

Disciplinary Panel Hearing

Case of

**Countrywide Residential Lettings Ltd
United Kingdom**

On

Wednesday 30 October 2019

At

RICS Offices, 55 Colmore Row, Birmingham

Panel

Alison Sansome (Lay Chair)
Patrick Bligh-Cheesman (Lay Member)
Nick Turner (Surveyor Member)

Legal Assessor

Chris Hamlet

Firm representative

Marc Beaumont

RICS Presenting Officer

James Lynch

The formal charges were:

The charges against the Firm were:

1. Between 2008 and 2018, the Firm transferred a sum of £10,093,866 of client funds, representing unclaimed and unidentified client balances that had not been claimed for six years or more, from the Firm's client account into the Firm's office account, when it was not permitted to do so. In doing so, the Firm failed to preserve the security of client funds

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

2. The Firm's conduct at 1 above represented a serious and prolonged disregard towards the Firm's professional obligations as set out in the RICS' client money guidance document ("Clients' money: General advice for firms (v2 w/e from 4 April 2011)")

Contrary to the third limb of Rule 3 of the Rules of Conduct for Firms 2007

(i.e. the duty to: "avoid any actions or situations that are inconsistent with its professional obligations").

The Firm is therefore liable to disciplinary action in accordance with RICS Bye-Law 5.3.2(c).

Evidence:

2. The Panel received a bundle containing material on behalf of both parties running to 242 pages, as well as a witness statement from Mr Paul Creffield, Managing Director of the Firm, dated 4 October 2019 and a document headed "Agreed Sanction Submission" (the "Joint Document"), signed by Mr Lynch on behalf of RICS and Mr Beaumont on behalf of the Firm.
3. The Joint Document was provided in the following terms:

Introduction

1. *This document represents a provisional agreement between Countrywide Residential Lettings Ltd ("the Firm") and RICS which sets out:*

i) *The Firm's admission to the following allegations 1 and 2, on an agreed factual basis*

1. *Between 2008 and 2018, the Firm transferred a sum of £10,093,866 of client funds, representing unclaimed and unidentified client balances that had not been claimed for six years or more, from the Firm's client account into the Firm's office account, when it was not permitted to do so. In doing so, the Firm failed to preserve the security of client funds*

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

2. *The Firm's conduct at 1 above represented a serious and prolonged disregard towards the Firm's professional obligations as set out in the RICS' client money guidance document ("Clients' money: General advice for firms (v2 w/e from 4 April 2011)")*

Contrary to the third limb of Rule 3 of the Rules of Conduct for Firms 2007

(i.e. the duty to: "avoid any actions or situations that are inconsistent with its professional obligations").

The Firm is therefore liable to disciplinary action in accordance with RICS Bye-Law 5.3.2(c).

- ii) The Firm's agreement that those facts justify disciplinary action,*
 - iii) RICS' and the Firm's agreement, subject to the Panel's approval, that the appropriate sanction is a fine of £75,000 and a reprimand,*
 - iv) An agreement for the Firm to pay costs in the sum of £600,*
 - v) The Firm's agreement that publication is appropriate.*
- 2. The Panel is asked to consider this agreement, and the representations made in respect of it. If it considers that it appropriately addresses the public interest and reflects the seriousness of this case, it is asked by RICS to find the facts proved on this basis, find a 'liability to disciplinary action', and approve the approach to sanction. These findings and sanction would have the same standing and effect as in any other disciplinary case.*
 - 3. If the Panel considers that a reprimand and fine are not sufficient in principle, or that they are sufficient in principle, but that the proposed fine should be larger, the parties agree that the Firm will withdraw its admissions and the parties will ask for the matter to be remitted to a fresh panel for a full determination of all the allegations and/or of the question of a liability to disciplinary action, which will in such an event, be contested. RICS would support such an application.*
 - 4. This procedure in substance follows the practice in the Nursing and Midwifery Council and the Solicitors Disciplinary Tribunal, where parties may ask a panel to approve a consensual panel disposal. It was adopted in RICS v Wells (2018) and RICS v Kelly (2019). It is also allied to the procedure adopted in the criminal courts where the judge may provide an indication of sentence based on provisional admissions. In our submission, it represents a proportionate and appropriate attempt between the parties to resolve this case in a way which ensures the public interest in the good repute of the profession is upheld and that formal findings are made, but that considerable tribunal time and costs are saved.*
 - 5. The Panel has the power to approve the proposed approach. In the case of Hill v Institute of Chartered Accountants in England and Wales [2013] EWCA Civ*

555, the Court of Appeal endorsed a permissive approach by regulators to the interpretation of their rules, as it did in the case of solicitors in *Viridi v Law Society* [2010] 1 WLR 2840, CA at [31]. In short, in the absence of a prohibition, the Panel has the power to exercise its discretion, regulate its own procedure and consider the submissions within this document. The case of *Regina v Goodyear* [2005] 2 Cr. App. Rep. 20 demonstrates a well-established, analogous approach in the criminal courts.

Stage 1 - Facts

6. *The parties request that paragraphs 4 - 27 of the case summary (attached hereto) are treated as an agreed statement of the facts.*
7. *The Firm accepts that the facts proved and admitted are sufficient to evidence amended charges 1 and 2.*

Stage 2 - Liability to Disciplinary Action

8. *RICS submits that the Firm is liable to disciplinary action. The conduct of the Firm represents a serious and prolonged disregard for the Firm's professional obligations and for the guidance that was available.*
9. *Whilst the Firm put in place a cross-indemnity underwritten by Countrywide Group PLC and returned in full any funds whose origin was capable of identification, the sums involved were substantial. The Countrywide Group retained and declared those funds as profit, as evidenced by the correction issued on 02 August 2018 (see para 9 of the agreed facts). There is a real risk of harm to the reputation of the profession if Firms not only fail to hold client monies safely, but choose to treat unclaimed client funds as profit, publicly declaring them as such in their financial reports, rather than treating them in accordance with the rules.*
10. *The Firm has since returned the funds in full and has put in place measures that identify the origin of all payments and automatically returns them after 6 months to prevent a repeat of such issues. Whilst these points may be relevant to mitigation, it does not in RICS' submission, alter the fact that these breaches were serious and deserving of sanction.*

11. *The Firm accepts that it is liable to disciplinary action by virtue of a failure to adhere to the Rules governing Firms' conduct (BL 5.3.2(c)) and because its actions are liable to bring RICS into disrepute (BL 5.3.2(a))*

Stage 3 - Sanction

12. *Paul Creffield, Group Managing Director of Countrywide PLC, has filed a witness statement setting out the Firm's mitigation in this matter. That statement is at page 243 of the bundle.*

13. *RICS and the Firm agree the following features relevant to sanction are present in this case:*

- a) *The Firm accepts that it was its standard procedure, between 2008 and 2018, for unidentified and unclaimed client balances to be transferred from the Firm's client account to an office account held by the Firm or the wider Countrywide Group.*
- b) *the Firm accepts that the available guidance was that such funds ought to have been returned to the legal owner, retained by the Firm in the firm's client account if unidentifiable, or paid to a registered charity in return for an indemnity to return those funds if required.*
- c) *The Firm accepts that its misconduct was serious and continued over a prolonged period.*
- d) *The Firm has returned the sum in full and there are no reports of individual clients suffering financial loss. However, the public interest is still engaged as there may be circumstances where the rightful recipient was unaware of their entitlement to those funds (eg where the funds were due to a now insolvent company and were therefore Bona Vacantia and payable to the state)*
- e) *The Firm was transparent in its actions. The decision to retain these funds was a policy decision made at a senior management level by personnel employed at the time by the Firm and was not the product of deceit.*
- f) *Management at the Firm has since changed and the current CEO, appointed in 2018, provides a witness statement setting out his disapproval of the Firm's decision and actions. He shows insight into the issues and the*

Regulation



potential harm that its actions may cause and demonstrates a genuine commitment to regulation in the property industry.

- g) The Firm has now purchased a 'Datalink' system from its bank which allows it to return unidentified client balances directly to the payer after 6 months, thus avoiding the accumulation of unidentified funds in such large quantities in the future.*
- h) The Firm has varied its procedures so that going forward, it will either retain unclaimed client funds in client account, or pay those sums to charity in line with the RICS client money guidance,*
- i) The Firm has accepted the facts of the amended charges and recognises that such findings are both serious and liable to bring RICS into disrepute,*
- j) The Firm has engaged fully and promptly with RICS throughout the course of the investigation and these proceedings.*

14. The Panel is therefore invited by the parties to impose a reprimand and a fine. RICS says that this approach protects the reputation of the profession and marks the severity of the misconduct.

15. The level of fine has been calculated as a percentage (0.75%) of the sums referred to at charge 1. That sum has been rounded down for convenience.

Costs

16. Under R34 DRAP, the Panel may make such order for costs against the Firm as it considers fair and reasonable.

17. RICS seeks costs of £600.

18. The Firm agrees to pay such costs.

Publication

19. The parties agree that the decision should be published in line with the presumption at paragraph 3.2 of the Sanctions Policy.

Burden and standard of proof:

4. The Panel received advice from the Legal Assessor that ordinarily RICS is required to prove all allegations in dispute to the civil standard and that ordinarily, the Panel would be required to determine those allegations one way or the other. However, it was advised that there is provision in the Rules to vary the ordinary procedure, at Rule 42, should it consider it appropriate to do so. In addition, it was advised that there are legal authorities supporting the adoption of a summary procedure where the parties have reached an agreement as to the disposal of the matter that is appropriate in the circumstances. The Panel was referred in this regard to the cases of *In re Carecraft Construction Co Ltd* [1994] 1 WLR 172 and *R (Hill) v Institute of Chartered Accountants in England and Wales* [2013] EWCA Civ 555 as examples of matters in which this has operated effectively without the need to undertake a full hearing of the issues.
5. Applying these principles to the determination of the facts, the Panel was advised that it was entitled to treat the admissions contained in the Joint Document, specifically at paragraphs 6 and 7, as full admissions to the charges without deliberating further on those issues.
6. However, the Panel was further advised that before doing so, it must consider the overall basis upon which those admissions were made, as set out at paragraph 3 of the Joint Document, being that the Panel also adopts the form of *disposal* jointly agreed by the parties, as set out at paragraph 1 and 14-19.
7. The Panel was advised that should it conclude that the proposed form of disposal was inadequate or inappropriate, the Firm would withdraw its admissions and the Panel was invited at paragraph 3 of the Joint Document to remit the matter to a fresh Panel for determination of the allegations.

Facts and Liability to Disciplinary action:

8. The Panel had regard to the evidence contained within the bundle, the statement of Mr Creffield, the Agreed Document and the submissions by the parties. It concluded that full admissions had been made therein which gave rise to a liability to disciplinary action.
9. In relation to the latter, the Panel took account of Rule 3 and 8 of the Rules of Conduct for Firms 2007 as well as Bye-Law 5.3.2(c).

Sanction:

10. 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 its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
11. The Panel paid careful heed to the advice of the Legal Assessor and to the Sanctions Policy of RICS. It considered carefully the mitigating and aggravating factors of this case.

12. The Panel was advised that whilst a decision on the appropriate sanction or sanctions, if any, was a matter for its independent judgment, it was entitled to adopt the means of disposal proposed in the Joint Document if it considered it appropriate and in the public interest to do so.

Mitigating/Aggravating features:

13. The Panel was concerned that this case involved a household name which had, over a protracted period of time, systematically failed to preserve the security of client funds. It had transferred into the Firm's Office Account funds totaling over £10,000,000 which it knew did not belong to it. In fact, it declared those funds as profits, declaring them as such in its financial returns, rather than treating them in accordance with the Rules. This had an inevitable impact on public confidence and clearly represented conduct liable to bring RICS into disrepute.

14. However, the Panel was mindful of the fact that there were significant mitigating features of the case. These included:

- The conduct was part of a transparent policy, ratified by previous senior management, in respect of unidentified and unclaimed client balances
- The Firm has fully cooperated with the proceedings and admitted its wrongdoing, apologised and accepted liability to disciplinary action
- The Firm has taken steps to return the funds to the Client Account and introduced robust measures to prevent a recurrence
- The current Group Managing Director of the Firm appeared to have good insight into the nature of the misconduct and how it can be avoided in future
- No individual clients appear to have suffered financial loss as a result

Decision on Sanction:

15. The Panel considered the matter too serious for no sanction to be imposed. It took careful account of the sanctions proposed within the Joint Document. It was content that public safety and confidence could be restored by the imposition of significant fine and Reprimand.

16. However, the Panel considered that there was an imperative in this case to impose a fine that reflected the degree of misconduct concerned and which sent a strong message of deterrence to other regulated firms. Accordingly, the Panel considered a Reprimand as well as a fine of £100,000, representing approximately 1% of the sum involved, was more appropriate.

17. After reflecting upon this, the Parties submitted an amended Agreed Sanction Submission which reflected their agreement to this revised figure.

18. Accordingly, the Firm is ordered to receive a Reprimand and a fine of £100,000.

Publication

19. 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 published on RICS' website and in RICS Modus. The Panel sees no reason for departing from the normal practice in this case.
20. 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

21. RICS made an application for costs in the sum of £600. The Panel acceded to that application in order that the costs of the hearing are not borne by the profession.

Appeal Period

22. Given that this matter was disposed of in accordance with the terms of the Joint Document, the usual provisions regarding an appeal by a Firm do not apply.
23. 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.