

Disciplinary Panel Hearing

Case of

**Mr Andrew Tew [5790562] & Redway Associates t/a 360 Surveying [744510]
Bridgwater, Somerset TA7**

On

Tuesday 27 June 2017

At

RICS, Parliament Square, London

Panel

Julian Weinberg (Lay Chair)
Carolyn Tetlow (Lay Member)
Christopher Pittman (Surveyor Member)

Legal Assessor

Ben Kemp

RICS Representative

James Lynch

The formal charge against Mr Tew is:

You did not at all times act with integrity and avoid actions or situations inconsistent with your professional obligations in that as contact officer for and sole principal of the regulated firm Redway Associates Ltd. you failed to ensure that remedies awarded to Ms R by the Ombudsman Services Property in a Final Decision dated 13 March 2015 were implemented.

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

The formal charge against the Firm is:

Redway Associates Ltd. t/a 360 Surveying, a firm regulated by RICS, did not at all times avoid actions or situations that were inconsistent with its professional obligations in that, being a member of the Ombudsman Services Property scheme, it failed to implement remedies awarded to Ms R by the Ombudsman in a Final Decision dated 13 March 2015.

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

Introduction

1. The RICS Disciplinary Panel convened to consider the foregoing allegations about Mr Tew and Redway Associates Ltd. t/a 360 Surveying (“the Firm”).

Response

2. Both Mr Tew and the Firm admit the allegations.

Summary

3. Mr Tew has been a member of RICS since 2011 (as an Associate Candidate) and is the sole principal and contact officer of the Firm. It was a matter of agreement that he is as such subject to the disciplinary jurisdiction of RICS. The Firm, which has been registered for RICS Regulation since 2005, undertakes its main area of practice in the field of building surveying.
4. It is a requirement imposed by RICS on firms which it regulates that they must provide their clients with an independent mechanism by which complaints may be considered and redress provided. The provider of this service must be approved by RICS Regulatory Board. The Firm is a member of the Ombudsman Services: Property (OSP) scheme and as such is required to implement remedies awarded by OSP within 28 days of being notified of its final decision.
5. RICS alleges that the Firm has failed to give effect to a final decision, dated 25 March 2015, issued by OSP arising from a complaint from a client of the Firm, Ms R. OSP’s decision provided for an award of £1600 to be paid to Ms R in respect of the failure by the Firm to identify rising damp during a survey conducted by the Firm on 29 October 2013. The award issued by OSP was payable by the Firm by way of a contribution to the cost incurred by Ms R in remedying the rising damp, following her purchase of the property in January 2014.

Burden and standard of proof

6. RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. That is a single unwavering standard of proof, though the more unlikely an allegation the more cogent the evidence that the Panel might require to prove it. There is no requirement for Mr Tew or the Firm to prove anything. The Panel has in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and proceeds upon the basis that the Human Rights Act 1998

will apply. It bears in mind in particular Mr Tew's and the Firm's rights to a fair trial and Mr Tew's right to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act. The question of whether or not any facts admitted or found proved give rise to liability to disciplinary action is a matter for the Panel's judgment.

Preliminary matters

7. Mr Tew did not attend the hearing. Neither he nor the Firm were represented. The Panel was referred to the service of the papers. Notice of the hearing had been served on Mr Tew and the Firm by special post on 01 June 2017. Although the notice period had accordingly been somewhat less than the 56 days stipulated by rule 23(b) of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7 (the Rules), the Panel was satisfied that Mr Tew had waived this requirement through correspondence between RICS and Mr Tew's solicitor. The Panel was additionally satisfied that the requirements of Rule 23A had been met in full in respect of the service of evidence in the case, which had been undertaken by RICS on both Mr Tew and the Firm.
8. The Panel next considered whether to proceed in the absence of Mr Tew and the Firm. The Legal Assessor's advice was sought and accepted. The Panel was referred to the case of R v Jones [2002] UKHL 5, which Tait v The Royal College of Veterinary Surgeons (RCVS) [2003] UKPC 34 states is also applicable to professional conduct proceedings.
9. A decision to proceed in the absence of the person facing the allegation should be taken with great care, and caution. The risk of prejudice to the individual must be carefully weighed, and the conclusion that someone has deliberately and voluntarily absented themselves requires the Panel to find that there is a clear and unqualified - unequivocal - intention not to attend.
10. The Panel concluded that this condition was satisfied in the present case. Mr Tew had voluntarily absented himself from the hearing. This was evident from correspondence from his solicitor, addressed to RICS, dated 15 June 2017, a copy of which was provided to the Panel. Mr Tew through his solicitor has made clear in this and subsequent correspondence both that he was aware of the hearing, that he did not wish to attend and that neither he nor the Firm would be represented. The Panel was mindful that a previous calling of the case had been adjourned to allow Mr Tew to seek legal advice. This he had done, and his and the Firm's instructed solicitor had in the meantime engaged with RICS and confirmed Mr Tew's non attendance.
11. The Panel accordingly determined that it was appropriate in this case to proceed in the absence of Mr Tew and the Firm.

Evidence

12. The Panel has perused the RICS Solicitor's bundle of documents, running to 39 pages, in addition to a supplementary bundle including recent correspondence and a jointly agreed Statement of Facts. The bundle also included correspondence between Mr Tew and RICS, as well as between Mr Tew and OSP, in the case, as well as the initial and final decisions of OSP.

Findings of fact

13. The Panel finds all of the facts of the allegations proved upon the basis of the documentary evidence produced, and as set out in the Agreed Statement of Facts jointly produced and signed by both parties prior to the hearing.
14. In particular, the Panel finds that the Firm was subject to a final decision of OSP dated 25 March 2015. That decision required the Firm to pay to a client, Ms R, compensation in the sum of £1600. This was the final decision of OSP, from which there was no appeal within the OSP scheme. Mr Tew and the Firm have refused to pay this award to Ms R, either within the required 28 days or at all.

Submissions by RICS Presenting Officer

15. RICS says that Mr Tew and the Firm acted inappropriately in failing to implement OSP's final decision in the matter. That decision was issued by OSP in accordance with its Terms of Reference, a copy of which was available to the Panel in the hearing bundle, and by which the Firm was bound. There is no right of appeal within the OSP scheme from this decision. That being the case, there was an obligation on the Firm to satisfy the award and an individual professional responsibility upon Mr Tew as its sole principal to ensure that this was done. Mr Tew acted deliberately in refusing to do so.
16. RICS alleged in relation to the allegation against Mr Tew that he had failed to act with integrity and in accordance with his professional obligations, in breach of Rule 3 of the Rules of Conduct for Members. It submitted that he had risked bringing the surveying profession into disrepute. RICS did not allege dishonesty and distinguished between a failure of integrity and dishonesty. The Panel noted recent case law on this point, including most recently the case of Williams v the Solicitors Regulation Authority [2017] EWHC 1478, which confirmed the distinction.

Submissions on behalf of Mr Tew and the Firm

17. Mr Tew has stated in correspondence with OSP that the Firm would not pay the award because it disputed the decision, a position which it maintained in correspondence with RICS. Mr Tew has stated that he did not accept that the Firm was in the wrong.
18. Mr Tew has however accepted the facts of the case, and that he is liable to disciplinary action, albeit recognising that this is a decision which is a matter for the judgment of the Panel.

Discussion and conclusion

19. The Panel accepted the advice of the Legal Assessor. Mr Tew had admitted liability to disciplinary action, on behalf of himself and the Firm. This question is nonetheless one for the Panel's judgment, having regard to all of the circumstances of the case.
20. Having considered carefully all of the documentary evidence in the case, and the submissions of all parties, the Panel is satisfied that the Firm was clearly bound by the terms of the OSP scheme. Regardless of Mr Tew's views on the merits of the case, the Firm was

bound by the terms and conditions of the scheme, and, in accordance with those terms and conditions, by OSP's final decision in the case.

21. The Panel notes that the OSP award of £1600 was ultimately paid to Ms R through the RICS Client Money Protection Scheme. Mr Tew set up a payment plan with RICS to repay this sum therefore owed by him to RICS. Three of the twelve agreed monthly payments of £133.33 were paid, up until March 2017. No further payments were made and the balance of £1,199.97 remains outstanding.
22. By wilfully failing to give effect to the OSP decision Mr Tew undermined the purpose and effectiveness of a key element of the client protection requirements imposed by RICS on regulated firms.
23. For these reasons the Panel finds Mr Tew to have breached Rule 3 of the RICS Rules of Conduct for Members 2007, in that he did not at all times act with integrity and avoid actions or situations inconsistent with his professional obligations .
24. For the same reasons the Panel finds that the Firm breached Rule 3 of the RICS Rules of Conduct for Firms, as charged.
25. The Panel accordingly finds both Mr Tew and the Firm liable to disciplinary action.

Mitigation

26. There has been no previous disciplinary finding against Mr Tew or the Firm.
27. Mr Tew submitted that he had been experiencing personal and financial difficulties, and produced medical evidence to the effect that he had been experiencing health issues since at least the end of 2016. There was however no evidence to demonstrate that Mr Tew suffered from the identified health conditions in 2015, when he first refused to comply with the OSP decision.
28. Mr Tew had engaged with RICS, agreed the facts, accepted his liability to disciplinary action, and offered an apology prior to today's hearing.

Decision as to sanction

29. The Panel bore in mind that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
30. The Panel paid careful heed to the advice of the Legal Assessor (delivered in open forum), and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case.
31. The Panel had decided that Mr Tew and the Firm are liable to disciplinary action. Having done so it first has to decide whether to impose a sanction, and if it so decides the Panel commences at the lowest sanction, and only if it decides that sanction is not appropriate

does it move to the next level of sanction. Having arrived at a sanction that it is minded to impose, the Panel then reviews the next sanction above so as to satisfy itself that this would be too severe a sanction. The Panel bears in mind that more than one sanction may be imposed. If conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.

32. The Panel had regard to the mitigating factors already noted. It was nonetheless concerned that Mr Tew had demonstrated a lack of insight in this case. He had willfully refused to comply with the final decision of OSP. Mr Tew's objection to that decision was irrelevant. He on behalf of the Firm had submitted to the decision-making authority of OSP, in compliance with its obligations to RICS. It was not for him or the Firm then to question its final decision just because he happened not to like it. Mr Tew had not just failed to comply with an important aspect of the RICS client protection framework, but had willfully refused to do so. In so doing he risked bringing the reputation of the profession into disrepute. His actions had resulted in a financial cost being borne by RICS and therefore, unless it was repaid, by the profession at large. His actions would have resulted in financial benefit to the Firm in failing to comply with the OSP decision.
33. The Panel considered the matters too serious for no sanction to be imposed. It considered whether a caution would be appropriate, but concluded that this would not reflect the seriousness of the breaches in this case. Complaints handling procedures must be complied with if the public is to be protected.
34. The Panel finds that a reprimand would be appropriate and proportionate in this case. In coming to this view, the Panel took account of the fact that Mr Tew did engage with RICS and belatedly took steps to comply with the OSP final decision, repaying to RICS a portion of the sum paid by RICS to Ms R. He had not however completed the repayments due to RICS.
35. The Panel was also mindful of the need to maintain the reputation of the profession in the eyes of clients such as Ms R, and the public at large.
36. The Panel accordingly imposes a reprimand on both of Mr Tew and the Firm.
37. The Panel additionally imposes a condition on the Firm's registration with RICS, requiring the Firm to make payment to RICS of the balance due to RICS of £1,199.97, payable by 9 monthly instalments, each of £133.33, due by the last day of each calendar month, commencing from July 2017.
38. The Panel additionally imposes a condition on Mr Tew's membership of RICS, requiring Mr Tew to ensure compliance by the Firm with the condition set out at paragraph 37 above, or in default by the Firm to make such payments himself.
39. If either the Firm or Mr Tew fails to comply with their respective conditions, Mr Tew will be automatically expelled from membership of RICS and the Firm will be removed from registration for RICS regulation, with immediate effect and without the necessity of further recourse to a Disciplinary Panel.
40. The Panel considered imposing undertakings, but didn't consider this appropriate given the suitability of imposing a conditional order on Mr Tew and the Firm. The Panel also considered a fine, but considered that the effect of a fine would be entirely punitive, and

wouldn't address the Panel's primary concern that Mr Tew and the Firm should comply with the OSP decision.

41. The Panel has considered whether an immediate more severe sanction is appropriate in this case, including immediate expulsion in the case of Mr Tew, or removal from registration for RICS regulation, in the case of the Firm. The Panel considered that it was proportionate having regard to all of the circumstances to afford Mr Tew and the Firm a final opportunity to make amends for their conduct, and thereby repay the debt to RICS and the profession.

Publication and Costs

Publication

42. The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on the RICS website and in RICS Modus. The Panel sees no reason for departing from the normal practice in this case. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.
43. The Panel orders that this decision is published on the RICS website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

44. The RICS Presenting Officer asked for costs, in respect of both today's hearing and the previously adjourned hearing in this case. He had provided a schedule to Mr Tew in advance of the hearing. Mr Tew through his solicitor had submitted that Mr Tew was in a position of some financial difficulty, although the Panel had no specific evidence or information in this respect.
45. The Panel considered carefully the costs sought. The figure for the hearing is the average cost of a hearing day, and the Panel has no reason to doubt it. It is mindful that, as regards today's hearing, Mr Tew had cooperated fully and had been willing to proceed by way of a paper hearing, with the costs saving which this would have entailed. The fact that this had not in fact been how the case had in the end been conducted should not, the Panel considered, be attributed to Mr Tew. It determined that it was appropriate in relation to today's hearing to restrict the award of costs to the level which RICS would have sought had the case proceeded as a paper hearing only, being £600.
46. The Panel additionally concluded that RICS was entitled to costs in relation to the previously adjourned hearing. There was no persuasive reason why Mr Tew could not previously have engaged with these proceedings, and attended that hearing. The limited medical evidence submitted was not sufficient to explain Mr Tew's failure to attend the hearing on 01 June 2017. The Panel considered it appropriate however to restrict the costs awarded to RICS in respect of that hearing to £2,400.

47. The Panel accordingly orders that Mr Tew and the Firm pay to RICS costs in the total sum of £3,000.

Appeal Period

47. Mr Tew and the Firm may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rules 58 – 70 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.
48. The Honorary Secretary of RICS may require a review of a finding or penalty imposed by a Disciplinary Panel within 28 days from service of the notification of the decision, in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.