

## **Disciplinary Panel Hearing**

### **Case of**

**Watts Group Limited [001911643]  
London EC3R**

### **On**

Friday 19 October 2018

**At RICS, 55 Colmore Row, Birmingham, B3 2AS**

### **Panel**

John Anderson (Lay Chair)  
Angela Brown (Lay Member)  
Ian Hastie (Surveyor Member)

### **Legal Assessor**

Peter Steel

### **RICS Presenting Officer**

James Lynch – Solicitor, RICS

### **Member Firm's representation**

Gregory Treverton-Jones QC – Counsel instructed by Frank Maher, Legal Risk LLP

Mr Trevor Rushton, director of the Member Firm also attended.

### **Hearing Officer**

Maria Choudhury

The formal charge is:

1. On 27 January 2016 you were convicted of the following offences:
  - a. On 28<sup>th</sup> January 2013 in the County Court Division of Antrim, in contravention of Article 5(1) of the Health and Safety at Work (Northern Ireland) Order 1978 being

an employer, failed to conduct your undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not in your employment who may be affected thereby were not thereby exposed to risks to their health and safety. Contrary to Article 31(1)(a) of the Health and Safety at Work (Northern Ireland) Order 1978.

- b. On 11<sup>th</sup> February 2013 in the County Court Division of Antrim, in contravention of Article 5(1) of the Health and Safety at Work (Northern Ireland) Order 1978 being an employer, failed to conduct your undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not in your employment who may be affected thereby were not thereby exposed to risks to their health and safety. Contrary to Article 31(1)(a) of the Health and Safety at Work (Northern Ireland) Order 1978.
- c. On 1<sup>st</sup> March 2013 in the County Court Division of Antrim, in contravention of Article 5(1) of the Health and Safety at Work (Northern Ireland) Order 1978 being an employer, failed to conduct your undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not in your employment who may be affected thereby were not thereby exposed to risks to their health and safety. Contrary to Article 31(1)(a) of the Health and Safety at Work (Northern Ireland) Order 1978.

**The Firm may therefore be liable to disciplinary action in accordance with Bye-Law 5.3.2(a)**

**Response**

1. The Firm's solicitors had returned the standard listing questionnaire to RICS indicating that the charge was admitted and that the Firm accepted that it was liable to disciplinary action. Mr Treverton-Jones QC, who appeared on behalf of the Firm, confirmed that this remained the Firm's position.

**Summary**

2. On 27 January 2016, the Firm pleaded guilty and was convicted of three breaches of Article 31(1)(a) of the Health and Safety at Work (Northern Ireland) Order 1978. The Firm was fined £10,000 on each count (a total of £30,000) and was ordered to pay costs of £1,149.

3. Those offences related to work that the Firm had performed on behalf of the Northern Health and Social Care Trust at Holywell Hospital in Northern Ireland. The work was intended to eradicate asbestos containing materials from underground service ducts at the hospital and included removing and replacing a series of fire doors throughout the structure. Prior to undertaking the substantive construction work, the Firm agreed to undertake a survey of the underground ducts at the hospital.
4. The purpose of the survey was to locate and describe, as far as reasonably practicable, all asbestos containing materials in the area in which the construction work was to take place. The survey needed to be thorough and accurate, as it was relied on by the licensed asbestos contractors when tendering for and conducting the removal work.
5. In addition, that survey ought to have been carried out to the standards laid down in The Asbestos Survey Guide (HSG264). At the time of instruction, the Firm did not have a competent asbestos surveyor in its Belfast office. It therefore sub-contracted the work, though the Firm briefed the sub-contractor as to how and where to collect the samples. The sub-contractor conducted the asbestos management survey on 24 August 2011. He took 13 samples from a 1.2 km stretch of underground ducts.
6. The Firm issued an Asbestos Management Survey Report (the Report) in reliance on the sub-contractor's advice on 7 October 2011. It was common ground that this report was inadequate and created a risk to the health and safety of non-employees of the Firm. This came to light on 12 March 2013, when the construction workers found a pipe with suspected asbestos insulation discarded in an area that was marked on the plan prepared by the Firm as part of the Report as having had all asbestos removed. Subsequent inspections discovered asbestos in areas where the Firm had reported none.
7. This led in due course to the Health and Safety Executive prosecuting the Firm. The dates of the charges reflected the three dates on which the construction workers had visited the site and were therefore exposed to risk as a result of the inaccurate information contained in the Report.

### **Findings of Fact**

8. As set out above, the Firm admitted the charge as set out above. The documents provided to the Panel included a certificate of conviction for the offences dated 29 June 2016.
9. Accordingly the Panel found the factual allegations proved, on the basis of the documentary evidence produced and the Firm's admission.

## Liability to Disciplinary Action

10. The Firm also admitted liability to disciplinary action. The Panel was in any event clear that a conviction of the nature set out in the charge was a serious matter and constituted conduct that liable to bring RICS into disrepute.
11. Accordingly, the Panel was satisfied that the Firm was liable to disciplinary action.

## Sanction

### Panel's Approach and Mitigation

12. The Panel listened carefully to the submissions of Mr Lynch on behalf of RICS and those of Mr Treverton-Jones QC on behalf of the Firm. Mr Lynch told the Panel that the Firm had no previous regulatory history. The Firm had also pleaded guilty to the offences and had cooperated with RICS throughout its investigation. RICS accepted that the risk of repetition of the conduct was low, as the Firm no longer undertakes such work. Mr Lynch submitted that nonetheless, this was a high profile offence and the issue was serious. An offence of this nature would invariably tend to bring RICS into disrepute and the Firm's failures in this case reflected badly on the surveyors' profession as a whole. The papers before the Panel contained an expert report by a Mr Welch about the conduct of the responsible employee of the Firm. This report had been included in the Firm's mitigation bundle. However, Mr Welch's conclusions indicated that the Firm must bear some responsibility for the failures in the case and that those failings were not the exclusive responsibility of the sub-contractor in the case.
13. On behalf of the Firm, Mr Treverton-Jones first of all offered its apology to the Panel and to RICS as a whole. However, he submitted that the primary responsibility in this case lay with the sub-contractor who performed the asbestos survey. The Firm had fallen down not in the appointment of the sub-contractor, who was adequately qualified, but in not allocating enough time to the task and failing to appreciate the scope of the task. There had not therefore been any deliberate disregard of the Firm's regulatory obligations.
14. Mr Treverton-Jones submitted that the fine imposed by the Crown Court in Northern Ireland had been more severe than the Firm had expected. It appeared that the Court had sentenced on the mistaken basis that the Firm had charged £7,500 for the survey while the sub-contractor had only been paid £280. In fact the Firm had invoiced £2,734.80 for the work including the asbestos survey. Mr Treverton-Jones suggested that the Court was therefore inadvertently misled and this may have accounted for the high level of the fine. He said that the evidence suggested that the inadequate survey had caused very limited risk to anyone, if at all. The Firm accepted the criticisms made in Mr Welch's expert report. The problem that this case identified had been put right by the decision of the Firm's Board on July 2015 to cease doing asbestos work, except in

its Edinburgh office where there was a suitably qualified team. The Firm had in fact now stopped all asbestos work, though all staff were kept up to date on asbestos awareness.

15. Mr Treverton-Jones said the Panel should take into account the following factors in arriving at a sentence. The survey had taken place some 7 years ago. Secondly, the Firm had paid a substantial fine of £30,000, which he suggested was imposed on an erroneous basis. The case was a one-off failure and did not indicate a systemic problem. The Firm had made full admissions at every stage and cooperated fully with RICS. Lastly, the Firm continued to take its regulatory responsibilities seriously, as demonstrated by the CVs of Firm members included in the mitigation bundle provided to the Panel.
  
16. The Panel accepted the advice of the legal assessor and took into account RICS' Sanctions Policy in arriving at its decision. It bore in mind that the purpose of sanctions is not to be punitive, although 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 RICS as its regulator and to protect the public. Sanctions must be proportionate to the breach and all the circumstances and a decision should be reached having taken into account any mitigating and/or aggravating factors.

### Decision

17. The Panel noted that the following mitigating factors were present:
  - The Firm had no previous regulatory history;
  - It had demonstrated a high degree of cooperation with RICS and deserved credit for its admission of guilt both in the criminal proceedings and before this Panel;
  - The incident was apparently a one-off, and given that the Firm had assured the Panel that they no longer undertook any asbestos work, was unlikely to be repeated;
  - The events in question dated back some time; and
  - The Firm had taken effective steps to remediate the problems identified by the case.
  
18. The Panel considered that the following aggravating factors were present in this case:
  - Watts Group Limited was a prominent firm and even though the conviction appeared to arise from circumstances that were unlikely to be repeated, the effect of any conviction of a high-profile firm on the public standing of surveyors and surveying firms generally was potentially severe; and
  - The public was entitled to expect high standards of professional competence from surveyors or regulated firms engaging in asbestos work, the dangers of which were well understood. The Firm had taken on the responsibility of providing a

report to assure others of the safety of a client's premises. A failure in this area, which had at least the potential to cause serious harm to others, reflected very badly on the whole profession. Further the Panel was of the view that, contrary to the mitigation offered on behalf of the Firm, the Report had created an actual risk to construction workers at the time, as well as a potential future risk to anyone who had to visit or work in the ducts subsequently.

19. The Panel first considered whether it was appropriate to impose any sanction at all. The Panel concluded that the admitted conviction was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate.
20. The Panel went on to consider whether to impose a caution. The Panel concluded that a caution would not adequately reflect the seriousness of the case, recognising the high profile of the Firm and the potential effect of the conviction on public confidence in the profession. The Panel also considered the imposition of a reprimand, but concluded that on its own this did not reflect the seriousness of the regulatory breach.
21. In considering whether to require the Firm to give an undertaking the Panel took into account the fact that the Firm had already ceased doing asbestos work. The Panel therefore concluded that imposing such a sanction would serve no point and would therefore be insufficient to maintain public trust and confidence in the regulatory process. For similar reasons, the Panel considered and dismissed the imposition of a condition on the Firm's continuing membership. The Panel concluded that there were no appropriate or workable conditions that would address the misconduct demonstrated by this case.
22. The Panel then considered whether to impose a fine. It decided that a fine combined with a reprimand would be an appropriate sanction. It considered that this would adequately mark the Panel's disapproval of the Firm's conduct and of the effect that its conviction might have on the profession as a whole, by undermining public belief in the competence of regulated firms. The Panel did consider whether expulsion was appropriate as a sanction, but concluded that in the light of the apparently isolated and historic nature of the conviction and the potential effect on otherwise blameless employees, to go beyond a fine and a reprimand in this case would be punitive and disproportionate.
23. It therefore ordered that the Firm be reprimanded and pay a fine in the sum of £7,500.

## Publication

24. The Panel has considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website and in the RICS magazine Modus.

## **Costs**

25. RICS applied for costs of £4,000, which amount had been agreed by the Firm.

26. The Panel considered carefully the issue of costs. The costs figure represents a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel had no reason to doubt that the costs application was fair and reasonable.

27. The Panel concluded that it was appropriate for the Firm to make a contribution towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole.

28. The Panel orders that the Firm pays to RICS costs in the agreed sum of £4,000.

## **Appeal Period**

29. The Firm has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

30. 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.