

## **Disciplinary Panel Hearing**

### **Case of**

**Mr James Bowness BSc MBA MRICS [0844307]  
Maidenhead, Berks SL6**

### **On**

Tuesday 23 May 2017

### **At**

RICS, Parliament Square, London

### **Panel**

Catherine Audcent (Lay Chair)  
Gillian Seager (Lay Member)  
Christopher Pittman (Surveyor Member)

### **Legal Assessor**

Peter Steel

### **RICS Representative**

James Lynch

## **Introduction**

1. James Bowness (“Mr Bowness”) is an RICS member and is the sole member principal of Hub Construction Limited (“the Firm”). He appears before the RICS Disciplinary Panel in connection with the following allegations:-

1. Between 14 July 2015 and 22 August 2016, you failed to cooperate with members of RICS staff in that you failed to respond to the following correspondence:-
  - a) Email dated 14 July 2015
  - b) Email dated 7 August 2015
  - c) Letter dated 28 August 2015
  - d) Email dated 10 March 2016
  - e) Email dated 11 April 2016

## **Contrary to Rules 8 and 9 of the Rules of Conduct for Members 2007**

## **Response**

2. Mr Bowness admitted the factual allegations in full, but disputed that they made him liable to disciplinary action under the Rules.

## **Summary**

3. The background to the matter was as follows. In July 2015, RICS conducted a data cleansing exercise, as a result of which it concluded, incorrectly as it transpired, that the Firm was no longer trading. A member of staff at RICS therefore sent Mr Bowness an email on 14 July asking him to complete and return a de-registration form and to provide details of the Firm's insurance cover. No response was received from either Mr Bowness or the Firm.

4. RICS wrote again to Mr Bowness by email on 7 August 2015 requesting the return of the form and the provision of the information previously requested. Again there was no reply.

5. RICS sent a letter to Mr Bowness on 28 August 2015 again requesting the return of the form and the provision of the information. The letter was shown as "signed for" on 29 August. No reply was received.

6. RICS wrote again on 18 February 2016 to inform Mr Bowness that in the absence of a response to the previous correspondence his case had been referred to the Investigation Team. The Investigation team emailed Mr Bowness on 10 March and 11 April 2016, again without receiving a response.

7. On 10 May 2016, RICS sent Mr Bowness a final letter, reminding him of the requirement to provide information under the Rules of Conduct for Members and that if he did not respond within 7 days, this might be considered a breach of the Rules. That letter was signed for at Mr Bowness' registered address on 11 May 2016. No reply was received.

8. RICS wrote again to Mr Bowness on 6 June 2016 and 22 August 2016 advising him of the result of the investigation and the decision of the Head of Regulation to refer the potential breach of the Rules to a Panel hearing. Again, the correspondence did not meet with any reply.

9. On 6 October 2016, RICS wrote to Mr Bowness (as the Firm's contact officer) at the Firm's registered address issuing it with a Fixed Penalty for failure to submit an Annual Return by the deadline of 29 September 2016 (this was a separate issue to that considered by the Panel at the hearing today; however it was raised by Mr Bowness in his evidence to the Panel, which concluded that it was relevant to the chronology of the events before it).

10. RICS wrote again on 7 November 2016 to indicate that the Fixed Penalty had increased to £500 as the original sum of £300 had not been paid within 28 days. On 17 January 2017, RICS wrote a final letter to the Firm indicating that in default of payment of the Fixed Penalty by 31 January 2017, the matter would be referred to a Disciplinary Panel.

11. Having received the bundle of documents relating to the separate allegations against him which are the subject of these proceedings, Mr Bowness emailed RICS on 30 January 2017 indicating that his failure to respond to e-mails was because they had been sent to an old e-mail address, which he had ceased to use on a regular basis because the account had been hacked.

12. He also said that he had not ignored the letters sent to his home address. Mr Bowness said that the letters had been signed for by family members who were house sitting for him, as he had been out of the country for considerable periods during the preceding 12 to 18 months. Mr Bowness indicated that he would pay "*the fine of £500*" to avoid further disciplinary action. It would appear that in so doing, he had conflated the action against the Firm for failure to submit its Annual Return and the proceedings before the Panel today relating to his personal failure to reply to e-mails and letters sent by RICS. Mr Bowness subsequently paid the Fixed Penalty in the sum of £500 on behalf of the Firm.

## **Burden and standard of proof**

13. 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. However, Mr Bowness has admitted the allegations in full, so the Panel found all of them proved to the required standard. 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.

## **Evidence**

14. The Panel has perused the RICS Solicitor's bundle of documents, running to 42 pages. The Panel also heard evidence from Mr Bowness. Further to his submissions regarding the payment of a Fixed Penalty relating to the Firm, the Panel asked for and received a small bundle of emails and letters relating to the separate proceeding RICS had undertaken against the Firm relating to the failure to submit an Annual Return

## **Findings of fact**

15. As indicated above, Mr Bowness admitted the allegations and so the Panel found them proved to the required standard.

## **Submissions by RICS Presenting Officer**

16. Mr Lynch on behalf of RICS submitted that the facts as admitted did make Mr Bowness liable to disciplinary action. While in fact the Firm had not ceased trading, it had been entirely reasonable at the time for RICS to require Mr Bowness to provide it with the necessary information to ensure compliance with the Rules and that the Firm had appropriate PII or run-off cover as necessary. RICS has to maintain an accurate register of firms in order to avoid fraud and protect the public and the reputation of the profession generally.

17. Mr Bowness had agreed to abide by the Rules of Conduct and Bye-Laws when he joined RICS. This included maintaining an effective contact address and responding to communications by RICS reasonably promptly. RICS had attempted to contact Mr Bowness at the addresses he had provided. RICS depends on members to provide up-to-date contact details. If members fail to engage, that frustrates RICS in pursuing its regulatory aims. That failure must be treated seriously if Rules 8 and 9 of the Rules of Conduct for Members are to have any effect

## **Evidence of Mr Bowness**

18. Mr Bowness gave evidence on his own behalf. He told the Panel that although he accepted the emails and letters had been sent to him as alleged, he had not received them. The letters had been signed for by his sister-in-law. He had not read them. He first became aware of the chain of correspondence when he received the bundle for the hearing today under cover of a letter dated 6 January 2017. Mr Bowness said that he thought the case had been dealt by his emails of 30 and 31 January 2017 to RICS and his payment of the fine of £500. He thought that in so doing he was dealing with both complaints, i.e. his personal failure to respond to RICS correspondence and the failure by the Firm to submit an Annual Return. He did not consider that his failing to provide RICS with an alternative email address made him liable to disciplinary action.

## **Discussion and conclusion**

19. On the basis of the admitted facts the Panel had to decide whether or not Mr Bowness was liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the Legal Assessor. This question is one for the Panel's judgment.

20. In reaching its decision, the Panel noted that the onus was on members to remain in contact with RICS by supplying up-to-date postal and e-mail addresses. This is essential so that RICS can undertake its regulatory function and monitor firms and individual members effectively.

21. Mr Bowness accepted in his evidence that the emails and letters sent to him had in fact been received at the addresses he had supplied to RICS. However, they had not come to his attention. It was striking that when he perceived the need to respond to RICS in January of this year, Mr Bowness had in fact been able to access the e-mails from the hacked account, as he indicated in his email to RICS dated 30 January 2017.

22. Further, the letters sent to his home address had been signed for by relatives of Mr Bowness. That address remained his registered address with RICS. In the circumstances, the Panel found it difficult to see what more RICS could have done to communicate with Mr Bowness. It was entirely reasonable of RICS to attempt to do so at the addresses Mr Bowness provided; the fact the communications did not come to his attention was because he had not provided an alternative address and/or had ignored the letters received at his registered address.

23. The Panel noted that Mr Bowness was clearly confused in his initial response to RICS as to which matter he was responding (RICS having written to both him as an individual member and to the Firm in connection with a separate failure to submit its Annual Return). However, the Panel was satisfied that the position would have been clear from the correspondence received.

24. The Panel therefore concluded that Mr Bowness was liable to disciplinary action

### **Mitigation**

25. Mr Bowness spoke in mitigation. He reminded the Panel of the account he had given about the e-mail account and the fact that the letters had not come to his attention. He had paid the Penalty Notice and as RICS had acknowledged he and the Firm were now fully compliant. There has been no previous disciplinary finding against Mr Bowness.

### **Decision as to sanction**

26. 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 a regulator and to protect the public. Sanctions must be proportionate to the matters found proved.

27. 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.

28. The Panel decided that Mr Bowness was 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 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.

29. The Panel considered that the following mitigating factors were present: firstly Mr Bowness had now engaged with RICS since the notice of today's proceedings had come to his attention. Secondly, as was accepted by Mr Lynch on behalf of RICS, he had now brought both himself and the Firm back into full compliance and had paid the increased Fixed Penalty in respect of the Firm's Annual Report. Lastly, he admitted the facts of the allegations, even if he did not accept that this made him liable to disciplinary action.

30. The Panel were however concerned that Mr Bowness did not seem to demonstrate any particular insight into his responsibility for the situation. Nor did he demonstrate any understanding of the need for RICS to be able to monitor and regulate its members in the public interest. This was typified by the comment in his e-mail to RICS dated 30 January 2017 in which he stated:

*"...however, with only me working at the firm and holding Chartered Status anyhow, I do not see the added value of regulation and the possibility of missed returns."* It found this an aggravating feature.

31. The Panel considered the matters too serious for no sanction to be imposed, and so considered first of all whether a caution was appropriate. The Panel concluded that the breaches found proved were not minor in nature and concluded therefore that a caution would not meet the seriousness of the situation.

32. The Panel was of the view that this was not a trivial offence and that the problem was not simply a failure to provide RICS with an up-to-date e-mail address. As had been rightly submitted on behalf of RICS, it relies on members to engage with it as a regulator, so that it can fulfil its duty in the public interest to protect the public. Although no actual harm resulted from Mr Bowness' breaches, they did create a potential risk to the public who might for instance have been misled as to the status of the Firm. Further, the failure to engage with RICS undermines its regulatory efforts to the detriment of all members. For those reasons, the Panel concluded that the appropriate sanction was a reprimand and a fine of £250.

33. In setting the level of the fine, the Panel took into account both the previous Fixed Penalty he had paid on behalf of the Firm, which arose from effectively the same defaults, and Mr Bowness' ability to pay as evidenced by his Statement of Means.

34. Accordingly the Panel orders that Mr Bowness be reprimanded and pay a fine of £250

## **Publication and Costs**

### **Publication**

35. 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 RICS' website and in RICS Modus. Mr Bowness opposed this on the basis that he would rather not have his name published. 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.

37. The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

## **Costs**

38. The RICS Presenting Officer asked for costs, and had provided a schedule to Mr Bowness in advance of the hearing. Mr Bowness did not object to the application for costs in principle, but again drew the Panel's attention to his Statement of Means.

39. 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. The other costs are those of RICS's solicitor and its Investigation and Disciplinary costs, which were supported by a break down and which seemed within reasonable limits to the Panel.

40. The Panel concluded that it was fair to make a costs order in this case. Otherwise the cost of the proceedings falls on the profession as a whole. However, bearing in mind Mr Bowness' ability to pay, it concluded that it should order him to pay the reduced sum of £2,350 to RICS

## **Appeal Period**

41. Mr Bowness 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.

42. 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.