

Disciplinary Panel Hearing

Case of

Mr David Rogers MRICS ACIOB MASI

David Rogers (the Firm)

On

Thursday 17 January 2019

Panel

John Anderson (Lay Chair)
Joshua Askew (Surveyor Member)
Ron Barclay-Smith (Lay Member)

Legal Assessor

Mark McConochie

The formal charge is:

Member

The formal charge against Mr Rogers MRICS is that:

1. Around December 2016 he failed in his professional obligations to Mr Garrett in that:
 - a. Having taken payment in advance for a survey report, he failed to send Mr Garrett the report in a timely manner,
 - b. Following his conduct at 1 a. above, he failed to provide a refund to Mr Garrett in a timely manner.
 - c. And his conduct at 1 a. and / or b. above constituted a lack of integrity.

Contrary to Rule 3 of the Rules of Conduct for Members 2007 and Mr Rogers is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

2. Between 2016 and 2017 he failed in his professional obligations in that the firm David Rogers (“the Firm”), which he controlled, possessed client money for one or more clients and he:
 - a. Failed to inform RICS in a timely manner or at all of the extent of client money held by the Firm,
 - b. Failed to ensure adequate procedures were in place for handling and / or safeguarding client money,
 - c. And his conduct at 2 a. and / or b. above constituted a lack of integrity.

Contrary to Rule 3 of the Rules of Conduct for Members 2007 and Mr Rogers is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

3. Following the survey commissioned by Mr Garrett in December 2016, he failed to carry out his professional work in a timely manner and with regard to proper standards of customer service and care in that he:
 - a. Failed to respond appropriately or at all to Mr Garrett’s communications regarding the survey,
 - b. Failed to provide Mr Garrett with the Complaints Handling Procedure of the Firm which he controlled.

Contrary to Rule 5 of the Rules of Conduct for Members 2007 and Mr Rogers is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

4. He failed to cooperate adequately with RICS employees in that it did not provide a substantive response to communications sent on or around:
 - a. 3 October 2017
 - b. 13 November 2017
 - c. 19 January 2018

Contrary to Rule 9 of the Rules of Conduct for Members 2007 and Mr Rogers is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

Firm

The formal charges against the Firm are that:

1. Around December 2016 it failed in its professional obligations to Mr Garrett in that:
 - a. Having taken payment in advance for a survey report, it failed to send Mr Garrett the report in a timely manner,
 - b. Following its conduct at 1 a. above, it failed to provide a refund to Mr Garrett in a timely manner,
 - c. And its conduct at 1 a. and / or b. above constituted a lack of integrity.

Contrary to Rule 3 of the Rules of Conduct for Firms 2007 and the Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

2. Between 2016 and 2017 it failed in its professional obligations in that it possessed client money for one or more clients and:
 - a. It failed to inform RICS in a timely manner or at all of the extent of client money held by the Firm,
 - b. And its conduct as set out at 1 a. above constituted a lack of integrity.

Contrary to Rule 3 of the Rules of Conduct for Firms 2007 and the Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

3. Following the survey commissioned by Mr Garrett in December 2016, it failed to carry out its professional work in a timely manner and with regard to proper standards of customer service and care in that it failed to respond appropriately or at all to Mr Garrett's communications regarding the survey.

Contrary to Rule 5 of the Rules of Conduct for Firms 2007 and the Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

4. Prior to around March 2017, it failed to have in place any Complaints Handling Procedure at all, or, in the alternative, a Complaints Handling Procedure which included recourse to an appropriate Alternative Dispute Resolution provider.

Contrary to Rule 7 of the Rules of Conduct for Firms 2007 and the Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

5. Prior to 20 September 2017, it failed to have in place proper arrangements for ensuring the security of clients' money.

Contrary to Rule 8 of the Rules of Conduct for Firms 2007 and the Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

6. Prior to 20 September 2017, it failed to have in place adequate arrangements in the event of the sole principal's death or incapacity or other extended absences.

Contrary to Rule 12 of the Rules of Conduct for Firms 2007 and the Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

7. It failed to cooperate adequately with RICS employees in that it did not provide a substantive response to communications sent on or around:
 - a. 3 October 2017
 - b. 13 November 2017
 - c. 19 January 2018

Contrary to Rule 15 of the Rules of Conduct for Firms 2007 and the Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

Service and Proceeding in Absence

1. Mr Rogers did not attend the hearing and was not represented. RICS invited the Panel to proceed in the absence of Mr Rogers and the Firm.
2. A Notice of Hearing, dated 7 November 2018, was sent to Mr Rogers by email and by special delivery to the address held on the member contact record held by RICS for Mr Rogers and the Firm. Mr Rogers has indicated that his email address is his preferred means of communication with RICS. A copy of the Notice and a witness statement from Mrs Jae Berry, Regulatory Tribunal Executive at RICS, was produced by RICS as proof that the Notice had been sent.
3. The Panel was satisfied that Notice had been properly served in accordance with Rule 23 of the Disciplinary Registration and Appeal Panel Rules 2009.

The Notice:

- i) confirmed the charges;
 - ii) gave the required 56 days' notice of the date, time and venue of the hearing;
 - iii) enclosed the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended);
 - iv) enclosed the RICS bundle of documents including the evidence upon which the RICS relied and a Listing Questionnaire for completion by Mr Rogers.
4. Having determined that service of the Notice of Hearing had been properly served in accordance with the Rules, the Panel went on to consider whether to proceed in the absence of Mr Rogers and the Firm.

5. The Panel accepted the advice of the legal assessor about the need to consider very carefully whether to exercise its discretion to proceed in the absence of Mr Rogers and the Firm and the factors it should consider when doing so. The Panel took the following into account:
- a) All of the circumstances including the need for regulatory proceedings to be conducted fairly and the potential prejudice to Mr Rogers and the Firm of proceeding in their absence, weighed against the public interest in ensuring that regulatory proceedings are dealt with promptly. The Panel was mindful of the need to consider very carefully whether this case could properly – and fairly – be considered without Mr Rogers being able to present his case in person, or through a representative, and bore in mind as a general principle that a Member or Firm facing a disciplinary allegation have the right to be present and represented at a hearing;
 - b) The original complaint dates back over two years to 13 December 2016. Any further delay would not be consistent with the need, in the public interest, for regulatory proceedings to be conducted promptly;
 - c) Mr Rogers had engaged with RICS prior to the Notice having been served on him and has clearly therefore been able and willing to communicate with RICS previously and it would have been open to him to seek an adjournment if he was unable to attend;
 - d) Mr Rogers was offered the possibility to avoid a disciplinary hearing by RICS who invited him to agree to the terms of consent order, something which was not taken up by Mr Rogers;
 - e) The Panel considered that Mr Rogers was aware of the hearing taking place but had chosen not to attend, or take part. In light of his failure to engage, the Panel did not consider an adjournment would realistically result in him attending on a future date;
 - f) When considering whether it is fair to proceed in the absence of Mr Rogers, the Panel considered the nature of the hearing - and the charges he and the firm faced. There were no witnesses being called by RICS. The RICS bundle of documents indicated that this was unlikely to be a case that turned on significant disputes of fact. For example, whether or not Mr G instructed Mr Rogers to carry out the valuation report; whether or not Mr G received the valuation report in the time requested; whether or not Mr G paid Mr Rogers in cash up-front; if and

when Mr G received a refund; where and how Mr Rogers kept the funds that were paid up front by Mr G; the nature of the Firm's ADR arrangements and those in place in the event of death or bankruptcy. The Panel did not consider the potential prejudice to Mr Rogers if he is not able to address the Panel about the facts to be as significant as may be in a case with substantial disagreement about the factual position;

- g) The Panel carefully took into account the potential disadvantage to Mr Rogers in not being able to give evidence about his personal circumstances and any medical evidence by way of mitigation - if the Panel should find liability and reach the stage of applying any sanctions as part of its final determination, the most severe of which is removal from the register;
- h) There was evidence in emails from Mr Rogers that he has suffered from intermittent ill-health over a sustained period of time since 2013. However, there was no medical evidence before the Panel that he was not fit to attend the hearing and Mr Rogers has not made a request for these proceedings to be adjourned on health grounds, something which would have been open to him to do.

- 6. Having carefully weighed all of the considerations above, the Panel decided that in all of the circumstances the hearing could proceed fairly in the absence of Mr Rogers or the Firm.

Findings of Fact

- 7. Mr Rogers registered with RICS on 30 September 1994. The Firm registered with RICS on 8 May 2015. The Annual Return Form for the Firm, submitted on 6 March 2016, listed Mr Rogers as the Firm's Director and Principal.
- 8. The Panel carefully considered the evidence contained in the RICS bundle of documents and took into account the representations made on behalf of RICS by Mr Chris Geering of counsel.

Charges against Mr Rogers

Charge 1

9. The Panel found the following facts proved in relation to Charge 1 against Mr Rogers:

- i. Mr Rogers was instructed to undertake a valuation report on behalf of Mr G on Friday 2 December 2016. Mr Rogers undertook to produce the valuation report by Monday 5 December and he offered to undertake the survey for a £150 cash payment, payable in advance on the day of the survey. Mr G paid the £150 to Mr Rogers on Friday 2 December. The Panel accepted the evidence contained in the email from Mr G to RICS dated 13 December 2016 and attached emails between Mr G and Mr Rogers in finding these facts proved;
- ii. Mr Rogers did not provide the report to Mr G on Monday 5 December despite Mr G chasing Mr Rogers through emails, telephone calls and even attending his property on one occasion. Mr G attempted to contact the Ombudsman's Service to bring a complaint but was told that Mr Rogers was not registered with them. Mr G therefore escalated the matter to RICS. In response to a request for further information from RICS, Mr G confirmed in an email dated 20 December 2016 that he still had not heard from Mr Rogers as of that date;
- iii. In an email dated 17 February 2017 to RICS, Mr Rogers stated:

"I do not know why I let Mr G down as I have the report on file and a copy is attached. Why it was never sent I do not know."
- iv. An email from Mr G to RICS dated 7 March 2017 Mr G confirmed that he had not received the report by that date. Mr G went on to state that he had arranged a report from another provider and no longer required the report from Mr Rogers;
- v. An email from Mr G to RICS dated 30 March 2017 confirmed that, as of that date, he had still not been provided with a refund of the £150 he had paid Mr Rogers for the report;

- vi. In an email to RICS dated 8 May 2017 Mr G confirmed that he had received a refund.

10. In summary, Mr Rogers visited Mr G's property in order to carry out a valuation report on Friday 2 December. Mr Rogers failed to provide the report within the timescale agreed with Mr G despite a number of chasers from him. It was only in response to Mr G's complaint that in an email sent by Mr Rogers to RICS on 23 February 2017 he invited RICS to provide the report to Mr G by which time Mr G had arranged an alternative valuation so he never actually received the report he had paid for. Mr G did not receive a refund of the £150 paid for the report on Friday 2 December until on or around 8 May 2017. Mr Rogers has offered no explanation as to why he did not send the report to Mr G.

11. The significant delay on the part of Mr Rogers in providing the valuation report to Mr G within the agreed timescale and the significant delay in arranging a refund was unacceptable. The delay defeated the purpose of Mr G arranging the valuation in the first place, and is a poor reflection not only on Mr Rogers but on the surveyors' profession as a whole. Mr G had specifically asked for the report to be provided in a short timescale, something which Mr Rogers agreed to for a discounted - cash in advance - payment. The Panel considered that Mr Rogers had demonstrated a want of integrity in breach of Rule 3 of the Rules of Conduct for Members in failing to meet the high professional standards to be expected of him in the delivery of services to clients. Surveyors have a privileged and trusted role in society and in return they are required to comply with their own professional standards. This is essential in order to uphold the reputation of the profession and public confidence in it. The Panel found Charge 1 against Mr Rogers proved.

Charge 2

12. The Panel found the following facts proved in relation to Charge 2 against Mr Rogers:

- i. In an email dated 26 May 2017 Mr Rogers confirmed that Mr G had paid him in cash on the day of the survey (£150 on Friday 2 December);

- ii. Mr Rogers confirmed in his email dated 26 May 2017 that he did not have a client account set up at that time and the money was paid into his personal account along with private cash;
- iii. Mr Rogers also stated in his email of 26 May 2017 that he was in the process of setting up a separate business client account. He stated that he was paid in cash by Mr Garrett “*with no VAT*”. Mr Rogers could not explain why he had accepted a cash payment since this was not his usual practice and he was not VAT registered;
- iv. Further to a Regulatory Review Visit to the Firm on 20 September 2017 by a Mr Peter Dixon, Professional Assurance Surveyor for the RICS, a report was prepared by Mr Dixon dated 22 September 2017. The report confirmed at page 17 that the Firm received fees in advance of completing reports. This constituted client money. However, proper arrangements at the Firm were not at that time in place, despite the assurance given that Mr Rogers was addressing this issue in his email to RICS of 26 May 2017. The report noted:

*“It is not acceptable to deal with this by not banking a cheque:
When issuing an invoice in advance you must either:
a) hold monies received in a dedicated client money account which will be subject to RICS monitoring and client money rules, or;
b) you must make a clear declaration in the terms of engagement or the covering letter that fees received in advance of completion of the report will not be held as client money and will not be subject to the protection of the RICS’ Client Money Protection Scheme. Your client must agree to this.”*
- v. RICS were not notified by Mr Rogers that the Firm was holding clients’ money until the Firm completed and submitted its annual return on 23 March 2017, in which it was confirmed that the Firm had started holding clients’ money on 31 October 2016.

13. The payment of client money into a surveyor’s personal bank account is not an acceptable, safe or secure way for clients’ money to be handled. In the event of bankruptcy for example

there would be no way of distinguishing client money from money belonging to Mr Rogers or other debtors. It is clear that this arrangement was still in place in September 2017 at the time of the Regulatory Review Visit by Mr Dixon despite Mr Rogers indicating in his email to RICS dated 26 May 2017 that he was taking steps to set up a separate client account. It was only in response to the investigation by RICS in response to Mr G's complaint that it came to the attention of RICS that Mr Rogers was taking cash payments in advance and paying them into a personal bank account. In the Firm's annual return completed on 29 March 2017 Mr Rogers indicated that the Firm had started to handle client money in October 2016, some five months before RICS was formally notified of the position in the Firm's annual return.

14. This is a serious matter and exposed clients to financial risk. Clients expect surveyors to take appropriate and effective steps to ensure that their money is safeguarded. Mr Rogers failed to do this, and failed to take immediate action to put appropriate arrangements in place once having been put on notice by RICS of the need to do so. The Panel therefore considered that Mr Rogers had failed to meet the high professional standards required of a member his profession and had not demonstrated sufficient awareness of the importance of compliance. This constituted a lack of integrity in breach of his professional obligations under Rule 3 of the Rules of Conduct for Members. Based on the above findings of fact the Panel found the second Charge against Mr Rogers proved.

Charge 3

15. Based on evidence in emails from Mr G dated 13 December 2016 and 31 May 2017, the Panel found the following facts proved in relation to Charge 3:

Following the visit by Mr Rogers to Mr G's property on Friday 2 December to carry out the survey, Mr G:

- i. Attempted to contact Mr Rogers by email on Tuesday 6 December but did not receive a reply;
- ii. Made several unsuccessful attempts to contact Mr Rogers on his mobile telephone on Wednesday 7 December;

- iii. Visited Mr Rogers at his property on Thursday 8 December and was informed that Mr Rogers was not there and was asked to leave;
- iv. Mr Rogers stated in his email to RICS dated 30 March 2017 that he did not recall Mr G contacting him or trying to make contact and that because of ill-health he had trouble recalling any telephone conversations or picking up emails during December 2017. However, the Panel preferred the evidence of Mr G in relation to his attempts to make contact with Mr Rogers which took place immediately after 2 December when Mr Rogers visited the property of Mr G and he was clearly well enough to be able to carry out the survey – and to engage in email correspondence with Mr G in the week immediately leading up to the visit on 2 December.

16. The Panel found no evidence that Mr Rogers had provided Mr G with the Firm's Complaints Handling Procedure and therefore found that he failed to do so as alleged. It was RICS that gave Mr G the details of the Complaints Handling Procedure on the Firm's record.

17. The Panel considered the failure by Mr Rogers to respond to Mr G's attempts to contact him after 2 December to be a failure to carry out his work in a professional manner and with regard to proper standards of customer service and care. Mr Rogers had undertaken to provide the report in a short timescale upon Mr G's request, had taken payment from Mr G, had visited Mr G's property but then failed to provide the report or respond to Mr G's attempts to find out where the report was. Mr G was not provided with the Firm's Complaints Handling Procedure and in any event the procedure that the firm did have in place at that time was not suitable for the type of work carried out by the Firm. This falls short of what the public are entitled to expect and is a failure to comply with Rule 5 of the Rules of Conduct for Members.

Charge 4

18. RICS applied to delete reference to the letter dated 13 November 2017 from Charge 4. The Panel considered that this amendment could be made with prejudice to the overall fairness of the hearing and proceeded accordingly.

19. The Panel found the following facts proven in relation to the fourth Charge against Mr Rogers:

- i. That he failed to provide a response to an email from RICS dated 3 October 2017 by the requested deadline of 24 October 2017 and only did so on 3 November 2017 following a chaser from RICS;
- ii. That he failed to provide a response to an email from RICS dated 19 January 2018 by the requested deadline of 2 February 2018 and only did so on 15 February 2018

20. Based on the findings of fact above the Panel found the fourth Charge against Mr Rogers proved. Rule 9 requires Members to co-operate fully with the RICS. This allows the RICS to carry out its regulatory functions efficiently and promptly. The not insignificant delays by Mr Rogers in replying to correspondence from RICS is not consistent with that very important objective.

Charges against the Firm

21. Mr Rogers is the sole Director and Principal of the Firm. He is effectively the embodiment of the Firm. His action and omissions amount to actions and emissions of the Firm. Taking this into account and based its findings above in relation to Charges against Mr Rogers, the Panel found **Charges 1, 2, 3, 5 and 7** proved against the Firm.

22. In relation to **Charges 4 and 6**, the Panel found:

- i. RICS wrote to Mr Rogers on 17 February 2017 asking him to complete an Interim Annual Return with appropriate details about the Firm's Complaints Handling

Procedure which should include an appropriate Alternative Dispute Resolution (ADR) mechanism that is approved by the Regulatory Board. The letter stated: *“it is important that [Mr G], or any other consumer client, has access to an appropriate independent redress provider should they wish to pursue a complaint”*;

- ii. Mr Rogers reply on 22 February 2017 indicated confusion over this requirement:

“I thought I was to use the RICS ombudsman (sic) service in the case of a complaint. When I spoke to the independent ombudsman they (sic) said they would not cover a self employed person, is that not correct? When I spoke to someone in the RICS they told me that I should use the RICS should there be a complaint, was that not correct?”

- iii. RICS responded on 23 February 2017 explaining the Firm had to comply with rule 7 of the Rules of Conduct for Firms 2007 and that it had to have in place an approved ADR procedure. When registering the Firm Mr Rogers had chosen ‘The Property Ombudsman’, an approved scheme for residential estate agents and lettings agents. Since his Firm did surveying services, it was pointed out that he should have selected ‘Ombudsman Services: Property’ (“OS:P”) ADR. RICS advised Mr Rogers to make this change by submitting an Interim Return. It pointed out he would then have to draft a Complaints Handling Procedure, an example of which was attached;

- iv. As of 7 March 2017 Mr Rogers had not submitted an Interim Return. RICS telephoned and emailed him chasing this, and seeking Mr Rogers’ response to the complaint. Mr Rogers replied on 21 March 2017 explaining he had experienced a period of further ill-health but that he was working albeit *“at a slow pace”*. RICS gave additional time for his response to the complaint, but repeated that he needed to address the Complaints Handling Procedure issue;

- v. Mr Rogers replied on 11 April 2017. He stated:

“I do have a complaints mechanism in place with the OS:P and this was confirmed yesterday by the RICs (sic) directly, I spoke to Mrs Edwards who confirmed to this

was in place when I became self-employed. see below. I have had, as far as I was concerned OS:P in place since 2014 when I became self employed”.

- vi. The email he referred to from Mrs Edwards did not confirm he had OS:P cover since he was self-employed. Rather it stated that he had selected OS:P on his annual return submitted 27 March 2017;
- vii. Mr Rogers attached a copy of an undated complaints procedure. This included reference to OS:P;
- viii. He stated that he had not been aware of the requirements under rule 12 of the Code of Conduct for Firms 2017 for Firms having a sole principal to have adequate cover in place to guard against illness or death or other absence. He undertook to address this “*forthwith*”. He concluded:

“I hope I have answered all your questions and I now realise I have done some things that are not in accordance with RICS Regulations and I can only put this down to the fact I rushed into being totally self-employed without realising the implications and also due to my ill health since 2013”.

- ix. RICS arranged for a Regulatory Review Visit to take place at the Firm. After some delays Mr Dixon, Professional Assurance Surveyor, RICS, was able to conduct an inspection on 20 September 2017. Mr Rogers was fully cooperative and many aspects of his business were compliant, or required only minor technical improvements. However, Mr Rogers was unable to locate his Complaints Handling Procedure, although Mr Dixon noted: “*he assured me that it had been approved by RICS Regulation as part of the on-going investigation*”. Mr Rogers also had in place no appropriate cover for the Firm in the event of illness or death or other incapacity, as required under rule 12 of the Rules of Conduct for Firms;
- x. On 3 October 2017 Mr Dixon’s report was shared with Mr Rogers and he was asked to provide comments. RICS also asked what steps Mr Rogers had taken to put into effect a suitable locum arrangement since the rule 12 non-compliance was

raised back in May 2017. A further chaser was sent 3 November 2017. He replied on the same day:

“I do apologise, but at the time you sent the email I was in hospital and was treated for a period of 10 days. I went into hospital shortly after the home visit from your colleague and I have been on medication since being discharged and found it difficult to work or do anything.”

23. Based on the above findings of fact the Panel also found Charges 4 and 6 proved against the Firm. In the light of Mr Rogers’ ill-health, it was particularly important that the arrangements in place in the event of illness or other absence in order to ensure the work of the Firm could continue and clients were appropriately protected. Not having put such arrangements in place was an unacceptable breach of the Firm’s professional obligations under the Rules. It is vitally important that clients have a suitable means of redress in the form of a complaints mechanism with an appropriate form of dispute resolution. The Firm had also failed to comply with its professional obligations in this regard.

Liability to Disciplinary Action

24. The Panel considered that the multiple instances of breaches of the Rules of Conduct for Members and Firms were sufficiently serious to render both Mr Rogers and the Firm liable to disciplinary action. Members of the public rightly place their trust and confidence in surveyors and failing to act with integrity in breach of professional obligations and to carry out work in a professional and timely manner with regard to proper standards of customer service and care are very serious matters. Mr Rogers had failed to ensure appropriate procedures were in place at the Firm for which is was responsible to safeguard client money and provide a suitable form of redress in the event of any complaints and this placed clients at risk failed to ensure the public were protected with the prospect of reputational harm for the profession. Mr Rogers had failed to take immediate steps to bring his Firm back into compliance once he had been put on notice of the need to do so by RICS and had failed to co-operate adequately with RICS as part of their investigation.

25. The Panel noted the evidence in emails from Mr Rogers about ill-health and changes in his personal circumstances. The Panel considered that whilst the mitigation advanced was relevant to the issue of any sanction if should consider, it does not obviate the need for disciplinary action in this case.

Sanction

Panel's Approach

26. The Panel took into account the written submissions made on behalf of RICS and the RICS Sanctions Policy.

27. The Panel bore in mind that the purpose of sanctions is not to be punitive, although they may have that 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 breach and all the circumstances, and the Panel approached its decision having taken into account any mitigating and/or aggravating factors.

28. The Panel took into account that neither Mr Rogers or the Firm had any previous disciplinary history.

29. The Panel also took into account that Mr Rogers had made some attempt to engage with RICS as part of its investigation and that he had co-operated with the RICS Regulatory Review Visit which took place in September 2017, at which it was found that many aspects of his business were found to be compliant or required only minor technical improvements. However, the Panel considered that the combination of failures in this case amounted to very serious public protection issues. Taking money from clients, failing to have arrangements in place to protect that money, failing to provide a service to a proper standard and failing to ensure that where that happened, clients were given a suitable means of redress, demonstrated an indifference to the importance of complying with professional rules in order to protect the public.

30. Whilst the Panel did not have the benefit of medical evidence about Mr Rogers' current state of health, the Panel noted that Mr Rogers had been suffering from serious ill health and some very challenging changes in his personal circumstances since 2013 as explained in his email to RICS dated 26 May 2017. The Panel took this carefully account when arriving at its decision about sanction but considered that it would have been open to Mr Rogers to provide the Panel with medical evidence but he had not done so which the Panel considered illustrative of a failure to engage with the regulatory process.

Decision on Sanction

31. Having considered all of the circumstances of this case, the Panel first considered whether to impose any sanction at all and considered that imposing no sanction would be neither proportionate nor appropriate taking into account the severity of the breaches.

32. The Panel went on to consider whether to impose a caution. The Panel concluded that a caution was not appropriate because it would not adequately reflect the seriousness of the conduct, both Mr Rogers and the Firm having been found to have shown a lack of integrity and a disregard for their professional obligations.

33. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Rogers' and the Firm's conduct.

34. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. Mr Rogers' repeated failure to abide by his professional responsibilities was unacceptable for someone who wished to remain part of a respected profession.

35. The Panel considered attaching conditions to Mr Rogers's continuing membership but considered this would not be an adequate or proportionate sanction. Mr Rogers had not taken up the invitation to avoid disciplinary proceedings by agreeing to the terms of a consent order and the Panel were not persuaded that Mr Rogers would comply with any conditions imposed in light of the correspondence history to this case and all of the circumstances.

36. Having carefully considered all of the circumstances, the Panel concluded that the appropriate and proportionate sanction in this case was expulsion. It therefore ordered that Mr Rogers be expelled from membership of RICS.

37. Mr Rogers was the sole Principal and Director of the Firm and his acts and omissions were effectively the acts and omissions of the Firm. In the light of the findings against the Firm, and the findings against Mr Rogers who was responsible for the failings by the Firm, the Panel considered removal of the Firm's registration to be the appropriate and proportionate sanction in all of the circumstances. It therefore ordered that the Firm be removed from membership of RICS.

Publication

38. The Panel has considered the policy on publication of decisions - The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website and in the RICS magazine Modus and ordered publication accordingly.

Costs

39. RICS has applied for costs in the sum of £5,751.75 and the Panel considered it fair, just and reasonable for Mr Rogers pay those costs rather than let them fall on the membership generally and therefore makes an order that he pay RICS £5,751.75 within 21 days of the date of this decision.

Appeal Period

40. Mr Rogers has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

41. 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.