

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING

Case of

**Mr Peter Judd MRICS [0082798]
Peter Judd and Associates [034422]
Tavistock, PL19**

On

Wednesday 20 May 2015

At

RICS, Parliament Square, London

Chairman

Helen Potts (Lay Chairman)

Members

Carolyn Tetlow (Member)
Jack McKinney (Lay Member)

Legal Assessor

Mark McConochie

RICS Representative

Vicki Buckley

CHARGES HEARD

The formal charges against Mr Peter Judd are:

1. 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 Peter Judd Associates you did not ensure that remedies set out in a Final Decision made by the Ombudsman Services Property against the firm in relation to a complaint by Mr and Mrs B were implemented within 28 days of notification
Contrary to Rule 3 of the Rules of Conduct for Members 2007

2. You did not co-operate fully with an RICS Regulation Officer investigating a complaint from the Ombudsman Property Services that your firm had not implemented remedies contained in a Final Decision in that you did not respond to written correspondence sent to you on 09 February 2015, despite indicating in a telephone conversation on 17 February that you had received the correspondence and would respond

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

The formal charges in respect of case 104041 are:

1. You did not submit in a timely manner or at all information reasonably requested by an RICS Regulation Officer in a letter dated 03 September 2014 in relation to her investigation of a complaint from a member of the public such that RICS has been prevented from investigating that complaint and your conduct as a member of RICS

Contrary to Rule 8 of the Rules of Conduct for Members 2007

2. You did not co-operate fully with an RICS Regulation Officer in that you did not respond to written correspondence sent to you between 03 September and 10 December 2014 in connection with a complaint received from a member of the public

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

The formal charge against Peter Judd and Associates (the firm) is:

1. The firm did not at all times avoid any actions or situations that were inconsistent with its professional obligations by failing to discharge its obligation as a member of the Ombudsman Services: Property scheme (a scheme approved by RICS to provide independent redress to members of the public unhappy with the service they have received) to implement the remedies set out in a Final Decision of the Ombudsman in relation to a complaint by Mr and Mrs B within 28 days of notification

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

DETERMINATION

Background

1. Mr Judd has been a Member of the RICS since 1989 and is the sole principal of the firm Peter Judd Associates ("the Firm"). The Firm registered for regulation by RICS in 2008; its main area of business is building surveying.
2. Mr Judd and the Firm both faced disciplinary charges arising from two separate investigations by RICS: one following a referral from the Ombudsman Services: Property ("OSP"); and the other following a complaint from a member of the public.
3. Mr Judd did not appear before the Panel today and neither Mr Judd nor the Firm were represented.

Preliminary Issue, Proceeding in Absence

4. The Panel was invited by RICS to proceed in the absence of Mr Judd and in the absence of any representative of the Firm.
5. The Panel took advice from the legal assessor as to the approach that it should take when considering whether or not to exercise its discretion to proceed in Mr Judd's absence.

6. The Panel noted that Rule 30 of the Disciplinary Appeal Panel and Registration Rules 2009 provides that it may proceed in a Member's or Firm's absence if satisfied that notice under Rule 23 of those Rules has been properly given.
7. The Panel was satisfied that Notice had been properly given in accordance with the Rules to both Mr Judd and the Firm by way of two letters dated 9 April 2015 which were sent by special delivery. Proof of delivery of both letters was confirmed by way of signature on 11 April at 11:36 am.
8. The Panel noted that the discretion it has under the Rules to proceed in the absence of a Member or Firm is one which has been described by the courts as a discretion which should be exercised with the utmost care and caution.
9. In exercising that discretion, the Panel noted that it must strike a careful balance between fairness to the Member and the Firm on the one hand and the wider public interest on the other and that it must consider all of the circumstances of the case.
10. The Panel noted the need to consider carefully each of the relevant criteria in R-v- Jones in turn before determining whether to proceed in Mr Judd's absence, including:
 - i. the nature and circumstances of Mr Judd's and the Firm's absence and, in particular, whether the behaviour may be deliberate and voluntary and thus a waiver of the right to appear;
 - ii. whether an adjournment might result in Mr Judd or the Firm attending the proceedings at a later date;
 - iii. the likely length of any such adjournment;
 - iv. whether Mr Judd or the Firm, despite being absent, wished to be represented at the hearing or has waived that right;
 - v. the extent to which any representative would be able to receive instructions from, and present the case on behalf of, the absent Mr Judd or the Firm;
 - vi. the extent of the disadvantage to Mr Judd or the Firm in not being able to give evidence having regard to the nature of the case;
 - vii. the general public interest and, in particular, the interest of any third parties or witnesses that a hearing should take place within a reasonable time of the events to which it relates; and
 - viii. the effect of delay on the memories of any witnesses.
11. The Panel was referred to an email from Mr Judd received on the morning of this hearing, that is 20 May 2015, timed at 9:15 am. In that email Mr Judd indicated that he would not be attending the hearing. He confirmed that he was aware of the contents of the RICS documentation sent to him. Mr Judd further indicated that he saw no point in dealing with today's proceedings by way of telephone.
12. Based on the evidence before it, and in particular the email received from Mr Judd on the morning of this hearing, the Panel found that Mr Judd was aware that the proceedings were due to take place today and had voluntarily waived his right to attend, either in his own capacity or as representative of the Firm. Mr Judd was clearly aware of the possibility of attending the hearing by telephone and had declined to do so.
13. Whilst mindful of the need to proceed with extreme caution, the Panel found that no purpose would be served by adjourning the proceedings and that any such adjournment would be unlikely to result in Mr Judd or any other representative of the Firm attending. The Panel therefore decided to proceed in the absence of the Firm and Mr Judd.

14. The Panel, which is independent of the RICS, proceeded with an open mind and put out of its mind those matters referred to by Mr Judd in his email of 20 May 2015 which did not form part of the charges alleged by RICS.

Application to amend the charges

15. The RICS applied to amend the charges against Mr Judd in respect of case 104041 to amend the date of the letter from RICS referred to in both of those charges as 3 September 2014, to 28 October 2014.
16. In considering the application to amend, the Panel was mindful of the need to consider carefully any prejudice to Mr Judd, particularly as Mr Judd was not present at the hearing in order to make representations in response to the application either in his own right or on behalf of the Firm.
17. However, the Panel was satisfied that Mr Judd had received the letter of 28 October 2014, had read it, and was therefore aware of the information being sought by RICS in it. The amendment was a technical one which did not go to the substance of the allegations against Mr Judd and the Panel was therefore satisfied that it could be made without any unfairness to Mr Judd.

Findings of Fact

18. Having considered all the documentary evidence before it on the balance of probabilities, and having listened to the representations made on behalf of RICS, the Panel made the following findings of fact in relation to the four separate charges against Mr Judd and the single charge brought against the Firm. In doing so the Panel was mindful that the burden of proof rests upon RICS to make out the charges against Mr Judd and the Firm in accordance with Rule 43 of the RICS Disciplinary Registration and Appeal Panel Rules:
19. Case 115320 Charge 1 against Mr Judd and the single charge against the Firm

The Panel found:

- i. That the OSP wrote to Mr Judd on 12 December 2014 confirming its Final Decision in relation to a complaint from Mr and Mrs B and required the Firm to implement the OSP's Final Decision within 28 days of the date of that letter. That Final Decision required the Firm to refund the cost of a building survey report to Mr and Mrs B in the sum of £840, to make a goodwill payment of £50 for a shortfall in customer service, and to write a letter of apology to Mr and Mrs B;
- ii. That Mr Judd did not reply to the letter from the OSP dated 12 December 2014;
- iii. That the OSP wrote again to Mr Judd on 9 January 2015, and again on 19 January 2015, seeking confirmation that all required actions would be carried out within 7 days of the date of those letters;
- iv. That Mr Judd did not reply to the letters from the OSP dated 9 and 19 January 2015;
- v. That the Firm has failed to implement the remedies required in the Final Decision of the OSP in relation to Mr and Mrs B's complaint within 28 days of being notified of that Decision and that Mr Judd did not take steps to ensure that the Firm did so.

20. Case 115320 Charge 2 against Mr Judd

The Panel found:

- i. That RICS wrote to Mr Judd on 9 February 2015 following the complaint from the OSP to seek an explanation as to why the remedy set out in the OSP's Final Decision had not been implemented within the required 28 day timescale. RICS also sought confirmation as to whether or not the remedy had by then been implemented. This letter was sent by recorded delivery and signed for as delivered on 11 February 2015 at 11:56 am.
- ii. That RICS telephoned Mr Judd on 17 February 2015 to confirm that the letter of 9 February 2015 had been received. Mr Judd confirmed that the letter had been received, and had been read, and that a response would be sent by the end of that week, i.e. Friday 20 February 2015.
- iii. That Mr Judd failed to respond to the letter dated 9 February 2015 despite having indicated that he would do so by 20 February 2015.

21. Case 104041 Charge 1 against Mr Judd

The Panel found:

- i. That RICS wrote to Mr Judd on 28 October 2014. A copy of that letter was sent by email to the Firm, and there is evidence, which the Panel accepted, that the email was opened on 29 October 2014;
- ii. That the letter dated 28 October 2014 was sent following a complaint from a member of the public, Mrs C, about the conduct of the Firm in dealing with a party wall matter. RICS sought information in that letter about Mr Judd's handling of the matter on behalf of Mrs C and in particular the extent to which Mr Judd had kept Mrs C updated and had responded to correspondence. The Panel found that the information sought by RICS in this letter was reasonably requested following Mrs C's complaint;
- iii. That Mr Judd failed to respond to the letter from RICS dated 28 October 2014 despite a reminder letter having been sent by email on 25 November 2014, and subsequent letters from RICS sent by recorded delivery on 10 and 19 December 2014. Therefore the Panel found that Mr Judd failed to submit the information reasonably requested by RICS.

22. Case 104041 Charge 2 against Mr Judd

The Panel found:

- i. That not only did Mr Judd fail to respond to the letter from RICS dated 28 October 2014 but he also failed to respond to an email seeking a response to that letter sent to the Firm. The evidence proved that email was read on 25 November 2014. He also failed to respond to a further letter dated 10 December 2014 from RICS;
- ii. Based on its findings of fact set out above, the Panel found that Mr Judd did not respond to written correspondence sent to him by RICS between 28 October 2014 and 10 December 2014 in connection with the complaint received from Mrs C. The Panel determined that this conduct amounted to a failure to co-operate fully with an RICS Regulation Officer.

Panel's Decision

23. Based on its findings of fact as set out above, the Panel found all the charges against Mr Judd and the Firm, and the breaches of the Rules referred to in those charges, proved.
24. The Panel went on to consider whether or not its findings of fact rendered Mr Judd and the Firm liable to disciplinary action because of a failure to adhere to the RICS Rules governing the conduct of Members and Firms.
25. The Panel found that Mr Judd and the Firm were liable to disciplinary action. There was a clear failure on the part of Mr Judd to take steps, as the sole principal and contact officer of the Firm, to ensure that the Firm implemented the OSP's Final Decision within the required period of 28 days. It was Mr Judd's individual responsibility as the Firm's sole principal to ensure that the OSP's Final Decision was implemented in a timely manner in order to maintain the integrity of the complaints process. That process is intended to provide an independent and effective means of redress for members of the public. A failure to do so undermines that very process and the public protection mandate of the regulator. Mr Judd had the opportunity to appeal the decision of the OSP but he did not do so.
26. It is essential that Members and Firms co-operate with RICS. A failure to do so undermines the regulatory process. If Members are to benefit from membership they have a responsibility to provide information when reasonably requested to do so and cannot simply ignore correspondence from RICS. The collective reputation of the profession is of crucial importance and depends on Members and Firms respecting the role and responsibilities of their regulator.

Penalties

27. Upon finding Mr Judd and the Firm liable to disciplinary action, the Panel noted that it had the power in byelaw 5.4.2 to impose one or more disciplinary penalties upon the Member and the Firm.
28. In considering what sanction, if any, was appropriate, the Panel noted that it was expected to comply with the RICS Sanctions Policy but that each case must be considered on its own individual facts and circumstances.
29. The Panel first considered what sanction, if any, was appropriate in relation to Mr Judd as an individual Member of RICS.
30. The Panel considered the mitigating and aggravating features of this case. It was of the view that Mr Judd had shown a fundamental lack of insight into his responsibilities as a Member of RICS and had failed to take any remedial action in response to two separate investigations by RICS, having been given more than one opportunity to do so. As a consequence, clients of the Firm suffered delay and could have suffered loss.
31. Mr Judd has been in practice for a number of years having been a member of RICS since 1989 so is an experienced member of the profession. Despite this, he has shown a lack of responsibility and a disregard for the regulatory process. He has shown no remorse and took no steps to ensure that the Final Decision of the OSP was implemented. This is not the first time this has happened. The Panel took into account a previous finding by an RICS Disciplinary Panel that the Firm had failed to implement a Decision of the OSP and had failed to co-operate with the RICS Regulatory processes; a finding in relation to which a reprimand and conditions were imposed. The Panel considered that although the previous finding related to the Firm and not Mr Judd as a Member, because Mr Judd was sole principal of the Firm he would have been fully aware of the consequences of non-compliance with an OSP decision.

32. The Panel considered that these proceedings and the hearing today were wholly avoidable. Mr Judd has demonstrated a complete lack of understanding of both the role of RICS and the consequences of his actions on members of the public.
33. The Panel took into account the reference in Mr Judd's email to RICS of today's date, to clients who had been satisfied with the service provided by the Firm. However, the Panel had received no evidence in the form of testimonials from those clients. In any event, the issues before the Panel were not in relation to the standard of service provided to clients but rather to a failure to implement decisions of the OSP and to engage with RICS.
34. The Panel considered whether it should impose any penalty at all on Mr Judd. It considered the conduct sufficiently serious to justify the imposition of a penalty.
35. The Panel considered the range of penalties available to it starting with the least severe.
36. The Panel decided that a Caution was not appropriate in this case. This was not a minor breach of the Rules.
37. The Panel considered whether or not a Reprimand was appropriate. The Panel noted that a Reprimand had been imposed previously in respect of similar failings by the Firm of which Mr Judd was sole principal, and clearly this had had no effect as the conduct has been repeated. The Panel also considered that an undertaking would serve no useful purpose because it had no confidence that the imposition of an undertaking would avoid a further repetition of the conduct which led to today's proceedings.
38. The Panel considered whether a Fine was the appropriate and proportionate penalty in this case. The Panel determined that a Fine would not of itself adequately address Mr Judd's attitudinal failings or otherwise protect members of the public.
39. The Panel was of the view that Mr Judd had demonstrated a lack of understanding of the role of RICS and of the impact of his conduct on the public. This is demonstrated in his repeated failure to ensure that the Firm complied with decisions of the OSP and his disregard for the requirements of RICS. The Panel also noted that Mr Judd has failed to comply with the requirements of RICS in relation to CPD in the last two years for which he has received a Caution and a Fine. Protection of the public is paramount and the collective reputation of the profession has been undermined by the actions of Mr Judd.
40. In all the circumstances, the Panel decided to expel Mr Judd from membership of RICS. It is of the view that expulsion is justified and proportionate in this case and that it is necessary for the protection of the public. This case is illustrative of a persistent and wilful failure to comply with RICS Rules of Conduct and to co-operate with RICS.
41. Having considered the penalty against Mr Judd as a Member of RICS, the Panel went on to consider what sanction, if any, was appropriate in relation to the Firm. There was only one finding against the Firm; that is failure to implement a final decision of the OSP. However, this was the second occasion on which such a finding has been made against the Firm and accordingly, having again considered each sanction in ascending order, the Panel has determined that removal of the Firm's registration for regulation is the necessary and proportionate sanction to protect the public; the Panel considered that in effect there was no distinction between the actions of Mr Judd and those of the Firm in relation to the failure to implement the decisions of the OSP.
42. Further, the Panel determined that the Firm should be ordered to pay a Fine in the sum of £890. This sum reflects the fact that RICS was required to pay this amount to Mr and Mrs B in order to implement the decision of the OSP where the Firm had not discharged its obligation to do so.

Determination on Publication and Costs

Publication

43. The Panel directed publication in accordance with Supplement 3 to the Sanctions Policy and considered that there was no reason to depart from the presumption of publication in this case.

Costs

44. The Panel ordered that Mr Judd pay the costs of the RICS in this case of £5,025.50. The Panel was mindful of the need to consider a costs award that is just and reasonable and took into account the matters raised by Mr Judd in his email of today about his financial position. However, Mr Judd brought these proceedings upon himself. He would have been well aware that a failure to implement a decision of the OSP would result in a Disciplinary Hearing which would result in costs being incurred. Mr Judd was given the opportunity to complete and return a statement of his means but he did not do so.
45. The Panel made no separate costs award against the Firm.

Appeal Period

46. Mr Judd and the Firm have 28 days from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.
47. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days from the service of the notification of the decision to require a review of this decision.