

ROYAL INSTITUTION OF CHARTERED SURVEYORS**APPEAL PANEL HEARING****Case of**

**Mr Jeremy Thomas [0096752]
Pontyclun, CF72**

On

Wednesday 03 September 2014 at 1000 hours BST

At

RICS, Parliament Square, London

Chairman

John Anderson (Lay Chair)

Members

Ian Hastie (Member)
Catherine Audcent (Lay Member)

Legal Assessor

Mark McConochie

RICS Representative

Vicki Buckley

Background

1. This is an appeal brought by Mr Jeremy Thomas under Rule 59 of the Disciplinary, Registration and Appeal Panel Rules (“the Rules”) against the decision of the Disciplinary Panel (“the Panel”) dated 7 May 2014 to expel him from membership of the RICS.
2. Mr Thomas relies upon a single ground of appeal, namely that in his view the decision of the Panel to expel him from membership was excessive. He does not appeal the finding of the Panel that he was liable to disciplinary action.
3. Mr Thomas appears before us in person today and is not represented.
4. Mr Thomas applied for permission to introduce additional evidence pursuant to his appeal today in the form of medical records. The RICS did not object to those medical records

being introduced into evidence. In all of the circumstances, and considering the balance of fairness of the proceedings, the Appeal Panel exercises its discretion under Rule 65 and gives permission for the additional evidence to be introduced as part of Mr Thomas' appeal.

5. Mr Thomas appeared before the Panel on 7 May 2014 and was represented by Mr Mark Harries of counsel. At that time Mr Thomas was sole principal and Contact Officer for the Firm Rees Thomas ("the Firm").
6. Mr Thomas admitted three separate breaches of Rule 3 of the Rules of Conduct for Members in that he failed at all times to act with integrity and failed to avoid any actions that were inconsistent with his professional obligations. Without repeating here the detail of the allegations, they concerned firstly a failure to provide the level of service Mr Thomas had promised to a client; secondly failing to co-operate effectively with the Ombudsman Services: Property in respect of complaints about the Firm by four separate clients, or to implement final decisions of the Ombudsman Services: Property in respect of those clients; and thirdly, submitting an annual return to the RICS on behalf of the Firm on 6 August 2013 in which he made two misleading statements.
7. Mr Thomas also admitted on behalf of the Firm a number of breaches of Rules 3, 5 and 7 of the Rules of Conduct for Firms. Again, without repeating the details of each allegation, the Firm was charged firstly with a failure to provide a client, Mr W, a refund promised to him as a result of a building survey that had been commissioned but not produced within the timescale promised. In relation to the same complainant, the Firm was charged with failing to undertake the survey report commissioned with appropriate expedition and with proper regard for standards of care in breach of Rule 5 of the Rules of Conduct for Firms. The Firm further failed to provide a copy of its complaints handling procedure to this complainant in breach of Rule 7. Similarly the Firm was charged with failing to provide a refund to another client, Miss G, for a late survey report and failing to provide its complaints handling procedure when requested to do so, again in breach of Rule 7. In response to a further complaint from a Mr T, the Firm failed to respond to messages and correspondence from the complainant and failed to follow the Firm's complaints handling procedure. Four further cases brought against the Firm related to a failure to engage effectively with the Ombudsman Services: Property.
8. The Panel found Mr Thomas liable to disciplinary action and expelled him from membership of the RICS on 7 May 2014.

Determination

9. In accordance with Rule 64 of the Rules, this appeal is by way of a review and not a re-hearing. Importantly therefore it is not for this Panel to consider all the evidence before the Disciplinary Panel afresh and substitute its own decision. Its role is to review the decision of the Disciplinary Panel and consider whether or not Mr Thomas has satisfied us that the decision was wrong. Only if we find that the decision is wrong can the appeal be allowed and the burden rests on Mr Thomas to prove that.
10. Rule 64 requires us to review the decision of the Disciplinary Panel having regard to:
 - (i) The evidence presented to the Disciplinary Panel;

- (ii) Any representations made to the Disciplinary Panel, including any transcript of the hearing;
- (iii) The Appellant's grounds of appeal; and
- (iv) Representations, made by the Appellant, and on behalf of the RICS made to this Appeal Panel.

11. The Panel has taken careful note of what Mr Thomas has said on his own behalf today and has read his Application for Appeal and supporting documents. In addition to Mr Thomas' medical records put before us today these documents include various items of client feedback and a letter dated 19 May 2014 from Mr Thomas' wife Suzanne Thomas. We have also read letters dated 2 June 2014 from Mr Ian Smith MRICS and dated 20 May 2014 from Rosemary Rogers of "reallymoving.com", both in support of this application for appeal. We have also taken careful note of what has been said on behalf of the RICS by Ms Buckley in response to the appeal.
12. We have read carefully the transcript of the proceedings which took place on 7 May 2014 as well as the documentary evidence that was before the Panel when reaching its decision.
13. It is clear from the transcript of the hearing on 7 May that the Panel considered all of the facts, surrounding circumstances and chronology carefully in relation to each individual complaint. We note from the transcript that Mr Thomas did not dispute any of the facts as alleged by the RICS in support of each charge.
14. As noted by the Chairman in the transcript, the Panel also considered carefully the substantial submissions made by Mr Harries on behalf of Mr Thomas by way of mitigation before reaching its decision in considering Mr Thomas' appeal.
15. The Panel also had the benefit of hearing from Mr Thomas in person when he was taken through his evidence by counsel.
16. It is clear from the transcript that the Panel took into account a number of written testimonials produced on Mr Thomas' behalf and also the fact that Mr Thomas had no previous disciplinary history in his 20 years as a chartered surveyor. It heard from Mr Thomas as to the impact of the disciplinary investigation on him personally, the positive change in his attitude as a consequence, and the remorse that he now felt. The transcript reflects that the Panel accepted the detailed evidence of Mr Thomas relating to the difficult personal circumstances being suffered by him during the spring and summer of 2013.
17. It is clear from the transcript that when considering sanction the Panel reminded itself, having taken advice from the Legal Assessor before reaching its decision, that it was not obliged to impose a penalty at all and that to the extent that it did consider appropriate to impose a penalty, this would be in accordance with the principle of proportionality.
18. The transcript indicates that the Panel considered the range of penalties available to it, beginning with the least serious and stopping when it considered it had arrived at a penalty or penalties which were necessary, sufficient, and proportionate in all of the circumstances of the case.
19. We remind ourselves when considering today whether or not the Panel's decision to expel Mr Thomas from membership was excessive, that in imposing any sanction, the purpose of

doing so in a professional regulatory context is not primarily punitive but most fundamentally of all to maintain the reputation of the profession, sustain public confidence in its integrity and to protect the public as a whole. Personal mitigation should therefore be given due weight accordingly. In recognising this the Panel stated in reaching its decision that:

“The Panel recognises the importance with which it must take into account in determining penalty of upholding the confidence of the public in the surveyors’ profession, ensuring the protection of the public, as well as safeguarding the reputation of the RICS.”

20. In reaching its decision, the Panel found that:

“The conduct of both Mr Thomas and the Firm clearly demonstrates a pattern of behaviour which falls significantly short of the standards expected of a member of the RICS. Mr Thomas and the Firm have failed repeatedly and over a significant period of time to demonstrate an acceptable standard of service to their clients and failed to address effectively the client complaints which arose as a result.”

21. The Panel noted that in reaching its decision it regarded the misleading statements made by Mr Thomas, in respect of the Firm’s annual return to the RICS, and the failure of him and the Firm to engage with the Ombudsman very seriously. Mr Thomas admitted in his evidence that submission of a misleading annual return was inconsistent with his professional obligations.

22. The Panel also noted that the fact that Mr Thomas did eventually take remedial steps to resolve at least some of the complaints from which the proceedings arose, this did not of itself obviate the appropriateness and necessity of disciplinary action to address prior misconduct.

23. The Panel, when considering the level of seriousness of the conduct proved, considered, as it was entitled to do, the complaints collectively.

24. In deciding to expel Mr Thomas from membership, the Panel stated as follows:

“The Panel has reached this conclusion only after very careful consideration of the mitigation advanced by Mr Thomas and by Mr Harries on his behalf. It has concluded that these steps are necessary to protect the public, its confidence in the surveyors’ profession, as well as the reputation of the Institution as its regulatory body. In doing so the Panel has had regard in particular to the fact that these cases arose from a pattern of repeated conduct continuing for at least a year and a total of seven complaints involving different members of the public.

The Panel places significant weight, in addition, on the misleading declaration provided by Mr Thomas to RICS which does give rise to a significant concern as to his professional integrity and on repeated failure to co-operate with Ombudsman Services: Property to the extent that that body was obliged to report to the RICS about his conduct”

25. Taking all of this into account, we are satisfied that the Disciplinary Panel applied its mind correctly to the law, to the procedure and the evidence. The Panel was mindful, as it must be, of the provisions of the Sanctions Policy, the need for proportionality and of the purpose

behind any sanction being not primarily punitive but to maintain the reputation of the profession in the public interest. It is clear from the transcript that the Disciplinary Panel carefully considered the substantial mitigation presented on behalf of Mr Thomas, including the personal difficulties and ill health he was suffering at the material time in 2013, and took into account his previously clear disciplinary history and admissions to the charges brought. This was not however an example of an isolated complaint. Complaints were made by seven different clients of Rees Thomas, a Firm of which Mr Thomas was sole principal and contact officer, and RICS received four referrals from the Ombudsman Services: Property between 13 September and 11 October 2013. In each case Mr Thomas, on behalf of Rees Thomas, failed to implement the Ombudsman's Final Decision within the requisite 28 day period and failed to engage with the Ombudsman.

26. We therefore find that the Disciplinary Panel reached a decision which on the basis of all the evidence, taking into account the substantial mitigation presented on behalf of Mr Thomas - which it is clear from the transcript was properly taken into account - was a decision that was open to them to make. The Panel considered the lesser sanctions available to it of a fine, caution or reprimand but did not consider either of these penalties to be sufficient, recognising the seriousness of the repeated conduct which gave rise to the proceedings. It also did not consider the imposition of conditional membership appropriate, due to the significant weight the Panel had placed upon serious concerns about Mr Thomas' professional integrity.
27. We find nothing wrong with the Disciplinary Panel's decision that in all the circumstances expulsion was necessary and proportionate or with its decision making process in reaching that conclusion. In the light of all of the evidence before us we do not find the sanction of expulsion to be so excessive and disproportionate so as to be wrong, taking into account the seriousness of the conduct which was admitted by Mr Thomas and found proved.
28. We have considered whether, if the medical records or any of the other material presented to us today by Mr Thomas were before the Disciplinary Panel, whether it would have been wrong for that Panel to find as it did. We do not consider this to be the case.
29. Mr Thomas has referred, in his Application for Appeal, to the outcome of the Appeal Hearings of Mr Rowland Saunders heard on 28 August 2013 and Mr David Loynes heard on 15 November 2012. We have carefully considered what Mr Thomas has to say about those decisions. This Panel is however bound, not by previous decisions of other Appeal Panels, but to consider the specific facts and circumstances of the matter before it today.
30. For these reasons the Appeal Panel concludes that the Disciplinary Panel was not wrong to expel Mr Thomas from membership and this appeal is therefore dismissed.

Determination on Publication

The Panel directs publication in accordance with Supplement 3 to the Sanctions policy.