

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING

Case of

**Mr A J Warde MRICS &
Alan J Warde - Chartered Surveyor
Essex, RM15**

On

Wednesday 13 May 2015

At

RICS, Surveyor Court, Coventry

Chairman

Paul Housego (Lay Chairman)

Members

Carolyn Tetlow (Lay Member)
Andrew Winscom (Member)

Legal Assessor

Stephen Murfitt

RICS Representative

Vicki Buckley

CHARGES HEARD

The formal charges against Mr A J Warde MRICS are:

In respect of case 114896:

1. That he did not at all times act with integrity and avoid any actions or situations that were inconsistent with his professional obligations in that as the sole member principal of the regulated firm Alan J Warde he failed to ensure that the remedies set out in a Final

Decision of the Ombudsman Services: Property (OS:P) in respect of a complaint by Mr C were implemented within 28 days of notification to the firm on 14 October 2014 that the decision had become binding **Contrary to Rule 3 of the Rules Conduct for Members 2007**

In respect of case 114001:

1. Mr Warde has not at all times avoided actions or situations inconsistent with his professional obligations in that
 - he has not applied to register with RICS on its valuer registration scheme
 - he has prepared and provided valuation reports to the public since April 2011 without having registered on the RICS valuer registration schemesuch that
 - he has failed to comply with his obligations as a member of RICS to comply with its Rules
 - he has exposed his clients to risk as it is likely that his professional indemnity insurance cover excludes valuations undertaken by an RICS member not registered on valuation scheme

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

2. Mr Warde has not at all times acted with integrity and avoided actions or situations inconsistent with his professional obligations in that
 - As Contact Officer for the registered firm Alan J Warde he completed and submitted an Annual Return for the firm dated 13 June 2014
 - He made a declaration on the Annual Return that the information was correct to the best of his knowledge and belief
 - He provided information that the firm did not undertake valuation work
 - RICS has been provided with copies of valuation reports prepared by Mr Warde dated 18 June 2014 and 30 August 2014, and he informed an RICS officer by telephone on 03 November 2014 that you had been conducting valuations for thirty years

and that the information he provided to RICS as regulator was therefore misleading

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

3. Mr Warde did not carry out his professional work with due skill, care and diligence and with proper regard for the technical standards expected of him in that he failed to comply with the requirements of VPS 3 of the RICS Valuation – Professional Standards 2014 (the Red Book) - which are mandatory for RICS members undertaking valuations - in that two valuation reports he prepared for 111 Ballards Walk, Basildon, dated 18 June and 30 August 2014 did not contain the minimum requirements set out in VPS 3 7 at (a) to (n), and in failing to prepare those valuation reports in accordance with the internationally recognised Standards there is a risk they may not have been fit for purpose

Contrary to Rule 4 of the Rules of Conduct for Members 2007

4. Mr Warde did not submit in a timely manner or at all information requested by RICS in a letter dated 12 November 2014 concerning his professional activities, his valuer registration status, and a particular client file such that RICS has been prevented from investigating a complaint from a member of the public and his conduct as a member of RICS

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

5. Mr Warde has not co-operated fully with RICS staff in that he has failed to respond substantively to correspondence sent to him by RICS regulation officers on 12 November, 05, 08 and 23 December 2014

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

The formal charges against Alan J Warde – Chartered Surveyor are:

In respect of case 114896:

1. The firm has not at all times avoided actions or situations inconsistent with its professional obligations in that it failed to implement the remedies in a Final Decision made by the Ombudsman Services: Property in respect of a complaint by Mr C within 28 days of notification on 14 October 2014 that the decision had become binding
Contrary to Rule 3 of the Rules of Conduct for Firms 2007

In respect of case 114001:

1. The firm did not ensure that all previous and current work was covered by adequate and appropriate professional indemnity insurance cover which met standards approved by the Regulatory Board in that it was providing valuation reports to which RICS Valuation – Professional Standards applied prepared by an RICS member not registered on RICS registered valuer scheme which were therefore likely to have been excluded from cover in accordance with RICS minimum policy terms
Contrary to Rule 9 of the Rules Conduct for Firms 2007

DETERMINATION

Preliminary Applications.

1. Mr Warde did not attend the hearing and has not returned the listing questionnaire. In a recent undated letter to RICS Mr Warde informed RICS that he was unable to attend the hearing.
2. The Panel has reminded itself that it has to consider two issues in relation to whether it should proceed in the absence of Mr Warde; namely, whether service of the Notice of Hearing had been in accordance with the Rules; and secondly, the exercise of the Panel's discretion.
3. The Panel is satisfied that the service requirements have been complied with. The Notice of Disciplinary Panel Hearing dated 9 April 2015 sent to both the firm and Mr Warde complied with the Rules.
4. The Panel accepts that in exercising its discretion it has to proceed with utmost care and caution. The Panel has been referred to the guidance set out in the reported case of R v Jones, which the Panel has considered carefully.
5. The Panel is satisfied that the full details of the allegation are before it. The Panel considers that in the public interest there should be no delay to the proceedings; the allegations are of a serious nature. Mr Warde has made clear in his letter that he will not be attending the hearing, and makes no application for an adjournment. If an adjournment were granted there is no evidence before the Panel that Mr Warde would attend.
6. The Panel is therefore satisfied that Mr Warde has waived his right to attend today's hearing, and that there would be no unfairness or injustice in proceeding with the hearing in his absence.
7. The Panel has therefore decided to proceed in the absence of Mr Warde.

Background

8. Mr Warde is the sole principal of the firm Alan J Warde - Chartered Surveyor. He has been a member of RICS since 1971 and registered his firm for regulation by RICS in 2010. Mr Warde and the firm face allegations arising from two separate investigations by RICS Regulation. The first allegation relates to a referral from the Ombudsman Services: Property ('OS:P') of which the firm is a member of the independent complaints procedure. The OS:P provides independent redress to consumers when complaints cannot be resolved through a firm's complaint handling procedure.
9. Mr C made a complaint to OS:P and on 14 October 2014 the OS:P made a final decision in Mr C's favour. The firm was required to make a payment of £2,550 to Mr C within 28 days of the 14 October 2014. RICS wrote to Mr Warde seeking further information but no response was received to a number of letters.
10. The second investigation concerned Mr M who in October 2014 made a complaint concerning valuations prepared in connection with a dispute concerning Mr M's late mother. RICS requested information from Mr Warde in order to investigate the complaint, but received no substantive response from Mr Warde.
11. Mr M provided two valuation reports prepared by Mr Warde that should have complied with RICS Valuation-Professional Standards. Mr Warde was not a registered valuer and he was informed of the immediate requirement to register with RICS before conducting any further valuation work.
12. The reports provided by Mr M were reviewed by Mr Peter Dixon FRICS whose witness statement records that the valuations did not comply with the Requirements in a number of substantial respects.
13. Mr Warde and the firm face allegations arising from the failure on the part of Mr Warde to register as a valuer, and concerning professional indemnity insurance. Furthermore RICS alleges that the failure on the part of Mr Warde to engage with RICS and its investigations has prevented RICS from carrying out its function as a Regulator of the profession

Panel's Decision

Finding of Fact

14. The Panel has considered and accepted the advice of the Legal Assessor.

Mr Warde

15. The first charge against Mr Warde in case 114896 alleges that he failed to implement the final decision of the OS:P following a complaint from Mr C. The OS:P wrote to Mr Warde on 14 October 2014 to inform him as to the final decision and the requirement to pay Mr C the sum of £2,550 within 28 days. The OS:P sent reminders to Mr Warde on 11 November 2014 and 25 November 2014 with no response being received from Mr Warde. RICS then wrote to Mr Warde on 13 January 2015, and subsequently, with regard to the obligation to discharge the OS:P final decision. Mr Warde failed to reply to the correspondence. In his recent undated letter Mr Warde maintained that the claim was fraudulent and that he was seeking legal advice.
16. The Panel determines that Mr Warde has failed in his obligation to discharge the OS:P final decision. Mr Warde makes available to his clients an independent redress procedure and should therefore comply with OS:P final decisions. Mr Warde was offered the opportunity to participate in the OS:P process and did not appeal the decision. Mr Warde's refusal to

comply is a failure to act with integrity and a failure to avoid an action inconsistent with his professional obligations. Compliance with final decisions of OS:P is not optional. Accordingly the Panel finds allegation 1 against Mr Warde proved.

17. The first charge against Mr Warde in case 114001 concerns his alleged failure to register under the RICS valuer registration scheme and the consequences that followed from that omission. On 3 November 2014, Mr Baker on behalf of RICS Regulation spoke to Mr Warde on the telephone and informed him of the complaint received from Mr M. Mr Baker made clear to Mr Warde that as he was not a registered valuer he should not be conducting Red Book valuations and this may have an impact on his professional indemnity cover. The telephone note recorded at page 58 of the hearing bundle that Mr Warde said that he had been conducting valuations for 30 years. On the same date Mr Baker sent an email to Mr Warde providing information as to valuer registration and a link to complete the on-line valuer registration application which Mr Warde said he would complete that day.
18. Mr Warde's website holds him out as a provider of valuations.
19. RICS continued to correspond with Mr Warde who failed to reply, and in particular failed to make application to be admitted to the valuer registration scheme. The Panel accordingly finds proved the following facts in relation to Mr Warde:
 - A failure to apply to register with RICS on its valuer registration scheme;
 - Preparing and providing valuation reports since April 2011 without having registered on the RICS valuer registration scheme;
 - A failure to comply with obligations as a member of RICS to comply with the Rules;
 - An exposure of clients to risk as it is likely that Mr Warde's professional indemnity insurance cover excludes valuations undertaken by an RICS member not registered on the valuer registration scheme. (See fact determination case 114001 charge 1 against the firm.)
20. The second charge alleges that as Contact Officer for the registered firm Alan J Warde, Mr Warde provided incorrect information in the Annual Return dated 13 June 2014; a copy of which is at pages 19 to 23 of the hearing bundle. The Return, completed by Mr Warde, contains a declaration that it is correct to the best of his knowledge and belief, and does not state that the firm undertook valuation work. Two valuation reports prepared by Mr Warde (dated 18 June 2014 and 30 August 2014) are at pages 28 to 47 of the hearing bundle. The Panel has made previous reference to the telephone conversation between Mr Warde and RICS on 3 November 2014 (page 58 of the hearing bundle) when Mr Warde made a statement that he had conducted valuations for thirty years. The Panel finds on the evidence that charge two is proved.
21. The third charge alleges that the two valuation reports prepared by Mr Warde for an address in Basildon and dated 18 June 2014 and 30 August 2014, failed to comply with the requirements of the Red Book. The Panel has carefully considered the witness statement of Peter Dixon dated 9 March 2015 at pages 71 to 83 of the hearing bundle. Mr Dixon in his witness statement concluded that neither of the two valuation reports fell within any of the exemptions provided by the requirements and therefore Mr Warde had to comply with the mandatory requirements of the Red Book. Mr Dixon in considering the two reports found a failure to comply with many requirements, but in particular VPS 3.7 paragraphs (a) to (n). The report of Mr Dixon was sent to Mr Warde for his comments, but he did not reply to RICS. The Panel finds allegation three proved.
22. The fourth charge alleges a failure on the part of Mr Warde to submit timely, or at all, information requested by RICS (concerning the matters which result in these allegations) in a letter dated 12 November 2014 and which is at pages 51 to 62 of the hearing bundle. RICS sent a reminder to Mr Warde on 5 December 2014 and Mr Warde replied stating that the dispute for which the valuations had been requested had been settled, but he failed to

provide the information requested in the letter of 12 November 2014. Further reminders were sent by RICS on 8 December 2014, 23 December 2014, 20 January 2015 and 11 March 2015. The Panel is satisfied that Mr Warde failed to provide information properly requested by RICS and finds the charge proved.

23. The fifth charge alleges a failure on the part of Mr Warde to co-operate fully with RICS by failing to reply substantively to correspondence sent by RICS staff. The Panel having regard to its findings in respect of charge four finds the charge proved.
24. The Panel accordingly finds all of the six charges against Mr Warde proved.

Alan J Warde - Chartered Surveyor (the firm)

25. The first charge against the firm in case number 114896 alleges a failure to implement a final decision of the OS:P made on 28 November 2014. The Panel, having regard to its findings of facts made in relation to Mr Warde under charge 1 of case 114896, finds the charge against the firm proved.
26. The first charge against the firm in case number 114001 alleges that the firm did not ensure that all work was covered by appropriate professional indemnity insurance as a consequence of providing valuation reports when the RICS member was not a member of the RICS registered valuer scheme. The Panel is satisfied that the standard conditions of insurance agreed between RICS and Insurers contain terms that exclude cover for valuations which are not undertaken by a registered valuer. Mr Warde was asked on a number of occasions by RICS to produce a copy of his firm's professional indemnity policy. Mr Warde did not reply to those requests. The Panel determines that it is more likely than not that the valuation work undertaken by the firm was excluded from cover because Mr Warde was not a registered valuer on the RICS valuer registration scheme. Accordingly the Panel finds the charge proved.
27. Accordingly the Panel finds both charges against the firm proved.

Disciplinary Action

28. The Panel finds Mr Warde liable to disciplinary action in accordance with Bye-law B5.2.2 (c) in respect of the charges against him, because these are serious matters. The Panel also finds the firm liable under Bye-law B.5.3.2.(c). The Panel is satisfied that the acts of Mr Warde and the firm as found proved by the Panel place at risk the trust and reputation of the profession.

Determination on Sanction

Mr Warde

29. In his recent undated letter Mr Warde has conceded that he is not completely up to date with Rules and Regulations and indicated that 'he will spend more time in keeping to the Rules and Regulations'. Mr Warde advanced the submission that the Rules and Regulations have changed considerably since he qualified 45 years ago. The Panel noted the submission, but determined that there is a continuing obligation of some importance on all Members to keep fully up to date with the requirements of being a member of RICS. Mr Warde was given advice and direction as to the method of applying for membership of the valuer registration scheme; advice he chose to ignore.
30. The Panel noted the previous record of disciplinary matters recorded against Mr Warde. There are two matters which relate to CPD for two consecutive years. On 5 August 2014 and 16 April 2014 Mr Warde received a caution and on the latter occasion, a fine of £150.

31. The Panel has considered whether it would be appropriate to impose a penalty. The Panel has borne in mind that the purpose of sanctions is not to be punitive, though 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. The Panel has accepted legal advice and had regard to the RICS sanctions policy. The Panel has concluded it is necessary to impose a penalty having regard to the serious nature of the charges found proved, and has proceeded to consider each sanction available beginning with the least serious, reminding itself that any sanction has to be proportionate.
32. The Panel does not consider a Caution sufficient having regard to the seriousness of the case. The Panel does not consider that the imposition of undertakings would be appropriate to protect the public, as these would be to do what he has already been obliged to do. Mr Warde has been requested repeatedly to provide information and to join the valuer registration scheme and has not done so. The imposition of a fine would not be appropriate having regard to Mr Warde's repeated and serious omissions of his professional obligations as found proved by the Panel. The Panel considered that conditions on continued membership would not be appropriate because they would not address the failings in this case.
33. The Panel considers that Mr Warde's failure to join the valuer registration scheme, to meet the obligation imposed by an OS:P final decision, and his failure to respond to reasonable requests for information from RICS, demonstrates a lack of insight and professionalism. The valuer registration scheme and the OS:P scheme are designed to establish professional standards and to protect the public. Mr Warde placed at risk those clients who instructed him to carry out valuations, by practising uninsured and by preparing valuations not compliant with Red Book standards. Mr Warde has failed in the view of the Panel to embrace the spirit of membership of RICS and the associated regulation. He is an experienced member of the profession and should lead by example.
34. The Panel is mindful of the need, stated in the Sanctions Policy, to demonstrate to society and other members of firms that RICS takes firm action to protect the public interest and promote regulatory compliance. There is also a need to deter members and firms from future non-compliance. The Panel found no mitigating factors. The aggravating factors are that Mr Warde's actions and omissions demonstrate an unwillingness to abide by important rules of the RICS. The rules are in place both for the reputation of the profession and for the protection of the public. These two considerations result in the Panel concluding that no sanction short of expulsion is appropriate. The Panel decided to expel Mr Warde from membership of RICS.

Alan J Warde - Chartered Surveyor (the firm)

35. The Panel adopted the same approach to sanction in the case of the firm. The same reasons apply to the firm as to Mr Warde. The Panel is mindful of the need to protect the public interest and to promote regulatory compliance. Mr Warde is the sole member of the firm and the Panel decided to remove the firm's registration for regulation.

Determination on Publication and Costs

Publication

36. The Panel directs publication in accordance with Supplement 3 to the Sanctions policy.

Costs

37. The Panel orders that Mr Warde pays the costs of RICS in this case of £5,185.00.

Appeal Period

38. Mr Warde has 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.

39. 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.