

Disciplinary Panel Hearing

Case of

**David Loosley MRICS and;
Holland Alexander & Co Limited**

On

Wednesday 07 December 2016

At

Surveyor Court, Westwood Way, Coventry

Chairman

Catherine Audcent

Members

Chris Pittman (Surveyor Member)

Carolyn Tetlow (Lay Member)

Legal Assessor

Margaret Obi

RICS Representative

Vicki Buckley

Introduction

Mr David Loosley MRICS and Holland Alexander & Co Limited appear before the RICS Conduct Panel.

The formal charges against Mr David Loosley MRICS are:

1. You did not carry out your professional work in a timely manner and with proper regard for standards of service and customer care expected of you in that:
 - a. You accepted instructions from Chamberlain Martin, solicitors, in June 2015 to inspect premises and provide a figure for extending a lease term and you failed to provide the said service
 - b. You did not respond to email correspondence or telephone calls from Chamberlain Martin sent/made between 14 July and 09 September 2015
 - c. You accepted instructions from TB on or about 02 June 2015 to prepare a valuation report on premises in Bognor Regis and you did not provide the said service to TB nor did you return his fee of £350
 - d. You did not respond to an email from TB dated 01 September 2015
 - e. You accepted instructions to provide an expert valuation report of premises owned by Mr H in January 2015 knowing that it was needed for use at a Court hearing on 16 February 2015 and you failed to provide the report in time for the Court hearingand your conduct at 1- 5 above was **contrary to Rule 5 of the Rules of Conduct for Members 2007**, and liable to bring RICS into disrepute

2. You did not submit information requested from you by RICS between 17 September 2015 and 25 March 2016 about complaints received from members of the public about the standards of service provided by you and your firm Holland Alexander and Co Ltd. such that RICS has been prevented from carrying out its function as regulator of the profession
Contrary to Rule 8 of the Rules of Conduct for Members 2007

3. As the sole member principal and contact officer for the regulated firm West Sussex Surveyors Ltd. you did not submit information requested from you by RICS on 28 August 2015, namely a completed firm deregistration form and a copy of the professional indemnity insurance policy providing run off cover for the firm after the company was dissolved in August 2015 such that RICS has been prevented from carrying out its function as regulator of the profession
Contrary to Rule 8 of the Rules of Conduct for Members 2007

4. You have failed to co-operate fully with RICS regulation officers investigating complaints received from members of the public in that you have not responded to correspondence sent to you between 28 August 2015 and 25 March 2016

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

The formal charges against Holland Alexander & Co Limited are:

1. Holland Alexander & Co Ltd. a firm regulated by RICS, failed to carry out its professional work with expedition and with proper regard for standards of service and customer care expected of it in that
 - a. it accepted instructions from Chamberlain Martin, solicitors, in June 2015 to inspect premises and provide a figure for extending a lease term and it failed to provide the said service
 - b. it accepted instructions from TB on or about 02 June 2015 to prepare a valuation report on premises in Bognor Regis and it did not provide the said service to TB nor did it return his fee of £350
 - c. It accepted instructions to provide an expert valuation report of premises owned by Mr H in January 2015 knowing that it was needed for use at a Court hearing on 16 February 2015 and it failed to provide the report in time for the Court hearing

And its conduct at 1-3 above was **Contrary to Rule 5 of the Rules of Conduct for Firms 2007**, and liable to bring RICS into disrepute

2. Holland Alexander & Co Ltd. a firm regulated by RICS, did not submit information requested by RICS between 17 September 2015 and 25 March 2016 about complaints received from members of the public about the standards of service provided by the firm such that RICS has been prevented from carrying out its function as regulator of the profession

Contrary to Rule 14 of the Rules of Conduct for Firms 2007

3. Holland Alexander & Co Ltd. a firm regulated by RICS, failed to co-operate fully with RICS regulation officers investigating complaints received from members of the public in that it has not responded to correspondence sent to it between 17 September 2015 and 26 March 2016

Contrary to Rule 15 of the Rules of Conduct for Firms 2007

Response

To date there has been no response from Mr David Loosley or the Firm.

Background

Mr David Loosley has been a member of RICS since 1999. He is the sole principal of the firm Holland Alexander & Co Ltd which he registered for regulation in 2007. He had a second firm West Sussex Surveyors Ltd which he registered for regulation in 2012. That company was dissolved on 11 August 2015.

Charge 1 relates to three separate complaints received by RICS in 2015, with regard to the standard of service provided Mr Loosley practicing as Holland Alexander & Co Ltd and relate to:

- (i) A complaint from Ms R of Chamberlain Martin Solicitors, stating that Mr Loosley had been engaged to provide services on July 2015. The service was not provided and the solicitors were unable to contact Mr Loosley.
- (ii) A complaint from Mr B stating that he had instructed Mr Loosley to prepare a valuation in June 2015 and paid the fee in advance. Mr Loosley carried out a survey of the property but did not provide a report or return Mr B's fee. Mr B was unable to contact Mr Loosley.
- (iii) A complaint from Mr H stating that Mr Loosley had been instructed in January 2015 to provide an expert report for use in bankruptcy proceedings. The instruction had made it clear that the report was required for a court hearing on 16 February 2016. Mr Loosley did not provide the report in time for the hearing. Mr H tried to recover the fee that had been paid but received no response to his correspondence and phone calls.

Charges 2 and 4 relate to the attempts by RICS to investigate the above complaints. Charge 3 relates to documentation regarding the status of West Sussex Surveyors Ltd and professional indemnity insurance following the dissolution of the company in August 2015.

Burden and standard of proof

The 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 Loosley 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 Loosley's rights to a fair trial and 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 gave rise to liability to disciplinary action is a matter for the Panel's judgment.

Preliminary matters

Mr Loosley did not attend the hearing. Neither Mr Loosley nor the Firm were represented and had not provided any written representations. The Panel was referred to the service of the papers.

The Panel noted that although the Notice of Hearing was sent to Mr Loosley as the Firm's Contact Officer at his home address, it was not sent the Firm's registered address. Ms Buckley, on behalf of the RICS, informed the Panel that there has been no indication that the Firm has been operating from the registered address since November 2015. Following advice from the Legal Assessor, the Panel determined that service had not been properly effected in respect of the Firm as the RICS have not complied with Rule 23. In reaching this conclusion the Panel noted that Rule 23 requires posting by special delivery and there is no requirement that the Notice has to be received. The Panel did not therefore, proceed to consider the charges against the Firm because Notice of Hearing had not been properly served upon it.

The Panel was satisfied that the provisions, as to service, set out in Rule 23(b) of the Disciplinary, Registration and Appeal Panel Rules [1 April 2009] ('the Rules') have been complied with, in respect of Mr Loosley, as the Notice of Hearing, together with the other documents required to be supplied, were sent by special post to Mr Loosley at his registered address on 31 October 2016. Therefore, more than the required 28 days' notice of this hearing has been provided. Accordingly the Panel found that the Notice of Hearing was properly served on Mr Loosley, as an individual member.

The Panel next considered whether to proceed in the absence of Mr Loosley, as permitted by Rule 30. 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. The Legal Assessor also referred the Panel to the judgement in GMC v Adeogba [2016] EWCA Civ 162. The judgement in Adeogba confirmed that 'The fair, economical, expeditious and efficient disposal of allegations made against ... practitioners is of very real importance' and that a hearing should not be re-listed in circumstances

where a practitioner had deliberately failed to engage in the hearing given the consequential cost and delay to other cases. The judgement in *Adeogba* also stated that:

“there is a burden on...all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.”

The Panel determined that it was reasonable and in the public interest to proceed with the hearing in respect of Mr Loosley for the following reasons:

- (i) Mr Loosley has not engaged with the investigatory and regulatory process. The Notice of Hearing was sent by special post to Mr Loosley’s registered address. The Panel noted that, as a courtesy, the Notice was also sent by First Class post and email. The Notice of Hearing sent by special post was ‘refused’. In these circumstances, the Panel was satisfied that Mr Loosley’s non-attendance is voluntary and therefore a deliberate waiver of his right to attend.
- (ii) Mr Loosley has not made an application to adjourn and there is no indication that even if the case were to be adjourned that he would attend on any future date.
- (iii) The Panel was satisfied that Mr Loosley’s interests are outweighed by the public interest in ensuring that this hearing commences and proceeds expeditiously.

Evidence

The Panel carefully considered the RICS solicitor’s bundle of documents, running to 116 pages, and to the written and oral submissions made on behalf of RICS. The documentary bundle included relevant correspondence between the complainants and Mr Loosley relevant to the charges, including various attempts by RICS and solicitors acting on its behalf to make contact with Mr Loosley in relation to the subject matter of these charges. In the absence of any response to the allegations from Mr Loosley and the Firm, the Panel treated all charges as denied.

Findings of fact

The Panel found the facts relating to Charges 1(a) –(d), 2, 3 and 4 proved, based upon the documentary evidence produced. Charge 1(e) was found not proved.

Discussion and conclusion

Charge 1

The Panel had sight of the correspondence and documents submitted in relation to Ms R's complaints. This included an email from Ms R to the RICS, dated 10 September 2016, in which she set out the difficulties she had experienced in contacting Mr Loosley.

The Panel was satisfied on the basis the documentation provided by Ms R, that Mr Loosley had accepted instructions from Chamberlain Martin Solicitors to inspect premises and had quoted a fee for extending a lease term. The Panel was also satisfied that the service was not provided. The Panel accepted that Chamberlain Martin Solicitors received no communication from Mr Loosley between 14 July – 9 September 2016, when the complaint to the RICS was made. No response or explanation had been put forward by Mr Loosley, either at the time or in the course of RICS' investigation. The Panel was satisfied on the balance of probabilities that the complaints of Ms R were proved and that Mr Loosley had therefore not carried out his professional work in a timely manner and with proper regard for the standards of service and customer care expected of him, contrary to Rule 5 of the Rules of Conduct for Members 2007.

Allegations 1(a) and (b) are therefore found proved.

The Panel had sight of the correspondence and documents submitted in support of Mr B complaint which was received by the RICS on 1 September 2016. The Panel was satisfied that Mr Loosley accepted instructions to prepare a valuation report for which he was paid in advance, yet failed to provide the report. An email was sent by Mr B to Mr Loosley on 1 September 2016, enquiring about the valuation and the fee. The Panel accepted that there was no response to that email and that the fee has not been reimbursed. The Panel was satisfied on the balance of probabilities that the complaints of Mr B were proved and that Mr Loosley had therefore not carried out his professional

work in a timely manner and with proper regard for the standards of service and customer care expected of him, contrary to Rule 5 of the Rules of Conduct for Members 2007.

Allegations 1(c) and (d) are therefore found proved.

The Panel had sight of the correspondence and documents in support of Mr H's complaint which was received by the RICS on 21 December 2015. In that email Mr H set out the sequence of events from instruction of Mr Loosley to provide an expert report in bankruptcy proceedings to failed attempts to contact him following late service of the report. Based on the information provided the Panel was satisfied that Mr Loosley was specifically instructed to provide an expert report by 16 February 2015 and that he was informed that the court hearing was at 10.35am. The Panel noted that the report was not received until approximately 11.30 am on 16 February 2015 which was too late as the hearing had finished. However, Mr Loosley in an email, sent on 16 February 2015 at 11.29 am, stated that he had originally emailed the report on 13 February at 16.50. The Panel noted that the valuation report was completed and dated 13 February 2015. The Panel was not satisfied that the RICS have established, on the balance of probabilities, that the report was not 'provided' on 13 February 2015. The Panel accepted that Mr Loosley may have sent the email and noted the acknowledgment by the instructing solicitors in their email, dated 13 February 2015, chasing the missing valuation report, of the possibility that the email might not be received because of the file size or the solicitor's firewall system. In these circumstances the Panel concluded that RICS had not proved that Mr Loosley had failed to provide the report in time for the court hearing.

Allegation 1(e) is found not proved.

Charge 2

The Panel noted that RICS had written to Mr Loosley concerning the complaints, by email on 17 September 2015 and by letter on 7 October 2015, 15 October 2015, 25 November 2015. Browne Jacobson were subsequently instructed to continue the investigation and sent a further letter on 24 March 2016. No response to any of these communications was received and none of the information requested was supplied. The Panel was satisfied that the facts have been proved and that Mr Loosley therefore failed to submit information requested about the complaints, which prevented the RICS from

carrying out its regulatory function. In so doing, he acted contrary to Rule 8 of the Rules of Conduct for Members 2007.

Allegation 2 is found proved.

Charge 3

The Panel had sight of the RICS letter, dated 28 August 2015, informing Mr Loosley that as the regulated firm, West Sussex Surveyors Ltd, had ceased trading it may need to be de-registered. A de-registration form was attached and Mr Loosley was informed that the completed form was to be returned together with a copy of the firm's current professional indemnity insurance or run off cover. Reminders were sent by email on 25 September 2015 and by letter on 13 October 2015. The Panel accepted that the RICS received no response.

The Panel was satisfied the factual allegation was proved and that Mr Loosley had therefore breached Rule 8 of the Rules of Conduct for Members 2007.

Allegation 3 is found proved.

Charge 4

The Panel took into account its findings in relation to Charge 2. The Panel was satisfied that Mr Loosley failed to co-operate fully with RICS regulation officers investigating the complaints received and that as a consequence he breached Rule 9 of the Rules of Conduct for Members 2007.

Allegation 4 is found proved.

Liability to disciplinary action

Submissions by RICS presenting solicitor

Ms Buckley, on behalf of RICS, submitted that the charges found proved against Mr Loosley give rise to a liability to disciplinary action. She submitted that Mr Loosley had demonstrated a disregard for his professional obligations, which undermined public confidence in the profession and the regulatory process. She further submitted that Mr Loosley's actions have brought the profession into disrepute.

Panel Decision

On the basis of the facts found proved the Panel went on to decide whether Mr Loosley is liable to disciplinary action. In reaching its conclusion the Panel accepted the advice of the Legal Assessor that liability to disciplinary action is a matter of judgment.

The Panel accepted the submissions made on behalf of RICS that Mr Loosley's behaviour in relation to the service complaints has been aggravated by his failure to co-operate with the investigation and engage with the regulatory process. The Panel recognised that Mr Loosley's disregard for his professional obligations has resulted in several breaches of RICS Rules of Conduct for Members 2007, and as a consequence has brought the reputation of the profession into disrepute.

Accordingly, the Panel found that collectively the factual findings give rise to a liability to disciplinary action.

Mitigation

No evidence in mitigation has been provided by Mr Loosley and no testimonials had been submitted. Ms Buckley, on behalf of RICS, informed the Panel that there were no previous adverse disciplinary findings against Mr Loosley.

Decision as to sanction

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 declare and uphold the standards of the profession, to safeguard the reputation of the profession and of the RICS as its regulator and to protect the public. Sanctions must be proportionate.

The Panel took into account and accepted the advice of the Legal Assessor and had regard to the Indicative Sanctions Policy of RICS. It considered carefully the mitigating and aggravating factors of this case.

The Panel, having determined that Mr Loosley is liable to disciplinary action, first had to decide whether to impose a sanction. Having done so, it started by considering the lowest sanction, moving up the scale of gravity only when the sanction under consideration was insufficient to meet the public interest.

The Panel considered that individually the facts found proved, in relation to Charge 1 were not in isolation at the highest level of seriousness. However, cumulatively Mr Loosley's conduct and behaviour in relation to all the charges found proved amounted to serious failings. These failings were aggravated by the following:-

- Mr Loosley had demonstrated a persistent and continuing failure to respond to correspondence, including in relation to his clients and, in particular, RICS, as his regulator;
- Mr Loosley had declined to accept correspondence from RICS on more than one occasion;
- There was no evidence of insight on the part of Mr Loosley as to the significance of his failure to engage with clients and his regulator.

The Panel considered that the absence of any of previous disciplinary findings against Mr Loosley was the only mitigating factor.

The Panel considered that its findings are too serious for no sanction to be imposed. It similarly considered that the imposition of a reprimand would be insufficient, given the gravity of the repeated breaches in this case, and did not consider that undertakings could adequately address the public interest concerns to which they give rise. The Panel went on to consider the imposition of a fine, or of conditions, but again concluded that neither would adequately address the Panel's underlying concern as to the risk of harm to the public arising from Mr Loosley's persistent breaches of RICS Rules. The Panel further considered that conditions on Mr Loosley's practice were inappropriate because Mr Loosley has not engaged with RICS' regulatory process and therefore even if appropriately worded conditions could be formulated the Panel could have no confidence that Mr Loosley would comply.

The Panel determined that it had no option in this case but to expel Mr Loosley from membership of RICS. In reaching this conclusion it had regard in particular to his persistent failure to comply with the RICS Rules of Conduct for Members, his repeated breach of Rule 5, involving his failure to provide an adequate standard of service and communicate with his clients in a timely manner, his breach of Rule 8, relating to his failure to provide information and his repeated failure to cooperate with RICS as his regulator. 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.

Accordingly the Panel orders Mr Loosley's expulsion from RICS membership.

Publication and Costs

Submissions by RICS presenting solicitor

Ms Buckley, on behalf of RICS, referred the Panel to the presumption that its decision would be published and requested costs. She informed the Panel that the schedule of costs was sent to Mr Loosley by email on 6 December 2016 at 9.30 am. The email was 'undelivered', however, it was sent to the email address provided by Mr Loosley for the purposes of communications with RICS.

Panel Decision

The Panel accepted the Legal Assessor's advice that it is usual for decisions to be posted on the RICS website, published in Modus, and in a newspaper local to the practice. The Panel was unable to identify any 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.

The Panel orders that this decision is published on the RICS website, in Modus and in a newspaper local to Mr Loosley.

The Panel considered carefully the issue of costs. The figure for the hearing is the average cost of a hearing day, and the Panel has no reason to doubt it. The other costs sought are associated with the time spent by RICS' solicitor and with the RICS disciplinary investigation.

The Panel concluded that it was fair to make a costs order in this case, otherwise the cost of the proceedings would fall on the profession as a whole. It determined however to reduce the costs sought

in respect of the disciplinary process to £5,000 (instead of £5,409.20), in recognition of the duplication of costs relating to the Firm which matter has not been considered by the Panel. The Panel noted that there was substantial overlap between the charges relating to Mr Loosley as an individual member and the Firm. The duplication is therefore limited to correspondence directed specifically to the Firm. The Panel orders that Mr Loosley pays to RICS costs in the sum of £5,000.

Appeal

Mr Loosley has 28 days to appeal against this decision in accordance with Rules 59- 70 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009.

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.