

Case of

Mr Benjamin Mire FRICS
Middlesex
HA8

Represented by

Marc Beaumont (Counsel)
Mark Weston and Tom Cahill (Matthew, Arnold & Baldwin)

On

Monday 01 & Tuesday 02 June 2015

At

RICS, Parliament Square, London

Chairman

Julian Weinberg (Lay Chair)

Members

Andrew Winscom (Member)
Carolyn Tetlow (Lay Member)

Legal Assessor

Mark McConochie

RICS Representative

Victoria Butler Cole (Counsel)
Tim Rikard (Field Fisher Waterhouse)

The formal charges are:

1. On 25 October 2012, you failed to act at all times to avoid conflicts of interest and/or avoid any actions inconsistent with your professional obligations, contrary to Rule 3 of the Rules of Conduct for Members, in that you appeared before the Southern Leasehold Valuation Tribunal ("the LVT") on behalf of your client, Lakeside Developments Limited. This was inappropriate in that:
 - (a) your appearance before the LVT was contrary to Guidance Note 1 – Conflicts of Interest provided to those holding judicial office;
 - (b) as you sit as a part time Chair of the LVT, this represented a potential conflict of interest.

2. You failed to act at all times to avoid any actions inconsistent with your professional obligations, contrary to Rule 3 of the Rules of Conduct for Members, as demonstrated by the statement of the Judicial Investigations and Conduct Office ("JICO") dated 15 November 2013 which found you had failed to observe the standards that could reasonably be expected of a judicial office holder.
3. Your conduct as described in the statement of the JICO dated 15 November 2013, given your membership of RICS, was liable to bring RICS into disrepute, contrary to Bye-Law B5.2.2(a)
4. As a member of RICS you failed at all times to act with integrity and/or avoid any actions inconsistent with your professional obligations, contrary to Rule 3 of the rules of Conduct for Members, the particulars being that:
 - (a) In an article published in News on the Block (issue 40) during the course of an interview with Jamie Reid, you inappropriately used your position as a part time Chair of the LVT to:
 - (i) further your own interests;
 - (ii) further the interest of Trust Property Management Limited.

Submission of no case to answer.

At the conclusion of the RICS case, Mr Beaumont made a submission that there was no case for Mr Mire to answer in relation to all four charges. This was on the basis that there was no reasonable prospect of establishing professional misconduct against Mr Mire as a surveyor on the basis of sufficiently serious and reprehensible conduct.

Mr Beaumont submitted that there is an overarching requirement in all professional regulation proceedings that an allegation must be of a sufficiently serious and reprehensible nature to justify the bringing of proceedings.

In relation to the first charge Mr Beaumont submitted that even if there was a breach of the blanket ban on Mr Mire appearing as an advocate before a Tribunal in his own area, that Mr Mire had gone out of his way to ensure that this did not happen and that because an alternative Tribunal was imported from outside of the Southern Area, he did not in fact appear before his own Tribunal in anything but name. He invited the Panel to be concerned with what actually happened, and not what could have happened, and submitted that there was no risk of potential conflict as alleged. Mr Beaumont relied upon an email from JT, Acting President of the Southern Residential Property Tribunal to SM dated 10 August 2012 at page 85 of the RICS bundle in which JT stated in relation to the Arthur Court case that he had: "gone to some lengths to allocate Members who had not sat, or met, Mr Mire before so there will be a fair hearing."

In relation to the second and third charges, Mr Beaumont asserted that the findings of the Review Body are "completely wrong" and that that body is constituted simply as an investigatory tribunal without all of the relevant evidence before it and that its findings should be treated accordingly.

In relation to the fourth charge, Mr Beaumont submitted that it was “mind boggling” that the article published in News on the Block could be regarded as demonstrative of a failure on the part of Mr Mire to act with integrity or to avoid actions inconsistent with his professional obligations as alleged and that there was no reasonable prospect of such a finding in relation to it.

RICS submitted that the Panel could not possibly conclude that there was no case to answer. They relied upon the findings of the review Body and asserted that it was a properly constituted expert panel. They pointed to the conclusions at paragraph 66 of their report in relation to the News on the Block article that: “it could not have been suggested that the comments, if accurately reported, amounted to anything other than a failure to observe the standards reasonably expected of a judicial office holder”.

In relation to the first charge, the RICS relied upon the blanket ban contained in paragraph 16 of the Guidance Note in relation to conflicts of interests and asserted that it would be wrong for the Panel to only be concerned with actual conflicts of interest. RICS asserted that sufficient steps were not taken by Mr Mire to avoid conflicts of interest and/or to avoid any actions consistent with his professional obligations and that by failing to do so he did appear before a Tribunal in his own area in conflict with the guidance and that this represented a potential conflict of interest.

The RICS accepted that the conduct alleged needed to reach a sufficient level of seriousness in order to cross the threshold into a finding of liability to disciplinary action and that trivial allegations would not meet that threshold.

The Panel took account of the representations from counsel for both parties and received advice from the legal assessor.

The Panel proceeded on the basis that it was for the RICS to prove its case and that liability to disciplinary action required conduct to be proved that is of a sufficiently serious nature and that trivial allegations would not do.

The Panel approached Mr Beaumont’s application adopting the test in R –v- Galbraith noting that these proceedings required the Panel to apply the civil standard of proof when considering whether or not the evidence proved the allegations as alleged by RICS.

In relation to each charge the Panel therefore considered firstly whether there was there any evidence before it upon which it could find that matter proved. If there was no evidence of any particular fact, then it would allow the submission.

If there was some evidence, but of such an unsatisfactory character that the Panel, properly directed as to the burden and standard of proof, could not find the matter proved, the Panel would allow the submission.

The RICS did not call any witnesses. This was not therefore a case which was dependent upon the Panel's view of the reliability of a RICS witness or witnesses.

The parties agreed that the approach in Galbraith was to be followed in these proceedings when considering the sufficiency of the evidence on each charge as a whole.

The Panel took each charge in turn.

Charge 1

That there was evidence that Mr Mire appeared before the Southern Leasehold Valuation Tribunal (“LVT”) on 25 October 2012 on behalf of Lakeside Developments Limited as alleged. The Panel noted the reference to Mr Mire as acting for the respondent in proceedings before the LVT on 25 October 2012 at the bottom of the first page of the SVT’s decision found at page 5 of the RICS bundle.

There was also evidence before the Panel that Mr Mire’s appearance before the LVT on 25 October 2012 was contrary to paragraph 16 of the Guidance Note 1 – Conflicts of Interest which provided that “no chairman may appear as an advocate before any committee or tribunal from his or her own panel area”.

The Panel noted the evidence that Mr Mire, in his letter dated 20 February 2014 to the RICS at the bottom of page 124 of the RICS bundle, accepted that representing his client at the hearing in the Arthur Court case before the LVT was a breach of the RPTS Members Handbook.

The Panel went on to consider the evidence before it in relation to the allegation that Mr Mire’s appearance before the LVT on 25 October 2012 was inappropriate because it represented a potential conflict of interest in the light of Mr Mire’s role as a part time chair of the LVT.

The Panel found that there was evidence at paragraph 39 of the Review Body’s Report that Mr Mire had notified JT whenever he had been acting for a client before the LVT, irrespective of whether it arose in the Southern Region or elsewhere, as was required by the Members’ handbook.

The Panel also found there was evidence in the letter from Mr Mire to RICS dated 20 February 2014 at pages 123 and 124 of the RICS bundle in which Mr Mire stated that he did not know, and could not have known, on which Panel the Arthur Court Panel members sat having notified JT of the potential for conflict in advance.

The Panel found that there is some evidence that JT, as Acting President of the Tribunal, took on the responsibility for managing such conflicts. The Panel noted the contents of the email from Mr Mire to JT dated 1 May 2012 on page 135 of the RICS bundle in which Mr Mire stated his presumption that the Arthur Court case would be passed by JT to an alternate Panel and indicating that he may need to appear as an advocate in the case.

The Panel found that there is evidence that Mr Mire appeared in front of a Panel that it transpired to be from his own area on 25 October 2012. Technically this was in conflict with the guidance but there is evidence that Mr Mire had notified JT in advance that he may be appearing before the Panel as an advocate and he thought he had taken sufficient steps to avoid the conflict.

The Panel notes that there is no evidence that the members of the SVT itself recused themselves on grounds of conflict when Mr Mire appeared before them.

Considering the second limb of the Galbraith test the Panel needs to consider whether, considering the sufficiency of the evidence as a whole in relation to the first charge, a Panel properly directed as to the burden and standard of proof, could find the matter proved and it is not satisfied that this is the case.

The Panel considers that the evidence presented by the RICS is insufficient when taken as whole for a reasonable Panel to be able to properly conclude that the charge is made out to the necessary standard. The evidence from RICS was insufficient to be able to prove on the balance of probabilities that Mr Mire's appearance before the LVT on 25 October 2012 did represent a "potential" conflict of interest in breach of the Guidance, in the light of the evidence about the steps that JT had taken to allocate members to the Panel to ensure that there would be a fair hearing. In these circumstances the Panel considers that the evidence could not prove that there could have been a potential conflict because specific steps were taken to avoid that happening in this case. The Panel also found, even if it were to be accepted that there was a potential for conflict, taking into account the evidence in relation to the steps taken by Mire to ensure that the conflict would have been dealt with in accordance with procedures that had applied previously, that there was insufficient evidence for a Panel to conclude to the necessary standard that this was a failure on the part of Mr Mire to act to avoid conflicts of interest and/or avoid actions inconsistent with his professional obligations such as to amount to a liability to disciplinary action.

Charges 2 and 3

In relation to both charges 2 and 3 the RICS rely upon Mr Mire's conduct as demonstrated by the statement of the Judicial Investigations and Conduct Office ("JICO") dated 15 November 2013 found at page 75 of the RICS bundle. The Panel did not consider itself bound by the findings of the Review Body although it did take them into account when considering the sufficiency of the evidence in relation to charges 2 and 3. The Panel considered the evidence of the fact that the Review Body had found that Mr Mire had failed to observe the standards that could reasonably be expected of a judicial office holder, as well as the evidence before it of the reasons for it reaching that finding. The RICS did not rely upon evidence of the complaints that were put before the Review Body and reference to any findings that there were in relation to those complaints had been redacted from the Review Body's report. The Panel proceeded on the basis of the evidence presented to it in the form of the redacted report. The Panel considered whether the fact of the finding without more would be sufficient for reasonable Panel to conclude that Mr Mire had acted contrary to his professional obligations, or had conducted himself in a way liable to bring the RICS into disrepute. It was not satisfied that, without enquiring into the reasons for the Review Body's findings, that a reasonable Panel could find a breach of the Rules as a necessary and automatic conclusion from the Review Body's finding that Mr Mire had failed to observe the standards that could be expected of a judicial office holder. The evidence before the Panel of the reasons for that finding were confined to those matters alleged in the first and fourth charges. The Panel considered that if it was not satisfied that the evidence was sufficient for the first and fourth charges to be made out to the necessary standard, then it would not be possible for a reasonable Panel to conclude that the second and third charges were made out.

Charge 4

The Panel found that there was some evidence of the existence of the article published in 'News on the Block' in the extract contained at paragraph 62 of the Review Body's report even though the full article did not form part of the RICS bundle. The charge did not particularise how it is alleged that Mr Mire had inappropriately used his position as a part time Chair of the LVT to further his own

interests or to further the interests of Trust Property Management Limited in relation to the interview which led to the article. The Panel found that there was some evidence in the report of the Review Body that they were of the view that the wording of the interview could suggest that Mr Mire's membership of the LVT gave him an advantage in his business dealings and they were of the view that the "poacher to gamekeeper" comment in particular was, in their judgment entirely inappropriate. There was some evidence before the Panel at paragraph 63 of the Review Body's report that Mr Mire did not recall making that particular comment and that it was not sort of language he would have used. However there was some evidence before the Panel at paragraph 66 of the Review Body's report that Mr Mire did make the comments, although the Panel was not bound by that finding. The Panel is not being asked at this stage of proceedings to make a finding one way or the other on whether or not the comments were actually made but whether or not there is some evidence of a satisfactory character that a Panel properly directed could find the charge proved.

Taking the sufficiency of the evidence as a whole the Panel found that even if it was accepted that Mr Mire had inappropriately used his position for his own self promotion and business advantage in the comments he made in the interview, there was insufficient evidence that this amounted to a failure to act with integrity and/or avoid actions inconsistent with his professional obligations, contrary to Rule 3 of the RICS rules of conduct for members. The contents of the interview as published in the article, the full version of which was not part of the RICS case, even if it is accepted are an accurate reflection of what was said by Mr Mire, may have been inadvisable in some respects, but there was insufficient evidence before the Panel for it to conclude that the charge was capable of proof to the necessary standard by a reasonable Panel properly advised. The Panel was of the view that, taking the RICS case on this charge at its highest, the conduct is not of a sufficiently serious nature to be demonstrative of actions inconsistent with Mr Mire's professional obligations or so as to amount to a lack of integrity on his part so as to give rise to disciplinary action.

Publication & Costs

The Panel orders that the decision be published on RICS website and in Modus.

The Panel made no order as to costs as these were agreed as between the parties.