

Registration Panel Hearing

Case of

Mark Thurston (in attendance, unrepresented)

On

Wednesday 13 March 2024

Held remotely via Microsoft Teams

Panel

Sally Ruthen (Lay Member, Chair)
Peter Scott (Surveyor Member)
Deborah Fajoye (Lay Member)

Legal Adviser

Gary Leong

RICS Representative

Marie-Claire Frankie

Member's Representative

None

Tribunal Executive

Marie Choudhury-Rahman

Introduction

1. This is the oral hearing of an application by Mr Thurston for re-admission following disciplinary expulsion, under Rule 130(a) of the RICS' Regulatory Tribunal Rules (Version 2, with effect from 02 March 2022) (the Tribunal Rules).

Burden of proof

2. Under Rule 135 of the Tribunal Rules, the burden is on the Applicant, Mr Thurston, to satisfy the Registration Panel that the order being sought should be made. There is no standard of proof and the Panel are to rely on their own professional judgment.

Background

3. Mr Thurston was first registered as a member of RICS on 24 December 1998.
4. He was expelled from RICS following a ruling made by the Disciplinary Panel on 31 May 2016. That decision was before the Panel today .
5. From January 2013 RICS members were obliged to complete 20 hours Continuing Professional Development (CPD) activity by 31 December of each calendar year and record it on an online portal.
6. On 31 May 2016, the Disciplinary Panel considered that Mr Thurston had failed to comply with RICS' requirements in respect of CPD on three occasions in that Mr Thurston had not recorded any CPD activity for the years 2013, 2014 or 2015.
7. The Disciplinary Panel concluded that Mr Thurston was liable for disciplinary action and, as it was the third successive year that Mr Thurston had failed to comply with his obligation to record 20 hours of CPD, the Disciplinary Panel decided that the appropriate sanction was expulsion from Membership.
8. On 25 January 2023 Mr Thurston submitted an application to be re-admitted to RICS membership. It was a matter of agreement between the parties that his application satisfied the formal requirements for such an application as stipulated by the RICS Rules Setting Out the Procedure for Re-Admission to Membership Following Disciplinary Expulsion (version 2, with effect from 02 March 2020) (the Re-admission Rules). RICS accordingly took no issue with the formal validity of Mr Thurston's application.

Preliminary matters

9. The Panel was satisfied that the relevant requirements had been met in relation to notice and service. In particular, Mr Thurston was in attendance and took no issue with notice and service of the documents before the Panel.

RICS submissions regarding the application

10. The Panel had before it Mr Thurston's formal written application for re-admission, the written decision of the Disciplinary Panel on 31 May 2016 that resulted in Mr Thurston's expulsion from RICS in 2016, a supporting letter from a current RICS member (Mr Toby Sallows), and the Case Summary and evidence bundle produced by RICS, including relevant correspondence between Mr Thurston and RICS.
11. Ms Frankie referred the Panel to the relevant provisions of the RICS Bye-laws and Regulations, as well as the Re-admission Rules. She also referred the Panel and Mr Thurston to the written submissions on behalf of RICS and said that those submissions remain the RICS' stated position.
12. Essentially, RICS were adopting a neutral position and it was a matter for the Panel to consider whether it was now appropriate to re-admit Mr Thurston, and in particular, whether he was a fit and proper person to be a member, and whether it was in the best interests of RICS that he should be re-admitted.

Evidence of Mr Thurston

13. Mr Thurston gave oral evidence to the Panel. He acknowledged that his failure that led to his expulsion was serious and wrong. He told the Panel of his career and that his motivation for now applying for re-admission was
 - (a) so he could provide a good role model to others who were working towards their RICS accreditation; and
 - (b) because he should not abandon his RICS membership because he had worked so hard for it in the past.
14. Mr Thurston explained that RICS registration was not a requirement in his current role, which he was due to leave, nor in his new role which he is due to start shortly. He proffered that as evidence his application for re-admission was for altruistic and personal reasons.
15. In response to questions from Ms. Frankie about how, if re-admission was granted, he would ensure compliance with the CPD rules, Mr Thurston stated that he would make it a priority and that he would partner with a colleague who is a Member of RICS to ensure compliance.
16. When asked if he had undertaken any CPD training since his expulsion, Mr Thurston said that he had completed some CPD and had logged some of them onto the RICS member

portal. This was confirmed by Ms Frankie and the entries were shown to the Panel. There were three hours of formal CPD registered on 6 May 2023 and one hour of formal CPD registered on 18 May 2023.

17. When he was asked by the Panel members what he thought was the purpose of the CPD process Mr Thurston told the Panel that he understood the importance of the CPD process to be a process to ensure that members maintain up to date knowledge of the industry and its standards.
18. When asked if there were any other purpose to the CPD process, Mr Thurston replied that there were none that he could think of.
19. The Panel also asked about how it was intended that Mr Sallows would be able to provide 'supervisory' assistance to help Mr Thurston achieve and maintain his CPD requirements if he was no longer going to be working with Mr Sallows. Mr Thurston gave assurance that he would maintain contact with Mr Sallows as he has known him for over 20 years and they both live close to each other.

Registration Panel's Decision

20. The Panel considered, in accordance with Rule 5 of the Re-admission Rules:
 - (a) whether Mr Thurston was a fit and proper person for the purposes of re-admission in accordance with RICS Regulation 2.2.2; and
 - (b) whether his re-admission was in the best interests of the RICS.
21. The Panel received and accepted advice from its Legal Adviser. It noted that the RICS had not raised any concern which might be considered a barrier to re-admission at this stage. It nonetheless recognised that it was for Mr Thurston to satisfy the Panel that he should be re-admitted, applying the criteria set out, and that it was in turn for the Panel to be satisfied that Mr Thurston was a fit and proper person to be a Member of the RICS, and that it was in the best interests of the RICS to allow him to be re-admitted.
22. The Panel was not satisfied overall, and on balance, that Mr Thurston had learned from his previous breaches, and resultant expulsion. His answers to Panel questions did not show a full understanding of the importance of CPD nor of the purposes of the CPD process. Whilst he was able to demonstrate a basic understanding of the purposes of maintaining CPD, he did not demonstrate an understanding of the wider policy purpose nor of its impact upon those who would seek the services of RICS members in terms of the quality of the service provided and in terms of the reputation of the profession.
23. Whilst Mr Thurston said that he was committed to the CPD process and that he would in future exceed the requirement, the Panel were disappointed that Mr Thurston had not provided evidence that he had converted that commitment into actually undertaking CPD training that would at least meet the requirements of the current CPD year. The Panel

also noted that, whilst Mr Thurston said that he had undertaken more CPD training than he had recorded on the RICS system, he could not recall what that training was on, nor even if they were relevant professional training.

24. The Panel also determined that, whilst Mr Thurston had demonstrated some insight into his failings, he had not demonstrated sufficient insight to satisfy this Panel that the risk of repetition was low. From the evidence and his oral testimony the Panel was unable to discern any real and material changes in Mr Thurston's attitude towards the CPD process since his expulsion. In the absence of the above, the Panel has concerns that Mr Thurston would maintain the CPD requirement of registration, particularly in light of the fact that he is about to start a new role that does not require RICS registration and also in an organisation that will not be RICS regulated and as such will not have in place formal training procedures to ensure that CPD requirements remain a priority and are achieved,.
25. In light of the above, the Panel could not be satisfied that there was very unlikely to be any reoccurrence. It is of critical importance that Members comply with CPD, in order to maintain standards and to enable the RICS to uphold the reputation of the surveyors' profession. Failure to comply risks bringing the profession into disrepute and is quite properly treated seriously by the RICS, particularly in the event of repetition. Mr Thurston had not taken steps to ensure that he was able to comply in future, nor has he maintained his CPD in the meantime.
26. The Panel determined that the risk of further repetition could not be said to be low, both because of the lack of sufficient insight demonstrated and the lack of steps taken by Mr Thurston to demonstrate that he would be better able to proactively attend to regulatory obligations in future. The Panel was satisfied overall that Mr Thurston has not demonstrated the level of engagement and insight which had been found to be lacking at the time of his expulsion.
27. As a result, the Panel was not satisfied from the evidence before it that Mr Thurston is a fit and proper person to be a full Member of the RICS, nor that it is in the interests of the RICS that he should be re-admitted. Professional membership is a privilege and CPD compliance is a critical part of the commitment which comes with being a Member of the RICS. Whilst the Panel is refusing Mr Thurston's application, it would wish to encourage him to consider how he might demonstrate his commitment to the CPD process and mitigate further the risk of any reoccurrence. This might include undertaking training that would qualify for CPD points for RICS membership even though he is not a member of RICS and further reflecting on how the CPD process is relevant other than only to ensure the maintenance of standards within the industry.
28. In light of the above, the Panel refuses Mr Thurston's application for re-admission as an Associate Member of RICS.

Publication and Costs

Publication

29. The Panel considered the guidance as to publication of its decisions and accepted the Legal Adviser's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on the RICS website and in RICS Modus. The Panel had regard to the submissions of both parties. Mr Thurston made no objection to publication of this decision. The Panel equally sees no reason for departing from the normal practice in this case. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.
30. The Panel therefore orders that this decision be published on the RICS website and in the RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008, version 9.

Costs

31. RICS made an application for costs in the total sum of £2660, supported by a detailed schedule of costs. Ms Frankie told the Panel that RICS are only seeking the cost for the hearing and not for her attendance or work done by her.
32. Mr Thurston made no representation about the costs sought by RICS.
33. The Panel considered all of the circumstances. The Panel concluded that it was appropriate for Mr Thurston pay the costs of this hearing, otherwise the full cost of these proceedings would fall on the profession as a whole. The Panel was therefore satisfied that it was just and reasonable to order that Mr Thurston pay the RICS' costs of this hearing in the sum of £2660.

Appeal Period

34. Mr Thurston may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rule 152 of the Regulatory Tribunal Rules.