

Disciplinary Panel Hearing

Case of

Mr Matthew O'Dwyer

On

Tuesday 16 April – Thursday 18 April 2024

At

By Video conference

Panel

Sally Ruthen (Chair, Lay)
Dr Stephen Moore (FRICS Member)
Peter Baker (Lay Member)

Legal Assessor

Chris Hamlet

RICS Representative

Christopher Hopkins, Counsel

Registrant Representative

Mr O'Dwyer represented himself

The formal charges are:

The charges against Mr O'Dwyer are:

1. On or around 14 July 2021, you were dishonest in that you submitted to RICS and application to register on the RICS Valuer Registration Scheme ("VRS") which declared that you met the eligibility conditions required to register when you knew that you did not, causing you to be registered on the VRS when you otherwise would not have been.
2. On or around 14 July 2021, you submitted to RICS an application to register on the VRS which declared that you met the eligibility conditions required to register when you did not, causing you to be registered on the VRS when you otherwise would not have been. In doing so, you acted without integrity in that you:
 - a. deliberately sought to deceive RICS by providing incorrect information about your eligibility; or
 - b. recklessly misled RICS by providing information about your eligibility without regard to its accuracy.
3. On or after 14 July 2021, having been notified that your application to register on the RICS Valuer Registration Scheme ("VRS") had been successful and in the knowledge that you had no qualifications or training in valuation, you acted without integrity in that you:
 - a. Failed to alert RICS immediately or at all that you had been certified as an RICS Registered Valuer despite your lack of expertise in valuation and/or
 - b. Undertook and completed 11 valuation reports for members of the public between 2 March 2022 and 3 October 2022.

Contrary to Rule 3 of the Rules of Conduct for Members Version 7

You are therefore liable to disciplinary action under RICS Bye-law 5.2.2(c).

Preliminary matters:

1. Mr O'Dwyer returned a listing questionnaire dated 8 April 2024 in which he indicated an intention to admit all the factual charges and to engage in the proceedings without legal representation.
2. An application was made on behalf of RICS by Mr Hopkins to admit a further statement by Ms Jamie Edwards, Lead Investigator of RICS, dated 9 April 2024. The statement produced a Valuer Registration Annual Return for the Member dated 17 June 2022.
3. The Application was supported by written submissions by Mr Hopkins which referred to Rule 121 of the RICS Regulatory Tribunal Rules (v2) and confirmed that the statement from Mr Edwards would be served on the Member on 11 April 2024.

4. The Panel was referred by the Legal Assessor to Rule 54 of the Rules, which provided for service of all documents upon which the RICS Presenting Officer intended to rely at least 56 days before an oral hearing. However, Rule 121 provides that:
 - a. all questions of admissibility of evidence and law before the Panel are to be decided by the Panel
 - b. subject only to the requirements of relevance and fairness, the Panel may receive any documentary evidence and where a hearing is held, any oral evidence, unless otherwise stated in these rules
5. Accordingly, the Panel was advised that it had a discretion to allow the admission of the additional material if it considered it relevant to the matters before it and fair to do so.
6. The Panel, having taken account of that advice, the submissions of Mr Hopkins and the indication by Mr O'Dwyer that he did not object, determined to allow the application.

Evidence:

7. The Panel received a bundle of material produced on behalf of RICS. This included factual statements from Mr Jonathan Hill, Regulation and Compliance Officer, dated 29 November 2022 and Ms Jamie Edwards, Lead Investigator for RICS, dated 6 June 2023, 24 July 2023 and 6 November 2023. The additional statement from Ms Edwards dated 9 April 2024 was received following the preliminary application for its admission.
8. No additional material was produced by or on behalf of Mr O'Dwyer.

Facts:

9. The case concerns Mr O'Dwyer's application to join the RICS Valuer Registration Scheme ("VRS"), in accordance with Appendix A of the the RICS Rules for the Registration of Schemes. This allows members to carry out valuations in accordance with the Red Book of valuations (the "Red Book").
10. Mr O'Dwyer became a director of Finch Surveyors Ltd ("Finch") on 17th March 2021, which has been regulated by RICS since 30th September 2021. He made an application to join RICS on 14th June 2021 and became a Chartered Member ("MRICS") on 4th July 2021. His application and admission was via the direct entry route by virtue of pre-existing membership of the Chartered Institution of Civil Engineering Surveyors. His application form recorded that he was employed as a trainee Quantity Surveyor ("QS") in 2007 before becoming a QS and undertaking contract management, joining Finch as a freelance QS in March 2018. His pathway was quantity surveying and construction. However, his application to join RICS recorded no experience or qualification in valuation, and his was not an approved direct entry route to VRS.

11. On 14 July 2021, Mr O'Dwyer completed an online application to register onto the VRS. Within that form, he stated:

"I confirm that I have achieved the required valuation competency or am joining through an approved direct entry route."

12. In addition, he checked the box beneath the "Declarations" section confirming, inter alia, that all information was correct, he had read the Rules for Registration of Schemes and was appropriately qualified to carry out valuation work.

13. Mr O'Dwyer was duly registered on the VRS with immediate effect.

14. However, Mr O'Dwyer was not eligible to join the VRS and the relevant declarations he made were incorrect. He had no experience or qualifications in valuation and did not raise any issues with RICS before proceeding to complete at least 11 valuation reports for members of the public between 2 March 2022 and 3 October 2022.

15. On 17 June 2022, Mr O'Dwyer submitted his annual return to RICS for the VRS in which he repeated his declaration that he had achieved the required valuation competency or was joining through an approved direct entry route.

Investigation

16. In September 2022, Mr O'Dwyer was referred to the RICS Investigations Team after an employee of RICS, during a monitoring and assurance activity, became suspicious of Mr O'Dwyer's entry route to becoming a qualified valuer.

17. On 10 October 2022 Ms Jamie Edwards sent an information request to Mr O'Dwyer. The following day, Mr O'Dwyer explained he had submitted his VRS application naively to further his career and knew now that he should not have done so since he was not qualified and had received no training to be a valuer. He provided a written response in which he stated that he had undertaken 10-15 valuations in the last 12 months with the highest value being at around £400,000.

18. Mr O'Dwyer was removed from the VRS on 10 November 2022.

19. On 25 January 2023, Mr O'Dwyer provided a further response in which he denied having been aware of the eligibility conditions for VRS registration at the time of his application and claimed

he had only become aware that he was not eligible upon the commencement of the RICS investigation. Mr O'Dwyer provided RICS with a copy of Finch's Terms of Engagement and a valuation report he had completed dated 22 April 2022 which referred to him as being, "... a professional member of the Royal Institute of Chartered Surveyors ..." The Terms also refer to him as being a "RICS Regulated Valuer" whereas the report refers to Mr O'Dwyer as being a "RICS Registered Valuer."

20. On 14 March 2023, Mr O'Dwyer provided a spreadsheet containing a list of 11 valuations he made for Help to Buy loan redemption purposes between 2 March 2022 and 3 October 2022 with the highest valuation being for £400,000.
21. Ms Edwards sent an allegation letter to Mr O'Dwyer dated 6 June 2023. He responded by email dated 20 June 2023 including that it had been a "... *Genuine mistake on my part as I was expecting feedback to ascertain membership rather than being issued a certificate after paying fees.*" Mr O'Dwyer emailed again dated 26 June 2023 when he added, "... *I understand how the situation may be perceived as dishonest and apologise ... In retrospect, I should have alerted RICS to the issue of the certificate however I was unsure of the process.*"

Submissions on behalf of the parties

22. Mr Hopkins, on behalf of RICS, reiterated the case advanced in his written submissions. He took the Panel to, inter alia, the relevant Rules, specific parts of the application, including the content of the declaration given, the guidance available to Members and correspondence between him and RICS. He submitted that Mr O'Dwyer had acted dishonestly and without integrity as charged.
23. Mr O'Dwyer admitted that he had recklessly misled RICS as charged at 2b but denied all other allegations.

Burden and standard of proof

24. The Panel was advised that RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. That is a single unwavering standard of proof, though the more unlikely an allegation the more care should be taken to examine the evidence. There is no requirement for Mr O'Dwyer to prove anything.
25. The Panel had in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and proceeded upon the basis that the Human Rights Act 1998 will apply. It bore in mind in particular Mr O'Dwyer's right to a fair trial and respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by

that Act. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment.

Dishonesty

26. The Panel was referred to the case of **Ivey v Genting Casinos [2017] UKSC 67**, in which the Supreme Court examined the concept of cheating and the definition of dishonesty.

27. Para 74 states as follows:

*“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) **the actual state of the individual's knowledge or belief as to the facts**. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, **the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people**. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”*

28. It follows that the test is as follows:

- a. What did the Member (subjectively) know or believe to be the factual situation at the time? Having established that...
- b. Taking a) into account, was the conduct (objectively) dishonest according to the standards of ordinary decent people?

Integrity

29. The Panel was referred to the case of **Wingate v Solicitors Regulation Authority [2018] EWCA Civ 366**: On a review of authorities, Jackson LJ, gave judgement as follows:

*93. ... Honesty is a **basic moral quality which is expected of all members of society**. It involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct. These observations are self-evident and they fit with the authorities cited above. The legal concept of dishonesty is grounded upon the shared values of our multi-cultural society. **Because dishonesty is grounded upon basic shared values, there is no undue difficulty in identifying what is or is not dishonest.***

95. ... As a matter of common parlance and as a matter of law, **integrity is a broader concept than honesty**. In this regard, I agree with the observations of the Divisional Court in *Williams* and I disagree with the observations of Mostyn J in *Malins* .

96. **Integrity is a more nebulous concept than honesty**. Hence it is less easy to define, as a number of judges have noted.

97. In professional codes of conduct, the term "integrity" is **a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members**. See the judgment of Sir Brian Leveson P in *Williams* at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

100. Integrity connotes **adherence to the ethical standards of one's own profession. That involves more than mere honesty**. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.

102. Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. **The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public.**

30. The Panel was referred to extracts from the guidance published by RICS at the time of the index events in the document "Global Professional and Ethical Standards" of the type of conduct that it considers would breach its standards of integrity:

Act with integrity

- This means being honest and **straightforward** in all that you do.
- This standard includes, but is not limited to the following behaviours or actions:
 - o Being trustworthy in all that you do.
 - o Being open and transparent in the way you work. Sharing appropriate and necessary information with your clients and/or others to conduct business and doing so in a way so they can understand that information.
 - o Acting consistently in the public interest when it comes to making decisions or providing advice.

• Some of the key questions that you could ask yourself include: o What would an independent person think of my actions?

o **Would I be happy to read about my actions in the press?**

o How would my actions look to RICS?

o **How would my actions look to my peers?**

o Do people trust me? If not, why not?

o Is this in the interests of my client, or my interest, or the interest of someone else?

o Do I say “show me where it says I can’t” or do I say “is this ethical”?

Determination on Facts

31. The Panel took careful account of the submissions of both parties and the advice of the Legal Assessor.
32. The Panel was satisfied that the Application Form produced by RICS in the bundle contained the same information as the online form that Mr O’Dwyer had completed and submitted to the VRS on 14 July 2021. It noted that the Application included express reference to the appropriate criteria and a declaration, which had been ticked by Mr O’Dwyer, to confirm inter alia, that :
 - a. The information on the form was correct;
 - b. He had read and understood the Rules for the Registration of Schemes;
 - c. He was appropriately qualified and/or experienced to carry out valuation work;
 - d. He would update RICS if any of the information provided changes.
33. The Panel took account of Mr O’Dwyer’s oral evidence that he had not read the Application form, nor the Declaration, before submitting the form. He made repeated comparisons between the Application and the “Terms and Conditions” of a mobile phone contract, which he asserted few people actually read. He accepted in hindsight that he ought to have paid more attention to the content of the Application but completed and submitted it without doing so.
34. The Panel accepted that account but was troubled by Mr O’Dwyer’s assertions that he “expected the Application to fail” and that he submitted it “in order to secure feedback from RICS” as to the appropriate means by which he could conduct valuations under the VRS. It noted his acceptance that he had no prior experience of valuations of this nature and had

cited a valuation in the application of a purely 'personal nature', which underlined that lack of substantive experience. In addition, the Panel took account of Mr O'Dwyer's reference to being surprised that the Application was granted without any feedback or 'red flags' from RICS and that the certificate was issued immediately.

35. The Panel concluded that, whether or not Mr O'Dwyer had read and understood the content of the Application form, this all pointed to an appreciation on his part that he did not meet the relevant criteria for the VRS. As he put it in oral evidence, he submitted the form "to see where it would get him".
36. In that context, the Panel was further troubled by Mr O'Dwyer's decision to conduct valuations under the VRS without making any subsequent enquiries of RICS as to whether he had been issued the certificate in error. His evidence was that having been issued the certificate, he assumed the VRS process was akin to a "subscription service" whereby one was deemed to be qualified upon payment of the relevant fee. The Panel considered that if Mr O'Dwyer was in any doubt about the process of VRS or his eligibility to join it, he had a duty as a member of RICS to make those enquiries - and it was instructive as to his state of mind that he chose not to do so.
37. The Panel did not accept Mr O'Dwyer's assertion that he believed it was incumbent upon RICS to challenge the declarations he had made as to his experience and qualifications and that the issue of the VRS certificate was, in itself, indicative of eligibility. The Panel considered it more likely that Mr O'Dwyer knew or suspected that he should not have been admitted to the VRS scheme but chose to take advantage of the fact that RICS granted the application without questioning his self-declaration as to eligibility.
38. Accordingly, the Panel concluded that Mr O'Dwyer acted dishonestly in submitting the VRS Application and providing a declaration that he met the eligibility requirements – given that he knew he did not.
39. It further concluded that in submitting that Application, Mr O'Dwyer lacked integrity not merely by virtue of a reckless failure to ensure the information was accurate, as he asserts, but by way of a deliberate deception of RICS as to his eligibility.
40. Finally, the Panel determined that Mr O'Dwyer's subsequent conduct in failing to alert RICS as to his known lack of expertise and undertaking and completing 11 valuation reports for members of the public under the scheme represented a clear lack of integrity on his part.
41. Accordingly, charges 1, 2a, 3a and 3b are found proved.

Liability to Disciplinary action:

42. The Panel went on to consider whether Mr O'Dwyer was liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the Legal Assessor. This question is one for the Panel's judgment and applies in respect of the specific charge found proved. In Bye Law 5.2.2 it is set out that a member 'may' be liable to disciplinary action by reason of:
- a) Conduct liable to bring RICS into disrepute;
 - b) Serious professional incompetence;
 - c) A failure to adhere to these Bye-Laws/Regulations/Rules;
 - d) Having been convicted of an offence that could result in a custodial sentence.
43. In this instance, RICS invites you to consider that c) applies. The Rules provide for a separate decision to be made on liability after allegations have been determined. This underlines the fact that liability does not arise automatically upon proof of allegations. The decision provides a 'gateway' for the imposition of a sanction, but does not mandate or determine what that outcome may be.
44. The Panel considered that any act of dishonesty and/or lack of integrity raises a presumption of liability to disciplinary action. The Panel were concerned in this case that whilst Mr O'Dwyer acknowledged that he ought to have taken more care to read the Application form in question, he repeatedly implied that RICS bore responsibility to check the eligibility of applicants to the VRS. It was not apparent from his evidence that Mr O'Dwyer understood the import of a self declaration, or the personal duty on Members to ensure that information provided to RICS – especially when making professional applications - is accurate. Mr O'Dwyer maintained that he had not appeared to have learned failure to carry out a condition of membership which is there to ensure members retain current knowledge and skills, is serious. Mr O'Dwyer accepted he is liable to disciplinary action by virtue of his conduct.
45. The Panel took into account the fact that the VRS is intended to ensure that those carrying out valuations are appropriately qualified and skilled to do so and that members of the public can have confidence in that system ...
46. The Panel concluded that Mr O'Dwyer was liable to disciplinary action.

Sanction:

47. Having found the charges proved and determined that Mr O'Dwyer was liable to disciplinary action, the Panel took account of submissions from both parties and the advice of the Legal Assessor. Mr Hopkins referred the Panel to the relevant aspects of the published Sanctions Policy, in particular the Sanctions Policy Guidance, Version 9, Part 2 and the Sanctions Policy Supplement 1, Part 2. Mr O'Dwyer invited the Panel to consider, inter alia, the fact that no one had been 'physically harmed' by his actions, there had been no financial gain, he had apologised, and he had not renewed his VRS registration of his own accord. He

asserted that the public did not need protection from him and his error had been a “small, small incident in the grand scheme of things.”

48. The Panel were advised that the decision on sanction is a matter for its independent judgment, drawing upon the published guidance. It noted that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved, taking into account the aggravating and mitigating features present.

Mitigating/Aggravating features:

49. The following features of the case were considered to mitigate the breaches:

- He has apologised for the breaches
- No prior disciplinary history
- He indicated a willingness to undertake relevant courses in future

50. Though not strictly a mitigating feature, the Panel acknowledged the fact that Mr O’Dwyer had fully cooperated with RICS’ investigation and engaged in the proceedings.

51. The following features of the case were considered to aggravate the breaches:

- An ongoing and deep-seated lack of insight into the seriousness of the breaches, including the potential direct risk to the public and the impact on the reputation of the profession
- The lack of integrity in failing to alert RICS to the dishonest breach was sustained over a period of 15 months
- Direct risk of harm to clients as a product of completing valuations without appropriate qualifications and consequently, effective indemnity insurance
- Attempts to attribute blame to RICS for failing to immediately challenge his dishonest declarations
- No substantive attempts to remedy, rectify or reflect on the breaches
- Real risk of repetition

Decision on Sanction:

52. The Panel considered the matter too serious for no sanction to be imposed. Having accepted the advice of the Legal Assessor regarding the need to take a proportionate approach, the Panel considered the full range of sanctions available to it, starting with the least stringent.

53. The Panel considered that breaches of this seriousness demanded a commensurately stringent response in order to restore public confidence in the profession and uphold

standards. In view of Mr O'Dwyer's evident lack of insight and failure to take any steps to attempt to address the breaches, the Panel concluded that Conditions were not adequate in meeting the gravity of the misconduct, nor were they appropriate or workable.

54. In the Panel's view, these breaches were of the utmost seriousness. Honesty and Integrity go to the heart of what it means to be a professional member of RICS. The breaches in question were not the product of a trivial or fleeting error, but deliberate and sustained acts of dishonesty and a lack of integrity. Though the Panel was mindful of Mr O'Dwyer's cooperation and engagement in the proceedings, as well as his apology, having had the opportunity to hear from him over the course of three days, it was not able to conclude that he established an appreciation of the seriousness or impact of those breaches on the wider profession. Similarly, the Panel was not satisfied that Mr O'Dwyer had learned from the experience, such that he was unlikely to repeat them in future. As a consequence, the Panel concluded that the only means by which it could protect the public, restore confidence and trust in the profession and uphold standards was to order his expulsion.

55. Accordingly, the Panel orders Mr O'Dwyer be expelled from membership.

Publication

56. The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus. The Panel sees no reason for departing from the normal practice in this case.

57. The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

58. RICS made an application for costs in the sum of £21, 035.50. Mr O'Dwyer addressed the Panel on his financial means and ability to pay those costs. The Panel took careful account of those submissions but did not consider it had evidence before it that warranted a departure from the usual position on costs. It concluded that the costs of the hearing should not be borne by the profession.

Appeal Period

59. Mr O'Dwyer may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rules 58 – 70 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.

60. The Honorary Secretary of RICS may require a review of a finding or penalty imposed by a Disciplinary Panel within 28 days from service of the notification of the decision, in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.