

**ROYAL INSTITUTION OF CHARTERED SURVEYORS****APPEAL PANEL HEARING****Case of**

**Mr Gregor McGill [0044030] and  
Gregor C. McGill & Co (firm) [004755]  
Cheshire, WA2**

**On**

Friday 13 March 2015

**At**

Warrington Village Urban Resort, Warrington, WA1 1QA

**Chairman**

Julian Weinberg

**Members**

Milton McIntosh (Member)  
Catherine Audcent (Lay Member)

**Legal Assessor**

Stephen Murfitt

**RICS Representative**

Daniel Gutteridge

**Background**

1. This is an appeal by Gregor McGill FRICS & Gregor C. McGill & Co. (firm).
2. A Disciplinary Panel was convened on 22 October 2014 and 5 December 2014 to consider four charges against Gregor McGill FRICS, and one charge against his sole principal practice Gregor C. McGill & Co.
3. The formal charges against Mr McGill were as follows:
  1. He failed at all times to act with integrity and to avoid any actions or situations inconsistent with his professional obligations, contrary to Rule 3 of the Rules of Conduct for Members 2007, the particulars being that:
    - He failed to satisfy a County Court Judgment (CCJ) imposed by Wigan County Court on 20 April 2012 in favour of Mr W;

- He indicated that he did not intend to satisfy the CCJ; and,
  - Such a failure demonstrated a lack of professionalism expected of an RICS member.
2. He failed at all times to act with integrity and/or to avoid any actions or situations inconsistent with his professional obligations, contrary to Rule 3 of the Rules of Conduct for Members 2007, the particulars being that:
    - He failed to ensure that previous work undertaken for his clients was covered by appropriate run off insurance.
  3. He failed to carry out his professional work with due skill, care and diligence and with proper regard for the technical standards expected of him, contrary to Rule 4 of the Rules of Conduct for Members 2007, the particulars being that:
    - He accepted instructions from Mr W to produce drawings for an extension at Mr W's property and to supervise the work undertaken to erect the extension in conjunction with the requirement of Wigan Council's Environmental Services Department who were financing the work through a Disabled Facilities Grant.
    - He failed to act with due skill, care and diligence in that he did not liaise adequately with the Environmental Services Department to ensure that the building work satisfied their requirements.
    - He failed to act with due skill, care and diligence in that the drawings prepared either did not show a path was required or did not adequately show that a path was required.
    - As a result, a path was not created around the extension and the Environmental Services Department would not sign off on the building work.
  4. He failed to carry out his professional work with proper regard for the standards of service and customer care expected of him, contrary to Rule 5 of the Rules of Conduct for Members 2007, the particulars being that:
    - He failed to provide his terms of engagement in advance to Mr W, allowing him an opportunity to peruse the same.
    - On 12 March 2009, he provided to Mr W, and allowed him to sign, two different terms of engagement which contained two different fees.
    - His lack of customer care resulted in Mr W signing terms of agreement that he did not know he had agreed to, and confusion being caused when payment came to be made.
4. The charge against the firm Gregor C. McGill & Co ("the firm") was as follows:
    1. Gregor C. McGill & Co, a regulated firm of Chartered Surveyors, had failed to ensure that all previous professional work was covered by adequate and appropriate professional indemnity insurance cover, contrary to Rule 9 of the Rules of Conduct for Firms 2007.
  5. The Disciplinary Panel considered the charges in the presence of Mr McGill on 22 October 2014 and heard submissions both from RICS and Mr McGill before adjourning part heard to

make a decision as to the facts, determine any breaches of the rules and liability to disciplinary action.

6. The case was adjourned to 5 December 2014 when the Disciplinary Panel announced that it had found all of the charges proved and found a liability to disciplinary action in all but one charge, namely charge 3.
7. On 5 December 2014, the Disciplinary Panel considered the submissions, applied the Sanctions Policy Guidance and its supplements and decided to expel Mr McGill from membership of RICS and remove his firm from registration for regulation.
8. Mr McGill submitted his grounds of appeal on 20 December 2014:  
  
*'The situation has not been considered correctly by all the people involved with the situation and requires to be so. Mr G Highfield should not be a "single joint expert" simply because he lacks residential building construction knowledge.'*
9. Mr McGill wrote a detailed letter to RICS on 18 December 2014 when he addressed each paragraph of the Disciplinary Panel's determination. In summary Mr McGill did not accept the Disciplinary Panel's findings that he was in breach of the rules concerning charges 1, 2 and 4 against him as an individual. Furthermore it became apparent during the hearing that Mr McGill did not accept the Disciplinary Panel's findings as against his firm.

### **Disciplinary Registration and Appeal Panel Rules**

10. Rules 59 to 70 of the Disciplinary Registration and Appeal Panel Rules 2009 ("the Rules") govern appeals against decisions of Disciplinary Panels. Rule 59b provides that a relevant person, in this case Mr McGill and/or his firm, may appeal a finding or penalty imposed by a Disciplinary Panel.
11. Rules 61 and 62 provide that any appeal shall be lodged with RICS within 28 days of service of notification of the decision to be appealed and that the appeal shall be in the form prescribed by RICS and specify the grounds relied on in support of the appeal. RICS take no point with regard to the service and content of the notice of appeal.
12. Rules 64 requires the Appeal Panel to review the decision of the Disciplinary Panel with regard to:
  - a. The evidence presented to the Disciplinary Panel
  - b. Any representations made to the Disciplinary Panel if available in written form, including any transcript of any hearing
  - c. The Appellant's grounds of appeal
  - d. Any representations which the Appellant or the Head of Regulation may wish to make to the Appeal Panel regarding the findings and/or penalties imposed by the Disciplinary Panel
13. Rule 65 provides that the parties may not provide new evidence to an Appeal Panel without leave.
14. Rule 66 of the Rules provides that the burden rests with Mr McGill to satisfy the Appeal Panel that the order being sought should be made.
15. Rule 68 of the Rules states that only when an Appeal Panel considers that a decision of a Disciplinary Panel is wrong, may it then allow an appeal.

16. By virtue of Rule 69, if the Appeal Panel allows an appeal, it may either:

- a. Vary the Disciplinary Panel's finding that the relevant person (the appellant) was liable to disciplinary action
- b. Vary the penalty imposed to one of greater or lesser severity or
- c. Refer the matter back to a Disciplinary Panel for a new hearing or consideration.

## **DETERMINATION**

### **Panel's Decision**

17. In accordance with Rule 64 of the Rules, an appeal is by way of a review not a re-hearing. Importantly therefore it is not for the Appeal Panel to consider afresh all the evidence before the Disciplinary Panel and substitute its own decision. The role of the Appeal Panel is to review the decisions of the Disciplinary Panel and consider only whether or not Mr McGill and/or his firm satisfies the Panel that the decisions were wrong. Only if Mr McGill satisfies the Panel that the decisions were wrong can the appeals be allowed. As already mentioned, under Rule 66 the burden remains on Mr McGill.
18. Mr McGill made an application that Mr Tomlinson should be permitted to give evidence to the Appeal Panel. Furthermore Mr McGill applied for a letter from the Norwich and Peterborough Building Society dated the 15 December 2014 to be admitted in evidence. Mr Gutteridge objected to Mr Tomlinson giving evidence to the Appeal Panel but raised no objection to the letter being admitted in evidence.
19. In relation to the application for Mr Tomlinson to give evidence Mr Gutteridge relied on Rule 65 that a party may not provide new evidence to an Appeal Panel without leave. RICS also relied on the case of *Ladd v Marshall (1954) 3 All ER 745*.
20. The case of *Ladd v Marshall* sets down the conditions to be applied when new or fresh evidence is sought to be introduced:
  1. It must be shown that the evidence could not have been obtained with reasonable diligence for use at the hearing
  2. The evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive and
  3. The evidence must be such that is presumed to be believed, in other words credible though not incontrovertible.
21. The Legal Adviser has given advice as to the guidance contained in Rule 52.11.2 of Civil Procedure Rules 1988 which provide that the Appeal Court will not receive fresh evidence (oral or written) "unless it orders otherwise". The principles of *Ladd v Marshall* remain relevant to the extent that they are matters which the appeal court must consider in the exercise of its discretion and the Panel has considered each of the three tests. The Panel has determined that the right approach is one of exercising discretion to give effect to the objective of doing justice. Taking all of these matters into consideration the Panel has decided to admit the letter of 15 December 2014. The Panel are satisfied that the Disciplinary Panel at paragraph 16 of its reasons made reference to a mortgage of £20,000 being paid off. The letter now admitted makes clear that the correct figure is one of £33,728.61.
22. The appeal is by way of review and is not a re-hearing and therefore it is only in exceptional cases that an Appeal Panel would allow new evidence to be considered. The Panel has determined that it was open to Mr McGill to call any witnesses he wished to do so in

support of his case before the Disciplinary Panel, including Mr Tomlinson. He chose not to do so. Mr McGill made clear in his application that Mr Tomlinson could assist the Appeal Panel with regard to the matter of dragon ties and the Panel is satisfied that it will not be assisted by such evidence in the task before it. In those circumstances the Panel has rejected Mr McGill's application for Mr Tomlinson to be called to give evidence. The Appeal Panel in considering the interests of justice has borne in mind that, in any event, the evidence that Mr Tomlinson could give does not relate to any of the charges that are the subject of the appeals.

### Charge 1

23. Charge 1 related to an alleged failure on the part of Mr McGill to satisfy a County Court Judgment imposed by Wigan County Court on 20 April 2012 in favour of Mr W. There is common ground between the parties that the order of the Wigan County Court remained unsatisfied and it was clear from correspondence written by Mr McGill to RICS that Mr McGill had no intention of paying the judgment sum. The Disciplinary Panel relied on a means examination of Mr McGill by a court official that took place in October 2012 and which disclosed substantial funds in both a Bank of Scotland Business Account and a Bank of Scotland ISA. The Disciplinary Panel concluded that Mr McGill had intentionally divested himself of substantial assets at a time when the County Court Judgment was outstanding.
24. The Appeal Panel is satisfied that the County Court proceedings between Mr McGill and Mr W have come to an end and it is assisted in that conclusion by reference to the note prepared by His Honour Judge Halbert at Chester County Court on 11 November 2013 when he recorded:
- 'Mr McGill has lost this case and has lost his appeal. He has exhausted all other remedies open to him and there is no effective step open to him by which he can further challenge the original decision'.*
25. In his letter of 18 December 2014, Mr McGill accepted that paragraphs 16, 17 and 18 of the Disciplinary Panel's decision were correct; although Mr McGill denied that there had ever been any attempt to 'dispose of assets'.
26. In his evidence before the Appeal Panel Mr McGill made clear that he disagreed strongly with the findings of the County Court and that it was his firmly held belief that the task of both the Disciplinary Panel and the Appeal Panel was to look again at the factual findings. Mr McGill felt Mr Tomlinson would have assisted in that task. Mr McGill confirmed in evidence that the County Court Judgement remained outstanding and that Mr McGill had no intention of paying it.
27. The Appeal Panel considered that it would be wrong for either the Disciplinary Panel or the Appeal Panel to go behind the findings of the County Court Judgement. The Appeal Panel is satisfied that the Disciplinary Panel considered the evidence and submissions carefully and came to a considered judgement. The Disciplinary Panel relied on the admissions of Mr McGill as to particulars one and two. Given the evidence before the Disciplinary Panel, the Appeal Panel determines that it was a proper conclusion to reach that Mr McGill's failure demonstrates a lack of the professionalism expected of an RICS member. Mr McGill has therefore failed to satisfy the Appeal Panel that the Disciplinary Panel's findings, both in respect of facts and liability to disciplinary action, were wrong.

### Charge 2

28. Charge 2 was an allegation that Mr McGill had failed to ensure that previous work undertaken for his clients was covered by appropriate run off insurance. There was common ground between the parties at the Disciplinary Panel hearing that since the expiry of the Firm's Aviva Professional Indemnity Insurance Policy on 21 February 2014 the Firm

has not had any Professional Indemnity Insurance. At paragraph 21 of his letter of 18 December 2014, Mr McGill accepted that this was the correct position.

29. Mr McGill in evidence to the Appeal Panel stated he had not received professional fees since June 2014. Mr McGill had approached nineteen insurance companies for quotes for professional indemnity insurance; only two insurance quotes were provided and Mr McGill did not have the financial means to accept either of them.
30. The Appeal Panel is satisfied that the Disciplinary Panel considered the evidence and submissions carefully and came to a considered and correct judgement. Mr McGill has not provided any evidence before the Appeal Panel such that it can be satisfied that the Disciplinary Panel's findings, both in respect of facts and liability to disciplinary action, were wrong in relation to Charge 2.

### Charge 3

31. The Disciplinary Panel found that Mr McGill had failed to act with due care, skill and diligence in that he did not liaise adequately with the Environmental Services Department to ensure that his building work satisfied their requirements. Furthermore Mr McGill failed to act with due skill, care and diligence in that drawings that he prepared did not show a path was required or did not adequately show that a path was required. The Disciplinary Panel determined that although the two factual particulars of the charge were proved, it was not a serious breach of Rule 4 and it did not give rise to a liability for disciplinary action.
32. The Appeal Panel is therefore not concerned with Charge 3 as a result of the Disciplinary Panel deciding that it did not give rise to a liability for disciplinary action.

### Charge 4

33. Charge 4 was an allegation that Mr McGill failed to provide his terms of engagement in advance to Mr W and that on 12 March 2009 provided to Mr W two different terms of engagement which contained two different fees. As a consequence of these matters, Mr W signed terms of agreement that he did not know he had agreed to, and confusion was caused when payment came to be made.
34. Mr W was not called to give evidence but the Disciplinary Panel gave weight to his written complaint dated 1 December 2011. Mr W was able to supply to RICS two different versions of the terms of engagement, copies of which appeared in the hearing bundle. It is not disputed by Mr McGill that the terms of engagement were not provided in advance to Mr W. Pressure of time may have been a factor as to why he then left an incorrect signed copy with Mr W. It was clear to the Disciplinary Panel that allowing Mr W to sign two different terms of engagement, which contained two different fees, resulted in confusion being caused when payment came to be made.
35. At paragraph 4 of his letter of 18 December 2014, Mr McGill set out his position as follows:

*'The situation regarding the terms of engagement has been fully explained. I repeat, my secretary, who lived some distance from me, had typed the original copy of the terms of engagement, i.e. £1600, but before I had time to collect it, I had spoken to a colleague, who informed me, as I was supervising the construction of the work, I should be charging at least 7.5% rather than the £1600 flat fee. I informed my secretary of this and collected two copies of each of the "terms" contracts on my way to the Wigan Site, the original (at £1600) and the one representing the 7.5% charge. I emphasised and fully explained the charges to Mr W after he had signed the original £1600 "terms" contract. He then signed the 7.5% charge copies. The amended "terms" represented an increase of £275.'*

36. In evidence before the Appeal Panel Mr McGill repeated the explanation set out in his letter of 18 December 2014. When asked by the Panel to explain why he considered the Disciplinary Panel was wrong as to Charge 4, Mr McGill stated 'they were not up to it'.
37. The Appeal Panel is satisfied that the matter was carefully considered by the Disciplinary Panel and that Mr McGill has not provided any evidence upon which the Appeal Panel could find that the decisions of the Disciplinary Panel, both in respect of facts and liability to disciplinary action, were wrong.

#### Gregor C McGill and Co

38. In relation to the Firm, the Disciplinary Panel found the charge proved, namely that Gregor C. McGill & Co failed to ensure that all previous professional work was covered by adequate and appropriate professional indemnity insurance cover, contrary to Rule 9 of the Rules of Conduct for Firms 2007. At paragraphs 46, 47 and 48 of Mr McGill's letter of 18 December 2014, he records as follows:

*'As previously explained, I have applied to, and had my applications for cover rejected by some 18 insurers. The two that did offer insurance and have issued quotations were so high that I could not afford to accept.'*

39. In relation to the charge found proved against the Firm, Mr McGill has not provided any evidence upon which the Appeal Panel could be satisfied that the decisions made by the Disciplinary Panel, both in respect of facts and liability to disciplinary action, were wrong.

#### Sanction, Costs and Publication

40. Mr McGill does not make clear in his written grounds of appeal whether he wishes to challenge the Disciplinary Panel's decision to expel him from membership of the RICS and to remove the Firm's registration from RICS regulation. The Appeal Panel provided an opportunity for Mr McGill to expand on this aspect but he declined to do so. It is the view of the Appeal Panel, as explained above, that Mr McGill has not discharged the burden upon him to persuade the Appeal Panel that the decisions of the Disciplinary Panel were wrong. The Disciplinary Panel had proper regard to the evidence, submissions and Indicative Sanctions Guidance before it and came to the conclusion that it was the appropriate sanction to impose to expel Mr McGill from a membership of RICS and to remove the Firm's registration from RICS regulation. The Appeal Panel is satisfied that Mr McGill has a substantial lack of insight as to his professional obligations.
41. So far as the question of costs and publication with the Disciplinary Panel hearing, the Appeal Panel has borne in mind Paragraph 27.3 of the Sanctions Policy which states that there is no right of appeal against an order for costs. It has also borne in mind that Mr McGill has presented no evidence before the Appeal Panel that would allow it to conclude that the order of the Disciplinary Panel for publication was wrong.
42. Accordingly, for all of the reasons set out above, in relation to each of the charges both for Mr McGill and the Firm, the Appeal Panel rejects the appeals on the part of the Mr McGill and the Firm in their entirety.

#### **Publication and Costs**

43. RICS does not make a claim for costs on the basis that paragraph 27.3 of the Sanctions Policy provides that there is no right of appeal against costs. In those circumstances, the Appeal Panel makes no order as to costs.

44. The Appeal Panel is mindful of the presumption in the Sanction Policy in favour of publication and sees no reason to depart from that in this case. The Panel therefore orders publication in *Modus* on the RICS website and in newspapers local to where Mr McGill's firm is based.