

## **DISCIPLINARY PANEL HEARING**

### **Case of**

Mr Jeremy Thomas and;  
Rees Thomas (firm) [039894]

### **On**

Wednesday 07 May 2014

### **At**

Parliament Square, London

### **Chairman**

Paul Housego

### **Members**

Julian Weinberg  
Helen Riley

### **Legal Assessor**

Ben Kemp

### **RICS Representative**

Vicki Buckley

### **Relevant Persons' Representative**

Mr Harries, Counsel  
Shoosmiths LLP, Solicitors

## **CHARGES HEARD**

**The formal charges against Rees Thomas (the Firm) are:**

**Case 102158**

1. That Rees Thomas (the firm) did not at all times avoid actions or situations that were inconsistent with its professional obligations in that having provided a building survey quotation to Mr W stating that it would refund half the quoted fee if the report was not provided to him within 48 hours of the property inspection did not make that refund when it did not provide the report within 48 hours from the inspection on 17 May 2013, **Contrary to**

**Rule 3 of the Rules of Conduct for Firms 2007**

2. That the firm did not carry out its professional work with expedition and with proper regard for standards of service and customer care expected of it in that;

- it did not provide a survey report to its client Mr W within the agreed time
- when the report was provided it was not accompanied by the photographs
- it did not respond to written correspondence from Mr W dated 20 May and 03,10,18,24,26 June 2013
- it did not make an agreed refund of 50% of the survey fee to Mr W for failing to provide the report within 48 hours of the property inspection

**Contrary to Rule 5 of the Rules of Conduct for Firms 2007**

3. That the firm did not operate a Complaints Handling Procedure (CHP) in that it did not send a copy of its CHP to its client Mr W in response to his requests made on 20 and 26 June 2013 or at all, **Contrary to Rule 7 of the Rules of Conduct for Firms 2007**

**Case 102447**

1. That the firm did not at all times avoid actions or situations that were inconsistent with its professional obligations in that having provided a building survey quotation to Ms G stating that it would refund half the quoted fee if the report was not provided to her within 48 hours of the property inspection did not make that refund when it did not provide the report within 48 hours from the inspection on 16 April 2013, **Contrary to Rule 3 of the**

**Rules of Conduct for Firms 2007**

2. That the firm did not operate a Complaints Handling Procedure (CHP) in that it did not send a copy of its CHP to its client Ms G in response to her request made on 05 June 2013 or at all, **Contrary to Rule 7 of the Rules of**

**Conduct for Firms 2007**

**Case 102615**

1. That the firm did not carry out its professional work with expedition and with proper regard for standards of service and customer care expected of it in that;

- it did not respond to messages and correspondence from its client Mr T between 25 January and 12 March 2013 about the service provided to him by the firm

#### **Contrary to Rule 5 of the Rules of Conduct for Firms 2007**

2. That the firm did not operate a Complaints Handling Procedure (CHP) in that having supplied a copy of its CHP to its client Mr T it did not comply with its terms in the following respects;

- acknowledge receipt of Mr T's written complaint dated 12 February 2013 within 7 days
- respond fully to Mr T's complaint within 28 days or if it was unable to respond fully at that point to provide an update

#### **Contrary to Rule 7 of the Rules of Conduct for Firms 2007**

#### **Case 102744**

1. That the firm did not at all times avoid any actions or situations that were inconsistent with its professional obligations by failing to discharge its obligations as a member of a scheme approved by RICS to provide independent redress to members of the public unhappy with the service they have received in that;

- the firm is a member of the Ombudsman Services: Property scheme (OSP) and is required to comply with its requirements as a member of the scheme which include providing information to the OSP when requested, and implementing final decisions within 28 days of notification from the OSP
- the firm was notified of a final decision in the case of Ms R on 10 July 2013 and informed that the remedies specified in the decision must be implemented within 28 days
- the firm did not implement the remedies within 28 days - RICS received a complaint from Ms R on 16 October 2013 that the firm had still not implemented the remedies
- the final decision letter stated that the firm did not respond to the OSP in relation to its investigation; nor did it respond to correspondence from the OSP after the decision had been issued

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

#### **Case 102746**

1. That the firm did not at all times avoid any actions or situations that were inconsistent with its professional obligations by failing to discharge its obligations as a member of a scheme approved by RICS to provide independent redress to members of the public unhappy with the service they have received in that;

- the firm is a member of the Ombudsman Services: Property scheme (OSP) and is required to comply with its requirements as a member of the scheme which include implementing final decisions within 28 days of notification from the OSP
- the firm was notified of a final decision in the case of Ms A on 01 July 2013 and informed that the remedies specified in the decision must be implemented within 28 days

- the firm did not implement the remedies within 28 days – RICS received notification from OSP on 13 September 2013 that the remedies had still not been implemented
- the information provided to RICS by the OSP showed that the firm had failed to respond to correspondence from the OSP after the decision had been issued

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

**Case 103038**

1. That the firm did not at all times avoid any actions or situations that were inconsistent with its professional obligations by failing to discharge its obligations as a member of a scheme approved by RICS to provide independent redress to members of the public unhappy with the service they have received in that;

- the firm is a member of the Ombudsman Services: Property scheme (OSP) and is required to comply with its requirements as a member of the scheme which include providing information to the OSP when requested, and implementing final decisions within 28 days of notification from the OSP
- the firm was notified of a final decision in the case of Mr S on 21 August 2013 and informed that the remedy specified in the decision must be implemented within 28 days
- the firm did not implement the remedy within 28 days - RICS received a complaint from Mr S on 28 October 2013 that the firm had still not implemented the remedy
- the information provided to RICS by the OSP showed that the firm had failed to respond to correspondence from the OSP after the decision had been issued; and RICS received information from Mr S that the firm had not responded to OSP correspondence during the investigation

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

**Case 103165**

1. That the firm did not at all times avoid any actions or situations that were inconsistent with its professional obligations by failing to discharge its obligations as a member of a scheme approved by RICS to provide independent redress to members of the public unhappy with the service they have received in that;

- the firm is a member of the Ombudsman Services: Property scheme (OSP) and is required to comply with its requirements as a member of the scheme which include implementing final decisions within 28 days of notification from the OSP
- the firm was notified of a final decision in the case of Mr C on 23 August 2013 and informed that the remedies specified in the decision must be implemented within 28 days
- the firm did not implement the remedies within 28 days – RICS received notification from the OSP on 11 October 2013 that the remedies had still not been implemented
- the information provided to RICS by the OSP showed that the firm had failed to respond to correspondence from the OSP after the decision had been issued

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

**The formal charges against Mr Thomas (as an individual) are:**

## Case 102158

1. That you did not at all times act with integrity and avoid any actions or situations that were inconsistent with your professional obligations in that;

- you responded to an enquiry from Mr W for provision of a building survey made through [www.reallymoving.com](http://www.reallymoving.com)
- you provided a quotation with the promise that you would refund 50% of the quoted fee if the report was not provided within 48 hours from the property inspection
- Mr W selected your quotation following your confirmation of that promise
- you did not provide the survey report in the agreed time and you did not make the refund of 50% of the fee in accordance with your promise

and in offering a service to a member of the public in the manner described and then failing to provide the service promised you did not act in a way that promoted trust in the profession, **Contrary to Rule 3 of the Rules of**

### **Conduct for Members 2007**

2. That you did not at all times avoid any actions or situations that were inconsistent with your professional obligations in that as the sole principal and contact officer for the regulated firm Rees Thomas you did not co-operate with the Ombudsman Services Property in that;

- in 2013 four clients of the firm (Ms R, Ms A, Mr S and Mr C) referred complaints about the firm to the OSP
- you did not respond to correspondence received from the OSP in relation to the investigation of those complaints or the implementation of final decisions
- you did not ensure that the firm implemented OSP final decisions within 28 days as required

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

3. That you did not at all times act with integrity and avoid any actions or situations that were inconsistent with your professional obligations in that;

- as Contact Officer for the registered firm Rees Thomas you completed and submitted an Annual Return to RICS on 06 August 2013
- you made a declaration on the Annual Return that the information disclosed was correct to the best of your knowledge and belief
- you stated that the firm had not been subject to any County Court judgments that had not already been notified to RICS, and that the firm had not received any complaints in the last 12 months
- RICS has received information that the firm was the subject of a County Court judgment dated 17 July 2013, that the firm had received a formal complaint from Mr T on 12 February 2013, and that four complaints against the firm had been referred to the Ombudsman during the 12 months prior to 06 August 2013

and that the information you provided on the Annual return in respect of county court judgments and complaints was therefore misleading, **Contrary to Rule 3 of the Rules of Conduct for Members 2007**

## **DETERMINATION**

## Findings of Fact

The Panel has considered a number of related charges brought by the RICS against Mr Thomas, as an individual, and, separately, against the Firm, Rees Thomas (the Firm). Mr Thomas has at all times relevant to these charges been a Member of the RICS and sole principal of the Firm.

The Panel has received and accepted legal advice from the legal assessor. It has reminded itself in particular that the burden rests with the RICS to prove each charge on the balance of probabilities.

The factual particulars of each of the charges are not in dispute and are found to be proved, as charged, both by admission and upon the basis of the comprehensive supporting documentary evidence produced on behalf of the RICS.

The RICS brings three charges against Mr Thomas, as an individual, in each case alleging that Mr Thomas has breached Rule 3 of its Rules of Conduct for Members 2007, in that he failed at all times to act with integrity and failed to avoid any actions or situations that were inconsistent with his professional obligations.

In summary, and without repeating the detailed particulars set out above (which are all found to be proved), Mr Thomas is charged with (1) failing to provide the level of service he had promised to a client, Mr W; (2) failing to cooperate effectively with the Ombudsman Services: Property, in respect of complaints about the Firm by four separate clients, or to implement final decisions of the Ombudsman Services: Property in respect of those clients; and (3) submitting an Annual Return to the RICS on behalf of the Firm on 6 August 2013, in which he made two misleading statements. In relation to the latter, Mr Thomas made a formal declaration to the effect that the Firm had not in the relevant period been subject to any County Court Judgments, and that the Firm had not received any complaints. Both statements were untrue. Mr Thomas accepts that in so doing he acted with a lack of integrity.

The Firm is charged with a number of related breaches of Rules 3, 5, and 7 of the Rules of Conduct for Firms 2007. Again, the factual particulars are all found to be proved, as charged, by admission and upon the basis of the documentary evidence produced.

In summary, and without repeating the detailed particulars set out above, the Firm is also charged in relation to the case of Mr W; specifically because it failed to provide to Mr W the refund promised to Mr W as a result of a building survey that had been commissioned but not produced within the timescale promised. The Firm is additionally charged in relation to the same case with failing to undertake the survey report commissioned by Mr W with appropriate expedition, and with proper regard for standards of service and customer care, in breach of Rule 5 of the Rules of Conduct for Firms. The Firm further failed to provide a copy of its Complaints Handling Procedure in response to requests by Mr W that it should do so, in breach of Rule 7.

A similar pattern of conduct emerges in relation to case 102442, in which the Firm is charged with failing to honour a promise of refund to another client, Ms G. Again, the refund had been promised in circumstances where a building survey report had not been completed within a 48 hour timescale, which it failed to achieve. Again, the Firm failed to provide its Complaints Handling Procedure when requested by Ms G, in breach of Rule 7.

A similar pattern of conduct emerges in relation to case 102615, in which the Firm failed to respond to messages and correspondence with another client, Mr T, between 25 January and 12 March 2013 and, again, failed to operate effectively its Complaints Handling Procedure. In this case, the Firm, although it sent its Complaints Handling Procedure to Mr T, did not then follow that Complaints Handling Procedure in dealing with Mr T's complaint.

The charges brought by the RICS against the Firm in relation to the remaining four cases (cases 102744, 102746, 103038 and 103165) are again all of a clear theme. In each case, those charges relate to a failure on behalf of the Firm in respect to four separate clients (Ms R, Ms A, Mr S and Mr C) to engage effectively with the Ombudsman Services: Property. The Firm is a member of the Ombudsman Services: Property scheme and is as such required to cooperate with the Ombudsman Services: Property in relation to its independent consideration and determination of complaints about the Firm, and to implement determinations issued by the Ombudsman Services: Property in respect of such complaints. The Firm failed to implement remedies ordered by the Ombudsman Services: Property in relation to each of these cases in the time ordered, and failed to cooperate effectively with the Ombudsman Services: Property, as required by the scheme.

### **Panel's Decision**

The Panel has considered carefully all of the evidence produced in the case, along with submissions from both parties. The Panel is concerned that the conduct of both Mr Thomas and the Firm clearly demonstrates a pattern of behaviour which falls significantly short of the standards to be expected of a member of the RICS. Mr Thomas and the Firm have failed, repeatedly, and over a significant period of time, to demonstrate an acceptable standard of service to their clients, and failed to address effectively the client complaints which arose as a result. In the case of Mr T, the concerns from which these proceedings arise began in at least February 2013 and were not finally resolved until September 2013.

The Panel is particularly concerned at the failure of the Firm to discharge effectively its obligations to the Ombudsman Services: Property. This despite a number of written reminders issued to him by the Ombudsman Services: Property. The role of the Ombudsman Services regime is critical in providing important reassurance to the public that complaints will be addressed and, where appropriate, suitable redress provided. Mr Thomas and the Firm as a result of their actions undermined the effectiveness of the important public protection provided by

the Ombudsman Services: Property and, as a result, risked undermining the confidence of the public in the surveyors' profession.

The Panel notes that Mr Thomas did eventually take steps to resolve at least some of the various complaints from which these proceedings arise. He only did so however once each of the cases was the subject of investigation by the RICS. In the case of Ms G, who first complained to the RICS in August 2013, the Panel was informed that the partial fee refund due to her had in fact only been made by Mr Thomas the day prior to the hearing. In the cases of Mr S and Mr C, payment of the sums due to them had in fact been made by the RICS, rather than by Mr Thomas. The Panel was informed that Mr Thomas undertook to reimburse the RICS in respect of the sums it had paid, on his behalf, to Mr S and Mr C, within 28 days of the date of this hearing. The fact remains, however, that, while Mr Thomas has taken a number of steps to resolve these various complaints, these have come regrettably late and are still, as at the date of the hearing, unresolved.

Mr Harries submitted on behalf of Mr Thomas that it was open to the Panel, notwithstanding the facts and breaches which have been admitted, not to find Mr Thomas liable to disciplinary action. He invited the Panel to treat the matter as a serious and regrettable, but nonetheless exceptional, episode in Mr Thomas' otherwise unblemished professional career. He emphasised that Mr Thomas had taken significant steps to resolve the complaints and had now effectively put the matter behind him.

The fact that Mr Thomas may have moved on does not however of itself obviate the appropriateness and necessity of disciplinary action to address prior misconduct. The Panel regards the conduct of Mr Thomas and the Firm very seriously. The pattern of conduct demonstrated by these cases and, in particular, the charges against Mr Thomas as an individual, call into question his professional integrity. The Panel regards very seriously the misleading statements made by Mr Thomas in respect of the Firm's Annual Return to the RICS, and the failure of him and the Firm to engage effectively with the Ombudsman Services: Property. It has for all of these reasons no difficulty in finding Mr Thomas in breach of Rule 3 of the Rules of Conduct for Members 2007, and the Firm to be in breach of Rules 3, 5, and 7 of the Rules of Conduct for Firms 2007, all as charged. It further finds Mr Thomas and the Firm to be liable to disciplinary action, upon the basis of the charges which it has found to be proved, considered individually and collectively.

## **Penalties**

The Panel has received and accepted advice from the legal assessor. It has reminded itself both that it is not obliged to impose a penalty and that, to the extent that it does consider it appropriate to impose a penalty, this should be in accordance with the principle of proportionality. The Panel has had regard to the RICS Sanctions Policy, and to submissions received from both parties. It has considered very carefully substantial submissions advanced by Mr Harries, on behalf of Mr Thomas. Mr Harries urged the Panel to treat Mr Thomas' conduct as

exceptional in a long and otherwise unblemished career. He submitted that the catalyst for that conduct had been a tumultuous, chaotic and dishevelled period in Mr Thomas' personal circumstances. The Panel has had the benefit of hearing oral evidence from Mr Thomas in person. To the extent that this evidence related to Mr Thomas' health and personal circumstances during 2013, on the (unopposed) application of Mr Harries, the Panel agreed to hear that evidence in private session. In addition, the Panel has had regard to a number of written testimonials produced on Mr Thomas's behalf.

The Panel has considered carefully the mitigatory evidence presented by, and on behalf of, Mr Thomas. Mr Thomas has no previous disciplinary record in his 20 years as a Chartered Surveyor. During the course of the spring and summer of 2013, Mr Thomas suffered a degree of trauma in his personal circumstances, which had, the Panel is led to understand, had some negative impact upon Mr Thomas' health over this period. No medical evidence was produced, but the Panel accepts this evidence, to the extent that Mr Thomas did experience difficult personal circumstances for part of 2013. It was led to understand however that the period of personal trauma had to a significant extent receded by around the end of August 2013.

The Panel further notes that Mr Thomas and the Firm did eventually take steps to try to resolve the various complaints from which these proceedings arise, and that he and the Firm eventually refunded monies due to most of their clients. Again, they did so however at a very late stage and only once these matters were under investigation by the RICS.

The Panel treats very seriously the fact that Mr Thomas misled the RICS as his regulatory body, in submitting misleading statements in the Firm's Annual Return, and that Mr Thomas and the Firm failed to cooperate with the Ombudsman Services: Property. Moreover, as Mr Harries accepted, the complaints considered collectively demonstrate a pattern of poor client service which falls significantly short of the standard of a professional surveyor and member of the RICS.

The Panel considers for these reasons that it is necessary to impose a penalty in this case.

The Panel proceeded to consider the penalties available to it, beginning with the least serious and stopping when it considered that it had arrived at a penalty or penalties which were necessary, sufficient and proportionate in all the circumstances of these cases.

The Panel considered the imposition of a caution, or reprimand, but did not consider either of these penalties to be sufficient, recognising the seriousness of the repeated conduct giving rise to these proceedings.

Mr Thomas and his Firm have demonstrated a pattern of conduct which directly negatively impacted members of the public and brought the surveyors' profession into disrepute. In making misleading declarations to the RICS, his regulatory body, Mr Thomas failed to disclose significant information, bringing into question his professional

integrity and potentially compromising the ability of the RICS to discharge its public interest responsibilities. In failing to engage effectively with the Ombudsman Services: Property, or to implement its determinations, by which they were bound, Mr Thomas and the Firm similarly risked undermining the ability of the Ombudsman Services to discharge its functions in protecting the public. In December 2013, the RICS paid to two of the Firm's clients the sums ordered to be paid to those clients by the Firm many months before.

The Panel recognises the importance, of which it must take account in determining penalty, of upholding the confidence of the public in the surveyors' profession, ensuring the protection of the public, as well as safeguarding the reputation of the RICS. It recognises that Mr Thomas has experienced difficult personal circumstances, corresponding in time with some, but not all, of the conduct giving rise to these charges. It notes that Mr Thomas and the Firm have admitted the charges in full, but is concerned at their failure to address the various client complaints promptly. It questions Mr Thomas' insight in suggesting that the various complaints had been resolved, when in fact that they had not. Such remediation as was effected occurred late.

The Panel considered the imposition of a fine, but does not consider that this would sufficiently address the public interest. It does not consider the imposition of conditions to be appropriate, recognising both the practical difficulty in their meaningful application in the context of a sole practitioner, but also, and more substantively, its serious concern that Mr Thomas' integrity had been brought into question.

The Panel considers, in all of the circumstances of this case, that it is for these reasons necessary and proportionate to expel Mr Thomas from membership of the RICS. It further considers it necessary and appropriate to remove the Firm's registration for regulation.

The Panel notes Mr Thomas' reassurance, given today, that, whatever the outcome, he will reimburse the RICS the £2,200 it has paid to satisfy the Ombudsman Services: Property orders, within 28 days from the date of this hearing.

The Panel has reached this conclusion only after very careful consideration of the mitigation advanced by Mr Thomas, and by Mr Harries on his behalf. It has concluded that these steps are necessary, to protect the public, its confidence in the surveyors' profession, as well as the reputation of the RICS, as its regulatory body. In doing so, the Panel has had regard in particular to the fact that these cases arose from a pattern of repeated conduct continuing for at least a year, and a total of 7 complaints involving different members of the public. The Panel places significant weight in addition on the misleading declaration provided by Mr Thomas to the RICS, which does give rise to a significant concern as to his professional integrity, and on his repeated failure to cooperate with the Ombudsman Services: Property, to the extent that that body was obliged to complain to the RICS about his conduct.

The Panel so orders.

### **Determination on Publication and Costs**

#### **Publication**

The Panel directs publication in accordance with Supplement 3 to the Sanctions Policy. It directs publication on the RICS website, in RICS Modus and in appropriate newspaper(s) local to Mr Thomas and the Firm.

#### **Costs**

The Panel orders that Mr Thomas and/or the Firm pay the costs of the RICS in this case in the total sum of £5,767.50, as sought.

#### **Appeal Period**

Both Mr Thomas and the Firm have 28 days to appeal these decisions in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.

In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days to require a review of these decisions.