

Disciplinary Panel Hearing

Case of

**Mr Rodney Exton BSc FRICS [0074996]
Nottingham, NG3**

On

Thursday 20 April 2017

At

RICS, Surveyor Court, Coventry

Panel

Julian Weinberg (Lay Chair)
Imran Benson (Lay Member)
Ian Hastie (Surveyor Member)

Legal Assessor

Margaret Obi

RICS Representative

James Lynch

The formal charges are:

Charge 1

You did not submit information requested from you by RICS on 13 April 2016 namely a completed firm deregistration form for the firm Exton Associates Ltd., and confirmation that the firm had professional indemnity insurance run-off cover

Contrary to Rule 8 of the Rules of Conduct for Members 2007

Charge 2

You have failed to co-operate fully with RICS Regulation officers in that you have not responded to written correspondence sent to you and telephone messages left for you between 13 April and 08 December 2016

Contrary to Rule 9 of the Rules of Conduct for Members 2007

Response

1. To date Mr Exton has not responded to the formal charges.

Summary

2. Mr Exton has been a member of RICS since 1986. He is the sole principle of the firm Exton Associates Ltd, which he registered for regulation by RICS in 2007. Information obtained from Companies House indicated that as of October 2016 the Registrar had commenced the procedure to strike off the company.
3. On 16 March 2016 Mr Exton submitted the RICS Annual Return for the firm indicating that it had no professional indemnity insurance cover as it was ceasing to trade. A regulation officer wrote to Mr Exton on 13 April 2016 asking for more information about the firm's insurance position and completion and return of a firm de-registration form by 27 April 2016. In a telephone conversation with Mr Exton on 4 May 2016 he stated that the firm had not traded for two years due to his health. During that telephone conversation Mr Exton agreed to complete the de-registration form. RICS received no further contact from Mr Exton or any reply to emails and letters dated 20 May 2016, 13 June 2016 and 21 July 2016.
4. RICS commenced an investigation and in a letter, dated 28 October 2016, reminded Mr Exton of his obligation to comply with Rule 8 of the Rules of Conduct for Members.
5. The formal allegations relate to a failure to co-operate with RICS and provide information reasonably requested from Mr Exton by his regulatory body.

Burden and standard of proof

6. RICS is required to prove the allegations to the civil standard; that it is more likely than not that what is alleged to have occurred, did occur. There is no requirement for Mr Exton to prove anything. The Panel was aware that Mr Exton has the right to practice his profession and proceeded upon the basis that the Human Rights Act 1998 applies. In particular it bore in mind Mr Exton'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. The Panel was aware that the question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment.

Preliminary matters

Service of Notice of Hearing

7. Mr Exton did not attend the hearing and was not represented. The Panel was provided with a signed Proof of Delivery certificate that the Notice of Hearing had been sent in a letter, dated 17 February 2017, by Special Delivery, to the address shown for the Mr Exton on the RICS register. The letter was signed for by Mr Exton on 18 February 2017. The Notice of Hearing had also been sent to Mr Exton by email on the same date. The Panel was satisfied that Notice had been properly served in accordance with Rule 23 of the Disciplinary, Registration and Appeal Panel Rules 2009, as the Notice of Hearing, together with the other documents required to be supplied by RICS, were sent by special post to Mr Exton more than 28 days' in advance, as required. Having heard and accepted the advice of the Legal Assessor, the Panel found that the Notice of Hearing had been properly served.

Proceeding in Absence

8. Having determined that service of the Notice of Hearing had been properly effected, the Panel went on to consider whether to proceed in Mr Exton's absence, as permitted by Rule 30 of the Disciplinary, Registration and Appeal Panel Rules 2009.

9. The Panel noted that where a member is ill it will usually be unfair to proceed with a hearing in their absence. However there is a public interest in conducting professional regulatory proceedings expeditiously. The Panel accepted the advice of the Legal Assessor that it must consider matters such as whether the person had requested an adjournment, whether the person would be likely to attend any adjourned hearing, or whether, in all the circumstances, Mr Exton had voluntarily absented himself from the hearing. A decision to proceed in the absence of the person facing the allegation should be taken with great care, and caution. The risk of prejudice to Mr Exton must be carefully weighed, and the conclusion that he has deliberately and voluntarily absented himself requires the Panel to find that there is a clear and unqualified - unequivocal - intention not to attend.

10. The Legal Assessor referred the Panel to the judgement in GMC v Adeogba [2016] EWCA Civ 162. The judgement in Adeogba confirmed that 'The fair, economical, expeditious and efficient disposal of allegations made against ... practitioners is of very real importance' and that a hearing should not be re-listed in circumstances where a practitioner had deliberately failed to engage in the hearing given the consequential cost and delay to other cases. The judgement in Adeogba also stated that: "there is a burden on...all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession."

11. The Panel determined that it was reasonable and in the public interest to proceed with the hearing for the following reasons:
 - a) Mr Exton has not fully engaged with the regulatory process. Despite correspondence being sent to Mr Exton from the RICS by post and email during the investigation stage of these proceedings there has been no response from him. The Panel noted that during a telephone conversation with a representative of RICS, Mr Exton indicated that he had a health condition and it was for this reason his firm had ceased trading for two years. However, despite repeated requests Mr Exton has not provided any medical evidence. RICS sent a letter to Mr Exton on 30 March 2017 requesting information regarding his health condition and to date there has been no response. There has also been no response to the three telephone messages left on his mobile telephone on 18 April 2017

and 19 April 2017. Having been properly served with the Notice of Hearing, and in the absence of any medical evidence, the Panel was satisfied that it was fair and reasonable to conclude that the Mr Exton's non-attendance was voluntary and therefore a deliberate waiver of his right to attend.

- b) Mr Exton has not made an application to adjourn and there is no indication that even if the case were to be adjourned that he would attend on any future date. In these circumstances an adjournment would serve no useful purpose.
- c) The Panel noted that the evidence is solely document based. The Panel acknowledged that proceeding in the absence of Mr Exton may cause some disadvantage to him as he would not be able to present his case or challenge the RICS case. However, the Panel concluded that Mr Exton's interests were outweighed by the Panel's duty to give effect to the public interest by ensuring that the hearing commences and concludes expeditiously.

Evidence

12. The Panel carefully considered the RICS solicitor's bundle of documents and the written and oral submissions made on behalf of RICS. The documentary bundle included evidence of correspondence and telephone calls between the RICS and Mr Exton, including various attempts by RICS to make contact with Mr Exton in relation to the subject matter of the charges. In the absence of any response to the allegations from Mr Exton, the Panel treated all charges as denied.

Findings of fact

13. The Panel found the facts relating to Charge 1 and Charge 2 proved based on the documentary evidence produced.

Discussion and conclusion

Charge 1

14. The Panel was provided with the Annual Return submitted by Mr Exton to RICS. The Annual Return was completed on 16 March 2016 and stated that the firm, Exton Associates Ltd, had no Professional Indemnity Insurance because the 'Firm is ceasing to trade'. Mr Exton's Annual Return generated a query and on 13 April 2016 a regulation officer wrote to him requesting further information. Mr Exton was also advised in that letter that if the firm was ceasing to trade he would have to de-register the firm. A de-registration form was attached, which he was asked to complete and return and Mr Exton was also asked to provide evidence of the firm's Professional Indemnity Insurance run-off cover. A telephone attendance note, dated 4 May 2016, confirmed that a representative from RICS rang Mr Exton and during that telephone discussion he stated that the firm had not traded for two years due to a particular health condition. Mr Exton agreed to complete the de-registration form.
15. The Panel accepted that the telephone conversation on 4 May 2016 was the last direct communication RICS has had with Mr Exton. The Panel had sight of reminder emails and letters sent to Mr Exton on 20 May 2016, 13 June 2016 and 21 July 2016. The Panel accepted that the RICS received no response to these reminders.
16. The Panel was satisfied that RICS had made a reasonable request for completion of the de-registration form and evidence of Professional Indemnity Insurance run-off cover and was also satisfied that Mr Exton had not complied with this request.
17. In the circumstances the Panel finds that Mr Exton acted in breach of Rule 8 of the Rules of Conduct for Members 2007.

Charge 1 is found proved.

Charge 2

18. The Panel took into account its findings in relation to Charge 1. The Panel was satisfied that Mr Exton failed to co-operate fully with RICS regulation officers during its investigation. The Panel was provided with copies of letters from RICS dated 28 October 2016 and 8 December 2016. Both letters requested completion of the de-registration form and evidence of Professional Indemnity Insurance run-off cover. The letters also confirmed that further action could be taken. The Panel accepted that Mr Exton did not respond to these letters.
19. The Panel was satisfied that Mr Exton had a duty to co-operate with the RICS investigation and failed to do so by not responding to reasonable requests for completion of the de-registration form and evidence of Professional Indemnity Insurance run-off cover.
20. In the circumstances the Panel finds that Mr Exton acted in breach of Rule 9 of the Rules of Conduct for Members 2007.

Charge 2 is found proved

Liability to disciplinary action

Panel Decision

21. On the basis of the facts found proved the Panel went on to decide whether Mr Exton is liable to disciplinary action. In reaching its conclusion the Panel accepted the advice of the Legal Assessor that liability to disciplinary action is a matter of judgment.
22. The Panel accepted the submissions made on behalf of RICS that Mr Exton demonstrated a disregard for his professional obligations which undermined public confidence in the profession and the regulatory process and that he had brought the profession into disrepute. The Panel took the view that RICS is entirely reliant on the co-operation of its members to carry out its role in the public interest. The Panel concluded that Mr Exton's failure to co-operate and provide information left RICS unable to carry out an assessment of any potential risk posed to the public by his firm following it ceasing to trade.

23. Accordingly, the Panel found that both individually and collectively the factual findings, together with the corresponding breaches of the Rules of Conduct for Members 2007 give rise to a liability to disciplinary action.

Mitigation

24. No evidence in mitigation was provided by Mr Exton and no testimonials had been submitted. However, the Panel was informed that there were no previous disciplinary matters recorded against Mr Exton.

Sanction Decision

25. The Panel has borne in mind that the purpose of sanctions is not to be punitive, though they may have that effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of the RICS as its regulator and to protect the public. Sanctions must be proportionate.

26. The Panel took into account and accepted the advice of the Legal Assessor and had regard to the Sanctions Policy of RICS. It considered carefully the mitigating and aggravating factors of this case.

27. The Panel, having determined that Mr Exton is liable to disciplinary action, first had to decide whether to impose a sanction. Having done so, it started by considering the lowest sanction, moving up the scale of gravity only when the sanction under consideration was insufficient to meet the public interest.

28. The Panel considered that individually and collectively the facts found proved, amounted to serious failings. These failings were aggravated by the following:-

- Mr Exton had demonstrated a repeated, persistent and continuing failure to respond to correspondence from RICS;

- There was no evidence of insight on the part of Mr Exton as to the significance of his failure to engage with his regulator.
- There is an ongoing risk to the public as there is no evidence that Mr Exton has obtained the required Professional Indemnity Insurance or run off cover for the firm.

29. The Panel first considered taking no action. The Panel concluded that, in view of the nature and seriousness of Mr Exton's breaches of the Rules to take no action on his registration would be wholly inappropriate. The Panel concluded that taking no action would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

30. The Panel next considered whether to impose a caution but considered this to be inappropriate given the seriousness of Mr Exton's failures.

31. The Panel next considered whether to impose a reprimand and considered that this was appropriate and proportionate and so orders.

32. The Panel went on to consider undertakings and concluded that such a sanction was not appropriate given the nature of the breaches. In reaching this conclusion the Panel took into account the Sanctions Policy which indicates that undertakings may be appropriate where the desired effect is to ensure that a Member refrain from repeating or continuing the conduct. In the circumstances of this case positive action is required by Mr Exton which he has failed comply with.

33. The Panel went on to consider the appropriateness of imposing a fine. The Panel concluded that a fine would be punitive in nature and would not address the Panel's concern regarding the risk of harm to the public and the undermining of public confidence in the profession.

34. The Panel considered conditions. The Panel concluded that appropriate, workable and measurable conditions could be imposed. The Panel took the view that Mr Exton should be provided with one final opportunity to de-register the firm and provide evidence to RICS that he has obtained Professional Indemnity Insurance run-off cover for the firm. The conditions imposed are as follows:

- i) Mr Exton must complete a de-registration form for the firm Exton Associates Ltd and submit it to RICS by **31 May 2017**.
- ii) Mr Exton must provide evidence to RICS of adequate and appropriate Professional Indemnity Insurance run-off cover by **31 May 2017**.

33 The Panel further directs that failure to comply with one or more of the above conditions will result in automatic expulsion.

Publication and Costs

RICS Submissions

34 Mr Lynch, on behalf of RICS, referred the Panel to the presumption that its decision would be published and requested costs.

Panel Decision

35 The Panel accepted the Legal Assessor's advice that it is usual for decisions to be posted on the RICS website and published in Modus. The Panel was unable to identify any 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.

36 The Panel orders that this decision is published on the RICS website and in Modus.

37 The Panel considered carefully the issue of costs. The figure for the hearing is the average cost of a hearing day, and the Panel has no reason to doubt it. The other costs sought are associated with the time spent by RICS' solicitor and with the RICS disciplinary investigation. The Panel concluded that it was fair to make a costs order in this case, otherwise the cost of the proceedings would fall on the profession as a whole.

However, it determined to reduce the costs sought in respect of the today's hearing in recognition that the hearing was shorter than anticipated.

38 The Panel orders that Mr Exton pays to RICS costs in the sum of £4,235. The Panel also ordered that this sum be paid in full by **31 May 2017**.

Appeal

39 Mr Exton has 28 days to appeal against this decision in accordance with Rules 59- 70 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009.

40 In accordance with Rule 60 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009 the Honorary Secretary has 28 days from the service of the notification of this decision to require a review of this decision.