



ROYAL INSTITUTION OF CHARTERED SURVEYORS

Disciplinary Panel Hearing

Case of

**Daniel ROBERTS [1298209]
Wallsend, Australia**

On

Monday 08 – Friday 12 January 2024, and Thursday 18 January 2024 and Thursday 04 April 2024

And the Panel met in camera on 15 and 16 January 2024

At

Held remotely via Microsoft Teams

Panel

Angela Brown (Lay Chair)
Ron Barclay-Smith (Lay Member)
Ben Davies (Surveyor Member)

Legal Adviser

Rebecca Vanstone

RICS Representative

Christopher Geering, Counsel

Tribunal Executive

Adeel Qureshi

Introduction

1. Daniel Roberts ("Mr Roberts") appears before the RICS Disciplinary Panel in connection with the following allegations (as amended in this hearing):-

1. a. *Mr Roberts deliberately damaged Goodwin Street Developments Pty Ltd's property / properties, or caused them to be damaged, in the following ways:*
 - i. *circular saw cuts through structural floor beams and wall structures,*
 - ii. *drill holes in the valleys of the roof iron box gutters,*
 - iii. *concrete inserted into tops of sewer pipes,*
 - iv. *power cables made unserviceable,*
 - v. *internal wall sheeting damaged with hole punctures,*
 - vi. *holes punched into external cladding and / or ceilings,*
 - vii. *damaged bathroom waterproofing;*
- b. *Mr Roberts deliberately removed or caused to be removed the following items from the property / properties:*
 - i. *Internal doors,*
 - ii. *External doors,*
 - iii. *Sliding glass windows,*
 - iv. *Internal stairs,*
 - v. *Skylights;*
- c. *As a result of his actions at (a) and (b) above, he caused damage of around \$586,000 (Australian);*

Contrary to Rule 1 Rules of Conduct

Mr Roberts is therefore liable to disciplinary action under byelaw 5.2.2(c)

2. a. *Mr Roberts, whilst working on the property / properties, failed to exercise due skill, care or diligence in that he was responsible for one or more of the following defects:*
 - i. *missing stormwater pipe,*
 - ii. *exposed unsupported pier footing,*
 - iii. *termite protection system not installed,*
 - iv. *no recess for vanity,*
 - v. *external steel not hot dip galvanised,*
 - vi. *internal steel not painted,*
 - vii. *laundry window missing and incorrectly sized doors installed,*
 - viii. *windows in bathrooms in incorrect places,*
 - ix. *windows in kitchenette in incorrect places,*
 - x. *frame built on sewer pipe,*
 - xi. *no step down from concrete slab,*
 - xii. *black mould on timber frames,*
 - xiii. *loose bracing,*
 - xiv. *floor sheeting moves up and down,*
 - xv. *wet area wall lining not fixed as required,*
 - xvi. *waterproofing to showers,*

- xvii. *wrong board used on fascia,*
- xviii. *sliding door tracks not flush with floor,*
- xix. *beams not supported by piers,*
- xx. *damaged foil sarking,*
- xxi. *air conditioning drains drip outside the building,*
- xxii. *downpipe not fitted correctly – no sump and overflow,*
- xxiii. *inadequate flashings around windows and sliding doors,*
- xxiv. *wrong size reveals on window,*
- xxv. *incorrect painting of window architraves,*
- xxvi. *downpipes from top roof drain into lower roof,*
- xxvii. *penetrations not sealed,*
- xxviii. *loose external wall linings,*
- xxix. *missing insulation,*
- xxx. *manholes sealed,*
- xxxi. *hallway too narrow,*
- xxxii. *loose tie down straps,*
- xxxiii. *temporary formwork not removed,*
- xxxiv. *inadequate clearances over doors and windows,*
- xxxv. *no sill framing support,*
- xxxvi. *defective framing bolt,*
- xxxvii. *Private certifier inspection approvals.*

- b. *His actions at (a) above resulted in the loss of around \$300,000 (Australian)*

Contrary to Rule 3 Rules of Conduct

Mr Roberts is therefore liable to disciplinary action under byelaw 5.2.2(c)

Response

- 2. Mr Roberts denied the allegations in full.

Summary

- 3. Mr Roberts is a Member of RICS, qualifying as a professional member in April 2011.
- 4. The case has arisen following Mr Roberts being named as the second defendant in a civil case that was heard at the Supreme Court in Australia, in April / May 2022. The case was brought by Goodwin Street Developments Pty Ltd (“Goodwin”). The matter then came before the Court of Appeal; that decision was handed down in February 2023.
- 5. Goodwin had entered into a building contract with the first defendant in the case, DSD Builders Pty Ltd (“DSD”) to construct three residential boarding houses. DSD’s sole director was Mr Roberts’ partner, who was later his wife.
- 6. The relationship between DSD and Goodwin broke down. Goodwin claimed that, in addition to the damage, there were numerous defects to the property that needed remedying. Goodwin issued a Notice to Remedy Defaults on DSD on 02 March 2018.

7. It was said that on 19 March 2018, Mr Stokes, one of the directors of Goodwin, attended the site and observed substantial damage to the buildings. He noted that doors, windows, stairs and other times that had previously been installed in the buildings were now missing. Mr Konjarski, a scaffolder who had provided scaffolding services to the project, later said that on or around 15 March 2018 he saw Mr Roberts and two others on site causing damage to the building and removing fixtures and fittings.
8. Goodwin brought an action against DSD and Mr Roberts for the damage and the defects. Prior to the matter being heard by the Supreme Court in Australia, DSD entered liquidation.
9. Goodwin alleged that Mr Roberts acted as a representative of DSD. Goodwin argued that he negotiated the building contract, administered it, and controlled the construction works on behalf of DSD. Mr Roberts did not attend the trial, however he was legally represented.
10. The Court allowed the claim and found that Mr Roberts had committed the damage complained of, and that he was liable for the defects. Damages in the sum of \$586,000 (Australian) were awarded against him for the damage, and \$300,000 (Australian) for the defects. During the hearing there had been no dispute that the damage had occurred or that the defects were present. There was no dispute as to the quantum – that is, the value of the damage / defects. The challenge to the evidence advanced on Mr Roberts' behalf was that he was not responsible for the damage or the defects.

Burden and standard of proof

11. The Panel received advice from the Legal Adviser as to the burden and standard of proof. The advice highlighted that the RICS is required to prove the allegations to the civil standard; that is, it is more likely than not that any event material to those allegations occurred. There is no requirement for the Member to prove anything. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action was a matter for the Panel's judgment.

Preliminary matters

Applications to admit further evidence

12. On day one of the hearing, the Panel was advised that there were applications to admit further evidence. Mr Geering, on behalf of RICS, submitted an addendum bundle which set out steps taken by an RICS investigator to make contact with a witness who gave evidence during the case at the Supreme Court. The bundle also contained written submissions from Mr Roberts which the Panel was informed were omitted in error from the main hearing bundle. The RICS also provided a bundle of authorities from the Australian courts, providing the Panel with detail as to how appeals were decided.
13. Mr Roberts did not object to the late admission of this evidence.
14. Mr Roberts sought the late admission of the following:
 - i. Addendum bundle 1 which contained two emails from Mr Roberts to the RICS' solicitor and annotated closing submissions for use in his civil appeal;

- ii. Addendum bundle 2 which contained his grounds of appeal for the civil case;
- iii. Addendum bundle 3 which contained a witness statement from a Mr Pobbathi, dated 14 June 2022, who is alleged to have been told by an unnamed third party that damage had been caused to the site in February 2018, together with an email from Mr Roberts reiterating this. The bundle also contained an application by Mr Pobbathi for a police report for the damage caused to the property; the application is dated 22 June 2018;
- iv. A print out of the license and supervisory record showing who is the recorded site supervisor

And later:

- v. An email from Mr Roberts to the RICS' solicitor attaching an updated document which was described as a 'quotation'.
15. Mr Geering did not object to the admission of addendum bundles 1 and 2, nor to the licensing print out or the email with quotation attachment. The Panel determined whether it could receive these documents at this late stage. It received advice from the Legal Adviser as to the test of relevance and fairness, and that the late submission of evidence was not in itself a bar to admissibility. The Panel accepted this advice and determined that each of the agreed documents was relevant as they either referred directly to the Supreme Court case and Mr Roberts' subsequent appeal, or to his work at the relevant time; the Panel also determined that that it was fair to admit these documents in the circumstances when they would be referred to by Mr Roberts in his defence of the allegation and there was no objection by the RICS to their admission. The Panel was mindful that some of the documents contained matters of legal privilege. It was satisfied that Mr Roberts had been told of this and the consequences of waiving such privilege, and that he had made an informed decision in choosing to submit them to the Panel nonetheless.
 16. The Panel also considered that it could properly receive the RICS addendum bundle as the documents contained were clearly relevant to the matters before it, and it was fair to do so given the documentation was produced by the RICS but of benefit to Mr Roberts.
 17. The Panel next considered the documents within defence addendum bundle 3. Mr Roberts told the Panel that the documents were not hearsay as there was a sworn, signed affidavit and the exhibiting email was a business document. He explained that the documents were directly relevant to the Panel's considerations as they provided evidence that someone else was responsible for the damage that the Supreme Court held him to have caused.
 18. Mr Geering objected to the admission of the documents. His objection was two-fold. First, that the documents had been served very late, only two working days before the hearing, with no explanation as to why, and the lateness of service meant that the RICS was unable to undertake its own enquiries or investigations, or make any efforts to contact the witness who has provided the statement, or anyone else referred to within the documents. Secondly, that the statement contained hearsay, multiple hearsay and anonymous hearsay, and was not admissible in the circumstances of the case.
 19. The Panel received and accepted advice from the Legal Adviser.

20. The Panel first considered whether the documents within the addendum bundle 3 were relevant. It determined that they were, given that they contained a suggestion that someone else was responsible for the damage which is set out at allegation 1.
21. The Panel next determined whether it was fair to admit this evidence. It determined that it was not fair to admit the evidence, in all of the circumstances.
22. The Panel noted Mr Roberts' explanation that he did not realise he had to serve his evidence by a particular date, and that he had assumed – as the case was listed for five days – that he could submit his evidence during the course of the hearing. The Panel was mindful that Mr Roberts was unrepresented, however it recognised the efforts made by the RICS to ensure Mr Roberts submitted any evidence on time. It was directed to evidence that Mr Roberts had received the listing questionnaire on 03 November 2023, to which he had responded that he would be attending the hearing, and that the RICS had prompted him to submit any further documentation on 15 December 2023, having received nothing of substance from him. Mr Roberts did not submit any further evidence until 04 January 2023; the Panel did not accept that he was unaware that this evidence would need to be submitted in advance.
23. Further, given the apparent importance of the documentation which – if accepted as true – would lend weight to the suggestion that someone else had caused the damage as set out at allegation 1, the Panel was surprised that Mr Roberts had not submitted it to the RICS before now.
24. The Panel did not consider that it would be fair to the RICS to allow the submission of such evidence at this late stage. The Panel noted that the evidence was entirely inconsistent with the lines of defence that had been previously advanced by counsel for Mr Roberts in the civil case – for example, it was put forward in the civil case (where Mr Roberts was not present but was legally represented) that the property was damaged by three unidentified men ('money lenders') between 02 and 19 March 2018, but the recently submitted evidence suggests that this damage was committed by 12 representatives of an identified company on 21 February 2018. RICS could not reasonably have anticipated that such evidence was available and therefore had no prior opportunity to carry out any enquiries of its own. The identified company had not previously been named or referred to in any documentation, despite Mr Roberts telling the Panel that he had been aware of this evidence at the time of the civil proceedings.
25. However, this was not the sole basis upon which the Panel determined not to allow the admission of the evidence. The Panel accepted the submission of Mr Geering that the evidence contains multiple – and anonymous – hearsay evidence from a witness about whom nothing had been known until late last week.
26. In response to questions from the Panel, Mr Roberts said that Mr Pobbathi could be available to give evidence to the Panel, either today, or on any other day this week. The Panel noted this but considered that this did not address the difficulties identified. If Mr Pobbathi were to attend to give evidence, he would simply be giving hearsay evidence of what someone (currently unidentified) had told him, rather than giving direct evidence of matters he had seen and/or heard.
27. In response to a further question from the Panel, Mr Roberts said that there were only a couple of site managers at the relevant time and so he had a good idea of who the site

manager was (words to this effect), as referred to in Mr Pobbathi's witness statement. However, he did not proffer the identity of this individual or suggest that the site manager may be able to give direct evidence of what he observed. Therefore, even if the Panel were to hear from Mr Pobbathi, it would still be hearing evidence of anonymous hearsay which, in the Panel's view, was inappropriate.

28. Given the information contained within the documents, the Panel recognised that this may go to the decisive issue in the case. The Panel could not be satisfied that the hearsay evidence was reliable or that there was any way to test its reliability. The request for the police report accompanying the witness statement is dated 22 June 2018 and the witness statement itself is dated almost four years after the incident is said to have occurred. The documentation had been absent from the civil proceedings (both the trial and the appeal), and the Panel had not received any explanation of why this was, other than Mr Roberts' assertion that he had asked his legal team to submit the documentation but they had refused to do so.
29. The Panel therefore concluded that there was no opportunity for the hearsay evidence to be challenged, or tested in any meaningful way. This, together with questions as to its reliability, gave rise to real concerns that the Panel would – if it admitted the evidence – not be able to place any weight on the evidence in any event. If it did so place weight on the evidence, it considered this would infringe the requirements of fairness to both parties given the RICS' inability to test the evidence. The Panel noted Mr Roberts' submission that the email exhibited to Mr Pobbathi's witness statement was not hearsay but a business document; the Panel considered that as it was simply an email written by Mr Roberts himself it would ordinarily be admissible as exhibited by him. However, given the contents of the email and the date of the submission of it, the Panel considered that the late admission of this evidence would be unfair to the RICS for the reasons set out at paragraph 14 above.
30. Whilst the Panel does not specifically invite this course, it is mindful that Mr Roberts is unrepresented and so it reminds him that he is able to apply for the proceedings to be adjourned if he considers there is further admissible evidence to be submitted to the Panel that is material to the allegations and that is not currently available.

Application to amend the allegation

31. Whilst not dealt with as a preliminary matter, an application was made by the RICS to amend the allegations after the case had been opened.
32. Mr Geering made an application under Rule 122 to amend the allegations as follows:
 - a. Allegation 1 to be amended to reference that the alleged conduct is contrary to Rule 1 of the Rules of Conduct, rather than contrary to Rule 3;
 - b. Allegation 2 to be amended to reference that the alleged conduct is contrary to Rule 3 of the Rules of Conduct, rather than contrary to Rule 4.
33. Mr Geering explained to the Panel that the previous Rules of Conduct ('the 2007 Rules') had mistakenly been referenced within the allegations, as these were in force at the time the allegations arose. However, by the time the allegations came to the attention of the RICS, there were new Rules of Conduct in force ('the 2022 Rules'). The transitional arrangements set out within the byelaws made it clear that it was the Rules in force at the time the conduct was known about by the RICS that were the relevant Rules.

34. Mr Geering submitted that that was no prejudice to Mr Roberts by this late amendment because the conduct complained of remained unchanged; therefore, it did not impact upon the defence he wished to advance.
35. Mr Roberts did not object to the proposed amendments.
36. The Panel received advice from the Legal Adviser, which it accepted. The Panel was advised that in accordance with Rule 122 of its Tribunal rules, the allegation was able to be amended provided the amendment could be made without injustice. The Panel was reminded that fairness to Mr Roberts was paramount when considering the application and that it should consider the nature of the amendment, the impact of the proposed amendment on the substance of the case that Mr Roberts has to meet.
37. The Panel determined that the amendments sought could be made without injustice to Mr Roberts given the nature and substance of the proposed amendments. The Panel noted that the amendments were to correct an error in citing the correct Rules of Conduct; it did not consider that Mr Roberts was prejudiced by these amendments, notwithstanding that it was a late application, as it would not adversely affect any preparation he had carried out to date.
38. The Panel therefore allowed the application to amend the allegations.

The admission of further evidence

39. On days two and four, Mr Roberts submitted further documentation to the Panel. Whilst Mr Geering, on behalf of the RICS, did not accept the relevance of these documents, he did not object to them going before the Panel. These documents consisted of:
 - a. An adjudication decision, and a Court of Appeal decision (involving parties relevant to the building works);
 - b. A valuation for the Goodwin Street properties, carried out approximately one year after the alleged damage was said to have occurred;
 - c. An email setting out the estimate of Mr Roberts' legal costs incurred during the proceedings.
40. The Panel considered the documents and determined to admit them. As there was no objection from the RICS and given Mr Roberts wanted to refer to them during his evidence, the Panel determined it was relevant and fair to do so.

Evidence

41. The evidence before the Panel submitted on behalf of the RICS consisted of the judgment of the Supreme Court, transcripts of the trial and the judgment of the Court of Appeal. The Panel was also provided with Mr Roberts' responses, both submitted to the RICS during the investigation and those put before a Panel hearing an interim measures application in July 2022. (The Panel was unaware of what had been determined at the interim measures hearing, the only documents before it were to evidence some of the submissions made by Mr Roberts at that time.)
42. The Panel noted that the evidence before it was limited, insofar as it had not heard from any of the witnesses who gave evidence to the Supreme Court and nor had it seen the underlying

- evidence. However, it was cognisant of the fact that the Judge had carried out a detailed review of the evidence before him, which had not only included hearing live evidence, but also included – according to the transcripts and the judgment – the review of photographs, plans, reports and spreadsheets itemising the damage.
43. In addition to the late admission of the documentary evidence submitted by Mr Roberts as set out above, the Panel also heard oral evidence from Mr Roberts.
44. Mr Roberts asserted that he was the quantity surveyor for the project; he was not the builder or the appointed supervisor and had no role in the project, beyond the usual roles and responsibilities of a quantity surveyor.
45. Regarding the damage, Mr Roberts said he could not comment on whether the damage had in fact occurred and if so, to what extent. He referenced two occasions that he was aware of where damage had been caused to the site and police reports had been filed. Those police reports were not produced to the Panel. He said that due to the location of the site, vandalism was commonplace and the site was not properly secured. Mr Roberts could not recall whether the damage reported to the police took place before or after the damage alleged to have been caused by him, was said to have occurred (March 2018). Mr Roberts said that there was no credible evidence in relation to the damage as there were no photographs or witness statements available to the Panel.
46. Mr Roberts told the Panel that he was not responsible for the defects; that he acted as a representative of the main contractor, DSD builders and no more. The company, he said, was ultimately responsible. He disputed the suggestion that he was involved in the project in any capacity other than that of a quantity surveyor. Mr Roberts said he did not owe a duty of care to Goodwin because of his limited role in the project and his sole responsibility for the quantity surveying aspects of the project, rather than as site supervisor or performing any of the construction works.
47. Mr Roberts said that, in any event, the works were incomplete – and remain incomplete – and therefore, the 'defects' could not be described as such but, rather, as works in progress.
48. Mr Roberts told the Panel that he did not attend the Supreme Court hearing as he was under duress, in fear, having received threats from those associated with the project. He also detailed personal issues which contributed to his decision not to attend. He told the Panel that where the damage and defects had been accepted by his counsel, this was not on his instruction. He disputed the figures put forward to the Supreme Court for damages, albeit it had not been challenged at the time, and told the Panel that this had been challenged on appeal. He urged the Panel to place greater weight on his oral evidence, than on the evidence given to the Supreme Court, which the Panel had not heard.

Findings of fact

49. The Panel received submissions from the parties and advice from the Legal Adviser before retiring to consider its findings of fact.
50. The Panel was advised to bear in mind that the sole evidence before it was in the form of a judgment and the transcripts of the civil proceedings and that, unusually, the Panel was not in possession of any witness statements from those who gave evidence to the Court. It was advised that whilst Rule 121f of the Tribunal Rules provides for a finding of a court to be

admissible as prima facie evidence of the facts found, that something could be prima facie evidence in proceedings and ultimately be found to have no weight at all, as per *R(Hollis) v Association of Chartered Certified Accountants* [2014] EWHC 2572 (Admin). It was further advised that in *Hollis* it was said that the more a finding of fact in a judgment represents the considered view of a Judge after hearing detailed argument and evidence, with full notice to the (in that case, ACCA) member involved and an opportunity for them to participate in the hearing, the greater weight it is likely to carry.

51. The Panel carefully considered the evidence before it and had in mind the legal advice it had received. This included, but was not limited to, reference to *Towuagbantse v General Medical Council* [2021] EWHC 681 (Admin) that the Tribunal is not bound by the findings of fact made in another forum, and that any findings must be weighed with all of the other evidence in reaching its determination; further that the GMC Rules (akin to the RICS Regulatory Tribunal Rules) would not permit the Tribunal to simply adopt the view of the previous decision maker.
52. The Panel had in mind the legal advice that it should carry out an independent assessment and form its own view of the evidence and not simply adopt the conclusions of the Court. The Panel considered the advice it also received from the case of *Afolabi v SRA* [2011] EWHC 2122 (Admin) that the findings upon which a judgment is based are proof but not conclusive proof, and that it was vital the Tribunal reached a final conclusion of its own. Similarly, *R(Squier) v General Medical Council* [2015] EWHC 299 (Admin) served to remind a Tribunal that was crucial that it should be the decision maker on the issues and evidence before it and that it should not adopt the decision of another body, ‘*even of several judges*’, as a substitute for reaching its own decision on the evidence before it.
53. The Panel considered each of the allegations separately.

1. a. **Mr Roberts deliberately damaged Goodwin Street Developments Pty Ltd’s property / properties, or caused them to be damaged, in the following ways:**
 - i. ***circular saw cuts through structural floor beams and wall structures,***
 - ii. ***drill holes in the valleys of the roof iron box gutters,***
 - iii. ***concrete inserted into to tops of sewer pipes,***
 - iv. ***power cables made unserviceable,***
 - v. ***internal wall sheeting damaged with hole punctures,***
 - vi. ***holes punched into external cladding and / or ceilings,***
 - vii. ***damaged bathroom waterproofing;***
- b. **Mr Roberts deliberately removed or caused to be removed the following items from the property / properties:**
 - i. ***Internal doors,***
 - ii. ***External doors,***
 - iii. ***Sliding glass windows,***
 - iv. ***Internal stairs,***
 - v. ***Skylights;***
- c. **As a result of his actions at (a) and (b) above, he caused damage of around \$586,000 (Australian);**

Contrary to Rule 1 Rules of Conduct for Members

Mr Roberts is therefore liable to disciplinary action under byelaw 5.2.2(c)

Found proved in relation to 1(a) (i) – (vii), 1(b) and 1(c)

Allegation 1(a)

54. The Panel was satisfied that the damage had occurred as specified. It noted that each of the items of damage particularised in allegation 1(a) were set out in the Supreme Court judgment as having been evidenced.
55. The Panel noted, during its careful consideration of the evidence that had been before the Supreme Court that spreadsheets of the alleged damage had been prepared and produced by Mr Corbett, the contract administrator, and that photographs of the alleged damage were available and viewed by the Judge. It also had in mind that, whilst the transcripts of the evidence were limited in respect of examination-in-chief, that there was reference to affidavits that had been made (as would be expected), and that it had the full transcripts of the evidence given by witnesses in cross-examination and in re-examination. In some instances, the contents of the affidavits (for example, with the evidence of Mr Konjarski) were reproduced within the judgment.
56. The Panel had in mind that the fact that the damage as specified had occurred, was not challenged by Mr Robert's counsel at the Supreme Court or indeed, at the Court of Appeal thereafter.
57. At the trial it was suggested by Mr Roberts' counsel that the damage was more likely to have been committed by money lenders who attended the site on 02 March 2018 in response to monies outstanding, owed to them by Mr Roberts. However, in his evidence before this Panel, Mr Roberts denied that he had borrowed money as alleged; he said he could not comment on who may have attended site on 02 March 2018 as he was not present. He did not accept the damage, as specified had occurred, saying that he simply did not know. There were inconsistencies that the Panel found difficult to reconcile. For example, Mr Roberts' counsel said during the proceedings in the Supreme Court that *'There's no question at all that the evidence of Mr Stokes should be accepted and there's no issue at all that the damage was done.'* Mr Stokes' evidence was that he attended the site on 19 March 2018 and observed substantial damage to the buildings, and that doors, windows and stairs that were previously installed in the buildings were missing.
58. When asked whether Mr Roberts' counsel was acting contrary to his instructions, Mr Roberts said he had no hand in how his legal counsel constructed arguments on his behalf and that *'they just did what they wanted to do'*. He later suggested that his counsel had ignored his instructions and said she would present the case in the way that she wanted, because she was trying to make a name for herself. The Panel did not accept this was credible and took the view that it was unlikely that counsel would put forward an argument that was contrary to express instructions. The Panel noted that Mr Roberts had not lodged any formal complaint about his counsel and indeed, had continued to use the same legal representatives for his appeal to the Court of Appeal. This undermined his suggestion that he was unhappy with his representatives and that they had not acted in accordance with his instructions. The Panel noted Mr Roberts' explanation that he only kept the same legal team as he could not afford to instruct fresh solicitors, but considered that if he had been unhappy

with the service received at the Supreme Court, he would not have continued to instruct them for the appeal.

59. Mr Konjarski was a scaffolder who had provided scaffolding services to the project. He gave live evidence before the Supreme Court and was cross-examined by Mr Roberts' instructed counsel. His evidence was that when he was on site on or around 15 March 2018, he saw Mr Roberts filling plumbing pipes and toilet pipes with concrete. He also saw Mr Roberts put holes in the walls in the front building, to the top floors. Mr Konjarski said he asked Mr Roberts what he was doing, and Mr Roberts told him that he was unhappy with the client.
60. The Panel noted that the Judge was careful to consider whether Mr Konjarski's evidence could be relied upon. He commented – having heard the live evidence – that the evidence was given without hesitation and that he was confident as to the accuracy of his recollection. The Judge noted that he gave evidence about matters in respect of which he could not be mistaken, he was either telling the truth or deliberately giving false evidence. The Judge directed himself that he should exercise caution when forming a view about credibility based on demeanour but concluded that he was satisfied that Mr Konjarski was telling the truth as to what he observed on the day in question.
61. When the Panel considered the evidence of Mr Konjarski and the Judge's conclusion about the credibility of his evidence, and indeed, the evidence received by the Supreme Court as a whole, it had in mind the case of *R(Hollis) v Association of Chartered Certified Accountants* [2014] EWHC 2572 (Admin) where the Court stated:

'...the more a finding of fact in a judgment represents the considered view of a judge after hearing detailed argument and evidence, with full notice to the ACCA member involved and an opportunity for them to participate in the hearing, the greater the weight it is likely to carry. This may impose a practical onus on the member to be willing to come forward before any disciplinary committee to give their own, exculpatory, version of events. In this way, the weight to be given to a finding of fact will be modulated by, amongst other things, issues regarding the fairness of the underlying proceedings to the member and a nuanced assessment of the probative force in the context of the disciplinary proceedings against the member of the finding made by the court in a different context.'

62. The other evidence in support of this allegation came from Mr Corbett and Mr Stokes who reported the details of the damage they had observed. In the Panel's view, when considering the evidence of Mr Konjarski and what he directly observed Mr Roberts doing, it is a reasonable inference to draw that much or all of the damage occurred on or around the same day by the same person(s). The Panel had in mind that most if not all of these observations and records, were made in close proximity in time. Mr Konjarski said he had observed Mr Roberts causing damage to the pipes and walls on 15 March 2018; Mr Stokes had put in a police report on 19 March 2018 following a site visit that same day, where he noted the various items of damage; and Mr Corbett produced a record dated 27 March 2018 which referred to damaged waterproofing and plumbing.
63. The Panel was careful to consider the evidence given by the witnesses at the Supreme Court, and it noted that there was no specific reference within the transcripts of the evidence, to the damage as alleged at allegation 1(a)(ii) and 1(a)(iv). However, the Panel was mindful that witness statements provided, which had stood as evidence in chief, were not before it, and that the existence of damage as set out at (ii) and (iv) had not been challenged by Mr

Roberts' counsel during the civil proceedings. The Panel considered that, when looking at the findings made by the Judge in the round, and the specific references to the damage as alleged at sub-particulars (i), (iii), (v), (vi) and (vii), it could be satisfied on balance, that each of those specific areas of damage as particularised, had occurred.

64. The Panel had in mind that Stevenson J, sitting at the Supreme Court, drew an adverse inference from Mr Roberts' non-attendance when reaching his conclusions; however, during these proceedings, the Panel had had the benefit of hearing direct evidence from Mr Roberts. This was a factor weighing in his favour; however the Panel found it difficult at times to reconcile the inconsistencies in the account put forward by Mr Roberts when compared to the challenges made on his behalf in the Supreme Court.
65. However, the Panel noted that there is no reference, either in the judgment of the Supreme Court or within the transcripts, of the reasons why Mr Roberts was not in attendance during the trial. The Panel considered that had he been in genuine fear, as a result of threats made, an explanation would have been proffered to the Court. Indeed, the Panel noted that the Judge drew significant adverse inferences from his failure to attend and / or to provide his account. The Judge specifically noted in his judgment that no explanation had been provided for Mr Roberts' absence from the witness box. The Panel considered it reasonable that his counsel would have argued against any adverse inference being drawn, if there was a legitimate reason for Mr Roberts' absence which was in line with the reasons he has provided to this Panel. Mr Roberts alluded to evidence being available as to the nature of the threats he had suffered, and the other associated personal problems. None of that evidence was provided to the Panel or to the Supreme Court. This raised a doubt with the Panel as to the veracity of these claims and it was not persuaded by Mr Roberts' evidence on this point. The Panel noted that Mr Roberts had said he was still willing to work with the individuals involved to continue the construction of the building to ensure it was finished. In the Panel's view, this seemed an unlikely proposition if he had in fact, been threatened by associates of those individuals.
66. In all of the circumstances, and having regard to all of the available evidence, the Panel was satisfied that allegation 1(a) was proved in its entirety.

Allegation 1(b)

67. Mr Roberts' own counsel referred the Judge to photographs which showed windows were missing. The Panel also noted the evidence from Mr Corbett in respect of this allegation. Mr Corbett's evidence included a record dated 27 March 2018 which referred to glazed doors having been removed from site, and a skylight having been removed. He said internal and external doors had been removed.
68. Mr Konjarski's evidence was that sliding windows were removed and that the staircase was dismantled and removed from the building. He said that doors were removed from the building and loaded into a vehicle before being taken away from the site, as well as windows. The fact that the items were removed was not challenged by Mr Roberts' counsel during the hearing at the Supreme Court.
69. The Panel was satisfied that each of the items as particularised in the allegation had been removed. It then considered whether Mr Roberts removed the items himself or caused the items to be removed, when considering the evidence from Mr Konjarski.

70. Mr Konjarski had told the Supreme Court that he had observed Mr Roberts, together with his business partner and accountant, carrying parts of the stairs out from the second building on site and loading them into a truck. He observed Mr Roberts carrying out the same actions with doors and windows. The absence of the stairs, as well as the doors, windows and skylights, was subsequently observed by Mr Stokes and Mr Corbett. The inference therefore, drawn by the Court, was that when the stairs were being removed by Mr Roberts (and others), the other items detailed were also removed. The Panel accepts this is an appropriate inference to draw.
71. The Panel gave weight to the account provided by Mr Konjarski for the reasons set out above. It had no basis upon which to distinguish Mr Konjarski's evidence in respect of allegation 1(a) from allegation 1(b).
72. For the reasons outlined above, the Panel determined that allegation 1(b) was found proved.

Allegation 1(c)

73. The Panel noted that the value of the damage caused, was not challenged in the Supreme Court. Any challenges to quantum in the Court of Appeal were unsuccessful.
74. The evidence considered by the Supreme Court as to the value of the damage was limited, but this was due to the fact that the value remained unchallenged by Mr Roberts' counsel. It included a report from a quantity surveyor (Mr Madden) itemising the costings to rectify the damage. There was a further cost estimate prepared by Mr Corbett, also a quantity surveyor.
75. Mr Roberts had placed before the Panel, a valuation of the property made in 2019, which he said was evidence in support of the proposition that no financial damage had been suffered. However, the Panel could not accept this. The valuation report was of limited use in isolation, as it did not provide the Panel with sufficient information as to any extraneous factors that affect property valuation. Further, it would follow as a matter of common sense, that damage of the nature complained of, would cause financial damage to the owner of the property.
76. The Panel did not consider that there was any evidence before it to allow it to properly challenge the figure put forward in the Supreme Court as being the value of the damage.
77. Having therefore found that Mr Roberts had damaged or caused the properties to be damaged, and that he removed items or caused items to be removed, it was satisfied that he caused the damage to the value of around \$586,000 (Australian).
78. The Panel held firmly in mind that it should not adopt the decision of the Supreme Court and that it was required to reach its own decision on the evidence before it. However, for the reasons outlined above, the Panel was satisfied that allegation 1 was proved in its entirety.
79. The Panel finally considered, in respect of this allegation, whether the facts as found proved represented conduct which was contrary to Rule 1 of the Rules of Conduct 2022. It found that it clearly was. Causing damage to property was conduct unbefitting of a professional and fell far short of the standards expected.

2. a. Mr Roberts, whilst working on the property / properties, failed to exercise due skill, care or diligence in that he was responsible for one or more of the following defects:

- i. *missing stormwater pipe,*
- ii. *exposed unsupported pier footing,*
- iii. *termite protection system not installed,*
- iv. *no recess for vanity,*
- v. *external steel not hot dip galvanised,*
- vi. *internal steel not painted,*
- vii. *laundry window missing and incorrectly sized doors installed,*
- viii. *windows in bathrooms in incorrect places,*
- ix. *windows in kitchenette in incorrect places,*
- x. *frame built on sewer pipe,*
- xi. *no step down from concrete slab,*
- xii. *black mould on timber frames,*
- xiii. *loose bracing,*
- xiv. *floor sheeting moves up and down,*
- xv. *wet area wall lining not fixed as required,*
- xvi. *waterproofing to showers,*
- xvii. *wrong board used on fascia,*
- xviii. *sliding door tracks not flush with floor,*
- xix. *beams not supported by piers,*
- xx. *damaged foil sarking,*
- xxi. *air conditioning drains drip outside the building,*
- xxii. *downpipe not fitted correctly – no sump and overflow,*
- xxiii. *inadequate flashings around windows and sliding doors,*
- xxiv. *wrong size reveals on window,*
- xxv. *incorrect painting of window architraves,*
- xxvi. *downpipes from top roof drain into lower roof,*
- xxvii. *penetrations not sealed,*
- xxviii. *loose external wall linings,*
- xxix. *missing insulation,*
- xxx. *manholes sealed,*
- xxxi. *hallway too narrow,*
- xxxii. *loose tie down straps,*
- xxxiii. *temporary formwork not removed,*
- xxxiv. *inadequate clearances over doors and windows,*
- xxxv. *no sill framing support,*
- xxxvi. *defective framing bolt,*
- xxxvii. *Private certifier inspection approvals.*

- b. His actions at (a) above resulted in the loss of around \$300,000 (Australian)

Contrary to Rule 3 Rules of Conduct for Members

Mr Roberts is therefore liable to disciplinary action under byelaw 5.2.2(c)

Found not proved in relation to allegation 2(a)(i) – (xxxvii) and 2(b)

Allegation 2a

80. There was no dispute during the trial at the Supreme Court that the defects were present (although the Panel notes Mr Roberts' evidence that they should not be described as defects but as works in progress) and required remedy.
81. However, the Panel considered there was limited evidence to demonstrate that Mr Roberts *'failed to exercise due skill, care or diligence in that he was responsible for one or more of the following defects'*. The Panel accepted from Mr Roberts' evidence that he was not the builder. The Panel considered the evidence that Mr Stokes gave to the Supreme Court that he (Mr Roberts) said *'I'm the builder'* was a mere reference to him being a representative of DSD rather than being the individual with control over the project. The Panel did not consider that this comment meant that Mr Roberts was suggesting he was the supervisor. The Panel further noted that Mr Roberts disputed this comment having been made. Similarly, the Panel was referred to emails where Mr Roberts was notified of defects and said *'We'll fix it'* or words to that effect. The Panel did not consider that this meant Mr Roberts had control of the team, but rather that he was suggesting, as part of the team, that the defects would be remedied.
82. The Panel noted the reference within the Court transcript to the existence of an email from Mr Roberts where he said that he had updated the application to the bank's quantity surveyor, who had been appointed to approve drawdowns under the construction loan facility, to take account of the fact that further works had been done. The Panel considered that it could not conclude that this assertion was made by Mr Roberts in a role of site supervisor, but that it would be usual practice for a quantity surveyor – the sole role that Mr Roberts alleges to have held – to submit a further claim for additional work carried out.
83. The Panel considered the licensing record, submitted by Mr Roberts on day one of the hearing. This listed a Mr Dane Meredith as the nominated supervisor until 27 September 2017 and then again from 09 October 2017 until 15 March 2018; during the period of this project.
84. There is very little reference in the Supreme Court documents to the role of Dane Meredith. Mr Stokes's evidence was that he did not see him on site. That was insufficient in the Panel's view to confirm that he was not the site supervisor, as is set out within the licensing record.
85. The Panel noted from the judgment that it appeared to be Mr Roberts' non-attendance at trial that had led the Judge to conclude that the case had been proved against him, in respect of the defects and his responsibility for the same. Within the transcript the Judge commented:

'your case ... is ... that I should infer ... that all of the 32 defects, each one of them, exists because of his want of care. It's quite a big inference to draw.'

and then later

'...I'm a bit troubled by the basis upon which I could comfortably come to a conclusion that all these defects or, indeed, any of them, in fact are caused by a want of care by Mr Roberts.'

and

‘...It’s a very good example of where the evidence is perhaps not completely clear, perhaps capable of a couple of constructions. But I’m invited to draw the inference [Mr Roberts] was doing more than being a project manager, and on one view the inference is more readily available bearing in mind he hasn’t come into (sic) deny that which these documents might suggest.’

86. The Panel noted that the Judge did then draw this inference, which appeared to have been based upon the comments made by Mr Roberts – which as explained above, the Panel did not consider it could place great weight on – together with an absence of any evidence from Mr Roberts.
87. However, the Panel has had the benefit of hearing from Mr Roberts and it considered that his evidence that he was not the builder, supervisor, or person with overall responsibility for the site was credible, in light of the other evidence available. It could not therefore be satisfied, on balance, that the defects complained of were the responsibility of Mr Roberts or that they were as a result of his failure to exercise due skill, care or diligence.
88. Accordingly, the Panel found allegation 2(a) not proved.

Allegation 2(b)

89. It follows from the finding at allegation 2(a) that allegation 2(b) is also found not proved.

Liability to disciplinary action

90. On the basis of the facts found proved, the Panel were required to determine whether or not Mr Roberts is liable to disciplinary action. The Panel received submissions from Mr Geering, on behalf of the RICS, that the conduct alleged, if found proved, would significantly damage public confidence in the profession.
91. The Panel accepted the advice of the legal adviser that the decision is one for the Panel’s independent judgement, drawing upon the facts found proved; that a finding of fact does not automatically lead to liability to disciplinary action; and that account must be taken of the seriousness of the conduct and the context in which it occurred.
92. The Panel noted that these were serious breaches of the Rules and that the departures were a significant departure from what would ordinarily be expected of a professional. It considered that the behaviour had the potential to significantly undermine public confidence in the profession and in the RICS.
93. The Panel concluded that the charges proved in this case amounted to serious misconduct that breached sub-paragraph (c) of byelaw 5.2.2. The Panel considered that the reputation of RICS and the reputation of the profession is at risk from such conduct and that members of the public would be concerned to learn about what had taken place. The Panel concluded that the conduct found proved was liable to bring the profession into disrepute. It considered that it would be unconscionable not to take disciplinary action against an individual who had been found to have behaved in this way.

94. Accordingly, the Panel found that the conduct found proved means Mr Roberts is liable to disciplinary action.

Submissions by RICS Presenting Officer

95. At the invitation of the Panel, Mr Geering provided his submissions on sanction in writing in advance of the hearing reconvening, so that Mr Roberts had the opportunity to fully consider them.
96. Mr Geering did not invite the Panel to impose any specific sanction but he reminded the Panel of the general principles and the purpose of sanction. He invited the Panel to consider the aggravating and mitigating features and submitted that, in this case, Mr Roberts had caused very significant damage to property, that this was done intentionally and that this was a considered and protracted act, rather than a fleeting error of judgement.
97. Mr Geering told the Panel that Mr Roberts had no previous regulatory findings against him and that he had been subject to interim measures for the past 21 months, in the form of a suspension, which was relevant when considering proportionality. He reminded the Panel that Mr Roberts had engaged with the regulatory proceedings.
98. Mr Geering invited the Panel to consider whether there was a risk of repetition and that, even if there was not, the public interest may require such misconduct to be marked by an appropriate sanction given the impact on the reputation of the profession.

Submissions on behalf of Mr Roberts

99. Mr Roberts told the Panel that he did not agree with the factual determination but that he felt the Panel had no option but to make the findings it had, based on the evidence before it. He told the Panel that he was at the relative start of his career and that RICS membership is the cornerstone of his life. He said he did not think it was necessary for him to be expelled from the profession and that training or mentorship could be put in place.
100. Mr Roberts told the Panel that he was glad this hearing will conclude matters and that he would like to retain his membership.

Discussion and Conclusion

101. The Panel received and accepted legal advice and gave consideration to the Sanctions Policy (version 9, in force from 02 February 2022) and its supplements.
102. The Panel first considered the seriousness of the breach and the aggravating and mitigating factors present in this case. It was assisted by the factors in paragraph 7 of the Policy and by the aggravating and mitigating factors identified in Supplement 1 to the Policy.
103. The Panel considered that the actions found proved represented reckless conduct; that the breach was deliberate or intentional, that there was a large loss / amount of damage as a result of the conduct, that the breach was persistent in that it would not have been short in duration, and that there had been a relevant Court finding against Mr Roberts by way of a civil judgment.

104. The Panel considered that the matter was significantly aggravated by the nature of the actions carried out in that this was not a 'spur of the moment' act, but was protracted. The resulting financial damage was also an aggravating factor.
105. The Panel considered that any insight shown had been limited. Mr Roberts appeared to accept the Panel's findings of fact, but did not show any recognition of the impact of the damage to the client, or the impact of his conduct on the reputation of the profession.

Mitigation

106. The Panel noted that there was no prior disciplinary history and that this was the first time Mr Roberts had been before a Disciplinary Panel. It acknowledged that the conduct found proved likely occurred on one day and to that extent was 'isolated' (however, the conduct would not have been short in duration and caused extensive damage).
107. The Panel noted that Mr Roberts had explained during earlier stages of the hearing that he had been under significant stress at the time and that concerns for his safety had been identified. However, this was something that had not been raised during the civil proceedings and so this affected the weight the Panel felt it could place on such assertions.
108. The Panel noted that steps had been taken to compensate the client but that this was via damages ordered by a civil court rather than steps taken by Mr Roberts himself and therefore this was not treated as mitigation but rather, a neutral factor.
109. The Panel acknowledged that Mr Roberts had said he wanted to work with the client to ensure the building was finished; however, this was not an admission or any particular expression of regret and so the Panel felt limited weight could be placed on this.
110. The Panel recognised that Mr Roberts had cooperated with RICS during the investigation and had fully engaged with the hearing process.

Decision as to Sanction

111. The Panel noted that there was no requirement to impose a sanction, notwithstanding that it had found Mr Roberts liable to disciplinary action. However, in the Panel's view the facts found proved represented serious conduct which was a significant departure from that expected of a Member and therefore, a sanction was required both for the protection of the public and was otherwise in the public interest.
112. Having determined that a sanction was required, the Panel considered the sanctions available in ascending order of seriousness. It first considered the imposition of a caution but recognised this was ordinarily imposed where the breach was minor and unlikely to be repeated. It was clear to the Panel that the breach was not minor and it therefore concluded a caution would be inappropriate.
113. It next considered a reprimand. The Panel noted the reference in the Sanctions Policy that a reprimand may be appropriate where there was a risk of harm to the public. However, the Panel considered that a reprimand would not be a sufficient means of marking the seriousness of the conduct found proved.

114. The Panel considered undertakings but did not think these were appropriate or workable in the circumstances of this case. To impose relevant undertakings would be to formally require Mr Roberts to behave in a way befitting of a Member of the profession, which is required under the Rules of Conduct in any event. It was not possible to formulate specific, relevant undertakings which would be proportionate to the seriousness of the conduct identified.
115. The Panel considered the imposition of a fine. It did not consider that this sanction, on its own, would adequately mark the seriousness of the breach or protect the public interest.
116. The Panel next considered conditions, but was of the view that conditions were neither workable nor appropriate given the nature of the conduct found proved and the seriousness of the breach.
117. The Panel then considered expulsion. It identified that there were a number of examples within the Policy of instances likely to result in a decision to expel a member from the profession. Those relevant in this case were: (paragraph 21) (a) a gross, persistent or willful failure to comply with a RICS Rule of Conduct; and (d) gross incompetence or recklessness in relation to the conduct or management of professional activities.
118. The Panel was particularly concerned with the nature of the behaviour that gave rise to these allegations. It considered that the conduct was extremely serious and that there had been only limited insight expressed. The Panel determined that, in the absence of any full and true reflection by Mr Roberts of his actions, it could not be satisfied that the conduct would not be repeated in the future if Mr Roberts found himself in a similar position.
119. The Panel further considered that the financial damage that had resulted from Mr Roberts' actions was significant (said to be around \$568,000 Australian) and that a reasonable member of the public would be shocked to discover a registered Member had acted in this way. It did not consider that Mr Roberts' actions could be said to have been impulsive, given the inevitable duration of the conduct and the resulting financial consequences, and that there was an element of premeditation.
120. The Panel recognised that the Sanctions Policy produced by RICS is guidance only and that it had a discretion to depart from the Policy. The Panel noted that Interim Measures had been imposed upon Mr Roberts since July 2022, a period of 21 months, and that this was directly relevant to whether it was proportionate to impose the most serious sanction of expulsion. The Panel recognised that the role of a sanction was not to be punitive but was mindful that its role was to protect the public, to maintain proper professional standards and to uphold the reputation of the profession. The Panel recognised that the reputation of the profession as a whole was more important than Mr Roberts' own interests and it was of the view that Mr Roberts' actions as found proved, would severely undermine public confidence in the profession. It could find no reason to depart from the Policy in the particular circumstances of this case.
121. For those reasons, **the Panel determined that nothing less than the expulsion of Mr Roberts from the profession**, would be a proportionate regulatory response.

Publication and Costs

Publication

122. The Panel considered the policy on publication of decisions contained in the Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. It accepted the advice of the Legal Adviser. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website. It noted the submissions made by Mr Roberts that publication will be detrimental to his reputation and that he would prefer publication not to take place, particularly in circumstances where the civil judgment had already attracted publicity some time ago. However, the Panel considered that publication of decisions was necessary in order to uphold the reputation of the profession. There was nothing exceptional in this case which meant there was a good reason not to publish the decision.

Costs

123. RICS applied for its costs totaling £23,374.76, supported by a detailed schedule of costs.

124. The costs figure represented a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel noted that RICS had reduced the figures applied for to take account of the time spent on investigating matters that did not result in a hearing, the delay which was no fault of Mr Roberts', and to reflect the fact that allegation 2 had not been found proved. The Panel therefore had no reason to doubt that the costs application was a reasonable one to make. However, the Panel considered that as a matter of fairness, a greater reduction should be given to the overall costs, to take account of the fact that allegation 2 had not been found proved. It did not consider a reduction of half of the hearing costs would be proportionate for the reasons given by Mr Geering (those being, that it could not be said that half of the hearing time had been spent on allegation 2) but it determined to reduce the overall figure to £20,000.00 to reflect the fact that the case had not been proved in its entirety.

125. Mr Roberts acknowledged that the costs applied for were fair and reasonable. He told the Panel that he understood that the costs applied for represented only a proportion of the costs actually incurred and that the real figure would be far greater. Mr Roberts told the Panel that provided a payment plan was in place, he could pay any costs awarded against him and was willing to do so. He said he had a high earning capacity. The Panel noted this was somewhat at odds with his email to RICS in response to a request for his statement of means, whereby he declared he had no current income. However, it accepted the submissions made by Mr Roberts during the hearing, that he was able to pay any costs imposed.

126. The Panel concluded that it was appropriate and fair for Mr Roberts to pay these costs, otherwise the full cost of these proceedings would fall on the profession as a whole.

127. The Panel therefore ordered that Mr Roberts pays costs in the sum of £20,000.00 to RICS within 28 days.

Appeal Period

128. Mr Roberts may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rule 152 of the Regulatory Tribunal Rules.

129. In accordance with Rules 166 and 167 of the Tribunal Rules, RICS' Chair of Governing Council may require a review of this decision on the grounds of undue leniency within 28 days.