

Disciplinary Panel Hearing

Case of

**Mr Robert Montgomery [1301053]
Co Armagh, BT66**

Held on

Wednesday 29 July 2015

At

RICS, Parliament Square, London

Panel

Julian Weinberg (Lay Chair)
Christopher Boothman (Lay Member)
Jack McKinney (RICS Member)

RICS Representative

Daniel Gutteridge

Legal Assessor

Mark McConochie

The formal charge is:

1. You have failed to act with integrity and/or in accordance with your professional obligations, the particulars being that in submitting your Assessment of Professional Competence (APC) documentation to RICS you were dishonest in that:
 - (a) you signed a Candidate Declaration stating that your APC submission containing your Professional Development Record and Experience Record was all your own work when you knew it was not as you had plagiarised another candidate's submission.

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

Introduction

1. Mr Robert Montgomery attended the hearing by way of telephone but was not represented.

Preliminary matters

Amendment of the Charge

2. RICS applied to amend the charge to delete the words: "all your own work" and replace those words with: "a true and accurate representation of your own training and experience."
3. Mr Montgomery confirmed that he did not object to the amendment being made.
4. The Panel took advice from the Legal Assessor and noted that it had discretion to amend the charge under Rule 41 (e) of the Disciplinary Registration and Appeal Panel Rules 2009 ("the Rules") where that could be done without injustice.
5. The Panel took into account the nature of the proposed amendment, which it felt did not materially affect the nature of the allegations against Mr Montgomery. Taking into account the overriding need for fairness in these proceedings and the lack of any prejudice to Mr Montgomery if the charge were to be amended as requested, the Panel decided to allow the application.
6. Paragraph (a) of the amended charge therefore read as follows:

"(a) you signed a Candidate Declaration stating that your APC submission containing your Professional Development Record and Experience Record was a true and accurate representation of your own training and experience when you knew it was not as you had plagiarised another candidate's submission."
7. The amended charge was put to Mr Montgomery. He admitted that he had copied the work of Mr H, another Trainee Member of RICS, in his Assessment of Professional Competence (APC) submission but he denied that he had done so knowing that his submission was not a true and accurate reflection of his own training or experience or that he had done so

dishonestly. The Panel therefore proceeded on the basis that Mr Montgomery denied the charge.

Background

8. Mr Montgomery is a Trainee Member of RICS and has been a Trainee Member since 2010.
9. Mr Montgomery appeared before the Panel in respect of an allegation of failing to act with integrity and in accordance with his professional obligations in breach of Rule 3 of the RICS Rules of Conduct for Members 2007.
10. As a Trainee Member of RICS Mr Montgomery is required to comply with RICS' Rules of Conduct for Members.

RICS' case

11. It is alleged by RICS that Mr Montgomery was dishonest in signing his Candidate Declaration stating that his APC submission was a true and accurate representation of his own experience, when he knew it was not as he had plagiarised another candidate's submission.
12. RICS' case relied substantially on a comparison between the APC submissions of Mr H and Mr Montgomery. Mr H and Mr Montgomery were both trainee surveyors with a surveying firm, BTW Shiells in Belfast, between 1 November 2010, when Mr Montgomery joined that firm, and 15 July 2011, when Mr H left.
13. It is alleged that Mr Montgomery had copied the submissions of Mr H in an attempt to pass them off as his own work, amending them only to reference the firm at which he was employed, or that he made other minor alterations to the text. As a result, the submissions did not properly reflect what Mr Montgomery had actually done during his training.
14. RICS relies on 19 entries in Mr Montgomery's Professional Development Record and 33 entries in his Experience Record which it is said, are in many instances, virtually identical in phrase and content to the records of Mr H. RICS also points to spelling mistakes and grammatical errors that were replicated in the records submitted by Mr H and those submitted by Mr Montgomery as evidence supporting the allegation that the submissions of Mr H had been plagiarised by Mr Montgomery.

15. RICS has also produced copies of two of the files worked on by Mr Montgomery, the contents of which it is said do not reflect the entries in his Experience Record relating to those files.

Mr Montgomery's case

16. Mr Montgomery admitted that he had copied the work of Mr H. He said that he did so as a shortcut and admitted that it was "slapdash" to have done so. He said that whilst his submission did not in all cases reflect his experiences exactly, where it did not do so, his experience was similar to, or very similar to, that shown in the submission that he made.

17. Mr Montgomery stated in correspondence with RICS that he only used Mr H's submission as a template; that he adjusted it to ensure that he was presenting an accurate record of his own experience; and that at no time had he intended to mislead or deliberately deceive the APC Panel.

18. In an email dated 16 December 2014 to RICS, Mr Montgomery stated:

"Mr (H) passed his APC in the summer sitting of 2014. It would be fair to note that we attained each competency level at the same stage based on our shared workload. As our CPD record and workbook experience was the same I utilized the template keeping the experiences we had undergone together the same. I adapted other relevant experience to fit with my own individual experiences.."

19. Mr Montgomery stated in the same email, that Mr H provided the template to him "in good faith", and that he had asked Mr H to share the template with him in a telephone conversation.

20. In an email to RICS dated 23 January 2015, Mr Montgomery states:

" I appreciate that this looks like a shortcut to providing the information, but given my severe dyslexia this is an instinctive management technique I use wherever possible. I would re-

iterate the fact that I did not set out to mislead or misinform the Panel and I do not believe that I did”

21. When invited by RICS to respond specifically in relation to the allegation of dishonesty, Mr Montgomery stated in a letter dated 11 March 2015:

“I accept that I have demonstrated naivety and stupidity not to have taken the little extra time required to update the workbook template to accurately reflect the exact basis of every transaction. However, I was confident I could accurately reflect at the interview when asked any details on either competency.”

22. Mr Montgomery went on to say:

“I recognise I have made a mistake and demonstrated an error of judgment to which I can only convey my deep regret. I did not intentionally set out to be deceitful.”

Burden and standard of proof

23. RICS is required to prove the allegations to the civil standard; that it is more likely than not that any alleged event occurred. That is a single standard of proof, though the more unlikely an allegation the more cogent the evidence the Panel might require to prove it. There is no requirement for Mr Montgomery to prove anything.

Evidence

24. The Panel has carefully considered the RICS Solicitor’s two bundles of documents: bundle 1 consisting of 40 pages; and bundle 2 consisting of 5 separate dividers of documents.
25. The Panel also heard representations from Mr Gutteridge on behalf of RICS and Mr Montgomery on his own behalf.

Findings of fact

26. The Panel found that Mr Montgomery did, as alleged, sign a declaration dated 19 September 2014, a copy which is found in RICS’s Bundle 2 at Divider 3.

27. The declaration states:

“The following documentation is a true and accurate representation of the candidate’s own training and experience.”

28. The Panel therefore found this aspect of the charge proved.

29. The Panel went on to consider whether Mr Montgomery *knew* that his APC submission was not a true and accurate reflection of his own training and experience as alleged in the charge.

30. Before considering whether Mr Montgomery *knew* that his APC submission was not a true and accurate reflection of his own training and experience, the Panel first considered whether RICS had proved on the balance of probabilities that Mr Montgomery’s APC submission was not a true and accurate reflection of his own training and experience.

31. Mr Montgomery confirmed in response to questions from the Panel that he took a deliberate shortcut and copied another student’s work into his own APC submission. His explanation for doing so was because he was under time pressure to submit his application; he had family health issues at the time; and being dyslexic, he felt that Mr H had described his training and experience better than he could have done.

32. The Panel accepted Mr Montgomery’s submission that his training and experience as a trainee surveyor was similar to, and in some cases, very similar to, the training and experience of Mr H.

33. RICS relied upon a selection of identical, or near identical, entries in the APC submission of Mr Montgomery and Mr H, inviting the Panel to infer from this that Mr Montgomery’s APC submission was not a true and accurate reflection of his own training and experience because he had plagiarised the submission of Mr H.

34. The Panel accepted that the extent and nature of the similarities between the entries in the APC submission of Mr Montgomery and that Mr H which are relied upon by RICS, was evidence from which it could conclude that Mr Montgomery copied entries from the submission of Mr H, but that those copied entries reflected Mr H’s training and experience.

35. The Panel noted that mistakes in spelling and grammar, and the use of particular phrases, were copied by Mr Montgomery and that some of the identical or near identical records related to a time when Mr Montgomery was not at the same firm as Mr H.
36. The Panel also took into account the limited evidence before it concerning what Mr Montgomery's training and experience actually was. This was found in the copy case files at Dividers 4 and 5 of RICS' Bundle 2. The two entries in respect of these files in Mr Montgomery's submission were identical to those of Mr H save in respect of the name of the firm.
37. The Panel did not condone the copying of another student's submission in the way that Mr Montgomery had admitted to doing and considered there to be some force in the RICS' case which was based largely on the inference to be drawn from a comparison between the submissions of Mr Montgomery and Mr H. However, taking all of the evidence into account, the Panel was not persuaded on balance of probabilities that Mr Montgomery's submission was not a true and accurate representation of his training and experience.
38. The Panel accepted Mr Montgomery's evidence that his training and experience was the same, and if not the same, then it was similar, or very similar to that of Mr H. In these circumstances the Panel was not satisfied based on the limited evidence before it of Mr Montgomery's *actual* training and experience, that his submission was not a true and accurate reflection of his training and experience. RICS did not produce any evidence of where the training and experience of Mr Montgomery and Mr H was the same, or different, and if different to what extent, to satisfy the Panel of the truth and accuracy of Mr Montgomery's submission where he had plagiarised the work of Mr H. RICS relied substantially on the inference which they invited the Panel to draw from the comparison document which was not, in the Panel's view, sufficient to prove the conduct alleged.
39. In the light of its finding that the evidence did not support the allegation that Mr Montgomery's submission was not a true and accurate representation of his own training and experience, the Panel did not go on to consider whether Mr Montgomery knew his submission was not true and accurate and further whether or not he was dishonest in signing a declaration stating that it was.
40. The Panel therefore finds the charge not proved.

Publication and Costs

41. The Panel considered the RICS guidance as to publication of its decisions. The guidance provides that it is usual for the decisions of the Panel to be posted on RICS' website, published in Modus, and published in a newspaper local to the individual's practice or place of work.
42. Having carefully considered the particular circumstances of this case and having balanced the wider public interest in publication of decisions of RICS against the private interests of Mr Montgomery, the Panel ordered publication of its decision on RICS' website and in Modus but not in a newspaper local to where Mr Montgomery works.
43. Neither party applied for costs and the Panel therefore made no order as to costs.