



ROYAL INSTITUTION OF CHARTERED SURVEYORS

Registration Panel Hearing

Case of

Kevin Day (present and unrepresented)

On

Wednesday 01 May 2024

At

Held remotely via Microsoft Teams

Panel

Alison Sansome (Lay Chair)
Peter Baker (Lay Member)
Mohamed Shehata (Surveyor Member)

Legal Adviser

Rebecca Vanstone

RICS Representative

Donna Carr, RICS

Regulatory Tribunal Executive

Maria Choudhury-Rahman

Background

1. Mr Day became a member of RICS in 1999 and was expelled following a decision of the Disciplinary Board on 14 May 2003. The expulsion was following Mr Day's criminal conviction which is now spent.
2. By virtue of a written application dated 01 November 2023 and supporting information dated 11 March 2024 Mr Day applies for readmission to the membership.

Preliminary matters

3. At the outset of the hearing the Panel requested further information as to the nature of the conviction and the conduct that had led to the conviction. The Panel was told by Ms Carr on behalf of RICS that due to the passage of time, the only information now available was the formal written decision of the Disciplinary Board. Mr Day did not object to the Panel having sight of this document.
4. The Panel received and accepted the legal advice which was that it had a broad discretion to admit evidence in these proceedings, subject to the requirements of relevance and fairness. The Panel determined that it was relevant to receive the information requested as it would help to inform their ability to determine whether Mr Day had displayed sufficient insight and reflection into his prior conduct; the Panel determined it was fair to receive the evidence in the absence of any objection, and bearing in mind that the information was in the public domain in any event.
5. The Panel therefore received and considered the decision from the Disciplinary Board which outlined the previous penalty imposed and the brief reasons for arriving at the decision of expulsion.

Submissions by Mr Day

6. Mr Day explained that in respect of the criminal conviction he had passed a document to the Local Authority which was thereafter deemed to be fraudulent. He said he had no involvement in creating the document and that he had received no financial benefit from his actions. He had pleaded guilty to the offence and told the Panel he accepted responsibility.
7. Mr Day told the Panel he had reflected on his conduct and, since then, has never accepted things at face value and instead always questions what he is told. Mr Day explained that in the twenty years since the conviction, he is now cautious as to what instructions he receives and if there is any doubt as to whether the instruction is outwith his professional competence, he will decline it.
8. Mr Day explained that after the conviction was spent, which he explained was a period of five years, he set up his current business which has also been regulated by RICS for the past 12 years. He has continued to work as a building surveyor throughout his career and has experienced no professional difficulties since. He has experienced repeat business from satisfied clients and the business is profitable. It currently employs five surveyors, one MRICS member, two support staff and an accredited finance director. One of the surveyors is currently in training to become a RICS accredited member.

9. Mr Day told the Panel that his business has grown such that it now employs a business development professional. He anticipates that the business will continue to recruit employees and as a matter of governance, he will be required to have other RICS regulated members on the Board. He wants to take this role on himself given the business is owned by him.
10. Mr Day told the Panel that he was supportive of RICS and the regulations in place and that he believed they were important in maintaining the integrity and the reputation of the profession.

Submissions by the RICS Presenting Officer

11. Ms Carr, on behalf of RICS, was neutral as to the application but drew the Panel's attention to the various Rules and guidance, and to the salient points of the application.
12. Ms Carr pointed out that the 2003 decision of the Disciplinary Board highlighted the following mitigating factors present: that the offence was a one-off act a number of years prior; that the financial penalty imposed by the Court was small; that Mr Day had notified the RICS immediately which was what was expected of members, and that there was a character witness (although this Panel was not aware of what that witness had said).
13. Ms Carr urged the Panel to consider any insight displayed by Mr Day and the risk of recurrence. She confirmed that the procedural requirements of the application had been met and highlighted the fact that a supporting statement from a colleague of Mr Day's who is a current member of RICS had been submitted. Ms Carr reminded the Panel that Mr Day's conviction was now spent.

Panel's Decision

14. The Panel received and accepted the advice of the Legal Advisor. It had in mind the need to have regard to *The Rules Setting Out the Procedure for Re-admission to Membership Following Disciplinary Expulsion*. It was told that there was no prescribed test for who is a fit and proper person but that it would depend on the facts and circumstances of the case, and that it must consider the conduct since the expulsion, any insight and remediation, and the risk of repetition, amongst other factors it may consider relevant.
15. When determining whether Mr Day was a fit and proper person the Panel considered that he had been working as a surveyor since he was expelled, without further issue. This was now some twenty years. Mr Day told the Panel that he was competent and now very experienced. The Panel agreed with this assessment, from the information before it.
16. The Panel also had in mind that Mr Day was making efforts to keep up to date with CPD. He provided specific examples of the training he had carried out with regard to changes to Approved Document B to the Building Regulations and described receiving regular CPD presentations from contractors and consultants to ensure he and others in the business remain up to date. Mr Day explained that this was supplemented by informal meetings taking place between him and his co-surveyors where they would identify any changes in legislation together and determine whether any training was required.

17. The Panel concluded that Mr Day was passionate about his work and was invested in the profession.
18. The Panel acknowledged that the offence for which Mr Day had been convicted and which resulted in expulsion was serious. However, it noted that he had fully accepted not only responsibility for the offending behaviour but also the decision of the Disciplinary Board in deciding to expel him. Mr Day told the Panel that he had been naïve in taking things at face value. The Panel considered that Mr Day had displayed insight and remorse, and that the risk of repetition of any such behaviour was extremely low.
19. In all of the circumstances the Panel determined that Mr Day was a fit and proper person.
20. The Panel next considered whether it was in the best interests of RICS for Mr Day to be re-admitted to the membership.
21. The Panel was mindful that Mr Day's business held many years of unblemished accreditation with RICS and that the intention was for the business to grow and to train current surveyor employees to become RICS accredited. This would be of benefit to the profession and demonstrated Mr Day's commitment to the profession and to his desire to work within the confines of the regulations. The Panel considered that Mr Day was positively promoting RICS accreditation which was of a benefit to both the profession and the public.
22. The Panel considered that in light of the passage of time since the conviction, the work that Mr Day has carried out since and his continued commitment to the profession, there was a public interest in re-admitting him to the membership. The public would not be concerned to learn that an individual in these circumstances, was allowed to return to regulated practise. Mr Day acknowledged that the onus was on him to ensure compliance with the RICS regulations and he recognised the importance of such compliance. This would ensure the integrity of the RICS is maintained.
23. Whilst it was not considered by RICS that there were any issues with Mr Day's professional competence, for completeness, the Panel considered whether this criteria was met. The Panel determined that in light of Mr Day's continued work over the past 20 years, without any evidence of complaint against him, and given his cautious nature upon accepting new instruction, he was of sufficient professional competence. Mr Day told the Panel of the measures he had in place to ensure that he was working only within the limits of his professional competence. The Panel was unsure whether any specific procedures were in place in this regard as Mr Day explained his cautious approach, but the Panel recognised that the checks he made to assure himself about clients and prospective work would maintain the objective of ensuring he did not work outside of the limits of his professional competence in any event.
24. The Panel was mindful that it was able to grant re-admission on an unconditional basis, with conditions or to a different membership class. The Panel was of the view that conditions were not necessary in the circumstances of this case. RICS did not propose that conditions should be applied, and the Panel did not think conditions would be appropriate in any event. Neither did the Panel consider a change in membership class was necessary or appropriate.
25. The Panel has therefore determined to grant Mr Day's application for unconditional admission as a member of RICS.

Publication and Costs

Publication

26. The Panel considered the guidance as to publication of its decisions and accepted the Legal Advisers 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 the online Modus and that there is a presumption in favour of publication. Mr Day was told of the period of publication and did not make any submissions.
27. The Panel 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.
28. The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy – Publication of Regulatory Matters.

Costs

29. RICS made an application for costs in the total sum of £2,170.00 supported by a detailed schedule of costs which had been served on Mr Day in advance as required. This application was for the costs for today's hearing and did not include Ms Carr's attendance or the preparation of the case, in light of Mr Day's application being successful.
30. Mr Day made no submissions in respect of the application for costs.
31. The Panel considered all of the circumstances. The Panel concluded that it was appropriate for Mr Day to 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 Day pay the RICS' costs of this hearing in the sum of £2,170.00.

Appeal Period

32. Mr Day 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.
33. In accordance with Rules 166 and 167 of the Tribunal Rules, RICS' Chair of Governing Council may require a review of this decision on the grounds of undue leniency within 28 days.