

Disciplinary Panel Hearing

Case of

Graham Newton MRICS

Woking, Surrey, GU22 9PY

On

28 September 2018

At

RICS, 55 Colmore Row, Birmingham, B3 2AA

Chairman

Ian Hastie (Surveyor Chair)

Members

Gregory Hammond (Lay Member)

Sue Heads (Lay Member)

Legal Assessor

Margaret Obi

RICS Representative

Will Martin

Charges

The formal charges against Mr Newton are as follows:

1. You failed to carry out your professional work in a timely manner and with proper regard for the standards of service and customer care expected of you in that you did not respond adequately and / or promptly to communications from Mr and Mrs B concerning their complaint.

Contrary to Rule 5 of the Rules of Conduct for Members 2007

2. You did not inform your insurers of a claim / complaint made against you by Mr B within a reasonable time and / or when taking out any subsequent insurance policy. In so doing you:
 - a. Failed to adhere to your professional obligations
 - b. Did not act with integrity in that you sought to conceal information which you knew you were obliged to tell the insurers.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

3. You failed to cooperate adequately with RICS' investigation of the complaint made by Mr and Mrs B.

Contrary to Rule 9 of the Rules of Conduct for Members 2007

4. You failed to carry out your professional work in a timely manner and with proper regard for the standards of service and customer care expected of you in that you did not respond adequately and / or promptly to communications from Mr and Mrs R concerning their complaint.

Contrary to Rule 5 of the Rules of Conduct for Members 2007

5. You did not inform your insurers of a claim / complaint made against you by Mr and Mrs R within a reasonable time. In so doing you:
 - a. Failed to adhere to your professional obligations
 - b. Did not act with integrity in that you sought to conceal information which you knew you were obliged to tell the insurers.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

6. Having had Professional Indemnity Insurance in place at the time of the complaint / claim being received from Mr and Mrs R you did not maintain your payments for your insurance, allowing the policy to lapse. You did not inform Mr and Mrs R that your Professional Indemnity Insurance had lapsed promptly, allowing them to continue to pursue a complaint / claim against you believing you had PII in place. In so doing you:
 - a. Failed to adhere to your professional obligations
 - b. Did not act with integrity in that you sought to conceal information which you knew you should disclose.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

7. You failed to cooperate adequately with RICS' investigation of the complaint made by Mr and Mrs R.

Contrary to Rule 9 of the Rules of Conduct for Members 2007

8. You failed to carry out your professional work in a timely manner and with proper regard for the standards of service and customer care expect of you in that you did not respond adequately and / or promptly to communications from Mr T concerning a complaint.

Contrary to Rule 5 of the Rules of Conduct for Members 2007

9. You failed to cooperate adequately with RICS' investigation of the complaint made by Mr T.

Contrary to Rule 9 of the Rules of Conduct for Members 2007

10. You did not inform your insurers of a claim made against you which resulted in a court judgment. In so doing you:
 - a. Failed to adhere to your professional obligations

- b. Did not act with integrity in that you sought to conceal information which you knew you were obliged to tell the insurers.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

11. You failed to cooperate adequately with RICS' investigation of a court judgment made against you.

Contrary to Rule 9 of the Rules of Conduct for Members 2007

BACKGROUND

1. Mr Newton has been a professional member of RICS since 1965. The background circumstances as outlined by RICS in the Case Summary are as follows:

Complaint from Mr and Mrs B

Failure to respond to complaint

2. On 24 November 2014 Mr Newton, who was at that time practising as a sole practitioner of Newton's Chartered Surveyors (the Firm), was instructed by Mr B to undertake a full building survey of his property, Bay Tree House, for a fee of £1,500 plus VAT. Mr Newton visited the property on 26 November 2014 and subsequently sent a copy of his report to Mr B on 1 December 2014. At the time of the instructions the Firm was regulated by RICS. Mr Newton de-registered the Firm on 19 July 2016.
3. Mr and Mrs B purchased the property on 19 December 2014. They subsequently became aware of some issues with the roof on the property in early 2015.
4. Mr and Mrs B complained to Mr Newton. In accordance with his complaints handling procedure, Michael Madgwick of MEM Property Services was appointed to review the matter. He inspected the work on 23 July 2015. He issued his findings in a letter dated 18 August 2015. He concluded

that Mr Newton's report should have identified the potential defects. He recommended that the Firm make a contribution to the cost of repair, which he assessed as £2,000.

5. Having heard nothing from Mr Newton after confirmation of the outcome of the review, Mrs B wrote to the Firm on 14 September 2015, requesting his feedback. No response was received to this request and chaser letters were sent on 22 September 2015 and 15 October 2015. Mrs B stated in her email of 15 October 2015:

'Please could you provide...details of your Professional Indemnity Insurance, as we would like to make a claim for the full costs of the works that have been specified by Michael Madgwick.'

6. Mr Newton responded on 6 November 2015 to apologise for the delay in responding but suggesting that he would meet with Mr and Mrs B to discuss their complaint. No further action was taken by Mr Newton until he wrote to Mr and Mrs B on 7 March 2016, again apologising for the delays and asking for a telephone call so that they could make, *'positive plans to set the works under way.'*
7. Mr and Mrs B wrote to Mr Newton on 10 March 2016 expressing their dissatisfaction and demanding a prompt resolution of the complaint. They repeated the demand for a copy of his liability insurance. Mr Newton did not respond. Mr and Mrs B wrote to Mr Newton on 23 March 2016 again demanding a response and a copy of his insurance certificate. Mr Newton responded on 31 March 2016 indicating that he hoped to resolve the matter and was in the process of selling assets to cover the costs of the remedial work. He asked that he settle matters in this way rather than to involve the insurers.
8. Mr B responded to Mr Newton on 5 April 2016 indicating that he had taken legal advice and was not prepared to proceed without notifying the insurers. He was concerned that to do so would limit any future claims that he may have against the Firm should further issues be discovered. Mr B stated, *'please let me know when you have notified your insurer and we can commence their internal review.'* This request was repeated on 25 April 2016. There was no further response from Mr Newton.

Insurance Position

9. The available documentation indicates that Mr Newton was insured by Brunel from 9 September 2014 to 8 September 2015. Brunel explained in a letter dated 8 September 2015 that the Firm was insured on a 'claims made' basis, meaning that the Firm was only insured by Brunel for any breaches that had been notified to them during the currency of the policy.
10. The Firm was then insured by International General Insurance Co Ltd from 9 September 2015 to 8 September 2016 under the auspices of Manchester Underwriting Ltd. The agreement was predicated on being provided with 'accurate and complete' information as of the commencement of the policy. It sets out that it will indemnify civil liability of any claim '*first made against you during the period of insurance and arising out of your professional business.*' This is subject to exclusions, including any claim or loss, '*known before period of insurance*', which arises, '*out of any claim made or Circumstances known to you...before the commencement of the Period of Insurance.*' The policy also sets out notification obligations on the member to inform them:
- 'as soon as possible...if you receive, discover or become aware of:*
- 1.1 any claim made against you;*
 - 1.2 any indication that someone intends to make a claim against you;*
 - 1.3 or a Circumstance'*
11. A Circumstance is defined at length and includes '*any complaint from a client about work undertaken by you and which cannot be resolved immediately.*'
12. Having failed to obtain Mr Newton's cooperation, Mr B contacted DAC Beachcroft Solicitors who acted for Mr Newton's insurers. However, on 22 August 2016 the solicitors stated, '*we have completed our investigations, and unfortunately your claim against Newtons does not fall for an indemnity under the policy.*' Mr Newton was asked by RICS, in an email dated 20 March 2017, if he had challenged this decision but he did not reply.

RICS Investigation

13. Following his referral to RICS on 23 August 2016, Mr Newton was asked to provide his response to the potential rule breaches on 7 September 2016. He was given 14 days to do so. Chaser emails and letters were sent to Mr Newton on 22 September 2016 and 4 October 2016. Mr Newton was warned of his duty to cooperate. Efforts were made to contact him by telephone. However, Mr Newton did not provide a substantive response until 26 October 2016, the day after the last deadline extension. In that response Mr Newton set out his difficult financial and family history. He also stated:

'I have been endeavouring to reduce my PI insurance premiums as a prelude to my personal retirement from the profession at the age of 80 in 3 years' time. I have allowed myself to be misguided by bending the rules and not recording or declaring to my PI insurers the details of what I have deemed to be minor claims unlikely to cost more than the £5k excess under my policy. However, I have been fully aware of and matched the RICS requirement to maintain PI insurance at all times. I can only apologise and say that I am addressing the issues now. My endeavours have been much hampered by the fact that I had to relocate a mass of papers and files when we moved house and I am still trying to recover the PI file in which the insurance policies are archived.'

14. Mr Newton did not specifically address the allegations in his substantive response. The matter was referred to a hearing.

15. On 18 January 2017, Mr Newton sent a further email to RICS. He stated,

'I admit that I have dealt with the matter of [Mr B's] complaint in a less than professional manner but it was never my intention that he should suffer financial loss although this has not been communicated to him in an adequate fashion...

I accept that the claim was not reported to insurers at the time it was made as I estimated that it would be close to or within the excess under the policy and the cost would have to be met by me.'

Complaint from Mr and Mrs R

Failure to respond to complaint

16. On 5 May 2017 Mr and Mrs R wrote to Mr Newton informing him that they were making a complaint against him. They stated that they had bought a property, relying on a survey report produced by Mr Newton. The report failed to identify a serious damp issue which had cost them £6,619.60 to address.
17. On 18 May 2017, 1 June 2017 and 12 June 2017, Mr and Mrs R chased Mr Newton for a response to their complaint letter. On 15 June 2017 they requested the Firm's complaint handling procedure. Mr Newton did not respond or even acknowledge these communications.

Insurance Position

18. In respect of his insurance, around 22 August 2017, Mr R spoke to Mr Newton on the telephone. Mr R summarised the conversation to RICS in an email, dated 22 August 2017. He stated:

'I have spoken to Mr Newton and followed up with an email to request insurers details.'

He confirmed on the phone that he has stopped paying his PI premiums for financial reasons and to date he has not provided us with any details so we can check directly.'

19. On 23 August 2017, Mr Newton spoke to RICS and confirmed his Firm had ceased trading as of 15 July 2017. Mr Newton indicated that:

'...the decision was affected by the claim made by [Mr R]...and his ability to afford both Professional Indemnity Insurance (PII) and Run Off Cover. He explained that his PII was maintained until May 2017.'

RICS Investigation

20. RICS had opened an investigation on 15 June 2017. Mr Newton was asked to provide information and specific details in emails and letters sent to him on 21 August 2017, 23 August 2017 and 30 August 2017. In the letter dated 26 September 2017 RICS summarised potential rule breaches and quoted the Head of Regulation's decision to refer the matter for an Interim Measures hearing in these terms:

'RICS are currently investigating Mr Newton...and his conduct in relation to his failure to notify his insurers of negligence claims in an attempt to reduce the cost of his run off cover. Unfortunately, Mr Newton did not have the cash to meet the claim so the client has been left out of pocket.'

21. In his response of 27 September 2017, Mr Newton did not address the specific requests for information made of him or respond to the allegations other than to say, *'your email and other communications...accurately describe the current situation'* and *'I anticipate that the full weight of the RICS rule book will be thrown at me.'*

22. The Interim Measures Panel was informed of Mr Newton's failure to notify his insurers. Mr Newton stated during that hearing that he was *'guilty as charged'* and that he had fully accepted the allegations against him. In an email sent on 1 December 2017, he appeared to make general admissions that he had *'...not acted in accordance with the regulations and would not wish to cause further damage to the reputation of RICS.'*

Complaint by Mr T

Failure to respond to complaint

23. Mr T instructed Mr Newton to carry out a building survey of a property. In March 2017 Mr T obtained further reports which reported high levels of damp in the property. Mr T sent an email on 5 April 2017 seeking to make a complaint. He had some verbal discussions with Mr Newton who then failed to meet two agreed deadlines for his response. Mr T sent a further email on 4 May 2017 but received no response. Mr T contacted RICS on 15 May 2017.

RICS Investigation

24. Browne Jacobson solicitors were appointed by RICS to investigate Mr T's complaint. Mr Newton did not respond to letters from the solicitors dated 26 July 2017, 19 September 2017 and 25 September 2017. The last letter was returned undelivered.

Disclosure of County Court Judgement

25. Around 7 October 2016 Mr Newton submitted his Valuer Registration Form in which he declared he had received a court judgment in August 2016. He was asked to provide details of the case on 10 October 2016. A telephone note of a conversation between Mr Newton and RICS on 18 October 2016 recorded some details. He disclosed the fact that the judgment concerned a valuation he did for a property that one his clients was buying. A second valuation by the mortgage company revealed certain issues he had allegedly missed, and this formed the basis of the legal proceedings.

Insurance Position

26. On 23 November 2016 the matter was referred for investigation. On 21 December 2016 RICS wrote to Mr Newton to seek further information. In an email sent on 18 January 2017, Mr Newton did not address the majority of questions asked of him. He did, however, state, '*Seeing that to be a relatively limited sum and well within the excess under my PI policy I decided not to report the claim.*'

RICS Investigation

27. On 1 February 2017 Mr Newton was once again asked to provide specific information – for example, if the judgment was against him or the Firm, which court issued the judgment, had it been paid in full etc. He was warned of his duty to cooperate. He did not respond to these requests.

Response

Mr Newton's response

28. RICS sent emails to Mr Newton on 31 August 2018 and 19 September 2018. In response to those emails Mr Newton sent an email to RICS, dated 25 September 2018, in which he stated:

'I write in reply to your Emails to confirm: -

- 1. I choose not to attend the hearing and am aware that RICS will make application to proceed with the hearing in my absence.*
- 2. I accept each of the charges listed on the notice letter.*
- 3. I accept that I am liable to disciplinary action as a result of those breaches.*
- 4. I confirm that the case summary is factually accurate and would prefer the matter to proceed to a paper hearing.*
- 5. I have not returned the statement of means but have chosen to record below my past and present financial circumstances in a fashion which should be readily intelligible and can be easily proven should the need arise.*
- 6. The only other information I can offer is that I anticipate that the Inland Revenue are likely to sue for my bankruptcy in the very near future.*

I might add that I suffered an earlier bankruptcy in 1991 as the result of the property recession in 1989 soon after I had adopted 3 young children in my mid 40s and my 6th child at the age of 48 when I endeavoured to secure their future prosperity. I was running a successful surveying practice at that time and purchased a local commercial property to house my practice with several sub-tenants. Interest rates rose from 7% to 15% and I was unable to service the substantial loan. The bank allowed the cellar of the re-possessed building to be flooded by a burst pipe and sold it for £90k versus the £270k for which I had purchased and refurbished it. I had to file for my own bankruptcy.

The Official Receiver took all of my substantial pension provisions at that time as well as the lump sum which would have paid off a large part of the mortgage on my modest 3-bedroom semi-detached house. At the age of 79 I am endeavouring to build two other businesses both of which I run from our rented house as well as a rented barn nearby. At least one of those businesses will hopefully enable me to work and earn till the age of 90 if I can maintain the remarkable health, mobility and vitality with which I have been blessed so far.

I managed to salvage one private pension which shows me a return of approximately £7000pa which coupled with my state pension, paid into my wife's account, is insufficient to meet our living costs after paying the rent of the house and barn at £1420pcm and £750pcm respectively. I tend to travel by motor-bike in the interests of economy but Winter presents a problem. I have no savings and I am having to operate with the benefit of well used overdraft facilities usually maxed out at £6000 with a credit card debt in excess of £11,000

I remain determined and hopeful whilst working 6 days per week. I sincerely regret that I have let down [Mr and Mrs B] and other clients as well as the RICS of which I have been a member since 1963 following in the footsteps of my father a Chartered Quantity Surveyor.'

Preliminary matters

Service

29. A Notice of Hearing, dated 31 July 2018, was sent to Mr Newton. The Notice was sent to him by email as his email address was his 'preferred' correspondence address held by RICS at the relevant time. The Notice was addressed to Mr Newton. A copy of the Notice, an email read receipt and a Royal Mail postal delivery receipt, both dated 1 August 2018, were produced as proof that the Notice was sent together with a signed witness statement from a Regulatory Tribunal Executive.

30. The Panel concluded that the Notice:

- i) confirmed the charge;
- ii) provided at least 56 days' notice of the hearing;
- iii) confirmed the date, time and venue;
- iv) enclosed the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended).

31. Accordingly, the Panel was satisfied that the Notice was properly served on Mr Newton in accordance with Rule 23.

Proceeding in Absence

32. Having determined that service of the Notice of Hearing had been properly effected, the Panel went on to consider whether to proceed with the hearing in Mr Newton's absence.
33. The Panel determined that it was fair and in the public interest to proceed with the hearing, in Mr Newton's absence, for the following reasons:
- a) Mr Newton confirmed in his email, dated 25 September 2018, that he had chosen not to attend the hearing and appreciated that RICS would be making an application for the hearing to proceed in his absence. In these circumstances, the Panel was satisfied that it was reasonable to conclude that Mr Newton's non-attendance was deliberate and demonstrated a voluntary waiver of his right to attend the hearing.
 - b) There has been no application to adjourn and no indication from Mr Newton that he would be willing to attend on an alternative date, and therefore re-listing this hearing would serve no useful purpose.
 - c) The Panel acknowledged that there may be some disadvantage to Mr Newton in not being able to make oral submissions. However, the Panel noted that this potential disadvantage was mitigated to some extent, as Mr Newton had provided written submissions. In any event, the Panel concluded that any residual disadvantage to Mr Newton was outweighed by the public interest.
 - d) There is a strong public interest in ensuring that substantive hearings take place as expeditiously as possible.

Admissions

38. Mr Newton confirmed in his email, dated 25 September 2018, that he admitted the charges in their entirety. He also accepted liability to disciplinary action and did not dispute the background circumstances as set out in the Case Summary.

Findings of Fact

Panel's Approach

39. The Panel was aware that the burden of proving the facts was on RICS. Mr Newton was not required to prove anything, and the charges could only be found proved if the Panel was satisfied on the balance of probabilities.

40. The Panel accepted the advice of the Legal Assessor. In reaching its decision the Panel took into account the documentary evidence within the hearing bundle which included the complaint letters, correspondence between the complainants and Mr Newton, and correspondence between RICS and Mr Newton. The Panel also took into account Mr Newton's admissions.

Decision

Charge 1– Found Proved

'You failed to carry out your professional work in a timely manner and with proper regard for the standards of service and customer care expected of you in that you did not respond adequately and / or promptly to communications from Mr and Mrs B concerning their complaint.'

41. The Panel was provided with a copy of Mr and Mrs B's complaint and their communication with Mr Newton. The Panel noted that Mr and Mrs B attempted to resolve their concerns with Mr Newton on several occasions. Mr Newton apologised for his delayed response on 6 November 2015 and again on 7 March 2016, but no action was taken. Mr and Mrs B received no further communication from Mr Newton following their letter dated 25 April 2016.

42. The Panel was satisfied that Mr Newton had a professional duty to respond promptly to the communication received from Mr and Mrs B with regard to their complaint, but did not do so,

despite repeated requests. The Panel concluded that this amounted to a failure as no good reason for the omission was provided. In reaching this conclusion the Panel took into account Mr Newton's admission.

43. Accordingly charge 1 was found proved.

Charge 2 – Found Proved

'You did not inform your insurers of a claim / complaint made against you by Mr Newton within a reasonable time and / or when taking out any subsequent insurance policy. In so doing you:

a. Failed to adhere to your professional obligations

b. Did not act with integrity in that you sought to conceal information which you knew you were obliged to tell the insurers.'

44. The Panel was provided with a copy of an email from Mr Newton to Mr B, dated 31 March 2016, in which he stated that he *'would prefer to progress this matter without reference to [his] professional indemnity insurers...'* The Panel noted that this proposal was rejected by Mr B and there was no response from Mr Newton to his subsequent requests for the insurance details. Mr Newton accepted that he did not inform his insurers of the complaint raised against him in order to keep his insurance costs down and expressed regret for *'bending the rules'*.

45. The Panel was satisfied that Mr Newton had a professional duty to inform his insurers that a complaint had been made against him, but chose not to do so. The Panel concluded that this amounted to a failure as no good reason for the omission was provided. In reaching this conclusion the Panel took into account Mr Newton's admission.

46. Furthermore, the Panel concluded that Mr Newton's omission demonstrated a lack of integrity as he must have been aware that his insurance may be invalidated if he did not inform his insurer of the complaint from Mr and Mrs B. He was also aware that that if he did report the matter there was a risk that his premiums would increase, or at the very least, would not decrease as he had hoped. In these circumstances, the Panel was satisfied that Mr Newton made a conscious and reasoned decision not to report the matter to his insurer in anticipation that he would gain financially. The Panel concluded that by putting his own interests above the interests of his former clients Mr Newton demonstrated a lack of integrity.

47. Accordingly charge 2 was found proved.

Charge 3 – Found Proved

‘You failed to cooperate adequately with RICS’ investigation of the complaint made by Mr and Mrs B.’

48. The Panel was provided with a copy of an email from RICS to Mr Newton, dated 25 October 2016, which set out the various requests for information that had been made, to which there had been no response.

49. The Panel was satisfied that Mr Newton had a professional duty to cooperate with RICS but did not do so. The Panel noted that RICS’ ability to conduct investigations and safeguard the reputation of the profession requires cooperation from its membership. The Panel concluded that Mr Newton’s non-cooperation amounted to a failure as no good reason for the omission was provided and his response of 26 October 2016 was inadequate, as it did not address the substance of the complaint. In reaching this conclusion the Panel took into account Mr Newton’s admission.

50. Accordingly charge 3 was found proved.

Charge 4 – Found Proved

‘You failed to carry out your professional work in a timely manner and with proper regard for the standards of service and customer care expected of you in that you did not respond adequately and / or promptly to communications from Mr and Mrs R concerning their complaint.’

51. The Panel was provided with a copy of Mr and Mrs R’s complaint and their communication with Mr Newton. The Panel noted that Mr and Mrs R attempted to resolve their concerns with Mr Newton on several occasions.

52. For the same reasons as set out in paragraph 42 above the Panel concluded that Mr Newton did not respond promptly to the communications from Mr and Mrs R with regards to their complaint and that this amounted to a failure.

53. Accordingly, charge 4 was found proved.

Charge 5 – Found Proved

‘You did not inform your insurers of a claim / complaint made against you by Mr and Mrs R within a reasonable time. In so doing you:

- a. Failed to adhere to your professional obligations*
- b. Did not act with integrity in that you sought to conceal information which you knew you were obliged to tell the insurers.’*

54. The Panel noted that Mr Newton accepted at the Interim Measures hearing and in correspondence with RICS that he did not inform his insurer of the complaint from Mr and Mrs R within a reasonable time.

55. For the same reasons as set out in paragraphs 45 and 46 above the Panel concluded that Mr Newton was in breach of his professional duty and demonstrated a lack of integrity.

56. Accordingly charge 5 was found proved.

Charge 6 – Found Proved

‘Having had Professional Indemnity Insurance in place at the time of the complaint / claim being received from Mr and Mrs R you did not maintain your payments for your insurance, allowing the policy to lapse. You did not inform Mr and Mrs R that your Professional Indemnity Insurance had lapsed promptly, allowing them to continue to pursue a complaint / claim against you believing you had PII in place. In so doing you:

- a. Failed to adhere to your professional obligations*

b. *Did not act with integrity in that you sought to conceal information which you knew you should disclose.'*

57. The Panel was provided with a copy of an email from Mr R to Mr Newton, dated 18 May 2017, which followed the original complaint, dated 5 May 2017. The email dated 18 May 2017 sought assurance that Mr Newton had notified his insurers of the complaint. Follow up emails were sent by Mrs R on 1 June 2017 and 12 June 2017. In a telephone call with RICS on 23 August 2017, Mr Newton stated that he had maintained his insurance until May 2017, the implication being that it had lapsed after that date. The Panel noted that the information provided by Mr Newton was corroborated by the email from Mr R sent to RICS, dated 22 August 2017. In that email Mr R stated that he had been informed by Mr Newton that he had '*stopped paying his PI premiums for financial reasons...*'.

58. For the same reasons as set out in paragraphs 45 and 46 above the Panel concluded that Mr Newton was in breach of his professional duty and demonstrated a lack of integrity.

59. Accordingly, charge 6 was found proved.

Charge 7 – Found Proved

'You failed to cooperate adequately with RICS' investigation of the complaint made by Mr and Mrs R.'

60. The Panel was provided with a copy of the requests for information that had been made by RICS, to which there had been either no response or a limited response. The Panel noted that when Mr Newton did respond he did not address the specific requests for information or explanation. The Panel was satisfied that Mr Newton's admissions did not vitiate his requirement to respond to specific requests for information.

61. For the same reasons as set out in paragraph 49 above the Panel concluded that Mr Newton failed to cooperate adequately with RICS' investigation.

62. Accordingly, charge 7 was found proved.

Charge 8 – Found Proved

‘You failed to carry out your professional work in a timely manner and with proper regard for the standards of service and customer care expect of you in that you did not respond adequately and / or promptly to communications from Mr T concerning a complaint.’

63. The Panel was provided with a copy of Mr T’s complaint and his communication with Mr Newton. The Panel noted that Mr T attempted to resolve his concerns with Mr Newton on several occasions.

64. For the same reasons as set out in paragraph 42 above the Panel concluded that Mr Newton did not respond promptly to the communications from Mr T with regards to his complaint and that this amounted to a failure.

65. Accordingly, charge 8 was found proved.

Charge 9 – Found Proved

‘You failed to cooperate adequately with RICS’ investigation of the complaint made by Mr T.’

66. The Panel was provided with a copy of the requests for information that had been made by RICS, to which there had been no response.

67. For the same reasons as set out in paragraph 49 above the Panel concluded that Mr Newton failed to cooperate adequately with RICS’ investigation.

68. Accordingly, charge 9 was found proved.

Charge 10 – Found Proved

'You did not inform your insurers of a claim made against you which resulted in a court judgment. In so doing you:

a. Failed to adhere to your professional obligations

b. Did not act with integrity in that you sought to conceal information which you knew you were obliged to tell the insurers.'

69. The Panel was provided with a copy of an email from Mr Newton to RICS, dated 18 January 2017, in which he stated with regards to the CCJ that *'they claimed for their legal and mortgage costs as well as the costs of the 'specialist inspection'. Seeing that to be a relatively limited sum and well within the excess under my PI policy I decided not to report the claim...'* The Panel understood this to be an admission by Mr Newton that he did not inform his insurers of the complaint raised against him.

70. For the same reasons as set out in paragraphs 45 and 46 above the Panel concluded that Mr Newton was in breach of his professional duty and demonstrated a lack of integrity.

71. Accordingly, charge 10 was found proved.

Charge 11 – Found Proved

'You failed to cooperate adequately with RICS' investigation of a court judgment made against you.'

72. The Panel was provided with a copy of the requests for information that had been made by RICS, to which there had been no response.

73. For the same reasons as set out in paragraph 49 above the Panel concluded that Mr Newton failed to cooperate adequately with RICS' investigation.

74. Accordingly, charge 11 was found proved.

Liability to Disciplinary Action

75. Mr Newton's status as a member of RICS carries a legitimate expectation and an obligation to comply with RICS rules. The Panel noted that all members agree to adhere to the RICS Rules, Regulations and Bye-Laws and accept that they may be subject to disciplinary action if they fail to do so.
76. The Panel took the view that Mr Newton's failure to uphold the high standards expected of RICS members at all times amounted to a serious falling short of his professional duties and obligations. The Panel's factual finding that Mr Newton's conduct demonstrated a lack of integrity is particularly serious and it noted that his unprofessionalism persisted for a significant period of time. His misconduct cannot be described as a one-off instance as there are multiple examples from 2014 to 2017 which demonstrated a complete disregard for the high standards expected of Members.
77. The Panel concluded that Mr Newton's acts and omissions had the potential to seriously undermine public trust and confidence in the profession and therefore bring the profession into disrepute.
78. In these circumstances, the Panel concluded that Mr Newton was liable to disciplinary action.

Panel's Approach to Sanction

79. The Panel bore in mind that the purpose of sanctions is not to be punitive, though they may have that effect. The purpose of sanctions is to protect the public, declare and uphold the standards of the profession and safeguard the reputation of the profession and the RICS as its regulator. Sanctions must be proportionate and considered in order of severity starting with the least restrictive until a sanction which meets the public interest has been reached.
80. Mr Martin confirmed that Mr Newton had no previous disciplinary history. The Panel accepted the advice of the Legal Assessor and had regard to the Sanctions Policy of RICS. It considered carefully the aggravating factors and the mitigating factors as set out by Mr Newton in his emails.

Sanction Decision

81. The Panel identified the following aggravating factors:

- The breach cannot be described as isolated or a one-off incident as it was repeated and persisted for a significant period of time;
- The breaches were conscious, deliberate and premeditated;
- Mr Newton was, at least in part, motivated by financial gain;
- Clients were exposed to the risk of financial loss as a consequence of his acts and omissions and there was no attempt to take appropriate corrective action.

82. Mr Newton, in his email dated 25 September 2018, made reference to his personal financial circumstances. However, after careful consideration the Panel concluded that this factor did not amount to significant mitigating circumstances and afforded it little weight.

83. The Panel identified and applied the most weight to the following mitigating factors:

- Mr Newton made full admissions at an early stage and accepted that he was liable to disciplinary action;
- He expressed a degree of remorse and apologised for his actions which the Panel accepted as genuine;
- This is the first occasion on which allegations have been brought against Mr Newton, in a career spanning more than 50 years.

84. The Panel first considered taking no action. It concluded that, in view of the nature and seriousness of the Rule breach, to take no action regarding Mr Newton's membership would be wholly inappropriate. The Panel concluded that taking no action would be insufficient to protect the public and would not maintain public confidence or uphold the reputation of the profession.

85. The Panel next considered whether to impose a Caution but considered this to be insufficient to mark the seriousness and persistent nature of the failures. The Panel was unable to conclude that the conduct was unlikely to be repeated, given the absence of any insight or remediation. Furthermore, the Panel concluded that in light of the persistent and repetitive nature of Mr Newton's actions his conduct could not be described as 'minor' or an isolated incident. Therefore, the Panel concluded that a Caution was not an appropriate and proportionate sanction.

86. The Panel next considered whether to impose a Reprimand. The Panel concluded that the risk of potential harm to clients was so serious that it required more than a formal admonishment to declare and re-affirm the standards expected of members. The Panel was also satisfied that a Reprimand would not send a clear message to the wider profession about the standards of conduct expected and would therefore be insufficient to uphold public trust and confidence in the profession and the regulatory process.
87. The Panel went on to consider whether a Fine should be imposed. The Panel concluded that a financial penalty alone would be purely punitive and would not adequately address the Panel's concern regarding the risk of harm to the public and public confidence in the profession. The Panel also concluded that it would be disproportionate to impose a fine in addition to other more serious sanctions.
88. The Panel next considered whether conditions or undertakings should be imposed on Mr Newton's membership. The Panel carefully considered the nature and seriousness of Mr Newton's conduct and concluded that, even if suitable conditions or undertakings could be formulated, they would be insufficient to send a signal to Mr Newton, the wider profession and the public, reaffirming the high standards expected of Members at all times. In any event, the Panel concluded that conditions require, at the very least, a positive indication that the Member is willing and able to comply with such an Order. Mr Newton's limited engagement with RICS' regulatory process provided the Panel with no assurance that he would comply with conditions, even if suitable conditions could be formulated. In these circumstances the Panel took the view that conditions or undertakings would not be appropriate or sufficient to protect the wider public interest.
89. The Panel determined that it had no option in this case but to expel Mr Newton from RICS. In reaching this conclusion the Panel took into account his persistent failure to comply with the RICS Rules of Conduct for Members. Having particular regard to paragraph 20 of the Sanctions Policy, the Panel noted that the breach involved a persistent and wilful failure to comply with an RICS Rule of Conduct for a relatively lengthy period of time, demonstrated a lack of integrity and a failure to cooperate with RICS. The Panel took the view that expulsion is justified and proportionate in this case in order to maintain public trust and confidence in the surveyors' profession and ensure proper standards of conduct are

upheld. The Panel concluded that only expulsion of Mr Newton would demonstrate that the RICS takes appropriate action to protect the public interest and promote regulatory compliance as well as deter others from future non-compliance.

90. Accordingly, the Panel orders Mr Newton's expulsion from RICS membership.

Publication and Costs

Publication

91. Mr Martin referred the Panel to the RICS policy on publication.

92. The Panel accepted the Legal Assessor's advice that it is usual for decisions to be posted on the RICS website and published in Modus and had regard to Supplement 3 to the Sanctions Policy. The Panel was unable to identify any valid reason in this case for departing from the presumption of publication of decisions of the Disciplinary Panel. Part of the role of the Panel is to declare and uphold standards and to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.

93. The Panel orders that this decision, in relation to Mr Newton, is published on the RICS website and in Modus.

Costs

94. Mr Martin made an application for costs. The total costs amounted to £4,220. The Panel noted that a schedule of costs had been provided to Mr Newton in advance of the hearing.

95. Mr Newton did not oppose the costs application. However, he set out his financial circumstances in his email dated 25 September 2018, although no documentary evidence was provided. He stated that 'the Inland Revenue are likely to sue for my bankruptcy in the very near future.'

96. The Panel carefully considered whether to make an award of costs. It was satisfied that the case had been properly brought against Mr Newton, and that costs should be awarded otherwise the financial burden of bringing this case would fall on the profession as a whole.
97. The Panel concluded that Mr Newton should make a contribution to RICS' costs subject to a deduction to (i) reflect the early indication that the facts would be admitted and (ii) his financial circumstances.
98. Accordingly, the Panel ordered that Mr Newton pay RICS costs in the sum of £3,000. In determining that Mr Newton should pay a proportion of RICS' costs, the Panel took into account the fact that he may be able to enter into negotiations with RICS to devise an acceptable payment plan.

Right of Appeal

99. Mr Newton has 28 days to appeal against this decision in accordance with Rule 59 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009.
100. In accordance with Rule 60 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009 the Honorary Secretary has 28 days from the service of the notification of this decision to require a review of this decision.