

DECISION SHEET

RICS Regulatory Tribunal Rules 2022

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member:	Mr Thomas Clarke [6390135]
Single Member Decision of:	Jane Bishop
Case Number:	REG0000160171
Date of Decision:	28 March 2023

CHARGE:

The formal charge against the Regulated Member (Mr Clarke) is:

“On 31 August 2022 at Liverpool Crown Court, Thomas Clarke was convicted of a criminal offence, namely fraud by false representation under section 2 of the Fraud Act 2006, which resulted in a custodial sentence of 15 months suspended for two years”

ALLEGED RULE/S BREACH

Mr Clarke is therefore liable to disciplinary action under RICS Bye-Law 5.2.2(d).

MATERIALS CONSIDERED

I have had regard to the RICS bundle of documents consisting of 44 pages and published on 14 March 2023.

BACKGROUND

1. Under the Regulatory Tribunal Rules version 2 (effective from 2 February 2022) a “Member” is defined to include a Member of the Attached Classes of RICS. RICS Regulation 2.1.1 states the Attached Classes of RICS include trainee surveyors, candidates for membership and students. Attached

Classes are classes of persons who are not Members but who are attached to RICS as set out in Regulation 2.¹

2. On 15 December 2022, RICS emailed Mr Clarke attaching a letter and supporting evidence about the charge. Mr Clarke replied and stated he is not a Member of RICS and doesn't want to be.
3. Mr Clarke became an Assessment of Professional (APC) Candidate of RICS on 11 April 2013 but has not completed it. APC Members are not Members of RICS but are Members of the Attached Classes. Mr Clarke, as a Member of the Attached Classes, is subject to RICS' Bye-Laws, the Regulations made under those Bye-Laws² and the Rules concerning conduct.³ A Regulated Member includes an individual, such as Mr Clarke, who is subject to a RICS disciplinary procedure.⁴
4. The unchallenged evidence before me are records from the Liverpool Crown Court indicating Mr Clarke was convicted of the criminal offence of fraud under section 2 of the Fraud Act 2006 and sentenced to a custodial sentence of 15 months suspended for two years. Mr Clarke confirmed in his email dated 15 December 2022 that he had a criminal conviction and, in his email dated 14 February 2023, confirmed he had a criminal record. Based on the evidence, I am satisfied the charge has been proved to the civil standard.

FINDINGS OF FACT

5. I find the charge against Mr Clarke has been proved to the civil standard.

LIABILITY FOR DISCIPLINARY ACTION

6. Under RICS' Bye-Law 5.2.2(d), a Member may be liable to disciplinary action, whether or not he was a Member at the time, if the Member is convicted of a criminal offence which could result in a custodial sentence.

¹ RICS Bye-Law 1.2.2

² RICS Bye-Law 1.1

³ RICS Bye-Law 2.4.3

⁴ Rule 1(ff) of the Regulatory Tribunal Rules version 2

7. Mr Clarke has been convicted of a criminal offence and given a custodial sentence (suspended). During sentencing the Judge stated the facts of Mr Clarke's case were troubling. Mr Clarke, on at least 55 occasions, had undertaken cladding fire safety inspections in buildings over 18 metres high when he was not qualified to do so. When Mr Clarke's qualifications were challenged, he gave a dishonest explanation. He then obtained the personal professional information of an innocent former colleague and continued to undertake the inspections and complete the requisite forms using that innocent person's name, RICS number and signature. The Judge describe the innocent person as a victim who Mr Clarke attempted to implicate in the fraud by using a fraudulent email. The Judge stated Mr Clarke pushed aside the welfare of the building's residents and abused his position of power or trust.
8. Rule 1 of the RICS Rules of Conduct (effective from 2 February 2022) state that a Member must be honest, act with integrity and comply with their professional obligations, including obligations to RICS. Rule 5 states Members must act in the public interest, take responsibility for their actions and act to prevent harm and maintain public confidence in the profession.
9. Mr Clarke's actions were dishonest, lacked integrity and did not comply with his professional obligations. He didn't act in the public interest or to prevent harm. He attempted to implicate an innocent professional person and has undermined the public confidence in the profession. I am satisfied Mr Clarke is liable to disciplinary action.

REGULATORY SANCTION

10. The purpose of sanctions is not to be punitive, although it may have that effect. Their purpose is to uphold the standards of a profession, safeguard the reputation of the profession and, RICS as the regulator, to protect the public. Sanctions must be proportionate to the breach after considering all the circumstances of a case.

11. On 14 February 2023, RICS emailed Mr Clarke a second time and advised it was obliged to disclose the Investigation Report and give him the chance to respond. Mr Clarke replied and stated he has no involvement with RICS, and the matter had been dealt with. He stated he wanted RICS to “ban” him.⁵
12. Mr Clarke engaged in deliberate dishonest behaviour to obtain a financial benefit. He undertook cladding fire safety inspections that he was not qualified to do. The risk to the residents of those buildings was potentially catastrophic. He involved an innocent professional person and attempted to implicate them. When his qualifications were challenged, he provided a dishonest explanation. He has been convicted of the criminal offence of fraud and given a custodial sentence. However, Mr Clarke did enter a plea of guilty and the Judge recognised he had shown remorse. His actions were driven by a gambling addiction.
13. The charge is profoundly serious. Imposing no sanction, caution, a reprimand, undertaking and/or a fine would not be appropriate given the seriousness of the breach. This is consistent with paragraph 21.1 of the RICS’ Sanction Policy – Guidance to RICS Regulatory Tribunal Rules version 9 (effective from 2 February 2022). That paragraph states that, except in extenuating circumstances, expulsion is likely in Mr Clarke’s circumstances.
14. I am not satisfied there are extenuating circumstances in this case and find that the most appropriate sanction is expulsion.

ORDER MADE

15. In accordance with Part VI of the Regulatory Tribunal Rules version 2, I make the following order:
 - i. **Mr Clarke is expelled from the membership of RICS.**

⁵ Email from Mr Clarke dated 14 February 2023

TAKING EFFECT OF ORDER

16. In accordance with Part VI of the Regulatory Tribunal Rules version 2, this order will take effect 14 days from service of the Single Member's decision upon the Regulated Member, unless notification in writing is received from the Regulated Member or RICS stating that they consider that the findings and/or the Regulatory Sanction imposed by the Single Member are wrong.

COSTS

17. RICS has applied for costs in accordance with Supplement 2 to the Sanctions Policy: Fines, Costs and Administrative Fees version 9 (effective from 2 March 2020).⁶ Those costs amounted to £2,745 (including the costs of investigation, the costs of an interim measures hearing and the costs of a Single Member disciplinary panel).

18. Mr Clarke was found liable to disciplinary action. His evidence is that his financial circumstances are dire.

19. I accept Mr Clarke's financial circumstances are dire. However, in the context of a criminal conviction for fraud it would not be appropriate to burden the whole RICS membership with the costs of these proceedings. I am satisfied Mr Clarke should bear RICS' reasonable costs.

20. In accordance with Part VI of the Regulatory Tribunal Rules version 2, I make the following order in respect to costs:

- ii. **Mr Clarke will pay RICS' costs of £2,745.**

⁶ The costs are the same as those set out in Supplement 2 to the Sanctions Policy – Fines, Costs and Administration Fees, version 10 with effect from 2 February 2022

PUBLICATION

21. In accordance with Part VI of the Regulatory Tribunal Rules version 2, the Single Member's Record of Decision will be published following the expiry of 14 days from service of the Single Member's decision upon the Regulated Member.