

## **Disciplinary Panel Hearing**

### **Case of**

Parc Properties Management Ltd. [036580]

London E14.

### **On**

Thursday 14 March 2019

### **At**

RICS, 55 Colmore Row, Birmingham B3 2AS

### **Chair**

Ian Hastie (Surveyor Chair)

### **Members**

Catherine Brown (Lay Member)

Patrick Bligh-Cheesman (Lay Member)

### **Legal Assessor**

Rosemary Rollason

### **RICS Representative**

James Lynch

### **Relevant Person**

Peter Plunkett FRICS, Chairman, and Mark Plunkett, Managing Director, of Parc Properties Management Ltd. attended the hearing.

Parc Properties Management Ltd. was represented by Paul Mitchell QC, Counsel, instructed by Rebecca Archer, Kennedys Law LLP.

### **Hearings Officer**

Maria Choudhury

**The formal charge against the Member Firm, Parc Properties Management Ltd., as amended at the hearing, is:**

1. On 17 January 2018, the Firm was convicted at Central London Magistrates' Court of the following:
  - a. Fail to comply with requirements/prohibition by regulations where that failure risks death/serious injury in case of fire, contrary to sections 32(1)(a) of the Regulatory Reform (Fire Safety) Order 2005.

**The Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2**

## **Introduction**

1. The Member Firm, Parc Properties Management Ltd. ("the Firm") appeared before the RICS Disciplinary Panel in connection with the charge set out above.

## **Amendment of the charge**

2. The Panel accepted an application to amend a technical error in the particulars of the charge to reflect that the Firm was convicted under section 32(1)(a) of the Regulatory Reform (Fire Safety) Order 2005. The charge as set out in the Notice of Hearing incorrectly referred to sections 32(1)(b) and (3) based on information previously provided by the Court.
3. The Panel took advice from the Legal Assessor. The Panel was satisfied that no prejudice was caused to the Firm by the amendment and considered that it was important that the terms of the charge be accurate. Both parties consented and the Panel agreed that the amendment should be made.

## **4. Response**

5. The Firm admitted the charge, both in respect of the facts and in respect of liability to disciplinary action under Bye-law 5.3.2.

## **Background**

6. The Firm was incorporated as a limited company in 1993 and has been registered with RICS since 27 September 2007. Peter Plunkett is the Chairman and a director of the company and is a Fellow of RICS. His son, Mark Plunkett, is the Managing Director of the Firm. Hooman Vahabi is the Finance Director and is a Civil Engineer.
7. The Firm's business is managing commercial and residential properties. It currently manages 53 properties around London and the south east.
8. On 17 January 2018, the Firm pleaded guilty and was convicted at Central London Magistrates' Court of an offence of failing to comply with section 32(1)(a) of the Regulatory Reform (Fire Safety) Order 2005. On 19 March 2018, the Firm was sentenced at Southwark Crown Court to pay a fine of £40,000 and to pay prosecution costs of a similar amount. RICS obtained a copy of the Certificate of Conviction and a copy of the transcript of the comments of Her Honour Judge Taylor, Honorary Recorder at Southwark Crown Court, at the sentencing hearing. Both documents appeared in RICS' bundle.
9. The circumstances leading to the Firm's conviction were that the Firm was appointed by the management company of a block of flats, Meridian Place, as managing agents. The property consisted of five blocks, known as "cores". The Firm was responsible for the day to day management and maintenance of the common parts of the block. It was responsible for ensuring that the common parts of the building were compliant with the relevant fire safety requirements and that the residents were not exposed to unacceptable risk contrary to health and safety legislation.
10. On the night of 25/26 August 2012, a fire started in a flat on the 4<sup>th</sup> floor of one of the cores. A young woman who, with her partner, was a resident of flat on the 5<sup>th</sup> floor, returned home after a night out with friends. She saw the fire and attempted to reach and warn her partner on the fifth floor. The young woman was subsequently found by firefighters in the 4<sup>th</sup> floor lobby of the block and later died in hospital of

severe airway burns. The later verdict of the Coroner was that her death was accidental. She was the only fatality in the fire and other residents escaped with minor injuries.

11. Following these events, investigations into the cause of the fire at Meridian Place were carried out by the Fire Brigade and the Police. These investigations found serious faults in the building, including in relation to the maintenance of the building and the fire safety precautions. It was accepted that the failings of the Firm were not causative of the young female victim's death, which was found to be the result of defects in the door of the flat where the fire started for which the Firm bore no responsibility. However, the investigation found other failings in the Firm's responsibilities which had put residents at risk. Criminal proceedings were pursued in respect of the Firm.
12. As explained by Her Honour Judge Taylor at the sentencing hearing, whilst the Firm had obtained a Fire Risk Assessment (FRA) in respect of the property, it had failed to recognise that this was defective. The Judge's comments referred to the terms of the Fire Brigade's investigation report. She commented that serious fault lay with the third-party provider of the FRA, Vance Miller of Vance Miller Health and Safety Limited. That company was contracted by the Firm to undertake the FRA which had been produced in 2008. The Fire Brigade investigation found that Mr Miller's assessment was inadequate, in that it included an incorrect description of the building, an incorrect assertion that there was a lack of fire alarm, failure to identify the lack of ventilation and failure to identify the location and purpose of smoke detectors fitted in the lobbies. This was accepted by Mr Miller, who was also the subject of a criminal prosecution. The Firm was found to have been at fault in failing to identify the flaws in the FRA, which it accepted.
13. Faults were also identified in the fire alarm system. This was designed so that common parts were fitted with smoke detectors which when triggered, relayed notification to the control panel, which in turn released the smoke vent door on that floor. However, it was found that the control panel was not operational and during the fire, none of the doors or dampers or vents opened. It had been identified previously that the alarm system required to be repaired, but this had not in fact

been carried out. The investigation also found that the magnetic locks attached to the vent doors were not appropriate and the system had not been installed correctly.

14. There was also a failure to realise that the fire alarm system was powered down and that one of the dry risers in a different block at the property was defective.
15. Following the fire, the Firm co-operated with the Fire Brigade, the management company for Meridian Place and with other professionals to ensure that the fire safety measures at the property were rectified and met all relevant fire safety requirements.

## **Documents**

16. The Panel received a bundle of documents prepared by RICS, comprising 49 pages. The Panel also received a bundle comprising documents relating to service and the completed listing questionnaire.
17. The Panel also received a bundle of documents submitted on behalf of the Firm, comprising 406 pages and written submissions from Mr Mitchell QC.

## **Evidence of RICS**

18. Mr Lynch, on behalf of RICS, referred the Panel to the documentary evidence contained in the RICS bundle. He referred to the Certificate of Conviction from Central London Magistrates' Court and relied upon the admissions made by the Firm. Mr Lynch referred the Panel to the transcript of the sentencing comments of Her Honour Judge Taylor, Honorary Recorder of Westminster, at the sentencing hearing in Southwark Crown Court on 19 March 2018.

## **Evidence on behalf of the Firm**

19. Mr Mitchell QC referred the Panel to the witness statements provided by Peter Plunkett, Mark Plunkett and Hooman Vahabi and other relevant documents which appeared in the Defence bundle. In the light of the Firm's admissions, no witnesses were called to give oral evidence.

## **Submissions on behalf of RICS**

20. In relation to the facts of the charge, Mr Lynch on behalf of RICS submitted that the facts were proved by virtue of the Certificate of Conviction. The conviction was accepted by the Firm and was not in dispute.

21. In relation to liability to disciplinary action, Mr Lynch submitted that the matter was serious, as was apparent from the sentencing remarks. The Firm's failures caused a real risk of harm. The conviction and sentence imposed marked the seriousness of the potential risk.

22. Mr Lynch submitted that the subject matter attracted a high degree of public interest and also had had the potential to cause far worse consequences of harm than had transpired. This brought the profession into disrepute and clearly passed the threshold to render the Firm liable to disciplinary action.

## **Submissions on behalf of the Firm**

23. Mr Mitchell QC confirmed that the Firm admitted the criminal conviction. The Firm had pleaded guilty in the criminal proceedings. It had been convicted as alleged and there was no dispute as to the facts alleged in the charge.

24. The Firm also accepted that in the light of its conviction, it was liable to disciplinary action.

25. In relation to liability to disciplinary action, Mr Mitchell confirmed that this was accepted by the Firm. The Firm had always acknowledged its responsibility for the management oversights which gave rise to the criminal prosecution.

## **Legal Advice: facts and liability to disciplinary action**

26. The Panel was reminded that RICS is required to prove the factual allegations to the civil standard of proof; that it is more likely than not that any fact alleged occurred. The burden of proof is upon RICS, which brings the charges, and it was not for the Firm to prove its innocence. The Panel was able in this case to take account of the admissions made to the Charge on behalf of the Firm.
27. The Panel was reminded that Rule 41b of the Rules provides that where the Relevant Person, in this case the Firm, has been convicted of a criminal offence, a certificate of conviction is admissible as conclusive evidence of that conviction and of the Relevant Person's commission of that offence. It was not for the Panel to go behind the criminal conviction.
28. The question of whether or not any facts admitted or found proved would give rise to liability to disciplinary action was a matter for the Panel's judgment. The Panel was able to take account of the admission of liability made on behalf of the Firm, but ultimately this was a matter for the Panel's own judgment. Not every factual finding or breach of the rules of conduct would automatically result in liability to disciplinary action – the falling short of required standards must be serious.

## **Findings of fact**

29. The Panel carefully considered all the evidence it had heard and read. It considered the detailed submissions of both advocates.
30. In respect of the facts of the charge, the Panel had sight of the certificate of conviction from Central London Magistrates Court which confirmed that the Firm was convicted of the offence alleged on 17 January 2018 and was sentenced at Southwark Crown Court on 19 March 2018. The Firm admitted the conviction. The Panel was satisfied that the facts were proved to the required civil standard.

## **Liability to disciplinary action**

31. On the basis of the facts found proved, the Panel considered whether the Firm was liable to disciplinary action. The Panel accepted the advice of the Legal Assessor. The Panel bore in mind that this was a matter for the Panel's judgment. It was mindful that not every falling short of RICS' standards or breach of RICS' rules will give rise to disciplinary action: the falling short in question must be of a serious nature.
32. The Panel was mindful of the seriousness of the matter that a person's life had been lost in the fire incident of August 2012, and that public interest might think it critically important to address this. Investigation reports submitted to the hearing all concluded that the major contributing factor to the fatality (other than the cause of the fire) was the failure of the exit door of the fire flat to close. Alterations which compromised the safe functioning of the door had been made to the flat by other parties. The Panel noted that it was established during the investigations that neither the location nor the operation of this door were within the Firm's area of responsibility, or duty of care.
33. The Panel was satisfied the charge found proved represented a serious breach of RICS' Code of Conduct and Bye-law 5.3.2. The Firm had been convicted of a criminal offence. The Panel took careful account of the sentencing comments of the Judge. She stated, making reference to the scheme of the Sentencing Council guidelines on health and safety, that the Firm's culpability was "high". Their failings, which the Panel acknowledges were not found to be causative of the tragic death of the young woman who was killed in the incident, nevertheless put the safety of residents of the block at risk of harm. The Firm failed to ensure that these critical responsibilities were carried out to the appropriate standard.
34. The findings undermined public confidence in the profession and impacted upon its reputation. The findings represented a serious falling short of the standards expected of the profession and as such, clearly gave rise to liability to disciplinary action.
35. The Panel was satisfied that there was liability to disciplinary action under Byelaw 5.3.2 in respect of the Firm, Parc Properties Management Ltd.



## Submissions on sanction

36. The Panel considered the submissions of Mr Lynch on behalf of RICS and those of Mr Mitchell QC on behalf of the Firm.
37. Mr Lynch confirmed that the Firm had not been the subject of any previous disciplinary findings. Mr Lynch said that he did not make submissions as to the appropriate sanction as this was a matter for the judgment of the Panel. He drew the attention of the Panel to RICS' Sanctions Policy and its supplements and referred to the aggravating and mitigating features which RICS said were present.
38. In relation to the issue of seriousness, he submitted that there were two key aspects: first, the impact of the Firm's failings on the reputation of the profession and public confidence in it. In relation to this, he said that a member of the public was entitled to expect that such breaches by a member of the profession who took on serious responsibilities in relation to fire safety would be found to be at the higher end of the spectrum.
39. The second aspect was the risk of recurrence. Mr Lynch submitted this depended on understanding how the issues came about, and whether steps to address the failings had been put in place.
40. On behalf of the Firm, Mr Mitchell QC addressed the guidance in RICS' Sanctions Policy and submitted that the Panel should take into account the following factors:
  - a. The Firm's breaches did not involve recklessness or dishonesty;
  - b. The Firm acted with exemplary professionalism in immediately accepting responsibility and working effectively with relevant agencies to rectify the defects;
  - c. The breaches were not deliberate or intentional;
  - d. The Firm did not stand to benefit in any way;
  - e. The breaches did not involve vulnerable clients;
  - f. The Firm did not facilitate wrong-doing by a client;

- g. The Firm has no other disciplinary record and these breaches were isolated failures;
- h. The Firm had not sought to conceal the breaches, but worked to resolve the issues in an open, straightforward and professional manner;
- i. No previous warnings or advice were ignored and the breaches comprised inappropriate reliance on reassurances given by third parties;
- j. The Firm immediately accepted responsibility for its failings;
- k. The Firm has worked to put matters right, contributing to the multi-agency process so that Meridian Place now has an adequate fire safety regime in place;
- l. The Firm has co-operated with RICS;
- m. The directors have expressed personal remorse and appreciate the gravity of the issues.

41. Mr Mitchell QC submitted that in relation to public confidence in the profession and in RICS, members of the public would be reassured by the Directors' acceptance of responsibility and subsequent taking of effective action resulting in the residents of Meridian Place being safer than they previously were.

42. The Panel was asked to bear in mind in its consideration the circumstances and sanction applied by another RICS Disciplinary Panel in the case of Warwick Estates Property Management Limited which, it was submitted, concerned more serious regulatory breaches than this case and where the relevant Panel considered that the individuals had not demonstrated insight into the impact of their breaches.

43. In conclusion, Mr Mitchell QC submitted that the regulatory aim of the disciplinary process, in particular protecting the public and promoting regulatory compliance, could be met in this case by publication of the decision demonstrating what had gone wrong in this case, but also demonstrating how the Firm had responded and addressed the failings.

## **Legal advice and the Panel's approach to sanction**

44. The Panel received and accepted the advice of the Legal Assessor and referred to RICS' Sanctions Policy and its supplements.
45. In respect of the Panel's approach to sanction, it bore in mind that the purpose of a sanction is not punish the member for a second time. A disciplinary sanction is not intended to be punitive, although that may be its effect. The purpose of a sanction is to protect the public; to declare and uphold the standards of the profession; to safeguard the reputation of the profession, and of RICS as its regulator; to demonstrate to the public and to RICS members that RICS takes firm action to promote regulatory compliance in the public interest; and to deter other members and firms from future non-compliance.
46. The Panel was first required to decide whether to impose a sanction. The Panel was mindful that if it decided that a sanction was required, it must adopt a proportionate approach in determining the appropriate sanction. If the Panel decided that it was necessary to impose a sanction it was able to impose more than one disciplinary sanction. Adopting a proportionate approach, the Panel should commence at the lowest sanction, and only if it decided that a sanction was not appropriate would it proceed to consider further sanctions. Having arrived at the sanction that it was minded to impose, the Panel would then review the sanctions above, so as to satisfy itself that these would be too severe and disproportionate in the circumstances of the case. The Panel noted that more than one sanction may be imposed, and that if it were to impose conditions, they must be specific, measurable, realistic, achievable and time bound. Any sanction must be proportionate and address the issues raised in the proceedings.

## **Panel's decision on sanction**

47. The Panel considered the submissions of both parties. The Panel bore in mind the sentence imposed on the Firm in the criminal proceedings and that it was not its function to punish the Firm for a second time: the purpose of a disciplinary sanction is different and is to promote the regulatory objectives set out in RICS' Sanctions Policy.

48. The Panel concluded the breaches in this case were serious. The Firm took on professional responsibilities for ensuring that appropriate fire safety measures were in place at Meridian Place and that the safety of the residents was thereby protected. This is undoubtedly a matter of high public interest and the failings in this case had the potential to impact on public trust and confidence in the surveyors' profession and in RICS as its regulator.
49. The Panel was mindful that the actions of the Firm were found not to be causative of the tragic death of the young woman who died during these events at Meridian Place. Nevertheless, the failings which were found on the part of the Firm in ensuring that the required fire safety mechanisms were in place put the residents of the property at risk of harm.
50. The Panel paid careful attention to the comments of the sentencing Judge, who stated that the Firm's culpability was "high". Their failings put the safety of residents of the block at risk of harm. The Firm failed to ensure that the critical responsibilities were carried out to the appropriate standard.
51. The Panel took into account all the factors to which Mr Mitchell QC had referred. The issue of recklessness had been the subject of discussion. Mr Mitchell QC, in addressing the factors in the Sanctions Policy, had submitted that the Firm had not been reckless in its actions. Having heard argument on the issue, the Panel accepted that the Firm had not been reckless. The Firm itself accepted, through Mr Mitchell QC that its actions had been negligent. The Panel was mindful that in respect of the two key matters, the FRA and the certification by the firm Alpha Peerless regarding works to the fire alarm control panel, there were elements which on the face of the documents could have alerted the Firm to deficiencies in both documents. However, in both matters, the Firm had engaged a suitably qualified professional to act and the Panel accepted that, although it remained ultimately responsible, it was entitled to rely on such professionals. In the case of the FRA, it had been accepted without question by the Firm. In the case of the Fire Alarm Control Panel, the Firm had been given indications that the works remained incomplete. Overall, in relation to this submission, the Panel accepted the Firm did not "not care" (as it was put by Mr Mitchell) but it must bear ultimate accountability.

52. The Panel referred to the Sanctions Policy and identified the following mitigating factors:

- The Firm's previous clear disciplinary record;
- The Firm's cooperation and engagement with the RICS investigation and proceedings;
- The admissions made to the charge brought by RICS;
- The Firm's plea of guilty in the criminal proceedings;
- The failings were not the result of deliberate intention or recklessness;
- The prompt and positive actions taken by the Firm after the events in question by working with other agencies and professionals to rectify the failings identified at the property;
- The apology and remorse demonstrated by the Directors;
- The insight demonstrated by the Directors of the Firm into the seriousness of the breaches and the impact of those breaches upon public confidence and the reputation of the profession, which satisfied the Panel that the risk of repetition of similar breaches in the future was low:
  - First, the Panel was satisfied from the evidence presented that appropriate action had been taken to rectify the issues at the specific property in question, Meridian Place. In particular, the Panel noted that the Fire Alarm Control Panel is now tested on a 6 monthly basis and is now connected to the London Fire Brigade and, should it fail, an alarm is triggered at the London Fire Brigade;
  - Secondly, the Panel was satisfied that, looking more widely than only at the property in question in this case, this matter had had a salutary effect upon the directors of the Firm, that they had learnt from the experience and that systems within the Firm had been improved as a result.

53. The Panel identified the following aggravating factors:

- The comments of the sentencing Judge that the Firm's culpability was high;
- The impact of a surveyors' firm being convicted of a matter of such high public interest and the impact on public confidence in the profession;

- The Firm accepted it had been negligent in relation to its professional responsibilities;
- The indications from the face of the documents in relation to the Fire Alarm Control Panel and the Alpha Peerless reports which could have alerted it to deficiencies.

54. The Panel considered first whether any sanction should be imposed. The Firm was the subject of a criminal conviction for an offence that its failings caused risk of death or serious injury. Whilst the Panel took careful account of the points advanced on behalf of the Firm, the seriousness of the matter and the potential impact on public confidence and the reputation of the profession caused the Panel to conclude that a disciplinary sanction was necessary in this case: it would be insufficient to conclude this matter without a sanction.

55. The Panel next considered imposing a caution, but took the view that this would not adequately mark the gravity of its concerns: this was not a minor matter for the reasons stated above, although the Panel has concluded the risk of repetition is low.

56. The Panel next considered imposing a Reprimand. The failings of the Firm had caused a risk of public harm and a risk to the reputation of the surveyors' profession and public confidence in the profession, albeit the Panel was not concerned that there remained a risk of future harm in this case. The Panel considered that a Reprimand would form part of a sanction which would publicly mark the gravity of the misconduct in this case and would provide the required deterrent effect.

57. The Panel concluded that this was not a case which was readily amenable to conditions or where conditions upon the Firm's continued membership of RICS would serve a useful purpose in protecting the public. Extensive remedial action had already been undertaken. The Panel reached the same conclusion in respect of undertakings.

58. The Panel considered whether to impose a fine. The Panel was mindful that a fine had already been imposed upon the Firm in relation to the criminal conviction. This was not a matter of punishing the firm twice for the same conduct. However, the Panel concluded that a fine in combination with a Reprimand would constitute a regulatory sanction which would appropriately mark the seriousness of the matter

and promote the objectives of the Sanctions Policy. The Panel concluded that a fine of £15,000.00 would be proportionate in this case and would not have an inappropriately punitive effect.

59. Before concluding its decision, the Panel considered the further available sanction of withdrawal of the Firm's registration with RICS. However, the Panel concluded that this would be disproportionate in the circumstances of this case. Although the criminal conviction related to serious failings on the part of the Firm, the Panel took into account the substantial mitigating factors (as set out above). Importantly, it was satisfied that the Firm had addressed its failings in a prompt, cooperative and responsible manner. The Panel accepted that the Firm had learned lessons and had developed clear insight into its past failings. As a result, the Panel was satisfied the risk of repetition was low. It did not consider that there was an attitudinal issue which was incompatible with continued registration with RICS. It considered that an order for withdrawal of the Firm's registration with RICS would be disproportionate to the findings made and in the light of the mitigating factors present in this case.

## **Publication**

60. The Panel considered Rule 39 and the guidance as to publication of its decisions in Supplement 3 to the Sanctions Policy. It accepted the Legal Assessor's advice.

61. The Panel considered the submissions of the parties and noted that the Firm did not seek to persuade the Panel against the usual presumption in favour of publication.

62. Part of the purpose of Panel decisions is to uphold the standards and reputation of the profession and to act as a deterrent to other members of the surveyors' profession. Publication of the Disciplinary Panel's decisions is an essential part of that role. In this case, the Panel saw no reason to depart from the usual presumption of the policy in favour of publication.

## **Costs**

63. In accordance with Rule 34 of the Rules, the Panel may make such order for costs against RICS or the Relevant Person as it considers fair and reasonable. The Panel considered the matter of costs and referred to section 26 of the Sanctions Policy and Supplement 2 to that Policy which sets out guidance on costs at Section 3.
64. RICS had submitted a schedule of costs of the investigation and the hearing which had been provided to the Firm in advance of the resumed hearing, as required by Rule 34. RICS applied for its costs in the sum of £4,387.50, which it submitted were proportionate.
65. On behalf of the Firm, Mr Mitchell QC did not challenge the amount of costs sought by RICS.
66. The Panel observed that the figure claimed for the hearing represents the average cost of a hearing day, and the Panel has no reason to doubt it. The Panel was satisfied that the charge in this case was properly brought by RICS. The Panel identified no reason to reduce the amount of RICS' claim for costs.
67. The Panel therefore decided to make an order for costs in favour of RICS in the sum of £4,387.50, to be paid by the Firm.

## **Decision**

68. In conclusion, the Panel imposes the following sanctions on the Firm, Parc Properties Management Ltd.,
- a) A Reprimand
  - b) A fine of £15,000.00.
69. The Panel orders that:
- a) The Firm must pay RICS' costs in the sum of £4,387.50;



- b) This decision will be published in Modus magazine and on RICS' website in accordance with the publication policy.

## **Right of Appeal**

70. The Firm has 28 days to appeal this decision in accordance with Rules 58 and 60 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009.

71. In accordance with Rules 59 and 60 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009 the Honorary Secretary has 28 days from the service of the notification of this decision to require a review of this decision.