

**ROYAL INSTITUTION OF CHARTERED SURVEYORS**

**DISCIPLINARY PANEL HEARING**

**Case of**

**Mr David Gurl FRICS [0067950]  
DAG Property Consultancy (F) [045618]  
Avon, BS21**

**On**

Wednesday 29 April 2015

**At**

Parliament Square, London

**Chairman**

Paul Housego

**Members**

Christopher Boothman (Lay Member)  
Helen Riley (Member)

**Legal Assessor**

Sarah Ellson

**RICS Representative**

Daniel Gutteridge

**CHARGES HEARD**

**The formal charges are:**

**Charges for Member - David Gurl FRICS**

In relation to case \*105904

1. In relation to instructions from a Mrs Freeman in 2014, you failed to carry out your professional work with expedition and with proper regard for expected standards of service and customer care, contrary to Rule 5 of the rules of Conduct for Members 2007, the particulars being that:

- (a) you failed to undertake a Home Buyers report survey within 2 days of instruction as was agreed with Mrs Freeman
  - (b) you failed to provide the Home Buyer report to Mrs Freeman in the timescale agreed or at all
  - (c) you failed to respond to telephone calls and e-mail correspondence from Mrs Freeman expeditiously
2. In relation to instructions from a Mrs Freeman in 2014, you failed to act at all times with integrity and/or in accordance with your professional obligations, contrary to Rule 3 of the Rules of Conduct for Members, the particulars being that:
- (a) having agreed to refund 50% of Mrs Freeman's fee, you failed to do so
  - (b) you have failed to account adequately or at all for the monies received from Mrs Freeman
3. As a member of RICS, Contact Officer and principle of a regulated firm of chartered surveyors, DAG Property Consultancy, you failed at all times to act with integrity and/or avoid any actions or situations which were inconsistent with your professional obligations, contrary to Rule 3 of the Rules of Conduct for Members 2007, the particulars being:
- (a) you did not implement the Final Decision dated 25 November 2014 of the Ombudsman Services: Property in favour of a Mrs Freeman within the required timescales or at all.

In relation to case \*106252

1. In relation to instructions from Mr Jones in 2014, you failed to carry out your professional work with expedition and with proper regard for expected standards of service and customer care, contrary to Rule 5 of the rules of Conduct for Members 2007, the particulars being that:
- (a) you failed to undertake a Home Buyers report survey within the timescales indicated to Mr Jones or at all
  - (b) you failed to provide the Home Buyer report to Mr Jones at all
  - (c) you failed to respond to telephone calls and e-mail correspondence from Mr Jones expeditiously
2. In relation to instructions from a Mr Jones in 2014, you failed to act at all times with integrity and/or in accordance with your professional obligations, contrary to Rule 3 of the Rules of Conduct for Members, the particulars being that:
- (a) having indicated that you would refund Mr Jones' fee, you failed to do so
  - (b) you have failed to account adequately or at all for the monies received from Mr Jones

In relation to case \*106325

1. In relation to instructions to undertake a Building Survey from Mr Worthington in 2014, you failed to carry out your professional work with expedition and with proper regard for expected standards of service and customer care, contrary to Rule 5 of the Rules of Conduct for Members 2007, the particulars being that:
- (a) you failed to provide the Building Survey report within a timescale agreed with Mr Worthington
  - (b) you failed to provide the Building Survey report to Mr Worthington within the reasonable timescales requested by him
2. In relation to instructions to undertake a Building Survey from Mr Worthington in 2014, you failed to act at all times with integrity and/or in accordance with your professional

obligations, contrary to Rule 3 of the Rules of Conduct for Members 2007, the particulars being that:

(a) Having failed to deliver the Building Survey report to Mr Worthington within a reasonable timescale, you failed to refund Mr Worthington's fees

3. As a member of RICS, Contact Officer and principle of a regulated firm of chartered surveyors, DAG Property Consultancy, you failed at all times to act with integrity and/or avoid any actions or situations which were inconsistent with your professional obligations, contrary to Rule 3 of the Rules of Conduct for Members 2007, the particulars being:
  - (a) you did not implement the Final Decision dated 19 November 2014 of the Ombudsman Services: Property in favour of a Mr Worthington within the required timescales or at all.

In relation to case \*106396

1. You have failed to provide the information that was reasonably requested in RICS' e-mailed letter of 19 June 2014, contrary to Rule 8 of the Rules of Conduct for Firms 2007
2. You have failed to co-operate fully with RICS staff, contrary to Rule 9 of the Rules of Conduct for Members 2007, the particulars being that you failed to respond to the following letters, e-mails and telephone messages from RICS:
  - (a) E-mail of 19 June 2014
  - (b) Telephone message of 27 June 2014
  - (c) Telephone message of 7 July 2014
  - (d) Letter of 8 July 2014
  - (e) Telephone message of 8 July 2014
  - (f) Telephone message of 25 July 2014
  - (g) Telephone message of 15 August 2014
  - (h) Telephone message of 22 August 2014

### **Firm charges - DAG Property Consultancy**

In relation to case \*106325

- In relation to instructions to undertake a Building Survey from Mr Worthington in 2014, the regulated firm of chartered surveyors, DAG Property Consultancy, failed to operate a complaints handling procedure (CHP), contrary to Rule 7 of the Rules of Conduct for Firms 2007, the particulars being that:
  - (a) the firm failed to provide a copy of its CHP to Mr Worthington following his request on 12 May 2014
- 2. DAG Property Consultancy, a regulated firm of chartered surveyors, failed at all times to act with integrity and/or avoid any actions or situations which were inconsistent with its professional obligations, contrary to Rule 3 of the Rules of Conduct for Firms 2007, the particulars being:
  - (a) it did not implement the Final Decision dated 19 November 2014 of the Ombudsman Services: Property in favour of a Mr Worthington within the required timescales or at all.

In relation to case \*106396

1. DAG Property Consultancy, a regulated firm of chartered surveyors, has failed to operate a complaints handling procedure and maintain a complaints log, contrary to Rule 7 of the Rules of Conduct for Firms 2007

2. DAG Property Consultancy, a regulated firm of chartered surveyors, has failed to ensure that all of its previous and current work is covered by adequate and appropriate professional indemnity insurance cover, contrary to Rule 9 of the Rules of Conduct for Firms 2007
3. DAG Property Consultancy, a regulated firm of chartered surveyors with a sole principal, has failed to have appropriate arrangements in place in the event of the sole principal's death, incapacity or other extended absence, contrary to Rule 12 of the Rules of Conduct for Firms 2007

In relation to case \*105904

1. DAG Property Consultancy, a regulated firm of chartered surveyors, failed at all times to act with integrity and/or avoid any actions or situations which were inconsistent with its professional obligations, contrary to Rule 3 of the Rules of Conduct for Firms 2007, the particulars being:
  - (a) it did not implement the Final Decision dated 25 November 2014 of the Ombudsman Services: Property in favour of a Mrs F within the required timescales or at all.

## **DETERMINATION**

### **Panel's Decision**

#### **Introduction**

1. The Disciplinary Panel ("the Panel") convened to consider the charge against the member, Mr David Gurl and his firm DAG Property Consultancy. RICS was represented at the hearing by Mr Gutteridge. Mr Gurl attended by telephone following a request made shortly before the hearing.
2. The case involves a series of charges against Mr Gurl arising from complaints received by RICS during 2014. The complaints concern work which Mr Gurl had apparently accepted and for which he had received payment. The charges suggest that on three separate occasions Mr Gurl and his firm failed to undertake the work in the timescales agreed or at all, failed to respond to telephone calls or emails, and failed to refund monies when he had indicated he would do so. In two cases the firm was ordered by the Ombudsman to make payments in favour of the clients who had been let down. These final decision have not been complied with. The nature of the work requested by clients were Home Buyers or Building Report surveys. It is also alleged that Mr Gurl failed to respond to RICS and to co-operate with RICS by not replying to correspondence and telephone messages in the course of this investigation.
3. In relation to the firm DAG Property Consultancy Mr Gurl is the sole principal and the contact officer for the firm. DAG Property Consultancy faces allegations that it failed to provide a copy of its complaints handling procedure to one of the clients referred to above, and more broadly that it failed to have or operate a complaints handling procedure and maintain a complaints log, The charges also state that DAG Property Consultancy has failed to ensure all its work is covered by adequate and appropriate professional indemnity cover or to have appropriate arrangements in place in the event of Mr Gurl's incapacity or extended absence. It also faces charges arising from the failure to comply with the Ombudsman's Final Decisions.

## **Response**

4. At the beginning of the hearing Mr Gurl on his own behalf and on behalf of the Firm accepted each of the charges.

## **Burden and standard of proof**

5. The RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. The Panel has in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and proceeds upon the basis that the Human Rights Act 1998 will apply. It bears in mind in particular Mr Gurl's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act.
6. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment.

## **Evidence**

7. The Panel perused RICS' Presenting Officer's bundle of documents, running to approximately 300 pages, and to correspondence written to RICS by Mr Gurl. The Panel had the benefit of Mr Gurl having attended the hearing by telephone and he was able to address the Panel, give oral evidence and answer the Panel's questions.

## **Findings of fact**

8. In relation to the cases involving Mrs Freeman, Mr Jones and Mr Worthington the Panel, noting the evidence adduced and the admissions made by Mr Gurl, determined that each and every charge was found proved and that Mr Gurl personally:
  - failed to carry out your professional work with expedition and with proper regard for expected standards of service and customer care, contrary to Rule 5 of the rules of Conduct for Members 2007
  - failed to act at all times with integrity and/or in accordance with your professional obligations, contrary to Rule 3 of the Rules of Conduct for Members,  
  
and in relation to dealings with RICS
  - failed to provide the information that was reasonably requested contrary to Rule 8 of the Rules of Conduct for Members 2007
  - failed to co-operate fully with RICS staff, contrary to Rule 9 of the Rules of Conduct for Members 2007
9. In relation to DAG Property Consultancy, again noting the admissions made at the outset of the hearing and the evidence in the bundle, the Panel found all the charges proved and that the regulated firm of chartered surveyors, DAG Property Consultancy:
  - failed to operate a complaints handling procedure (CHP), contrary to Rule 7 of the Rules of Conduct for Firms 2007,
  - failed to ensure that all of its previous and current work is covered by adequate and appropriate professional indemnity insurance cover, contrary to Rule 9 of the Rules of Conduct for Firms 2007
  - failed to have appropriate arrangements in place in the event of the sole principal's death, incapacity or other extended absence, contrary to Rule 12 of the Rules of Conduct for Firms 2007

- failed at all times to act with integrity and/or avoid any actions or situation that were inconsistent with it professional obligations, contrary to Rule 3 of the Rules of Conduct for Firms 2007

### **Liability to disciplinary action**

#### **Submissions by RICS presenting officer**

10. It was submitted that these admitted facts made both Mr Gurl and the Firm liable to disciplinary action. The presenting officer highlighted the damage to the profession's reputation caused by poor service, promises of refunds not being forthcoming, the lack of a Complaints Handling Process and the clients having to resort to lengthy complaints to the Ombudsman or through the Courts. He emphasised the absence of consumer safeguards that were not in existence including the lack of insurance.

#### **Submissions on behalf of Mr Gurl and the Firm**

11. Mr Gurl accepted that his practice had not been conducted well, that he said this was related to his medical condition and to an adverse reaction to a combination of drugs which he said interfered with his ability to practice. In oral evidence he accepted that he had failed his clients and RICS and had not maintained the right standards. He recognised that this was a case in which sanctions might need to be considered.

### **Discussion and conclusion**

12. The Firm's terms of business set out that it (that is Mr Gurl) would provide reports within a specified period of time. In the cases set out the allegations relating to Ms Freeman, Mr Jones and Mr Worthington he had not done so. Having promised refunds he failed to make them. In the cases of Ms Freeman and Mr Worthington the Ombudsman made decisions that he should make refunds to them (on 25 November 2014 of £200 and on 19 November 2014 of £375 respectively) and he failed to comply.
13. The complaints of these three clients were not handled properly in part because the Firm had no complaints handling procedure and no complaints log. Necessarily the Firm failed to supply a complaints handling procedure to its clients, because there was none.
14. When RICS wrote to Mr Gurl his response was inadequate, in that he failed to engage with the process until after allegations had been put before this Panel, repeatedly ignoring attempts to contact him and investigate the concerns.
15. Investigation of the Firm revealed that not only did it not have a complaints handling procedure for log, but that it was practising uninsured (insurance cover having in fact expired in February 2014), and that there was no locum or other appropriate arrangement in place to cover incapacity or extended absence of the sole principal Mr Gurl.
16. On the basis of the facts found proved the Panel had to decide whether or not Mr Gurl and/or the Firm were liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the legal assessor. This question is one for the Panel's judgment. The Panel decided that Mr Gurl and the Firm are liable to disciplinary action. These are matters that adversely affect the reputation of the profession and show a practice not compliant with basic regulatory requirements.

### **Adjournment application**

17. In an email sent at 09:07 on 29 April 2015 and in oral submissions Mr Gurl invited the Panel to adjourn its consideration of sanction pending provision of medical reports. Mr Gurl indicated that he wanted to see his consultant at an appointment scheduled for 19 May to

obtain a report about how his medication may have impacted on this ability to run his business. Mr Gurl's evidence and submissions were that he had been diagnosed with a serious health issue in December 2011, and had been taking medication for that and another health condition. Mr Gurl, supported by his GP's letter, said that the medications had interacted and this had interfered with his ability to practice effectively.

18. The RICS presenting officer opposed the adjournment request and invited the Panel to proceed to decide sanction today. He submitted that Mr Gurl had been well aware of the date of the hearing and had had ample opportunity to address these matters in advance of the hearing today.
19. The Panel carefully considered the application but decided not to grant an adjournment. It accepted the submission that Mr Gurl had had considerable time to prepare any evidence to which it wanted the Panel to have regard, in advance of today's hearing. It noted that Mr Gurl's appointment with his consultant had been postponed but considered this was not a reason to excuse Mr Gurl from taking steps to obtain medical evidence if he considered this to be relevant. The Panel noted that Mr Gurl accepted that he was able to participate in the hearing by telephone and he had responded in correspondence provided shortly before today's hearing and before the previous hearing. It further noted that Mr Gurl was fit to undertake some work and has continued to practice since the events in question.
20. The Panel therefore went on to consider previous history, mitigation and sanction.

#### **Decision as to sanction**

21. The Panel bore 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 the RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
22. The Panel paid careful heed to the advice of the legal assessor (delivered in open forum), and to the Sanctions Policy guidance of RICS. It considered carefully the mitigating and aggravating factors of this case. Mr Gurl had not provided the Panel with testimonials. The Panel was told that the only previous disciplinary record related to Mr Gurl's failure to supply evidence of his CPD. His failure in 2013 has resulted in a caution and his failure in 2014 had resulted in a caution and a fine of £150 (imposed on 12 March 2015).
23. Mr Gurl told the Panel more about his medical condition and the effects of his medication and the Panel was referred to the GP notes which confirmed that Mr Gurl had been diagnosed as he stated.
24. The Panel had decided that Mr Gurl and the Firm were liable to disciplinary action. Having done so it first has to decide whether to impose a sanction, and if it so decides the Panel commences at the lowest sanction, and only if it decides that sanction is not appropriate does it move to the next level of sanction. Having arrived at a sanction that it is minded to impose, the Panel then reviews the next sanction above so as to satisfy itself that this would be too severe a sanction. The Panel bears in mind that more than one sanction may be imposed. If conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.
25. The Panel considered that the following mitigating factors were present:
  - ill health
  - no previous complaints of this nature
  - during the hearing Mr Gurl made some apology for the way he and his firm had conducted matters
26. The Panel considered that the following aggravating factors were present:

- the Firm had not been not organised in a regulatory compliant way, and remained so
- in particular the Panel heard in evidence that the Firm has been operating in the absence of professional indemnity insurance since February 2014. The Panel notes that this is at a time when Mr Gurl and the Firm have had very limited means and would apparently lack funds to meet any claims against the firm
- the Firm still did not have a complaints handling process
- the Firm still did not have any locum arrangements in place, despite evidence that it continued to operate and yet Mr Gurl had not been able to work full time for a number of personal reasons
- there was a pattern of failure, repeated in relation to three clients
- the failure to refund fees and not to comply with the Ombudsman's decisions was long standing and had still not been addressed and ultimately in March 2015 RICS had had to make the payments to the clients under the terms of its arrangements with the Ombudsman
- there is no evidence that the organisational failings have been remedied. Mr Gurl told the Panel that he had contacted a broker about insurance, but he had only done this the day before the hearing
- there had been an ongoing failure to communicate with and cooperate with RICS (although the Panel did note that it was suggested this was related to Mr Gurl's ill health)
- there is no real evidence of insight

27. The Panel first considered whether to impose a sanction and concluded that a sanction should be imposed. The reason is that these matters are too serious for no sanction to be imposed, and because the problems remain unresolved.
28. The Panel next considered a reprimand or a caution. The Panel decided that these were not appropriate as they did not deal with the unresolved matters, and did not reflect the seriousness of the allegations.
29. The Panel next considered conditions of practice or imposing an undertaking, but did not consider these workable as there was no likelihood that Mr Gurl or the Firm would comply with them. It noted that for many months now Mr Gurl could have taken steps to rectify matters but he had not and, to the contrary, had continued to run his business in a non-compliant way.
30. The Panel next considered a fine, but considered this inappropriate as this did not deal with the regulatory breaches that remained unresolved. The Panel also noted Mr Gurl would apparently not have the funds to pay a fine.
31. Accordingly the Panel orders that Mr Gurl be expelled from the RICS and orders removal of the Firm's registration for regulation. It concluded that these were the only sanctions that adequately reflected the serious and ongoing Rule breaches found in this case.

### **Publication and Costs**

32. The Panel considered the guidance as to publication of its decisions. The guidance provides, that it is usual for the decisions of the Panel to be posted on the RICS website, published in Modus, and in a newspaper local to the practice. Mr Gurl had made no representation concerning this other than that details of his health condition should not be mentioned in any such publication. The Panel sees no reason for departing from the normal practice in this case. 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.
33. The Panel orders that this decision be published on the RICS website, in Modus and in a newspaper local to Mr Gurl / the Firm.



34. The RICS Presenting Officer asked for costs, and had provided a schedule to Mr Gurl /the Firm in advance of the hearing. Mr Gurl suggested that the costs were disproportionate to the matters in issue. The Panel rejected this suggestion and noted that the case had required repeated chasing of Mr Gurl who failed to respond.
35. The Panel determined that the costs should be reduced by £700 as the hearing had not lasted for a full day.
36. The Panel considered carefully the costs sought. The figure for the hearing is the average cost of a hearing day, and the Panel has no reason to doubt it. The other costs are reasonable.
37. 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.
38. The Panel orders that Mr Gurl and the Firm pay to RICS costs of £7,275.50.

### **Appeal Period**

Mr Gurl and the firm DAG Property Consultancy 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.

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.