ROYAL INSTITUTION OF CHARTERED SURVEYORS ('RICS')

INDEPENDENT REVIEW IN RESPECT OF THE ISSUES RAISED AT RICS IN 2018 AND 2019 FOLLOWING THE COMMISSIONING BY THE RICS AUDIT COMMITTEE OF A TREASURY MANAGEMENT AUDIT

Alison Levitt QC

7th September 2021

OPEN VERSION

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CHAPTER 1

INTRODUCTION

This Independent Review was commissioned following the publication of a number of articles which alleged that the Royal Institution of Chartered Surveyors[1] had tried to suppress a critical internal report into its finances and then unfairly dealt with those who had sought to explore the issue.

The process was begun following a vote by RICS' Governing Council on 21st January 2021. I am not the first Independent Reviewer. My predecessor was another barrister, Peter Oldham QC, who for professional reasons was unable to continue. I was appointed on 12th April 2021 and my Terms of Reference were set on 14th April 2021.

I have been asked to:

(1) Consider the way in which the internal report was commissioned and dealt with and consider whether there were any shortcomings in this respect;
(2) If there were, to consider the extent to which this represents a failure of governance; and
(3) To make recommendations for the future.

My full Terms of Reference are to be found at Appendix A and my methodology is set out in Chapter 3.

Whilst this Review was commissioned and has been paid for by RICS, I was prepared to undertake it only on the basis that the organisation agreed that I could be truly independent in my methods, my findings and my conclusions. This included setting my own Terms of Reference rather than adopting those which had been fixed by my predecessor. In order to give comfort that I had no financial interest in RICS' opinion of my findings, it was agreed at the outset that all fees would be settled before I delivered my report; this agreement has been honoured. RICS has devoted substantial financial resource to this Independent Review and it is my hope that that will be recognised as a measure of its commitment to it.

[1] 'RICS'

RICS is an organisation about which its members are passionate. One witness told me that for her and many of her fellow members, RICS performed a multiplicity of roles: it has educated her, regulated her professionally and even provided much of her social life from her late teens onwards. Whilst those who provided evidence to me disagreed about a great many things, there was one subject which united them, namely the sense of pride they felt at being members of RICS.

That said, many of those who have contacted me told me that RICS has lost its way. This is echoed on social media by people who did not make direct contact with me but of whose opinions I am aware.

These are not only the views of rank and file members but also of those who are powerful within their industries and even members of the current Governing Council. There is always, of course, a risk of confirmation bias, in the sense that only the disgruntled bother to contact the Reviewer, but to some extent the discrete issues which I have been considering appear to be a microcosm of other matters. RICS would be well-advised to listen to the concerns and to take them seriously.

The primary purpose of this Independent Review is to report to RICS (in the form of its Governing Council). Only when the Council knows what has happened and why, can it move forwards. To this extent I have seen myself as a critical friend to RICS and consider that I have an obligation to present the unvarnished truth based on the evidence I have received and the material I have read.

That said, the Review has a secondary purpose. The public also has an interest in ensuring that RICS is well-managed. It is a professional membership organisation with a Royal Charter, which provides that in its regulatory activities it must promote the public advantage. What this means is that it is a guarantee for the public that members of RICS are trained and held to a high standard and the ordinary citizen has a remedy in the event that they were to receive an unsatisfactory level of service.

I had hoped to be able to report in the middle of June 2021, because at the time I embarked on the Review the issues seemed relatively narrow. It has taken me significantly longer than I had anticipated, in part because of the quantity of responses I received and the number of people who wanted to speak to me. That said, the chief reason has been the very late disclosure of the file held by RICS' external legal advisers, Fieldfisher LLP. RICS has known since January 2021 that it would be necessary to disclose

legally privileged material but, despite requests, the first part of the Fieldfisher file was not provided until the 10th June 2021[2] (roughly the deadline to which I had originally been working).

Reading it completely changed this report from the one I had been going to write. Contained within the 436 separate documents was clear evidence that the senior leadership had been trying to find a way to get rid of the 'troublesome' non-Executives for many months. Regrettably, it shows too that some of those to whom I had spoken had not been wholly transparent with me. I set this out in detail in Chapter 6.

I am aware that my report will not satisfy everyone. There will be some who will disagree with my findings, as well as those who think that this report does not go far enough. Many of those who contacted me have raised issues which are outside my Terms of Reference and I have been given information which, had I had longer, I would have liked to investigate. I have had to balance this against the fact that this episode has been damaging to RICS and every day which passes makes the situation worse. I have regarded it as part of my duty as RICS' critical friend to report as quickly as I could whilst reaching evidence-based conclusions on the issues which are at the heart of the matter.

Whether my report is published will be a matter for Governing Council to decide. Its conclusions will make uncomfortable reading for some, but if RICS is serious about transparency it will need to explain both to its membership and a wider audience what went wrong and why. Many of those who have made contact with me have expressed anxiety that my report may never become public; they fear that RICS will become entangled in process and Governing Council will be urged to take a cautious approach because of fears of legal challenge. Insofar as my opinion has value, I would urge RICS to remember that fortune favours the brave. The membership feels that it is owed an explanation; given that the central purpose of this Review has been to decide whether there was a cover-up, to refuse to publish my report risks a crisis of confidence. The entitlements of those whom I have criticised are not the only interests in play; the rights of the membership at large, as well as the requirement of public benefit, must also be respected.

My recommendations appear in the final chapter of this report. RICS has already made some changes: there are now monthly informal Governing Council meetings and quarterly meetings of the Chairs of all

[2] There was a second tranche provided between 22 June 2021 and 24th June 2021

the Boards. The Boards and Committees now all provide updates to Governing Council following each meeting. These developments are to be welcomed.

That said, there is much which remains to be done.

I owe a huge debt of thanks to my senior counsel, barrister Christopher Foulkes, and to Sophie Kemp, partner at Kingsley Napley LLP. Their contribution has been inestimable. Thanks too, to Sophie Kemp's team at Kingsley Napley, particularly Bianca Patulea.

It would be remiss of me not to mention the contribution of Nicholas Maclean, Chair of the Steering Committee of Governing Council, who has remained independent and objective and whose commitment to the best interests of RICS has been clear throughout. RICS owes him a great deal.

The methodology I have used appears in Chapter 3. I am deeply grateful to all those who have taken the time and trouble to contact me. I know that for many of them it has not been an easy decision; I thank them for their contribution.

Whilst the other members of the team have shared the work needed to prepare this report, the views expressed and the conclusions reached are mine.

Alison Levitt QC

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7th September 2021

CHAPTER 2

EXECUTIVE SUMMARY

SUMMARY OF THE FACTS

The four non-Executives who are at the centre of this matter are Simon Hardwick, Bruce McAra, Steve Williams and Amarjit Atkar. All are distinguished and highly regarded, indeed Steve Williams is a former President of RICS[3]. They were members of RICS' Management Board, which reports to Governing Council.

On 12th December 2018, the Management Board held its quarterly meeting. Within the papers for the meeting was a relatively small announcement that it had been necessary to extend the RICS overdraft facility from £4million to £7million for a 45-day period as a result of inaccurate cashflow forecasting.

Members of the Management Board were surprised and concerned that they had not been made aware of the issues surrounding this at an earlier stage. Simon Hardwick expressed the view that there should be "no surprises" like this in the future. The Chief Operating Officer[4], who was a member of the Board as the most senior person responsible for finance and was present at the meeting, gave an undertaking to this effect.

On 20th February 2019 Simon Hardwick and Amarjit Atkar learned from the Director of Risk (who worked for the COO) that an internal audit into the Treasury Management function[5], had concluded that 'no assurance' could be given as to both the design of the internal controls and their operating effectiveness.

Mr Hardwick made enquiries and discovered that neither the Chief Executive nor the Chair of the Management Board was aware of the internal audit report's existence.

[3] A summary of their attributes and achievements is set out in Chapter 4
[4] COO
[5] which includes cash flow forecasting

At the next Management Board meeting on 27th March 2019, Mr Hardwick was surprised to find not only had they not been given a copy of the report but there was no explicit reference to it in the Board papers or COO's update. He raised it and was told that a re-audit had been commissioned by the Audit Committee and that remedial action was underway. The Board was told that both the original report and the re-audit report would be provided for its consideration at the next quarterly Management Board meeting in June.

This did not happen. Once again, the Management Board papers made no reference to the subject. At that meeting (on 19th June 2019) the Board was told that the re-audit had yet to be considered by the Audit Committee and for that reason they would not be given either of the reports. There was some robust discussion about this.

In fact the re-audit had taken place in late May 2019; what BDO had found was that progress had been slow and internally-set targets had been missed. BDO produced its re-audit report in early June; for reasons which have never been satisfactorily explained, that report was reduced to a two-page note at the request of the COO. That short note was not considered by the Audit Committee until its meeting in July; at this meeting the Committee asked BDO to undertake a second re-audit.

Following the July Audit Committee meeting, on 19th July 2019 the Management Board was finally shown the original BDO 'no assurance' report, together with a note from the Audit Committee Chair which told them that the re-audit report had provided insufficient information and a further re-audit had been commissioned. The Board was never to be shown the first re-audit report (not even in the form of the two-page summary), despite numerous requests for it.

Having finally been given a copy of the original 'no assurance' report, a number of the non-Executive Board members had significant concerns both about its content and the reasons for what they saw as the delay that had occurred in providing it to the Management Board. A special meeting of the Board was held on 29th August 2019 at which the Chair commissioned an "internal governance review" into the facts and the governance structure, to be conducted by General Counsel . A number of the non-Executives objected to this on the basis that General Counsel would find it difficult to be sufficiently objective and they argued that it should be an external review. Their objections and concerns were rejected.

General Counsel produced her review on 20th September 2019. In it she concluded that there had been no failure in the operation of the governance framework and that Governing Council, the superior

governance body of RICS, had been properly informed and updated by the CEO about this topic after every Board meeting. This was disputed by some of the non-Executive members, who did not accept that General Counsel was entitled to reach any conclusions at all and did not agree with those that she had.

The issue was aired at the next meeting of the Board on 25th September 2019, following which the draft Minutes recorded that the matter had been concluded, save that the Head of Governance was to conduct a governance review of some parts of the interface of the various bodies. The four non-Executives did not agree: they felt that a number of their concerns had not been addressed and they did not accept that the Board as a whole had agreed that the matter was concluded. They were concerned about what they saw as an ongoing lack of transparency (which meant they had been unable to fulfil their fiduciary obligations) and felt that examination of the real issues was being closed down. They were particularly anxious that the full history of the matter should be provided to Governing Council, which they felt had not been kept informed.

Simon Hardwick and Bruce McAra both had meetings with the then-President of RICS at which he undertook to ensure that Governing Council (of which he was Chair) was fully informed. On 11th November 2019, Bruce McAra drafted a letter to the President on behalf of all four non-Executives. He attached a chronology of events which they had originally intended to send to Governing Council themselves. In light of the President's agreement to update the Council, they had decided to give it to him to ensure that the full facts would be known. Their letter concluded by saying that as far as they were concerned, this brought the matter to an end.

On 21st November 2019, the President wrote to each of the four non-Executives, informing them that their positions on the Board were being terminated with immediate effect.

I have been asked to:

(1) Consider the way in which the internal audit report was commissioned and dealt with and consider whether there were any shortcomings in this respect;
(2) If there were, to consider the extent to which this represents a failure of governance; and
(3) To make recommendations for the future.[6]

[6] The full Terms of Reference are to be found at Appendix A and my methodology is set out in Chapter 3.

The primary purpose of this Independent Review is to report to RICS (in the form of Governing Council). To this extent I have seen myself as a critical friend to RICS and consider that I have an obligation to present the unvarnished truth based on the evidence I have received and the material I have read. That said, the Review has a secondary purpose, in that the membership and the public also have an interest in ensuring that RICS is well-managed. Whether my report is published will be a matter for Governing Council to decide.

This is not a statutory Inquiry and I had no power to compel evidence from anyone. My primary concerns have been to be fair to all concerned and ensure that the Review is proportionate. All potential witnesses were told that this was an entirely voluntary process and that no one was obliged to speak to me. I have made it clear that if they did not want to engage with me then I would draw no inference from that fact and I have not done so. Once I had reached provisional conclusions, I notified those who might be criticised in my Report of the nature of the criticism I had in mind. I have received seven sets of detailed representations. I have considered all the representations carefully and as a result have reviewed my provisional conclusions and made changes. I have received representations from General Counsel and the Chief People Officer to the effect that they are in a state of health that renders them unable to make representations at present.

Only two significant individuals declined my invitation to be interviewed: the Chair of the Audit Committee and Matthew Lohn, partner at Fieldfisher LLP. I told them both that it was likely that I would report that I had not been able to speak to them; the Chair of the Audit Committee asked that I should give his reasons for declining to speak to me, which I have done in the full version of my report[7]. Matthew Lohn initially agreed to be interviewed by me but then changed his mind, saying that having been through his file he had concluded "*that the documents speak for themselves*". Where I have concluded that it would be fair and reasonable to criticise them on the basis of the evidence, I have done so.

[7] Both the Closed and Open versions

DISCUSSION AND ANALYSIS

Having considered all the evidence, I am satisfied that the origins of what went wrong in this case lay in the governance architecture of RICS. The constitutional structure has led to a lack of clarity about the roles and responsibilities of the boards, the senior leadership and the management. That lack of clarity has, in turn, bred tension and led to stress on the system.

In 2019, that stress erupted over the handling of the BDO 'no assurance' report and the system imploded. Everyone I interviewed was genuinely shocked and distressed that a relatively small issue could have led to four well-liked and respected members of the Management Board being dismissed. All were struggling to understand how they had ended up in a place that no one had wanted to go.

I have concluded that the reason is that, far from being merely an unfortunate episode which was badly handled (although that is certainly true), it was an accident waiting to happen.

RICS has, in effect, two Boards: in the cracks between the two, the Chief Executive and his team have become used to operating with little effective scrutiny.

Neither the CEO nor the COO are bad people: on the contrary, they have devoted a considerable part of their working lives to RICS and I am satisfied that in the main everything they have done has been with what they perceive as being RICS' best interests at heart. They believe that RICS is handicapped by the unwieldy and cumbersome 'two Board' system. I can see that the CEO has made significant attempts to try to persuade RICS to adopt what he believes is a more functional model; he plainly feels that the membership has rejected his efforts for reasons that have everything to do with sentiment and nostalgia and very little to do with modern commercial practice.

I am satisfied that what has happened is that, having been unable to persuade the Institution to reform in the way they believe it should, the CEO and the COO have devised systems by which they can help it to function effectively in the twenty-first century. These workarounds paid lip service to the constitution whilst allowing them and their staff to get on with the job.

Understandable though this might be, the trouble is that this is not what good governance requires. No large organisation such as RICS should hand all its power to one or two employees, however senior and experienced, however well-intentioned, and however much they feel that they have been forced into

adopting pragmatic solutions in order to circumvent the unwieldy structure within which they are forced to operate.

Not only is this not what should happen under general principles of sound governance, it is not what the formal architecture of RICS requires. I have concluded that the Executive hid behind the governance structure when it was convenient but circumvented it for much of the rest of the time. In relation to the handling of the BDO reports, the Executive (and those who supported them[8]) repeated the mantra that even if no one thought that it was sensible that the Audit Committee should control the flow of information to Management Board, that was the system they had and there was no option but to follow it. Yet when it came to keeping Governing Council informed, involved and consulted, the Executive felt that the system was unworkable and so largely ignored it.

The most striking example of the consequences of allowing the Executive to control what Governing Council was told is provided by what happened during the period between 25th September and 21st November 2019. As the crisis loomed and the leadership panicked, Governing Council was completely in the dark. Governing Council is RICS, yet the first inkling it had that there was anything wrong was when its members received letters telling them that almost half of the Board had been dismissed a few hours earlier. It is hardly surprising that they were shocked.

The CEO and the COO had become used to running RICS in the way they felt was in its best interests and then updating the various bodies as and when they thought necessary and appropriate. It was not so much a question of withholding things, rather it was that they had become accustomed to not sharing the fact that there was a problem until the solution had been identified and, ideally, implemented. Whilst the issue of the unexpected increase to the overdraft in November 2018 provides the first concrete example of the habits they had got into, I am satisfied that it was far from the first time this had happened.

The governance structure of RICS required that the Management Board should have been told immediately about the need to extend the overdraft. That said, I do not believe that the matter was deliberately withheld from Management Board and I entirely accept the evidence of the COO that her focus was on sorting the matter out, which was what she believed to be in the best interests of RICS. I suspect that she either forgot to update the Management Board at the time or just did not really realise that there was a need to do so. I believe too that she was genuinely taken aback and apologetic when the

[8] General Counsel, Fieldfisher and the Chairs of the Management Board and Audit Committee

Board raised strong objection to having only been told after the event. I accept that she was sincere when she agreed that there should be 'no surprises' going forwards.

The difficulty is that old habits die hard.

I am satisfied that the BDO internal audit report into the Treasury Management function was commissioned for all the right reasons, that is to say, to give the Executive visibility on this aspect of the Finance Department's capabilities and competence. It is a point well made that those who are trying to cover things up do not arrange external examination of the very thing that they are trying to conceal. I accept that the commissioning of the internal audit demonstrates that there was no intention to cover anything up.

What happened was something rather different. Although the COO knew that there might have been some issues in the Finance Department she had no idea how deep and serious the problems were until BDO exposed them. Confronted by the worrying and unwelcome news that RICS' Finance Department was in a mess, the COO defaulted to her usual way of doing things, which was to say little or nothing until the problems had been sorted out. She was taking steps to do this but wanted to be left to get on with it without interference from either Management Board or Governing Council. In that sense it was not a 'cover-up'; in her mind the priority was to resolve the problems and she was simply doing what was in RICS' best interests. That said, I am also satisfied that at least part of her motivation was to avoid the inevitable scrutiny and criticism of her and her department which would follow the revelation that the unexpected overdraft extension was not an aberration but in fact a symptom of a much deeper malaise.

As soon as he became aware of the BDO report, the Chair of the Audit Committee should have worked with the Management Board to ensure that management was held to account and that the proposed solution was not only appropriate but actioned at pace. This did not happen. Having considered the extensive evidence, I am satisfied that the COO and the Chair of the Audit Committee agreed between them that none of the BDO reports would be shared with the Management Board until such time as they chose to do so. The motivation of each may have varied as between each other and over time, but the outcome was the same.

I am satisfied that no one genuinely believed that the governance structure did not permit the Management Board to see the reports until the Audit Committee said that it could. It was merely a pretext used to justify withholding the various reports until the Executive could put remedial measures in place.

Although it looked like one, this was not a cover-up in the traditional sense. What it was in fact was a power struggle. Both the Executive and the non-Executives believed that they knew what was in the long-term best interests of RICS. When it became clear that the non-Executives were not going to back down, it rapidly became a question of "them or us", with the governance structure being used as a fig leaf to give leverage to the Executive.

It is with great sadness that I note that in fact, everyone was on the same side. All the members of the Management Board, Executives and non-Executives alike, wanted to do what was best for RICS, but because the CEO and COO (and to a lesser extent the Chairs of the Management Board and Audit Committee) took offence at being challenged, tensions rapidly escalated.

Because I am satisfied that the constitution and structure is at the root cause of what went wrong in 2019, there is a real risk that if this is not dealt with, something like this could happen again. For this reason I urge RICS not to waste the opportunity presented by the wider governance review.

MAIN CONCLUSIONS[9]

1. This was an entirely avoidable crisis. The situation should never have been allowed to develop in the way that it did. As the months passed, there were a number of opportunities to defuse the situation, but these were not taken. I am satisfied that had the then-President and the Chair of the Management Board gripped this matter at an early stage, this crisis might have been avoided.

2. I have found nothing to suggest that any criminal offences have been committed or that any other financial impropriety has occurred in relation to the financial matters which are the subject of this Independent Review.

3. The four non-Executives were correct in their belief that the Management Board was entitled to inspect the BDO internal audit report. Refusal to allow the Board to see such a report was a breach of Bye-Law B9.1.3(c) which states "*…any document relating to the financial affairs of RICS*

[9] See Chapter 9

shall be open to the inspection of….the Management Board". In any event, sound governance principles required that the Board should have seen it at an early stage.

4. The non-Executives were right to challenge the refusal to give them full and proper information about the state of the Treasury Management function of the Finance Department. That was their job. I find that the four were not troublemakers either individually or as a group; rather they were genuinely concerned about fulfilling their duties to RICS, which they took very seriously. They did not deserve the treatment to which they were subjected and should receive a public apology.

5. I find that the COO knew by 10th October 2018 that BDO was extremely concerned about the situation it had discovered in the Finance Department. She made a decision that, save for providing the report to the Audit Committee in late February 2019, no one outside her immediate team should be told about the very real problems in the Treasury Management function until a solution had both been found and implemented.

6. I find that the state of affairs in the Finance Department by Autumn 2018 (and for some months thereafter) presented a not-insubstantial threat to RICS. One of the risks to which BDO drew attention – running out of cash – manifested itself whilst the internal audit was taking place (although I accept that this was never an existential threat). The fact that some of the other risks which BDO had identified did not materialise does not alter the fact that the situation had the potential to cause serious harm to the organisation. By the time even the Audit Committee was aware of BDO's findings, more than four months had passed with no one other than the COO and her team being aware that there was even a problem, far less any substantive solution being effected. The Management Board was not permitted access to the report until July 2019.

7. The COO's reasons for keeping the information to herself and within her department were mixed. In part it was due to a desire to maintain confidence within the organisation. This provides an example (and there are others) of the Executive, together with the Chairs of various bodies, ignoring the governance structure of RICS when it suited them to do so and yet doggedly persisting in adhering to it when convenient.

8. I find that a desire not to cause alarm at the top of the organisation was not the only reason for the COO's decision. I have concluded that it is more likely than not that one of her purposes was at least to postpone, and possibly to deflect altogether, criticism of her own performance.

9. As is customary, the COO reported directly to the CEO. As soon as she learnt of BDO's concerns, she should have told the CEO. That did not happen. The CEO did not find out about the report until 25th February 2019 and even then it was not because the COO told him, but because he was asked about it by the Chair of the Management Board, who had himself been told by Simon Hardwick.

10. That is not to say that the CEO thereafter made appropriate decisions in sound governance terms. Once he became aware of the report's existence, he should have ensured that it was shared with the Management Board immediately or at the very latest at its quarterly meeting on 27th March 2019. Thereafter Governing Council should have been told about it and given assurance that appropriate remedial measures were being taken. Neither of these things happened.

11. Because of the unusual governance structure, the CEO and COO have become accustomed to making decisions on behalf of the organisation. The corollary of this is a deep-seated resistance to challenge. I find that both were over-sensitive to perceived criticism and quick to take offence. The result was what started as a difference of opinion about areas of responsibility rapidly escalated into questions of trust and behaviour.

12. I have concluded that whilst the original reason for not providing the report to the Management Board was to buy some more time to implement remedial measures, as the months passed that was supplemented by something even more concerning. The evidence shows that the more insistent the non-Executives were that they were entitled to see the report, the more entrenched became the view that they were not going to be given it.

13. This was not, in truth, a cover-up as much as a power struggle.

14. I am satisfied that from an early stage (late March 2019), sides were being taken and the Chair of the Audit Committee aligned himself with the Executive. The Chair of the Audit Committee and the COO had a common interest in ensuring that remedial measures were put in place before the Management Board or Governing Council became aware of BDO's findings. The situation in the

Finance Department had not arisen overnight; both the COO and the Audit Committee were likely to be asked awkward questions, not only about why the situation was as bad as it was, but why it had not been detected earlier.

15. I find that the oft-relied upon explanation that the governance structure did not permit the BDO 'no assurance' report to be shared was not only based on faulty analysis but was in fact a pretext.

16. The internal governance review purportedly conducted by RICS' General Counsel in September 2019 not only reached the wrong conclusion, but was not what it appeared to be. General Counsel did not in fact conduct the Review herself, rather she had outsourced it to RICS' external legal advisers, Fieldfisher LLP. Further, before the Review had even been commissioned, its conclusions had already been decided. The most important objective was that there should be no threat to or criticism of the CEO, the COO or the Chairs of the Management Board and Audit Committee.

17. The Chief People Officer sided with the Executive against the non-Executives from the date of her first involvement with the matter, which was at the latest 4th September 2019. I am satisfied that she saw her role as being solely to protect the CEO, the COO and the Chair of Management Board from criticism.

18. I have concluded that the 25th September 2019 Management Board meeting had been carefully planned and extensively choreographed by the Chief People Officer, General Counsel and Fieldfisher, as well as the Chair of the Management Board. The objective was to ensure that this meeting closed down the Treasury Management Review issue for good.

19. The material in Fieldfisher's file shows that no later than 1st October 2019 (and probably as early as 13th September), a decision had been made by General Counsel, the Chief People Officer, the CEO, the COO and Fieldfisher that Simon Hardwick and Bruce McAra had to go. Over the weeks that followed, considerable effort was expended in finding a way to achieve this.

20. I find that from the outset of their instruction in this matter, Fieldfisher took a partisan approach, siding with the Executive against the four non-Executive members without any objective analysis of the true merits of the situation. I have concluded that Fieldfisher had more than one potential conflict of interest which they appear either to have ignored or misjudged. I have concluded that

their Advice of 18th November 2019 fell short of what RICS was entitled to expect in that it was not balanced and was not in the interests of their client because it did not give RICS an informed choice.

21. It is more likely than not that the then-President of RICS and the Chair of the Management Board had doubts about both the wisdom and propriety of dismissing the four non-Executives and that their instincts were not to take that course. I am satisfied that despite their misgivings, they were unable to stand up to the wishes of the CEO and COO, particularly when they were backed up by the Chief People Officer and General Counsel. I accept that both were also influenced by advice from Fieldfisher.

22. I have concluded that the then-President was not entitled to terminate the contracts of the four non-Executives by giving one month's notice. I have found nothing in the Charter, Bye-Laws, Regulations or other legislative instruments which would give him the power to do so.

23. The process of summary dismissal was manifestly not a fair one. There was a fair process available, which was set out in the *Members / Staff Partnership Policy* and is designed for a situation such as this. It is at least arguable that it was an implied term of the non-Executive members' Service Agreements that any disputes about their conduct would be resolved by means of the *Members / Staff Partnership Policy*.

24. The first time Governing Council was aware that there was even a problem was after the majority of the non-Executive members of the Board had been dismissed. There was thus no opportunity for it to mediate or to resolve the competing contentions of the two sides and thus possibly avoid the damage to the organisation which has resulted.

25. I find that when, a year later[10], RICS issued a public statement to the *Sunday Times*, it was inaccurate and misleading to say that Governing Council had been "*kept informed*" of all the actions which were taken both at the time and later. In fact, Governing Council was not told anything meaningful until after it was all over.

[10] 15th December 2020

26. RICS' response in 2020 – 2021 to the interest of the press in this story lacked candour. The letters to the GC2019 group threatening them with defamation proceedings were an overreaction and should not have been sent.

27. I find that there was a failure of governance for the following reasons:

(i) The reporting lines and areas of responsibility are unclear, with areas of overlap which lead to confusion;

(ii) There has been a significant concentration of power in the Executive, particularly the Chief Executive and the Chief Operating Officer, who have become accustomed to deciding what is in the best interests of RICS. They can be over-sensitive to perceived criticism and do not respond well to challenge;

(iii) There are sectional rivalries, with various bodies and individuals being jealous of their perceived areas of responsibility;

(iv) There has been an over-dependence on rules, process and external legal advice at the expense of good judgement, sound governance principles and plain common sense;

(v) There has been weak leadership at Chair level; and

(vi) The Chief People Officer failed to understand that her duty is to the organisation as a whole and is not merely to protect senior staff from criticism.

RECOMMENDATIONS

I urge RICS to convert its internal review into a wide-ranging examination of purpose, governance and strategy, conducted by an external reviewer. The issues are both complex and arcane and it will not be easy to rebuild trust as there is an ingrained suspicion that there is an agenda to limit the influence of the membership. Many members see any attempt to reform the governance structures as nothing short of a land-grab by the Executive and senior leadership. It is wholly foreseeable that a review which puts in charge of change, the very people who are perceived to be part of the problem, will fail.

Because I am recommending that there should be a wide-ranging independent review of governance and strategy, I do not intend to make observations on matters such as whether RICS should have a unitary Board. My recommendations are intended to be provisional.

1. All Minutes of the Boards and Committees should be provided to Governing Council once they have been agreed.
2. The provision of updates to Governing Council is the responsibility of the Chair of the Board or Committee and should no longer be undertaken by the Chief Executive or any other member of staff.
3. There should be explicit recognition that the Management Board has an overarching responsibility for all operational matters. Thus it should receive the Minutes of all other Committees in order to ensure that it is fully sighted on what is happening in the other parts of the organisation.
4. If the Management Board wishes to be given more information or asks to see documents, then these must be provided on request.
5. Management Board meetings should be shorter but more frequent.
6. Consideration should be given to whether financial bonuses at senior Executive level are appropriate for a professional membership organisation.
7. There should be an overhaul of the whistleblowing structure.
8. Governing Council should clarify the circumstances (if any) in which the Chair of Governing Council is entitled to take decisions, such as dismissing non-Executives, on behalf of the Council.

9. General Counsel or the Head of Legal should not have a pre-existing relationship[11] with RICS' external legal advisers.
10. RICS' external legal advisers should be invited to tender every three years, with a presumption that there will be a regular change of provider.
11. There should be a framework to establish the circumstances in which external legal advice will be sought and by whom.
12. RICS should issue a public apology to Steve Williams, Simon Hardwick, Amarjit Atkar and Bruce McAra.
13. RICS should also publicly apologise to the members of the GC2019 Group who received letters in January 2021 threatening defamation proceedings and should reimburse them for fees incurred in connection with obtaining legal advice about the matter.

[11] In the sense of having been a partner in, employed by or trained at

CHAPTER 3

METHODOLOGY

The purpose of this chapter is to explain the methodology I have used, the reasoning behind it and my approach to the evidence.

It is important to note that this is not a statutory Inquiry and I have had no power to compel evidence from anyone. My primary concerns have been to be fair to all concerned and to ensure that the Review is proportionate. Given that its main purpose is to provide RICS with my conclusions about what happened during 2018 – 2019, I have been careful not to allow it to be diverted into consideration of matters which are not directly relevant to the Terms of Reference. I am aware that it is all too easy for Reviews such as this to expand beyond their original scope and remit, with concomitant effects on the cost and the time it takes to deliver the report.

By way of introduction, it is necessary for me to set out in a little detail the events which took place before my appointment.

The change of Independent Reviewer

As is widely known, my predecessor, Peter Oldham QC, was unable to continue with this Independent Review for professional reasons. He and I spoke and he provided me with such material as he had, for which I thank him.

All he was able to send me was a few emails from those who had approached him to say that they wished to speak to him. Even though it had been two months since Governing Council had voted for an Independent Review, RICS had not provided him with any evidence until 23rd March 2021. I did not want

to put Mr Oldham in a difficult position by asking him his view of why it had taken so long for them to do so, so I asked Kingsley Napley for emails and other documents to see if I could work out the reason for the delay.

It was clear that in the main it was caused by General Counsel[12] and Fieldfisher (who were advising RICS) engaging in the following tasks: negotiating the Terms of Reference and a protocol for witness participation, drawing up privacy notices, considering a publication protocol, putting together packs of documents for the RICS internal witnesses, making the selection of documents and engaging in an extensive process of redaction before providing them to the Reviewer (including, bizarrely, removing the email addresses from a large number of internal emails).

From the documentation I can see that Kingsley Napley had become frustrated by the length of time it was taking and had even suggested that some might see this as a delaying tactic. This was hotly and indignantly denied by General Counsel and Fieldfisher, who asserted that they had been doing the bare minimum required to ensure that the procedure was both fair and lawful.

This period of "preparation" for the Review provides evidence in support of three themes which are echoed in other parts of this Review.

The first is the quantity (and the nature) of the external legal advice sought. It is my view that Fieldfisher should not have been involved in this process. It is not entirely clear to me why General Counsel, who is an experienced solicitor of some seniority, required any external legal advice at all, particularly in relation to the selection and redaction of documents to be provided to the Independent Reviewer. In Chapters 6, 8 and 9, I set out the reasons for my view that throughout the history of this matter General Counsel has been far too reliant on external legal advice. That said, even were external help and advice necessary, objectively speaking, it should have been clear to everyone that it would be unwise for Fieldfisher to participate in this process. It was they who had provided the legal advice dated 18th November 2019 upon which the President relied in deciding to dismiss the four non-Executive members of the Management Board. Since the correctness of that advice was likely to be central to this Independent Review they should not have been involved in the selection and redaction of material to be provided to the Reviewer. Conflicts of interest are as much about the appearance of bias as about actual bias.

[12] It is not clear to me whether she was being given instructions by anyone in RICS and if so who. I have decided that not a great deal turns on this.

The second theme is that the events before my appointment demonstrate a tendency in RICS to become entangled in process, often to the detriment of sound judgement and common sense. It should have been obvious that given that the timeframe for the entire Review was two months, it was disproportionate to spend more than six weeks developing aspects of the process, whilst not supplying Mr Oldham QC with any documents. The approach taken by General Counsel and Fieldfisher meant that by the time I was appointed, what RICS had to show for two and a half months of effort was a number of long and complicated documents setting out how the work was to be done, but no Review. I wish to make it clear that nothing I have seen in the documentation suggests that this was in any way the fault of my predecessor or that of Kingsley Napley, who were plainly frustrated and dismayed by RICS' approach.

The third theme is that whatever their true feelings, the RICS management and others have on occasion given the impression of reluctant acquiescence in the review process rather than willing participation in and facilitation of it.

For these reasons, I decided that my priority should be to streamline the process and make a start on gathering and evaluating evidence as quickly as possible.

The Terms of Reference

All Independent Reviewers have their own style. As my role is to be independent, I decided that I was not bound by the earlier Terms of Reference but would settle my own. I produced a greatly simplified document and it was agreed by RICS on 14th April 2021. I sent a copy of this document to everyone I invited to speak to me; it is to be found at Appendix A to this Report. I have not adopted the Protocols agreed by my predecessor nor produced any of my own as I viewed them as an unnecessary process which was likely to delay matters.

The impression of reluctant acquiescence in the Review process was demonstrated at an early stage. I was disquieted to find that whilst the second, internal, review[13] of RICS' governance appeared prominently on the landing page of RICS' website, the Independent Review was enormously difficult to find. RICS

[13] Entitled *Defining Our Future*

management dragged its feet about updating the Independent Review page: even though my revised Terms of Reference had been agreed by Governing Council on 14th April, they did not appear on the website until (after much prompting) 18th May 2021, when I was, or so I believed, half-way through the Review. Despite numerous attempts, I never succeeded in persuading them to give the Independent Review equal prominence with the internal governance review.

It felt as though RICS was making it as difficult as possible for people to contact me. This may not have been their intention but that was the impression given. Given that the Independent Review was the wish of Governing Council, this suggests something of a disconnect between the senior governance body and management, a matter to which I shall return later in this report.

Contact with the organisation

By the time of my appointment, Governing Council had already established a Steering Committee to act as the point of contact for the Independent Review Team and the solicitors. It consists of five members of Governing Council: Nicholas Maclean, Marion Ellis, Uche Obi, Martin Eberhardt and Rob Wilson. None of the five were members of Governing Council in 2019 and thus have no direct knowledge of or involvement in the events which form the subject matter of this Review.

The existence of the Steering Committee has been important in terms of allowing me to keep my distance from RICS and thus preserve my independence. I have had limited contact with the Chair; we have met once a week (sometimes less frequently) over Zoom and always in the presence of the solicitors. The purpose of those meetings has been to discuss logistics and arrangements; the Chair has never asked for, and I have never provided, any details about what I have been doing or my findings.

Other than this weekly meeting with the Chair of the Steering Committee, I have had no contact with RICS, its employees or its non-Executives other than as witnesses; they have been treated in the same way as everyone else.

I should make it clear that although I have at times had difficulty in getting cooperation from RICS, none of this has been the fault of the Steering Committee. On the contrary, Nick Maclean has been nothing other than helpful throughout. He has demonstrated clear commitment to the interests of the

organisation, which owes him a considerable debt for ensuring that this Review has in fact been able to take place.

Initially RICS provided me with a set of redacted documents. I rejected this: as the Independent Reviewer it is for me to decide what is relevant and what is not. RICS then provided me with all documents in unredacted form. When I have asked for additional material, in the main it has been provided without difficulty. When I have asked for additional resource (for example, to take some advice from a solicitor who specialises in employment law as that is outside my area of expertise) this was granted without difficulty.

The exception to this was the various Fieldfisher files, where there was pushback on the grounds of legal privilege, relevance and proportionality. Eventually, RICS purported to disclose all the files, though I believe (on reasonable grounds) that I am missing a number of relevant documents, some of which might be very significant. I know for a fact that Fieldfisher withdrew from the file their internal correspondence on the ground that it does not belong to the client. Whilst I disagree with this assessment as a matter of law, there came a point where I was not prepared to spend more time attempting to prise documents out of an unwilling RICS or Fieldfisher as I already have sufficient to form an opinion.

The Call for Evidence

I began this process with an entirely open mind as to what had happened in 2018 – 2019. At the forefront of my mind were three important principles.

The first was that I wanted to reach as many people as possible who might wish to contribute to the Independent Review so that I could gather as much material as could be achieved within a reasonable time.

The second was that I needed to ensure that those who responded were treated fairly. This included providing a mechanism so that all could feel confident that they could speak to me without fear that anyone from RICS would know what they had said or even, in some cases, that they had contacted me at all.

The third was that I had to ensure that this Independent Review was proportionate. In this context, 'proportionality' meant taking care not to get diverted from the Terms of Reference, delivering the report within a reasonable time and being mindful that the costs should not be allowed to spiral.

To ensure that as many people as possible would know about the Independent Review we set up a website (which went live on 30th April 2021) and, through Kingsley Napley, issued a press release to publicise it. RICS has no control over the website.

In order to encourage participation from as many people as possible, I did three things:

(1) I sent letters to all those who appeared to have potentially relevant evidence to give, enclosing a copy of my revised Terms of Reference, and inviting them to contribute;
(2) On 30th April 2021, I issued a public Call for Evidence and drafted a questionnaire to accompany it[14]; and
(3) I sent an individual email to all 130,000 RICS members. This was done by RICS on my behalf.

If there are people whom I have failed to reach, I hope that I will be forgiven.

It was a matter of regret to me that I was not able to speak to everyone who contacted me. I hope that it will be understood that in order to deliver my report within a reasonable time I had to make choices about those with whom to speak. Sometimes I spoke to people in groups. All those to whom it was not possible to speak were invited to send me something in writing.

Kingsley Napley set up a mailbox which is operated by the Independent Review team and RICS cannot access it.

All documents have been requested through, and provided by, the solicitors. Some witnesses have provided material directly to me which I have then shared with the solicitors. I do not hold any material which they do not also have. They have set up a confidential and secure e-platform on which all the evidence is stored and RICS cannot access it.

[14] Both are to be found at Appendix B.

The Evidence

Those to whom I have spoken come, broadly, from the following groups:

1. The four non-Executives whose dismissal is at the centre of these events;
2. The RICS senior leadership (including the Executive);
3. Past Presidents;
4. Members of Governing Council, past and present;
5. Current and previous employees;
6. Current and former non-Executives;
7. Members.

Some witnesses agreed to speak to me; others have submitted evidence in writing. Most were happy for it to be known that they have provided evidence[15], but on the understanding that some parts of what they had to say would not be attributed to them. There was a small number whose identity is known to me but I have promised not to reveal. I have received anonymous evidence from one person.

All potential witnesses were told that this was an entirely voluntary process and that no one was obliged to speak to me. I have made it clear that if they did not want to engage with me then I would draw no inference from that fact and I have not done so.

All witnesses have been treated in the same way. Many asked whether they could be given a list of questions in advance, provided with documents to consider and / or be allowed to see the transcript of their evidence following the interview. Some asked for a commitment that I would give them sight of the parts of my report which mention them before it was provided to RICS.

The senior courts have considered the requirements of fairness for both internal Reviews and statutory Inquiries on a number of occasions. The principles which emerge from this area of jurisprudence are as follows.

1. Everyone must be treated fairly;

[15] A list of these witnesses is at Appendix C

2. That said, there is a significant interest in reports being produced quickly and at a reasonable cost. Proportionality is key;
3. Provided that they[16] bear these principles in mind, the Reviewer has a significant degree of flexibility as to the precise methods used;
4. In some cases a Reviewer may find it helpful to give a witness advance notice of the matters which are of interest to the Review together with the main documents about which questions will be asked, together with a summary of any adverse material or damaging evidence, but this is at the discretion of the Reviewer;
5. A person who is to be criticised in a report should be given a fair opportunity to respond to the criticism before the report is published;
6. That opportunity may be given either as part of the interview process or by providing draft conclusions before the report is finalised.

It is an error of approach to adopt a procedure at the start of the Review which includes a firm commitment to conducting a Representations Process[17] in relation to every person who is to be criticised. The Reviewer should have sufficient flexibility to decide, once they have produced a draft report, whether or not to conduct a Representations Process, and if so, which persons should be invited to make representations and in respect of which proposed criticism. It is a matter for the Reviewer whether they consider that some persons have already had a fair opportunity in respect of some or all criticism.

In this case I decided not to provide a list of questions, areas of interest or a pack of documents in advance, for the following reasons:

(1) The subject matter of this Review is narrow in compass and relatively discrete. Each potential witness was sent the Terms of Reference, which include twelve questions which I must consider. It follows that the areas about which I would be asking were, in the main, completely obvious;
(2) This has not been a criminal investigation, far less a trial, neither is it a disciplinary process. Advance disclosure was neither proportionate nor necessary;

[16] This is a deliberate use of the gender-neutral pronoun
[17] Sometimes also known as a Fairness or 'Maxwellisation' process

(3) The witnesses who are still part of RICS already have access to the relevant documents, not least because General Counsel and Fieldfisher had put together a bespoke pack for each of them;
(4) All the RICS witnesses (including those I have criticised) have had access to independent legal advice at RICS' expense;
(5) In the case of those who are no longer part of RICS, providing disclosure of documents in advance would have involved sending confidential RICS material to email addresses in circumstances where I had no control over what would then happen to it. Weighing the risks and the benefits I assessed that there was no necessity for this and I would make it fair by reminding myself that some witnesses did not have access to them;
(6) Providing each witness with a transcript following the interview, for them to comment on and suggest amendments, would have increased dramatically the length of the Review. Instead, I concluded each interview by saying to the witness that I would like the lines of communication to be kept open, that they could add to or amend anything they wished if on reflection they felt that they had not done themselves justice (including, if appropriate, having a further interview) and they should feel free to provide me with any further documents or other material they felt was relevant.

Each witness to whom I spoke was asked to confirm the extent to which they were happy for their evidence to be 'on the record'; it follows that all had the opportunity to speak on a completely confidential basis if they chose to do so.

Arguably, the most significant documentation I have seen was that contained within the Fieldfisher file. Despite requests, this was not disclosed until 10th June 2021, by which time I had finished all the witness interviews and had started to write my report. It took me more than a week to read and absorb the 436 individual items. I then had two options:

(1) To reinterview all the relevant witnesses, or
(2) To invite representations in writing.

I chose the latter course, for these reasons. Some (though by no means all) of the material attracts Legal Professional Privilege[18] and thus could not be provided to anyone other than Governing Council members.

[18] 'LPP'

Trying to disentangle the privileged parts from the non-privileged would be a complex and lengthy process. To have done this and then to have reinterviewed all the witnesses who were affected would probably have doubled the length of the Review period.

I concluded that providing the people I was minded to criticise with the opportunity to make further representations in writing was both fair and proportionate. Once I had reached provisional conclusions, I notified those who might be criticised in my Report of the nature of the criticism I had in mind.

I have received seven sets of detailed representations, some from individuals and from solicitors representing others. I do not know whether those who responded 'in person' have taken legal advice and it does not matter. I have treated them all the same way.

Some expressed a lack of confidence in my methodology and approach. I believe that criticism to be inaccurate and unfounded. Many have complained that they had been given insufficient time to make representations, for a variety of reasons including holidays. I considered these on a case-by-case basis but decided that taking into account the interests of all stakeholders I would not alter the timetable.

Some of the representations were more appropriate to litigation than to an Independent Review. I am an experienced Reviewer and have acted in accordance with what I regard as proper and settled Review practice. A Representations Process does not require a litigation-type exchange of pleadings and protracted point-by-point debate. Far less is it appropriate for the Reviewer to engage in negotiation. What is required is that the Reviewer should read and consider the representations made and do so with an open mind, making such re-examination of the oral and documentary evidence as is appropriate.

This I have done in accordance with what I see as my professional duty and responsibility to all concerned. I have considered all the representations in detail and as a result have reviewed my provisional conclusions and made changes.

I have received representations from General Counsel and the Chief People Officer to the effect that they are in a state of health that renders them unable to make representations at present. They have asked for more time.

I have been conscious of the importance of producing my report in reasonable time. This has been difficult partly because of the large amount of material I have had to examine and partly because of very late disclosure of documentation which should have been self-evidently relevant and supplied to me at the beginning of the process. Where illness has been cited, I have had to consider the importance of a proportionate response. There are many people with an interest in my producing my report as soon as possible. Balancing this with the nature of the requests for more time, I concluded in each case that I would not alter the timetable but told them that they could send representations at any point and I would take them into account provided that to do so would not delay my report. I have taken into account the documentation in my possession concerning the issues affecting these two individuals and have tried to anticipate the representations that might have been made at some future date. They asked that it should be recorded that they have not provided a response due to ill-health and I am happy to do so.

I have decided that it would be wrong to delay my report further, given the volume of documentary evidence that speaks for itself and also the fact that witnesses whom I interviewed showed levels of consistency that have aided my judgement and findings.

The evidence of witnesses

I conducted all the interviews myself. I spoke to 53 witnesses (33 individually and the remaining 20 in five groups, though not of equal size). Some witnesses were interviewed twice. The total time spent conducting interviews was 74 hours (give or take) over a period of four weeks.

Only two significant individuals have declined my invitation to be interviewed: the Chair of the Audit Committee and Matthew Lohn, partner at Fieldfisher LLP. I told them that it was likely that I would report that I had not been able to speak to them; the Chair of the Audit Committee asked that I should give his reasons for declining to speak to me, which I am happy to do. He was only prepared to be interviewed if I agreed to:

(i) provide an outline of the topics about which I wished to ask, together with the copies of the documents I might wish to reference, at least five days in advance of the interview;

(ii) provide him with a transcript of his evidence and give him ten days to provide his comments on it; and

(iii) commit in advance to a Representations Process[19].

My reasons for not acceding to his requests was that they were disproportionate, for the reasons I have set out above, and in any event to accede to them would have been unfair to other witnesses, many of whom by that point I had already interviewed. I invited him to provide me with a written statement rather than be interviewed; this he declined but he did provide me with a small bundle of documents. I confirm that I have taken these into account.

Matthew Lohn initially agreed to be interviewed by me but then changed his mind, saying that having been through his file he had concluded "*that the documents speak for themselves*". I invited him to make a written statement but he did not take up my offer.

I have already said that I have not drawn an inference against either Matthew Lohn or the Chair of the Audit Committee simply by virtue of the fact that they neither wished to speak to me nor to provide me with a written statement. That said, where I have concluded that it would be fair and reasonable to criticise them on the basis of other evidence, I have done so. I have said on numerous occasions that this is an evidence-led review; if the evidence strongly points in a particular direction then it would be irrational to disregard it simply because the witnesses declined to speak to me. It would also not be fair to RICS for an individual to acquire immunity from criticism simply by refusing to communicate with me. Both gentlemen have been included in the Representations Process and thus have had an opportunity to comment on my draft conclusions before the report was finalised. Their observations have been taken into account, though I have given them less weight than had they been interviewed because I was unable to test what they said. That said, I have read them carefully and made changes where I felt it was appropriate to do so.

The impact of Coronavirus has meant that we have conducted all our witness interviews remotely. This has worked well, not least because it has allowed us to record them[20] and then have them transcribed. Both the recordings and the transcripts are stored on the e-platform and RICS cannot access them. We considered what would happen if, in the future, RICS were to request their electronic file from Kingsley

[19] This was on the basis that the previous interviewer had devised a protocol which provided for this. I am plainly not bound by that protocol and have made it clear that I was not adopting it.
[20] Only one witness refused to allow us to record them. The two witnesses from BDO permitted a recording to be made solely for the purpose of producing a transcript; once we had done so, the recording was deleted in accordance with their Compliance Department's request.

Napley; in order to deal with this potential problem, Kingsley Napley have sought and obtained an undertaking from RICS that they will not ask for the evidence and that, were they to do so, Kingsley Napley would be professionally obliged to refuse to provide it.

Responses to the call for evidence

In total, we received 256 responses through the Independent Review mailbox. Some correspondents simply emailed us, others completed the questionnaire. The respondents included current and former RICS employees and non-Executives, but the majority were RICS members from around the world. Some were from people whom we subsequently interviewed.

We believe that we have responded to everyone who contacted us, even if only to acknowledge receipt and thank them. If there is anyone who did not receive an email thanking them I hope we can be forgiven for the oversight; we intended no discourtesy.

Many of the concerns which were raised came from people who had no involvement in, or direct knowledge of, the events which form the subject-matter of this Independent Review and thus were out of scope.

That said, I found it useful to hear from these people because they provided a snapshot of the issues which are troubling at least part of the membership, as well as some current and former employees. Plainly, I am unable to say how widespread these concerns are, but many of them were echoed by those I interviewed. Those who are active on social media make many of the same points.

Some of those who wrote to me are of high standing and have held positions of responsibility at RICS. They expressed themselves in measured terms. In the main they spoke to their shame and distress that, in their view, a leading professional institution should have found itself in a place where it has been repeatedly criticised by responsible newspapers and journals. The fact that they asked me to treat their contribution as having been provided in confidence should trouble Governing Council.

I have taken into account the danger of 'confirmation bias'. What I mean by this is that those likely to respond to the Call for Evidence or the letter to the membership are those who are concerned about

something. In fact that has not proved to be entirely the case: I have received a number of emails and completed questionnaires from members of RICS who are not concerned about anything and seemed to be responding out of politeness.

Because I am very grateful to those who took the time and trouble to write to me, I set out a summary of the matters which our correspondents raised. I suspect that none of this will come as news to the Senior Leadership, but my suggestion is that RICS would be unwise to ignore it.

In summary, the responses came from those who:

1. Are instinctively troubled as a matter of principle by the dismissal of four non-Executives and wanted to know "what RICS was trying to hide"
2. Expressed concern that my report would be "swept under the carpet"
3. Feel that RICS is no longer the great Institution it once was and that there has been a general lowering of standards
4. Wanted me to know there has been a culture of bullying at RICS and generally poor treatment of employees and some non-Executives[21]
5. Expressed concern about the adequacy of governance and a lack of transparency
6. Feel that RICS no longer understands or represents the interests of rank-and-file members and is out of touch
7. Complained of poor communication with the membership
8. Felt that the RICS Executive and/or management have too much power at the expense of the membership
9. Are critical of the CEO and object to the level of his remuneration / bonus, particularly when staff have been furloughed or made redundant
10. Wanted to express concern that RICS has become a commercial organisation at the expense of its primary purpose
11. Feel that their membership fee is too expensive and represents poor value for money
12. Believe that RICS uses its disciplinary process to silence whistle-blowers and to suppress criticism

[21] I have not been able to investigate these allegations

13. Are unhappy with the administration of RICS (complaints about incompetence, the length of time taken to respond to queries etc)
14. Are concerned that there is too great an emphasis on international membership at the expense of the UK members
15. Believe that RICS is wasting members' money, particularly on travel and other expenses for the Executive
16. Are anxious about the state of RICS' finances (including whether the Great George Street building has been 'mortgaged')
17. Wanted to tell me that the wider internal governance review should be undertaken by an independent external reviewer
18. Are very unhappy about the loss of the use of the library in Great George Street.

A number of correspondents informed me of other incidents which they felt reflected badly on RICS. All of these fell outside my Terms of Reference but I am grateful to them for taking the time and trouble to let me know.

A handful of correspondents appeared to have no concerns and were simply responding out of politeness. There was also a small number who may have misunderstood the letters, who wrote to me about their CPD points or with questions about how to pay their subscription.

There is one letter which I felt was important to deal with on its own. It was an anonymous letter sent to my Chambers by post. The writer said that, despite my assurances, they and others affected did not feel safe submitting evidence by email. The writer told me that there were others who would like to speak to me but were afraid to do so. They said that there is a culture of fear at RICS which predates the issues with which I am concerned and that intimidation and threats were used to silence those who raised legitimate concerns. The author said that in order to get a true picture of what has been happening, I would need to look at "*all correspondence with resigners, whistle-blowers, and any non-disclosure agreements*" and should scrutinise the spend on legal advice and settling cases out of court. The author says that whilst there is a whistle-blowing procedure, it is not independent and those who have used it "*are swiftly dealt with*".

I would normally not give much weight to an anonymous letter but much of what it contains has been supported by what I have heard from others. Certainly I have seen references in some sets of Minutes to the fact that during the period in question there had been no whistleblowing incidents. In an organisation the size of RICS, this should be a cause for concern not congratulation. Had I more time I would have investigated this matter; it may be something which RICS should consider.

Approach to the evaluation of the evidence

This is an evidence-based Review.

Because this is not a criminal trial, where there has been a dispute of fact or a material conflict in the evidence, I have adopted the civil standard, namely the balance of probabilities. What this means in practice is that I have asked myself whether I think it is more likely than not that a fact is true. Where appropriate, I have drawn inferences (that is to say, common sense conclusions) from evidence that I am satisfied is reliable and I have applied the settled law that circumstantial evidence can be as powerful as direct evidence[22]. That said, this has not been an adversarial process and I have not found it helpful to evaluate the evidence by applying shifting burdens and standards of proof.

I have not been able to resolve every issue nor has it been necessary for me to do so; I have restricted myself to deciding only such matters which allow me to reach a conclusion.

I am aware that there are some witnesses who have felt that they were in effect 'the accused' and that this Review was an investigation of them and their behaviour. I can assure them that this was very far from the case. This has not been a disciplinary process. It was inevitable that in order to fulfil the Terms of Reference I would have to make findings of fact, but I started the process with an entirely open mind and everyone was treated equally. In reaching my conclusions I have simply followed the evidence where it led.

[22] *DPP v Kilbourne* [1973] QC 729, *Exall* [1866] 4 F&F 922

Method of preparation of my reports

RICS is my client. The fact that my instructions are to conduct an Independent Review does not alter that fact. It follows that the product of my Review belongs to RICS and is subject to Legal Professional Privilege, unless the Institution waives it. What, if anything, RICS decides to do with my report is entirely a matter for Governing Council (as the controlling mind of RICS).

I have been provided with material from two firms of solicitors, Fieldfisher LLP and Sheridans LLP, both of whom acted for RICS at various points in relation to this matter. Some (but by no means all) of that material attracts Legal Professional Privilege. This is a complex area of law; suffice to say I have taken the view that because my relationship with RICS is a privileged one, providing material to me does not waive privilege, as all the lawyers are within the privilege circle. Certainly, RICS has not been minded thus far to waive privilege. It is my hope that once it has read my report Governing Council will change its mind in the interests of transparency.

I have already set out in Chapter 1 that this Review has a dual purpose: it is primarily to inform Governing Council about what happened in 2018-2019. That said, I am aware that RICS would like, if at all possible, to publish my report in order to be transparent and to restore confidence.

With this in mind I drafted three documents. The first is a Closed version, which is intended for Governing Council only; it includes material which RICS needs to see in order to have the full picture. The second is an Open version, which I have drafted with a view to publication, if that is what RICS chooses to do. I have also produced an Executive Summary, which provides an alternative for publication.

Normally, I would not put material which attracts Legal Professional Privilege in the Open version, but in this case I am suggesting that RICS should waive privilege in the interests of transparency because, for the reasons which appear in the paragraphs which follow, my findings will be almost impossible to understand without that material. In addition, some of the content of the Fieldfisher file would not attract privilege but the task of separating it from the privileged part would be lengthy, complex and costly.

The material which has been removed in order to create the Open version consists of:

(1) Chapter 5, which contains allegations which were out of the scope of my review and thus have not been investigated;

(2) Other unsubstantiated allegations to be found in various places in the report, which I included in the Closed version because it is important that Governing Council, as RICS (and therefore my client), is aware of them but which should not be published in fairness to those concerned;

(3) Some minor matters in relation to relatively junior staff in the Finance Department, which again do not affect my overall conclusions.

There is an additional matter which I have removed. It concerns an allegation made by a senior Executive that one of the four non-Executives had tried to obtain a copy of the BDO 'no assurance' report from another person and this was alleged to have been improper. I was told that this second person did not want their identity to be disclosed to me (although in fact I know it because it appears on emails with which I have been provided)[23].

The details of this incident have been removed from the Open version of my report in order to respect the privacy of the second person concerned, because, although I have not given their name, they would be readily identifiable even from the few facts which I have set out in in the Closed version (in order to explain the issue to Governing Council).

I have decided that this was the proportionate response given the following:

(1) I have not investigated this issue and so it remains merely an allegation,

(2) I can see that there are explanations which would be available to the non-Executive in question which would make the matter very much less serious than the senior Executive seems to have believed it to have been, and

[23] Given that they did not contact me, I have concluded that they did not want to speak to me (deliberate use of gender-neutral pronoun)

(3) I have concluded that even were I to find against non-Executive, taken at its highest this behaviour would not have justified summary dismissal.

For these reasons, removing the details of this episode from the Open version cannot cause injustice nor would it mislead anyone reading this report. I have concluded it is the reasonable and proportionate response.

I confirm that nothing has been removed from the Open version solely for the reason that its inclusion might cause embarrassment to RICS or its senior leadership. I confirm too that, save for the material noted above and some stylistic and grammatical changes made to make it easier to read, the two versions are identical.

When I began this Independent Review, I had thought that I would provide a draft to Governing Council in order that it could be checked for factual accuracy. In light of the fact that I have conducted a Representations Process in relation to a number of people, I have concluded that providing a draft is unnecessary and would only cause delay.

CHAPTER 4

BACKGROUND

SUMMARY OF THE ALLEGATIONS

On 13th December 2020, the *Sunday Times* published a piece in its *Prufrock* column which alleged that RICS had dismissed four non-Executive Board members for trying to raise the alarm about the alleged suppression of an internal financial report. Throughout December 2020 and January 2021, there were a number of further articles, including two substantial pieces by Oliver Shah, again in the *Sunday Times*. All were critical of RICS. On 21st January 2021 Governing Council voted unanimously to commission an Independent Review.

In Chapter 6 I set out the evidence that I have considered. In summary, these are the facts.

The four non-Executives who are at the centre of this matter are Simon Hardwick, Bruce McAra, Steve Williams and Amarjit Atkar. All are distinguished and highly regarded, indeed Steve Williams is a former President of RICS[24]. They were members of RICS' Management Board, which reports to Governing Council. I set out a summary of the relevant parts of the governance structure of RICS below.

On 12th December 2018, the Management Board held its quarterly meeting. Within the papers for the meeting was a relatively small announcement that it had been necessary to extend the RICS overdraft facility from £4million to £7million for a 45-day period owing to inaccurate cashflow forecasting.

Members of the Management Board expressed concern and surprise that they had not been made aware of this at an earlier stage. Simon Hardwick expressed the view that there should be "no surprises" such as this in the future. The Chief Operating Officer[25], who was a member of the Board in her capacity as the most senior Executive responsible for finance and who was present at the meeting, gave an undertaking to this effect.

[24] A summary of their attributes and achievements is set out in Chapter 4
[25] 'COO'

On 20th February 2019, at a meeting of the Management Board Risk Subgroup, Simon Hardwick and Amarjit Atkar learned from the Director of Risk & Assurance (who worked for the COO) that an internal audit into the Treasury Management function - which includes cash flow forecasting - had been undertaken. Its conclusion was that 'no assurance' could be given as to both the design of the internal controls and their operating effectiveness.

Mr Hardwick made enquiries and discovered that neither the Chief Executive nor the Chair of the Management Board was aware of the 'no assurance' report's existence.

At the next Management Board meeting on 27th March 2019, Mr Hardwick was surprised to find not only had the Board not been given a copy of the report but there was no explicit reference to it in the Board papers or COO's update. He raised it and was told that a re-audit had been commissioned by the Audit Committee and that remedial action was underway. The Board was told that both the original report and the re-audit report would be provided for its consideration at the next quarterly Management Board meeting in June 2019.

This did not happen. Once again, the Board papers made no reference to the subject. At that meeting (on 19th June) the Board was told that the re-audit had yet to be considered by the Audit Committee and for that reason they would not be given either of the reports. There was some robust discussion about this.

A month later, on 19th July 2019, the Board was finally shown the original 'no assurance' report, together with a note from the Audit Committee Chair telling them that the first re-audit had provided insufficient information and a further re-audit had been commissioned. The Board was never to be shown that first re-audit report.

A number of the non-Executive members had significant concerns both about the content of the 'no assurance' report itself and the reasons for what they saw as the delay that had occurred in providing it to the Board. A special meeting of the Management Board was held on 29th August 2019 at which the Chair commissioned an "internal governance review" into the facts and the governance structure, to be conducted by General Counsel . A number of the non-Executives objected to this on the basis that General Counsel would find it difficult to be sufficiently objective. They argued that it should be an external review. Their objections and concerns were rejected.

In September 2019, General Counsel delivered her review. She concluded that there had been no failure in the operation of the governance framework and that Governing Council, the superior governance body of RICS, had been properly informed and updated by the CEO about this topic after every Board meeting.

This was disputed by some of the non-Executive members, who did not accept that General Counsel was entitled to reach any conclusions about this matter and did not agree with those that she had. The report issue was aired at the next meeting of the Board on 25th September 2019, following which the draft Minutes recorded that the matter had been concluded, save that the Head of Governance was to conduct a governance review of some parts of the interface of the various bodies.

The four non-Executives did not agree: they felt that a number of their concerns had not been addressed and they did not accept that the Board as a whole had agreed that the matter was concluded. They were concerned about what they saw as an ongoing lack of transparency (which meant they had been unable to fulfil their fiduciary obligations) and felt that examination of the real issues was being closed down. They were particularly concerned that the full history of the matter should be provided to Governing Council, which they felt had not been kept sufficiently informed.

Simon Hardwick and Bruce McAra both had meetings with the President of RICS at which he undertook to ensure that Governing Council (of which he was Chair) would be fully informed. On 11th November 2019, Bruce McAra drafted a letter to the President on behalf of the four non-Executives in question, which contained a chronology of the events and their concerns. They had originally intended to send this to Governing Council, but in the light of the President's undertaking, had sent it to him in order to ensure that the full facts could be provided to the Council. Their letter concluded by saying that as far as they were concerned, this brought the matter to an end.

On 21st November 2019, the President wrote to each of the four non-Executives, informing them that their positions on the Board were being terminated with immediate effect.

A BRIEF HISTORY OF THE ROYAL INSTITUTION OF CHARTERED SURVEYORS

RICS was founded in 1868. Its headquarters are in London, in a grand building on the corner of Parliament Square and Great George Street, opposite the Cabinet Office. It has an office in Birmingham plus regional offices in the UK, mainland Europe, China, Singapore, Australia, the Middle East, Sub-Saharan Africa, North America and Brazil.

I asked most of the witnesses to whom I spoke how they would define RICS. It was described variously as a membership organisation, a professional body, and a hybrid trade-regulatory body. The Chief Executive described it as a Royal Charter body which works on the principles of mutuality for the purposes of taxation. It is not a charity, though it has a charitable foundation. In many ways, he said, it is probably more akin to a mutual than it is to a charity or a PLC.

Its Royal Charter status means that it has an independent legal personality, much in the way that a company does (although it is not a company and there are many differences in its structure from that of a company or corporate such as a PLC). It has members who pay an annual fee and trustees who have the normal trustee obligations to act in the best interests of the beneficiaries (that is to say, the members). There are no shareholders.

In my view the most accurate way of describing it is as a hybrid professional organisation which has both a regulatory and a membership function as well as an overarching public interest purpose. It promotes and enforces standards in the valuation, management and development of land, real estate, construction and infrastructure. Its members are drawn from a range of related professions, including quantity surveyors, town planners and estate agents.

For the professions in question, membership of RICS (or any other professional body) is not a legal requirement[26]. There is a degree of competition to RICS provided by other organisations, such as the Institution of Party Wall Surveyors, Chartered Institution of Civil Engineering Surveyors, the National Association of Estate Agents, and the Royal Town Planning Institute, some of which also have a Royal Charter.

[26] Unlike the situation with some other professions such as medicine or the law

In order to become a member, in addition to having a qualifying degree or an accredited conversion degree an applicant must pass the professional examinations set by RICS. Members are required to undertake Continuing Professional Development[27] activities, compliance with which is monitored by RICS. Belonging to RICS as either a member or a Fellow has traditionally had high status: those with the designation FRICS[28] or MRICS[29] are also known as Chartered Surveyors. Chartered Surveyors tend to earn more than their non-Chartered counterparts.

RICS has some 140,000 members in 146 countries. The majority of its members are in the UK. It has two primary sources of income: membership fees and income from events such as conferences and CPD courses. RICS is intended to be profit-making, but because there are no shareholders, it does not distribute dividends. Instead, any profits that it makes are ploughed back in to advancing its purpose as a professional body with a public interest purpose. It is not a commercial organisation as such, but its annual turnover is in the region of £80 million.

Its position as the holder of a Royal Charter is a reflection of its high status. Royal Charters are normally reserved for bodies which work in the public interest and which can demonstrate pre-eminence, stability and permanence in their particular field.

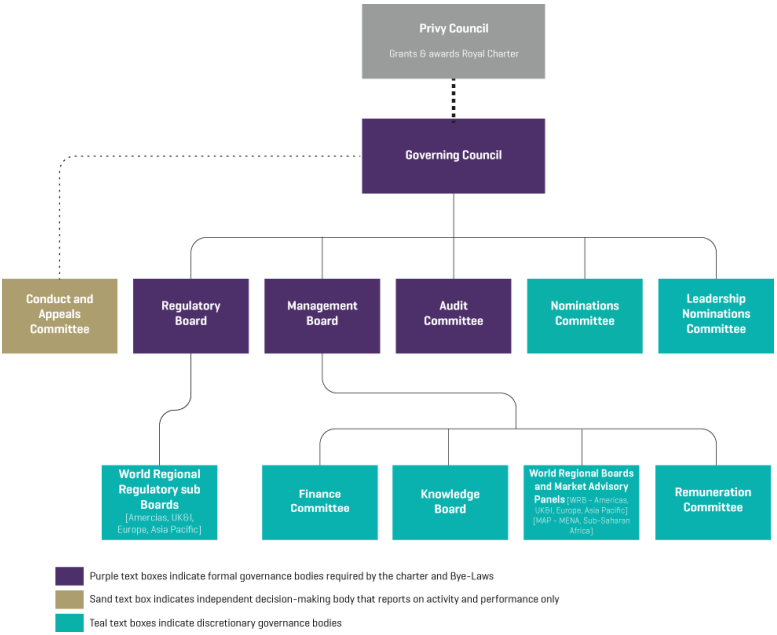
As an institution incorporated by Charter, it is, subject to the general law, self-regulating and not answerable to the Privy Council in relation to the conduct of its internal affairs. The role of the Privy Council Office only extends to dealing with amendments to its Charter, for which the work is instigated by the Institution itself.

Much of RICS' administration function is located outside London. Before April 2018, there was an office in Coventry which housed a large number of RICS staff; of particular relevance to this Review is that this is where the Finance Department was situated. In April 2018, the office moved from Coventry to Birmingham. It is accepted by everyone that one of the four non-Executives with which this Independent Review is concerned[30] gave a great deal of his time (unpaid) to helping to ensure the move went smoothly. It had been anticipated that there might be a loss of staff and this is indeed what happened; this was one of the reasons that the internal audit took place which is at the centre of this Independent Review.

[27] 'CPD'
[28] Fellow
[29] Member
[30] Bruce McAra

STRUCTURE AND GOVERNANCE

The impression I have been given is that much of the past decade has been spent in having governance reviews of one sort or another. These have led to a number of changes. The organogram below shows the formal governance structure as it was during much of the relevant period[31].



[31] until March 2020

Governing Council

Governing Council is the most senior governing body of RICS. Its existence is mandated by the Royal Charter, which states that subject to the Charter, Bye-Laws and Regulations, the management and control of the Institution and its affairs shall be vested in the Governing Council which shall have power to act in all matters in the name of the Institution. It has power to delegate many (though not all) of its functions, in such manner as it deems appropriate.

By virtue of the Bye-Laws, Governing Council directs the affairs of RICS. Its primary duties and functions include determining strategy and policy, overseeing and monitoring the performance of Governance Bodies and ensuring communication of direction and performance to members and stakeholders. As a matter of law, Governing Council is the directing mind and will of RICS.

Another way of putting it is that Governing Council *is* RICS.

From November 2017 its composition was amended by a Transitional Regulation which provided that it would have a minimum of 25 members (it had previously been larger but had decreased significantly in size over the years) of which 66% had to be elected, 66% Chartered Members, and 50% practising in the UK. The President and President-Elect are *ex officio* members. The basis upon which members of Governing Council are elected is arcane and has changed following various governance reviews. This is itself not without controversy but is out of scope of this Independent Review. The members of Governing Council are trustees and have fiduciary duties towards the whole membership.

What is of note is that no member of the Executive has a seat on Governing Council, nor do the Chairs of the various Boards and Committees. Although Governing Council is the Board of RICS, in the sense of being the most senior governance body, it is structurally quite different from the Board of a more conventional organisation such as a PLC. Many of those to whom I have spoken have told me that this structural composition is a significant weakness.

The President historically had the role of Chair of Governing Council. His or her term was for a year. Around the time with which this Review is concerned, Governing Council decided that the Chair should become a separate, remunerated appointment for a period of three years, which would be renewable. The rationale was that this would allow the President to conduct the ceremonial side of the job for a year, whilst the Chair would perform the administrative functions and would provide continuity year on year.

During the period covered by this Independent Review, a formal selection process to appoint the inaugural Chair was undertaken by a panel but I am told that it did not find a suitable candidate. In the circumstances, in November 2019, Chris Brooke, who was coming to the end of his term as President, was being considered for appointment as the Interim Chair on a transitional and temporary basis. At the Governing Council meeting which took place a matter of days after the dismissal of the four non-Executives, he was appointed. The Regulations stated that this would be for a period of no longer than one year, however, if a substantive appointment to the role had not been made within that period, Governing Council would review the position. In fact, Mr Brooke is still in post as Interim Chair, due in large part to the pandemic.

At the time with which this Review is concerned, Governing Council only met twice a year, once for a strategy meeting and once for an oversight meeting. These took place over two days and were generally held in different global locations. In addition to the Governing Council members these meetings would generally also be attended by the Executive, General Counsel, the Chairs of the various Governance and other sub-Boards and Committees and other staff members.

It will be apparent from the fact that Governing Council only met twice a year that in reality all operational decisions and routine oversight have had to be delegated.

Some past members of Governing Council told me that the Governing Council meetings have been carefully controlled and they did not always feel that they were given either the full information that they needed or requested or the opportunity fully to discuss the matters on the agenda. They described matters being presented to them *ex post facto*: often an issue or topic would be mentioned briefly in passing at one meeting, then at the next they would be told that it had been dealt with and concluded. When they queried this, the response would be to the effect that they had been told about it at the previous meeting. Whilst this may have been technically correct, the overall effect was that at neither meeting did they have any proper opportunity to debate the issue and have any meaningful input or oversight. That said, given that I have not spoken to all the members of Governing Council it may well be that there are others who do not share these concerns. In any event, I am told that since 2020 Governing Council has had monthly informal catch-ups.

The Management Board

The Management Board is established pursuant to the Bye-Laws. It acts on delegated authority from Governing Council. It is responsible for implementing the strategy of RICS as determined by Governing Council, to which it is subordinate and accountable. Its duties and responsibilities are set out in its Terms of Reference and I consider these in detail in Chapter 7.

During the period 2018-2019, the Management Board had nine members plus the Chair (who was a remunerated non-independent[32] non-Executive).

They were:
The Chief Executive (ex-officio)
The Chief Operating Officer (ex-officio)[33],
Five non-independent non-Executives:

- Kathleen Fontana (who was also Senior Vice-President and a member of Governing Council)
- Steve Williams
- Bruce McAra
- Natalie Cohen (based in Australia), also a member of Governing Council
- Edgar Li Kwok Wah (based in China)

Two independent non-Executives:

- Amarjit Atkar
- Simon Hardwick.

More than one person has told me that the Management Board is "*the closest thing to a normal Board in a company…you have executive and non-Executive members who have day-to-day responsibility for the management of the organisation*[34]". I consider in Chapter 7 whether this is an accurate way of characterising it .

[32] Non-independent in the sense that he was and is a member of RICS
[33] She was a member of the Management Board by virtue of being RICS' most senior finance Executive at the time (she had previously been the Chief Financial Officer, a post which was not filled following her becoming COO)
[34] Simon Hardwick, for example

All the non-independent non-Executives were unpaid (save for the Chair) and thus gave their time and expertise for nothing. The two independent non-Executives were paid a *per diem* of £340 for four full-day meetings a year. Both told me that they had not taken the position for the money and it was apparent to me that the level of payment in no way compensated them for the many hours which they gave to RICS.

There were a number of others who regularly attended Management Board meetings. These included General Counsel and the Group Finance Director.

The Management Board met four times a year. The meetings lasted for a full day and the papers were extensive (sometimes running to 500 pages). Amarjit Atkar told me that in his view these infrequent meetings were less effective than they might have been because the three-month gap meant that they were often considering things which had already happened. In any event a full day's meeting was too long as people were very tired by the end. He had suggested more than once that the Board should meet more regularly but for only half a day at a time but at the time of his departure this had not been accepted, not least because it was felt that the two overseas members had to attend in person.

It is my view that given the importance of the Management Board in the governance structure, quarterly meetings are far too infrequent. Unless or until that structure changes, they should be held more often and provision should be made for overseas members to attend at least some of the meetings virtually.

The Audit Committee

The Audit Committee also acts on delegated authority from Governing Council, pursuant to the Bye-Laws. Its remit is to consider matters relating to audit arrangements and systems and internal control. It is independent of the Management Board and reports to Governing Council only.

During the relevant period, the Audit Committee had three members, plus the Chair. The Chair is a remunerated independent non-Executive. The members are all non-Executives, one of whom is independent. I do not know if they are remunerated and it does not matter.

The Chief Operating Officer and the Director of Risk and Assurance are not members of the Committee, although they regularly attended the meetings. In most organisations, audit and risk are dealt with by the same body, but not at RICS.

The Audit Committee usually meets three times a year

INDIVIDUAL ROLES AND RESPONSIBILITIES

The purpose of this section is to give a brief overview of the people, their job descriptions and reporting lines which feature in this report.

President and Chair of Governing Council

The 2018-2019 President, Chris Brooke, was in post throughout the most significant events being considered by this Review. Under the previous governance structure, as President he was also Chair of Governing Council. As I have already explained, he was then appointed to the new role of Interim Chair of Governing Council, in which he continues today.

I interviewed him twice. He is a personable and articulate man, who has spent much of his career in very senior positions in CBRE and other international property companies, based principally in Hong Kong. He is a non-Executive Director of a large Real Estate Investment Trust. He has a long history of involvement in, and commitment to, RICS, which he has served in various capacities. As with all Presidents, he relies upon the Executive to support him in his role.

During the same period, the current President, Kathleen Fontana, was Senior Vice President (the first step on the three-year "Presidential ladder", leading to President-Elect and then President). She was also a member of Governing Council and a non-independent, non-Executive member of the Management Board. She remains on the Management Board although her six-year term is coming to an end shortly. As President she is automatically a member of Governing Council.

I interviewed Ms Fontana. She is clearly a capable and energetic person who specialises in facilities management, being Managing Director of a leading facilities management and professional services PLC.

Chief Executive[35]

Sean Tompkins is the CEO of RICS. I spoke to him for over four hours on a single occasion. I found him engaging and likeable. In my view there is a great deal to admire about him; his personal and professional achievements have been considerable. Whilst he was friendly and open with me in interview, there can be no doubt that he has found this Independent Review stressful and was anxious about the outcome.

At the time of the events in question, he had been at RICS for many years, having joined in 2002 and become CEO in 2010. He was frank about the fact that he found the governance structure of RICS unwieldy. In his view it is a real problem that the organisation in effect has two Boards and it was not clear who the Directors were. Governing Council is made up of 27 surveyors and is simply not equipped to run a multi-million pound international organisation. He believes RICS would be better served by a single unitary Board of the type to be found in some other professional membership organisations. In this view he is not alone.

A witness who did not want to be named told me that, looking back, he felt that the CEO had, in quite a calculating way, tried to drive the culture and the organisation of RICS to concentrate the decision-making with him and a small number of others.

One witness said of him:

> *"I thought [he] worked very hard. It certainly appeared that he had the interests of the organisation at heart. He believes in the organisation. It's almost as if it's his baby, so he was very close to it. But not always very receptive to criticism. I would say defensive"*

The CEO and the COO had worked together for a long time and appeared to be close. But this also led to the CEO being defensive on her behalf as well as his own. One witness said,

> *"You couldn't criticise [the COO] in front of the CEO; he would always defend her. He was very protective of her."*

[35] 'CEO'

Chief Operating Officer

Violetta Parylo was the COO at the relevant time. I spoke to her on two occasions: she was forthcoming and earnest in response to my questions. She was also, on occasions, extremely distressed. She said that she had found the events of the past 2-3 years difficult and stressful and she took the way she had been treated very personally.

She too had been at RICS for a long time; she is a qualified chartered accountant and had previously been its Chief Financial Officer. She was therefore the person who had been in charge of the Finance Department for many years. When she was appointed to the position of COO in 2018, the role of Chief Financial Officer was left unfilled. She thus remained the senior finance Executive for the organisation (the most senior position in the Finance Department below her was the Group Finance Director who reported to her). It was in this capacity that she had a seat on the Management Board. In January 2019, in order to rectify the weaknesses identified by BDO which are at the centre of this Independent Review, Rofi Ihsan was appointed as the Interim Chief Financial Officer, a position he still held when I interviewed him.

Because of the part she had played in the financial management of RICS over the years, the COO had not only theoretical responsibility for financial issues but actual responsibility, in the sense that any historic problems had happened whilst she was Chief Financial Officer.

One witness said to me, in confidence, that:

> "*Quite a lot got dumped on her [the COO] because [the CEO] was not very hands on. He quite liked the globe-trotting bit and didn't really engage in the nuts-and-bolts of managing the organisation and all of that fell to [the COO]. My impression was that she probably had a bit too much on her plate*"

Another agreed that she had too much to do. They said they remembered the Chair of the Management Board saying *"we need to be careful because she is overstretched and something might go wrong".*

Another witness described her as a very bright lady, a personality with a lot of gravitas. She was a powerful individual. Another said she was direct and wouldn't necessarily "do the niceties". She knew her mind and was decisive but did not pick on people. A further witness said that she could be incredibly supportive of her staff but could equally turn very quickly.

All four of the non-Executives liked her. One described her as an *"agreeable, sensible, competent person".*[36]

She resigned from RICS during the currency of this Independent Review; her last day was 4th June 2021.

Chair of the Management Board

Paul Marcuse has been the Chair of the Management Board for a number of years. He is a member of RICS. During his career he has held senior roles in real estate investment management, including as CEO, and was head of global real estate at a major global investment bank. He occupies a number of non-Executive positions, including chairing a flexible workspace business and being Senior Independent Director of a major listed UK Real Estate Investment Trust.

Bruce McAra said that he was highly intelligent, a real gentleman, a good listener and very dedicated to the improvement of RICS. He was an excellent Chair of meetings, conscientious about allowing everyone to have their say and giving them time to express their view.

A number of people said that one of the issues was that the Chair of the Management Board was too close to the CEO. They met weekly and sometimes daily. The Chair was a good man who, in the end, got stuck in the middle. One witness described him as being very set in his ways. Although he would listen, he wouldn't do anything. One said: *"I think he tried to do his best for the organisation. He was very, very close to the CEO."*

Another described him as an incredibly risk-averse individual, but in a good way. His chairing style was very collaborative. His nature was to involve others in the decision-making process and to seek as many different views as possible.

I spoke to him on two occasions for more than six hours in total. He also provided me with a 14-page document containing further observations, in addition to many contemporaneous documents relating to the events in question.

[36] Simon Hardwick

I thought he was a nice man who had been hit very hard by this. It was clear that he was very concerned to ensure that the right processes had been followed. I had the strong impression that he did not enjoy confrontation, which must have made his experience of these events particularly difficult.

General Counsel

General Counsel qualified as a solicitor in 2004 having been a trainee at Fieldfisher LLP. Having qualified, she remained at Fieldfisher as an associate in the public and regulatory group. This involved her working on a number of long-term secondments, one of which was that she was seconded on a part-time basis to RICS at the end of 2017 to assist in the development of a new General Counsel role following the departure of the Head of Governance and the in-house lawyer. She then applied for the role and became General Counsel in April 2018.

I interviewed her twice and also had email contact with her in respect of the provision of further documents relevant to the Review.

She is an engaging person and apparently a conscientious lawyer who I know has put in a very considerable amount of work to contribute to this Review, both in her role as General Counsel and voluntarily as a witness. She played an important role in providing advice and assistance to her employer in these events. I believe she did so with sincere intentions.

However, I have concluded that in performing her role in relation to these events, she placed excessive reliance on advice from her previous employer, Fieldfisher, who were RICS' chosen external legal advisers. It may be that her inevitable professional closeness to the firm that trained her was at least partly the cause of this. In any event, it did not serve her well.

The Chief People Officer

The Chief People Officer joined RICS in September 2018. The first two months of her appointment were spent alongside her predecessor as an induction to the job. She took over operational responsibility on 1st November 2018 (at the beginning of the period with which this Review is concerned).

She has experience of working in a number of very large commercial companies across a number of sectors, as well as a tech. start-up company.

I interviewed her on one occasion. She is an intelligent and motivated individual. She described her role at RICS as primarily looking at legal matters relating to employment, and duty of care for Officers, employees and non-Executives. Her contact with governance is purely through the Remuneration Committee, the meetings of which she attends, as well as the Nominations Committee. She also attends meetings of Governing Council as well as of Management Board on invitation. At the time I interviewed her, she had only ever attended Management Board on three occasions. One of these related to the events which I am considering[37], the other two were for matters such as informing the Board as to progress with employee engagement, organisational wellbeing and capability.

She told me that she felt that Governing Council was in a difficult position given its composition, the infrequency with which it met and the difficulty in finding the line between the trustee role and the management role. As with those of a number of witnesses who have day-to-day responsibility for the operation of RICS, I found her views on the complexities and issues encountered in the RICS governance structure to be enlightening and helpful.

Interim Chief Financial Officer

I interviewed Rofi Ihsan once. He is a chartered accountant and has had two previous CFO roles in the energy sector. He joined RICS on a temporary contract in October 2018 to assist with business planning, working under the Head of Financial Planning and Analysis. He "hit it off" with the COO and in January 2019 she asked him to work as Interim CFO, maintaining his emphasis on business planning, with the Group Finance Director continuing with the "business as usual" work but reporting into him.

He came across as a capable individual with drive and an engaging personality. He was appointed Interim COO in June 2021.

[37] 25th September 2019

Former Director of Risk and Assurance[38]

I interviewed the former Director of Risk once. I found him a modest, softly spoken, competent and professional man. He has considerable experience in audit. He had been employed at BDO before taking the job at RICS in June 2017. Having been put on furlough, he was made redundant in November 2020. He is now employed by BDO again.

He expressed great sadness at his redundancy and clearly felt upset that having initially been highly valued by the COO, she was very annoyed with him for having disclosed the existence of the 'no assurance' report to two of the non-Executives during a Risk Sub-group meeting in February 2019. I examine this further in Chapter 6 but I have concluded from all the evidence that he has been unfairly blamed, at least by the COO, for the events that ultimately gave rise to this Review. What he did was done in good faith and in a creditable spirit of openness and transparency.

Former Group Finance Director

I interviewed him once. He did not have access to any of the documents and I have borne that in mind when evaluating his contribution.

He is a highly qualified and experienced chartered accountant who had spent much of his career in industry, primarily engineering and manufacturing.

He was described by a senior member of the Finance Department as an extremely nice guy. He was said to be incredibly hard working, working all hours to try to make things come together. But his leadership team was not of the quality for him to succeed and if he had a weakness, it was that he never managed to step back and look forward a little bit. He focused on the task in front of him and was effectively running in a hamster wheel. Two members of his team did not get on and instead of dealing with that, he made them both report directly to him, further increasing his own workload and spreading himself even more thinly. The amount of time he was required to spend in producing papers for Board and committee meetings which were of the quality expected by the COO meant that he did not have enough time to focus on his operational work.

[38] Known for convenience as the Director of Risk

He left RICS in the Spring of 2019.

Audit Committee Chair

Amit Shah, the Audit Committee Chair, is a chartered accountant with over twenty years of risk management and assurance experience, having worked in audit and risk for large organisations in various sectors, as well as in corporate finance. He has occupied his role at RICS for many years. The Chair is an independent, remunerated, non-Executive position.

I invited him to speak to me as part of this Review or to provide a written account. He declined to do either, as is his right. He stated that he would have spoken to me had I adopted the same protocol for the conduct of the Review as my predecessor. I declined to do so on the basis that I had already spoken to a number of other witnesses and it would not be fair to them to treat him differently.

He was described by one witness as being very confident.

I bear in mind that I have not had the opportunity to speak with him or to hear his account of events. However, the evidence that I have heard and the contemporaneous documentary evidence that I have read give me the impression that he was closely aligned with the Executive and resisted what he regarded as interference from Management Board in the work of the Audit Committee.

The four non-Executive members of the Management Board who are at the centre of this Review.

I spoke to each of them separately, twice. All had sent me comprehensive written statements, together with some supporting documents. Some of the documents which were disclosed to me by RICS either had never been seen by them or had not been seen by them for many months. I have borne in mind that this potentially disadvantaged them compared to those who are 'RICS' witnesses, for whom General Counsel prepared bespoke packs.

All four have immensely impressive CVs. Were I to set them out in full it would add many pages to my report so I hope I will be forgiven for only mentioning those parts which in my view are most directly relevant to the issues I have to decide.

Although the four who were dismissed have been made to sound rather as though they were a cohesive group, each told me that this was far from the case either before or since their dismissal. None of them knew each other before they joined the Management Board and they had joined at different times. Simon Hardwick described them as being *"work colleagues with whom he had a constructive and friendly relationship"*. He said that the other three non-Executives on the Board were rather more remote and that he, Steve Williams, Amarjit Atkar and Bruce McAra *"were [those] who were most engaged with the business of RICS"*.

Amarjit Atkar said that they never met outside meetings to discuss things. What had united them was that each of them was concerned about the audit report and they shared those concerns.

Three of the four were second-term members of the Board. Given that a renewal of membership after the initial three-year period was contingent on performance, this supports what I was told by others, which was that until this matter arose, all four were regarded as extremely hard-working, pleasant and effective members of the Management Board. There is no sense from anyone that they were regarded as troublemakers.

Steve Williams

Steve Williams has given 25 years' service to RICS, almost all of it unpaid[39]. He was President of RICS from 2005-2006, he started RICS Americas and was Chair of RICS USA. He chaired the Knowledge Board and was the 'Chair of the Chairs' (the Chairs of the professional groups).

In 2018 he was awarded the Presidential medal for contributions to RICS.

He told me that he thought that the CEO would agree that he (Steve Williams), together with other people, had been responsible for a lot of the global growth which RICS has enjoyed over the last 10-15 years.

[39] He received a stipend for the year he was President

Mr Williams' commitment to RICS is beyond doubt. One witness described him as having been incredibly successful in business and:

> *"…a really good President. He's one of the few Presidents … that have been invited to get involved or have still wanted to get involved in different things post-Presidency, and he's one of those people that kept popping up … he was still wearing the RICS badge. He was still passionate about the organisation. He was well thought of by the Executive and others"*

This assessment is borne out by the efforts made by both the President and the Executive to give him the opportunity to "back down" when the decision had been made to terminate the other non-Executives' appointments, or at least to resign rather than be dismissed. This was no doubt partly borne of a desire not to be seen to be dismissing a former President but was also in recognition of the regard in which he was held and all that he had given to the Institution.

I asked Mr Williams (as a person steeped in RICS governance) to tell me what he believed his duties were as a non-executive member of the Management Board. He said:

> *"My duties were pre-set in a series of terms and conditions that related to the duties of the Management Board. They boiled down to about 6 headings. We were responsible for the oversight of the global performance of the Institution, which could include everything from risk to finance to conduct to standard setting. We were the highest Board under Governing Council. Governing Council meets three or four[40] times a year and it delegates operational performance responsibilities to the Management Board. So in the interests of the membership we were answerable to Governing Council for a huge range of activities and oversight management and for other Boards as well, such as the Knowledge Board.*
>
> *"The members were our constituents and our shareholders, to whom we were responsible for the efficient running of the Institution and the disbursement of their subscriptions and other income. Management Board was totally responsible for operational activities.*
>
> *"There was a governance gap in the way the Audit Committee communicated and was responsible to Governing Council and were able to avoid scrutiny by the Management Board"*

Of RICS' governance history he said:

> *"It had started off as a sort of members' club, meeting in pubs and coffee houses, but it changed over the last 20 years. In 1998 we agreed to a total change of direction and we agreed to go global. It became a confederation with a whole bunch of world regions. At the time the UK members had their noses a little bit out of joint. The branches were set aside….*
> *"[The CEO] and I really believed this was the way forward, but there was a little bit of unrest as we went global".*

[40] Actually only twice a year by 2018 - 2019

When I spoke to him he showed no malice towards anyone. He is a charming man who spoke in very warm terms of the CEO in particular, whom he had regarded as a friend. He told me that during his 25 years of service to RICS he had worked very closely with him:

> *"I was partly responsible for his interview and appointment process in 2010. I was [the CEO's] greatest fan and my biggest disappointment in this whole thing was not understanding why he has done what he's done".*

Mr Williams said this of Chris Brooke:

> *"Chris and I were great friends. We had done some business together. I knew his father very well. So he and I had a great relationship until the moment he terminated us. Until that moment I had great respect for him. [We had] two telephone conversations in the hours before he terminated us and they were still very cordial. I was saying to him "you need to do the right thing – I've been in your shoes, you need to take the high road, you are the one person of authority who can tell the truth, be frank, be open".*

He was plainly troubled by the loss of the friendship of the President and CEO.

The overwhelming sense that I got from him was one of sadness about what had happened and the fact that anyone could have felt it necessary to dismiss the non-Executives. I have no doubt that to this day he still wants the best for the organisation.

Simon Hardwick

Mr Hardwick, by background and training, is a solicitor who spent most of his professional career at PwC, where he worked alongside the audit team.

His route to becoming a non-Executive was that he was due to retire from PwC and decided that his next career-move would be to have a portfolio of non-Executive roles. In order to prepare for this he undertook some training courses[41] which covered, amongst other things, the roles and duties of non-Executive directors. A contact of his suggested that RICS might be of interest to him and he was introduced to the Chair of the Management Board and the CEO. In due course there was a vacancy on the Management Board and he was encouraged to apply for it. Following a rigorous selection process, he

[41] Including one at the Cass Business School

was appointed in January 2015 for a three-year term. His first year as a non-Executive overlapped with his final year at PwC before he retired. He was remunerated but it was not a substantial amount: a *per diem* of £340 for four days work a year. He told me that he did not take the role for financial reasons and that during his first three-year term he did not claim his fee. RICS was his first non-Executive role; since then he has been appointed to a number of other Boards. He has chaired five organisations, one of which was in public ownership (in the sense that it is owned by a local authority). Another is an investment and asset management business, and another involves a housing association. He also has non-Executive roles in two businesses owned by Norfolk County Council.

He was an independent non-Executive, in the sense that he is not a member of RICS. He and Amarjit Atkar were the only two independent members of the Management Board.

All the RICS witnesses, that is to say, the Executive, the management and the senior leadership[42], told me that Simon Hardwick was a very hard-working, effective and well-respected member of the Board. One or two of the witnesses said that he could be a little abrasive in his manner but all agreed that until the issue of the Treasury Management Review arose, he had been nothing other than a first-class contributor to the work of the Management Board. It is surely a reflection of this that his term was renewed in October 2017. Thus, at the time of his dismissal, he had one more year to serve.

In the interests of balance I should say that there is no doubt that some regarded the direct style that he employed in setting out his views and concerns, and in scrutinising and challenging, as unnecessarily confrontational. One witness described being the victim of bullying behaviour by him at a Management Board meeting. Others doubted how genuine his intentions were because of the way he came across.

That said, one impressive witness (who has held very senior roles) who knows him well spoke of Mr Hardwick's strong ethics and values. They added:

> *"…he's a diplomat and a peacemaker….he would do the right thing almost at the cost of himself or anything else. You know, Simon's a good guy, really, really strong."*

I asked Mr Hardwick how he saw his role within the RICS governance structure. He said:

> *"Management Board's role … was to exercise oversight of day-to-day operational decisions by the Executive, and Governing Council was responsible for the strategic direction of the organisation. I think that is entirely*

[42] For example, the Chair of the Management Board and the President

normal. When you have a Governing Council that consisted of 20 plus members , it is reliant quite extensively on having a steer from the Executive about where the strategy should be taking the organisation.
"Bizarrely, the Audit Committee sat as a separate entity that reported up to Governing Council rather than being a subsidiary of the main Management Board, which would be normal in the corporate sense. In constitutional terms [the centre of power was] Governing Council, but the reality was that the membership of Governing Council was so wide and so dispersed that it was not really ever able to exercise an effective governance oversight….
"There was a tendency to concentrate power into the hands of the Executive by restructuring what was happening in Governing Council by taking out the dissenting voices. I would say that, in practice, power very much sat with the CEO and the Executive team".

Having interviewed Mr Hardwick on two occasions, I sensed a very strong sense of duty and a desire to do the right thing. It may be that some did not enjoy being subjected to his style of scrutiny, but to the extent that anyone may have thought that this was for any purpose other than to serve RICS' best interests, I have concluded that they were wrong.

Amarjit Atkar

It is not without irony that Mr Atkar is an expert in governance and risk. He is a Fellow of the Institute of Chartered Accountants and is currently the independent member of the Audit and Risk Assurance Committee of the Department of Transport. He has been the Chief Risk Officer at the Ministry of Defence. It was following his recommendation to the Management Board the RICS set up its Risk Sub-group, of which he and Simon Hardwick were members, together with the COO and the Director of Risk.

He was a consultant at PwC, but he and Simon Hardwick had not known each other before they had joined the Management Board.

He was one of the two independent non-Executive members of the Management Board (the other being Simon Hardwick). He too was remunerated, at the same rate. He told me, as had Mr Hardwick, *"you don't do it for the money*". He said that one of the considerations for him was that he thought he could make a difference to the organisation; he wanted "*to make a contribution*". He had been invited to apply for the

position by one of the Past Presidents, who had felt that the Board could do with his experience. The panel which appointed him had included the Chair and the CEO.

He had joined the Management Board in December 2016 for three years. Thus at the date of his dismissal he had only a month left to serve.

Many witnesses spoke of him of him in glowing terms. The CEO said that he had a lot of respect for all four non-Executives but he thought that Amarjit Atkar was probably the most experienced of them in this sort of area. Another witness described him as *"a softer personality. He was more polite [than Simon Hardwick], more pleasant, whilst wanting to make his point known."* The Chair of the Management Board said that when Amarjit Atkar joined the Board he had a different, and very good approach, to strategic risks. When he raised points in relation to this matter he did so in a constructive way, even if the Chair didn't agree with all of them.

The COO said that RICS had developed its risk approach quite significantly, largely through direction from Amarjit Atkar. He had had a real positive influence.

I asked Mr Atkar to describe his role. He said:

> "*I understood that the governance structure for an organisation like RICS, which is a members' forum, would be very very different from a commercial, public organisation…there would be issues and risks around the governance structure, because I had worked for three years for an international NGO, which had a very similar structure where they had a Board of Governors and a Board.*
> *"Governing Council is there to represent the members' interests at the highest level of the organisation. The Management Board, on behalf of the Governors, is responsible for efficiently running the organisation and providing assurance to the Governors… it is responsible for how the business plan is executed, managing the financial performance of the institution and what I call the housekeeping: approving the accounts as true and fair".*

Mr Atkar told me that there was nothing wrong in principle with the RICS structure "*but it is always the people who make the difference as to whether things work or not…it's the important bit about openness, about transparency and about working together".* That said, he did have some concerns and one of them was why the Chair of the Audit Committee did not report to the Board, which he thought was highly unusual. The Chair only reported to Governing Council and then only once a year:

> "*I thought that was totally inappropriate, did not make any sense, was ineffective and I was pushing the Chair [of the Management Board] saying 'look we need to change this quickly. The Chair of the Audit Committee should be part of the Board and should report to the Board on a regular basis'…every time I got the response 'look I agree with you but we would have to change the Bye-laws to do that'*".

He was also concerned about the infrequency of Management Board meetings:

> "*We met four times a year for a full day. Papers were 3-4" thick, and they were tiring and exhausting meetings…. I felt we should have more of those meetings but only lasting for half a day, because what happens is that you have a meeting, you challenge management, you want some action done, but then we don't meet for three months. So you have no idea what is happening during those three months*".

Two things in particular were clear to me from interviewing him. First, he is a highly experienced expert on risk. Secondly, he is a warm person who is principled and assertive but also diplomatic and positive. I gained no sense that he would seek confrontation for its own sake. I have seen abundant evidence that he wished that this matter could have been resolved in a collaborative way, but he was not prepared to abandon his principled opposition to something he thought was wrong.

Bruce McAra

Bruce McAra is a Quantity Surveyor by profession and has been a Fellow of RICS since 2012. He has a number of impressive qualifications, amongst which is that he has a diploma in Company Direction from the Institute of Directors. He was for many years a partner at Turner & Townsend, a complex global professional services consultancy, which gave him a great deal of experience in governance.

Having been invited to apply by the CEO, he was appointed to the Management Board as a non-Executive member in June 2015, following a lengthy and rigorous application process. In 2018 the Chair invited him to stay on for a second term, mentioning the positive contribution Mr McAra had made generally, but most notably the very considerable time and help that he had given in relation to the relocation of the RICS office from Coventry to Birmingham. His two terms as a non-executive director of RICS were both unpaid.

A fellow member of the Management Board said they held him in very high regard. He was well-respected in the industry having held very senior positions. Like Steve Williams, he had an appreciation of the governance complexities of the organisation. Another described him as *"deeply steeped in [RICS]… a consummate member leader in the RICS".*

Mr McAra told me that when he first joined the Board, Governing Council had about sixty members and it was almost impossible to find out even who they were. They just sat in the background. The CEO spoke of modernising but the effect seemed to be to remove decision-making power from the Governing Council and put it within the gift of the Executive. Governing Council ended up with oversight but no ability to make decisions.

In the context of these events, Mr McAra told me that whilst the COO would be directly responsible for any failures in the finance function, ultimately it was the Board which would be accountable.

I found him to be a very pleasant and professional man, with a long history of support for RICS and a desire for its success. Like the other non-Executives, I concluded that he was concerned to do the right thing and it was on this basis that he had continued to pursue the treasury management matter.

CHAPTER 5

THE ISSUES

This Chapter has been removed from the Open version.

CHAPTER 6

THE EVIDENCE

In this chapter I have summarised the evidence which we have considered. We have grouped it under various headings, but within those we have dealt with it thematically rather than considering it witness by witness.

This is by no means a comprehensive account of what we have been told; rather it is a precis; it is my intention that the reader, whether familiar with the subject-matter or not, should be able to understand the factual basis:

(a) Against which I have considered the legal, regulatory and governance framework; and

(b) Upon which I have drawn my conclusions.

In this Chapter the evidence is set out largely without comment. I discuss it in Chapter 8 and set out my conclusions in Chapter 9.

We have grouped the evidence under the following headings:

6G 27th March 2019 Management Board meeting

6H The period between the 28th March and 19th June 2019 Management Board meetings

6I Late June – July 2019

6J August 2019

6K August to September 2019 and the Internal Governance Review

6L The 25th September 2019 Management Board meeting

6M 25th September – 11th November 2019

6N 11th - 21st November 2019

6O 21st November 2019 – the dismissal of the 4 non-Executives

6P Governing Council oversight meeting 2nd-3rd December 2019

6Q December 2020 to the present day

6R What went wrong?

6A CHRONOLOGY OF KEY EVENTS

12th June 2018	Audit Committee meeting at which it was agreed that as part of the routine internal audit, there would be an audit of Treasury Management controls
29th August 2018	Finance Committee meeting at which cash flow was predicted to be within RICS' reserves policy
11th September 2018	BDO and the Director of Risk began the process of scoping the Treasury Management internal audit report
9th – 19th October 2018	BDO were on site conducting the fieldwork for the internal audit of the Treasury Management function

26th October 2018	Special Finance Committee meeting as a result of unanticipated cash shortfall, at which it was resolved to increase the overdraft facility from £4m to £7m for 45 days from 1.11.18
6th December 2018	Draft BDO Treasury Management Report provided to RICS' Director of Risk
7th December 2018	Chief Operating Officer received the BDO draft report and was told that its conclusions were unlikely to change
12th December 2018	Management Board quarterly meeting
12th February 2019	BDO Treasury Management Report finalised
18th February 2019	BDO report provided to the Audit Committee
20th February 2019	Director of Risk told Simon Hardwick and Amarjit Atkar about the existence of the BDO report and that it had a 'no assurance' rating
25th February 2019	Chief Executive first saw a copy of the BDO report, having been previously unaware of it
12th March 2019	Audit Committee meeting at which it reviewed the BDO report and commissioned a re-audit to be undertaken in June 2019 to provide assurance that new financial controls had been embedded
19th March 2019	Finance Committee meeting. No copy of the BDO report provided
27th March 2019	Management Board quarterly meeting. No copy of the BDO report provided. The COO gave assurance that the re-audit report should be completed in time for the next quarterly Management Board meeting (June), at which both the original and re-audit reports would be provided

20th May 2019	BDO on-site fieldwork for the re-audit started
3rd June 2019	Original BDO "no assurance" report provided to the Finance Committee ahead of its next meeting
4th June 2019	First draft re-audit report (in the form of a short note rather than a report) sent by BDO to RICS.
10th June 2019	Finance Committee meeting at which the first BDO report was discussed but not the re-audit report
17th June 2019	Publication of the June 2019 Management Board Agenda and papers, which included neither the original BDO report nor the re-audit
19th June 2019	Management Board quarterly meeting. Decided that the original BDO audit report to be made available immediately on request to the Chief Operating Officer [but this part of the Minutes is disputed] and the re-audit report to be provided following the July Audit Committee meeting
28th June 2019	Interim Chief Financial Officer provided BDO with additional comments on the draft re-audit report
29th June 2019	BDO re-audit report finalised.
3rd July 2019	BDO re-audit report provided to the Audit Committee
15th July 2019	Audit Committee meeting. Considered BDO re-audit report and asked for further work to be undertaken because the short note "did not provide sufficient assurance" and was not sufficiently up-to-date.
19th July 2019	Management Board provided with: (1) the BDO original no assurance report (2) a note from the Chair of the Audit Committee saying that the Committee had considered BDO's re-audit (no copy provided) but did not think that it provided sufficient assurance and so a second re-audit was to be commissioned.

22nd July 2019	BDO started the fieldwork for the second re-audit report
26th July 2019	Simon Hardwick sent an email to the Chair of the Management Board asking for an urgent meeting to discuss the Treasury Management matter
5th August 2019	BDO provided draft second re-audit report to RICS
8th August 2019	Meeting held between Director of Finance, Director of Risk and BDO, following which a second draft of the second re-audit report was provided to RICS
12th August 2019	The four non-Executives emailed the Chair of Management Board to ask what was happening with the second re-audit and when the promised Special Meeting was going to take place
13th August 2019	Date of Special Meeting announced (29th August) Third draft of BDO second re-audit report provided to RICS following further comments
14th August 2019	BDO provided the final version of the second re-audit report to RICS and it was provided to the Audit Committee
18th August 2019	BDO second re-audit report discussed by the Audit Committee on its Virtual Community.
20th August	The COO formally instructed Fieldfisher to provide advice in relation to the upcoming Special Meeting of the Management Board
21st Aug 2019	BDO second re-audit report provided to the Management Board
29th August 2019	Special Meeting of the Management Board to discuss the BDO internal audits. The Chair announced that he was commissioning General Counsel to conduct an "internal governance review". This was opposed by the four non-Executives who would rather have had an external independent review.

2nd September 2019	Simon Hardwick and Amarjit Atkar asked General Counsel whether RICS would pay for them to receive some legal advice about their duties to the organisation as non-Executive members of the Board.
5th September 2019	General Counsel emailed Simon Hardwick and Amarjit Atkar to say that RICS would not pay for legal advice for them
12th September 2019	Finance Committee Quarterly meeting at which the BDO second re-audit was considered
20th September 2019	General Counsel's Internal Governance Review was provided to the Management Board. It concluded that there had been no failure of process.
24th September 2019	The Chief People Officer agreed to the COO's request that RICS should pay for her to obtain personal legal advice as to her employment rights
25th September 2019	Quarterly meeting of the Management Board
31st October 2019	Meeting between Simon Hardwick, the President and the Chair of the Management Board, at the President's invitation
11th November 2019	Bruce McAra sent a letter to the President on behalf of all four non-Executives
18th November 2019	Fieldfisher provided a note addressed to General Counsel which advised that all four non-Executives should have their contracts terminated
21st November 2019	The President wrote to all four non-Executive directors terminating their contracts
2nd – 3rd December 2019	Governing Council oversight meeting in London

6B THE 2018 OVERDRAFT EXTENSION

The events with which this Review is concerned had their origins in an unexpected cash shortfall in Autumn 2018.

The Finance Committee (which reports to Management Board) met on 29th August 2018. At this point cash flow was predicted to conform with RICS' policy, which stipulated that the overdraft should not exceed £4m. At the Management Board meeting on 18th September 2018 the COO reported that the financial situation was compliant with the reserves policy, i.e. there was no indication that anything had changed.[43]

That situation deteriorated rapidly. Less than a month later, on 16th October 2018, the Group Finance Director produced a paper for the Finance Committee in which he provided a 'current cash flow reforecast' for the next 5 months. This showed that the month-end cash balance for October would be a £3.7m deficit, expanding to a £6.5m deficit for November, before returning to a positive figure of £1.7m in December. The negative balance was forecast to peak at £6.8m on 2nd December 2018.

The report said:

> *"We will therefore be in breach of our reserves policy at November month end, as there is a requirement that the overdraft should be maintained at £4m. In September we presented to Finance Committee a business plan with a cash flow projection that suggested we would be within all the parameters of the Reserves Policy. This cash flow was based on a number of assumptions which have since changed and they are outlined below.*
> *"Our current view is that this is a short-term timing issue, with only one month end being in breach of the policy."*

One of the factors was an apparently unexpected £400,000.00 discretionary bonus[44] paid to the CEO. I include this fact not in order to invite judgement as to whether or not a bonus should have been paid but because of what it reveals about the financial arrangements at RICS. It seems that this bonus payment was completely unexpected and unbudgeted for. Commenting on the need to extend the overdraft facility,

[43] Minutes of Management Board meeting on 18th September 2018
[44] See p2, *Cashflow & Resources Requirements* paper dated 16th October 2018 and discussion on Finance Committee Virtual Community dated 19th October 2018

the Group Finance Director said, "*We need to build some contingency in for unexpected costs such as discretionary bonuses and expected costs coming in earlier than planned*"[45] (emphasis added).

Given that the amount was nearly half a million pounds, an unbudgeted-for discretionary bonus of this size is surprising in and of itself . I note in passing that it is the Chair of the Management Board who is responsible for performance-managing the CEO and recommends his remuneration. He also sits on the Remuneration Committee.

If this very large bonus payment was known[46] (in the sense that if the CEO met various targets, the payment would be triggered) then for some reason this had not been factored into the cash flow forecasting.

Either way, this does not reflect well on RICS' financial functioning.

In his 16th October 2018 report, the Group Finance Director outlined three possible solutions: improving working capital, liquidating investments and extending the overdraft with NatWest. In relation to the third option, he noted:

> *"RICS has historically relied on extended overdrafts to deal with short term cash shortfall. In 2012, 2013 and 2014, during our last period of investment the overdraft limit was £7m (1st Sept to 31st Jan) and £2m (1st Feb to 31st Aug) respectively.*
> *"Based on our current forecast we would not need the £7m facility until 2nd November and would be back to within the £4m limit by mid Dec.*
> *"We have received confirmation from NatWest that they will enter into this increased overdraft provision. An arrangement fee of approximately £15k would be required with interest on the excess of £4m amounting to £1k."*

He recommended that the Finance Committee approve the almost doubling of the overdraft facility from £4m to £7m for a period of 45 days. The consequent breach of the reserves policy would be reported at November 2018 month end. The Group Finance Director ended by saying:

> *"Finance Committee Chair to brief Management Board on the decisions made through the regular Board report and give assurance that cash flow management is under control and that they are comfortable with this temporary arrangement/or are comfortable to revise the reserves policy for such a limited timing circumstance."*

As there was no regular Finance Committee meeting due to take place before the increased facility was needed, an emergency meeting was held by conference call on 26th October 2018. The Finance

[45] Exchange on the Finance Committee Virtual Community
[46] Contrary to what the Group Finance Director said

Committee agreed the proposal to extend the overdraft facility from £4m to £7m for 45 days[47] from 1st November, but highlighted the need for better forecasting in future. This was to be discussed at the next regular meeting, which was due to take place on 21st November 2018.

It transpired that this updated cashflow forecast was itself inaccurate, because the overdraft never increased beyond £4.9m. It follows that the full £7m facility arranged with the bank was not needed. I do not think it is unfair to say that this reveals that the Finance Department really had very little idea of how much cash they had, or were likely to have, or were going to need in that two-month period. For an organisation with a turnover of £80 million, to say that this is both surprising and disappointing is an understatement.

It would be expected that the COO would have been made aware immediately the need to double the overdraft facility was identified, because the Group Finance Director reported directly to her; indeed subsequently she was to confirm that she had known in October 2018[48].

There were thus two routes by which the Management Board could legitimately have been expected to be told that this issue had arisen: by the Finance Committee (which reported to it) or by the COO (who was a member of it).

The CEO told me that he thought he had been told in September or October:

> "*Because I'd put the business plan to bed which had all the cash flow forecasts…and then I was told that this work was being looked at by the Finance Committee. The Finance Committee would re-look at it and then would make some decisions and advise the Management Board".*

From this evidence I am satisfied that both the CEO and the COO, who were both members of the Management Board, had known about the breach of the reserves policy by October (at the latest) but had not thought to notify the rest of the Board immediately.

Amarjit Atkar said:

> *"It came as a bit of a surprise, because in some ways the business means you don't have to wait until a Board meeting. You can actually tell us before there is an issue, we have a portal and papers are posted there. A note could have gone out just to alert us, you know? "*

[47] 45 days is the period stipulated in the paper, but in fact the period for which the overdraft facility was extended was 48 days (Finance Committee Minutes dated 21st November 2018 and Management Board Agenda dated 10th December 2018). I do not believe anything turns on this.
[48] Email from COO to CEO and Chief People Officer 11th September 2018

In fact, the Management Board did not become aware of it until 10th December 2018, when the Agenda for the 12th December 2018 meeting was published. The papers for the Management Board were 406 pages long. On page 59 (after the CEO's and COO's updates, which were silent on this matter) it said:

> *"**Reserves Policy***
>
> *"The current position and forecast cash flows continue to be compliant with the Reserves Policy as summarised below with the exception of planning to exceed the £4m overdraft limit at November month end. November is the only month end when the overdraft will be outside policy. The increase in overdraft was approved by Finance Committee and put in place with Nat West.*
>
> ***"Reserves Policy Non-Compliance***
>
> *"In preparing the Business Plan (BP) there were several assumptions made when preparing the cash flow. Based on those assumptions, it was expected that the BP would be compliant with the Reserves Policy through the BP period. Subsequently, a number of those assumptions relating to cash inflows and transfers were delayed leading to the need to extend the overdraft to £7m for 48 days from 1st November 2018.*
>
> *"Finance Committee explored the various options available to it, and given the relative short-term nature of this, as well as the opportunity to improve on the working capital position, agreed that the best course of action was to increase the overdraft for a short period of time. Management Board should be aware that this is not in compliance with the reserves policy and that this will be reported as such.*
>
> *"For the purposes of reporting compliance with the Reserves Policy – we have reported a non-compliance of this policy only at November 2018 month end with compliance ever month end thereafter."*

Thus by the time the Management Board was notified about the breach of the reserves policy, RICS was already 40 days into the 48 day emergency extension of the overdraft.

The Board's regular quarterly meeting took place two days later, on 12th December 2018. An account of what happened at that meeting follows in section 6D.

Views about the seriousness of this breach of the reserves policy differ. Both the COO and the Group Finance Director felt that it was not really that big a deal. The bank was always likely to agree to extend the overdraft, particularly for such a short period and in circumstances where RICS had for many years had a much higher facility. Although it was a breach of the policy, that policy was only an internally set target rather than, for example a legal requirement. As set out above, the bank charged £15,000 for arranging the overdraft plus £1000 interest on the excess of £4m. I asked the COO whether this wasn't a waste of money, but she felt that the amounts were not significant. In the overall scheme of things, that may be right, but I make the observation that this is members' money and care should be taken for that reason alone.

The CEO's view was that:

> *"Ever since I've been the Chief Exec, the organisation has operated on an overdraft, it's the bridge, the lumpy nature of the way revenues come into the organisation so in any twelve-month period the organisation is overall cashflow positive, there are just a couple of months where it needs an overdraft before the bulk of the subscriptions come in. So stepping back, it's not a massive issue, it's not like the organisation is cash flow negative.*
>
> *"… but equally I want to know that the finance team can get the cash flow forecast accurate because I'm reliant on all of the information as the CEO so it's a big deal from that perspective. I was in a position where the forecast was not as accurate as it needed to be; I've never experienced that before as the CEO.*
>
> *"I think it was bloody disappointing that my team believed we need access to 7 million and our reserves policy tries to keep it within 4 and at the end of the day we only really need 4.9. So the level of alert that it created …I mean it says I haven't got a team who are on top of cash collection and treasury"*

However, some regarded this cash flow issue as extremely serious. They have said that it is simply not adequate to rely on the bank to step in at short notice, because the bank's lending policies may change or they might become 'spooked' by what they perceive as a lack of financial control.

Others say that cash flow forecasting is one of the most basic functions of a finance department and if it cannot get that right then it is a sign that all is not well.

Bruce McAra and Simon Hardwick both made the point that RICS does not have a hugely complicated cashflow model: it knows what its income is likely to be because it comes from membership fees, which it takes in at the beginning of the year and then spends throughout the following twelve months. For this reason, suddenly to need to increase the overdraft not just by a little but almost to double it and at very short notice is not the sign of a well-run organisation.

I asked BDO if they agreed with that assessment and they said that broadly speaking they did.

I note in passing that as far as the breach of the policy is concerned, it is hardly good governance to treat a financial control policy as though it was dispensable when it became inconvenient.

In Chapter 8 I analyse this further.

6C THE BDO INTERNAL AUDIT OF THE TREASURY MANAGEMENT FUNCTION

Nature of an internal audit

An internal audit is in many ways quite different from an external audit. The objectives of an external audit are defined by law; its purpose is to provide an objective independent examination, verifying that the financial statements provide a true and fair reflection of where the company is financially. The external auditor must confirm that the financial statements have been appropriately prepared in accordance with accounting standards. External auditors must be able to act independently to ensure an objective approach to the process. The external audit will be put into the public domain.

By contrast, an internal audit is primarily a tool used by a well-managed organisation to give itself comfort that its various processes are working well. In general terms, it is a sort of 'health check', designed to examine the key risks facing the entity, its effectiveness in managing those risks and to assess the control processes that management have implemented. It is discretionary rather than obligatory.

Internal auditors perform an advisory role by issuing recommendations aimed at supporting management to improve their systems and controls. The scope of their work is defined by management, who will pinpoint certain areas for attention in light of the organisation's objectives and risks.

Unlike the external audit, there is no requirement for the internal audit to be undertaken by an independent firm. The organisation can either have it performed by its own staff or can outsource it to an external audit firm. RICS used a hybrid model, called a 'co-sourced' internal audit, and the auditors it appointed for the purpose were BDO.

The way in which a co-sourced internal audit worked was that RICS would set the parameters for what was to be evaluated, but BDO would conduct the scoping exercise and do the fieldwork (which would include testing of processes and speaking to the staff). BDO would then produce its report in draft. That report would always go through a process of checking by RICS management, which would ordinarily lead to some factual corrections being made. Once BDO had finalised its report, it was up to RICS what it did with it.

It is what happened to the first BDO report that is at the heart of this Independent Review.

It could be said that BDO's role was to act as RICS' 'critical friend' (an expression which has been used in a number of contexts in this report). This is significant because it underlines the fact that it was not in BDO's commercial or professional interests to exaggerate its findings.

The point has been made to me repeatedly that, given that an internal audit is a voluntary undertaking designed as a health check, an organisation which is trying to hide something would hardly commission one. It is a good point and this is one of the factors which should give comfort to Governing Council that whatever else was happening in the Finance Department, the COO had no reason to suspect any fraud or other dishonest financial mismanagement.

The aspect which was to be subject to the internal audit which is the subject of this Review was RICS' Treasury Management function. 'Treasury Management' is the management of an entity's liquidity; it involves controlling its funds and working capital in order to make the best possible use of them. It includes mitigating its operational, financial and reputational risk. Cashflow forecasting is an important aspect of the Treasury Management function, because - put simply - an organisation which has run out of cash and does not have appropriate loan arrangements in place cannot pay its bills.

Cash flow forecasting is also a measure of assessing the long-term sustainability of the organisation. An entity which has poor forecasting risks misrepresenting its financial position.

The commissioning of the internal audit

The circumstances in which the Treasury Management audit was commissioned are clear; what the COO was subsequently to say about it is a matter to which I will return.

The evidence demonstrates that the BDO internal audit in respect of Treasury Management was planned in October 2017 as part of a three-year audit strategy agreed by the Audit Committee. One of the drivers was the fact that it was known that when the offices moved from Coventry to Birmingham in April 2018 there might be a loss of staff. In fact 30% of staff left because of the move, but the situation was worst in finance which lost 66%[49].

[49] COO interview 7th May 2021

At the Audit Committee meeting held on 12th June 2018, the Director of Risk had presented a paper seeking approval for the suggested plan for the financial year 2018 – 2019[50], which included the Treasury Management audit which was set for the first half of RICS' financial year (i.e. the Autumn). The plan was approved and it was to be circulated outside the Committee[51].

The BDO Treasury Management audit therefore was not prompted by the failure of cashflow forecasting which led to the unplanned extension to the overdraft in the Autumn of 2018. That said, the two events were closely related, in the sense that at exactly the time that BDO identified a serious risk in the cashflow forecasting, that risk manifested itself.

Although it was the Audit Committee which had planned the Treasury Management audit, the arrangements were made by the COO and the Director of Risk, who reported to her. As a result, it was to the Director of Risk that BDO first communicated its findings and to whom it sent the report. The Director of Risk then sent it to his line manager, the COO. What happened to it thereafter was outside BDO's knowledge and control.

The audit process

The process began on 11th September 2018 when the Director of Risk sent an email arranging to meet BDO. The project was scoped and Terms of Reference agreed, with the fieldwork starting on the 8th October 2018[52] and lasting for about 10 days. I was told by the BDO Director[53] who was in charge of the audit that it became apparent very quickly that there were serious problems. He explained the audit process to me as follows:

> *"The Chartered Institute and the Internal Audit Standards require risk-based internal auditing. So rather than saying here's a bunch of expected controls that we are going to check, instead you say 'well what could go wrong in this function? What do you do to manage that?' And then we assess two things as part of the fieldwork.*
> *" Is what they're doing suitably designed? Our report says no, we can provide you with no assurance over the design of your controls.*

[50] RICS' financial year runs 1st August to 31st July
[51] Minutes of the Audit Committee meeting 12th June 2018, point 3.2
[52] Some of the documents show the fieldwork as having started on 9th, but I have concluded that that is likely to be a mistake.
[53] He is now in fact a partner; I hope he will understand that I mean him no disrespect by referring to him as 'Director' in order to distinguish him from his colleague who was already a partner at the relevant time.

> *" [Then usually the next question would be] are the controls that are in place and suitably designed operating properly? You'd only test this if they were fit for purpose….[but here they were not]. "That forms the basis of our operational effectiveness opinion, which again we said 'no we cannot provide any assurance over that either'".*

BDO told me that RICS staff were unaware of information such as the number of bank mandates that RICS had for international bank accounts: they initially thought they had eight but it turned out to be more than 60[54]. In short, the system was so poor that RICS could not even provide sufficient information for BDO to perform the testing that it would normally do.

The BDO Director told me that because this was a co-sourced internal audit, it would be usual for him to talk to the client as they went along. In this case that meant telling the client immediately about their preliminary finding and that that is what he did. He told me that he held a meeting with the Director of Risk at which he told him *"about the major issues in lack of control around Treasury Management"*. The BDO Director's understanding was that the Director of Risk immediately briefed the COO, which is what one would expect given that he reported to her. This is confirmed by an email sent the following day[55] by the Director of Risk in which he told BDO that he had 'debriefed' the COO about the conversation the day before and that she would like a meeting with them to discuss their findings. That meeting was fixed for 17th October but cancelled by the COO at short notice[56].

The COO told me that she had indeed been informed that there were some issues before she saw the report, but she thought this was very shortly before the draft was delivered (which was on 6th December 2018). I am satisfied that in fact she was aware nearly two months earlier than this and that the evidence[57] clearly establishes that by 10th October 2018, the COO knew that BDO had uncovered major problems in the Finance Department. At around this time she also learned that the overdraft limit would need to be extended[58]. The dates she acquired both these pieces of knowledge are significant in terms of her subsequent actions.

On 22nd October, BDO held a "close meeting" with some of the RICS representatives. Following that, BDO's senior auditor prepared the draft report. It seems that she put the date of 8th November 2018 on the front because that was the date she began writing it, but I am satisfied by the evidence (and it is accepted by BDO) that it was not provided until 6th December 2018; when there are references many months later to the 'November' report, it is this report that is meant. I am not entirely clear why it took

[54] The Director of Risk told me that eventually it became clear that there were more than 80
[55] Email of 10th October 2018
[56] because her other meetings were overrunning – see email from the Director of Risk to BDO, 17th October 2018
[57] IRT interviews with BDO and the Director of Risk, supported by emails of 10th October
[58] See section 6B above

a month to provide it but I am satisfied that nothing turns on this. That said, the fact that the report appeared on its face to be dated 8th November 2018 was to cause major trouble in the months to come.

When I interviewed the CEO, I asked him whether he would have expected the COO to have given him a warning as soon as she knew there was a problem with the Finance Department. He said that he would absolutely have expected to have been told, but he knew nothing of BDO's findings until late February 2019. When he finally found out about it:

> *"My question to [the COO] at the time was: this seems pretty significant, why don't I know about it? Can you send it to me immediately? I asked her at the time why given the content she didn't feel that she could have at least sighted me or given me a bit of a heads up…I don't like surprises"*.

Her reason apparently was that she felt it needed to go through the Audit Committee before she told him. The CEO said:

> *"I didn't believe that she was doing anything to try and hide anything from me….[but] would I have liked to have known about it earlier? Yes*".

I am troubled by both the COO's explanation and the CEO's apparent acceptance of it.

With this in mind, the following email is significant. On 31st October 2018 the COO sent the CEO a "heads up" from the Audit Committee. She said:

> *"Unqualified audit opinion with some small balance sheet adjustments as reclassifications – nothing unusual here – some poor housekeeping matters have come back and some additional papers have been requested to substantiate a couple of further areas. Given the return of some of these matters, I have asked for a full balance sheet review for the UK around the controls being performed to be conducted by an external internal auditor….."*

In light of the reference to the full balance sheet review, I have concluded that it is possible that in this email she might have been referring to BDO's findings. Given that by the time this email was sent she knew how seriously BDO were taking the matter, the tone is interesting. That said, it is possible that she was referring to some other aspect of financial control; the matter is not sufficiently significant that I need to resolve it.

The CEO responded on 5th October to ask whether this merited the email to the Group Finance Director that they had previously discussed, namely "*well done*". The COO responded, *"Absolutely not".*

The delivery of the report

At 20.18 on 6th December 2018, BDO emailed the first draft of their report to the Director of Risk. In the email, the BDO Director said two things which are, in my judgement, significant.

The first was that he asked the Director of Risk whether the report "*would meet your critical risk criteria as this is a rating not built into the BDO grading system.*" He told me that what was meant by this was that BDO's rating system differed from that of RICS. RICS had five categories where BDO only had three. BDO's most serious level was "high priority", whereas RICS had both "high" and "critical" levels. BDO had put it in their highest category; the point of the question was whether as far as RICS criteria were concerned it should be in the highest category or one lower. The Director of Risk confirmed that it should be described as "high priority", which is the second most serious RICS category. The significance of this is that BDO had given considerable thought as to how to describe the level and I am satisfied that when they described the level of priority this needed to be given as being in their highest category, they meant it.

The second significant comment in the BDO Director's email was that he suggested a meeting to talk through the draft to ensure 100% accuracy "*as this may be a difficult message for the business to take".* When I spoke to BDO I asked them what they meant by this; they told me that 'no assurance' was not something which they wished to have to tell the organisation but the state of affairs was such that they were professionally obliged to do so.

The following morning, the Director of Risk emailed the draft report to the COO, referring to a discussion the night before and saying "*even if there are a few tweaks needed, the overall message is unlikely to change into a positive one*"[59].

I am satisfied that the COO knew exactly how serious this was because later that morning she emailed the draft report to the Group Finance Director saying:

[59] Email sent at 0821 on 7th December 2018

> *"As discussed yesterday … whilst there still needs to be some checking of the facts, I do not believe this is going to shift significantly….This report is indicating a significant risk to the organisation … I want you to consider which actions need to be put into place immediately."* (emphasis added) [60]

Thus on 7th December 2019, the COO was in possession of the draft BDO 'no assurance' report, knowing that it was unlikely to change significantly and with a full understanding of the nature and level of the risk. The importance of this will become clear in the light of what the COO was to tell me about her thoughts and actions.

BDO told me that it was their understanding from the outset that the intention under the co-sourcing arrangement was that, whilst they dealt directly with the Director of Risk, he was reporting to the COO and the report would go through her to the Management Board as well as to the Audit Committee. BDO had no control over who would see it and were not reviewing things from a governance perspective, but this was their firm understanding, based upon the fact that in their experience as auditors, a serious report like this was something the Management Board would want to be sighted on.

The content of the report

The BDO first draft of the report consisted of 14 pages. I set out the Key Findings in full below.

> ***Key Findings***
>
> *We have reported a number of findings during our review, including 4 of high priority and 2 of medium priority. Full details of our findings and recommendations can be seen within the management action plan in the following section of this report; however, below we summarise the high priority findings which need urgent attention:*
>
> - ***Treasury Management Framework:*** *There is no documented global Treasury Management Framework. Although various Treasury related policies exist, these have a number of notable omissions, have not been version controlled, and have not been updated to reflect the amendments requested by the Finance Committee. Furthermore, the policies are high level and there are no documented procedures in place for key Treasury activities. The Treasury Team was only recently appointed in April 2018, but confirmed they were not aware*

[60] Email sent at 1232 on 7th December 2018

of the existence of the Treasury policies and we could not find them on the shared portal at the time of the audit.

- ***Bank Mandates:*** *The Institution has not documented a policy for setting up a new bank account or amending the mandate of an existing one. There are numerous bank accounts across the 35 international locations where the UK Treasury Function is not on the mandate and does not have access to the Bank Statements. Furthermore, despite the Treasury team maintaining a list of international accounts, there are no controls in place to ensure completeness of this list; a recent exercise identified additional bank accounts in one country that we not previously known to the UK.*

- ***Cash flow management –*** *The Institution's 18 month cash flow forecast was produced by the AFC in June 2017 but this only runs to 31 December 2018. The AFC confirmed that it should have been updated each quarter to extend it by 3 months, but due to a change in his role this has not happened. We also identified that the Treasury Update presented to the Finance Committee in August 2018 contained a three year cash flow forecast that highlighted a negative net cash flow for 2018/19 of £610k, and the need to extend the maximum overdraft facility by an additional £3m to £7m. We requested the workings behind the three year cash flow model, but none could be provided to support the figures presented. Due to the manual nature of the completion of the cash flow forecast spreadsheet there is a possibility of error or manipulation of the spreadsheet. Furthermore, there is a high risk that the Institution may have unidentified cash flow issues post December 2018 when the detailed cash flow forecast ends.*

- ***Bank Account Reconciliations –*** *The Treasury Policy does not mandate the requirement for bank account reconciliations or the thresholds for resolving unreconciled differences. Due to the small size of the Treasury team and the large number of bank accounts across c.35 international locations, management confirmed that they have insufficient time to investigate and resolve unreconciled differences across all the bank accounts. Therefore, the management accounts are prepared with outstanding unreconciled differences each month.*

We also made two medium priority recommendation which are outlined in the detailed findings section of the report. These finding relate to control weaknesses over interbank transfers and the monitoring of actions from the Finance Committee to be carried out by the Treasury function. We believe the root cause for the risk exposures outlined in this report fundamentally relate to:

- *A lack of a communicated Treasury Management Framework setting out the policy rules for the international network to comply with. This happened over the period when RICS were expanding overseas and has not been addressed since.*

- *A relatively new UK Treasury team that did not receive a tailored induction for their role, did not have the Treasury policies communicated to them and have not received any bespoke training on how to apply the policies and procedures.*

- *Much of the Treasury team's time is spent chasing information from the international network who are not being centrally controlled, and therefore there are insufficient resources to carry out day to day routine activities, such as following up bank reconciliation variances, and continuing to update the cash flow when someone leaves.*

- *An over reliance on spreadsheets, which are poorly controlled, and key management information not being driven from software / automated tools, such as stress testing models and automated KPIs from feeder systems.*

- ***A culture that was aware of many of these issues but accepts the risks associated with them due to the resourcing issues and the transformation programme. There was no 'tone from***

the top' that these issues are unacceptable to be left unaddressed, instead there is hope that the Finance Systems project will resolve much of the issues in the future.

Conclusion

Overall, our review identified that the Treasury function has: insufficient resources to carry out all key tasks; limited access to global bank information; no training or awareness of the Institution's treasury policies, and a lack of documented procedures; and inadequate cash flow modelling arrangements. In our view, the control framework is not adequately designed to effectively and efficiently manage the key treasury management activities and associated risks.

Considering the fundamental nature of the high priority issues raised in this report, and the large number of overall improvements required to address these weaknesses, we believe there is a higher potential for unidentified fraud, misappropriation of funds, and misreporting of financial performance. Furthermore, it is not surprising that the Institution has had to extend their overdraft facility at short notice and there is a risk that further cash flow difficulties may arise in the future.

As such, we can provide no assurance over the design and operating effectiveness of the controls in place for the Treasury Management arrangements at RICS. (emphasis added)

In her evidence to me, the COO said it was really important to make the point that audit reports can be incorrect. There is a process by which management go through it, challenge and discuss. That had not happened as at 6th December 2018. The Group Finance Director must have told her that he thought there were inaccuracies in the report, so she gave him the benefit of the doubt to go through the process with BDO.

However, as will be seen, the conclusions remained unaltered when the final report was finally signed off by BDO two months later.

How serious was the "no assurance" finding?

I was told by the COO, the Interim Chief Financial Officer and the former Group Finance Director that whilst plainly a no assurance report is something which an organisation would not want to receive and that it was "disappointing"[61], it was, relatively speaking not all that serious.

[61] Interview with the COO dated 7th May 2021

The COO told me that had she been the one talking to BDO, she probably would have been able to get the risk rating changed. For example, BDO had said there were no policies in place, but there were; she thought this might have been said because the team was not aware where the policies were kept.

When she stood back and thought about the real risk to the organisation, the actual risk of fraud was there but it wasn't probably as stark as it was described. The report was written on the facts as BDO saw them, without the context of how RICS operates. The international bank accounts did not have a lot of money in them. A no assurance rating was probably more common than people might think, but this is not common knowledge. 2015 was the first year they had brought in a Director of Risk, so the risk system was immature. Her main feeling when she saw the report was disappointment because one of the reasons she had brought in the Group Finance Director and Group Financial Controller was to upskill the team.

The CEO said that he had never before had such a report at RICS. It was an alert that something needed to happen pretty radically, but it also needed to be put into the context of the organisation. In his view, internal auditors tend to say things to grab attention of Management to do something. He had asked some of the people he worked with at CIIA[62], and the issue of bank mandates does appear to be a bit of an internal audit "*hardy perennial*". He also spoke later on to the Audit Committee Chair, who said that it wasn't unusual to see a 'no assurance' rating, but you needed to have much more frequent auditing and compliance around the bank signatories.

In order to test this, I asked BDO how serious they thought the situation was.

ALQC *…in your professional opinion, you're sending out this report that is a red report so, no assurance, it's got high priority which is your highest level attached to it. [Is] the message that this is sending "guys this is really bad"?"*

BDO *From an internal audit and internal controls perspective yes. And that's why it's red - in the same way as any sort of red, amber and green system."*

ALQC *It has been suggested by some that a no assurance report is not that big a deal. It happens, it's quite common, it's not unheard of and actually in this particular case the risks weren't that great.*

BDO *I can understand why some people might say that depending on the organisation that they're referring to. I think you have to put the audit into context. If it's a key area of an organisation and we produce a red report it basically says look, what we're indicating is that your risks aren't really being managed effectively, you need a lot more control in place and rigour in order for this to be effective erm then then they need to take that understanding.*

So when you're talking about Treasury, if you had a red report against Treasury in my mind, and this is my own view, you would take that seriously. … I would say 99% of organisations would have the same view….I mean the conclusion on the report says it all. We say there's a higher potential for unidentified fraud as you don't have the controls in place to actually tell whether it's happened or not, to detect misappropriation of funds, and in particular we're

[62] Chartered Institute of Internal Auditors, upon whose Board the CEO sits.

talking around international there because you didn't know what bank accounts you hold, you don't know whether you are on the mandate and you're relying on somebody telling you in a spreadsheet what the cash in and out are without any verification.
And as a result because of the lack of robustness around the cashflow piece there could be potential misreporting of financial information because there's a weakness and the completeness. No controls around completeness, accuracy, validity, integrity or restricted access of that information.

ALQC *…one of the things that was suggested to me is that it wasn't that great a risk because none of those international bank accounts had much money in them*

BDO *But they wouldn't know. Well that's the point isn't it. You'd need to have some control, some mandate, some oversight of it because who would know that if they were using those accounts for money laundering or something. We just wouldn't know because there's no control."*

Perhaps the clearest indicator of the seriousness of BDO's conclusions is that the Director said he had been doing this since 2007 and he could not think of any other Treasury Management audit that he had given two "red" ratings to. The partner said that a 'no assurance' rating in Treasury Management was such a rare occurrence that he did not think he had ever issued one before, "*because it is such a fundamental area for business to get right. You run out of cash, you don't exist.*"

I asked him whether this was something which they were happy with doing. The partner said:

> *"It is serious and that's why if we are going to give you a no assurance report there's a lot of discussion and a lot of diligence and a lot double checking because of course from my perspective as a BDO partner* ***that's the last thing I want to do*** *is be issuing a no assurance report to a client because you know that typically the level of diligence, the level of questioning from management will be extra 'WOW that's really bad, can we see this, can we talk about this or can we provide you with more'".* (emphasis added)

I asked the Director of Risk how serious he thought the report was:

DofR *… a no assurance report on Treasury Management, which is one of the key functions of a finance team – effectively it is the management's reporting of cash and money within a business – no assurance is very significant I would say. You've got no policies, you've got no visibility over cash, you have a situation where they knew about 8 bank accounts out of about 30 which then transpired to be 8 out of 80. You then have poor reporting over the top of it. Any auditor [doing] the same report with the same terms of reference and looking at the same areas would have come up with the same conclusion, I'm quite sure of that.*

ALQC *… it's been suggested to me that… it's not as serious as it sounds because often these accounts were in other countries, and they've got virtually no money in them.*

DofR *I think in terms of the principle, people are operating bank accounts in your name that you have no visibility on. The bank reconciliation process didn't take place and in terms of a potential fraud risk anything could be happening within those bank accounts and then nobody would know. I mean, during the audit itself [the Group Financial Director] identified a bank account with £10,000 in*

it. Ok, that might not be material but if you find 10 bank accounts with £10,000 in them then suddenly that's 100 grand and, actually, it's members' money. And we've got no control over it.

There is thus a conflict of evidence as to the seriousness of the report. I found the evidence of the Director of Risk compelling but, in fairness to the COO, I have borne in mind that he had recently been made redundant by her and thus might have a motive to exaggerate. I trust that he will understand that I mean no discourtesy by this, it is simply that I must ensure that I am fair. That said, in this instance I accept his evidence because it is supported by that of the two BDO partners, who clearly had no motive to exaggerate their findings (rather the opposite). There is also the question of common sense: you do not need to be a financial expert to understand that:

(1) not knowing how much cash you have and being 'out' in your calculations by £3m over a period of 2 months, and
(2) having more than 70 bank accounts in various parts of the world that you did not know existed, what was in them or who had the authority to run the accounts

amount to a serious situation.

I find that the COO has downplayed the seriousness of it because she was responsible for the fact that this situation had developed. This was not merely because as COO she was the person ultimately accountable for the finance function, but because she had run the Finance Department for many years and these were failings which plainly had not developed overnight.

I asked the BDO partner about the timescale for remedial actions for something which they had rated as "high" priority. He said that he would normally expect the matters to have been dealt with within about three months from the delivery of the report. RICS missed this target by quite a wide margin.

As a result of the length of time it took RICS to get the report finalised (even though the final version was pretty much identical to the first draft, certainly in terms of its conclusions) and then follow what the COO insisted was the only possible governance route, the situation was as follows. Three months after delivery of the report, the Audit Committee was only considering it for the first time. The assurance of implementation of the solution was still many months away.

6D 12th DECEMBER 2018 MANAGEMENT BOARD MEETING

On 12th December 2019 the Management Board held its quarterly meeting in the RICS Birmingham office.

I am satisfied that by this date, the COO (who is a member of the Management Board):

(a) had known for two months that BDO had been very concerned by what it had found in terms of Treasury Management, and
(b) had had the draft report in her possession for five days.

However, no one outside her team (two of whom were present at the meeting) knew anything about it.

One of those who was in ignorance of its existence was the CEO.

In addition to the members of the Management Board, all of whom were present, those attending included:

- The President
- The Chairs of the Audit and Finance Committees
- The Group Finance Director
- General Counsel
- The Director of Risk and Assurance

Discussion of the unexpected increase in the overdraft

Simon Hardwick told me that the first time he became aware of this was when he read page 11 of the COO's Q1 operational performance report, which itself formed part of the substantial pack of papers provided in advance of the meeting. He was very concerned. His view was that this was clearly an operational matter and Management Board should have been told about it when it arose, not after the event, particularly since the Finance Committee reports to the Management Board. He had queried the

issue itself[63] , the failure to inform Management Board as soon as it had been identified and the "low-key" way in which they had eventually been told, in the sense that it had been buried in nearly 400 pages of Management Board papers. He made the point forcefully that there should be "no surprises" in future. His view was that it was primarily the responsibility of the Executive to tell Management Board of issues about which they needed to know.

It is notable that the COO agreed and said that she would ensure that in future the Management Board had notice of such an issue.

Amarjit Atkar told me that he had asked questions about how the cashflow issue had arisen. The meeting was told that they were going to do a more detailed review of the cash forecasting process.

General Counsel told me that she had some sympathy with the concern expressed at the meeting that this issue had 'popped up in the papers' rather than attention having been drawn to it overtly. However, she did not think that this was sinister, rather it might have been a reflection of the fact that there was a great deal going on at the time.

The Minutes record the following:

> *"The Board noted and expressed concern that it had not been informed of the temporary overdraft increase over and above what was stated in the reserves policy for 48 days… Going forward, a greater margin of security should be included, so as not to rely on assumptions. The maximum overdraft reached in November was £4.9m, as a result of improved assumptions from the original forecast…The reserves policy may need to be revisited given the growing uncertainty around a number of areas. The Chair noted that if the reserves policy was to be breached the Board should be alerted by the COO and Chair of the Finance Committee."*
>
> *"Decisions and Actions:*
>
> > *"Governing Council should be informed of the temporary overdraft increase [by the CEO].*
> >
> > *"A paper to be provided [by the COO] to the Board on the Virtual Community before the end of 2018 setting out how the Finance Committee manage cash flow, including details of what is the forecasting process and what is the management oversight. Paper to be agreed with Finance Committee Chair and with [its] members as necessary[64]".*

What is striking is that at no stage during the discussion did the COO mention that the Treasury Management function had already been audited, far less that she had had the first draft of the report for nearly a week.

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[63] i.e. the reason the need for an extension had arisen

[64] My understanding is that although the Action referred to it being produced within a fortnight of the meeting, this paper was not produced until 27th January

It was the fact that she had said nothing which was to cause Simon Hardwick and the other non-Executives anxiety when, two months later, they found out about it. Simon Hardwick's view was that since this was the very matter under discussion, it would have been the most natural thing in the world for the COO to have said something along the lines of: "well, in fact, coincidentally there has been an audit and although the report has not been finalised, the situation is not good. I am in the process of putting remedial actions in place and I will keep you and the Audit Committee updated".

I asked the COO why she had not said anything, particularly since one of the matters the Board had been emphatic about was that there should be no surprises in the future and given that she was being asked to provide a paper - within the next fortnight - on the management of cash flow. She said:

> "*I guess I didn't come at it from that point of view. I was following the governance structure which was: there is an internal audit report. It would go to Audit Committee and they would decide what we do with it, because by [telling the Management Board] I think I would not have been following the right governance steps, because Audit Committee have got purview over internal controls. Had we followed that process then I'm, pretty sure the Chair and I would have had a conversation to say 'right, we're going to alert Management Board'. But if we don't follow that sequence then that's where the problems emerge*"

I do not accept the COO's evidence on this matter. The conclusions I draw from this are set out in Chapter 8.

Simon Hardwick told me that after the meeting he walked to the train station with Bruce McAra and the Chair. He and Bruce McAra expressed their concern about what had been revealed about the emergency overdraft extension. The Chair said that he had not known either and had found out in the same way as the rest of the Board. He said that he had misgivings about the performance of the COO and her team, but was keen to leave the matter with the Finance Committee and push its Chair to do a better job. He expected the Finance Committee report into cashflow management to be unsatisfactory.

I asked the Chair about this. He could not confirm that he said it, but accepted that he might have done.

Other matters

In addition to the discussion of the unexpected extension of the overdraft, the following matters are noted in the Minutes:

(a) The Audit Committee Chair provided an update on the outcomes of the recent Year-End Audit. This was the first year of audit performed by Grant Thornton who replaced KPMG. Grant Thornton raised one new potential area of risk: paying non-existent employees, although it was noted that there was no evidence of such payments being made.

(b) The Minutes show that the Board discussed the fact that it relied on the work of the Audit Committee to undertake the detailed review of the accounts and to make a recommendation to the Board on approval of the annual accounts. It was concerned that stating in the Conclusion on the Financial Statements that "*Audit Committee believes…"* was weak. The Audit Committee Chair agreed that this should be amended to say "*Audit Committee confirms…*". The Audit Committee Chair also agreed that the report should be amended to state that Audit Committee recommends that management board approve the accounts.

I mention this because it provides an example of the Management Board scrutinising the work of the Audit Committee, which is relevant to what was to come later.

(c) Simon Hardwick noted that in the Remuneration Committee report it stated that there was a staff turnover of 22% even after adjustments for the move to Birmingham. It was felt this level was unhealthy. The Board was assured that the new Chief People Officer (equivalent to Head of Human Resources) was addressing this and could update the Board at its next meeting.

6E DECEMBER 2018 – 15th FEBRUARY 2019

Events which followed the December 2018 Management Board meeting

On 18th December 2018 the CEO updated Governing Council on the Governing Council Virtual Community, in line with the decision of Management Board. He attached his notes from Management Board, stating:

> *"As before, these are intended to keep Council **fully sighted on performance risks**, business planning etc. Any questions, [the Management Board Chair] and I are happy to respond."* (emphasis added)

What he said about the extension to the overdraft was this:

> *"In November/December we reach the lowest point in our cash cycle and for as many years as I can remember, have used a bank overdraft facility to help smooth out the year. For perspective, this used to be more than £10m. For the last few years, we have set a financing goal to keep this below £4m. [The COO] and Finance Committee Chair reported to Management Board that, for a period of 48 days, this reached a peak of £4.9m. Clearly, there is some disappointment in this, we will incur some additional bank fees and we could have worked smarter to enhance operational cash management. Just to clarify, we will end the financial year, operationally cash positive, so this is purely a cash flow timing management challenge not a cash concern. Management Board have asked Finance Committee for a) regular cash flow assurance b) tighter operational cash management and c) to consider if our arbitrary financing bank overdraft limit of £4m is appropriate given our 3-year business plan. I will look to give you further assurance on this after the March Board meeting."*

In my view this is a less than frank explanation. The CEO did not tell Governing Council that the flawed cash flow forecasting had led not only to the need for an overdraft extension at short notice, but that the extension had been for an extra £3m, three times more than had been ultimately required. I have concluded that this was a deliberate decision made in order to provide the most positive picture to Governing Council. To describe it as keeping Governing Council "fully sighted on performance risks" is disingenuous.

Unsurprisingly, there was no mention of the draft 'no assurance' Treasury Management report from BDO, given that the COO had made no mention of it at the Management Board and the CEO knew nothing about it. It follows that no criticism should be made of the CEO in respect of this aspect, save in the broadest possible sense of the fact that he was the COO's line manager.

I asked the CEO in interview whether not revealing the £7 million figure was an attempt to bury bad news. He said he understood what I was saying, in the context of "*where we are*", but that that was not anything he had ever intended to do as CEO:

> *"If you look at anything that I've ever tried to do inform or heads up and everything, I've never attempted to try and hide stuff. I've given the organisation the ability where the governing body can ask any questions or anything else.*
> *"I think the important thing was to understand what our level of cash need really was. The answer is it was 4.9 million and that's critical. I think, if I can remember, in any of the subsequent bits I think I did use the fact that actually we we'd incurred greater costs than we needed by needing to have a higher amount of facility when we only actually needed to access 4.9 million …*
> *"…you'll find that in a lot of this as the CEO I did a lot of heads up posting to the Governing Council. You know there are three or four posts that I made in this period. I'm not the only one who could be doing that, there are lots of other people around me who could be saying other things. If anyone was unhappy they could have, the Chairman could have put something up. The Audit Committee Chair could have put something up. The Finance Committee Chair, the Chair of Governing Council who attends the Management Board Meeting could have put something up so I'm not. I try uber hard as the CEO to just keep giving people a heads up and communicate but I'm not the sole vehicle of the ability to say those things. I do have Chairman, other people around me so if anyone at the time thought hold on, five other people could have gone, "they need to know more". So I don't know how much post-rationalisation there is going on in here but there are loads of other people that have could have said actually Governing Council needs this and that blah blah blah. Also Governing Council itself could have asked any number of questions, I don't think I got a single question."*

One of the interesting questions is why it was the CEO who was giving Management Board updates to Governing Council rather than the Management Board Chair. The previous Chair had always either done it himself or ensured that it went out in joint names. Either way, he had what he described as a "big hand" in its drafting[65].

The current Chair told me that when he took over, he had decided to ask the CEO to do it, on the ground that it gave the CEO more visibility. I have concluded that this was a poor decision. It gave the impression that the CEO was running the Management Board. It also gave the CEO control over what Governing Council was told. I am aware that the CEO does not accept this and says that the Chair or any member of the Board could have added to it had they wanted to. That may have been the theory, but I am satisfied from the evidence that it would have been a brave person who chose to tell Governing Council more than the CEO deemed appropriate. As matters were to unfold, when the four non-Executives were felt[66] to be threatening to tell Governing Council about the Treasury Management matter, this was one of the reasons given for their dismissal.

[65] IRT interview with Jim Carter, 27th May 2021
[66] In the letter of 11th November 2019

Following the delivery of the first draft of the 'no assurance' report on 6th December 2018, there had been discussions (by email and in person) between BDO and the various RICS finance personnel. On 19th December, BDO provided an updated draft (v2) of their Treasury Management report to the Director of Risk and the Risk & Compliance Manager, with tracked changes by BDO and the Risk & Compliance Manager himself. This predominantly included additional information and context. Initial responses to the recommendations were also given, but timescales were not provided in this respect. In terms of the main observations and conclusions, nothing had changed.

On 20th December 2019, a second 'close' meeting was held to discuss the recommendations in the draft report (v2) in more detail, along with the proposed actions that management would take. The Director and Senior Auditor from BDO were present and from RICS were the Transaction Team Manager, the Risk & Compliance Manager, the Director of Risk, the Group Finance Director and the Group Financial Controller. Timescales for remedial action were assigned.

The BDO Director told me that the RICS staff were extremely unhappy with the wording of the conclusions, but ultimately they were unable to dispute the facts. They tried to provide additional evidence about cash flow forecasting, but had had to accept that it did not have a material impact on the report gradings or the significance of the findings. BDO were also asked to provide an example of a treasury policy to help them going forwards. Following the meeting, the Group Finance Director sent further information to BDO.

January 2019

In early January 2019, following a review of the additional cash flow information provided by the Group Financial Controller, BDO had highlighted issues with the document and organised a meeting[67] with a specialist from their financial modelling team to help RICS with its future cash flow management controls.

[67] On either 11th (according to the Director of Risk & Assurance) or 18th January 2019 (according to BDO).

Work continued in respect of the internal audit report. On 20th January 2019, BDO emailed the Director of Risk and the Risk & Compliance Manager with an updated version of the report (v3) mainly to include information about the additional cashflow workings that were provided. This did not change the assurance gradings, the number of recommendations or the significance of them, it just provided better context for the reader. An example of a Treasury Management Policy was also provided.

On 21st January at 0902 the Director of Risk emailed BDO about this latest draft. He pointed out that there were some typos and that "*we are missing a bridge*" in that there was some wording needed to link up the sentences. BDO responded that evening at 2141 having made the amendments and said they would reissue the draft, but he thought that the Risk & Compliance Manager was going to pick up the management responses with the Group Finance Director as they needed some more detail. He issued the draft report directly to the Group Finance Director, the Transaction Team manager and the Group Financial Controller by email. He noted,

> *"I have left in the management responses from last time; however, I remember [the Risk & Compliance Manager] asking in the close meeting for you to add some additional detail regards timescales and steps to complete in the interim if the fix will be the new system. [To the Risk & Compliance Manager] can you confirm?"*

On 24th January 2019, the Interim CFO was appointed. The COO told me that he was very good and very quickly he put in resource to address the Treasury Management issues.

On 27th January, the Finance Department provided the paper which the Management Board had asked to be prepared by the end of 2018. General Counsel posted it on the Management Board Virtual Community. It was a brief paper and short on detail. It provided an explanation, of sorts, for the overdraft extension and it set out six steps that the Finance Committee could take to improve financial oversight. Crucially, it also said:

> *"Due to the non-compliance, improvements in the cash forecasting process at RICS had already been implemented. The focus of the Finance team has been raised to ensure no further non-compliance of reserve policy arises. The Finance Committee can and will support this."*

Anyone reading this might have been forgiven for thinking that the remedial steps had been completed. As matters unfolded, it became clear that this was far from being the case.

One of the non-Executives on the Management Board, Steve Williams, who was a past-President of RICS, asked General Counsel for more detail both about the causes of the breach and the proposed 'fixes'. It is not clear to me whether this request received a response.

Work on the BDO report continued. On 31st January, the Director of Risk emailed the COO:

> *"As discussed, here's the most up to date version of the TM report, updated following the provision of evidence by [the Group Financial Controller] and [the Group Finance Director]. There is an earlier version with more complete management responses which [the Group Finance Director] et al developed which will need to be reconciled with the attached version. I'll chase them down tomorrow with the aim of getting a finalised report by COP."*

February 2019

On 4th February 2019 there was a special meeting of the Management Board, held to deal with a single issue (the Client Money Protection Scheme). This is outside the Terms of Reference of the Independent Review and so I make no further reference to it, save to make the perhaps obvious point that it was possible to hold meetings outside the quarterly cycle if it were necessary to do so.

On 11th February 2019, the COO telephoned the Finance Committee Chair. The Chair has provided me with a contemporaneous note of this call. During it, the COO told him that she had conducted her own review of the finance department and was going to make changes. These were already underway. She said that she was deploying a firm of auditors on a special purpose internal audit assignment with a view to flushing out the problems in the finance department. She also said that she was putting in an Interim CFO. He was very clear that she was telling him that she was *going to* commission an internal audit, not that it had already been completed. Looking at his note, it is possible that he may have misunderstood and that she was referring either to the cash flow paper which she was preparing for the next meeting of the Management Board or the Key Financial Systems audit which was underway. That said, he was very clear with me that she was referring to the Treasury Management internal audit and his note does say:

> "*Blunt – eye off the ball. Accounting errors at y/e. Treasury Report. Last piece*".

What is absolutely beyond doubt was that she did not tell him that there was an audit which had been completed, nor that she had known since early December that BDO had given a 'no assurance' rating.

On 12th February 2019 the Director of Risk emailed the final version of the Treasury Management audit report to the COO's assistant, asking her to print it off for the COO's final review.

It is of note that there were no substantive changes from the first draft sent on 6th December 2018 and the report still made dismal reading. I do not accept the COO's evidence that she "*could have got BDO to change the no assurance rating*"[68]; I am in no doubt that this final iteration was the best the COO and her team could get BDO to agree to.

On 14th February 2019 the Director of Risk emailed the Audit Committee Chair:

> *"I wanted to schedule our normal pre-audit committee catch up, to talk through the agenda and provide you with a general update on the "state of the nation" here at RICS. I know that [the COO] has spoken with you around some of the issues within finance, and the papers being drafted do reflect these issues quite closely – this is something that we can pick up in our catch-up."*

I have assumed that this is an oblique reference to the BDO report and the issues which had given rise to it. Certainly, the Director of Risk put in his chronology[69] that the Chair of the Audit Committee was told about it in advance of being sent the final version.

Be that as it may, the plain meaning of this was that up until 14th February, no one outside the COO's team knew that there were any issues in the Finance department, other than those which had given rise to the unexpected overdraft extension and in relation to which the Group Finance Director's note had suggested the remedial actions were complete.

It follows that if BDO was correct that the issues they had uncovered represented a threat to RICS, then for four months[70], no one other than the COO and her team had known anything about it. Given that unquestionably these were the same people who were responsible for the situation arising in the first place, this is a significant cause for concern.

Later on 14th February, the Director of Risk emailed the COO asking whether she had had a chance to review the final versions of the Treasury Management report and the budget setting report, so that they could be forwarded to the CEO and added to the Audit Committee Virtual community. The COO responded:

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[68] See paragraphs above
[69] Provided in September 2019 to General Counsel to enable her to construct her own chronology of events
[70] I.e. since the time of the fieldwork at which the problems had been uncovered

"Yes to TM[71] – however can we add in the GFD[72] is doing a supplementary note to address the points raised on pg 4 and p5"[73].

Thus it can be seen that on 14th February 2019, the Director of Risk had assumed that he would be forwarding the BDO report to the CEO. The CEO told me that he knew nothing about it until 25th February and only then because he was told about it by the Chair of the Management Board, in circumstances to which I will come. All the evidence seems to support the fact that he is correct when he says that he did not know about it until the 25th. The significance of the Director of Risk's email is that it appears not to have occurred to him that the CEO would not be told. My view is that that is a wholly reasonable assumption and that the COO's failure to do so is significant.

On the following day, 15th February 2019, the COO went skiing for ten days.

[71] She asked him to re-send her the Budget setting one.
[72] Group Financial Director
[73] Pages 4 and 5 in the final version of the Treasury Management report set out the high priority findings which need urgent attention, the medium priority recommendations, and the conclusion

6F 15th FEBRUARY – 27th MARCH 2019

On 18th February 2019 the Director of Risk published the final iteration of the BDO report on the Audit Committee Virtual Community[74] (to which Management Board members do not have access) with the comment:

> *"I have been assured that management are working towards addressing the findings raised in the report; the risk and assurance team will review progress against these actions in the week leading up to the [Audit] Committee meeting to provide an up-to-date position".*

This final version is to be found at Appendix D.

Simon Hardwick and Amarjit Atkar learn of the BDO report

Two days later, on 20th February 2019, the Risk Sub-group met in London. This was a sub-committee of the Management Board which had been created on 19th June 2018[75]. Its members were Amarjit Atkar, Simon Hardwick, the Director of Risk and the COO.

Simon Hardwick described the meeting as follows:

> *"On Wednesday 20th February 2019 I attended a meeting of the Risk sub-committee arranged by [the COO] at RICS's London headquarters. The intended attendees were [the COO], Amarjit Atkar, [the Director of Risk] and me. The agenda was to progress our work about risk. AA and I were met by [the Director of Risk], who informed us that [the COO] was unable to join the meeting because she was away on a planned holiday. This was slightly frustrating because she had arranged the meeting and, as the lead executive responsible for the topic, was an essential participant. We therefore agreed we would need to reschedule the meeting. However, AA and I took the opportunity to have a wide-ranging discussion with [the Director of Risk] about RICS's attitude and approach to risk. I expressed my concern about the surprise disclosure at the December 2018 Management Board meeting of the increase in the Institution's overdraft facility and asked for [the Director of Risk's] impressions of the finance function. His response was that he shared our surprise that this had not been disclosed in a more timely and transparent manner. He went on to say something along the lines; 'but if you think that's bad, wait until you see the Internal Audit report'. He told us that this was a report from BDO (the external accountancy firm engaged to support RICS's Internal audit function) that had reached a 'no assurance' conclusion (the worst possible*

[74] See copy of the Virtual Community posting found within the Fieldfisher file
[75] Minutes of 19th June 2018 Management Board meeting

rating) regarding RICS's Treasury Management function - the part of the finance team responsible for managing cash and treasury matters . He said he wasn't in a position to share a copy of the report with us at that time but assumed it would be brought to the next Management Board meeting in March. The Director of Risk mentioned that a new Chief Finance Officer, … had been appointed and that there would be significant personnel changes in the RICS finance team as a result of this."

Mr Hardwick said that up until that point he was not aware that there had been an internal audit of the Treasury Management function planned, far less completed.

Amarjit Atkar's account is in similar terms. He noted in respect of the 'no assurance' rating:

"This raised immediate alarms because I know from my days of Internal Audit that such a damning conclusion means that either there no controls in place to manage the treasury functions or there was significant non-compliance with the controls. In view of the previously reported cash flow issues this now had become a matter of grave concern as the treasury function has a critical role in the management of the cash."

The Director of Risk said:

"[the COO was on holiday]… so I met with Simon and Amarjit myself. We went through the strategic risk register, you know mitigations, are we comfortable with methodology etc. etc. Towards the end of the meeting Simon basically flagged that he'd been asking for some time for information relating to treasury. Basically "what happened? management still haven't told us, what the hell happened in October, we've not had a satisfactory answer five months down the line". And it just so happened that at that point we were getting very close to finalising the Internal Audit report[76]. So I mentioned it to Simon saying "we've done an Internal Audit report which speaks to a lot of the issues that… that actually caused the… the problem we had in October, that's going to be shortly finalised and then issued to the Audit Committee". I didn't tell him any sort of details of what was in the report but I said it was a 'no assurance' report."

I asked the Director of Risk why he had told them. He replied that he hadn't thought he had done anything wrong because he thought it would obviously be shared with the Management Board; indeed it had never occurred to him that it wouldn't be. Following the meeting he emailed the COO on holiday to say that the meeting had been a good one and "*everyone left happy*"; both had flagged concerns with finance/cashflow but he had reassured them that "*it's in hand and moving in the right direction with the [Interim CFO] on board*". He did not say that he had told them about the BDO report but if, as he had told me, it had never occurred to him that there was any problem in his doing so, this is unsurprising.

[76] In fact it seems that it had already been finalised and sent to the Audit Committee two days earlier

The following day, 21st February 2019, Simon Hardwick emailed the Chair of the Management Board to ask if he was aware of the 'no assurance' internal audit report:

> *"I understand the 'no assurance' report on the treasury function is the first ever RICS internal audit report to receive a 'no assurance' rating, so, in my view, gives rise to significant concerns about our finance function. That is why Amarjit and I concluded it would be helpful to have a 'first impressions' paper from [the Interim CFO] to consider as part of the cashflow 'lessons learnt' agenda item for the next Management Board meeting. I suggest this might also be an appropriate opportunity to consider the effectiveness of the interactions between Management Board, Finance and Audit Committee.*
>
> *My impression is that we have multiple layers of governance, but which aren't working together as effectively as I believe they should."*[77] (emphasis added)

In the light of the events of the next few months, that final sentence was to prove astute.

The Chair replied on 22nd February to say that he was not aware of the internal audit report. He said he had raised the matter with the CEO[78] and would do so again on the latter's return from holiday, as well as with the COO and the Finance Committee Chair.

Simon Hardwick said that because this was the second issue within two months which had not been brought to the Management Board in a timely manner:

> "*I was really surprised and really quite concerned. But at that stage I was just concerned to make sure that the issue was flagged and raised and dealt with and I assumed it would be [dealt with] at the March Board meeting*".

On the same day, the Director of Risk said that he and the Audit Committee Chair had a telephone call as part of the pre-Audit Committee meeting preparation. The Treasury Management Audit report was discussed in depth.

[77] Email of 21st February 2019

[78] I have interpreted this as meaning he raised it once Simon Hardwick had told him about it but the CEO was on holiday and thus it might need to be raised again on his return

The involvement of the CEO

The CEO told me that he had known nothing of the BDO report until he had been telephoned by the Chair of the Management Board. He was not best pleased to discover that he had been kept in the dark. He had immediately contacted the COO and asked for a copy of the review. That this was the first time he had heard about it is supported by General Counsel's chronology[79].

I asked the CEO how he had felt when he was contacted by the Chair of the Management Board and told that, first, there was an internal audit report about which he knew nothing and, secondly, it had resulted in a 'no assurance' rating. He told me that he had spoken to the COO saying that it seemed pretty significant, asked her to send him a copy immediately and asked why she hadn't given him the heads up.

She had said to him that even when you get an audit report with that language it is very important that the Audit Committee gets a chance to look at it and they were not meeting until March. It was not unusual for the Audit Committee to reflect on it first and decide what they think needs to be done. The CEO told me that the COO could have told him earlier, but he had a level of trust and confidence in her. It was clear to him that she was not trying to withhold anything, because she had told the Chair of the Audit Committee.

I find this an odd reaction for the CEO to have had. He had been left unsighted for many months[80] on what was potentially a serious risk to the organisation he leads. I was surprised that he was not more concerned that he appeared to have been one of the last to know about it, and that he had had to learn about it from the Chair of the Management Board.

I have concluded that it was not so much a question of the COO withholding it, as of her using the governance structure as a justification for delaying telling the CEO and the Management Board. This would buy more time to start putting things right. I cannot think of any other reason why she would not give the CEO, to whom she was professionally close, a 'heads up' at an early stage.

On 25th February, the COO returned from her skiing holiday. At 1139 the CEO emailed her:

> "*Hope you had a great holiday. Sorry for this being the first email from me on your day back.*
>
> *"I have only just had sight of [the BDO] review today. It is pretty damning reading and raises some big competence questions. It feels [like] accounting basics are not being followed and raises a question of finance management. I know you had your doubts but this confirms them for me.*

[79] Prepared in September 2019
[80] Given that the situation had both been uncovered and communicated to the COO in mid-October 2018.

"I know we touched on this when we spoke, but the actions set out need seeing through and I would like your assurance that the timescales will be achieved by the management team.

"You should cover a summary of this in your March performance update for Management Board. For me it puts 2 and 2 together and answers why we looked in a bit of a mess last November and why surprises were evident all round. I think assurance from you acknowledging weaknesses and the progress on putting them right will create the right tone". [81]

There are three significant things about this email. The first is the lack of rebuke for the fact that (as was apparent from the face of the BDO report), this situation had now been allowed to continue since mid-October 2018, ie some four and a half months, and the CEO had known nothing about it. The second is that even though there is an acknowledgement that this "*raises some big competence questions*", there is no sense of urgency. The third is that he told her to put a summary of it in her March performance update to Management Board. There is no suggestion from this that this is none of Management Board's business until after the Audit Committee had reported.

As will become apparent, the COO did in due course provide a summary to the Management Board, but one which entirely omitted any reference to the 'no assurance' rating.

The COO responded to the CEO within a very short time[82] saying that she agreed it was pretty damning. This runs rather counter to what she was to tell me, which was effectively that it was not as bad as it looked.

On 26th February 2019 the Chair of the Management Board emailed Simon Hardwick to say that he had just spoken to the CEO and "*relayed the various concerns and suggestions. He understands and has undertaken to address promptly*".

Simon Hardwick told me that although he remained concerned, he was content to wait until the next Management Board meeting, which was due to take place on the 27th March, because he believed that they would then be given a copy of the BDO report and have an opportunity to discuss it.

When I asked the COO whether she was annoyed by what the Director of Risk had done, she said she wasn't but she couldn't understand why he had done it. He had a direct line to the Audit Committee Chair and had spoken to the Chair on 22nd February. In her view, he hadn't followed the proper governance process and was probably not thinking through that it was only once Audit Committee had

[81] This is the entirety of the email
[82] Email dated 25th February, 1144 am

looked at it, that it would have been appropriate to think about with whom it was shared and how. She felt that the 'how' was really important, because you needed the context. She had probably talked to him about it and supported him through it. She didn't think he understood the effect of what he had done.

I am satisfied from the evidence (not least from that contained in the Fieldfisher file) that contrary to what she told me, she was seriously annoyed with him. On 26th February the Director of Risk emailed the CEO to apologise:

> "*Sean*
> *[The COO] has briefed me on your call with [the Chair of Management Board]. I can only apologise for putting you in a difficult position. Having not been exposed to such an extent to the Board level before, it's certainly a bitter learning point for me on the dynamics and politics of that relationship.*
> *I'm supporting [the COO] in mitigating the current situation – please do not hesitate to contact me if you have any questions or if I can help forearm you with insight re the internal audit report*
> *Paul"*[83]

Half an hour later the CEO responded as follows:

> *"Paul*
> *Learn fast!*
> *I am sure this will be recovered*
> *Sean".*[84]

This is a surprising response. Had the CEO been concerned about having been kept in the dark, as he told me he was, one would have expected him to have reassured the Director of Risk that he had done nothing wrong. I have concluded from this that the CEO did not disagree with the COO's policy of playing her cards close to her chest.

In November 2020 the Director of Risk was made redundant, having previously been placed on furlough. The COO told me that RICS had had to make cost savings of £20 million during the Covid-19 pandemic, and this role was removed as it was decided that the organisation needed *"a lighter touch on risk"*. I reflect that making the Director of Risk redundant in the midst of a pandemic seems a rather extraordinary thing to have done.

I asked the COO why the BDO report had not been sent to the Management Board in early 2019. She said that she would not have shared anything with the Management Board until the management team had

[83] Email reproduced in its entirety
[84] Email from CEO to Director of Risk, 1542 on 26th February 2019

finalised the report, because it was not fair on them until they'd signed off on it, as they were going to be responsible. I find this explanation disingenuous because, first, she knew from 7th December 2018 that the BDO report was unlikely to change in any material way and, secondly, any hurt feelings of the staff should not really have been the top priority in the circumstances. I am satisfied that had the COO followed sound governance principles:

(a) the CEO would have known in October 2018 that there were serious issues, and

(b) the Management Board would have been told (at least informally in the sense of being given a 'heads-up') at the meeting on 12th December 2018.

When I asked the COO whether, with the benefit of hindsight, there was anything that she would have done differently in relation to this whole matter, she answered "*Not gone skiing*".

I found that a telling remark. I had expected her to say that she wished she had given the report to Management Board earlier, but her response showed that her view was that if only she had managed to keep the BDO report away from the non-Executives, none of this would have happened.

On 26th February 2019 the COO posted a 'Cash Flow Update' on the Management Board Virtual Community. She said that a more in-depth analysis on cash flow forecasting, controls and lessons learned was being prepared with the Finance Committee and would be presented at the March Management Board meeting. The update said:

> *"In November, as the cash flow issue emerged, **I instigated** two external audit reviews in addition to the year-end audit. The first of these reviews was an external review of the treasury management function which has a direct impact on the cash flow forecasting. This review was completed in January and the finance management team and I are currently reviewing the actions that have come out of this review. In addition, this has provided an opportunity to review the competencies that are required within this team, and whether the current team structure is appropriate. I will update you further on the findings and the actions that have already been put in place to deal with the matter. I want to assure you that the process around cash forecasting has been improved together with the teams focus on this – as an example there is now a bi-monthly review of the cash forecasts with two layers of management review. The treasury management report is also going to be reviewed by Audit Committee in March."* (emphasis added)

This is interesting for two reasons. First, the COO was saying unequivocally that she had instigated the BDO Treasury Management internal audit *as a result of* the cash flow (overdraft) issue that arose in November. That is plainly untrue. When I interviewed her she denied that she had ever said this.

Secondly, this posting acknowledged the existence of the internal audit report, but made no reference to the 'no assurance' rating.[85] Rather, the emphasis was on the remedial steps which were being taken. There are echoes here of the CEO report to Governing Council following the 12th December 2018 Management Board meeting: minimising the seriousness of the issue whilst focusing on the proposed solution. The problem was that it turned out to be many months before there was a satisfactory solution in place.

In his evidence to me the President confirmed that it was as a result of this posting on 26th February 2019 that he first learned of the BDO report.

Governing Council knew nothing and was not to find out about it until many months later.

It is interesting that whilst a number of emails passed between members of the Risk Sub-group on 1st March, no one mentioned the BDO report. The Director of Risk (copying in the COO) thanked Amarjit Atkar and Simon Hardwick for their attendance. The COO apologised to them both for having missed the meeting. Simon Hardwick said that he was disappointed she wasn't there, given that the non-Executives were giving up their time and were expecting her. He said the three who had been present had had a *"useful free-form conversation"*. The COO replied, apologising and saying that she would be there in future, she personally valued their contribution and wanted to assure them that the whole Executive and RICS was committed to moving the risk work forwards. The tone of these emails is polite, constructive and collegiate. I note that on 3rd March the COO forwarded this exchange to the CEO saying (of Simon Hardwick), *"hopefully he is feeling a bit more settled"*.

On 11th March 2019, in an email to the COO, the Audit Committee Chair raised concerns about the number of "errors" identified during the (external) audit[86]. He queried whether these were indicative of larger problems in terms of capabilities and the leadership of the function. The COO responded that as the errors emerged, she appointed the Interim CFO and that they were planning a restructure in finance in mid-March to address the issues that the Audit Committee Chair had identified.

The impression I get from these messages is that problems in the Finance Department were even wider than the issues identified by the BDO report.

[85] She added that she had also instigated a full review of the balance sheet by independent auditors. Early indications were that the balance sheet was sound but that there could be improvements around processing of international packs, which she said was a known issue.
[86] This is not the BDO internal audit

Audit Committee response to the BDO report

The Audit Committee met on 12th March 2019[87]. Two of the three members attended, in addition to the Chair. Also present were the COO, the Interim CFO, the Group Finance Director and the Director of Risk.

The Minutes record that there were a number of things concerning the Audit Committee.

The first was that there was 'posting error', in which £700,000 had been wrongly written off. This had been picked up by the external auditor, Grant Thornton.

The second was that the Annual Report and Financial Statements, which had been scheduled for signature in January 2019 had yet to be approved and it was now March.

There was consideration of the BDO internal audit report. The Chair said he was concerned and, "*whilst he noted the good intentions of management to address the issues, the Committee was required to address its mind to whether or not the organisation was positioned to meet the target deadlines*"[88]. The Group Finance Director and the COO reported the action that was being taken and that progress had been made. One committee member commented that he had been "surprised and concerned" to read the report given the particularly strong tone of BDO's commentary. He felt that:

> *"… the tone of the management responses could be interpreted as quite passive and it was important that the whole organisation could understand the culture and behaviours required."*

The COO said that capability across the finance functions was being reviewed, and the Interim CFO recognised need for improvements.

The Committee agreed that a follow up audit should be conducted by BDO in June 2019 to provide assurance that controls had been embedded and were functioning properly, together with an exploration of resource capability and the soft issues around control behaviours and culture.

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[87] Minutes of the Audit Committee meeting 12th March 2019.
[88] *Supra*.

This re-audit was commissioned by the Director of Risk on 15th March 2019 when he emailed BDO, giving a target report date in June. What happened in relation to this is set out in later sections of this chapter.

The Minutes are entirely silent on whether the BDO report should be shown to the Management Board. Given that the Audit Committee was not to meet again until 15th July, I am satisfied that the decision not to share it (whenever that decision was made and at whoever's suggestion) was taken by the Chair of the Audit Committee unilaterally.

The external auditor[89] was present at the meeting, as was usual. The Minutes record that following discussion of the 'no assurance' report, the auditor confirmed that the cashflow issues arising in 2018 had no impact on the 'Going Concern' status of RICS, provided that adequate banking facilities were in place. It was agreed that the Finance Director would provide the external auditor with the latest forecast to enable them to monitor that position.

Representations made to me by solicitors for the Audit Committee Chair assert that the external auditor said during this meeting that the risks identified in the BDO 'no assurance' report were only theoretical possibilities and there was no evidence that they had materialised and / or caused financial loss to RICS. This does not appear in the Minutes.

The letter of representations also reminds me that the external auditor later supported the decision that there was no need to refer to the Treasury Management internal audit report in the annual report and accounts. UK corporate governance rules dictate that such reference would have been necessary if the view was taken that there had been a material breakdown in internal controls.

It is said on the Chair's behalf that he considered that the issues raised by the Treasury Management audit were serious, but not so serious that they represented an existential threat to RICS. Had there been an existential threat, he would have escalated the matter to Governing Council.

The COO made similar observations to me in her letter of representations.

I accept some of these points and for these reasons have incorporated them into my report. I give the evidence provided on behalf of the Audit Committee Chair less weight than I might have done had I been

[89] This was not BDO but was one of the other large accountancy firms. There had been no need for me to interview the external auditor. Having received these representations there were some questions I would have liked to have asked them, but these came so late in the process that I decided that it would be unreasonable to delay the delivery of my report in order to do so.

able to test it in interview, because there are a number of matters arising about which I would like to have asked him. For example, I would have asked whether if the external auditors had said that none of the risks identified by BDO had in fact materialised, that had been probed during the meeting. Such an assertion was, as a matter of fact, undoubtedly wrong given that one of the risks plainly had materialised, in the form of the unexpected overdraft requirement arising from inadequate cash flow forecasting.

The evidence contained in the letter of representations does not alter my finding that the issues raised by the report were serious and that the Chair of the Audit Committee both knew and acknowledged this at the time. I believe that he accepts this.

At some point the Chair seems to have adopted 'existential risk' as being the test for whether escalation of the matter would be required. There is nothing in the governance and constitution which suggests that this is correct or justified.

Events following the Audit Committee meeting

On 13th March 2019 the COO sent her draft of the cash flow forecasting paper for the Finance Committee to the CEO for his comments. The CEO replied:

> *"My suggestions. A number of Board members will be expecting to see recognition of your own accountability here and I would lay that out to regain confidence in you as well as Finance. Mistakes happen, it is how we are seen to recover and recognise that counts".*[90]

The significance of this is that it shows that the COO had already been damaged by the overdraft issue in Autumn 2018, which the CEO plainly felt had reduced confidence in her as well as in the Finance Department. This might go some way towards explaining her reluctance to reveal the 'no assurance' BDO rating, which showed that the problems went deeper than had been thought. I cannot help but observe that the CEO himself had also known about the cash flow problem in October 2018, but appeared to feel no need to apologise himself for not making sure that Management Board had been told sooner.

[90] Email dated 15th March 2019

Also on 13th March 2019, Simon Hardwick attended the annual MIPIM[91] property conference in Cannes. He saw the CEO there and had an informal 'catch-up'. He asked the CEO if he was aware of the 'no assurance' report. According to Simon Hardwick, the CEO said that he was aware of a critical internal audit report but had not seen it, as he had spent the past few weeks travelling on RICS business. He said he would bring himself up to speed and ensure that it was addressed at the next Management Board meeting. There is a factual dispute here. According to the CEO, he did not remember telling Simon Hardwick that he had not seen the Treasury Management report; indeed he said he already had a copy of the report so could not have said that. From the emails I have seen, the CEO had both been provided with and had read the report on 25th February. It is possible that he did not want to discuss it with Simon Hardwick and thought that saying he hadn't read it was a way of postponing the conversation. It is also possible that Simon Hardwick misunderstood. Either way, I do not find it is necessary to resolve what the CEO actually said, save that Simon Hardwick was very clear that this what was what he understood, because it increased his sense that there was either a lack of urgency or that something was being concealed:

> *"I was pretty disturbed about it to be honest, It demonstrated a lack of curiosity. I would have expected a CEO who had had brought to his attention by the Chair of the Management Board that there was a no assurance internal audit report. I would have thought that the first thing you'd do is to ask for a copy of it and make sure you read it… he said he hadn't had time to read it because he'd been travelling on business."*

What I do regard as significant was that the CEO said that he would ensure that the matter was addressed at the next Management Board meeting which, at that point, was only a fortnight away.

Simon Hardwick also said that he suggested to the CEO that the COO might benefit from some development coaching & should be encouraged to be less defensive in response to legitimate questions and challenge. He said the CEO said that he was concerned about the performance of both the COO & the finance team. I asked the CEO about this and he agreed that he told Simon Hardwick that he was concerned about the finance team in the light of the issues with the cashflow and the report, and that they needed to resolve it. He accepted that it reflected on the COO in the sense that she was the lead person in the finance team and needed to resolve the issue by building greater strength in the team, but he denied telling Simon Hardwick that he had concerns about her personal performance.

[91] Le Marché International des Professionnels de L'immobilier

The Agenda and papers for the 27th March Management Board

Two days later, the Management Board Agenda was published, together with its accompanying papers.

Simon Hardwick told me that it wasn't necessarily a surprise that the BDO report (and its conclusion) was not an actual Agenda item, but "*it was a real surprise to find that the topic was not mentioned in any way at all in the papers which were circulated prior to the March Management Board meeting".*

This is not entirely accurate. Although there was no copy of the report, the Agenda had as an item (and attached a copy of) the COO's *Cashflow Forecasting, Controls and Lessons Learned* paper, now with the fulsome apology suggested by the CEO. The purpose of this paper was to address "the root causes" leading to the breach of the reserves policy. At paragraphs 3 and 4 of the introduction it reads as follows:

> *"Our peak overdraft reached £4.9m with the Board being advised after the event.* ***Following this,*** *and as advised in my note to Management Board in March 2019, in* ***November 2018 I requested*** *two internal audits by externals to ascertain the facts that led up to this breach: the first a review of the treasury function and the second a full balance controls audit"*

This paper seems to say quite clearly (and for the second time) that the BDO Treasury Management audit had been commissioned by the COO in November and carries the implication that she had done so as part of her desire to ensure that they did not find themselves in that position again. If that is what was meant, then it was untrue. It was certainly not correct that she had commissioned the report in November.

On page 4 of the *Lessons Learned* paper, the COO referred to the Treasury Management report. She said that all recommendations had been allocated an 'owner' and a due date and that all activities would be completed by April 2019. It did not mention the 'no assurance' rating or the specific risks identified and it did not attach a copy of the report.

When it met on 19th March 2019, the COO took the Finance Committee through the *Lessons Learned* paper and what additional assurance could be given by the Finance Committee that the issue with the overdraft would not happen again. It was agreed that the paper would be presented to the Management Board by the Finance Committee Chair and the COO and that this covered the Management Board's requirements.

What the Finance Committee did not have was a copy of the BDO report.

6G 27th MARCH 2019 MANAGEMENT BOARD MEETING

Having learned of the existence of the Treasury Management report in February 2019, and having discussed the matter with both the Management Board Chair and the CEO, Simon Hardwick and Amarjit Atkar expected to see a copy of the report included in the papers for the next Management Board meeting on 27th March. It was not there. Simon Hardwick told me that given the absence of reference to the BDO report in the papers he resolved to raise it at the meeting

At the meeting the COO sat next to him and they had had a friendly chat. The new Interim CFO was introduced. The Board was told that he had been appointed due to the problems uncovered in the finance team. The Interim CFO described the unsatisfactory situation he had found but said that he expected to have things in order by the June Management Board meeting. There was a detailed account of the steps which were in the course of being taken to secure better control of the finance function and cash flow management . The Board was told it would take a while longer fully to rectify the position and get things back into an acceptable state.

The COO apologised for the fact that the overdraft issue had not been communicated in a timely manner and said that her focus had been on resolving the problem.

Simon Hardwick said that since no one else was speaking about it, he asked about the no assurance report, which up until that point neither the COO nor the Interim CFO had mentioned.

> "*They presented that this was all a terrible s**tfest as a result of all the incompetent people that had now been fired out of the Finance Department, but no reference was made to the BDO report. So I thought what about this BDO report? I know it's a 'no assurance' report because I've been told that by the Head of Risk. Why haven't we seen it? What does it say? In the context of what has happened with the cashflow this is really significant.*
>
> *"… so [the COO] was challenged by me …as to what was going on.[I said] this looks really bad, we've had nearly a doubling of our overdraft and Management Board wasn't told about it. We had a discussion about no surprises and now we've got the surprise that there is this undisclosed internal audit report that provides a 'no assurance' rating which is the worst you can get. That is a proper red flag, particularly since it relates to the Treasury Management function which is responsible for cash management…..*
>
> *"The COO was very defensive"*[92].

[92] Simon Hardwick interview with IRT 5th May 2021

Mr Hardwick said he had asked why they had not been told about it, why it was not in the papers and why the Management Board did not have a copy of the report. The COO's reply was that her focus had been on fixing the problem rather than reporting to the Management Board.

Mr Hardwick told me that he had used the words "no assurance" and there could be no one who left that meeting without realising that there was a 'no assurance' report in existence which the Management Board had not seen.

All four of the non-Executives told me that they were in no doubt that at this meeting the COO had said that she had commissioned the BDO Treasury Management report because she had been so concerned about the unexpected need to extend the overdraft. Bruce McAra said:

> "*She said she had commissioned it as a reaction to the issue. Absolutely. No doubt in my mind about it.*"

Simon Hardwick said:

> *"She said 'I take this incredibly seriously and as evidence of that, I have commissioned two internal audit reports from BDO on this very topic, which is evidence of how seriously I take it'."*

Were the COO to have said this, it was without question untrue. This is a substantial issue of fact between her and the four non-Executives.

Simon Hardwick told me:

> *"I think it's now well-established that what [the COO] said about how this report came to be commissioned and why is not consistent with the evidence that has subsequently been put forward. Because apparently it was part of the standard audit process. My guess is that in the moment she was under pressure and she panicked."*

I asked the COO if it was true that she had told the Board that she had commissioned the BDO audit because she was so concerned about the unexpected need to extend the overdraft. She was adamant that she had not; she said that she had been talking about the balance sheet review and the four non-Executives must have misunderstood.

I prefer the evidence of the four non-Executives, not least because the Minutes[93] say:

> *"It was noted that the COO **had commissioned two audits** by independent internal auditors on Treasury Management (report completed) and Balance Sheet Controls (report not yet finalised) **as a result of this Breach**"* (emphasis added)

This is almost identical to the wording of the 26th February Cash Flow Update posted on the Management Board Virtual Community and that of the *Lessons Learned* paper (of which the COO was the author). It was also the impression given to the Chair of the Finance Committee in February 2019.

I am thus satisfied that, in relation to this issue, the COO misled the Management Board and that she was not candid with me.

Mr Hardwick was clear that he asked to see a copy of the 'no assurance' report (though this is not contained within the Minutes). The answer given was that there was work in progress to fix the problem, there would be further information about the actions which were being taken and that it would all be fully dealt with at the June Management Board meeting, when they would get the original report[94], the re-audit report and a summary of all the actions. Simon Hardwick said he thought that this was an acceptable way forward:

> *"Because fundamentally what we needed to do was to fix the problem rather than to have an internal wrangle about something that had already happened…so I did not insist that a copy of the report should be shared with us immediately"*

As will be seen, neither report was provided in June.

I asked Mr Hardwick about the atmosphere of the meeting. He said:

> *"This felt and smelt like a proper crisis. [They were saying] 'we've cleared everybody out of the Finance Department and we've brought in [the Interim CFO] who is …going to put it all right'."*

> *"There were moments in the meeting when it was a bit tense…but I am always very conscious that part of the role of a non-exec is to be a critical friend or to constructively challenge and I always try and make sure that things end on a good note…It was quite a tough conversation but we had a bit of a laugh and a joke and it was left on amicable terms and I don't think there was any kind of bad feeling. There was an issue that had*

[93] Of the 27th March 2019 Management Board meeting. The wording is repeated in the 'Actions Arising' document
[94] Again, this does not appear in the Minutes.

been raised, it had been dealt with, we had a way forward I was not happy we were in that situation but I was content with the way it was proposed to be resolved".

The COO says that the original report was never requested in this meeting. This is a substantial dispute of fact between her and Simon Hardwick. Once again, I prefer the evidence of Simon Hardwick. Given the concern he had had several weeks before about the BDO report and that it was he who had originally stipulated that there should be no surprises, it would make no sense for him not to have asked for a copy during the meeting. I am therefore satisfied that he did ask to see it but, given what he was told, was prepared to wait until June.

It is of note that at least four of the people present at that meeting already had a copy: the CEO and the COO (both of whom were members of the Board), the Interim CFO and the Director of Risk. I have concluded that there was no reason not to provide it and that the only explanation which makes any sense is that it was being withheld until there was a more positive story to tell.

The COO's and CEO's account of this meeting are rather different from that of the non-Executives.

I asked the COO whether it had occurred to her that, given the Management Board's previous concerns about the delay in telling it about the cash flow problem, she should take a different approach this time and not wait until the 'no assurance' issues were resolved before providing it. She said in hindsight perhaps, but that she had posted a paper about how they were going to improve cashflow and did a '*Lessons Learned*' paper in March. The first place the no assurance report had to go to was the Audit Committee. If she had gone to Management Board, the Chair of the Audit Committee would have told her she had not followed the governance process, so she was between a rock and a hard place. You had to follow the right processes. The Audit Committee looked at it and their view was that the primary thing was to get the problem solved. If they chose to escalate it, then it would go to Governing Council, not the Management Board.

She said she could not remember whether the 'no assurance' report was an item on the agenda for that March Management Board meeting but if anyone was unhappy they could have gone to the Chair, or her or to the CEO. No one had picked up the phone to her.

Because she had been so concerned in December 2018, she had commissioned an independent review of the balance sheet to see if there was a bigger problem than Treasury Management. It came back clean. She gave the assurance to the Board, but four members of the Board decided that her assurance was not

good enough. She thought fundamentally that because they were not given access to the internal audit report, they though she had something to hide. She agreed that she had sat next to Simon Hardwick at the Board meeting, but her account of it was rather different from his. She said she had said to him:

> *"Are you trying to get me fired, because if you are, I'd rather know about it, I can deal with it's fine. And he said to me no, he's - I can't remember the words - but he's after the Audit Committee and Finance Committee. I said to him well if that's the case, please express that at the Board Meeting, and he didn't."*

I asked her whether not providing the BDO report when asked was because she was engaged in a cover-up. She said:

> *"There's a couple of comments I would make. It was discussed at Audit Committee okay? and our external auditors were there and he was amazed that that was suggested because they attend every Audit Committee so they are aware of all of this, so there was no burying of any bad news.*
> *" If I wanted to bury bad news, (1) I could have said to [the Director of Risk] let's not do the Treasury management - kick the can down the line. We didn't, we actually accelerated it. (2) I could have sat on the Treasury Management Audit Report. It actually went through very quickly to Audit Committee after management had had a chance to respond and I think it's only fair that they get a chance to respond to it.*
> *"It's been discussed extensively at Audit Committee and our External Auditor has been there. It did not necessitate any change in the external audit for the following year, so they did not see it as a massive issue, and also it didn't need disclosing in the Financial Statements. If it was such a massive issue then it would need disclosing. All of that is Minuted in Audit Committee.*
> *"So to read that I've covered something up, I actually find quite offensive."*

The CEO told me that it would have been helpful for the COO to have mentioned the BDO report at the December Management Board meeting. However, she probably had the same feelings as him: some of the capabilities in the finance team were questionable and she was probably waiting to get a sense of the report in relation to whether they had all that they needed for the nature of what they were doing. By the time of the March Management Board meeting, he thought things had already started to get into a difficult place as to who was accountable for overseeing it. His sense was that the situation had already got into a place it shouldn't by then i.e. "whose accountability is it", rather than actually what might just be a sensible thing. RICS' culture from the top was very much around the governance and the process.

The Minutes record that:

1. The Finance Committee Chair and the COO presented the *Cash Flow forecasting, controls and lessons learned* paper. The COO offered an apology to the Board that the breach of the Reserves Policy which arose in November 2018 had not been communicated in a timely manner.

2. The message being advanced was a positive one. The Director of Internal Audit confirmed that completion of all actions was on track. The Audit Committee had commissioned a re-audit of Treasury Management to report in June 2019 on whether the actions had been satisfactorily completed.
3. The respective roles of the two Boards[95] was noted, but it was agreed that on this issue there needed to be greater connectivity of information and assurance. It was hoped that the actions already put in place to address and prevent a similar occurrence would rebuild the confidence of any members of the Board who remained concerned.
4. The Board were given assurance that good progress had been made over the preceding four-month period.
5. Assurance was given by the CEO, COO and Interim CFO that the Board would be provided with notification of any issues regarding cashflow in a timelier manner to avoid "surprises".
6. The Minutes record that some members of the Board remained concerned as to whether the required assurance had been provided that the necessary controls were now in place to prevent a repeat. While respecting the separate and respective roles of the Audit Committee, the Board requested further assurance be provided by way of a number of additional actions:

> *"Respecting the separate roles of the two Boards, a Report be provided from the Chair of Audit Committee which provides assurance that Audit Committee is satisfied with the Actions identified within the Treasury Management Report; that they are being actioned; that the proposed timescales are appropriate; and that there will be a re-audit to be completed by June 2019. (Action: The Audit Committee Chair; Date: Apr 2019).*
>
> *"The re-audit of Treasury Management report be provided to the Board when complete. (Action: The COO; Date: Jun 2019)"*

7. The Finance Committee was to provide a report to give assurance in respect of cash flow forecasting. Its Terms of Reference were to be reviewed to ensure that they reflected the assurance that it should be providing to Management Board.
8. The Audit Committee Chair was to be invited to the June Management Board meeting to provide assurance that satisfactory progress had been made, and assurance was to be provided to the Management Board in respect of the skills, capabilities and leadership culture within the Finance Team.

The Minutes do not mention the 'no assurance' rating.

[95] Management Board and Audit Committee. Confusingly, it is an RICS habit to use the expressions interchangeably.

At item 6 are the items for the Agenda for the next quarterly meeting of the Management Board due to be held on 19th June 2019. One of the items is the "cash flow re-audit report"

The CEO told me that it began to feel personal from the moment Simon Hardwick had made the call to the Chair of the Management Board in February. It became clear from March onwards that the Management Board was not in a good place. The Chair felt he was under attack. The CEO and COO were being cut out and "sent to Coventry". Emails and letters were going behind the scenes to the Management Board Chair and the CEO just didn't know where he stood.

He didn't know why the four non-Executives hadn't just rung him and asked him to talk sense into people. I asked him whether it would have been possible for him to have rung them; he accepted that he could have done, but he had started to hear things that made him wonder what was going on. In any event, he was not the Chair of the Management Board.

I do not accept that this tells the whole story. The CEO had had a copy of the BDO 'no assurance' report in his possession since February. At any point he could (and should) have simply made the decision to provide it to the Management Board.

The President (who attended Management Board by invitation) told me that it was during this meeting in March 2019 that he first learned of the BDO no assurance rating. He did not have a copy of the report. He did not think it sounded like a great situation, but had to rely on the experts. He was reassured that significant action was being taken to rectify the position, so it was under control.

General Counsel[96] similarly told me that it looked serious but she had to rely on the experts, particularly the Audit Committee and its Chair.

There is one issue which appears in the Minutes which is worth noting in passing. That is that:

> *"[The COO] reported a correction that needed to be made to the Balance Sheet as the accumulated profit and loss account did not, as it should, tie back to the profit and loss accounts. This was because last year's tax accruals had not been reflected in the accrued liabilities. This had been picked up by the Finance Committee. the revised version would be shared with the Board"*

[96] Who also was present

The issue of the posting to various accounts is one which, had I had more time and broader terms of reference, I would have like to have investigated further. I deal with this in more detail later in this report.

6H THE PERIOD BETWEEN THE 28th MARCH AND 19th JUNE 2019 MANAGEMENT BOARD MEETINGS

This section contains a great deal of detail for the following reason. When I first saw the papers, I had found it difficult to follow:

(a) what had happened in the three months between the March and June Management Board meetings, and
(b) what it was that BDO had done.

When I interviewed BDO their evidence helped me to understand what had happened. They told me that they had conducted not one re-audit, as I had initially understood to be the case, but two. The first had taken place in May 2019 and the second in July 2019.

The evidence about the events surrounding the first re-audit report is important, because I have concluded that it shows that:

(i) progress was slow in terms of implementing solutions to the Treasury Management problems, and
(ii) it suited the COO and her team for the BDO re-audit report to appear to have been delayed because this provided more time for the measures to be put in place.

This would explain the absence of any sense of urgency in providing the re-audit report to the Audit Committee. The evidence which I set out in the paragraphs which follow explains this further.

It also provides evidence that the Chair of the Audit Committee was not applying pressure on management in the way that the Management Board and Governing Council were entitled to expect, given the remit and purpose of his committee.

28th March 2019 onwards

Thus the situation the day after the March 2019 Management Board meeting was as follows.

It was now six months since the BDO report had been commissioned and four months since the seriousness of its findings became known to the COO, but the report itself remained unseen by both the Management Board and Finance Committee. Governing Council did not even know that there had been a report with a 'no assurance' finding.

The CEO, the COO and her team and the Audit Committee had seen it, but the Audit Committee Minutes were not provided to the Management Board[97].

The four non-Executives believed that the original report would be provided to the Management Board in three months' time, by which time the re-audit would have taken place and that report would also be available. I am satisfied that Simon Hardwick had made it clear that he believed it should have been provided sooner but that he and the rest of the Board were persuaded to wait for the next Board meeting which was to take place in June 2019. It seems clear that the hope and expectation by all was that by then the proposed solutions would have been implemented and thus the problems would have been solved.

On 29th March 2019 (two days after the Management Board meeting), the CEO provided his customary Management Board update to Governing Council. I have already commented on the fact that, in my view, good governance required that this should have been done by the Chair of the Management Board rather than the CEO. Governing Council relied entirely upon the updates to inform them of what was happening in terms of performance and operational oversight, together with alerts as to any issues arising.

Having reminded Governing Council about the incident involving the need for an emergency overdraft extension five months earlier, the CEO wrote:

> *"The Board were rightly disappointed that we exceeded our set limit and were concerned that this had happened. Our COO has initiated a number of internal audits (conducted by external parties) and reviews to make sure that our policies, procedures and competence are at the level we need for a global organisation. Audit Committee are now reviewing these and will be providing the Board with assurance in due course. These internal audits will be repeated in June in order to ensure that all corrective agreed actions are in place. Finance Committee have been asked by Management Board to enhance analysis of detailed cash flows on a more regular basis. Both myself and the COO are in no doubt that our finance team could have managed our cash flows better and improved our own levels of debt recovered. Rest assured, this has the focus of the Executive and the Board….*
> *"For the June Board we currently have on the agenda…….update on cash flow assurance."*

There are two matters of note.

[97] The Audit Committee Terms of Reference required that they should be but in practice this never happened. General Counsel was to address this in her internal governance review in September 2019.

The first is that if, as the COO maintains, the four non-Executives were mistaken about what she had said about the reason for the commission of the Treasury Management report, then the CEO seems to have made the same mistake.

The second is that the CEO made no mention of the fact that the Treasury Management report had a 'no assurance' rating.

Although I regard this as an unjustified omission, in all other respects this was a reasonable update to have given to Governing Council.

On the same day, 29th March 2019, BDO emailed the Director of Risk confirming that they had been asked to perform a re-audit of the Treasury Management function.

A few days later, on 4th April 2019, a document titled, "*Management Board actions arising from cash flow paper at meeting on 27.3.19*" was circulated on the Management Board Virtual Community. It repeated the expectation recorded in the Management Board Minutes that, in April[98], assurance would be provided by the Audit Committee Chair as to the progress of the remedial actions set out in the Treasury Management report. It is my view that given the respective roles of the Board and the Committee[99], this was not only a reasonable request to have made but one which was required by the governance structure. Despite this, the Chair of the Audit Committee did not provide that update to the Board until mid-June[100].

An email from the COO to the Audit Committee Chair on 8th April 2019, updating him as to what had happened at the Management Board meeting, gives some indication as to the level of knowledge and involvement that the COO had in what would be disclosed through the Audit Committee. She said:

> *"As you know from the December meeting I was asked to prepare a 'lessons learned' paper which I have attached for your reference…..*
> *" A couple of the members of Management Board are aware that the treasury report has given no assurance around the controls and focused on this element within a lengthy conversation around whether Management Board should have sight of this report.*
> *"We have agreed after quite a long discussion that to allay their concerns they would like something from you around the treasury report and also to be given sight of the reaudit scheduled for June.* ***I have agreed*** *to the re-audit report being shared with Management Board.*
> *" I attach a draft of* ***the proposed note from you*** *to Management Board which [the Director of Risk] has drafted as a starting point. I also attached a copy of the actions that came out of the section on cash flow."* (emphasis added)

[98] i.e. within the next month
[99] Which I consider in Chapter 7
[100] He wrote it in late May but it was not provided until a few weeks after that

From this it can be seen that the COO was comfortable making the decision that the re-audit report should be shared with the Management Board in June, without asking for the agreement or consent of the Chair of the Audit Committee. Yet despite this, she continued to insist that it was not for her to share the original report. This is an important piece of evidence which has led me to conclude that the COO relied on the governance structure only when it was convenient for her. In other words, that she was using it as a pretext for not providing the original report until she chose to do so.

It is of interest that the first draft of the note ostensibly to be provided by the Chair of the Audit Committee to the Management Board had in fact been drafted by a member of the COO's team. The Director of Risk was not a member of the Audit Committee and he reported directly to the COO (though he had a 'dotted line' to the Chair of the Audit Committee). All this provides further evidence that the COO and the Audit Committee Chair were in close communication; this is reinforced by what was to happen over the next few weeks.

I note that in their letters of representations to me, the COO and the Chair of the Audit Committee blame each other for the fact that Management Board was not shown the 'no assurance' report at an early stage. I deal with this elsewhere in this report.

Communication about the role of the Audit Committee

A few days later, on 12th April 2019, the assistant company secretary, who also reported - albeit indirectly - to the COO, emailed the Audit Committee Chair to say that the Management Board had asked that he be invited to the next meeting on 19th June "*to provide assurance that the actions in the paper presented at the March Board have been put in place and that satisfactory progress has been made*".

On the 16th April, the Chair emailed the COO in response saying that he couldn't make the June Management Board meeting but in any event he had a number of questions. He wrote:

> "*I just wanted to understand the background to this request. I am of course aware of the cashflow forecasting issue and the concerns that the Management Board have raised around this. I also know* ***that they have had sight of the recent internal audit report***." (emphasis added)

In my view this can only refer to the BDO report. If that is the case, it suggests that the COO's later insistence that it was the Chair of the Audit Committee who had refused to allow Management Board access to it (rather than her) was not correct.

In an email that reads as being both touchy and aggrieved, he went on to express the view that Management Board should be seeking assurance from the Executive, not the Audit Committee, as to whether the actions set out in the paper had been put in place and whether satisfactory progress had been made. He made pointed references to the fact that the Audit Committee was independent of the Management Board and reported only to Governing Council.

Plainly, the Management Board could only look to the Executive to see if sufficient progress was being made if they had seen the original report. If they were not to see the report then the Chair's email is meaningless.

In the absence of any evidence from him which would give a different perspective, I have concluded that this was an unhelpful email. It suggested that the Chair was preoccupied by matters both territorial and status-driven and had given little or no apparent thought to what was in the best interests of the Institution.

His email provides some support for what his solicitors said in their letter of representations to me, which was that he believed it was the Executive's decision as to whether Management Board saw the report or not. On the other hand, it makes a nonsense of his second representation which was that it was the Chair of the Management Board who had told him that it shouldn't be provided to the Board and he had simply gone along with that.

I would have liked to have asked the Chair of the Audit Committee about this.

The COO responded on 23rd April 2019 saying:

> "*I agree that the governance lines are getting blurred here and I have been very clear about that, however I think the Management Board are looking for assurance from you that management* ***i.e. my team and I*** *are taking this matter seriously and addressing it. Having been told of the no assurance report on treasury this has spooked the board.*
>
> *"Can I propose the following – that* ***we send the draft note that [the Director of Risk] has prepared*** *about the fact that audit committee have seen the report and are holding management to account for delivery of the recommendations. That a re-audit is due in June and that audit committee will look at this at their meeting in June and then send the reaudited report together with some comments from the audit committee about the remedial actions taken"* (emphasis added)

I have concluded from this email that whilst outwardly it appeared that the Chair of the Audit Committee was making these decisions, they were in fact being made jointly with the COO.

On 24th April 2019, the Chair of the Management Board emailed the CEO expressing concern that the June Audit Committee meeting was in fact due to take place after the Management Board meeting and saying "*given the background to these requests my view is that we need to deliver on them for the June Management Board*". This provides evidence that the Chair of the Management Board was warning the CEO that whilst the Board had been placated in March by the promise that they would have all the information needed by their next meeting in June, if that were not to happen, there would be considerable dissatisfaction and disquiet.

The CEO replied two days later:

> *"[The COO] is acutely aware of your desire here and has been in contact with [the Chair of the Audit Committee. He] has expressed a slightly different view of life here and [the COO] is working to find a solution that will ensure all are content on the way forward"*

Plainly, the CEO was staying closely involved.

The first BDO re-audit

Meanwhile, the re-audit was under way. On the 16th April 2019, BDO had held a scoping meeting with the Interim CFO and the newly appointed Director of Finance.

Four senior members of the finance team left around this time. Whilst it may be true that some or all of them were not performing at a sufficiently high level[101], it must not be forgotten that this was a team which the COO had recruited, managed and which had reported directly to her. Thus if they had fallen short, their failures were her failures, as well as – ultimately – those of the CEO.

On 1st May 2019, the Audit Committee Chair said that he needed to change the date of the next Audit Committee meeting, because he had another commitment. He suggested bringing it forward, but the

[101] I have not investigated it because it is out of scope for this Review

external auditors were unavailable then. The COO said it was crucial that the external auditors were present and suggested dates in July. She said,

> *"I don't think pushing this back will be too big an issue as the planning is going on in the background anyway, this is really just confirming the audit approach."*

True it was that the Audit Committee meeting was always going to follow the next Management Board meeting and so, in that sense, changing the date was not cataclysmic; nevertheless this lack of urgency is rather remarkable. Despite both the COO and the Audit Committee Chair knowing of the Management Board's anxiety to understand and have reassurance about the Treasury Management function, the Audit Committee Chair did not even mention this as an issue, and the COO seemed content for scrutiny of the matter to be postponed.

By the 17th May 2019, the instructions and timetable for the BDO re-audit of the Treasury Management function had been finalised and confirmed by BDO[102].

On the 20th May 2019, in a memo, the Audit Committee Chair provided his response to the Management Board request of 27th March, asking for his assurance. It differs from the draft originally sent to him by the COO on 8th April 2019. I do not know who, if anyone, received this memo in May. I am clear that the members of Management Board did not see it until 16th June.[103]

On the same day, BDO's week of fieldwork began on the re-audit. They told me that the 'close' meeting took place on the 25th May, having originally been scheduled for the 23rd.

On 3rd June 2019[104] the original BDO 'no assurance' report was shared with the Finance Committee on its Virtual Community ahead of its meeting on the 10th. I have been given no explanation for why it was provided at this point (rather than at the Finance Committee meeting in February) or who had provided it, but I have inferred from the other evidence that it was either provided by the COO herself or with her knowledge and agreement. What is, of course, noteworthy is that the Finance Committee reported to the Management Board and it seems, to put it neutrally, strange that in these particular circumstances the superior Board had not been given that which had been provided to the subordinate committee.

[102] Emails from BDO
[103] I set out its contents when I deal with the 19th June meeting.
[104] Chronology provided by General Counsel,

It will be seen from this that by 3rd June 2019, pretty much anyone with a passing interest in seeing the BDO 'no assurance' report had a copy. The members of the Audit Committee, the members of the Finance Committee, the COO, her team, members of the Finance Department and the CEO all had copies. The only people who had not been permitted to see it were the majority of the members[105] of the Management Board and its Chair. Governing Council, of course, did not even know that the report existed.

BDO continued with their work. In their evidence to us, they confirmed that by 4th June 2019 a full re-audit report had been drafted, as had been instructed and agreed. Their conclusions were unpromising. Although some progress was now being made, virtually nothing which had been intended to have been finalised by the end of April had been completed. It will of course be recalled that Management Board had been assured at its March meeting that all the proposed actions would have been completed by the time they next met in June.

I was told by BDO that something very unusual had then happened. The Director of Risk asked BDO whether, instead of providing their full report, they would mind summarising their conclusions in the form of a short note. BDO were aware that this was not the Director of Risk's personal decision and it was coming from someone senior to him, but they did not know from whom. In reality, this could only have been an instruction given by the COO. The Director of Risk confirmed to me in his evidence that it had indeed been she who had done so. He also told General Counsel this in September 2019[106], but General Counsel did not include this fact in her internal governance review.

BDO told me that they thought this was unusual, but produced it as requested. The note consists of two pages. By contrast, the report was 31 pages long.

The full 31-page report was never seen by the Audit Committee, the Management Board or the Finance Committee[107]. I know it exists because I have seen it (I asked BDO to send it to me). Its detailed findings – which, of course, did not make it into the note – make troubling reading. For example, whilst some progress had been made, it was said that "*The UK Treasury function currently has access to 37 out of 81 bank accounts*". The report concludes *"Treasury Management will remain at an increased risk until all 6 [recommendations] are fully implemented".*

[105] The CEO and COO also being members of the Management Board
[106] When he has asked
[107] From his letter of representations to me, I have concluded that the Chair of Management Board does not know of the existence of this report. He remains under the impression that there were only two BDO reports, when there were in fact three.

At around the same time[108] BDO produced another internal audit report, this time into *Key Financial Controls and Balance Sheet Review*. This was the report which was commissioned by the COO to give assurance about other aspects of the financial functioning of the organisation. It is outside my Terms of Reference but I note that the conclusion of this was troubling as well. BDO could give only limited assurance as to both the design and the operational effectiveness of the controls. There were seven high priority and thirteen medium priority recommendations. The area of greatest concern was the "*Institution's control over intercompany balances, exhibited by the large month on month differences in the intercompany reconciliation*". Because it does not directly concern this Independent Review, I have not pursued this matter further but it may be something which Governing Council would wish to know had been resolved.

The first draft of the Treasury Management function re-audit 'note' (i.e. the summary requested by the COO of the 31-page report) was provided to the Director of Risk on 4th June by email, when the BDO partner asked him for his comments. They met on the same day and the Director of Risk did indeed ask for a number of amendments to be made. According to General Counsel's chronology, this was to correct some inaccuracies/inconsistencies and for changes "*to better contextualise the findings*".

A second draft was then provided on 5th June 2019. It is in the form of a two-page note from the partner addressed to the Director of Risk. It states that:

- Of the six Internal Audit recommendations noted in the initial report (four High Priority and two Medium Priority), five had been partially implemented and one had not yet been assessed.
- The evidence of completion was not available at the time of the fieldwork.
- None of the recommendations had been fully implemented and therefore had missed management's stated implementation date of end of April 2019.
- Little progress had been made between November 2018 and the end of April 2019 when an Interim Financial Consultant was recruited. Thereafter, significant progress had been made to improve the control environment and work toward delivery of the recommendations.
- Management had made good progress in improving the overall control framework within Treasury Management.

[108] In a report dated May 2019

There is evidence which demonstrates that this BDO note was shown to the COO[109], which is what would be expected. Nothing seems to have happened to it for a number of weeks thereafter.

The Finance Committee met on 10th June. The Minutes record that it discussed the original BDO 'no assurance' report and received an oral update on the re-audit. The COO and the Interim CFO were present. One of the things recorded was the Finance Committee's desire that the BDO re-audit report should be shared as soon as possible.

In fact, of course, both the full re-audit report and the two-page note which summarised it were already in existence. That said, the Audit Committee had not yet seen either, although the evidence is silent as to why this had to wait for a meeting rather than being done by, for example, using the Virtual Community to exchange documents or a conference call, which would have speeded the process up.

An email from the Director of Risk to the Interim CFO on 11th June attached the second draft of the BDO re-audit 'note', stating that it previously had been sent to the COO as the Interim CFO was on annual leave.

On the 14th June, the COO emailed the Audit Committee Chair to give him a "heads up" that that the Finance Committee would be getting the re-audit 'report' (i.e. the note). She said that if it didn't also go to Management Board the Chair had indicated this was a *"potentially difficult situation"*. She said she had told the Chair of the Management Board that it was the Audit Committee Chair's decision and he was "respecting" governance lines. She said *"I personally have no issue with this report going to Management Board"*.

This last sentence is something of an anomaly as all the other material I have seen indicates that the COO had been unwilling to provide Management Board with the various BDO reports. I note in passing that to her knowledge (because she had requested that it be done this way) the re-audit 'report' consisted merely of a two-page note which was still in draft. Whether the COO was sincere or not in her stated position that she had no issue with the rest of the Management Board seeing the re-audit report, it is a fact that it was never sent to them.

[109] For example, the Director of Risk's chronology states that he shared this draft with the COO, although I have seen no direct emails to confirm this.

The 19th June 2019 Management Board meeting.

The papers for the 19th June Management Board meeting were provided to the members of the Board a few days before, probably on the 16th[110]. It will be remembered that at the last meeting in March, it had been Minuted that the cash flow update would be an Agenda item and that the COO had agreed that the Board would be provided with the re-audit report. Simon Hardwick firmly believes that it had also been agreed that they were to be provided with the original 'no assurance' report at the same time, though there is no reference to this in the Minutes. However, as a matter of logic, any re-audit report would make little sense without sight of the original report and, for this reason, I am satisfied that Mr Hardwick is correct in his understanding that it had been agreed that both would be provided for consideration at the June quarterly meeting.

"Cash Flow Update" was indeed on the Agenda, but was only allocated a five-minute slot for it to be "noted". There were no papers for this item and no sign of the promised reports. The only reference to the matter in the Agenda papers was to be found at page 153 (of 185) in the Sub-Board report of the Finance Committee which read:

> *"Finance Committee discussed the Treasury Management Board report and received a verbal update on the re-audit. The re-audited Treasury Management Board report will be shared as soon as possible with Finance Committee in due course. The Balance Sheet Review which was carried out in in January 2019 requested by the COO as a result of the breach in reserves policy will be finalised shortly and shared with Finance Committee."*

Although it does not appear as part of the Agenda papers, it seems that at this point Management Board was also sent the memo prepared by the Chair of the Audit Committee, dated 20th May 2019. This was the document in which the Chair of the Audit Committee Chair provided his response to the Management Board request of 27th March, asking for his assurance. The memo itself contains neither explanation of, nor apology for, the fact that it had been drafted in late May when Management Board had asked for it to be done in April, nor that it had not been sent to Management Board until 16th June. It will be remembered that Management Board had a Virtual Community which allowed documents to be shared and it could easily have been provided many weeks earlier.

In this memo, the Audit Committee Chair was keen to stress that the Audit Committee is independent of the Management Board and reports directly to Governing Council. He reminded the Management

[110] They say that they were 'published' on 17th June but the various emails I have seen suggest that they may have been provided on the 16th

Board that it was not their role to oversee the Audit Committee and how it discharged its responsibilities. This notwithstanding, he agreed that there should be 'communication' between the two boards. He continued:

> *"It is in this spirit that I confirm the following: -*
> *"The Audit Committee, at its March meeting was made aware of the cashflow breach in November 2018 and that the Board were extremely concerned by it and by the fact that no warning was given of it prior to its occurrence;*
> *"With this as background the Audit Committee considered the Internal Audit Report on Treasury Management and its findings and its conclusion that no assurance could be provided on the controls in place;*
> *"The Audit Committee discussed with management the steps being taken to address the findings and to improve the overall control environment as well as the timeline for implementation. The Committee was satisfied with the proposed steps and made it clear that this* ***was a matter of utmost urgency*** *and immediate progress was expected;*
> *"****Given the severity of the issues noted*** *a follow-up audit was requested to provide assurance that the necessary steps had been taken and that they were effective;*
> *"This follow up report will be reviewed at the next meeting of the Audit Committee in July and I will provide a summary of that review for the Management Board."* (Emphasis added)

He suggested that if Management Board wanted further assurance in the meantime, it should seek it from the Finance Committee and executive management.

There are three significant things about this memo.

The first is the tone, which makes it plain that the Chair did not appreciate any suggestion that the Management Board was entitled to tell the Audit Committee what to do. As I explain in Chapter 7, it is my view that the Audit Committee Chair interpreted the fact that the two 'Boards' were undoubtedly designed to be independent of each other as meaning that they were of equal status. I have concluded that this is incorrect. Irrespective of that, there is a territoriality about this memo which can be best described as 'silo'd'. Common sense should have told everyone that such an approach was not in the best interests of RICS.

The second significant thing is that, as the Audit Committee Chair well knew, the Management Board was expecting the re-audit report to be ready in time for it to be on the Agenda for their meeting in June. Despite this, the Chair was making it clear not only that Management Board would not have an update until the Audit Committee had considered it at their meeting in July, but then it would be by way of a summary only. This sits uncomfortably with his acknowledgement that the issue was a "*matter of the utmost urgency*."

The third aspect is the reference to the "*severity of the issues*". This is to be contrasted with the fact that a few weeks later, in August, the Chair was to say that the BDO findings were really not very significant.

In the circumstances I have concluded that it was hardly surprising that the Management Board was concerned. If this was not a cover-up, it looked remarkably like one.

Simon Hardwick was troubled. He sent an email to the Chair of the Management Board, which reads (in full):

> *"Dear Paul,*
> *"I trust all is well with you.*
> *"In preparation for the forthcoming MB[111] meeting and in the light of the attached communication[112] from [the Chair of the Audit Committee], may I ask whether you have yet had sight of the 'no assurance' Internal Audit report regarding Treasury Management? I had expected the report to be shared with MB by either the Executive, our Finance Committee or the Audit Committee. However, it doesn't appear anywhere in our papers which leaves me concerned about how MB can properly discharge its responsibilities.*
> *Regards*
> *Simon"*

Within a few minutes, the Chair replied to say:

> "*Hi Simon*
> *I spoke with [the Chair of the Audit Committee] again on Friday in relation to 2.3.11[113]. I will cover this at the meeting but, briefly, the re-audit will be considered at the AC[114] meeting in July and the plan is for this to be provided to FC[115] and to MB with a summary of AC's views, thereafter.*
> *Kind regards"*

Simon Hardwick responded the following morning, saying that he was concerned about this and knew that his views were shared by a number of other Management Board members. He asked if the Chair would have time to discuss it. They arranged to have dinner together in Birmingham the night before the Management Board meeting.

Later that day, the 17th June 2019, the Audit Committee Chair sent an email to the Chair of the Management Board asking him whether Finance Committee had seen the original BDO 'no assurance'

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[111] Management Board
[112] The logical inference is that this is a reference to the 20th May memo
[113] This is reference to the paragraph in the March Management Board Minutes which records that the re-audit of the Treasury management report was to be provided to Management Board when complete (and which had the COO's initials as the person who was to perform the action, together with the date of June 2019)
[114] Audit Committee
[115] Finance Committee

report. I have concluded that this was as a result of the Chair of the Management Board having contacted him to express concern about lack of an update or any apparent progress.

The COO, who was copied in, confirmed that the Finance Committee had indeed seen it, after it had been to the Audit Committee.

I found these various emails very confusing. I have concluded that it is telling that there is a lack of clarity, with people seemingly going round in circles about who had seen what, when and why. I discuss the significance of this in Chapter 8.

The Chair of the Management Board then emailed the COO to say that in the light of that, the Audit Committee Chair had confirmed he had no objection to the original 'no assurance' report being provided immediately, with the re-audit 'document' being provided after the July Audit Committee meeting. In the Chair of the Management Board's opinion "*it would be normal for a 'superior' Board as a matter of course to have access, if decide, to a report issued to a sub-Board*". In my view most people would not disagree with this.

The Chair of the Audit Committee replied:

> *"The only comment I would make is perhaps in future we should post on the Management Board portal the papers of all sub-boards of Management Board so that members can see such papers if they wish. The analogy I would use is what I see happening in PLC boards where the sub-board papers are made available to all Board members. Could [General Counsel] please think about that for the future?"*

The COO replied that she was *"slightly surprised"*, asked *"why the change?"* and did this mean that in future they were changing the practice that boards who have responsibilities for certain things would be sent audit reports as a matter of course?

Cutting through this, it can be seen that by 17th June 2019, the Chairs of the Management Board and the Audit Committee were agreed that Management Board should receive:

(a) the original 'no assurance' report immediately, and
(b) the re-audit report after the Audit Committee meeting in July.

Despite this, the original 'no assurance' report was not provided to the Management Board until 19th July, over a month later, and the re-audit report/note was never given to them. No one has given me an explanation for this. The Chair of the Management Committee said he had tried very hard to get both reports, and the emails confirm this. The fact that he did not succeed should be a cause for real concern. The criticism I make of him is that in the circumstances, he should then have escalated the matter.

The Management Board meeting was to take place on 19th June 2019 in Birmingham.

Simon Hardwick told me that having travelled to Birmingham the day before, he met Steve Williams and Bruce McAra for a drink that evening. They spoke about the Treasury Management issue during which they shared concerns about the ongoing lack of information and the fact that they still had not been allowed to see the original BDO 'no assurance' report. As arranged, the Chair joined them for dinner. He confirmed that he himself still had not seen the report. Simon Hardwick told me that the Chair had said he *"expected it to be really bad"* and that even the CEO had not seen it until late March[116]. That said, the Chair said he was much more interested in the re-audit, which would give reassurance that the necessary steps had been taken. In his evidence to me, Simon Hardwick said:

> *"I pointed out that Management Board urgently needed to have sight of the original report because, without it, we couldn't know what needed to be fixed. [The Chair] said that his understanding from his last conversation with [the CEO] was that the reason the promised re-audit report had not been included in the Management Board pack was that BDO's re-audit identified that there were still outstanding problems.*
> *" [The Chair] suggested there was no point in making a fuss (and potentially souring the atmosphere at the following day's Management Board meeting) and that we should merely insist on receiving all of the BDO reports … as soon as they were available. The [original report] should be provided straight away, and the [re-audit report] was expected to be in the following few days.*
> *He said that there had been some dialogue between him and the Chair of Audit Committee about this topic, but that [the Chair of Audit Committee] had been uncooperative and resistant to sharing information with Management Board.*
> *" I pointed out that Management Board had a strong, legitimate interest in this information, which was critical to enable us to discharge our responsibilities. I suggested that [the Management Board Chair] should simply insist that the information be provided to him by the Executive: this did not need 'permission' from the Audit Committee Chair. [He] said he was reluctant to do that because he wanted to leave the problem with Audit Committee, I responded that I considered that was an inappropriate approach because, as members of Management Board, we were all accountable for the Institution's governance and couldn't shut our eyes or pass the buck to someone else.*
> *" I was, however, willing to accept [his] proposed way forward to ensure there was a focus on achieving a pragmatic solution."*

When I interviewed the Chair of the Management Board, I asked him about Simon Hardwick's account of the conversation at dinner. He said to me that he did not remember speaking about the report in those words but agreed that it was certainly correct that he personally hadn't seen either the original report or the re-audit. He thought that he "*would have phoned*" the Chair of the Audit Committee and he "*may have told him that it wasn't great*". As to the Chair of the Audit Committee's uncooperative attitude, he might

[116] As a matter of fact, this was incorrect. I am satisfied that the CEO had seen it on 25th February.

have alluded to the 20th May memo, in which it was clear that the Chair did not think the reports ought to be shared. The Chair of the Management Board conceded to me that he might have said that it was "*difficult*".

It is my view that a stronger Chair of the Management Board would have insisted on being shown the documents and reported any continuing refusal to Governing Council.

The Management Board meeting took place the following day, the 19th June. The Minutes record that the Finance Committee Chair and the COO reported on cashflow. The Finance Committee was considering what more it needed in terms of assurance from the Executive in order for it, in turn, to give assurances to Management Board. A whole programme of change was being carried out. The Management Board noted that the 'no assurance' opinion related solely to Treasury Management and not the whole finance function. Significant progress had been made. The Management Board Chair advised that his conversation with the Audit Committee Chair had provided assurance of progress, as well as noting that it was only on an exceptional basis that audit reports would be shared with Management Board.

The Minutes also record that the original 'no assurance' report and the re-audit report would be shared with Management Board following the Audit Committee meeting in July, together with a note from the Audit Committee chair. The Minutes say that if any Board member wishes to have sight of the original report ahead of that time, they should contact the COO.

Simon Hardwick told me that he is certain that the Minutes do not accurately reflect what was agreed. His evidence was that at the meeting he had objected to deferring further the provision of the two BDO reports. He said that after discussion, it had been agreed that the original 'no assurance' report would be posted on the Management Board Virtual Community immediately, with the re-audit report being shared as soon as it became available. It was clear to everyone that he and the other non-Executives urgently required sight of both BDO reports.

It is not without significance that the COO was present whilst this discussion was taking place. As the evidence has demonstrated, she knew that the BDO re-audit report had been available since 5th June, but the other members[117] of the Board and the Chair did not. I consider this further below.

The Management Board Chair told me that he is pretty sure that the Minutes are accurate. He recalls that, partly as a way of trying to ameliorate the fact that the re-audit report wasn't ready, he had suggested that if anyone wanted to see the first report they should ask the COO. I asked him why, in that case, he thought

[117] With the possible exception of the CEO, who may have known. The evidence about this is unclear and nothing turns on it.

that Simon Hardwick had not turned to the COO then and there and said "can I please have it". The Chair said he could not answer for what Mr Hardwick might or might not have done. He did remember saying that he personally was going to wait for both as he wanted to do a "before and after" comparison.

The Chair also says that nobody objected to the Minutes: they were approved at the September meeting and someone should have said if they felt they were wrong. I asked Mr Hardwick whether he had raised it; he said that the draft Minutes had not been provided for several weeks and once they were, matters had moved on - not least because by then they had finally seen the original 'no assurance' report - and more important issues had eclipsed the question of the accuracy or otherwise of the June Minutes.

The COO told me that she could not remember what was agreed. She thought that what the Minutes recorded was odd as the person to whom anyone should have gone for a copy of the report was the Audit Committee Chair rather than to her. She agreed that members could have asked her there and then for a copy and she couldn't remember anyone doing so.

Bruce McAra's evidence supports Simon Hardwick's, namely that the original BDO report was to be provided immediately and that there was no suggestion of members having to ask the COO for a copy.

Simon Hardwick is firm in his memory about what happened. The Management Board Chair's recollection as to his suggestions to the meeting, and the reasons for them, is more consistent with Simon Hardwick's version, namely that it had been resolved that the report should be provided immediately to all. There is no issue but that by this time, Mr Hardwick and others were becoming increasingly concerned about the failure to provide it and were voicing those concerns firmly.

In the circumstances, the suggestion that anyone could have asked the COO for a copy, but apparently no one did, is not credible.

The COO told me that she couldn't recall anything particular about the June meeting other than that she had found it increasingly uncomfortable. She thought that there was probably an update by the Audit Committee Chair as the original intention for the audit recommendation on Treasury Management was April 2019, but it hadn't quite been achieved. In her view, that was probably another area of contention.

I asked her where would have been the harm in the Board being shown the original 'no assurance' report. She said that from her perspective it was the way it was being demanded. There was little respect for the role of Audit Committee and its Chair. She felt that assurances from her or from the Chair of the Audit Committee should have been good enough.

Having considered the evidence, I conclude that it is more likely than not that it was agreed at the Management Board that the first, 'no assurance' report would be provided immediately to all members and not merely 'on request' from the COO. Therefore the Minutes are inaccurate. I have concluded that the reason the Minutes are inaccurate was not simply that a mistake had been made. As drafted, they provided an explanation for why yet another month was to pass before the original 'no assurance' report was shown to the Board. Plainly, if it is correct that it had been agreed that the original 'no assurance' report was to be posted the following day, there is no reasonable explanation why that did not happen for a further month. If, however, it was that the COO was only going to provide it on request, then it was always open her to say - as she did - "well, no one asked me for it" (however unlikely that might be).

In relation to the re-audit report/note, which the Board was really anxious to see, I have concluded that it is no answer to say that the Audit Committee had not yet considered it. It had been available since 5th June. Even were it correct to say it was not 'possible' to provide it until the Audit Committee had considered it (with which I do not agree), the Audit Committee meeting had been postponed for the convenience of its Chair. The Audit Committee only has three members. There was no reason why it could not have been shared with them and the members asked for their comments, utilising the Audit Committee Virtual Committee or by having a telephone conversation. I can find no reasonable explanation for this other than, since the news was bad, this was a way of delaying Management Board scrutiny.

I was also struck by the fact that anyone reading the 19th June Management Board Minutes, who had not been present, would gain no sense of the level of concern which had been articulated by the non-Executives.

In an email on 27th June 2019 to the Chair of the Management Board, the CEO said "*I recognise that this whole issue was not handled well at the outset.*" This is the first of a number of occasions on which members of the senior leadership expressed private reservations about the behaviour of the COO whilst outwardly defending her to others, particularly the non-Executive members of the Management Board.

6I LATE JUNE – JULY 2019

The second draft of the re-audit 'memo' had been provided to the Interim CFO on 11th June 2019.

It was 17 days later, on 28th June 2019, that he emailed another draft to the Director of Risk; in it he had made substantial amendments by way of tracked changes. These made it read rather more favourably to RICS than before. In particular, he proposed to delete BDO's conclusions that, as none of the recommendations had been fully implemented, the stated implementation date had been missed, and that little progress had been made between November 2018 and April 2019. The statement that the part-actioned recommendations should be fully completed in the near future /as soon as practicable was also removed, being replaced with an endorsement that a full re-review of Treasury Management would occur once management confirmed that all recommendations have been implemented.

The Director of Risk then sent the Interim CFO's version to BDO that day, saying that "*in light of the sensitivities around this area he had made a few tweaks to help position the report*". The BDO partner replied the following day saying that he was comfortable with the changes.

On 30th June 2019[118] the CEO had posted on the Governing Council Virtual Community his customary update following the 19th June 2019 Management Board meeting. The cash flow issue is dealt with in the following way:

> "*Our processes have been audited and improvements put in place globally including better collection of debt. Our maturing global structure has necessitated a strengthening of our processes. The Board is* ***awaiting confirmation from Audit Committee that, following a re-audit in June, the process changes required have been fully implemented to satisfaction****".* (Emphasis added)

It will be noted that this is a much more optimistic account than appears in the Management Board Minutes. In addition, the COO knew perfectly well that the BDO re-audit report which already existed, said exactly the opposite. The fact that the CEO could say this to Governing Council indicates either that the COO had not been entirely frank with him or that he was being less than transparent with Governing Council. Having been present at the meeting, the CEO knew how concerned at least some of the other

[118] The CEO's summary is dated 19th June but not posted until 20th

Board members were, but there is no mention of this to Governing Council. In turn, the Chair must have known that this was a less than fully-transparent report of this matter (in the sense that it was at best selective) yet did nothing to correct it.

On 3rd July 2019, the finalised version of the two-page BDO re-audit report/note was posted on the Audit Committee Virtual Community. The Chair of the Audit Committee appears to have been on holiday and did not look at it for nearly a week. On 9th July 2019 he sent an email to the Director of Risk, copied to the COO, in which he said:

> *"I am looking at the memo prepared by BDO on the Treasury follow-up audit – is this all there is? Is there not a more detailed paper supporting the memo giving a description of the original finding and what had been done to date to remediate and then an opinion of what more is left to do. I think given the seriousness of the original report and the concerns raised by both the AC and MB we should have more than a two-pager to provide assurance.*
>
> *"The overall opinion is fairly woolly in that it notes progress and good intent to fix things but is still some way short of providing comfort that the control environment is where it should be.*
>
> *"I think we have to be able to manage expectations – I think there is a* ***general expectation*** *that Treasury will have been fixed by now and that this report would confirm this but instead the message is one of work in progress.*
>
> *"I am back in the UK on Thursday and am generally available for a call to discuss further.*
>
> *"I am copying [the COO] in on this email so that she is aware of my concern"* (emphasis added)

What is remarkable is that the two people to whom this email was addressed both knew:

(a) why this BDO 'memo' was such a short document. It was in this form because the COO had asked that it should be;
(b) that it was out of date because the COO and her team had had it for over a month, plainly without telling the Chair of the Audit Committee about it; and
(c) that there was indeed a full report from BDO, because the COO and her team had a copy of it.

I am satisfied that the COO did not tell the Chair of the Audit Committee any of these things. When she replied to his email three days later, on 12th July 2019, she did not directly answer any of the questions he had asked. Instead she said that she was very close to the Treasury piece, that good progress had been

made and hopefully his concerns would be allayed. She suggested meeting for a chat before the Audit Committee meeting, stressing that the new staff had been in place only since April.

True it was that the Director of Risk also knew the full situation about the BDO memo and could have told the Chair of the Audit Committee, but it would be unreasonable to expect him to have gone behind the back of the COO (who was his boss), not least because the last time he had done so, she and the CEO had been very angry indeed. I refer, of course to the fact that is was he who had told Simon Hardwick and Amarjit Atkar about the existence of the 'no assurance' report five months earlier.

I am satisfied that this is evidence of a further instance of the COO keeping information to herself in order to buy more time to try and rectify things.

The 15th July 2019 Audit Committee Meeting

At the meeting the Audit Committee considered the two-page BDO re-audit report/note. The Chair reiterated his concerns and asked for a more detailed and up-to-date report. The COO and the Director of Risk were present, as was the BDO Director.

The BDO Director told me that he felt somewhat hard done by in the circumstances, given that he had in fact prepared a full report but then had been told to provide the short note in its place. Nobody told the Audit Committee this. I suspect the reason was that the BDO Director (who did not know that it was the COO who had ordered it) did not want to get the Director of Risk into trouble and the Director of Risk did not dare undermine the COO by revealing what had actually happened.

The Minutes are silent on what if anything should be said to the Management Board. This is interesting given that in March the Management Board had explicitly been promised[119] the re-audit report, as the Chair well knew. I have inferred from this that it was not discussed and the decision not to provide it to the Board was once again a decision made by the Chair without consulting the members of the Committee.

[119] A fact which is recorded in the Minutes

The provision of the original BDO 'no assurance' report to the Management Board

Four days after the Audit Committee meeting, on 19th July 2019, two documents were posted on the Management Board Virtual Community. I have concluded that the decision to do so was made either by the Chair of the Audit Committee alone or, more likely, following discussion with the COO.

The first document was a note from the Audit Committee Chair stating that the Audit Committee had considered the re-audit report but did not think that it provided sufficient assurance, partly because little progress had been made when BDO conducted their work, and also because the report did not contain enough detail. The Chair expressed disappointment that the BDO report was not sufficient to enable Audit Committee to provide the assurance they required but expected that once BDO had completed the additional work requested of them, assurance would be obtained. The final report would be issued in the first week of August.

The first re-audit two-page report/note was not provided, despite the previous assurances that it would be. Simon Hardwick responded immediately saying "*Please could the follow-up report be shared with MB via the Virtual Community **now**, as was agreed at last month's MB meeting*" (original emphasis). This request appears to have been ignored. Despite the fact that Simon Hardwick was to repeat it many times over the weeks that followed, to the best of my knowledge, the Management Board has never seen the report/note.

It is reasonable to ask why it was not provided to them. The reason given to the Board was that BDO's work was unsatisfactory and they had failed to compile a full report. I am completely satisfied that what the Management Board was told was not true (although it seems that the Audit Committee had themselves been misled). BDO certainly had compiled a full report: I have seen it.

The evidence has led me to the conclusion that the full report had been in effect buried by the COO. I am also satisfied that the reason the two-page BDO re-audit report (note) was not supplied to the Management Board was because, despite the modifications made to the language, it made explicit that:

(i) insufficient progress had been made; and

(ii) all the internal targets had been missed.

The second document posted that day was the original BDO 'no assurance' report.

In my view this is a significant point in the chronology. Having waited months to see this document and having been told that the reason it could not be provided was because work was ongoing, the Management Board had finally received the original report, despite the work not having being completed. I would have liked to have asked the Chair of the Audit Committee why he had suddenly decided at this point to provide it.

Events following the posting of the 'no assurance' report

All four non-Executives told me that they were deeply shocked when they were finally allowed to read the original 'no assurance' report.

Simon Hardwick thought that it was much worse than they had imagined it would be, not just because of the number of controls which simply didn't exist but because of BDO's conclusions about the higher potential for unidentifiable fraud, misappropriation of funds and misreporting of financial performance:

SH	*"I worked alongside the audit team [at PwC]. I know what audits look like and that was absolutely shocking. Any organisation that treats a 'no assurance' internal audit report as being nothing to worry about is merely suffering from a problem with its governance. When you look at the content of that report in the context of what had happened, for me it was absolutely a red flag issue. The fact that it came to light and was disclosed to us so many months after it had been published was for me really really troubling and the cause of serious anxiety*
ALQC	*Do you think any of these other people really believed it was nothing to worry about?*
SH	*No. if you look at [the Chair of the Audit Committee's] notes at the time[120], they were clearly very critical and very worried about it."*

Amarjit Atkar told me that he knew a 'no assurance' rating implied a number of very serious issues so he had been braced for a really bad report. But when he read it, it was a lot worse than he had anticipated. They had been given to believe that the cashflow problem was very much an isolated issue; all of a sudden the report said no assurance in the whole of Treasury Management, which was wider than merely cash forecasting. Previous assurance reports had not raised a Treasury Management issue, so this undermined what they had been told in the past. He subsequently asked whether this meant that whoever filed those

[120] The notes he circulated to Management Board

earlier assurance reports had lied. He thought the answer he got back was that, yes, people had not been truthful and that was why one or two people no longer worked for RICS. Although the COO and Audit Committee Chair were saying it was not as serious as it seemed, his reading of the report, combined with the fact that it had been withheld, meant that he had lost trust. Mistakes are made in all organisations but in good ones, people are open about them and then everyone moves on. So for him, the concern was not just the Treasury Management issues but the fact that it was beginning to appear that a great deal had been concealed in the past.

Steve Williams said:

> *"I've seen a lot of audit reports over the years and 'no assurance' is kind of a catch phrase and it can be very mild. But this one had other wording attached to it about high potential for fraud and misappropriation of funds and risk of further cash flow difficulties. When you take [them together] it was alarm bells, I mean it was huge".*

On 19th July 2019, the day of the posting of the 'no assurance' report, Simon Hardwick emailed Steve Williams and Bruce McAra about it. His email says that in his view it had deeply troubling conclusions, *"which raise questions about who should be considered ultimately accountable for what was clearly a substantially flawed Treasury function."*

Steve Williams responded saying that no one seemed accountable and they were uncovering a hornet's nest. Despite what seemed like some stonewalling from the COO, the Audit Committee Chair and even the Management Board Chair, he suggested that *"we*[121]*"* stay on top of it, not duplicating the audit and risk officer functions but asking the hard questions.

Bruce McAra replied saying

> "*Steve, as you say, it's a bit of a hornet's nest. The question is how to continue to talk about it* ***in a way to support the Exec,*** *when at the moment they have been trying to bury it. Simon, your conversation with [the Chair of the Management Board] is another example to me of how the various committees tend to side-step directly accepting responsibility for an issue. I'm guessing that [he] is frustrated as well."* (emphasis added)

[121] The non-Executive members of the Board

On 20th July 2019, the CEO emailed the Chair of the Audit Committee saying that he was trying to balance the "heightened concerns" of the Management Board Chair and others on the Board with what he was being told by his team. It would appear that they then spoke[122].

Simon Hardwick took the weekend to think about it and then on 22nd July 2019, tried to telephone the Chair of the Management Board to discuss the report, but was unable to get hold of him. On the balance of probabilities what I believe happened was that following the attempted call, the Chair realised that he was going to have to speak to Simon Hardwick and so contacted the CEO to try and get some answers he could pass on. The CEO in turn then spoke to the Chair of the Audit Committee.

Certainly, on the same day (22nd July), the CEO telephoned the Audit Committee Chair[123] to ask whether he was content with where matters were and whether he felt the intensity of management effort was where he needed it to be. The Audit Committee Chair confirmed that he was content. I find this rather surprising but as I have not been able to ask the Chair of the Audit Committee about it I have not drawn any conclusions from it.

Also on 22nd July 2019, BDO completed the Terms of Reference for the second re-audit and started the fieldwork.

On 23rd July 2019, the Chair of the Management Board returned Simon Hardwick's call. Mr Hardwick told me that he expressed his concerns. To his surprise, the Chair was defensive, saying that he (Mr Hardwick) should have asked for a copy of the report had he wanted to see it sooner. The Chair claimed to have had 'robust' conversations with the CEO about the need for the CEO to take responsibility for the remedial actions and there was no need for any of the non-Executives to get involved at this stage.

I have concluded that this was the point at which the Chair of the Management Board wrongly aligned himself with the CEO and COO against the majority of the non-Executives on the Board. I have concluded that in his heart he knew perfectly well that this issue had been seriously mishandled by the Executive. By telling the non-Executives it was none of their business, he created a situation where they had two options, either to leave it or to speak to each other about what to do. Unsurprisingly – and in my view correctly – they were not prepared simply to wait yet more months for unspecified action to be taken and so they spoke to each other about what they should do. In the weeks which followed, the Chair became very

[122] Because in an email on the 23rd when they were arranging to have coffee, the CEO said he appreciated the Audit Committee Chair's time the other day and greatly valued the perspective.
[123] This date is taken from General Counsel's chronology

offended by this, which he saw as his Board going behind his back, and yet it was a situation which he had created.

Simon Hardwick told me he consulted with the other non-Executives with whom he had the strongest relationships and who had shared similar concerns. These were Amarjit Atkar, Bruce McAra and Steve Williams. It was agreed that they should write to the Management Board Chair to request a meeting. Simon Hardwick drafted an email which he then sent to the other three inviting their input.

26th July 2019

The email was sent by Simon Hardwick to the Management Board Chair on 26th July, at 2156, on behalf of the four. In the weeks which followed, one of the matters about which the Chair was to complain bitterly was that this had been sent "late at night" on a Friday. With respect to the Chair, I do not think that many people would consider shortly before 10pm to be an extraordinary time to send an email or that this should have been interpreted as being in some way aggressive.

The email is polite, but the tone is different from that of the communications in the months leading up to this point. It contains some criticism of the CEO and the Management Board Chair. Mr Hardwick requested an urgent meeting with the Chair in order to discuss the internal audit reports and continued:

> *"There are three separate but related issues we wish to consider with you. They are:*
> *1. The proximate problems with Treasury Management that resulted in BDO's 'no assurance' report dated 8 November 2018[124]. What went wrong? What has been done to fix the problems and what remains to be done?*
> *2. Accountability. Who is accountable and have they and we in Management Board properly discharged our respective responsibilities?*
> *3. Culture and behaviours. Does the individual and organisational behaviour demonstrated in dealing with this issue align with RICS's values? Does it support or undermine trust in and within the organisation? If it isn't right, what is going to be done to try to fix it?"*

In respect of the first point, he acknowledged that it is quite common for organisations which have been through a period of great change, to find that some of their processes have not kept pace. That said, it was deeply troubling that after more than eight months, Management Board still had no visibility of what had been done and what remained to be done. It was clear from the Audit Committee Chair's note about

[124] As has been seen earlier in this chapter, that date was in fact wrong. This did not become clear for some months

the re-audit report (still not seen despite assurances at the June Management Board meeting that future reports would be shared promptly) that Audit Committee was dissatisfied with the current position, but Management Board still didn't know what deficiencies remained or how and when management expected to fix them.

In relation to the second point, the non-Executives believed that the relevant lines of responsibility were quite clear. Within the Executive, the 'buck stopped' with the CEO; it was troubling that rather than those at the top accepting responsibility, the attitude within the Executive had been to pass criticism down the chain of command, blaming junior employees.

The view of the four was that within RICS' governance structure, Management Board's Terms of Reference include:

- *Seeking assurance from the Executive for both operational performance and the successful implementation of strategy;*
- *Ensuring key stakeholders are aware of performance;*
- *Monitoring performance against the agreed financial strategy;*
- *Assessing and monitoring key strategic risks.*

The Management Board Chair must report to Governing Council to provide assurance of RICS' performance against the business plan, which gives a collective and individual responsibility to all members of Management Board. Yet they had no visibility on how management was dealing with the serious risks identified. Furthermore:

> *"…the reporting to Governing Council that we have seen appears to lack candour….. we are concerned that we presently lack evidence this matter has been appropriately dealt with and/or reported to Governing Council. We believe we have a responsibility to ensure these deficiencies are addressed straightaway".*

In relation to the third point, Mr Hardwick said:

> *"The issues of culture, behaviour, integrity and TRUST concern us most. What we have observed about the way in which this has matter has been handled has been deeply corrosive to our trust in both individual members of the executive team, as well as the effectiveness of the Institution's organs of governance."*

He reminded the Chair of the Management Board that loss of trust and confidence in RICS was one of their top strategic risks. Notwithstanding this, their increasingly strong impression was of a notable lack of transparency and openness in the way this matter had been dealt with. For example the existence of the report had not been disclosed until Simon Hardwick and Amarjit Atkar had found out about it by accident:

> *"Since then, there has been a series of obstacles involving review and commentary by other organs of governance (Audit Committee, Finance Committee) which, whether or not intentionally, have had the effect of obfuscating and delaying publication of the report to Management Board. Consequently, our trust in the executive and the effectiveness of our governance regime has been severely undermined. This is a huge concern at a time when we have other significant strategic and operational challenges facing the organisation."*

He said that they would like to discuss those concerns with the Management Board Chair and agree a plan of action, which they suggested should include the immediate publication to Management Board of the re-audit report, a report by the Executive (principally the CEO) detailing the further action to be taken, reporting the issue to Governing Council including the BDO reports, and having a special meeting with the CEO to share their concerns about culture, behaviours, integrity and trust.

He concluded that the email was intended in a constructive spirit:

> "*We all wish to support RICS and its leadership team but cannot allow to pass by unchallenged issues that so clearly represent a serious risk to the organisation which we all have a duty to protect."*

The reaction to the 26th July email

The letter was also emailed to Kathleen Fontana, Natalie Cohen and Edgar Li, the other three non-Executive Management Board members, on 27th July 2019, seeking their views and hoping that they would participate in the special meeting for which they had called.

Mr Hardwick never heard from Edgar Li.

Natalie Cohen responded the following day, agreeing that it was unclear what actions had been taken following the BDO report, and saying that in terms of accountability and transparency, Governing Council should be provided with a more comprehensive account of what had and would happen. Natalie Cohen was a member of Governing Council as well as of the Management Board.

Kathleen Fontana was in a unique position. In addition to being a member of the Management Board, her foot was on the lowest rung of the "Presidential ladder"; she was the Senior Vice President, scheduled to

become President-elect, and a member of Governing Council, in December 2019.[a] She is now the President, a position she has held since December 2020. She too replied to Simon Hardwick the following day, saying that she hadn't had access to her RICS account and had not been able to attend the June Management Board; she would review and get back to him. It took her three weeks to do so.

As the events of the next few months unfolded, Ms Fontana seems to have distanced herself from the developing crisis. Given that she aspired to become, and was on her way to becoming, President, the membership was entitled to expect more from one of its officers.[b]

This seems to have been the point at which the Chair of the Management Board decided that he wanted help from lawyers. On 28th July 2019 he emailed General Counsel (who was on holiday) saying that he had spoken to the President and wanted to have an urgent conversation with her. When I spoke to the Chair of the Management Board, I asked him whether if, with the benefit of hindsight, he felt that he had been over-reliant on lawyers and too quick to consult them. He looked surprised and appeared offended by the suggestion.

General Counsel told me that the 26th July email from Simon Hardwick was a critical part of the chronology. This was the start of the concerns around "behaviours" and was the point at which she began giving more legal advice rather than "*the backfilling and the overarching kind of governance side of things*" that she had been doing up until that point.

She and the Chair of the Management Board spoke. He then sent her a draft of his proposed reply to Simon Hardwick.

She replied that same evening saying that:

(1) His proposed reply was an appropriate response;
(2) She agreed with him that it was "*premature for the first re-audit report to be shared. Audit Committee is still seized of this matter and have not concluded their work in this regard*";

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[a] Correction - Kathleen Fontana was in a unique position. In addition to being a member of the Management Board, her foot was on the lowest rung of the "Presidential ladder"; she was the Senior Vice President, scheduled to become President-elect, and a member of Governing Council, in December 2019.

[b] Correction - As the events of the next few months unfolded, Ms Fontana seems to have distanced herself from the developing crisis. Given that she aspired to become, and was on her way to becoming, President, the membership was entitled to expect more from one of its officers.

(3) The request for an executive response on anything that remains outstanding is something which can arguably only follow the outcome of the re-audit report;
(4) Suggesting that a special Board meeting before the next quarterly meeting (due to take place on 25th September 2019) might be a good idea.

I have concluded that General Counsel's response was typical of the RICS approach. Instead of standing back and looking objectively at what was most likely to calm the situation, she gravitated towards rules and process. For example, she had been present at the March 2019 Management Board meeting when the COO had explicitly committed to providing the re-audit report in June and yet this had not happened, yet in this email she did not even acknowledge that that would be likely to have caused concern. Had she given more thought to finding a practical common-sense solution rather than taking sides, matters might have taken a different course.

On 30th July 2019 the Management Board Chair replied to Simon Hardwick's email (having run the draft of his email past General Counsel for her approval). He said that he wished to continue to involve the whole Board in this and other matters, in accordance with the Board's Terms of Reference and to avoid the risk of any members feeling disenfranchised. He too was disappointed that the re-audit report was not ready, but the Audit Committee Chair had explained why and the revised timeline was being monitored clearly. He intended to convene a special Board meeting to discuss the re-audit report once it was available; discussion should include all related issues including Governing Council communication. He said he was in touch with the President, the CEO, the Audit Committee Chair, the Finance Committee Chair and General Counsel on the matter.

Simon Hardwick replied, supporting the involvement of the whole Board, and apologising for not making it clear that he had invited all the other non-Executive members to comment on his email (though he had received no feedback from Edgar Li or the Senior Vice President). He said they welcomed a special meeting and would like it to be arranged promptly. He said again that the most recent BDO re-audit report should be shared with Management Board immediately. This did not happen.

The Management Board Chair asked General Counsel to send the Simon Hardwick email chain to the President and the CEO, which she did on 31st July 2019. I have concluded that this is one of the earliest examples of "sides" being taken. Simon Hardwick's email had been addressed only to the Chair of the Management Board. It was then shared, without his knowledge or consent, with the very people about whose behaviour concerns were being expressed. I do not understand why the Chair of the Management Board thought this would be helpful or why he felt that the Executive needed to know what was being

said. I have concluded that this is an example of his being too close to the CEO. Similarly, General Counsel should have invited everyone to pause and reflect.

The CEO responded saying that he had sent it to the Chief People Officer,

> *"as she needs to be sighted on the employee matters being raised in here and ensuring whatever steps are taken properly balance both the governance and employee duty response dimensions"*
>
> *"It is not a pleasant read, personally very disappointing and a shock. There are far more professional ways to handle this and, in my view, should have waited for the final audit report. The trigger, so to speak, has been pulled a little too prematurely. The leap to conclusions and the approach being requested are strange and lack understanding of our governance. If there is to be cross-examination of me and my capabilities, it needs to be done by my employer and line managed as opposed to some "night of the kangaroo court*".

This was an unhelpful response. The CEO knew perfectly well that this matter had been badly handled at the outset, as evidenced for example by his email of 27th June 2019. I have concluded that he was very quick to take offence and this can only be because he disliked being challenged. He should not have been so ready to start talking about "employee issues being raised", because this inflamed matters, as events were to show.

On 31st July 2019, the COO asked the Audit Committee Chair whether the Finance Committee Chair had seen the 2-page re-audit report/note: if he had, then based on the commitment she had made to Management Board, she would share it with the latter. Her team hadn't given it to the Finance Committee but there was confusion being sown by the Management Board Chair. The Audit Committee Chair confirmed that he had not given the re-audit report/note to the Finance Committee Chair. He had now instructed that the initial 'no assurance' report be shared with Management Board, but had instructed BDO to do more work on the re-audit report: he was hoping it would confirm what the Interim CFO had outlined. The delay in disclosing the re-audit report to Management Board had caused a vocal response from some on Management Board: he had spoken to the Management Board Chair and agreed to draft a note.

He ended his email by saying,

> "*let's plan on discussing /reviewing the new re-audit report early next week and then decide on how best to share it with MB"*

The clear implication of this conversation is that the disclosure of the BDO work to Management Board was being carefully choreographed by the COO and the Audit Committee Chair.

Later that day, 31st July 2019, the CEO sent an email to the Chair of the Management Board in which he said

> "*My team are fully aware of my concerns my need for pace but importantly robust assurance, clearly, if they let me down I do need to be questioned and will do that as much myself. However, I don't think it benefits anyone by me giving a running commentary on my day to day performance management of my team. I need to feel the Board would trust me to be on it and past experience really says they should, I don't shy away from tackling issues or underperformance. I really don't like what Simon has triggered. It is unnecessary and not respectful to any of us.*"

This email illustrates a number of things:

(1) The CEO was much more closely involved than some of the earlier material might have suggested;

(2) He had been present at both Management Board meetings (as a member) at which the COO had committed to providing the re-audit report, first in June and then when that hadn't happened, straight after the July Audit committee meeting. Both of these commitments appear in the Minutes. Despite this, the CEO showed no signs of having even considered how the non-provision of the reports must have looked to the non-Executive members of the Board. Instead of taking a step back, he was very sensitive to perceived criticism and seems to have regarded any form of challenge as unacceptable; and

(3) The Chair of the Management Board was doing exactly what he told the four non-Executives he did not want to happen, which was to have discussions in small groups.

6J AUGUST 2019

The BDO second re-audit

There was a sense of urgency about this second re-audit that was strikingly absent from the events of May, June and July 2019, when the pace could be described as relaxed.

On 1st August 2019 the COO posted an update on the Management Board Virtual Community. She said that BDO had completed the fieldwork, their report was to go to the Audit Committee Chair the following week and there should be a full report from Audit Committee by the end of August. Steve Williams replied asking if the Chair of the Management Board could be one of those to see the report immediately on a confidential basis, as Management Board should know sooner rather than later if it should be the case that remedies had not been put in place.

The CEO replied that he didn't think they needed:

> *"…to discuss any variants to our stated governance….In terms of management actions, I would ask that the Board trusts me and my track record, as CEO, to be in regular discussion with [the COO] and [the Interim CFO], giving the importance of closing this down, without me needing to regularly say so. I speak to [the Management Board Chair] almost daily and have had meetings with Chair of Audit Committee. This is my job."*

He said he had evidence that good progress had been made, but needed himself to await the BDO findings:

> *"I would just ask fellow Board members to allow the Executive to follow our governance model, focus on getting the management actions disseminated and audited, the report sent to Audit Committee urgently and just await the Chair of Audit Committee's assessment. If the Audit Committee Chair is in anyway alarmed, he has actions to take and I am sure would take them. He reports to Governing Council and as it happens the Chair of Governing Council also attends Management Board. RICS is well covered if any alarms need to be rung.*
> *"I will be off Community for a bit now, but let's just allow our governance processes to run their course."*

Simon Hardwick posted on the Virtual Community thanking the COO for her update, her acknowledgement of the urgency and the need for reassurance. In that context, he suggested (again) that the re-audit report/note considered by Audit Committee on 15th July should be provided immediately, together with a brief summary of the key actions and whether they were considered by the Executive to be complete. Neither of these things happened.

The CEO posted another update the following day, 2nd August[125], repeating that there was no need to depart from the current governance structure and that Management Board should trust him because of his track record.

I find that these postings unnecessarily personalised the issue. The CEO repeatedly asked for trust in his track record, but without acknowledging that, looked at objectively, the delays which had taken place over the previous months did not provide grounds for confidence. In addition, there was the underlying point that the CEO was asking the Management Board to have faith that he would ensure that the issue was resolved, when (as CEO) it was he who was ultimately responsible for the unhappy situation in the Finance Department.

This is relevant because in the weeks which followed, the Executive and the senior leadership were to accuse the four non-Executives of making personal attacks on them. It is my view that it was the Executive who were too quick to interpret the raising of concerns as undermining their competence and integrity.

The second re-audit report

On 5th August 2019 the BDO second re-audit report was provided to the Director of Risk, who notified the Audit Committee Chair and the COO. The Audit Committee Chair, the Director of Risk and the Director of Finance all made comments in various emails to BDO the following day.

On the 6th August 2019, the Audit Committee Chair emailed the COO. The Director of Risk had told him that the second re-audit report had been received that day and was now with the COO and others for review. Significantly, the Chair acknowledged in this email, at this point he had only seen the conclusion and not the report itself. Despite this, he wrote:

[125] In response to a query from Steve Williams about the timing of the re-audit report

> *"I have made some suggestions to strengthen it……some of the language used by BDO is a bit vague and tends to give the impression that they are merely relaying management's views rather than the results of their own work. [The Director of Risk] is working on this with them."*

This is an interesting email. First, it is not clear why the Chair of the Audit Committee is involving himself in the wording of the auditor's conclusions (given that it is the role of the Audit Committee to provide oversight of, and assurance about, the response of management to the auditor's findings). Secondly, having not seen the report itself, it is not easy to understand how he could have been sufficiently sighted to know whether the wording of the *conclusions* was appropriate or not.

The Audit Committee Chair also asked when the COO thought he could have a look at the report so that they could discuss next steps, the provision of a note to the Chair of the Management Board and the sharing of the report with the Board.

I should have liked to have asked the Chair of the Audit Committee about this email. In the absence of an explanation, I have concluded that he was working with the COO and her team to help produce the report. For someone who apparently set such store on following formal governance processes, this is an unusual thing to have done.

On 8th August 2019 BDO held a meeting with the Director of Risk and the Interim CFO, following which an amended version of the second re-audit report was sent to them both.

The same day, the CEO emailed the COO. It would appear that he had seen (or at least had been told about) the contents of, the second BDO re-audit report. He wrote:

> *"…many thanks. Much more assuring! [The Audit Committee Chair] will need to give his view on this* ***which I assume is along the lines of*** *very content with management actions, feels risk level has reduced substantially and assurance greatly improved. There is never a full assurance , no risk, sign off in this area. Recognises that in the real world, banks are slow to provide all the bank mandate details to close this higher risk bank mandate piece off, but management have taken every action that they can and audit committee are comfortable with that, but will monitor until completely closed which could take a few months as management are reliant on a number of banks to provide the requested information"*
> (Emphasis added)

It is surprising, to put it neutrally, that the CEO considered that it was for him to contribute to the content of the Chair of the Audit Committee's opinion. It reads rather as though the CEO was providing notes for a script.

The Audit Committee Chair received the "final" second re-audit report the following day, 9th August 2019. His impression was not quite as optimistic as the CEO seems to have thought it would be. On 12th August, he emailed the Director of Risk[126] to say:

> *"**I am not convinced** that BDO's work / report gives me (and the Audit Committee) the required level of confidence and assurance that we will not have a repeat of last August. It seems that a number of actions to address the recommendations in the original report were only taken after the July Audit Committee…**we were assured at the Audit Committee that appropriate steps had been taken when, in fact, some steps only took place afterwards – how do we deal with this if the question is asked?** Happy to discuss on the phone"* (Emphasis added)

The clear meaning of this email is that the Chair felt that management had not been entirely straight with the Audit Committee in July. It is troubling that in that knowledge, the Chair of the Audit Committee seems to be asking the Executive and/or management how to deal with awkward questions from the Management Board.

On 12th August 2019, Amarjit Atkar emailed the Management Board Chair to ask about progress with arranging the Management Board special meeting. He made the point that they all knew that the first re-audit report had been provided to the Audit Committee a month earlier. Simon Hardwick, Bruce McAra and Steve Williams sent emails in support of Amarjit Atkar's request and some of them repeated Simon Hardwick's previous request for the first re-audit report and a summary of actions. In the light of how General Counsel was later to characterise these emails, I set out their content and the times at which they were sent:

(1) Amarjit Atkar's email was sent at 1959 and said "*you kindly agreed to convene a special Board meeting to discuss this very important issue, including further Governing Council communication. As you are in regular communication with the CEO, the Chair of the Audit Committee and the Chair of the Finance Committee, I was wondering if you are now in a position to convene this meeting?*"

(2) Simon Hardwick's was sent at 2041 and said "*I support Amarjit's enquiry about progress with arranging the special meeting of Management Board*[127]"

(3) Bruce McAra's email seems to have been sent from outside the UK so I cannot be sure of the time. He said *"Hi Paul. In case you had any doubt I too support this. I feel it's imperative that we can sit round a table to talk about the direct and indirect issues that this affair has raised. Albeit I would much prefer to talk about it, as the accountable Board for financial performance, I think I'm right in saying that in spite of having raised cash forecasting in December last year, from which this entire series of issues has*

[126] Copying in the COO and the Interim CFO
[127] Plus politely-phrased requests to see, amongst other things, the first re-audit report

unfolded, the Board still have no considered and properly reported management action. This simply can't be right."

(4) Steve Williams had emailed the Chair the following day[128] at 2002. He said: "*Hi Paul. Pardon my further bombardment, but let me support the others….allow us to re-chivvy you into communicating back to us. If MB isn't seen to ask the difficult questions, then we risk allowing system gaps to exacerbate ongoing issues and possibly invite public criticism. Whilst I'm not suggesting we second guess or do the work of the Audit or Finance Committee, can you keep us updated please about progress towards a timely resolution of the issues?*"

It is my view that these emails were perfectly polite and courteous and I would not describe three of the four as having been sent late at night (the fourth having been sent from abroad, I cannot say what time it was received).

On 13th August 2019 a posting on the Management Board Virtual Community gave notice of a special meeting to be held on 29th August. I was rather surprised that none of the four non-Executives seem to have been consulted as to whether the date was convenient (given that they had asked for the meeting) and in fact Steve Williams was unable to attend as he was on a pre-arranged walking holiday. The posting included an update from the Audit Committee Chair, which said that the BDO second re-audit report was now with management, that he himself had raised some matters and they were expecting the final report by the end of the week. He said that Audit Committee would review it and then he would summarise it for the Management Board and Finance Committee. A copy of the report would be provided to Management Board by 23rd August.

The second re-audit report is provided to the Audit Committee

On 14th August 2019, BDO provided the final version of the second re-audit report to the Director of Risk. According to one member of the Audit Committee, its members received the report that day[129] and the Chair sent a note asking for their views on it[130].

[128] 13th August

[129] The General Counsel chronology states that this took place 2 days later on 16th August.

[130] I note in passing that in his note, the Chair suggested that management had told Audit Committee and Finance Committee about the BDO report in November 2018. According to the evidence I have seen, neither Committee knew about the report until February 2019, and the Finance Committee did not actually see it until June 2019.

What is striking about this is that it shows that when a matter was regarded as urgent, it was possible for it to be dealt with outside the formal meeting structure. This is to be contrasted with May to July when consideration of the first re-audit report/note had had to wait until a physical meeting took place.

The three members of Audit Committee seem to have had concerns both about the report itself and the Chair's view of it. In a discussion on the Audit Committee Virtual Community, all three felt that progress seemed slow. They suggested that the Chair's Note to Management Board could be described as overoptimistic. One member suggested editing or deleting one part because it was:

> *"quite a strong sentence and I am not sure it is fully supported by the facts……but I am not suggesting that we highlight to Management Board any discrepancies between management's estimates and our view of the extent to which recommendations have been implemented."*

This provides another example of how governance processes only seemed to be followed when convenient. Given that the Chair of the Audit Committee was insisting that it was exclusively that Committee's role to give assurance to the Management Board and Governing Council, it is concerning to see that its Chair and members seem to be proposing that Management Board should be given a more favourable version of events than was justified by the facts. I would have liked to have asked the Chair about this, but he declined my invitation to be interviewed, as of course was his right.[131]

General Counsel's email of 14th August 2019.

On the same day, the 14th August, General Counsel emailed the Chief People Officer to say:

> *"By way of an update, [the Management Board Chair] has this week received another series of late night emails from the same several members of the Board* ***continuing to demand*** *a meeting to discuss the report and related matters and behaviours."* (emphasis added)

I am mystified by this email. The four non-Executives had waited for a fortnight after they were told by the Chair of the Management Board that he intended to hold a special meeting (a meeting which General Counsel herself had suggested should take place). When no date was forthcoming, they had sent polite

[131] I invited the other members of the Audit Committee to provide written evidence to me. One member sent me a statement and a number of documents.

emails asking him to set a date. None of these emails seem to have been sent later than 9pm. Whilst outside conventional office hours, I am surprised that the Chair thought that there was anything out of the ordinary about busy people sending emails in the early evening. I cannot see why General Counsel should have phrased her email in this way other than that it provides a further example of her having taken sides against the non-Executives.

Her email went on to say that although the expected outcome of the final version of the second re-audit report was that everything was resolved, there were wider issues concerning behaviour etc which were also likely to be the focus of the special Management Board meeting. The Chair had therefore asked that the Chief People Officer be made aware of the date and time of the meeting, should matters become complicated and any support and/or input be required from her on the day. General Counsel said that it would be helpful if she could speak with the Chief People Officer closer to the meeting:

> *"I will also be looking at the provisions of the Staff/Member Partnership Policy[132] – in terms of the conduct of the members of the board."*

This policy provides a mechanism for the Executive to make a complaint about non-Executives (and vice versa). I consider this further in Chapter 7.

The Audit Committee Terms of Reference 'anomaly'

Probably prompted by the 26th July email from Simon Hardwick, it seems that General Counsel had been considering whether or not the constitution of RICS and its various legislative provisions supported:

(i) the non-Executives' view of their responsibilities, or
(ii) the alternative view held by the senior leadership[133], namely that the governance structure dictated that Audit Committee had sole 'ownership' of the internal audit matter.

I am satisfied that by 19th August 2019 (at the latest) she had made up her mind that the stance taken by the senior leadership was correct and the non-Executives were in the wrong. I do not know whether she reached this on her own or whether even at this early stage she had taken the advice of Fieldfisher and it

[132] In fact the *Members/Staff Partnership Policy*
[133] The Chair of the Audit Committee, the CEO, the COO and the Chair of the Management Board

doesn't matter. What is important is the timing of the decision and the fact that, for the reasons I set out in Chapter 7, I consider that she had reached the wrong conclusion.

The significance of this is that ten days later, on the 29th August 2019 (that is to say, when the Management Board was "discussing" whether or not General Counsel should conduct a review), she had already resolved the central issue against the four non-Executives. My reason for finding that she had made this decision by 19th August is that on that date, the COO forwarded to the Chair of the Audit Committee an email that she had received from General Counsel 'forewarning' of what General Counsel described as an 'anomaly' in the Audit Committee Terms of Reference.

What was meant by the 'anomaly' was this. General Counsel had realised that the Audit Committee Terms of Reference specified that its Minutes, or a summary of them, should be provided to Management Board after each meeting. This suggested that although Audit Committee was independent of Management Board, the latter was entitled to have visibility over what it was doing. I asked General Counsel why she described this as an 'anomaly' when the wording seemed clear. Her reply was that the Audit Committee Minutes had never been provided and that the COO and the Chair were certain that it had never been intended that Audit Committee was required to keep Management Board sighted on the detail of what it was doing. When I asked her whether it wasn't at least equally arguable that this was in fact a breach of a clearly-worded requirement in the Audit Committee Terms of Reference, she gave me no clear answer.

In her email of 19th August 2019, the COO told the Audit Committee Chair as a "heads up" that Amarjit Atkar had asked for copies of the Terms of Reference for Management Board, Finance Committee and Audit Committee. The email continued:

> *"**I have agreed** with [General Counsel] that **our response** will be as follows if challenged*
>
> *That you attend a minimum of one mgt board meeting a year to present a report to them around the financial statements – and in some instances this has been twice a year*
>
> *Your annual report is over and beyond what is in the bye-laws and regs*
>
> *That you make a recommendation on whether or not the financial statements can be signed and that management board have full visibility to all the audit papers from the external auditors including all the management letter points*
>
> *That your primary responsibility is to Governing Council who is the controlling mind of the Institution*
>
> *Let me know if you need anything else from me."* (Emphasis added)

This provides evidence of the COO and General Counsel deciding what the Audit Committee Chair should say.

The Audit Committee Chair responded the following day with thanks. He said that he was attending the Management Board special meeting on the 29th August merely as a courtesy and to assist the Executive in discussing the cash flow issue. He would make it clear he had no reporting line to Management Board and, if challenged about the 'anomaly', would excuse himself on the basis that Management Board was not the appropriate body to be discussing whether or not the Audit Committee had any obligations to it. This email provides further evidence that positions were being agreed in advance by the senior leadership team as to how to deal with legitimate points of discussion raised by the non-Executive members of the Management Board.

Later[134] that day (20th August), the COO emailed the Chair of the Audit Committee saying that she and General Counsel would value his thoughts on the sharing of audit reports between committees (the suggestion being that Management Board should see the internal audit plan and be included in the quarterly risk papers). She wrote:

> *"There is still this debate around who should see what audit reports and what should be shared with a superior board and when. I am trying to find a compromise to this without creating a burden of administration…..I am all for transparency but need to get the balance right".*

The Audit Committee Chair's response was that:

a) In addition to the administrative burden, it was also necessary to respect the appropriate governance channels.
b) Internal audit reports were prepared for Audit Committee to help discharge its role, but were also invaluable to management in helping them to improve controls.
c) There was no need for those reports to go to any other Board. If there was a serious issue such as the Treasury Management one, it was incumbent on management to make the relevant Board or Committee aware that a serious issue had been raised in a 'no assurance' audit and that they were taking it seriously.
d) The Board did not need the report: that was for Audit Committee to address. Otherwise there was a risk that the role of Audit Committee could be usurped or undermined.

[134] The timings on the emails suggest that the Chair may have been abroad

e) What was elevated to Governing Council was a matter for the judgement of Audit Committee. If there was not such a filter, *"there is a danger of GC reverting to the sins of the past where it sought to question and interfere in duties it had delegated to management".*

f) Where, unusually, a report was shared with a committee such as Finance, it would be appropriate for that report to be shared with the superior board which had established the committee.

The four non-Executives knew none of this. Had they done so they would no doubt have considered that their insistence on seeing the original material - rather than relying on assurances from others - was wholly justified.

As it was they had been speaking to each other by email. On 16th August 2019, Natalie Cohen emailed Bruce McAra expressing gratitude that he and Simon Hardwick had been so persistent in impressing the seriousness of what was happening on the Management Board Chair and the Executive. She said she would make herself available for the special meeting on 29th. In another email she said that she was concerned about the relationship between the Board and the Executive and didn't want to start heading down a path where Council had been two years ago, which had led to a breakdown in many relationships. She agreed with Steve Williams that the CEO had provided a logical and common-sense overview, saying "*however we're all on the same side and can't have any surprises*".

Also on 19th August 2019 the Senior Vice President responded substantively to Simon Hardwick's email of 29th July. She said that there was cause for concern and was pleased that there was a separate discussion to address this, but that she would be on holiday at the date of the meeting. A little later, she emailed again saying:

> *"For me the most concerning thing is that this report was not openly shared / disclosed when we discussed the cash flow issue, or subsequently".*

She queried whether it had been deliberately withheld, not considered relevant for the Management Board, or a genuine error? She assumed it was not the first but said that the meeting should seek to be aligned on which it was. The heart of the matter was agreeing what Management Board should expect to be made aware of, and that policy, process and guidance should be developed on what constitutes a Management Board matter.

It is worth noting in passing that on 20th August 2019 there was a meeting of the Risk Sub-group (the members of which were the COO, the Director of Risk, Amarjit Atkar and Simon Hardwick). The COO emailed the CEO and the Chair of the Management Board to say that they had had a "*very constructive meeting*". The relevance of this is that it rather undermines the later suggestions by senior leadership and the Executive that the Management Board had become paralysed and was unable to function.

The involvement of Fieldfisher LLP

Fieldfisher LLP is a large and well-regarded law firm. It has a broad area of practice, including a public and regulatory law group. Matthew Lohn, a partner in the public and regulatory group, has given external legal advice to RICS for at least a decade. It seems that he has called on other specialists in his firm as and when required.

It is of particular note that RICS' General Counsel trained at Fieldfisher in the public and regulatory group. She was then employed as a junior solicitor by Fieldfisher, during which time she was seconded to RICS. When RICS decided to create the position of General Counsel, she was its inaugural appointee. From the material I have seen it is evident that professionally she remains close to Matthew Lohn.

20th August 2019 appears to mark the beginning of Fieldfisher's involvement in giving advice in respect of the issues surrounding the treasury management matter. It may have been that they were involved before this, but I have seen no evidence to suggest that.

From this point onwards in the chronology, much of the evidence I have seen has been taken from the Fieldfisher file. It is axiomatic that the four non-Executives will have known nothing of the extensive involvement of Fieldfisher nor seen any of these documents. Worryingly, it appears that Governing Council had no idea either, even though it is RICS (not the Executive) which is Fieldfisher's client. I asked to see Fieldfisher's bill for advising on this. For the period 20th August to 30th November 2019 alone[135], Fieldfisher charged RICS £118,677.30[136] for advising solely on the issues surrounding the four non-Executives[137]. The size of the bill reflects the extent of their involvement. It may be that for the future,

[135] I have not seen the invoices for their extensive involvement in this matter from 30th November 2019 to the present but this may be something which Governing Council wishes to examine.
[136] Inclusive of VAT
[137] I do not know whether they were, in addition, charging RICS for other advice within the same period.

RICS wishes to put in place some guidance as to the circumstances in which external legal advice is sought and who has the authority to incur substantial fees on behalf of the organisation.

The initial request for advice from Fieldfisher on this topic appears to have come not from General Counsel, but from the COO. In an email sent on 20th August 2019, she sought advice from Matthew Lohn. Having been forwarded the four non-Executive members' email chain of 13th August 2019 asking for the special meeting of the Board, the COO provided this to him and summarised the Treasury Management issue. She wrote:

> *"A special meeting has been called for the 29th August – as requested in the email chain below – we believe that there are 3 possible 4 board members who are pushing this and none of the communication has been done on the official community*
> *"I think that this is a move to remove the Chair of Management Board and Audit Committee – how could this group go about doing this given that both report into GC – have they any power to move this on- how would they have to go about this*
> *"Removal of CEO – again could you brief us on whether the board could call a vote of no confidence in the CEO and how would this go about this*
> *"Lastly in respect to me – could you advise as an employee of RICS and a board member I am assuming that the decision of dismissal would sit with [the CEO] – could you please just confirm this*
> *"Lastly – could you give me your view on the email – in your opinion is this a complaint or not quite – and how should RICS respond – you will see that [the Management Board Chair] has been holding the line around awaiting until the report has been released*
> *Speak at 3 – "*

The email appears to seek advice primarily for herself and the CEO. To the extent that she was asking for advice for RICS itself, she appears to have assumed that her interests (and those of the CEO) and those of their employer were largely coterminous. This is a theme which recurs throughout Fieldfisher's involvement in this matter.

One of the remarkable aspects of this email is that in the vast number of documents I have read and the considerable volume of evidence I have amassed, I have seen nothing which indicates that there is any justification for the suggestion that the four non-Executives had any intention of trying to unseat the CEO, the COO or the Chair of the Management Board. On the contrary, I accept the evidence of the four that they were merely trying to get some answers so that they could discharge their responsibilities as non-Executive members of the Management Board. There was plainly a degree of frustration but I have concluded that that, by August 2019, that was understandable given the delays.

It seems that following the COO's email, Matthew Lohn spoke to her. Apparently there is no note of this call (although it is logged on Matthew Lohn's time record[138]). I understand from correspondence that he was in an airport at the time he spoke to her.

Later that day, General Counsel emailed Fieldfisher, copying in the COO. She attached the Management Board Terms of Reference saying *"further to your earlier call with [the COO]"*.

The provision of the second re-audit report to Management Board

On the 21st August 2019, the second re-audit report was posted to the Management Board Virtual Community.

The Audit Committee Chair also wrote a letter to the Management Board and Finance Committee Chairs summarising the outcome of the second re-audit. He said that risks around cash flow forecasting had been significantly reduced, four of the six recommendations had been fully implemented[139], another was now low risk and only one remained high, pending receipt of information from banks. Another re-audit would be undertaken in six months *"given the seriousness of the subject"*.

On the same day, General Counsel emailed Fieldfisher attaching the Terms of Reference for the Audit and Finance Committees *"for completeness"*. The COO also emailed Fieldfisher saying that she was away for a few days but would be picking up emails *"on this matter"*. She also forwarded to the CEO a "timeline" that she had prepared, which General Counsel subsequently provided to Fieldfisher on 5th September. In a voicemail message left for Matthew Lohn, General Counsel drew his attention to the *"anomaly"* in the Audit Committee Terms of Reference, to which I have already referred in the paragraphs above.

The provision of all this documentation to Fieldfisher provides clear evidence that they were being asked at this early stage to provide their opinion as to whether it was the four non-Executives or the senior leadership who were correct in their views as to the governance duties and requirements.

On 22nd August 2019, there were emails between Matthew Lohn and General Counsel in which she referred to an earlier call with him and thanked him for agreeing to advise RICS in connection with the

[138] Kept by solicitors for billing purposes

[139] This was the sentence that the Audit Committee member suggested should be edited or deleted as it was not supported by the facts. This plainly did not happen.

special meeting of Management Board. There is no attendance note of this call with which I have been provided so it is difficult to know exactly what they were being asked to do or to advise upon. Nor have I seen an engagement letter[140]. General Counsel said that she was sending relevant background material and asked to schedule a call for the Management Board Chair to speak to Fieldfisher.

Matthew Lohn later sent General Counsel a table comparing the Terms of Reference for the Management Board, Audit Committee and Finance Committee in advance of their call the next day. He noted, *"this should help structure our discussions tomorrow and form the basis of* ***our advice*** *thereafter".* (Emphasis added).

Meetings with Fieldfisher on 23rd August 2019

On 23rd August 2019, Fieldfisher had at least three significant meetings (by way of conference calls) with various people at RICS. Over the course of the day, the issues were discussed at length. The content is recorded in a single attendance note which was provided as part of the Fieldfisher file.

The attendance note shows that the first of these calls took place between Fieldfisher and General Counsel. It has the feel of lawyers sharing their personal views in the absence of their 'client'. The attendance note contains a number of observations from Matthew Lohn which appear to reflect his view (and that of General Counsel) that in the early stages this matter may have been badly handled in some respects. These include that:

a) Management Board could have been told a bit more fully. A lot of people didn't get it quite right, (but nobody got it badly wrong);
b) The issue concerned a little bit more than a few days of an overdraft. There was a more complex narrative around varying responsibilities between the boards, and the clarity of how they operate and who has responsibility. According to Fieldfisher: *"SH has gone off on one, but could have been avoided with more information. Not his job to micro-manage RICS,* ***but [the Audit Committee Chair] in the wrong for not going to Management Board****."* (Emphasis added).
c) To this General Counsel responded, *"I personally think that would have been a more simple way to have dealt with things, particularly for that March meeting. My view was not shared by [the COO]."*

[140] An engagement letter (sometimes known as a retainer letter) is the document in which a law firm sets out the scope of the matter on which it has been asked to advise, together with a list of the lawyers who will work on the matter and an estimate of the costs. The provision of such a letter in relation to every matter on which a solicitor advises is a Law Society requirement.

Matthew Lohn also said that he did not see how the COO had done anything wrong. Neither did he see how the CEO could be described as having "dealt with it" in any sense. I would have liked to have asked Mr Lohn what he meant by this as it is, on the face of it, a surprising observation, given that the CEO is responsible for the performance of the COO as well as the overall management of the organisation.

General Counsel noted that the requirement for Audit Committee to provide its Minutes to Management Board was not followed, but in her view this was an 'anomaly'.

Fieldfisher then asked General Counsel what she would like to happen. The note records her as saying:

> *"**I certainly don't want this to end up blowing up into a full-scale move to try and remove members of the executive or significant Chairs…***
> *"I think Chris[141] feels his position is now untenable because of SH's behaviour.*
> *"Real risk that [the Management Board Chair] will throw in the towel.*
> *"Difficult to remove SH[142], but the hope might be that he falls on his sword."* (Emphasis added)

The note also records her as saying that Simon Hardwick was a stickler and a bit pompous but not normally a troublemaker. There might have been a way of handling it that calmed him down a little bit. The Audit Committee Chair had taken the view that a note from him to Management Board in relation to the BDO report was sufficient but it had taken forever for the Audit Committee Chair to produce his note on Audit Committee's activities. The Management Board met in March but the note only came out on 20th May[143]. The Finance Committee, as a Management Board sub-board, had a copy but not the Management Board itself. What became a red rag to a bull was the Audit Committee Chair changing his mind about sharing the [first] re-audit report with Management Board: the Audit Committee meeting after which it would have been shared had been moved from June to July, and then, because BDO did a bad job[144], Audit Committee got them to go and do more work.

General Counsel also said:

- A way to defuse it would be for the Management Board Chair to commission an independent review by Fieldfisher

[141] 'Chris' can only refer to Chris Brooke, the President. However, given the context, I think that this may be a mistake and that she intended to say 'Paul', meaning the Chair of the Management Board
[142] Simon Hardwick
[143] In fact it was not provided to the members of the Management Board until 16th June.
[144] I note for completeness that the suggestion that BDO had done a 'bad job' was unjustified, but General Counsel was almost certainly unaware of this at the time

- The Management Board Chair was taking it personally, feeling that Board members were going behind his back. Not all of the Board had been copied in: the Senior Vice President and Edgar Li (other non-Executive members of Management Board) were not featured anywhere[145].

Matthew Lohn's initial advice was:

- He didn't think it was the rest of the Board, it was Simon Hardwick trying to undermine the Management Board Chair[146].
- Fieldfisher would compile a chronology of the events.
- They needed to endorse the fact that no one had done anything wrong . Everyone was trying to do their best.
- Simon Hardwick didn't like the status quo in terms of information flow.

I have concluded that the note of this call provides clear evidence of the following:

(1) That Fieldfisher had already formed a view that as a matter of RICS governance Simon Hardwick was wrong;
(2) That both Fieldfisher and General Counsel were of the view that matters might have been better handled by the senior leadership; but
(3) Despite that acknowledgement, General Counsel was instructing Fieldfisher to protect the positions of the CEO, the COO and the Chairs of the Management Board and the Audit Committee.

At this early stage I would have expected Fieldfisher to have kept an open mind and to have given advice looking at the matter from both sides. I am surprised by their having reached a firm conclusion at such an early stage, without having seen any of the Minutes or the other documentation.

Most importantly, they had not heard the views of the four non-Executives. They were never to do so because they did not ask to speak to them. I would have liked to have asked Matthew Lohn why he apparently did not feel it was necessary as a matter of fairness to find out why four apparently

[145] This was in fact incorrect; Simon Hardwick had been in contact with both and had told the Chair that he had.
[146] I note that he did not give the basis for this conclusion and I have seen no suggestion of this anywhere other than the fact that the COO had said she suspected this to be the motive

reasonable and experienced non-Executives had taken the position they had. Rather, there seems to have been a rush to judgement on Simon Hardwick on the basis of nothing other than a suggestion made by the COO.

The second call on 23rd August 2019 took place between the Chair of the Management Board, General Counsel and Fieldfisher.

The Chair of the Management Board said:

a) There had been inadequate communication (from the COO) as to the existence of the BDO 'no assurance' report.
b) He (the Chair) had asked for the report when Simon Hardwick made him aware of it, but he didn't get it.
c) The COO had observed the governance, namely that it was up to the Audit Committee Chair whether to distribute the report, but he didn't believe the COO ever told the Audit Committee Chair that he (the Chair) had asked for it.
a) He didn't think Simon Hardwick's view of the responsibilities of Management Board was right.
b) He was unaware of the requirement in the Audit Committee Terms of Reference to provide the Minutes to Management Board.[147]
c) He was upset by Simon Hardwick and others going behind his back, as he saw it.
d) The main point of the meeting on 29th August should be what Audit Committee's view was of the re-audit.
e) The CEO was upset by the events and wanted to discuss culture and behaviours[148], but the Management Board Chair wanted to avoid that and for it to be dealt with at another time, perhaps by the President:

> *"… after the meeting, [the President], [the CEO] and I need to think about – and would benefit from further advice on the options for making sure we are not countenancing this sort of conduct."*

Matthew Lohn gave his opinion that:

[147] The 'anomaly'
[148] Emphasis added

a) Simon Hardwick presumed that Management Board has greater responsibility for this than is the case.
b) Concerns around culture and behaviours could be dealt with (depending on the CEO) by telling the meeting that General Counsel was to be commissioned to look into the background and the responsibilities of the committees and provide a full chronology.
c) He agreed with the Chair's suggestion that the President deal with Simon Hardwick. Simon Hardwick's conduct could not be allowed to stand.
d) He was not sure the Audit Committee Chair was aware of the requirement to provide Minutes to Management Board:

> *"That needs to be handled very sensitively…Need to address the Audit Committee Chair first, but ultimately GC[149] issue. What I don't want is SH to come to this meeting having read all this and catch the meeting and [the Audit Committee Chair] unawares in a way that is extremely unhelpful…"*

General Counsel said she could flag it to the Audit Committee Chair.

It was agreed that no one was looking to humiliate Simon Hardwick or force him off the committee.

The significance of this call is that it demonstrates that before the 29th August meeting – at which the internal governance review would be commissioned - Fieldfisher had stated their view, endorsed by General Counsel, that Simon Hardwick's opinion on the governance requirements was wrong. As will become apparent, it was ostensibly to decide this very issue that the 'internal governance review' was requested by the Chair of the Management Board a week later. I have concluded that this attendance note provides strong evidence that the result was a foregone conclusion.

In his solicitor's letter of representations to me, the Chair of the Management Board said that there was no basis for saying that the conclusions of the 'internal governance review' had been decided in advance and insofar as I was relying on attendance notes of the meeting on 23rd August, the Chair had never been asked to check any of them for accuracy. The fact that he has chosen to dispute this means that I am driven to disclose something he wanted me to keep confidential. I have only done so as otherwise I would be allowing him to mislead RICS.

[149] Governing Council

During my first interview with him he told me that Fieldfisher had agreed with his assessment of the governance requirements and that he had notes which would support this. He then emailed me an extract from his own manuscript note of the meeting on 23rd August[150] 2019, which in this respect echoes the relevant parts of the Fieldfisher note. It reads[151]:

> *"23/8/19 Matthew Lohn / [General Counsel and two other Fieldfisher solicitors] conf. call*
> *In advance of Pre-meeting + Special Meeting*
> *[General Counsel] had asked for ML's advice…..*
> *Referred to TM[152] - suboptimal – needed correction*
> *[indecipherable two letters] Mgt = AC / BDO involved*
> ***Simon H presumes MB has greater responsib. for this than is the case***
> *ML has reviewed MB TOR[153] + view is the same as mine*
> *AC responsib. in TOR – detailed respon. for IA[154] function* ***+ financial performance***
> *FC specific respons*
> *Nuts and bolts*
> *Violetta sits on [FC] + MB + AC[155]*
> *C'man of FC [indecipherable] to MB*
> *Simon has placed h.s.[156] in v difficult position + full analysis will show this was unwarranted*
> **Chronology of Events** ***[General Counsel]"***
> (original emphasis)

For these reasons I reject the Management Board Chair's representations in relation to this aspect. I prefer the evidence provided by the Fieldfisher attendance note, supported by the Chair's own note, that the outcome of the review – in terms of its central conclusions– had already been decided, and the Chair was well-aware of that fact.

The third and final call of 23rd August then took place between Matthew Lohn, General Counsel and other Fieldfisher lawyers. They discussed providing a script to the Management Board Chair in advance of the special meeting on 29th August and doing "Q&As" with him. In other words, they were intending to choreograph the meeting.

[150] He wanted me not to reveal that he had given me this note. The reason he was so anxious that I should treat it as having been in confidence is not apparent to me, but that was a matter for him. Had he not chosen to deny knowledge of this important aspect I would have continued to keep his confidence.
[151] Verbatim. The emphasis is that of the original.
[152] Treasury Management
[153] Management Board Terms of Reference
[154] Internal Audit
[155] In fact the COO was a member of only one of these, the MB, and by that stage did not even attend Finance Committee, although she had done so in the past
[156] I believe this means 'himself'

Fieldfisher said that they thought by the end of their call the Management Board Chair had *"quite a sensible 3-point plan. Substantive issue gets dealt with, he consults with [the President] and [the CEO] as to how to deal with SH's behaviour."*

General Counsel said that she had tracked the "quirk" in Audit Committee's Terms of Reference back chronologically. There was an awkward point *"for us"* because:

> *"it appears [the Audit Committee Chair] and crew were involved in in this bizarre provision about sharing minutes with Management Board. This was 2016."*

The call concluded with General Counsel saying that she would send the 2014 Audit Committee Minutes and the discussions so that Fieldfisher could consider them.

I consider the conclusions to be drawn from these meetings of 23rd August in Chapter 8.

When I interviewed the COO I had not yet been given the Fieldfisher file. I had asked her (as a genuine question) whether she knew about any external legal advice having been taken about this whole matter. Her reply was "*No, I would not have been involved in that*". That is demonstrably untrue. It was she who first gave the instructions to Fieldfisher on 20th August and, as the remainder of this chapter will show, she was present on many of the calls and at many of the meetings, up to and including 13th and 14th November. Indeed, at her own request, she was provided with a copy of the Fieldfisher's "termination" advice of 18th November 2019.

The COO is not the only person to have downplayed the extent of Fieldfisher's involvement: it has proved something of a consistent theme. The CEO told me that he did not have any personal legal advice but remembered one meeting with Fieldfisher "way back". He couldn't remember the precise conversation but he might have been trying to get straight in his own mind what the governance system was. Fieldfisher had been extremely helpful to the organisation over the years in trying to navigate the Bye-Laws etc.

The evidence shows that this is not a candid or transparent account of the CEO's knowledge of the part played by Fieldfisher. I examine this later in this Chapter.

The run-up to the special meeting of the Management Board on 29th August 2019.

To move forward in time, all four non-Executives were to tell me that they were puzzled by the atmosphere at the special meeting. In the past, they had found the Chair to be diligent about asking for contributions from all the members and to have encouraged discussion, but this time they had got the impression that he had come to the meeting with a pre-determined view of the outcome. They told me they thought that he had been discussing it beforehand with the CEO, which they found disquieting.

What the documents from the Fieldfisher file revealed was something which I found far stranger.

The first remarkable aspect is that from the moment Fieldfisher became involved on 20th August 2019, General Counsel constantly asked for their input, including on matters which were not issues of law. The file shows that barely a day went by without her consulting them on some aspect, frequently several times a day.

The second is the degree of pre-planning which went into the 29th August Management Board meeting. The Fieldfisher file provides clear evidence that the outcome of the meeting was predetermined and that the intention was that discussion was to be curtailed.

On 26th August 2019, General Counsel asked for Fieldfisher's advice on a draft Agenda for the special Management Board meeting, and a 'briefing note' for the Chair. The 'briefing note', when provided, included an outline of matters which would be allowed to be raised and those which would not. The latter included the extent and nature of the report from Audit Committee to Governing Council on the Treasury Management issue and any complaint about the personal behaviour or conduct of any Executive or member of the senior leadership connected with the Treasury Management matter. This document is in essence a 'playbook', which set out various scenarios and gave answers that the Chair should give in response to each.

General Counsel also noted that the Management Board Chair was due to meet with the CEO and the Audit Committee Chair and had asked that General Counsel join him and the CEO afterwards to discuss the approach. In other words, this provides evidence that part of the Management Board was getting together to discuss the special meeting in advance, together with the Chair of the Audit Committee.

Those who have made representations to me have sought to convince me that there was nothing unusual about all of this pre-planning. I disagree. In my view it is most unusual for a Chair's speaking note in such

a situation to be prepared by external lawyers. Further, I have concluded that it was objectionable for any lawyers, but especially those who had a predetermined view of the matter (including having formed a baseless conclusion that Simon Hardwick was trying to undermine the Chair), to be giving covert[157] advice to part of the Board as to how discussion should be curtailed. It has to be remembered that Management Board is the senior delegated governance body with operational authority at RICS. The clear impression given is that Fieldfisher were deciding what should happen at that meeting. The fact that they may have believed that they were acting in the best interests of RICS is neither here nor there. Neither General Counsel nor the Chair should have allowed this to happen.

At 2243, General Counsel forwarded to Matthew Lohn the emails between the Audit Committee Chair and the COO on 20th August 2019 about the sharing of internal audit reports "*as part of the assessment of the matters on which **you are advising** in relation to the special meeting*" (emphasis added).

Later that evening (26th August), General Counsel emailed the Management Board Chair enclosing the draft Agenda and his "briefing note". She referred to the "governance review" and told him that this meant that any discussion would be premature on 29th August. In other words, any debate about what had happened should be deferred pending the outcome of 'her' review.

An hour or so later, General Counsel emailed the same documents to the COO, copying Matthew Lohn. She wrote:

> *"Dear [COO],*
>
> *I have been working with Matthew over the weekend on the draft Chair's Agenda and separate briefing note for [the Chair], which are attached and which I have sent over to him to review. He is meeting with [the CEO] and [the Chair of the Audit Committee] tomorrow at 10 and then has a 121 with [the CEO] at 11 and wanted these before those meetings. He has suggested that I join the 121 when they want to discuss Thursday's [special Management Board] meeting.*
>
> *From discussion with Matthew, we agree that the most appropriate approach is to keep the meeting focused on the agenda items and not to allow it to stray into any other discussion, particularly about governance or individuals. You will see that the intention is for the matter to be controlled by [the Chair] commissioning a governance review by me (supported by FF) which will look at the chronology and also the governance in terms of the TOR. **The preliminary view of FF (subject to full analysis of the background) is that nothing has been done wrong**, as the issue of treasury management is a multifactorial issue, but from a governance perspective there is some potential for confusion in terms of the interplay between the various governing bodies which may have exacerbated the position in the eyes of certain members of the Board".*
> (Emphasis added)

[157] In the sense that the majority of the Board were completely unaware of Fieldfisher's involvement.

This is an important email because it provides evidence that part of the Management Board was in the inner circle, whilst the non-Executives were kept in ignorance of significant matters. These included the pre-planning of the special meeting, the involvement of Fieldfisher and the fact that the conclusions of the review had already largely been decided. I have concluded too that it is difficult to understand why the COO needed to see the Chair's briefing note in advance.

What is clear is that the uneasy feeling which all the four non-Executives had that the outcome of the special Management Board meeting had been decided in advance was completely accurate.

I note too that Fieldfisher's preliminary conclusions, as set out in General Counsel's email on 26th August 2019, were exactly those which a month later General Counsel was to express as being her own.

The COO replied at 2051, again copying Matthew Lohn. She said that she was not happy, and that even conducting the review suggested that something had gone wrong.

General Counsel emailed Matthew Lohn on 27th August 2019 to say that:

- Having spoken to the CEO and the Management Board Chair, she (General Counsel) was going to amend the Management Board Agenda *"to tighten up the scope of the review".*
- Having discussed the matter with the CEO and the Chair of the Management Board, she suggested that the Management Board Chair commission the review, rather than she herself, the CEO or the President.
- She had spoken with the Audit Committee Chair about the "anomaly" and he did not recall *"this questionable provision"* being implemented in this way. If anybody was to receive a regular update after each Audit Committee meeting it was Governing Council and even this didn't happen.
- Depending on how the Management Board meeting went, she would like advice on how to confirm that no formal complaint was being made about the Executive and the senior leadership
- Simon Hardwick's behaviour needed to be dealt with as advised: she felt this could be done by a meeting between the Management Board Chair and Simon Hardwick, or alternatively by the President if the Management Board Chair felt conflicted.

Her email contains the following important words:

> *"The intention from my perspective would also be by keeping this narrow focus we would be able to complete this work as far as the learning from MB is concerned and move on. The outcome of the review may feed into*

a wider governance TOR review but that doesn't and shouldn't involve MB beyond looking at their own TOR and those of their sub-committees. If possible by the September Board meeting ***I would like to be able to close*** *the direct MB involvement*." (Emphasis added)

In her letter to me, General Counsel said that she was not a decision-maker and that she only gave advice. This email is one of a number of pieces of evidence which suggest that although she may not technically have made decisions, her involvement went much further than merely giving advice.

Later that day (27th August), Matthew Lohn provided further advice to General Counsel. He wrote:

> "*you* ***o****verseeing the review as General Counsel will give assurance as to the independence of the review to the recipients of the report…*
>
> *"there is no issue from our perspective with completing the review in time for the 25th September MB meeting….*
>
> *"We are working up the full chronology which will form the basis for the review*".

This provides evidence that the decision had already been made that there was to be a review, the form of it, the fact that Fieldfisher was to conduct it, that it was merely to be 'overseen' by General Counsel and that the work had already started. It is to be noted that this is two days before the meeting at which there was ostensibly to be discussion about whether there should be a review at all.

Fieldfisher's advice was reflected in a further amendment to the Management Board Agenda, which Matthew Lohn approved the following day.

Meanwhile, oblivious to all this, on 28th August 2019, Simon Hardwick had sent his own chronology of events to the Management Board Chair. It was not copied to anyone else. In his email he wrote that he felt that the chronology demonstrated a lack of transparency but hoped that nevertheless the meeting would be constructive. The Management Board Chair thanked him for providing it in advance and then, without telling Mr Hardwick or asking for his consent, forwarded it to General Counsel, who then circulated it to the Executive and to Fieldfisher. There is no explanation of why this was felt to be a helpful thing to do. On any view, this could only have inflamed matters.

On 29th August 2019, General Counsel emailed Matthew Lohn, having spoken *'at length'* with the Management Board Chair that morning. She relayed the Chair's concern about how to get clarity as to whether a complaint was being made against any individual and the impact that any approach may have on the timing of the process of dealing with Simon Hardwick's behaviour. His view was that the issue of transparency and trust was really the key focus, rather than the outcome of the audit report.

Whilst his concerns suggested that the Chair was trying to be fair and resolve matters, it is again clear that he had already made a decision that Simon Hardwick's 'behaviour' needed 'dealing with'.

The special meeting of the Management Board on 29th August 2019

The meeting took place at Great George Street at 9.00 am. It was attended by the following members of the Board:

(i) The Chair,
(ii) The CEO,
(iii) The COO,
(iv) Simon Hardwick,
(v) Amarjit Atkar,
(vi) Bruce McAra and
(vii) Natalie Cohen[158].

Three Board members - the Senior Vice President, Steve Williams and Edgar Li - were unable to attend but sent apologies.

Also present were:

(i) the Audit Committee Chair,
(ii) the President,
(iii) the Finance Committee Chair,
(iv) the Interim CFO,
(v) General Counsel and
(vi) the Head of Governance.

This was a single issue meeting. The Minutes record that:

[158] The last two via Skype

(i) The Management Board Chair said that this "*Special Meeting had been organised to consider the Treasury Management Re-Audit report due to concerns expressed by some elements of the Board about the timescales for receipt of the report. It had been called to ensure that there was sufficient time available to discuss the outcomes of the re-audit and the conclusions of the Audit Committee*".

(ii) The Chair set out the history of the events, stating that the Audit Committee Chair had decided to share the work of the Audit Committee in relation to the Treasury Management audit with the Finance Committee and the Management Board; hence the re-audit report had been shared. This was an unusual step as the reports are prepared for the Audit Committee and for Management.

(iii) The Audit Committee Chair set out his view of the history of the matter, saying that in March he had made it clear to the Executive "*that the conclusions were serious and unacceptable and required immediate action…. As it would be unusual for the Management Board to receive an Audit report, the BDO Treasury Management Report had not been sent to the Board. Management had indicated that all matters raised would have been rectified by April 2019*".

I pause to note in passing that it was not suggested that the Audit report could not be provided to the Board, merely that it would have been unusual for it to have been.

(iv) The Audit Committee Chair went through the re-audit report explaining that four of the six areas of concern had been fully implemented and closed, and that good progress had been made generally, but that it was too soon for BDO to comment on the operational effectiveness of the controls as they had only been in place for a couple of months. Risks around cash flow were now better managed and understood. As at that date (29th August 2019), 35 bank mandates had been verified and RICS was awaiting information in relation to the remaining 50. In the meantime, bank accounts were being monitored for any unusual activity. He said that management had taken the matter seriously. There was to be a further follow-up audit due to report in March 2020.

(v) The COO expressed her view that there was no significant risk of fraud as there was not a great deal of money in the overseas bank accounts.

(vi) The Management Board Chair asked if anyone had any questions. Simon Hardwick asked and was told that the review of the Treasury Management function had already been planned before the cash flow issue arose in November 2018[159]. The Audit Committee Chair confirmed that it had. Simon Hardwick noted that the BDO report went to Audit Committee in March 2019,

[159] The significance of this being that that is not what the March Management Board Minutes say.

but the report was dated 8th November 2018. He wanted to establish what had happened in order to understand the gap in time. The Management Board Chair said that this was a matter for General Counsel's review and would be covered by the chronology.

(vii) Simon Hardwick and Amarjit Atkar asked further questions around the causes of the failings in Treasury Management controls.

(viii) Amarjit Atkar expressed his view that the BDO reports should have been provided to the Board. The Chair of the Audit Committee disagreed.

There then followed an item which in the Minutes has the heading "*Discussion and further learnings*".

The Chair is recorded as having announced that "*he had decided to ask RICS General Counsel to conduct a review for the Board around the governance associated with the handing of the Treasury Management issue from the Board's perspective*". This was to include:

a) Preparation of a detailed chronology, and
b) What the responsibilities of the governance bodies were in accordance with their current Terms of Reference.

Other Board members were invited to provide any input to the chronology and any other aspects of the review they wished to be considered.

There then followed a discussion which is recorded in some detail in the Minutes but which I have summarised for the purposes of this report.

- Simon Hardwick asked that the review should consider the existing governance structure and whether it worked, and why it had taken so long for the Management Board to be informed of the report and even longer to see it (and only after a lot of pushing). As someone who took his responsibilities as a Board member seriously, he felt that the Board had been blind to the necessary information. He asked who had taken the decision to withhold the audit reports from the Board despite their requests.
- The Audit Committee Chair said it was not a question of the reports being withheld: Management Board was not entitled to see them.
- Simon Hardwick asked whether it was suggested that a 'no assurance' report should not be reported promptly to the Board and said that there was a major issue as to how the Management Board could fulfil its responsibility in this case. Amarjit Atkar noted that the report was addressed

to management, not the Audit Committee. The Audit Committee Chair said it was not addressed to the Management Board.

- Simon Hardwick and Amarjit Atkar asked for the review to be independent and external: General Counsel was a member of management. Whilst having full faith in General Counsel's abilities, Amarjit Atkar queried whether it was fair to be asking her to comment on the behaviour of other senior members of management. Simon Hardwick noted that this was particularly difficult given that the way the matter had been dealt with had undermined trust, which needed to be re-established. He asked for the review to be extended to include lack of transparency, culture and behaviour as it was management's lack of transparency that had created a deeply corrosive culture of mistrust. It was not a process issue and the review would just be "kicking the can down the road".
- The Management Board Chair said Simon Hardwick had himself asked for the governance around Treasury Management to be considered. The review would do so and if substantial issues were discovered, they would need to be addressed. It was wrong to say that there had been a lack of transparency.
- Amarjit Atkar said they were two separate issues.
- Bruce McAra said that management behaviour associated with the Treasury Management issue needed to be addressed: whether the Management Board should have been informed by management. *The Management Board Chair confirmed that it would.* (emphasis added)
- The COO said that management would have advised the Board directly if there had been a serious failure (I find this difficult to reconcile with her recognition in earlier emails of the seriousness of the issues identified by the original BDO report).
- She also confirmed to Simon Hardwick that the Treasury Management audit had been commissioned before the issues arose in 2018.
- The CEO hoped that the governance review would resolve most of the issues, but that if there was a concern about employees or behavioural issues, then a very different review to the one requested by Simon Hardwick was required. It was an employment performance issue and should be addressed to his employer and appropriately investigated. It would be entirely inappropriate for General Counsel to do this.

This demonstrates that on 29th August 2019, the Chair of the Audit Committee made it plain that it was his view that the Management Board had no right to see the BDO internal audit report and thus it was quite wrong to describe it as having been 'withheld'. I note that in his written representations to me he

now suggests that it was not he who decided not to provide the report to Management Board. He now says that the only reason that the Board did not see it was because:

(a) management had not provided it, and
(b) because Management Board's own Chair had said it was inappropriate for it to be shown to them.

I am satisfied that other evidence demonstrates that certainly the second part of the explanation is incorrect. The first part seeks to downplay the part the Audit Committee Chair himself had played.

It is significant that the Minutes reflect that the internal governance review was to be the starting point for the discussion which was due to take place in September. For example, the Chair said that "*it would be wrong to look at behaviours until the review had been done*".

Under *Decision and Actions* it is recorded that:

1. General Counsel was to prepare a detailed chronology
2. General Counsel was to provide a review which covered what the responsibilities and accountabilities of the governance bodies were in accordance with their current respective Terms of Reference
3. General Counsel would make recommendations for improving the governance structure and if the existing Terms of Reference were not suitable they would be reviewed
4. The Review and Chronology would be provided to the Management Board for their 25th September Board meeting
5. If the outcome of the review was found to be insufficient, next steps would be considered, and
6. The Terms of Reference would be circulated for members of the Board to provide input into the chronology and review.

Amarjit Atkar, Simon Hardwick and Bruce McAra all told me that these were not decisions reached by agreement. They had been unilaterally decided by the Chair despite opposition from the three of them. I note that in terms of members of the Board, only six were present, together with the Chair. Thus half the members of the Board present actively disagreed with the 'Actions' and as far as the other half of the Board was concerned, two of the three members' own behaviour was under some degree of scrutiny in relation to issues of trust and transparency. There had been no vote. For these reasons I conclude that any

suggestion that the internal governance review represented the 'will' of the Management Board is misleading.

I have concluded that having seen the material with which I have been provided, the 'decisions and actions' recorded are hardly surprising, given that not only had Fieldfisher started the work, they had already reached the conclusion which was to be presented, a month later, as being that of General Counsel.

In his evidence to me, Simon Hardwick said that the Management Board Chair refused to allow any meaningful discussion about the issues previously raised and said he had made the decision (with the President's support) to ask General Counsel to do the review. He was surprised to see it recorded later in the Minutes that it had been "agreed" that there should be a governance review, when there was no further discussion and no decisions were reached.

Amarjit Atkar told me:

> *"[the Chair] came saying I have decided that the in-house lawyer will do an independent audit review and I was thinking 'but hang on, you've decided with whom? We've not discussed it.' And it was obvious that he had decided with [the CEO]"*

The Chair told me that he felt a governance review was important, but that an independent review was disproportionate. However, had the governance review provided insufficient information or there were shortfalls, they could do further work.

Amarjit Atkar told me that the meeting was very cold and frosty to begin with. The Chair had walked in with the Chair of the Audit Committee and had sat in one corner along with General Counsel. The CEO then walked in. The Chair opened the meeting and had obviously prepared himself – he was going through his notes. He said he'd already come to the conclusion that General Counsel should do a so-called independent review. Mr Atkar thought this was very unfair on General Counsel. He thought the Audit Committee Chair was being very passive-aggressive when he said they had no right to see the report. The Minutes did not reflect that Mr Atkar had said that they should all collectively do what was best for RICS, and not always worry about governance structures as such.

Simon Hardwick told me:

> *"[the Chair of the Audit Committee] sat there and said "were this to happen again I would not tell Management Board about it because I don't think it was sufficiently important to bother you". I was absolutely astonished by that".*

The President told me that he started to get concerned at this meeting because it was clear that there was a significant difference of opinion and he wasn't sure, given the personalities involved, that they were going to get to a consensus. He could see that was the beginning of a problem with the Board in terms of functioning and the continued involvement of everybody concerned. When he came away from the meeting he could see they were going to get into some very difficult circumstances. Although four independent members were saying it wasn't acceptable from a governance point of view, he felt that this had been ventilated a number of times. It had become all about the process and not about actually trying to be constructive to find a solution. Their embedded opinion wasn't going to change because they had a view about process. He agreed that the Audit Committee Chair had said during the meeting that if the same thing happened again, he would take the same position in relation to disclosure of the BDO report.

General Counsel told me that there were concerns about the treatment of staff and potential employment issues. There were policies and procedures for conduct allegations. It was always in the peripheral view that they needed to tread carefully around this. It was fine to raise concerns but the way you do it is the issue. You should go through the Chief People Officer and potentially the Management Board Chair if making a report of misconduct. It wasn't quite being put that way – it wasn't overtly said that someone was being dishonest – it was more of a collective feel. It felt premature for allegations to be made when the facts were not known.

The COO told me she had been really supportive of the meeting taking place. With the Audit Committee Chair, this was an opportunity to get the whole thing out, but once again there was a lack of respect shown for people's views. There were preconceived viewpoints of how the review was going to occur and quite damning accusations of the Audit Committee Chair:

> *"I think there was a push to get management behaviours and audit on what I had done, which I didn't feel I'd done anything [wrong]. So whilst I wasn't probably over-the-moon, I thought well if that's where we go and it allows the matter to move on, then so be it. I thought having an independent to do it was completely over-the-top for a matter that had already been resolved."*

The COO told me that there was distrust of General Counsel as well. She thought it was wrong to assume that if General Counsel felt conflicted or compromised, she wouldn't know how to deal with it. Her view was that anyone in management was tainted with some sort of massive cover up.

> *"I just think I've been, you know we had a No Assurance Report, I've had three reviews done on me, I've done a paper on how we're going to improve forecasting. I did a paper on Lessons Learned and then we cleared an External Audit. I guess for me I don't know what more the four expected me to do and actually if there was an expectation it was never clearly articulated. So for me it was this undertone, this pervasive,*

well we're not happy you're covering something up. But it was never really clearly articulated. Just before the September Board Meeting I offered my resignation to the CEO because I said I could not cope with the stress that this was putting me under, and he said no. Because we both knew that going into that September Board Meeting was going to be a pretty unpleasant affair – given what had gone on before…four meetings before. And I don't think a No Assurance Report warrants that sort of treatment, behaviour for something that was fixed absolutely. If myself and my team we hadn't fixed the problem, then absolutely. But this continued beyond July and for reasons that I still don't know."

Simon Hardwick said that he was really surprised to hear from the Chair of the Audit Committee that the BDO internal audit was a standard part of the internal audit cycle.

"SH I recollect I said are you sure about that? He said yes. I said we had previously understood from [the COO] that she had commissioned it. She said "oh well maybe I was mistaken" or – I forget what the explanation actually was but she implied that she had been panicked when she was put on the spot and she conceded that her original explanation wasn't correct…..

ALQC So she wasn't saying you had misunderstood?

SH Absolutely not, she acknowledged that she had said it. And it is Minuted explicitly in the March [Management Board] Minutes."

When he spoke to me, Bruce McAra was highly complementary about the Chair in general terms and said this was why his behaviour in August and September 2019 seemed completely out of character. The very fact that he was reading from a text told you a great deal, because in Mr McAra's view he was clever enough to be able to articulate any issue. This had led him (Bruce McAra) to conclude that there must be something much more serious below the surface.

6K AUGUST TO SEPTEMBER 2019 AND THE INTERNAL GOVERNANCE REVIEW

This section contains a large amount of detail because I have decided that it is important to set out the evidence which clearly demonstrates that General Counsel's internal governance review was, in almost every respect, not what it seemed to be. Almost all the evidence comes from the Fieldfisher file, although some (but by no means all) of the documents were also disclosed by General Counsel.

Where quotations appear, these have often been taken verbatim from the Fieldfisher attendance notes. For this reason, the sentences sometimes seem a little staccato.

30th August 2019 – the day after the Special Meeting of the Management Board

The internal governance review having been formally commissioned on 29th August 2019, as far as the members of the Board were concerned, discussion continued as to its precise scope. In fact, unbeknownst to them, Fieldfisher had already started work.

In a call between General Counsel, the COO and Fieldfisher on 30th August, there was a discussion about getting the Terms of Reference for the review 'sorted' and drafting a cover note which would ostensibly come from the Chair. General Counsel noted that Simon Hardwick was pressing for an element around behaviours and culture. She asked if they could clearly limit the scope so that that was not within the terms of the review. Matthew Lohn said that his view had not changed from that of the week before: "*SH has flipped and is pursuing this. It almost sounds like 'it's me or them'*". The COO agreed. She said that Simon Hardwick would not accept anything General Counsel concluded and asked whether "*we*" should let him step down or instead deal with the behaviours. Matthew Lohn said that he was relaxed about Simon Hardwick stepping down. With masterly lack of foresight, he added,

> *"People will have forgotten about this by November".*

Mr Lohn emphasised the need for appropriate support for the COO and the CEO. Unpleasant accusations had been made and they needed to ensure that the COO and the CEO were looked after.

The COO said that the Audit Committee Chair felt that the Management Board Chair should have dealt with Simon Hardwick much earlier. She said that Bruce McAra was a nasty piece of work, that all three Board members could step down, and that the review should say that it would not consider employee behaviours. She was not sure that the Management Board held the Management Board Chair in esteem, so having the President behind the review gave it 'clout'.

Matthew Lohn said:

> *"I wanted [General Counsel] to instruct us formally because it maintains her independence. To suggest she can't advise the organisation is corrosive".*

The COO said that if she and the CEO made a complaint, they needed the Minutes to record what words were used. She asked what power there was for removal of non-Executives, saying that a briefing for the President and the Management Board Chair from Fieldfisher would 'stiffen their resolve' to have 'that conversation' with the non-Executives.

Matthew Lohn said:

> *"We can do an initial review of the governance documents as well as the chronology…we will send note over to you and then work out which bits in what order and who will do what"*

Later the same day (30th August) Matthew Lohn emailed General Counsel with a list of actions arising from the call. Those for Fieldfisher included:

1. Producing a chronology of the events to form the basis of the review
2. Reviewing and if necessary amending the Terms of Reference for the review and the cover note
3. Draft a briefing note for the Chair summarising the "behavioural issues" relating to Simon Hardwick which could be used as preparation for the meeting with him
4. Analysing the issues which would arise if members stepped down from the Management Board and advising on temporary powers of appointment

5. Preparing the draft outline of the analysis of the governance arrangements for General Counsel to review and approve.

Actions for RICS included:

1. General Counsel to prepare the first draft of the Terms of Reference for the Review and the cover note (which was to include a statement that both the Chair of the Management Board and the President found that she was sufficiently independent); and
2. The Chair of the Management Board and the President to schedule a meeting with Simon Hardwick to discuss behavioural issues.

All the evidence points to this being the moment when Fieldfisher commenced the review. Save for sending over the draft Terms of Reference and a draft cover note endorsing her own appointment, there was no suggestion that General Counsel was to do anything,

General Counsel responded making it clear that the Terms of Reference and Chair's covering note would be passed through Fieldfisher before going to the Chair. As far as the involvement of the President was concerned, she wrote:

> "*I've given a verbal update to the President on the draft ToR and cover note and he confirms that he will approve [and] give endorsement"*

I make the following observations.

(i) It is not clear why the COO was involved in the conversation with Fieldfisher at all. The number – and tone of – her contributions gives the impression that it was she as well as General Counsel who was providing instructions to Fieldfisher. Given the nature of the review and the circumstances which had given rise to it, if this was not an actual conflict of interest then at the very least it looked as though Fieldfisher was taking the side of one part of the Management Board against the other.

(ii) It is clearly questionable whether it was appropriate for the COO to have been involved in a conversation about restricting the terms of reference of the review so as to ensure that it did not examine her own actions and behaviours.

(iii) Allied to this are my concerns about the propriety of the COO's involvement in a conversation about "dealing with" Simon Hardwick (a fellow member of the Management Board), together with her strongly expressed views about what she characterised as his behaviour and motives.

(iv) It is apparent that the President was involved from the very start of this process.

(v) There is clear evidence that the outcome of the review was a foregone conclusion. The decision had already been made that the CEO and the COO were to be protected and that Simon Hardwick had overstepped and misunderstood his remit and behaved unacceptably in the process.

(vi) The removal of Simon Hardwick was also being considered at this early stage. There was also talk about removing Bruce McAra.

Fieldfisher's August 2019 advice

Contained within the Fieldfisher file is a document on Fieldfisher headed writing paper. It is dated August 2019 and each page is headed "Privileged and Confidential – legal advice from external counsel". The title of the document is: *RICS Treasury Management Internal Audit reports – advice on the Remit of the Audit Committee, Management Board and Finance Committee.*

This is a four-page legal advice which analyses the respective Terms of Reference of all three bodies. Having set out a summary of Simon Hardwick's email of 26th July 2019, it says:

> "*We have been instructed to advise on the remit of the Management Board of RICS under its Terms of Reference, in particular whether it is entitled to any of the specific information requested, and more generally whether its functions include the oversight of the actions of RICS' executive as suggested in Simon Hardwick's email*"

In summary, it concludes that the Audit Committee had responsibility for the internal audit and that Management Board was not entitled to visibility and oversight of the actions of the independent Audit Committee.

It looks to me as though this was probably prepared by a junior member of the Fieldfisher team. Despite the heading, I cannot be sure that this was ever sent to RICS and I find that it is equally likely that this is

an initial draft used to help prepared Matthew Lohn for meetings and calls. What is striking about it are the following:

(a) The advice was started – and conclusions reached – before the Terms of Reference for the review had been finalised; and

(b) It does not appear to have occurred to Fieldfisher that the Board and Committee Terms of Reference were not the only documents which needed to be considered. In particular, there is no mention of the Bye-Laws. I analyse this further in Chapter 7.

On 2nd September 2019, General Counsel emailed Fieldfisher having uploaded a further draft of the Terms of Reference and a draft cover note attributed to the Management Board Chair. As agreed, she sought Matthew Lohn's comments and amendments. Fieldfisher returned the Terms of Reference with suggested changes the following day. They amended and clarified the elements that restricted the governance review to the role of the Management Board and the responsibilities of other governance bodies to the Management Board. As had been agreed, the Terms of Reference explicitly stated that the review would not consider matters concerning the personal behaviour or conduct of individuals, or management culture, save as relevant to the chronology. General Counsel responded saying she was happy with the changes and would share them with the Management Board Chair and then the President.

Meanwhile, on 4th September 2019, Simon Hardwick had sent General Counsel his chronology and a list of suggested topics for her review. He said it was essential that the review should identify when Governing Council, the CEO and the three relevant board heads (Management Board, Audit Committee, Finance Committee) were made aware of the existence of the BDO report and the serious issues it raised and when they were provided with a copy of the report.

Fieldfisher and General Counsel spoke that morning. I have seen an undated telephone attendance note which appears to relate to this call. In it, General Counsel says that she is waiting for the Management Board Chair to come back to her about the Terms of Reference. In a part of the note that I do not completely follow or understand, it appears that General Counsel is talking about Simon Hardwick's concern that Governing Council had not been not properly updated:

> *"I accept that no formal notification of a TM[160] issue to GC[161] but no one thought that was necessary…thought it important to put the marker down that the President should have said something"*

She later forwarded to Fieldfisher Simon Hardwick's email in respect of the Terms of Reference and chronology. Fieldfisher responded, saying,

> *"We will take this into account in working up* ***our*** *chronology"* (emphasis added).

In an email to Fieldfisher on 5th September 2019, General Counsel said that the Management Board Chair had provided amendments to the Terms of Reference and *"his"* cover note, which she would type up and get over to Fieldfisher:

> *"He was also asking if it should be overt in those documents that I'm getting external legal advice around this matter. I've said that I don't see that is necessary."*

Matthew Lohn responded: *"no need to explain external resource, I agree"*. He asked to see the 29th August Special Management Board Minutes.

Fieldfisher had previously suggested that by formally instructing them as external lawyers, General Counsel's independence was maintained. It is curious in those circumstances that it was felt not to be necessary to reveal Fieldfisher's involvement in the review, the purpose of which was said to be to deal with complaints about lack of transparency.

General Counsel then emailed to say that she had uploaded various documents including the draft 29th August Minutes, revised Terms of Reference and cover note incorporating the Management Board Chair's amendments, together with the COO's timeline sent to the CEO on 21st August 2019:

> *"I have uploaded to the SharePoint folder the ToR and cover note from the chair – v3 – marked up to show the amendments requested by the Chair. Can you please let me know if you have any concerns about the proposed amendments. He was keen to ensure that it was clear that it wasn't just the Boards – but also the relevant executives whose actions would feature as part of the factual chronology otherwise it would be an incomplete picture. From the factual basis I don't think that this contravenes the line that has been drawn to exclude looking at personal performance / behaviour.*

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[160] Treasury Management
[161] Governing Council

"The President is here today and so it would be helpful to be able to pass him a copy of the ToR before the end of the day to confirm his approval as is indicated in the cover note."

Fieldfisher responded saying that they had no concerns with the proposed changes to the Terms of Reference and cover note.

On 6th September 2019 the Management Board Chair posted a note to the Management Board members saying that he had considered further but had not changed his view that General Counsel was the right person to conduct the review. He said that the outcome of the review would be discussed at the 25th September Management Board meeting.

Anyone reading this note to the Management Board would assume that General Counsel was conducting the review herself; I find it inexplicable that the Board was not told about the involvement of the external lawyers, particularly given that concerns had been raised about the suitability of General Counsel to conduct it. The significance of this is not that it was necessarily wrong for Fieldfisher to have been involved, but it is symptomatic of a lack of transparency and a failure to give the Management Board the information it needed in order to make fully-informed decisions.

In a call between Fieldfisher and General Counsel that morning, they discussed the breadth of the investigation, deciding that they did not want it to touch on what the Executive should have done and when.

Fieldfisher then sent General Counsel further amendments to the Terms of Reference and cover note. General Counsel responded, saying that she was happy with both documents and would be circulating them to the Chair, the President and the Audit Committee Chair. Quite why the Chair of the Audit Committee was being consulted is not clear to me.

At 1305 General Counsel sent the documents to the Management Board Chair (copied to the Head of Governance), noting that Fieldfisher had made amendments to ensure that it did not trespass into an investigation of employment-related matters. She stressed that it was the "what" and the "when" but not the "why". She said she was seeking sign off from the President and the Audit Committee Chair and would circulate to the CEO, the COO and the Chief People Officer.

At 1513 she sent the document to the CEO asking if he had any comments. The CEO in turn forwarded the email to the Chief People Officer, saying:

> *"The risk I see here is that, in the context of the email and allegations, it is difficult to just set this aside now as fact gathering on an issue as opposed to the fact gathering stage of investigation. Are you convinced RICS is in a sound employment position with this, if you have any doubts can you get advice. I recognise that I personally am in play here but I am setting that aside and just making sure we are covering employment risks off as CEO."*

Towards the end of the day, the Terms of Reference were circulated on the Management Board Virtual Community, together with the explanatory note from the Management Board Chair, for comment.

On 8th September 2019, Simon Hardwick emailed the Management Board Chair saying that he was responding to the note posted on the Management Board Virtual Community and wanted to check that the Review would include when the Governing Council, CEO, Audit Committee Chair and Finance Committee Chair were first made aware of the BDO report and when they first saw it.

On 9th September 2019, General Counsel emailed Fieldfisher saying that she had uploaded the Terms of Reference and cover note from the Management Board Chair on the SharePoint folder as circulated on Management Board Virtual Community. It had been reviewed and endorsed by the President and Audit Committee Chair before posting. It was also being shared with the Chief People Officer and Finance Committee Chair. She would let them know if there were any comments from Management Board members on the Terms of Reference; Simon Hardwick had already provided comment and sent it again to the Management Board Chair. General Counsel had uploaded his email too.

A Fieldfisher associate responded saying that Fieldfisher agreed that the matters Simon Hardwick had requested were included in the Terms of Reference: *"[The Management Board Chair]'s reply could therefore simply acknowledge receipt of SH's email."*

On 10th September 2019, the CEO emailed the Management Board Chair, copied to the President and General Counsel. He wrote:

> *"I am personally finding [it] a little hard to reconcile with the immediate desires of other Board members to "investigate management behaviours and culture" without even considering if the facts even warrant this. I find this odd and strange Board behaviour and I therefore find myself questioning the intent. In all the years I have been CEO and Violetta has been COO/CFO, I can count the number of "significant*

operating issues" on a couple of fingers. We are leading a vastly complex organisation that is at its peak of change. Given my own leadership behaviours and ways of working, which is regularly tested by 360 reviews, it is therefore hard to listen to such conclusions. The fact that this matter, which has incurred no material loss to RICS, has occupied huge time and attention, distracted focus and created Board dysfunction is troubling. For me it sends all the wrong messages for an organisation that wants to be ambitious and high performing.

"I have every confidence in the intent of the Review that you are leading, however, given the leap to root cause that other Board members have made, I think it is inappropriate for me to comment as an Executive voting member of the Board and ultimately the person charged with establishing appropriate management behaviour and setting the right cultural tone from the top."

General Counsel later passed this email to Fieldfisher.

The Terms of Reference were finalised and posted on Management Board Virtual Community on 11th September 2019.

The conduct of the Internal Governance Review

The contents of the file make it clear that it was Fieldfisher who undertook this review; General Counsel's contribution was limited to commenting on the documents which they sent to her.

On 11th September 2019, Fieldfisher emailed her a copy of the chronology and asked a number of questions. She responded the following day saying she would work through it and that she was asking a number of questions of the Director of Risk.

It is not clear to me why General Counsel could not have compiled the chronology herself, given that this is not a task which requires any legal advice.

She then had another call with Matthew Lohn and his team. There was discussion about:

(i) The appointment of the inaugural Chair of Governing Council[162]. Fieldfisher took the view that the question of the wisdom of appointing the current President as Interim Chair was a 'political', not a legal one. No suitable candidate had been found by the appointment panel and in their view RICS needed a Chair whilst reforms to the governance structure were introduced. The current President was *de facto* Chair so it made sense for him to be appointed to the role. They discussed the "optics" given that the President had chaired the appointment panel which had been unable to find a suitable candidate. Reference was made to plans for governance changes:

"GC [The COO] was involved in a secondary conversation with [the CEO] around this, and where we want to get to longer term. Next year we are going to want to look for a new chair of Management Board. Looking to merge the two – do we want to bring in a new chair of Management Board who is also chair of GC.

FF Is he thinking about collapsing Management Board now?

GC I think so. From a long-term perspective, having split of Management Board and GC maybe not right going forward.

FF Effectively you've now got potentially competing organisations thinking they run RICS.

GC Ultimately they think that's where they want to go, 2-3 years' time. Need a bye-law change. How do we start that up, and deal with issue of needing new chair of Management Board next year.

FF Need a conversation about what do they want to get to.

…

FF You are going to be longer than a year implementing all these changes, you will need a chair of GC in the meantime.

GC Exactly. We have to have an eye to the solution come 12 months' time. From The CEO's perspective we are going to need to recruit a new Management Board chair. Could we structure the recruitment of that individual to that post in consideration of becoming new chair of GC.

FF I'll need to think about that."

(ii) General Counsel's review. She was concerned that some of the questions Fieldfisher had asked her about the gaps in the chronology seemed to be taking her review into a more probing investigation than she had anticipated. Because of the position that she was in, and because she was not going into the employment law issue, she wanted to keep it as a purely

[162] In Chapter 4 I explained that one of the most recent Governance reforms had involved creating a remunerated, non-Executive post of Chair of Governing Council. In the past the President had also been the Chair of Governing Council

factual chronology. She felt that some of Fieldfisher's questions seemed to take her beyond that:

"GC I'm mindful of fairness to the likes of [the CEO] and [the COO] and [the Audit Committee Chair]. This is not meant to be an investigation of them and their behaviours per se, because this is where we drew the line.

FF We're interested to know as much in the negative as we are in the positive. Who didn't know what when?

GC From a pure chronological basis, who received report and when are in the scope. I can ask [the CEO] directly what date he was aware of TM issue at all, as opposed to when he became aware of no assurance in that report.

…

FF Issue of sense of misleading. But real issue is failure to understand what actual process was.

GC There are those who feel misled. There were opportunities in the timeline for the matter to be flagged that there was a potential issue. That did not happen. Only way Management Board found out about it was inadvertent disclosure by [the Director of Risk] to two members of Management Board. That is what flipped the switch.

Back in the December meeting, when the overdraft had been discussed, that was when wider issues around TM should have been discussed. They now feel that there was information withheld at that December meeting and from then on, that should have been finally brought to Management Board's attention.

Date-stamped BDO report 8 November received in July. Nobody said anything at meeting in December.

There are some questions around who did know what, when. Slightly beyond what is the governance around this. Good to set out factual normal process stuff, without expanding into how does our internal audit process work. We can look at what boards and committees are responsible for, the reality being that I know when I get to the end of this review it won't satisfy anyone, and I don't want this to grow into what I am not comfortable doing.

FF I am comfortable we are not going to satisfy everybody as a result of this.

GC I don't want to trespass into what should be dealt with by [the Chief People Officer] on that side."

General Counsel noted that there were additional questions from a 'chronology perspective' that they needed to go back to the COO and the CEO on. But she wanted to keep it limited, not trespassing into an investigation into their conduct.

"FF [The COO] knew what was going on, but was waiting for all of the facts before she gave all of the information to Management Board.

GC Was not Management Board's business."

(iii) The "anomaly" in the Audit Committee Terms of Reference. Fieldfisher noted that it seemed "*weird*" in 2016 for Audit Committee to have pushed for this wider accountability to

Management Board and to have then not followed the procedures it itself had asked for. General Counsel wondered whether the reference to circulation of Minutes was to Governing Council, but accepted that this did not fit with the words of the Terms of Reference. She hadn't asked the Audit Committee Chair: she asked whether they should simply say that what was in the Terms of Reference didn't happen?

"FF I think you should give [the Audit Committee Chair] the heads up. Because otherwise somebody's going to ask why this is the case.
GC Where it starts to get a little bit uncomfortable – you have an Audit Committee chair who doesn't seem to know his own TOR in sufficient detail. They review them annually, and nobody had picked this up since 2016 to be a weird anomaly.
FF On full analysis, [the Audit Committee Chair] is in difficulties as a result of this.
GC We need to treat him carefully. He's not an employee.
FF My view is there's exposure for him there. He looks a bit stupid having driven the change in the first place."

It was agreed that they would wait for the Director of Risk's answers[163] to the question on the chronology before asking questions of the Audit Committee Chair. They were also going to ask neutral fact-finding questions of the CEO, the COO, the Finance Committee Chair and the Management Board Chair relating to knowledge.

There were, during this period, further conversations involving Fieldfisher on issues surrounding Simon Hardwick's behaviour and concerns about possible constructive dismissal claims from the CEO and COO. These are dealt with in the section which follows.

On 14th September 2019, Fieldfisher emailed General Counsel to say that they had continued their work on the chronology, so that General Counsel could present it to the Management Board Chair. A few questions remained to be addressed by the Director of Risk, the COO and General Counsel. A longer 43-page document had been prepared but the attached chronology summarised the key dates and facts to make it accessible for Management Board. Matthew Lohn summarised his opinion thus:

"What is clearly discernible from reading this document is:
- *the finalised BDO Audit report was shared promptly with the Audit Committee in February,*
- *the no assurance of Treasury Management and other concerns were promptly shared with Simon Hardwick and Amarjit Atkar in February subsequent to the Audit Committee being notified*

[163] these were provided later that day

- *the prompt and fulsome apology given by [the COO] to Management Board on the Virtual Community at the end of February.*
- *the clear and timely updates given by [the CEO] to Governing Council in relation to this matter.*
- *the acknowledgement by [the COO] that Management Board could and should have been notified sooner regarding the cash flow situation.*

"What I cannot see here is any evidence in the timeline suggesting the Executive has sought to mislead or otherwise conceal salient facts from those responsible for oversight."

This is an important document. Having reviewed all the evidence in detail, I do not agree with any of Matthew Lohn's conclusions and find it difficult to understand how, were he considering the matter objectively, he could have reached them.

Mr Lohn continued that Fieldfisher were finalising a separate document setting out the various governance responsibilities, which made it clear that the key committee entrusted by Governing Council for scrutiny and reassurance in relation to finances was the Audit Committee. He noted that there was a "gremlin"[164] regarding a reporting line to Management Board, which, although codified at the Audit Committee Chair's request, was not observed in practice. They would provide the background to this in a separate document.

He concluded:

"My 'take' on this issue remains that certain members of Management Board have 'mistaken' their governance role. Management Board is not the primary board with responsibility for oversight of RICS's activities – financial or otherwise. The main board is in fact Governing Council and they have delegated financial scrutiny to the Audit Committee. In fact were Management Board to seek to undermine the independence and reporting lines of Audit Committee that would be a clear breach of RICS's intended Governance."

Having looked at all the RICS governance documentation, not merely at the Terms of Reference for the various Boards and Committees, I disagree with Matthew Lohn's conclusion. I give my reasons for this in Chapter 7.

General Counsel replied at 0049 on 15th September 2019, thanking him. Then at 1022 that morning, she forwarded an email from the Management Board Chair (discussed below) and an email from Amarjit

[164] What General Counsel had described as the 'anomaly'.

Atkar in which he sought hard copies of the Management Board papers, plus the Terms of Reference, Regulations and Bye-Laws. It is not clear to me why Fieldfisher needed to be shown this email. The picture that emerges is that General Counsel simply forwarded everything to Fieldfisher and it is this which gives the impression that this entire matter was being outsourced to RICS' external legal advisers.

There was further email communication between Fieldfisher and General Counsel on 16th September: an updated chronology was provided and General Counsel provided further dates for it, presumably at Fieldfisher's request.

Fieldfisher also provided General Counsel with three additional documents:

(i) An "explanation" of the background to the changes in the Audit Committee Terms of Reference (the 'anomaly'). This included the fact that at a Management Board meeting on 15th March 2016 attended by the Audit Committee Chair and the COO:

> *"The Audit Committee Chair … noted under the reporting section [of the Terms of Reference], he doesn't report to Management Board after every meeting, only annually. Committee agreed that their Minutes be circulated to Management Board. … [The Director of Risk] would amend the TOR to reflect these comments and then the TOR would be put to Governing Council (via the online community) for approval"*

(ii) A document setting out the various duties/obligations of Audit Committee, Management Board and Finance Committee; and

(iii) A document described as *"Our first pass at an analysis of whether the respective Boards and Committee met their obligations"*.

As will be seen, these form all of the constituent parts of the internal governance review. In other words there was nothing material which remained for General Counsel to do other than check it and put her name to it. It is for this reason that I have concluded that this was not a review conducted by her, but one conducted by Fieldfisher.

The CEO and the COO both replied to General Counsel's questions about dates, which she then forwarded to Fieldfisher.

On 18th September 2019, General Counsel emailed Fieldfisher to say that the chronology was fine. She asked if they could do a "final eyes" so that it could go to the Management Board Chair "*so that he can begin his review*". Given that General Counsel had been tasked with conducting the review, it might be thought that by this she was referring to his review of "her" findings. However, it is clear from the subsequent exchange with Fieldfisher that it was anticipated that the Management Board Chair would himself have some input. General Counsel noted that she was not sure of the extent to which he would want to keep the Simon Hardwick correspondence included. Fieldfisher responded, suggesting that the Management Board Chair might want to reduce the amount of Simon Hardwick correspondence:

> *"So it doesn't look as though [Simon Hardwick] is the driving force behind Management Board discharging its responsibilities"*

On 19th September 2019, the COO emailed General Counsel (copied to the CEO and the Chief People Officer) asking if she could have an advance copy of the governance review. General Counsel emailed Fieldfisher to ask their opinion. She said that the COO had asked whether she and the CEO would get to see the review before it went to the whole Management Board. General Counsel thought that they should, if Fieldfisher agreed. She gave no explanation for why they should be treated differently from the other Board members.

General Counsel then emailed the CEO and the COO confirming that they would both receive a copy of the final governance review before it was issued to the full Board. She attached a copy of the chronology for them to review for factual accuracy. In a later email she said that she would look into the other matters that the COO had raised as relevant additions to the chronology, as opposed to any factual corrections. It is not clear what these additions were.

That afternoon, Fieldfisher responded to General Counsel. They had discussed the matter and could see the merit in showing the COO and the CEO the timeline, "*since they have been contributing to it*" but thought that to be even-handed, it should be shown to Simon Hardwick too, as he also contributed to the document. The Management Board Chair could accept or reject any objections from those given prior disclosure. If he rejected an objection he could choose to tell Management Board.

In advance of a further phone call that evening General Counsel emailed the draft report to Matthew Lohn asking him to have a look at it. She had sent it to the Management Board Chair as he was anxious to see it

ASAP. She said she wanted to discuss one of the conclusions about the informal sharing, which was something the Management Board Chair wanted reflected, but she wasn't sure she'd quite got the language right.

During her call with Fieldfisher, General Counsel said that contrary to Matthew Lohn's earlier advice, she wanted to show the report in advance to the CEO and the COO but not to Simon Hardwick. The reason was that the COO and the CEO had been singled out for criticism. The COO was sensitive. They needed to work out where people might try and take questions next week. In reply, Matthew Lohn said that the COO had "overplayed her hand". He warned General Counsel:

> *"What you've got to guard against is any accusations that you were in some shape or form colluding with the person who supervises or remunerates you in regards to what the outcome of the inquiry should be".*

The COO was, of course, General Counsel's line manager. General Counsel's stance in respect of the different treatment of Simon Hardwick is curious and the justification apparently unwarranted, given the level of criticism that had also been levelled at him by the Executive (although he was largely unaware of it).

General Counsel also said:

> *"[The Management Board Chair] needs to close this down…*
> *he thinks there has been a failure that he wasn't efficiently given the heads up"*

Fieldfisher responded that the Management Board Chair had to make the point himself and it should not appear in General Counsel's review. It did not.

Thus it can be seen that the Chair of the Management Board had important reservations about the treatment of the BDO 'no assurance' report and felt that he should have been told both more and earlier. Nevertheless, General Counsel said he "needed to close this down". I am satisfied that this email provides evidence that General Counsel and Fieldfisher knew that the Chair of the Management Board, at least to some extent, shared the concerns of Simon Hardwick and others, but his opinion was supressed in order not to appear to criticise the Executive and the Chair of the Audit Committee. Whilst the Terms of Reference were explicit in stating that behaviours and culture were not to be included, they did address whether 'the governance' had been complied with. To exclude the concerns of the Chair from the conclusions risked giving an unbalanced picture and suggests that the true aim of the review was simply

to give a clean bill of health to the decisions of the Executive and the Chair of the Audit Committee. Anything which was inconsistent with that was simply ignored.

The finalisation of the Internal Governance Review

On 20th September 2019, General Counsel emailed the CEO and the COO confirming that both would get an advance copy of the report that day . She attached the chronology for their comments.

The CEO's response was that he had thought she was planning to include the response from Governing Council on the CEO updates:

> *"I think this provides colour as to the level of concern that Top Co[165] had and the assurance they felt. Other than that, sorry you have had to invest so much personal effort and for any doubts that Board members expressed about your personal integrity and ability to carry out this review. Not the finest hour for RICS or Board behaviour"*

General Counsel replied that she would be covering this in the 'verbal' presentation of her report so that it was recorded in the Minutes.

The COO's response was that there were a couple of things in the chronology that were not right about personnel in the Finance Department:

> *"…this is important as it explains why in mid-May the re-audit did not give us a clean bill of health – given the movement of staff and the conversations which were taking place".*

At 1335 that day, General Counsel emailed Fieldfisher and the Chief People Officer to say that she had uploaded the Management Board Chair's "*draft script*" for the upcoming Management Board meeting and she and the Chief People Officer would review it. The Management Board Chair wanted Fieldfisher's advice on whether:

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[165] I assume he meant Governing Council

*"What is stated is accurate, fair and proportionate to **all** concerned"* (Original emphasis)

This is a further example of General Counsel asking for Fieldfisher's guidance about something which was not a legal issue and should have been well within her competence.

She later emailed to say she had amended the chronology document (now v5) to add a couple of things the CEO and the COO had wanted included. She then emailed again to say that the Management Board Chair had asked for an amendment to be made.

At 1646, as promised, General Counsel provided the advance copy of her review to the CEO and the COO (copied to the Chief People Officer and the Head of Governance).

Later that evening, she posted the review on the Management Board Virtual Community.

At 1931 she emailed it to the President[166] and said it had been shared that evening with all members of Management Board and the Chairs of the Audit and Finance Committees.

I analyse the content of the review later in this section.

The involvement of the Chief People Officer

The chronology in the paragraphs above deals with the broad day-to-day interaction between General Counsel and Fieldfisher whilst the review was taking place.

As the material shows, there was determination that a clear line should be drawn which would exclude consideration of behaviour or what were termed 'cultural issues'. This was borne of concerns as to how the review might impact upon employment law matters in relation to the Executive (a matter which had been raised in July by the CEO). It is evident from the documents that from the outset the objective was to protect the COO, the CEO and the Chairs of the Management Board and Audit Committee. Part of

[166] Who did not have access to that Virtual Community as he was not a member of the Management Board.

this 'protection' included taking action against those non-Executives considered to have behaved inappropriately.

From the time of her first involvement in this matter the Chief People Officer took a strongly partisan approach. Although she was to tell me when I interviewed her that she felt she was concerned about the welfare of all those involved, I have concluded that all the evidence points to her having decided that Simon Hardwick and his fellow non-Executives were trouble-makers, from whom the Executive and the Chairs of the various bodies needed to be protected. I have concluded that she should have been both more objective and more measured than she was and that she must take a share of responsibility for the escalation of the tension which culminated in the dismissal of the four non-Executives.

The evidence in relation to this is as follows.

On 4th September 2019, General Counsel told Fieldfisher that the Chief People Officer needed advice and she would introduce them to each other. At 1350 that day General Counsel emailed Fieldfisher, introducing the Chief People Officer, who:

> *"has been asked by Chair of Management Board to advise and ensure due process is followed in relation to…certain NEDs…and their comments/inferences/allegations concerning the behaviour and culture of certain members of management at RICS and more particularly the executive members of the Board"*

The following day (5th September 2019), the Chief People Officer had a 45-minute phone call with Fieldfisher about how to support the CEO and the COO. At this meeting, Richard Kenyon, a partner in Fieldfisher's employment law department was present. He was to remain involved until the dismissal of the four non-Executives.

During this call, the Chief People Officer said that at least one of the non-Executives thought that there was a more serious allegation around trust, confidence and behaviour of management but her feeling when she first read the emails relating to this was that it didn't constitute a formal complaint, just raising an issue at Management Board. However, following the special Management Board[167] meeting she didn't think this was going to go away. They needed to address how Simon Hardwick had behaved. In her view, he had significantly undermined the position of the Management Board Chair, made allegations against

[167] On 29th August 2019

the CEO and the COO and potentially "called into disrepute" the Audit Committee Chair. Simon Hardwick was calling for an independent review, which undermined General Counsel's reputation. The Chief People Officer's concern was that the Management Board Chair would downplay the conflict as much as possible and then the issue would linger on, unless they got "at the front of it". She drew attention to the CEO's "glowing appraisal" in June, in which 84 individuals had taken part[168]. It would appear that the COO's appraisal may have been slightly less glowing, as all the Chief People Officer said about it was that it "*took account of the finance issues*".

Fieldfisher said that the nub of the problem was that Simon Hardwick had mistaken the role of Management Board and thought that it was more equivalent to a PLC board. In Matthew Lohn's opinion, the truth was that Simon Hardwick was merely a non-exec on a sub-board of the main Board. I note in passing that I do not agree with this analysis; the RICS governance situation is much more complex than this.

The Chief People Officer said it was not clear whether Simon Hardwick was a 'rogue' non-Executive on his own or this was a wide belief held by other members of Management Board. Simon Hardwick didn't have the power to oust the CEO "*as he is trying to do*". I note once again in this context that I have seen no evidence that Mr Hardwick or any of the non-Executives had any interest in removing any of the senior leadership of RICS. I comment further on this in Chapter 8.

Matthew Lohn said that the CEO and the COO needed supporting, but there must be sufficient scrutiny given to the accusation to see whether it had any foundation. The latter was being addressed by the review, but he was concerned about the support of the CEO and the COO.

The Chief People Officer was confident from the reviews of the CEO and the COO and wanted to know how to get on the front foot of the behavioural allegations. She "*worked hand in glove*" with both on a daily basis.

Fieldfisher said:

> *"the key element that Simon is unhappy about, is the failure to disclose information to Management Board in a timely way. [The CEO] effectively provided air cover for [the COO]'s behaviour by not informing*

[168] The CEO's line manager is the Chair of the Management Board.

Management Board, and there is a nasty whiff of an allegation that he has not properly informed Governing Council.
"Until we've taken a view on when [the COO] should have told Management Board things, difficult to get a handle on that.
"but even if the chronology should have been different, the way Simon has behaved – opening salvo at [the Management Board Chair] on a Friday night that [the Management Board Chair] is still upset about." (Emphasis added)

As a question of fact it was wrong to describe Simon Hardwick as having delivered his "opening salvo" at 10pm on a Friday night. This can only be a reference to the email of the 26th July 2019, which indeed was sent just before 10pm on a Friday but was very far from being Mr Hardwick's first discussion with the Chair on the matter. As the Chair himself and General Counsel were well aware, Mr Hardwick had raised the matter with the Chair on many occasions between February and July, including at two Management Board meetings. Although the language used in the 26th July email was more robust than before, I have concluded that this was understandable given that his earlier concerns had been seemingly ignored, by virtue of the delays and the failure to honour promises to provide the documentation in a timely and transparent manner. What had prompted the 26th July email was the fact that the original BDO report had finally been given to the Management Board on 19th July (six months after it had first been requested by the Chair himself) but there had been no sign of the first re-audit report which had repeatedly been promised.

The Chief People Officer agreed that the Management Board Chair, who she felt had high moral values, had taken the 26th July email personally. Her view was that whilst Simon Hardwick was entitled to express concerns, he had done it in a way that undermined the Management Board Chair. She suggested that contrary to Fieldfisher's suggestion that there might be a genuine public interest concern, Simon Hardwick's motivation might have been that he didn't get the Standards and Regulation Board job and wanted to oust the Management Board Chair so that he could become Chair of Management Board. This entirely speculative opinion seems to be based on nothing more than gossip and innuendo, but it again demonstrates the partisan basis upon which the Chief People Officer approached this whole episode.

It was agreed that it was necessary to get a chronology before addressing issues of trust and behaviour.

Fieldfisher said it was difficult to judge whether the CEO and the COO should have acted differently, but there was a huge gap between that and saying that they did it in a grossly deceitful way. The Chief People Officer had already concluded that there was no malicious intent to withhold information.

Fieldfisher noted that Simon Hardwick might possibly be viewed as a whistle-blower but that that was to be distinguished from the way he had behaved. They needed to reassure the Executive so that they didn't claim constructive dismissal. The Chief People Officer would draft letters of reassurance to the CEO and the COO which would be reviewed by Fieldfisher.

Fieldfisher wanted to see the minutes of the Management Board special meeting on 29th August:

> *"It captures some of the more inflammatory phraseology used by Simon.*
> *"Don't want to leave Simon too long thinking his current modus operandi is acceptable. Counterpoint is you give him enough rope he'll hang himself, but maybe your letter will flush out with [the CEO] and [the COO] that we are not colluding or acceding to those behaviours, by not calling them out"*

On 6th September 2019, the draft 'letter of comfort' to the COO was circulated between the Chief People Officer, Fieldfisher and General Counsel and amendments made. The letter made it clear that the purpose of the internal governance review was not to conduct an investigation.

On 9th September 2019, General Counsel emailed the Chief People Officer attaching the Terms of Reference for the internal governance review and telling her that there had been further correspondence with Simon Hardwick .

On 10th September 2019, the CEO emailed the Management Board Chair (copied to General Counsel and the President) complaining about the intentions of other Board members in relation to having "management behaviours and cultures" as part of Terms of Reference. General Counsel forwarded this to the Chief People Officer, asking to speak to her.

The "letter of comfort" was sent to the COO and the CEO by the Chief People Officer on 11th September 2019. It said that the review was not a grievance action and that they should let the Chief People Officer know if there was anything that she could do to support them.

That evening, the COO emailed the CEO (copying in the Chief People Officer) to say:

> *"With the review under way I am concerned that this has now moved onto something more – given that the treasury audit issues have been largely resolved I am unclear as to why facts are now being gathered around timescales. This feels to me as a start to an investigation. To date significant resource has been committed to something that in the view of two independent chairs has been escalated beyond what is required and therefore can only conclude that this has now moved to something more personal.*

> *"In addition, I am disappointed that the board has been dominated by 2 or 3 individuals with the rest of the board largely remaining silent. The board has never asked my view on the matter and having worked for over 10 years at RICS and have only had a small number of issues that had to be brought to their attention, I am unclear as to why the board has just jumped to the assertion that management has withheld information or acted unprofessionally. For me this is an afront to my professionalism and my personal levels of integrity."*

She continued that she was disappointed the Management Board Chair and Governing Council Chair had never spoken to her about this matter nor asked her opinion. She felt let down by their silence and saw it as tacit support for the allegations made. The Board had never asked her views, but rather fixated on the 'no assurance' report without fully understanding the risks that it posed. Whatever the review outcome, she was considering her position and had little confidence in the matter either being dealt with fairly or with robustness.

The Chief People Officer emailed Fieldfisher the following day asking for a further conversation. She enclosed the notes from the CEO and the COO as to their feelings and said that she had had long conversations with both. She wanted to know:

> *"what we do from an employment perspective/protection of [the CEO] and [the COO]?"*

Both were saying that they couldn't work with Simon Hardwick, and the COO was talking about it feeling like constructive dismissal,

> *"So I will need to balance a concern for the individual with a future protection of RICS"*

Both the CEO and the COO had asked RICS to pay for legal advice *"if the time comes".*

In the Chief People Officer's opinion there was a risk to the organisation of losing the CEO and /or COO and / or the Management Board Chair. She wanted advice on whether the Management Board Chair and /or the President could request Simon Hardwick's resignation.

13th September 2019 call

I have concluded that as early as 13th September 2019, there was an explicit intention to remove Simon Hardwick from the Management Board, in order to placate the CEO and the COO.

In her evidence to me, the Chief People Officer said that this was the date that she first approached Fieldfisher for advice. It is clear that she had in fact had a lengthy discussion with them a week earlier. She may simply have been mistaken, although I would have expected her to have kept notes, given the importance of the matter.

The call she had asked for took place on 13th September 2019 between her, Fieldfisher and General Counsel .

The Chief People Officer began by saying:

> *"I sent you the quite long briefing email just to line everyone up on the same thinking. From my POV, I'd like to cover off some of the governance piece, then we can cover off employment matters with GC[169] off the call.*
> *"… [The Management Board Chair] is focused on process, but almost to the extent of ignoring human behaviour. If someone is riled by process, they will not just get back in their box and be quiet. What's your view about getting [the Management Board Chair]* ***in the right place****?"* (emphasis added)

Fieldfisher again said that it was difficult to get to the bottom of the issues with any degree of certainty without the chronology. For the Management Board Chair to start speaking to Simon Hardwick now would probably be premature.

"CPO	*It would be difficult to have a productive Management Board meeting scheduled for 25 September, unless there are conversations and pre-positioning.*
FF	*[The Management Board Chair] needs to have spoken to SH[170] before the meeting, but it's too early at this point in time for him to speak. Otherwise SH is going to say "you're after me".*

[169] General Counsel
[170] Simon Hardwick

General Counsel expressed concern about no action being taken against Simon Hardwick until the review was completed, but Fieldfisher said:

> *"My concern is that you don't want SH to start saying he is being victimised because he is raising valid concerns.*
> *"Question whether SH is a 'worker' for the purposes of legislation. … Would hate to see RICS in Supreme Court as the leading case on the level of workers.*
> *"Chronology is likely to show all the steps that SH took circumventing normal processes and bringing this to be an issue. That will be* ***a good piece of evidence for us*** *– not fact of raising the issue but manner in which he has."* (Emphasis added)

There was agreement that the key was for the Management Board Chair to take a strong position. He might need to speak to Simon Hardwick more than once before the meeting. If the CEO and the COO learned that there was not going to be any discussion before the meeting, they might well make a formal complaint against Simon Hardwick. The Chief People Officer said that the CEO and the COO couldn't imagine an effective Management Board going forward with Simon Hardwick and them on it. She said that the Management Board Chair would need to be "*carefully orchestrated*". He needed to hold the narrative. It was not in his mindset yet.

Fieldfisher said that it was a question of them all persuading the Management Board Chair that there was no mischief. He would want external legal advice that there was no problem, so that he could rely on it. He would not reach that conclusion on his own. It would compromise General Counsel's position as 'neutral General Counsel' to give that assurance to the Chair, so it would have to come from Fieldfisher. The Chief People Officer said that the message needed to come from Fieldfisher, the Chief People Officer and General Counsel because:

> *"He will need to be carefully scripted even with legal advice"*

She said the Chair was quite shaky around all of this. He had suggested the President's involvement in the conversations but:

> *"He will lose all respect as chair if he has to have a backup in that situation."*

Richard Kenyon said:

> "***We*** *need to establish what SH's position is with his contract.. Need to invite him to go. What if he says no? What are* ***our*** *rights to remove him?"* (Emphasis added)

Fieldfisher said that the Chair needed either to invite Simon Hardwick to consider his position, or to say that it was all 'done and dusted' and it was for him (the Chair) to decide. Fieldfisher referred to them already having had to prepare the Chair in respect of another matter.

The Chief People Officer said that the Chair should speak to other members of the Management Board separately. She was not sure that Simon Hardwick's presentation of it being him and three or four others was correct. Others wouldn't support any suggestion of impropriety by the CEO and the COO. General Counsel said that Amarjit Atkar shared Mr Hardwick's position around trust and transparency. Fieldfisher said:

> *"You will have to think about divide and conquer if you are going to take SH out and keep Amarjit"*

General Counsel expressed concern that the Management Board Chair would step down if the entirety of Management Board disagreed with him. The Chief People Officer asked:

> *"Are we seriously in a position where we are contemplating removing chair of Management Board, CEO and COO? We cannot function as an organisation in that scenario."*

They moved on to discuss the way in which the 25th September meeting could be controlled:

> *"GC* *From the handling of the meeting itself, should [the Chief People Officer] be present?*
> *FF* *You bet.*
> *GC* *How do we control the discussion of review and its conclusions in a way that is appropriate? Review and chronology will say what it says. If individuals start wanting to probe why didn't you tell such and such earlier when you were in receipt of it, how do we handle those questions so it doesn't start being a quasi-investigation of their behaviour.* ***How is [the Chair] entitled to shut down discussion****?*
> *CPO* *Some of that is looking people in the eye before the meeting – you've read the chronology, this is my view. We can categorically say to people we have addressed their issues.*
> *GC* *I'm anxious about timescale*
> *FF* *A lot of moving parts to deliver this."* (Emphasis added).

They considered delaying the meeting to ensure that sufficient time was available to prepare the Chair, but concluded that this was impossible.

They then set out proposals for ensuring that the Chair was fully briefed and scripted:

"FF By Wednesday we should be in a position for [the Chair] to have a document to review, and reach some conclusions, so we can spend some time with him on Thursday morning agreeing next steps.

CPO Useful for [General Counsel]and I to be on that call.

FF Absolutely. He can be spoken to in advance of the meeting on Thursday to tell him the direction of travel.

CPO I think it may be worthwhile for GC and I to start drafting a script for him. By the time we are at Thursday afternoon or Friday morning, we will have a finalised script for him.

FF We have got to get [the Chair's] head in a space on Thursday morning that there has been no mischief. SH's behaviour makes his Management Board position untenable. Are you going to bring [the Chair] up to speed on this general approach?

CPO I think I'll call and then diarise time with him on all of this. By COB Thursday next week we will have script for [him], the report, some guidance for him on who he should speak to and in what order.

GC I'll get SH's contract over to you now. There are termination and notice provisions in them"

This provides powerful evidence that the intention was to ensure that by the end of the 25th September 2019 Management Board meeting, a line would be drawn under the concerns raised around the Treasury Management issue. In addition it was planned that Simon Hardwick would be "dealt with", the outcome being that he would either resign or be dismissed. Any other result would be unsatisfactory to the CEO and the COO and risk their departure, and there was a risk that they would bring constructive dismissal claims.

That evening (13th September 2019) General Counsel emailed the Management Board Chair to say:

> *"I understand that [the Chief People Officer] has spoken with you this afternoon about the advice and some proposals for the meeting on 25th. Please let me know if it would be helpful to speak about options with me, or with me and Matthew and if so, your availability to do so"*

The Management Board Chair responded:

> *"it may be helpful for us to speak to make sure you understand my feelings….I think it might be helpful within the Board meeting to cover explicitly the issue of how Management Board members can be comfortable that they can discharge their responsibilities within the current governance structure.*
> *"I said to [the Chief People Officer] that it would be important for [the President] to be kept updated".*

Preparation for the 25th September 2019 meeting

On 16th September 2019, General Counsel reported back to the Chief People Officer (copying in Fieldfisher). She had spoken to the Chair, who had been working on the governance review item for the Management Board meeting and had his own script. He was unwilling to have calls with Board members before the meeting, as had been suggested by Fieldfisher. He could not see how he could speak to Simon Hardwick without also dealing with the other matters concerning him and didn't think he could do that until after the meeting. He knew that further advice was being sought in relation to the conversation. He wondered if having the Chief People Officer at the meeting was escalating the matter. General Counsel had explained to him that the Chief People Officer's presence shouldn't come as a surprise given what had been said previously in writing and in meetings. It was necessary to protect the RICS position from an employment law perspective.

General Counsel then gave the others on the call a summary of the Chair's "script". This included that it was reasonable for the Management Board to want to understand what it is responsible for and to have called for the review, and that he understood the expectations of "no surprises" as previously acknowledged. The Chair continued to have full confidence in CEO and COO and their integrity and trusted that he spoke for the Board. In future, if there are concerns, then Management Board members should raise them with him in the first instance.

Later that day Chair himself had a call[171] with Fieldfisher. As was by now usual, both General Counsel and the Chief People Officer took part in the call.

They all went through his script. He said that he thought they should have made more of the Management Board members discharging their responsibilities in the Terms of Reference for the special meeting:

> *"You (FF) very helpfully said there's probably a case where some Management Board members are aggrandising what their responsibilities are. At the Management Board meeting this came up again, and got extended to the corporate governance statement in the annual report.*

[171] The note that I have states that it was at 1700. An email from General Counsel suggests that a call took place at 1400. I have no note of a call at this time. However, the covering email from the note's author refers to the call "this afternoon".

> *"I do think it would be useful for the review to cover at least the discharge point, and secondly to flag that of reviewing the annual report, and duties ascribed to Management Board, and make sure they are still fit for purpose in light of the review she will have done."*

Fieldfisher agreed and said that having looked at the chronology, they still failed to understand where, based on a proper interpretation of duties and obligations, anyone had done anything wrong here. It was a conflagration [*sic.*] from a typo from a document[172] and misinterpretation of duties.

The Management Board Chair went through the bullet points for his script. Fieldfisher suggested that he add in the COO's "fulsome apology" in respect of lessons to be learned: *"Implies otherwise that episode is still live. It was an unequivocal position that she took, which I think is much to her credit."*

Fieldfisher said that once the Management Board Chair had seen "*all the documentation that General Counsel has prepared*"[173], the real point of learning was that Management Board should not be interfering with governance responsibilities between Audit Committee and Governing Council.

The Chair said that the governance structure was different to that of other boards, where Audit Committee was a sub-committee of the Board:

> *"Which is why it was important to review that corporate governance thing. It is reasonable where we are signing off on corporate governance.*
> *"There is some ambiguity that can be improved upon, but in terms of your point about the ToRs, in RICS' governance structure, I agree with you.*
> *"I'm not sure any of that is mutually exclusive with Management Board being sensitised to the fact that an overdraft had to be increased, and to being given some colour around it in the context of no surprises. But doesn't give them entitlement to see all the reports."*

Fieldfisher took a more robust stance than that articulated by the Chair:

> *"To have Management Board undertake internal audit is wrong in governance. RICS has an unusual governance structure, but it is what it is. People who sit on Boards should understand what their position is.*
> *"If members of a Board have concerns, there are ways of expressing those in a professional and collegiate way. Creating a sub-cabal of the Board, and sending undermining and aggressive ways [sic] late on*

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[172] I assume that what is meant by this is the date of 8th November on the BDO report.
[173] Which is ironic, since it had in fact all been prepared by Fieldfisher themselves.

Friday evenings, does not do that. In the same way [the COO] has apologised, at the very least you should be expecting a similar articulation from Simon Hardwick and Amarjit."

The Chair said "*what I am trying to do in this Board [meeting] is effectively close the matter and remind people of what my expectations as Chair for the future are*". The Chair has told me more than once (including in the letter of representations) that it was offensive to suggest that at the 25th September meeting he was trying to close the matter down. I have concluded that there is plenty of evidence which shows that that was precisely what he was trying to do, whether he now remembers it or not, and that this note of the 16th September call provides a powerful example of this.

There was discussion about how to ensure the meeting achieved closure of the matter, though the Chair said that he didn't want to close the door on subsequent conversations that needed to take place or mislead the Board into thinking that "*that's it now*". It is clear from the context that he was referring to the perceived need to "deal" with Simon Hardwick, not that he was saying he would allow future debate about the handling of the BDO reports. Fieldfisher was encouraging of his desire to express not only trust and confidence in the CEO and the COO, but sadness as to some of the behaviours he had witnessed. The Chair felt that the behaviour issue was for a subsequent conversation.

The Chief People Officer said,

"Given that [the CEO and the COO] have in this relatively public forum been accused of misconduct to some extent, I think they would also need to hear that they have been subject to unwanted behaviour. My sense is that it might help you to have an additional conversation with SH, if you tee up with all of Management Board, in your role as Chair, the expected levels of behaviour. Right to express that standards haven't been kept."

The Chair queried whether Simon Hardwick had actually made allegations. Fieldfisher and the Chief People Officer expressed the view that there was a clear inference that he had, both against the CEO and the COO and had also "*made a pop*" at the Chair and the President. Simon Hardwick had pulled the trigger very quickly if it turned out that the senior leadership had all behaved properly. This was unwise and needed to be called out so that the CEO and the COO didn't have some sense that it had been allowed to linger to their detriment. The Chief People Officer referred to the COO's record; "*where her own integrity has been called into question by SH particularly, he is aware [that] the way he has brought this to your attention and the attention of the Board is not right".* In her view, the Management Board Chair needed to be robust.

The Chair spoke about having a conversation with Simon Hardwick afterwards. He needed to know what he could say and propose. Simon Hardwick might say it wasn't just him. The Chair asked whether it should be the President, or him and the Chief People Officer. He said,

> *"Duty of care to non-execs too, so we have to remember that"*

Matthew Lohn agreed but said that Simon Hardwick was undoubtedly the ringleader and whilst everyone should be able to raise concerns, it was the manner in which they had gone about it that eroded trust and confidence. The Chair said that Simon Hardwick had been singularly untransparent. It appears that he is referring to Mr Hardwick having been in communication with the other members of the Board. He appears to not have considered how the numerous conversations that had taken place between him, the CEO, the COO, the Chair of the Audit Committee, Fieldfisher, General Counsel and the Chief People Officer (in various permutations) could be seen in that context.

The call concluded with a discussion about who should speak, what they should say and in which order. General Counsel said "*[we] need to avoid probing of [the COO], why she didn't act in certain ways*".

Following this call, the Chief People Officer sent an email to the COO, responding to the email she had sent to the CEO. The Chief People Officer said that she knew the Management Board Chair was keen to:

> *"demonstrate that there is absolutely no question of a lack of integrity on either your or [the CEO]'s part….let's hope next week brings this to a sensible resolution for all concerned"*

On 19th September 2019, during a call between General Counsel and Fieldfisher only, General Counsel said "*[the Chair] needs to close [this matter] down*".

<u>Simon Hardwick's request for legal advice</u>

On 2nd September 2019, at 1203 Simon Hardwick emailed General Counsel, copying in Amarjit Atkar, to say:

> *"Further to last Thursday's special meeting of Management Board, Amarjit and I in our capacity as the two independent non-executive members of Management Board, wish to obtain external legal advice about our responsibilities to RICS in relation to the subject matter of last week's meeting and the resulting concerns that have been raised with the Chair. I assume that, in accordance with the principles of good governance, there is a process by which board members can obtain relevant independent advice at the*

organisation's cost. Please would you let us know what this is and the steps that need to be taken to facilitate it.
"For your information, in principle, we would wish to appoint [X], a partner at Linklaters to advise us."

I would have imagined that this would have been a relatively straightforward matter for General Counsel herself to decide, but again she asked Fieldfisher for advice. Matthew Lohn tasked one of the more junior solicitors in the team to conduct some legal research which he then sent to General Counsel. It was inconclusive; Fieldfisher's best advice was to check to see whether RICS had a policy on the subject.

In his covering email, Matthew Lohn said that his provisional view was that:

"if a member of a sub-board of RICS is unhappy with what has happened on the sub-board then he should complain first to his Board Chair and if he then remains dissatisfied he should raise a further complaint to the senior Board and its chair - i.e. the President who is ultimately responsible for governance of the organisation.
"The member of the sub-board should not be given funds to pursue his personal agenda. If he does not like this response and wants to take legal advice as to his own position he should bear the cost of it personally. In noting this I would like to check the point with our Employment team to check there are no other gremlins I am overlooking but wanted to let you have my preliminary thoughts."

I note that Fieldfisher considered Simon Hardwick to be in dispute with RICS, when the review had (at least to Mr Hardwick's knowledge) not yet reached any conclusion on the very issue upon which he wished to obtain advice.

It was also an over-simplification to describe this as pursuing "his personal agenda". It is my view that in giving this advice, Fieldfisher failed to consider what was in the best interests of their client, which was RICS, not the Executive or the senior leadership. I would expect a senior and experienced lawyer to have welcomed the validation of another senior lawyer that they were in fact correct in their assessment of the duties and responsibilities of the Board, given that the consequences were potentially so significant.

The matter was discussed during the call between General Counsel and Fieldfisher which appears to have taken place the following day, 4th September 2019. It is clear from this that they believed Simon Hardwick to be wrong in his understanding of the issues. Fieldfisher said,

"We are still trapped in the issue that SH doesn't realise he is on a sub-board …will come back to you with draft advice and a response to SH for you to share with [the Chair] &[the President]"

He advised General Counsel not to tell the COO about Simon Hardwick's request for legal advice.

Later, he provided further thoughts on the topic. He concluded that, as Simon Hardwick's concerns had been addressed at the 29th August special meeting, and a plan of action to investigate the issues was underway, he should raise any complaint with the Chair and/or President, and should he wish to obtain legal advice in respect of "his complaint", he must do so at his own cost. Fieldfisher then provided a draft email for General Counsel to send to Simon Hardwick. I note in passing that I can see no reason why RICS should have paid Fieldfisher to draft an email for General Counsel to send given that she had already been provided with written advice, and that this provides further evidence that she was significantly over-reliant on Fieldfisher.

Matthew Lohn copied in the employment partner, Richard Kenyon. The significance of this will become apparent.

In emails the following day (5th September 2019) Fieldfisher told General Counsel that they had informed the Chief People Officer of their advice in respect of Simon Hardwick's request. General Counsel had also informed the Management Board Chair.

She emailed Simon Hardwick a little later using the draft provided by Fieldfisher. He responded that evening, asking whether the refusal to pay for legal advice was because RICS had no such policy, or whether it had a policy but it had been disapplied.

In a call between Fieldfisher and General Counsel on 6th September 2019, she noted that the CEO, the President and the Management Board Chair were all aware now of Simon Hardwick's request for legal advice and that he did not accept that RICS did not pay for legal advice.

On 9th September General Counsel emailed to Fieldfisher a draft response to Simon Hardwick's questions about the policy on RICS paying for legal advice. This focused on the absence of an explicit provision within the Management Board Terms of Reference, unlike the Terms of References for the Audit and Finance Committees. Fieldfisher later responded saying they liked her draft (albeit a number of amendments were made to it), as it:

"Avoids suggesting you have made a subjective decision to refuse SH. Instead, your reply correctly identifies the lack of any policy or precedent whereby you could authorise or obtain authorisation for such expense."

The basis for refusal had therefore become a reliance on the presence or absence of a specific provision within the written governance rules, rather than the original "principled" basis. General Counsel sent her reply to Simon Hardwick shortly afterwards.

The content of the internal governance review

This was posted on the Management Board Virtual Community on 20th September 2019. It consisted of a seven-page paper with four appendices.

As I have described in the paragraphs above, all parts had been written by Fieldfisher and then provided to General Counsel for her to check and amend[174].

Its conclusions were:

1. *RICS operates within a prescribed governance framework which must be respected and adhered to. There had been no failure in the operation of that framework as regards the handling of the Treasury Management audit.*
2. *The three committees had been able to discharge their functions.*
3. *Governing Council had been informed and updated by the CEO following each Management Board meeting.*
4. *The Treasury Management audit and addressing RICS' management's responsiveness to that audit sat squarely with Audit Committee not Management Board. Audit Committee had provided information and assurance to Management Board and exceptionally provided a copy of the underlying audit reports.*

[174] She had obtained the factual information for the chronology, which she had then provided to Fieldfisher who had prepared the document itself.

5. *Where a sub-board/committee is in receipt of material, it may also be appropriate for that material to be shared with the superior board.*

It also said:

(i) *The events leading to the review had raised questions as to the current clarity of the responsibilities between Governing Council, Management Board, Audit Committee and Finance Committee. Therefore Governing Council should review this as part of the wider governance review, and the Head of Governance should review the Corporate Governance Statement within the Annual Report in this respect.*

(ii) *There appeared to be a drafting anomaly within Audit Committee Terms of Reference.*

(iii) *The date on which an internal audit report is finalised should be clearly stated on the finalised document and earlier drafting dates removed.*

I asked General Counsel whether she thought that the Management Board Terms of Reference were broad enough to encompass the alternative conclusion that it had a responsibility in relation to the BDO report. She accepted that it could be said to be ambiguous. I asked why, in that case, she had not said so. She told me that the purpose of her review was not to express a conclusion about the various governance responsibilities but to provide comfort to the non-Executives that they were not in breach of their duties. She had intended merely to address concerns that they were being prevented from fulfilling their responsibilities and might therefore be at risk. Her conclusion was that she didn't believe the Board had failed in its duties. They should be reassured by the fact that the Audit Committee "had its arms around" the issue and nothing was slipping through the cracks. The ambiguity was the reason she recommended that Governing Council review some of the responsibilities to see how they worked together and the corporate governance statement should be reviewed.

I am afraid that I am unable to accept the explanation that this was merely an exercise in reassurance, particularly in the light of the material within the Fieldfisher file. When I interviewed General Counsel I had not been provided with the Fieldfisher file (though I had asked for it a fortnight earlier) and so had no idea about the substantial role they had played in the review. Knowing what I now know, I am very surprised that she was not candid with me about their involvement, given that she knew that I had not seen the file and it was not clear at that stage whether I ever would.

She also told me that her review was not meant to close down discussion. It was simply her viewpoint which would provide the starting point for the debate which was to take place five days later at the Management Board meeting. I do not accept this either, as the evidence which I summarise in the next section makes it quite clear that her objective was to help the Chair to close down the issue with minimal further discussion.

As to the "drafting anomaly", I asked her who told her it was an anomaly rather than a breach of the Term of Reference which required that the Audit Committee Minutes (or a summary) be provided to Management Board after every meeting. She said she believed she had been told this by the Audit Committee Chair and the COO. It wasn't a case that they knew it was there and it had never been complied with. It must have appeared there at some point in history but it wasn't something that they were consciously doing anything about.

Fieldfisher Advice in respect of the dismissal of the non-Executives.

In addition to their work on the Governance Review, Fieldfisher also prepared two notes, on 17th and 18th September 2019 respectively, addressing the legal position on the "termination" of the non-Executives. It is not clear on whose instructions these were prepared, nor to whom they were sent or when. The earlier looks like a preliminary draft of the later.

These documents are of interest for two reasons:

(i) Even before the 25th September Board meeting took place, serious consideration was being given as to how to remove Simon Hardwick; and

(ii) The employment partner was plainly aware of the *Member/Staff Partnership Policy*. This was discounted as a way of removing some or all of the four non-Executives, on the basis that policies are not usually legally binding, and there had been no complaint made by the COO or the CEO. Rather, in his view, the route to dismissal (were they to refuse an invitation from the Management Board Chair to stand down) was provided by their contracts for services, which permitted termination on one month's notice.

For the reasons I set out in Chapter 7, I disagree with this advice.

What is striking about these documents is how little consideration is given to the consequences to RICS of pursuing this. Not only would this have a chilling effect on all remaining non-Executives, which might suit the Executive but was clearly not in the interests of the organisation, but the reputational damage caused by dismissing the majority of the non-Executive members of the Management Board would potentially be immense. Neither of these aspects was mentioned.

The non-Executives' response to the Internal Governance Review

The review having been provided during the evening of Friday 20th September 2019, Simon Hardwick posted a response on the Management Board Virtual Community on the 22nd. Because of a long-standing commitment he believed that he would not be able to attend the meeting on the 25th and so gave his thoughts in writing.

In his response he said that it was entirely appropriate and proper for Management Board to enquire why it was that the conclusions of the BDO report were not immediately brought to the attention of the CEO, Management Board and Governing Council when the Executive first learned of them. He had been advised that a failure to make that enquiry would represent a dereliction of their duties as Management Board members. Whilst the chronology was helpful, it contained an inaccuracy in that it said that no comments were received about the Terms of Reference for General Counsel's review. He had provided comments and had asked for specific matters to be considered, which the report had not fully addressed. Further, the chronology left numerous questions unanswered. He listed a number of these, which in summary covered *why* things had been done when they had.

His view was that General Counsel had gone beyond her Terms of Reference. He said that the question as to whether Management Board had been able to discharge its responsibilities for monitoring and oversight was not one for her to answer, but for the Management Board itself. Similarly, it was for the Board to decide whether there had been any failure in the operation of the governance framework. He

described the assertion that under its Terms of Reference Management Board was not required to be informed as "*disingenuous, legalistic obfuscation*".

In his view, the key issue was that Management Board members needed to be able to trust the Executive to bring to its attention in an open and transparent manner significant issues pertaining to RICS' finances, operational performance and risks. That had not happened and the matter could not be satisfactorily concluded without an acknowledgement of the shortcomings in the way in which things had been handled. The Board would need assurance that it would not be allowed to happen again. Constructive reflection on how to achieve this was more productive than a needless and probably fruitless 'governance review' of the type suggested by General Counsel.

The reaction to Simon Hardwick's note was hostile. Great exception was taken to both the tone and content of his message. I recognise that the note was robustly-worded, but the matter had now dragged on for many months and I find that his obvious sense of frustration was understandable.

On 23rd September 2019, Steve Williams responded to the Internal Governance Review. He too took issue with the report's conclusions. He referred back to the 29th August special Management Board meeting when a number of people had counselled against putting General Counsel in the impossible position of potentially having to criticise the work of senior colleagues.

23rd September 2019

Monday 23rd September 2019 was a busy day for communication with the external lawyers. At 0936 General Counsel emailed Fieldfisher and the Chief People Officer to inform them of Simon Hardwick's response, which she had uploaded to the SharePoint. She said that she would like to discuss it "today".

She then emailed the posting to the CEO and COO telling them that a response was being considered.

The COO then emailed the Chief People Officer, copying in the CEO. She said now that the review had been completed she wanted independent legal advice at RICS' expense. She referred to the effect that this matter had had on her because of what she described as the *"whim of 3 board members"*.

Significantly, she ended her email by saying "*given the finding of the review I am not prepared for this matter just to be left where it is.*"

If it had not been clear before, this email left no room for doubt that the COO expected something to be done about the non-Executives in question, with the clear threat that there would be consequences if matters were just left. Her feelings had been fortified by the Review's implicit conclusion that there was no criticism possible of the approach she had taken to the BDO report.

In email discussions between General Counsel and Fieldfisher in advance of a lengthy call that afternoon, General Counsel said that she had spent an hour speaking to the Management Board Chair. She forwarded a long note of that call. At the end of the conversation the Chair had wondered whether there remained sufficient time to prepare for the meeting on the 25th or whether it should be postponed.

Meanwhile, the Chief People Officer and Fieldfisher were dealing with how best to address the COO's complaint. The Chief People Officer forwarded the COO's email and said that she was

> *"tempted to pick up the phone and talk to her about the plan for Management Board and afterwards…this could quickly spiral into a WP*[175] *conversation about exit or constructive dismissal"*

Taking this in full context, I have no doubt that what was meant by "the plan for Management Board and afterwards" was that steps were already being taken to find some way of removing at least Simon Hardwick.

She also said that she was *"tempted"* to agree to the request for legal advice funding. The Fieldfisher employment partner replied that he didn't see too much of an issue with funding legal advice:

> *"Other than reinforcing a precedent (will [the CEO] want the same and then Simon?!) … I don't see any traps in the email … her main concern seems to be gunning for the board members".*

I regard this as evidence of a lack of even-handedness. Both the Fieldfisher partner and the Chief People Officer knew that Simon Hardwick and Amarjit Atkar had asked for legal advice as to the extent of their duties as non-Executive directors and that this had been refused on the basis that RICS would not pay for

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[175] Without prejudice

them to pursue a "personal agenda". Yet the COO wanted advice on her personal employment position (which Fieldfisher and the Chief People Officer believed could include the possibility of a constructive dismissal claim against RICS) and this was permitted. There is no explanation in the file of why there was a distinction between the two positions, nor any recognition of the possibility of a conflict of interest between Fieldfisher's role as lawyers for RICS and the COO's personal position.

The call between General Counsel and Fieldfisher that afternoon lasted 2 hours 40 minutes. They were joined by others at various points. In the initial discussion when it was just the lawyers present, Fieldfisher raised the question of whether:

> *"The point about [the COO] and constructive dismissal is a live one now"*

General Counsel spoke disparagingly of Steve Williams, saying that he was:

> *"Not bright enough to realise the implications. SW's posting alone was a risk from a dismissal point…SW felt the need to chip in and in a way that isn't appropriate."*

I read this remark with surprise. Mr Williams was a distinguished past President of RICS with a track record of 25 years' service to the organisation. For General Counsel to speak of him in this way is a failure to recognise respective and proper roles.

During this conversation, General Counsel and Fieldfisher were critical of the COO, the Audit Committee Chair and the CEO for the part they had played in all this. I am troubled by the fact that this private acknowledgement that parts of the senior leadership had played a significant role in bringing RICS to the situation in which it now found itself was never reflected in the advice, either written or oral, which was given to the Chair of Management Board and the President.

This has caused me to conclude that the lawyers were, in effect, taking their instructions from the Executive without correct analysis of the important governance roles of others. They give the appearance of treating the CEO and COO's wishes as determinative. Had General Counsel or Fieldfisher told the President and the Chair of the Management Board that the Executive was at least partly responsible for the situation, it is possible that matters would have been resolved more beneficially.

Matthew Lohn said:

> *"The COO might have been slightly light on her feet but didn't lie. Uncomfortable that these people are gunning for her and she is a creature of [the CEO]. He either sides with her or cuts her adrift."*

The Management Board Chair joined the call part way through. I note with interest that he felt that Simon Hardwick was trying to draw a line under things. His own view was that,

> *"There is no doubt that notwithstanding everything which GC's review has shown up, some heads up on a matter like this would not have gone amiss."*

In my view, that observation encapsulates very neatly one of the key elements of the approach that should have been taken to this whole issue. Irrespective of their view of the formal constitutional structure of RICS, common sense as well as general principles of good governance demanded that the Management Board be informed fully of the issues. It was foolish and ill-considered to avoid what should have been the obvious imperative of full disclosure.

Unfortunately, the Management Board Chair was ultimately persuaded away from the logical, common sense conclusion. Contrary to the Management Board Chair's view as to Simon Hardwick's intentions, Fieldfisher suggested that Simon Hardwick *"demonstrates an ill-will towards the institution."* Had Fieldfisher taken a more objective and considered position, they would have served their client better.

The Chief People Officer joined the call. Matthew Lohn said:

> *"we need to consider that as an organisation **we** support [the CEO] and [the COO] and make sure that RICS doesn't allow non-execs to expose RICS to some form of claim were [the COO] or [the CEO] minded to bring one"* (emphasis added)

There was discussion as to how the Management Board meeting would be choreographed, and how the COO would express her distress.

The Management Board Chair expressed the view that he had been undermined (as Chair). In discussions after he left, General Counsel said: *"I am now in a position where I have to defend RICS and two employees".* The Chief People Officer made it plain that they *"cannot have a witch-hunt of [the COO] as a result of all this".*

The last part of the call involved the Chief People Officer and Fieldfisher alone, as General Counsel had another commitment. The discussion focused on the Chief People Officer's "duty" to the COO and the CEO. Fieldfisher noted that they were at the point where the CEO would not work with Simon Hardwick on the Board. The Chief People Officer questioned whether tactically she should be encouraging that:

> *"I don't think there is any way SH and AA can come back from this.*
> *" [If] SW and BM admit they have been idiots – backstepping apology – [the CEO] and [the COO] could work with them…*
> *"[the Management Board Chair] will want a script for all scenarios which could arise"* (Emphasis added)

There was discussion about their duty to protect RICS against litigation. In contradistinction, there was no discussion about the chilling effect on others (whose proper duties included, where appropriate, challenging decisions) that dismissing non-Executive Directors would have, nor the reputational damage that might well be caused to RICS as a result.

The Chair's script and the 'playbook' for the 25th September meeting.

Also passing between Fieldfisher, General Counsel and the Chief People Officer were Fieldfisher's amendments to the Chair's "script" for the 25th September 2019 Management Board meeting, now amended to take account of Simon Hardwick's and Steve Williams' postings. The script included a handsome endorsement of the CEO and COO. The time for discussion was to be limited to ten minutes, after which the Management Board Chair would thank General Counsel for her review and move on to other matters. It may be felt that this was a surprising guillotine in the light of the Management Board Chair's insistence at the 29th August meeting that no discussion on the topic should be had at all until the review had taken place and the upcoming September meeting was the obvious (and indeed only) opportunity for such discussion to take place.

In addition to the amendments to this script, the Chief People Officer was scheduled to meet Fieldfisher the following day (the 24th) in order that she would know how to "finesse" the Management Board Chair's draft. In an email that evening (23rd September 2019), General Counsel asked Fieldfisher and the Chief People Officer whether it was intended that that discussion be completed ahead of any meeting with the

Management Board Chair, as the Management Board Chair was due to have a "121" with the CEO at 0900. Fieldfisher observed that:

> *"Allowing half an hour [for the Chief People Officer] with Richard[176] should give [the Management Board Chair] time to receive a headline briefing before he sees [the CEO]"*

Later that evening, at 2044, the Chief People Officer emailed Matthew Lohn and Richard Kenyon of Fieldfisher (copied to General Counsel) with a 'playbook' for the upcoming Management Board meeting. She wrote:

> *"Dear Richard / Matthew*
> *In preparation for tomorrow's call I thought it would be worth outlining the worst case scenario as I see it (please build on it) so that we can contingency plan with this in mind. We will need to build on the script (from an employment point of view) to cover these points.*
>
> *"Scenario 1: Simon as a lone wolf - Please advise if you think this is the right approach?*
> *Context - Simon persists in his personal attack on [the CEO] and /or [the COO] but others are backing away*
> *"Suggested Handling - in some ways this is a favourable position as Simon is creating his own isolation and is creating the storyline for his removal from the board.*
> *"Who does what - in this scenario [the Management Board Chair] can continue to reiterate that [the CEO]/[the COO] have the full support of himself, [the President] and the majority of management Board and whilst he appreciates that Simon felt he was doing the right thing, the manner in which it was done has been inappropriate and unnecessarily hurtful to all concerned."*
> *"Scenario 2: Simon chorales [*sic*] other members of the board behind him or they rally behind him spontaneously in the meeting.*
> *Handling - very much more tricky. This bit only increases the risk of not resolving the issue in the meeting, it also lays foundations for [the COO] to claim constructive dismissal and potentially leads to a vote of no confidence being escalated to Gov Council for [the CEO].*
>
> *"Please give us advice on who does what in this scenario?*
>
> *…*
> *"Additional Questions for you:"*

The questions raised in Simon Hardwick's response to the review were then set out. She continued:

> *"How does [the Management Board Chair] introduce my presence in the meeting – what are we saying is the reason? What basis is he introducing me and my attendance?*

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[176] Richard Kenyon, the employment law partner

"How and when should I intervene so that I don't undermine [the Management Board Chair] as Chair but protect either [the COO]/[the CEO] or RICS?
As a last resort?

- *It is clear that [the COO]/[the CEO] are unable operate with Simon (potentially Amarjit, potentially Bruce, potentially Steve- to be confirmed) on the Board. How and when should she raise this as a complaint?*
- *Is there any tactical play where we would want [the CEO] to state – that the trust has broken down materially between the Executive and the Board and there he cannot continue to work with the members of the board because of the personal and hurtful way in which they have raised this issue?"*

She then listed questions that the Management Board Chair would ask her when she met him, with suggested answers, before setting out the last two scenarios:

"Questions [the Management Board Chair] will ask and suggested responses: (Please confirm your advice on these)

Q1) should we take the post[177] down as it is in some way adds to the possibility of a constructive dismissal claim by [the COO] ?
A1) No, as the time frame between now and Management Board is very short

Q2) should we cancel this section of the meeting in its entirety?
A2) no, because it will remain the elephant in the room until it is discussed in open forum

Q3) does [the Management Board Chair] as Chair, have the right to ask them to leave the meeting
A3) yes, but would suggest an initial verbal warning along the lines of –" if you pursue in this unhelpful manner I will ask you to leave the meeting" (wording to learn, move on, adjourn, exclude if necessary)

Q4) does [the Management Board Chair] as Chair have the right to ask Simon (and others) to leave the board.
A4) yes (but outside the meeting) without giving a reason and with a month's notice. (we know there is a risk of whistle blowing here, but the financial risk is minor), reputational risk is more of a concern

Scenario 3: [the Management Board Chair] indicates his intention to resign as Chair given he feels his position is untenable ?
If there is a direct allegation of mishandling of this situation in the room, how do we deal with this?

Scenario 4: "Vote of no confidence" suggestion in [the CEO] or [the COO]?
Who should respond and what should they say? (? The Management Board Chair a matter for GC, it is not appropriate for this matter is discussed at Management Board)"

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[177] Simon Hardwick's response to the internal governance review

The above demonstrates beyond doubt that the entire Management Board meeting was to be choreographed in advance and in detail. It is notable that the Chief People Officer even sought advice as to how the Management Board Chair should explain her presence in the meeting and what should be said to justify it. When the Chief People Officer gave evidence to me, I had not seen this email[178]. I asked her why she had been present at the 25th September Board meeting. She said that she was there to protect the interests both of the RICS employees *and* the non-Executive members. The above material, taken together with the other evidence that I have read and heard, demonstrates that she was being less than candid with me.

Matthew Lohn responded the following morning (in an email copied to General Counsel) providing "*input in red [to the 'playbook'] to assist the conversation*". He referred to the fact that he and the Chief People Officer were due to speak shortly. As an example of the advice given, his response to the question of the CEO and COO not being able to operate with Simon Hardwick was:

> *"Either [the CEO] or [the COO] could raise this as a complaint – better ask [the Chair] to raise this with [the President] – much more powerful and removes [the CEO] and [the COO] from a tit-for-tat behaviour slur. Potentially deal with on notice rather than another investigation – see below."*

Fieldfisher, the Chief People Officer and General Counsel had another call that morning (24th September 2019) in which the strategy and choreography for the Management Board meeting were again discussed[179]. The theme of protecting the COO and the CEO and isolating Simon Hardwick (and possibly Amarjit Atkar and Steve Williams) was again the top item. The call even included a discussion as to the order in which people should speak in the meeting. It was suggested that the most difficult thing would be if the CEO was asked whether he was happy having been kept in the dark. The Chief People Officer described the President as:

> *"Slightly flaky. Needs to be really robust in his support of [the CEO] and [the COO]. [The President] has started to say GC[180] should have been alerted earlier."*

Fieldfisher noted that *"**our advantage** is the extravagance of [SH's] criticisms."* (Emphasis added).

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[178] It was only supplied to me as part of the Fieldfisher file.
[179] An attendance note that purports to be of a call on 23rd September appears in fact to relate to the 24th.
[180] I am satisfied this is Governing Council.

Also on 24th, Amarjit Atkar posted a response to the Internal Governance review on the Management Board Virtual Community. He too made the point that the question of analysis and conclusions were for the Management Board, not General Counsel and that in any event he didn't agree with the conclusions she had reached. He made the point that if the risks had crystallised, the Board would not have been able to "hide behind" the governance structure.

6L THE 25th SEPTEMBER 2019 MANAGEMENT BOARD MEETING

The account given in the Minutes

The Minutes provide a useful starting point for an understanding of what happened at the meeting of 25th September 2019. However, they do not provide the full picture: there is a dispute about their accuracy in certain respects. Plainly, the atmosphere and context can only be spoken to by those who were present.

The meeting was held at RICS' offices in Great George Street, London. The Board members present were the Senior Vice President, the CEO, the COO, Amarjit Atkar, Bruce McAra, Steve Williams, Natalie Cohen and Edgar Li, together with the Chair. Simon Hardwick was present by telephone for the Governance Review element of the meeting only. Others in attendance included the Finance Committee Chair, the Interim CFO, General Counsel and the Head of Governance. The Chief People Officer and the President were in attendance for the governance review part only.

The Minutes record that discussion of the Treasury Management internal governance review began with the Management Board Chair advising that Simon Hardwick had joined by conference call, the President would also dial in when available but had been delayed, and the Chief People Officer had joined the meeting to ensure RICS' duty of care obligations *to the CEO and COO* were observed, given that concerns in relation to their behaviours had been raised (my emphasis).

The Chair then set out the procedure for discussion:

- General Counsel would provide a summary of her Internal Governance Review
- The Management Board Chair would advise of his position
- The President would provide his thoughts
- Board members who had not posted comments on the Virtual Community would be asked for their views
- The CEO and COO would be asked for their comments
- The discussion would be broadened out to the whole Board.

General Counsel duly summarised her report. She reiterated that the review specifically did not include personal performance or cultural matters. She noted that she had received one point of clarification on Terms of Reference from a Board member which had been resolved and was referred to when the final Terms of Reference were posted on the Virtual Community. If this refers to Simon Hardwick, it is of note that he had already expressed to General Counsel the concern that, whether or not the matters he had asked about were implicitly included, in his view the questions had not been fully answered in the report.

In relation to the "drafting anomaly", General Counsel said that regular horizontal information flow from Audit Committee to Management Board was not a practice that had ever been undertaken so this reporting requirement needed to be understood and would be referred to the Head of Governance to review with Governing Council and Audit Committee.

The Management Board Chair said that he was aware that a number of Board members had concerns about:

(a) whether the governance structure was effective,
(b) their ability to discharge their functions as Management Board members, and
(c) the level of openness throughout the Treasury Management audit process.

The Minutes record the Chair as having said:

- He was surprised by comments about General Counsel's ability to undertake the review given her undertaking to disclose any conflict of interest that arose. Her instruction had been supported by the President (who was also the Chair of Governing Council) and the Audit Committee Chair.
- His view that through the review, Management Board had discharged its responsibilities as required by its Terms of Reference. The review had been thorough and all appropriate aspects had been covered.
- Audit Committee, not Management Board, was responsible for the outcome of the Treasury Management audit. But the governance structure was unclear in relation to Management Board's accountabilities, hence the recommendation for Governing Council to review the Terms of Reference of the governing bodies.
- He was not complacent about the Treasury Management issue and there was no question in his mind but that the CEO and COO had taken the matter seriously.

- He accepted the review's conclusion that there had not been a governance failure under the existing structure. The differing views of Management Board should be referred to Governing Council for review which should also consider informal communications to Management Board from management and other governance bodies. It would be unjustified criticism to conclude that the CEO or COO had been untransparent with Management Board or that there had been obfuscation.
- The existence of a formal structure did not prevent informal sharing of material issues with Management Board to avoid surprises.
- His personal confidence and trust in CEO and COO's leadership and integrity was undimmed. In future all Board members should contact him directly with concerns so he could bring matters to the attention of the full Board. He wanted to avoid a situation where individual members felt undermined or unfairly criticised, and trust affected. The situation had undermined the collaborative Board that he had tried to build. If any member had any concerns about the way he had handled the matter they should refer it to the President as Chair of Governing Council.

From the above, in particular I note two matters.

First, the Management Board Chair's surprise at concerns having been expressed as to General Counsel's ability to remain independent in conducting the review, is concerning. From the evidence I have seen it was clear that her independence was indeed compromised and not only for the reason that the non-Executives had feared. It was not just a question of her feeling constrained in relation to possible criticism of those under whom she worked but that she had in fact formed a highly partisan view of matters (which included having reached a conclusion) well before the review was even commissioned. The Chair knew this to be the case because (amongst other things) he had been present at the meeting on 23rd August when Matthew Lohn had told him, in General Counsel's presence, that Simon Hardwick was wrong.

Also, and again to the knowledge of the Chair, General Counsel had engaged a third party to conduct the bulk of her review, but withheld this fact from the non-Executive members of the Board. Whilst the Chair may not have been aware of the full extent of the facts demonstrating her lack of independence, he knew enough to make his expression of 'surprise' at the suggestion misleading.

Secondly, given the insistence on and explicit inclusion in the review's Terms of Reference that behaviours and culture were not to be considered, it is surprising that the Management Board Chair felt able to conclude that any criticism of the CEO and COO was unjustified. This is precisely the area that was said to be "off limits".

The Minutes record that he then asked for observations from Board members who had not already provided "feedback" on the review and the chronology.

During the meeting the Senior Vice President said the following[181]:

> "*Having attended Governing Council she believed that, given their size and composition, they were unable to provide oversight in the same way that the Management Board could. She explained that she had chaired their monthly calls and that they did not discuss the issues which a governing body was expected to consider. She did not believe they were positioned in such a way as to give issues, such as the treasury management matter, sufficiently deep scrutiny. Where are these issues being dealt with if they are not being dealt with [at the Management Board]? She asked where these matters were given scrutiny if Governing Council were unable to undertake this function and whether Audit Committee had escalated the matter to Governing Council?*"

Natalie Cohen's concern was about Management Board's entitlement to reports and documents and concerning the lines of responsibility. She was satisfied with the review but informal notification of the Treasury Management issues at an earlier stage would have been of assistance. The chronology had answered many questions but there had been disappointments around the timing of notifications being made and reports being provided to Management Board. It was timely that Governing Council would review the Terms of Reference. She had confidence in the Executive.

Edgar Li felt that there had been an issue with the quality of the data provided: it was an area for improvement. The information provided to the meeting was very comprehensive, and he had full confidence in the integrity of the Board.

Bruce McAra appreciated the Chair's address, the assurance that improvements had been made and better quality informal communications would take place. He said the issues were not governance but competence and capability to manage financial affairs. There was a lack of timely communication of the conclusions of the audit report, which was the worst he had ever seen. If there had been a discovery of fraud in the future, Governing Council would not be content for Management Board to say that they had met the requirements of the governance framework and thus discharged their responsibilities. They would have expected Management Board to question the findings and ensure adequate controls were in place. He reminded the meeting that Management Board was the accountable body for this matter.

The President joined by telephone. He said General Counsel's chronology provided a clear picture although areas for improvement had been identified. Communications would benefit from improvement

[181] At 3.1.36

and whilst governance responsibilities had been fulfilled, clearer accountabilities could be introduced. Comments around culture and behaviour had arisen due to the lack of clarity around process and responsibilities.

The CEO stressed that he felt he had enjoyed the trust and confidence of the Board and his last 360 degree feedback had been very positive in terms of the behaviours and cultures that he set. He found the comments by some Board members about investigating management behaviour and culture personally unacceptable. This had been morale-sapping and had distracted the Executive from other important objectives. RICS' governance structure was unusual and complex. It demanded trust that each governance body would act in the right way and within their remit, accepting that informal communications from the Executive could be improved. He believed he was a role model for this. RICS' top level governing body structure required a radical rethink as to whether the responsibilities could be split. The COO had endured a difficult time, having always protected RICS' best interests and informed him when necessary. The Audit Committee Chair had done the same. How this matter had been handled had potentially placed Executives in an untenable position.

The COO said it had been a "*personal and very difficult time*" for her. She found it upsetting and offensive that her integrity was being questioned and she was being told that she had not been transparent or kept people informed. She had not felt part of the Board for 12 months despite being a member. None of the Board had contacted her to discuss the Treasury Management matter and she felt they did not want to understand the real issues. The Board's response had put the organisation at a greater risk than the Treasury Management issue itself had.

Simon Hardwick said that whilst he respected the comments aired, he had not significantly changed his view from that expressed in his posting to the Management Board Virtual Community. He had taken his own legal advice and felt that the Treasury Management issue fell within Management Board's responsibilities and the BDO report should have been brought to Management Board's attention. He welcomed the acknowledgment that there should be improved informal communications but lessons still needed to be learnt.

Steve Williams said that the Chair's concerns had been an equal burden to him. He could not have imagined the matter would cause such emotion. Whilst General Counsel's chronology was accurate, her review had provided conclusions, despite the Chair having previously advised that conclusions could not be drawn until the review had been considered. He did not agree with the conclusions she had reached. There had been a failure in communication. The matter was in the Board's remit through its operational

remit and he could not understand why the CEO had not been informed earlier than February 2019. The lessons learnt could assist the Board to move on to the healing process.

Amarjit Atkar felt that the matter had been painful for everyone. He had not questioned anyone's integrity, had worked closely with the COO on risk management and his personal view was that a small issue had been blown out of all proportion. All that had happened was Management Board members had asked for comments on the Treasury Management audit and a copy of the report. This had resulted in a strained relationship. He offered his resignation if that would help *"as he was seen as one of the instigators rather than a member of the Board"*. He had felt upset when he had asked for a hard copy of the Board papers, which had been refused, and he had wondered if he was being targeted.

The Chair then made further comments, referring to the Audit Committee Chair's position, and asking for the governance statement in the annual report to be reviewed as he was required to sign off on it and couldn't currently instruct the Audit Committee Chair to send reports to the Management Board.

He said that there was some consensus in the meeting. Whilst the current governance system was in place the informal communication framework should be reviewed, but should also be addressed in the governance review.

There was some further discussion before the Chair closed the item, confirming that he believed there was support for the recommendations to review the governance structure including potential reform of the governing body. Having thanked General Counsel for the significant amount of time she had spent on the review and chronology, he suggested that it was a suitable time for a break as the discussion had been difficult and emotional.

The Minutes record the following decisions and actions:

- The Head of Governance would be asked to review the Corporate Governance Statement in the Annual Report to ensure that the Management Board were able to approve the content.
- The Management Board agreed that informal communications between the Management Board, other governance bodies and the Executive required improvement.
- The Management Board agreed to recommend to Governing Council that within the governance reforms there be a review of RICS' governance structure and that this would consider whether governing body responsibilities could continue to be split between Governing Council and the Management Board.
- General Counsel would keep the Board updated on Governing Council's governance review.

It is worth noting that the Treasury Management / Governance review item covers 12 pages of the 29 pages of the Minutes. Thus whilst it was the most substantial of the items considered at the meeting, it was not the only one. The Minutes show that in addition, the following matters were dealt with:

(i) The CEO's update,
(ii) The operational performance report,
(iii) Finance update,
(iv) Membership and Stakeholder survey,
(v) The Client Money Protection Scheme,
(vi) The India "deep dive",
(vii) The Key Strategic Markets "deep dive",
(viii) The 2019 – 2022 Business Plan,
(ix) The Risk and Assurance report,
(x) The Health and Safety Annual Report, and
(xi) The Annual Assurance report to be given by the Chair to the Governing Council oversight meeting.

The significance of this was that one of the reasons given for the dismissal of the four non-Executives was that the Management Board had not been able to deal with any business other than the issue of the BDO internal audit. The Minutes themselves suggest that that was untrue.

The account of the Management Board meeting given to me by the witnesses

Simon Hardwick

Due to a long-standing arrangement, Mr Hardwick had believed he would not be able to attend the September 2019 meeting. He had telephoned in just for this particular part of it (having already given his views in writing). He said that the meeting had begun with the Chair reading an emotional personal statement, in which he referred to his own "sky high" ethical standards but failed to address the substantive concerns. This had been followed by the CEO reading a similarly emotional statement and then the COO gave "*an emotional exposition of her upset at having been challenged around this*"

He said that the Head of HR was there and he had thought that that was "*really weird*". The explanation given was that:

> *"she was there to protect the interests of the Executive members present at the meeting…and in the sense that presence was positioned as a sort of threat, you know 'you criticise the exec at your own risk'".*

He said that he was clear that he personally had not attacked the integrity of the Executive. What he was looking for was reassurance for the future. What they all wanted was to re-establish trust. For him, the Treasury Management issues themselves had largely been resolved and what remained was the question of how did this happen, what lessons are to be learnt and "*how are we going to make sure in the future that these issue are dealt with in a better and more appropriate way*."

He said he told the Board that in his view:

> *"the Management Board members needed to be able to trust the Executive promptly to bring to its attention in an open and transparent way any significant issues pertaining to finances, operational performance and risk and that [had not happened] so what I was looking for was an assurance that it wouldn't happen again and an acknowledgment that there had been shortcomings in the way that things had been dealt with".*

I asked him what he felt was going to happen following the September 2019 Management Board meeting. He said that there was no discussion, just a series of presentations about people's individual perspectives and no decided conclusion. The meeting had been halted for an "emotional break" (as the Chair had characterised it) and after that the Chair moved on to other matters. He thought that the way it was left was profoundly unsatisfactory; there had been no agreement to a course of action and he was surprised and perturbed when he received the draft Minutes to find that it was noted that there had been agreed actions. He said he felt that the way that the Chair had dealt with the issue had really exacerbated the internal tensions.

Amarjit Atkar

He told me he was surprised that the Chief People Officer was in attendance. When the meeting was told this was to ensure RICS' duty of care obligations to the CEO and COO were met, he was really concerned, not least because he would have thought that any duty of care owed was to them all. As at the 29th August Special Meeting, the Chair had read from a script. When the CEO started talking about his performance reviews, Mr Atkar had thought "*hang on a minute, why aren't we talking about the subject matter instead of veering off into something personal?"* In his view nobody had attacked the CEO. Then the COO started to go through how she felt and had started crying; Mr Atkar thought what is going on here? They hadn't attacked her performance or her personality.

He offered to resign because, rather than resolve the issue, the Chair, the CEO and the COO had created an atmosphere and personalised everything by calling it an attack on the Executive. He didn't want to be around if that was the frosty atmosphere they would have going forward. He was frustrated by what occurred in the first part of the meeting. What was clearly an issue about governance and information-sharing had been turned into a complaint that members of the senior leadership team were being subjected to personal criticism and attack. As he had repeatedly said, all he had wanted was a copy of the report. His comment about a small thing having been blown up into a major issue was not a concession that he and the other non-Executives had been wrong to raise it, but rather a complaint that this could all have been so easily dealt with had they been provided with a copy of the original 'no assurance' report when they had first asked about it.

He went for a walk at lunchtime. Initially he had thought about not going back but had decided privately that he would consider his position later.

After the meeting he had stayed for the drinks and spoken to the CEO, who had said that he was fed up with constantly being attacked by people and being under review. Mr Atkar said he wasn't asking for that, he just wanted a copy of the report. The CEO said that the blame lay with the Chair of the Audit Committee who had told them not to release the report.

At the suggestion of the CEO, Mr Atkar later spoke to the COO by phone. He said he had asked her why she had made this so personal, when all they had wanted was to see a copy of the report. She also blamed the Chair of the Audit Committee.

Bruce McAra

He told me that he was surprised to find that the Chief People Officer was present "*to ensure that the CEO and COO were protected (it was unclear to me why 'protection' was needed).*" He remembered that the Chair read from a pre-prepared script. It was very controlled, but the COO was very emotional. The Chair then invited views from any member who had not already expressed them. There was no opportunity for debate or discussion. He then adjourned the meeting for half an hour for what he described as an 'emotional break'. When the meeting reconvened the matter was not reopened and the Board turned to other items.

He was left with a huge feeling of dissatisfaction. All he wanted was for a proper discussion to take place about how to make sure this did not happen again and he thought that had that happened, it would have subsided into "ok great, let's move on".

Steve Williams

Mr Williams told me that:

> *"In the interests of the RICS membership we four could not accept a conclusion that nothing was wrong. There was clear evidence of failed responsibilities during the still unexplained delay in revealing to the Management Board the existence of such a troubling BDO internal audit report".*

He too said that at this meeting the Chair, the CEO and the COO were extremely emotional. He said that his own response was "*well we are terribly sorry, but this has got to be dealt with and we will help you to deal with it*." He said that the COO would not accept this and was saying that she felt like the target of criticism.

He said that he felt that the Minutes were not accurate; that four or possibly five members were telling the Chair that "*it's more serious than this*" but the Chair kept saying that they needed to move on: *"there's so much other business, we can't spend any more time on this".*

As far as he was concerned, the 25th September meeting was a line in the sand and it came down to him and the three others to take the matter forward to Governing Council, to make sure that the Council knew what was happening, that there were two sides to the matter and that the Council should debate the issue.

The Senior Vice President

She told me that the meeting was very emotional and very tense and she had been quite surprised by the level of emotion in the room. The Chief HR Officer was there, which she had thought was unusual. The COO was visibly distressed and was saying that her personal integrity was being questioned.

She said that Simon Hardwick had been very robust, but she didn't think she had seen any unprofessional behaviour. She felt that there was something going on behind the scenes. In the end she had felt that it was a constructive meeting: whether they agreed with General Counsel's report or not, they had all had their say; that would draw a line under things and they could all move on.

The COO

She told me that she didn't think she had been told in advance how the meeting was going to go. The CEO may have told her that she was going to be given an opportunity to say how she was feeling about it all but it was no more than that. She was certainly not part of any choreography.

She understood that the Chief People Officer was to be present as a duty of care to the Chair, the CEO and herself.

She remembered that everyone was given an opportunity to speak. At the conclusion of the meeting she did not feel positive, but the phone call she had had with Amarjit Atkar following the meeting was both long and amicable. She felt there was possibly a way they could move on, maybe even with the others. But it was not at all clear to her what it was that they wanted. She thought they had no understanding of the impact of what they said, which she found astounding given that they were quite senior.

The CEO

He thought the Management Board Chair had asked the Chief People Officer to attend the September meeting because he thought that things would be said that needed to be balanced appropriately with the employment culture of the organisation. The CEO did not discuss what he said in advance but knew that he was expected to provide his view. He had some bullet points from which he spoke. As to the meeting itself, some people were very raw. Amarjit Atkar summed it up when he said it had been blown out of all proportion.

I note that the CEO was clear in his own mind that Mr Atkar was conceding that the non-Executives had been in the wrong and that that was why he had offered to resign. It is my view that this was in fact a genuine misunderstanding.

The CEO felt that the meeting was inconclusive; he didn't feel that it had moved anything substantially on.

The Chair of the Management Board

I asked the Chair whether he had told the CEO and COO before the meeting that he would be giving them an opportunity to make a speech. He didn't think he had. He couldn't remember whether they had notes or not; it was a massive room and he wouldn't have been able to see. He had spoken with General Counsel and Fieldfisher in preparation for the meeting, which he anticipated would be a very difficult one. He had spent a lot of time preparing himself.

He did not tell me about the involvement of Fieldfisher, the fact that a 'playbook' had been prepared around different scenarios, that his 'script' had been through several lawyers or that the Chief People Officer had helped to rehearse his speech. At the time I interviewed him, I had not been given the Fieldfisher file and so I was unable to put to him that the preparation was considerably greater than he led me to believe.

He told me that everyone was given the chance to talk about the report and to express their views. Some were less happy than others, but nobody came to him with any objections during the break or after, or asked him to do another review. No one challenged that the Minutes recorded accurately what he had said. The majority of the meeting was in agreement. He thought that it was very unfair to suggest that he wanted to close the issue down and he absolutely rejected the suggestion that there was a predetermined outcome. Subsequently (in his note of 8th November 2019), he invited people to talk to him if they still had issues, but he was clear that he didn't want it to be on the Agenda for the next quarterly Management Board meeting.

At the end of the meeting he had no sense that people regarded the matter as being unresolved. He too drew attention to Amarjit Atkar having said that this was a small issue which had been blown out of all proportion. He accepted that there had been no vote but he felt that – as with all meetings – sufficient consensus had been reached by the Board based on everyone having been asked to contribute, having noted their feedback and having "*gauged the room*". He felt that none of the decision or actions appeared controversial and nobody had suggested that the matter had not been concluded.

The Chief People Officer

The Chair had invited her for that one item. She told me:

> *"he had invited me to come because he felt I had a duty of care responsibility for [the CEO and COO] and indeed for the Officers of the Organisation,* ***including, by the way, the non-Executives****. It would be unusual for me to attend a Management Board Meeting but I think the fact that I was asked to attend was a testament to the fact that… … the behaviour that we saw wasn't necessarily what we'd expect from a professional Board, and my presence was really there to make sure that we were enacting our duty of care to* ***whomever needed it in the meeting essentially****."* (Emphasis added)

As the Minutes demonstrate, this was not what was said and everyone else present (including the CEO and COO) understood that she was there to look after the Executive only.

It was unusual for her to attend a Board meeting but she thought it was a testament to the behaviour that they had seen and the effect it had had on the CEO and COO. I asked her whether she thought it had "upped the ante". She said it might have done but she didn't feel in the meeting that anything happened that required her to step in. Indeed, she thought her presence had led to it dawning on Amarjit Atkar that this had been blown out of proportion, as he had said. It had come to light that this had caused upset to the CEO and COO, so it was difficult accurately to understand the impact of her presence. As to whether talking about a duty of care had a chilling effect on challenge, she could not speak on behalf of others as to how they might have interpreted it. The intention was professionally to go through the facts.

She did not accept the suggestion that some if not all of the four non- Executives had said that they had no intention of impugning the integrity of the CEO and COO. If it had been said it would have been a big help. In common with others, including the COO, she placed emphasis on Amarjit Atkar's offer to resign as providing hope that a resolution might be found.

6M 25th SEPTEMBER – 11th NOVEMBER 2019

It appears that the view amongst the Executive and senior leadership was that whilst the 25th September Management Board meeting had not been easy, the internal audit report issue was now resolved. The question of friction between the Executive and non-Executive members of the Board remained.

On 26th September 2019, General Counsel emailed Richard Kenyon of Fieldfisher saying:

> *"we made it through the meeting relatively unscathed, although it was a very difficult meeting!!…we will now need to look at options for dealing with the behaviours that remain outstanding".*

Moments later she emailed Matthew Lohn and Richard Kenyon saying that she had spoken to the CEO and intended to speak to the COO about their thoughts and feelings based on events the day before. She was intending to send over a summary of the position, with proposals, in order to give updated advice to the Management Board Chair on the immediate options for him.

The COO emailed the Management Board Chair to say that Amarjit Atkar had telephoned to apologise to her.

CEO update to Governing Council

In the CEO's regular "Management Board update" to Governing Council posted on the Virtual Community on 27th September 2019 following the meeting two days earlier, the tone of the message was one of "business as usual". The document consists of four pages of densely typed text. The Treasury Management matter was dealt with in two lines as follows:

> *"The Board Chair led a discussion on lessons that could be learned for the future and the assurance that our governance had operated effectively throughout".*

I have concluded in the light of all the evidence that it was the CEO's intention deliberately to ensure that Governing Council was not alerted to the fact that this had been a seriously contentious issue. The

Treasury Management matter had taken up the greater part of the meeting. Given that – inexplicably – Governing Council (despite being the controlling mind of the organisation) did not receive the Minutes of its operational Board, there was nothing in this summary to alert Governing Council to the fact that for a substantial part of the Board membership, there was a serious issue of governance and transparency concerning the financial management of the organisation which remained unresolved.

I have no doubt that the CEO's position is that the Board had now dealt with the matter so there was nothing to tell Governing Council. I disagree. A well-functioning and transparent organisation would have ensured that the governing body received a summary of the different issues, the competing arguments and the manner in which it had been resolved. If there was no problem, there could be no harm in telling Governing Council what had taken place.

This is a further piece of evidence which demonstrates the approach the Executive took, namely that the CEO and the COO ran the organisation, and told the various governance bodies only that which they wanted them to know. There are echoes in this "Management Board update" in September 2019 of what had happened with the original BDO 'no assurance' report back in February, namely that the Executive would deal with the matter and it was not necessary for Governing Council to be told anything.

As the CEO well knew, the matter was not fully resolved, because both he and the COO remained determined that they would not work with at least one of the members of the Board, Simon Hardwick. As matters were to unfold, it became clear too that the non-Executives were unhappy with the way in which the matter had been left at the Board meeting.

I have two further observations to make about this document. The first is that, as Governing Council did not receive the Minutes, this was all it knew about this matter until 21st November 2019, when the President wrote to the members to tell them that a few hours earlier he had dismissed four non-Executive members of the Board. The second is that one of the justifications for the dismissal was that the Board had become 'dysfunctional' because, owing to what was characterised as the intransigence of some of the non-Executive members, it had been unable to deal with any of the other business of the Management Board. The CEO's update suggests that this was untrue. If it was true, then his update is very seriously misleading.

The CEO's and COO's ongoing concern about "behaviours"

On 27th September 2019, General Counsel emailed the CEO and COO (copying in the Chief People Officer). She referred to having had a "debrief conversation" with them both, and that she had updated the Management Board Chair. She wrote *"we are I think all agreed on the position in terms of the four members of the Board."* The Chair would tell Amarjit Atkar that there was no need to resign and he would also speak with every Board member over the coming weeks. It was made explicit that the question of Simon Hardwick and Bruce McAra was different: General Counsel wrote that she was due to speak to the Management Board Chair *"about immediate next steps re the nature of the conversation to be had with the other 2 Board members and will update you both thereafter".*

That same day, 27th September, the Management Board Chair emailed Amarjit Atkar saying that he would like him to remain on the Management Board and was sure that they shared a desire to *"turn this particular page".*

It was plain too that Simon Hardwick, at least, did not believe that the 25th September Board meeting was the final word on the matter. Also on 27th September he sent an email to the Chair which read:

> "*In response to your 'my door is always open' invitation during Wednesday's MB meeting. I would like to discuss with you my thoughts about continuing my position as independent member of Management Board and to provide you with some feedback regarding the difficult events of the past few months. I suggest that it would be preferable to deal with this face-to-face, so should be grateful if you would indicate whether you are willing to get together – preferably in the near future"*

General Counsel emailed Fieldfisher (copied to the Chief People Officer) saying that the two men were due to meet on 10th October 2019 and the Management Board Chair *"would like to know the options available to him".*

General Counsel noted that she had agreed with the Chief People Officer that matters had currently swung back towards governance rather than the people team, so it had been agreed that the latter did not need to join the call the next day.

Fieldfisher's involvement in these matters did not diminish. On 1st October 2019, General Counsel forwarded to them an email that Amarjit Atkar had sent to the Management Board Chair. In it, Mr Atkar said that he had learned from the CEO and the COO that it was not the Executive, but the Audit

Committee Chair, who had not allowed distribution of the original BDO 'no assurance' report. He said that if this had been made clear then there would not have been so many difficulties with the Executive. Mr Atkar also set out an analysis of why it was that Management Board should have been shown the original BDO 'no assurance' report, in which he explicitly referred to the Royal Charter and Bye-Laws of RICS, B.9.1.3 (which states that Books of Account and any document relating to the financial affairs of RICS shall be open to inspection of, amongst others, the Management Board). I consider this further in Chapter 7 but I observe in passing that this should have alerted Fieldfisher and General Counsel to the fact that the Terms of Reference needed to be read in the context of the "primary legislation" of RICS, which was the Charter and the Bye-Laws. There is no evidence that any of the lawyers considered that what Mr Atkar had said had any significance, despite the fact that he is an acknowledged expert on Risk and had been recruited in that capacity to bring his expertise in risk to the organisation.

Despite this email being forwarded to Fieldfisher, it did not cause any shift in the advice given as to the actions that should be taken[182].

In a call between General Counsel and Fieldfisher that day, General Counsel said that the CEO and the COO "are clear" that they could not work with Simon Hardwick and his position on Management Board was untenable. Similarly, the COO thought that Bruce McAra (whom General Counsel described as a "*sneaky weasel*") needed to be "dealt with" but didn't want the complaint to come from her. The CEO didn't want to work with Bruce McAra but wouldn't kick up a fuss. General Counsel also made specific reference to Amarjit Atkar, saying that she had thought he was "sorted", but that now appeared not to be the case (presumably because of his email making reference to the Bye-Laws). Nobody wanted to make a big fuss about Steve Williams.

They discussed how to achieve the CEO's and COO's objectives. Having described the other Management Board members[183] who hadn't made any criticism of the four non-Executives as "*pathetic*", she said

> *"I need to get [the Management Board Chair] into the position [where] he can have the conversations with difficult members of the Board…[he] needs to have wording available to get Simon off the Board. "This is what we need to help him with*
> *"no way that [Simon Hardwick] can stay".*

[182] The Management Board Chair later replied to Amarjit Atkar on 8th October 2019 saying that he would ask that his point be considered by General Counsel and the Head of Governance as part of their review.
[183] Including the Senior Vice President (now the President).

They agreed that Fieldfisher would look to giving Simon Hardwick a month's notice and Bruce McAra would be invited to step down. Significantly, they also discussed Governing Council. It is of note that no one suggested informing Governing Council, let alone consulting it. Matthew Lohn said that Governing Council couldn't be "*updated …**until we** have dealt with SH*" (emphasis added). Fieldfisher would provide a "playbook" for the conversations with Simon Hardwick and Bruce McAra, as well as some advice on the Management Board Chair's reply to Amarjit Atkar.

These were duly provided the following day. The "playbook" set out various scenarios, and the Management Board Chair's options and actions in respect of each. This demonstrates clearly that by this point there was a firm intention to 'terminate' both Simon Hardwick and Bruce McAra at the meeting on 10th October 2019, when the Management Board Chair was due to meet Simon Hardwick.

Significantly, this was to happen even were Simon Hardwick to show contrition at that stage. It was a 'done deal'.

Lest there be any doubt about this, General Counsel later thanked Fieldfisher for the playbook but queried whether their advice as to the giving of one month's notice would change given that she didn't think there would be any monies owing to him anyway. Richard Kenyon responded in the positive,

> *"we have no contractual right to terminate SH's agreement with immediate effect but I suggest [the Management Board Chair] purports to do so anyway … would you like me to tweak the script?"*

The following day he provided an "amended script" for the Management Board Chair for 'terminating' Simon Hardwick and Bruce McAra.

The playbook also made it clear that either the Chief People Officer or the Head of Governance should be present at the 10th October meeting between the Chair and Simon Hardwick. The Chief People Officer was on holiday and so the Head of Governance was asked to attend.

On 7th October 2019, the Head of Governance emailed Simon Hardwick to tell him that the Management Board Chair had asked her to attend their meeting. Simon Hardwick emailed the Chair to ask why she was attending, as he was surprised that the Chair considered a "*chaperone*" to be either necessary or appropriate. The Chair was offended by this email, although when he spoke to me, he did concede that he had neither asked Simon Hardwick whether he would be happy for her to be there nor had he even informed him. He accepted with hindsight that this was discourteous as between professional colleagues.

The Chief People Officer told me that it was not usual for such a meeting to take place only on the condition that she attended too, but it was a measure of the Chair's anxiety and how vulnerable he felt. He was concerned by the "*animosity*" in Simon Hardwick's emails. She said she thought that in mid-October they all still hoped that it could be resolved. I do not accept her evidence about this: it is plain from the documents that she was well aware that before 10th October, a firm decision had already been made that he must leave the Board.

Simon Hardwick's irritated email about why the Head of Governance was to be present at their private meeting upset the Chair. This prompted another request for advice from Fieldfisher. General Counsel and the Head of Governance thought that the purpose of the meeting should be made clearer. They wanted to know whether the meeting should take place with the Chief People Officer (who was at that time on holiday) or whether it was more appropriate for the President to attend. The Chair had also "*made reference to the duty of care RICS owes **him** as a non-exec*"[184].

I have been provided with no record of the call that followed, but General Counsel emailed Fieldfisher (copied to the Head of Governance) on 8th October 2019 thanking them for their time "*just now*", and in the light of their discussion, asking them to give their views on a draft email from the Management Board Chair to Simon Hardwick rearranging the meeting so that the Chief People Officer could be there. That email was sent by the Chair to Simon Hardwick on 9th October. In it, the Chair cancelled the meeting on 10th and suggested instead that the Management Board Chair and the Chief People Officer meet with Simon Hardwick *"to discuss his future on the Board in the light of events"*. Fieldfisher would later claim that this amounted to sufficient advance notice of Simon Hardwick's termination[185]. It was also suggested later on that it was Mr Hardwick who had cancelled the meeting on the 10th, which was factually incorrect.

Simon Hardwick responded to the Chair the following day, saying that he was disappointed that the latter had cancelled the meeting and that *"you seem unwilling to engage in a constructive dialogue with me"*. He made it clear that he was not interested in participating in a meeting with the Chief People Officer and said he would write to the Management Board Chair and the Chair of Governing Council in due course.

The Chair passed all these communications to General Counsel, who in turn sent them to the President, the Head of Governance and, of course, Fieldfisher.

On 11th October 2019, General Counsel said she didn't believe they needed to wait any longer and instructed Richard Kenyon to draft the letter giving Simon Hardwick one month's notice. She asked who

[184] Emphasis added
[185] Fieldfisher memo on 28th October 2019.

the letter should be sent from: the Chair or a member of RICS staff. In his reply, Mr Kenyon agreed to draft the letter. He also said that it was not necessary to give reasons but that:

> *"a short summary will be helpful in case we need to explain the reasons at a later stage … my immediate thought is we would be best off purporting to terminate with immediate effect and leaving SH either to (a) accept the position or (b) make smart alec points about affirming the contract in the absence of an express right to terminate early".* (Emphasis added)

Given Richard Kenyon's previous observation that they had no right to terminate without notice, but would purport to do so anyway, his choice of language is particularly surprising.

The flow of correspondence with Fieldfisher continued. It is clear that although the Executive, management and the lawyers were keen to dismiss Simon Hardwick immediately, both the Chair of the Management Board and the President were reluctant to do so. General Counsel told Fieldfisher that the Chair wanted to give Simon Hardwick the opportunity to resign, but she was concerned that Mr Hardwick was more likely to make a formal complaint and then termination would look like retaliation. Fieldfisher advised that the termination letter should be sent immediately and could always be retracted if there was an offer of resignation.

General Counsel summarised the position as agreed with the Chair:

> *"The agreed actions are that [the Chair] acknowledges receipt of SH's email and indicates that we will await his formal written comments….will diarise to prompt him if they haven't been received by the end of next week….in the meantime please proceed with preparation of the core elements of a letter of termination….I will update [the President] so that he knows something is expected to come to him"*

Meanwhile, Bruce McAra had emailed the Head of Governance in response to her Management Board Virtual Community posting seeking input for the next meeting agenda items. He said that he would like to hold a discussion about the outstanding issues from the 25th September meeting:

> *"as I am sure the minutes will record, there were a number of points made by individuals at the meeting (including me) which were not discussed and which I believe need addressing around the table"*

The Head of Governance responded asking Bruce McAra which issues he believed still required addressing: she said that she was not aware there was anything and the issue was now closed.

I am satisifed that the evidence shows that the decision to remove Simon Hardwick and Bruce McAra was entirely driven by the concerns of the CEO and the COO and their fixed position that they would not work with them. It is more likely than not that the Chair of the Management Board and the President would have been content to let matters resolve themselves following the September Management Board

meeting, were it not for the fact that they were repeatedly told that if they did not "deal with" the non-Executives then RICS might lose its senior Executives.

On 2nd October 2019, the CEO emailed the Audit Committee Chair about the 25th September Management Board meeting. He said that he thought they had largely ended "*the madness*", with the Management Board Chair putting his feelings out there and telling them "*how it was*". He anticipated some fallout but so be it. The situation was currently untenable and although they were moving forward, the way a few Board members dealt with it had "*left a stench*" for the CEO, the COO and the Management Board Chair. The COO had been struggling.

The Audit Committee Chair responded the following day making his position clear. He expressed his complete agreement and described it as a bizarre episode that had been a distraction from what they should all be focussing on. At the suggestion of the CEO, he emailed the COO to see how she was, saying that as far as he was concerned she personally "*did the right thing*" throughout this whole affair, had been open with Audit Committee and Management Board and had to withstand some unacceptable questioning and comments. He suggested that they meet for coffee or lunch.

The draft Minutes of the 25th September Management Board meeting

The draft minutes of the Management Board meeting were circulated on or about 15th October 2019[186], *"input from the Chair, CEO and COO having been obtained prior to posting in the usual way"*. Over the next few days, Messrs. Hardwick, Atkar, McAra and Williams posted comments on the Virtual Community or emailed with amendments and corrections to the draft. All disputed that the decisions and actions had been agreed, saying that there had been no vote. They said that what had happened was that the Chair had adjourned the meeting for a break, had not returned to the matter and the discussion was left open. They said that there had been no discussion about the issues and concerns expressed by Management Board members which did not accord with the opinion of the Chair and the conclusions in General Counsel's report. It was also requested that the comments posted before the meeting should be included in the Minutes so that there was a formal record of them.

[186] The document I have has a file date of 16th October 2019 but it is clear that Bruce McAra was commenting on the Minute son the 15th . It is possible that this may have been because he was abroad. Nothing turns on this.

In an email to General Counsel (copied to the Management Board Chair and the Head of Governance) on 22nd October 2019, Bruce McAra said that the Treasury Management issue should be on the Agenda for the December meeting, as the draft Minutes made clear what he was saying, namely that there had been no opportunity to challenge the conclusions of General Counsel's review:

> *"I have to say that through this correspondence I'm getting the strong decision that a unilateral decision has been made that there is to be no more conversation on this matter".*

I have concluded that he was completely correct.

General Counsel sought five minutes with Matthew Lohn to discuss this email. Mr Lohn indicated that he was about to go into a meeting to review the wider governance advice and would call thereafter. In a call later that day they discussed both the "governance piece"[187], and Bruce McAra's email. General Counsel said that she thought Bruce McAra and Simon Hardwick were liaising and Amarjit Atkar was saying that the decision on 25th September was the Management Board Chair's rather than a decision of the Board:

GC	*"[the CEO], [the COO], [the Management Board Chair] and neutrals agree on outcome of the meeting. To come away from this now with the understanding that the outcome was ambiguous is not acceptable"*
ML	*"You are not going to have another meeting, this is about how you are going to shut him down"*

Then later in an email, Matthew Lohn told General Counsel that the Management Board Chair should:

> *"produce an assertive reply [to Bruce McAra] from his position as Chair shutting down the issue…I agree that this is not the right moment to go on the offensive against BM…since the intention is still to terminate SH's appointment, to remove two members of the Board so shortly after the matter was purportedly resolved could open [the Chair] and the executive up to criticism that they are silencing critics".*

He continued that they should not ask the Board to affirm the outcome of the meeting because it risked reopening the issues concluded there, *if in fact they had misread the Board's stance*, or if Simon Hardwick now took the opportunity to influence members in the background and create "*further disruption*". This is a further piece of evidence that rather than check that matters were as they believed them to be, the default position was to ensure that there was no opportunity for discussion just in case it transpired that not everyone agreed with the outcome desired by the Executive and the lawyers.

General Counsel emailed Fieldfisher later that night at 2212 and 2356. In the second email, into which the Chief People Officer and the Head of Governance were copied, she said that the Management Board

[187] i.e. the wider review, which General Counsel had recommended in the internal governance review, including the high priority of merging Governing Council and Management Board

Chair was not comfortable with the termination letter being sent now, not least because of Bruce McAra's comments, and wanted to wait to see what Simon Hardwick sent. The Chair thought they should reflect on potential collateral damage and was going to speak to the President to ensure that he had the full picture. The Chair completely agreed that the outcome with Simon Hardwick was inevitable but was not sure the current proposed approach was the best way to handle it. He was worried about his personal legal position and wanted his own legal advice.

General Counsel wanted to know:

(i) Whether the advice Fieldfisher had given was to RICS or the Chair or whether this was one and the same
(ii) Should the termination letter be issued by a member of RICS staff rather than the Chair
(iii) Should the decision to terminate be endorsed/approved by the President
(iv) Could they produce written advice to the Management Board Chair
(v) When could they have a conference with the Head of Governance, General Counsel and the Chief People Officer about the appropriate responses to the comments of Bruce McAra, Simon Hardwick and Amarjit Atkar
(vi) When could they have a conference with the Management Board Chair

I regard it as significant that there was no mention of any consultation with or endorsement by Governing Council.

On 11th October 2019, the Management Board Chair had emailed Simon Hardwick saying that he would await his promised comments to him and the President. On 18th October, General Counsel sought Fieldfisher's advice as the Management Board Chair had asked whether it would be appropriate to make a "final offer" of a meeting with the Management Board Chair and the President to Simon Hardwick. They wanted confirmation that Simon Hardwick could be invited to resign, failing which they would give notice of termination. On 21st October 2019, General Counsel told Fieldfisher (copied to the Chief People Officer) that she had spoken to the President: in the absence of anything from Simon Hardwick, she and the Chief People Officer considered that it would be appropriate to issue the termination letter now, although if he wanted to submit anything to the President it would still be considered. She wanted to update the Management Board Chair and the President ASAP. Richard Kenyon said he saw no issue with sending the termination letter immediately.

On 23rd October 2019, General Counsel informed Fieldfisher (copied to the Chief People Officer and the Head of Governance) that the President had spoken to the Management Board Chair and was fully in

agreement with the final outcome in relation to Simon Hardwick but also agreed with the Management Board Chair that now was not the time to issue the letter of termination. The President had written to Simon Hardwick offering to meet him. They wanted to wait until Friday to see who else commented on the draft Minutes.

Because of what was later to be said about the four non-Executives having gone to the President behind the back of the Management Board Chair, it is important to note that it was the President himself who had first contacted Simon Hardwick, with the agreement of the Chair and the full knowledge of all the lawyers, the Chief People Officer and the Head of Governance.

When the President gave evidence to me he told me that his decision to terminate the four non-Executives was made entirely as a consequence of the letter that they wrote on 11th November 2019. That is inconsistent with the documents which I have seen and have summarised above.

Simon Hardwick responded to the President agreeing that an informal meeting would be beneficial. Mr Hardwick told me that before this he had consulted not only with his fellow members of the Board, but also in strict confidence with former professional colleagues who were experienced in corporate governance. They had advised him that the Management Board members owed legal duties to RICS for which they could be held personally liable if they failed to discharge them. He and the other three non-Executives therefore concluded that they had a responsibility to ensure that the matter was properly reported to Governing Council and that as a matter of law it could not just be left unresolved.

General Counsel met Richard Kenyon and Matthew Lohn on 24th October 2019. I have not been provided with an attendance note of the meeting.

The Management Board Chair and the President were in contact with each other. The Chair said that 31st October worked for him as he was due to meet the CEO that morning and also to have lunch with the Audit Committee Chair. He asked whether he should keep the CEO and General Counsel in the loop. The President confirmed that he had forwarded Simon Hardwick's response to General Counsel so she was aware and he was happy for the Management Board Chair to update the CEO. They arranged to speak in advance of the meeting. General Counsel passed all correspondence to Fieldfisher.

On 28th October 2019, no doubt in response to General Counsel's list of questions sent on the 22nd, Fieldfisher drafted a "*Note on Chair of Management Board's authority to terminate the appointment of Board members*". The summary of the advice was as follows:

1. *The entity we have been advising in relation to ongoing issues with Management Board is RICS. However, the interests of RICS and the Chair of Management Board are aligned, and the latter has received and utilised this advice throughout our engagement on the matter.*
2. *The most appropriate person to issue a termination letter to a member of Management Board is its Chair (having also signed the relevant appointment letter). No further authority is required to approve this action.*
3. *The Chair of Management Board is entitled to terminate Simon Hardwick's appointment with one month's notice without any specific grounds, in accordance with the terms of his appointment letter.*
4. *We consider that Mr Hardwick should be invited to resign, or alternatively should receive notice to terminate his appointment, as soon as is practicable. The main risk of delaying such action, which has been pre-warned to Mr Hardwick through communications referring to his 'future on the Board', is that Mr Hardwick causes further disruption to the business of Management Board and its members.*

It was suggested the termination could potentially occur at the meeting scheduled with the Management Board Chair and the President on Thursday 31st October 2019.

On the 29th October 2019, General Counsel emailed the CEO and the COO to provide an update. She told them of the upcoming meeting between Simon Hardwick, the Management Board Chair and the President. As for the Minutes, she, the Chief People Officer, the Management Board Chair and the Head of Governance did not agree that the Treasury Management matter was left unfinished on the 25th September. The Management Board Chair was reflecting and would respond.

Fieldfisher again met with General Counsel and others from RICS. The Management Board Chair and the President were present. The President told me that he attended this before his meeting with Simon Hardwick in order to discuss options and the 'escalation process'.

The note of the meeting reveals that both the President and the Management Board Chair said that they needed to listen to what Simon Hardwick had to say. By contrast, Matthew Lohn drove the 'terminate now' agenda; he said that Simon Hardwick would not change and to the Management Board Chair he said:

> *"in the nicest way you have been incredibly indulgent to him".*

The President's account of this period is as follows. He told me that after the Chair of the Management Board had cancelled the meeting on 10th October, Simon Hardwick had said he didn't want a further meeting but was going to send a submission instead. They had waited for that but it never came. The President spoke to the Chair and they thought it would be a good idea to try to engage with Mr Hardwick to try to find out what his specific issues were and to try to find a solution. He could see they were going to have to make some difficult decisions if they couldn't get some agreement. So he sent a note to Mr Hardwick in late October. There had been some discussions as to whether Mr Hardwick's position had

become almost untenable. He (the President) took the view that it would be more appropriate to meet and discuss, rather than just to take action. He felt that it was for the Chair to decide on the composition of his Board, not for him as President. He felt it was important to listen to what Mr Hardwick had to say to see whether he could mediate and get agreement to get the Management Board back on track.

I am satisfied that there is evidence of reluctance by the President (and to a lesser extent the Chair of the Management Board) to dismiss Simon Hardwick and equally clear evidence of General Counsel and Fieldfisher attempting to persuade them to do so immediately in order to pacify the CEO and the COO.

Meeting between Simon Hardwick, the President and the Chair of the Management Board on 31st October 2019

In a cordial exchange of emails the day before the meeting, the President told Simon Hardwick that he had booked a room and they both said that they looked forward to seeing each other there.

The meeting took place at 1530. Simon Hardwick told me that the President was cordial and constructive, but the Management Board Chair came across as aggressive and hostile. Mr Hardwick told me how he had explained that the BDO report and the issues arising from it fell within RICS' top strategic risk (loss of trust and confidence). He said he had the authority to represent the other three non-Executives and together they constituted the majority of the non-Executives on the Board. He said he made it clear that his purpose was to try and find a solution and that the way forward was to acknowledge that the BDO report should have been disclosed to Management Board and to commit to better communication in the future. His view was that he had made it clear to the President and the Chair in the meeting that the four non-Executives remained concerned that the lack of transparency over the financial problems was inconsistent with good governance, that there was no guarantee that this might not happen again in the future and this now was a matter for Governing Council – as the controlling mind of RICS – to decide.

Mr Hardwick told me that he was worried because by the time of this meeting he had seen the CEO's "update" to Governing Council and that the kindest way of describing it would be as economical with the truth (an assessment with which I agree). Mr Hardwick said he had really agonised over this because the temptation was simply to walk away, but in the end he decided that were he to do so, he would not be discharging his responsibilities to the organisation. The meeting ended with the President saying that he needed to discuss the matter with the Chair and thanking Simon Hardwick for his candour and his constructive approach.

In his evidence to me, the Management Board Chair said that Simon Hardwick had made it clear that he believed that the Chair had sought to close the matter down including making a remark that the Chair had "*waved it on*" at the 25th September Board meeting. The Chair found this offensive to his integrity and professionalism. In his view, he had tried very hard. It was the language that Mr Hardwick had used that was offensive. I note in passing that as a matter of fact, all the evidence shows that Mr Hardwick was entirely correct.

The Chair told me that Mr Hardwick had also accused him of being unwilling to engage, which was not fair. He did not seem to the Chair like someone who was trying to find a constructive solution. The two lead Executives had felt very bruised and battered and the Chair had a responsibility to the whole Board. He wasn't sure that he could have delivered a solution with the Board intact. There were some really significant risks with management. It would have been a pretty bad outcome if they had a Board that still consisted of all the non-Executives but management felt they couldn't continue.

The President's account of the meeting was that he had asked Mr Hardwick several times what the resolution was and he said "*that's up to you and [the Chair]".* So it was a bit difficult because he had hoped to get an idea of how they could move forward, but the meeting was all about criticism of the way it had been handled and the Chair's role as Chair. It was amicable: they agreed to disagree.

Importantly, the President did not sense that there would be a significant problem going forwards.

Events following the meeting on 31st October 2019

Plainly, either the President or the Chair (or both) had reported straight back to General Counsel. At 2029 she emailed Fieldfisher, the Chief People Officer and the Head of Governance to say that the meeting had lasted for two hours. The President and the Chair said it was pretty much as expected, but they wanted to reflect and would be in touch to indicate next steps. She said she would provide a more detailed update the following day.

I have been provided with no documents between then and 6th November, when General Counsel gave Fieldfisher a synopsis of the 31st October meeting, at the same time asking for their views on a draft message from the Management Board Chair and some amendments to the draft Minutes in the light of the comments posted by the non-Executives. The message from the Chair asserted that it was time to

move forwards and therefore the Treasury Management issue would not be on the December 2019 Management Board meeting Agenda. The Minutes would be amended to say that although there had not been a vote, the Chair was satisfied that there was sufficient consensus to move forward with the recommendations.

In her synopsis to Fieldfisher, General Counsel said that Simon Hardwick remained entrenched in his views and did not accept that his behaviour had been in any way wrong. There were suggestions that there had been a cover up. He had said that if there was not a satisfactory response to their comments on the Minutes then all four non-Executives were likely to resign. In turn the President and the Management Board Chair had not considered it appropriate at the meeting to raise the subject of his continued presence on the Board. It was left that they would go away and reflect upon what he had said. General Counsel said that the President and the Management Board Chair remained of the view that his future position on the Board was untenable, but they were concerned about timings and didn't want to rush it.

She sought Fieldfisher's advice on the Chair's proposed note to the Board. She said,

> *"The Management Board Chair has again asked if this note should refer to the fact that my review was also conducted with the benefit of external legal advice. What are your views?"*

I have not seen any document recording Fieldfisher's response to this but have taken it that between them they decided that Fieldfisher's involvement should not be revealed, given that the note in its final version makes no reference to it. General Counsel said that once the Management Board Chair's note had been posted, if there were no resignations then they would reassess the issue of the letter of termination.

It was observed that Simon Hardwick had told the President and the Management Board Chair at the meeting how stressful this episode had been. The Chair was concerned as to whether that meant there was a duty of care towards Simon Hardwick. General Counsel and the Chief People Officer expressed the view that they did not need to do anything about this.

There is in this evidence once again a clear sense of the Management Board Chair and the President rather reluctantly being driven towards the termination conclusion by General Counsel, the Chief People Officer and Fieldfisher, as result of the wishes of the CEO and the COO.

Also on 6th November 2019:

- General Counsel asked Matthew Lohn whether he agreed that it would not be fair to ask the COO to attend the Risk Sub-group given that no action had been taken against Simon Hardwick, and
- Steve Williams emailed the Management Board Chair asking to speak to him about the BDO audit issue. The Management Board Chair suggested speaking on Friday, before, of course, forwarding the messages to General Counsel *"as requested"*.

Matthew Lohn continued to drive the 'termination' issue forward in a call with General Counsel on 7th November 2019:

> *"We still see the necessity of actually getting [the Management Board Chair] and [the President] focused on getting on with the job in hand. What is the reason for the delay?"*

There was further discussion about the COO's attendance at the Risk Sub-group meeting on the 12th November, and General Counsel asked how strongly she could tell the Management Board Chair that "*this is the way forward*". Matthew Lohn replied:

> *"making [the Chair] more scared that he is going to be the Chair who presided over the CEO and COO resigning than Simon being mean to him….that should give [him] a great big signpost….if he digs in his heels we need to have a more blunt conversation".*

Simon Hardwick received an email that he described as "friendly and conciliatory" from the President on 8th November 2019, with the promised follow-up from their meeting. The President assured him that Governing Council would be made aware of the specifics of the Treasury Management issue, as well as the proposed remedial actions, at the next meeting[188].

Having read this email I am satisfied that it was quite clear what the four non-Executives were suggesting should be the way forward to resolve the impasse. I have concluded that those who now tell me that it was never clear what the four wanted have either forgotten or are being less than frank.

Bruce McAra and the President met on 8th November 2019. Bruce McAra described it to me as a friendly and constructive meeting. This meeting also concluded with the President making a commitment to ensuring that the issues were reported to Governing Council in December. The President then reported

[188] Which was to take place on 2nd December 2019

to the Management Board Chair that Simon Hardwick had given Bruce McAra the impression that "we" may not be treating the Treasury Management issue sufficiently seriously; Bruce McAra had said that Governing Council should be told. The President said that he preferred that Governing Council should be told of both the issue and the solution. It would be covered by both the Management Board and Audit Committee reports:

> *"Bruce seemed satisfied with this response and agreed that is was a pragmatic approach. I also stressed that I felt it would be in best interests of RICS to move forward and focus on more pressing matters, while trusting that the executive would focus on ensuring that this type of situation did not occur in the future".*

On the basis of this evidence it would appear that the matter was on the way to resolution. This is consistent with the letter that Bruce McAra was to send on 11th November 2019, in which he noted that the four non-Executives had confidence in the Executive. The President repeated (in a further email to Simon Hardwick) that he agreed with the need to tell Governing Council and assured him that the Council would be made fully aware of the specifics of the Treasury Management issue. The President said he was hopeful that the matter could now be closed. He also noted that the Management Board Chair would be posting revised Minutes of the 25th September meeting together with a covering note.

An equally cooperative and good-natured exchange of emails took place between the Management Board Chair and Steve Williams. They had either met or had a telephone call: Steve Williams thanked the Chair for their "*one on one*", which he said had been "*a very positive chat with hopefully some rewarding outcomes*".

The President reflected a similar desire to move on from these matters when he emailed the Management Board Chair asking whether he was ok with the content of a note. It is not clear to which note he was referring. The President said to the Chair:

> *"I decided not to state categorically that I felt that 'the matter had been handled appropriately' as I wanted to save this in case I need one more opportunity to respond to any further comments which Simon might raise – therefore tried to say the same thing in a slightly different way – however, hopefully he will fully appreciate that my view is that the matter should now be closed and ..we should move on"*

The Management Board Chair later responded saying that he too had spoken with Bruce McAra at length. He really hoped that there was now a desire to move on.

The Management Board Chair's covering note, revised Management Board Minutes and Agenda for the 12th December 2019 Management Board meeting were sent to the Management Board that day, copied to the Chief People Officer, the President, the Finance Committee Chair and the Audit Committee Chair. This included two new paragraphs headed "*Post-meeting note*". The first recorded that the written comments posted by some members before the meeting had been saved with the meeting papers to provide a permanent record. The second said that "*in accordance with usual practice"* there had not been a vote on the actions recorded in respect of the Treasury Management audit issue but the Chair was of the opinion that a sufficient consensus had been reached in the meeting. Since then four Board members had indicated that they did not agree that the Board had made a decision on these actions. The Chair's covering note responding to comments received on the draft Minutes had also been saved with the papers.

The covering note itself addressed the chronology of the events before, during and after the meeting and explained the Chair's conclusions as to the actions that he had taken. It gave reassurance that matters would be referred to Governing Council and expressed the firm belief that it was in RICS' interests for the Management Board now to function collaboratively and to turn its attention to other pressing matters. Given this, and his explanations within the note, it was not therefore planned to include the topic again on the December meeting Agenda.

The Fieldfisher file includes a copy of this note, with tracked changes. It is clear therefore that Fieldfisher also had some input into this document.

General Counsel emailed the CEO and COO that evening informing them of the Management Board Chair's posting of "*a detailed and robust note*", responding to the comments and rebutting the suggestion that the Treasury Management matter was not concluded.

The evidence shows that the tone at this point from both the President and the Management Board Chair on the one hand, and the four non-Executives on the other, was one of apparent agreement to move on with the only action which remained to be taken was that Governing Council was to be informed of what had taken place with the Treasury Management audit. This had been agreed by both sides.

Simon Hardwick told me that the four non-Executives were relieved and had spoken to each other. Given the clear commitment made by the President to tell Governing Council, the four agreed that it might be helpful to share the chronology that they had already prepared. The context was that before they had met with the President and Chair and received the commitment to update Governing Council, the four had thought that the only way they were going to be able to ensure that the Council was sighted was for them to write to the members of Governing Council direct. Following the positive meetings with the President

in which he undertook fully to inform the Council, that was now unnecessary. It was agreed that Bruce McAra would prepare a letter to the President on behalf of them all, after which the matter would be laid to rest.

I am satisfied from the evidence I have seen that the four non-Executives were sincere when they told me that at this point the entire issue was now pretty much resolved.

6N 11th - 21st NOVEMBER 2019

The 11th November 2019 letter from the four non-Executives to the President.

On 11th November 2019, Bruce McAra sent an email to the President. He copied in Messrs Hardwick, Atkar and Williams but no one else (not even the Chair of the Management Board).

The email read:

> *"Dear Chris,*
>
> *Thank you for your time on the phone on Friday, I'm sorry to have extended your evening but very much appreciate our conversation.*
>
> *Attached is a letter which formalises the concerns that Amarjit, Simon, Steve and I have. We originally drafted this as an open letter to members of GC[189], but given your commitment to report this at the meeting in December, we thought it more appropriate that* ***it is sent to you only*** *to assist with that reporting.*
>
> *Although not directly expressed in the letter, we would be very happy to help in whatever way you and GC might see as appropriate to ensure recognition of what went wrong and perhaps most importantly* ***to help find a solution, so that looking ahead, the Institution doesn't find itself in such a situation again****.*
>
> *Many thanks*
>
> *Regards*
>
> *Bruce"* (emphasis added)

Attached to the email was a letter, also dated 11th November 2019, also addressed to the President alone, and signed by all four non-Executives.

The letter began as follows:

> *"Thank you for taking the time to talk with me last Friday 8th November. This letter is to follow up to firstly discharge our oversight duties to the Institution and its members, and secondly to assist you in*

[189] Governing Council

> *reporting to Governing Council.* ***We particularly want to help you find a positive outcome*** *to the Treasury Management issue (i.e. the handling and communicating of the BDO Audit Report received in December 2018).*
> *"As you will see this letter is from four members of Management Board, representing the majority of the non-executive members of that Board. Attached is an addendum which sets down the issues about which we are concerned. We do this so that you may make a full report to Governing Council with the goal of putting in place any remedial measures that Council deems necessary."* (Emphasis added)

They went on to note the alarming nature of the BDO report, despite the declared view of the Audit Committee Chair that he did not think the report contained any issues serious enough to advise or alert the Management Board. They said that one of their primary concerns was that they - the Management Board - both collectively and individually, were left personally exposed to being held to account if their oversight duties were perceived as not having been properly discharged.

They were concerned that BDO's draft findings should have rung alarm bells within the Executive and immediately been reported up to the highest levels including CEO, Management Board and General Counsel.

Even though remedial action had been taken, there was obviously a need to identify what went wrong and put in place appropriate measures to ensure there was no repetition. An explanation of the time taken to provide a copy of the report to the Management Board had yet to be forthcoming.

They strongly disagreed with the conclusions of General Counsel's review and believed that the matter would not be adequately addressed by characterising the problem as a 'no fault" structural governance issue.

The letter ended:

> *"As I said in our phone conversation, we have no evidence that BDO's report and the serious issues it raises have been specifically brought to the attention of Governing Council members, which is the primary reason we are writing to you now. It was good to learn that you will now do this.*
>
> *"****As far as we are concerned this closes the matter****. Any further steps to remedy operational concerns and rebuild inter-Board trust will be for Governing Council."* (Emphasis added)

There was an addendum to the letter, which, as Bruce McAra had explained in the covering email, had originally been drafted as an open letter to Governing Council, the perceived need for which had now evaporated.

The addendum began by setting out the four non-Executives' view of the issue as:

> *"The failure to disclose in a timely manner the receipt in December 2018 of a "no assurance" audit report about the Institution's Treasury Management function prepared by our internal auditors, BDO, at the request of the COO or Audit Committee. The fact that the report was not made available to Management Board until July 2019 compromised Management Board's ability to hold meaningful discussions about the Institution's financial performance (at its meetings in December 2018, March and June 2019) or to confront the problem by suggesting appropriate and timely remedial action. This left Management Board exposed to potential criticism (or worse) for not foreseeing the possibly serious consequences of the problems revealed by BDO."*

This was followed by a chronology of events with quotations from messages and Minutes, and a description of the Management Board meeting of 25th September 2019. This included:

> *"The draft Minutes of the 25th September 2019 meeting record eleven pages of text (4500 words) on the Treasury Management topic though it lasted only thirty-five minutes. The Chair invited viewpoints to be stated and re-stated but then pronounced the actions and decisions to be taken going forward, without any opportunity for debate, discussion of actions or voting on decisions about actions to be taken.*
> *"The Chair adjourned the item for a half-hour 'emotional' break. When the meeting re-convened the matter was not re-opened. The Board turned its attention to other items. Importantly, the inaccuracies of the internal General Counsel review were not discussed nor were they recorded in the subsequent Minutes. One of the inaccuracies concerned Governing Council. The report inferred that GC[190] had full knowledge of the BDO matter and had not so far questioned or commented on it. We believe GC has not been appropriately informed of the matter."*

The note then stated that their goal was accurately to record what happened. It described Management Board's duties and said that it was very clear from the timeline of official correspondence that there had, at the very least, been a failure in communication to Management Board, and in turn to Governing Council, about a matter that was identified as a strategic risk.

It noted as positives that management had worked diligently to improve the Treasury Management functions and BDO had provided assurance of these improvements. Further, Management Board and the Executive had a successful track record for collaborative projects.

The note ended as follows:

> *"Recommendations*
> *"Having brought this to your attention we believe that as members of Management Board we have now discharged our fiduciary responsibilities.* ***We continue to have confidence in the capabilities of our Chair, the CEO and COO;*** *our concern is the risk of wider, systemic problems that go beyond this one example of the delay in issuing the BDO 'no assurance' findings to Management Board.*

[190] Governing Council

> *"At the heart of RICS's values is the expectation that the Institution and every member should act with honesty, transparency and integrity in order to build the trust necessary to discharge our number one priority: acting in the public interest."* (emphasis added)

At 0945 on 11th November 2019, Bruce McAra emailed the letter and addendum to the President alone.

In my judgement the letter and addendum firmly and politely set out legitimate concerns and were conciliatory in tone. They contained nothing new: all these points had already been made to the President. It was addressed to him only and stated explicitly that it was for his use alone.

Members of the Boards of corporate entities of all kinds would recognise the above correspondence as a normal and legitimate challenge by non-Executives and Trustees to the head of their organisation.

The reaction

The President immediately contacted General Counsel by text. At 1048 they spoke about the letter. He said to her[191]:

> *"I assume that if I acknowledge receipt and say that I'm updating GovCo, they will consider the matter closed…*
> *"my preference is not to let it all blow up again".*

He noted that he only wanted to share it with the Management Board Chair. He did not want to show it to the CEO.

General Counsel prepared a note of the conversation with the President and sought advice from Fieldfisher. At 1803 she emailed Matthew Lohn and Richard Kenyon saying that she had put the letter in the SharePoint folder. She noted that before the letter arrived, the Management Board Chair had spoken to both Bruce McAra and Steve Williams: *"he agreed to disagree with them on various points – but I think felt the conversations were ok."* She thought the letter to the President would come as a surprise to him.

According to Fieldfisher's fee schedule, there was a phone call with General Counsel at this time, but I have not been provided with a note of this call, although I have asked for it more than once.

[191] According to her note of the call

At 1806 Richard Kenyon (the employment partner at Fieldfisher) sent an email to General Counsel (copied to Matthew Lohn) in which he said:

> *"We are concerned about the implications of this latest letter on the senior employees – CEO and COO in particular – who it seems are again being maligned by these members of the Management Board. The final sign off at the end of the addendum, that "we continue to have confidence in the capabilities of our chair, CEO and COO" is dripping in insincerity given the context…*
>
> *"RICS is risking constructive dismissal claims from those employees….the letter has been sent without their knowledge and without giving them the opportunity to comment or reply.*
>
> *"…the CEO and COO are likely to find out about this letter sooner rather than later so probably best to make that sooner".*

Given the view expressed by the President that he did not want to open anything up again, and the reported position of the Management Board Chair, the likely effect of this advice is clear. It did not address the fact that the letter was sent to the President alone and that it should be dealt with as correspondence with the President. It was disproportionate as a reaction and set a higher emotional level than was justified. For example, the remark that the expression of confidence in the CEO and COO was *"dripping with insincerity*" was provocative at a time when Fieldfisher as lawyers could have been expected to provide calm advice rather than increasing resentment. It was also unfounded, given that some (if not all) of the non-Executives had been at pains to emphasise for many months that it was the process that they were criticising, not the individuals. It also failed to address the fact that the four said explicitly that as far as they were concerned, this closed the matter.

General Counsel emailed her thanks for this "*clear and helpful*" advice. At midnight that evening she emailed the President telling him that in the light of the content of the email and letter from the four, it had been necessary for her to take legal advice. That advice was that she should share the letter with the Management Board Chair, the COO and the CEO. She joined Fieldfisher in the use of pejorative language in describing the four non-Executives, accusing them of acting "*covertly*". She then forwarded her email to Fieldfisher.

Later that day[192] (12th November 2019) Simon Hardwick had emailed the President to say that the collective focus should be on learning from this matter to improve things for the future, but that that required an acknowledgement of what had gone wrong. He hoped that the Bruce McAra email would be

[192] Some of the correspondents were outside the UK so the timing of the emails is not entirely clear.

helpful in that regard as well as ensuring that Governing Council was properly briefed; he subscribed fully to it.

Amarjit Atkar emailed the President to say that he too hoped the Bruce McAra email would be helpful in finding a solution and that he fully supported it.

The President forwarded both emails to General Counsel, and said further:

> *"in the light of the external advice received and having considered further, I am happy to take your/external advice regarding way forward – grateful if you could let me know what action I need to take from both an external perspective as well as in relation to any response to be provided to the email/letter from Bruce. I would also welcome advice as to how this matter should be handled with GoC in December".*

General Counsel updated Fieldfisher and the Head of Governance that morning, adding that she had uploaded some telephone attendance notes from her recent calls with the President and the Management Board Chair covering the conversations with Simon Hardwick, Bruce McAra and Steve Williams. She was going to arrange a call to discuss the handling of this.

That afternoon, in another email to Matthew Lohn with the subject "*meeting with [the CEO] 13.11.19*", General Counsel asked for an 1130 meeting in person at RICS, because following this the CEO would be meeting the Management Board Chair. She had passed on the offer to the COO that, if she couldn't join in the meeting, Matthew Lohn had said he would happily have a separate call with her. It appears that there had therefore been a previous call in which Matthew Lohn had made that offer.

General Counsel then forwarded the four non-Executives' letter to the CEO and the COO (copied to the President). She said that she would be providing a copy to the Management Board Chair once the CEO had had an opportunity to digest it.

The following day, 13th November 2019, the CEO responded saying that he was happy for her to share the letter with the Management Board Chair[193], ideally before his one-to-one with him that morning, adding,

> *"I am left wondering what this letter really represents and its status and I think that should be our focus – having read it three times, my sense it is a complaint to the Chair of Council but not with the authority of the whole Board"*

[193] It is not clear to me why this should have been the CEO's decision, given that the Chair of the Management Board was his line manager. In the circumstances, nothing much turns on this.

As to the suggestion that it was a complaint but made without the authority of the whole Board, it should be remembered that on 25th September, the Management Board Chair had explicitly invited anyone wishing to take the matter further, to contact the President. Also, as recently as the 31st October, the President specifically had invited the four to contact him about the matter.

The meeting of 13th November 2019

This meeting was a significant point in the chronology. It is clear that the CEO was asking Fieldfisher to provide him with advice. This was an area which was self-evidently fraught with risk for them as external legal advisers because their client was RICS itself. The threat to their client came in the main from a risk that the CEO and COO would resign claiming constructive dismissal.

Because this was potentially such a significant meeting, I was very anxious to see an attendance note. I was sure that one existed because the meeting was a long one and one of the junior Fieldfisher lawyers had claimed on the bill for the preparation of the note. After a number of requests, in early July 2021 General Counsel sent me a short note of the meeting, which she had made and which she indicated was incomplete. I did not receive Fieldfisher's attendance note until 28th July 2021, despite numerous requests. I am told that it had been misfiled.

The account of this meeting is taken from the Fieldfisher attendance note. Those present were: General Counsel, the CEO, the COO, Matthew Lohn and a junior lawyer from Fieldfisher. The President and the Management Board Chair were not there.

It is my view that the note reveals that this meeting, if not amounting to a formal conflict of interest in the regulatory sense, was deeply unwise. Parts of what was said during it were not in the interests of Fieldfisher's client. Throughout the meeting Matthew Lohn gave unequivocal advice on the following themes:

(i) The non-Executives had to go;
(ii) The President and the Chair were letting the organisation down by not dealing with this in a robust manner; and
(iii) The CEO and the COO should issue threats to encourage the President to take action.

The effect of this meeting was that Fieldfisher handed the pistol to the CEO and COO which would subsequently be held to the head of the President.

During it, Matthew Lohn rehearsed his stance on the Treasury Management issue as expounded in the governance review. He repeated that the non-Executives had a "*PLC Board mindset"* and added that the matter had been ventilated at the Management Board meeting and the Board had settled on a view, albeit without consensus. He said:

> *"these people are not prepared to lie down in the face of a process that has been completed. They have crossed the line from having acted in good faith – now to now acting in bad faith. I believe that there is a ringleader, there are some weaker members of the group"*

He described it as a personal attack on the COO and the CEO. He saw it as a staggering lack of insight of the bandwidth of this organisation[194], given all that it was covering. The four had continued to micro-dissect an issue, just because they hadn't got the answer they wanted.

The COO asked, *"do we know what they are trying to get to?"*

Matthew Lohn responded that it was "*a thoughtless desire to win*." There were then some attacks on Simon Hardwick's motives which are, from what I have seen, no more than groundless speculation.

He asserted that they had gone behind the Chair again (I note once again that the Chair had specifically invited them to go to the President and the President himself had contacted them) and that "*this makes their tenure on Management Board untenable".*

This is such an extraordinary document that I have set out what follows in detail.

"FF	*My concern is that [the Chair] is a consensus leader. He does not take strong political positions and run them through. The President has chosen to please everyone. That does the organisation no favours*
CEO	*And [he] has encouraged that last letter.[The President's] behaviour has encouraged it*
FF	*Correct. Improperly advised, an organisation without a CEO, COO and Chair of Management Board – if an organisation allows itself to be determinedly bullied you can see how it would go*
CEO	*..it will establish a behavioural pattern, it is not a single issue any more. Reaching out to the Chair by limited groups, imagine where we will be if that is the established culture*

[194] I note that a number of members of the Executive who gave evidence to me, not least the CEO himself, stressed the size and complexity of the organisation and the level of work and number of responsibilities that the CEO, COO and others had to deal with. I bear this fact very much in mind.

FF *Governance anarchy…that latest letter is a poorly disguised threat…this is bullying behaviour, you have to call it out, if you indulge them then you give them traction…the time for propriety has been and gone, external advice had been taken…they are trying to divide and conquer. Richard Kenyon, my employment partner, says failing to provide you [the CEO and COO] with that letter is a breach of trust and confidence. I want to make [the President] more frightened about that*

COO *He needs to feel the heat*

FF *There is no point being nice about this any more*

CEO *[the President] has not reached out to me*

GC[195] *He may be waiting in panic mode because I put the fear up him. [The Chair] has now seen the letter, he was here this morning. I gave him a copy, I said to him "this is coming to you Paul with all of us in the mix together". He wants to speak to [the CEO] next*

FF *I have engaged with the Chair along the way. He gets that Simon should no longer be on the Board but he [the Chair] would rather resign from the Board than [deal] with this. He is whiskers away from resigning….if he resigns, one of those non-Executives will try to step in*

GC *I spoke to him about the vacuum that would create…His [the Chair's] response was that having read the letter that makes it harder to get rid of Simon*

FF *I take the reverse [view] – it is easier*

GC *He needs the comfort*

COO *We need to figure out how to get rid of them without [the Chair] doing it*

FF *If you cut off the head, some of this would melt away*

COO *So what are the options*

FF *Take the President with you, or he doesn't have an organisation underneath him*

COO *Maybe if we said there's a choice here, back us or…*

CEO *I want the wording to help get [the President] to that point*

FF *The other thing is the ability for the organisation to transact business as usual is being absolutely undermined*

CEO *I completely agree. How do we position this for [the President]? If we took him to the races, he'd have a dollar on every horse – how do we help him now? Simon and the gang are putting the heat on, so how do we enhance the heat from me, [the COO and the Chair]? He needs to feel the balance of the heat and decide which way we're heading. The more I read the letter, it is a veiled threat, blackmail, complaint for Governing Council to look at.*

[195] General Counsel

FF *It is a complaint against [the Chair] and a complaint against [the President] because he was present at board meetings, a complaint against the [COO] and implicitly [the CEO]. Simon is acting like the Chair*

COO *Has [the President] got the ability to terminate all four of them on the basis of that letter*

FF *Governing Council is the controlling mind. It could remove them*

CEO *[The Chair] is now implicated*

COO *This has now moved into [the President's] court. But for him to do that we need a piece of advice that he's on clear ground. He wants to know the basis of any challenge which comes back.*

CEO *I [too] think we need to give [the President] something. We've all seen the letter, he needs to know how we feel about it*

GC *[The President's] view on Monday, his preliminary view on the letter was that he [should] acknowledge it and then 'I will deal with it how I choose to at Governing Council'*

FF *That goes back to the path of least resistance. He is not prepared to challenge what is a complaint against [the Chair] and by implication [the CEO and COO]*

COO *We need external legal advice*

CEO *I am quite keen to write to him…my sense is that [the President] needs to be clear now that he needs to make a decision. This is now untenable*

FF *This is not going away. There is also building the case against Simon for undermining the authority of Audit Committee*

CEO *My reading of [the President] is that he will only get a grip on this if he realises the implications of not doing it for me, [the Chair and the COO]. Without that it is the "Simon may expose me" threat, but he needs both*

FF *The other conclusion [the President] needs to know is that if [the Chair] goes, then [the CEO and the COO] go, [then] he will need to go because that happened on his watch…..*

[The Chair] came to Fieldfisher, they agreed a way forward. They said they would ask him to leave it was just a question of timing. I think [the CEO] is right; [the President] did not say boo to Simon on the call, which Simon took as tacit encouragement to redouble his efforts

COO *[The President] needs the legal advice*

FF *We can give him comfort on getting rid of them, we have given [the Chair] advice on getting rid of Simon*

COO *We need a summary on how the letter moves it from the Management Board to [the President]*

FF *That advice will come. You need to articulate to him that his continued indulgence is a request for you to leave. You are not saying it is constructive dismissal, you are saying that he is asking you [to leave]. You are putting it in his court. You are saying 'by doing this ..you want me to leave'. That*

puts pressure on him. I would give him the courtesy of telling him this and saying you will follow it up in writing.

…….

CEO *So if [the President] says that he wants to now take some action*

COO *He could terminate*

FF *I would couch it [by] saying 'your continued failure to recognise the veiled threats has destroyed the trust and confidence I can have in you'*

…

CEO *It would be helpful if [the Chair] was in the same place so [the President] really feels it*

GC *So I need you to turn up the heat on [the President] to make himself available*

….

FF *It is not that [the President] is actively supporting the opposition, but he has been passive. He needs to work out what is the least worst option*

GC *He keeps talking about noise from the members….the noise is spooking [the Chair]. [The President] has mentioned it to say 'we can't be too close to the Executive'. He does not want to terminate anyone. [The Chair] mentioned that maybe Simon can have a warning letter but not termination*

FF *It is the threat of the bully who is not getting their own way. Take it [away from the Chair], lean on [the President].*

COO *We need the letter to be firm, packaged up, so he cannot dilute it.*

"Need to make it clear that this letter must be treated as a complaint against [the Management Board Chair]. Therefore that gives it to [the President] to have to deal with"

General Counsel's note ends

"NEXT STEPS:
Advice from Fieldfisher on implications of letter.
Processes to date conducted – for sharing with [The President] after this.
[The CEO] to speak to [the President] Thurs / Fri.
Fieldfisher needs to draft the termination letters. Need to look at what the individual ones say based on the what the situation with each one is."

What is of significance is that, having identified that Governing Council was the controlling mind (and thus Fieldfisher's client) and therefore[196] the power to act lay with the President, Matthew Lohn then

[196] At least in Fieldfisher's view

advised the CEO how to persuade the President to act in the way that he and the COO wanted, primarily by threatening him that they would leave and that the threat should be couched in terms which mirror the language of constructive dismissal.

Given that Richard Kenyon had already given RICS advice about the risk of a constructive dismissal claim by them, the use of words such as "*you are asking me to leave*" would plainly amplify the threat.

This is not, as it is suggested, advice to RICS, in the sense that it is advice to the controlling mind or embodiment of RICS. It is advice to the Executive as to how to persuade the controlling mind into a particular course of action.

I have carefully reflected on the letter of representations sent to me, but despite their contents, I have concluded that Fieldfisher unnecessarily and disproportionately inflamed this matter by:

(i) advising that the 11th November letter from the non-Executives to the President should be shown to the CEO and COO (which on any view was unnecessary); and

(ii) by giving advice to the CEO and COO that they should threaten the President.

Indeed, I have concluded that this Independent Review might not have been necessary had General Counsel and Fieldfisher taken a more conciliatory and sensible approach to the situation.

I remind myself that Matthew Lohn said to me in correspondence that the documents in the Fieldfisher file speak for themselves. I agree.

Later that day (13th November), the CEO had his one-to-one meeting with the Management Board Chair. General Counsel emailed the non-Executive's letter to the Audit Committee Chair telling him that a decision needed to be taken on the handling of the letter *"in the interests of RICS"*. They arranged to speak to get his view.

In accordance with the advice given by Fieldfisher, the CEO emailed the President (copying the COO, the Management Board Chair and General Counsel) saying that he had now had a chance to digest the letter and *"our continued indulgence of this is making it an untenable environment"*. He said that the President, the Management Board Chair, the COO, the Audit Committee Chair and he should have an urgent conversation. The President responded and a conference call was arranged for the following morning.

The call on 14th December 2019

The call took place at 0800 on the 14th November. Those participating were General Counsel, the CEO, the President, the Audit Committee Chair and the COO. The Management Board Chair had another meeting and was unable to attend; General Counsel said that she would update him later.

The CEO addressed the President saying it was worth just having some time with him about this issue which appeared to continue. People were not in a great place as a result of the stress and strain of it. It was not possible to take no action as this would not provide a solution.

> *"On a personal level – if at the end of the day what they want is a scalp and a victory – that is a conversation that we should have –*
> *"this position is untenable."*

Furthermore, he said, the Management Board could not function. The Management Board Chair had struggled over the last few months and had nearly resigned the day before. They could not have a viable meeting. The CEO had no trust in the four non-Executives now.

The COO agreed and wanted to underline what she described as the threatening and intimidating nature of the 11th November letter. It had moved away from the issues to the behaviour. The Audit Committee Chair agreed that the letter was threatening.

The President updated them on the calls he had had with the non-Executives and said that he was quite disappointed to receive the letter, as in it the four agreed they should be looking to the future, but with lots of caveats.

He said he wanted advice on how they approach the matter with Governing Council: he would not indulge the non-Executives' request for him to give a long report to Governing Council. They needed to take action and respond *before* the Governing Council meeting[197].

He and the Chairs would approach Governing Council in the normal way and needed to be ready to respond to any questions raised at the meeting. He said that Governing Council was a "*risk area*": its members were likely to be approached and they would not understand that the internal audit was the responsibility of the Audit Committee. The postings on the Governing Council Virtual Community had become more aggressive and confrontational lately. He said "*we are a bit late in telling them what is going on*".

[197] Due to take place in three weeks' time

The CEO and the COO repeated more than once that the position vis-a-vis the Management Board was untenable. The President suggested that it was not his remit to *"have that conversation"* with the non-Executives, it was that of the Chair of the Management Board. The COO said that the letter made it his (the President's) remit and the CEO agreed. At this, the President appeared to accept that it had become his problem.

General Counsel confirmed to the Audit Committee Chair that they already had advice that there was a lawful basis to terminate the non-Executives, and that Fieldfisher's *"preliminary view is that their position on Management Board is now untenable"*. The Audit Committee Chair said that the four should be told this.

It was agreed that letters would be drafted terminating the four. The President said that there was no need to terminate Steve Williams: his term was ending in any event and they had had a situation where a past President was terminated from Management Board. The COO said that all of them needed to be treated in the same way, once they had confirmation from all four that they supported the letter.

General Counsel would obtain external legal advice as soon as possible on the letters and the consequences for Governing Council.

The sense from the note is that the President remained concerned about dismissing the four but others were pushing him towards it.

This is corroborated by an exchange which took place by email between the CEO and the Audit Committee Chair immediately following the meeting. The CEO apologised to the Audit Committee Chair that:

> *"you had to take more time on this. **I needed to turn the heat up** otherwise this would just keep drifting and indulgence would grow"* (emphasis added)

The Audit Committee Chair responded:

> *"I agree with your approach – hence my suggestion we consider giving notice. Between us, we might need to strengthen [the President's] resolve on this as I detected a level of caution which though understandable should not prevent us doing the right thing"*.

Further emails show that Fieldfisher were in the process of drafting the termination letters that afternoon. General Counsel also informed Fieldfisher that she had had an update call with the Management Board Chair. He had requested that the termination letters made clear the endorsement of the handling of the matter by him, and that the letters needed to be directed personally to each of the four.

On the 15th November 2019, the advice and letters were still being drafted by Fieldfisher. General Counsel emailed the CEO, the COO, the President, the Management Board Chair and the Audit Committee Chair to say that they needed the weekend and the letters would arrive on Monday. Meanwhile the CEO emailed a rough draft of the communication to General Counsel and the COO, saying that he had sought to keep it manageable given the audience.

The Fieldfisher advice of 18th November 2019

Fieldfisher's advice was addressed to General Counsel and was said to have been authored by the two partners: Matthew Lohn and Richard Kenyon. It was sent first in unfinished draft form to General Counsel as Matthew Lohn said that he wanted to give her early sight, *"mindful of the time pressures".* This can only be a reference to the desire to dismiss the four before the Governing Council meeting because there were no other time pressures, and Amarjit Atkar's term of office was due to end in December anyway. The letters were still being drafted to allow for resignation, in accordance with her instructions from an earlier call.

Curiously, General Counsel responded asking,

> *"Is it your expectation in drafting this advice that it will be shared with [the President] in full – in order to give him the necessary comfort that he needs, or will there be separate short form advice to him together with the actual letters?"*

It is unclear why General Counsel thought that the President might not be shown the full advice. There is no note of the reply.

About three hours later, at 1642, the formal finished advice and letters arrived. The covering email from Fieldfisher said:

> *"Further to your instructions on the response that RICS should take in the light of the recent letter from 4 members of the Management Board; please find attached an advice note together with 4 draft termination letters".*

Fieldfisher also said that they would be pleased to scrutinise the "*draft comms*" in due course. It appears that this referred to what was to be said to Governing Council and other interested parties. It seems that

General Counsel's desire to obtain Fieldfisher's advice in respect of any action or communication continued unabated.

The 18th November advice did not pull its punches. The Executive Summary contained the following:

> *(i) "In our view, the letter materially changes the approach that should be taken with respect to an issue regarding treasury management ("**TM issue**") that has been the subject of scrutiny by Management Board."*
>
> (ii) The Treasury Management issue had been carefully conducted under the guidance of Management Board Chair in accordance with the principles of good Board governance. The process followed had been *"proportionate and scrupulously fair to all parties involved".*
>
> *(iii) "The assertions contained in the letter – both implicitly and explicitly – mean that this issue must transfer to the jurisdiction of the President. In our view, the existence of the letter, alongside its tone and substance, makes it untenable for the four members to continue as members of Management Board. Removal of the four members from office is now a necessary course of action in order to restore the organisation to a properly functioning body."*

The body of the advice then described the background, declaring that the majority of the Management Board had agreed that the issue had been "*dealt with*" at the 25th September meeting. It said that those entrusted with Board positions should acknowledge and accept the conclusion of their Board, save on extremely rare occasions, in which case any continued dissent or concern should be openly and constructively pursued in the best interests of the organisation. Anything else would migrate from constructive criticism to behaviour which undermined and destabilised the very organisation which they were charged with supporting. Such individuals could not expect to remain as Board members.

It said that the 11th November letter had established a new dynamic, principally by:

- Seeking *"yet again"* to relitigate a matter that had been properly addressed in accordance with the principles of good governance[198];
- Casting groundless aspersions on the ability of senior management (including the CEO, COO and Chair of Management Board) to carry out their functions properly;
- Exhibiting conduct that does not reflect the standards expected of people holding their positions.

[198] I note in passing that the advice makes absolutely no reference to the part which Fieldfisher themselves had played in preparing the internal governance report

It continued that by sending the letter to the President, the four members had chosen to circumvent and subvert the Management Board Chair, making poorly veiled threats seeking to intimidate the President into adopting their viewpoint. This demonstrated a desire on the part of the four to win at all costs.

In Fieldfisher's view, it was of considerable concern that the letter failed to recognise the appropriate and proper oversight conducted by the Audit Committee, demonstrating a wilful attempt to undermine the processes of the organisation.

The letter was said to imply a lack of confidence in the ability, or even inclination, of senior management appropriately to ventilate the concerns raised in it:

> *"Most seriously, the letter alludes to a concern that senior management may fail to brief the Governing Council properly without the impetus provided by the letter This is tantamount to implying the President or CEO would in some form seek to execute a 'cover up'. This is a serious allegation which goes to the heart of the organisation's ability to govern itself."*

Overall, the advice said that the conduct suggested an absence of any good faith motivation in continuing to air grievances. Fieldfisher's view was that despite claiming to be interested in finding a solution, the reality was the only solution that would appease them was one with which they agreed.

Fieldfisher's *"firm advice"* was that RICS should not engage in any substantive way with the matters raised in the letter. The general tone of the letter contained a sense of bullying and threatening language, was not in accordance with the organisation's values and did not reflect the conduct expected of people occupying their positions:

> *"Our firm advice, having considered the behaviours outlined above, is that the correct course of action is to terminate the four members' appointment to Management Board. To do otherwise and to indulge the four members any further would set a reprehensible precedent for organisational governance. Just as concerningly, it would allow the Management Board Chair, and the CEO and COO, to draw serious adverse inferences about RICS's conduct towards them as clearly articulated in the advice note from Richard Kenyon (sent to you on 11 November 2019 at 18.07)."*

The advice went on to consider the legal position in respect of termination. It concluded that litigation would be highly unlikely, and in any event the far greater risk would be to lose the CEO or COO to resignation or worse, constructive dismissal, because they felt that RICS had not supported them appropriately by taking appropriate action against all four non-Executives. There would then be a real risk of successful claims being brought.

It concluded that it was incumbent on the President decisively to intervene for the good of the organisation. In order to restore RICS' ability to function properly and to protect senior employees *"from*

an ongoing campaign of vilification in the face of evidence and analysis to the contrary", the President should choose immediately to terminate the appointments of the four members.

The advice is entirely silent about matters such as the potential reputational damage to RICS of losing the majority of the non-Executive members of the Board. What it did say was:

> "*Put simply, were the President not to defend his senior staff or to choose not to take action in relation to this sustained campaign against the organisation, those in senior management positions could reasonably conclude that the President would be issuing a request that they depart their positions."*

The advice is also silent as to the constitutional power which entitled the President to dismiss the four non-Executives. It simply states that it is a power he had. I disagree, for the reasons I give in Chapter 7.

Dissemination of the Fieldfisher Advice

That evening (18th November 2019) General Counsel and Matthew Lohn discussed the measures which needed to be taken in order that the Advice could be shared with a number of people. General Counsel initially sought to check that Legal Professional Privilege would be maintained by asking Matthew Lohn and Richard Kenyon to confirm their expectation that it would be shared with the President, the CEO, the COO, the Chief People Officer and the Audit Committee Chair. I can see no good reason for the Executive being provided with copies of the advice, save on the basis that they had effectively been giving instructions to Fieldfisher. Normally, privilege only exists between the lawyer and their client: the CEO and COO were not Fieldfisher's client, Governing Council was. The issue of privilege is complex and is not one that is necessary for me to resolve in this context. What is clear that this provides further evidence of partisanship on the part of Fieldfisher towards the Executive. There was no reason for them to see the Advice other than curiosity. I note that it was never suggested that the Advice should be shared with the other three non-Executive members of the Management Board.

General Counsel also asked for the draft letters to be amended to insert a reminder that the four non-Executives *"should not be going public about the specifics".*

Matthew Lohn advised that the full Advice should not be sent to the CEO, the COO and the Management Board Chair because of the references to constructive dismissal claims. He suggested producing a redacted

version that could be shown to them. General Counsel agreed but said she would give a high-level summary to the others in the meantime as they were *"anticipating (and chasing) for the advice"*. She added that she would share the '*draft comms*' with Fieldfisher soon. In another email she expressed the hope that the letters could go out by Wednesday.

At 2246, Matthew Lohn emailed to say that he had redacted the Advice so that it could be shared with the CEO, the COO, the Management Board Chair and the Audit Committee Chair, and would send it the following day. About 50 minutes later General Counsel sent Matthew Lohn the "*draft comms*" to Governing Council, noting:

> *"My concern is that it currently provides too much detail on the TM matter – such that it circumvents the proper line of reporting from Audit Committee to GovCo on this issue. However, this needs to be balanced against the need to control the narrative on this announcement".*

She also noted that the announcement to Governing Council would have to be amended if any of the four decided to resign.

This provides clear evidence of the careful control being exercised over what RICS' governing body was to be told.

The "chasing" for sight of Fieldfisher's advice by those to whom the redacted version was to be sent, continued the following day (19th November 2019). Having provided the full advice in draft to the President and the Chief People Officer early that morning, with draft letters allowing for the option to resign within 24 hours, in the afternoon General Counsel sought timing from Fieldfisher on the redacted version *"as I've got people chasing me for an update"*. It arrived shortly afterwards, with only the references to constructive dismissal claims excised. General Counsel forwarded it to the CEO, the COO and the Management Board Chair, together with a copy of one of the draft letters. Again, save for satisfying their curiosity, I can see no proper reason for sending them the draft dismissal letters.

The President had meanwhile updated General Counsel having spoken to Steve Williams. Steve Williams had said that he stood by the content of the letter whilst conceding that the tone was not that which he would have chosen. General Counsel sought advice from Fieldfisher as to whether there was an issue with inviting Steve Williams to resign, as the President was very concerned to give him this option and thought he would take it. Fieldfisher saw no issue with treating one of the four differently from the others.

Fieldfisher also emailed General Counsel about the communication to Governing Council. They stated:

> *"our initial view is that there may be some merit in considering whether a statement [to GovCo] that divulges less information (and is therefore less provocative in some senses) could be worthwhile".*

I am concerned, but not surprised, that it was even contemplated by Fieldfisher that they would consider withholding information from their own client. It is difficult to see any wisdom in such advice, and indeed to see how it could be described as appropriate to the solicitors' clear areas of responsibility. Whether this amounts to a regulatory breach of the solicitors' rules is not for me to judge. What I can say with confidence is that the evidence shows that Fieldfisher had entered the fray and there was little sign of objectivity.

Consultation with Fieldfisher continued the next day, 20th November 2019. Through Matthew Lohn, the employment team advised General Counsel that there was a low risk in treating one of the four differently (by giving only Steve Williams the opportunity to resign). General Counsel asked why the draft letters referred only to an irreparable breakdown with members of the Executive and the Management Board Chair and did not include the President. Fieldfisher advised that this could be added if the President thought it applied to him too.

As to the draft communication to Governing Council, an updated version was forwarded with comments by the Audit Committee Chair. General Counsel sought advice as to whether the communication could give rise to a defamation claim by the four non-Executives. The response was that the defence of qualified privilege would apply; some of the words and phrases were clearly defamatory (e.g. threatening and unacceptable behaviour), but if those words were removed, there was a good chance of defeating a defamation allegation. I note that another defence to a defamation claim is that the allegations made are true. Surprisingly, this does not appear to have been a matter that was included within the advice.

It appears that the Management Board Chair was struggling to reconcile Steve Williams' support for the 11th November letter with the conciliatory emails that he had sent on 8th November. The Chair forwarded them to General Counsel, making this point.

Meanwhile, the four non-Executives were completely oblivious to the consternation that their letter of 11th November had caused. They had not received even an acknowledgement of receipt, so Bruce McAra emailed the President chasing a response:

> *"I thought we might have heard from you to let us know whether the letter was helpful for reporting to GC, although I am sure you have plenty of other things on your plate. Certainly if you want any help then do let us know, otherwise I'd appreciate having sight of what you're hoping to report".*

The President forwarded this to General Counsel.

In her evidence to me, General Counsel said that there were meetings with Fieldfisher and at least two versions of the 18th November Fieldfisher Advice. As she put it, she was predominantly working for and supporting the Management Board Chair initially: she produced her report as commissioned by him. Then as the President was brought more into the chronology, he was receiving the advice around the decision whether or not to terminate, but it was also directed to the rest of the organisation. There was a tension around the concerns about constructive dismissal claims from the CEO and COO, which the Chief People Officer was managing. After the 25th September Management Board meeting they knew that some people had a different view but they thought that there was a consensus that they were moving on. There was no question it would get reported to Governing Council. But then the 11th November letter had arrived.

I asked her why the Fieldfisher advice was shared with the CEO, COO, Management Board and Audit Committee Chairs. She said that everyone was moving forward with their other work for the organisation, performing their roles and functions.

> *"This is where it becomes very difficult when it's your entire sort of leadership group that are the people who are involved in this matter. It's a bit like, we're in the situation we're in now as in* ***who is the mind of RICS if not those people*** *and in their roles so the view was … it became very confusing what [the four non-Executives] actually wanted …the view was that operationally for the organisation those key individuals of the Chief Exec, Chief Operating Officer, Chair of Management Board and Chair of Audit Committee needed to know that this is what the four members of that Management Board were saying at that point in time and that for the organisation there needed to be an understanding that that is what was trying to be achieved and what was the organisation's response to that from those people in those roles."* (Emphasis added)

I am not sure that I understand any of this. It is quite clear, as a matter of law, that Governing Council is the 'controlling mind' of RICS.

She continued that she had taken one look at the 11th November letter and wanted to obtain advice as General Counsel as to how to deal with it. The President asked her for advice as to how to handle it and also how to handle it from the perspective of what would be said to Governing Council in the coming weeks. They were in unprecedented territory.

The President told me that the Fieldfisher Advice was clearly very strong in its recommendation. He was surprised to a certain extent but he hadn't really known what to expect. He hadn't seen legal advice like that before (he was used to advice about property transactions). He had been brought in to resolve this and it wasn't a situation in which he was very happy to find himself, but he was being called upon to make a decision in the best interests of RICS. His main interest in the Fieldfisher Advice was not necessarily the opinion about what they should do, but what he as President was entitled to do. But obviously the fact

that Fieldfisher felt strongly that there were grounds for dismissing the non-Executives gave him additional comfort that there were justifiable grounds, if that was the decision he decided to take.

> *"But it was not based on me already deciding that's what I was going to do because as I say it was triggered by me forwarding the letter to [General Counsel] rather than me saying I think we need to do something please can you get some legal advice."*

I asked him whether it would be right to suggest that he had already made up his mind to get rid of the four non-Executives and Fieldfisher were just asked to in effect 'cover his back'. He said that that would be completely wrong. He wasn't expecting that legal advice. It was commissioned by General Counsel as a result of the 11th November letter.

I asked him what the determining factor for him in that period had been. He said it was the letter that tipped the balance, because it became clear that notwithstanding the verbal assurance that they could try to move forward, the letter just reiterated all of the same arguments and demonstrated to him that this issue wasn't going to go away. He was concerned that the veiled threats in the letter were also going to cause additional problems to the Institution. He was balancing the removal of the four against the risk of losing the CEO and COO and the consequent massive disruption to the whole Executive. There were other factors but those were the fundamental considerations.

I asked him whether he thought that the CEO and COO would actually leave. He said that was the advice he was getting from the Chief People Officer. He had received various notes from the CEO, he spoke to him and the CEO's view was that the situation was untenable.

In my second interview with the President, he referred to an email from the CEO on 13th November 2019, in which the CEO said that he believed the situation was untenable from the CEO and COO's perspective and the Management Board Chair's point of view and they needed to come up with a satisfactory way forward.

The President said all four non-Executives had to go, as two of them sent notes supporting the letter. Steve Williams was different. He had spoken to him but Mr Williams eventually came back saying that he agreed with the other three.

As to the reason for urgency, he said that there was a Management Board meeting coming up in December 2019 and they wanted to get the Board functioning and focused on other things. He said he could absolutely assure me that it had nothing to do with wanting to get rid of them before the next Governing Council meeting (which was imminent). At the time I asked him this question I had not seen the note of

the conversation of 14th December 2019. This directly contradicts what he told me: on 14th December the President himself referred to the need to deal with this matter before the Governing Council meeting. I am satisfied that there was no other reason why it could have been urgent.

The President said he wasn't aware that Amarjit Atkar had less than a month to go before his term came to an end in any event.

I note too in passing that not only is there no evidence that the Management Board was unable to function, as was asserted, but there is ample material showing that quite apart from this issue, it was continuing to deal with all its usual business.

I asked the President whether any thought was given to involving Governing Council in the decision to dismiss the four. He replied that that there was a timing issue: it would have been hard to explain everything to 35 members and get consensus within the timeframe. Additionally, his main concern was that it was a very sensitive employment matter that it was not practical to take to 35 members. There was a reputational/defamation risk around the four, and there were sensitive constructive dismissal issues around the CEO and COO that it would not be sensible to discuss with the whole of Governing Council. He had also been advised that it was within his power to make the decision.

The CEO told me that he had told the President that he was finding the situation untenable, and that if the President thought it better for RICS that the CEO should have a conversation with him about his own position, and it would provide a solution, then fine. He told me that did not think he had seen the non-Executives' letter of 11th November. I have concluded that not only had he plainly seen it but that this was something he could not possibly have forgotten and therefore he was being less than frank with me. The evidence for this is contained in the notes of the meetings on 13th and 14th November 2019, which make it clear that it was this letter which was preoccupying everyone. Indeed, the Fieldfisher advice of 18th November 2019 (which the CEO had undoubtedly seen) is predicated upon that letter.

At the time I interviewed the CEO I had not seen the Fieldfisher documents. On the assumption that the CEO might not have seen the 11th November letter, I told him that in it the four had asked that the President bring their chronology to Governing Council's attention and they then would feel their duties discharged. He said he didn't know that, but he wasn't sure that it would have made much of a difference to the way he was feeling about anything *"because of the journey and the ride that I'd been on and everything I'd seen and observed. And felt."*

In the light of the notes of the meetings of the 13th and 14th November 2019, I am satisfied that the advice that the President should dismiss the four non-Executives was given for the pragmatic reason that no one had any confidence that the Chair of the Management Board would be prepared to do it.

6O 21st NOVEMBER 2019 – THE DISMISSAL OF THE 4 NON-EXECUTIVES

The consultation continued into the next day. At 0044 on 21st November 2019 General Counsel emailed the President:

- explaining that the advice was that one non-Executive would be asked to resign, and
- attaching the draft letter to Governing Council and explaining that, whilst it attracted qualified privilege, they needed to be cautious of the danger that the letters could enter the wider domain.

At 0730 Fieldfisher responded, agreeing that it was best to name the four non-Executives in the Governing Council letter to avoid speculation. When General Counsel asked whether qualified privilege would still apply if they circulated the letter beyond Governing Council, to the Executive and other Management Board members, Fieldfisher advised that they should consider providing only a synopsis.

There was a further exchange between General Counsel and Fieldfisher in respect of the letter to Steve Williams. General Counsel said that the President intended to contact Mr Williams that morning. General Counsel wanted to discuss the wording of the letter to him with that in mind. Richard Kenyon said that the amendments looked fine, whilst noting that the offer of resignation which he had thought was a good idea politically appeared to have gone. However, the offer of resignation was delivered orally when the President spoke to Steve Williams at 1130.

Steve Williams said that he and the then-President had previously been close friends:

> *"[We had] two telephone conversations in the hours before he terminated us and they were still very cordial. I was saying to him "you need to do the right thing – I've been in your shoes, you need to take the high road, you are the one person of authority who can tell the truth, be frank, be open". I had every respect for him until the moment he terminated me. He said to me "Steve would you please resign from the Management Board." He said he had been instructed to terminate me. I said "Chris what are you saying? That is no way to speak to a friend and certainly no way to speak to a past President." [He said he had] taken legal advice. He changed in that moment. I suppose his back was to the wall and he terminated me hours later. Since that moment I have had no communication with him at all"*

Following that call Mr Williams sent the President an email thanking him for giving him the option to resign or be terminated and saying that he was sorry that the President had been unable to take the side of what was right. He understood that the President was weighing up the damage control options. When the President then forwarded this to General Counsel, she asked whether this was a resignation. The President confirmed that it was not. Steve Williams was going to revert back to him.

Two hours later, General Counsel was given the "instruction to proceed". Minutes later the four Non-Executives received letters from the President terminating their appointments, and the announcement by letter to Governing Council was posted on the Governing Council Virtual Community at 1545.

I asked the then-President why the urgency. I have received no persuasive response to this question. I have concluded that the clear reason was to ensure that all four were gone before the Governing Council meeting on 2nd December 2019.

The President's letter to Governing Council

In the light of the issues which have arisen since as to how much information Governing Council was given, it is important to set out in some detail the content of the President's letter of 21st November. It began as follows:

> *"Dear Council members,*
> *In my capacity as President of RICS, I am writing to inform you of a decision that it has become necessary for me to take in the best interests of the institution.*
> *Today, I have terminated the appointments of four members of Management Board (Simon Hardwick, Bruce McAra, Amarjit Atkar and Steve Williams) as a result of behaviour which has significantly undermined the functioning of the Management Board Chair, fragmented the Board and risked our duty of care to senior Executives. In addition, the behaviour has sought to undermine the role and authority of the Chair of the Audit Committee of RICS, a respected, independent and experienced member of the Internal Audit profession.*
> *I can assure you that I have tried to address and resolve this matter in a number of other ways over the last several months, alongside the Chair of Management Board, well ahead of reaching the conclusion today that to continue any further dialogue is simply not in the interests of the effective functioning of RICS, or its reputation, culture and employees."*

The letter went on to set out the background to the Treasury Management issue and the BDO report. It asserted that:

> *"… a 'no assurance' rating, though concerning, was not an uncommon occurrence in a corporate environment. The important thing is to ensure appropriate and immediate action is taken and this is*

what happened here. Further explanation and detail will be provided to Governing Council by the Chair of Audit Committee at our meeting in December."

The key identified control weakness included that the model used to forecast cash flow had assumptions within it that had not been kept up to date and RICS did not have up-to-date records of all global bank mandate authorities. It also raised concerns about the competence and culture of the finance team, including its managers. An audit recovery plan had been put in place, but implementation was delayed for a few months while senior personnel changes were made in the Finance team. The letter described the re-audits, and asserted the progress made.

The letter then moved to *"The Issue"*. A member of Management Board became aware "*through an open and transparent conversation with RICS' Head of Internal Audit*" that the Audit Committee was looking at Treasury Management control weaknesses after receipt of the 'no assurance' report:

"Unfortunately, rather than being comforted that this was operating under the appropriate governance jurisdiction of the Audit Committee, this individual demanded access to the report and that a report by management be provided to Management Board."

Despite being informed that audit reports are overseen by Audit Committee on behalf of Governing Council, the individual challenged this in the belief that Management Board must be made aware, that this issue was so significant that Management Board should have been alerted by management or the Audit Committee Chair and that the latter should have escalated it to Governing Council:

"The allegations throughout have been of a lack of openness and transparency."

The Audit Committee Chair maintained that it is for his and the Audit Committee's professional judgment to decide when things should be escalated. The Chair had stated repeatedly that this matter was not serious enough to escalate outside the annual reporting cycle as he was satisfied that management action in response to the report was appropriate and being undertaken with a sense of urgency. He always intended to, and would, provide a summary in his annual update to Governing Council.

The four Management Board members *"continued to hold the entrenched view"* that they were entitled to a copy of the report and the information from Audit Committee. The matter escalated and a special Management Board meeting was called at which the Audit Committee Chair agreed to disclose the audit and re-audit reports on an exceptional basis, and the Management Board Chair asked for a review conducted by General Counsel, which concluded that Audit Committee, Management Board, Finance Committee and senior management had followed the expected governance processes of RICS. This conclusion was not accepted by the four Management Board members.

The September Management Board meeting had sought to discuss the review outcome and provide an opportunity for all members to express their feelings and views. The President and others felt that the Board had worked through this issue and could move forward. Regrettably matters escalated; the President had had to stand back take further advice and make decisions in the best interests of RICS.

The President had concluded that without change Management Board would be unable to function effectively, that this was a significant risk to RICS and there had been plenty of opportunity to ventilate the matter. It was well past the time for moving on:

> *"I am completely satisfied that no-one has sought to hide anything at any stage and that all the actions taken have been sufficient, proportionate and in the best interests of RICS."*

It was appropriate for Management Board members to raise concerns and provide challenge. However, it was the manner and tone in which this had been done in this instance that had been untenable. It had not been an easy decision. He said:

> "*Clearly, I would be happy to discuss the matter further at our meeting in December".*

The issue and review had raised further questions about the way in which top level governance was split between two entities. Governing Council should think through the pros and cons of a more integrated approach.

Announcement on the Management Board Virtual Community

The announcement was posted on the Management Board Virtual Community, together with a message (a little later) from the Management Board Chair endorsing the President's sentiments and approach.

Natalie Cohen[199] responded thanking the Management Board Chair and the President for their postings. She said she was deeply shocked and, whilst she did not know the ins and outs of what had happened since the last Management Board meeting, she had a significant amount of respect for the four Board members in question. As a Governing Council member she felt it necessary and appropriate personally to provide comments to Governing Council. She trusted that this was acceptable:

[199] Who in addition to being a member of the Management Board was also a member of Governing Council.

> *"… given I have a spotlight on me to speak up at present.*
> *"I am sure that has already been considered, however Governing Council will have questions and concerns which can hopefully start to be addressed in the lead up to Council on 2 December. The general mood of Council is somewhat subdued at present and this will come as another blow. I will leave that in yours and [the President's] capable hands though."*

Her post was followed by a response from the CEO advising her not to do anything until she had spoken to the President. Natalie Cohen responded saying that she had spoken to the President. Ultimately she sent no message of her own to Governing Council.

The Audit Committee Chair emailed the President at 1631 telling him it was a difficult decision but one which was *"both right and necessary"*.

The reaction of the four non-Executives

The letters of dismissal came as a shock to the four.

Amarjit Atkar replied to the President's email that evening, telling him that he would be seeking legal advice. He said that he would like to know what was being said to Governing Council. He told me that if before 11th November the President had said:

> *"listen guys, don't write to me. It's all in hand. I will make sure this matter is formally raised at the Governing Council. I'll make sure they're informed that this issue happened and how it will resolve, I give you that assurance, don't worry guys. You know, back off or whatever, we would have done that"*

He said that the four of them had made it clear in the letter that they believed that they were doing their governance duty by informing him. He had understood that the President had been quite receptive to receiving a note that he could use to inform Governing Council, as a result Mr Atkar felt misled by him. He thought that the President had been put under pressure, probably by the CEO, because the CEO treated the organisation as his own and the four non-Executives were asking too many questions.

The next day Simon Hardwick also emailed the President, copying in the other three:

> *"I am sure you will appreciate that my colleagues and I take very seriously indeed any unilateral statement by RICS that could be perceived as detrimental to our reputations. I suggest that it would therefore be in all our interests to try and agree an appropriate communication in anticipation of any enquiry"*

The President responded:

> *"We consider this to be a private matter and do not therefore intend to make a public statement about the decisions taken yesterday. I would be grateful if you could please confirm my reading of your email that you, similarly, do not intend to issue a unilateral statement".*

Simon Hardwick confirmed this, saying that he raised it to ensure a pre-agreed response in the event of an enquiry, as these things had an unfortunate habit of leaking.

Mr Hardwick told me that he was very disappointed by the untrue and defamatory statements made:

- to Governing Council that his termination was on the grounds of "*inappropriate behaviour*", and
- much later, a Report in Building Magazine on 5th January 2021 which asserted that the four non-Executives had asked RICS not to disclose that they had gone.

Back in November 2019, General Counsel was constantly touch with Fieldfisher by telephone and email, updating them about the President's contact with Steve Williams, and seeking advice about Amarjit Atkar's request to see any communications sent to others explaining what had happened.

Having seen Simon Hardwick's email, Matthew Lohn commented that everyone was holding their nerve. Of Simon Hardwick he said that he was:

> *"a big boy, he's lost but if RICS is saying anything negative in the press he will come after it."*

They discussed the reactions of various others before moving on to discuss the appointment of the Interim Chair of Governing Council.

The following Monday, 25th November 2019, a paper was sent from General Counsel to Governing Council recommending that the then-President (Chris Brooke) should be appointed as inaugural (interim) Chair. This was supported by the President-Elect and the CEO. I asked Chris Brooke whether the fact that the CEO was supporting him in becoming inaugural Chair had played any part in the decision to back the Executive against the four non-Executives. He replied indignantly that it had not.

The President responded to Amarjit Atkar's request, telling him that Governing Council had been informed of the termination of his appointment, but that what was said was confidential.

The discussion between Fieldfisher and General Counsel on 26th November 2019 turned to the question of what to reveal to Governing Council at the forthcoming meeting. In an email from General Counsel to the President and the CEO, copying in the COO and the Head of Governance, she said that they

needed to limit the communication of the detail. The greatest risk was an allegation of defamation or reputational damage. The President replied in agreement, saying they should keep communication to a short factual statement. I repeat, that were the matters alleged to be true, this provides a complete defence to an action for defamation and I find it curious that the lawyers did not make this very basic point.

For a number of reasons I do not regard the threat of defamation proceedings as providing a reasonable excuse for not giving Governing Council more information. I consider these in Chapter 7.

There were also signs of unhappiness amongst the senior leadership. The CEO emailed the COO and General Counsel "*in confidence*", saying

> *"I spoke with [the Management Board Chair] after the session (for 1.5 hours) as I thought he showed a lack of perspective on the whole situation and how hard people have been working. It was all about him and his feelings and woes. With reflection he recognises his personal feelings about everything coloured his interactions and he wanted me to let you know how much he values what you have all been doing and to apologise. He is broken over the TM issue and it is clearly weighing on and absorbing him way too much".*

I observe in this context that despite his heavy burdens, he remains in position nearly two years later.

Unsurprisingly, there were a number of communications between the Executive and various parts of the organisation over the next few days concerning the departure of the four non-Executives. In one from Dayle Bayliss, a Governing Council member, she complained that "*the top*" ignored Governing Council. The CEO had spoken to her and she felt that it would help if there was more visibility from the leadership team.

The Chief People Officer told me that she felt the whole issue stemmed from a misunderstanding of the duties of Management Board. There had been a desire to do the right thing. But the non-Executives should have recognised the hurt caused by their perhaps unintended allegations against the CEO and COO. They were not particularly respectful of the Chair. They were seasoned non-Executives and the way in which Board members conduct themselves is critical. She said they were all very conscious of the track record of the four and the fact that it took twelve months to bring the matter to a head would suggest how keen they all were to get back to a functioning Management Board. The hours they put in to try to resolve this amicably at every stage could not be underestimated.

I struggle to reconcile some of these observations in the light of the evidence from the Fieldfisher file. It is certainly correct that many, many hours were spent on this matter, but I see very little if any evidence

of an effort by the senior leadership to be conciliatory and to build consensus. Rather, their energies were concentrated on finding a way to get rid of the four non-Executives .

As the Governing Council meeting on 2nd December 2019 approached, there was focus on determining what the Council was to be told. In my view this was about "optics" rather than substance.

6P GOVERNING COUNCIL OVERSIGHT MEETING 2nd-3rd DECEMBER 2019

The Governing Council Oversight Meeting took place on 2nd and 3rd December 2019 at the Kensington Garden Hotel, London.

The Minutes

A central feature of the non-Executives' concerns, the one that led ultimately to their dismissal, was the extent to which Governing Council would be informed of the events surrounding the Treasury Management audit.

Because of this, it is important to set out in some detail what the written reports said to Governing Council, and what the Minutes of the meeting record in relation to this subject and related matters.

The written reports

Management Board Performance Report. This noted that the performance of the finance team had necessitated changes in leadership in the year. There had been concerns over Treasury Management controls and recognition that confidence needed to be restored for both Board and Executives. It was stated that the current and forecast cash flows continue to be compliant with the Reserves Policy with the exception noted that the £4m reserves policy was breached in November 2018 by £0.9m due to a number of assumptions in the cash flow not materialising. A temporary uplift was arranged to cover this period.

The Finance Committee Report noted the same issue, in the same words and format.

The Audit Committee Annual Report in written form noted that one of the internal audits completed in 2018/19 gave rise to a 'no assurance' rating due to the extent and number of control weaknesses identified ,which ranged from controls either not being correctly designed or not operating effectively. The Audit Committee Chair wrote:

> *"Treasury Management Audit*
> *4.5 Governing Council will have seen [the President's] note on the recent termination of the appointment of four Management Board members and which referenced the Treasury Management audit. Set out below is a summary of that audit, the subsequent reaudit and my own reflections on it:-*
>
> *4.6 Background*

- *An audit of RICS' Treasury management function was on the Internal Audit plan for 2018/19. It had been identified as an area of focus following discussions with the Executive and finance personnel and Internal Audit were asked to review the area in the light of the move from Coventry to Birmingham and loss of certain staff as a result;*
- *Given that treasury is a specialised function it was decided to use an external firm to conduct the review on Internal Audit's behalf – the use of external resources to assist on specialist areas is consistent with established best practice – BDO were selected;*
- *The internal audit commenced in November 2018. At about the same time the need to extend RICS' overdraft limit was identified and reported to Management Board by the COO and to Governing Council by the CEO – this being both indicative and symptomatic of the weaknesses subsequently identified by the Internal Audit report;*
- *The audit was completed and the final report issued in February 2019 – it identified a number of control weaknesses arising either from the poor design of controls or from certain controls not operating effectively and concluded that '..we can provide no assurance over the design and operating effectiveness of the controls in place for the Treasury Management arrangements at RICS';*
- *The report was discussed at the March meeting of the Audit Committee at which management assured the Committee that appropriate steps were being taken to address the issues and with a sense of urgency. At that meeting, the Committee stressed the need to ensure that that the right 'tone from the top' and culture was also in place;*
- *Given the seriousness of the issue the Audit Committee requested that a follow up audit be performed to confirm that the issues had been addressed and that the control environment had been appropriately strengthened;*
- *The reaudit, again performed by BDO, concluded: 'For the six recommendations assessed as part of this review, management's actions to address the original audit's findings, including the introduction of improved and new controls, provide greater assurance that the control environment has been designed effectively, reducing the level of risk around Treasury Management.' BDO did not comment on the operating effectiveness of those controls as they had not been in place for a sufficient time to allow for them to be tested but the Committee took comfort that they had been designed effectively to address treasury management risks;*
- *It was noted by the Audit Committee that implementation of some of the actions had been delayed by the departure of four senior finance personnel but this provided the new team responsible with the opportunity not only to address the actions raised but also to implement further improvements and enhancements to the treasury management function at RICS;*
- *The audit confirmed that much progress had been made to improve the control environment in the treasury management function at RICS and the serious risks highlighted in the original audit report had now been substantially addressed and mitigated by the introduction of appropriately designed controls; and*
- *A further follow up audit is proposed for early 2020 to confirm the closure of the few outstanding items and to confirm the operating effectiveness of the controls put in place, the design effectiveness of which has already been confirmed.*

4.7 I have deliberately not detailed the actions of certain members of Management Board around this audit as they are clearly set out in [the President's] note. However, from an Audit Committee perspective I would like to make the following points (which we can discuss further, as appropriate, at the Oversight meeting during my presentation);-

- *The Audit Committee, by reviewing the Internal Audit report on treasury management and holding management to account for remediation of the concerns noted, correctly fulfilled its role of monitoring the integrity and effectiveness of the financial reporting systems of RICS on behalf of Governing Council. Accordingly, the appropriate governance processes had been followed;*
- *It was the judgment of the Committee*[200] *that the matter did not require it to be escalated to Governing Council outside of the annual reporting cycle as it was satisfied that management action in response to the report was both appropriate and being undertaken with a sense of urgency. This was the proportionate response especially given that, though the issues noted were serious, there never was any existential threat to RICS;*
- *It should be noted that if the Committee considered that appropriate action was either not being taken or not being taken with appropriate urgency then the matter would have been escalated – I have done this once in my tenure as Chair when I raised a specific issue with the CEO when I had such concerns;*
- *Finally, as noted above, the fact that management had felt comfortable raising concerns about the Treasury management function with Internal Audit and sought its help is a strong indication of the open and transparent culture within RICS which can only contribute to the strength of the prevailing control environment. Recent events were potentially corrosive to this but, by being addressed, thankfully have not caused any such damage."*

The Minutes of the President's comments concerning the dismissed NEDs

The dismissal of the four non-Executives was addressed in the President's welcome and introduction, together with a number of other matters that are of some relevance. He began by dealing with the status of the incoming and outgoing Governing Council members:

> *"1.2 … the President, chairing the meeting, welcomed Council members to the meeting. It was noted that newly-elected Governing Council members were in attendance as observers, as their term of office had not yet begun. Transitionary Governing Council members were advised that they would remain in office until the Chief Executive issued a written Direction of Commencement in relation to the appointment of the new Council, which would formally end their term. The new Council would formally take office from January 2020."*

He advised those present that social media posts about the meeting were welcome, but discretion was requested in relation to the substance of discussions. He went on to deal with the new, remunerated Governing Council Chair post:

> *"1.4 It was noted that there had been a report circulated in relation to the role of Chair of Governing Council. It was explained that a recruitment campaign had been undertaken, however, an appointment had not been possible as no candidate had met all of the criteria set out for the role. The feedback received from candidates and search agents, suggested that further discussion was required in relation to the job description and person specification. This would be part of wider governance discussions during the first*

[200] The Audit Committee Minutes are silent on the issue. Thus if it was discussed by the Committee, it was not recorded. I have drawn the inference that it was not discussed.

quarter of 2020. The importance of the role merited further consideration in order to ensure the right person was appointed."

Specifically on the subject of the termination of the four non-Executives it records that:

> *"1.5 The President advised the Council that the decision he had taken in relation to the termination of the appointment of four members of Management Board and based upon independent legal advice, had not been an easy one to reach. The President emphasised that the decision was taken in the interests of RICS and to ensure that the organisation was able to continue to operate. The manner in which questions had been raised had made the functioning of the Management Board untenable. There were lessons to be learned about how the Management Board, Audit Committee and Governing Council functioned together as well as seeking more clarity around where accountability lay. Council members noted that the removal of Management Board members had not been brought to their attention during their Q&A calls, which caused them to be concerned as to whether they were able to carry out their role correctly. The Council were assured that they would receive a full account regarding the Treasury Management audit from the Chair of Audit Committee, as well as having the opportunity for a more detailed discussion during that part of the meeting."*

General Counsel reported on the progress of the Governance Reform Programme, including the composition of Governing Council itself and the role of the President. Following the recent global election process, there would be a fully populated Council in place for 2020 under the new model. The CEO and the President-Elect led a discussion regarding the role of the Chair of Governing Council in light of the update on the recruitment process. The possibility of having a joint Chair with Management Board was raised, as part of the wider governance review, although no formal proposal had yet been presented for decision. Governing Council were keen that the Chair should be a RICS member if at all possible.

Governing Council agreed that an independent external review of high-level governance arrangements within RICS should be undertaken. It was noted that there was confusion in the lines of responsibility and Council members had had difficulty in explaining the governance structure when asked by other members of the profession.

<u>The Minutes of the Chair of the Audit Committee's comments</u>

The Minutes record what was said at the meeting by the Chair of the Audit Committee (and the ensuing discussion) as follows:

> *"3. Annual Assurance Reports*
>
> *3.1 Audit Committee Annual Report – GOVC/P (19) 14*
>
> *3.1.1 … Chair of Audit Committee, attended the meeting to present the report to the Council. Council noted the role of the Committee in providing oversight of risk management, internal controls and the audit of financial statements, as delegated to the Committee by Governing Council.*

...

"3.1.2 The Audit Committee Chair reported the following to Council:

No issues were identified in relation to revenue recognition, management overriding controls and employee remuneration.

The 2018 financial statements were deemed to be a true and fair representation. These had been approved by the Management Board and signed on their behalf by the Chair of Management Board and the Chief Executive.

Throughout 2019, steps had been taken to make improvements to risk management.

The 2019 financial statements were largely complete and an unqualified audit opinion was expected.

In 2018/19 there had been 12 internal audits carried out, which overall had a positive outcome.

"3.1.3 The Audit Committee Chair reported that there had been one instance which gave rise to a 'no assurance' rating in relation to an internal audit of the treasury management function. The internal audit had been carried out as part of the Internal Audit plan for 2018/19 at the request of management, due to concerns following the office move from Coventry to Birmingham as a result of which a significant number of staff had not moved to the new location. The audit was carried out by an independent external Chartered Auditors who specialise in internal audit work. The audit commenced in November 2018. At about the same time, there had been a breach of the overdraft limit from £4 to £4.9m which formed part of the internal reserves policy. The overdraft increase was extended for a period of 45 days as agreed by Finance Committee. The cost of this increase was minimal. The extension to the overdraft limit was reported to Management Board. The treasury management audit was completed and the report had been issued in February 2019 to Audit Committee, and was discussed by the Committee formally at its meeting in March 2019. It identified a number of control weaknesses either from poor design of controls or from certain controls not operating. A re-audit was requested to confirm that all issues had been addressed and the control environment strengthened. The re- audit was considered by the Committee, and it was noted that following the implementation of actions to address the issues identified there was now greater assurance that the control environment had improved and in particular there was a more robust cashflow forecast model. The Committee noted that those actions that remained outstanding were reliant on external third parties to validate information. A further followup audit report was planned to be carried out in February 2020 and would be presented to the Committee in March 2020, to ensure that the controls were working effectively. The Committee had noted that while improvements had been made, cash flow management would never be an exact science. The Audit Committee Chair noted that the Committee felt the overall response was proportionate and that there had been no threat to the wider existence of RICS.

"3.1.4 The following points were raised and discussed by members of Governing Council:

The importance of Council being informed of any issues in a timely way was raised, as well as providing them with details of assurance received. The Audit Committee Chair acknowledged that in future more detail would be provided in any future reporting.

It was concerning that four members of Management Board had been dissatisfied with the handling of the treasury management issue. However, it was noted that this related more to a reluctance to accept the current governance arrangement as to how oversight should have been carried out rather than whether the correct actions were taken in response.

The removal of four members of Management Board was a result of inappropriate behaviours on the part of those members, and the decision was taken by The President after receiving external legal advice.

There had been no question as to whether the Audit Committee had acted appropriately and the Chair of Management Board was fully briefed.

It was positive to see that the culture was in place to enable management to feel comfortable requesting the treasury management audit. Maintaining and building on this was very important so that issues can

be identified and improved upon. The culture should continue to be one that encourages management to request audits in areas where they feel a review is needed.

The External auditors (Grant Thornton LLP) did not adjust their approach to the year-end audit as a result of the treasury management audit nor in their opinion was there any need to make reference of this matter in the 2019 financial statements, An update would be provided to Council following the March 2020 meeting of the Audit Committee, after the Audit Committee had had an opportunity to review the re-audit in March 2020."

Management Board Annual Report to Governing Council

The Chair of the Management Board said that there had been improvements in the way in which strategic risks were prioritised, to enable them to be aligned with business plan priorities, and how the strategic risks could be mitigated. The internal finance function needed greater stability and new capabilities to ensure the function was able to meet the requirements of a global business. A demanding change programme was ongoing.

The Chief Operating Officer provided an update on the financial health of RICS: it was in reasonable financial health. Work was being undertaken to address:

- A focus on operational risks as well as management of strategic risks
- A review of the reserves policy in light of the reported breach of the overdraft policy
- A global finance team was being established with greater capability, a more centralised model focused on data, quality, insights and the control environment.

Before the meeting was formally closed, the CEO advised that discussion about engagement but not the assurance reports could be shared on social media. He reminded all members that all reports were confidential.

Other accounts of what took place in the meeting

The Governing Council 2019 group ("GC2019") is a group which comprises the majority, but not the entirety, of members of Governing Council during the 2019 period.

A number of its members gave evidence to me. They recalled how they first heard of the BDO report and the issues surrounding it when a letter was posted on their Virtual Community on 21st November 2019, informing them of the dismissal of four of the non-Executive members of the Board. Self-evidently, this was after the event. They immediately tried to obtain more information. When they received the papers for the Governing Council meeting they could see that no time was allocated for discussion of this issue other in the context of the routine Agenda item for the Audit report. Unsurprisingly, they pushed to discuss the sacking of the four non-Executives. They also wanted more information as to why no suitable candidate had been found for the Chair role.

They were eventually given a morning to discuss these items at the meeting. They asked for both the shortlist of candidates for the Chair role and for the BDO report and any information surrounding it, but were refused both. I note in passing that given that Governing Council *is* RICS, there is no power for the Executive or senior leadership to withhold information from it.

Until that time the members of Governing Council had known only what they had been told by the CEO's updates, which referred lightly (as they saw it) to some overdraft issues and asserted that audits had been undertaken. At no time were they told what they were, or given any indication of the seriousness of them. Certainly by the time I interviewed them, GC2019 had never seen a copy of the original 'no assurance' BDO report.

They said in evidence to me that they were told in the meeting by the President that they could not be given any information about the issue with the non-Executives because the four, and the President, were party to non-disclosure agreements and so the information could not be shared for legal reasons. They were pretty sure that this representation to them had not been written down anywhere. I note in passing that there were in fact no non-disclosure agreements. I think that this may have been a misunderstanding, but I am satisfied that Council was told that there were legal reasons why they could not be given more information. I have already set out that as a matter of law I am of the view that there were no reasons why Governing Council could not and should not be told and that this is further evidence of the approach taken by the Executive and senior leadership, which was to control the amount of information which Governing Council was given.

The GC2019 members also told me that the incoming members of Governing Council, who had yet to be sworn in, were asked to leave the room when the non-Executives' issue was discussed. I have heard conflicting accounts about this but nothing much turns on this for the purposes of this Independent Review.

They told me that they also insisted that there should be an independent review of governance and that this should be Minuted, as they were not convinced that the Minutes would record this part of the discussion. They were troubled that, because of the way the majority of Governing Council was to be replaced in one go (all save 6 members), the issue would be left in the hands of a new group that didn't understand the issues:

> *"I think that's part of the ploy that we've seen over the years where those of us who might get our knees under the table and understand governance and start asking questions get shuffled off and a new group come onboard. So that was why we were adamant that this needed to be covered."*

They complained that it was a common experience at Governing Council that they would ask questions and be told that the information would be collated and "*we'll get back to you*" and then that was the last they heard. They also described how members who were outspoken tended to be singled out and told to toe the line or they would be 'sorted out'. Some had been pursued to the point of expulsion. Nobody could say anything about the staff: they were given a staff member engagement document that was effectively used to silence criticism of staff on the basis that it was disrespectful and would lead to the member's exclusion. Each also had to sign a service agreement which imposed a duty of confidentiality upon them.

They described how each member was "buddied up" with a member of the staff who then sat near them at meetings and dinners. They felt they were being monitored. In their view it was clear from discussions that the staff had been briefed to take a particular line in relation to each topic. The meetings were controlled so as to prevent much discussion on particular topics. Governing Council was now just a rubber-stamping body.

When I spoke to her, the COO remembered the Council being told that, for legal reasons, they couldn't be told anything about what the four dismissed non-Executives had done wrong. That was to protect the reputation of the four because of the known risk of leaks from Governing Council. The Audit Committee Chair spent a long time taking them through the Treasury Management issue. It was a good opportunity for questions to be asked. No one asked the Audit Committee Chair for a copy of the BDO report and she was pretty sure if asked he would have shared it. I note in passing that I find that a surprising assertion, given the limited amount of information which was being given to Governing Council.

The CEO did not remember the incoming members being asked to leave the room. He was pretty sure that didn't happen. He believed the President did describe the non-Executives' behaviour as

inappropriate. The President could not go into it: he had taken legal advice and it was not a matter that he could openly discuss.

I asked the President about the level of detail in the CEO's update to Governing Council and whether he had the authority to require that more detail be given. He agreed that he probably could, in his role as Governing Council Chair, but that he was comfortable that, having observed the various meetings, the level of detail was sufficient and consistent with the types of update Council had been receiving for many years.

He agreed that there were a fair number of questions about the dismissal of the four non-Executives. A few wanted specific details dating back to early 2019. He did not recall telling them that no details could be given because of Non-Disclosure Agreements. He was not aware of any such agreements. There was just confidentiality under the four non-Executives' service agreements[201]. General Counsel had advised him to be very careful what he said about the behaviour of the four so as to avoid reputational risk to them. Other than specific disciplinary files, he could not remember any other occasion when Governing Council had been refused something because it was confidential. But this was not about confidentiality, rather it was about potential risk to the Institution.

[201] Their contracts

6Q DECEMBER 2020 TO THE PRESENT DAY

Further correspondence from the non-Executives about the Management Board Minutes

On 3rd December 2019, Steve Williams emailed General Counsel making it clear that the record should show that he did not approve the Minutes of the 25th September 2019 Management Board meeting. General Counsel replied that his position was noted. On 6th December 2019, Bruce McAra emailed to similar effect, asking that the formal record of the next Management Board meeting should show that he did not approve the updated Minutes posted on 8th November 2019.

That next Management Board meeting took place on 12th December 2019. The Minutes of that meeting record that the amended draft Minutes of the last meeting were approved. There was no mention of the fact that the four had asked that their disagreement be noted. The only reference to their departure was that there had been a *"detailed"* discussion at Governing Council, which had been disappointed but had accepted the need to move on.

On 3rd January 2020 Bruce McAra sent a letter by email to the President saying that he was shocked and saddened and completely rejected the criticisms set out in the 21st November 2019 letter. The President did not consider that it required a reply.

On 16th January 2020, the COO emailed Messrs Hardwick, Atkar, McAra and Williams informing them that *Property Week* was proposing to run a story about their termination. She enclosed the correspondence between *Property Week* and RICS, including the assertion by RICS that the information was confidential and threatening legal action if the article was published. Steve Williams replied thanking her for the 'heads up'.

In the event no article was published by *Property Week* at that time.

Other events in 2020

On 9th March 2020 EY produced a further report into the Treasury Management function. It gave a green rating for the controls that were then in place and an amber rating for the application of those controls. The Executive has sought to persuade me that the instruction of a new firm of accountants (that is to say, that it had not been carried out by BDO) is an indication of transparency. I note that there is an alternative explanation, which was that BDO had been inconveniently critical in the past. This may be unduly sceptical, but the history of this matter has given me cause to test assertions made by some of the senior leadership. I do not find it necessary to resolve this for the purposes of this Review, save to say that I would not view this fact, taken in isolation, as evidence of an open and transparent system.

On 1st June 2020 the CEO produced a paper suggesting that, against the background of a global pandemic, the Chairs of the Management Board, Governing Council and Remuneration Committee should remain in post to give stability at a time of uncertainty.

In November 2020 the following events took place:

(i) RICS made 140 members of staff redundant;

(ii) The Senior Vice President from 2019 (Kathleen Fontana) became President, having been President-Elect throughout 2020;

(iii) A charge was placed on RICS' headquarters at Great George Street in favour of NatWest Bank;

(iv) Governing Council met for its annual oversight meeting. Whilst the Audit Committee Chair gave a verbal update about the improved situation since the 'no assurance' report, he did not mention certain critical details and there is again an issue about the accuracy of the Minutes. I have heard evidence that some Governing Council members dispute that some of the information recorded in those Minutes – which were first provided in February 2021 – was actually given.

Articles published in the Sunday Times

On 11th December 2020 Oliver Shah of the *Sunday Times* contacted the RICS press office asking for comment on the departure of the four non-Executives. This prompted a response the same day, again claiming confidentiality, implicitly threatening legal action and providing a statement which included the following claim:

> *"RICS Governing Council is fully aware of all the decisions taken."*

General Counsel wrote to Messrs. Hardwick, Atkar, McAra and Williams to tell them both of the *Sunday Times* enquiry and RICS' response. Steve Williams responded to the effect that he did not agree with what RICS had said. He asked to be left out of future correspondence.

On 13th December 2020 a piece appeared in the *Sunday Times Prufrock* column alleging the suppression of the BDO audit report and that the four had been sacked as a result of questioning it.

RICS responded two days later, providing a statement (which it placed on its website) in which it said that:

> "*The Governing Council of RICS received all appropriate assurances at the time, had oversight of the handling of the issue and has been kept informed of all the actions that were taken both then and as part of appropriate follow-up".*

Many RICS members, including a number of past-Presidents were horrified by what they read in the *Sunday Times* and wrote to the President to say so.

The *Sunday Times* published a follow-up piece in *Prufrock* on 20th December 2020, revealing that RICS had told its journalist that the information was confidential and had implied that it might sue.

Oliver Shah then wrote an article in *React News* on 5th January 2021, titled *"Poor governance and weak leadership mean the RICS is failing the industry".* This again prompted a response, this time from Fieldfisher on 7th January 2021. Fieldfisher alleged that the article was defamatory and complained that RICS had been given no opportunity to comment in advance of the publication. *React News* appears subsequently to have withdrawn the article.

There was clearly concern within RICS as to the impact of the *Sunday Times* articles. On 8th January 2021 a special meeting of Governing Council was held. The membership of Governing Council was of course largely different to that of 2019 and some explanation of the background to the issue had had to be given. Two days before the meeting, Governing Council was provided for the first time with the original BDO 'no assurance' report and the second of the BDO re-audit reports (of February and August 2019 respectively). At the meeting, the Audit Committee and Management Board Chairs sought to provide explanations for the events in 2019 and how the concerns of the four non-Executive Management Board members had been dealt with.

During the meeting, members of Governing Council asked questions as to why neither the Audit Committee nor the Management Board had informed, let alone consulted, Governing Council in accordance with the Delegated Authority matrix[202]. Having reviewed the Minutes of that meeting and heard from individuals present it is my view that the answers given were vague and lacking in the kind of transparency and detail which Governing Council was entitled to expect.

It was suggested that an Independent Review might be required. Governing Council voted against this by *"a narrow majority"*, the CEO and President (Kathleen Fontana) having both argued that it was not necessary, their view being that any review should be an internal one.

Dissatisfaction with that decision was evidently such that at least one member of Governing Council seems to have concluded that the appropriate course was to inform the press, as within 24 hours the *Times* published a further article in which it listed the number of members who were calling for an independent inquiry into the matter.

On 21st January 2021 there was a further Special Meeting of Governing Council, which voted unanimously in favour of an Independent Review. It is of note that Matthew Lohn of Fieldfisher not only attended the meeting (which I regard as unusual) on the basis that legal advice may be needed, but also spoke. I regard this as having been inappropriate. It must have been apparent to Mr Lohn that his Advice of 18th November 2019 was likely to be central to such a review.

[202] Known as the 'RACI' matrix

Correspondence with the GC2019 group

The GC2019 group consists of a number of members of the Governing Council of 2019 (all of whom are members of RICS). This group had come into being as a result of RICS' response to the *Sunday Times* articles because it was felt that RICS' suggestion that the Governing Council of 2019 had been 'kept informed' was misleading.

On 4th January 2021 ten members using the umbrella designation of 'GC2019' had written a joint letter to the President[203], the immediate past-President, and the President from 2019[204].

They said that:

- The first time that they had been made aware of the dismissal of the four non-Executives was in a letter from the President on 21st November 2019
- This was also the first time that Governing Council were notified of the existence of the 'no assurance' internal audit rating
- During the December 2019 Governing Council oversight meeting this had been discussed at length, as it was an appropriate time to review the management structure, communication and feedback, with the suggestion made of exploring an independent review
- They were advised that the dismissal of the four was in part due to their aggressive and persistent approach to requesting information and that due to non-disclosure agreements no further information could be given to Governing Council.

They said that it was not their intention to review the details of the discussion at the time as they were assured that the matter had been addressed and that a review would take place:

> *"However, it is now with some surprise to [sic] see a press release that states that Governing Council were fully aware of the Audit findings and that the appropriate actions [were] undertaken. Given the timeline of events, that we have never had sight of the Audit and the details of the matter, with these being refused when requested, it is disingenuous to state that Governing Council had been kept informed of all the actions, when it is known from the discussions at December 2019's meeting that we raised the concern that we hadn't been made aware of the issue and that this had been going on for some months. We seem to be now finding out the content of the Audit report from the press which is extremely disconcerting.*

[203] Kathleen Fontana, who had taken office in December 2020
[204] Chris Brooke

"We are not aware of what actions have been taken since the Governing Council Board meeting in December 2019. Therefore, we request assurance and evidence that the measures discussed have been progressed and also an update on the latest Audit and outcomes, particularly in relation to the treasury function.

"We also request that the press release is amended to accurately reflect the events and the actual awareness of Governing Council at the time."

The President acknowledged receipt on 6th January 2021. On 8th January she wrote to Dayle Bayliss (possibly on the basis that she represented all ten) updating her about the special meeting held that day and saying that she genuinely did not think that Governing Council had been misrepresented in the recent statement.[c] She made it clear that no NDAs had been issued by RICS or any other party. However, it was true to say that Governing Council members and other non-Executive board members owed a duty of confidentiality to RICS.

The group (now comprising eighteen signatories) responded on 13th January 2021 by means of a further letter. They made the point that this group now consisted of the majority of the 2019 Governing Council members. They said that they disagreed with the points made by the President in her letter of 8th January and asked that RICS correct the press release. They also reminded the President that at its December 2019 meeting, Governing Council had agreed that there should be an independent external governance review. Their recollection was that during those discussions, the Presidential team and the Executive had mentioned that the four dismissed non-Executives had been asked to sign Non-Disclosure Agreements. It was on this basis that Governing Council had been told that not all the facts and information could be shared with them, *"for legal reasons"*. They now understood that it was likely that the "NDA's" may be no more than the *"gentle reminder that you have given us regarding confidentiality"*. That said, the Bye-Laws were very clear that Governing Council were the accountable body to which all other Boards reported and therefore any refusal to provide information requested by Governing Council to aid their role in governance was a direct contravention of this.

It appears that they received no reply.

On 15th January 2021, Fieldfisher wrote to the *Sunday Times* legal department complaining that the articles were defamatory.

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[c] Clarification - On 8th January she wrote to Dayle Bayliss (possibly on the basis that she represented all ten) updating her about the special meeting held that day and saying that she genuinely did not think that Governing Council had been misrepresented in the recent statement.

Having received no reply to their letter of 13th January, the GC2019 Group then wrote to the President for the third time on 20th January 2021.

This letter was more strongly worded. It noted the news that Governing Council were meeting the following day to review the decision not to have an external Independent Review. It said that the focus of the December 2019 Governing Council meeting was a wider review of governance, going beyond simply the audit function; that it would encompass remuneration, Chair roles and engagement with World Regional Boards, establishing lines of communication, responsibilities and reporting protocols:

> *"We welcome the review by Governing Council of their previous decision on the 8th January, but urge that the following are part of the independent review:*
>
> - *The review must be truly independent and not influenced by Executive and those complicit in the suppression of information to Governing Council. This should also exclude existing service providers with existing service agreements with the RICS, removing any conflicts*
> - *The review must cover the Chair of Governing Council, Auditing process, including financial integrity and dismissals, and the reporting and responsibilities between the boards and world regions. We suggest that this takes the form of a full structural review of the organisation*
> - *The process must include former Governing Council and Board members, including those fired from Management Board*
> - *The outcome must be made publicly available in the spirit of openness and transparency and rebuilding trust in the profession"*

It continued that, given the nature of past events and the information "*that we are now finding out was withheld from Governing Council",* they requested that all those that were part of Management Board and Executive should not be able to vote or influence the forthcoming decision by Governing Council, *"given their roles in the cover-ups and removal of the four Management Board members".* They should only be there to address questions from Governing Council members. They still awaited a response regarding the misrepresentation of past Governing Council events in the RICS press release, *"which is still being used in current correspondence".*

This was not well received, by the President in particular. Within five minutes of the GC2019 email, at 1128, she emailed a copy to her fellow addressees as well as to General Counsel, saying:

> *"I am personally very uncomfortable about some of the derogatory comments and the tone of this letter…I would like to know how we can address this."*

The involvement of a second law firm

Thus it was that another firm of solicitors became involved. Sheridans LLP is a leading media law firm.

On 20th January Colin Gibson, the Head of Dispute Resolution[205] at Fieldfisher, emailed Sheridans saying that he had an urgent need to refer "*a (good) client*":

> *"They need a letter to go urgently this evening to individuals. You'd also need to be clear to act against the Sunday Times if necessary".*

I have concluded that the most likely reason that Fieldfisher felt unable to act in this matter was that the members of GC2019 were viewed as having been Fieldfisher's client in 2019. Self-evidently, they could not issue letters threatening their own client.

That being said, the letter which Sheridans was to send later that evening to GC2019 had been drafted by Fieldfisher. It was provided by Fieldfisher in a document which said at the top "*To be sent on Sheridans letterhead*".

General Counsel was copied into all the correspondence between the two firms. Sheridans did a conflict check and received the GC2019 letters from General Counsel. They asked Fieldfisher to send through what they needed, and at 1928 Fieldfisher emailed saying:

> *"the current draft of the letter to go urgently this evening is attached … I hope that you can in the meantime get comfortable with the basic content…should have the background pack with you very soon. For this evening's purposes, please do copy me and [General Counsel]…on all emails so we can help you to get it right."*

The background pack of press articles, Fieldfisher responses and GC2019 letters were sent through at 1938 and at 1940, General Counsel emailed Sheridans directly, giving her approval for the content of the letter *"from the RICS perspective".*

At 1957 Sheridans confirmed that they were reviewing the letter and supporting documents. At 2111 they emailed again, attaching a copy of the draft letter which was now on their own letterhead, containing *"some hopefully uncontroversial stylistic amendments".* They said that they had moved the deadline for a response to the letter to 11am the next day. Save for that, they were happy to send the letter. At 2205 General Counsel responded saying that she was happy with the proposed amendment *"and with a 10am deadline for response".* She confirmed that she had instructions for it to be sent. At 2237 Fieldfisher chased to make sure that the letter had been sent, and three minutes later it duly was.

[205] In many law firms, 'Dispute Resolution' is used interchangeably with 'litigation'

Although Sheridans is a firm with expertise in media law and defamation, the reality is that it appears to have had a limited amount of input into the letters that were sent, not least because of the speed with which they were sent out.

Fieldfisher, through their solicitors Clyde & Co, have made the point to me that it was Sheridans' professional responsibility to ensure that they were content with the letter as a matter of law. Unquestionably, that is right in terms of the regulatory requirements and I am satisfied that Sheridans would not have sent it unless they believed that they were entitled to do so. That said, I make the following observations:

(1) I have seen no record of advice, either from Sheridans or Fieldfisher, as to not merely whether as a matter of law what the GC2019 members had said was defamatory (which in my view was debatable) but the broader question of the wisdom of sending this letter; and
(2) It is my view that the members of RICS will be very surprised to learn that, in effect, their subscriptions were being used for their external advisers to use a second law firm to send a threatening letter to other members of the Institution.

What is without questions is that at 2240 on 20th January 2021, the members of GC2019 each received a letter from a top media law firm, on behalf of RICS, threatening legal action for defamation in respect of the further circulation of their letter, and giving them until 10am the following day to respond. I remark in passing that one of the charges levelled against Simon Hardwick was that he had sent his email of 26th July 2019 to the Chair of the Management Board at just before 10pm. On any view, that was a considerably less disturbing and upsetting letter than that sent to the GC2019 members. As will be apparent, there was literally no prospect of all these surveyors being able to obtain legal advice within the time frame they had been given to respond. It is my view that this went further than a serious error of judgement and looked very much like bullying.

For the reasons I set out in Chapter 8, I have concluded that there are parallels to be drawn between RICS treatment of GC2019 and that of Messrs Hardwick, Atkar, McAra and Williams.

The following day saw a number of emails pass between Sheridans, General Counsel and Fieldfisher discussing the fact that they had yet to receive a response from the members of GC2019. General Counsel forwarded the posting on the Governing Council Virtual Community made by Ben Towell, a current member of Governing Council, revealing the news that GC2019 had received the letter.

Sheridans suggested discussing the steps to be taken should there be no reply by close of business. Fieldfisher argued that *"for credibility's sake"* they should consider chasing sooner: by "*11ish*". General Counsel felt similarly. She noted that the Governing Council meeting started at 2pm and it would be helpful to have an update for the meeting:

> *"Even if it is just that we have chased for a response but still haven't had* ***the courtesy*** *of one"* (Emphasis added).

I note in this context that GC2019 had not received a reply to their letter of 13th January.

It would appear that Sheridans felt the need to constrain General Counsel and Fieldfisher. They acknowledged that GC2019 should be under no illusion as to how "*urgent and serious a matter this is*". Despite this, their view was that given the short period of time initially given for a response, a deadline any earlier than 12 or 1 risked looking oppressive. They were also concerned that RICS should consider whether it would and/or should pursue formal legal action, as threatening it and then failing to do so risked losing all credibility.

The Governing Council meeting having started, General Counsel emailed to say that she would not be able to get instructions on formal legal action until later and therefore instructed Sheridans to send the chaser letter requiring a response by 4pm. The letter duly went out at 1441.

22nd January 2021

GC2019 responded by email to the President and her two predecessors at 1243, but not before General Counsel had, at 0903 remarked internally that *"we are all rather disappointed not to have had the courtesy of a response"*. She added that her instructions were nevertheless to wait and see whether there was an indication that day that GC2019 had shared with the media. This would inform whether any formal legal action was required, the preference being not to do so.

In GC2019's response they said that they were dismayed by the Sheridans letters and that all they had wanted was a dialogue. The President's reply was terse and in my view inappropriately aggressive. She said that they ought to apologise. She was confident that the Independent Review would give everyone the opportunity to share their recollection of events.

At this point it seems that the appetite for legal action had diminished. Fieldfisher asked Sheridans to let them know their fees to date.

Although a further article appeared in *The Times* on 23rd January 2021, which said that RICS had been forced into launching an Independent Review following a backlash from its members, and a *Prufrock* piece appeared in the *Sunday Times* on 24th January 2021, revealing that RICS had been using Fieldfisher and Sheridans to threaten its critics with legal action, RICS decided against bringing defamation proceedings against GC2019.

This was a wise decision, to say the least, given that there was nothing untrue about what GC2019 had said, even if the language used was perhaps rather strong. This whole episode has the feel of a rush of blood to over-excited legal heads. The fact that you *can* do something does not necessarily mean that you should.

On 26th January 2021, having consulted the international members of their group, GC2019 emailed the President again saying that they thought there was nothing to be gained by legal action, which would only cause further unwelcome publicity. They proposed to (and did) send an email stating that they were pleased that there would be an Independent Review and they were fully committed to supporting RICS; further that they had been informed that some of the language in their email hasdcaused upset to some at RICS. This was never their intention and they were happy to apologise for any upset caused. This was a generous response, in my view.

GC2019 told me that when the first letter from the President arrived, they circulated it to all current Governing Council members, together with all those who had been members in 2019. Some others had come forward to express support, which explains why the number of signatories increased in subsequent correspondence. They sent the second letter because they wanted the matter corrected. By that stage they represented the majority of the Governing Council of 2019. Having originally called for an Independent Review in 2019, and noted in their first letter that that had been Minuted, they received the second letter saying that no review was to take place. When it was announced that a review was to take place, they wrote again to say what they expected of it. That had inflamed RICS and the response was a familiar one - the Executive putting people in fear for their professional livelihoods, demanding that they retract their allegations.

The Sheridans letter had caused huge issues for them. They had had to spend £3,000 on legal advice. When they did not retract what they had said, they had a follow up email from the President a couple of days later at about 6pm on a Friday evening implying that if the matter got to the press, RICS would know who was leaking it.

> *"That caused one of the members of those nineteen to spin their car they were so stressed that night. The stress that it caused the group absolutely … ripped us apart. We had to have emergency meetings just to get everybody to hold still and get legal advice on the Monday morning so we…we thankfully got that legal advice and everybody did hold still but that was proper crisis point and it felt tactical. It felt like they did that last thing Friday to scare the…scare the living daylights out of us."*

GC2019 said that if anyone's reputation had been damaged, it was theirs, by the false assertion that they had been fully aware of the circumstances surrounding the four non-Executives' dismissal, and thereby had either made, or at the very least acquiesced in, the decision, when the truth was that they had been told nothing until it was all over. That they had been told nothing until it was all over is unquestionably true as a matter of fact.

I asked Chris Brooke (who had been President in 2019 and is currently the Interim Chair of Governing Council, a position he has held for nearly two years) whether he was involved in the response to the press to the effect that Governing Council had been kept informed at all times. He said that he saw it before it was posted. He was part of a group formed to address the press interest (which included General Counsel and the CEO). He accepted that there was a difference of opinion as to what being '*kept informed*' meant, but from his perspective Governing Council *were* kept informed of matters during 2019 and had had a full explanation of everything in December 2019. They had been '*kept informed*' through the CEO's updates, and the Audit Committee and Management Board reports in December 2019. He said that nobody had asked for the BDO report at the December 2019 meeting, or subsequently, until the *Sunday Times* coverage. The claim that Messrs. Hardwick, Atkar, McAra and Williams had asked RICS to keep confidential their dismissal was the result of misquoting by the press of the RICS release.

As to the decision to threaten GC2019 with defamation action, he said the current President signed the letters, but it was a group decision based on external advice. He thought it was important that GC2019 understood the implications of what they were saying.

The CEO said that in his view there was nothing misleading about saying that Governing Council had been kept "fully informed": they had had two sessions and the Council could have taken it where they wanted.

The evidence that I have set out in this chapter has driven me to the conclusion that it was indeed misleading to say that Governing Council had been 'kept' informed. The use of 'kept' carries the clear implication of an ongoing line of communication, when the truth is that Governing Council were told the bare minimum until after the four non-Executives had been dismissed.

The Special Meeting of Governing Council on 21st January 2021

A special meeting was held by video platform to consider whether an independent review was required in order to address:

> *"both recent negative media coverage as well as communications received from other stakeholders in relation to the treasury management audit report which had been received by the Audit Committee in 2018 and matters arising from it"*[206].

None of the Executive team nor the Chairs of any governance bodies were present. The President and Chris Brooke were present, but did not vote or take part in discussion around the vote due to a possible conflict of interest. Matthew Lohn of Fieldfisher also attended the meeting, *"to give legal advice if and as needed".*

Debate about an Independent Review

Although the CEO was not present, the Minutes record that he had asked for a number of points to be considered.:

- The decision could have an impact on the requirements associated with the Revolving Credit Facility with the bank
- There were significant costs associated with any such review
- Any work requested by Governing Council could have an impact on organisational bandwidth and capacity to undertake the work
- The decision Governing Council made could have an impact on subscriptions income.

The President advised that representations had been received from a number of groups. Those addressed directly to Governing Council had been shared; the rest had been considered by the Advisory Group set up to make recommendations to Governing Council.

The President also noted that one member had suggested that it was not appropriate to vote on an Independent Review given that Governing Council had not yet considered the dismissal of the four non-Executive members. The Advisory Group had considered this point and taken advice from Fieldfisher. They felt that it was not appropriate for Governing Council to discuss this point until the outcome of the

[206] as recorded by the Minutes

Review was known, if one was commissioned. She asked Matthew Lohn to explain his advice on this point.

Matthew Lohn addressed the meeting. He said that advice was from an "optics", rather than a legal perspective. If it commissioned a Review, Governing Council would want to demonstrate that it would be conducted done in a way in which external stakeholders could have confidence. This meant not appearing to have closed its mind to aspects of the Review subject matter. Hence it might wish to wait for the Review conclusion, which would be based on all relevant information, before debating the topic itself.

This clearly caused concern amongst some members, who felt that they were not being given information in relation to the four non-Executives' dismissal. Having confirmed with Matthew Lohn that he was familiar with the Bye-laws and Governing Council's duties, they asked how his advice fitted with them not being given information which was part of their role in governance. They were concerned to be given information about the dismissal of the Management Board members, which was surely key information for understanding what had transpired. Matthew Lohn said he had only been asked to give advice on the timing of when the debate should take place. He was asked to confirm that Governing Council should be given this information despite it being part of the Independent Review.

It is of importance, given the events surrounding the issue of the BDO internal audit reports, that Matthew Lohn said that Governing Council was entitled under the Charter to be given any information it wanted and to see anything it wished.

After further discussion it was decided that Governing Council should be provided with the information around the dismissal of the four, in order that they could understand it, but only after the vote on the Independent Review.

Discussion of the Sheridans letter

The President raised this matter. She said that a letter had been sent from Sheridans to some members in response to the second letter from GC2019. It had been distressing for her: the GC2019 letter had been defamatory and further circulation of it needed to be stopped as quickly as possible to prevent any further defamation. Governing Council and RICS owed a duty of care to those who were being defamed, including members of Governing Council in 2019 who had not signed the letter.

She invited Matthew Lohn to comment. He confirmed that RICS had taken advice from specialist lawyers who would have taken into consideration the liability arising if the letter had been more widely circulated. Swift action was required to prevent that.

Various views were expressed on the matter. There was anxiety amongst current Governing Council members that the expression of an opinion could result in them receiving a similar letter. A dialogue with GC2019 would have been preferable. Against that, it was said that GC2019 should not have expressed their views as statements of fact, which were said to be wrong in parts. GC2019 had copied the letter to the past-Presidents' group as well as the Windsor group, together with the subsequent solicitors' letters.

Matthew Lohn said the organisation owed a duty of care: it would be very unusual for an organisation not to take action against anyone who published a defamatory statement.

I note that that begged the important question of whether the GC2019 group had said anything defamatory. I consider this further in Chapter 7.

Conclusion

Having heard from the Advisory Group, the meeting unanimously voted in favour of an Independent Review.

The 2019 President told me that it was probably he and the current President who asked Matthew Lohn to attend the meeting. It was not normal but they thought it was important to have someone who could answer questions on the history and as to whether any advice had been given.

The response of the four non-Executives to the press articles

I asked all four whether they were the original source of the articles in the press. All four assured me that they were not. I have no way of establishing this as a fact and in a sense it does not matter, but for what it is worth, I believe them.

Simon Hardwick told me that the publicity has not been his interests. If he had to speculate, he thought that the reason the story had come about a year after the events was that towards the end of 2020 there

had been a bit of a crisis at RICS, with staff being furloughed and then made redundant and at the same time the CEO had taken a bonus.

Amarjit Atkar said

> *"We were all surprised and shocked when we got the letter from the [then President]. We shared those concerns. We basically after that said 'you know what? good riddance'. It's their loss. We've got our own lives to lead.*
>
> *"They subsequently accused us of wanting to remain silent, which was a total lie… we'd forgotten about it to be honest. We were just carrying on… there was no bitterness any more. Sort of 'it's happened, to hell with it, we've got other things to do'".*

Steve Williams said to me :

> **"***I would hate to see this present crisis escalate to a point where it is damaging or ruinous to RICS. All four of us will say we had nothing to do with [the stories in the press]. We've followed some of it but we are totally out of it. After we were terminated by [the then-President] we had nothing more to do with RICS. There was no emotion, no retribution sought or anything like that. We said "look we are all seasoned business professionals, we've got a great track record of helping you through some of these crises and now you're saying you don't want us. So be it.""*

6R WHAT WENT WRONG?

I asked many of those whom I interviewed how RICS had found itself in a position where it dismissed four previously well-liked and respected Board members, had a number of negative journalistic articles written about it and was now the subject of an Independent Review. In the paragraphs that follow I set out some of the opinions of the witnesses.

Simon Hardwick said:

> *"I personally wouldn't use the language of cover-up. What I would say is that from a lack of candour and transparency one could easily understand how you get from there to the conclusion that it was a cover-up. I think that there was definitely a conscious decision taken for whatever reason not to candidly disclose to Governing Council what had actually happened and that occurred on a number of occasions and at a number of different levels.*
> *"I mean you can't really call it a cover-up because they failed miserably to cover anything up.*
> *"I think what happened is that originally the failure to disclose this was a cock-up. The arrival of a 'no assurance' red flag internal audit report - [indicating that] something was catastrophically wrong - probably resulted in the Finance Department and the COO going into headless chicken overdrive. My suspicion is they were focused on "Oh my God what are we going to do about it, let's fix it". And then when confronted with a specific question – "tell us about this. What's happened?", there was a moment of panic and an untruthful answer was given… having got themselves into that situation I think the progression of non-disclosure got worse and worse….people made decisions that they thought were perhaps the appropriate ones in the moment but actually led to other consequences."*

His view was that:

> *"governance has a number of components to it. It's about the systems, processes and controls but it's also around culture, attitudes and behaviours. When it actually came down to it, the attitudes and behaviours were not, in my view, what they needed to be to ensure that the systems and processes were effective."*

Amarjit Atkar said:

> *"All that needed to happen was to say 'listen Management Board, we've had this report done, it's pretty damning, we take it seriously, we've been open with you….. we're going to work on it.' That's what a mature, open, transparent organisation would have done anywhere.*
> *"Quite simply that, if they'd done that, there would have been no issue whatsoever.*
> *"I think they didn't want any bad news to come out….I got the feeling [the CEO] was protecting [the COO]…[in the hope that] the Governing Council would never find out about it".*

Mr Atkar said that one of the problems was that the Chair of the Management Board was very close to the CEO:

> *"[the Chair] told me how regularly he met with [the CEO], which is on the one had the right thing to do to get to know an organisation and to steer the organisation, but was he getting too close to making decisions with the Executives? That's not the role of the Chair. That became apparent to me once the issue of the Treasury thing came up because [the Chair] would come to meetings having already made up his mind what to do rather than discuss with the Board what we should do."*

I note in this context that the papers within the Fieldfisher file show that Mr Atkar was completely right about this. The outcome of both the 29th August 2019 special Management Board and the 25th September 2019 quarterly Management Board meetings had been decided in advance.

Mr Atkar said that another thing which had contributed to things going wrong was that the Chair of the Management Board was not only very close to the CEO, but he had not built relationships with the non-Executive members:

> *"he could have reached out to the four of us just saying 'look you guys have concerns about it, let's meet, why don't the four of you come and sit with me and let's talk about it. He was obviously doing that with the Executives".*

Once again, the Fieldfisher file shows that Mr Atkar was correct about the Chair having regular meetings with the CEO and COO but not interacting in the same way with the non-Executive members of the Board. I asked Mr Atkar why he felt that was and he said that basically the Chair had been there too long.

Bruce McAra said that it always seemed that the COO was very transparent, but when the BDO issue arose, it was like the doors got slammed shut. He said it was a bit like what had happened with the move from Coventry to Birmingham: on the surface it looked as though she was managing it ok but when you drilled down, she didn't seem to have either the skills or experience to make it happen in the way it ought to be happening. She looked competent on the surface to run the Finance Department and looked as though she had everything under control, but subsequent events showed that she did not have either the skills or experience to run a tight ship financially.

The CEO told me that he felt that it had become personal as far back as the March 2019 Board meeting. By the August special Board meeting, it had started to feel like people wanted some change and that he should go. Given what he had heard and seen, he just wanted to confront the issues and have the appropriate conversation.

The COO told me that it began to feel personal at the August 2019 special Board meeting. She discussed it with the CEO and the Chief People Officer and sent an email on 11th September 2019 to that effect. She felt let down by the Board, Chair and Governing Council Chair. Her professional opinion had never been sought. She'd already been judged and hung out to dry despite doing everything the Board had asked for. She had probably had a couple of conversations with the Chief People Officer that it was becoming really difficult for her. She had had a routine planning session with the CEO the day before the 25th September 2019 meeting and offered to resign, but he didn't accept.

The Chair of the Management Board said that he felt that it was divisive for Simon Hardwick to have emailed[207] other members of the Board without telling the Chair that he was going to do so. Sending him [the Chair] an email at 2156 on a Friday night was not the right way to do things. I note in passing that I understand that late night emails may be regarded by some as antisocial, though busy people often send them with the intention of them being seen the following morning. In reality, there is nothing untoward about late emails unless an urgent response is demanded. In the context of this case, and given the seniority of the individuals involved, it is difficult to reconcile the sense of affront at this email expressed by the Chair and others on his behalf, especially alongside examples of regular emails being sent much later at night, between the Executive and Fieldfisher.

The Chief People Officer told me that she first understood there were problems when on 31st July 2019 the CEO forwarded an email from Simon Hardwick to the Management Board Chair. The Chair was concerned by the tone and implication of the email: as Chief People Officer she was looking after 'the duty of care' for the CEO and COO as employees, but also the Chair of the Management Board. The email spoke of a concern around leadership behaviour, integrity and trust. She thought the tone was jumping to conclusions about how people had behaved before ascertaining the facts. To suggest that the

[207] Back in July and August

two long-standing Executive members had behaved with a lack of integrity was unfounded. At that stage it did not concern her unduly but was something where they needed to verify the facts and discuss round a table. She didn't necessarily like the tone of the email but professional people were used to receiving imperfectly worded communications. She could understand why the CEO was upset. The Management Board Chair had invited her to come to the special Board meeting[208] if necessary, but she didn't attend. It was clear that emotions were running high because people were keen to discharge their duty. The Chair said it was important to make sure all were working from the same chronology of facts. General Counsel had a big job to pull together the facts. The Chief People Officer's role was to ensure the Chair was able to carry out his role and was comfortable. Before the 25th September 2019 meeting, she had helped him rehearse his walk-through of the chronology. That was not usual, but for her that was some of why they had landed there: the Chair already felt that his Board members had not behaved in a way that he would expect them to. Raising concerns with him and asking to table agenda items was OK, but he had received late night emails from Simon Hardwick in particular, copied to others. The Chair was looking for an independent ear to say whether he was presenting it well. She hadn't been in the organisation long and was there as a sounding board for him. She did not consider it her job to talk to the four non-Executives about their concerns: they were talking about whether or not there was a material issue with the audit report. That was not her training. She had no material relationship with them and it would have felt strange to engage in a conversation around whether they were ok with this. It was not her remit.

She had sought legal advice: what she really wanted to get across to me was the impact that this was having on the COO, who was a chartered accountant bound to behave with integrity. She felt she had a good relationship with the Management Board and had earned their trust and respect. The COO was one of her closest colleagues and she could see the material impact it was having upon her. The COO wrote a worrying email to the CEO about how vulnerable she felt: the Chief People Officer not only had a duty of care towards her but was also concerned about a constructive dismissal claim. She had two hats: duty of care towards officers and employees and also to protect the organisation from legal claims. So she had sought advice from Fieldfisher on a constructive dismissal claim, on 12th September 2019. She was advised that there was a potential claim for the COO.

[208] On 29th August

She was speaking to General Counsel and the Management Board Chair about what had happened. She felt that there was a fundamental problem in terms of understanding where accountability lay so that the Management Board could discharge their duties. It was not her job to come down on the side of anyone.

I asked her whether she felt she had a duty of care to RICS to make sure that the non-Executives were able to discharge their responsibilities appropriately. She said that the 31st August and 25th September meetings were designed to have a full and frank discussion, to establish the facts and re-establish normal ways of working and that was what they were all working towards.

She had a number of conversations with Fieldfisher about clarity in respect of the responsibilities of the Audit Committee and the Management Board. This wasn't about the fact that the four had raised concerns. What was troubling was the way they were raising them. It didn't feel like the presentation of the facts was going to change their view: they had a pre-formed conclusion.

General Counsel had also asked her for some advice as to the contractual status of the four so that went to Fieldfisher too. General Counsel was not involved in employment advice: the Chief People Officer had authority to take employment advice. General Counsel had authority to seek advice on a number of matters. They were very conscious and prudent about when they needed to take legal advice.

More than one person has suggested to me that:

> *"[the then-President] wanted to move on because he was in line to take the paid position of Chair of Governing Council, which was a new position. The CEO and the COO were wanting to continue with their jobs and the now-President was within weeks of being made Senior Vice President*[209] *and she didn't want us to rock the boat*".

Steve Williams told me that he thought that the then-President's back was to the wall:

> "*It's strange that people will trample on a deep friendship like that for the sake of very little, you know? You can hear, I am still agonising about it. He and the Chair of the Management Board and the CEO had obviously closed ranks and they obviously regarded us as sort of rebels*"

[209] This is Kathleen Fontana. In fact, she was about to become President-Elect (she was already Senior Vice President)

Simon Hardwick said:

> *" I think [the then-President] was in a position where he had to make a decision: he either had to get rid of us as the problem or he had to make a candid disclosure to Governing Council. My impression was he chose the lesser of the two evils, as he perceived it to be".*

I asked the then-President for his response to these suggestions. In a courteous and measured letter, for which I am grateful, he made it plain that having received the unequivocal advice from Fieldfisher he felt that he had little choice but to do as they recommended. Fieldfisher had told him that not dismissing the four non-Executives would create a serious risk to the organisation and he took their advice as experts.

I regard this as a fair and well-made point. The way Fieldfisher phrased the Advice of 18th September 2019 largely removed the then-President's ability to make a reasoned choice.

CHAPTER 7

THE LEGAL FRAMEWORK

I have used 'the legal framework' in this context as a shorthand for the following:

(i) RICS' constitution and internal governance instruments; and

(ii) widely accepted concepts of good governance and the duties of non-Executives.

The principal issues which arise are:

[1] Whether the Management Board should have seen the BDO internal audit reports

[2] Whether the President had power to dismiss the non-Executive Board members

[3] Whether information was improperly withheld from Governing Council.

The first two of these are, in effect, the matters upon which General Counsel and Fieldfisher advised in the latter part of 2019.

All three require examination of the governance structure.

RICS' constitution and governance framework

The 'law' as it applies to RICS' governance is to be found in the following documents:

1. The Royal Charter
2. The Bye-Laws
3. The Regulations
4. The Terms of Reference of the various Boards[210]
5. The Standing Orders
6. The Governing Council Handbook
7. The Board Handbook.
8. The Code of Conduct
9. Various policies – in particular the *Member / Staff Partnership Policy*
10. The Delegated Authority Matrix[211].

There may be other sources of governance but these are the principal ones[212].

RICS is a body incorporated by Royal Charter in 1881. The original Charter was amended by a Supplemental Charter, which was itself amended a number of times until in 1973 a consolidating Supplemental Charter was granted. The version in force at the time of the matters with which this Review is concerned was that dated January 2009[213].

The Charter provides for:

i. The making of amendments to the Charter itself by Special Resolution. Any amendments must be approved by the Privy Council;

[210] 'Board' in this context means variously the Boards, Committees and sub-committees which exist below Governing Council (see Chapter 4 "Background")
[211] Sometimes referred to as the 'RACI' matrix, 'RACI being an acronym for "*Responsible – Accountable – Consulted – Informed*"
[212] Self-evidently there are rules about the professional conduct of members but these are not relevant to this Review and I have omitted them in their entirety so as not to complicate matters.
[213] It was amended in February 2020, but the provisions with which this Review is concerned were unaltered

ii. The making of further Bye-Laws, or amendments to existing Bye-Laws, by Special Resolution, in any manner that is not inconsistent with the express provisions of the Charter. These too must be approved by the Privy Council;

iii. The making of Regulations by the Governing Council, provided they are not inconsistent with the Charter and Bye-Laws. For these, Privy Council approval is not required.

The various constitutional instruments of RICS make it plain that there is a hierarchy of legislation. At the apex sit the Charter itself and the Bye-laws[214], which cannot be amended save with the consent of the Privy Council. Sitting underneath these are the Regulations, Terms of Reference, Standing Orders, Handbooks, Policies and Codes which can be drafted and amended by RICS itself[215], *provided that* they are not inconsistent with the Charter and Bye-Laws[216].

There is an analogy with the primacy of Parliament in the Law of England and Wales, where Statutes (primary legislation) have to be approved by Parliament following the full legislative procedure and Statutory Instruments (secondary legislation) by way of affirmative or negative resolution of both Houses. Secondary legislation is subordinate to, and must not be inconsistent with, primary legislation[217].

Therefore any consideration of the governance requirements of RICS must always start with the Charter and Bye-Laws. If any other rule is inconsistent with these, then the Charter and Bye-Laws prevail. It follows, too, that if there is ambiguity, this is to be resolved by reference to the principles articulated in the Charter and Bye-Laws.

In addition to the matters set out above, this is made explicit in part 3 of the Board Handbook and part 1 of the Governing Council Handbook.

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[214] The version of the Bye-Laws in force at the relevant time was also dated January 2009

[215] *B7.1.4 The membership, functions, terms of reference, and procedures of any boards, committees, groups or panels shall be laid down by Regulations or in Standing Orders.*

[216] *Royal Charter,* paragraph 18

[217] This is a settled area of law. For example, the courts will consider Statutory Instruments but not Statutes by way of judicial review.

[1] WHETHER THE MANAGEMENT BOARD SHOULD HAVE SEEN THE BDO INTERNAL AUDIT REPORTS

The first and fundamental question is whether Fieldfisher and General Counsel's conclusion[218] was correct that proper governance procedures had been followed in relation to the BDO reports. There are two aspects to this:

a. Whether what happened was consistent with the formal governance structure of RICS (as set out in the various instruments), and in any event
b. Whether irrespective of the structure, it was consistent with generally accepted principles of good governance.

The formal governance structure

The RICS governance structure is less clear than the standard commercial corporate model, which usually involves a single "Top Co" Board on which sit the most senior Executive directors [EDs] alongside non-Executive directors [NEDs]. Typically other senior directors would attend Board meetings on material agenda items, but without voting powers. Under that model the Audit Committee would usually be a sub-committee of the main Board. Thus the Audit Committee, as a sub-committee of the main Board, with its authority being delegated from the main Board, must answer to the Board which expects to see documentation in its possession.

[218] In the internal governance review

In that typical Board structure, the Agenda for Board meetings would include the full Minutes of recent Audit Committee meetings, and the Board would routinely be able to have sight of documents discussed in the Audit Committee.

In examining the RICS position, it is a key question whether the fact that Audit Committee reported directly to Governing Council means that the Management Board should not have been shown, and was not entitled to see, the internal audit reports. These are two separate issues, but they are closely related in the context of this Independent Review.

I have concluded that the formal governance structure required the Management Board to be given access to the BDO reports and indeed for them to be drawn to its attention. I come to this conclusion for the following reasons.

[A] Bye-Law B9.1.3.

This provides that :

> *"B9.1.3 Books of Account and* ***any document relating to the financial affairs of RICS*** *shall be open to the inspection of:*
>
> *(a) the Audit Committee;*
> *(b) the Professional Auditor;*
> ***(c) the Management Board;***
> *(d) Governing Council;*
> *(e) the Chief Executive; and*
> *(f) any Member or other person authorised by Governing Council or by Members at a General Meeting* (emphasis added)

The BDO internal audit report in respect of Treasury Management is a document "*relating to the financial affairs of RICS*".

It follows that, at the very least, once Management Board had asked to see these reports, there was an obligation to provide them and failure to do so was a breach of RICS' governance rules.

The Chair of the Management Board has sought to try to persuade me[219] that the Management Board never asked to see the reports. I regard this as an overly pedantic and technical approach to this issue, for the following reasons.

As he himself accepts[220], as Chair he had asked on numerous occasions to see a copy of the original 'no assurance' report but it was not provided to him. The first of these requests was made in February 2019. As Chair, he should have realised that the Management Board was empowered by the constitution to see any financial document it pleased. Given that nowhere in the RICS constitution does it say that the only circumstances in which Management Board is entitled to see these documents is following a fully-binding resolution of the Committee, I have concluded that a request by the Chair was sufficient. If he did not believe that it was sufficient, then as Chair he should have brought the matter to the Board and asked it to confirm that it wanted to see it. It is my view that the reason that this did not happen was that he was unaware of (or had forgotten about) B9.1.3, which is a surprising omission, given that by this stage he had been Chair of the Management Board for several years.

In any event, the matter of obtaining a copy of the report was raised by at least one of the members of the Management Board at the March 2019 meeting and I am satisfied that that the entire Board was concerned about this issue. They should have been told that by virtue of B9.1.3, they were entitled to see the BDO report. I am satisfied from all the evidence I have seen and heard[221] that the Board was persuaded that this was the sole preserve of the Audit Committee and, as result, that they had no alternative but to put the matter off to the June 2019 Management Board meeting. The advice given was wrong and the Board should have been encouraged to decide whether it wanted to see the report. I am satisfied that had the correct advice been given, the Board would have issued a formal request to be provided with a copy. Failure then to do so would have been a clear breach of B9.1.3.

What is without doubt is that Management Board had asked to see the BDO June 2019 re-audit report (the first re-audit). This is recorded in the March 2019 Minutes. As I have set out in Chapter 6, BDO did produce a re-audit report in June 2019. The COO asked that that be summarised as a note. Management

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[219] By means of the numerous, and lengthy, letters of representation sent by his solicitors, to which I have given careful consideration

[220] Indeed, he has advanced his many requests to see the BDO audits as a reason why I should not be critical of him

[221] Which is not confined to that which is recorded in the Minutes. I have come to the conclusion that RICS Board and Committee Minutes can on occasion provide unreliable and incomplete evidence as to what actually happened in meetings.

Board never saw either the report or the note despite clear and repeated requests. This is a breach of B9.1.3.

Given that Bye-Law B9.1.3 provides a complete answer to the question, I am surprised that no one seems to have raised it (other than Amarjit Atkar, who raised it in September 2019 when giving his view on the conclusions of the internal governance review). I have concluded that no one had thought to consider the Bye-Laws, rather they had concentrated on the Terms of Reference of the various bodies.

For the reasons I have already given, it is beyond doubt that the Terms of Reference are subordinate to the Bye-Laws. It follows that the Bye-Laws override any other provision that was relied upon by General Counsel and Fieldfisher. I have seen no evidence that either General Counsel or Fieldfisher ever looked further than the Terms of Reference when they were conducting their internal governance review. They should have done so, as the Regulations make explicit. For example, by virtue of R7.1.4:

> "*Every person involved with a board, committee or group carrying out duties or functions under the Charter, Bye-laws or Regulations or otherwise acting on behalf of RICS, shall:*
>
> *(a) act in accordance with the Charter, Bye-laws, Regulations, strategy and policies of RICS* ***and*** *any relevant terms of reference or Standing Orders published from time to time"* (emphasis added).

I am satisfied that they never thought to look at the other sources of RICS' legislation. Had they done so, and had they felt that for some reason they were free to disapply the Bye-Laws (though I cannot see how that would have been a legitimate conclusion to have reached), it would have been inevitable that they would have said so, in order to give their reasons. The fact that they did not satisfies me that it was something they collectively overlooked.

I would have liked to have asked Matthew Lohn about this. I explicitly drew this conclusion to his attention as part of the Representations Process but his lawyers chose not to address it save than to say, in effect, that I am entitled to my opinion.

I am therefore satisfied that the conclusion reached in the internal governance review, namely that there was no breach of governance, was wrong. The review did not consider the relevant provisions and did not apply the correct test; thus its conclusions were fundamentally flawed.

I have concluded that had Fieldfisher considered B9.1.3 this might have led to an entirely different outcome and in all probability the four non-Executives would not have been dismissed. General Counsel

must bear part of the responsibility for this, although doubtless she would say that she relied on Fieldfisher's advice.

This question of the failure to consider the Bye-Laws may be something which RICS wishes to pursue with Fieldfisher.

[B] The function, status and purpose of the Management Board.

The duties and obligations of Governing Council are set out in the Bye-Laws:

> *B6.1.2 Duties and Powers*
> *(a) Governing Council shall direct the affairs of RICS.*
> *(b) The primary duties and functions of Governing Council shall be to:*
> *(i) determine the strategy and policy of RICS;*
> *(ii) oversee, monitor and assess the performance of Governance Bodies;*
> *(iii) ensure communication of direction and performance to Members and stakeholders;*
> *(iv) make appointments, and to determine duties, terms of reference and other responsibilities in accordance with Regulations;*
> *(v) oversee the appointment of the Regulatoy Board, and the development and implementation of policy, rules and procedures governing the regulation of Members, Attached Classes, Firms and Regulated Non-Members; and*
> *(vi) oversee and be the decision-maker of the last resort in respect of administrative activities of RICS.*
> *B6.1.3 Delegation*
> *Governing Council may delegate any of its functions (including the power to sub-delegate) except those set out in B6.1.2(b) to subordinate bodies or individuals on such terms as it considers appropriate.*

For reasons that will become apparent, B6.1.4(d) is a significant provision. It states that:

> *"Governing Council shall lay down Standing Orders to govern the conduct of its business including the procedure at any meeting".*

The Management Board is a body the existence of which is guaranteed[222] - and the fundamental remit of which is defined by - the Bye-Laws.

> ***B7.3 Management Board***
> *B7.3.1 The Management Board shall be responsible for implementing the strategy of RICS as determined by Governing Council.*
> *B7.3.2 The Management Board shall be subordinate and accountable to Governing Council.*
> *B7.3.3 The Management Board may establish, dissolve and amalgamate such other boards, committees, groups or panels as it considers necessary or desirable to implement the strategy of RICS, and any such boards, committees, groups or panels will be subordinate and accountable to the Management Board.*
> *B7.3.4 The Management Board may change:*
> *(a) the name or title; and*
> *(b) the terms of reference, of any board, committee, group or panel which it established.*

The Management Board Terms of Reference [223] state its purpose as being

> *"…to inform and oversee RICS affairs under delegated authority from Governing Council".*

Its duties are stated to be as follows:

> *"The main duties of the Management Board, as set out in the delegated authority matrix approved by Governing Council, are as follows:*
>
> - *Advising Governing Council on the business plan objectives and direction needed to meet the approved strategy;*
> - *Approving a business plan based on the strategic objectives set by Governing Council;*
> - ***Seeking assurance from the Executive for both operational performance and the successful implementation of strategy;***
> - ***Ensuring key stakeholders are aware of performance;***
> - *Strategic Estate Management;*
> - *Preparing and Signing Annual Accounts;*
> - *Changes to Charter, Bye-Laws and Regulations as appropriate;*

[222] Bye-Law B7.1.1
[223] Effective from 6th October 2016

- *Creation, dissolution and changes to its sub-boards as appropriate;*
- ***Monitoring performance against the agreed financial strategy**;*
- *Assessing and **monitoring strategic risks**;*
- *Ensuring competency requirements for each specialism are correctly defined and continue to meet market demand;*
- *Advising Governing Council on such other matters as Council requires;*
- *Undertaking such other functions as provided for in the Charter, Bye-Laws and Regulations or delegated by Governing Council, including in relation to PGs, WRBs and others"* (emphasis added).

As far as reporting is concerned:

> *"The Board is accountable to Governing Council.*
>
> *The Chair of Management Board and Executive members as appropriate will report to Governing Council on the activities of the Management Board and **provide assurance on the performance of RICS against the business plan** in line with the strategic direction set by Governing Council at least once a year at the Governing Council Oversight Meeting through a written paper and / or oral presentation"* (emphasis added).

The Audit Committee is also established by the Bye-laws:

> ***B7.4 Audit Committee***
>
> *B7.4.1 The Audit Committee shall consider matters relating to audit arrangements and systems and internal control.*
>
> *B7.4.2 The Audit Committee shall operate independently of Governing Council and the Management Board.*
>
> *B7.4.3 The Audit Committee shall report at least annually to:*
>
> *(a) Governing Council; and*
>
> *(b) members at a General Meeting.*
>
> *…*
>
> *B7.4.5 No member of the Audit Committee may be a member of:*
>
> *(a) Governing Council; or*
>
> *(b) the Management Board.*

Its Terms of Reference[224] state its purpose as follows:

> *1.1. The main purpose of the Committee is to monitor the integrity and effectiveness of the financial reporting, internal control and risk management systems, to review fraud and Raising Concerns policies and to review the effectiveness of and recommend the appointment of the external auditor.*
> *1.2. For the avoidance of doubt, the Committee's remit extends across the whole organisation, including the regulatory function.*
> *1.3. The Committee operates independently of Governing Council, the Management Board and the Regulatory Board.*

Its duties include[225]:

> *Financial reporting*
> - *The Committee shall monitor the integrity of the financial statements of RICS, including its annual reports, interim management statements, and any other formal announcement relating to its financial performance, reviewing and reporting to Governing Council / Management Board on significant financial reporting issues and judgements which they contain having regard to matters communicated to it by the auditor.*

> …
> - *Where the Committee is not satisfied with any aspect of the proposed financial reporting, it shall report its views to Management Board.*

> *Narrative reporting*
> *Where requested by Management Board, the Committee should review the content of the annual report and accounts and advise Management Board on whether, taken as a whole, it is fair, balanced and understandable and provides the information necessary to assess RICS performance, business model and strategy.*

> ***Internal controls and risk management systems***
> ***The Committee shall:***
> - ***keep under review the adequacy and effectiveness of the internal financial controls and internal control and risk management systems; and***
> - ***review and approve the statements to be included in the annual report concerning internal controls and risk management.***

> *Internal audit*
> *The Committee shall:*
> - *approve the appointment or termination of appointment of the head of internal audit. (The Chief Financial Officer should consult the Chair over the compensation awarded.);*

[224] Effective from 2016, it appears

[225] It also has duties in relation to external audit but these are not directly relevant to this issue

- *review and approve the charter of the internal audit function and ensure the function has the necessary resources and access to information to enable it to fulfil its mandate, and is equipped to perform in accordance with appropriate professional standards for internal auditors;*
- *ensure* ***the internal auditor has direct access to the Chair of Management Board, if required,*** *and to the Committee Chair, and is accountable to the Committee;*
- *review and assess the annual internal audit work plan;*
- *receive a report on the results of the internal auditor's work on a periodic basis;*
- ***review and monitor management's responsiveness to the internal auditor's findings and recommendations****;*
- *meet with the head of internal audit at least once a year without the presence of management; and*
- *monitor and review the effectiveness of the organisation's internal audit function, in the context of the organisation's overall risk management system (*emphasis added).

As far as reporting is concerned:

> *12.1. The Chair will report to Governing Council and Management Board as appropriate on the activities of the Committee. The Chair shall also liaise occasionally with the Chair of the Regulatory Board to ensure assurance needs in that area are being met.*
> *12.2. The Chair will attend the Annual General Meeting and will answer questions about the Audit Committee's activities and responsibilities.*
> *12.3. The Chair shall report formally and annually to Management Board and Governing Council on its proceedings on all matters within its duties and responsibilities and on how it has discharged its responsibilities.* ***Minutes of its meetings or a brief summary of key points should be reported to Management Board after each meeting.***
> *12.4. This report shall include:*
>
> - *the significant issues that it considered in relation to the financial statements and how these were addressed;*
> - *its assessment of the effectiveness of the external audit process and its recommendation on the appointment or reappointment of the external auditor; and*
> - *any other issues on which Management Board / Governing Council has requested the Committee's opinion.*
>
> *12.5. The Committee shall make whatever recommendations to Management Board / Global Regulatory Board it deems appropriate on any area within its remit where action or improvement is needed.* (Emphasis added)

Under "Other Matters" it provides that:

> *14.1. The Committee shall:*
> …
>
> - *be responsible for co-ordination of the internal and external auditors;*
> - *oversee any investigation of activities which are within its terms of reference;*
> - ***work and liaise as necessary with other RICS governance bodies***
>
> (Emphasis added).

I am satisfied that all the RICS governance provisions make it abundantly clear that the Management Board is the primary operational Board of RICS, with extensive powers and responsibilities. Governing Council and Management Board *together* perform the functions, and have the powers most closely analogous to, those of a conventional, unitary PLC Board. As the CEO himself put it: RICS has two Boards. Given that the superior body, Governing Council, which is the 'controlling mind' of RICS, does not have the ability to make operational decisions or exercise scrutiny of management, those roles have been explicitly delegated to the Management Board.

Fieldfisher concluded that the Management Board was not the equivalent of the Board of a PLC. That may be technically correct but does not provide the whole answer. The Charter and Bye-Laws make it clear that the Management Board is the closest equivalent to a PLC Board in that it is responsible for oversight of the operations of the organisation. That this is correct can be tested by asking the following question: if it is not Governing Council which makes and oversees operational decisions, then who is it? There are only two choices: it is either the Management Board or the Chief Executive and his team. I am satisfied that it was never the intention that RICS should be run on a day-to-day level solely by the Executive. The constitutional documents make that plain. Putting it in more everyday language, it is clear that the Management Board was intended to be the eyes and ears of the organisation.

It follows from this that although in the RICS structure the Audit Committee was independent of the Management Board, it was not of equal status to it. The Audit Committee has a specific remit and function; that of the Management Board is much wider. Whilst the areas of concern of the Management Board may encompass those being considered by the Audit Committee, the reverse is not the case.

This is further illustrated by the 'RACI' Delegated Authority Matrix which shows that the Management Board is accountable for:

(i) the business plan objectives and direction;
(ii) directing the operations of RICS and ensuring communication of performance;
(iii) implementing strategy;
(iv) preparing and delivering the business plan;
(v) preparing the annual accounts;
(vi) making changes to the Charter, Bye-Laws and Regulations.

By contrast, under the same matrix, Audit Committee is accountable only for auditing the Annual accounts.

As the Terms of Reference for the Management Board make clear, in performing its function and meeting its responsibilities it must be closely involved in monitoring the organisation's financial health and performance. By way of example:

- Under the Bye-Laws[226] it is responsible for preparing, approving and (through its Chair) signing the Annual Accounts.
- Pursuant to Regulation R7.3.7, the Management Board shall determine the level of resources and priorities required for the funding of RICS' activities.
- Under Regulation R9.1, the Management Board and the CEO determine the extent and circumstances under which anyone other than those authorised under the Bye-Laws[227] may inspect any of the Books of Account.
- Its duties include approving a business plan, seeking assurance from the Executive for operational performance, monitoring performance against the agreed financial strategy, and assessing and monitoring strategic risks.

Pursuant to its Terms of Reference, the Management Board must include amongst its members the CEO and the lead Finance Executive**.** It follows that the COO was a member of the Board not because of her role as COO, but because her role included, at that time, being the most senior Executive in charge of finance.[228]

The Board's function and its responsibility for monitoring RICS' financial health and systems is manifest from the fact that it has complete control of and oversight over the existence and remit of the Finance Committee, one of its sub-committees, which is accountable to it. According to the Finance Committee's Terms of Reference, its purpose includes:

- Assessing the financial performance of RICS

[226] Bye-Law B9.2.2
[227] B9.1.3
[228] This also serves to emphasise the COO's personal responsibility for the proper functioning of the Institution's finance function.

- Monitoring the impact on the Institution's liquidity of significant income and expenditure items
- Conducting regular financial scenario planning including stress testing.

Its main duties are to:

- Monitor operational financial performance against the business plan
- oversee currency exposure
- satisfy itself that appropriate arrangements exist to identify significant financial risks
- investigate any activity within its role. It is authorised to seek any financial information it requires from any member of staff, and all members of staff are directed to co-operate with any request made by the Committee.

It is therefore clear that the Management Board is obliged to be closely involved with the Institution's finances at both a strategic and operational level. Whilst the Audit Committee is required to operate independently of the Management Board (as it is of Governing Council), and reports directly to the Governing Council, the Management Board is a superior body to the Audit Committee with greater powers and responsibilities. The Audit Committee deals with, in effect, routine audit matters. That does not mean that the Management Board should be kept in ignorance of what it is doing, particularly when something out of the ordinary occurs.

Whatever view is taken of the level of threat represented by BDO's findings, no one seriously disputes that they represented a serious matter for the organisation. The fact that the Audit Committee might have the task of considering the report does not mean that Management Board should have been excluded from any consideration of what was happening. Not only is this clear from the governance structure of RICS, it is also a matter of common sense. One way of testing this would be to ask what would have happened if in July 2019 there had been a substantial fraud or case of money laundering involving one of the overseas bank accounts that RICS knew nothing about? Governing Council (and indeed the membership) would have asked the Board whether they had known of the risk and if so, for how long and what they had done about it. Had the Board replied "we were told we had to leave it to the Audit Committee", this would have been greeted with incredulity and derision. It is plainly not good governance and it is not what the

constitution of RICS provides. The Audit Committee is required by its Terms of Reference to work and liaise with other RICS governance bodies.

That the position adopted by the Audit Committee Chair and the COO was untenable is evident from the fact that, by 10th June 2019, the 'no assurance' report had been disclosed to the Finance Committee, which is subordinate to the Management Board. The COO recognised the issue at least in part in her email to the Audit Committee Chair on 14th June 2019 when she identified the *"potentially difficult situation"* where, *"as should be the case"*, the Finance Committee was given the re-audit report, when the Management Board had not seen it.

To use a nautical metaphor, the Management Board sails the ship on the course set by the Governing Council. The Audit Committee performs the role of ensuring that the ship's supplies are monitored and controlled. Nobody would suggest that those in charge of sailing the ship should not be alerted immediately if a potentially serious problem is identified, such as nobody knowing how much food is left onboard, let alone whether that food is being kept safe.

[C] The Audit Committee's Terms of Reference 'anomaly'

In light of the above, it is not surprising that the Audit Committee's Terms of Reference include provisions that:

- The Chair will report to Governing Council and Management Board as appropriate on the activities of the Committee;[229]
- The Chair shall report formally and annually to Management Board and Governing Council on its proceedings on all matters within its duties and responsibilities and on how it has discharged its responsibilities,[230] and

[229] Audit Committee Terms of Reference, section 12.1
[230] Audit Committee Terms of Reference, section 12.3

- Minutes of the Audit Committee's meeting or a summary of key points should be reported to Management Board after each meeting.[231]

As I observed in Chapter 6, the genesis of this provision is of particular note. Part 12 of the Audit Committee Terms of Reference was approved by the Audit Committee on 1st November 2016 and by Governing Council on 23rd November 2016. This followed a meeting of the Management Board on 15th March 2016 which was attended by, amongst others, the Chair of the Audit Committee and the COO[232].

At that meeting, the Audit Committee Chair:

> *"… noted under the reporting section [of the Terms of Reference], he doesn't report to Management Board after every meeting, only annually. Committee agreed that their Minutes be circulated to Management Board. [The then-Director of Risk] would amend the TOR to reflect these comments and then the TOR would be put to Governing Council (via the online community) for approval. [The Director of Risk] would also draft a covering note for this purpose."*

This was followed by a posting by the Audit Committee Chair on the Governing Council Virtual Community on 9th May 2016 addressed to the Governing Council, inviting the Council to vote on the revised Audit Committee Terms of Reference. He highlighted that one of the main changes was *"greater clarity and formality on the level of reporting from the Committee to Management Board and Governing Council."*

According to the formal governance structure, therefore, the Audit Committee should provide to the Management Board the Minutes from each of its meetings[233]. Apparently this had never happened.

This provision of the Audit Committee Terms of Reference, and its origin, was known to Fieldfisher when it conducted the governance review on behalf of General Counsel. The firm prepared a document describing the above events, with its own comments. It is this that Matthew Lohn described as a 'gremlin' and General Counsel called the 'anomaly'.

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[231] Ditto
[232] Both of whom were in the same roles then as in the period with which this Independent Review is concerned.
[233] Or at least a report of its key points

I do not regard the provision as an anomaly. It is entirely consistent with the remainder of the governance structure, as the Audit Committee Chair himself plainly felt when he promoted it in 2016. That he dismissed it in late 2019 as being something that the Audit Committee "did not do", does not detract from this. It simply means that under his leadership, the Audit Committee had for some time been failing to act in accordance with the formal governance structure.

Principles of good corporate governance

I asked a number of witnesses to describe what, in their view, good governance looks like. The responses were varied but principally fell into two categories: those who emphasised the importance of adherence to a rigid governance structure, and those who recognised the importance of the governance structure, but emphasised the overriding and complementary qualities of openness and transparency.

I do not attempt to provide a paradigm definition of good corporate governance, but it seems to me to be beyond argument that whilst it is essential that an organisation has a formal structure that allows its stakeholders to understand the fundamental reporting lines and communication channels that govern the way that it functions, such a structure cannot provide the answer to every situation that may arise. Good corporate governance requires more than this. It requires all stakeholders - and particularly those in positions of authority towards the top of the organisation - to exercise judgement and common sense, conscious at all times of the underlying guiding principles of openness and transparency.

Those principles do not just "fill in the gaps" where the formal structure is lacking; they may, and indeed will, inevitably override that structure at times. The constitutional provisions provide the minimum that must happen in the governance of the entity. However, it is permissible for there to be greater transparency than is required by those provisions. It is common practice, and common sense, that information that may affect the way in which one part of a corporate structure carries out its responsibilities is disclosed between parts. There is, to state the obvious, an expectation that an audit report of serious deficiencies in the financial controls of the entity should be shared with the main Board and between all committees with financial responsibilities.

When Simon Hardwick said in the Management Board meeting of December 2018 that in future there should be "no surprises", he was articulating a significant aspect of this principle. In a well-governed organisation, whatever its formal structure, those involved will welcome the support of others in addressing and monitoring performance. A sound basis of transparency engenders trust, which in turn permits all to do their jobs with the degree of autonomy that their role provides. The level of scrutiny adjusts accordingly.

This is consistent with the UK Corporate Governance Code, which, whilst referring to the need for formal policies and procedures, also notes that they should be transparent.

In the matters which I have considered for this Independent Review, transparency was lacking. This led to a lack of trust, which in turn led inevitably to an increased desire to scrutinise. The four non-Executives cannot be criticised for this. Scrutiny and challenge is a fundamental part of their role. When faced with resistance to scrutiny, they would be expected to push harder. And that is what they did.

It follows, therefore, that whatever view any particular individual took of the formal governance structure and how it should be interpreted, it should have been obvious to all involved that, at the very least, the existence and conclusions of the BDO 'no assurance' report should have been brought to the attention of the Management Board at an early stage. If members of the Board then requested sight of the report itself, in order to satisfy themselves that they were fulfilling their obligations, they should have been provided with it. Not to do so made it look like a cover-up, even if it was not so intended.

Applied to the circumstances which existed, transparency, judgment and common sense lead clearly to this conclusion. No hindsight is required.

Put another way, even if the view were taken that the formal governance structure is not as clear cut as I suggest, there can still be no question but that disclosure should have taken place.

As to timing, it was suggested by the COO that it would have been wrong to reveal the report before it had been signed off by those responsible[234]: it was claimed that that would have been unfair to them, given that management input may well lead to the conclusions being amended. I do not agree. Putting to one

[234] The staff within the Finance Department

side the fact that she had received an email from the Director of Risk in early December indicating that the overall message was unlikely to change, it would be expected that any report to the Management Board would provide context, and allow judgement to be exercised accordingly.

Concluding observations

Both analysis of the formal governance structure and the application of the principles of good corporate governance establish that the report should have been disclosed to the Management Board.

It follows that General Counsel's governance review came to the wrong conclusion, failing even to acknowledge the existence of competing arguments or that there might be any ambiguity in the issue. Given her awareness of the 'anomaly' (as she described it) in the Audit Committee Terms of Reference, General Counsel's conclusion might be thought to be surprising. It is perhaps less surprising when the motive behind her review is considered.

In her evidence to me, General Counsel told me that her review did not seek to close down the question of whether Management Board should have been shown the report; rather, the intention was to give reassurance that the Board had discharged its general responsibilities for monitoring and oversight. I do not accept her evidence about this; in my view this is a piece of *ex post facto* rationalisation. The review was designed to provide 'reassurance' only in the sense that this would close the matter down once and for all and prevent further discussion.

[2] DID THE PRESIDENT HAVE THE POWER TO DISMISS THE NON-EXECUTIVE BOARD MEMBERS?

a) Who was the right person or body to make the decision to dismiss the four non-Executive members?

The following provisions of the Regulations are relevant to this question.

> *"R7.1.1 Power*
> *A board, committee or group established pursuant to the Bye-Laws and Regulations shall act in accordance with:*
> *(a) the Charter, Bye-Laws, Regulations and Rules of RICS; and*
> *(b) any terms of reference or Standing Orders applicable to it."*

Regulation 7.1.2 provides that the composition and membership of any Board, committee or group shall be approved by the Governance body establishing it. Where any Board, committee or group needs to regulate its own composition, then, unless otherwise specified in Regulations, the following shall apply:

> *"(b) A power to appoint … a person to a position (other than a staff position) includes the power to terminate that appointment at any time."*

The composition of the Management Board is to be found in Regulation R7.3, which provides that:

> *"(a) The composition of the Management Board shall be as follows:*
>
> *(i) ten non-executives, including Members and Lay members, provided that the majority shall be Members;*
>
> *(ii) the Chief Executive, the Chief Operating Officer and the Finance Director who shall act as executives.*
>
> *(b) Governing Council shall appoint:*
>
> *(i) a Chairman from R7.3.1(a)(i) on recommendation from the Nominations Committee; and*
>
> *(ii) the remaining members of the Management Board under R7.3.1(a)(i) and select a Vice-Chairman from those members, in consultation with the Chairman and on recommendation from the Nominations Committee, and to assist with any such appointment, the Nominations Committee may appoint a panel which includes at least one representative from each of the Nominations Committee and the Independent Appointments Selection Board to conduct interviews of candidates and to report to the Nominations Committee in accordance with any criteria or procedure set by Governing Council."*

By virtue of Regulation R7.1.2 and the Management Board Terms of Reference:

> "*Non-executive members of the Board will be appointed in accordance with the Global Appointments Model*"

Under the Global Appointments Model[235], members of the Management Board can only be appointed by a three-person appointments panel consisting of the Chair, the Executive responsible for supporting the Board or his nominee and an Accredited Appointment Expert.

Again by virtue of the Terms of Reference:

> *"Non-executive members of the Board may be removed in accordance with processes set out in the RICS Charter, Bye-Laws, Regulations, and relevant Terms of Reference, Standing Orders, policies, procedures, guidance notes, codes, the Board Handbook etc"*

The Global Appointments Model states:

> "***Removals Process***
>
> "*Key Principles Applicable to all Removals*
>
> *The removals process applied should be governed by a commitment to operate in a fair, transparent and lawful manner".*

From the above, it appears that Governing Council itself has the power to dismiss a member of the Management Board, but the Chair of the Management Board does not.

Further guidance is provided by paragraph 4.17 of the Board Handbook, which provides that where a Board member behaves in a manner which does not appear to meet the required standards, the Chair of the Board should attempt to resolve the problem in the first instance with the member. If this fails to resolve the problem, the Chair may, at their discretion, refer the issue for consideration under the RICS *Members/Staff Partnership Policy*.

Whilst a reference by the Board Chair is discretionary, the use of the policy is mandatory when a complaint is made against a non-Executive or a staff member by another such individual.

The policy provides for an independent panel to be appointed to hear the complaint which has the power to remove the Board Member. It also provides a mechanism for an appeal.

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[235]This version updated by Governing Council 28th June 2019.

There is no mention within the Charter, Bye-Laws, Regulations or Standing Orders of the President having any role in appointing or dismissing, or power to appoint or dismiss, members of Management Board or any other Board or committee.

Therefore I have concluded that there are only two ways in which a member of the Management Board can be removed, either:

(i) By an independent panel following a successful complaint made under the *Members/Staff Partnership Policy*, or
(ii) In theory, by Governing Council.

I have said "in theory" because given that a procedure exists under the Policy, it is difficult to envision the circumstances in which Governing Council would move to removal of a Management Board member without some form of procedure.

If the President had any power to dismiss the four non-Executives, it can only have been through his role as Chair of Governing Council. The only provision I can find which would entitle him personally to exercise any power of Governing Council is Standing Order 3, which is plainly an 'emergency' provision. It provides that:

(i) the Chair of any Governance body may take decisions that would normally be taken by the body,
(ii) in exceptional circumstances
(iii) where there is a matter of such urgency that it is impractical to consult members by telephone or in correspondence.
(iv) Every practical effort should be made to consult the members.
(v) It is not expected that this authority will be used frequently, and
(vi) the number of decisions made in this manner should be reviewed annually by the relevant body to consider whether the frequency of meeting is still appropriate and to be satisfied that the mechanism is not being used to circumvent proper process.

There can be no question of any emergency having arisen in relation to the four non-Executives.

The 18th November 2019 Advice from Fieldfisher was to the effect that the decision to dismiss members of Management Board would ordinarily be that of the Management Board Chair. However, because it was said that the four non-Executives' criticism had extended to the Chair, the matter should be dealt

with by the President. No explanation was given as to the suggested basis on which he had power to do this, pursuant to SO3 or by any other route. I have concluded that this Advice was wrong in every respect. Having considered the evidence I have set out in Chapter 6, I am satisfied that the true reason it was given was that the Chair of the Management Board could not be relied on to terminate the appointments of the four non-Executives.

In his evidence to me, the President said that the matter was urgent as the organisation was struggling to move forward: the Management Board had been unable to function properly and had other matters to address. As a question of fact I am not satisfied that this assertion has any real basis: in August 2019 there had been a successful meeting of the Management Board Risk Sub-group and the 25th September Board meeting plainly covered a large number of other issues[236]. I have not heard any evidence as to why the Board was not able to function save that the CEO and COO were offended and did not want the non-Executives to remain on it. For the reasons I have already set out, their feelings were unjustified as it was they who had made faulty decisions, although General Counsel and Fieldfisher had (wrongly) advised them that they had done nothing wrong.

The President denied, when I asked him, that the motivation for acting swiftly in dismissing the four was to ensure that they were out of post before the upcoming Governing Council meeting and so would not be able to "tell all" to Governing Council. I am satisfied that this is a less than candid answer. The notes of the meeting of 14th November 2019 record him as having said: *"we need to take some sort of action. We don't want to leave it until the GovCo meeting….try and do this pre-meeting of GovCO, do not want to leave it to the meeting*". In truth, even without that note it was clear that this is the reason. There was a clear sense of urgency and there is no other explanation for why that should be.

The President told me that he did not involve Governing Council in the decision because of a) the impracticability of the logistics of explaining the situation in this sensitive employment matter to thirty-five members and getting feedback and consensus; b) the reputational/defamation risk for the four non-Executives of the broader discussion of their conduct; and c) because he had been advised that it was within his remit as President to make the decision.

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[236] See the CEO's update dated 27th September 2019

I address the issue of defamation later in this chapter.

Analysis of the constitution shows that the power vests in Governing Council as a whole, save in the circumstances set out in SO3, namely emergency. The four were dismissed on 21st November 2019. The Governing Council meeting was scheduled to take place less than a fortnight later (2nd and 3rd December 2019). There was no Management Board meeting in between those dates. Even had there been, I can see no urgency which amounts to or even approaches the exceptional circumstances required by SO3, such as would give the Chair power to take this decision without consulting Governing Council.

Furthermore, Amarjit Atkar's term of appointment was due to expire on 31st December 2019. There was no exceptional need to bring forward his dismissal, even had dismissal been appropriate.

b) Was the decision to dismiss correct as a matter of law?

The Fieldfisher Advice

I start by considering the basis upon which the President was advised that dismissal of the four non-Executives was the appropriate course to take. This was set out in an email from Richard Kenyon of Fieldfisher to General Counsel on 11th November 2019, and in a written Advice authored by both Matthew Lohn and Richard Kenyon, again addressed to General Counsel, and dated 18th November 2019 ("the Advice")[237]. These two documents are to be found at Appendix E to this report. I summarise their key points as follows.

The 11th November email

Fieldfisher were concerned about the implications cast on the CEO and COO in particular: "*who it seems are being maligned again*". Richard Kenyon said that "*The final sign off at the end of the addendum that "we continue to have confidence in the capabilities of our chair, CEO and COO" is dripping with insincerity given the context*". He said that every employment contract contains within it an implied term of mutual trust and confidence, a significant breach of which by the employer may give rise to a successful claim for constructive dismissal. By continuing to call into question the actions of Executive members that have

[237] Both of which are to be found at Appendix E

been "*fully explored and addressed*", RICS is risking constructive dismissal claims from those employees, the risk of which is potentially heightened by the letter to the President[238] having been sent without their knowledge, with content that "potentially undermines their position" but without them being offered any opportunity to comment or reply. He ended by saying:

> *"I suspect that the longer this goes on without them being notified the more damaging it is likely to be to the issue of their trust and confidence in the organisation. The CEO and COO are likely to find out about this letter sooner or later so probably best to make that sooner."*

The 18th November Advice

In its Executive Summary, Fieldfisher assert:

- The 11th November letter from the non-Executives materially changes the approach that should be taken
- Management Board's response to the issue has been carefully conducted under the guidance of its Chair in accordance with the principles of good board governance, in a proportionate approach which has been scrupulously fair to all parties involved
- The assertions contained in the letter both implicitly and explicitly mean that the issue must transfer to the jurisdiction of the President.
- Its tone and substance make it untenable for the four to continue as members of Management Board and their removal from office is a necessary course of action in order to restore the organisation to a properly functioning body.

Under the heading *Background – the process followed to date,* Fieldfisher say that they have reviewed background facts and the process followed by Management Board. A description is given which includes the following assertions:

- Functional good governance was demonstrated by:
    - The COO offering an apology and the "lessons learned" document

[238] Of 11th November

- The CEO kept Governing Council informed and updated after each Management Board meeting
- The Management Board Chair convened a Special Meeting on 29th August 2019 and commissioned General Counsel's review
- The review found no failure in the operation of the operation of the governance framework
- Recommendations were made that Governing Council be invited to review the respective governance responsibilities of the relevant governance bodies and the Head of Governance should review the Corporate Governance Statement within the Annual Report.
- At the 25th September Management Board meeting, the majority of members expressed support for the approach and actions taken.
- Despite this, the Management Board Chair engaged with the four non-Executives following the meeting.

- It is clear that Management Board and its Chair have given ample scrutiny to the issue and events.
- From a governance perspective, it is elementary that those entrusted with board positions should acknowledge and accept the conclusion of their board, save on extremely rare occasions where it is appropriate to continue to express concern or dissent. In such circumstances it is crucial that any such behaviour should be openly and constructively pursued in the best interests of the organisation. The persistent return of individuals to an issue can migrate from constructive criticism to behaviour which undermines and destabilises the very organisation which they are charged with supporting. They cannot then expect to members of a board.

The focus then turned to the letter of 11th November 2019. The following is asserted:

- The 11th November letter establishes a new dynamic, principally by seeking "*yet again*" to relitigate a matter that has been properly addressed, casting groundless aspersions on the ability of senior management (including the CEO, COO and Management Board Chair) to carry out their functions, and exhibiting conduct that does not reflect the standards expected of them in their positions and therefore undermine the organisation's trust and confidence in their ability to hold office.

- By sending the letter, the four chose to subvert the Management Board Chair, seeking to further their agenda with poorly veiled threats which seek to intimidate the President into adopting their viewpoint.
- This demonstrates a desire to win at all costs.
- They fail to recognise the appropriate and proper oversight conducted by Audit Committee, as accepted by the collective Management Board.
- The letter implies that senior management and the President would seek to execute a cover up by failing to brief Governing Council properly.
- Overall, their conduct suggests an absence of good faith which is offensive to good governance.
- Therefore, Fieldfisher's firm advice is that the organisation should not engage in any substantive way with the matters raised in the letter, which is likely to be interpreted as inviting further dialogue.
- The general tone of the letter is not in accordance with the organisation's values and does not reflect the conduct expected of their roles. It contains a general sense of bullying and threatening language.
- The remit for the matter is now with the President, given that allegations are made against the Management Board Chair; the duration of the dispute, the seriousness of the allegations made, and the effect on the organisation's ability to function means that the President is the only appropriate office-holder who can address the issue.
- Fieldfisher's firm advice is to terminate their appointment to Management Board. To do otherwise would further indulge the four and set a reprehensible precedent for organisational governance. It would also allow the Management Board Chair, CEO and COO to draw serious adverse inferences about RICS' conduct towards them as articulated in the 11th November advice note.

The Advice then moves to *Legal analysis on terminating the appointments of the four members,* stating that in order to consider any rights, obligations and risks associated with terminating the appointments of the four non-Executives. Fieldfisher have considered the terms of the contracts between them and RICS, and any statutory rights that they may have. It was said that:

- Each of the letters provides for termination by either side on one month's written notice, with separate provisions dealing with immediate termination for serious issues. However, given the short notice period it is unnecessary to "seek to describe" their behaviour as warranting summary termination and would seem unnecessarily provocative.
- Nevertheless, Fieldfisher imagines that RICS will want to end their contracts immediately.

> *"Strictly speaking, you have no right to terminate on less than one month's notice. They could "affirm" the contract and insist on continuing as members of the MB for a month. That is possible but unlikely. Were it to happen, we would find practical solutions to avoid them attending MB meetings."*

Fieldfisher's view of the statutory position

- The four had all been required to sign letters described as "Service Agreements". They specifically state that they are contracts for services and not contracts of employment. Rather than being office holders, they are expressly stated to be independent contractors engaged under contracts to provide services to RICS.
- Their status is important. If not employees, they have no employment rights, such as claiming unfair dismissal, in order to challenge the reason for and reasonableness of their termination.
- "Workers" may be employees but include those falling between employees and self-employed independent contractors and have some rights. Fieldfisher are not aware of any non-Executive director having been found to be a "worker" by a court or tribunal but it is a theoretical risk, particularly in respect of Messrs Hardwick, Atkar and McAra (Steve Williams being engaged on different terms).
- If so, the most obvious statutory right afforded to workers that may be relevant here is the right not to suffer detriment for raising a whistleblowing issue, although the appropriate costs and compensation would be low and no determination would be made in less than 12 months.
- Litigation is therefore very unlikely and could still be defended on the basis of the *manner* in which they pursued the issues in question.
- A far greater risk would be to lose the CEO or COO to resignation or, worse, constructive dismissal because they felt that RICS had not supported them appropriately by taking appropriate action against all four. There is a real risk that such claims would be successful.

Fieldfisher concluded that:

- For the good of the organisation, to restore its ability to function properly, and to protect its senior employees from "*an ongoing campaign of vilification in the face of evidence and analysis to the contrary",* it is incumbent on the President to decisively intervene. There is a real risk of institutional crisis owing to the consequences of the four members' behaviour, most demonstrably seen in the issuance of the letter.
- Were the President not to defend his senior staff, they could reasonably conclude that he would be issuing a request for them to depart.
- The President is legally entitled to choose to terminate each of them on the basis that their conduct has resulted in his loss of trust and confidence in them
- In the interests of the organisation's integrity going forward, Fieldfisher's advice is that the President should choose to immediately terminate their appointments.

Draft termination letters were attached.

Analysis of the Fieldfisher Advices

Before considering the advice given by Fieldfisher, it is helpful to consider some of the principles which underpin it, namely constructive dismissal and the duty of care owed by RICS to its employees and others.

I am not an expert in employment law and so I requested that RICS provide funding for me to seek formal advice from a solicitor specialising in this field. RICS acceded to this request. What follows is therefore based upon the advice that I received, for which I am very grateful. Nevertheless, the conclusions that I reach based upon this advice are my own.

Constructive unfair dismissal

This principle is enshrined within sections 95(1)(c) and 98(4)of the *Employment Rights Act* 1996[239]. Under the first provision, an employee is dismissed if he terminates the contract under which he is employed, with or without notice, in circumstances where he is entitled to terminate it without notice by reason of the employer's conduct.

If the employee's resignation can be said to be a dismissal, then the issue of the fairness or otherwise of that dismissal is governed by section 98(4). This provides that the question of the fairness of the dismissal depends on whether in the circumstances the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

In short, the relevant questions to be asked are: has the employee been 'dismissed', and if so, has the employer shown that it acted fairly in 'dismissing' the employee?

The test for constructive unfair dismissal claims is whether the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.[240]

Alongside this principle there has developed caselaw in which the resignation has been in response to a breach of an implied term and, in particular, a breach of the implied term of trust and confidence. Put simply, the employer must not, without reasonable and proper cause, act in a manner calculated or likely to destroy or seriously damage the relationship of trust or confidence. Where breach of an implied term of trust and confidence can be established, that breach goes to the root of the contract and is therefore repudiatory.

Co-existing with the implied term of trust and confidence are other implied terms such as a duty to supply a safe working environment and a duty to provide reasonable support.

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[239] 'ERA'

[240] Per Lord Denning MR in *Western Excavating (ECC) Ltd. v Sharp* [1978] QB 761

There is also the 'last straw' doctrine, under which an employee can resign in response to a series of breaches of contract or a course of conduct by their employer which, taken cumulatively, amount to a breach of the implied term of trust and confidence. The test is whether, viewed objectively, the course of conduct showed that the employer had, over time, demonstrated an intention to no longer be bound by the contract of employment.

As a general principle, where one party commits a repudiatory breach of the contract, the other party can choose either to affirm the contract and insist on its further performance, or accept the repudiation, in which case the contract is at an end. The innocent party must at some stage elect one of these two possible courses.

For those advising on employment law, constructive unfair dismissal is often regarded as a last resort for an employee. It can aid an employee who is seeking to be released from his or her obligation to observe restrictive covenants (generally, these do not survive repudiatory breach by the employer), but in many other cases it will not be a commercially attractive proposition, for the following reasons:

1. Unless the dismissal is linked to a health and safety resignation or discriminatory conduct, compensation will be limited to the employee's loss of earnings during the period between his/her leaving his/her current position and obtaining new employment;
2. The claim will be subject to the unfair dismissal cap (payable in addition to the employee's notice period) up to maximum of £90,000, or 12 months' salary (whichever is the lower);
3. The employee is under a duty to mitigate by making active attempts to find new employment.
4. The employee may end up in costly and uncertain litigation where any compensation s/he recovers is then eroded by his/her own legal costs. The usual order in Employment Tribunal proceedings is that each party pays their own legal costs.

For all these reasons, many employment lawyers advise employees to seek new employment whilst remaining employed, rather than leave and embark on the uncertainties of a constructive unfair dismissal case.

Constructive unfair dismissal claims are not generally regarded as easy to win. They often fall into the "50/50" category, where two competing narratives (that of the employer and that of the employee) come before the Employment Tribunal and the successful party will be the one whose account of the facts the Employment Tribunal favours. As cases, they are often hard to call.

Duty of care

In the evidence I can see that there are many references made during the course of the events in question to the duty of care owed by RICS to its employees. The question arises as to the nature of this duty and whether a similar duty is owed to others, for example the non-Executive Board members.

A duty of care may arise under Health and Safety legislation, or pursuant to the tort of negligence.

These two are closely linked. Under Health and Safety legislation (the bedrock of which is the *Health and Safety at Work Act* 1974), an employer has a duty to protect the health, safety and welfare of their employees and other people who might be affected by their business. Employers must do whatever is reasonably practicable to achieve this. This will encompass providing a safe working environment and protecting the physical and mental wellbeing of employees and workers. Breach of this legislation can lead to criminal prosecutions and claims by employees for stress or constructive unfair dismissal.

In a negligence action against an employer, claims for physical injury are usually easier to win than those for psychiatric injury. Essentially, in either case, an employee must show that:

- There has been a breach of the duty of care;
- The injury suffered is an actionable physical or psychiatric injury;
- It was reasonably foreseeable that the employers' breach of duty would result in the type of injury suffered;
- The breach of the duty caused the injury complained of.

It is generally accepted that claims for psychiatric injury are harder to bring. There is a clear difference between being stressed and having a psychiatric injury. The authorities suggest that unless there is a real risk of breakdown, which the employer ought reasonably to have foreseen and which they could reasonably have averted, there will be no liability. Unless it knows of some particular problem or vulnerability, an employer is usually entitled to assume that the employee is up to the normal pressures of the job.

Claims for psychiatric injury are normally brought as a result of a breakdown caused by overwork or bullying. Whilst bullying cases frequently involve a line manager bullying a subordinate, cases have

succeeded where the bullying is by non-supervisory colleagues acting in a genuinely offensive and unacceptable way. If there has been bullying, the Courts are more ready to accept that it was foreseeable that this would result in psychiatric injury.

The other way in which a 'duty of care' may be relevant is as an express or implied term of a contract.

It is an implied term of every employment contract that an employer will:

- Take reasonable care of the health and safety of employees;
- Provide and monitor, so far as is reasonably practicable, a working environment which is reasonably suitable for the performance by employees of their contractual duties. This duty is broader than the health and safety duty;
- Not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Encompassed within that duty is a duty to support and protect against bullying and abuse.

These implied terms are analogous to the employer's duty of care in tort. As a result of this, stress claims are often based in both tort and contract.

It follows that RICS would therefore owe a duty of care to the CEO and COO in both tort and contract, essentially to provide a safe place of work and take reasonable care of their health (including mental health) and safety.

Similarly, RICS would owe a duty of care to the Chair of the Management Board and the Chair of the Audit Committee certainly in tort and possibly in contract.

The four non -Executive Board members had a contractual 'health and safety' term within their Service Agreements, and there well may be similar clauses in the Agreements appointing the two Chairs. In health and safety litigation the distinction between tort and contract is not generally a crucial consideration.

The duty of care would extend to protecting employees from bullying, harassment or discriminatory behaviour. It is more questionable whether it would extend to a duty to take reasonable care not to upset or offend employees (unless there was discrimination involved).

There is a greater likelihood that the duty of care can more easily be invoked by an employee than by a non-Executive. The employee will have the advantage of the implied terms of their employment contract, and also it is founded on the different nature of an employment relationship as compared with, say, a consultancy relationship.

As stated above, even if they were treated as self-employed, the four non-Executives had express contractual health and safety protection. It follows that at the very least a duty of care in tort was owed to them, and there is a reasonable argument that it is an implied in the contractual relationship.

The Fieldfisher Advice

With these provisions in mind, I turn to the written advice provided by Fieldfisher on 11th and 18th November 2019.

My first observation is that it is clear that both the COO and the CEO had, by their language, raised the prospect of constructive unfair dismissal claims and that they had done so before they received overt encouragement from Matthew Lohn to give the President what was essentially an ultimatum. Further, whilst I consider the interpretation put on the letter of 11th November by Fieldfisher to be questionable, it is possible to see that an argument could have been advanced by the COO or CEO that their integrity continued to be questioned and their positions undermined so as to have become untenable. Considering both these factors, it was right that Fieldfisher should consider claims for constructive unfair dismissal by the COO and CEO as being a possibility.

That said, the advice does not in my view provide a balanced analysis from which Fieldfisher's client might make a decision as to the appropriate course to take. My reasons are these.

a. There is no recognition that the four non-Executives had been told by the Management Board Chair on 25th September 2019 that if they had any concerns about the way he had handled the matter, they should refer those concerns to the President, or that the President had himself

approached them to discuss the matter. Instead, there is a bare assertion that by approaching the President, they had circumvented the proper process.

b. There is no acknowledgement of the fact that members[241] of RICS are expressly permitted to raise matters with Governing Council. Paragraph 4.9 of the Governing Council Handbook provides that an individual RICS member can contact a Governing Council member about an issue and, if a sufficient number of other Governing Council members agree, the matter will be dealt with by Governing Council as a whole.

c. The interpretation placed on the sentiments behind and motivation for the 11th November letter is highly partisan. For example, the phrase "*dripping with insincerity given the context*" is emotive, unjustified and fails to consider the whole content of the letter, even allowing for the "context" as Fieldfisher saw it. There is no recognition that one view of the letter (and the interpretation that I in fact conclude is the correct one, having considered all the evidence), is that it was an attempt by the four to ensure that they had discharged what they recognised as their fiduciary duties.

d. It ignores what the letter says on its face, that is to say that by ensuring that Governing Council is fully informed, the four consider the matter closed, they having discharged their fiduciary duties. It ignores (even arguably ridicules) the positive "noises" being made. Instead, it uses language (such as seeing threats, bullying language, an absence of good faith and conduct not meeting the standards to be expected) which does not reflect that used in the letter itself.

e. There appears to be little analysis as to why "*there is a real risk of successful claims being brought against the organisation*" by the COO or CEO. Neither is there recognition of potential defences that may be available to such claims, such as:

[241] This would apply to Bruce McAra and Steve Williams

i. The possibility that by not having previously resigned, those Executives may already have waived any breaches by the organisation, and that the 11th November letter may not then have provided grounds to resign as a "last straw";

ii. That RICS had "reasonable and proper cause" to act in the way that it did in investigating the matters and allowing the non-Executives to take the matter up with the President and Governing Council, given the seriousness of the failings identified in the no assurance report;

iii. That RICS had acted fairly in that it had thus far supported the Executives.

f. There is no separate consideration of the cases of the CEO and the COO. They did not stand or fall together. Arguably, the CEO's case would be weaker than that of the COO.

g. There appears to be little recognition of the difficulties generally inherent in a constructive unfair dismissal claim. The advice does not address whether the Executives really would bring such claims and have all these matters played out in court or if they would resign in circumstances where such resignation might be seen as an admission of guilt.

h. In contrast, the potential claims of the non-Executives are discounted. The suggestion in the Advice that there is only a "theoretical risk" that they might be determined by a court to be "workers" may be considered questionable in the light of the judicial trend towards the expansion of this category. Any compensation awarded would of course have to be paid to all four individuals. Similarly, the four might have been able to argue that they were whistle-blowers, having considered that there had been a breach of the non-Executive obligations which they were highlighting in the letter. Whilst Fieldfisher observed that the manner of the making of the disclosures was the cause of the dismissals, rather than the disclosures themselves, this would be likely to be scrutinised by a Tribunal.

i. No consideration appears to have been given to the reputational damage that might be suffered by RICS in dismissing four non-Executives, whether or not they brought claims in the courts.

j. It is far from clear why Fieldfisher felt that the CEO and COO had to be shown the 11th November letter, especially if it was thought that this would provide them with ammunition for a constructive unfair dismissal claim. To give such advice is arguably acting against Fieldfisher's client's interest. Clyde & Co, in making representations on behalf of Fieldfisher, suggest that the reason was that were the CEO and COO to discover that the letter had been withheld from them, that might have inflamed the situation. It is my view that, whilst that was a possibility, providing it to them rendered it an absolute certainty that there would be increased polarisation and hardening of positions. This is not a matter of law but of common sense.

k. No reference is made to the possibility of mediation, were the non-Executives to be dissatisfied with the course ultimately taken.

Implied Terms of the non-Executives' Service Agreements

The 18th November 2019 Advice correctly observes that pursuant to each Service Agreement, the contract could be terminated by either side by giving one month's notice. That said, it is my view that this contractual provision cannot supersede RICS' own governance requirements, not least because it is silent as to who, for these purposes is RICS. If, as it can only be, it is Governing Council, then for all the reasons set out above, Governing Council is bound by its own constitution. I have already examined the requirements of that in the paragraphs which precede this.

The 18th November Advice is silent as to whether there was a requirement that a fair process should be followed before any decision to terminate was made. The Global Appointments Model requires that termination of Board members should be governed by a commitment to operate in a transparent, fair and lawful manner. The obligation within each Service Agreement to abide by all regulations, codes, policies and procedures etc. explicitly imports into those Agreements the *Members / Staff Partnership Policy*, which provides a procedure for the resolution of written complaints by or against non-Executives by or against staff.

Although it was suggested by Fieldfisher in September 2019[242] that this Policy would not apply on the ground that no formal written complaint had been made against any of the non-Executives, it is certainly arguable that by 11th November, the emails from the CEO and COO complaining of the untenable position in which they said they were being put, would amount to a written complaint.

Furthermore, given the existence of that contractual disciplinary procedure for adjudicating upon complaints, it is in my view at least a possibility that a court would conclude that it was an implied term of each Service Agreement that the non-Executives would be treated fairly in relation to the decision to terminate his appointment[243]. Fair treatment could be interpreted in this case as meaning the application of the same policy to any dismissal determination, whether arising from a written complaint or not.

In the circumstances, this would have led to each non-Executive having at a minimum, the opportunity to consider the allegations made and to present evidence in their defence to a fair and impartial tribunal, before any decision to dismiss him could be made, and to appeal an adverse decision. As it was, none of the four knew that a decision to dismiss them was even being considered until after it had been made.

The 18th November Advice does not touch upon this issue.

It has been pointed out to me as part of the Representations Process that none of the four brought a legal challenge either to the decision to dismiss them or to the process by which it was done. With respect, it is not possible to infer from the lack of legal challenge that either the decision or process were correct and I do not believe that this can be being advanced as a serious point. There can be many reasons why someone would not contest something through the courts, not least because in the case of at least two of the four, they only had weeks left to go (Amarjit Atkar had only a month). As I point out in the context of my consideration of the 2021 letter sent to the GC2019 group threatening them with defamation proceedings, just because you can do something does not mean that you should.

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[242] In two versions of a written advice contained within the file. It is not clear whether either of these were sent and if so which and to whom.

[243] *Dymoke v Association for Dance Movement Psychotherapy UK Ltd* [2019] EWHC 94 (QB), at paragraphs 50-65

I bear in mind that Fieldfisher could only advise on the facts and issues as they were presented to them. However, it is also true that Fieldfisher had had a considerable degree of involvement, such that they were not only aware of the facts in some detail, their own actions formed an integral part of that factual background.

Looking at the 18th November written Advice in the round, it does not read as the provision of advice upon which RICS could come to an informed decision. It appears instead to be a document drafted in order to fortify a decision which has already been made, more like a skeleton argument to be advanced in adversarial proceedings. It puts the case for dismissing the four non-Executives at its highest. In other words, it is designed as a document that may be relied upon by RICS, should its decision to dismiss the non-Executives later be subject to scrutiny.

In circumstances where full and balanced advice had previously been given and the client had then been able to come to an informed decision, it might be argued that there is nothing wrong with providing such advice, although the way it is phrased might still raise an eyebrow. But that is not the situation here. All the evidence demonstrates the opposite: that partial and partisan advice had been given from the outset in order to sustain and support a decision that the CEO, COO and Chairs should be protected at all costs.

Conclusion

It is my clear view that the decision to dismiss the four non-Executives was not based upon a consideration of all the relevant legal principles or a balanced assessment of relevant factors. The conclusions were presented by Fieldfisher with a level of apparent confidence that was inappropriate in the circumstances and which did their client a disservice.

Had a proper assessment been undertaken, the inevitable conclusion would have been that it was not appropriate to dismiss the four non-Executives. That conclusion is distinct from, but is also in fact supported by, my determination that the non-Executives' concern that proper governance had not been followed was in fact justified.

[3] WAS INFORMATION IMPROPERLY WITHHELD FROM GOVERNING COUNCIL?

The existence of Governing Council is provided for by the Charter, which states that it shall have power to act in all matters in the name of the Institution and execute and do all such deeds, acts and things as the Institution itself might do. The Bye-Laws provide[244] that Governing Council shall direct the affairs of RICS. Its primary duties and functions include determining the strategy and policy of RICS, overseeing, monitoring and assessing the performance of Governance Bodies, ensuring communication of direction and performance to Members and stakeholders and overseeing and being the decision-maker of last resort in respect of the administrative activities of RICS. Further, the Management Board shall be responsible for implementing the strategy of RICS as determined by Governing Council and shall be subordinate and accountable to Governing Council.[245]

There is no power to withhold any information from Governing Council, because Governing Council ***is*** RICS. This was accepted by Matthew Lohn on 21st January 2021. The fact that the Council may be regarded as 'leaky' or not fit for purpose is nothing to the point.

But the obligation goes further. It is clear from the governance documents that in order to perform its functions, Governing Council must be provided with complete information as to the activities of its primary subordinate governance body (the Management Board), which in turn has a duty to provide that information.

I concluded in Chapter 6 that the extent of the information provided to Governing Council in respect of the activities of the Management Board was inadequate. For example, the Council was not provided with the Minutes of the Board's meetings, receiving instead brief reports from the CEO that were insufficiently detailed and did not always provide a balanced account. Examples of this are his report to Governing Council following the Management Board meeting on 25th September 2019 and the failure to provide any further information until 21st November 2019, after the four non-Executives had been dismissed.

Given this, I have concluded that information was improperly withheld from Governing Council.

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[244] B6.1.2
[245] B7.3.1-2

[4] OTHER MATTERS

In addition to the principal legal issues considered above, three further matters arise, which I address below.

a. Should GC2019 have been threatened with action for defamation?

The facts surrounding the decision to threaten legal action against members of the GC2019 group are set out in some detail in Chapter 6.

I have considered carefully the evidence relating to these events, including the material provided to me from the Fieldfisher file.

As with employment law, I am not a specialist in the law of defamation. Nevertheless, I am familiar with the broad principles and that is sufficient for these purposes.

It is clear that Fieldfisher had advised that it was appropriate to threaten action for defamation against these individuals. However, nowhere have I found any written advice dealing with the question of whether the letter of 20th January 2021 was in fact potentially defamatory or the merits of any such claim. It is self-evident that such an advice would be necessary in relation to a matter as significant and serious as this.

On the facts of this case, it would be expected that advice would address the following issues as a minimum:

1. Does the letter sufficiently identify any particular individual so as to give them a claim for defamation?

   'Defamation' is defined as an *untrue* spoken or written expression, referring to a person, which when published, is deemed harmful to or likely to harm the reputation of an individual.

In order to be defamatory it is necessary for an individual to be sufficiently identified within the published words in question such that their reputation may be harmed. It is far from clear to me that the contents of the 20th January 2021 letter do identify any given individual so as to found the basis for a claim. I do not suggest that the matter is necessarily clear-cut: that is why it would be all the more necessary for those contemplating threatening action to receive reasoned, expert advice on the matter.

2. A claim in defamation can only lie with an individual. However, it is possible for a corporate entity to bring a similar claim for reputational damage. That said, it is necessary for the offending publication to identify sufficiently a particular entity in order for that entity to have a claim. Whilst a corporate body has its own legal identity, it can only act through individuals. Whether the complaints raised in the letter identify those individuals that would be deemed in law to embody the Institution itself, is again unclear, and would require legal advice and analysis.

   Additionally, a necessary element of any such claim is that loss has been caused to the entity by the offending publication. Although RICS pursues some commercial activities, these are subsidiary to its principal functions. If any damage to its reputation had potentially been caused by the letter, careful analysis would be required to identify any commercial loss that had been caused to it.

3. Was the letter disseminated to a sufficiently wide group to exclude qualified privilege?

   There are a number of defences to a claim for defamation. One – qualified privilege – applies to statements made fairly in situations in which there is a legal or moral obligation to give the information and the person to whom it is given has a corresponding duty or interest to receive it. Beyond its named recipients, the GC2019 group told me that the letter was circulated to current Governing Council members and to those on the Council at the time of the events in question in 2019. Whether or not it was also disseminated to others, analysis of this realistic and important issue would again be expected.

4. The fact that it is a defence to any claim if the content of the letter is true.

> A fundamental issue is that it is a defence to a defamation claim that the words published were true. It is certainly properly arguable that the assertions within the GC2019 letter were true. The nature of the language used was strong and perhaps ill-judged, but the use of strong language is not defamation. In many instances strong language may be justified, for example after the repeated refusal of reasonable requests. In this case there had been two previous attempts to engage with RICS to get some answers about the events in question and what had been published in the press, such that an element of suspicion understandably crept into the minds of GC2019 which may in turn have been reflected in the language used. Whilst this may not provide a defence if the language is considered not to be justified on the grounds of truth, it is plainly relevant to the question of the wisdom or propriety of threatening legal action.

None of the above issues are straightforward, but this demonstrates the importance of proper reasoned advice. As with the advice on the dismissal of the four non-Executives, this was absent.

Beyond the legal issues, it appears that no thought was given to the question whether RICS should be spending its members' money on threatening legal action against its own members, rather than engaging in other options such as discussion. Although ultimately the decision was taken not to action the threat, it seems that this was due in part to the conciliatory response of the GC2019 group. Had the group or any of its number chosen to react differently to this threat, action might have been taken. This could have been extremely costly.

This mirrors the approach taken to the dismissal of the non-Executives where little or no thought had apparently been given (and certainly no proper measured advice provided) as to the huge reputational damage and potential legal costs that might flow from the course being embarked upon.

The rush to law in both these situations was ill-advised and served RICS badly.

Allied to this is the manner in which the threat of action was issued. The letters were sent by email at 2240 on a Wednesday night, allowing only 12 hours to respond. This was a bullying tactic, wholly unjustifiable in the circumstances. A moment's reflection would have shown that this was oppressive.

One cannot help remembering the complaints made from within RICS about the timing of one email sent by Simon Hardwick just before 10pm on 26th July 2019.

Conclusion

From the evidence that I have seen, it appears that insufficient analysis was undertaken, and certainly no recorded advice was given, on the merits of a claim for defamation, in order that RICS could weigh all of the relevant factors in deciding whether the "nuclear option" of a threat of legal action was appropriate and proportionate.

In my view, whatever the merits of such a claim might ultimately have been, the course adopted was antagonistic, oppressive, and unnecessary. It was quite clear from their letters that what the GC2019 group wanted was a dialogue because they were anxious about what was being said about the Institution. Their intention was not to cause harm or damage.

b. Did Fieldfisher have a conflict of interest?

I have considered this issue, which has arisen during my Review, together with Clyde & Co's letter of representations to me on the subject. There is nothing in the documentation, disclosed apparently with reluctance and at a late stage, which demonstrates that Fieldfisher considered that there was a possibility they had a conflict of interest in advising both (a) their client, RICS, and (b) employees of RICS whom they thought might have possible constructive dismissal claims against their client.

It is not necessary for me to make a finding on the issue of conflict of interest and I do not do so. What I have concluded, as I have said elsewhere in this report, is that Fieldfisher became demonstrably and inappropriately partisan in their approach to the governance questions in play and they provided legal advice which fails the test of objectivity. On occasions, such as when Matthew Lohn agreed to the meeting with the CEO and COO on 13th November 2019, their conduct was unwise. Whether it amounted to a conflict of interest in the regulatory sense is not necessary for me to resolve.

c. Was the conduct of any or all of the four non-Executives contrary to the RICS Code of Conduct?

The Board Handbook contains provisions governing the conduct of its members:

> *"4.15* ***Board Member Code of Conduct:*** *Board Members are expected to adhere to the Board Member Code of Conduct and should be accepting and supporting of the decisions made by their Board. Once a quorate decision is taken, every Board Member is collectively responsible for it, even if they have voted against it, abstained from voting or were absent when the decision was taken. It follows that Board Members are bound by a decision made in good faith (whether by unanimous or majority vote) and they should not obstruct the execution of that decision.*
>
> *"4.16 The Chair of a board meeting is responsible for ensuring compliance with board etiquette and compliance by board members with the Code of Conduct and all applicable RICS Policies (including this Handbook and related Policies) during that board meeting. The Chair of a board is also responsible for managing the behaviours of board members at any time during their tenure (not just in board meetings).*
>
> *"4.17* ***Breaches of Board Member Code of Conduct:*** *Where a board member behaves in a manner which does not appear to meet the required standards, the Chair of the board should attempt to resolve the problem in the first instance with the board member. If this fails to resolve the problem, the Chair may at their discretion refer the issue for consideration under the RICS Members / Staff Partnership Policy.*
>
> *"4.18 Where it is the behaviour of a Chair of a Board which is failing to meet the required standards, then the Chair of the superior Board should attempt to resolve the problem in the first instance. If this fails to resolve the problem, the Chair of the Superior Board may at their discretion refer the issue for consideration under the RICS Members / Staff Partnership Policy.*
>
> *"4.19 Any person (executive or non-executive) bringing a complaint in relation to board member behaviour should follow the RICS Members / Staff Partnership Policy."*

The *Members / Staff Partnership Policy* adds:

> *"2.6. Members must not make any false disparaging comments or remarks, or make any other form of false disparaging communication about RICS or its staff in any public context through any channel of communication or on any social media site and must not bring RICS into disrepute.*
>
> *"2.7. RICS works to ensure that everyone has the right to work in a fair environment, free from inappropriate behaviour. The organisation considers any breach of this right to be serious matter and could result in a formal process being applied.*

"2.8. When Non-Executives and Executives or other RICS staff are working together, the following behaviours should be practised:

i. to work in a professional manner and to develop a working relationship which is underpinned by mutual understanding and with respect for one another;

ii. to possess an understanding of and to demonstrate acknowledgement of the contributions and effort made by each person involved in the relationship;

iii. to show politeness, tolerance, and a willingness to compromise for the greater good;

iv. to practise diversity and inclusion; and

v. to be mutually supportive to achieve the best results."

There is, in addition, a separate Code of Conduct but it is a short document which deals broadly with generalities and adds nothing to the specific provisions of the Handbook and the Policy.

A number of issues arise.

First, could it be said that in pursuing their concerns in respect of the issues surrounding the no assurance report beyond the 25th September 2019 Management Board meeting, the four were in breach of paragraph 4.15 of the Board Handbook?

Bearing in mind my conclusions as to the manner in which the meeting was planned and conducted, it is properly arguable that the decision purportedly reached was not one that all members present understood to have been a decision at all. Furthermore, the decision related to the very principles upon which the Board operated. In those circumstances a Board member cannot be expected to remain silent when s/he has a fundamental concern that s/he is failing in his/her fiduciary duties. That there may be exceptional circumstances where further challenge is necessary was recognised in Fieldfisher's advice of 18th November 2019.

Secondly, was the ***manner*** in which the four pursued their concerns in breach of the above provisions? Again, this can be answered shortly. There is no doubt that the language used by some of them, and Simon Hardwick in particular, became increasingly robust from late July 2019 onwards. That said, context is everything. I find that they had patiently and courteously pursued their legitimate concerns over many months. They had waited when told to wait, but were faced with delay after delay, with no meaningful information being provided and no resolution of their concerns in sight. In this context, the increasing exasperation and anxiety of this group was reflected in the language that they used, as they became more

nervous as to the motive behind - and reason for - the failure to provide them with information such that they could discharge what they considered to be their obligations and duties to the organisation.

In the light of my findings as to the motives of the Executive, their anxiety was justified.

Allegation that one of the four non-Executives had acted improperly by asking a second person for a copy of the original 'no assurance' report.

The details of this matter have been removed from the Open version of my report in order to respect the privacy of the individual concerned, because although I have not given their name they would be readily identifiable even from the few facts which I have set out in the Closed Version in order to explain the issue to Governing Council. I have decided that this was the proportionate response given the following:

1. I have not investigated this issue and so it remains merely an allegation,
2. I can see that there are explanations which would be available to the non-Executive in question which would make the matter very much less serious than the COO seems to have believed it to have been, and
3. I have concluded that even were I to find against the non-Executive, taken at its highest this behaviour alone would not have justified summary dismissal.

For these reasons, removing this episode from the Open version cannot cause injustice nor would it mislead anyone reading this report. I have concluded it is the reasonable and proportionate response.

CHAPTER 8

DISCUSSION & ANALYSIS

Having considered all the evidence, I am satisfied that the origins of what went wrong in this case lay in the governance architecture of RICS. The constitutional structure has led to a lack of clarity about the roles and responsibilities of the Boards, the senior leadership and the management. That lack of clarity has, in turn, bred tension and led to stress on the system.

In 2019, that stress erupted over the handling of the BDO 'no assurance' report and the system imploded. Everyone I interviewed was genuinely shocked and distressed that a relatively small issue could have led to four well-liked and respected members of the Management Board being dismissed. All were struggling to understand how they had ended up in a place that no one had wanted to go.

I have concluded that the reason is that, far from being merely an unfortunate episode which was badly handled (although that is certainly true), it was an accident waiting to happen.

RICS has, in effect, two Boards: in the cracks between the two, the Chief Executive and his team have become used to operating with little effective scrutiny.

Neither the CEO nor the COO are bad people: on the contrary, they have devoted a considerable part of their working lives to RICS and I am satisfied that in the main everything they have done has been with what they perceive as being RICS' best interests at heart. They believe that RICS is handicapped by the unwieldy and cumbersome 'two Board' system; I sensed genuine exasperation when the CEO told me that it was really absurd for anyone to think that it was appropriate for an international organisation with a multi-million pound turnover to be run by twenty-seven Chartered Surveyors. His view is that however good they might be at their day jobs, most of them do not have the experience, expertise or capacity to administer a large business, not least because they are located in a number of different countries and only meet twice a year.

In the view of the CEO and COO, RICS has continued to prioritise member representation over business requirements: RICS being run by Governing Council is analogous to a major PLC being run by a Board which consists *solely* of a number of elected shareholders, with no Executive presence or other specialist membership.

I can see that the CEO has made significant attempts to try to persuade RICS to adopt what he believes is a more functional model; he plainly feels that the membership has rejected his efforts for reasons that have everything to do with sentiment and nostalgia and very little to do with modern commercial practice. Although he did not put it this way to me, I believe he acknowledges that were RICS to adopt his preferred model of a single unitary Board, this would lead to his having less autonomy and being under greater scrutiny than to date. I also believe that he would not only accept that but would welcome it.

I am satisfied that what has happened is that, having been unable to persuade the Institution to reform in the way they believe it should, the CEO and the COO have devised systems by which they can help it to function effectively in the twenty-first century. These workarounds paid lip service to the constitution whilst allowing them and their staff to get on with the job.

Understandable though this might be, the trouble is that this is not what good governance requires. No large organisation such as RICS should hand all its power to one or two employees, however senior and experienced, however well-intentioned, and however much they feel that they have been forced into adopting pragmatic solutions in order to circumvent the unwieldy structure within which they are forced to operate.

Not only is this not what should happen under general principles of sound governance, it is not what the formal architecture of RICS requires. It is for this reason that I have concluded that the Executive hid behind the governance structure when it was convenient but circumvented it for much of the rest of the time. In relation to the handling of the BDO reports, the Executive (and those who supported them[246]) repeated the mantra that even if no one thought that it was sensible that the Audit Committee should control the flow of information to Management Board, that was the system they had and there was no option but to follow it. Yet when it came to keeping Governing Council informed, involved and consulted, the Executive felt that the system was unworkable and so largely ignored it.

[246] General Counsel, Fieldfisher and the Chairs of the Management Board and Audit Committee

A striking example of this is the fact that Governing Council did not receive the Minutes from Management Board meetings, although everyone[247] accepted that it was obvious that they should and that there was no good reason why they could not. Thus the only way for Governing Council to know what its operational Board was doing was by means of an "update" note, the preparation of which the Chair of the Management Board had delegated to the CEO. This should never have happened; even presentationally it was a mistake because it made it look as though the CEO was running the Board. Substantively it was disastrous because, contrary to the governance requirements, it allowed the Executive to control what Governing Council was told and when. Much of the time this will not have mattered but in relation to (and as a result of) the BDO 'no assurance' report, its potential to be deeply corrosive was exposed.

The most striking example of the consequences of allowing the Executive to control what Governing Council was told is provided by what happened during the period between 25th September and 21st November 2019. As the crisis loomed and the leadership panicked, Governing Council was completely in the dark. Governing Council *is* RICS, yet the first inkling it had that there was anything wrong was when the members received letters telling them that almost half of the Board had been dismissed a few hours earlier. It is hardly surprising that they were shocked. When Governing Council asked for further information it was told that it was not possible to give it for 'legal reasons'. Whilst this may have been a pragmatic solution to help the leadership and Executive manage a body which they regarded as unreliable and 'leaky', it was not permitted by RICS' constitution. If Governing Council wants to see or know something, there is no power to prevent it from doing so, however unwise it may seem at the time.

A further example of the senior leadership ignoring the formal governance structure because it was inconvenient is provided by the decision that the President had the power to dismiss members of the Management Board. For the reasons I have given in Chapter 7, it is clear that he did not. In the absence of using the procedure laid out in the *Members/Staff Partnership Policy*, the only entity which had power to dismiss the four was Governing Council itself. The President greeted with incredulity my suggestion that a body of thirty-plus surveyors[248] in multiple countries could be consulted in advance about whether members of the Board should be dismissed. That incredulity may be understandable, but it needed to be faced that there was no power for the President simply to take the decision himself.

[247] In particular the CEO and COO agreed with this in interview, saying that there was no reason why this did not happen, it just never had.

[248] The 2019 Transitional Governing Council was larger than that of today.

If the system does not work, you may have to change it. What you cannot do is just ignore it when it suits you but then rely on it to provide justification for things you want to do.

That said, I have some sympathy for the President in the situation in which he found himself on 18th November 2019, given that he had received advice from Fieldfisher that not only did he have the power to dismiss the four non-Executives but that he would be jeopardising the organisation if he failed to exercise it.

In truth, the CEO and the COO had become used to running RICS in the way they felt was in its best interests and then updating the various bodies as and when they thought necessary and appropriate. It was not so much a question of withholding things, rather it was that they had become accustomed to not sharing the fact that there was a problem until the solution had been identified and, ideally, implemented. Whilst the issue of the unexpected increase to the overdraft in November 2018 provides the first concrete example of the habits they had got into, I am satisfied that it was far from the first time this had happened. For some years there have been persistent low-level grumblings from parts of Governing Council that they were often inadequately sighted on issues. A common complaint was that something would be mentioned almost in passing at a meeting and by the time it was next heard of, it had been dealt with. Any questions were then met with the answer that they had already been told about it. Whilst that might technically be true, it was not what the RICS constitution required, nor was it consistent with sound governance principles.

As I have said, the issue in relation to the unexpected extension to the overdraft in November 2018 provides a telling example. I agree with the COO that in practical terms it was not that serious an incident: there was never a real danger that RICS would run out of money, because the bank was overwhelmingly likely to agree a short-term extension to the loan. Even had it for some reason refused, RICS had cash reserves which could be drawn on in an emergency. The Executive were able to, and did, sort the situation out. Once it was dealt with, the COO told the Management Board what her team had done and why they had done it. The CEO had known about it and the COO had dealt with it. There was nothing for the Management Board to do.

But, with respect to the CEO and COO, that was not the point. The governance structure of RICS required that the Management Board should have been told immediately, not just that there was an issue but the proposed solution. There are established mechanisms for dealing with matters which arise outside

the quarterly Board meeting timetable, as the Executive well knew (indeed the Finance Committee had approved the emergency overdraft extension by way of a conference call).

I do not believe that the matter was deliberately withheld from Management Board and I entirely accept the evidence of the COO that her focus was on sorting the matter out, which was what she believed to be in the best interests of RICS. Rather, I suspect that she either forgot to update the Management Board at the time or just did not really realise that there was a need to do so. I believe too that she was genuinely taken aback and apologetic when the Board raised strong objection to having only been told after the event. I accept that she was sincere when she agreed that there should be 'no surprises' going forwards.

The difficulty is that old habits die hard.

I am satisfied that the BDO internal audit report into the Treasury Management function was commissioned for all the right reasons, that is to say, to give the Executive visibility on this aspect of the Finance Department's capabilities and competence. It is a point well made that those who are trying to cover things up do not arrange external examination of the very thing that they are trying to conceal. I accept that the commissioning of the internal audit demonstrates that there was no intention to cover anything up.

What happened was something rather different. Although the COO knew that there might have been some issues in the Finance Department caused, at least in part, by a loss of staff consequent on the move from Coventry to Birmingham, she had no idea how deep and serious the problems were until BDO exposed them.

The fact that the Finance Department was seriously inadequate was in itself a significant cause for anxiety for RICS as an organisation. Issues of this sort do not arise overnight and BDO's examination exposed systemic weaknesses which could have had grave consequences.

It was also a problem for the COO personally because she was directly responsible for the finance function and had been for some years. If there were failings which had arisen over time, then she was directly accountable for them.

In turn, the Audit Committee's *raison d'etre* was to have oversight of these internal controls and to hold management to account for their performance. If the COO was not doing her job properly, then the

Audit Committee was to blame for not having challenged her sufficiently or at all. I suspect that this will come as no surprise to previous incarnations of the Audit Committee. Witnesses who have asked not to be identified (but whom I am satisfied are measured, truthful and accurate) told me that previous incarnations of the Audit Committee had been troubled by the lack of information and had had a sense that they were being bypassed. When they had tried to challenge the Executive, they were replaced.

Confronted by the worrying and unwelcome news that RICS' Finance Department was in a mess, the COO defaulted to her usual way of doing things, which was to say little or nothing until the problems had ostensibly been sorted out. She was taking steps to do this but wanted to be left to get on with it without interference from either Management Board or Governing Council. In that sense it was not a 'cover-up'; in her mind the priority was to resolve the problems and she was simply doing what was in RICS' best interests. That said, I am also satisfied that at least part of her motivation was to avoid the inevitable scrutiny and criticism of her and her department which would follow the revelation that the unexpected overdraft extension was not an aberration but in fact a symptom of a much deeper malaise.

There came a moment during the December 2018 Management Board meeting when the COO found herself at the fork in the road. It arose when Simon Hardwick asked her to ensure that there would be no surprises in the future. She could have said "well, in fact, I have got a draft report from BDO which does not make for happy reading. It is not yet finalised, but if you leave it with me for a couple of weeks I will tell you as soon as I have better visibility of the problems and some idea of the steps we should take".

Or she could say nothing.

The choice she made was to have far-reaching consequences and for that she must bear responsibility. I am satisfied that if she ever was in the habit of behaving transparently, by December 2018 she had got out of it. When I interviewed her, I asked her what 'governance' meant to her. She replied that it was having well-embedded systems of delegation where everyone knew their role. She did not mention transparency, even though I deliberately asked her a second question, namely 'what does good governance look like' in order to see if she would.

The fact that the COO did not even take the CEO into her confidence so that he could be sighted on the issues and shoulder at least part of the burden has persuaded me that she knew that she was likely to be criticised by him as well, even if only privately. Although she had known of the problems since the middle of October 2018, the first the CEO knew about them was when the Chair of the Management Board

telephoned him at the end of February 2019 to ask him if he had seen the 'no assurance' report. This is hardly evidence of a well-run organisation.

I have no doubt that the CEO was annoyed to discover that he had been kept in the dark. He cares deeply about RICS and prides himself on running an efficient and successful organisation despite the challenges presented by the governance structure. That said, I am also satisfied that the *de facto* strategy of the Executive simply getting on with things was so ingrained by this stage that he made the decision to support the COO in her desire to try and sort things out without 'interference' from the Board or Governing Council. I suspect he felt that the consequences of undermining her would be worse than insisting that Management Board should see the report so that they could have proper oversight of the steps which were being taken.

The CEO and the COO believe that they have been doing their best to make RICS successful in the face of structural obstacles which were not of their making. The corollary of a deep-seated belief that only they know what is in the organisation's best interests is a resistance to challenge which can quickly develop into resentment at what is seen as attempted interference. The more the non-Executive members of the Management Board insisted that they should have oversight of the matter, the more the CEO and COO resented it. The harder the non-Executives pushed, the more personally the CEO and COO took it.

When I spoke to the COO, what she seemed to be saying was that it was not her fault that the structural weaknesses were such that she had been forced to find workarounds in order to make RICS successful. She was angry and upset in interview and she has since resigned. Whilst I have no doubt that her distress was genuine, I felt that she lacked any insight into the contribution her handling of the BDO reports had made to the disastrous consequences for RICS. I had a strong sense that the essence of her complaint was "after everything I have done for them, this is the way they treat me".

The truth is that although it looked like one, this was not a cover-up. What it was in fact was a power struggle. The Executive and the non-Executives both believed that they knew what was in the long-term best interests of RICS. When it became clear that the non-Executives were not going to back down, it rapidly became a question of "them or us", with the governance structure being used as a fig leaf to give leverage to the Executive.

One of the reasons transparency is a vital component of sound governance is that a lack of it can lead to a concentration of power in a small number of hands. Though I suspect the CEO and the COO do not fully

realise this, people have become afraid of standing up to them. I am satisfied that those who challenge their authority rarely prosper at RICS. What happened to the Director of Risk provides an example. In all innocence, he had shared with two Board members (who had responsibility for risk) the fact that there had been a negative assessment for which management were in the process of finding a solution. As the Fieldfisher file reveals, the COO blamed him for all the subsequent events. She has no insight into the fact that it was not his revelation which was at fault but her subsequent determination that Management Board should be provided with no information until she was ready to do so. When I asked her whether, with the benefit of hindsight, there was anything she would do differently, her answer was "*not gone skiing*".

As soon as he became aware of the BDO report, the Chair of the Audit Committee should have worked with the Management Board to ensure that management was held to account and the proposed solution was not only appropriate but actioned at pace. This did not happen.

Representations were sent to me by solicitors acting for the Chairs of the Audit Committee and the Management Board, as well as by the COO herself. Each has sought to explain the failure to provide the 'no assurance' report to the Management Board by blaming the others:

1. The COO said that the decision to share the report had not been hers to make. The report had been commissioned by the Audit Committee and the decision as to whether, when and in what form Management Board should be told about it was exclusively that of the Audit Committee Chair. All she had done was to follow the governance structure, which required her to provide the report to the Audit Committee; what happened to it thereafter was for them to decide.

2. According to the Audit Committee Chair, whether the CEO and COO shared the BDO report with the Management Board was entirely a matter for them and was nothing to do with him. In addition, through his solicitors he now says that he believes he first became aware that the Management Board wanted to see the report when he was told this by the Chair in April 2019. He tells me that the Chair expressed the view that the report should <u>*not*</u> be shared with the members of Management Board. Based on his understanding of the RICS governance framework, he had gone along with this. It was not for him to undermine the views of the Management Board Chair.

3. In a direct conflict of evidence, the Management Board Chair has said that he asked repeatedly to see the report from February 2019 onwards but he was never given it. Some of those requests

had been made directly to the Chair of the Audit Committee. His understanding is that under the governance structure it was a matter for the Audit Committee Chair to decide and that given that the Chair was highly experienced, it was not for him to contradict him.

On the basis of all the evidence that I have read and the accounts given to me by the many witnesses to whom I spoke, I prefer the evidence of the Chair of the Management Board. I accept that he asked repeatedly to be provided with the report but was told that there were obstacles which meant that this could not happen. Insofar as I have a criticism of the Chair of the Management Board in this respect it is that he succumbed, rather than trusting his own judgement and experience. He should not have allowed himself to be fobbed off and should have insisted on seeing the report.

Having considered the extensive evidence, I am satisfied that the COO and the Chair of the Audit Committee agreed between them that none of the BDO reports would be shared with the Management Board until such time as they chose to do so. The motivation of each may have varied as between each other and over time, but the outcome was the same.

The Chair of the Management Board is a good, intelligent and conscientious man. He takes everything to heart, worries extensively and tries hard to do the right thing. I have concluded that the problem was that he was too close to the CEO. He knew instinctively that the Management Board needed to have oversight of the BDO reports and the action being taken to remedy the issues and so he tried to obtain them, but as matters became polarised, he chose the side of the CEO and the COO. I am sure that the reason he did so was that he believed that RICS could not survive without the CEO and the COO and they had taken up entrenched positions. I am equally sure that he relied heavily on the legal advice given by Fieldfisher.

He is a man who takes comfort from adherence to rules. He allowed himself to be persuaded that the governance structure supported the actions taken by the COO. For him, this was a less confrontational position than the alternative. He does not like conflict and thought that by commissioning a review which was, in effect, to be done by the external legal advisers he would pacify the other members of the Board.

At the 25th September 2019 Management Board meeting he invited each person present to make comment but would not allow debate. This was an error of chairmanship: he equated the opportunity to express individual views with dialogue. More importantly, he would not permit discussion to see whether a resolution could be reached. Simply saying that you think consensus has been achieved only exacerbates

the situation when in truth the divisions still remain and rankle. He was well-aware that the four non-Executives did not agree with General Counsel's conclusions, nor that it was for her to assume responsibility over what was, plainly, a decision for the Board. The Chair's decision to move on was an exercise in papering over large cracks, the consequences of which were wholly foreseeable.

I am satisfied from the evidence of the witnesses to whom I have spoken and the material I have seen that no one genuinely believed that the governance structure would exclude Management Board from seeing the reports until the Audit Committee said that it could. It was merely a pretext used to justify withholding the various reports until the Executive could put remedial measures in place. The truth was that the Executive did not want Governing Council to "interfere" in the running of RICS because it made it difficult for them to do their job. There is a telling remark in an email from the Audit Committee Chair in which he refers to:

> *"the danger of GC[249] reverting to the sins of the past where it sought to question and interfere in duties it had delegated to management"*[250].

I am satisfied that over the years the CEO and the COO have become used to operating largely without check. They believe that Governing Council is rather like a group of children which does not know what is in its best interests and on whose behalf decisions have to be made. They decide what the various governance bodies are told, when and how. I gained a very strong sense from the CEO that, polite and friendly though he was, he was exasperated by finding himself sitting opposite me answering questions about the Treasury Management issue. I hope I do not do him a disservice when I summarise it by saying that he believes he has tried to get RICS to adopt a more functional governance structure; RICS having rejected it, he just decided to get on with the job in the way he thought best, otherwise the organisation would have suffered. As a principle, this is a precarious approach to take in any organisation.

It will be seen from this that I have concluded that the Executive is not wholly to blame for the situation which arose. Without expressing any view as to what is the right way forward for RICS (which will be a matter for the second, wider governance review), I have been left with a sense that various Presidents and members of Governing Council over the years have known that this is an issue which needs to be tackled but, because there is little consensus as to the right way forward, the approach has been largely to tinker and tweak without engaging with the fundamental problems. Many of those to whom I have

[249] Governing Council
[250] Email to the COO, 20th August 2019

spoken (some of whom wish not to be identified) have devoted decades of unpaid work to RICS and have spoken with real passion about the need to modernise.

There is a yearning to return RICS to a position of pre-eminence in professional membership organisations. Regrettably, there is little agreement about how this is to be achieved.

Because I am satisfied that the constitution and structure is at the root cause of what went wrong in 2019, there is a real risk that if this is not dealt with, something like this could happen again. For this reason I urge RICS not to waste the opportunity presented by the wider governance review by once again dealing with it internally. I regret to say that it is my strongly held view that any review led by the President and Chief Executive will have little credibility, not least because they have been so closely associated with the matters with which this Review is concerned.

Whilst I am satisfied that the Executive is not to blame for the environment which caused this to happen, it is responsible for the events themselves and the way in which they were handled.

This situation should never have been allowed to develop in the first place, far less escalate to the point where four senior and respected figures, properly exercising their independent judgement, were summarily dismissed from an organisation for which they had all done a great deal. Time after time there were opportunities to de-escalate matters, but these were never taken. There seems to have been a collective failure of common sense by all those on the Executive and senior leadership 'side'. The very fact that there were sides at all is deeply troubling, but exist they undoubtedly did. The CEO, who is a highly intelligent man and deeply committed to RICS, ought to have appreciated that a power struggle between the Executive and non-Executive members of the Management Board was never going to end well for the organisation. It was certainly not what was expected of so prestigious a Royal Institution.

I exonerate the four non-Executives entirely. They were not to blame for what happened and I am satisfied that the only way that they could have de-escalated matters was if they had been prepared to back down. It is my view that they would have failed RICS had they not pursued this, because they were correct in their suspicion that this was not an isolated incident but symptomatic of a pattern of behaviour.

Throughout this episode RICS was not well-served by its lawyers. No doubt those reading this report will think that it is richly ironic that I, a senior barrister, have concluded that RICS has been too dependent on external legal advice. I am sure that Fieldfisher and other lawyers have given RICS much sound advice over the years in relation to what I would describe as legitimate legal matters, but the lawyers were seriously over-used here . What was needed was not legal advice but judgement, common sense and the courage to stand up to the Executive as appropriate.

I believe that the Executive and the senior leadership know in their heart that this is right, because nothing else would explain the extraordinary lengths to which they have all gone to conceal from me the extent of Fieldfisher's involvement. When I finished conducting the witness interviews I had not been given the file and I believed - because that is what I had been led to believe - that Fieldfisher's part had consisted solely of the preparation of the 18th November 2019 Advice that resulted in the dismissal of the four members. The only reason I asked to see the file at all was because I was puzzled by the unequivocal and uncompromising nature of that Advice. I remarked at the time that it read not like an Advice but like a document written to give legal 'cover' to a decision which had already been taken. Yet when I interviewed him, the President was adamant that he had read that Advice with an entirely open mind. I asked to see the file because I wanted to understand the nature of the instructions which had been given to Fieldfisher and who had given them. I expected the file to contain possibly four or five documents. What I received truly astonished me. It can be seen from Chapter 6 how extensive Fieldfisher's involvement was, yet everyone had hidden it from me.

Events from late August 2019 onwards felt like the cover-up of the cover-up. Both were unnecessary, unplanned and should not have been allowed to happen.

Having read the file, I now understand something else which had puzzled me. The Executive and the senior leadership had stressed that one of the reasons the four non-Executives had to go was because of the amount of time which had been taken up by this matter, to the detriment of other commitments of the organisation. Yet I could see only a small number of emails sent by the four over the period July to November 2019. There had been one special meeting held in August 2019, followed by a handful of telephone calls and meetings between the President and the four. Whilst relations were plainly tense, this did not seem to me to amount to an enormous amount of time and effort.

The reason for this variance in perception was revealed by the Fieldfisher file and has been set out in detail in Chapter 6. Over a period of three months, Fieldfisher was engaged in daily correspondence and

meetings about this matter with General Counsel, the Chief People Officer, the Chair of the Management Board, the CEO, the COO and the President (in various permutations and at various times). What is depressing about this is that all this effort was not to try to understand why the four were so troubled, and find a solution which would allow everyone to move forward, but was in an effort to try to get the four non-Executives to drop what was perceived as their challenging behaviour and, subsequently, to remove some or all of them from the Management Board. This caused expenditure over a few weeks of more than £100,000 in legal costs on this issue alone.

It also explained something else which I had not understood when I first read the papers. Everyone agreed that it was the letter written by Bruce McAra on behalf of the four on 11th November 2019 which provided the catalyst for their dismissal. Yet when I first read it, it really didn't seem as though it was something which would justify taking the radical step of dismissing four non-Executives. If anything, it was rather conciliatory, given that it stated explicitly that the four had confidence in the CEO, COO and the Chair and they regarded this as being the end of the matter. I felt that there must be something which I was missing.

When I read the material in the Fieldfisher file, all became clear. From August 2019, the Executive had been expressing discontent at the prospect of Simon Hardwick[251] remaining on the Board. From the middle of September 2019 this attitude had progressively hardened until by the middle of October, there was determination that he, at least, had to be got rid of. The difficulty was that the Chair of the Management Board and the President were reluctant to do so and were showing signs of saying that they thought that everyone could move on. Extraordinary though this may seem, there is clear evidence of Fieldfisher encouraging senior management to put pressure on the Chair and the President to dismiss at least some of the four[252].

Thus, unbeknownst to the four non-Executives, when they sent the letter on 11th November, they had walked into a trap. The letter was not the catalyst, it was the excuse.

It is with great sadness that I note that in fact, everyone was on the same side. All the members of the Management Board, Executives and non-Executives alike, wanted to do what was best for RICS, but

[251] and to a lesser extent some of the other three
[252] Particularly on 13th November 2019

because the CEO and COO (and to a lesser extent the Chairs of the Management Board and Audit Committee) took offence at being challenged, tensions rapidly escalated.

As soon as the CEO and COO started to suggest that they were considering their positions I am satisfied that the leadership panicked and lost all sense of proportion. True it is that the prospect of losing your senior executives is destabilising, but that was not the complete story. As Fieldfisher, General Counsel and others (including the CEO) had privately acknowledged, this was a situation which the COO had created by being defensive and untransparent in relation to the initial BDO 'no assurance' report. The CEO had compounded it by defending her when he knew that she could have handled things better. Further, no one seemed to have considered whether either or both of them really would have left. I have concluded that the CEO and COO had become so powerful that even their discontent was enough to cause consternation at the senior end of the Institution.

In any event, no organisation should allow a gun to be held to its head, particularly not by those who were responsible for creating the situation in the first place. The President and the Chair of the Management Board should have realised that they were being intimidated into doing what the Executive wanted. It was weak leadership not to have withstood that; rather, they should have worked harder to find a solution consistent with good governance.

Part of the problem was that the lawyers and the Chief People Officer never spoke to the four non-Executives to try to understand their concerns. This led to them giving advice based on only one side of the story. There is ample evidence of this, but one striking piece is provided by the fact that the Chief People Officer kept referring to the duty of care owed to the CEO and the COO. This was bound to create anxiety in the minds of the senior leadership, and it did. It also fortified the CEO and COO in their belief that the non-Executives' challenge amounted to an unjustified attack on them. The Chief People Officer appears to have given no thought to the duty of care she owed to the non-Executives which, whilst arguably at a lower level, undoubtedly existed[253]. More important, her overriding duty was to her employer. It was not in RICS' interest to lose four members of its Management Board. The Chief People Officer never spoke to any of the four to see if she could understand their position or help to mediate. Instead, she jumped to the conclusion that their motives were malign, based on no more than gossip and innuendo. I consider that in her enthusiasm to discharge RICS' duty of care towards its Executive, she

[253] She told me in interview that she had appreciated at the time that she owed a duty to all parties and that she believed that she had discharged it. I do not accept this evidence, not least because she was unable to give any plausible explanation for why, in that case, she had never sought to make contact with the non-Executives.

lost sight of its responsibilities towards some of its non-Executives. She made little or no attempt to take an objective view and was too quick to remain loyal to her fellow Executive members.

The President deserves credit for the fact that he spoke to Simon Hardwick and Bruce McAra and asked them to explain their concerns and what it would take to resolve matters. The Chair of the Management Board also deserves credit for having made similar efforts with Steve Williams and Amarjit Atkar. I have concluded that there was every prospect that, even at that stage, some form of mediation could have succeeded. I am satisfied that had Fieldfisher taken a more measured approach to the letter of 11th November, matters would not have escalated in the way they did.

My criticism of the Chair of the Management Board and the President is that they did not follow their instincts and that in the end they felt unable to withstand the demands of the Executive that the four should be dismissed. I acknowledge that the Management Board Chair in effect withdrew himself from the process and played no part in the dismissal, though I regard that as having been merely an abdication of responsibility. I acknowledge too that the President found himself in a very difficult position as a result of the uncompromising advice given by Fieldfisher.

This has been a sad and depressing episode in the life of a great Institution. It has seen its reputation traduced and has spent a large amount of its members' money on an issue which was eminently avoidable. I am confident that with courage and imagination, and in the knowledge that everyone is on the same side, the second review will be able to put RICS into the position of moving forward in unity in the public interest.

CHAPTER 9

CONCLUSIONS

[1] THE WAY IN WHICH THE INTERNAL REPORT WAS COMMISSIONED AND DEALT WITH AND WHETHER THERE WERE ANY SHORTCOMINGS IN THIS RESPECT

In order to respond to the first of the Terms of Reference, I have borne in mind the twelve questions set out in Appendix A. My conclusions are as follows.

1. This was an entirely avoidable crisis. The situation which began in November 2018 and ended a year later with the dismissal of four non-Executive members of the Management Board should never have been allowed to develop in the way that it did. As the months passed, there were a number of opportunities to defuse the situation, but these were not taken.

2. The four non-Executives were correct in their belief that the Management Board was entitled to inspect the BDO internal audit report. Refusal to allow the Board to see the report was a breach of B9.1.3(c) which states "*…any document relating to the financial affairs of RICS shall be open to the inspection of….the Management Board*". The Charter and Bye-Laws are the superior legislative instruments for RICS and nothing in the Terms of Reference for the various Boards and Committees can displace their express provisions.

3. Irrespective of my conclusion that the Bye-Laws entitled the Management Board to see the BDO report, I am satisfied that the four non-Executives were substantially correct in their assessment that sound governance principles were not being followed in relation to the handling of the Treasury Management matter.

4. I find that the four were not troublemakers either individually or as a group; rather they were genuinely concerned about fulfilling their duties to RICS, which they took very seriously. They did not deserve the treatment to which they were subjected and should receive a public apology.

5. The expression 'cover-up' is emotive: to the extent that it has been suggested that the BDO report was withheld to cover up wrongdoing, this has no basis in fact. I have found nothing to suggest that any criminal offences have been committed or that any other financial impropriety has occurred in relation to the financial matters which are the subject of this Independent Review.

6. The genesis of these problems lies in the governance structure of RICS. It is no secret that the CEO and the COO (and others) believe that the member-only Governing Council model is not fit-for-purpose in the twenty-first century and that RICS should modernise. Their preferred structure would merge Governing Council and the Management Board to create a single body which more closely aligns with the Board of an organisation such as a PLC. I note that this suggestion has recently been rejected by Governing Council for the reason that it would tilt the balance of power too far towards the Executive to the detriment of the representation of the membership.

7. There is a certain irony in this. The fact that Governing Council is, by its nature and composition, remote from the day-to-day running of RICS has already resulted in a situation in which the real power lies with the Executive, regardless of the formal governance structure. In theory, both the Management Board and the Audit Committee have significant responsibilities delegated to them, but the events with which this Independent Review is concerned demonstrate that the Chairs of both bodies have such a close relationship with the Executive that it is the will of the CEO and the COO which prevails.

8. I find that the CEO and the team he leads genuinely believe that the members of Governing Council are not equipped, by virtue of the size of the Council, its geographical spread, the infrequency of its meetings and the skill-set of its members, to make day-to-day decisions in the best interests of RICS. The CEO said to me "*..let's think about the Board of an organisation like RICS. Do you think a highly effective Board of a global body that trades in thirty-two counties, has intellectual property challenges, brand challenges, tax issues and everything like that is twenty-seven Chartered Surveyors?*"

9. The result is, for all practical purposes, that the Executive (together – sometimes – with the Chairs of the Boards and Committees) decides what Governing Council will be told, when, and in how much detail.

10. At times this manifests itself as a sort of benign condescension: one witness described it as a desire not to present Governing Council with problems until it could also be given the solution. Being able to present a solution may be a sensible aim, but it should not prevent or delay communication of a problem to those required to know. Both in the interviews I conducted and in many of the documents I have seen, I was left with the clear impression that the Executive and the Boards and Committees have treated Governing Council more like a group of shareholder representatives than the top layer of the governance structure.

11. This approach is at least part of the root cause of what happened in relation to the matters with which this Independent Review is concerned.

12. I find that the COO knew as early as 10th October 2018 that BDO was extremely concerned about the situation it had discovered in the Finance Department. She made a decision that, save for providing it to the Audit Committee in late February 2019, no one outside her immediate team should be told about the very real problems in the department until a solution had both been found and - ideally - implemented.

13. The effect of this was that for some months, no one was aware of the threat this presented to RICS. It follows that no steps could be taken to mitigate the risks other than the actions she herself was arranging. A sound system of governance, properly implemented, should not allow a decision of this kind to be left to one member of the Executive, however senior or well-intentioned.

14. The fact that the BDO report, submitted in draft on 6th December 2018, was not finalised until 12th February 2019 does not alter my conclusion (and is in fact a cause for concern in itself). The COO was told on 7th December 2018 that although the report was technically in draft, BDO's 'no assurance' conclusions were unlikely to change. The final version of the BDO report does not differ from the earlier versions in any material way; yet the first that the Audit Committee knew about this report, over which they ostensibly had exclusive authority, was on 18th February

2019. This was more than two months after receipt of the first version and a full four months after the COO had been given the 'heads-up' that there was a serious issue.

15. The effect of this was that by the time the Audit Committee was aware of BDO's findings, more than four months had passed with no one other than the COO and her team being aware that there was even a problem, far less any substantive solution being effected.

16. I reject the suggestion made by some, including the COO, that the conclusions in the BDO report were not, relatively-speaking, terribly serious. I have been shown no evidence to support the then-President's assertion that 'no assurance' reports were not uncommon; rather, I prefer the evidence of the partner from BDO, who said that a 'no assurance' rating in Treasury Management was such a rare occurrence that he did not think he had ever issued one before, "*because it is such a fundamental area for business to get right. You run out of cash, you don't exist*." Whilst I acknowledge that in this case there probably was no existential threat, this does not alter the fact that this was a serious matter that needed to be dealt with swiftly.

17. I find that the state of affairs in the Finance Department by Autumn 2018 (and for some months thereafter) presented a not-insubstantial threat to RICS. One of the risks to which BDO drew attention – running out of cash – manifested itself whilst the internal audit was taking place. The fact that some of the other risks which BDO had identified did not materialise does not alter the fact that the situation had the potential to cause serious harm to the organisation.

18. The COO's reasons for keeping the information to herself and within her department were mixed. In part it was due to a desire to maintain confidence within the organisation, as there was a real risk that Governing Council would have become very nervous indeed had it been presented with a full and transparent account of the problems uncovered by BDO.

19. The difficulty with this approach, even if it is to some extent understandable, is that it is not what the governance structure of RICS requires. This was not her decision to make and she should not have been in a position to make it. For this, the CEO must take responsibility.

20. This provides an example (and there are others) of the Executive, together with the Chairs of various bodies, ignoring the governance structure of RICS when it suited them to do so and yet doggedly persisting in adhering to it when convenient.

21. I find that a desire not to cause alarm at the top of the organisation was not the only reason for the COO's decision. I have concluded that it is more likely than not that one of her purposes was at least to postpone, and possibly to deflect altogether, criticism of her own performance.

22. As is customary, the COO reported directly to the CEO. As soon as she learnt of BDO's concerns, she should have told the CEO (as he told me he had said to her himself). That did not happen. There is no reasonable explanation for why it took her four months to tell him (by which time she had had the actual report itself for more than two months) other than that she wanted to use the time to find a solution. As it was, the CEO did not find out about the report until 25th February 2019 and even then it was not because the COO told him, but because he was asked about it by the Chair of the Management Board, who had himself been told by Simon Hardwick.

23. That is not to say that the CEO thereafter made appropriate decisions in sound governance terms. Once he became aware of the report's existence, he should have ensured that it was shared with the Management Board immediately or at the very latest at its quarterly meeting on 27th March 2019. Thereafter Governing Council should have been told about it and given assurance that appropriate remedial measures were being taken. Neither of these things happened. This has caused me to conclude that the COO's approach of burying bad news until the solution was in place was endorsed by the CEO.

24. From the evidence I have seen and heard, the CEO and the COO have (and have had for many years) a deep commitment to RICS and genuinely believe that they understand what is in its best interests. Because of the unusual governance structure, they have become accustomed to making decisions on behalf of the organisation but the corollary of this is a deep-seated resistance to challenge. I find that both were over-sensitive to perceived criticism and quick to take offence. The result was what started as a difference of opinion about areas of responsibility rapidly escalated into questions of trust and behaviour.

25. I have seen no evidence that the Audit Committee was consulted by its Chair about whether the BDO report should be provided to the Management Board and I have concluded that this was a decision which he took unilaterally. This should not have happened: the RICS governance structure does not give the Chair of the Audit Committee the exclusive right to decide whether

and in what circumstances the Management Board should be able to see documents. Even had that been the case, as a matter not only of good governance but of common sense, the Chair should have wanted the Management Board to have seen it as quickly as possible.

26. I am satisfied that the Executive and the Chair of the Audit Committee all recognised the significance of BDO's report but when the members of the Executive spoke to me they downplayed the seriousness of the findings (as they had done with Governing Council). This was in order to justify and explain why they had delayed both the provision of the report to Management Board and informing Governing Council.

27. I have concluded that whilst the original reason for not providing the report to the Management Board was to buy some more time to implement remedial measures, as the months passed that was supplemented by something even more concerning. The evidence shows that the more insistent the non-Executives were that they were entitled to see the report, the more entrenched became the view that they were not going to be given it.

28. The COO told me that she was offended by the manner in which they were insisting on being shown a copy and that had they gone about it in a different way, she might have provided it. In my view this speaks persuasively to the powerful position held by the COO as well as her resistance to challenge.

29. I am satisfied that from an early stage (late March 2019), sides were being taken and the Chair of the Audit Committee aligned himself with the Executive. He appears to have been affronted by the suggestion that he was in any way answerable to the Management Board and rather than see this as an opportunity for the two bodies to work together for the good of RICS, he, in effect, dug his heels in. I am satisfied that the Chair of the Audit Committee and the COO had a common interest in ensuring that remedial measures were put in place before the Management Board or Governing Council became aware of BDO's findings. The situation in the Finance Department had not arisen overnight; both the COO and the Audit Committee were likely to be asked awkward questions, not only about why the situation was as bad as it was, but why it had not been detected earlier.

30. It is more likely than not that the apparently relaxed attitude that was taken to the re-audit during May, June and July 2019 was due to the fact that the COO and her team needed more time to implement the remedial measures and thus a delay in BDO producing a re-audit report suited them. I find that it was at the request of the COO (relayed by the Director of Risk) that BDO did not produce the report they had completed but summarised their findings in a short note dated 4th June 2019[254]. This note was subsequently dismissed as inadequate by the Chair of the Audit Committee, who blamed BDO for not having produced a sufficiently full and up-to-date report and a second re-audit was commissioned. I find that it is more likely than not that the Chair of the Audit Committee was not aware that it was the COO who had ordered that a synopsis be provided rather than the full report.

31. By mid-June 2019, it seems that many people had a copy of the original BDO 'no assurance' report except the Chair and non-Executive members of the Management Board, the very body charged by the Bye-Laws with responsibility for the financial good health of the organisation. Governing Council was in ignorance of its findings and was to remain so until late November 2019.

32. I have concluded that the Chair of the Management Board knew instinctively from the outset that good governance principles required that he and the Board ought to be fully sighted on this matter, not least so that a decision could be made about reporting to Governing Council. He made one or two attempts to see the report but in the end bowed to the collective will of the Executive and the Chair of the Audit Committee, bolstered substantially by the legal advice of Fieldfisher, with the result that he failed to pursue the matter with the rigour which Governing Council was entitled to expect of him as the non-Executive Chair of the Management Board.

33. I find that the oft-relied upon explanation that the governance structure did not permit the BDO no assurance report to be shared was not only based on faulty analysis but was in fact a pretext. Whilst the reason for the original decision to withhold it may well not have been understood by those who relied upon this pretext, their reason for doing so was to support the position that had been taken by the COO and CEO and to protect them from criticism.

[254] But not provided to the Audit Committee until 3rd July 2019

34. The internal governance review purportedly conducted by RICS' General Counsel in September 2019 not only reached the wrong conclusion, but was not what it appeared to be. General Counsel did not in fact conduct the Review herself, rather she had outsourced it to RICS' external legal advisers, Fieldfisher LLP. Further, before the Review had even been commissioned, its conclusions had already been decided. The most important objective was that there should be no threat to or criticism of the CEO, the COO or the Chairs of the Management Board and Audit Committees.

35. The Chief People Officer sided with the Executive against the non-Executives from the date of her first involvement with the matter, which was at the latest 4th September 2019 . I am satisfied that she saw her role as being solely to protect the CEO, the COO and the Chair of Management Board from criticism. I have found no evidence that she gave any thought to the duty she owed RICS to ensure that its non-Executives were in a position to challenge in the way that a healthy governance system requires or that she conducted any kind of balanced, objective assessment of the matter.

36. I have concluded that the 25th September 2019 Management Board meeting had been carefully planned and extensively choreographed by the Chief People Officer, General Counsel and their external legal advisers, Fieldfisher, as well as the Chair of the Management Board. Far from being the discussion that the non-Executives had been promised at the Special Meeting in August, the objective was to ensure that this meeting closed down the Treasury Management Review issue for good.

37. The CEO's regular post-Management Board 'update' to Governing Council not only made no reference to the stark difference of opinion between the four non-Executives and the rest of the Board but was potentially misleading. Following the 25th September 2019 meeting, he dealt with the matter in a two-line summary thus:

> "*Treasury Management Review*.
> *"The Board Chair led a discussion on lessons that could be learnt for the future and the assurance that our governance had operated effectively throughout".*

38. Given that Governing Council did not receive the Minutes of Management Board meetings, this was the last it was to hear of the matter until 21st November 2019 when it was told that four of the seven non-Executive members of the Board had been dismissed by the President. I find that

when, a year later[255], RICS issued a public statement to the *Sunday Times*, it was inaccurate and misleading to say that Governing Council had been "*kept informed*" of all the actions which were taken both at the time and later. In fact, Governing Council was not told anything meaningful until after it was all over.

39. The material in Fieldfisher's file shows that no later than 1st October 2019 (and probably as early as 13th September), a decision had been made by General Counsel, the Chief People Officer, the CEO, the COO and Fieldfisher that Simon Hardwick and Bruce McAra had to go. Over the weeks that followed, considerable effort was expended in finding a way to achieve this.

40. The justification for the need to dismiss the non-Executives was the manner in which they had expressed their views, which was said to have rendered the Management Board unable to function.

41. The evidence shows that this was in fact a situation which had been created by the COO (even if she had not realised the possible consequences) with the at-least tacit acceptance of the CEO. It started when the COO did not mention the findings of the internal audit at the 12th December 2018 Management Board meeting. As a result, when the non-Executives found out about the report in February 2019, it looked as though it was being withheld. I am satisfied that the decision not to mention it in December 2018 was deliberate.

42. As a result of the wrongful refusal to allow Management Board to see the original BDO report at an early stage and the absence of candour during the months which followed, the COO had created suspicion not only that something was being concealed, but a concern that this might have happened before. Worse, there was no guarantee that it would not happen again. If it was not a cover-up, it looked like one.

43. No one has been able to give me a convincing answer to the question "what harm would it have done to have provided a copy of the report at the outset?", save to repeat the explanation that this was not permitted by the governance structure.

[255] 15th December 2020

44. The non-Executives were correct to challenge the refusal to give them full and proper information about the state of the Treasury Management function of the Finance Department. That was their job. That they should simply take the Executive's word that there was not much of a problem and such problem as there was, was being dealt with is entirely contrary to good governance.

45. It is equally unacceptable that, as I have already said, the Chair of the Audit Committee should be the sole arbiter of what the Management Board could see and Governing Council could know. The suggestion made by the Chair that the only time the Audit Committee would share information with Governing Council was when there was an existential threat to the organisation is an extraordinary one. I have not been pointed to any provision within the Charter, Bye-Laws, Regulations or Terms of Reference which would justify this approach.

46. The risk inherent in this attitude may be thought to be demonstrated in RICS' current predicament. Because of the failure to provide the report to the Management Board or notify Governing Council about the issues arising from this, the first time Governing Council was aware that there was even a problem was after the majority of the non-Executives members of the Board had been dismissed. There was thus no opportunity for it to mediate or to resolve the competing contentions of the two sides and thus possibly avoid the damage to the organisation which has resulted.

47. It is true that from July 2019 onwards the language used by some of the non-Executives could be described as robust, but that has to be seen in the context of the fact that many months of courteous requests and polite waiting when asked to do so had resulted in no information and no apparent progress towards resolving the issues which they knew existed. There is a parallel to this in RICS' treatment of the GC2019 group in January 2021.

48. The four non-Executives should have been able to rely on the President and the Chairs of the Management Board and Audit Committee to be objective, impartial and to exercise some judgement and common sense. Instead, these three senior members of RICS' governance hierarchy aligned themselves with the Executive. It is no answer to say that it was the manner of

the challenge which was unacceptable, because the alignment with the Executive had happened before the non-Executives' communications became more challenging.

49. Whilst Fieldfisher's emphatic advice did not assist them, the President and Chair of the Management Board should have acted upon their instincts for reconciliation and sought mediation.

50. The Audit Committee's Terms of Reference required proper information to be given to the Management Board. Despite this, the Chair either forgot about the existence of this rule or chose to ignore it.

51. I am satisfied that had the then-President and the Chair of the Management Board gripped this matter at an early stage, this crisis might have been avoided.

52. It is said that the letter written by the four non-Executives to the then-President on 11th November 2019 was the catalyst for their dismissal. I have concluded that this is misleading; the truth is that it provided an excuse to remove them from the Board in order to placate the Executive. I do not find their behaviour to have been either "improper" or "passive-aggressive", as asserted by the then-President in his letters dated 21st November 2019 (which had been written by Fieldfisher). Rather, I am satisfied that the true reason was that they were not prepared to back down from their demand that this issue should be fully ventilated before Governing Council. That level of challenge was something which the CEO and the COO, supported by General Counsel and the Chief People Officer, were not prepared to tolerate.

53. This was not so much a cover-up as a power struggle.

54. I find that it is more likely than not that the then-President of RICS and the Chair of the Management Board had doubts about both the wisdom and propriety of dismissing the four non-Executives and that their instincts were not to take that course. I have seen evidence that the President believed that the letter of 11th November genuinely represented the non-Executives' final word on the matter and that, provided Governing Council was informed, thereafter they were willing to let the matter rest.

55. I accept the evidence of the four non-Executives that their reason for writing the letter was that the President had already given them assurance that he would inform Governing Council and that they only wanted to be sure that he had all the information. That he had said that he would do so is not disputed. The letter sent by the four-non-Executives was addressed only to him and had he kept it to himself, I find that it is likely that matters would have resolved themselves. Instead of doing so, he decided to send the letter to General Counsel, who forwarded it to Fieldfisher. For reasons that I remain at a loss to understand, Fieldfisher advised that this private letter should be shared with the CEO and the COO. It had a predictably incendiary effect.

56. Given their seniority within the organisation, the then-President's and Chair of the Management Board's views that this matter was on its way to being resolved should have prevailed. I am satisfied that despite their misgivings, they were unable to stand up to the wishes of the CEO and COO, particularly when they were backed up by the Chief People Officer and General Counsel. I accept that both were also influenced by advice from Fieldfisher. In the President's case, this included written advice to the effect that he had little choice but to terminate the non-Executives' appointments.

57. I have concluded that from, at the latest, the end of August 2019 onwards, RICS was too quick to consult its external lawyers and overly-reliant upon their advice in relation to this issue. It should have been clear that Fieldfisher were being asked for, and were giving, advice which went beyond legal matters and strayed into questions of operational strategy, tactics and judgement. Whilst it may be common for solicitors to advise on matters that are not purely legal, the extent of Fieldfisher's involvement was extreme. I find that from the outset of their instruction on this matter, Fieldfisher took a partisan approach, siding with the Executive, against the four non-Executive Directors without any objective analysis of the true merits of the situation. I was surprised to find that the 18th November 2019 Fieldfisher note advising termination of the non-Executives was shared[256], on Fieldfisher's advice, not only with the Chair of the Management Board but also with the CEO and COO and that this was done before the letters of dismissal were sent. I remain of the view that there is no reasonable explanation for why this should have happened. I note that Fieldfisher did not advise that their note should be provided to the other non-Executive members of the Management Board, nor was it. This has reinforced the

[256] With the excision of the short sections which dealt with the Executives having a possible constructive dismissal claim, but otherwise unaltered

impression of Fieldfisher forming an alliance with the Executive and General Counsel against the four non-Executives.

58. I have concluded that Fieldfisher had more than one potential conflict of interest which they appear to have either ignored or misjudged. The gravamen of the notes of 11th and of 18th November 2019 was that the then-President had little choice but to dismiss the four non-Executives because the alternative was that RICS would lose both its Chief Executive and its Chief Operating Officer in circumstances where they might claim constructive dismissal. I have concluded that for this reason it was not appropriate for Fieldfisher to have held a long meeting with both the CEO and the COO on 13th November 2019. Until very recently the Fieldfisher attendance note could not apparently be found, despite my having asked for it a number of times. It was provided to me on 27th July 2021 with the explanation that it had been misfiled. Its contents confirm and enhance my concerns as to the wisdom of this meeting.

59. I have concluded that the then-President was not entitled to terminate the contracts of the four non-Executives by giving one month's notice. I have found nothing in the Charter, Bye-Laws, Regulations or other legislative instruments which would entitle him to do so. Having now seen the Fieldfisher Attendance Note of 13th November 2019 I am satisfied that the reason the President was selected to do it was because the Chair of the Management Board had, in effect, refused.

60. The process of summary dismissal was manifestly not a fair one. This is significant because there was a fair process available, which was set out in the *Members/Staff Partnership Policy* and is designed for a situation such as this. It is at least arguable that it was an implied term of the non-Executive members' Service Agreements that any disputes about their conduct would be resolved by implementing the *Members/Staff Partnership Policy*. I find that it is more likely than not that the reason this was not used was precisely because that procedure required both sides to be able to put their point of view before an independent panel, as well as the fact that it provided an appeals process. Such explanation as was given, namely that this procedure could not be used because no one had made a formal complaint against the non-Executives is, at best, disingenuous.

61. I have concluded that Fieldfisher's Advice of 18th November 2019 fell short of what RICS was entitled to expect in that it was not balanced and was not in the interests of their client because it did not give RICS an informed choice. In particular:

(i) No explanation was given or authority cited for what is meant by the "jurisdiction of the President" nor on what his purported authority to dismiss members of the Management Board was founded;

(ii) The Advice is silent about the use of the *Members/Staff Partnership Policy* and whether it was an implied term of the non-Executives' contracts that this (or some other fair process) was the mechanism which should be used;

(iii) The Advice says that *"there is a real risk of successful claims being brought against the organisation*" by the CEO and / or COO but fails to mention that constructive dismissal claims are difficult to prove and in any event that the damages are low. Whilst the loss of such senior staff would itself have been serious, this has to be balanced against the merits of the positions that they had adopted which had led to this crisis;

(iv) The advice was less than transparent about the part Fieldfisher itself had played in the internal governance review purportedly conducted by General Counsel;

(v) It was eminently foreseeable that the consequences for RICS were potentially disastrous. The reputational repercussions for any organisation of sacking the majority of the non-Executives on its Board were always likely to have been extensive, particularly in the absence of a compelling explanation for why it had been necessary. The Advice is silent on this aspect;

(vi) RICS, not the CEO and COO, were and are Fieldfisher's client. I have seen no evidence that Fieldfisher gave any advice about the potential chilling effect that these dismissals would have on legitimate challenge by non-Executives going forwards, which could not be in RICS' long-term interests; and

(vii) The terms in which the advice to terminate the four non-Executives is framed are surprisingly robust given the possible adverse consequences to the organisation. Fieldfisher told RICS that "*Removal of the four members from office is now a necessary course of action in order to restore the organisation to a properly functioning body*". Fieldfisher should have appreciated that it left the President feeling as though he had no choice. Whilst robust advice may be appropriate in certain circumstances, it is then all the more important that the client is fully informed of all relevant matters. Fieldfisher failed fully to inform its client in this respect.

62. RICS' response in 2020 – 2021 to the interest of the press in this story lacked candour. The letters to the GC2019 group threatening them with defamation proceedings were an overreaction and should not have been sent.

[2] IF THERE WERE SHORTCOMINGS, THE EXTENT TO WHICH THIS REPRESENTS A FAILURE OF GOVERNANCE

63. I find that there was a failure of governance for the following reasons:

(i) The reporting lines and areas of responsibility are unclear, with areas of overlap which lead to confusion;

(ii) There has been a significant concentration of power in the Executive, particularly the Chief Executive and the Chief Operating Officer, who have become accustomed to deciding what is in the best interests of RICS. They can be over-sensitive to perceived criticism and do not respond well to challenge;

(iii) There are sectional rivalries, with various bodies and individuals being jealous of their perceived areas of responsibility;

(iv) There has been an over-dependence on rules, process and external legal advice at the expense of good judgement, sound governance principles and plain common sense;

(v) There has been weak leadership at Chair level; and

(vi) The Chief People Officer failed to understand that her duty is to the organisation as a whole and is not merely to protect senior staff from criticism.

64. Good governance is about more than systems of delegation. For an organisation to be the best version of itself, its governance system must include the subtle qualities of openness and transparency, ethical conduct (including fairness to all members, whether employees or non-Executives), accountability and openness to change.

65. It is not consistent with good governance for members of the Executive, or any other individuals (such as the Chair of a Board or committee) to have limitless power when it comes to deciding what the governing body is, or is not, entitled to know.

[3] RECOMMENDATIONS FOR THE FUTURE.

66. These are to be found in Chapter 10.

CHAPTER 10

RECOMMENDATIONS

This Independent Review is one of two workstreams commissioned by RICS. The second is a wide-ranging governance review which has been given the title *Defining Our Future*. That has been an internally-run exercise under the leadership of the current President, Kathleen Fontana, and the CEO. A consultation process was begun in March 2021, which closed in April, and my understanding is that further work has been suspended pending the outcome of my Review.

I have been asked to make recommendations for the future, but because I have concluded that there were significant failures of governance there is an inevitable overlap with the broader governance review. One of the things I have learned is that for the last decade RICS has been engaging in almost constant governance reviews of one sort or another. It is apparent from my findings that these internal exercises have not yet succeeded in getting it right.

Whether the RICS senior leadership wants to hear this or not, it seems that there is a considerable trust deficit not only amongst members but also in the wider community, to whom RICS has a responsibility because of the public benefit duty which comes with being a holder of a Royal Charter.

For these reasons I urge RICS to convert its internal review into a wide-ranging examination of purpose, governance and strategy, conducted by an external reviewer. The issues are both complex and arcane and it will not be easy to rebuild trust as there is an ingrained suspicion that there is an agenda to limit the influence of the membership. Many members see any attempt to reform the governance structures as nothing short of a land-grab by the Executive and senior leadership.

Put bluntly, it is wholly foreseeable that a review which puts in charge of change the very people who are perceived to be part of the problem will fail.

I suggest that the ideal person would be someone of high standing, with knowledge of governance and how public-interest bodies work, but who is independent of RICS. A retired senior civil servant of impeccable reputation is one possibility.

Because I am recommending that there should be a wide-ranging independent review of governance and strategy, I do not intend to make observations on matters such as whether RICS should have a unitary Board. My recommendations are intended to be provisional whilst the organisation consults and considers what its ultimate structure should be.

On the understanding that these are only interim measures, my recommendations are as follows.

1. I understand that since the events of 2018 – 2019 which are the subject of this Review, updates are now provided to Governing Council by the Chairs of all the Boards and Committees immediately following meetings. This is helpful because the formal Minutes may not be available for some time, but my recommendation is that henceforth all Minutes should be provided to Governing Council as soon as they have been agreed. This should help to avoid one of the issues which I have found to have been corrosive of trust, namely that the Chief Executive was providing summaries which were not as transparent as they might have been.

2. This will allow members of Governing Council to have relatively contemporaneous oversight of what is happening in the various parts of the organisation. It will also allow them to be read at intervals rather than as part of a dauntingly large meeting pack twice a year. As there are now monthly informal Governing Council meetings, issues can be raised within a reasonable time. This is in line with the existing governance structure, which in order to operate properly requires Governing Council to be sighted on matters of any significance. It is the wrong approach to see Governing Council as interfering in such issues: there is nothing which should be closed to it. It is a democratic structure and if one member is behaving inappropriately then it will be for others to steady the body.

3. The provision of updates to Governing Council is the responsibility of the Chair of the Board or Committee and should no longer be delegated to the Chief Executive or any other senior member of staff.

4. There should be explicit recognition that the Management Board has an overarching responsibility for all operational matters. Thus it should receive the Minutes of all other Boards, in order to ensure that it is fully sighted on what is happening in the other parts of the organisation. If the Management Board wishes to be given more information, including having sight of documents, then these must be provided on request. Being sighted does not equate to interference nor does it undermine the system of delegation.

5. Management Board meetings should be shorter but more frequent. Quarterly meetings which last for a full day are inconsistent with proper oversight and operational decision-making and result in the Executive having to make decisions without Management Board input. Members of the Management Board who are based overseas should be able to attend remotely.

6. No member of the Presidential team should also be a member of the Management Board, save on an *ex-officio* basis.

7. Members of the Management Board should be allowed to raise matters with Governing Council without having to seek permission from the Chair.

8. The Board Handbook makes provision for regular Board reviews of effectiveness and these should be conducted annually. All non-Executives should be evaluated in terms of the contribution they make and any who are simply passengers should be replaced.

9. As a short-term measure, Governing Council should commission an over-arching statement which emphasises that culture and behaviours such as openness, transparency, ethical conduct (including fairness to all members, whether employees or non-Executives), accountability, collegiality, cooperation and openness to change are as important as governance structures.

10. Consideration should be given to whether financial bonuses at senior Executive level are appropriate for a professional membership organisation.

11. There should be an overhaul of the whistle-blowing structure. There needs to be an alternative route (to an independent third party with standing or authority) if the complaint is made either by, or concerns, a member of the senior leadership team. The fact that a whistle-blowing hotline is never used should be a cause for concern, not complacency.

12. Governing Council should clarify the circumstances (if any) in which the Chair of Governing Council is entitled to take decisions, such as dismissing non-Executives, on behalf of the Council.

13. General Counsel or Head of Legal should not have a pre-existing relationship[257] with RICS' external legal advisers.

14. RICS' external legal advisers should be invited to tender every three years, with a presumption that there will be a regular change of provider.

15. RICS should consider replacing its external legal advisers, ideally by putting the matter out to tender. As part of this process, RICS may wish to scrutinise the involvement of Fieldfisher in this matter, particularly in relation to:
    a. Possibly unwise decisions, bearing in mind that RICS – not the Executive – was Fieldfisher's client;
    b. Whether advice was given on legal matters only or whether it strayed into other areas and whether it could be described as non-partisan;
    c. The level of spend.

    I was denied access to some documents in the file on the ground that they were internal Fieldfisher communications and thus did not belong to the client (RICS). I disagree with this view and suggest that RICS might consider making a request of Fieldfisher in order to see the internal discussions which took place.

16. For the future, there should be a framework setting out the parameters for seeking external legal advice and stipulating who can give instructions. There may be levels of spend for which authorisation should be sought from Governing Council. Advice from external legal advisers should be non-partisan and should always be given in the clear recognition that the client is RICS itself, not any part of senior management. It should be limited to genuinely legal matters and should not extend to matters of strategy.

[257] In the sense of having been a partner in, employed by or trained at

Finally, I recommend that:

(i) RICS should issue a public apology to Steve Williams, Simon Hardwick, Amarjit Atkhar and Bruce McAra. Before his dismissal, Simon Hardwick sought and obtained legal advice about his obligations as a non-Executive Board member and he should be reimbursed for this. For the two non-Executives who were remunerated, RICS should pay them what they would have earned had they been allowed to finish their terms.

(ii) RICS should also publicly apologise to the members of the GC2019 Group who received letters from Sheridans in January 2021 and should reimburse them for fees incurred in connection with obtaining legal advice about the matter.

Appendix A

Terms of Reference

ROYAL INSTITUTION OF CHARTERED SURVEYORS ('RICS')

INDEPENDENT EXTERNAL REVIEW IN RESPECT OF THE ISSUES RAISED AT RICS IN 2018 AND 2019 FOLLOWING THE COMMISSIONING BY THE RICS AUDIT COMMITTEE OF A TREASURY MANAGEMENT AUDIT

REVISED TERMS OF REFERENCE

APRIL 2021

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1. Articles have appeared in the Press suggesting that the RICS tried to suppress a critical internal report into its finances and then wrongly censured those who sought to explore the issue.
2. The purpose of this Independent Review, conducted by Alison Levitt QC, is to consider the governance, obligations and duties of the RICS in relation to these issues.
3. There are three core objectives for the Independent Review:
   (i) To consider the way in which the internal report was commissioned and dealt with and to determine whether there were any shortcomings in this respect;
   (ii) If there were, to consider the extent to which this represents a failure of governance;
   (iii) To make recommendations for the future.
4. In the course of the Review, regard will be had to the specific questions which appear at Appendix A to this document.
5. Alison Levitt QC should provide a report which addresses the three core objectives. Any findings and recommendations should be evidence-based and proportionate. She will endeavour to produce her report by mid-June 2021.
6. This Independent Review was commissioned by the Governing Council of the RICS. However, the Review and Alison Levitt QC are independent of the RICS. Ms Levitt

QC was appointed by the Steering Committee of the RICS and is instructed by Sophie Kemp of Kingsley Napley LLP. Ms Levitt QC will be supported by barrister Christopher Foulkes, also of 2 Hare Court Chambers, and a team of solicitors from Kingsley Napley LLP.

7. Details of the governance of, and the methodology for the Independent Review will be agreed between Alison Levitt QC and Kingsley Napley LLP. It will include the issuing of a call for evidence.

APPENDIX A

Questions to be considered by the Independent Review

1. The background to, and the circumstances of the commissioning of a Treasury Management Audit in 2018;
2. When, how and on what basis the Audit was undertaken and completed;
3. The internal reporting and progress of the outcome of the Audit to the RICS Management Board and Governing Council (including the adequacy of corporate governance and oversight arrangements);
4. Whether reporting and escalation procedures were sufficiently clear and if so, whether they were acted upon properly or at all;
5. The nature of concerns raised within RICS about the Audit;
6. The steps taken in response to concerns about the Audit (in particular the Internal Governance Review of 20th September 2019);
7. The background to and circumstances surrounding the Management Board meeting of 25th September 2019;
8. The concerns raised by four non-executive directors (Amarjit Atkar, Simon Hardwick, Bruce McAra, Steve Williams) and others in relation to this Board meeting;
9. The response to those concerns;

10. The timing and the circumstances in which Messrs. Atkar, Hardwick, McAra and Williams were exited as non-executive directors of the Management Board;
11. The governance and oversight arrangements in place at RICS in relation to removal of non-executive directors and whether these were adhered to;
12. The nature and accuracy of subsequent briefing internally and externally on the departure of the non-executive directors.

Appendix B

Call for Evidence and Questionnaire

ROYAL INSTITUTION OF CHARTERED SURVEYORS ('RICS')

INDEPENDENT EXTERNAL REVIEW IN RESPECT OF THE ISSUES RAISED AT RICS IN 2018 AND 2019 FOLLOWING THE COMMISSIONING BY THE RICS AUDIT COMMITTEE OF A TREASURY MANAGEMENT AUDIT

Call for Evidence

The Independent Review

1. Articles have appeared in the Press suggesting that RICS tried to suppress a critical internal report into its finances and then wrongly censured those who sought to explore the issue.

2. In response to these allegations RICS has committed to examining its actions, governance, obligations and duties in relation to these issues.

3. RICS has commissioned an Independent Review and appointed Alison Levitt QC to lead it.

4. There are three core objectives for the Independent Review:

   (i) To consider the way in which the internal report was commissioned and dealt with and to determine whether there were any shortcomings in this respect;

   (ii) If there were, to consider the extent to which this represents a failure of governance;

   (iii) To make recommendations for the future.

The full Terms of Reference can be found at:
http://www.levittqcindependentreview.co.uk/.

About this Call for Evidence

This call for evidence seeks to generate a range of written responses from as wide a range of respondents as possible. Attached is a questionnaire which shows the areas in which we are particularly interested, but individuals and organisations can also provide their own statement if they wish.

We encourage you to provide evidence, where possible, to support your comments so that we can better understand the issue.

To whom is the Call for Evidence directed?

We want to hear a range of opinions, expertise and experience from those who can offer an insight into the issues which form the subject of this Review

This includes:

- *Current and former members of RICS*
- *Current and former Directors and Officers of RICS*
- *Journalists*
- *Others with an interest in the governance of RICS*

Confidentiality and consent

The Independent Review Team consists of two independent barristers instructed by Kingsley Napley LLP. They have set up a digital platform where all material is stored safely and confidentially and to which RICS has no access.

If you wish to give evidence on a confidential basis then RICS will not be able to find out that you have contacted the Independent Review team nor what you have said.

You can provide evidence and / or answer the questionnaire anonymously, but you should be aware that that might affect how much weight can be given to your answers. The Independent Review Team would much prefer it if you would tell them who you are but ask for your identity to be kept confidential.

The Independent Review will act in accordance with the General Data Protection Regulations.

A privacy notice can be found at http://www.levittqcindependentreview.co.uk/.

All information collected through the call for evidence will be kept in the strictest confidence. Analysis of the evidence submitted may be used as part of the report of the Independent Review, which will be published, but information identifying individuals will be removed, unless express permission to include an individual or group's name or identity is given by that individual or group. There may be some reference to broader defining characteristics, such as gender or sector, but this will not identify individuals.

By submitting a response to this call for evidence you are consenting to the use of your data as set out above.

How to submit your response

Please send the Independent Review Team an email at contact@LevittQCIndependentReview.co.uk. This is an email address to which RICS has no access.

Please provide your response by Wednesday 19th May 2021.

Alison Levitt QC

Christopher Foulkes

The Independent Review Team

April 2021

ROYAL INSTITUTION OF CHARTERED SURVEYORS ('RICS')

INDEPENDENT EXTERNAL REVIEW IN RESPECT OF THE ISSUES RAISED AT RICS IN 2018 AND 2019 FOLLOWING THE COMMISSIONING BY THE RICS AUDIT COMMITTEE OF A TREASURY MANAGEMENT AUDIT

QUESTIONNAIRE

IMPORTANT NOTICE:

RICS will have no access to responses to these questions

1. Your name (if you are prepared to tell us)
2. Your occupation (if you are prepared to say)
3. The organisation or group to which you belong
4. If you have told us your name, would you like your identity to be kept confidential?
5. If we wanted to ask some follow-up questions, may we contact you? If we may, please give us an email address or a telephone number.

We would like to hear what you have to say about the following issues. Please give as much detail as you can and send evidence (such as documents) if you have any. It would be really helpful if you could tell us whether you are speaking from your personal knowledge or whether it is something you have been told by others (or have learnt from some other source). Please do not feel bound by the questions below; if you would like to tell us about something in your own words please feel free to do so, but please remember that we can only take account of issues which are within the Terms of Reference for the Independent Review.

1) Do you know anything about ***why*** the internal Audit report into Treasury Management issues was commissioned?

2) Do you know anything about *the way in which* the internal Audit report into Treasury Management issues was commissioned?
3) Do you have any concerns about the commissioning of the Audit report? If so, what are they?
4) Do you have any observations about when, how and on what basis the Audit was undertaken and completed?
5) Do you have any observations about the internal reporting of the progress and the outcome of the Audit to the RICS Management Board?
6) Do you have any observations about the internal reporting and progress of the outcome of the Audit to the Governing Council?
7) Are you aware of whether any reporting and escalation procedures existed?
8) Were any such reporting and escalation procedures sufficiently clear?
9) Were any such reporting and escalation procedures acted upon properly or at all?
10) Do you have knowledge of the nature of any concerns raised within RICS about the Audit?
11) Do you have any observations on the steps taken in response to any concerns raised about the Audit (in particular the Internal Governance Review of 20th September 2019)?
12) Do you have any knowledge of the background to and circumstances surrounding the Management Board meeting of 25th September 2019?
13) Do you have any knowledge of the concerns raised in relation to what happened at this Board meeting?
14) Do you have any knowledge of the response to those concerns?
15) Do you have any observations to make about the circumstances in which Messrs. Atkar, Hardwick, McAra and Williams were removed as non-executive directors of the Management Board?
16) Do you have any observations to make about the timing of Messrs. Atkar, Hardwick, McAra and Williams being removed as non-executive directors of the Management Board?
17) Do you have any observations about the governance and oversight arrangements in place at RICS in relation to the removal of non-executive directors? In particular,
    a. Do you believe these were adhered to?
    b. Do you believe that the arrangements were adequate?

18) Do you have any observations to make about the nature and accuracy of subsequent briefing internally and externally on the departure of the non-executive directors?

19) Do you believe that there have been failures of governance? If so, what are they?

20) Do you have any recommendations for how things might be done better in the future?

21) Is there anyone you think we should speak to or anything else you think we should read?

22) Is there anything further you would like to add?

Alison Levitt QC

Christopher Foulkes

The Independent Review Team

27 April 2021

Appendix C

List of witnesses

List of Witnesses

The following is a list of the witnesses with whom we spoke in interview, and the dates of those interviews. All dates are in 2021.

The list does not include those who asked not to be identified.

Amarjit Atkar	Former Management Board non-Executive	5th & 14th May
Chris Brooke	Interim Chair of Governing Council President, 2018-2019	7th & 24th May
Louise Brooke-Smith OBE	Former President of RICS (2014-2015)	11th May
Terri Burns	Assistant Company Secretary, RICS	24th May
Jim Carter	Former Chair, Management Board, RICS (to 2014)	27th May
Gillian Charlesworth	Former Director of Regulatory & Corporate Affairs, RICS (to May 2019)	10th May
Amanda Clack	Former President of RICS (2016-2017)	21st May
Natalie Cohen	Management Board non-Executive member Former Governing Council member (to Dec. 2019)	13th May
Max Crofts	Former President of RICS (2009-2010)	27th May
Elizabeth Edwards	Former Junior Vice President, and Governing Council and Executive Committee member	25th May
Alistair Elliott	Senior Partner & Group Chairman, GB Knight Frank	20th May
Kathleen Fontana	Current President of RICS	17th May
Dame Teresa Graham DBE	Former Chair, Regulatory Board Global Governance Reviewer for RICS, 2014-2015	26th May
Richard Gunning	Chair, Finance Committee	13th May
Simon Hardwick	Former Management Board non-Executive	5th & 17th May

Rofi Ihsan	Interim CFO (to June 2021) Current Interim COO	21st May
Bill Jones	Current Governing Council member	25th May
[redacted]	Chief People Officer, RICS	17th May
Caroline Lace	Head of Governance, RICS	6th May
Paul Marcuse	Chair, Management Board	19th & 28th May
Bruce McAra	Former Management Board non-Executive	4th & 11th May
[redacted]	Former Group Finance Director, RICS	10th May
Dame Janet Paraskeva DBE PC	Chair, Standards & Regulation Board, RICS	13th May
Violetta Parylo	Former COO (to June 2021)	7th & 25th May
[redacted]	General Counsel, RICS	14th & 27th May
George Roberts	Head of UK & Ireland, Cushman & Wakefield	4th May
Sean Tompkins	CEO	20th May
Paul Wilczycki	Former Director of Risk and Assurance	21st May
Steve Williams	Former Management Board non-Executive	29th April & 10th May

The following witnesses were interviewed in groups:

<u>BDO UK LLP</u>		
Timothy Foster Jonathan Lanes	Partner, Head of Risk and Advisory Services, Midlands Director (now Partner), Risk and Advisory Services	3rd June
<u>Four Past Presidents of RICS</u>		26th May
Amanda Clack	President 2016-2017	
Jonathan Harris CBE	President 2000-2001	
Christopher Jonas CBE	President 1992-1993	
Simon Pott	President 1995-1996	
<u>Two Past Presidents of RICS</u>		19th May
John Hughes	President 2017-2018	
Robert Peto	President 2010-2011	

GC2019 Group

14th May

Richard Asher
James Baker
Dayle Bayliss
Rob Hindle
Julian Josephs
Amy Leader
Jon Lever
Monique Royle
Ramsey Tadros
Adrienne Yarwood

Appendix D

BDO Report of February 2019

DRAFT

Treasury Management

CONFIDENTIAL

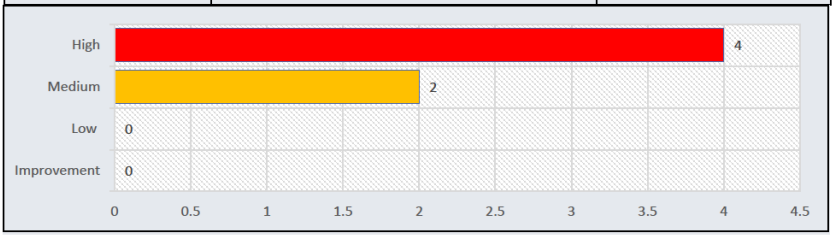
PREPARED FOR:

[redacted]

DISTRIBUTION:

Audit Committee

Design Opinion	A fundamentally flawed design of internal controls that is unlikely to support the achievement objectives and which is ineffective in managing risk.	**No Assurance**
Operating Effectiveness Opinion	The controls in place are not applied effectively. There is no assurance that the controls are effective in mitigating the associated risks.	**No Assurance**



Date of report:	8 November 2018
Report number:	1903
Total days of review:	12
Review team:	BDO
Reason for review:	Treasury Management

Executive Summary

Background

The purpose of the review was to provide assurance to management and the Audit Committee that effective controls are in place for The Royal Institution of Chartered Surveyors (RICS or Institution) in relation to Treasury Management.

Treasury Management underpins the effective maintenance of working capital, ensuring an organisation has sufficient funds available to meet its obligations, whilst ensuring surplus cash is managed within the Board's appetite for risk and return.

The Institution currently has no loan agreements in place other than an overdraft facility with NatWest for up to £4m. Two further banks are used to hold RICS funds: Nationwide (£9-10m) and HSBC (£7-8m). As the Institution's main source of finance is a revolving credit facility, the Institution's policy is to minimise this facility whilst ensuring sufficient funds are available at all times to sustain the Institution on a day-to-day basis.

RICS operates a centralised Treasury function to manage its funding requirements, and its financial risks, in line with the Board approved Treasury Management Policy, Investment Policy and Reserves Policy. The UK based function is responsible for the management of the Institution's main bank accounts and consolidated cash flow reporting; however, the international business units are handled directly by the International Accountant. The Treasury function is managed by the Group Financial Controller (GFC) who is supported by the Transaction Manager (TM) and two Treasury Associates (TA). The GFC reports into the Group Finance Director (GFD), with treasury related updates to be reported to the Finance Committee.

Scope and approach

Our approach was to conduct interviews and walkthroughs with the Treasury team to document the key controls for each scope area outlined below. We then obtained documentary evidence that these controls are designed as described, and carried out test samples and review of documents to identify whether the controls were operating effectively. The key focus areas for our audit were:

- **Treasury Management Policy:** We; reviewed the Treasury Management Policy to confirm it was complete and reflected current practices and responsibilities; reviewed the roles, responsibilities and accountabilities of Finance Committee and senior management; and assessed the setting, approval and roll out of policies to reflect strategic and business planning priorities.
- **Banking and Treasury Transactions:** We; reviewed the controls operating over bank account management, including opening new bank accounts and bank mandates for both UK and International Accounts; reviewed the key controls operating over the bank reconciliation process and assessed the accuracy and timeliness, accountability and segregation of duties for both UK and International bank account reconciliations. We also assessed whether there was adequate segregation of duties between the processing, approval and monitoring of inter-company treasury transactions.
- **Cash Flow Management:** We reviewed the adequacy and effectiveness of the cash flow monitoring and reporting arrangements, including the frequency of cash flow reporting and the oversight that Group Finance has over this process. We also evaluated the rolling cash flow spreadsheet integrity controls.
- **Reporting to Finance Committee:** We assessed the completeness and quality of the reports to the Finance Committee and evaluated whether or not there were reasonable key performance indicators against which the performance of the Treasury function is monitored.

Although our audit focused on the Treasury Management arrangements in place throughout 2018, we acknowledge that many of the issues identified in this report are known by the recently appointed Treasury team (in April 2018). The team confirmed they were in the process of addressing the known issues; for example, in the case of the UK being included on the bank mandates of international locations, an action plan is already in place. However, as this process is still at the very early stages (with just 10 of the 35 international locations having granted the UK team access to the bank mandate), we have still made a recommendation in this report so that progress can be followed up in the future.

As there is no documented Treasury Procedure Manual, we interviewed key personnel in the Treasury and Finance teams to understand the key processes and controls in place for daily treasury operations, these are outlined below:

- **Bank Mandates:** The GFC and GFD confirmed that they should approve any new accounts, changes to banking mandates and/or signatories relating to the opening or closing of bank accounts for any legal entity in RICS. All associated documentation should then signed by all relevant Directors of the legal entity and if necessary, approved by the Board. However, this process is not documented within the Treasury Policy.

  Cash Flow Management: At the time of the audit we were informed that the cash flow forecast was produced in June 2017, and only looked ahead to December 2018, but did not include international locations. The spreadsheet cash flow forecast is updated with daily actuals from each bank account by the Treasury Assistants from the UK treasury team and is used by the International Accountants to consolidate the cash position of the Institution within the preparation of the management accounts. This forecast is used to identify any concerns with headroom and to ensure surplus cash is used to repay debt on the credit facility. Management explained that for quarter 1 to quarter 3 the cash balance is always strong and declines throughout the year and in quarter 4 a more detailed cash flow forecast is normally carried out due to delays in members paying the membership fees. However, in quarter 4 2018 the Institution had some cash flow difficulties and needed to extend its overdraft by an additional £3m.

  Subsequent to the audit, we were provided with a more up to date cash flow working paper which had been used to forecast the future cash requirement to extend the overdraft. Our review of the working paper confirmed that the assumptions had been hard coded into the calculations in each cell, rather than linking to a set of variables which can be easily updated. As such we were unable to confirm what assumptions had been used nor test the supporting evidence as to why they had been used. This updated cash flow forecast continues to include the UK bank accounts but a small number of international accounts have now been added i.e. the accounts that the UK Treasury team have access to where the mandate has been updated. The latest cash flow forecast document is linked to the consolidation schedule and thus the bank balances per the forecast are pulled through into the consolidation schedule to produce the monthly management accounts. The international accountants then manually key in the bank balances for the remaining international locations to ensure that all banks are included in the consolidated schedule. The International accountants do not maintain a separate cash forecast for the international bank accounts.

- **Bank Account Reconciliations:** For the three main UK bank accounts, monthly bank reconciliations are prepared by the TAs, and reviewed and approved, by the TM. However, the UK Treasury function does not have sufficient access to bank statements to perform the reconciliations for international locations. Therefore, it is the responsibility of each international finance team to reconcile their own bank accounts and send this to the International Accountant in the UK to update consolidation schedules used to produce the management accounts.

- **Treasury Reporting:** Bank reconciliations reviewed and approved by the Transactions Manager are sent to the FRP team for inclusion in the monthly management accounts process. Management account packs are prepared on a monthly basis by the International Accountant and reflect the bank balances from the bank reconciliations completed by the UK Treasury function and the International Finance teams. The packs are then reviewed by the GFC and GFD, with the consolidated results presented to the Finance Committee on a quarterly basis.

Throughout our testing, we sought to gain evidence of the satisfactory operation of the controls to verify the consistency of application, and overall effectiveness, of the controls. At the conclusion of the review, we held a closing meeting to discuss the outcome of the review and agree the improvements that need to be made to the treasury management arrangements.

Key Findings

We have reported a number of findings during our review, including 4 of high priority and 2 of medium priority. Full details of our findings and recommendations can be seen within the management action plan in the following section of this report; however, below we summarise the high priority findings which need urgent attention:

- **Treasury Management Framework:** There is no documented global Treasury Management Framework. Although various Treasury related policies exist, these have a number of notable omissions, have not been version controlled, and have not been updated to reflect the amendments requested by the Finance Committee. Furthermore, the policies are high level and there are no documented procedures in place for key Treasury activities. The Treasury Team was only recently appointed in April 2018, but confirmed they were not aware of the existence of the Treasury policies and we could not find them on the shared portal at the time of the audit. The Treasury Manager confirmed that she had only recently found out that there was a RICS Treasury Policy when she was copied in on an email sent to the Auditor containing it.
- **Bank Mandates:** The Institution has not documented a policy for setting up a new bank account or amending the mandate of an existing one. There are numerous bank accounts across the 35 international locations where the UK Treasury Function is not on the mandate and does not have access to the Bank Statements. Furthermore, despite the Treasury team maintaining a list of international accounts, there are no controls in place to ensure completeness of this list; a recent exercise identified additional bank accounts in one country that we not previously known to the UK.
- **Cash flow management –** The Institution's 18 month cash flow forecast was produced by the AFC in June 2017 but this only runs to 31 December 2018. The AFC confirmed that it should have been updated each quarter to extend it by 3 months, but due to a change in his role this has not happened. We also identified that the Treasury Update presented to the Finance Committee in August 2018 contained a three year cash flow forecast that highlighted a negative net cash flow for 2018/19 of £610k, and the need to extend the maximum overdraft facility by an additional £3m to £7m. Subsequent to the audit, management provided a further detailed cash flow forecast covering the period until December 2019 a list of variable assumptions, and justifications for these assumptions, could not be provided to support the model as these had been hard coded into the calculation. Furthermore, due to the manual nature of the completion of the cash flow forecast spreadsheets used there is a possibility of error or manipulation of the spreadsheet. In our opinion, until the cash flow model is bettered controlled there is a high risk that the Institution may have unidentified cash flow issues in the future.
- **Bank Account Reconciliations –** The Treasury Policy does not mandate the requirement for bank account reconciliations or the thresholds for resolving unreconciled differences. Due to the small size of the Treasury team and the large number of bank accounts across c.35 international locations, management confirmed that they have insufficient time to investigate and resolve unreconciled differences across all the bank accounts. The Transactions Manager confirmed that the volumes of unreconciled transactions requiring investigation and fix are in the thousands (some of which are legacy). Although lots of work has been done to identify the root causes the existing systems and manual reconciling processes make it impossible to have everything reconciled before the Management accounts are issued. Therefore, the management accounts are prepared with outstanding unreconciled differences each month.

We also made two medium priority recommendation which are outlined in the detailed findings section of the report. These finding relate to control weaknesses over interbank transfers and the monitoring of actions from the Finance Committee to be carried out by the Treasury function. We believe the root cause for the risk exposures outlined in this report fundamentally relate to:

- A lack of a communicated Treasury Management Framework setting out the policy rules for the international network to comply with. This happened over the period when RICS were expanding overseas and has not been addressed since.
- A relatively new UK Treasury team that did not receive a tailored induction for their role, did not have the Treasury policies communicated to them and have not received any bespoke training on how to apply the policies and procedures.
- Much of the Treasury team's time is spent chasing information from the international network who are not being centrally controlled, and therefore there are insufficient resources to carry out day to day routine activities, such as following up bank reconciliation variances, and continuing to update the cash flow when someone leaves.

- An over reliance on spreadsheets, which are poorly controlled, and key management information not being driven from software / automated tools, such as stress testing models and automated KPIs from feeder systems.
- A culture that was aware of many of these issues but accepts the risks associated with them due to the resourcing issues and the transformation programme. There was no 'tone from the top' that these issues are unacceptable to be left unaddressed, instead there is hope that the Finance Systems project will resolve much of the issues in the future.

Conclusion

Overall, our review identified that the Treasury function has: insufficient resources to carry out all key tasks; limited access to global bank information; no training or awareness of the Institution's treasury policies, and a lack of documented procedures; and inadequate cash flow modelling arrangements. In our view, the control framework is not adequately designed to effectively and efficiently manage the key treasury management activities and associated risks.

Considering the fundamental nature of the high priority issues raised in this report, and the large number of overall improvements required to address these weaknesses, we believe there is a higher potential for unidentified fraud, misappropriation of funds, and misreporting of financial performance. Furthermore, it is not surprising that the Institution has had to extend their overdraft facility at short notice, and there is a risk that further cash flow difficulties may arise in the future.

As such, we can provide no assurance over the design and operating effectiveness of the controls in place for the Treasury Management arrangements at RICS.

1.Finding
Documented guidance and policy documents A Treasury Management Framework should set the strategy, risk appetite, rules, roles and responsibilities for the management of funds within any organisation. Within RICS, there is no documented Treasury Management framework, instead, the Institution has established three policies which detail the rules for governing the Treasury function, as follows: • **Treasury Policy (updated November 2016)**: Principal objectives of RICS's treasury activities; cash flow management rules; lists the key risks that the RICS group is exposed to and how they tend to mitigate them; day to day banking and investment of surplus cash funds in short term investments; funding objectives which are then referred to the Reserves and Statement of investment policies; capital financing objectives and how the Finance Committee directs them. • **Reserves Policy (Updated September 2015):** Purpose of the Reserves Policy; key principles upon which the Reserves policy is based; funding objectives for the Institution and the projects it runs in the short and long term as well as how they will be managed; and how surplus funds will be used. • **Investment Policy (Updated May 2014):** Purpose of the Investment Policy; roles of the Finance Committee on overseeing the Institution's investments; the Investment Manager's role; investment objectives; list of various risks to which the investment policy is exposed to and planned mitigation; and the investment strategy. Our testing confirmed that the three policies are not properly version controlled, appear to be out of date and have never been communicated to the Treasury team. We were unable to locate the policies easily in the Institution's shared folders and they were not widely communicated on the intranet. All members of the Treasury team confirmed that they had not seen the policies before and, instead, just follow instructions from the GFC and rely on their own experience from previous treasury roles. There is no formal induction, communication, or training programme for members of the Treasury team. Despite the GFC confirming that the policies have been reviewed and updated in September 2018, evidence of the review and approval process could not be provided. However, a review of the minutes of the Finance Committee dated 21 November 2017 identified that the Treasury Policy was reviewed and amendments were discussed by members. However, the review of the minutes confirmed that the current Treasury Policy was not formally minuted as approved. Furthermore, a review of the report and minutes of the Finance Committee on the 29 August 2018 found that, although the finance update paper refers to the Finance Committee agreeing to amend the Treasury Policy to allow a lower rated bank to be used, and that the maximum holding would resultantly be reduced to £5m, the minutes do not reflect this and the Investment Policy was not subsequently updated. The Treasury Policy still notes that a higher listed bank should be used. In addition, our detailed review of the policies identified the following documentation gaps: • The respective roles of the UK Treasury function, International Accounts and International Finance teams in each location and how each will work together • Procedures confirming the controls for daily activities of the Treasury team and how roles and responsibilities will be structured to enable them to meet the objectives of the strategy and policies • The rules and threshold for key areas such as the authority levels for individuals within the team to carry out transactions • How the Institution would deal with a potential breach of the policy and how it would be reported to the Finance Committee

- How the Institution assesses and benchmarks the performance of the Investment Manager against the market, and how any recommendations for improvement are assessed and monitored; and
- How the Institution manages funds held by CMP, a 100% subsidiary based in Guernsey.

Although it is common practice for large organisations to have a wider overarching Treasury Management Framework, management confirmed they felt what was already in place was sufficient and fit for purpose.

Risk exposure	**Risk Rating**	**HIGH**

There is a risk of a lack of standardisation of treasury management activities across the Institution which will likely result in inconsistency and the inability to effectively apply the Institution's Treasury Policy, as should be approved by the Finance Committee. If minutes do not reflect the requirements and decisions made by the Finance Committee the proposed changes to policies may not subsequently updated and communicated to staff.

Agreed solution

We recommend that management develop a Treasury Management Framework which sets out the strategic direction, risk appetite, policy rules, supporting procedures, tools and templates. The following key elements of this framework should be included:

- Version control approval date, next review date and review and approving body;
- Purpose of the framework along with scope and statement detailing the main objectives;
- List of key risks for the Institution, as well as the risk appetite for each key treasury activity. How the Institution will strive to mitigate these risks.
- Monitoring and evaluation of treasury performance and details of source data, calculation and validation.
- Delegations of authority by roles for decision making;
- Organisational clarity and details of segregation of duties, roles, responsibilities for international and UK teams;
- Rules for bank accounts, loans and investments;
- Reporting requirements and management information requirements;
- Budgeting, accounting and audit arrangements;
- Cash and cash flow management requirements;
- Anti-money laundering regulations and how they ensure they adhere to the relevant rules;
- Staff training and qualifications requirements;
- Use of external service providers;
- Reference to detailed procedures, tools and templates.

The Framework should be regularly reviewed to ensure the strategy and policy rules are fit for purpose and the processes and guidance tools and templates remains up to date and reflective of current practice.

A review of the Finance Committee and Board minutes should be undertaken to ensure all Treasury related decisions over the last 12 months have been correctly minutes and actioned. All minutes should be reviewed at the start of each Committee meeting to confirm accurate reflection of the meeting and decisions.

Management Response

We will create a Treasury Management Framework (Assistant Financial Controller)	GFC and TM team End of April 2019

We will version control all policies and ensure up to date (Assistant Financial Controller)	GFC and TM team End of February 2019
Detailed procedures will be created/updated and circulated (Assistant Financial Controller, Treasury Section & International Accountants, Treasury Management)	TM team End of April 2019

2.Finding
Bank Mandates The Institution does not have a documented policy in place for opening, closing and setting up/amending the bank mandates for UK and international locations. As a result, the Treasury function is aware that there is a high number of international locations which have set-up bank accounts without the UK being included on the mandate. As a result, a project has commenced to go through the list of international locations (starting with the largest and working down) to contact the Finance team and amend the mandates. The Treasury function is working off a list of bank accounts which they have pulled together by analysing emails from the previous Transactions Manager, for which there was no handover process. We were provided with a detailed 'group' structure from Company Secretariat; this shows all the legal entities and the overall consolidation levels. We were informed that the International Accountants maintain a consolidation schedule which tracks the legal entities and their relevant bank accounts and thus showing the cash position. The Treasury team have a separate list of bank accounts which they are working through as part of their project to update the bank mandates. These three documents have never been reconciled, and we were unable to match them successfully as part of the audit. We believe there may be an issue with the completeness of the list as we found eight international locations on the latest group structure that were not on this bank account list. The eight locations are: Taiwan, Thailand, Barbados, Mexico, Greece, Ireland and Russia, and this was being investigated by the Treasury function following the close meeting for this audit. The list of bank accounts held by the Treasury team details the location, bank account details, administrators and signatories as well as cash limits. The list has 35 international locations of which the Institution has only managed to obtain bank mandates for 9 locations, namely Australia, New Zealand, Singapore, Belgium, Qatar, Spain, Sweden, Switzerland, Hong Kong and UAE. For the 26 remaining locations, the Institution is neither sure of how many bank accounts are in existence nor how much funds they hold. Our testing of the bank mandates obtained thus far, confirmed that there were clear segregation of duties with the Treasury team contacting the banks and completing the relevant bank forms, which are then reviewed and signed by the GFC and GFD. The signatories and limits were proposed by the GFC and GFD and approved by the relevant directors for the legal entity by signing the Board resolutions. However, due to time constraints, they were not always able to update the list of bank accounts to reflect the recent changes as per the approved board resolutions. Until the UK is added to the bank mandate, the Treasury function do not have visibility through direct access of the bank statement, instead they have to place reliance on the screen shots sent through to the International Accountants as part of the cash flow monitoring process. As a result, none of the team are independently reviewing or performing bank account reconciliations in the international locations. Furthermore, in the case of the Belgium location, the mandate has now been obtained and they discovered it holds three bank accounts rather than the two bank accounts on their list (and within the cash flow). As such, there were an addition c£20k of funds which were not included in the financial reporting of consolidated group cash flow.
Risk exposure / **Risk Rating** / **HIGH**
The Institution may not be aware of all RICS bank accounts internationally and the individuals and rules being applied on the bank mandates may not be appropriate exposing the business to potential misappropriation of RICS funds.
Agreed solution

We recommend that the Institution should have in place a detailed bank mandate listing which is reconciled to the group structure and cash flow monitoring tools to ensure completeness.

As a matter of priority, the Institution should establish the policy for setting up bank accounts and determining the bank mandates. Each bank mandate then needs to be reviewed against the policy. Where the bank mandates are not appropriate, i.e. UK Treasury team is not on the mandate, the mandate should be amended to match the Institution's policy for bank mandates.

As planned, management should continue to work through the list of international countries and bank accounts and get copies of the bank mandates. The details should be recorded within a bank mandate listing that details:

- Locations and accounts held at each;
- Full bank details;
- Branch and address;
- Signatories;
- Authorisation rules i.e. dual sign off requirements;
- Where bank statements get sent to.

Management Response	
Rules on opening, managing and closing bank accounts to be circulated (Assistant Financial Controller)	GFC and TM team End of March 2019
List of all bank mandates to be finalised and confirmed (Temp, Treasury Section & Treasury Management	Transactional Support End of February 2019

3. Finding

Cash Flow Management

Cash flow forecasting is fundamental for ensuring the Institution has sufficient cash available to pay suppliers and employees and their debts when they fall due. In June 2017, the former Assistant Financial Controller (AFC) produced an 18 months cash flow forecast looking ahead to December 2018. Management confirmed that the spreadsheet model should be rolled forward every three months to cover the 18 month period every three months by the former AFC, then it is reviewed by the GFC and approved by the GFD. Cash transactions for each bank accounts are updated daily to reflect the actuals by the International Accountant.

During the review, management confirmed that the former AFC had recently been re-assigned to a new role on the transformation project. The cash flow spreadsheet is stored in the shared portal in the Finance folder, and the password to access the spreadsheet has not been changed post the re-assignment of the AFC. The former AFC still has access to make changes to the model even though he is no longer responsible for this area. In addition, our interview with the former AFC confirmed that nobody has been assigned to replace him and, therefore, the cash flow forecast has not been rolled forward since June 2017. As a result, the forecast does not look beyond December 2018 which is not sufficient and exposes the Institution to potential cash flow challenges in 2019 which could have been managed but are as yet unknown. Most successful businesses have cash flow models that continually look ahead more than 18 months on the monthly rolling basis.

We also identified that the Treasury Update presented to the Finance Committee in August 2018 contained a three year cash flow forecast which highlighted a negative net cash flow for 2018/19 of £610k and the need to extend the maximum overdraft facility by an additional £3m to £7m. The finance paper stated: *"A reforecast of cash is done until December 18 and is showing a need for cash by more than £ 3 million over and above the agreed overdraft from NatWest of £4 million. We had an informal chat with NatWest and have been positive should we need over and beyond the £4million limit."* The late notice of such a requirement and the lack of formality with regards to communication with the bank is concerning. If the bank decided not to allow an increase to the overdraft, or to levy higher interest charges, this would leave RICS in a difficult negotiation position. Subsequent to the completion of the audit fieldwork, we were provided with the cash flow workings behind the three year cash flow model which was used to forecast the extension to the overdraft. However, a list of variable assumptions and justifications could not be provided to support the model as these had been hard coded into the calculation.

In addition, management could not provide an analysis to determine the root cause of the unforeseen overdraft extension but there was a general feeling that due to the high bank balances from January through to September each year there may have been some over complacency in the monitoring of the cash flow until quarter 4 which meant the only solution was to extended the overdraft at short notice. The Finance Director explained that part of the issue was some international transfers back into the UK from India and various other cash positive locations which did not materialise.

Our review of the original cash flow forecasting spreadsheet model confirmed that information is manually keyed directly into the spreadsheet, and the resultant cash flow is driven from complex formulae, links and macros; these are not protected. There are no spreadsheet integrity controls to prevent the cash flow data being deleted, overwritten or manipulated. This exposes the Institution to both a key dependency risk on the person that created the model, and an inherently high risk of manual error. The former AFC also confirmed that the model is not being updated to reflect current economic changes and revised forecasting assumptions.

Our review of the updated cash flow working paper (provided subsequent to the audit) raised some further concerns as it did not compare actual against forecasted cash flow nor did it have the ability to adjust key variables used as assumptions i.e. interest rate. The model have variable assumption which would allow stress testing scenarios to consider the impact of volatile market conditions from Brexit to key assumptions such as interest rates, forex fluctuations etc.

In general the cash flow workings are overly manual and appear complex with various interlinked formulas. In our opinion, the cash flow control weaknesses mean that The RICS cash flow forecast model does not appear to be fit for purpose.

Risk exposure	Risk Rating	HIGH

As the cash flow forecasting model does not look beyond December 2018, there is a risk that RICS may find themselves in significant cash flow difficulties post December 2018 which they are unable to resolve in sufficient time with the banks. This is going to be a difficult operating period for most businesses considering the uncertainty that still remains around Brexit.

Furthermore, where macros and formula are not protected there is a risk of error, accidental amendments, or deliberate manipulation resulting in calculation errors in the cash flow spreadsheet. As a result, cash flows may not be accurately monitored and reported to ensure any surpluses and deficit are identified in a timely manner. This could mean that RICS are unable to pay debts when they fall due putting their financial sustainability at risk.

There is also a risk that the bank may not grant an increase to the overdraft facility or any extension, and that this will result in a significant increase in interest charges.

Agreed solution

Management should take immediate formal action with the bank to ensure an extension to the overdraft facility is negotiated at a reasonable interest cost with no penalties involved.

Management should carry out a cost benefit analysis of implementing a cash flow monitoring software package which is set-up to link with existing finance feeder systems, can be used for accurate stress testing and longer term forecasting > 18 months and reduces the risk of error and manipulation of the cash flow information.

In the interim, Management should immediately extend the existing cash flow model to look forward at least 18 months. Before this is done it should carry out a full and complete integrity check of the cash flow monitoring spreadsheet to ensure errors have not been introduced over the period that the cells and formulae have been unprotected. Once confirmed accurate, the cash flow monitoring spreadsheet needs to be properly version controlled, cell protected backed up with access restricted to necessary staff only.

Interim resource should be considered to carry out the forecasting role that was previously completed by the AFC. A permanent solution for the role should be put in place in the medium term either through recruitment or training of other staff in finance.

Management Response

Validate the current cash flow model	GFC End of January 2019
Run out 18 months	GFC End of February 2019
Provide Business Plan cash flow workings	GFD End of January 2019
Provide info on Reserve Policy non-compliance to update the report	GFD End of December 2018
Review improvements to cash flow modelling (specific software or D365)	GFD End of March 2019

4. Finding

Bank Account Reconciliations

For the three main UK bank accounts, monthly bank reconciliations are prepared by the Treasury Assistants, and reviewed, and approved, by the Transactions Manager. However, the UK Treasury Function does not have sufficient access to bank statements to perform the reconciliations for international locations. Therefore, it is the responsibility of each international finance team to reconcile their own bank accounts and send this to the International Accountant in the UK; the International accountants do not maintain a separate cash forecast for the international bank accounts but instead just update the bank balances in the consolidation schedule. The Treasury Policy does not outline the requirements for performing regular bank account reconciliation, roles or responsibilities, nor does it specify any tolerance to unreconciled differences and how variances will be resolved in a timely manner.

Through our discussions with the Treasury team, we found that the UK bank reconciliations are done manually which very time is consuming, i.e. to match through individual transactions on the bank statement and cash book on a line by line basis. Management confirmed that every month there is a high number of unreconciled items which cannot be resolved and are just carried over to the following month. There is no mandated approach to investigating and addressing adverse variances, with no pre-defined tolerance or materiality levels set to flag corrective action in a timely manner. Where adverse variances are identified they are discussed between the Treasury team members; however, due to staffing constraints this process is not often awarded the priority it deserves to follow it through to resolution.

Testing of a sample of UK bank reconciliations (2 accounts for 6 months) confirmed that they have been prepared and reviewed with appropriate segregation of duties, but there were always unexplained unreconciled items which were not followed up and resolved, i.e. did not balance to zero. Furthermore, the Transactions Manager does not have access rights to the online bank statement and therefore is reliant on checking and trusting the screen shots.

Testing of a sample of International Bank Accounts for the some of the largest balances: Hong Kong, UAE and Spain (reviewed a 6 month period) confirmed that there was no reconciliation performed and retained as evidence. Instead only a copy of the local entity cash book and a screen shot of the bank statement is provided to the International Accountant. Copies are not provided to the Treasury Function and the International Account just enters the figures into the cash flow model rather than performing a proper reconciliation. There is no evidence, enforced segregation of duties or accountability in this process.

It is concerning that the UK Treasury team has no responsibility for reconciling or checking the reconciliations for the international bank accounts; this appears to be a consequence of them not having access to the required information (see mandate issue above).

Management explained that with the limited resources available this is the best that can be done. There appears to be a culture that the risks are acceptable in the interim due to the overly manual systems and limited resources to operate these effectively. There is hope that the Finance Transformation Systems project will resolve these problems in the future.

Risk exposure	**Risk Rating**	**HIGH**

Corrective action may not be taken where adverse variances are identified and flagged as requiring action. Additionally, there is the risk of errors, manipulation or undetected fraud.

Agreed solution	
We recommend that the entity set a policy which clearly sets the roles and responsibilities for all bank reconciliations and requires material unreconciled difference to be resolved in a timely manner. The Transaction manager should be granted access to online statements. Application of this policy should commence immediately with retrospective review of the most recent bank reconciliations. Management should also carry out a cost benefit analysis of investing in an automatic reconciliation software.	
Management Response	
Create a policy on roles and responsibilities on bank recs including international	AFC and TS team End of April 2019 (UK bank accounts) AFC and International Accountants End of April 2019 (international bank accounts)
Review opportunity to automate the bank rec for UK accounts pre D365	GFD End of February 2019

5. Finding

Interbank Transfers

The Treasury Policy requires that foreign locations submit cash flows that support any request for interbank cash transfers. Interbank transfers are required to:

- ensure the overdraft limits of each bank account are not breached; and
- to fund the foreign locations administrative needs and potential projects.

Testing of a sample of interbank transfers confirmed that the foreign locations were invoicing for interbank cash transfers which came through the International Accountant. We would have expected that these invoices should be accompanied with the breakdown of how they intend to use the funds and what their future cash flow projections are. However, no back up evidence is provided in any of our test results and in all cases the invoices were being approved and paid without evidential challenge.

As the foreign locations are not submitting back up evidence, such as cash flow forecasts and bank statement, there is a risk that urgent short term needs are not addresses, and funds are granted which are not needed. This is concerning considering the UK are not on the bank mandate for many of these locations and it could lead to misappropriation of company funds.

Risk exposure	**Risk Rating**	**MEDIUM**

International cash surpluses or deficits may not be identified in a timely manner. Cash transfers may be made without a need and therefore there is a risk undetected fraud.

Agreed solution

The Treasury Policy should make it clear as to the mandated evidence required to support requests for cash transfers. Cash transfers should be rejected unless the required evidence is provided in a timely manner.

In the longer term, once the UK has visibility through being granted access on the bank mandate, all inter-company cash transfers should be managed in the UK to maximise the use of company funds and reduces interest payments through the overdraft.

Management Response

Ensure the need transfer requests to be documented is circulated and standard format created	AFC End of June 2019
Ensure UK on all bank mandates and such transfers managed from UK	Transactional Support team End of December 2019

6. Finding		
Implementation of Actions from Finance Committee Decisions. Following each meeting of the Finance Committee clear actions should be assigned to members of the Treasury function, which should be monitored regularly to confirm that any resolutions made in the Committee meetings are completed. From our review of the Finance Committee minutes over the last 12 months, we identified a number of actions that needed to take place, for example updating the Treasury Policy or resolving the extension to the overdraft facility. However, discussion with the Treasury function confirmed that agreed actions from these meetings are not communicated to them and they do not have access to the minutes. We also noted that there is no specific action owner or target date for completion documented in the minutes of the Finance Committee. Responsibility to chase progress on individual actions is allocated to the Finance team; however, there is no centralised mechanism to record all outstanding actions and document progress towards completion. Subsequent to the audit, we were provided with the minutes of the meeting held in October with which did not impact our findings as we still have the same concerns as noted above. In the close meeting we were informed that the minutes were taken by a member of staff that is not trained in minute taking.		
Risk exposure	**Risk Rating**	**MEDIUM**
Required actions to align with updates to policies may not be communicated to the relevant team members and therefore are unlikely to be implemented.		
Agreed solution		
We recommend that a standardised process for recording, communicating and tracking agreed actions from the Finance Committee in the minutes. As agreed with the GFD in the closing meeting, the minutes should be taken by an individual who has appropriate corporate governance training and in particular is trained in minute taking. Management should ensure any actions put in place to address underperformance or changes to policy. This needs to be done through maintenance of an action tracker which includes: specific owner; target completion date; and specific progress updates of how it will be measured. There should be a process in place to ensure actions are followed up in a timely manner in order to effect change and these should be reported back to the Finance Committee.		
Management Response		
Provide action list from FC meetings	GFD End of January 2019	
Ensure minutes more specifically identify actions and decisions	GFD End of January 2019	

Definitions

In conducting this review, we have assessed the effectiveness and efficiency of the controls in mitigating the business risks of the area being audited and given our opinion on the overall level of assurance that can be taken. The possible grading is defined below:

Opinion	Design Opinion	Effectiveness Opinion
 No Assurance	A fundamentally flawed design of internal controls that is unlikely to support the achievement objectives and which is ineffective in managing risk	The controls in place are not applied effectively. There is no assurance that the controls are effective in mitigating the associated risks.
 Limited Assurance	The design of internal controls presents a number of weaknesses likely to undermine achievement of objectives and lead to poor management of risk	Controls in place are operating inconsistently, with a number of weaknesses likely to undermine achievement of objectives and lead to poor management of risk
 Moderate Assurance	Generally, a sound design of internal controls, but where there are a few weaknesses that could materially affect the management of risk	Generally, controls are being applied effectively, but where there are a few weaknesses that could materially affect the management of risk
 Substantial Assurance	A reasonably designed system of internal control that is likely to achieve the system objectives, and which is effective in managing risk	A reasonably effective application of internal controls that is likely to achieve the system objectives, and which is reasonably effective in managing risk

Actions have been assigned a priority, based primarily on the potential impact of the action on improving business operations or an assessment of the risks associated with the control assessment. The priorities are defined as follows:

Finding priority	Definition
CRITICAL	A weakness in control where there is a substantial risk of fraud, impropriety, poor value for money or failure to achieve organisational objectives. Actions must be taken immediately.
HIGH	A fundamental weakness in internal controls which present an immediate level of threatening risk or poor value for money or where the continued weakness identified could have a serious impact on the company. Actions should be specific and implemented in prompt manner.
MEDIUM	A weakness in control which, although not fundamental, relates to shortcomings which expose individual business systems to a less immediate threat of risk or poor value for money.
LOW	A low priority weakness or failure in internal controls which present the opportunity for greater efficiency or effectiveness in processes and controls.
IMPROVEMENT	A suggested improvement where, given the current control environment, there is no or limited risk should the recommendation not be implemented or where other recommendations have been made to address any control weaknesses.

Appendix E

Fieldfisher advices

dated 11th and 18th November 2019

From: Richard Kenyon
To: [redacted]
Cc: Matthew Lohn
Subject: Management Board
Date: 11 November 2019 18:06:55

Dear [redacted]

Matthew has shared with me the letter and addendum dated 11 November 2019 from Simon, Amarjit, Bruce and Steve.

We are concerned about the implications of this latest letter on the senior employees – CEO and COO in particular - who it seems are again being maligned by these members of the Management Board. The final sign off at the end of the addendum that "we continue to have confidence in the capabilities of our chair, CEO and COO" is dripping in insincerity given the context.

Every contract of employment contains within it an implied term of mutual trust and confidence. That is quite a fragile term. A significant breach of it risks a successful claim from the employee for constructive dismissal. I am concerned that by continuing to call into question the actions of members of the Executive on issues that have been fully explored and addressed, RICS is risking constructive dismissal claims from those employees. The CEO and COO would be entitled to assume that these matters have now been fully resolved given the last Management Board meeting and the finalisation of the minutes.

The risk of constructive dismissal claims is potentially heightened by the fact that this letter has been sent without their knowledge, with content that potentially undermines their position but without them being offered any opportunity to comment or reply. I suspect that the longer this goes without them being notified the more damaging it is likely to be to the issue of their trust and confidence in the organisation. The CEO and COO are likely to find out about this letter sooner or later so probably best to make that sooner.

Regards

Richard Kenyon
Partner
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www.fieldfisher.com

We do not intend to change our bank details. If you receive any communication that any of our bank details have changed, telephone us and speak to your contact at our office before transferring any funds. We do not accept responsibility for monies paid into a wrong bank account in any circumstances.

fieldfisher

To:	[redacted] (General Counsel, RICS)
From:	Matthew Lohn (Partner), Richard Kenyon (Partner)
Date:	18 November 2019
Our Ref:	MSL/MSL/UK01-038025-00274/83923793 v2

Executive Summary

1. We are asked for our advice in respect of the letter sent by four non-executive members ("**the four members**") of RICS's Management Board (**"MB"**) to Chris Brooke, (RICS's President) on 11 November 2019 ("**the letter**"). In our view, the letter materially changes the approach that should be taken with respect to an issue regarding treasury management (**"TM issue"**) that has been the subject of scrutiny by MB.

2. In our view, MB's response to the Treasury Management issue ("**TM issue**") has been carefully conducted under the guidance of its Chair, Paul Marcuse, in accordance with the principles of good board governance. The process followed has been proportionate and scrupulously fair to all parties involved with the issue.

3. The assertions contained in the letter – both implicitly and explicitly – mean that this issue must transfer to the jurisdiction of the President. In our view, the existence of the letter, alongside its tone and substance, makes it untenable for the four members to continue as members of MB. Removal of the four members from office is now a necessary course of action in order to restore the organisation to a properly functioning body.

Background - the process followed to date

4. We have reviewed background facts and the process followed by MB in relation to the TM issue. The issue was raised by Simon Hardwick (**"SH"**) with the support of the remainder of the four members. The matters concerned cash flow reporting and a wider issue regarding treasury management.

5. Following scrutiny by MB, a number of events ensued which have demonstrated functional good governance and appropriate and proportionate decision making, including:

   (a) In conjunction with Finance Committee, the COO produced the "Cashflow, Forecasting, Controls and Lessons Learned". The COO offered an apology to MB that the breach of reserves policy which arose in November 2018 had not been communicated to the Board in a more timely manner;

   (b) The CEO kept Governing Council informed and updated on the TM issue through written summaries provided to Governing Council following each of the December 2018, March and June 2019 meetings of Management Board;

(c) The Chair of the Management Board convened a Special Meeting on 29 August 2019. At that meeting, the Chair commissioned the organisation's General Counsel to conduct an internal review of the governance associated with the handling of the TM issue from the perspective of the Board. The purpose of the internal review was to clarify the responsibilities and expectations of the MB in relation to the TM issue and to assist the MB and Governance team in identifying any lessons to be learned;

(d) The conclusions of the internal review, accompanied by a detailed chronology of events, were presented at a meeting of the MB on 25 September 2019. The internal review found that there had been no failure in the operation of that governance framework as regards the handling of the Treasury Management Audit. In particular, in accordance with their current Terms of Reference, the MB, Audit Committee and Finance Committee had all been able to discharge their respective responsibilities as regards the TM issue;

(e) Recommendations were made as a result of the internal review, namely:

(i) As part of the wider governance reforms which are underway, Governing Council should be invited to review the respective governance responsibilities of Council, MB and Audit Committee, as regards reporting on financial management, in order to ensure that they are fit for purpose and reflect good governance practices.

(ii) The Head of Governance should be asked to review the Corporate Governance Statement within the Annual Report to ensure that it clearly reflects the respective responsibilities and assurances provided to and between the relevant governance bodies as regards reporting on financial management, the outcome of which should be shared with Audit Committee and MB.

(f) At the 25 September Board meeting, the majority of MB members expressed support for the approach and actions taken by the organisation in response to the TM issue.

(g) Following the 25 September Board meeting, the Chair of MB engaged with those members who continued to express further concerns about the handling of the TM issue. This is despite the TM issue being 'dealt with' from a management perspective, as agreed by the majority of the MB.

6. In our view, it is clear that MB and, in particular its chair, has given ample scrutiny to the events surrounding the TM issue, including by conducting a review, the receipt of an acknowledgement and apology from the COO and the initiation of reforms and further reviews. The organisation's response to the TM issue was endorsed (in our view wholly appropriately) by the MB.

7. From a governance perspective, it is elementary that those entrusted with board positions should acknowledge and accept the conclusion of their board. There may be extremely rare occasions where it is appropriate to continue to express concern or dissent but it is crucial that any such behaviour should be openly and constructively pursued in the best interests of the organisation. The persistent return of an individual or individuals to an issue where their view has not been endorsed can migrate from constructive criticisms to behaviour which undermines and destabilises the very organisation which the individuals are charged with supporting. Such individuals cannot expect to continue to remain members of a board. An individual cannot pick-and-choose when to adhere to the principle of majority decision-making and in the alternative from time to time undermine that very principle.

The letter of 11 November 2019

8. The letter establishes a new dynamic, principally by:

   (a) Seeking, yet again, to re-litigate a matter that, for the reasons set out above, has been properly addressed in accordance with the principles of good governance; and

   (b) Casting groundless aspersions on the ability of senior management (including the CEO, the COO and chair of MB) to carry out their functions properly

   (c) Exhibiting conduct that does not reflect the standards expected of people holding their positions, and in doing so undermine the wider organisation's trust and confidence in their ability to hold office.

9. In sending the letter to the President of the organisation, the four members have chosen to circumvent and subvert the MB Chair. Ordinarily, it would be the Chair to whom complaints about MB would be directed. Each member had ample opportunity to raise these matters with the Chair in the light of the Chair's engagement with members after the meeting and moreover when he sought views on the minutes. Far from adopting an appropriate manner of engagement, the four members have sought to further their agenda with poorly veiled threats which in our view seek to intimidate the President into adopting their viewpoint.

10. By refusing to accept the MB's agreed position, and by choosing to undermine the position of Chair of the MB, the four members' behaviour demonstrates an apparent desire to use whatever means necessary to 'get their way'. The result is an impression of 'winning at all costs'.

11. In addition, and of considerable concern, the letter fails to recognise the appropriate and proper oversight conducted by Audit Committee throughout the scrutiny of the TM issue. This demonstrates another wilful attempt to ignore and undermine the processes of the organisation. The Audit Committee's authority over the matter was confirmed during the review phase, and was accepted as such by the collective MB.

12. Further, the content of the letter itself implies that the four members have a lack of confidence in the ability – or even inclination – of senior management to appropriately ventilate the concerns raised in the letter. Most seriously, the letter alludes to a concern that senior management may fail to brief the Governing Council properly without the impetus provided by the letter. This is tantamount to implying the President or CEO would in some form seek to execute a 'cover up'. This is a serious allegation which goes to the heart of the organisation's ability to govern itself.

13. Overall, the four members' insistence on undermining the organisation's proper processes, and the making of serious allegations without substance, suggests an absence of any good faith motivations in continuing to air their grievances. Indeed, despite claiming in the letter to be interested in finding a solution, the reality is that the four members' conduct has demonstrated that the only solution that will appease them is one with which they agree. Such an approach is quite obviously offensive to the notion of good governance and decision-making.

14. For that reason, our firm advice is that the organisation should not engage in any substantive way with the matters raised in the letter. The four members are likely to interpret any such response in a way that suits their (unclear) objectives, and any such response would invite further dialogue on a matter that has already been fully ventilated and resolved in a manner that adheres to the principles of good corporate governance.

15. Finally, the general tone of the letter is not in accordance with the organisation's values and does not reflect the conduct expected of people occupying their positions. The letter contains a general sense of bullying and threatening language. The thrust of the letter appears to be that 'if what we are demanding does not happen, we will make something else happen'.

16. The organisation's response to the letter must now reside within the remit of the President. That is principally for two reasons:

    (a) The content of the letter contains allegations against the Chair of the MB and purports to call into question his ability to discharge his functions appropriately; and

    (b) The duration of this dispute and the seriousness of the allegations contained in the letter, and the effect it is having on the organisation's ability to carry out its functions properly, means that the President is the only appropriate office-holder who can address the issue.

17. Our firm advice, having considered the behaviours outlined above, is that the correct course of action is to terminate the four members' appointment to MB. To do otherwise and to indulge the four members any further would set a reprehensible precedent for organisational governance. Just as concerningly, it would allow the MB Chair, and the CEO and COO, to draw serious adverse inferences about RICS's conduct towards them as clearly articulated in the advice note from Richard Kenyon (sent to you on 11 November 2019 at 18.07).

Legal analysis on terminating the appointments of the four members

18. In order to consider any rights, obligations and risks associated with terminating the appointments of the four non-executive members of the MB, we have considered:

    (a) The terms of the contracts between the four members and RICS; and

    (b) Any statutory rights that they may have.

Terms of the contracts

19. Each of the letters provided to the four members provides for termination by either side on one month's written notice. There are separate provisions dealing with immediate termination for serious issues. However, with short one month notice periods and little or no payments due, there is no need for us to seek to describe their behaviour as warranting the summary termination of their appointments and it would seem unnecessarily provocative to do so.

20. Although we are advising against summary termination for e.g. "serious unprofessional or unethical behaviour," we imagine that you will want to end their contracts immediately rather than have them still engaged as members of the MB during their one month notice periods. Strictly speaking, you have no right to terminate on less than one month's notice. They could "affirm" the contract and insist on continuing as members of the MB for a month. That is possible but unlikely. Were it to happen, we would find practical solutions to avoid them attending MB meetings.

Statutory rights

21. The four members all signed letters which are described as "Service Agreements". They are required to sign to confirm their agreement and the letters specifically state that they are contracts for services and not contracts of employment. Rather than merely being office holders, the four members are expressly stated to be independent contractors engaged under contracts to provide services to RICS.

22. The status of the four members is important from the point of view of any statutory rights that they may have. Assuming that none of them are employees, they will have no employment rights. They would not, for example, be able to claim "unfair dismissal" in order to challenge the reason for and the reasonableness of the termination of their appointments, since only employees can claim unfair dismissal.

23. There are some protections, however, for "workers" which as a group, sit somewhere between those who are employed and those who are self-employed independent contractors. "Workers" includes employees but also any individual who works under any other contract:

"*whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual*".

24. We are not aware of a non-executive board member having yet convinced a Tribunal or Court that they were a "worker". Nonetheless, there remains a theoretical risk that Simon, Bruce and Amarjit (and also possibly Steve, although he is engaged on different terms) could seek to convince a court that new precedent should be set and they should be considered "workers" with some statutory rights.

25. The most obvious statutory right afforded to workers which could become relevant upon termination of these appointments is the right not to suffer a detriment for raising a whistleblowing issue. Any whistleblowing claim would not be worth very much in terms of compensation, given that their financial losses would be zero or negligible. Some compensation for injury to feelings could be due and aggravated damages are theoretically possible although rarely awarded. Costs are generally not awarded in the Employment Tribunal. There are potentially ways in which the four could get low cost or even free representation in any Employment Tribunal proceedings or perhaps even represent themselves. Given the current backlog of cases, it is unlikely that any case could be resolved in less than 12 months.

26. Overall, any such case would have to be run as a matter of principle rather than to obtain substantial financial compensation from RICS. At first glance, this might make litigation seem very unlikely at all or very unlikely to be pursued all the way to a Hearing. If it was and even if they could establish their status as "workers," ultimately, our defence would be that the actions taken by RICS were not *because* they raised issues but because of the *manner* in which they pursued them.

27. The reality of litigation is in our view highly improbable but we mention it from a perspective of completeness.

28. In any event, the far greater risk would be to lose the CEO or COO to resignation (or worse, constructive dismissal) because they feel that RICS has not supported them appropriately by taking appropriate action against all four non-executive members of the MB. Were that to be the case, there is a real risk of successful claims being brought against the organisation.

Conclusion

29. For the good of the organisation, and in order to restore its ability to function properly, and to protect its senior employees from an ongoing campaign of vilification in the face of evidence and analysis to the contrary, it is incumbent on the President to decisively intervene in this state of affairs. The persistent behaviour of the four members is hampering the organisation's ability to function properly and is having a very real effect on the capacity of senior members of management to focus on their work and therefore discharge their duties and obligations.

30. There is now a real risk of institutional crisis owing to the ongoing consequences that the behaviour of the four members – most demonstrably seen in the issuance of the letter – is having. It is axiomatic that having four members of the MB actively circumvent and undermine parts of the organisation (and individuals occupying senior management positions), and as a result create a litigation risk to the organisation, must be dealt with.

31. Put simply, were the President not to defend his senior staff, or to choose not to take action in relation to this sustained campaign against the organisation, those in senior management positions could reasonably conclude that the President would be issuing a request that they depart their positions.

32. The President is legally entitled to choose to terminate each of the four members from their appointments on the basis that their conduct has resulted in his loss of trust and confidence in them. At its most simple, they have:

    (a) Undermined the role of the MB and its Chair by circumventing those positions and going directly to the President with alleged concerns which relate to matters that have been properly ventilated and dealt with by the MB;

    (b) Called into question the integrity of senior members of management to conduct their work properly, including an implication that the Governing Council may not be fully briefed on all matters – a serious allegation without foundation;

    (c) Deployed a bullying and threatening tone which does not reflect the values of the organisation or the conduct expected of people in their position;

    (d) Continually failed to recognise the Audit Committee's governance authority over the matter in question and, relatedly, persistently re-litigated an important matter that has been satisfactorily been resolved in adherence with the principles of good governance; and

    (e) Deliberately or not, brought the organisation's ability to carry out business as usual to a halt, and placed extreme pressure on employees to the extent that any failure to stamp out the behaviour of the four members could reasonably be seen as the President issuing a request that those senior members resign.

33. On that basis, and in the interests of the organisation's integrity going forward, our advice is that the President should choose to immediately terminate the appointments of the four members. We attach to this advice draft letters of termination for each of the four members.

18 November 2019

Appendix F

RICS Members / Staff Partnership Policy

Members / Staff Partnership Policy

June 2015

1. Executive Summary

1.1. The vision set by Governing Council requires RICS to become a 21st century professional body with a leading position in key international markets. This requires RICS to lead the way in terms of the governance, performance and the behaviours of Board Members, and these are now set out in the revised RICS Members/Staff Partnership Policy (the "Policy").

1.2. The revised Policy applies to Non-Executive Board Members (a Board Member who is not RICS staff but can either be an independent non-member of RICS or a member of RICS) and to Executives (RICS staff) and replaces the current Policy.

2. Behaviours

2.1. Boards include a balance of Executives and Non-Executives to ensure that RICS benefits from a rich and diverse spread of views.

2.2. Non-executive Board Members are not involved in the day-to-day running of the business and do not have any authority to contractually commit RICS in any way.

2.3. Executives often have a dual role. They contribute in the setting of the vision, strategy and objectives of a Board. They also develop and implement operational plans to meet RICS' objectives and deliver the outcomes in their capacities as RICS staff. Executives need to manage the tensions which may develop in their roles as both Board Members and as RICS staff.

2.4. Non-Executives neither have the authority to assign work nor the authority to give instructions to RICS staff. In the event of a disagreement occurring between Non-Executives and Executives or other RICS staff, Executives / RICS staff shall always receive their directions from their respective line managers, and not from the Non-Executive Board Members.

2.5. Where RICS staff are also RICS Members, their primary duty is to RICS as their employer. Any issues involving their duties as RICS Members will be for their line managers to manage.

2.6. Members must not make any false disparaging comments or remarks, or make any other form of false disparaging communication about RICS or its staff in any public context through any channel of communication or on any social media site and must not bring RICS into disrepute.

2.7. RICS works to ensure that everyone has the right to work in a fair environment, free from inappropriate behaviour. The organisation considers any breach of this right to be a serious

matter and could result in a formal process being applied.

2.8. When Non-Executives and Executives or other RICS staff are working together, the following behaviours should be practised:

i. to work in a professional manner and to develop a working relationship which is underpinned by mutual understanding and with respect for one another;
ii. to possess an understanding of and to demonstrate acknowledgement of the contributions and effort made by each person involved in the relationship;
iii. to show politeness, tolerance, and a willingness to compromise for the greater good;
iv. to practise diversity and inclusion; and
v. to be mutually supportive to achieve the best results.

3. Managing Complaints

3.1. Complaints made by RICS staff about Non-Executive Board Members behaviours, actions or about their failure to comply with this or any other RICS Policy, will be referred to the Chair of the Board who will follow the process set out below. Depending on the nature of the complaint, the Director of Regulation may also be informed where it involves a Non-Executive who is a RICS Member.

3.2. Complaints made by Non-Executive Board Members about RICS staff behaviours, actions or about their failure to comply with this Policy will be referred to the staff member's line manager. The line manager may instigate an investigation which will follow standard staff procedures and could result in disciplinary action being taken against the member of staff. The Non-Executive Board Member will not be entitled to be informed of the outcome.

3.3. Complaints made by Non-Executives about other Non-Executives' actions or about their failure to comply with this or any other RICS Policy will be referred to the Chair of the Board who will follow the process set out below. Depending on the nature of the complaint, the Director of Regulation may also be informed where it involves a Non-Executive who is a RICS Member.

3.4. All complaints must be submitted in writing and must provide the reason(s) for and any supporting information relating to the complaint. The subject of the complaint will be informed and will have the right to respond. Following liaison with the appropriate persons, the Chair of the Board will have the option to temporarily remove a Board Member from the Board(s) whilst the investigation is ongoing.

3.5. If it appears that any standards as set out in the Board Handbook and / or any RICS policies may have been transgressed by a Non-Executive, the matter may be referred to the RICS Governance department who will appoint an independent panel to consider the transgression complained of.

3.6. The independent panel will be made up of 3 independents (they may be independent members of a board – but not the same board as a board member under investigation - or they may be independent accredited appointment experts - AAEs).

3.7. RICS Governance department will appoint the panel and administer the complaint and will collate relevant evidence as submitted both by the person bringing the complaint and by the subject of the complaint to send to the panel for their consideration.

3.8. The independent panel may decide on the process, including any deadlines, to be followed to investigate the complaint but as a minimum this must allow both sides of the complaint to

submit a statement and evidence for consideration whether or not in writing.

3.9. Following consideration of the evidence, the independent panel can impose the following sanctions:

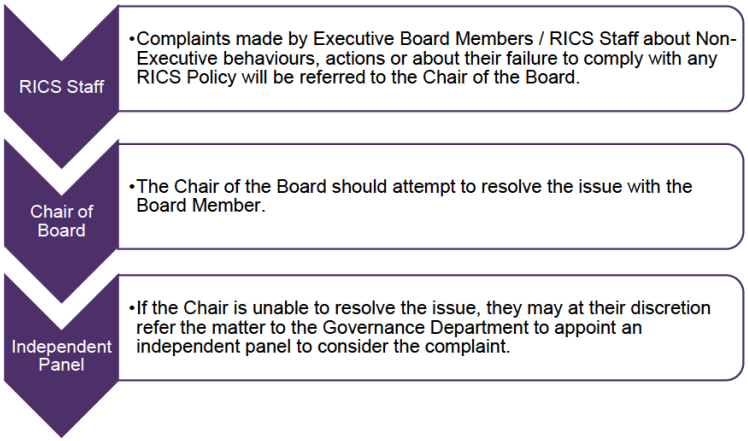
i. Formal warning to correct the behaviour within a specified timescale; and / or
ii. Impose conditions on board member in relation to continued membership of the board; and / or
iii. Removal of board member

4. Appeal

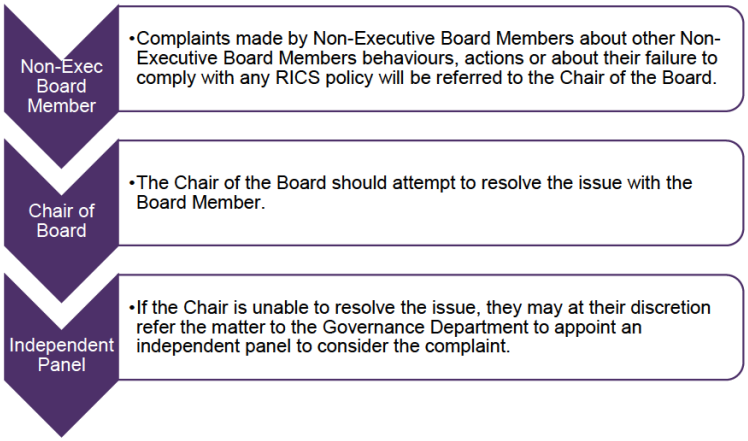
4.1. A Non-Executive Board Member who has been sanctioned has a final right of appeal to the Honorary Secretary. The Honorary Secretary has the power to overrule a decision or sanction which has been made by an independent panel.

4.2. Where the Honorary Secretary is conflicted because he is involved in a complaint either on a personal basis or in his capacity as Chair of a Board, then the President or his delegate will perform those responsibilities.

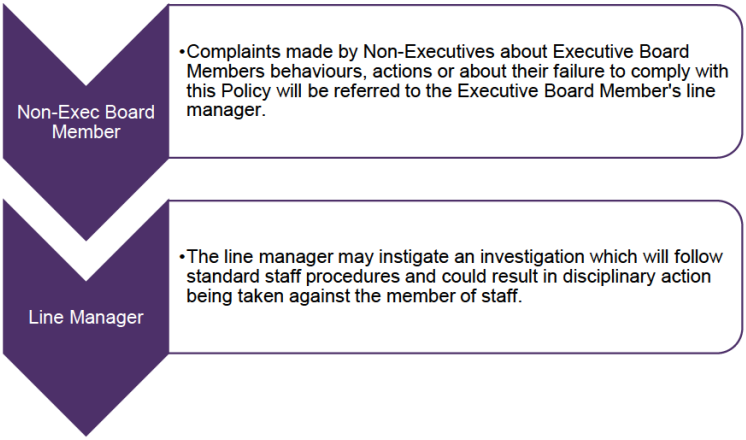
Complaints By Executive Board Members / RICS Staff About Non-Executive Board Members



Complaints By Non-Executive Board Members About Other Non-Executive Board Members



Complaints By Non-Executive Board Members About Executive Board Members



Appendix G

Corrections & clarification,

22nd December 2022

Owing to her appointment as a Circuit Judge, Her Honour Judge Alison Levitt KC is no longer in a position to comment on the contents of her report. The following corrections and clarification are made by junior counsel Christopher Foulkes, who assisted Ms Levitt QC (as she then was) in the conduct of her Independent Review.

Pages 156 & 157

a. Correction - Kathleen Fontana was in a unique position. In addition to being a member of the Management Board, her foot was on the lowest rung of the "Presidential ladder"; she was the Senior Vice President, scheduled to become President-elect, and a member of Governing Council, in December 2019.

b. Correction - As the events of the next few months unfolded, Ms Fontana seems to have distanced herself from the developing crisis. Given that she aspired to become, and was on her way to becoming, President, the membership was entitled to expect more from one of its officers.

Page 317

c. Clarification - On 8th January she wrote to Dayle Bayliss (possibly on the basis that she represented all ten) updating her about the special meeting held that day and saying that she genuinely did not think that Governing Council had been misrepresented in the recent statement.