

## Disciplinary Panel Hearing

### Case of

**Mr M J Reid FRICS [ 0053650] and;  
Eastbourne Surveyors Limited t/a Reid + Dean, East Sussex, BN21**

### On

Thursday 08 June 2017

### At

RICS, Parliament Square, London

### Panel

John Anderson (Lay Chair/Chair)  
Imran Benson (Lay Member)  
Chris Pittman (Surveyor Member)

### Legal Assessor

Peter Steel

### RICS Representative

Annabel Joester

### The formal charges are:

The formal charge against Mr M Reid is:

1. Between 1 October 2013 and 19 May 2016 Mike Reid FRICS was dishonest in his operation of the client account of Eastbourne Surveyors Ltd ('the firm').

he has therefore **breached Rule 3 of the Rules of Conduct for Members 2007** and is liable to disciplinary action under Bye-law 5.2.2 (c).

The particulars being that;

during the above period Mr Reid took monies exceeding £25,000.00 from the firm's client accounts without the consent of the clients.

Or, in the alternative

2. Between 1 October 2013 and 19 May 2016 Mike Reid FRICS failed to avoid a conflict of interest and/or failed to adhere to his professional obligations in his operation of the client account of Eastbourne Surveyors Ltd.

he has therefore **breached Rule 3 of the Rules of Conduct for Members 2007** and is liable to disciplinary action under Bye-law 5.2.2 (c).

The particulars being that

during the above period Mr Reid took monies exceeding £25,000.00 from the firm's client accounts without the consent of the clients.

The formal charge against Eastbourne Surveyors Ltd ('the firm') are:-

1. Between 1 October 2013 and 19 May 2016 the firm failed to preserve the security of client monies entrusted to its care in the course of its business because the adequacy of its accountancy systems and controls were not sufficiently robust to preserve the security of client monies.

The firm has therefore **breached Rules 8 and 3 of the Rules of Conduct for Firms 2007** and is liable to disciplinary action under Bye-law 5.3.2 (c)

the particulars being that;

- a. The firm had not undertaken monthly reconciliations for all client accounts since 2011.
- b. The principal of the firm took monies exceeding £25,000.00 from the firm's client accounts.
- c. A non-principal was able to action payments on the client bank account without the authorisation of the principal.
- d. The firm did not operate a pre-numbered cash receipt book system.
- e. The firm retained the interest it received on the client bank accounts and did not have the clients' written permission so to do.
- f. The firm were unable to produce a copy of the bank operating conditions letter on request.

## Introduction

1. The allegation against Mr Reid is that between 1 October 2013 and 19 May 2016 he took more than £25,000 from the client account operated by the firm without the consent of the clients. The corresponding allegation against the firm is that the firm failed to preserve the security of client monies by dint of the fact that its systems and controls were not sufficiently robust to prevent Mr Reid from acting as he did (and in a number of other respects were sufficiently inadequate as to amount to a breach of the rules).

2. Mr Reid is a RICS member and the sole principal of the firm. The firm is a RICS regulated firm, and has been since 2 October 2007. Mr Reid is the sole director of the company.
3. On 19 May 2016, a RICS accountant, Mrs Leeder, conducted a regulatory review visit at the firm. Mrs Leeder produced a report of her findings dated 23 May 2016.
4. Mr Reid informed Mrs Leeder and confirmed subsequently in correspondence that he had taken monies from the firm's client accounts. He did so by authorising the transfer of funds on several occasions from one of the firm's client accounts to the firm's office account. The transfers occurred on a number of occasions and the shortage continued until May 2016. Mr Reid said that he had used the monies to fund the working capital of the firm.
5. At the time of her report, Mrs Leeder estimated the deficit on client account to be £44,680.76, comprised of the difference between the amount shown as owing to clients from the client ledgers and the funds actually held in the firm's client accounts (£39,085.79) and the total of the overdrawn balances shown on the client ledgers (£5,594.97). However, the figure could only be an estimate as the firm's accounts were unreliable. Since the deficit on the current accounts was discovered, Mr Reid repaid £28,171.62 and believed that this had made good any deficit. RICS did not dispute this.
6. Mrs Leeder's report identifies further points which led to her conclusion that the firm should be rated 'unsatisfactory' for its client money handling. A 'critical' point she identified was the lack of reconciliations of client account transactions since 2011. Reconciliation of client account is crucial in order to ensure that the bank statement balance agrees with the cashbook and (if applicable) client ledger. Without regular reconciliations, any discrepancies between the recorded levels of client money (the amount that should be held by the firm) and the bank statement balance (the amounts actually held in the client account at the bank) cannot be established. It is in part because of the lack of reconciliations is that it is still difficult to confirm the current position in relation to the client accounts and particularly whether all monies taken from the accounts have been replaced.
7. The report also identifies a 'serious' point; that a non-principal was able to action payment from the client bank account without the authorisation of the principal, Mr Reid. Mr Reid had authorised an employee of the firm, Ms A, to operate the firm's online banking system. She was able to authorise payments herself, without any other authorisation, with a daily limit of £5,000 and a single item limit of £5,000. The lack of adequate controls over such payments meant that the firm was exposed to the risk of misappropriation of client funds.
8. Mrs Leeder also reported that there were a number of less serious concerns about the system operated by the firm, which were nonetheless further evidence of an inadequate system. Firstly, the firm did not operate a pre-numbered cash receipt book system. The system in relation to cash payments was that they were paid in to one of two employees. Duplicate receipt receipts were not issued, meaning that if money were to go missing after a payment they would have been no record of its receipt.
9. The second point was that the firm was receiving interest on monies held in the client account, but that this was not being paid to clients. Firms should only retain interest paid on client account if they have the written consent of clients to do so.

10. The final point was that the firm had not at that time produced a copy of the bank operating conditions letter when requested to do so.

## **Response**

11. Mr Reid (on his own behalf and as principal of the firm) admitted the allegations and accepted that he and the firm are liable to disciplinary action.

## **Burden and standard of proof**

12. 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 Reid to prove anything. The Panel has in mind throughout its deliberations that the right to practice 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 Reid'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**

13. On behalf of RICS, Ms Joester drew the Panel's attention to an erroneous reference in the bundle to another firm. The Panel accepted this was a simple error and ignored the reference. Mr Reid indicated that he did not object.
14. Ms Joester indicated that in the light of Mr Reid's admissions, RICS did not intend to offer any evidence in respect of allegation 2 of the formal charge against him.

## **Evidence**

15. The Panel has perused the RICS Solicitor's bundle of documents, running to 208 pages, and the statement of Mrs Leeder dated 12 March 2017. The Panel also heard evidence from Mr Reid. The Panel also considered a bundle of documents provided by Mr Reid under cover of a letter dated 9 May 2017.

## **Findings of fact**

16. Mr Reid admitted allegation 1 against him, including that he was dishonest. He indicated in response to questions from the Panel that he had known withdrawing monies from client

account was dishonest. He accepted as principal that the allegation against the firm was also made out.

### **Submissions by RICS Presenting Officer**

17. Ms Joester submitted that in light of the admitted breaches of Rule 3 of the Rules of Conduct for Members 2007 (in respect of Mr Reid) and Rules 8 and 3 of the Rules of Conduct for Firms 2007 (in respect of the firm), both he and the firm were liable to disciplinary action.

### **Submissions on behalf of Mr Reid/ the firm**

18. Mr Reid accepted that Ms Joester's account of the background was accurate and on behalf of himself and the firm, he accepted the liability to disciplinary action.

### **Discussion and conclusion**

19. Mr Reid candidly admitted the allegations against himself and the firm. The Panel nonetheless gave careful consideration to the evidence before it. In particular the Panel gave thought to the question of whether Mr Reid had been dishonest as alleged. The Panel accepted the advice of the Legal Assessor that this question involves the two stage test set out in Twinsectra Ltd -v- Yardley & Others [2002] UKHL 12, subject to the observations of Longmore LJ made in Hussain -v- GMC [2014] EWCA Civ 2241. The two stage test is that he must himself appreciate that what he was doing was dishonest by the standards of honest and reasonable Chartered Surveyors, and that he knew that by those standards it was dishonest.
20. Mr Reid had demonstrated in response to questions from the Panel that he understood this test and that he accepted that he had acted dishonestly. On this basis and in the light of the admitted facts, the Panel found that both Mr Reid and the firm were liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the Legal Assessor to the effect that this question was one for the Panel's judgment.

### **Mitigation**

21. Mr Reid spoke in mitigation. He said that his troubles had stemmed from trying to do the right thing. In summer 2011, his senior negotiator had suffered a serious accident. He had been on sick leave for a considerable period but was still paid. Mr Reid and his then business partner had at that time, as a result of the recession, put all their savings into the business. His business partner then fell ill with cancer. She was away from work for the best part of a year, but Mr Reid had still ensured that she received her share of the profits from the partnership. After one year away she was told that she was in remission. However she had lost her confidence and memory to the extent that she decided to retire from the partnership at the end of 2012. Mr Reid had given her the opportunity to come back to the firm as an employee. She acted as the firm's administrator and managed the lettings business. However, the firm continued to have trading difficulties. Mr Reid's business partner

continued working for about a year 2 to 3 days a week. In May 2015 she was told that she only had a short time to live and she passed away in November 2015. At that time, Mr Reid was taking care of all aspects of the business. Over the period while his business partner had been ill, the firm had gone through three lettings managers. As a result of the inspection by RICS, Mr Reid had found that both his current lettings manager and he himself had not really been trained properly in dealing with client accounts.

22. Mr Reid said that he had negotiated the sale of the business to another local firm. He had given an undertaking that if any shortfalls were found in the future in client account, he would make them good. However if this disciplinary hearing produced any adverse publicity, the deal would be off. He had only one opportunity to retire and if the firm with whom he had agreed the sale did not proceed with it, there was no other business that could step in.
23. Mr Reid accepted that what he had done was wrong. He was very sorry about it and very upset to find himself before the Panel. None of it had been intended. He had just tried to look after his business partner and the staff of the firm.
24. In answer to questions from the Panel, he indicated that the firm has now put in place a system of control over payments out of client account. He and Mrs A had been through the accounts and were satisfied that there were no longer any discrepancies. The client account was in balance with the bank accounts and the firm was otherwise in compliance. He had not really been aware of all the formal requirements for holding client monies, but he accepted that this was no defence. He asked that there be no publicity of the Panel's decision, because of the potential effect on the sale.
25. There has been no previous disciplinary finding against Mr Reid or the firm.

### **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 its 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. The Panel considered carefully the mitigation provided by Mr Reid.
28. As regards the firm, the Panel considered that the following mitigating factors were present:
  - The firm had cooperated with RICS from the outset;
  - The findings of the report had been treated very seriously and had been rectified (at some expense) so that the firm was now compliant with the rules;
  - There had been no loss to clients;
  - The firm had started to replace some of the monies before the RICS Regulatory Review Visit; and
  - There had been no previous findings against the firm.

29. As regards the firm, the Panel considered that the following aggravating factors were present:

- the failure to operate an adequate system to manage client monies had extended over a lengthy period
- there appeared to have been little understanding by the firm of even the basic principles of operating a proper system;
- the firm had allowed discretionary payments to the director/shareholder during a period when the client account was in deficit.

30. The Panel considered the matters too serious for no sanction to be imposed, and so considered first of all whether a caution was sufficient. It considered that such a sanction was insufficient to address the seriousness of the firm's breach of the Rules.

31. The Panel considered that in the circumstances, it was sufficient to direct that the firm be reprimanded and that its continuing registration with RICS be subject to a condition that it undergo a satisfactory Regulatory Review Visit within the next 12 months demonstrating the firm's compliance with RICS' published guidance on Clients' Money.

32. As regards Mr Reid, the Panel considered the following mitigating factors were present:

- Mr Reid had shown considerable candour and insight in his admissions and evidence to the Panel;
- The Panel accepted that his behaviour was born of difficult personal and professional circumstances at the relevant time; and
- He had not intended to deprive clients of their monies permanently and meant only to use the monies to maintain the firm as a going concern (though clearly he had resort to client account as a source of funds when other means of funding the firm were closed to him).

33. In Mr Reid's case, the aggravating factors were as follows:

- His dishonest conduct had extended over a considerable period;
- He had created a risk to client monies by his actions, even if that risk did not materialise; and
- His behaviour had the potential to undermine public confidence in the profession to a serious degree.

34. The Panel concluded that this was not an isolated incident, rather a course of conduct that had extended over many months. Mr Reid had made a conscious decision to take money from client account in order to keep the firm going. Those monies had been entrusted to him and the firm for safe keeping. His conduct demonstrated a complete lack of understanding of the requirement imposed on chartered surveyors and firms holding client money to protect it, even to his detriment and that of the firm. Mr Reid's conduct had fallen seriously below the standards expected by the profession and by the public in handling client money and was accordingly extremely serious.

35. Accordingly the Panel considered the penalties available to it, starting with the least severe first. However, it concluded that a caution, reprimand, conditions or a fine would not



adequately address the seriousness of Mr Reid's conduct. The Panel concluded that in all the circumstances of this case, the only appropriate sanction was to expel Mr Reid from membership with RICS.

36. The Panel therefore ordered that:

1. a. Eastbourne Surveyors Limited t/a Reid + Dean should be reprimanded; and  
b. Its continuing registration with RICS be subject to a condition that it undergo a successful Regulatory Review Visit within the next 12 months demonstrating its compliance with RICS published guidance on Clients' Money; and
2. Mr Reid be expelled from membership of RICS.

37. This decision supersedes the interim measures order imposed on 9 June 2016.

## **Publication and Costs**

### **Publication**

38. 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 Reid opposed this on the ground that adverse publicity might affect the proposed sale of the firm. 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.

39. 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**

40. The RICS Presenting Officer asked for costs, and had provided a schedule to Mr Reid in advance of the hearing. Mr Reid had provided statements of means on behalf of himself and of the firm, which the Panel took into account.

41. The Panel considered carefully the costs sought. The Panel paid careful attention to the means of Mr Reid but 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. The Panel orders that Mr Reid/ the Firm jointly and severally pay to RICS costs fixed in the sum of £5,000.

### **Appeal Period**

42. Mr Reid 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.



43. 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.