

Disciplinary Panel Hearing

Case of

**Mr Robert Heald [0060676] and Wallakers [017866]
Surbiton KT6**

On

Wednesday 19 April 2017

At

Surveyor Court, Coventry

Panel

Julian Weinberg (Lay Chair)
Ian Hastie (Surveyor Member)
Chris Pittman (Surveyor Member)

Legal Assessor

Mark McConochie

RICS Representative

Vicki Buckley

The formal charges against the firm are:

1. In January 2015 Wallakers (the Firm) provided information to RICS during its investigation into a complaint from Mr N that in April 2014 it had corrected an error made in August 2013 by transferring the sum of £10,000 to the client account for Meadowside from the client account for Brae Court Freehold to which it had been wrongly attributed.
2. The Firm provided copies of the client ledgers for the client accounts in 1 above to RICS by way of confirmation which showed rectifying entries dated 06 April 2014 and in so doing the Firm failed to act with integrity and it failed to avoid actions or situations which were inconsistent with its professional obligations as it had not made any transfer of

funds in April 2014, and the information it provided to RICS was false and likely to mislead RICS in its role as regulator of the profession.

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

Between August 2013 and January 2015 Wallakers failed to preserve the security of clients' money entrusted to its care in the course of its business in that

1. In August 2013 it transferred the sum of £10,000 from the client account for Meadowside to the client account for Brae Court in error
2. having been informed by its accountants in March 2014 that £10,000 had to be transferred from the client account for Brae Court to the client account for Meadowside to correct that error the firm did not make that transfer until December 2014.

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

The formal charge against Mr Heald is:

1. In January 2015 you provided information to RICS during its investigation into a complaint from Mr M that in April 2014 you had corrected an error made in August 2013 by transferring the sum of £10,000 to the client account for Meadowside from the client account for Brae Court Freehold to which it had been wrongly attributed
2. You provided copies of the client ledgers for the client accounts in 1 above to RICS by way of confirmation which showed rectifying entries dated 06 April 2014
3. You provided false information to RICS as no such transfer of funds had been made in April 2014 and in doing so you were
 - (a) dishonest as you knew that the information you had provided to RICS was false and likely to mislead RICS or
 - (b) did not act with integrity and did not avoid actions or situations which were inconsistent with your professional obligations in that you failed to make proper enquiries to establish that the information you gave to RICS was correct

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

Mr Heald appeared before the Panel as RICS Member and as sole principal and contact officer for Wallakers (“the Firm”). Mr Heald was not represented and neither was the Firm.

Preliminary Matter

RICS applied to amend paragraph 1 of the first charge against the Firm to refer to the complainant as “Mr N” and not Mr M, as stated in the charges as drafted. Mr Heald did not object to the amendment being made. Having heard and accepted the advice of the legal assessor, the Panel considered the amendment to be of a minor and technical nature which, if made, would not affect the overall fairness of the proceedings and therefore agreed to the amendment being made.

Burden and standard of proof

RICS is required to prove the allegations against Mr Heald and the Firm to the civil standard; that it is on the balance of probabilities.

Evidence

The Panel read the RICS bundle of documents, consisting of 98 pages, and the statement submitted by Mr Heald. RICS did not call any witnesses of fact. Mr Heald made representations on his own behalf and on behalf of the Firm.

The Charges

The charges were put to Mr Heald and he admitted:

The facts as set out in paragraphs 1 and 2 of Charge 1 against the Firm;

The facts as set out in paragraphs 1 and 2 of Charge 2 against the Firm;

The facts as set out at paragraphs 1 and 2 and 3(b) of Charge 3 against him personally;

Mr Heald did not admit the allegation of dishonesty as set out at paragraph 3(a) of Charge 3.

On the basis of these admissions the Panel found:

Charge 1 against the Firm proved. Mr Heald admitted that the information provided to RICS that a transfer of funds had taken place on 6 April 2014 was false. The provision of false information to RICS is likely to mislead and is inconsistent with a Firm’s professional obligations contrary to Rule 3 of the Rules of Conduct for Firms 2007.

Charge 2 against the Firm proved. £10,000 of client money had been incorrectly attributed by the Firm and this was a serious matter which could have had financial consequences for both Firms concerned. The Panel considered this to be a clear failure to preserve the security of client money in breach of Rule 8 of the Rules of Conduct for Firms 2007.

The Panel treated the allegation of dishonesty at paragraph 3(a) of the third Charge as not proven.

Having heard from the RICS and Mr Heald and having considered all of the evidence before it, the Panel makes the following findings in relation to Charge 3:

1. A transfer of £10,000 was incorrectly made by the Firm from the client account of Meadowside Limited to the client account of Brae Court Limited on 15 August 2013;
2. In January 2015 in response to an RICS investigation into a complaint by Mr N, Mr Heald produced copies of client ledgers for Brae Court Limited and Meadowside Freehold Limited in support of his assertion to RICS that a transfer to correct the error had been made by the Firm on 6 April 2014. This information was false and was relied upon by RICS. As a consequence their investigation into the initial complaint by Mr N was closed;
3. Mr Heald did therefore provide false information to RICS that the correcting transfer had been made in April 2014, 8 months prior to when it had actually been made in December 2014;
4. However, whilst the provision of false information to RICS is a very serious matter, the Panel is not satisfied that Mr Heald knew that the information was false or that he acted dishonestly in providing it. The Panel accepts Mr Heald's evidence that he was provided with the incorrect information by his accounts team and that he therefore relied upon it as being accurate. The Panel accepts Mr Heald's evidence that he had no intention to mislead and that he understood it to be correct at the time he provided it. The Panel notes that at the time it was provided to RICS, in January 2015, that the transfer had actually been made, on 2 December 2014, so there would have been no apparent need to attempt to deliberately deceive RICS into thinking the transfer had been made when by that time, it had been;
5. However, the Panel does find – and Mr Heald admits this – that he did not act with integrity, or consistently with his professional obligations. He clearly failed to make proper enquiries to ensure that he was providing accurate information to RICS and this is a serious matter.
6. The Panel found that Mr Heald's conduct as found proved collectively amounts to a breach of Rule 3 of the Rules of Conduct for Members 2007.

Liability to Disciplinary Action

Taking into account the charges the Panel has found proved, it went on to consider, in light of all the surrounding facts and circumstances, whether or not the conduct was sufficiently serious to render Mr Heald and/or the Firm liable to disciplinary action. This is a matter for the Panel's collective judgment.

The Panel has found that the Firm has failed to preserve the security of clients' money entrusted to its care and has provided false information which was likely to, and did, mislead the RICS. Even though the Panel made no finding of dishonesty against Mr Heald, it has found that he failed to act with integrity and consistently with his professional obligations as a surveyor. These breaches of the Rules as found proved are serious matters which the Panel considers clearly cross the threshold of seriousness so as to render both Mr Heald and the Firm liable to disciplinary action.

Decision as to sanction

The Panel bore in mind 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.

The Panel accepted the advice of the Legal Assessor and had regard to the indicative sanctions guidance of RICS. The Panel noted that the sanctions guidance provides that, in the absence of extenuating circumstances, a finding of lack of integrity is likely to lead to expulsion or withdrawal of a Firm's registration. However, each case must be considered on its own individual facts and surrounding circumstances.

It considered carefully the mitigating and aggravating factors of this case.

The Panel took into account that:

- neither the Firm or Mr Heald, who has been a member of RICS for 35 years, have a disciplinary history;
- Mr Heald made admissions as to the charges against him and the Firm;
- Neither he nor the Firm had not benefitted financially;
- Mr Heald had transferred the monies to the correct ledger and Mr Heald was making arrangements to compensate for any loss of interest;
- there was no deliberate intent on Mr Heald's part to deceive;
- Mr Heald has taken steps to prevent a repetition of the matters found proved by ensuring that the Firm now undertakes daily reconciliations of its client ledgers;
- Mr Heald has demonstrated insight into his and the Firm's failings accepting that he should have personally transferred funds from his own account to regularise the situation as soon as he had been made aware of what had happened. He accepted that what took place was "totally unacceptable" and that his and the Firm's actions "caused further unacceptable distrust".

However, the Panel had found that the Firm and Mr Heald had failed to act with integrity and had failed to act consistently with their professional obligations in breach of the Rules of Conduct. The charges arose because client money had been mishandled by the Firm and Mr Heald had provided information which had misled the RICS as part of its investigation into a complaint. These are very serious matters. The duration of the breach was also an aggravating feature in that the funds were transferred to the wrong client account in August 2013 and not paid back until December 2014. Mr Heald did not ensure that prompt steps were taken to correct the error.

The Panel considered that the conduct found proved against the Firm too serious to justify imposing no sanction at all, and was not so minor as to justify a caution. Taking into account the risk to clients associated with the Firm's failure to preserve the security of client money entrusted to its care, the Panel considered a reprimand to be justified and proportionate and therefore reprimands the Firm. The Panel considered whether to impose an undertaking but concluded that this was not appropriate as in all the circumstances this would not address the failings found proved.

Taking into account the seriousness of the conduct when viewed collectively, the Panel also imposed a fine on the Firm of £5,000 to be paid to RICS within 21 days of the date of this decision.

Mr Heald had given assurances on behalf of the Firm as to steps that he had taken to ensure that similar errors were not repeated in the future. The Panel therefore considered it appropriate and justified that this is confirmed and that the Firm submits to a further Regulatory Review Visit by or on behalf of the RICS not later than 31 December 2017. The costs of this Regulatory Review Visit are to be borne by the Firm. The Panel therefore orders that a condition be attached to the Firm's registration to that effect. A failure to comply with this condition will lead to further disciplinary action.

The Panel considered in light of all of the mitigating features that there are sufficiently extenuating circumstances such that withdrawal of the Firm's registration was neither necessary nor proportionate

The Panel also considered whether to impose a sanction against Mr Heald. Taking into account all of the circumstances of this case, the Panel considered that it was justified and proportionate to impose a sanction against Mr Heald given the finding made against him personally.

The Panel considered the conduct to be too serious to justify a caution and that undertakings or conditions as to Mr Heald's membership would not be appropriate because they would not address the failings found proved. The Panel considered that a reprimand and a fine against Mr Heald of £2,500 were proportionate and justified and reflected the seriousness of the breaches of the rules found proved against him. The Panel therefore reprimands Mr Heald. The fine must be paid by Mr Heald within 21 days of the date of this decision.

The Panel considered in light of all of the mitigating features that there are sufficiently extenuating circumstances such that expulsion was neither necessary nor proportionate.

Publication and Costs

Publication

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.

The Panel sees no reason for departing from the normal practice in this case and Mr Heald did not object to publication. 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.

The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy.

Costs

The RICS Presenting Officer asked for costs in the sum of £5,120.00 and had provided a schedule to Mr Heald in advance of the hearing. Mr Heald made no representations on costs although did provide a statement of means.

Taking into account the costs claimed and the means of Mr Heald and the Firm, the Panel 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 therefore orders that Mr Heald and the Firm both pay 50% of RICS costs amounting to £2,560.00 to be payable by the Firm and £2,560.00 to be payable by Mr Heald, both sums to be paid within 21 days of the date of this decision.

Appeal Period

Mr Heald 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.

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.