



ROYAL INSTITUTION OF CHARTERED SURVEYORS

Disciplinary Panel Hearing

Case of

**Kevin TOOMBS [0059476]
Gloucestershire**

On

Monday 15 September – Wednesday 17 September 2025

At

RICS, Colmore Row, Birmingham

Panel

Ms Alison Sansome (Lay Chair)
Ms Niru Uddin (Lay Member)
Dr Stephen Moore (Surveyor Member, appearing remotely)

Legal Adviser

Ms Rebecca Vanstone

RICS Representative

Mr Ben Rich, Counsel, appeared on behalf of RICS

Mr Toombs present and unrepresented

Tribunal Executive

Ms Jae Berry

Introduction

1. Kevin Toombs (“Mr Toombs”) appears before the RICS Disciplinary Panel in connection with the following allegations:-

1. *Mr Kevin Toombs failed to avoid any actions or situations that were inconsistent with his professional obligations in that he failed to treat Mr Weerawardena with respect when sending him the following emails:*
 - a. *Email of 20 December 2021 which was condescending in tone and/or made threats to remove items of property or access to utilities and/or described Mr Weerawardena as operating like a free-range chicken and/or*
 - b. *Email of 24 December 2021 in which Mr Toombs suggested that he might cause chicken excrement to be deposited in Mr Weerawardena’s garden and/or sought to belittle or discriminate against Mr Weerawardena based on his ethnicity by reference to how deals are done in GB, by reference to the law in Sri Lanka and by reference to ‘your lots Arrogance’.*

Contrary to Rule 3 of the Rules of Conduct for Members v 7 with effect from 2 March 2020. Mr Toombs is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c).

2. *Mr Toombs was convicted before the Crown Court at Bristol on 9 November 2023 of an offence of Racially Aggravated Harassment contrary to section 31(1)(b) of the Crime and Disorder Act 1998; that offence being one which could result in a custodial sentence.*

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

3. *Mr Toombs, on 8 February 2022, failed to treat Mr Weerawardena with respect by telling Mr Weerawardena to go back to where he came from and asking him to get a ticket and go back.*

Contrary to Rule 4 of the Global Rules of Conduct with effect from 2 February 2022. Mr Toombs is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c).

Response

2. Mr Toombs accepts allegation 2 and that he is liable to disciplinary action as a result. He denies allegations 1 and 3.

Summary

3. Mr Toombs is a Member of RICS, qualifying as a professional member in November 1981.
4. On 30 December 2021, a concern was raised with RICS by Mr Weerawardena in relation to Mr Toombs' behaviour towards him and in relation to the contents of email communication sent to him by the Member.
5. Mr Weerawardena and his family purchased a property at Manor Farm in Tockington near Bristol in around May 2000. That property is part of a larger estate and was brought from a Mr Scandrett and Ms Dovey who retained other land and property on the estate. Their home neighbours Manor Farm.
6. From around 2015 there was a dispute between neighbours. In October 2020 Mr Scandrett asked Mr Weerawardena to arrange a meeting with Mr Toombs. Mr Toombs was a friend of both Mr Scandrett and Ms Dovey. He was also a regular visitor to their property and to the estate.
7. A meeting took place on 31 October 2020 at which Mr Toombs stated that he was acting on behalf of Mr Weerawardena's neighbours who claimed that he had built on their land and should pay £50,000. This was disputed by Mr Weerawardena. There then followed protracted negotiations together with the involvement of a solicitor and building surveyor. The allegations before the Panel do not relate to the factual elements of the dispute, and relate solely to Mr Toombs' conduct as a professional and as a Member of RICS.
8. On 15 December 2021 Mr Weerawardena emailed Mr Toombs asking him to intervene to stop his clients from damaging the property. On 20 December 2021 Mr Toombs sent an email to Mr Weerawardena which was said to be condescending. It is also alleged to have contained

threats as to the removal of access to utilities unless significant sums of money were paid. RICS allege that the contents of the email was also unprofessional and disrespectful.

9. Mr Weerawardena replied to the email on 22 December 2021 which was followed by a further email from Mr Toombs on 24 December 2021 which RICS further allege was condescending and unprofessional. Mr Toombs referenced Mr Weerawardena's ethnicity which did not have any relevance to the ongoing dispute. RICS say this email was belittling, discriminatory and disrespectful.
10. On 08 February 2022 there was a confrontation at the property between Mr Weerawardena and Mr Toombs. Parts of this confrontation were recorded on Mr Weerawardena's mobile telephone. Mr Toombs is heard saying on one of the clips, that Mr Weerawardena should go back to where he came from, and should buy a ticket to return to where he is from.
11. Mr Weerawardena reported matters to the police and Mr Toombs was subsequently charged with a criminal offence. He pleaded guilty to racially aggravated harassment on 06 November 2023 and was sentenced to a financial penalty.

Burden and standard of proof

12. The Panel received advice from the Legal Advisor as to the burden and standard of proof. The advice highlighted that RICS is required to prove the allegation to the civil standard; that is, it is more likely than not that any event material to the allegations occurred. There is no requirement for the Member to prove anything. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action was a matter for the Panel's judgement.

Preliminary matters

Application to amend the charge

13. At the outset of the proceedings Mr Rich, on behalf of RICS, made an application to amend the date in allegation 2, from 09 November 2023 to 06 November 2023. The latter is the date that Mr Toombs was convicted, the former is the date he was sentenced.
14. Mr Rich submitted that this was a technical matter and that Mr Toombs was aware in advance not only of the application, but also of the date that events occurred. He said there was no ambiguity that the plea had been entered earlier than the date of sentence.
15. Mr Toombs did not oppose the application.
16. The Panel received advice from the Legal Advisor that Rule 122 of the Regulatory Tribunal Rules allowed the amendment of the allegation providing such amendment could be made without injustice.
17. The Panel determined to allow the application. It noted that the amendment referred only to a change of date, and the correct date was apparent from the papers that Mr Toombs had received. It had in mind that Mr Toombs had received advance notice of the application and that he did not object. The Panel was of the view that there was no prejudice to Mr Toombs from allowing the amendment.

Application to admit evidence and background facts of a spent conviction

18. Mr Rich, on behalf of RICS, made an application to admit the fact of a conviction (which is pleaded as allegation 2) and the background facts of the conviction (pleaded as allegation 3). The Panel had received a written application in advance of the hearing which Mr Rich expanded upon orally.
19. Mr Rich submitted that as RICS is an Institution and provides the Rules for the profession, it acts as a judicial authority exercising its functions in England and Wales. Proceedings of this

type therefore fall within the exceptions under the Rehabilitation of Offenders Act 1974 which permit evidence of a spent conviction to be admitted in evidence if the Panel determined justice could not be done without its admission. Mr Rich submitted that the damage done to the surveying profession relates to the conviction and the conduct underlying it. He reminded the Panel that if the exemption did not apply to RICS it would be obliged to deal with the matter within 12 months even though it may not have come to the attention of the RICS until after that date.

20. Mr Toombs did not oppose the application.

21. The Panel received and accepted advice from the Legal Adviser that whilst the starting point was that the conviction and the backgrounds were not admissible by virtue of it being 'spent', the RICS would amount to a judicial authority for the purposes of the exemptions. The Legal Advisor thereafter advised that the Panel had discretion to admit the evidence if it considered that justice could not otherwise be done to the case.

22. The Panel determined that justice could not otherwise be done in this case unless the evidence was admitted. It had in mind that the conviction and underlying facts had the potential to demonstrate serious departures from the standards expected from a professional. It noted that RICS could bring matters to a hearing long after the date of the conduct where no criminal charges had been brought. It was of the view that the graveman of the case would not be adequately reflected by allegation 1 alone, which is the only allegation that did not relate to the spent conviction. It also had in mind that Mr Toombs did not formally oppose the application. Notwithstanding this, the Panel carried out its own careful consideration of the application and reached the conclusion that refusing the application would mean RICS could not properly perform its role as regulator of the profession. Keeping the public interest in mind, the Panel considered that justice could not be done in this case without the evidence being admitted and so it exercised its discretion in favour of receiving the evidence.

Further matters

23. Mr Toombs suggested he had not received a copy of the allegations or the case summary, prior to the first day of the hearing. Confirmation was sought from RICS and the Panel had sight of an email dated 11 June 2025 which showed all of the papers for the hearing having

been served on him by email. The Panel offered Mr Toombs extra time to further consider these documents and Mr Toombs confirmed that he had had sufficient time that morning and was ready to proceed.

Evidence

24. The evidence before the Panel submitted on behalf of RICS comprised statements from two witnesses, and their exhibits. The Panel heard live evidence from both of those witnesses.
25. Mr Indrajee James Weerawardena was the complainant in the case. He confirmed that the contents of his statement was truthful. Mr Weerawardena told the Panel in response to a question from Mr Toombs, that he took the video clip on his mobile telephone because he felt threatened. He said he passed the videos to the police but was not aware whether they had edited thereafter.
26. Mr Jonathan Morcom is an investigator for RICS and provided a statement exhibiting various correspondence, and the certificate of conviction. He confirmed that he had had ongoing contact with Mr Toombs during the investigation process, in the form of emails and telephone calls. He agreed that Mr Toombs had asked him to meet in person, and said he did not consider there was a good reason to do so and ordinarily the RICS requires members to respond to emails (rather than meet face-to-face) so that there is a written record of correspondence.
27. The Panel had received and read, in advance of the hearing, a statement and accompanying CV from Mr Toombs dated 03 September 2025, and an addendum statement, in the form of a letter. Mr Toombs also gave live evidence to the Panel in his own defence.
28. Mr Toombs said that Mr Weerawardena was a friend of his and that the comments made in his emails were in the context of him speaking to a friend. He said that he dislikes corresponding by email because words can be misinterpreted. Mr Toombs denied that he had acted unprofessionally at any time in email correspondence but accepted that he could have used different words. He apologised for the language used and said he had also apologised to Mr Weerawardena but denied that his language was rude or disrespectful.

29. Mr Toombs denied his language was discriminatory or belittling. He told the Panel that he told Mr Weerawardena to go back to where he had come from, as a friend who did not like living in the UK. He accepted he had told the Judge when he was being sentenced for the racially aggravated harassment, that he had lost his temper and snapped. He accepted that he became unprofessional but denied he had racially harassed the witness.

30. In response to questions from the Panel, Mr Toombs said that he had sent the emails in question because he was trying to incite a response from Mr Weerawardena who had refused to answer the telephone to him.

Submissions by RICS Presenting Officer

31. In closing, Mr Rich highlighted that much of the evidence given by Mr Toombs about his friendly relationship with Mr Weerawardena was not put to the witness during his evidence. He reminded the Panel that within Mr Weerawardena's witness statement he had said that he had found Mr Toombs' comments to be *'incredibly abusive and racist in nature.'*

32. Mr Rich invited the Panel to conclude that there was not a friendly relationship between the two men but that they were on opposing sides of a long running dispute. He pointed out that the unprofessional comments made in emails on 21 and 24 December 2021 were repeated in similar terms on 08 February 2022 in person, when Mr Toombs lost his temper. Mr Rich invited the Panel to find that Mr Toombs' reference to Mr Weerawardena's ethnic background in person, and which was the subject of the criminal offending, was consistent with the wording used by Mr Toombs in his earlier emails.

Submissions on behalf of Mr Toombs

33. Mr Toombs reiterated that Mr Weerawardena was a friend but said that Mr Weerawardena did not tell the truth and was vexatious. Mr Toombs said he understood he used the wrong language but denied he was racist. He told the Panel that he had pleaded guilty to the offence set out at allegation 2 because the Crown Court had asked him to do so.

Findings of fact

34. The Panel received advice from the Legal Advisor before retiring to consider its findings of fact.

35. The Panel considered each of the allegations separately.

1. *Mr Kevin Toombs failed to avoid any actions or situations that were inconsistent with his professional obligations in that he failed to treat Mr Weerawardena with respect when sending him the following emails:*

a. *Email of 20 December 2021 which was condescending in tone and/or made threats to remove items of property or access to utilities and/or described Mr Weerawardena as operating like a free-range chicken*

Contrary to Rule 3 of the Rules of Conduct for Members v 7 with effect from 2 March 2020. Mr Toombs is therefore liable to disciplinary action under RICS By-law 5.2.2(c).

Proved.

36. The Panel had sight of the email referred to, which included the references as set out within this allegation. It noted that Mr Toombs admitted he had sent the email dated 21 December 2021 (either himself or most likely, having dictated it via his secretary). Mr Toombs admitted that he had made assertions that he would remove items of property and access to utilities, although said he was doing his job when doing so. He admitted that he had described Mr Weerawardena as '*operating like a free-range chicken*'.

37. The Panel's view was that the email was condescending, applying its ordinary English meaning of displaying patronising superiority. The Panel further determined that the email was disrespectful, both in tone and in content.

38. The Panel considered that Mr Toombs' actions were a failure to avoid any actions or situations inconsistent with his professional obligations, as set out in the allegation. Mr Toombs had a duty to ensure that he spoke in a professional manner with individuals with whom he was in a

professional relationship. That included Mr Weerawardena. Mr Toombs told the Panel that he considered Mr Weerawardena a friend and that the email had to be read within the context of a friendly relationship. It was plain to the Panel that the email was not friendly in tone; inappropriate phrases and unacceptable language were used in an email where Mr Toombs was representing his client.

39. Mr Toombs told the Panel that his reference to Mr Weerawardena '*operating like a free range chicken*' was a common phrase he used and that it was akin to 'running around like a headless chicken'. The Panel did not accept this, and considered the language was disrespectful, particularly in the context of a professional relationship.

40. The Panel noted that in Mr Toombs' evidence he had said there was a contractual arrangement in place that the Panel needed to see. However, the Panel did not consider that this document was of any relevance to these proceedings and that it was able to properly determine matters without having sight of it. Even if Mr Toombs' actions were in furtherance of the contract, that does not excuse or justify the use of inappropriate and unprofessional language.

41. The Panel also noted that Mr Toombs had repeatedly said that he does not like to use email, that he prefers not to communicate in this way, both for time saving purposes and because he is not au fait with technology. However, this does not mitigate the fact that he sent an email using entirely improper and disrespectful language.

42. The Panel therefore found allegation 1(a) proved in its entirety.

1. *Mr Kevin Toombs failed to avoid any actions or situations that were inconsistent with his professional obligations in that he failed to treat Mr Weerawardena with respect when sending him the following emails:*

b. *Email of 24 December 2021 in which Mr Toombs suggested that he might cause chicken excrement to be deposited in Mr Weerawardena's garden and/or sought to belittle or discriminate against Mr Weerawardena based on his ethnicity by reference to how deals are done in GB, by reference to the law in Sri Lanka and by reference to 'your lots Arrogance'.*

Contrary to Rule 3 of the Rules of Conduct for Members v 7 with effect from 2 March 2020. Mr Toombs is therefore liable to disciplinary action under RICS By-law 5.2.2(c).

Proved.

43. The Panel had sight of the email referred to, which included the references as set out within this allegation. It noted that Mr Toombs admitted he had sent the email dated 24 December 2021 (again, either himself or most likely, having dictated it via his secretary). He admitted that he had suggested he would cause chicken excrement to be deposited in Mr Weerawardena's garden, and that he had referred to how deals are done in Great Britain, that he referred to the law in Sri Lanka and that he had referenced '*your lots Arrogance*'.
44. The Panel was shocked at the tone and content of this email. It determined that this language was discriminatory, when applying the ordinary English meaning that this was displaying a prejudicial distinction between different categories of people, especially on the grounds of ethnicity. How 'deals' were conducted in Great Britain and the law in Sri Lanka was entirely irrelevant to the professional matters that Mr Toombs was engaged with. Mr Toombs told the Panel that his intention in sending the emails was to elicit a response from Mr Weerawardena who had chosen not to answer any of his telephone calls. Sending an email with such discriminatory content was, in the Panel's view, only to belittle Mr Weerawardena and was entirely inconsistent with his professional obligations.
45. The Panel considered that using the phrase '*your lots Arrogance*' was belittling of Mr Weerawardena and sought to dismiss him. It noted that Mr Toombs used the word '*respectfully*' when addressing Mr Weerawardena but took the view that his email demonstrated a complete lack of respect.
46. The Panel was mindful that it had been shown a snapshot of correspondence which undoubtedly occurred over many months or years. However, this email was entirely inappropriate and any frustration encountered by Mr Toombs as a result of the ongoing dispute or his perceived inability to contact Mr Weerawardena, did not excuse the tone and content of this communication. The Panel was particularly concerned that Mr Toombs had repeated what it regarded to be discriminatory comments against ethnic groups, during his oral evidence.

47. The Panel found allegation 1(b) proved in its entirety.

48. Having made the above findings, the Panel considered whether the facts as found proved represented conduct that was contrary to Rule 3 of the Rules of Conduct 2022. It found that it clearly was. Rule 3 requires professionals to act in a way that is consistent with their professional obligations. Using discriminatory, belittling and inappropriate language in professional correspondence, and failing to treat an individual with respect is clearly conduct unbefitting of a professional and fell far short of the standards expected.

2. Mr Toombs was convicted before the Crown Court at Bristol on 6 November 2023 of an offence of Racially Aggravated Harassment contrary to section 31(1)(b) of the Crime and Disorder Act 1998; that offence being one which could result in a custodial sentence.

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

Proved.

49. The Panel had in mind its legal advice that Rule 121(d) provides that where a Regulated Member has been convicted of a criminal offence, a certified copy of the memorandum of conviction or equivalent formal admission, will be admissible as conclusive evidence of that conviction and of the Regulated Member's commission of that offence.

50. The Panel therefore determined that the evidence before it, provided conclusive evidence of Mr Toombs' conviction. It also noted Mr Toombs' admission to the allegation. Whilst Mr Toombs later said that he had not pleaded guilty and referred to the fact that the conviction is spent, that does not alter the fact of the conviction itself.

51. The Panel noted that Mr Toombs had referred to a Newton Hearing; the Panel understood that the matter was listed for a Newton Hearing but that the Judge proceeded to sentence without such a hearing, having determined one was not necessary. Moreover, the transcript of the sentencing remarks make it clear that Mr Toombs entered a guilty plea to the offence.

52. Accordingly, the Panel found this allegation proved.

3. *Mr Toombs, on 8 February 2022, failed to treat Mr Weerawardena with respect by telling Mr Weerawardena to go back to where he came from and asking him to get a ticket and go back.*

Contrary to Rule 4 of the Global Rules of Conduct with effect from 2 February 2022. Mr Toombs is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c).

Proved

53. The Panel had sight of a video clip and a transcript of the video clip. There was some discussion about the admissibility of the same in light of Mr Toombs' assertion that the clips did not show the whole conversation, and had been edited. Mr Toombs' did not wish to formally challenge the admissibility and was content for the evidence to be considered by the Panel. A matter for the Panel is therefore whether it is satisfied that the clip accurately represents Mr Toombs' conduct on the day in question.
54. The Panel recognised that the video clip did not show the beginning or the end of the incident. However, the clip plainly showed Mr Toombs saying to Mr Weerawardena '*go back to where you came from*' and '*please get a ticket to go back*'. Mr Toombs accepted he had said these words although he denied they were racist or offensive; he said he had told Mr Weerawardena this in a friendly capacity, as he knew Mr Weerawardena did not enjoy living in the UK.
55. The Panel felt unable to accept this explanation from Mr Toombs. The video clip provided the Panel with the opportunity to view Mr Toombs' demeanour at the time he said these words. He was, to the Panel's mind, angry and dismissive. He had a duty to act professionally as he was representing a client, and his words were disrespectful. The Panel did not accept that these comments were intended as friendly advice.
56. The Panel noted that in evidence, Mr Toombs accepted that he may not have used the best choice of words. He accepted he had not been polite and had been unprofessional. He said he had apologised to Mr Weerawardena many times. The Panel had regard to the fact that the clip was showing an argument between the parties, it was apparent that relations were

strained and that both men were acting in a heightened state. But in the Panel's view, this did not excuse clear disrespectful comments being made by Mr Toombs, which were neither appropriate nor justified. The Panel acknowledged that Mr Toombs had expressed concerns that he had initially believed Mr Weerawardena had a weapon. However, by the time of Mr Toombs' comments, he knew that Mr Weerawardena was not in possession of a weapon and that the item in his hand was a mobile telephone, being used to film the incident.

57. The Panel therefore found allegation 3 proved in its entirety.

58. Having made the above finding, the Panel considered whether the facts as found proved represented conduct that was contrary to Rule 4 of the Global Rules of Conduct 2022. It found that it clearly was. Rule 4 requires members to treat others with respect and to encourage diversity and inclusion. Using disrespectful language in the terms complained of, fell far short of the standards expected.

Liability to disciplinary action

59. On the basis of the facts found proved, the Panel was required to determine whether or not Mr Toombs is liable to disciplinary action. The Panel received submissions from Mr Rich on behalf of RICS, that the conduct alleged, if found proved, would significantly damage public confidence in the profession. Mr Toombs accepted that his admission to allegation 2, rendered him liable to disciplinary action.

60. The Panel accepted the advice of the Legal Advisor that the decision is one for the Panel's independent judgement, drawing upon the facts found proved that a finding of fact does not automatically lead to liability to disciplinary action; and that account must be taken of the seriousness of the conduct and the context in which it occurred. The Panel was advised that Mr Toombs' acceptance of liability to disciplinary action was simply a further factor for it to consider.

61. The Panel noted that Mr Toombs had been convicted of a serious criminal offence. It acknowledged that he had been sentenced to a financial penalty which was at the lower end of the sentencing scale for such matters; however, the Panel concluded that the sentence

imposed by the criminal Court does not detract from the seriousness of the offence, as it was viewed by the Panel who is solely concerned with matters of professional regulation.

62. The Panel noted that these allegations represented serious breaches of the Rules and that the departures were a significant departure from what would ordinarily be expected of a professional. It determined that the Rules relating to ethical behaviour, respect and inclusion were fundamental rules for members to abide by. Any breach of those rules was serious and in this particular case, the failings fell far short of what was expected. The Panel was in no doubt that the behaviour had the potential to significantly undermine public confidence in the profession and in RICS.

63. The Panel concluded that the allegations found proved in this case amounted to serious misconduct that breached sub-paragraphs (c) and (d) of byelaw 5.2.2. The Panel considered that the reputation of RICS and the reputation of the profession is at risk from such conduct and that members of the public would be concerned to learn about what had taken place. The Panel also concluded that the conduct found proved was liable to bring the profession into disrepute. It considered that it would be unconscionable not to take disciplinary action against an individual in these circumstances.

64. Accordingly, the Panel found that the conduct found proved means Mr Toombs is liable to disciplinary action.

Submissions by RICS Presenting Officer

65. Mr Rich did not invite the Panel to impose any specific sanction but he reminded the Panel of the general principles and the purpose of sanction. Mr Rich identified the aggravating and mitigating features that he considered were present in the case. He submitted that there was a lack of any remorse expressed by Mr Toombs and that he had attempted to place the blame for his own conduct on Mr Weerawardena rather than accepting responsibility for it himself. Mr Rich asked the Panel to conclude that this had a direct bearing on the risk that such conduct may be repeated.

66. Mr Rich told the Panel that Mr Toombs had no relevant disciplinary history. He reminded the Panel that Mr Toombs had engaged with the regulatory proceedings, and that he had offered an apology both to Mr Weerawardena and to the profession. He informed the Panel that there had been no repetition of the conduct since the events as set out within the allegations.

Submissions on behalf of Mr Toombs

67. Mr Scandrett gave character evidence on behalf of Mr Toombs. He told the Panel that Mr Toombs had not behaved in a racist manner before, and that he had worked with him for 30 years to positive effect. He said Mr Toombs' work for him was exemplary. Mr Scandrett explained that whilst he could not comment on the specific allegations as he was not present during those events, there had been an ongoing dispute with Mr Weerawardena since 2000 and that he understood it was this property disagreement that was at the root of the conduct complained of.

68. Mr Toombs told the Panel that he did not agree with the findings of fact and that he felt some of the evidence had been misrepresented to the Panel. He said that he had been remorseful about his conduct since the matter (leading to allegation 2) had reached the Magistrates' Court and that he had apologised. Mr Toombs maintained that he did not consider he had used racist language and that Mr Weerawardena had been a friend of his. He reminded the Panel that he had engaged with the regulatory process.

Discussion and Conclusion

69. The Panel received and accepted legal advice and gave consideration to the Sanctions Policy (version 9, in force from 02 February 2022) and its supplements.

70. The Panel first considered the seriousness of the breach and the aggravating and mitigating factors present in this case. It was assisted by the factors in paragraph 7 of the Policy and by the aggravating and mitigating factors identified in Supplement 1 to the Policy.

71. The Panel considered that the actions found proved represented serious departures from the standards of conduct. It determined that the conduct was deliberate and repeated, that there was a criminal conviction for racially aggravated behaviour, that the charges covered a period

of time (although the conduct was not 'ongoing' in the sense of a continuous act), and that it did not consider Mr Toombs had taken proper responsibility for his conduct. These factors, taken together, caused the Panel to conclude that the breaches were serious.

72. On the other hand, the Panel noted that each breach was of a short duration, that Mr Toombs had taken steps since the conviction to avoid repetition of the conduct towards Mr Weerawardena, that he has cooperated with RICS and has engaged throughout the proceedings.

73. The Panel noted that an admission had been made to allegation 2, however it had then been resiled from.

74. The Panel further noted that whilst Mr Toombs had offered an apology both to RICS and to Mr Weerawardena, it had grave concerns about whether the apology was authentic.

75. The Panel identified the following aggravating factors:

- a. Lack of insight
- b. Repetition of serious breaches of the rules of conduct
- c. Racially aggravated conduct

76. The Panel agreed with Mr Rich that there was a lack of genuine remorse and insight displayed by Mr Toombs. Mr Toombs maintained, during the fact finding process and during submissions at the sanction stage, that his conduct had not been rude or racially aggravated. Whilst the Panel was mindful that Mr Toombs was entitled to deny the allegations, it considered there was a wholesale failure by him to recognise his discriminatory conduct. The Panel had not heard any evidence (or submission) to suggest that Mr Toombs would behave differently in future, if he were to encounter a similar situation. This gave the Panel serious concerns that there was a very real risk of repetition of the behaviour.

Mitigation

77. The Panel noted that there was no prior relevant disciplinary history.

78. The Panel recognised that Mr Toombs had cooperated with RICS during the investigation and had fully engaged with the hearing process.

79. The Panel acknowledged that Mr Toombs' case was that the contract was fundamental in this case and that he had been provoked into acting in the way complained of. Whilst the Panel recognised this may provide an element of mitigation, it did not consider that this could sufficiently mitigate the seriousness of the breaches. Further, the Panel did not consider that it was required to examine the contract or make reference to the same, as it was solely determining Mr Toomb's conduct and behaviour as set out within the specific allegations before it.

Decision as to sanction

80. In the Panel's view the facts found proved represented serious conduct which was a significant departure from that expected of a Member. It had determined that there was a risk of repetition. Whilst the Panel noted that a sanction did not automatically follow a finding that Mr Toombs was liable to disciplinary action, it considered that a sanction was required in this case, both for the protection of the public and was otherwise in the public interest to uphold public confidence in the profession and to maintain proper professional standards.

81. Having determined that a sanction was required, the Panel considered the sanctions available in ascending order of seriousness. It first considered the imposition of a caution but recognised this was ordinarily imposed where the breach was minor and unlikely to be repeated. It was clear to the Panel that the breach was not minor and that there was a risk of repetition. It therefore concluded a caution would be inappropriate.

82. It next considered a reprimand. The Panel noted the reference in the Sanctions Policy that a reprimand may be appropriate where there was a risk of harm to the public. However, the Panel considered that a reprimand would not be a sufficient means of marking the seriousness of the conduct found proved and would not serve to sufficiently protect the wider public interest.

83. The Panel considered undertakings but did not think these were appropriate or workable in the circumstances of this case. To impose relevant undertakings would be to formally require

Mr Toombs to behave in a way befitting of a Member of the profession, which is required under the Rules of Conduct in any event. The Panel paid important regard to paragraph 18.1 of the sanctions policy which says '*...the Panel ... may require the Regulated Member to take a course of action such as apologise personally or publicly to a person. This may be appropriate, for instance, in discrimination cases or where the Regulated Member has criticised a person without good reason.*' However, the Panel had concerns that Mr Toombs did not sufficiently recognise that his conduct was wrong. In those circumstances it did not consider undertakings to be suitable and moreover, it was of the view that undertakings would not be a proportionate response to the seriousness of the conduct it had found proved.

84. The Panel considered the imposition of a fine. It did not consider that this sanction, on its own, would adequately mark the seriousness of the breach or protect the public interest, particularly in light of the nature of the conduct complained of. The Panel considered whether it could combine a financial penalty with another sanction in order to reach a proportionate response. The Panel determined however, that a combination of sanctions would be insufficient to uphold the public interest or to address the risk of repetition it had identified.

85. The Panel next considered conditions, but was of the view that conditions were neither workable nor appropriate given the nature of the conduct found proved, the seriousness of the breaches of the Rules of Conduct and the seriousness of the criminal conviction.

86. The Panel then considered expulsion. It carefully considered paragraph 21 of the sanctions policy. It considered that the following factors were relevant to this case:

- a. 21(a) – *gross or persistent failure to comply with an RICS Rule of Conduct*
- b. 21(c) – *conviction of a serious criminal offence* (although the Panel did not place undue weight on this factor as it recognised that this was not the most serious criminal offence)
- c. 21(d) – *gross incompetence or recklessness in relation to the conduct of professional activities*
- d. 21(g) – *deliberate discrimination*

87. The Panel recognised that the Sanctions Policy produced by RICS is guidance only and that it had a discretion to depart from the Policy. The Panel recognised that the role of a sanction was not to be punitive but was mindful that its role was to protect the public, to maintain proper

professional standards and to uphold the reputation of the profession. The Panel had received character evidence from Mr Scandrett about Mr Toombs' prior professional behaviour. Mr Scandrett spoke highly of Mr Toombs and gave evidence that he always worked to the best of his ability. However, the Panel was of the view that professional competence could not mitigate conduct of this nature.

88. The Panel recognised that the reputation of the profession as a whole was more important than Mr Toombs' own interests and it was of the view that Mr Toombs' actions as found proved, would severely undermine public confidence in the profession. It could find no reason to depart from the Policy in the particular circumstances of this case.

89. For those reasons, the Panel determined that nothing less than the expulsion of Mr Toombs from the profession, would be a proportionate regulatory response.

Publication and Costs

Publication

90. The Panel considered the policy on publication of decisions contained in the Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. It accepted the advice of the Legal Advisor. Mr Toombs did not object to the matter being published in the ordinary way. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website and in Modus and considered that publication of decisions was necessary in order to uphold the reputation of the profession. There was nothing exceptional in this case which meant there was a good reason not to publish the decision.

Costs

91. RICS applied for its costs totaling £20,500.06, supported by a detailed schedule of costs.

92. The costs figure represents a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel had no reason to doubt that the costs application was a fair and reasonable one to make.

93. Mr Toombs did not make any submissions on the costs application and nor did he provide a statement of means. The Panel concluded that it was appropriate for Mr Toombs to contribute to the costs of the case, otherwise the full cost of these proceedings would fall on the profession as a whole. In the absence of a statement of means it was entitled to assume that Mr Toombs is able to meet the costs.

94. The Panel reduced the total costs figure to account for the hearing finishing one day early.

95. The Panel ordered that Mr Toombs pay costs in the sum of £16,890.50 to RICS within 28 days.

Appeal Period

96. Mr Toombs 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.

97. 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.