



ROYAL INSTITUTION OF CHARTERED SURVEYORS

Disciplinary Panel Hearing

Case of

Rizwan Kalideen

Location

Saudi Arabia

On

Tuesday 27 August 2024

In Private via Microsoft Teams

Panel

Alison Sansome - Lay Chair

Ben Davies – Surveyor Member

Patrick Bligh-Cheesman - Lay Member

Legal Adviser

Fiona Barnett

Tribunal Executive

Adeel Qureshi

1. The Panel convened in private to consider the case against Mr Kalideen on the papers.

Notice

2. The Panel was provided with a witness statement, dated 26 August 2024, from Adeel Qureshi, RICS Regulatory Tribunal Executive. In this statement, Mr Qureshi confirmed that notice of this hearing, dated 26 July 2024, was sent to Mr Kalideen on that date by email to Mr Kalideen's preferred email address. Mr Qureshi provided the delivery receipt for that email, and confirmed that the evidence bundle was also sent to Mr Kalideen.
3. The Panel noted that the charge set out in the notice of hearing contained an error, in that charge 1 and charge 2 were identical, (they both alleged that Mr Kalideen acted dishonestly in the same terms). This error had been queried with Mr Qureshi in advance of the hearing. Mr Qureshi had made enquiries into this matter, and responded in an email dated 26 August 2024, as follows:

"I have received a response from RICS below:

The charges on the Charge Sheet are lifted from the Head of Regulation decision. However the head of regulation decision contained a typo in that Charge 2 refers to dishonesty rather than lack of integrity.

I can confirm that the correct charges are the charges in the summary. They correct charges were also put to Mr Kalideen in the allegation letter dated September 2023 [page 135 of evidence bundle]. Mr Kalideen responds to this letter. The correct allegations were also set out at the start of the application for the paper hearing."

4. The Panel was satisfied that although there was an error in the charges set out in the notice of hearing, Mr Kalideen was aware of the proper/correct wording of the charges. The correctly worded charges had been set out in correspondence with him in advance of this hearing, and were also set out in the RICS case summary. Mr Kalideen had responded to the charges in the correct format, (ie. one charge of dishonesty and one alleging lack of integrity) prior to the hearing. The Panel was therefore satisfied that no prejudice was caused to Mr Kalideen by the error in the notice of hearing.
5. The Panel was satisfied that notice has been served in accordance with Rules 53 and 54 of the Regulatory Tribunal Rules, version 2, (with effect from February 22), ("the Rules").
6. Mr Kalideen had requested a paper hearing, and there was no objection from RICS. The notice of hearing informed Mr Kalideen that this would be a private hearing based on the papers. The

Panel was therefore satisfied that it could proceed on the basis of the papers before it, without the parties in attendance.

Charges

7. The charges against Mr Kalideen are as follows:

1. Mr Kalideen acted dishonestly in that he submitted his Assessment of Professional Competence (APC) candidate submission for preliminary review on or around 4 March 2023 with the intention of representing it as his own original work, when he knew that it did not and one or more of the sections in Appendix A were exact or near exact duplications of a case study submitted to RICS by another candidate dated 18 May 2022.

Contrary to Rule 1 of the RICS Rules of Conduct 2021 Mr Kalideen is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c).

2. Mr Kalideen lacked integrity in that he submitted his Assessment of Professional Competence (APC) candidate submission for preliminary review on or around 4 March 2023 with the intention of representing it as his own original work, when he knew that it did not and one or more of the sections in Appendix A were exact or near exact duplications of a case study submitted to RICS by another candidate dated 18 May 2022.

Contrary to Rule 1 of the RICS Rules of Conduct 2021 Mr Kalideen is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c).

Response

8. Mr Kalideen completed a Listing Questionnaire which was signed by him on 26 May 2024. In the Listing Questionnaire, he said that he accepted the charges, and accepted that he is liable to disciplinary action.

Summary

9. Mr Kalideen became an APC professional candidate with RICS on 21 February 2018 and remains a Member of the Attached Classes to whom the Rules of Conduct apply.
10. Mr Kalideen submitted his APC submission document to RICS in March 2023. The submission was reviewed by a Panel on 9 May 2023. That Panel concluded that the submission was of sufficient quality to proceed for final submission.

11. The submission document was examined using plagiarism software called “Turnitin” on 30 May 2023. The results of that examination showed a 79% similarity between Mr Kalideen’s submission and that of a previous submission which was sent to RICS in May 2022 by Mr Rifas Mohammed Moulanavilla, another APC candidate.
12. The matter was referred to the RICS Investigations team. An investigator conducted a manual comparison of the two documents which also showed a high degree of similarity.
13. During the investigation, Mr Kalideen admitted knowingly copying the work of another RICS member.
14. In August 2023, the RICS Investigator contacted Mr Moulanavilla. Mr Moulanavilla confirmed that he knew Mr Kalideen as they had worked together at a management consultancy for approximately six months, but said they did not maintain contact after Mr Kalideen left. He confirmed he had not discussed or shared his own submission with anyone and did not know how Mr Kalideen had managed to copy his submission.
15. In September 2023, formal allegations of dishonesty and lack of integrity were put to Mr Kalideen. He responded to the allegations and made full admissions.

Burden and standard of proof

16. The burden of proof rests on RICS to prove the charges to the civil standard, which is the balance of probabilities. This means that a fact can be proved if RICS has established that it is more likely than not to have occurred as alleged.

Evidence

17. The Panel had before it a bundle of documents provided by RICS numbering pages 1 to 253.

Findings of fact

Charge 1

18. In reaching its decisions as to whether the facts alleged are proved, the Panel had regard to all of the evidence before it, which included:
 - A statement from Jamie Edwards, RICS Lead Investigator,
 - The “Turnitin” software report,
 - A copy of Mr Kalideen’s APC submission,
 - A copy of Mr Moulanavilla’s APC submission,

- A comparison of Mr Kalideen's submission with the submission of Mr MoulanaVilla.

19. The Panel also bore in mind, as advised by the Legal Assessor, that the test to be applied when determining allegations of dishonesty, is the test set out in the case of *Ivey v Genting Casinos*, [2017] UKSC 67. That test is as follows:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held.

When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people....."

20. In Mr Kalideen's responses to RICS throughout the investigation, he admitted that the APC submission he sent to RICS was copied from someone else's work. He said that he had found the submission on a printer at work with no name or reference on it, and did not know whose it was until RICS contacted him during the investigation. Mr Kalideen also said that he thought about the document for a long time, which suggested that he had made a conscious decision to take and copy the document.
21. Mr Kalideen expressed some regret for his actions, and said that no one else was involved. He accepted that he had breached RICS' rules and he admitted the charges in full, raising no challenge to the evidence relied upon by RICS.
22. The Panel was therefore satisfied that Mr Kalideen had acted deliberately in copying the work from someone else, and knew the work was not his own when he sent it to RICS. It was further satisfied that when he sent the submission, he intended to represent it as his own work, when in fact, a large proportion of it was exactly the same, or nearly the same as that of another APC candidate, and Mr Kalideen knew that that was the case.
23. The Panel found that copying work from another RICS candidate, then sending it to the regulatory body knowing it was not his own work but intending to pass it off as such, were actions that would be regarded as dishonest according to the standards of ordinary decent people. The Panel therefore found that Mr Kalideen's actions were dishonest, and it found the facts in charge 1 proved.
24. The Panel also found that Mr Kalideen's actions in charge 1 were contrary to Rule 1 of the RICS Rules of Conduct 2021, which states that;

“Members and firms must be honest, act with integrity and comply with their professional obligations, including obligations to RICS”.

Charge 2

25. In deciding whether Mr Kalideen’s conduct lacked integrity, the Panel had regard, as advised by the Legal Assessor, to the case of *Wingate and anor v SRA (2018) EWCA Civ 366*, in which the Court of Appeal considered the meaning of “integrity” in regulatory proceedings. Lord Justice Jackson said:

"In professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members..... The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty.... to take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or an arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse. The duty to act with integrity applies not only to what professional persons say, but also to what they do”.

26. The Panel was satisfied that Mr Kalideen’s actions lacked integrity. As a member of RICS, he is obliged to abide by the rules of the profession, and maintain the high professional standards of knowledge, conduct and behaviour expected of all RICS members. In copying the written submission of another person, and sending this to RICS, representing it as his own work, Mr Kalideen’s conduct fell seriously short of the high standards expected of a member of RICS.
27. The Panel found the facts alleged in charge 2 proved, and was satisfied that the facts found proved also amounted to a breach of Rule 1 of the RICS Rules of Conduct 2021.

Liability to disciplinary action

28. In the case summary, RICS submit that Mr Kalideen’s conduct is so serious that it would bring the profession and the institution into disrepute, and he should therefore be liable to disciplinary action.
29. Mr Kalideen has accepted in his response in the Listing Questionnaire that he is liable to disciplinary action, however, this is always a matter for the Panel in the exercise of its own judgment.

30. The Panel was satisfied that Mr Kalideen was liable to disciplinary action. His conduct was dishonest, and lacked integrity, and the matters proved have the potential to impact on public safety and bring the profession into disrepute. Copying work, and dishonestly passing it off as his own work within the RICS system of professional qualifications was a matter which may attract a sanction to uphold the public interest.

Sanction submissions

31. In the RICS case summary, RICS referred the Panel to paragraph 21.1 b of RICS' Sanctions Policy, which states that where the Panel finds dishonesty and or a lack of integrity and there are no extenuating circumstances, the starting point for a sanction should be exclusion from membership.
32. Mr Kalideen made no specific sanction submission. However, in the Listing Questionnaire, he stated,

“I have been waiting for the panel's decision, I will pay the penalty, I want to do my APC with RICS guidelines, Still I am regretting why I did this, Please give me the chance to do my APC”

33. In written correspondence with RICS, Mr Kalideen asked for the “least punishment”.

Sanction decision

34. The Legal Assessor advised the Panel that the purpose of a sanction is to protect the public, safeguard the reputation of the profession and to declare and uphold proper standards of conduct and behaviour. Further, any sanction imposed must be proportionate, balancing the public interest with the interests of the member. If the Panel is minded to impose a sanction, it must consider the sanctions in order of severity, starting with the least severe. It must satisfy itself that any sanction it imposes is the minimum necessary to meet the public interest. The Legal Assessor advised that the Panel should have regard to any written submissions made by the parties, but exercise its own judgment.
35. The Panel had regard to the RICS Sanctions Policy.
36. The Panel found that there were factors which aggravated Mr Kalideen's conduct and rendered it very serious. He had made a deliberate attempt to mislead the regulator about his knowledge and experience and to circumvent/subvert a system of regulation which is in place to ensure that the public is protected. If his attempt to deceive RICS had not been stopped, then he may have advanced to a level of membership for which he was not properly qualified.

This in turn, could have put members of the public at risk, damaged confidence in RICS as a regulator, and undermined the integrity of the APC process.

37. The Panel was able to identify some mitigating factors. Mr Kalideen had co-operated with the RICS investigation throughout, and admitted the charges against him from an early stage. He accepted that he had breached the rules which govern the conduct of RICS members, and showed some regret for his actions.
38. As advised by the Legal Assessor, the Panel considered the sanctions available, starting with the lowest level of sanction.
39. The Panel first considered a caution, but decided that given the seriousness of the facts found proved, a caution would be insufficient to uphold the public interest.
40. The Panel also decided that a Reprimand was insufficient to uphold the public interest, and would not mark the seriousness of the facts proved. It found that undertakings would not be appropriate, and that a fine alone would also be insufficient to mark the seriousness of the case.
41. The Panel decided that conditions would not be appropriate for two reasons. First, the conduct found proved was behavioural/attitudinal in nature and as such, is not conduct which can be addressed by conditions on Mr Kalideen's membership. Second, conditions, even if they could be formulated, would be insufficient to mark the seriousness of the case.
42. The Panel next considered expulsion from membership. It was mindful that there was some mitigation, in that Mr Kalideen had admitted his misconduct and shown some regret for his actions. However, the mitigation was limited, and attracted little weight when weighed against the seriousness of the facts found proved. Mr Kalideen's dishonesty, had it not been discovered, had the potential to put members of the public at risk, and seriously damage the confidence that the public place in the profession and in RICS as the regulator of the profession. The processes which govern the granting of RICS membership, and progression as a RICS member, are in place to ensure that all members have a recognised level of knowledge, skill, and competence. Mr Kalideen, by copying a submission written by someone else, had attempted to circumvent that process. This could have benefitted him, but may have ultimately caused harm to others, and impacted on the integrity of the regulatory system.
43. The Panel was mindful of its role to ensure that the public interest is upheld. The public interest includes protecting the public, ensuring that public confidence in the profession is maintained, and ensuring that proper professional standards are upheld at all times. It was satisfied that the only sanction which would serve to uphold the public interest was one of expulsion. Any sanction less than expulsion would be insufficient to send a proper signal to Mr Kalideen, to the profession as a whole, and to the public, about the high standards of conduct and behaviour expected of RICS members.

44. The Panel was aware that a sanction of expulsion may have an impact on Mr Kalideen, in that it may impact on his ability to earn his living within the profession. However, having balanced Mr Kalideen's interests with the public interest, **the Panel concluded that expulsion was an appropriate and proportionate sanction given the seriousness of the case.**

Costs

45. RICS made a request for costs in the sum of £2725.
46. Mr Kalideen provided a completed statement of his means.
47. The Panel was satisfied that the costs sought by RICS were appropriate and reasonably incurred.
48. Mr Kalideen had not challenged the costs sought, nor provided sufficient information which would justify reducing the costs.
49. The Panel therefore concluded that the sum of £2725 was fair and reasonable, and it ordered that **Mr Kalideen pays costs in the sum of £2725 to RICS.**

Publication

50. 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.
51. The Panel was unable to identify any reason to depart from the presumption that decisions will be published, and it ordered publication on the RICS website and in Modus, in accordance with the Publication policy.

Appeal Period

52. Mr Kalideen may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rules 152 and 153 of the Regulatory Tribunal Rules.