

ROYAL INSTITUTION OF CHARTERED SURVEYORS

Case of

Mr Roderick James Stephens

NSW, Australia

On

14 May 2019 – 17 May 2019 and 20 May 2019 – 24 May 2019 (except 22 May 2019)

8am - 1pm - UK time (5pm – 10pm Australian time)

Before

John Anderson (Chair)

Christopher Pittman (Surveyor Member)

Jane Bishop (Lay Member) (via Skype)

Legal Assessor

Margaret Obi

Representatives for the Parties

Mr Christopher Geering attended on behalf of RICS

Mr Stephens attended via Skype/Telephone

Background

1. Mr Stephens was admitted as a member of RICS on 31 March 1994. He currently resides in Australia.
2. This case has a long and complicated history. On 19 March 2018, Mr Stephens appeared before a Disciplinary Panel via video-link in relation to two charges:

Charge 1

'Mr Stephens sent a letter to Mrs A dated 25 May 2016 which contained personal abuse directed at Mrs A and her family and allegations of criminal conduct on the part of RICS, and sought to induce Mrs A to give evidence against her husband by reference to the consequences of not doing so for her and her children. The letter caused Mr and Mrs A alarm and distress.

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

Roderick Stephens MRICS has therefore breached RICS Bye-law 5.2.1(a) and/or 5.2.1(b) and is liable to disciplinary action under RICS Bye-Law 5.2.2(a) and/or 5.2.2(c)'

Charge 2

'Mr Stephens failed to co-operate with RICS staff in the course of its investigations into the above conduct, in particular by refusing to give any or any substantive response to the allegations and questions posed.

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

Roderick Stephens has therefore breached RICS Bye-Law 5.2.1(b) and is liable to disciplinary action under RICS Bye-Law 5.2.2(c)'

3. Mr Stephens was represented by Mr Beaumont of Counsel, who appeared in person and RICS was represented by Mr Solomon, Queens Counsel. The hearing was scheduled for five days between 19 and 23 March 2018 and both Mr and Mrs A attended to give evidence having flown to the UK from Australia.

4. RICS' Case Summary for the March 2018 hearing described the background circumstances as follows:

'Over the course of a number of years Mr Stephens has made a number of allegations and complaints about the conduct of [Mr A]. These concerns primarily relate to valuation methodology (in particular allegations that methodology used by [Mr A] is wrong, plagiarised and/or intentionally misleading).

Mr Stephens' complaints about [Mr A] were considered by RICS and were not upheld. By a letter dated 5 April 2015, Gillian Charlesworth, Director of Regulatory and Corporate Affairs at RICS, confirmed that RICS would not be taking action against [Mr A].

Mr Stephens has also made complaints about [Mr A] in relation to the liquidation of the firm Voaden Sandbrook, [Mr A's] former employer. These were investigated by RICS. By letter dated 26 January 2016 (also sent by email), Christine O'Rourke, Head of Conduct at RICS, wrote to Mr Stephens explaining that RICS had engaged a forensic accountant to review the relevant documents. Ms O'Rourke's conclusion was that no disciplinary action should be taken against [Mr A].

Mr Stephens has also made a number of serious allegations about RICS, primarily in correspondence with RICS. These appear primarily to arise from perceived failures in RICS' response to Mr Stephens' complaints about [Mr A]. The allegations made about RICS have been serious, wide-ranging, and repeated over a prolonged period. They include allegations of "criminal negligence"; being "part of a criminal conspiracy", being involved in "a conspiracy to pervert the course of justice over the last 5 years or so".

Letter of 25 May 2016

On or around 25 May 2016 [Mrs A] received a letter of that date. The letter was signed "Rod Stephens" and was sent from the address registered with RICS as Mr Stephens' address.

This letter purports to inform [Mrs A] about wrongdoing on her husband's part. The allegations primarily concern the matters previously raised regarding Mr Stephens' perception of wrongdoing in relation to valuations and Voaden Sandbrook.

The letter invites [Mrs A] to assist Mr Stephens in "exposing [Mr A] and [others] for the criminals they are" by "giving evidence against those parties before they do it to you". It purports to give [Mrs A] a limited window of time to do so, stating "Time is not on your side. I can only give you to

the end of May to make a decision. If you don't get back to me shortly; then I'll be clear where you stand on this".

The letter makes numerous references to [Mr and Mrs A's] children, and in particular states that [Mrs A's] co-operation or lack of co-operation with Mr Stephens could have serious consequences for her children. The letter states (inter alia):

- a. "you need to commence action now and make suitable arrangements, so that your children are not exposed to these matters anymore than they need to be".*
- b. "This is not just about the selfishness of yourself and Mr A but about the future of your children as well. The current policy in Australia is to extradite any criminals to their country of origin and leave the children born in Australia behind. That is why I am giving you an opportunity to do the right thing".*
- c. The letter concludes "I wouldn't want them to end up in a foster home, but that's your choice".*

On 6 June 2016, [Mr A] made a formal complaint against Mr Stephens. The complaint states that while [Mr A] had previously...sought to ignore Mr Stephens, in the light of the letter of 25 May 2016 and its effect on his family he felt it necessary to make a complaint. The letter stated "The rhetoric used by Stephens throughout this correspondence has left my wife extremely distressed and fearful for our family's safety, especially now that Stephens is aware of our home address and makes mention of our children throughout the letter. Based on its contents we have decided to take the matter up with the Police.

...

Failure to co-operate with RICS

On 4 July 2016, RICS sent a Rule 5 letter to Mr Stephens. On 22 July 2016, having received no response, RICS sent the Rule 5 letter to Mr Stephens' firm.

On 4 August 2013 Mr Stephens emailed RICS making a number of allegations. In relation to the Rule 5 letter, Mr Stephens stated only "I simply do not have to respond to your vexatious and false allegations"; and "all you seek to do is to question whether I have acted unethically".

RICS re-sent the Rule 5 letter on 5 August 2016 and 23 August 2016 and received no response.

On 16 September 2016, Mr Stephens emailed RICS. His email referred to the allegations regarding the letter to [Mrs A] as 'false allegations'; questioning "why do you continue to pursue

these false allegations against me, if not to bully and harass and intimidate me". The email also stated "You appear to be implying that I both wrote and sent the letter to [Mrs A] and I have neither admitted nor denied this; What evidence do you hold that confirms that I actually signed the letter".

On 6 October 2016, Mr Andy Shaw of RICS wrote to Mr Stephens with notice of referral to a disciplinary panel under Rule 8 of the Disciplinary, Registration and Appeal Panel Rules 2009.

By email of the same date (6 October 2016), Mr Stephens replied to Mr Shaw's email and again repeated his assertion that he was being faced with "false accusations", and indicated that he would bring legal proceedings against RICS. Mr Stephens proceeded to challenge the decision to refer him to a disciplinary panel by means of Judicial Review: This was unsuccessful."

5. On the first day of the March 2018 hearing, following extensive discussions between the parties, an Agreed Outcome was presented to the Panel for approval. The terms of the Agreed Outcome stipulated that:

"RICS and Mr Roderick Stephens have agreed the following facts and outcomes for publication in Modus in the form appearing below.

A: Facts

- i. Mr Stephens sent a letter to Mrs A dated 25th May 2016, which contained personal abuse directed at Mrs A and her family and sought to induce Mrs A to give evidence against her husband by reference to the consequences of not doing so for her and her children. The letter caused Mr and Mrs A alarm and distress. Mr Stephens therefore breached Rule 3 of the RICS Rules of Conduct for Members 2007 and was liable to disciplinary action under Bye-law 5.2.2(c) and/or conducted himself in a way which was liable to bring RICS into disrepute and was liable to disciplinary action under Bye-Law 5.2.2(a).*
- ii. Mr Stephens failed to co-operate with RICS staff in the course of its investigation into the above conduct, in particular by refusing to give any or any substantive response to the allegations and questions posed. He therefore breached Rule 9 of the RICS Rules of Conduct for Members 2007 and was liable to disciplinary action under Bye-Law 5.2.2(a).*

B: Outcomes

- i. *Mr Stephens agrees to apply forthwith to resign his RICS membership. RICS will revoke his membership on receipt of his resignation and Mr Stephens agrees not to reapply for membership thereafter.*
- ii. *Mr Stephens will not seek to join RICS or the RICS Valuer Registration Scheme, whether through membership of the Australian Property Institute (“API”) or otherwise.*
- iii. *RICS agrees not to make a complaint to API about Mr Stephens’ conduct which is the subject-matter of these proceedings.*
- iv. *Mr Stephens undertakes not to communicate with Mrs A ever again.*
- v. *Mr Stephens undertakes only to communicate with Mr A through solicitors that Mr Stephens has instructed.*
- vi. *Mr Stephens agrees that the anonymity of Mr and Mrs A in these proceedings shall continue and that he will not bring any further challenge to the order as to anonymity.*
- vii. *Mr Stephens will on or before 4pm on 16th April 2018 pay RICS £15,000 in cleared funds, such sum being in respect of its costs of these proceedings.”*

6. RICS wrote to Mr Stephens on several occasions following the hearing as he did not resign his membership and did not pay the costs. In addition, Mr A raised a concern that Mr Stephens had written to Mr A’s clients in an effort to discredit him and his business.
7. On 15 October 2018 a further hearing took place, before the same Panel that had endorsed the Agreed Outcome on 19 March 2018. During the hearing RICS invited the March 2018 Panel to re-open the matter whilst Mr Stephens’ sought an adjournment on various grounds. The grounds for an adjournment were rejected by the March 2018 Panel but the matter could not be concluded due to lack of time.
8. RICS subsequently served Mr Stephens with notice of an additional charge of failing to act with integrity (Charge 3). On 18 April 2019 a case management hearing was conducted by telephone

with a differently constituted Panel. Although Mr Stephens was notified of the telephone conference he did not participate. The Panel imposed case management directions on both parties in preparation for this hearing.

9. The primary purpose of this hearing was to consider the status of the original charges in light of the Agreed Outcome and, if appropriate, to determine the additional charge relating to the alleged failure to act with integrity (Charge 3).

Introduction

10. The hearing was listed for 10 days and was scheduled to commence on 14 May 2019. Due to an administrative error, which was not the fault of the Legal Assessor, she was not present on the first day of the hearing. The Panel noted that Rule 27 states, '*Disciplinary, Registration and Appeal Panels may be advised by an independent, suitably qualified and experienced Legal Assessor who is not an employee of RICS.*' The Panel determined that due to the complex nature of the case, and that Mr Stephens was unrepresented, the Legal Assessor was required to advise on law and procedure. Therefore, the Panel adjourned the case until the following day.
11. At the start of Day 3 (Day 2 of the substantive hearing) the Chair informed the parties that because proceedings were taking place in what is the evening in Australia after a normal working day, a short adjournment would be scheduled approximately mid-way through each session. The scheduled break was for the comfort and convenience of Mr Stephens and the lay Panel member - Mrs Bishop, who was also in Australia.
12. On Day's 2 to 8 of the hearing Mr Stephens made a series of preliminary applications. The adjournment applications are set out in **Annex A**.
13. The Panel, having determined the preliminary applications went on to consider the substantive applications and submissions made by both parties.

Jurisdiction – Charges 1 and 2

14. Mr Geering, on behalf of RICS, referred the Panel to the case of *In Re Carecraft Ltd* [1994] 1 WLR 172, in which the court, instead of conducting a full hearing had adopted a '*summary procedure*' in agreement with the parties. In adopting the summary procedure, it was accepted that the court

was making formal factual findings. Mr Geering relied on his written submission dated 16 May 2019 and invited the Panel to conclude that the March 2018 Panel had endorsed the agreement reached by the parties and, in doing so, had made formal factual findings.

15. Mr Stephens reiterated during his submissions that he had not voluntarily consented to the Agreed Outcome.
16. The Panel noted that the March 2018 Panel was specifically referred to the fact-finding procedure adopted in the *Carecraft* case and the Chair read the terms of the agreement into the record. The Panel was satisfied that it was the intention of the March 2018 Panel and both parties that the Agreed Outcome would stand as formal findings of fact as well as a finding that Mr Stephens was liable for disciplinary action. The purpose was to expedite matters in the interests of both parties. In reaching this conclusion the Panel noted that at no stage during the current proceedings, has Mr Stephens suggested that the March 2018 did not make formal findings of fact or find him liable to disciplinary action.
17. The Panel concluded that Charges 1 and 2 were determined by the March 2018 hearing. Having determined that there were no grounds for re-opening the agreement and setting aside the Agreed Outcome (see **Annex B** below) the Panel concluded that the only factual determination to be made was in relation to Charge 3.

Fact Finding – Charge 3 (Found Proved)

18. Charge 3 reads as follows:

'Mr Stephens acted with lack of integrity in failing to comply with the terms of an Agreed Outcome dated 19 March 2018.

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

Roderick Stephens has therefore breached RICS Bye-law 5.2.1(a) and/or 5.2.1(b) and is liable to disciplinary action under RICS Bye-Law 5.2.2(c)'

19. Mr Geering invited the Panel to find Charge 3 proved on the basis that Mr Stephens did not resign his RICS membership '*forthwith*', did not pay RICS' costs and did not comply with the spirit of the Agreed Outcome by sending correspondence to Mr A's clients in an effort to discredit both Mr A and his business.
20. Mr Stephens did not deny Charge 3. He maintained his position that the Agreed Outcome was entered into without his valid consent. However, he conceded that unless he can successfully appeal Charge's 1 and 2, he has no positive defence to Charge 3.
21. The Panel accepted the submissions made on behalf of RICS that Mr Stephens did not resign from RICS membership '*forthwith*' and did not pay RICS' costs by 16 April 2018. The Panel noted that RICS extended the date for compliance until 3 May 2018. However, Mr Stephens still did not resign and still did not pay RICS' costs. The Panel was satisfied that the Agreed Outcome was a binding agreement between Mr Stephens and his regulatory body, and he had a duty to comply with it. The Panel concluded that by not resigning and not paying RICS' costs, Mr Stephens failed to comply with the Agreed Outcome. The March 2018 Panel and RICS were entitled to expect that an agreement entered into by Mr Stephens, following consultation with his legal representative and signed on his behalf by his representative, was a legally binding agreement which would be complied with in full. The Panel accepted the advice of the Legal Assessor that integrity denotes the higher standards which society expects from professional persons and which the professions expect from their own members. As stated in *Wingate & Evans v SRA; SRA v Malins*, [2018] EWCA Civ 366, '*The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.*'
22. The Panel concluded that Mr Stephens' failure to comply with the Agreed Outcome demonstrated a lack of integrity. Accordingly, Charge 3 was found proved.

Liability to Disciplinary Action

23. Mr Geering submitted that the lack of integrity demonstrated by Mr Stephens was '*deplorable*'. He stated that the Agreed Outcome was negotiated in good faith and invited the Panel to conclude that Mr Stephens' lack of integrity rendered him liable to disciplinary action. Mr Stephens reiterated the submissions he had made at the outset of the hearing that his consent to the Agreed Outcome

had been obtained under duress and, as a consequence, was not a valid agreement. He reminded the Panel that Mrs A made a complaint against him to the API which undermined paragraph B(iii) of the Agreed Outcome.

24. Mr Stephens' status as a member of RICS carries an obligation and a legitimate expectation that he will comply with RICS rules. The Panel noted that all members agree to adhere to the RICS Rules, Regulations and Bye-Laws and accept that they may be subject to disciplinary action if they fail to do so.

25. The Panel took the view that Mr Stephens' lack of integrity in not complying with the Agreed Outcome demonstrated a failure to uphold the high standards expected of RICS members and amounted to a serious falling short of his professional duties and obligations. The Panel noted that Mr Stephens was provided with a '*grace period*' within which he had the opportunity to comply with the Agreed Outcome but chose not to take advantage of that opportunity. In the absence of a reasonable explanation, the Panel concluded that his failure to comply was a wilful and conscious decision. The Panel concluded that Mr Stephens' attitude and behaviour demonstrated a complete disregard for his obligations as a RICS member which was serious. The outcome of the March 2018 hearing had been published on Modus and therefore Mr Stephens' failure to comply had the potential to seriously undermine public trust and confidence in the profession and therefore bring the profession into disrepute.

26. In these circumstances, the Panel concluded that Mr Stephens was liable to disciplinary action.

Sanction

27. Mr Geering addressed the Panel in relation to all three findings of fact; namely the letter, failing to cooperate with RICS' investigation and failing to comply with the Agreed Outcome. He confirmed that Mr Stephens had no previous disciplinary history. Mr Geering informed the Panel that Mr Stephens had been made subject to an interim suspension order in July 2018, which it was entitled to consider in determining the appropriate sanction to impose.

28. Mr Stephens described himself as a '*whistle-blower*' and invited the Panel to take no action against him on the grounds that he was simply highlighting corruption. He stated that he '*may leave the profession*' and follow a different career path. As an alternative to no action he invited the Panel

to consider a caution. He maintained that he had '*done the right thing*' and submitted that he is no risk to the public.

29. The Panel accepted the advice of the Legal Assessor and had regard to the Sanctions Policy of RICS. It considered carefully the aggravating factors and the mitigating factors, and the oral submissions made by both parties. The Panel bore in mind that the purpose of sanctions is not to be punitive, though they may have that effect. The purpose is to protect the public, declare and uphold the standards of the profession and safeguard the reputation of the profession and the RICS as its regulator. Sanctions must be proportionate and considered in order of severity starting with the least restrictive until the most appropriate and proportionate sanction or combination of sanctions which meets the public interest has been reached.

30. The Panel identified the following aggravating factors:

- The failure to comply with the Agreed Outcome was a deliberate and conscious decision;
- Mr Stephens has demonstrated a persistent lack of insight into the nature and extent of his own wrongdoing choosing instead to focus on the behaviour of others;
- The letter to Mrs A was threatening in tone, offensive and abusive;
- Mr Stephens repeatedly chose to criticize the RICS' process in broad terms and make assertions that he did not have to respond to its request for information during the investigation stage rather than cooperate constructively.

31. The Panel was unable to identify any mitigating factors other than the absence of any previous adverse disciplinary findings.

No Action

32. The Panel first considered taking no action. The Panel concluded that, in view of the nature and seriousness of the Rule breaches, to take no action regarding Mr Stephens' membership would be inappropriate as it was unable to identify any exceptional circumstances. Furthermore, the Panel concluded that taking no action would be insufficient to maintain public trust and confidence in the profession and the regulatory process and would undermine the need to declare and uphold the high standards of the profession.

Caution or Reprimand

33. The Panel next considered whether to impose a caution but considered this to be insufficient to mark the seriousness of Mr Stephens' actions and the persistent nature of his failures. The Panel noted that at no stage did Mr Stephens demonstrate any acknowledgement of his own wrongdoing, the impact of his behaviour on Mr and Mrs A, or the impact of his behaviour on his professional standing as a member of RICS and the wider profession. In the absence of any insight the Panel concluded that there was a risk of repetition. Furthermore, the Panel took the view that Mr Stephens conduct could not be described as '*minor*' or an isolated incident which may justify a sanction towards the lower end of the spectrum. Therefore, the Panel concluded that a caution was not an appropriate and proportionate sanction.

34. For the reasons as mentioned above the Panel concluded that Mr Stephens' willful disregard of the high standards expected of RICS members required more than a formal admonishment. The Panel concluded that a reprimand would not send a clear message to the wider profession reaffirming the standards of conduct expected and would therefore be insufficient to uphold public trust and confidence in the profession and the regulatory process.

Financial Penalty

35. The Panel went on to consider whether a fine should be imposed. The Panel concluded that a financial penalty alone would be purely punitive and would not adequately address the Panel's concern regarding public trust and confidence in the profession. The Panel also concluded that a fine in combination with a caution, reprimand, conditions or undertakings would not adequately address the Panel's concern regarding public trust and confidence in the profession.

Conditions or Undertakings

36. The Panel next considered whether conditions or undertakings should be imposed on Mr Stephens' membership. The Panel carefully considered the nature and seriousness of Mr Stephens' conduct and concluded that, even if suitable conditions or undertakings could be formulated, the Panel could have no confidence that Mr Stephens would comply with them. The Agreed Outcome was a form of undertaking and it was breached almost immediately. To impose

a further undertaking would seriously undermine confidence in the profession and RICS as its regulator. Furthermore, conditional membership would be insufficient to send a signal to Mr Stephens, the wider profession and the public, reaffirming the high standards expected of RICS Members and their duty to cooperate with RICS. In these circumstances, the Panel took the view that neither conditions nor undertakings would be appropriate or sufficient to declare and uphold the standards expected of RICS members.

Expulsion

37. The Panel determined that it had no option in this case but to expel Mr Stephens from RICS. In reaching this conclusion the Panel took into account his persistent and wilful failure to comply with the RICS Rules of Conduct for Members. The Panel noted that the letter to Mrs A threatened her with the loss of her children. The Panel was satisfied that even if Mr Stephens holds a subjective, genuine belief that he has uncovered a criminal offence or other wrongdoing, it was wholly inappropriate for him to send Mrs A such an offensive letter. Mr Stephens' unwillingness or inability to recognise that the nature and tone of his letter to Mrs A fell far below the standards expected of a RICS member caused the Panel particular concern. Mr Stephens went on to challenge RICS' authority to investigate the complaint that had been made against him and refused to constructively engage with the investigation. In the absence of any other reasonable explanation, the Panel was driven to the conclusion that this was in order to frustrate the process. Furthermore, having consented to an Agreed Outcome with RICS, Mr Stephens breached it almost immediately. The Panel concluded that Mr Stephens' acts and omissions are fundamentally incompatible with continued membership.

38. The Panel was satisfied that expulsion is justified and proportionate in this case to maintain public trust and confidence in the surveyors' profession and ensure proper standards of conduct and behaviour are upheld. The Panel concluded that only expulsion of Mr Stephens would demonstrate that RICS takes appropriate action to promote regulatory compliance and to deter others from future non-compliance.

39. Accordingly, the Panel orders Mr Stephens expulsion from RICS membership.

Publication and Costs

Publication

40. Mr Geering referred the Panel to the RICS policy on publication in Supplement 3 of the Sanctions Policy and invited the Panel to direct publication in accordance with '*open justice*' principles. Mr Stephens did not oppose publication.
41. The Panel accepted the Legal Assessor's advice that in accordance with the publication policy it is usual for decisions to be posted on the RICS website and published in Modus. The Panel was unable to identify any valid reason for departing from the presumption that Disciplinary Panel decisions will be published. The Panel's overarching objective is to declare and uphold standards and to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.
42. The Panel orders that this decision, in relation to Mr Stephens, is published on the RICS website and in Modus.

Costs

43. Mr Geering made an application for costs in the sum of £48,250 based on a schedule of costs that had been provided to Mr Stephens in advance. The request for costs included the costs associated with the hearing that took place in March 2018. Mr Geering acknowledged that the claim for costs was significantly higher than the sums usually requested. However, he submitted that in assessing the level of costs the Panel should take into account the manner in which Mr Stephens had conducted his defence. He informed the Panel that RICS frequently had to respond to irrelevant correspondence and reminded the Panel that Mr Stephens had not complied with any of the case management directions, the purpose of which, was to shorten the hearing and clarify the issues in dispute. Mr Geering further submitted that lengthy legal arguments with no prior notice had increased the length of the hearing.
44. Mr Stephens submitted that the costs requested by RICS was a '*huge amount of money.*' He made reference to the cost orders made against him following his unsuccessful application for

Judicial Review and expressed concern that if a further costs order was made against him he would be liable for approximately £100,000.

45. The Panel carefully considered whether to make an award of costs. The Panel noted that although Mr Stephens indicated that a costs order, in the amount requested by RICS, would cause financial hardship he did not provide any evidence of his means despite being given the opportunity to do so in response to the notice of costs. In the absence of any evidence of Mr Stephens' means the Panel concluded that it was appropriate to make a costs order against him. The Panel was satisfied that the case had been properly brought against Mr Stephens, and that in view of the manner in which he had conducted his defence the costs application was fair and reasonable. The Panel was also satisfied that costs should be awarded against Mr Stephens otherwise the financial burden of bringing this case would fall on the profession as a whole.

46. The Panel was unable to identify any reason for reducing the costs. Accordingly, the Panel ordered Mr Stephens to pay RICS costs in the sum of £48,250. In determining that Mr Stephens should pay RICS' costs, the Panel took into account the fact that he would be able to enter into negotiations with RICS to devise an acceptable payment plan.

Right of Appeal

47. Mr Stephens has 28 days, from service of this decision, to appeal in accordance with Rules 59 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009.

48. In accordance with Rule 60 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009 the Honorary Secretary has 28 days from the service of the notification of this decision to require a review of this decision.

Annex A

Application to Adjourn (duplication of proceedings, defending two cases and disclosure)

49. At the outset of the hearing Mr Stephens invited the Panel to adjourn the proceedings. His primary submissions can be summarised as follows:

- (i) Duplication of proceedings. He submitted that the proceedings in the New South Wales Supreme Court relate to the same matters under consideration by the Panel. He further submitted that as the Supreme Court is 'superior', those proceedings should take precedence over the disciplinary proceedings. He invited the Panel to adjourn these proceedings until the conclusion of the matters in the Supreme Court.
- (ii) Difficulties associated with defending in two cases at the same time. He confirmed that he had instructed lawyers in relation to the Australian proceedings but stated that he was finding it difficult to focus on two sets of proceedings at the same time. He stated that he would prefer to deal with the Supreme Court matters first.
- (iii) Disclosure. He informed the Panel that on numerous occasions he had requested further disclosure from RICS, he had requested that certain documents be provided to the Panel and in addition there was outstanding evidence that he had not yet been able to obtain. He stated that he had not received Folders B and C because the emails were too large for his e-mail service account to accept.

50. Mr Geering on behalf of RICS opposed the application. He outlined the procedural history and Mr Stephens' failure to dial in to the case management hearing which took place on 18 April 2019. He submitted that the overlap between the two sets of proceedings was minimal as the RICS matters are solely related to the appropriateness of sending the letter to Mrs A, not whether the contents are true and Mr Stephens' co-operation with RICS. He stated that although the proceedings were overlapping, Mr Stephens was not facing simultaneous substantive hearings. With regard to disclosure Mr Geering stated that it was for Mr Stephens to establish that the further

disclosure he had requested was relevant to the issues the Panel has to decide. He also stated that it was for Mr Stephens to ensure that he had appropriate IT arrangements that worked.

51. The Panel refused the application to adjourn for the following reasons:

- (i) The Panel noted the events underlying what has given rise to these proceedings and the Supreme Court proceedings in Australia are the same. However, the facts at issue and the purpose of these proceedings is entirely different from those in Australia. The Panel was not being invited to consider the matters before the New South Wales Supreme Court. The Panel was only concerned with the appropriateness of the letter that was sent to Mrs A by Mr Stephens given his status as a RICS member and the level of his cooperation with RICS. Therefore, the Panel concluded that there was no material overlap between the two sets of proceedings as the outcome of the Supreme Court case was of no relevance to the RICS charges.
- (ii) The Panel noted that, whilst these proceedings had already commenced, the Supreme Court proceedings in Australia were at a preliminary stage and may take many months to conclude. Mr Stephens had instructed lawyers in relation to the Supreme Court matters and due to the time difference between the UK and Australia there was no requirement for him to attend both proceedings at the same time. Furthermore, the Panel could not identify any difficulty in Mr Stephens providing his lawyers with instructions during the day (Australian time) and participating in these proceedings in the evening (Australian time). The Panel was satisfied that the public interest in continuing with these proceedings far outweighed any convenience to Mr Stephens in adjourning the hearing to an unknown date many months in the future. However, the Panel confirmed that this would be kept under review.
- (iii) The Panel was not persuaded that the material requested by Mr Stephens and the documents he invited the Panel to take into consideration were relevant to the issues to be determined by the Panel. For example, the content of the valuation reports which Mr Stephens states were plagiarised would be relevant if the Panel was determining whether his grievance was valid or true. However, it is not relevant in determining the appropriateness of sending a '*threatening*' letter to Mrs A. Furthermore, the Panel noted

that Folders B and C had been sent to Mr Stephens by post and that it would be re-sent to him by email. As these folders related to documents Mr Stephens had either seen before at the March 2018 hearing or were generated by him it would not take long for him to digest the contents. The Panel confirmed that the issue of disclosure would be kept under review.

52. The Panel was satisfied that no injustice would be caused by proceeding with the hearing.

Further Application to Adjourn

53. Mr Stephens subsequently made a further application to adjourn. During his application he referred to a statement from Mr A in relation to the Supreme Court proceedings in which Mr A referred to the earlier RICS proceedings. Mr Stephens reiterated many of the arguments he had previously raised regarding the overlap of the professional regulatory proceedings and the proceedings in the Supreme Court. He stated that he needed '*breathing space*'. In addition, he raised a new ground based on his intention to instruct a legal representative in the UK. He stated that he had been in touch with a firm of solicitors.

54. Mr Geering opposed the application to adjourn. He objected to the '*re-litigation*' of the argument that there was an overlap between RICS' proceedings and the proceedings in the Supreme Court. He further submitted that Mr Stephens ought to have known prior to the commencement of this hearing that these matters warranted legal representation.

55. The Panel refused the further application to adjourn for the following reasons:

- (i) The Panel noted the contents of the extract from the statement of Mr A but was not persuaded that it established that there was a material overlap between the regulatory proceedings and the Supreme Court proceedings. The Panel was not provided with any of the pleadings in relation to the Supreme Court proceedings but was satisfied that the regulatory issues were narrow and could be determined solely based on the documentation that had been provided.

- (ii) The Panel accepted the advice of the Legal Assessor that Mr Stephens did not have an unfettered right to an adjournment in order to seek legal representation. The Panel noted that the original hearing took place in March 2018 followed by a further hearing in October 2018. Therefore, by October 2018 at the very latest, Mr Stephens was aware that it was RICS's intention to pursue his failure to comply with the Agreed Outcome. The Panel was not provided with any reasonable explanation for the delay in obtaining legal advice. The panel also noted that Mr Stephens did not provide evidence of him contacting UK solicitors despite being given the opportunity to do so. Furthermore, the Panel noted that there was no certainty that the solicitors Mr Stephens had contacted would be willing or able to accept his instructions to act in these proceedings or whether their involvement would be limited to advising on making a judicial review claim. In these circumstances, the Panel concluded that the public interest in continuing with the proceedings outweighed Mr Stephens' interests in delaying the hearing to ascertain whether he would be able to secure legal representation.

Non-Service of Documents

56. Mr Stephens made an application for the hearing to be adjourned on the basis that he had not been properly served with the hearing bundles. He stated that he had not had the opportunity '*to get on top of*' the documents that had been re-sent to him by email. He also reiterated that certain documents had not been provided to the Panel which in his view were highly relevant.

57. Mr Geering informed the Panel that Mr Stephens had been served with hard copies of the hearing bundles by post in accordance with the Rules and in addition the documents had been sent by email. He referred the Panel to the transcript of the March 2018 hearing where it had been agreed that three of the bundles before that Panel were not relevant to the allegations. He also stated that the alleged missing documents will be provided to the Panel if required.

58. The Panel refused the application for the following reasons.

- (i) The Panel was satisfied that the hearing bundles were served in accordance with Rule 23A which states that '*...at least 56 days before the hearing date the Presenting Officer*

shall send to the Relevant Person... The documents upon which he intends to rely when presenting his case, including any witness statements.' The Panel noted that there was no requirement that Mr Stephens had to have received the documents. However, he acknowledged that he had received Folder A. Folders B and C had been re-sent to Mr Stephens by email in smaller files so that it would not be rejected by his email server. The Panel was satisfied that the contents of Folders B and C were documents that had previously been served and therefore it would not take Mr Stephens very long to re-familiarise himself with the contents.

- (ii) The Panel has the opportunity to review the documents deemed to be irrelevant by the earlier Panel if it requires.

59. The Panel directed that the documents alleged by Mr Stephens to be missing be made available to the Panel, in the event it becomes necessary to review and determine their relevance and weight in due course.

Mediation

60. Mr Stephens made an application for the hearing to be adjourned to enable mediation to take place between himself and RICS.

61. Mr Geering opposed the application. He stated that RICS was not willing to consider mediation.

62. The Panel refused the application for the following reasons:

- (i) The Panel noted that to be effective mediation requires the consent of both parties. As RICS has expressed an unwillingness to enter into mediation the Panel concluded that adjourning the hearing for that purpose would not be a productive use of time.
- (ii) The Panel noted that the original substantive hearing took place in March 2018 and that the proceedings were resurrected because of Mr Stephens alleged breach of the Agreed Outcome. In these circumstances, the Panel concluded that adjourning the hearing to

enable further negotiations to take place would serve no useful purpose. The public interest and balance of convenience weighed heavily in favour of continuing with the proceedings.

ANNEX B

Re-opening Agreed Outcome

63. Mr Stephens chose to give evidence in support of his application for the Agreed Outcome to be re-opened. During his submissions he stated that the Agreed Outcome should be re-opened and set aside on the following overlapping grounds:

- (i) His consent was obtained under duress. He stated that he was under pressure given the hearing did not conclude until the early hours of the morning (Australian time) and he felt that he had no real choice. He also stated that he was confused and did not realise that not all of the evidence that he considered to be relevant had been presented to the March 2018 Panel.
- (ii) He was poorly represented by counsel. He stated that Mr Beaumont '*sabotaged his case*' by refusing to cross examine Mrs A. He also stated that Mr Beaumont gave him the option of sacking him.
- (iii) He alleged that Mr Solomon and Ms Sherlock (RICS' solicitor) were biased against him. He alleged that the chair of the March 2018 Panel, had demonstrated apparent bias as she was a member of a number of regulatory bodies. He also stated that his previous solicitors and Mr Beaumont were biased on the basis of a conflict of interest.

64. Mr Geering opposed the application. He submitted that the burden was on Mr Stephens to establish a good reason for re-opening the Agreed Outcome and that he had failed to discharge that burden. He also reminded the Panel that Mr Stephens had refused to expressly confirm that he had waived legal professional privilege which would have enabled Mr Beaumont to respond to the allegations.

65. The Panel accepted the advice of the Legal Assessor. The Panel noted that it is incumbent upon Mr Stephens to establish a good and substantial reason for the agreement to be set aside. A good and substantial reason is whether an injustice would arise if the Panel proceeded with the hearing on the basis of the Agreed Outcome. The ultimate question is not, 'Mr Stephens' guilt or innocence', but the integrity of the agreement itself. There will be no injustice where a panel acts upon an agreement entered into in the exercise of a free choice based on what Mr Stephens may have believed to be in his interests at the time. Not only must it be shown that the agreement was not genuine but also that there must be some factor which undermines the integrity of the agreement. The Panel refused the application for the following reasons:

- (i) The Panel noted that Mr Stephens' assertion that his consent to the agreement had been obtained under duress was not raised until October 2018. He stated that he had not realised that his evidence had not been considered by the Panel until much later. However, the Panel noted from the transcripts that it was agreed by both parties that three of the four folders were not relevant. Mr Beaumont made it clear that the Panel would not have to determine whether Mr Stephens' allegations are true or not. Mr Stephens did not object at the time and did not object until approximately six months later (8 October 2018) despite there having been correspondence between Mr Stephens and RICS in the intervening period, beginning 1 May 2018, relating directly to Mr Stephens' non-compliance with the Agreed Outcome.
- (ii) The Panel was provided with an email exchange between Mr Beaumont and Mr Stephens dated 19 and 20 March 2018. The emails were provided by Mr Stephens and demonstrated that he was involved in the negotiations. The Panel noted that the tone of the emails from Mr Beaumont were neutral and professional. There was no suggestion of coercion; it was clear that Mr Stephens was willing to enter into the agreement on terms that were in his interests.
- (iii) The Panel noted that after the agreement had been negotiated and placed before the March 2018 Panel Mr Stephens was asked directly by the Chair if he understood what had happened. He replied 'yes'. The Panel then adjourned for approximately 15 minutes and when it returned the Agreed Outcome was approved by the Panel and was subsequently read into the record. Mr Stephens did not raise any objection at that time.

- (iv) On Mr Stephens' own account Mr Beaumont told him that he could 'sack' him and cross examine Mrs A himself. Rather than demonstrating poor representation the Panel was satisfied that this indicates Mr Beaumont was acutely aware of his professional obligations and was not prepared to take a course of action which was not justified by the evidence or the issues to be determined by the March 2018 Panel.
- (v) The Panel noted that the March 2018 hearing commenced in the evening (Australian time). However, the timings had been agreed to in advance and there was no objection at the time. Mr Stephens was legally represented and if there was any concern that he was suffering from fatigue or was unable to participate in the proceedings for any other reason there was a legitimate expectation that it would have been raised at the time.
- (vi) The Panel noted that the test for apparent bias is that set out in the case of *Porter v Magill* [2002] 2 AC 357: 'Would the fair-minded and informed observer, having considered the facts, conclude that there was a real possibility of bias?' The Panel was unable to identify any justification for concluding that Mr Beaumont, Mr Solomon, the Chair of the March 2018 Panel, Mr Stephens' previous solicitors or Ms Sherlock were biased. The allegations made by Mr Stephens were wide-ranging and appeared to be based solely on the fact that he was unhappy with RICS' investigation and was no longer willing to be subject to the Agreed Outcome which had been signed on his behalf by Mr Beaumont with his consent. The '*fair-minded and informed observer*' would know and appreciate that lawyers working within the same field are likely to come across each other in various cases. It does not necessarily mean that because they know each other that they cannot discharge their professional duties without bias. The same applies to panel members who may sit on various regulatory panels.

66. The Panel concluded that Mr Stephens entered into the agreement voluntarily. Although he subsequently changed his mind about the merits of consenting to the Agreed Outcome, the Panel concluded that was not a sufficient reason for the Agreed Outcome to be re-opened and set aside.

Bias

67. Mr Stephens made an application for the Panel to recuse itself. He submitted that he was not able to have a fair hearing because two of the members of the Panel had sat on several other panels with members of the March 2018 Panel. He stated that this apparent bias should have been disclosed at the outset of the hearing.

68. Mr Geering did not support the application and reminded the Panel of the test for apparent bias as set out in the *Porter v Magill* case.

69. The Panel refused the application for the following reasons:

- (i) The application is completely without merit. Panel members are allocated to sit on particular hearings from a pool of lay and professional members. Inevitably panel members will sit on differently constituted panels from time to time with panel members that they have sat with on previous occasions. It is well established that the '*fair-minded and informed observer*' is not '*unduly sensitive or suspicious*' and therefore would not have any concerns about the constitution of the Panel.
- (ii) As there is no conflict of interest there was no need for any declaration to be made at the outset of the hearing.