

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING

Case of

Mr David C Pugh FRICS
West Midlands, WV6

On

Wednesday 27 May 2015 at 1000hrs BST

At

Surveyor Court, Westwood Way, Coventry

Chairman

Paul Housego (Lay Chairman)

Members

Ian Hastie (Member)
Chris Pittman (Member)

Legal Assessor

Matthew Lohn

RICS Representative

Vicki Buckley

Relevant Person

Did not attend was not represented and sent no representations

CHARGES HEARD

The formal charges are:

1. You have not at all times acted with integrity and avoided actions or situations that were inconsistent with your professional obligations in that whilst employed by the regulated firm Bruton Knowles as a salaried partner:
 - You accepted instructions to prepare valuation reports for secured lending and did not make the firm aware of those instructions

- You prepared valuation reports on Bruton Knowles' stationery and added reference numbers to the reports so that they appeared to have been prepared by you on behalf of the firm
- You intended to retain fees paid by clients for those valuation reports

And that those actions were dishonest

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

2. You have not at all times acted with integrity and avoided conflicts of interest and avoided actions or situations that were inconsistent with your professional obligations in that whilst employed as a salaried partner by the regulated firm Bruton Knowles:
 - You acted against the interests of your employer by providing valuation reports to clients without the firm's knowledge
 - You acted contrary to the firm's operating procedures for receiving and recording instructions
 - You placed members of the public at risk by producing valuation reports as if they had been prepared by you on behalf of the firm with the implication that they would have been covered by the firm's professional indemnity insurance policy when they would not have been

such that your conduct lacked integrity, was in direct conflict with your position as an employee, and did not meet RICS professional and ethical standards required of members

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

3. You did not co-operate fully with RICS staff investigating a complaint about your professional conduct in that:
 - You did not provide information requested from you by an RICS Regulation officer in a letter dated 14 July 2014
 - You did not respond to letters sent to you by an RICS Regulation officer dated 14 July, 08 August and 10 November 2014

Such that RICS has been unable to carry out its function as regulator of the profession

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

DETERMINATION

Absence of Mr Pugh

Mr Pugh did not attend the hearing. The Panel was referred to the service of the papers. The Legal Assessor advised the Panel that the provisions as to service set out in rule 23(b) of the Disciplinary, Registration and Appeal Panel Rules of 01 April 2009 had been complied with, as the notice of the hearing, with the other documents required to be supplied, were sent by special post to Mr Pugh on 14 April 2015 so giving more than the required 28 days' notice of this hearing. Accordingly the Panel found that the notice of hearing was properly served.

The Panel next considered whether to proceed in the absence of Mr Pugh. The Legal Assessor's advice was sought and accepted. The Panel was advised that Mr Pugh had a right to be present at the hearing, the more so when facing serious allegations as were before the Panel. That noted, there is a public interest in conducting professional regulatory proceedings expeditiously. In the current proceedings Mr Pugh had not engaged with RICS. He was aware of the fact of the RICS case; he had spoken to Mrs Berry for 30 minutes on the 27 April 2015 but had not responded to any communication from RICS. Mr Pugh had not requested an adjournment. Mr Pugh had

indicated that he had voluntarily absented himself from the hearing. The risk of prejudice to Mr Pugh must be carefully considered but in the circumstances of this case the Panel were entitled to proceed in his absence.

In this case the Panel determined to proceed. It noted that Mr Pugh was aware of the proceedings; he had failed to engage throughout and despite attempts by Mrs Berry and the Mrs Buckley to contact him by phone and email he had not replied substantively. The Panel reminded themselves of the need to exercise the utmost care and caution in deciding to proceed in the absence of Mr Pugh. The Panel reminded itself of the public interest in expeditious progress of professional disciplinary hearings and of the need to protect the public. There had been no request to adjourn or evidence of illness submitted to the Panel. There had been nothing submitted to the Panel that would suggest that Mr Pugh would attend if there was an adjournment. The Panel was satisfied that Mr Pugh had voluntarily absented himself and determined to proceed in Mr Pugh's absence.

Findings of Fact

The Panel carefully considered the documents and the submissions from RICS. The Panel noted that Mr Pugh was a salaried partner with reasonable level of autonomy at Bruton Knowles. He accepted instructions, albeit from unidentifiable clients, and prepared a number of reports as detailed in the allegations without running them through the firm's systems. He passed the reports off as being prepared by Bruton Knowles. The reports identify Lloyds TSB Plc as the client, one report giving a specific bank reference number. The Bank advised that it was not the client and the reference number given did not relate to the particular property. Lloyds TSB Plc had not been intending to lend money against 1-15 Handley Arcade. The Panel concluded that Mr Pugh was intending to receive money since he had quoted fees for the work.

The Panel considered whether this was objectively dishonest and concluded that it was. The Panel next considered by those standards whether Mr Pugh in fact realised it was dishonest. Mr Pugh had not attended or given any response to the allegations. On the balance of probabilities the Panel found that he did know it was dishonest. He was being paid by his employer. He was undertaking work (for whatever reason) purportedly on behalf of his employer but intending to retain the proceeds himself. It is not conceivable that he could regard this as honest. Allegation 1 was found proved.

In respect of allegation 2, the Panel found that Mr Pugh acted against the interests of his employer by providing reports to clients without the firm's knowledge. The facts of allegation 1 made this finding inevitable, but as the terms of his employment were that he should work for no other, 'moonlighting' would of itself substantiate this allegation.

The Panel concluded that the firm's operating procedures were mandatory. They required the receipt of instructions to be recorded on the firm's systems, and these two were not so recorded. The second limb of allegation 2 was found proved.

The third limb of allegation 2 was found not proved since the reports purported to have been prepared for Lloyds TSB Plc and liability was expressly limited by paragraph 2.8 of the reports to that bank (which was not relying on them) . No members of the public were therefore at risk.

The Panel found allegation 3 proved. On two occasions members of RICS had been able to telephone Mr Pugh and speak to him. On the first occasion he promised to respond but did not. On the second, 27 April 2015, he was unco-operative. He had never responded in writing to any of the many correctly addressed communications sent to him by post and by email.

Panel's Decision

The RICS alleged that Mr Pugh was dishonest. The Panel accepted the advice of the Legal Assessor that this question involves the two stage test set out in Twinsectra Ltd -v - Yardley &

Others [2002] UKHL 12, the two stage test is that he must himself have appreciated that what he was doing was objectively dishonest and that he knew that by those standards that it was dishonest. The Panel so found.

On the basis of the facts found the Panel had to decide whether or not Mr Pugh was 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 Pugh was liable to disciplinary action given the serious nature of the findings made against him.

Decision as to sanction

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.

The Panel paid careful heed to the advice of the Legal Assessor (delivered in open forum), and to the indicative sanctions guidance of the RICS. It considered carefully the aggravating factors of this case. There were no mitigating factors.

The Panel had decided that Mr Pugh was liable to disciplinary action. The Panel accepted the Legal Assessor's advice on its approach to sanction namely that it must first decide whether to impose a sanction, and if it so decided the Panel should first consider the lowest sanction, and only if it decided that sanction was not appropriate should it move to the next level of sanction. Having arrived at a sanction that was minded to impose, the Panel must review the next sanction above so as to satisfy itself that this would be too severe a sanction. The Panel may impose more than one sanction. If conditions are to be imposed they must be proportionate, workable and address the issues raised in the proceedings.

The Panel considered that the following aggravating factors were present. The dishonesty was pre-meditated, organised and extended over a period. It was not a momentary aberration. The Panel heard of four previous matters; lack of ethical behaviour in 2011, failure to co-operate in 2013, and failure to record CPD in both 2013 and 2014.

The Panel considered the matters too serious for no sanction to be imposed. Given the serious nature of the allegations the Panel moved swiftly through the less serious sanctions. It did not consider that conditions or undertakings could address the breach of a fundamental tenet of the profession, honesty. The Panel did not consider a fine a serious enough sanction. The only appropriate sanction is expulsion and the Panel so orders.

Determination on Publication and Costs

Publication

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

Costs

The RICS presenting solicitor asked for costs, and had provided a schedule to Mr Pugh in advance of the hearing. The Panel considered carefully the costs sought. The figure for the hearing was the average cost of a hearing day, and the Panel had no reason to doubt it. The other costs were reasonable and quantified.

The Panel concluded that it was fair to make the costs order sought in this case.

The Panel orders that Mr Pugh pay to RICS costs of £4,772.50

Appeal Period

Mr Pugh 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.

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.