

Appeal Panel Hearing

Case of

**Mr. Richard Hopwood FRICS [0058233]
Leicester, LE1 and;**

**Acorns Lettings Midlands Limited [051035]
Leicester, LE1**

On

Wednesday 24 February 2021

Heard remotely by video conference

RICS, 55 Colmore Row, Birmingham, B3 2AS

Panel

Sir Michael Burton GBE QC (Lay Chair)
Ron Barclay-Smith (Lay Member)
Paul Watkinson (Surveyor Member)

Legal Assessor

Peter Steel

RICS Representative

Ben Rich, 2 Hare Court

Member's Representative

Richard Hopwood appeared in person and represented himself.

Hearings Officer

Jae Berry

Introduction

1. This was an appeal by Mr Richard Hopwood under Rule 152 of the Disciplinary, Registration and Appeal Panel Rules 2009. Mr Hopwood appealed against the sanction imposed by a Disciplinary Panel against him following a hearing on 13 and 14 October 2020, on the grounds that it was wrong. The amended charge found proved against Mr Hopwood was as follows:

“1. Between 21 January 2016 and 28 February 2017, he transferred or instructed to be transferred, client money totalling £10,500 to the office account of Acorn Lettings Midlands Limited (‘the Firm’) for the purpose of a Firm loan. These actions constitute one or more of the following:

a. Dishonesty in that he used, or allowed to be used, client money for a Firm loan when he was not entitled to do so;

b. A lack of integrity in that he demonstrated a deliberate or reckless disregard for his professional obligations; and/or

c. A failure to act in a way that is consistent with his professional obligations in that he failed, in his capacity as the principal of the Firm, to ensure that the Firm preserved the security of clients’ money entrusted to its care in the course of business.

Contrary to rule 3 of the Rules of Conduct for Members 2007

Mr Hopwood is therefore liable to disciplinary action under Bye-law 5.2.2(a) and/or 5.2.2(c).”

2. The amended charge found proved against the Firm was as follows:

“1. Between 21 January 2016 and 28 February 2017, client money totalling £10,500 was transferred to the Firm’s office account for the purpose of a Firm loan. These actions constitute one or more of the following:

a. a failure to preserve the security of clients’ money entrusted to its care contrary to Rule 8 of the RICS Rules of Conduct for Firms 2007;

b. a failure to act with integrity and/or to avoid actions that are inconsistent with its professional obligations contrary to Rule 3 of the RICS Rules of Conduct for Firms 2007.

Acorn Lettings Midlands Limited is therefore liable to disciplinary action under Bye-law 5.3.2(a) and/or 5.3.2(c).”

3. In light of its findings above, the Disciplinary Panel expelled Mr Hopwood and the Firm from membership of RICS and ordered them jointly and severally to pay costs of £9,140. Mr Hopwood did not seek to appeal the Firm's expulsion.

Burden of proof

4. Under Rule 165 of the RICS' Disciplinary, Registration and Appeal Panel Rules (Version 8 with effect from 1 October 2019) ("the Rules"), the burden is on the appellant, Mr Hopwood, to satisfy the Appeal Panel that the finding made or the Regulatory Sanction imposed by the Disciplinary Panel was wrong.

Background

5. Mr Hopwood first registered with RICS in 1981. He was at the relevant times a Fellow of RICS and director and sole principal of the Firm, which undertook valuation work, professional residential, commercial and property management.

6. On 31 October 2018, RICS received a complaint from a Ms A concerning the alleged misuse of client money within the Firm. Ms A had worked for the Firm as a Business Development Manager for approximately 6½ years before leaving in July 2018.

7. On 21 December 2018 Mr B, a Professional Assurance Accountant employed by RICS, visited the Firm to undertake a client money review. During this visit, Mr Hopwood accepted that he had transferred money from the client account to the office account, to pay staff salaries. He could not recollect the frequency of those transactions or when the transfers had occurred but went on to state that the sums in question had been returned to the client account.

8. During his subsequent investigations and further visits, Mr B confirmed that there was evidence of multiple transactions from the Firm's Barclays client account to the Firm's business account. In total the transactions totalled over £10,000 between January 2016 and February 2017. This sum was repaid in various instalments prior to the inspection visit.

9. At the hearing before the Disciplinary Panel, Mr Hopwood admitted that £10,500 of client money had been transferred to the Firm's office account, but he denied particulars 1 (a)-(c).

10. The Disciplinary Panel found 1 (a) proved on the following basis:

"32. ...It was not disputed that, over the course of a significant period and on a number of occasions, transfers had been made out of the Firm's client account in order to ensure the office account did not exceed its overdraft limit. There was no suggestion that any of the clients whose money was used had consented to, or were even aware of, the withdrawals.

...

34. Mr Hopwood accepted that ‘under ideal circumstances’ he should not have made these transfers. He also accepted in his evidence, albeit in slightly equivocal terms, that members of the public would regard this as unacceptable and fellow members would regard it as damaging to the reputation of the profession. There was no doubt, in the Panel’s view, that Mr Hopwood clearly understood that what he was doing was wrong but had chosen nonetheless to do it.

35. The Panel was satisfied that Mr Hopwood’s conduct, namely transferring significant sums of money on a number of occasions out of the client account to pay office outgoings in the knowledge that what he was doing was wrong, would be regarded as dishonest by ordinary and decent people. Indeed, members of the public would in the Panel’s view be shocked to find out that a professional person was using money from a client account to pay wages or other business outgoings.”

11. The Disciplinary Panel found 1 (b) proved on the following basis:

“39. There was no doubt in the Panel’s mind that repeatedly taking money out of a client account in order to meet the Firm’s liabilities was a clear breach of the ethical standards of the profession. Indeed, the Panel noted there was, at least to some extent, an acceptance of that by Mr Hopwood during his evidence. Furthermore, Mr Hopwood had accepted that the purpose of having strict rules in relation to client funds was the protection of the public. Given the clear risk inherent in utilising clients’ money to pay a firm’s debts, particularly when the firm was in a difficult financial position as this one was, the need for such rules was in the Panel’s view obvious.

40. The Panel noted that, as stated in **Wingate**, it should not set unrealistically high standards. However, this conduct amounted to borrowing money from clients without their permission. It constituted a clear and significant failure to act with the integrity that the profession expects of its members.”

12. The Disciplinary Panel found 1 (c) proved on the following basis:

“44. ...The requirements to properly account for clients’ money and to keep it separate from other funds were important ones. The Panel was satisfied that Mr Hopwood had failed to act in accordance with his professional obligations because, as principal of the Firm, he had failed to ensure that the Firm preserved the security of the money entrusted into its care by its clients.”

13. The Disciplinary Panel found Mr Hopwood liable to disciplinary action. It noted:

“56. Mr Hopwood’s misconduct occurred over an extended period. A significant sum of money was transferred out of the client account, spread over a number of transactions, with consequential risk to the safety of those funds. The Panel had found that this conduct was both dishonest and lacking in professional integrity. It was misconduct of a very serious nature.”

14. The Disciplinary Panel found there to be the following points of mitigation in considering the question of the sanction to be imposed on Mr Hopwood:

- An unblemished record;
- The money was repaid and there was no actual loss to clients;
- The Firm was under financial pressure;
- Mr Hopwood had expressed regret;
- Mr Hopwood had admitted the transfers at an early stage and had co-operated with the investigation; and
- Mr Hopwood had complied with accounting restrictions imposed on the Firm by RICS.

15. The Disciplinary Panel considered the following aggravating features were present:

- The conduct was dishonest;
- Mr Hopwood stood to benefit from the transfers, given they were to shore up the Firm's financial position;
- The risk of loss to clients was "*not insubstantial*";
- The conduct comprised repeated breaches over a period of a year;
- Mr Hopwood was aware that he was acting in breach of his professional obligations; and
- "*He sought to minimise the seriousness of his actions, on the basis that the money was repaid quickly and that no harm was done, which in the Panel's view demonstrated a lack of insight.*"

16. In respect of proportionality, the Disciplinary Panel took into account the impact Mr Hopwood's exclusion would have on Homesurv Surveyors (Homesurv), the firm he was currently working for as one of two co-directors. Having considered all the available sanctions in turn, it concluded:

"76. ...acting with honesty and integrity is key to the trust and confidence the public places in the profession. In the Panel's view the behaviour in this case was fundamentally incompatible with continued membership of RICS.

77. The Panel considered that if it imposed any lesser sanction than expulsion it would not be acting in accordance with its duty to protect the public and the reputation of the profession."

Submissions on behalf of the Appellant

17. Mr Hopwood indicated that his appeal was on the basis that the sanction he had received was disproportionate. He told the Appeal Panel that he resented the suggestion in the written submissions on behalf of RICS that he could repeat such conduct, which he found "*repellent*", though in answer to questions from the Chair, did not accept that this statement might be perceived as demonstrating a lack of insight into his admitted conduct.

18. Mr Hopwood referred to his grounds of appeal, which contained five main points:

- He had read the decision of a RICS Disciplinary Panel in the case of *RICS v Countrywide Residential Lettings Ltd*, heard on 30 October 2019, and considered the Panel's decision in his case was inconsistent with the earlier decision. In *Countrywide*, the firm had transferred a large amount of money from client account to office account which had not been returned. In contrast to his own case, Countrywide had only received a large fine.
- The Firm had been placed under interim measures following Ms A's complaint. The Firm had remained entirely compliant during the lengthy period prior to the substantive hearing and there had been no repetition. It was unfair in those circumstances for the Disciplinary Panel to have found as it did.
- He had not been aware that Ms A would be called to give evidence and he did not consider it entirely fair for him to have to hear her give evidence and to cross examine her.
- His expulsion from membership was likely to have a significant detrimental effect on the business of Homesurv, which was entirely innocent of any wrongdoing, and it was unreasonable of the Disciplinary Panel to make a decision which would result in harm to one of its existing members.
- The decision to expel him from membership was disproportionate to the offence, taking into account his mitigation.

19. Mr Hopwood said that he admitted that the transfers from client account to office account had taken place. It was subsequently established that some of the money in client account may have been aged management fees (totalling approximately £1,500) i.e. money that was properly owed to the Firm, though he accepted that this did not change the findings of the Disciplinary Panel.

20. Mr Hopwood again observed that the decision had harmed Homesurv, a separate and blameless firm of which he was a director. Homesurv would now be unable to service various of its clients as a result of his expulsion.

RICS' submissions regarding the Appeal

21. RICS's opposed Mr Hopwood's appeal, which in its view was misconceived. Taking each of his grounds of appeal in turn, RICS submitted as follows:

Inconsistency with *Countrywide*

The *Countrywide* case did not assist Mr Hopwood at all. It was a first instance decision of a Disciplinary Panel which turned on its own facts. It did not act as a precedent or bind the Disciplinary Panel in Mr Hopwood's case in any way at all. Furthermore, the facts of the case were entirely different. The respondent in the case, Countrywide, had made full admissions, and had repaid the money and, significantly, had not been found guilty of dishonesty or lack of integrity.

Compliance with interim measures

The fact that the Firm (as opposed to Mr Hopwood himself) had complied with the interim measures imposed on it did not make the Disciplinary Panel's decision on sanction wrong. The interim measures were a temporary restriction designed to protect the public pending the decision of the Disciplinary Panel. The fact that interim measures had been imposed did not restrict the Disciplinary Panel in its powers of disposal or imply or guarantee any particular outcome. Lastly, the Disciplinary Panel had clearly considered in its decision the evidence of remediation that the Firm's compliance with the interim measures offered.

It was unfair to call Ms A to give evidence

RICS submitted that the allegations had been disputed and that RICS had relied on the evidence of Ms A as part of its case. It would have been unfair not to call her and allow the Panel and Mr Hopwood to question her. Indeed, Mr Hopwood had been invited by an email dated 6 October 2020 to indicate whether he agreed the witness evidence but had not done. Nor had he objected during the hearing to Ms A giving evidence. He had cross-examined her during the hearing.

The impact on Homesurv

The impact of expulsion on others is a factor a Disciplinary Panel should take into account in considering sanction as part of ensuring that its decisions are proportionate. The Disciplinary Panel in this case had taken the potential consequences into account, as was evident from its determination.

The sanction was disproportionate

The decision of the Disciplinary Panel was clearly one that was open to it in the light of its findings on dishonesty and lack of integrity. The findings of the Panel were evidently at the top end of seriousness, involving misuse of client money in circumstances where Mr Hopwood stood to gain from that behaviour, because the Firm was in financial difficulty. It was telling that during the hearing the Chair of the Disciplinary Panel had asked in respect of the aged management fees why Mr Hopwood had transferred £5,000 to office account rather than the figure of £1,500. Mr Hopwood had answered that the former amount "*was what was needed for the office account*".

Appeal Panel's Decision

22. The Appeal Panel carefully considered all the written material with which it had been provided, including the helpful written submissions of both parties and the case law RICS had supplied in support of its submissions. It listened carefully to the submissions of Mr Hopwood and Mr Rich.

23. Having done so, the Appeal Panel first determined that the approach it should adopt to the appeal was as follows. The required test was whether the Disciplinary Panel's decision was wrong in law, in being outside the range of what was reasonable (*Yeong v GMC* [2009] EWHC 1923 (Admin)).

24. The Appeal Panel accepted that decisions on dishonesty may be awarded a lesser degree of deference, as per *General Medical Council v Theodoropoulos* [2017] EWHC 1984 (Admin). It similarly accepted that an appeal panel exercises a secondary judgment. It must give respect to the decisions of a specialist disciplinary tribunal in particular where sanction is concerned as per *Fatnani and Raschid v. General Medical Council* [2007] EWCA Civ 46.

25. The Panel could find no basis on which to disturb the finding of the Disciplinary Panel's decision on sanction in this case for the following reasons:

- As regards the significance of the *Countrywide* case, it entirely accepted the submission on behalf of RICS that the fact that a disciplinary panel may have imposed a lenient result in one particular case cannot sensibly mean that all future RICS panels are obliged to adopt an equally lenient approach in all subsequent cases. Further, the facts of the *Countrywide* case were very different and did not involve findings of dishonesty and lack of integrity, and, unlike in *Countryside*, Mr Hopwood denied the charges;
- The dishonest course of conduct had continued for a year;
- The Firm's compliance with the interim measures order did not assist in assuaging the gravity of Mr Hopwood's misconduct, save to the limited extent which the Disciplinary Panel had allowed in considering the mitigating factors;
- There was simply no basis for criticising the decision to call Ms A. Mr Hopwood had had the opportunity to agree her evidence or to object during the hearing, but had not done so, and had called a witness to seek to challenge her evidence;
- The potential effect of Mr Hopwood's expulsion on Homesurv may be regrettable, but it primarily resulted from his own misconduct. The Disciplinary Panel took into account the effect on Homesurv, but in any event it did not render its decision wrong in law. This was a point that followed from the well-known case of *Bolton v Law Society* [1994] 1 WLR 512, in which it was observed:

"[The respondent solicitor] can often show that for him and his family the consequences of striking off or suspension would be little short of tragic...All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness...Membership of a profession brings many benefits, but that is a part of the price."

The Appeal Panel considered that members of the public ought similarly to have confidence that any surveyor to whom they entrust their money will be a person of unquestionable integrity, probity, and trustworthiness.

- As the case law amply demonstrates, even a single instance of dishonesty may justify an expulsion order. In this case, the dishonesty was repeated and extended over a significant period. The Disciplinary Panel had fully considered all relevant mitigation in arriving at its decision, which in the Appeal Panel's view was plainly within the range of reasonable outcomes.

26. In the light of all the material it had considered and the submissions it had received, the Appeal Panel concluded that it should dismiss this appeal.

Publication and Costs

Publication

27. The Panel considered the guidance as to publication of its decisions. 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 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 therefore orders that this decision recording be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

29. The RICS made an application for costs in the total sum of £3,370 and submitted a schedule of their costs to the Panel.

30. Having heard submissions from both parties on the question of costs, the Panel considered that it was appropriate for Mr Hopwood to make a contribution towards the costs of this appeal, 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 Hopwood pay the RICS' costs of this hearing in the sum of **£3,370.00**. Absent any agreement to the contrary, those costs must be paid to the RICS within 21 days.