

## **Disciplinary Panel Hearing**

### **Case of**

**Mr Peter Rhys Williams**

On

Thursday 18 April 2019

At

55 Colmore Row, Birmingham

### **Panel**

Sally Ruthen (Chair)

Patrick Bligh-Cheesman (Lay Member)

Justin Mason (Surveyor Member)

### **Legal Assessor**

Alastair McFarlane

### **Hearing Officer**

Jae Berry

## **The formal charge is:**

1. On 01 February 2017 the Solicitors Disciplinary Tribunal made findings that, whilst acting for a client in your capacity as a solicitor, you failed to act with integrity contrary to Principle 2 of the SRA Principles 2011. Those findings were upheld on appeal.

**You are therefore liable to disciplinary action in accordance with Bye-law 5.2.2**

## **DETERMINATION**

### **Representation and Service**

1. RICS was represented by Mr Lynch and Mr Williams appeared in person and represented himself. The Notice of Hearing, dated 10 January 2019, was sent by RICS to Mr Williams by post and by e-mail on 10 January 2019.
2. The Panel had before it two bundles of documents. Bundle 1 from RICS was numbered pages, 1-176 and Bundle 2 from Mr Williams was numbered pages 124. Additionally, the Panel received a 7 page document from Mr Williams, dated April 2019 entitled "Note for RICS' Disciplinary Hearing on 18 April 2019" ("the Note") together with a copy of the case Conservative and Unionist Central Office v Burrell (Inspector of Taxes). In addition, it received a Case Summary, dated 19 February 2019 from Mr Lynch.

### **Preliminary Issue**

3. At the outset of the hearing Mr Williams, whilst indicating that he was not making any application, submitted that the Panel had to be satisfied that it had jurisdiction over him, as he was an honorary member of RICS.

4. Having accepted the advice of the Legal Assessor, the Panel determined that it was appropriate to hear submissions from the parties and determine the issue of jurisdiction as a preliminary matter.
5. Mr Lynch, for RICS submitted that Bye-law 2.1 listed the classes of members of RICS and this included "Honorary Members". Bye-law 5.2 dealt with "Liability of Members", which included at 5.2.2 that a member may be liable to disciplinary action by reason of conduct liable to bring RICS into disrepute. Mr Lynch submitted that "honorary" members were members and were liable under this bye-law. Thus, he submitted that there was jurisdiction over Mr Williams. Mr Lynch further relied upon Bye-law 5.2.3, to the effect that "a member shall not be entitled to resign from membership of RICS until all proceedings against him under this bye-law have been concluded..."
6. Mr Williams told the Panel that he was informed that RICS were considering bringing disciplinary proceedings against him in April 2018 and that they would be proceeding in June 2018. He indicated his intention to resign in his letter to the President of the RICS on 1 October 2018 "if the decision to pursue disciplinary proceedings against me is irrevocable" (pp. 165-168 of Bundle 1) and then in his letter dated 9 November 2018 to the President of RICS, stated "I hereby resign" (pp. 174-175 of Bundle 1). He indicated that the Panel would have to be satisfied firstly whether it had jurisdiction because he had resigned and secondly, whether it had jurisdiction even if his resignation was not effective. Mr Williams also referred the Panel to the authority of *Conservative and Unionist Central Office v Burrell (Inspector of Taxes) [1982] WLR 522* in support of the advice he had referred to in paragraph 20 of his Note from leading counsel, to the effect that the source of any jurisdiction must be contractual. In that note he indicated leading counsel's view that "there is no binding contract between RICS and myself".

7. The Panel accepted the advice of the Legal Assessor. It rejected Mr Williams's contentions and was satisfied that RICS had established that there was jurisdiction over him as an honorary member. Its reasons were as follows.
  
8. The Panel was satisfied under the Bye-Laws that "Honorary Members" was a class of membership of the RICS (Bye-Law B2.1.1(c)). It was further satisfied that under Bye-Law B5.2 "Liability of Members", the liability for disciplinary action applied to "Every Member" (B5.2.1) and that this included Honorary Members. It was further satisfied that by the operation of Bye-Law B5.2.3, no member was entitled to resign from membership "until proceedings against him" had been concluded "other than in exceptional cases at the discretion of the Head of Regulation". The Head of Regulation had not exercised his discretion in this case. The Panel was satisfied that Mr Williams' purported resignation expressed in his letter of 9 November 2018 to the President of RICS was of no effect because of the operation of Bye-Law B5.2.3. It was satisfied that RICS had indicated in June 2018 that proceedings against Mr Williams were going ahead and that this fell clearly within the operation of this Bye-Law. It did not consider that the date the charge was issued (10 January 2019) was the defining point of the start of proceedings and rejected any contention that the Bye-Law would not come into operation until the date of issue of the charge.
  
9. The Panel was satisfied that persons who have been granted the privilege of honorary membership, were, if they accepted the status, bound by the obligations of membership. If a contractual basis was required between members of RICS and RICS, it was satisfied that in Mr Williams' case, there was a binding contract between him and RICS. Mr Williams did not dispute that he accepted RICS' offer of honorary membership in 2010. Whilst the Panel has not seen documentation in relation to this, it accepted Mr Williams' recollection that it was probably confirmed in writing and that he accepted it following a lunch with the President of RICS. The consideration for such a contract (most likely partly oral and partly reduced to

writing) offering him the prestige, privilege and benefit of honorary membership was Mr Williams impliedly agreeing to obey the Bye-laws, Regulations and Rules of RICS.

### **Amendment of the Charge**

10. With the agreement of the parties the Panel amended the charge under rule 41 (h) inserting "one of" before "those findings". Accordingly, the amended charge read as follows:

On 01 February 2017 the Solicitors Disciplinary Tribunal made findings that, whilst acting for a client in your capacity as a solicitor, you failed to act with integrity contrary to Principle 2 of the SRA Principles 2011. One of those findings was upheld on appeal.

**You are therefore liable to disciplinary action in accordance with Bye-law 5.2.2**

### **Background**

11. Mr Williams has been an honorary member of RICS since December 2010.
12. Mr Williams was admitted to the Roll of Solicitors in October 1982. He practised as a solicitor, principally as a litigator with a speciality in the law of agricultural holdings. In April 2011 Wilsons Solicitors acquired the practice of Ebery Williams LLP of which Mr Williams had been a member. Internal disagreements broke out and Mr Williams and a fellow partner were excluded from Wilsons. In June 2012 he retired as a result of a resolution authorising the service of an Involuntary Notice of Retirement on him. That notice was the subject of acrimonious High Court proceedings brought by Mr Williams against Wilsons. Wilsons carried out a detailed review of Mr Williams' files, which led to Wilsons making a report to the Solicitors Regulation Authority about Mr Williams' conduct in relation to his dealings with a client. That report led to the disciplinary proceedings subsequently brought against Mr Williams.

13. The allegations were that Mr Williams devised and sought to implement a scheme to defraud the client's creditors and mislead third parties. The client was owner of a property subject to a mortgage in favour of Northern Rock for c. £2.8 million. The client was bankrupt and his trustee in bankruptcy was interested in any equity in the property. The essence of the alleged impropriety was Mr Williams' intention, on his client's behalf, to secure the sale of the property to F Ltd by Northern Rock for c £2.2 million, when F Ltd was a company to which the client was connected and it was the client's intention that there would be an onward sale to JD (an associate of the client) for £3.9 million, meaning the client potentially stood to gain the whole or a share of £1.7 million. Following a hearing held between 28 November 2016 to 9 December 2016 before the Solicitors Disciplinary Tribunal ("the SDT"), which handed down its written judgment on 1 February 2017, the SDT found Mr Williams guilty of misconduct by:
- i. Representing that his client did not have a valuation of a certain property in the sum of £3.9 million – found to be misconduct involving dishonesty
  - ii. Representing that negotiations were proceeding between his client and F Ltd – found to be misconduct amounting to a want of integrity
  - iii. Representing that he acted for F Ltd – found to be misconduct amounting to a want of integrity
14. The SDT ordered that Mr Williams be struck off the Roll of Solicitors.
15. Mr Williams appealed the SDT findings to the Administrative Court. In June 2017 the Court quashed the SDT's finding of dishonesty based on the £3.9 million representation for serious procedural irregularities (paragraph i above) and the finding of want of integrity based on the F Ltd representations (paragraph iii above) but dismissed the appeal against the finding of want of integrity based on the negotiation representations (paragraph ii above).

16. In relation to its decision to uphold the finding of lack of integrity in relation to paragraph ii above, the Court stated that there was no basis for criticism of the SDT's findings and:

"It is unrealistic to submit that the statements made by Mr Williams represented merely *"loose language"*. They involved deliberate words used as part of a theme pursued by Mr Williams, on more than one occasion, over a period of months and designed to create (and actually creating) a false impression. It was a strategy wholly consistent with Mr Williams' advice to the client that any interest which the client was to have in the purchasing company should not be visible to Northern Rock, as it would have the potential to create unwarranted delays and/or complications in the transaction."

17. In August 2017 the Administrative Court quashed the SDT's sanction of striking Mr Williams off the Roll of Solicitors and substituted an order suspending Mr Williams from practice for nine months from 9 December 2016.

### **RICS Submissions**

18. RICS submitted that the SDT's finding that whilst acting for a client in his capacity as a solicitor, Mr Williams failed to act with integrity contrary to the Solicitors Regulation Authority Principles 2011, rendered Mr Williams liable to disciplinary action under bye-law 5.2.2.

### **Mr Williams's Submissions**

19. Mr Williams does not accept that the Administrative Court was correct in upholding the SDT finding that he had acted with a lack of integrity. He continues to submit that he "had not acted in any way in breach of my professional obligations and certainly not dishonestly or with a lack of integrity." He stated that he continued "to consider the outcome of the process against me to be a most appalling miscarriage of justice" (paragraph 12 of the Note). Nonetheless, Mr

Williams stated that he accepts that this Panel will not be considering the merits afresh and is bound by the determination of the Administrative Court.

20. In oral submissions Mr Williams stated that the contention that he has brought RICS into disrepute did "not bear scrutiny". He drew the Panel's attention to the decision and observations of the "Authorised Officer" of the Solicitors Regulation Authority, dated 27 September 2017 by which his practising certificate as a solicitor was restored unconditionally.

### **Findings of fact**

21. The Panel carefully considered the documentary evidence it received and the submissions of both parties.
22. The Panel reminded itself that the burden of proving the charge was on RICS alone and that the standard of proof was the ordinary civil standard, namely the balance of probabilities. The Panel accepted the advice of the Legal Assessor.
23. The Panel has received the judgment of the Administrative Court, dated 21 June 2017 as well as the original decision of the SDT, dated 1 February 2017.
24. The Panel also noted that Mr Williams accepted the fact that the SDT made a finding that, whilst acting for a client as a solicitor, he failed to act with integrity contrary to Principle 2 of the SRA Principles 2011 and that that finding was upheld on appeal.
25. By virtue of the documents before it and Mr Williams' admission of the charge, the Panel found the factual allegation proved.



## **Liability for Disciplinary Action**

26. RICS submitted that Mr Williams' conduct demonstrated that he had fallen seriously below the highest standards of behaviour that RICS expects from its members both in their professional and personal lives. RICS submitted that the finding of the SDT upheld on appeal was sufficiently serious to render Mr Williams liable to disciplinary action under Bye-Law 5.2.2 (a).
27. Mr Williams did not accept that he was liable to disciplinary action.
28. The Panel accepted the advice of the Legal Assessor. It reminded itself that liability to disciplinary action was a matter for the judgment of the Panel. It was satisfied that the finding upheld on appeal that Mr Williams failed to act with integrity contrary to the SRA Principles 2011 in his role as a solicitor amounted to conduct that was a serious falling short of his professional obligations. He was at the time of the conduct that constituted this finding, an honorary member of RICS. The Panel was satisfied that such a finding against an honorary member of RICS presented a real possibility of damage to the reputation of the RICS and was conduct liable to bring RICS into disrepute. The Panel had no doubt that that it was sufficiently serious to render him liable to disciplinary action before this professional body.

## **Sanction**

29. The Panel next considered sanction. It noted the submissions of RICS and the submissions of Mr Williams. It accepted the advice of the Legal Assessor. It had regard to RICS' Sanctions Policy and bore in mind the overriding principle of proportionality.
30. The Panel reminded itself that the purpose of sanctions is not to be punitive, although 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.

31. Whilst mindful that its function was not to re-sanction Mr Williams for his conduct as a solicitor, it had a duty to safeguard the reputation and standing of RICS and this conduct was committed whilst Mr Williams had also been an honorary member of RICS. The Panel had regard to the observations of the Administrative Court in assessing the seriousness of the conduct. It noted that Mr Williams' "consciously and deliberately made misrepresentations to a third party bank" on 3 occasions over a period of 5 months.

32. The Panel considered carefully any mitigating and aggravating factors of this case as well as the issue of proportionality in weighing up the most appropriate response.

33. The Panel considered the following mitigating factors to be present:

- Mr Williams made no financial gain and there was no loss to clients;
- Mr Williams had no previous disciplinary record;
- Mr Williams had engaged with the proceedings and attended the hearing.

34. The Panel considered that the following aggravating factors were present:

- Mr Williams has not demonstrated any insight as he continues to maintain that he has not acted in any way in breach of his professional obligations;
- He has not demonstrated any understanding of the impact of the finding on the reputation of RICS;
- There was no evidence that Mr Williams appreciated how the public at large would view his conduct leading to the SDT's finding which was upheld on appeal;
- Mr Williams has not offered any expression of apology, remorse or regret;

- There were three representations made over a prolonged period that constituted the failure to act with integrity.

## Decision

35. The Panel reminded itself that acting with integrity is a fundamental tenet of any profession and that the reputation of the profession and its regulator is more important than the fortunes of any individual. Whilst reminding itself that it is not fettered by the sanction determination imposed on Mr Williams in his role as a solicitor, the Panel noted, in particular, the observations of Carr J at paragraph 38 and of the President at paragraph 69 of the Administrative Court's decision of 2 August 2017.
36. The Panel had the benefit of seeing and hearing from Mr Williams 18 months after the substitution by the Administrative Court of the sanction of suspension. The Panel was satisfied that Mr Williams had not developed any further insight into the impact of the SDT's upheld finding on the public's perception of his standing as an Honorary Member of RICS. Mr Williams consistently indicated that he was "neutral" about whatever decision was made about his membership. When questioned by the Panel and despite his assertion that he would like to remain a member, he still gave the Panel no evidence of any understanding of the impact of the finding on the reputation of RICS. It was the Panel's judgment that Mr Williams was not particularly concerned about his honorary membership of RICS, regarding it as useful but not considering that it conferred any responsibility on him.
37. The Panel considered the matter too serious for no sanction at all to be imposed. It considered the sanctions in ascending order of restrictiveness.
38. The Panel considered that a Caution was insufficient to mark the seriousness of the behaviour and to adequately maintain the reputation of the profession, and the failing could not be described as "minor".

39. Bearing in mind the seriousness of the conduct and the Panel's judgment as to the highly detrimental impact such serious behaviour has upon the standing and reputation of RICS, it was satisfied that neither a reprimand nor conditions accompanied with a fine were sufficient to maintain public confidence in RICS. Neither would such sanctions uphold proper standards of conduct.
38. The Panel was satisfied that Mr Williams' behaviour was fundamentally incompatible with him remaining a member of RICS and that the only appropriate and proportionate sanction in the circumstances was expulsion of Mr Williams from RICS.

### **Publication**

39. The Panel saw no basis for departing from the presumption of publication. The Panel considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. This decision will be published on the RICS website and in the RICS magazine Modus.

### **Costs**

40. RICS made application for costs in the sum of £5050 and had submitted a Schedule of Costs.
41. The Panel noted that under Rule 34 it had the discretion whether or not to make an order for costs and if it exercised that discretion to impose such amount as it considered to be fair and reasonable. The Panel decided in all the circumstances of this somewhat unusual case to make no order as to costs.

### **Appeal Period**

42. Mr Williams has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 60 of the Rules.