

Disciplinary Panel Hearing by way of written representations

Case of

**Mr Marcus Friend (First Respondent); and
Friend Associates (Second Respondent)
Lichfield, Staffordshire, WS14**

On

Thursday 23 November 2017

At

RICS, Parliament Square, London

Chairman

Sir Michael Burton (Lay Member)

Members

Ian Hastie (Surveyor Member)
Carolyn Tetlow (Lay Member)

Legal Assessor

Fiona Barnett

Service

1. Notice of this hearing dated 27 September 2017 was sent to Mr Friend and Friend Associates by email and by recorded delivery to the preferred email and postal addresses held by RICS on their system.
2. The Panel was therefore satisfied that proper notice of the hearing was given and that service was effected in accordance with Rule 23 of the Disciplinary, Registration and Appeal Panel Rules, 1 April 2009, with effect from 1 December 2016, (the Rules).

Hearing on papers without oral representations

3. The Panel had before it an agreed statement of facts signed by Mr Friend and by a RICS Solicitor. It was clearly stated in the agreed statement of facts that Mr Friend admitted the charges against himself and the Firm. The Panel had also seen correspondence which demonstrated that the parties had both requested a referral for a paper hearing.
4. The Panel was therefore satisfied that the criteria for a paper hearing (which are set out in Rule 43a of the Rules) were met. It decided that it was appropriate and fair to proceed and decide the case on the basis of the documents and written representations before it.

The Charges

Mr Friend:

1. Between 1 October 2013 and 29 September 2016 Mr Marcus Friend failed to ensure that he and/or the firm were covered by an appropriate policy of professional indemnity insurance.

He has therefore breached Rule 3 of the RICS Rules of Conduct for Members and is liable to disciplinary action under Bye-Law 5.2.2(c).

2. Between 20 July 2016 and 24 August 2016 Mr Marcus Friend failed to carry out his professional work with due skill, care and diligence and with proper regard for the technical skills and standards expected of him,

He has therefore breached Rule 4 of the Rules of Conduct for Members 2007 and is liable to disciplinary action under Bye-Law 5.2.2 (b) and (c).

Particulars

RICS conducted a regulatory review visit to Friend Associates. The reviewer's assessment of three files at the firm concluded that:-

- a) There were no or insufficient demonstrable or robust system of conflict of interest checks.
- b) The terms of engagement did not meet the RICS requirements.
- c) There was insufficient information collated and noted regarding the construction of buildings, and their age, potentially hazardous material and property taxes.
- d) There was no or insufficient formal analysis in the file regarding the comparables that had been recorded.
- e) There was no or insufficient note of the valuation calculations.
- f) There were no or insufficient notes to document the reliability of the information and sources used in arriving at the valuations.
- g) There was a failure to record essential information in the valuation reports.

Friend Associates:

1. Between 1 October 2013 and 29 September 2016 the firm Friend Associates failed to ensure that it was covered by an appropriate policy of professional indemnity insurance.

The firm has therefore breached Rules 3 and 9 of the RICS Rules of Conduct for Firms and is liable to disciplinary action under Bye-Law 5.3.2(c).

2. Between 20 July 2016 and 24 August 2016 the firm Friend Associates failed to carry out its professional work with due skill, care and diligence and with proper regard for the technical skills and standards expected of it.

Friend Associates has therefore breached Rule 4 of the Rules of Conduct for Firms 2007 and is liable to disciplinary action under Bye-Law 5.3.2 (b) and (c).

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- e) There was no or insufficient note of the valuation calculations.
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- g) There was a failure to record essential information in the valuation reports.

Background

5. Mr Friend trades as a sole practitioner through his RICS regulated firm, Friend Associates, ("the Firm"). On 24 August 2016, Ms Carol Guinney, an employee of RICS and a Professional Assurance Surveyor, conducted a Regulatory Review Visit at the Firm.
6. At the visit, Mr Friend informed Ms Guinney that he had not had any professional indemnity insurance ("PII") cover in place since 1 October 2013.
7. Ms Guinney also reviewed three files during the visit, all of which related to valuation work completed in July and August 2016. She found serious deficiencies in each of the files

reviewed, as set out above in the particulars. Ms Guinney was also concerned that Mr Friend was producing reports entitled "Homebuyer Reports" with the RICS logo attached and she alleged that Mr Friend did not have the requisite copyright licence for the use of the RICS 'Homebuyers Report' logo. She further alleged that one such report had been produced using a discontinued version of a RICS Homebuyer Report, and was not therefore compliant with the 4th edition Practice Note.

Evidence

8. In considering this matter, the Panel had before it the RICS solicitor's bundle of documents running to 238 pages. It also had an agreed statement of facts which was signed by the RICS solicitor and by Mr Friend on his own behalf and on behalf of the Firm. The Panel was also provided with written submissions from RICS and from Mr Friend.
9. The Panel was also provided with a Supplemental Bundle of papers shortly before the hearing. This numbered pages 1 to 225 and contained copies of the RICS Professional Standards PS1-2, and VPS1-4, and full copies of Mr Friend's response to the regulatory visit with all the documents provided by him to RICS.

Response

10. Mr Friend admitted the charges brought against him personally and the charges brought against the Firm.

Decision on facts

11. The Panel found all charges (against Mr Friend and the Firm) proved by way of the admissions.

Liability to disciplinary action

12. Mr Friend accepted that he and the Firm may be liable to disciplinary action. However, this is always a matter for the Panel in its own judgment.
13. In relation to charge one, the Panel was in no doubt that practicing as a surveyor for three years without insurance was a serious matter; the public would be placed at risk of financial loss if a claim had been made against Mr Friend for work done when the Firm was uninsured.
14. In relation to charge two, the survey reports prepared by Mr Friend and examined by Ms Guinney were prepared using a discontinued version of a RICS Homebuyer report and did not comply with RICS standards; they also displayed a RICS 'Homebuyer Report' logo when the Firm was not entitled to use that logo without a copyright licence. Mr Friend

accepts, and the Panel also found, that the deficiencies identified by Ms Guinney were serious and breached professional standards including professional standards of valuation. The use of the RICS 'Homebuyer Report' logo could also create a false impression that Mr Friend was working to current RICS standards when in fact he was not. The failures to prepare the reports in accordance with accepted professional standards gave rise to risks that the home valuations could have been defective and not fit for purpose. However the Panel acknowledged that whilst the reports contained serious deficiencies, there was no evidence before it that the valuations were in fact defective, or that any actual harm or loss to the public was caused as a result.

15. Mr Friend's actions, and those of the Firm in charges one and two, were capable of bringing the profession into disrepute and created risks to the public. The Panel therefore found that Mr Friend and the Firm were liable to disciplinary action.

Sanction

16. At this stage, the Panel was provided with submissions from RICS in relation to sanction. It considered these together with the written submissions/mitigation provided by Mr Friend.
17. The Panel reminded itself, amongst other matters, that any sanction imposed must be proportionate. If it is minded to impose a sanction, it must consider the sanctions in order of severity, starting with the least severe. It must satisfy itself that any sanction it imposes is the minimum necessary to meet the public interest.
18. The Panel had regard to the RICS indicative sanctions guidance, (the Guidance). It considered carefully the mitigating and aggravating factors of this case.
19. There was a number of aggravating factors. Mr Friend knowingly practiced as a surveyor for a sustained period of time without insurance cover for the Firm; this placed the public at risk of harm and risked bringing the profession of surveying and the RICS name into disrepute. This was exacerbated by the fact that during this period, Mr Friend produced home survey reports which purported to meet RICS standards but in fact did not meet accepted professional standards and were deficient in a number of respects.
20. However, there were also mitigating factors. Mr Friend co-operated with RICS at all times and apologised for his actions. He has now secured retrospective professional indemnity insurance which covers the extended period of time when he was practicing without it. He submitted that there were personal matters which contributed to his poor performance and the Panel accepts that this amounts to some limited mitigation. He has also taken steps to correct his documentation and to ensure there will be no repetition; RICS accepts that these steps constitute appropriate remediation, (with some minor amendments needed), although a further monitoring visit has not yet taken place to ensure that these changes are being implemented. In the light of the remediation steps taken, the Panel accepted that the risk of harm to the public should be considerably reduced.

21. The Panel first considered whether to impose a sanction. It decided that the matters were too serious for no sanction to be imposed. This would not maintain public confidence in the profession.
22. The Panel next considered whether a Caution would be an appropriate and proportionate sanction. The Guidance suggests that this would be appropriate when the breach is “minor”, however, the Panel’s view was that the breaches were not minor. In the Panel’s view, Mr Friend had knowingly practiced without insurance for three years which was a serious falling short of expected standards; he had also produced deficient home survey reports during that time and used a RICS logo when he had not paid for the requisite licence. A Caution would not therefore be sufficient to maintain public confidence in the profession given the seriousness of the misconduct.
23. The Panel next considered a Reprimand. The Guidance states that this may be appropriate where there either has been, or is a risk of public harm. This was a case in which there has been a risk of public harm, albeit this is now considerably reduced by virtue of the steps taken by Mr Friend to address the breaches. The Panel decided that a Reprimand would be an appropriate sanction.
24. However, the Panel decided that a Reprimand, on its own, was not sufficient to maintain public confidence in the profession of surveying, given the lengthy period in which the Firm practiced without insurance cover and its failures to comply with proper standards whilst uninsured. The Panel decided that a fine should also be imposed. It carefully considered the statement of means provided by Mr Friend and decided that a fine of £12,000 would be an appropriate and proportionate sum. In deciding this sum, the Panel took into account the following:
 - Mr Friend had avoided the cost of professional indemnity insurance for a period of three years.
 - He had been using the RICS ‘Homebuyer Report’ logo on his reports without incurring the costs of the requisite licence.
 - The Panel’s view was that the fine should be considerably more than the likely cost of insurance for the period in which no insurance was in place and of the unsought copyright licence. Whilst the fine is not intended to be punitive, the Panel decided that a fine of £12,000 was appropriate. A financial penalty of this amount should send a strong message to Mr Friend, the profession, and the public that practicing without insurance will not be tolerated and that a member of the RICS who does so will not ultimately avoid the cost of insurance. Any amount less than £12,000 would not be sufficient to maintain public confidence in the profession and to uphold proper standards of conduct for members of the RICS. The Panel was minded to impose a fine of more than £12,000 to mark the conduct, but decided that this would not be reasonable, taking account of Mr Friend’s means and personal circumstances.

25. The Panel also bore in mind that whilst Mr Friend has taken proper steps to remediate the breaches, these steps have not yet been tested in practice at a monitoring visit. The Panel decided that a further monitoring visit should take place, to ensure that the proposed remediation has been fully implemented in practice and that the public remains protected. It therefore imposed the following condition:

Mr Friend and Friend Associates must submit to a further Regulatory Review Visit from the RICS within three months from today's date at his/their own expense. Payment of the costs of this visit must be met by Mr Friend/Friend Associates within 14 days of demand.

26. If Mr Friend/Friend Associates fail to agree to a further Regulatory Review Visit, or if deficiencies are identified at the visit, this may result in further disciplinary action.
27. The Panel was satisfied that this combination of sanctions was appropriate and proportionate, taking account of the public interest, Mr Friend's interests and those of the Firm. This was the minimum necessary to protect the public, to maintain public confidence in the profession and to uphold proper standards of conduct and behaviour.

Publication

28. The Panel orders that this decision be published in Modus and on the RICS website. Mr Friend has not objected to this course.

Costs

29. RICS made an application for costs in the sum of £600. Given that the charges were properly brought, admitted and proved, the Panel decided that Mr Friend should pay the costs of £600.
30. Mr Friend has asked for a periodic payment structure to pay any costs/penalties. The Panel notes that he may liaise with the RICS to establish a mutually acceptable payment plan.

Appeal Period

31. The Firm has 28 days from service of the notification of this decision to appeal this decision in accordance with Rules 58 and 60 of the Disciplinary, Registration and Appeal Panel Rules.