

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING

Case of

**Mr Graham Dickerson MRICS, [0073745]
Bath, BA1 3ED**

On

Wednesday 11 February 2015

At

RICS, Parliament Square, London

Chairman

John Anderson

Members

Milton McIntosh (Member)
Christopher Pittman (Member)

Legal Assessor

Ben Kemp

RICS Representative

Daniel Gutteridge

CHARGES HEARD

The formal charges are:

1. You failed to fully co-operate with RICS staff in that between 11 October 2013 and 12 May 2014 you failed to provide a deregistration form for your firm, Lamberts Building Surveyors Ltd, thereby preventing RICS from meeting its regulatory requirements,
Contrary to Rule 9 of the Rules of Conduct for Members 2007

DETERMINATION

Introduction

1. Mr Dickerson has been a member of RICS since 1986. He was sole director of a regulated firm, Lamberts Building Surveyors Limited (the Firm), which was registered with RICS in 2007 and has recently been dissolved. Mr Dickerson was present for the hearing and admitted the facts relevant to the charge. The question of any liability to disciplinary action to which those facts gave rise was a matter for the judgment of the Panel.

Findings of Fact

2. The Panel accepted and bore in mind the advice of the legal assessor. It is for RICS to prove the case to the civil standard: that it is more likely than not that any matter occurred. It is not for Mr Dickerson to prove anything. The Panel has also borne in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and has proceeded upon the basis that the Human Rights Act 1998 will apply. It has borne in mind in particular Mr Dickerson's rights to a fair hearing and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act.
3. The Panel has perused the RICS solicitor's bundle of documents, running to 64 pages. It has received oral submissions from the RICS solicitor, and from Mr Dickerson.
4. Mr Dickerson notified RICS on 11 October 2013 that the Firm had ceased trading. He was sent by RICS on the same day a 'de-registration form', which he was required to complete and return, along with a copy of the Firm's current professional indemnity insurance or run-off cover, within 14 days. In short, there is a RICS de-registration process which requires to be undertaken and which is designed to ensure that the public is protected as regulated firms are wound up. De-registration from RICS regulation is not automatic and requires to be approved, and applicable criteria satisfied, to safeguard the public interest.
5. RICS sent a reminder to Mr Dickerson on 5 November 2013. Mr Dickerson responded by telephone call on 18 December 2013, apologising for the delay in returning the de-registration form, and indicating that he had been experiencing some "personal issues". He undertook to return the form by "the weekend". A further reminder was sent by RICS on 2 and 9 January 2014 by email. RICS attempted to call Mr Dickerson on 13 February 2014 and contacted him again by email on 26 February 2014, to which Mr Dickerson responded by email dated 20 March 2014, asking if he was still able to de-register, pending the conclusion of a separate complaint about the Firm. By email dated 21 March 2014, RICS confirmed that the de-registration form should be completed and returned. Mr Dickerson responded via email dated 02 April 2014, indicating that he would respond upon his return from a week away. On 2 April 2014 RICS agreed an extension of time to 09 April 2014. The de-registration form has not, as of the date of the hearing, been returned by Mr Dickerson.
6. The Panel accordingly found the facts alleged by the RICS to be proved, upon the basis both of the evidence before the Panel, and the admission of Mr Dickerson.

Panel's Decision

7. There was a pattern of non-engagement and non-cooperation demonstrated by Mr Dickerson in this case. In particular, although Mr Dickerson did correspond with RICS in relation to a separate complaint regarding the Firm, he failed repeatedly to address the RICS' reasonable request that he complete the necessary documentation in order to deregister the Firm from RICS regulation. This non-cooperation persisted to such an extent that it risked impeding the ability of RICS to perform its functions and responsibilities. The RICS has a responsibility in overseeing from a regulatory and public interest perspective the effective winding down of the Firm. Non-engagement with RICS in relation to regulatory matters is always a serious matter. The Panel therefore found Mr Dickerson in breach of Rule 9 of the Rules of Conduct for Members 2007, as charged, and upon this basis, liable to disciplinary action.
8. In coming to its conclusion the Panel accepted the advice of the legal assessor. The question of whether or not any facts found proved gave rise to liability to disciplinary action was a matter for the Panel's judgment.

Penalties

9. 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.
10. The Panel paid careful heed to the advice of the legal assessor (delivered in open forum), and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case.
11. The Panel, having found liability to disciplinary action, first had to decide whether to impose a sanction.
12. The Panel considered that the following personal mitigating factors were present. Mr Dickerson had experienced over at least part of the period in question significant difficulties and challenges in his personal life. His business had failed and he had required to devote substantial energy to serious health concerns and bereavement affecting a number of members of his family.
13. The Panel considered that the following aggravating factors were present. There were public interest concerns which arose in this case, arising from a sustained failure to engage effectively with RICS in relation to regulatory matters. Moreover, the Panel was not confident that Mr Dickerson had demonstrated sufficient understanding or insight as to the public interest importance of regulatory process. It was not simply a matter of filling in forms, but went to the regulatory importance of ensuring that RICS was appropriately informed, and in turn able to discharge its public interest responsibilities. The Panel noted further that there was some recent disciplinary history, to the extent of a fixed penalty caution issued to Mr Dickerson in relation to a failure to record sufficient CPD in 2013. This again suggested to the Panel a lack of awareness of the importance of regulatory compliance.
14. The Panel considered the matter too serious for no sanction to be imposed. The Panel therefore followed the advice it had received that it should commence with the lowest sanction, and only if it were to decide that that sanction was not appropriate should it move to the next level of sanction. Having arrived at a sanction that it was minded to impose, the Panel would then review the next sanction above so as to satisfy itself that this would be too severe a sanction. The Panel bore in mind that more than one sanction may be imposed.

15. The Panel decided that a caution would be insufficient, and would not reflect adequately the wider public interest importance of effective regulatory compliance and cooperation. The failure in this case had persisted over a significant period of time, up to and including the date of the hearing. The Panel decided in all of the circumstances that it would be proportionate and appropriate to impose a reprimand. The Panel further noted that Mr Dickerson had committed during the course of the hearing to produce to the RICS the de-registration form which had been repeatedly requested by the RICS since October 2013. The Panel additionally imposed a formal undertaking that Mr Dickerson would now produce this information, to the RICS' reasonable satisfaction, within 14 days of the date of this hearing.
16. The Panel so ordered.

Determination on Publication and Costs

Publication

17. 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, in the interests of openness and transparency, it is usual for the decisions of the Panel to be posted on the RICS website, published in Modus, and in a newspaper local to the practice. 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 decision is an essential part of that role.
18. The Panel ordered that this decision is published on the RICS website, in Modus and in a newspaper local to Mr Dickerson's practice.

Costs

19. The RICS presenting solicitor asked for costs, and had provided a schedule to Mr Dickerson in advance of the hearing.
20. The Panel considered carefully the costs sought, totalling £5,421.50. The figure for the hearing was the average cost of a hearing, and the Panel had no reason to doubt it. The other costs reflected the time of the RICS solicitor, and costs associated with the investigation. The Panel did not find these to be unreasonable.
21. Mr Dickerson produced a statement of his means, to which the Panel had careful regard. He submitted that the level of costs sought by RICS was disproportionate.
22. The Panel ordered that Mr Dickerson should pay a contribution towards the RICS costs of £4,600. This figure took account of a reduction allowed by the Panel having regard to Mr Dickerson's statement of means.

Appeal Period

23. Mr Dickerson has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
24. In accordance with Rule 60 of the Rules, the Honorary Secretary of RICS has 28 days, from the service of the notification of the decision, to require a review of this Decision.