

Disciplinary Panel Hearing

Case of

Mr C G Boulton FRICS

Berkshire, RG20

On

Tuesday 09 and Wednesday 10 May 2017 – adjourned.

Monday 5, Tuesday 6, Wednesday 7 and Thursday 8 February 2018

At

Tuesday 09 May - RICS' offices at Parliament Square, London, SW1P 3AD;

Wednesday 10 May 2017 at QEII Conference Centre, Broad Sanctuary, Westminster, London, SW1P 3EE;

Monday 5, Tuesday 6, Wednesday 7 and Thursday 8 February 2018 - Blake Morgan, 6 New Street Square, London EC4A 3DJ.

Panel

Julian Weinberg (Lay Chair)

Gillian Seager (Lay Member)

Helen Riley (Surveyor Member)

Legal Assessor

Rosemary Rollason

RICS Representative

Annabel Joester – 9 & 10 May 2017

James Lynch – 5,6,7,8 February 2018.

The Formal Charge

The formal charge against Christopher Boulton is that:

1. he failed to conduct himself in a manner befitting membership of RICS and such conduct was liable to bring RICS into disrepute

the particulars being:

As the Chief Executive Officer (CEO) of Yoo Limited when Ms H was an employee of the Company he committed acts of unlawful detrimental treatment of Ms H, by

- a. discrimination in relation to a remark about 'maternity paranoia'
- b. discrimination in the conduct of a meeting on 28 May 2012 when he was aggressive and hostile to Ms H
- c. discrimination in failing to consult Ms H about a proposed restructuring prior to May 2012
- d. victimisation leading up to, and in the conduct of a meeting on 8 May 2013 when he sought to pressurise Ms H to drop her further complaints and statutory processes.

Mr Boulton has therefore breached RICS law B5.2.1(a) and is liable to disciplinary action under RICS law B5.2.2 (a) and (c).

1.The Hearing

2. The hearing was adjourned on the second day of the first sitting, Wednesday 10 May 2017. The hearing resumed on Monday 5 February 2018.

3. Representation

4. Mr Boulton attended and was represented throughout by Mr R. Holtby, MRICS.

5. RICS was represented by Ms Joester at the May 2017 sitting and by Mr Lynch at the February 2018 sitting.

6. Background

7. RICS received a complaint against Mr Boulton from Ms H in November 2015.

8. Mr Boulton has been an RICS member since 1989. During the period relevant to this matter, he was the Chief Executive Officer (“CEO”) of Yoo Limited (“the Company”). Mr Boulton joined the Company as CEO in April 2007.

9. The Company was a property design business which carried out both interior and architectural design work on residential and commercial projects in the UK and internationally. It offered marketing, branding and property investment services. The Yoo Studio was central to the business and involved in all its design projects. The Company was founded by Mr H, the Chairman at the time in question, and the designer, Mr S in 2002. Mr D, who was Mr H’s brother-in-law joined them in the Company.

10. Ms H is a registered Architect who joined the Company in April 2004, when she was already an established and well-known architect of some 19 years’ experience. In 2005 she was promoted to the role of “Studio Director” and in 2007, to the role of Head of Yoo Design Studio.

11. The matters leading to the particulars of the charge brought by RICS took place around the time of Ms H’s second period of maternity leave from the Company in 2011. She had developed a number of concerns about her position in the Company over the preceding year or so. She had raised issues in relation to her parity of pay with Mr D, the lack of recognition of her contribution and profile on the Company website and her exclusion from marketing materials and from a prominent position on the website, which showed Mr D as the face of the Company. Ms H’s position was that she and Mr D held equal roles and should be recognised and remunerated equivalently.

12. Prior to commencing her maternity leave Ms H took some annual leave and was last in the office in late July 2011. Mr DY was recruited to take on her role in her absence and he commenced in August 2011.

13. Ms H’s maternity leave began in September 2011 and during it, she undertook some Keep in Touch (“KIT”) days, which included a 5 day business trip to Milan with Mr D in April 2012.

14. Ms H complained that she was discriminated against in a number of respects by the Company and its officers, including Mr Boulton, primarily at around the time when she was preparing to return to work in May 2012.

15. Ms H said she was aware that Mr Boulton had made a comment to Mr D either orally or in an email using the phrase “maternity paranoia” in relation to her.

16. As a result of her concerns, Ms H lodged a Grievance under the Company's internal procedures in June 2012 which was heard by the Chairman, Mr H. She lodged an appeal against the findings in April 2013. This was heard by an external Queens Counsel.

17. Ms H resigned from the Company on 14 May 2013. Subsequently, she lodged a claim in the Employment Tribunal against the Company, Mr H and Mr Boulton. The first judgment of the Employment Tribunal was issued on 18 March 2014 and the judgment relating to quantum, on 5 August 2015. The Tribunal had considered and determined many issues raised in Ms H's claim, not all of which were found to be well founded. The Tribunal found that Ms H had been constructively dismissed by the Company. As far as Mr Boulton was concerned, the Tribunal found he was co-liable with the Company for unlawful detrimental treatment of Ms H in respect of four specific issues which were now reflected in particulars (a) to (d) of the formal charge brought by RICS.

18. Response to the Charge

19. Mr Boulton denied the charge, both in relation to facts and liability to disciplinary action. He admitted as a matter of fact that he had used the words "maternity paranoia", as referred to in particular 1(a).

20. Documents

21. At the hearing sitting in May 2017, the Panel received a bundle of documents submitted on behalf of RICS, numbered pages 1 – 476.

22. The Panel received on behalf of Mr Boulton his own witness statement dated 6 April 2017, an exhibited email and statements from four witnesses to be called on behalf of Mr Boulton.

23. At the second sitting in February 2018, the Panel received a supplemental bundle including further witness statements from Mr Boulton's witnesses.

24. RICS' Evidence

25. The judgment of The Employment Tribunal

26. Ms Joester applied for the judgments of the Employment Tribunal dated 18 March 2014 and 5 August 2015 to be taken as read and incorporated into the evidence.

27. The Employment Tribunal found that in respect of the term “maternity paranoia” that the remark was probably made orally to Mr D at some point soon after Ms H had gone on maternity leave in July 2011. Mr Boulton admitted he had used the expression.

28. Witness: Ms H

29. The Panel heard oral evidence from one witness called on behalf of RICS, Ms H. She confirmed the content of her witness statement dated 28 October 2016.

30. Ms H explained that she had an established career as an architect and designer before joining the Company. She joined as a Senior Architect, was promoted to Studio Director and later to Head of Design. Mr Boulton joined at the time when Ms H was in this role. Ms H described Mr D as co-head of design with her.

31. Ms H said the problems began during 2011 shortly before she went on maternity leave with her second child in September 2011. She felt that “serious” meetings began at this time, when suggestions began to be made that she should take a less client-facing role, and would want to be at home with her children.

32. In relation to particular (a), the remark by Mr Boulton concerning “maternity paranoia”, Ms H understood the remark was made in an email to Mark Davison shortly before she went on maternity leave. She perceived that it alluded to mental illness and to gender stereotyping.

33. In relation to particular (b), the meeting on 28 May 2012, Ms H said this was a meeting to discuss her return to work after maternity leave, although she was not provided with an agenda. Only she and Mr Boulton were present. Rather than being welcoming on her return to work, Ms H said that Mr Boulton was accusatory and aggressive. She said he referred to allegations relating to inappropriate use of a Yoo photograph on her personal website and passing off Yoo awards as her own. She said there was an onslaught of disparaging comments.

34. It was at this meeting that the subject of a re-structuring was raised. Ms H’s evidence was that this had not previously been discussed and no reasons were given for the proposal. Ms H was astounded that on the structure chart shown to her, her role now appeared to be subordinate to Mr D and much of her role had been moved to Mr DY, the designer who had been appointed to cover her maternity leave. She felt there was little left of her former role. She described Mr Boulton’s attitude at the meeting as “aggressive” and with hindsight, “bullying”. She felt the Company was

planning to sideline her on the basis that as a “new mum” she would want to travel less, although she had travelled extensively for her work with her first child.

35. Ms H said she did not accept the proposed re-structure plans and ultimately she issued a grievance. This led to the investigation by an external lawyer, which Ms H felt did not go far enough in its findings. The hearing was heard by the Chairman, Mr H. There followed an appeal heard by an independent QC, Mr Jones. Ms H said she did not return to work at the Company whilst these processes were ongoing.

36. Following Mr Jones’ report, Mr Boulton apologised on behalf of the Company for injury to Ms H’s feelings. Ms H did not believe this to have been a personal apology from Mr Boulton. In May 2013, discussions were initiated about her return to work. There was still dispute about her role in relation to Mr D. Ms H felt demoralised after these meetings and that nothing had changed.

37. Ms H asked the Company to respond to an Equality Act Questionnaire and a Data Protection Act (“DPA”) request. Mr Boulton said in a letter to Ms H that if she withdrew those requests, the Company would drop the disciplinary issues against her.

38. In relation to particular (d), the purpose of the meeting of 8 May 2013, was to discuss the respective roles of Ms H and Mr D and the way forward. Mr Boulton and Mr D were both present. Ms H produced her own notes of the meeting. She described Mr Boulton at this meeting as again aggressive and “bombastic”. The issues of the DPA request and the Equality Act questionnaire were raised, as were allegations about an alleged conflict of interest between Ms H’s role for the Company and her interest in David Archer Architects. Mr Boulton wanted her to cease this role, although Ms H said that she had been open about the position and the two roles had worked alongside up to that time. Ms H perceived this issue was aimed at preventing her return to work.

39. Ms H said that Mr Boulton would not move on and the meeting was not productive. He became visibly angry and threw his pen down on the table and said he would have to seek legal advice. He said this would delay her return to work substantially.

40. Ms H said she was astounded at these events after all that had taken place. She felt she could not take any more and that she had no alternative but to resign from the Company.

41. Defence Evidence

42. Witness: Mr Christopher Boulton

43. Mr Boulton confirmed his witness statement dated 6 April 2017 and gave oral evidence.

44. Mr Boulton said he became a Chartered Surveyor in 1989 and had several roles in the surveying sector. He also worked outside the surveying sector for a period and then joined the Company as Chief Executive Officer (“CEO”) in November 2006. He left in May 2014 and is currently Chief Executive of The Greenham Common Community Trust.

45. Mr Boulton said he had been engaged by the Chairman of the company and tasked with bringing organisational structure to the business, including to the design side. The Company was very successful and had grown rapidly but lacked structure or job titles, or clear roles for the designers.

46. Mr Boulton said that over his working history he had been very used to working in teams with men and women. He explained that whilst he was at the Company, Mr D was Head of Design. He had a shareholding in the Company and was a board member. Ms H was Head of Design Studio.

47. Mr Boulton said that over his years at the company he believed he had ensured that it was recognised that Ms. H was making a significant contribution to Yoo’s business and had improved her remuneration. He was aware however that serious issues were starting to come up in the period before Ms H’s second maternity leave, such as pay and the website, and he confirmed that her email of 22 September 2010 did not come as a surprise to him.

48. When Ms H was to go on maternity leave in 2011, it was she and Mr D who interviewed and appointed Mr DY to cover her leave.

49. In relation to the particular (a) of the charge, Mr Boulton accepted he had used the words “maternity paranoia” in conversation with Mr D. He said this was not directly addressed to an individual. The situation was that Ms H was on maternity leave and they believed she was worried about her position in the business, a concern which he and Mr D considered was unfounded.

50. Mr Boulton referred to a meeting on 14 May 2012 at which he, Ms H, Mr D and Mr DY were present. The meeting was to discuss the way forward on Ms H’s return from maternity leave. It would be unusual for him as CEO to get involved at this level, but he had been asked to provide support in view of his experience. At the end of the meeting Mr DY was tasked to produce a note and Mr D, an organogram.

51. At the meeting of 28 May 2012 (particular (b)) it had been intended that Mr D would be present but it transpired that he was away and so the meeting involved just Ms H and Mr Boulton. It was a follow up to the 14 May meeting and he did not expect it to be difficult. Mr Boulton also took the opportunity to raise the issue of Ms H’s use of a photo on her personal website which had just been

brought to his attention by the marketing department. Mr Boulton said he did not consider he had acted aggressively as Ms H alleged.

52. Discussion of the organogram drawn up by Mr D followed. Mr Boulton said it was a proposal for discussion. He said that Ms H did not offer any input, she put it in her bag and left. Mr Boulton said with hindsight he recognized it would have been better not to have dealt with the website issue at this meeting.

53. In respect of the meeting of 8 May 2013, Mr Boulton, Mr D and Ms H were present. The purpose of the meeting was to discuss issues relating to Ms H's return to work. He had thought they were getting close to settling the outstanding issues, including the DPA request and Equality Act Questionnaire. The issue relating to the Company credit card was raised. Mr Boulton had been informed of the issues relating to Ms H representing David Archer Architects and an issue concerning the Great Northern Hotel by the Director of Marketing. He believed these were issues which needed to be dealt with. He wanted Ms H's return to start with a "clean slate". He did not believe that he had been aggressive in the meeting, but had been reasonable and measured. He did not agree with the representation of the meeting in Ms H notes.

54. On the recommendation of the external QC's report, Mr Boulton said he had apologised to Ms H on behalf of the Company and personally, on his own behalf. Mr Boulton explained that he was the only person from the Company who in the end had made any financial contribution to Ms H's financial award. He had been made bankrupt in November 2015. Mr Boulton said he did not believe he had been acting as a Chartered Surveyor in his CEO role at the Company. He did not believe he had brought RICS into disrepute.

55. In answer to questions from the Panel about how he now reflected upon these matters, Mr Boulton said he did not recognise the picture given of himself in this case. He deeply regretted the remark about "maternity paranoia", which he now understood was intrinsically sexist. However, he felt badly bruised by events and felt that he had allowed himself to be put in a position by the Company where he was the person who was left to deal with Ms H and made the focus of her claims at the tribunal. If such a situation ever arose again, he would ensure he handed the matter to the HR team.

56. Witness: Ms M

57. Ms M joined the Company in 2005 and was Head of Marketing at the time when Mr Boulton joined as CEO. She was part of the management team of whom three out of seven were women.

She explained that at the time, the Company had grown very quickly but lacked structure and organisation. She understood Mr Boulton had been employed as CEO to deal with this and put a management structure in place. She said Mr Boulton had involved her in decisions within the Company and she felt that everybody was given an equal platform in the Company's decision-making. She described Mr Boulton an excellent manager and leader. She did not believe there was any misogynistic attitude towards women at the Company and she had not heard any colleagues express such views.

58. Ms M knew Ms H well as they had frequently travelled together on business trips. Ms M said all the management team except herself had children and in her experience the culture of the team was to celebrate this whilst managing the needs of the business. She said she had been shocked and saddened by Ms H's claims and did not recognise the picture she had painted of the Company.

59. Ms M left Yoo in 2012. She confirmed she had no knowledge of any of the specific matters referred to in particulars (a) to (d) of the charge brought by RICS and was not present at either of the meetings referred to on 28 May 2012 or 8 May 2013. Ms M had not given evidence at the Employment Tribunal hearings.

60. Witness: Ms G

61. Ms G had worked at the Company on a consultancy basis since 2005. She described the Company as "buzzy" and dynamic. Mr Boulton was the third CEO she worked with and she said he brought stability to the Company. She described his management style as friendly, open inclusive and assertive. She had had no issues with the way in which Mr Boulton spoke to her.

62. Ms G had known Ms H very well at one time but they were no longer on speaking terms as she was not very happy with the way she felt Ms H had handled this situation. Ms G was asked about Ms H's evidence to the effect that she (Ms G) had spoken with Ms H at an early stage in her pregnancy in around February 2011 and said to Ms H that she was throwing away her career at the Company and that Mr Boulton would get rid of her and replace her with a man. Ms G said this was a lie and she had never made such a comment.

63. Ms G confirmed she had little knowledge of the Employment Tribunal proceedings. She confirmed she had no knowledge of any of the specific matters referred to in particulars (a) to (d) of the charge and was not present at either of the meetings referred to on 28 May 2012 or 8 May 2013.

64. Witness: Ms V

65. Ms V joined the Company in March 2012 after 10 years in management consultancy in technology and architect businesses. She joined initially as Global Marketing Director and latterly as a consultant. She said she had worked closely with Mr Boulton and the global team. Ms V described her time at the Company as one of the best jobs she had worked in and there was great camaraderie in the team. She said she had worked with Mr Boulton on a daily basis and in her view, he had fostered an environment of equality for all. She said as one of the female directors she felt immensely supported and an equal member of the team. She did not find him to be demeaning towards women.

66. Ms V had not given evidence at the Employment Tribunal. Her view of the matter was that if there had been an issue with regard to the treatment of women at the Company, this emanated from the Chairman not Mr Boulton. In her view, Mr Boulton was made the moral and financial scapegoat for the Company in the Employment Tribunal proceedings.

67. Ms V confirmed she had no knowledge of any of the specific matters referred to in particulars (a) to (d) of the charge and was not present at either of the meetings referred to on 28 May 2012 or 8 May 2013.

68. Witness: Ms S

69. Ms S was employed as a senior designer at the Company from August 2011 to March 2015. Ms H had interviewed her but by the time she joined the Company, Ms H had already gone on maternity leave.

70. Ms S said she did not believe Ms H's statement reflected the ethos of the Company as she experienced it. She said Mr Boulton had never been demeaning towards her and she had never heard him being demeaning of other women. She had not experienced her gender as an issue and had found the Company supportive of her as a working mother.

71. Ms S confirmed she had no knowledge of any of the specific matters referred to in particulars (a) to (d) of the charge and was not present at either of the meetings referred to on 28 May 2012 or 8 May 2013.

72. Submissions on behalf of RICS

73. Mr Lynch reminded the Panel it had had sight of the judgment of the Employment Tribunal and had also heard direct evidence from Ms H. Mr Lynch said that the charge brought by RICS alleged that on four specific occasions Mr Boulton acted in a manner amounting to unlawful detrimental treatment of Ms H. The particulars were based on the specific findings of the Employment Tribunal in respect of Mr Boulton personally and did not extend more widely: RICS did not allege that Mr Boulton was a person who acted in a generally discriminatory manner or had acted in such a manner towards other women.

74. Mr Lynch referred to Rule 41(d) of the Disciplinary, Registration and Appeal Panel Rules, April 2009, Version 7 (“the Rules”), which provided that the findings of a tribunal were admissible as prima facie evidence of the facts found.

75. Mr Lynch submitted that the Panel should give considerable weight to the Tribunal judgment, which was the judgment of an expert tribunal and which had not been the subject of an appeal. Mr Boulton submitted in his evidence that he was not properly represented and that he was a “soft” target for Ms H’s legal team. However, Mr Boulton had been legally represented at the Tribunal hearing. The Tribunal had heard extensive evidence from witnesses a number of whom had not appeared before this hearing. The Panel had heard from four witnesses who gave evidence in support of Mr Boulton, but each had accepted they had no actual or direct knowledge of the issues specified at particulars (a) to (d) of the charge. Mr Lynch urged the Panel not to go behind the findings of the Employment Tribunal.

76. Mr Lynch submitted that Mr Boulton’s conduct towards Ms H was not in accordance with RICS’ guidance “Treating others with respect” and he had therefore failed to conduct himself in a manner befitting membership of RICS by virtue of his treatment of her and so was in breach of RICS By-law 5.2.1(a), as alleged.

77. Mr Lynch further submitted that Mr Boulton was liable to disciplinary action in accordance with By-laws 5.2.2(a) and (c). In respect of 5.2.2(a), the conduct was likely to bring RICS into disrepute. Mr Boulton was a high-profile member of the profession and there had been substantial press coverage of the matter.

78. Mr Lynch submitted that when asked to reflect on events, Mr Boulton did not accept the findings of the Employment Tribunal, but described himself as “badly bruised”, and let down by the Company and the lawyers, and the absence of HR support. Other than making the comment regarding maternity paranoia, which he believed had been blown out of proportion, he still disputed the

findings made by the Tribunal. He had not indicated that he had learned lessons. His behaviour sent the wrong signal to the profession.

79. Mr Lynch submitted that the Panel should find that Mr Boulton was liable to disciplinary action.

80. Submissions on behalf of Mr Boulton

81. Mr Holtby submitted that to rely only on the findings of the Employment Tribunal was to take an overly simplistic view of what had proved to be a complex set of circumstances and the Panel should not find a prima facie case based on its findings. He submitted Mr Boulton should have been represented separately from the Company at the Tribunal hearing and there had been a clear conflict of interest. He submitted that the lawyers representing Mr Boulton at the Employment Tribunal had focused on the equal pay claim rather than on the allegations made against Mr Boulton personally. Mr Boulton had not appealed for a number of reasons and the appeal period had elapsed. He had been told by the lawyers that his personal liability was purely academic and thought that the Company was going to honour its assurances to him.

82. Mr Holtby submitted that at the Tribunal, Ms H's evidence on the issues relating to Mr Boulton had been largely unchallenged. At the RICS hearing, Mr Boulton had called four witnesses who presented a different picture of Mr Boulton and the Company and had challenged the statements made by Ms H in a number of respects. Ms G had given an instance where Ms H had lied about a conversation. These witnesses all commented positively on Mr Boulton's management style and his supportive and inclusive approach to female colleagues, but none of this evidence had been presented at the Employment Tribunal.

83. Mr Holtby addressed each of the events referred to in particulars (a) to (d) in the charge. He explained Mr Boulton's recollection of these matters. Mr Boulton's recollection as to his conduct differed from that of Ms H. Mr Holtby reminded that Panel that the comment about maternity paranoia had been found by the Tribunal to have been used as a descriptor, and not in an accusatory manner.

84. Mr Holtby submitted that the Panel should not find any breach of Bye-laws 5.2.1(a) or 5.2.2(a) or (c) and that liability to disciplinary action should not be found. Mr Boulton deeply regretted the indirect use of the words "maternity paranoia". He could not accept the other findings against him.

85. On behalf of Mr Boulton, Mr Holtby did not accept that the profession had been brought into disrepute. He submitted that the press coverage had not alluded to Mr Boulton's RICS membership.

86. Legal advice – facts stage

87. The Panel received and accepted the advice of the Legal Assessor. The burden of proof in RICS proceedings is throughout upon the RICS which brings the charge: it is not for the respondent to prove his innocence.

88. The standard of proof in RICS disciplinary proceedings is the civil standard of proof, that is the balance of probabilities, meaning that before finding a fact proved, the Panel must be satisfied that it is more likely than not that it occurred.

89. The Panel should consider and take into account all the evidence, both oral and documentary, which had been presented. The Panel should focus on the specific charges which RICS had brought against Mr Boulton,

90. In this case, the Panel had been referred to the judgments of the Employment Tribunal. The Panel was reminded that Rule 41(d) of the Disciplinary, Registration and Appeal Panel Rules, April 2009, Version 7 ("the Rules") provided that the findings of a court, tribunal or regulatory body in the United Kingdom or elsewhere are admissible as prima facie evidence of the facts found. In this case, the factual particulars of the charge brought by RICS were based directly upon the findings made by the Employment Tribunal against Mr Boulton personally. Ultimately, however, it was for the Panel to consider what weight should be given to the judgments of the Employment Tribunal.

91. Legal advice - Liability to disciplinary action

92. The question of whether or not any facts found proved by the Panel gave rise to liability to disciplinary action was a matter for the Panel's judgment, rather than the legal standard of proof. Before finding liability established, the Panel should be satisfied that the failings in question were of a serious nature.

93. The Panel was referred to guidance in regulatory case authorities in relation to the obligations upon professionals for their standards of conduct when not directly in the course of the practice of their profession.

94. In *Kirk v Royal College of Veterinary Surgeons [2004] UKPC 4*, it was stated in respect of veterinary surgeons that they “*as professionals have wider duties than the care of animals. They are expected to conduct themselves generally in accordance with the standards of professional men and women and failure to do so may reflect upon the reputation of the profession as a whole*”.

95. In *Roylance v General Medical Council, Privy Council Appeal No. 49 of 1998*, it was said that professional misconduct could arise in circumstances outside professional practice. There had to be a link with the profession [of medicine] but precisely what the link may be, and how it would occur, was a matter of circumstances for the Panel to determine.

96. The Panel’s decision on facts

97. The Panel received extensive evidence, both oral and documentary, during the hearing. It received and considered the detailed judgments of the Employment Tribunal. The Panel noted that the Employment proceedings, and thus the judgments, concerned claims and findings against other parties in addition to Mr Boulton and considered many issues which did not form part of RICS’s case against Mr Boulton.

98. The facts alleged by RICS were based directly upon four specific findings of the Employment Tribunal against Mr Boulton. These were referred to in the four particular matters set out at (a) to (d) of the charge. The Panel was mindful that its task in determining the facts was to consider evidence relevant to these matters and to reach its findings on the specific particulars before it.

99. The decision as to whether any facts are proved to the required civil standard was a matter for the Panel itself and it was not bound by the previous findings of another body. However, in accordance with Rule 41(d) of the Rules, the findings of the Employment Tribunal were admissible as prima facie evidence of the facts.

100. The Panel considered that the following points indicated that it should give considerable weight to the Employment Tribunal findings:

- that the three-person Employment Tribunal was a specialist tribunal, chaired by an Employment Judge;
- the Tribunal heard oral evidence from the key factual witnesses; this Panel had not heard from all of those witnesses, in particular the Chairman Mr H and the Head of Design, Mr D;

- the witnesses were tested in cross-examination by counsel representing the respective parties;
- the Tribunal was unanimous in its findings;
- the Tribunal gave a detailed written judgment of 71 pages.

101. The Panel noted that the Employment Tribunal was an authoritative body and an expert tribunal in relation to matters of employment law. The Panel was mindful that the Tribunal's findings on employment law concepts, such as acts of unlawful detrimental treatment, discrimination and victimisation, were intrinsic to the charge. These were issues properly to be determined by an expert Employment Tribunal, rather than an RICS disciplinary panel.

102. Overall, the Panel was of the view that it should give considerable weight to the Tribunal findings and it was not likely to go behind them.

103. However, the Panel heard direct evidence from the two key witnesses, Ms H and Mr Boulton, and from four defence witnesses who did not give evidence to the Employment Tribunal. The Panel therefore considered whether this evidence might impact on its view of the weight to be given to the Tribunal findings.

104. The factual issues had been fully explored in the Employment Tribunal hearing in February and March 2014, where both Mr Boulton and Ms H had been examined and cross-examined at some length. The Panel took into account that their recollection of the details of the events was likely to be better nearly four years ago than currently.

105. The Panel found Ms H's evidence to be essentially consistent with her account throughout the matter. Similarly, Mr Boulton's account remained essentially consistent. Their respective accounts in relation to the factual issues remained largely in direct opposition, as they had been before the Employment Tribunal.

106. The Panel had heard from four witnesses called on behalf of Mr Boulton, Ms M, Ms G, Ms V and Ms S, who were women who had worked in senior roles in the Company alongside Mr Boulton at different periods of his employment. Not all of them had worked closely with Ms H, but they all knew her. The Panel found all four witnesses to be credible and to have given evidence in good faith. They presented a wider picture of Mr Boulton as an effective CEO, who had been supportive and inclusive to female colleagues. They had not experienced any discriminatory behaviour from him, nor observed such behaviour by him towards other women in the Company. However, each of

these witnesses readily accepted in evidence that they had no involvement in, or direct knowledge of, the issues referred to in the charge. None of these four witnesses had given evidence at the Employment Tribunal.

107. The Panel concluded the evidence of these witnesses would be relevant if the matter proceeded beyond the facts stage, but it could give little assistance to the Panel in respect of the specific factual allegations. The Panel accepted RICS' submission that it was possible for an individual to act in a discriminatory manner towards one person on specific occasions, even if that did not represent their general behaviour.

108. Overall, therefore, having considered all the evidence it had heard, the Panel determined that it should give weight to the findings of the Employment Tribunal and could not properly go behind them.

109. The Panel had been referred to RICS' guidance "Treating others with respect" and was satisfied that in the light of this guidance, and as a matter of its own judgment, that Mr Boulton had failed to conduct himself in a manner befitting membership of RICS, as alleged in the stem of the charge.

110. The Panel found the facts of the charge, including particulars(a) to (d), proved in their entirety.

111. Panel decision on Liability to Disciplinary Action

112. The Panel applied its own judgment to the issue of whether the facts proved established liability to disciplinary action under Bye-law 5.2.2(a), conduct liable to bring RICS into disrepute, and Bye-law 5.2.2(c), failure to adhere to the Bye-laws or to Regulations or Rules governing members' conduct.

113. The Panel took into account RICS' Global Professional and Ethical Standards and the guidance entitled "Treat others with respect". This guidance states that RICS members should never discriminate against anyone for whatever reason.

114. The Panel was satisfied that to behave in an unlawful, discriminatory manner breached the guidance. The conduct in question concerned the fundamental standards of behaviour expected of an RICS member, in whichever sector or industry they are working. A surveyor who is a member of RICS and receives the benefits of membership remains subject to these fundamental standards. Failure to comply with these standards affects the reputation of the surveyors' profession and undermines public confidence in it.

115. The Panel was aware that this matter concerned specific instances of discrimination towards one individual, Ms H. Other evidence heard by this Panel indicated it may not reflect his usual mode of behaviour. Nonetheless, the Panel considered Mr Boulton's actions in this case fell seriously below required standard and brought the surveyors' profession into disrepute.

116. The Panel found Mr Boulton liable to disciplinary action under Bye-law 5.2.2(a) and (c).

117. Submissions on sanction

118. Mr Lynch informed the Panel there were no previous disciplinary findings against Mr Boulton. He reminded the Panel it should take into account mitigation presented on Mr Boulton's behalf. He submitted that the Panel could take account of what he suggested was a lack of insight by Mr Boulton into his past conduct as an aggravating factor.

119. Mr Holtby made submissions in mitigation, reminding the Panel of Mr Boulton's long and unblemished membership of, and contribution to, RICS. He submitted a number of current and very supportive character references and took the Panel through four of these in particular.

120. Mr Holtby reminded the Panel of the evidence of the four female witnesses from the Company and how highly they had spoken of Mr Boulton's performance as CEO of the Company and described him as being exceptionally supportive of them as female colleagues.

121. Mr Holtby drew the attention of the Panel to the severe impact upon Mr Boulton of the events at the Company and the Employment Tribunal proceedings, in terms of his professional and personal reputation and also financially upon him and his family. He reminded the Panel of Mr Boulton's resilience in the context of his current role as CEO of The Greenham Trust, where he was acknowledged by his current colleagues to be performing at a high level.

122. Mr Holtby urged the Panel to take as lenient an approach as possible in the circumstances, taking account of all the mitigating circumstances.

123. Decision as to sanction

124. The Panel accepted the advice of the Legal Assessor (delivered in open forum), and referred to RICS' Sanctions Guidance and its supplements.

125. The Panel bore in mind that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.

126. The Panel was mindful that if it decided a sanction was required, it must commence its consideration at the lowest sanction, and only if it decided that sanction is not appropriate should it move to the next level of sanction. Having arrived at a sanction that it is minded to impose, the Panel should then review the next sanction above so as to satisfy itself that this would be too severe a sanction.

127. The Panel considered very carefully all the information it had heard including the evidence presented in mitigation, and the submissions of the parties.

128. The Panel identified the following matters as mitigation:

- Mr Boulton's long and unblemished period of some 39 years membership of RICS;
- The absence of any previous disciplinary findings against him;
- Mr Boulton had engaged and co-operated with RICS' process;
- He had apologised for the comment relating to "maternity paranoia" previously and at this hearing, and had expressed remorse;
- In relation to the events which were the subject of the hearing, the Panel recognised Mr Boulton had faced a particularly difficult situation and recognised that he had to some extent, as had been submitted on his behalf during the hearing, been left to deal with the situation by other senior colleagues in the Company;
- The conduct in question related to an isolated set of circumstances and did not appear to be typical of his conduct;
- Mr Boulton had suffered personally, reputationally and financially following the Employment Tribunal proceedings;

- In the years since the Employment Tribunal hearing there had been no further complaints of such conduct by Mr Boulton;
- The Panel had heard evidence in the earlier stages of the hearing from four witnesses Ms M, Ms G, Ms V and Ms S. These were all women who held senior roles at the Company during Mr Boulton's period of employment there. Their evidence spoke highly of Mr Boulton as a collaborative manager and colleague and positively described him as a person who respected and supported female members of the team. Their evidence suggested the conduct in Ms H's case was not indicative of his usual attitude;
- The Panel had received a number of very positive testimonials from past and current colleagues testifying to his integrity and his resilience in the face of these events. Senior colleagues from his current employment at The Greenham Trust spoke of his high standard of performance in his current role as CEO of the organisation.

129. The Panel did not identify any aggravating factors in this case.

130. The Panel considered the risk of repetition of Mr Boulton's behaviour in all the circumstances to be insignificant. As a result, the Panel did not consider that a sanction was required to protect the public from harm. However, the Panel determined that its findings as to unlawful discrimination, following those of the Employment Tribunal, were of a sufficiently serious nature that a sanction was required to protect the public interest and to maintain confidence in the surveyors' profession.

131. The Panel first considered whether to impose a caution but considered that such a sanction would not be adequate. Referring to the Sanctions Guidance, it took the view that this matter was not minor, although the Panel did consider it was highly unlikely to be repeated.

132. The Panel proceeded to consider the imposition of a Reprimand and concluded that this was the appropriate and proportionate sanction. It accepted that this had been a salutary experience for Mr Boulton and it was conduct he would be unlikely to repeat. The Panel therefore concluded that a Reprimand was the appropriate sanction. A fine in this case would serve no useful purpose and would be unduly punitive. The Panel took the view that any higher level of sanction would be disproportionately punitive upon Mr Boulton.

133. The Panel therefore determined that a Reprimand should be imposed on Mr Boulton.

134. Costs

135. Mr Lynch on behalf of RICS had served schedules seeking costs on behalf of RICS in respect of the two sessions of the hearing in May 2017 and February 2018. He confirmed orally to the Panel that the figure RICS sought, as amended in certain respects to reflect developments during the hearing, for example as to time incurred, was £26,703.00.

136. Information as to Mr Boulton's financial circumstances was submitted to the Panel. Mr Holtby referred to the extensive financial impact upon Mr Boulton during the Employment Tribunal proceedings and since. He reminded the Panel that Mr Boulton had only recently been discharged from bankruptcy. He said that an order for the costs claimed by RICS would be likely to put Mr Boulton back into bankruptcy and he urged the Panel not to impose any costs order.

137. The Panel noted that in accordance with Rule 34 of the Rules, it could impose a costs order which it considered fair and reasonable.

138. The Panel carefully considered both parties' submissions and the information provided. The Panel took into account the information presented as to Mr Boulton's current financial circumstances. The Panel concluded that a costs order against Mr Boulton was appropriate. It determined that a fair and reasonable order would be to impose of a proportion of the costs claimed by RICS, in the total sum of £10,000.

139. Publication

140. Mr Lynch on behalf of RICS submitted there should be publication of the decision in the usual form. Mr Boulton did not object to publication on RICS website and in RICS Modus.

141. The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus.

142. The Panel saw 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.

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