Disciplinary Panel Hearing

Case of

Jeremy Bell MRICS and;
Greenslade Taylor Hunt

On
Tuesday 3 - Wednesday 4 July 2018

At
RICS, 55 Colmore Row, Birmingham, B3 2AA

Chairman
John Anderson

Members
Chris Pittman (Surveyor Member)
Rosalyn Hayles (Lay Member)

Legal Assessor
Margaret Obi

RICS Representative
James Lynch

Charges

The formal charges allege that Mr Jeremy Bell:

1. Was party to an agreement and/or concerted practice with others to fix a minimum level of commission for certain estate agent services, contrary to his professional obligation to comply with the Competition Act 1998.

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

2. His conduct as set out at 1. above:

a. Was dishonest in that he knew the agreement and/or concerted practice was intended to prevent, restrict or distort competition in order to increase his and others' profits,

b. In the alternative, lacked integrity in that he knew or should have known that the agreement and/or concerted practice was designed to prevent, restrict or distort competition in order to increase his and others' profits.

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

The formal charge against Greenslade Tayler Hunt ('GTH') is that:

1. The Firm failed to have in place adequate controls and/or training and/or monitoring procedures to prevent staff entering into anti-competitive agreement(s) or concerted practice(s), contrary to the Firm's professional obligation to comply with the Competition Act 1998.

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

Background

<u>The parties</u>

1. Jeremy Bell has been a professional member of RICS since 1 January 2000. He is a partner with GTH, which has itself been registered with RICS since 20 May 2008.

2. GTH is a firm of Chartered Surveyors, Auctioneers, Property Specialists and Letting Agents in south western England. It has 17 offices, one of which is based in Burnham-On-Sea.

<u>CMA investigation</u>

3. On 4 January 2017 RICS was informed by Duncan Brown, the Regulatory Contact at GTH, that it had been "raided" by the Competition & Markets Authority (("CMA"). On 7 February 2017 Mr Bell notified RICS he was subject to the CMA investigation, which had yet to be concluded.

4. CMA's investigation concerned an alleged cartel formed between six firms of estate agents in the Burnham area: GTH, Gary Berryman Estate Agents, Abbott and Frost Estate Agents, Annagram Estates, Saxons PS, West Coast Property Services.

5. CMA's final report was published on 31 May 2017. By this stage GTH had already admitted to the allegation of price fixing and the CMA had issued a press release to this effect dated 2 March 2017. This concluded that the firms in question had participated in "*an agreement and / or concerted practice to fix a minimum level of commission fees*" for residential property sales. The agreement had lasted from 4 February 2014 until 24 March 2015, although one firm had left the agreement about a month before. By so doing these firms had infringed s. 2(1) Competition Act 1998 ("the Act").

6. The final report and the evidence alluded to within it constitutes the basis for the instant cases. The names of individuals have been redacted. However, there is no dispute that the "Senior Employee 1" at GHT is Mr Bell.

7. The parties concerned each had a branch in Burnham and collectively accounted for the *"overwhelming majority"* of the share of the residential estate agent market. On 1 October 2013 Senior Employee 1, who was about to work for the firm Gary Berryman, emailed Mr Bell at GTH to inform him he was returning to Burnham to work. Mr Bell replied on 2 October 2013 and suggested he *"come and speak to us about fees."* Following further communications Mr Bell emailed Senior Employee 1 at Gary Berryman on 4 November suggesting he contact other estate agents, noting that the two of them would be exposed unless other agents were involved.

8. Senior Employee 1 at Gary Berryman reported back to Mr Bell he had reached out to all the other firms with a view to setting up a meeting to discuss fees. Mr Bell emailed him back indicating his approval of this progress. This reaching out to other parties culminated in an email from Employee 1 at Gary Berryman to the other parties proposing a date for a meeting. He wrote:

'[F]urther to our recent emails or conversations relating to us all getting together to discuss fees etc, I am pleased to say that [Senior Employee 1 (GTH)] has kindly offered the use of this offices on Tuesday 3rd December at 1pm.'

9. This meeting was in fact delayed when one firm, Abbot and Frost, temporarily pulled out.

10. On 13 December 2013, the Senior Employee 1 at Saxons replied to the other firms in these terms, giving a clear indication of the purpose of the proposed meetings:

"For too many years now the area has been driven by agents simply quoting low fees (including ourselves to be honest). Is it not worth a push to higher fees even if [Senior Employee 2] (Abbott and Frost) does not want to be part of it?"

11. Senior Employee 1 at Gary Berryman replied to Mr Bell and his colleague at the firm, Saxons:

"I had just emailed [Senior Employee 1] (GTH) to say I didn't mind him knowing that we were intending to charge between 1.5% and 1.75% next year when we can! I will speak to [Senior Employee 1] (GTH) and see if we 'sensible' ones can sort something out! At the end of the day if we can secure a minimum 1.5% on the majority of instructions and in doing so loose (sic) the odd one to them [Abbott and Frost], I still think we will be better off than we are now scrabbling around at 1% and 1.25%"

12. Abbott and Frost were persuaded to join the meeting and on 20 January 2014. Senior Employee 1 Gary Berryman arranged a meeting at GTH's offices *"to discuss the ongoing fee situation"*. Ahead of the meeting he contacted Mr Bell to check they were *both "thinking along the same lines"*. Mr Bell replied the same day stating, *"if we can just agree minimum 1.5% across the board, we would have done well".*

13. The meeting occurred on 4 February 2014 and all the parties met. The CMA found that this meeting resulted in an agreement being reached regarding the minimum fees for the sale of residential properties in the area. An email from Senior Employee 1 at Gary Berryman to Mr Bell and others stated:

"*Further to our meeting yesterday, I am as promised emailing everyone to confirm the agreement we reached with regards to minimum fees that we will be charging, which I outline below:*
Sole Agency: from 1.5% plus VAT with a minimum fee of £1,500 for properties up to £100,000 and £2,000 for properties over £100,000

Multiple Agency: from 2% plus VAT
Joint Agency: from 2% plus VAT
We will also be looking to enforce a minimum fee on repossessions and corporate clients of £2,000 and if they don't like it, we will refuse the instruction!!!! (sic)
[…] As requested each company will take it in turns each month to play 'policeman/problem solver', which I would propose we each do in the following months:
February: Gary Berryman
March: Abbott & Frost
April: Saxons
May: CJ Hole [Annagram]
June: West Coast
July: Greenslades [GTH]
I would also like to propose Wednesday 7th May at 1pm at Greenslades [GTH] offices as a 'review' meeting."

14. Emails from other parties also indicate an agreement had been reached. In particular, Mr Bell sent an email on 5 February stating:

"I felt this was a meeting of common minds and went remarkably well I'm confident this will work everyone has stock and nobody is new to the town wanting to build stock from scratch. I have a good feeling that as entrepreneurs we can still cooperate to mutual advantage and grow our businesses equally but concentrating on our firms' unique brands and services and selling ourselves not cutting each other's throat financially. We may even be able to build on this initial agreement at our next meeting – can everyone get the date in their diaries? We need a 100% attendance, it's really important we all give it the priority it deserves (making as much as profit as possible!)"

15. Following this meeting further emails between the parties addressed the precise terms of the agreement and in particular whether it applied to properties which had already been valued. Senior Employee 1 at Gary Berryman emailed on 17 February to say he had spoken to all parties and it was agreed the 1.5% minimum fee would apply to properties valued before the agreement unless the agent had already committed himself in writing.

16. The CMA noted this agreement was reinforced by three means: (i) the appointment of one firm a month to serve as "policeman" to monitor adherence, (ii) numerous emails between the parties reporting alleged breaches of the agreement and attempts to resolve difficulties, (iii) at least a further eight meetings between the parties. Most of these meetings, incidentally, were hosted at GTH's offices. For example, Mr Bell sent an email on 27 May 2014 encouraging the parties to meet in order to resolve differences which had become apparent. These means enabled the agreement to survive for just over a year until it broke down in March 2015.

17. The CMA's analysis was that this conduct constituted either an agreement or *"concerted practice"* between the parties – meaning *"a form of coordination… which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition"*. This agreement was intended to distort the market. The parties either knew *"or at the very least"* ought to have known their conduct was capable of harming competition.

18. The level of fine imposed on the parties took into account each firm's turnover. It also involved an analysis of the seriousness of the infringements. The CMA relied on the following factors:

    i. The infringement involved the most serious type of cartel behaviour,
    ii. The infringement involved almost all competitors in the relevant market,
    iii. The use of mechanisms such as "policing" to implement and promote the agreement,
    iv. The need to achieve a general deterrent in the estate agency sector.

19. In respect of GTH, the level of fine was increased because of Mr Bell's role *"in forming, directly participating in and implementing the Infringement"*. It observed Mr Bell *"jointly instigated the Infringement"*. A reduction was also made following GTH's application under the CMA's leniency policy. This involved admissions to the offence, an agreement to pay a financial penalty, and providing assistance with the investigation. Its cooperation came after two other firms had already agreed to assist CMA and the evidence supplied by GHT was of limited value as a result. Whilst GTH did allow two staff, including Mr Bell, to be interviewed *"the credit GTH obtained… would have been higher had GTH (acting through Mr Bell) been more candid from the outset of GTH's leniency application about the extent of the Mr Bell's participation in the infringement."* The total payable was set at £170,549.

Response

Mr Bell's responses

20. Mr Bell cooperated fully with RICS during its investigation. This included voluntarily sharing with RICS the outcome of two other bodies – the Central Association of Agricultural Valuers, which suspended him for a year, and Property Mark, which fined him £1000.

21. His first substantive response was sent 13 April 2017. He explained that the agents had all come together to discuss seeking a property section in the local newspaper. This idea was abandoned but this provided the context for:

"informal chit chat generally about commission rates and a desire to try and have a target commission rate of 1.5% + VAT. In evidence of this there were collaborative exchanges of emails between all the agents effectively creating peer pressure. The meetings gradually petered out when everyone realised they were doing their own thing anyway and was in fact 'smoke and mirrors' all along."

22. He also addressed his personal involvement in this way:

"I confirm that I attended some of the initial meetings (together with my Residential Manager) but as time went on I left my manager to represent the office, with my consent, as it was a little more than a talking shop over a coffee about the market etc. On reflection I have asked myself the question why I attended these meetings in the first place when I am not actively involved in residential estate agency other than as principle auctioneer at the property auctions. I do not actively get involved in private treaty sales myself but obviously I have an interest in it being in charge of the office.
Despite me handing over the reins to some extent, this in no way absolved my responsibility as Partner in charge."

23. He confirmed he had never discussed the matter with his partners, and the first they knew about it was when the firm was raided. GTH made an application for leniency, which required full cooperation with the investigation. This was granted and he was interviewed for four hours.

He was asked to comment on emails between the various parties, some of which he had never seen. In respect of price fixing, he commented:

"It was admitted there were informal discussions although nothing was 'formally' agreed. As far as the Competition Act was concerned I was told by the CMA that if one competing business discloses to another their pricing policy with the 'object' of preventing, restricting or distorting competition then the law has been breached. The fact whether any party followed it through is an irrelevance. In my own firms case I put forward evidence of my own office statistics of commission sales as compared to other GTH offices which showed a comparable mixed range from 1% - 1.75% and averaging 1.38%. The CMA was not interested. As far as they were concerned there were intentions and that was sufficient to break the law. On that basis the firm was found guilty along with all the other firms in the town."

24. Mr Bell explained he was given an enforced leave of absence from GTH, and relieved of managerial responsibility, responsibility for the Residential Department in his office, and his leadership of the Agricultural Professional Department. He has been made responsible for paying the whole of the fine levied on GTH.

25. By way of reflection he stated:

"The burden of guilt towards my fellow Partners and staff for the embarrassment and stress caused by this matter is heavy to bear and one which has been playing on my mind for the past 16 months… This will inevitably leave me with a permanent scar of regret and has blotted my copy book which I am proud to say for the last 30 years has been unblemished with no negligence claims… How on earth I could not have seen the light and drilled down to discover these talks were in breach of the Competition Act, dumbfounds me to this day."

26. In respect of remediation, he set out the steps he was taking, and would be taking in the future. These included attendance at an ethics courses and aiming to join the Statutory Committee within GTH to help to ensure nothing like this happens again.

27. On 22 September 2017 RICS wrote to Mr Bell, asking him to comment upon findings in the finalised CMA report. He responded on 5 October 2017 setting out a further detailed response to the case against him. He confirmed the following points:

- He was in contact with Senior Employee 1 at Gary Berryman to prompt him to concert action between the parties regarding fees;
- By the time of the meeting on 4 February 2014, all parties, including Mr Bell, knew the purpose was to discuss fixing a minimum commission fee;
- Before this meeting, Mr Bell and Employee 1 at Gary Berryman discussed a more detailed plan regarding the level of minimum commission they would recommend in the meeting;
- The meeting resulted in setting up the role of the *"policeman"* which Mr Bell in interview accepted was to *"see whether, in fact, people are actually adhering to those target commissions";*
- Further meetings were held at GTH's offices, although Mr Bell stated he only attended three or four meetings between the parties at the beginning;
- On 27 May 2014 he encouraged the parties to attend another meeting to resolve issues;
- He accepted being the joint instigator of this cartel, although he stated he was not the leading joint instigator.

28. In respect of the CMA's conclusion that GTH would have gained more credit had he been more candid with the investigator, Mr Bell agreed but observed that GTH received a 15% reduction for its cooperation so some of his evidence must have carried weight. Fewer documents were provided because of an IT glitch. He was interviewed about events a long time ago and to recollect the thinking behind the emails he was shown was difficult. When questioned, he was taken aback by the idea that a cartel existed since *"because there was no formal written agreement as such and no one really kept to it".* When he learnt the definition was broader than that he had to admit such an agreement was in place. In his view this may account for the apparent lack of candour.
29. Overall, he made clear, *"I do, of course, accept the findings of the report, which has been thoroughly compiled. I have no real criticism now that I understand the concept of the law."* He took issue only with the level of the fine. He also set out further details regarding his remediation.

30. On 5 February 2018, in response to the suggestion his conduct was dishonest or lacked integrity, he provided further submissions. He commented that in his view "*being dishonest means telling lies*", which he denied. Whilst he accepted the findings of the CMA report, he

asserted the agreement was never followed through. The level of commissions charged by his office did not materially change during this period. He observed:

"*I believe this is a significant point when considering dishonesty as it is one thing talking about something but another thing entirely if one follows it through*…

If one thought of an idea out loud but didn't action it (which was the case with my office) then the consumer wasn't affected by the 'idea'…
When considering the act of being dishonest in the context of a bodies' rules or regulations, is it not fair and reasonable, to assume there has to be a 'consequence' to a proposal which affects consumers? I submit there should be, otherwise the chain of liability is broken as the contract wasn't performed."

31. Finally, he observed the CMA report did not use the term "*dishonest*". He was truthful and upfront with the CMA investigation and with RICS, which are not the acts of a dishonest person.

GTH's responses

32. GTH cooperated fully with the RICS investigation. Following its self-referral to RICS, GTH sent a further email dated 24 March 2017. It stated Mr Bell had been asked to take a leave of absence and added:

"We, as a Partnership, are shocked by Mr Bell's actions and our disapproval has been expressed in the strongest terms. He is mortified and at a loss to explain what he did."

33. GTH maintained this was an isolated incident which concerned one individual in one of their offices only. The firm was determined to learn from this incident. In terms of practical changes it stated:

- Residential managers had a meeting with the partner in charge of residential sales which dealt with compliance issues and specifically addressed competition law.
- This issue is also now included in the office handbook.
- A competition law policy statement is attached to the website.

- Employment contracts have been amended to include a section dealing with compliance with competition law.
- An additional seminar on compliance has been organised.

34. GTH confirmed in an email dated 25 April 2017 that, having given Mr Bell leave of absence of six weeks, he was invited back to work on 18 April 2017. GTH added that Mr Bell will not have managerial responsibilities, or be responsible for the Residential Department in the Burnham office until all investigations had concluded. It noted:

"Jeremy is devastated by what has happened and is truly sorry for his actions. He has been an honest, professional, hard working and popular colleague within our firm who has attracted tremendous respect over the past 30 years from his colleagues, staff and significant numbers of clients".

35. A later email of 28 April 2017 explained GTH had decided to limit Mr Bell's role to *"livestock auctioneering, agricultural agency and work that does not require RICS accreditation"*.

36. In response to the finalised CMA report, GTH sent in a detailed letter. It confirmed GTH accepted the report's findings. The first time the partnership was aware of these events as when Mr Bell informed them the office had been visited by official from the CMA on 10 December 2015. At the time of these events commission rates were not monitored in great detail. However, now new software has been installed to ensure this happens. It commented:

"Actions taken by our firm since the CMA investigation to prevent this ever happening again and regarding compliance and regulation generally are considerable. There has been a root and branch review of compliance across all divisions of our practice, this includes the instruction of Ashfords Solicitors to audit our procedures and policies across all areas of compliance… to ensure that we and our staff are not only compliant but that our policies and training programs are independently reviewed regularly to make sure something like this never happens again."

37. The actions taken by GTH account for the reduction in the CMA fine from £186,054 to £170,549.

Preliminary matters

Application to Amend

38. Mr Lynch made an application, prior to the opening of the case, for charge 1 in respect of the Firm to be amended by substituting the word, '*staff'* with the words, *'employee and/or partner'*. He submitted that the word '*staff*' was meant to include partners, and therefore included Mr Bell. However, he submitted that for the purposes of clarity the charge should be amended. He further submitted that no injustice would be caused to the Firm as in its response it had made reference to Mr Bell and had therefore anticipated that the '*staff*' related to employees and partners and therefore included him.

39. Mr Clark, on behalf of the Firm, did not object to the proposed amendment. He stated that '*the change seemed sensible*.' However, he informed the Panel that the Firm was not sure whether '*staff'* was meant to include '*partners*' and had sought clarification from RICS but did not receive a response. He stated that the terminology made a *'big difference'* because partners are responsible for their own behaviour.

40. The Panel accepted the Legal Assessor's advice that typographical errors, minor changes, and matters of clarification are less likely to cause injustice than substantial alterations or amendments that widen the scope of RICS' case. She also advised that the words within the charge should be given their ordinary natural meaning.

41. The Panel determined that the application to amend should be refused for the following interrelated reasons:

    (a) The Panel recognised that a member of the public was likely to assume that '*staff*' included all personnel that worked at the Firm including partners. However, the Panel accepted that from the Firm's point of view there is a significant difference between the degree of autonomy between '*staff'* and '*partner*' which is therefore highly relevant to the issue of control, training and monitoring.

(b) The Panel concluded that the ordinary natural meaning of '*staff*' does not necessarily include *'partners'* and that it is fair to assess the meaning from the Firm's point of view in assessing whether there would be any injustice in accepting the amendment.

(c) RICS chose the wording of the charge based on all the information that was available and did not dispute that the Firm had attempted to seek clarification of this issue in advance of the hearing.

(d) The application to amend was only made because the issue was raised by the Firm shortly before the commencement of the hearing. Given the lateness of the application the Panel determined not to exercise its discretion to make the proposed amendment, even though to some extent the Firm had assumed that 'staff' included Mr Bell for the purposes of preparing the witness statement on behalf of the Firm.

Admissions

42. At the outset of the hearing Mr Bell confirmed that he admitted charge 1 and charge 2(b) (lack of integrity). He denied charge 1(a) (dishonesty). The Firm once the application to amend charge 1 had been refused then denied it.

Findings of Fact

Panel's Approach

43. The Panel was aware that the burden of proving the facts was on RICS. Neither Mr Bell nor the Firm had to prove anything, and the charges could only be found proved, if the Panel was satisfied, on the balance of probabilities.

44. In reaching its decision the Panel took into account the documentary evidence within the hearing bundle which included the CMA investigation report, correspondence between Mr Bell, the Firm and RICS, and samples of press articles.

45. The Panel accepted the advice of the Legal Assessor. The Panel noted that following the Supreme Court decision in *Ivey v Genting Casinos* [2017] UKSC 67 the test for dishonesty is an objective

test only. The Panel first had to determine the Registrant's actual knowledge or belief and then determine whether his act or omission was, on the balance of probabilities, dishonest by the ordinary standards of reasonable and honest people.

46. With regards to integrity RICS took into account the judicial guidance in the case of *Wingate & Evans;SRA v Malins* [2018] EWCA Civ 366:

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

47. The Panel was also mindful of the following overlapping issues with regard to charge 1 against the Firm: (i) the need to assess whether the charge against the Firm remains viable if Mr Bell is excluded from '*staff*' because of his status as a partner, (ii) whether Employee 1 could properly be described as '*entering into an anti-competitive agreement or concerted practice(s)*' and (iii) the charge cannot be found proved, if 'staff' does not include Mr Bell and if Employee 1 did not enter into the agreement.

Decision

Member

Charge 1– **Found Proved**

'Was party to an agreement and/or concerted practice with others to fix a minimum level of commission for certain estate agent services, contrary to his professional obligation to comply with the Competition Act 1998.'

48. The Panel noted that the CMA investigation report concluded that as consequence of Mr Bell's actions GTH was a party to the infringement of the Competition Act 1998. The CMA determined that the parties participated in an agreement and/or concerted practice to fix a minimum level of commission fees for the provision of traditional residential estate agency services (property sales agency services provided by estate agents that operate with a 'high street' presence) in the areas

that the parties provided these services from branches located in Burnham-on-Sea from at least 4 February 2014 until at least March 2015.

49. The Panel took into account Mr Bell's admission and was satisfied that based on the findings of the CMA there was reliable and credible evidence that he was a party to the 'price fixing' agreement. The Panel noted that although a reduction was applied to GTH's fine under the CMA's leniency policy, the initial level of fine was increased because of the level of Mr Bell's involvement.

50. Accordingly charge 1(a) was found proved.

Charge 2(a) – **Found Proved** (dishonesty)

'Was dishonest in that he knew the agreement and/or concerted practice was intended to prevent, restrict or distort competition in order to increase his and others' profits'

51. Mr Bell chose to give evidence. The Panel made appropriate allowances for the passage of time and the inherent stress involved in giving evidence but overall found Mr Bell's evidence to be unconvincing and unreliable. At times the evidence which he gave appeared to be deliberately vague in response to the perceived difficulty in answering the questions in a manner consistent with his case; at other times, he appeared to have deluded himself into believing his own version of events. He departed from his own previous oral evidence, sometimes within minutes of having given it and repeatedly sought to distance himself from the emails that he had sent or received during the relevant period, as if this somehow diminished his personal responsibility. A particular example of Mr Bell's lack of credibility as a witness was his initial denial in cross-examination that there had been any 'agreement' despite his admission to charge 1.

52. The Panel concluded that, in the absence of corroboration, Mr. Bell's evidence frequently could not be relied upon, where it conflicted with the documentary evidence.

53. In assessing Mr Bell's state of knowledge at the time of the initial meeting with the other parties the Panel carefully considered the documentary evidence including Mr Bell's witness statement together with his oral evidence. The Panel was satisfied that Mr Bell consciously and deliberately entered into preliminary email discussions with a representative from Gary Berryman as early as

October 2013. In an email dated 1 October 2013 Mr Bell asked Gary Berryman to '*come and speak to us about fees*.' Gary Berryman subsequently sent an email on 1 November 2013 which stated that it '*would be very keen to discuss the situation with regards to "fees"* with Mr Bell and suggested meeting up to '*have a chat with the hope of getting all the other agents on board, too!'* A further email was sent on 4 November 2013 Mr Bell sent an email to Gary Berryman which stated, *'[U]nless we get everyone on board we will only expose ourselves*.' Mr Bell, during his oral evidence, attempted to explain the meaning of '*expose ourselves'* by suggesting that it was just a reference to the need to have all the local agencies participation in the arrangement.

54. The Panel concluded, on the balance of probabilities, that from the context of the emails it was clear that Mr Bell knew from the outset that the proposed arrangement was wrong.

55. On 11 December 2013 Gary Berryman sent an email to Mr Bell with regards to the meeting that was proposed to take place later that day and suggested that with regard to the issues to be discussed he was, *'thinking of a minimum of a minimum (sic) commission of 1.5% plus VAT with a minimum of £2,000 for sole agency, with multiple agency being 2.75% plus VAT with £2,750 minimum fee…. Are you happy to lead it?'* In response Mr Bell replied, '*All well and good but if can just agree minimum 1.5% across the board, we would have done well*.' Although that meeting did not ultimately take place until 4 February 2014 there was no indication that the plans changed during the intervening period as evidenced by the formalised agreement in the email from Gary Berryman to the parties on 5 February 2014 which included the decision to introduce a '*policeman/problem solver'* role to be rotated amongst the parties on a monthly basis to enforce the agreement.

56. The Panel accepted the conclusions of the CMA that Mr Bell was a joint instigator of the agreement and was satisfied that at the time he entered into the arrangement with the other parties he knew that the purpose of it was to restrict the competition within the market. Although the Panel accepted that Mr Bell may not have known that what he was proposing breached competition law, the Panel was satisfied that he knew that it was wrong. The Panel did not accept, as suggested by Mr Bell, that the meetings developed organically and that he '*got caught up'* in something he had no intention of seeing through. He suggested during his oral evidence that he was busy '*doing other things'* and that this was not something he was focussed on. However, he attended at least three meetings at the beginning of the arrangement, was copied into the correspondence with the other parties and was aware that his sales manager was attending meetings where this matter was

being discussed. The Panel concluded that in these circumstances Mr Bell's suggestion that he had no interest in the proposal was not credible. The Panel also did not accept the assertion made by Mr Bell in his witness statement that his actions were '*not premeditated*.' The Panel was satisfied that Mr Bell's conduct was clearly premediated and was deliberately and consciously aimed at manipulating the market by fixing a minimum price for estate agent fees.

57. Having determined Mr Bell's state of mind the Panel went on to consider whether by the standards of reasonable and honest people his conduct would be considered to be dishonest.

58. The Panel took the view that members of the public would appreciate that as a concept dishonesty is wider than 'lying' and includes conduct which is deceptive and deceitful, particularly where a benefit is gained. In this case the benefit was financial. The Panel acknowledged that the plan did not come to fruition but at the time the agreement was entered into there was an anticipation that there would be a financial gain which the parties intended to benefit from. The Panel concluded that members of the public would find Mr Bell's conduct to be dishonest, as it was duplicitous in the sense that the public would be led to believe that market forces dictated the level of the estate agent's fees whilst, in fact, an agreement had been reached which would have required consumers to pay a minimum fee. Consequently, the consumer would be required to pay a higher fee than they might otherwise have done. The Panel was not persuaded by Mr Bell's suggestion that because the plan was never fully implemented it was not dishonest. The Panel was satisfied that the conduct was dishonest at the time the agreement was made, irrespective of the outcome.

59. Accordingly charge 2(a) was found proved.

Charge 2(b) – **Found Not Proved** (lack of integrity)

'*In the alternative, lacked integrity in that he knew or should have known that the agreement and/or concerted practice was designed to prevent, restrict or distort competition in order to increase his and others' profits*.'

60. As the Panel found that Mr Bell's conduct with regard to the agreement to fix a minimum level of commission was dishonest it did not go on to consider 'lack of integrity' as charge 2(b) was as an alternative to charge 2(a).

61. Accordingly charge 2(b) was found not proved.

The Firm

Charge 1 – **Found Not Proved**

'The Firm failed to have in place adequate controls and/or training and/or monitoring procedures to prevent staff entering into anti-competitive agreement(s) or concerted practice(s), contrary to the Firm's professional obligation to comply with the Competition Act 1998.

62. The Panel, having determined that charge 1 should not be amended, took into account the submission made by RICS that the charge remains viable as it includes Employee 1 whom the CMA found to be one of the individuals who '*were to differing extents involved in the Infringement.'*

63. The Panel noted that the Case Summary, which sets out in summary form the basis of RICS' case, made no mention of Employee 1 directly. The Panel took the view that it was clear from this document that RICS' primary focus was on the role played by Mr Bell. RICS appeared to tacitly accept that '*staff*' did not include Mr Bell (although it seems that he was deemed to be included at the time the charges were drafted and at the time the Case Summary was prepared) and the Panel concluded that the ambiguity should be resolved in favour of the Firm. Therefore, the Panel proceeded on the basis that '*staff*' did not include Mr Bell.

64. The Panel concluded that technically '*staff*' did include Employee 1 but that was not the basis upon which RICS had brought the case against the Firm. However, even if the Panel accepted that RICS was entitled to a degree of flexibility, there was insufficient evidence that Employee 1 '*entered into an anti-competitive agreement(s) or concerted practice(s)'*. The Panel was satisfied that the evidence that Employee 1 attended a number of meetings later during the year was insufficient to demonstrate that he entered into the agreement. In reaching this conclusion the Panel noted that RICS was unable to direct the Panel to any specific documents in the hearing bundle which indicated the level and timing of his involvement. In the absence of such evidence the Panel concluded that the charge could not be found proved.

65. The Panel noted that the Firm was willing to admit charge 1 if it had been amended to include *'partners'*. However, the Panel was restricted by the wording of the charge. The Panel took the view that had it not been for that restriction it was likely that an adverse finding would have been

made against the Firm because of Mr Bell's position within the Firm and the nature and extent of his involvement in the arrangement.

66. Accordingly, charge 1 against the Firm was found not proved.

Liability to Disciplinary Action

67. As the Panel did not find the charge against the Firm proved, it went on to consider liability to disciplinary action only in relation to Mr Bell.

68. Mr Bell'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.

69. The Panel took the view that Mr Bell'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 Bell's conduct was dishonest is particularly serious and it noted that the dishonesty persisted for a significant period of time. His conduct cannot be described as a one-off instance as his participation was an on-going feature until at least the mid-point of 2014, and demonstrated a complete disregard for the high standards expected of Members.
70. The Panel noted that Mr Bell's actions were publicised in the CMA's investigation report and that the case generated a degree of publicity in the local area. The Panel noted that Mr Bell's status as a RICS member was available to the public. The Panel concluded that Mr Bell's actions had the potential to seriously undermine public trust and confidence in the profession and therefore bring the profession into disrepute.

71. In these circumstances, the Panel concluded that Mr Bell was liable to disciplinary action.

Panel's Approach to Sanction

72. 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.

73. Mr Lynch confirmed that Mr Bell 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 Bell in his written statement and during his oral submissions. The Panel also had regard to the documents submitted by Mr Bell and/or GTH during the course of the RICS investigation

Sanction Decision

74. The Panel noted identified the following aggravating factors:
    - The breach cannot be described as isolated or a one-off incident as it persisted for a significant period of time.
    - The breach was conscious, deliberate and premeditated and involved dishonesty.
    - Consumers were exposed to the risk of incurring higher costs for property transactions i.e. financial loss as a consequence.
    - The purpose of the arrangement was to increase profits for the agencies involved – i.e. the firm (and Mr Bell as a partner) stood to benefit.
    - Mr Bell showed limited insight into his actions during the investigation and throughout his oral evidence at the hearing, prior to the Panel delivering its decision.
    - Mr Bell's action breached the law.
    - There was adverse publicity from the CMA and press articles.

75. Mr Bell, in his witness statement, dated 1 June 2018, referred to a number of mitigating factors which the Panel took into account. He also expressed remorse and apologised for his actions during his oral submissions which the Panel accepted as genuine.

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

- Mr Bell fully co-operated with RICS during the investigation stage of the regulatory process;
- He accepted responsibility for his actions and admitted they demonstrated a lack of integrity;
- He expressed remorse and apologised for his actions;
- He has taken remedial steps by attending a RICS course on 'Conduct, Rules, Ethics and Professional Practice. He also voluntarily limited his involvement in RICS accredited activities pending the conclusion of the RICS proceedings;
- He demonstrated a sincere wish to continue to learn from his errors and to continue to serve in the community as a chartered surveyor.
- This is the first occasion on which allegations have been brought against Mr Bell, in a career spanning more than 30 years.

77. 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 Bell'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.

78. The Panel next considered whether to impose a Caution but considered this to be insufficient to mark the seriousness and persistent nature of the failure. Although the Panel accepted that the conduct was unlikely to be repeated, particularly given the personal consequences for Mr Bell, it concluded that in light of the persistent and repetitive nature of his 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.

79. The Panel next considered whether to impose a Reprimand. The Panel concluded that the risk of potential harm to consumers was so serious that it required more than a formal admonishment to declare and re-affirm the standards expected of members, particularly those holding a senior position at regulated firms. 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.

80. 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.

81. The Panel next considered whether conditions or undertakings should be imposed on Mr Bell's membership. The Panel carefully considered the nature and seriousness of Mr Bell's conduct and concluded that, even if suitable conditions or undertakings could be formulated, they would be insufficient to send a signal to Mr Bell, the wider profession and the public, reaffirming the high standards expected of Members at all times. In these circumstances the Panel took the view that conditions or undertakings would not be appropriate or sufficient to protect the wider public interest.

82. The Panel determined that it had no option in this case but to expel Mr Bell from RICS. In reaching this conclusion it had regard in particular to 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 dishonesty as well as a persistent failure to comply with an RICS Rule of Conduct for a relatively lengthy period of time. 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 Bell 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.

83. Accordingly, the Panel orders Mr Bell's expulsion from RICS membership.

Publication and Costs

Publication

84. Mr Lynch referred the Panel to the RICS policy on publication. The Firm opposed publication on the basis that publication would not be in its interests. Mr Bell did not oppose publication.

85. 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.

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

Costs

87. Mr Lynch made an application for costs. The total costs amounted to £13,672.50 which he invited the Panel to apportion between Mr Bell and the Firm as it saw fit. He submitted that although the charge against the Firm was not found proved, RICS was entitled to seek from the Firm a proportion of the costs that had been incurred in bringing the case. Mr Lynch had provided a schedule of costs to the Firm and Mr Bell in advance of the hearing.
88. The Firm opposed the costs application. Mr Bell did not oppose the costs application. Neither Mr Bell nor the Firm provided any evidence as to their means. The Firm did not seek to recover its costs from the RICS. The Firm asked the Panel, when reaching its decision, to take into account the costs that the Firm had had to incur in preparing for and attending the hearing.

89. The Panel carefully considered whether to make an award of costs. It was satisfied that the case had been properly brought, against the Firm and against Mr Bell, and that costs should be awarded otherwise the financial burden of bringing this case would fall on the profession as a whole.

90. The Panel concluded that the Firm should pay the investigation costs relating to the Firm which amounted to £937.50. In addition, the Panel concluded that the Firm should pay one

¼ of the £5,300 hearing costs (£1,325), 1/3 of the £2,500 solicitors costs (£833), 1/3 of the £1,400 preparation costs (£466) and ¼ of the £2,800 attendance at the hearing costs (£700). These costs came to a total of £4,261.50. The reductions in the costs against the Firm reflected the fact that the majority of the work involved in presentation of the case at the hearing related to the conduct of Mr Bell. The Panel took account of the fact that the Firm had sought clarification of the allegation against it from the RICS in advance of the hearing.

91. The Panel concluded that the remainder of the costs should be paid by Mr Bell. These costs included investigation costs of £735.00 and the remainder of the hearing costs, preparation costs, solicitor's costs, preparation costs and attendance at the hearing costs. These costs came to a total of £9,411.00. In reaching its decision the Panel took account of the fact that Mr Bell has already been made responsible for paying the fine levied on the Firm by the CMA and that he had made partial admissions to the allegations in advance of the Disciplinary Panel hearing.

92. Accordingly, the Panel orders that the Firm pay RICS costs in the sum of £4,261.50 and that Mr Bell pay RICS costs in the sum of £9,411.00. In determining that Mr Bell should pay a proportion of RICS' costs, the Panel took into account the fact that he would be able to enter into negotiations with RICS to devise an acceptable payment plan.

Right of Appeal

93. Mr Bell and/or the Firm have 28 days to appeal against this decision in accordance with Rules 59 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009.

94. 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.