

Disciplinary Panel Hearing

Case of

**Mr Thomas Brian Phillips MRICS [0048571]
Maidenhead, Berks SL6**

On

Thursday 11 January 2018

At

The Priory Rooms, 40 Bull Street, Birmingham B4 6AF

Panel

John Anderson (Lay Chair)
Gillian Seager (Lay Member)
Ian Hastie (Surveyor Member)

Legal Assessor

Peter Steel

RICS Representative

Christopher Geering, 2 Hare Court

Audio Technician

Jamie Kim

Hearing Officer

Jae Berry

Introduction

1. Thomas Brian Phillips (“Mr Phillips”) is an RICS member first admitted as a member in 1974. And is the sole member principal of Block Property Management t/a BPM (“the Firm”). He appears before the RICS Disciplinary Panel in connection with the following allegations:-

Charges

1. Between March 2015 and November 2015 you failed to conduct the property management of 14a Walton Park, Liverpool, L9 1EZ (‘the property’) with due skill, care and diligence and with proper regard for the technical standards expected of you.

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

Particulars

- a. You did not obtain copies of the leases relevant to the property and as such were unable to assess the scope of your obligations in your role as property manager; and/or
- b. You failed to follow the applicable guidance at Part 15 of the Service Charge Residential Management Code (2nd Edition); and/or
- c. You failed to have in place a suitable system for the collection of service charges and to monitor any failures to pay that service charge;

You may therefore be liable to disciplinary action in accordance with Bye-Law 5.2.2(c)

2. Between March 2015 and November 2015, you failed to carry out your professional work in a timely manner and with proper regard for the standards of service and customer care expected of you in that you did not respond promptly, or at all, to any or all of the letters and emails from Mr L, sent either directly or via his solicitors, dated:

- a. 18 May 2015
- b. 04 June 2015
- c. 08 June 2015
- d. 04 August 2015
- e. 11 August 2015

Contrary to Rule 5 of the Rules of Conduct for Members 2007

You may therefore be liable to disciplinary action in accordance with Bye-Law 5.2.2©

3. You failed to comply with your professional obligations in that you did not register your firm, Block Property Management t/a BPM, with RICS before providing surveying services to the public in March 2015, as required under the Rules of Registration for Firms.

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

You may therefore be liable to disciplinary action in accordance with Bye-Law 5.2.2(c)

4. Between 04 July 2016 and 29 March 2017, you failed to provide the information requested by RICS in its email of 04 July 2016

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

You may therefore be liable to disciplinary action in accordance with Bye-Law 5.2.2(c)

5. In an email dated 28 June 2016, you told RICS that you had not been allowed to access any of Venmores' computer systems or electronic files when this was not true, as evidenced by your letter dated 31 January 2017 in which you stated that you had been given access to a limited amount of Venmores' computer systems and electronic systems. By making the statement of 28 June 2016 when you knew that it was not true, you acted dishonestly

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

You may therefore be liable to disciplinary action in accordance with Bye-Law 5.2.2 (c)

Or in the alternative to paragraph 5

6. In an email dated 28 June 2016, you told RICS that you had not been allowed to access any of Venmores' computer systems or electronic files when this was not

true, as evidenced by your letter dated 31 January 2017 in which you stated that you had been given access to a limited amount of Venmores' computer systems and electronic systems. By making the statement of 28 June 2016 when you knew that it was not true, you failed to act with integrity

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

You may therefore be liable to disciplinary action in accordance with Bye-Law 5.2.2 (c)

Preliminary issues

2. Mr Phillips did not attend the hearing. The Panel considered the question of 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 01st April 2009 had been complied with, as the amended notice of the hearing, with the other documents required to be supplied, were sent by special post to Mr Phillips on 16 November 2017, so giving more than the required 56 days notice of this hearing. Accordingly the Panel found that the notice of hearing was properly served.

3. The Panel next considered whether to proceed in the absence of Mr Phillips. The legal assessor's advice was sought and accepted. The Panel was referred to the case of R-v-Jones [2002] UKHL 5, which Tait v The Royal College of Veterinary Surgeons (RCVS) [2003] UKPC 34 states is also applicable to professional conduct proceedings, as well as the case of GMC v Adeogba; GMC v Visvardis [2016] EWCA Civ 162.

4. Where a person is ill it will usually be unfair to proceed in his absence. However there is a public interest in conducting professional regulatory proceedings expeditiously. The Panel must consider matters such as whether the person had requested an adjournment, whether the person would be likely to attend any adjourned hearing, or whether, in all the circumstances, Mr Phillips had voluntarily absented himself from the hearing. A decision to proceed in the absence of the person facing the allegation should be taken with great care, and caution. The risk of prejudice to the individual must be carefully weighed, and the conclusion that someone has deliberately and voluntarily absented requires the Panel to find that there is a clear and unqualified - unequivocal - intention not to attend.

5. In this case, it was clear from Mr Phillips' recent correspondence with RICS, in particular his email of 5 January 2018, that he knew of today's hearing but did not intend to be present. He invited the Panel to take into account the responses he had sent on 7 December 2017. He had therefore voluntarily absented himself from the proceedings. The Panel noted the words of Sir Brian Leveson at paragraph 19 of Adeogba (cited above): "*Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed*". In this case, the Panel determined that it was obviously right to proceed.

Response

6. In his responses sent on 7 December 2017, Mr Phillips had made partial admissions to some of the factual allegations and expressions of regret. However, given the equivocal nature of these admissions, the Panel approached the case as if it was contested and considered each allegation in full.

Summary

7. Mr Phillips was employed by a firm called Venmores until November 2014. During this time, Venmores were instructed to provide property management services to a number of residential blocks, including one at 14a Walton Park.

8. Mr Phillips set up Block Property Management t/a BPM ("the Firm") in March 2015. It was agreed that several existing Venmores clients would transfer to the Firm. This included the residents of 14a Walton Park.

9. The issues referred to in the charges above came about as a result of Mr Phillips' failure to register that firm for regulation and his subsequent dealings with a Mr L, an attorney for his mother Mrs L who owned a property at 14a Walton Park.

10. It was alleged by RICS that Mr Phillips, as the sole principal of the Firm, was required to register the Firm for regulation before providing those property management services, in accordance with

Rule 3.1 of the Rules of Registration for Firms.

11. It was not in dispute that Mr Phillips had failed to register the Firm for regulation until July 2016 when prompted by RICS during the course of its investigation.

12. RICS also alleged that Mr Phillips' management of 14a Walton Park was deficient in a number of respects. It was said that he had failed to keep the property in a good and tenable state of repair; he had not obtained copies of the leases so as to be able to understand his obligations under the leases; he had failed to respond to correspondence from Mr L and his solicitors about the property; he had failed to collect the service charges on the property; and had failed to provide insurance information to tenants. Mr Phillips had ultimately resigned as manager of the property.

13. The further allegations related firstly to Mr Phillips' alleged failure to provide RICS with information requested by it in a letter dated 4 July 2016. The allegation of dishonesty or in the alternative lack of integrity stemmed from Mr Phillips' assertion in his first response to RICS that he had not been allowed access to any of Venmore's computer systems or electronic files. RICS had obtained evidence from Mr F, the Chief Executive of Venmore, to the effect that Mr Phillips had been permitted access to Venmore's electronic records.

Burden and standard of proof

14. 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. That is a single unwavering standard of proof, though the more unlikely an allegation the more cogent the evidence that the Panel might require to prove it. 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

15. The Panel read the RICS Presenting Officer's bundle of documents, running to 344 pages. The Panel also took careful note of all Mr Phillips' representations to RICS set out in the bundle as well

as to his response to the charges dated 7 December 2017 referred to above. The Panel reminded itself that there was no requirement for Mr Phillips to prove anything. The Panel had 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 bore in mind in particular Mr Phillips' 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. 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.

Findings of fact

Charge 1

16. The Panel considered each of the particulars of this allegation in turn. Dealing first with particular 1(a), the evidence from the bundle in front of the Panel indicated that Mr Phillips had not obtained the leases to 14a Walton Park. Indeed, his first response to RICS dated 28 June 2016 indicated that he did not recall ever seeing a lease for any of the flats in the estate. This could not be explained solely by Mr Phillips' departure from Venmores, as he had been responsible for the estate for some years prior to leaving. There was no evidence that Mr Phillips had made any attempt to obtain the leases. The Panel accordingly found this particular proved on the balance of probabilities.

17. As to particular 1(b), Mr L had first requested the insurance details by email on 4 August 2015. Mr Phillips had accepted in terms in his correspondence with RICS that he not responded to Mr L or Mr L's solicitors. He had not provided any proper explanation for this failure and had disregarded a fundamental part of his professional obligations. In his resignation letter to the tenants in November 2015, he informed them that the building was not currently insured. The Panel therefore had no hesitation in finding this particular proved to the required standard.

18. Lastly, dealing with particular 1(c), the statement of Mr F confirmed that service charges for 14a Walton Park continued to go to Venmores for a number of months after the responsibility for it was transferred to Mr Phillips. Further the correspondence from Mr L and his solicitors demonstrated their efforts to pay the service charge to Mr Phillips after the Firm assumed responsibility for 14a Walton Park. Mr Phillips had not responded to RICS' request to him to confirm the system in place for

collection of service charges. The Panel again found this particular proved.

19. Having found all the particulars proved, the Panel concluded there was ample evidence to substantiate charge 1 which it also found proved to the required standard.

Charge 2

20. In his initial representations to RICS dated 28 June 2016 and most recently in his response sent on 7 December 2017, Mr Phillips accepted in terms that he had not responded to Mr L or his solicitors. The Panel therefore found this charge proved to the required standard.

Charge 3

21. In his response of 7 December 2017, Mr Phillips accepts that he did not take the action required to register the Firm with RICS and expresses his regret for not doing so. As an experienced surveyor, who held the Firm out as “...fully regulated by the Royal Institution of Chartered Surveyors” the Panel considered that he should have been aware of the requirements of the Rules of Registration of Firms. The Panel accordingly found this charge proved on the balance of probabilities.

Charge 4

22. It was clear from the course of correspondence contained in the bundle before the Panel that while he had engaged with RICS to the extent of providing a set of excuses for his failure to respond substantively, Mr Phillips had not in fact answered the questions reasonably put by his regulator. On that basis, the Panel also found this charge proved to the required standard.

Charges 5 and 6

23. These charges, which were to the effect that in knowingly stating in his letter of 28 June 2016 that he had not been allowed to access any of Venmore’s computer systems or electronic files, Mr Phillips had been either dishonest or had failed to act with integrity, were presented in the alternative. The basis for the charges was that, as set out in Mr F’s statement, Mr Phillips had been given access to Venmore’s QUBE system on 3 February 2015.

24. Mr Phillips' explanation of this discrepancy was that while he was given access to the QUBE systems, this was a property management system which contained only the individual lessees address records and their service charge accounts. He stated that he did not have access to his old email account or that of his assistant to whom Mr L and his solicitors addressed the majority of their correspondence referred to in charge 2.

25. In making its decision, the Panel took account of the recent change in the test for dishonesty in regulatory cases as a result of the Supreme Court decision in [Ivey v Genting \[2017\] UKSC 67](#). It also reminded itself of the difference between the concepts of dishonesty and integrity as outlined by Sir Brian Leveson in [Williams v Solicitors Regulation Authority \[2017\] EWHC 1478 \(Admin\)](#). In this instance, the Panel could not exclude the possibility that Mr Phillips had been artfully referring to the old emails rather than to the QUBE systems, which he clearly had accessed. However, as indicated in [Williams](#), professionals are rightly held to higher standards of scrupulousness in their dealings with others. Here, Mr Phillips was corresponding with his regulator and should therefore have taken every care to ensure the completeness and accuracy of his representations. The Panel considered his failure to do so represented a failure to act with integrity rather than an act of dishonesty and on that basis found charge 5 not proved and charge 6 proved on the balance of probability.

Submissions by RICS Presenting Officer

26. Mr Geering on behalf of RICS submitted that the facts as found proved made Mr Phillips liable to disciplinary action. By his actions, Mr Phillips had let down the tenants of the property, caused considerable difficulties to Mr L and his mother and had left the property to degrade. This sort of conduct inevitably had an impact on public confidence in the profession. Mr Phillips' conduct was exacerbated by his failure to engage properly with RICS.

Discussion and conclusion

27. On the basis of its findings on the facts the Panel had to decide whether or not Mr Phillips 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.

28. In reaching its decision, the Panel that these were serious breaches of the Bye-Laws and Regulations. In a number of respects it appeared that Mr Phillips had completely abdicated his professional responsibilities to clients and to his regulator.

29. The Panel therefore concluded that Mr Phillips was liable to disciplinary action.

Decision as to sanction

30. 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 RICS as a regulator and to protect the public. Sanctions must be proportionate to the matters found proved.

31. The Panel paid careful heed to the advice of the Legal Assessor (delivered in open forum), and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case.

32. The Panel decided that Mr Phillips was liable to disciplinary action. Having done so it first has to decide whether to impose a sanction. 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 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.

33. The Panel considered that the following mitigating factors were present: firstly Mr Phillips had made some limited admissions and had expressed regret for his actions. The Panel also accepted that 14a Walton Park was a property with significant problems and therefore presented a difficult challenge to a property manager.

34. The Panel was however concerned that Mr Phillips demonstrated little insight into his responsibility

for the situation, as indicated by the equivocal nature of his admissions and his failure to address the problems in the first place. Nor did he demonstrate any understanding of the need for RICS to be able to regulate its members in the public interest. This was amply illustrated by his failure to respond to the legitimate questions RICS had put to him about the case.

35. Further, this case demonstrated multiple failings over a significant period of time. As indicated above, to a great extent the Panel considered Mr Phillips had abdicated from his professional responsibilities. The findings that Mr Phillips had lacked integrity in his dealings with RICS and had also held the Firm out as regulated by RICS when it was not, were also aggravating factors.

36. The Panel considered the matters too serious for no sanction to be imposed, and so considered first of all whether a caution was appropriate. The Panel concluded that the breaches found proved were not minor in nature and concluded therefore that a caution would not meet the seriousness of the situation.

37. The Panel was of the view that these were not trivial offences. Mr Phillips' breaches created a real risk to the public, both tenants and owners of the flats of 14a Walton Park and those clients who might for instance have been misled as to the status of the Firm. Further, the failure to engage with RICS undermines its regulatory efforts to the detriment of all members. For those reasons, the Panel concluded that a reprimand would not meet the justice of the situation. Nor would undertakings or conditions be appropriate in the circumstances, given that Mr Phillips had not complied with his regulator in any meaningful way in the course of these proceedings.

38. The Panel also concluded that a fine would not address the seriousness of the failures in his practice. 14a Walton Park was uninsured at the time of Mr Phillips' resignation as property manager. As the managing agent he had thus failed to follow the applicable guidance at Part 15 of the Service Charge Residential Management Code. This put clients at risk. The failures (a) to comply with the RMC; and (b) to allow the property to fall into disrepair were particularly grave and in the Panel's view constituted a gross and persistent breach of the rules. When that was considered together with the failure to cooperate with RICS and Mr Phillips' lack of insight, the Panel decided that the only appropriate sanction was expulsion.

39. Accordingly the Panel orders that Mr Phillips be expelled from Membership of RICS.

Publication and Costs

Publication

40. 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. 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.

41. The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

42. The RICS Presenting Officer asked for costs, and had provided a schedule to Mr Phillips in advance of the hearing. Mr Phillips indicated in an email dated 9 January 2018 that it was impossible for him to respond in any detail given other commitments. He asked that no consideration be given to the schedule due to the short notice.

43. 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 those of RICS's solicitor and its Investigation and Disciplinary costs, which were supported by a break down and which seemed within reasonable limits to the Panel.

44. The Panel concluded that it was fair to make a costs order in this case and that Mr Phillips had received adequate notice of the application for costs but had chosen not to make any submissions about either the costs or his ability to pay. If the Panel declined to make a costs order, the cost of the

proceedings falls on the profession as a whole. It therefore concluded that it should order him to pay the sum of £7,525 sought by RICS.

Appeal Period

45. Mr Phillips 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.

46. 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.