

Disciplinary Panel Hearing

Case of

**Mr Martin Nicholson [1124057]
Sheffield S10**

On

Monday 7 – Wednesday 9 October 2019

At 55 Colmore Row, Birmingham, B3 2AA

Panel

Alison Sansome (Lay Chair)
Nick Hawkins (Lay Member)
Ian Hastie (Surveyor Member)

Legal Assessor

Peter Steel

RICS Presenting Officer

Kelly Sherlock

Mr Nicholson did not appear and was not represented

Hearing Officer

Emma Jones

The formal charges (*as amended – see below*) against Mr Nicholson are:

1. Between 7 July 2015 and 28 August 2015, you instructed Mr P to make transfers as to the distribution of funds in respect of a compulsory purchase order. In doing so, you forwarded emails purporting to confirm written instructions rendered to Mr H, dated 2 July 2015 and 24 August 2015, which were not accurate and/or true copies of the originals. Your conduct constituted:

- i. a lack of integrity in that you ought reasonably to have known that the emails forwarded by you were not accurate and/or true copies of the originals that you received;
 - ii. dishonesty in that you knew that the emails forwarded by you were not accurate and/or true copies of the emails that you had received.
2. Between 7 July 2015 and 28 August 2015, you concealed the true identity of the payee details referred to as “M Nicholls” in relation to the distribution of the compulsory purchase order funds and thereby facilitated the transfer of funds totalling £20,140 to your own bank account. Your conduct above constituted:
 - i. a lack of integrity in that you demonstrated a deliberate or reckless disregard for your professional obligations;
 - ii. dishonesty in that you sought to transfer the funds for your own benefit.
3. In or around November 2015, you procured the signature of Mr S for the purpose of opening a bank account in the name of BV without his knowledge or consent. Your conduct above constituted:
 - i. a lack of integrity in that you ought reasonably to have known that Mr S did not know or consent to the use of his signature for this purpose;
 - ii. dishonesty in that you knew that Mr S did not know or consent to the use of his signature for this purpose.
4. Between March and June 2016 you requested and received payment, in connection with a valuation undertaken on a church property, into a bank account that was not associated with BV citing the reference “B/V Nicholson”. Your actions above constituted:
 - i. a lack of integrity as you were reckless as to whether your request for and receipt of payment into an account, citing reference “B/V Nicholson”, was misleading;
 - ii. dishonesty as you knew that your request for and receipt of payment into account, citing reference B/V Nicholson was misleading.
5. Following the suspension of your RICS membership on 27 April 2018 you acted with a lack of integrity in failing to notify the “R” bank and/or your professional insurance provider of your membership suspension.
6. Between 28 April 2018 and 16 July 2018, you prepared valuation reports for the “R” bank, as detailed in Schedule 1, when you were not entitled to do so having been suspended from membership of RICS on 27 April 2018. Your actions above constituted:
 - i. a lack of integrity as you ought reasonably to have known that your RICS membership had been suspended by the Disciplinary Panel on 27 April 2018;
 - ii. dishonesty as you knew that your RICS membership had been suspended by the Disciplinary Panel on 27 April 2018.

7. In respect of the “A Road” valuation report, you amended the valuation report to reflect a £12,000 increase in the valuation figure calculated by another valuer. Your actions constituted:
 - i. a lack of integrity as you ought reasonably to have known that the amended figure did not reflect the true valuation that had been calculated by the reviewing valuer;
 - ii. dishonesty as you knew that the amended figure did not reflect the true valuation that had been calculated by the reviewing valuer.

8. You utilised the name and/or signature of Mr S on any or all of the valuation reports detailed in Schedule 2 without Mr S’ knowledge or consent. Your actions above constituted:
 - i. a lack of integrity in that you ought reasonably to have known that Mr S had no knowledge of and had not consented to the use of his signature in this way;
 - ii. dishonesty in that you ought reasonably to have known that Mr S had no knowledge of and had not consented to the use of his signature in this way.

9. You utilised the name and/or signature of Mr E on any or all of the valuation reports detailed in schedule 3 without Mr E’s knowledge or consent. Your actions above constituted:
 - i. a lack of integrity in that you ought reasonably to have known that Mr E had no knowledge of and had not consented to the use of his signature in this way;
 - ii. dishonesty in that you ought reasonably to have known that Mr E had no knowledge of and had not consented to the use of his signature in this way.

10. On 31 December 2018 you forwarded emails dated: 8 May 2018; 23 May 2018; 24 May 2018; 29 May 2018; 19 June 2018; and/or 16 July 2018 in response to an RICS investigation which were not accurate and/or true copies of the originals. Your actions above constituted:
 - i. a lack of integrity in that you ought reasonably to have known that the emails forwarded were not true and/or accurate copies of the originals;
 - ii. dishonesty in that you knew that the emails forwarded were not true and accurate copies of the originals.

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

In light of any or all of the above allegations, Mr Nicholson is liable to disciplinary action under RICS Bye-law 5.2.2 (a) or (c).

Schedule 1 (Allegation 6)

The Valuation reports referred to are:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]
- v. [REDACTED]
- vi. [REDACTED]
- vii. [REDACTED]

Schedule 2 (Allegation 8)

The Valuation reports referred to are:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]

Schedule 3 (Allegation 9)

The Valuation reports referred to are:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]

Proceeding in absence

1. As noted above, Mr Nicholson was not present and not represented. Ms Sherlock on behalf of RICS applied for the hearing to proceed in his absence. She submitted that the Notice of Hearing had been served in accordance with Rule 23 of the Disciplinary, Registration and Appeal Panel Rules 2009 on 9 August 2019 by post and by email. The correspondence demonstrated that he had received the Notice and the evidence bundle; further, he had applied by email dated 16 September 2019 to adjourn this hearing on the grounds of [REDCATED] and the [REDACTED].
2. The adjournment application had been refused. The note of the determination observed that Mr Nicholson had not provided any evidence of [REDACTED] that would prevent him from engaging in the hearing process: either by attending himself or instructing a representative to do so on his behalf. The determination also referred to the public interest in ensuring regulatory proceedings were dealt with expeditiously.
3. Ms Sherlock submitted that there had been no change since the adjournment determination. Mr Nicholson had not provided any further [REDACTED], which it had been open to him to do.

4. The Panel listened carefully to Ms Sherlock's submissions and considered the various email correspondence to which it was referred. It accepted the advice of the legal assessor as to the relevant law, in particular *R v Hayward, Jones and Purvis* [2001] 3 WLR 125 as qualified and explained in *R v Jones* [2002] UKHL 5; and *GMC v Adeogba* [2016] EWCA Civ 162. The key question in this instance was whether Mr Nicholson had voluntarily absented himself from the hearing. It was clear from the email he had sent dated 4 October 2019 that he was aware that the hearing could proceed in his absence (and in the same email he made various submissions about the case and invited the Panel to consider documents relevant to his defence). He nonetheless indicated he would not be attending.
5. The Panel therefore determined that Mr Nicholson had voluntarily absented himself. He was clearly aware of the need to produce medical evidence to support his assertion of [REDACTED], but had not done so. Nor had he sought to be represented at the hearing (or explained why this was not possible). There was a clear public interest in the expeditious disposal of this case. In all the circumstances, the Panel considered that it was right to continue to hear the case in Mr Nicholson's absence.

Amendment of charge

6. Ms Sherlock applied to amend the charges, to correct a number of typographical errors as follows:
 - a. by substituting the word "*dishonesty*" for the word "*dishonest*" each time it appeared in the charge;
 - b. by inserting the word "*of*" following the word "*knowledge*" in each of allegations 8(i), 8(ii), 9(i) and 9(ii); and
 - c. by correcting the date of the [REDACTED] report in Schedules 1 and 2 from "*4 June 2018*" to "*10 July 2018*".
7. Ms Sherlock submitted that these amendments could be made without injustice in accordance with Rule 41.h of the Rules. The Panel agreed on the basis that the amendments simply corrected typographical errors and did not make any substantial change to the allegations. It therefore allowed the amendments.

Background

8. Mr Nicholson has been a member of RICS since 1 January 1999. At the material times he was a director and shareholder of BV Limited and a partner of BV Professional Property Services, both RICS-regulated entities that for all practical purposes were run as a single company (and thus are collectively referred to in this determination as "BV"). Mr Nicholson was the Managing Partner of the partnership and the most senior person within the firm. The events leading to the above allegations can be summarised as follows.

Allegations 1- 2

9. The RICS investigation of Mr Nicholson's conduct was prompted by a complaint from BV dated 29 July 2016. The letter reported what was alleged to be fraudulent conduct by Mr Nicholson in connection with his work on behalf of a pension fund (the Pension Fund) negotiating the value of a compulsory purchase of a licensed public house (the premises) by Sheffield City Council. The Pension Fund owned the premises. The sole beneficiary of the Pension Fund was one BH, who was also a trustee of the fund.
10. Having agreed a purchase price for the premises of £275,000 plus VAT, Mr Nicholson caused BV to bill Sheffield City Council for this sum and the firm's fee of £5,500 plus VAT.
11. The sale proceeds, totaling £330,000 were paid into BV client account. This account was more usually used to accept rent payments on behalf of clients. The client account was managed by BV's lettings manager, MP. He was only permitted to load payments onto the system. The payments then had to be authorised by another partner/director of BV, RC.
12. The client account monies were then paid out as follows:
 - a. £234,360 to the Pension Fund;
 - b. £36,800 to BH;
 - c. £38,700 to BH's son, the former landlord of the premises; and
 - d. £20,140 to an account with the Co-operative Bank.
13. Mr Nicholson instructed Mr P to make the above payments in emails dated 7 July and 28 August 2015. He had told Mr P before sending the 7 July 2015 email that the monies would be coming into client account and that payments would be needed to a number of recipients. Mr P was concerned about this, as he did not understand why the monies needed to come into BV's client account rather than being paid directly to the client. He was also concerned about the payment to the Co-operative Bank account to a person named "M Nicholls", because of the obvious similarity to Mr Nicholson's name.
14. Mr P sought the advice of Mr C. However, on the basis of Mr Nicholson's assertion that he had personally checked the account details and because of his position of trust within the firm, Mr C authorised the payments and Mr P arranged for them to be made.
15. Mr Nicholson's emails to Mr P had enclosed copies of emails ostensibly from BH, dated 2 July and 24 August 2015, confirming his instructions as to the distribution of the sale proceeds.
16. Some months later, Mr C was notified that Lex Auto and Co-operative Bank had made credit searches against his name. This prompted him to investigate further. Mr C established that the Co-operative Bank account to which the "M Nicholls" payments had been remitted belonged to Mr Nicholson, as a result of the discovery of an old bank statement in the latter's office. It was also discovered that Mr Nicholson had edited the

emails from BH (as well an email he had sent to BH dated 24 August 2015) and had forwarded the edited versions to Mr P with the instruction to make the payments referred to at paragraph 13 above.

17. The effect of the edits to the emails was to give the impression that BH had given written instructions to Mr Nicholson to make the payments to “Nicholls”, when in reality the payments were made to a bank account in Mr Nicholson’s name.
18. The other partners of BV (Mr C and LS) met Mr Nicholson on the morning and again in the late afternoon of 7 January 2016 to discuss the transaction. A note was kept of the first meeting. Mr S recorded the second meeting and a transcript was subsequently produced. In between the two meetings, Mr Nicholson sent an email to his partners explaining his involvement in the compulsory purchase.
19. Within the email and during the meetings, Mr Nicholson suggested, amongst other matters that the VAT on the transaction had not been properly accounted for. He represented to his partners that “M Nicholls” was in fact a business partner of BH’s son.
20. A further partners’ meeting took place on 13 January 2016. It was again recorded and a transcript prepared. Mr C and Mr S confronted Mr Nicholson with their knowledge of the real destination of the payments made ostensibly to “M Nicholls”. Mr Nicholson accepted that the account to which the payments had been made was his. He said that he had not kept the money, but said he “*might get a couple of grand*” from the deal. He told his partners that he been helping BH “*lose some money*” for taxation purposes.

Allegation 3

21. During the 13 January meeting, Mr C and Mr S also questioned Mr Nicholson about a bank account he had apparently opened in the name of BV using both his own and Mr S’s signatures. Mr S had no recollection of signing such a document. Mr S suggested that the account opening form had been included with some other documents that Mr Nicholson had brought to Mr S’s house one evening as they needed signing urgently. Mr Nicholson accepted that this was most likely to have been the case and apologised to Mr S after being prompted to do so.
22. The account was used by Mr Nicholson to make car finance payments by direct debit. Mr Nicholson had paid his own money into the account to cover the payments, so there was no financial detriment to BV. However, the car finance had been taken out in the name of the firm without the knowledge or consent of his partners.

Allegation 4

23. Mr C and Mr S subsequently took steps to remove Mr Nicholson from both the partnership and as a director of the limited company. A general meeting was held on 13 July 2016

which resulted in a resolution to remove Mr Nicholson as a director of the limited company with immediate effect.

24. On 21 July 2017, BV wrote to RICS about a further matter that had come to light following Mr Nicholson's departure from the firm. The firm enclosed a letter from Reverend Mrs A, an ordained minister of a local church. BV had chased Reverend A for the £720 due for a valuation carried out by Mr Nicholson in June 2016. Reverend A stated that she had made the payment into a bank account, the details of which were given to her by Mr Nicholson, together with the reference "B/V Nicholson".
25. BV confirmed that the account was not one that belonged to the firm. The missing £720 was deducted from the amount paid to Mr Nicholson when the limited company subsequently purchased his share holding following his departure from BV.

Allegations 5 - 9

26. Having investigated the complaint against Mr Nicholson, RICS applied for interim measures against his membership. The hearing of this application took place on 27 April 2018. Mr Nicholson participated in the hearing by telephone. The Disciplinary Panel decided to impose an interim suspension order on Mr Nicholson's membership of RICS for a period of 12 months. RICS wrote to Mr Nicholson on 1 May 2018 to confirm the outcome of the hearing. In addition, a RICS investigator wrote to Mr Nicholson by email on 2 May 2018 as follows:

"As your RICS membership is currently suspended, your status as an RICS Registered Valuer is also suspended during this time. As a result of the Panel's decision, you are not entitled to use the RICS lion head logo, or the Registered Valuer logo during the period of your suspension..."

You must also advise any Valuation Panels that you are no longer an RICS Registered Valuer. You will need to inform your Professional Indemnity Insurance provider of this change..."

27. On 31 July 2018, an employee of R Bank (the Bank) contacted RICS about Mr Nicholson. He explained that the Bank is a secured lender and had engaged Mr Nicholson and Nicholson & Co. (the firm Mr Nicholson had established following his departure from BV) to prepare a number of valuation reports, which were required to be compliant with RICS standards. The Bank had that same day discovered that Mr Nicholson's membership of RICS had been suspended and were concerned about the effect this might have on their security. Self-evidently, Mr Nicholson had not informed the Bank of his suspension.
28. On 3 August 2018 the Bank wrote again to RICS confirming that it had received 12 valuation reports from Nicholson & Co. since 27 April 2018, although 4 were dated 27 April. Of the 8 remaining reports, 7 contained the name of one of two other valuers as

reviewer and the remaining report was prepared by one of those valuers and reviewed by Mr Nicholson. The Bank had contacted the two valuers with a view to establishing whether the reports were reliable. With the exception of one report (that relating to “A Road”), neither valuer had ever seen or reviewed the valuation reports which bore their name.

29. As regards A Road, the valuer had visited the property and prepared the report, but the valuation figure contained in the report sent to the Bank (£177,000) was £12,000 higher than the figure in the report he had delivered to Nicholson & Co (£165,000). RICS subsequently contacted both the valuers (RS and RE) and they confirmed that (with the exception of A Road, for which Mr Stevens had prepared a valuation report), neither had undertaken the valuations in question.

Allegation 10

30. During the course of the investigation into the matters raised by the Bank, Mr Nicholson forwarded a number of emails to RICS which purported to show that the valuations he had sent to the Bank were intended to be draft reports (and would have been signed off by another valuer when finalised).
31. However, RICS obtained the versions of the same emails that the Bank had received from Mr Nicholson. These demonstrated that the versions sent to RICS had been altered to add the references to draft reports.

Findings of Fact

32. The Panel heard from 6 witnesses called on behalf of RICS: Mr C; Mr P; Mr S; Mr P of R Bank; Mr S; and Mr E. The Panel considered all to be credible witnesses and identified no reason to doubt the accounts they provided. It carefully considered all the documentary evidence it was referred to, including the statement of Reverend Mrs A.
33. It took full account of the various representations made and documents supplied by Mr Nicholson, including his various emails and letters to RICS between January 2016 and the date of this hearing. It also had regard to the emails from BH to RICS dated 28 February and 18 December 2017. It listened to the submissions made by Ms Sherlock on behalf of RICS and accepted the advice of the legal assessor. Having done so, it found as follows:

Allegation 1

34. **Proved.** The uncontested evidence of Mr P demonstrated that the BH emails he had received were different to the originals extracted from Mr Nicholson’s computer. Since the effect of the alterations was to persuade Mr P to organise payments from BV’s client account to a bank account controlled by Mr Nicholson, the only reasonable inference was that Mr Nicholson had altered the emails. He therefore knew the copies he forwarded

were not accurate and true copies. The intention was clearly to secure payment of part of the proceeds of sale of the premises to his Co-operative Bank account. This was manifestly dishonest. The Panel considered it was axiomatic that a registered surveyor acting dishonestly must also be in breach of his professional obligations and is therefore acting without integrity.

Allegation 2

35. **Proved.** The uncontested evidence of Mr P, Mr C and Mr S, as well as the copy bank statement, established to the Panel's satisfaction that Mr Nicholson had falsely represented in emails and in meetings that the bank account details supplied to Mr P related to another, fictitious, individual, "M Nichols". He ultimately accepted during the meeting on 13 January 2016 that the bank account did indeed belong to him. As indicated above, whatever Mr Nicholson ultimately intended to do with the money, his intention was clearly to secure payment of part of the proceeds of sale to his Co-operative Bank account. In concealing the true identity of the payee from both his colleagues and his client (which can only have been done to avoid scrutiny of the transaction), he was clearly acting dishonestly. As above, that must also constitute acting without integrity.

Allegation 3

36. **Proved.** The uncontested evidence of Mr S was that he had not understood that he was signing an application for a bank account and that he would not have consented to do so in the circumstances (since the opening of a bank account would have required all the partners to discuss and agree). By obtaining the completion of the form without explaining to Mr S what his signature was required for, Mr Nicholson was acting dishonestly (and also without integrity).

Allegation 4

37. **Proved.** The uncontested evidence of Reverend A was that Mr Nicholson had conducted a survey for her and had billed her for the work. She paid the bill believing that she had settled her account with BV. Mr Nicholson did not explain that she was paying him rather than the firm. She was therefore misled into believing she had settled her account with BV and was shocked when she received a chaser for the account. Mr Nicholson had effectively conceded that he had diverted the monies to his own account by the subsequent deduction of the sum from his settlement with BV on leaving the firm. In failing to explain the real position to Reverend A (and in failing to account to BV), Mr Nicholson had deliberately misled them. This was plainly dishonest on any analysis and demonstrated a serious falling short from acceptable professional standards that could rightly be characterised as a lack of integrity on his part.

Allegation 5

38. **Proved in part.** Mr Nicholson cannot have been in any doubt as to the status of his membership, as he participated in the hearing on 27 April 2018 at which his membership was suspended. Further, RICS wrote to him shortly afterwards confirming his suspension and explaining his professional responsibilities. The unchallenged evidence of Mr P of the Bank confirmed that Mr Nicholson had not informed it of his suspension, as the Bank discovered this fact from the internet. The Panel was therefore satisfied on the balance of probabilities that this allegation was established. Given the explicit instructions provided to Mr Nicholson in the RICS email of 2 May 2018 that he should inform “*any Valuation Panels*” that he was no longer an RICS Registered Valuer, it was clear that he was in breach of his professional responsibilities in failing to notify R Bank and had acted without integrity.
39. As regards the allegation that Mr Nicholson had failed to notify his professional indemnity insurers of his suspension, the Panel reminded itself that the burden of proof rested at all times on RICS. RICS had not produced any evidence to the effect that Mr Nicholson had not informed his insurer of his status, such as a statement from the insurer. Instead, RICS relied on the fact that Mr Nicholson had not produced any confirmation that he had informed his insurer when requested to do so. The Panel was not therefore satisfied that this part of the allegation was proved to the requisite standard.

Allegation 6

40. **Proved with regard to all matters listed in Schedule 1.** As set out above, Mr Nicholson cannot have been in any doubt that he was suspended from membership and could not therefore conduct any valuations or hold himself out as a registered surveyor or valuer. In any event, RICS emailed him stating explicitly that he could not conduct valuations. The Panel was taken to a number of valuation reports that Mr Nicholson had prepared for the Bank after the date of his suspension, 28 April 2018. The instructions given by R Bank required valuations to be conducted by a RICS registered valuer in accordance with RICS standards. In some of the reports provided to the Bank, he had held himself out as a registered surveyor by using the post-nominal MRICS. Preparing reports for the Bank while suspended from membership was clearly a dishonest action (and by the same token, conduct lacking in integrity).

Allegation 7

41. **Proved.** The uncontested evidence of RS was that he had assessed the market value of the A Road property at £165,000 and this was reflected in the report that he had provided to Mr Nicholson. In the report provided to R Bank, Mr Nicholson had amended the market value figure to £177,000. Mr S had not known of or approved this change to his report. Revising the valuation figure without the knowledge or consent of the valuer was manifestly dishonest and likely to mislead the bank that was relying on that valuation to make lending decisions. Again, it followed that such dishonest conduct was a clear breach of Mr Nicholson’s professional duties and demonstrated a lack of integrity on his part.

Allegation 8

42. **Proved with regard to all matters listed in Schedule 2.** The Panel was shown the versions of the valuation reports that Mr Nicholson had purported to be the work of Mr S. Mr S was clear in his evidence that he had not seen these reports prior to these proceedings and had not prepared them. He gave a credible account of how his electronic signature, which Mr Nicholson had received in unprotected form with the "A Road" report, could have been misused. In presenting these fraudulent reports to the Bank as the work of Mr S, Mr Nicholson was again manifestly dishonest and lacking integrity.

Allegation 9

43. **Proved with regard to all matter listed in Schedule 3.** As above, the Panel was shown the versions of the valuation reports that Mr Nicholson had purported to be the work of Mr E. Mr E confirmed in evidence that he had not seen any of these valuation reports at the time; had no involvement with the properties; and had not reviewed the properties as the reports stated. Indeed Mr E's work only involves the valuation of plant and machinery; he did and does not value property. Again, it followed that Mr Nicholson had presented fraudulent reports to R Bank as the work of Mr E and in so doing, had acted dishonestly and with a lack of integrity.

Allegation 10

44. **Proved.** The Panel was taken to the original emails retained by the Bank and to the versions that Mr Nicholson had sent to RICS. In respect of each of the 6 emails detailed in the allegation, Mr Nicholson had edited them to suggest that the valuation reports he had provided to the bank were draft reports. As he was clearly in the best position to know what he had originally told the Bank, Mr Nicholson could not have been in any doubt that the emails he had sent to RICS were not true or accurate copies. This was again self-evidently dishonest and lacking in integrity.

Liability to Disciplinary Action

45. Ms Sherlock submitted on behalf of RICS that the findings were obviously serious enough to support a finding of liability to disciplinary action. RICS Bye-Law 5.2.2 provided that a member of RICS could be liable to disciplinary action by reason of:

- a. Conduct likely to bring RICS into disrepute; and
- b. A failure to adhere to the Bye-Laws or to Regulations or Rules governing Members' conduct.

46. The findings in this case engaged both of the above limbs. Further, any dishonesty by a member or lack of integrity struck at the heart of professionalism and was self-evidently serious.

47. The Panel carefully considered the submissions it had heard and accepted the advice of the legal assessor. The RICS Rules of Conduct for Members June 2007 Version 6 state at Rule 3 that:

“Members shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with their professional obligations.”

48. Further, it is axiomatic that members of any professional body must be straightforward and candid in their dealings with their regulator. The dishonesty Mr Nicholson had exhibited towards his professional body was a particularly serious breach of this Rule.

49. The Panel had found 9 instances of dishonesty and 10 instances of behaviour lacking integrity proved against Mr Nicholson. In the Panel’s view, any single one of these instances was serious enough to justify a finding of liability to disciplinary action. The cumulative effect of the findings against Mr Nicholson clearly made him liable to disciplinary action.

Sanction

Panel’s Approach

50. The Panel took into account the submissions of Mr Sherlock on behalf of RICS. It took into account the various representations made by Mr Nicholson, including the details he had provided of his own [REDACTED]. During the course of its deliberation on sanction, the Panel received a further email from Mr Nicholson outlining further details about [REDACTED]. It took the content of this email into account as mitigation. The Panel accepted the advice of the legal assessor and had regard to the RICS Sanctions Policy.

51. The Panel bore in mind that the purpose of sanctions is not to be punitive, although it 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 a decision should be reached having taken into account any mitigating and/or aggravating factors.

Decision

52. The Panel noted in mitigation that Mr Nicholson had no previous regulatory findings against him in his career of over 20 years as a surveyor. It noted his [REDACTED] caused by these proceedings, as well as the unfortunate personal circumstances in which he currently found himself.

53. As indicated at paragraph 50 above, in the course of its deliberation on sanction, the Panel was advised that Mr Nicholson had sent further emails to Ms Sherlock. One, timed at

10.30 on 9 October 2019, contained a letter from Mr Nicholson's GP outlining [REDACTED].

54. The Panel was told that the other emails contained further submissions on the facts of the case. Having already made its determination on facts and liability to disciplinary action, the Panel determined that it was not prepared to receive any further submissions on facts or entertain any application to reopen the fact-finding stage. As was made clear in the case of *TZ v General Medical Council* [2015] EWHC 1001 (Admin), it was right that a line must be drawn somewhere. The Panel concluded that the line was properly drawn at the point it had announced its findings.
55. The Panel nonetheless agreed to take the GP letter dated 9 October 2019 into account in its consideration on sanction. It observed that the very short letter did not add much to its existing knowledge of Mr Nicholson's circumstances.
56. The Panel considered that the following aggravating factors were present in this case:
- Mr Nicholson's conduct had at least in part been motivated by personal gain. He had hoped to obtain "a couple of grand" from assisting BH in what he himself suggested was an improper scheme; he had diverted the fee paid by Reverend A to his own account apparently because he believed he was owed money by BV; and his business had received payment for the fraudulent valuation reports provided to R Bank;
 - Mr Nicholson had demonstrated repeated and prolonged dishonest conduct of the most serious kind. Having become subject to an investigation by RICS as a result of his dishonest actions, he had attempted to deceive his own professional body to avoid the consequences;
 - It followed that he had not demonstrated any insight into his behaviour or the corrosive effect it might have on the surveying profession. He had not admitted any of the allegations, nor had he made any meaningful expression of regret either to his profession or to those who were affected by his conduct. Further, he had unfairly impugned the integrity of several RICS members who had rightly reported his misconduct and/or provided evidence to RICS in compliance with their professional obligations;
 - The misconduct charged as allegations 5 – 9 was committed while Mr Nicholson was subject to an interim suspension order imposed by a Disciplinary Panel of RICS; and
 - Any failure to deal openly and straightforwardly with RICS is a particularly serious matter, as it undermines RICS' ability to regulate in the public interest. As indicated above, Mr Nicholson's dishonesty towards RICS and complete contempt for its regulatory function was a significant aggravating factor.
57. The Panel first considered whether it was appropriate to impose any sanction at all. The Panel concluded that the numerous findings of dishonesty and failure to act with integrity against Mr Nicholson were obviously serious and imposing no sanction would obviously

be inappropriate. In reaching this conclusion the Panel noted that Mr Nicholson's conduct was repeated and deliberate.

58. The Panel went on to consider whether to impose a caution. The Panel concluded that a caution would not adequately reflect the seriousness of the case, recognising the role of RICS regulation in protecting the reputation of the surveying profession. As noted above, if members are dishonest in their dealings with fellow professionals, clients and RICS, such behaviour can only damage that reputation, to the detriment of the profession as a whole. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr. Nicholson's repeated dishonesty, which reflected a complete disregard of appropriate professional standards.
59. The Panel also concluded that it would not be appropriate or workable to impose an undertaking given that it was a fundamental requirement of membership of RICS that members should act with honesty and integrity. It would serve no purpose for Mr. Nicholson to undertake to be honest in the future in these circumstances.
60. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. Mr. Nicholson's repeated and blatant disregard for his professional responsibilities was plainly reprehensible. The scope and gravity of his misconduct were unacceptable for someone who wished to remain part of a respected profession.
61. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Nicholson's continuing membership as an adequate response to the misconduct demonstrated by this case. Again, it noted that Mr Nicholson was required to be honest in any event and it would be pointless to impose a condition relating to his future honesty.
62. The Panel took into account paragraph 20.1. of the Sanctions Policy, which states that in the absence of extenuating circumstances instances of fraud, dishonesty or lack of integrity are likely to result in expulsion. Given the lack of any real explanation from Mr Nicholson as to the reasons for his misconduct, the lack of any testimonials or other evidence to suggest he understood his professional responsibilities, the lack of any insight and his gross contempt for his own regulatory body demonstrated by his conduct, the Panel considered there was no good reason in this case to depart from the Sanctions Policy. Having carefully considered all the information before it, the Panel concluded that the only appropriate sanction to protect the public and to maintain the reputation of the surveying profession in this case was expulsion. It therefore ordered that Mr Nicholson be expelled from membership of RICS.

Publication

63. The Panel 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.

Costs

64. RICS applied for costs of £34,167.50.

65. The Panel considered carefully the issue of costs. The costs figure represents a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel concluded that it was appropriate for Mr Nicholson to make a contribution towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole. Having considered the schedule of costs claimed, which were based on an anticipated 5-day hearing, the Panel determined that this was overstated to a small extent, as a result of the hearing taking three days as opposed to the five. It assessed that a reasonable amount of costs would be £32,917.50.

66. The Panel therefore orders that Mr Nicholson pays to RICS costs in the sum of £32,917.50.

Appeal Period

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

68. 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.