

Disciplinary Panel Hearing

Case of

**Mr Jeremy Upsall MRICS
Wiltshire, BA12**

On

Wednesday 26 September 2018

At

RICS, 55 Colmore Row, Birmingham

Panel

Sally Ruthen (Chair)
Catherine Brown (Lay Member)
Justin Mason (Surveyor Member)

Legal Assessor

Alastair McFarlane

Hearing Officer

Jae Berry

Referral back to Disciplinary Panel

1. Mr Jeremy Upsall has been referred to the Disciplinary Panel as a result of an alleged failure to comply with a condition imposed by a previous Disciplinary Panel in October 2016.
2. Ms Sherlock appeared on behalf of RICS. Mr Upsall attended by Skype link and represented himself.

Charges before October 2016 Disciplinary Panel

3. On Thursday 20 October 2016, Mr Upsall appeared (by telephone) before a Disciplinary Panel, in respect of the following charges:
 - i) On 01 April 2015 he made an application to RICS for registration as a registered valuer;
 - ii) He included information on the application form for registration that he knew to be false, namely that he had carried out 6 individual valuations in the preceding 36 months;
 - iii) By reason of allegations 1 and 2 above, he failed to act with integrity and/or avoid actions or situations that were inconsistent with his professional obligations contrary to Rule 3 of the Rules of Conduct for Members 2007;
 - iv) He did not submit in a timely manner or at all information requested from him by an RICS Regulation officer on 09 June 2015 namely evidence of professional indemnity insurance cover for the firm Upsalls, contrary to Rule 8 of the Rules of Conduct for Members 2007.

Background

4. Mr Jeremy Upsall has been a member of RICS since 1999. He was the sole member of

his firm, Upsalls, (“ the Firm”) which was registered for regulation with RICS in 2007.

5. In April 2015, RICS requested Mr Upsall to complete and submit an annual return for the Firm. Mr Upsall responded that the Firm had ceased to trade. RICS therefore requested Mr Upsall to complete a firm de-registration form. Mr Upsall responded by telephone, stating that the Firm had not carried out surveying work for a number of years. He did maintain, however, that professional indemnity insurance cover was in place. He also outlined his personal circumstances in respect of the breakdown of his marriage and his precarious financial position.
6. Further correspondence was sent to Mr Upsall on 11 January 2016 and 3 February 2016 requesting copies of Mr Upsall’s professional indemnity insurance cover and details in respect of his financial position. It was also noted that Mr Upsall had made an application on 1 April 2015 to join the Valuer Registration scheme. Within the application, Mr Upsall had declared that he had carried out five valuations within the previous 12-24 months and one valuation in the period 24-36 months prior to his application. Further information was sought from Mr Upsall as a result of this.
7. Mr Upsall’s declaration of carrying out previous valuations conflicted with his declaration that the Firm had not carried out surveying work for a number of years. Mr Upsall subsequently admitted in correspondence dated 17 February 2016 that the valuation experience described within the application was untrue. Mr Upsall also indicated that he was unable to locate any of his professional indemnity insurance policy documents, but that he was continuing to make enquiries of his former insurance broker.

Outcome of Disciplinary proceedings in October 2016

8. The allegations were admitted by Mr Upsall and he also accepted that he was liable for disciplinary action. Having regard to these admissions and upon consideration of the evidence in the case, the Panel found the allegations proved and that he was liable for disciplinary action.
9. The Panel’s sanction was to impose a Reprimand and the following conditions on Mr Upsall’s membership:

- i) That he be debarred from applying for inclusion in the Valuation Register for two years commencing from the date of the hearing; and
 - ii) a requirement to ensure that all previous and current professional work was covered by adequate and appropriate professional indemnity insurance cover which meets the standards approved by the Head of Regulation, such professional insurance to be in place within three months of service of notification of the Panel's decision to Mr Upsall.
10. The Panel specified that a failure in respect of either of these conditions would be referred back to a Disciplinary Panel.

RICS' submissions - Breach of Condition ii)

11. Mr Upsall was required to put in place adequate and appropriate professional indemnity insurance within three months of service of notification of the Panel's decision. Mr Upsall was informed of, and sent a copy of, the Panel's decision by letter and email, dated 25 October 2016. The letter confirmed that the second condition needed to be in place by 25 January 2017 and that a failure to do so would result in the matter being referred back to a Disciplinary Panel for further consideration.
12. On 27 April 2017, RICS wrote to Mr Upsall to remind him of the conditions imposed on his membership by the Disciplinary Panel. It was pointed out to Mr Upsall that the deadline for compliance with the second condition had passed and RICS had not received any evidence of his professional indemnity insurance run-off cover. Mr Upsall was given a further opportunity to provide this by 5 May 2017.
13. On 5 May 2017, in a telephone call with RICS, Mr Upsall indicated that he was waiting for a response from his insurance broker. Mr Upsall then emailed RICS on 9 May 2017 confirming that he had had difficulty obtaining professional indemnity insurance run-off cover. He also confirmed that his original insurers had failed to locate him on their systems and that he was having difficulty as a result of losing his original insurance

related documents.

14. On 12 May 2017, Mr Upsall was written to by RICS to confirm that the matter would be referred back to the Disciplinary Panel as he had failed to comply with condition 2. He was again written to on 21 March 2018 with confirmation of a hearing date. On 12 April 2018, Mr Upsall wrote to RICS to confirm that he had not received the correspondence from RICS dated 12 May 2017. RICS forwarded a further copy of that letter by email on 16 April 2018 and requested evidence from Mr Upsall of the efforts made to obtain professional indemnity insurance.
15. RICS submitted that this Panel was constrained to consider the issue of breach of Condition ii) only and, that if it concluded Mr Upsall had breached the condition, it should then consider what sanction, if any, to impose, exercising the same powers as the original Committee. RICS contended that Mr Upsall failed to ensure that all previous and current professional work was covered by adequate and appropriate professional indemnity insurance cover by 25 January 2017 and by the extension granted by RICS of the date of 5 May 2017. Accordingly, it was submitted that the Panel should consider what penalty, if any, to substitute for the breach of this condition.

Mr Upsall's submissions

16. Mr Upsall admitted that he had not complied with the Condition ii) imposed by the Disciplinary Panel in October 2016.
17. Mr Upsall explained that he had repeatedly attempted to put such insurance cover in place and obtain proof of the same. He explained that in the three months after the decision in October 2016, he had looked for his old insurance papers, but these had been lost in a succession of house moves from 2014 to 2016 and that phone calls to the broker that he believed to be the relevant broker produced no results. When RICS extended the time for compliance in April 2017, Mr Upsall contacted Apex insurance brokers to try and arrange run off cover, but was declined and advised to "go to your present insurers". Mr Upsall produced e-mails detailing this approach in April 2017, today. Mr Upsall also stated that he made calls to other brokers (including Axa and Hiscox) last week. He was told that run off cover "can only be provided on existing

policies” and “cannot be put in place retrospectively when there has been such a lengthy period (7 years) since any work had been undertaken.” He contended that he felt “completely stuck” as his attempts to resolve the matter “seemed to be floored at the first hurdle” and questioned the relevance of putting this in place as he “left the profession many years ago and am involved in an entirely different industry.”

Decision

18. The Panel noted the submissions of Ms Sherlock for RICS and Mr Upsall on his own behalf. It accepted the advice of the Legal Assessor.
19. The Panel noted that there were no express provisions in the RICS Bye-Laws, Regulations and Rules (“the Rules”) for dealing with breach of condition cases, but was satisfied that there was jurisdiction for the Panel to deal with same and that this Panel’s powers were same the as the Panel imposing the original sanction. It had regard to the observations of the Court of Appeal in *Hill v Institute of Chartered Accountants of England and Wales [2013] EWCA Civ 555*. It was satisfied that the procedure for determining a breach of condition and, if appropriate, substituting a new sanction, was not prohibited in the Rules and that it was just and in the public interest to adopt a fair procedure for dealing with this referred back case.
20. The Panel was satisfied that Mr Upsall had failed to comply with Condition ii) of the Order imposed by the Disciplinary Panel in October 2016. Mr Upsall had not provided RICS with any proof that all previous and current professional work was covered by adequate and appropriate professional indemnity insurance. Further, Mr Upsall admitted the breach and that he had not provided this proof.
21. The Panel accepted that its powers were to take no action, or to substitute any sanction that the October 2016 Panel could have imposed. It had regard to RICS Sanctions Policy, and bore in mind the overriding principle of proportionality. 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.

22. The Panel noted Mr Upsall's submissions and his contention that, in effect, he had a good reason for not complying with the condition, as he had not been able to find any proof of his original insurance and had been unable to secure any run off cover. The Panel rejected Mr Upsall's contentions that he had any good reason for non-compliance with the Condition. The Panel considered Mr Upsall's efforts to comply with the Condition to have been inadequate, both in the original 3 months given by the original Panel and in the extended period and thereafter. It considered he had been largely re-active and not proactive. His attempts to ascertain the identity of his previous insurers and documentary evidence of it, were very limited. There was no documentation before the Committee from brokers or insurers. While some efforts were made at the end of 2016 and again in the Spring of 2017 to arrange run off cover, the Committee considered these attempts were limited. There was no pro-active engagement with his regulator – which was his obligation.
23. Co-operation with a professional's regulator is not optional and is a fundamental obligation on any professional. In this case, the Panel was mindful that a Disciplinary Panel had imposed an obligation on Mr Upsall by means of a formal condition. Non-compliance with a condition imposed as a sanction following a Disciplinary hearing is self-evidently a serious matter.
24. The Panel considered carefully the mitigating and aggravating factors of this case as well as the issue of proportionality in weighing up the most appropriate response.
25. The Panel considered that the following mitigating factors were present:
- Mr Upsall has admitted the breach
 - He has engaged with this hearing
 - Mr Upsall took some, limited steps to attempt to comply with condition
26. The Panel considered that the following aggravating factors were present:
- Mr Upsall had been given significant time to provide proof of insurance and the deadline had been extended by RICS
 - There has been a repeated and prolonged failure to comply with a lawful requirement of his Regulator.

- There was no remorse or apology
 - Mr Upsall has not shown any understanding of the impact of his failure on the fundamental role of the Regulator to ensure public protection and maintain the reputation of the profession.
27. The Panel considered the matters are too serious for no sanction at all to be imposed. They considered the sanctions in ascending order of restrictiveness.
28. The Panel considered that a Caution and Reprimand was insufficient to mark the seriousness of the behaviour and to adequately maintain the reputation of the profession.
29. The Panel had regard to Supplement 2 to the Sanctions Policy in relation to Fines. It considered that the imposition of a Fine with a condition would be sufficient and proportionate to mark the gravity and seriousness of the failure and to uphold public confidence. The Panel's decision was to impose a fine of £1,500 and to impose a Condition in the following terms:
- Failure to pay the fine by 31 December 2018 will result in automatic expulsion from membership, without further reference to a Disciplinary Panel.
30. The Panel also carefully considered whether it was necessary to expel Mr Upsall from RICS. In the Panel's judgment, it was just persuaded that the sanction of expulsion was not required and that the fine and condition were sufficient and proportionate to mark the public interest in ensuring compliance with Conditions imposed by a Disciplinary Panel.

Publication

31. The Panel has considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. Mr Upsall did not oppose publication and the Panel saw no basis to depart from the presumption of publication. Accordingly, this decision will be published on the RICS website and in the RICS magazine Modus.

Costs

32. RICS made an application for costs in the sum of £3,070. This was not opposed by Mr Upsall.
33. The Panel considered that it was appropriate to award costs in favour of RICS and it considered that the sum of £3,070 was fair and reasonable and it ordered Mr Upsall to pay this sum.

Appeal Period

34. Mr Upsall has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
35. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel 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.