

Disciplinary Panel Hearing**Case of****Stephen SANDS [0849035]****And ALLPROPS CS LTD [848806]****On**

Wednesday 30 November, Thursday 01 and Friday 02 December 2022

At

Virtual Hearing via MS Teams

Panel

Nick Hawkins (Lay Chair)

Jane Bishop (Lay Member)

Stephen Moore (Surveyor Member)

Legal Assessor

Rebecca Vanstone

RICS Presenting Officer

Christopher Geering

Respondents' Representative(s)

None

Hearing Officer

Jae Berry

Introduction

Mr Sands (“the Member”) and Allprops CS Ltd (“the Firm”) appear before the RICS Disciplinary Panel in connection with the following allegations:

The Member

1. *Between 19 October 2020 and 04 June 2021:*

- a. *Having undertaken to complete reports for one or more clients listed in Schedule A, and having taken payment in advance, Stephen Sands failed to complete those reports within a reasonable time or at all.*
- b. *His actions at 1(a) were:*
 - i. *In breach of his professional obligations.*
 - ii. *Lacked integrity.*

Schedule A: SH, YCL, CF, EM, CW, WW, IV, DS

Contrary to Rule 3 and / or 5 of the Rules of Conduct for Members 2007

Stephen Sands is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

2.

- a. *Having failed to provide the services promised in a timely manner or at all, Stephen Sands failed to refund payment(s) made in advance by the client(s) set out in Schedule A,*
- b. *His actions at 2(a) above were:*
 - i. *In breach of his professional obligations.*
 - ii. *Lacked integrity in that he should have known that this money should be returned to the client(s),*
 - iii. *Were dishonest in that he knew this money should be returned to the client(s) and he chose not to do so,*
 - iv. *Exposed RICS to risk of financial loss*

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

Stephen Sands is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

3. *Stephen Sands failed to communicate in a timely manner or at all with one or more of the client(s) in that:*
- a. *He did not respond to emails sent by Stewart Hale on or around:*
 - i. *9 November 2020*
 - ii. *10 December 2020*
 - b. *He did not respond to emails/communications sent by Emile Moore, or by Emma Morris on his behalf, on or around:*
 - i. *16 December 2020*
 - ii. *5 January 2021*
 - iii. *20 January 2021*
 - c. *He did not respond to emails / texts sent by William Wharton on or around:*
 - i. *12 February 2021*
 - ii. *15 February 2021*
 - iii. *22 February 2021*
 - iv. *26 February 2021*
 - d. *He did not respond to emails sent by Ignor Viner on or around:*
 - i. *21 April 2021*
 - ii. *24 May 2021*
 - e. *He did not respond to emails / texts / calls from Debbie Simpson on or around:*
 - i. *14 June 2021*
 - ii. *17 June 2021*
 - iii. *18 June 2021*
 - iv. *19 June 2021*
 - v. *22 June 2021*
 - vi. *23 June 2021*

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

Stephen Sands is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

- 4.
- a. *Stephen Sands failed to ensure that the Firm which he owned or controlled complied with CEDR awards in favour of Emile Moore and / or Stewart Hale.*
 - b. *His actions at 4(a) above:*
 - i. *Caused and / or exposed RICS to the risk of financial loss*
 - ii. *Lacked integrity*

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

Stephen Sands is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

5. *Stephen Sands failed to co-operate fully with RICS, in that he did not respond to communications from RICS staff or provide information requested, on or around:*
- a. *26 April 2021*
 - b. *14 May 2021*
 - c. *21 May 2021*
 - d. *15 June 2021*
 - e. *17 June 2021*
 - f. *18 June 2021*

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

Stephen Sands is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

The Firm

6. *Between 19 October 2020 and 4 June 2021:*
- a. *Having undertaken to complete reports for one or more clients listed in Schedule A, and having taken payment in advance, the Firm failed to complete those reports within a reasonable time or at all.*
 - b. *Its actions at 6(a) were:*
 - i. *In breach of his professional obligations*
 - ii. *Lacked integrity*

Contrary to Rule 3 and / or Rule 5 of the Rules of Conduct Firms 2007

The Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

- 7.
- a. *Having failed to provide the services promised in a timely manner or at all, the Firm failed to refund payment(s) made in advance by the client(s) as set out in Schedule A,*
 - b. *Its actions at 7(a) above were:*
 - i. *In breach of his professional obligations,*
 - ii. *Lacked integrity,*
 - iii. *Exposed RICS to risk of financial loss*

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

The Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

8. *The Firm failed to communicate in a timely manner or at all with one or more of the clients listed in Schedule A in that:*
- a. *It did not respond to emails sent by Stewart Hale on or around:*
 - i. *9 November 2020*
 - ii. *10 December 2020*
 - b. *It did not respond to emails sent by Emile Moore and / or by Emma Morris on or around:*
 - i. *16 December 2020*
 - ii. *5 January 2021*
 - iii. *20 January 2021*
 - c. *It did not respond to emails / texts sent by William Wharton on or around:*
 - i. *12 February 2021*
 - ii. *15 February 2021*
 - iii. *22 February 2021*
 - iv. *26 February 2021*
 - d. *It did not respond to emails sent by Igor Viner on or around:*
 - i. *24 April 2021*
 - ii. *24 May 2021*
 - e. *It did not respond to emails / texts / calls sent by Debbie Simpson on or around:*
 - i. *14 June 2021*
 - ii. *17 June 2021*
 - iii. *18 June 2021*
 - iv. *19 June 2021*
 - v. *22 June 2021*
 - vi. *23 June 2021*

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

The Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

9. *The Firms failed to provide a copy of its Complaints Handling Procedure to:*
- a. *Emile Moore on 20 January 2021*
 - b. *William Wharton on 27 February 2021*
 - c. *Ignore Viner on 9 June 2021*

Contrary to Rule 7 of the Rules of Conduct for Firms 2007

The Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

10.

- a. *The Firm failed to comply with CEDR awards in favour of Emile Moore and / or Stewart Hale.*
- b. *Its actions at 10(a) above:*
 - i. *Caused and / or exposed RICS to the risk of financial loss*
 - ii. *Lacked integrity*

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

The Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

11. *The Firm failed to co-operate fully with RICS, in that it did not respond to communication from RICS staff or provide information requested, on or around:*

- a. *26 April 2021*
- b. *14 May 2021*
- c. *21 May 2021*
- d. *15 June 2021*
- e. *17 June 2021*
- f. *18 June 2021*

Contrary to Rule 15 of the Rules of Conduct for Firms 2007

The Firm is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

Response

Mr Sands has not engaged with RICS' efforts to contact him requesting a response to the allegations. In response to an application for interim measures to be imposed Mr Sands said that he was embarrassed at his lack of professionalism and set out various matters of personal mitigation such as the illness of family members, a suicide of a close friend, health issues, financial pressures and the breakdown of his marriage. He requested time to respond to the allegations but has never provided a substantive response.

Preliminary matters

Service and proceeding in absence

Mr Geering, on behalf of RICS, made an application for the Panel to proceed in the absence of Mr Sands and the Firm. The Panel were provided with a bundle of correspondence together with a witness statement from a RICS' employee showing that the notice of hearing and the evidence RICS seeks to rely upon, had been served on Mr Sands.

The Panel received and accepted advice from the Legal Assessor.

The Panel determined that service had been effected in accordance with the Rules.

The Panel next considered whether to proceed in Mr Sands' absence and in the absence of the Firm. It was mindful that it needed to balance the interests of Mr Sands and the Firm, with the interests of the public. The Panel was mindful that there was reference within the correspondence from Mr Sands that he had been dealing with some difficult personal circumstances. However, there was no independent evidence to support these assertions.

The Panel bore in mind that there has been very limited engagement from Mr Sands to date and that he did not attend either of the two interim measures hearings. There is no request from Mr Sands for an adjournment or a reason put forward as to why he has not attended today. This led the Panel to conclude that Mr Sands' non-attendance at today's hearing was voluntary and that there would be no useful purpose served by the matter being adjourned today, as the Panel had no indication that Mr Sands would attend on any further occasion. The Panel took account of the fact that five witnesses were due to give evidence during the hearing and that all witnesses were warned to attend because Mr Sands had not responded to requests for his witness requirements. If the matter was to be adjourned those witnesses would be inconvenienced and required to attend on a future date.

The Panel determined that in all of the circumstances, it was fair to proceed in Mr Sands' absence and that the public interest required that the matter be heard.

Admission of late evidence

Mr Geering made an application for two pieces of evidence to be admitted before the Panel. One was a print-out of text messages between Mr Sands and witness BW, which had been

omitted from the original bundle of evidence. The second was written confirmation from RICS that it had borne the costs of two Centre for Effective Dispute Resolution (“CEDR”) awards.

The Panel received legal advice from the Legal Assessor which it accepted.

The Panel had regard to the principles of relevance and fairness. It bore in mind that the first piece of evidence was text messages that had been sent to Mr Sands’ mobile telephone and as such, he would have had sight of them before the investigation commenced. The Panel also noted that Mr Sands had been told about this ‘late’ evidence and that it had been formally served on him on 27 October 2022. No objection to its admission had been received. The Panel determined that there was no prejudice to Mr Sands by it receiving this evidence at this stage. The messages were plainly relevant and the Panel determined that it was fair to admit them given the circumstances in which they arose and the fact that Mr Sands had been notified of RICS’ intention to rely on them over a month before this hearing began.

The Panel next considered the second piece of evidence. It determined that this piece of evidence was not relevant to matters at the outset as it was relating to costs incurred by RICS. That would only become relevant at the point of sanction, if the case was to reach that stage. The Panel therefore declined to determine the application in respect of this piece of evidence at the outset.

Summary

Mr Sands is a Member of RICS (qualified in 2000) and the RICS registered principal of the Firm (registered with RICS on 11 August 2020). The case has arisen following multiple referrals received by RICS which alleged that the Member and the Firm accepted instructions from clients and requested payment in advance, before either failing to complete the commissioned work or completing it late. Refunds were not provided and when asked, Mr Sands did not provide a copy of his Complaints Handling Procedure. Two clients brought claims before the CEDR and in each of these instances, an award favourable to the client was made, but was not honoured by the Firm.

The complaints

On 16 October 2020 Mr H provided payment of £350.00 for a Homebuyers' report that he had requested be prepared. Mr Sands had undertaken to produce this report within five days of the survey being carried out. Mr Sands attended the property on 19 October 2020. Despite Mr H contacting Mr Sands for updates on 27 October 2020, 09 November 2020 and 10 December 2020, the report was not received. On 23 July 2021, Mr H made a complaint to CEDR and an award was made in his favour, but this went unpaid by Mr Sands.

On 26 October 2020 Mr M instructed Mr Sands to carry out a survey, which took place on 05 November 2020. Mr Sands then offered a refund of 30% promising the report would be ready by 04 December 2020. He offered a further discount of 50% promising that the report would be ready by 11 December 2000 but still the report was not forthcoming. On 16 December 2020 Mr M requested a refund. On 22 December 2020 Mr M requested a copy of the Complaints Handling Procedure. Both of these requests went unanswered. The estate agent for the sale also contacted Mr Sands by email and put a note through his letter box but still Mr Sands did not respond. In March 2021 CEDR made an award in Mr M's favour, but the Firm did not pay this award. Mr M then brought a civil claim against Mr Sands and received judgment for £530.00. RICS bore this cost under its client protection scheme.

On 17 November 2020 Ms F made payment to Mr Sands for a homebuyers' survey to be carried out. Ms F's property investment consultant (Mr W) chased Mr Sands for the subsequent report; Mr Sands explained that he was dealing with some family issues and needed more time to produce the report. However, the report was never produced. Mr W had two further clients who engaged Mr Sands' services, Ms W and Mr C. Both of those individuals paid Mr Sands the requisite fees in November 2020 but never received their reports. When Mr W requested that Mr Sands refund the fees taken, Mr Sands refused on the basis that he had carried out the surveys in question.

On 28 January 2021 Mr W commissioned Mr Sands to conduct a level 3 building survey. He paid £450.00 in advance. The survey was completed on 30 January 2021 and the report was expected within five days thereafter. On 04 February 2021 Mr Sands said the report would be provided within five 'working' days of the survey. On both 08 and 10 February 2021 he said that the report would be ready the following day. Efforts by Mr W to contact Mr Sands on 12 and 15 February 2021 were ignored. On 22 February 2021 Mr W requested a refund. Mr Sands refused as the survey had been carried out. Mr W requested a copy of the Complaints

Handling Procedure but this was not provided. Mr W brought a civil claim against Mr Sands and received judgment in his favour.

Mr V paid £500.00 on 12 February 2021 for Mr Sands to carry out a survey. On 16 March 2021 Mr Sands sent an email containing detailed information about a property and containing photographs but not a finalised report. Mr V chased Mr Sands on 21 April 2021 and on 24 May 2021 and requested a refund. Mr Sands did not respond. Mr V complained to RICS on 27 May 2021 and on 09 June 2021 asked Mr Sands for his Complaints Handling Procedure. No response was received.

On 03 June 2021 Ms S commissioned Mr Sands to produce a Homebuyers' report and paid £395.00 in advance. On 04 June 2021 Mr Sands said he had carried out the survey and the report would follow. It did not. On 14 June 2021 Ms S messaged Mr Sands to enquire when the report would be ready but received no response. She messaged him again on 17 June 2021 and followed this with telephone calls and text messages but Mr Sands did not respond.

Burden and standard of proof

The Panel received advice from the Legal Assessor as to the burden and standard of proof. The advice highlighted that RICS is required to prove the allegations to the civil standard; that is, it is more likely than not that any event material to those allegations occurred. That is a single unwavering standard of proof, though the more unlikely an allegation, the more cogent the evidence that the Panel might require to prove it. There is no requirement for the Firm or the Member to prove anything. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment.

Evidence

The Panel considered a significant bundle of documents, comprising material produced on behalf of RICS. It also heard oral evidence from Ignor Viner. RICS had warned four other witnesses to attend to give live evidence in light of Mr Sands' failure to respond to requests for those witnesses he wished to challenge. However, having determined to proceed in Mr Sands' absence, and having heard the evidence of Mr Viner, the Panel determined that it did not need to hear from the remaining four witnesses. Prior to making this decision it received submissions from Mr Geering and advice from the Legal Assessor. The Panel reminded itself of the contents of the statements of each of those witnesses and was satisfied that it did not have any questions for any of those witnesses. The Panel also considered whether there were

any questions it should ask on behalf of Mr Sands, but it could not identify any such questions given the contents and nature of the statements which dealt, in large part, with the admission of contemporaneous business documents. The Panel therefore determined that the remaining witnesses could be stood down.

Submissions

Mr Geering opened the case to the Panel and referred to his written opening note. After the one live witness had been called, Mr Geering made closing submissions to the Panel. He addressed the Panel on each of the allegations and submitted that the evidence demonstrated that each allegation was made out. He referred to the number and nature of the complaints, and that a clear pattern was demonstrated. Mr Geering addressed the Panel on the breaches of the Codes of Conduct that arose from these allegations. He reminded the Panel that the evidence had not been challenged by Mr Sands and suggested that the Panel should place reliance on the evidence before it.

Decision on the charges

The Panel accepted the evidence it received, both from Mr V live, and the witness statements and exhibits that appeared within the bundle. It noted that many contemporaneous records were provided and it neither saw nor heard anything to undermine these records. The Panel also bore in mind that there was no account put forward from Mr Sands at any stage in the proceedings or during the investigation.

The Member

1. Between 19 October 2020 and 04 June 2021:

- a. Having undertaken to complete reports for one or more clients listed in Schedule A, and having taken payment in advance, Stephen Sands failed to complete those reports within a reasonable time or at all.**
- b. His actions at 1(a) were:**
 - i. In breach of his professional obligations.**
 - ii. Lacked integrity.**

Schedule A: SH, YCL, CF, EM, CW, WW, IV, DS

Contrary to Rule 3 and / or 5 of the Rules of Conduct for Members 2007

Found proved in relation to 1(a) and (b)(i) and (ii), for all Schedule A clients

The Panel considered each of the allegations separately and considered each client separately. It determined that there was evidence in support of allegation 1(a) in its entirety. The letters of engagement for clients SW, YCL, EM, CW WW, IV and DS clearly demonstrated that Mr Sands had undertaken to complete the report. For the remaining scheduled client, CF, Exhibit BW/08 produced the communication between CF and Mr Sands which provided a strong inference that Mr Sands' services had been engaged. Regarding the payments, there was evidence that requests for refunds were made by YCL, CF, EM, CW, WW and IV, which the Panel accepted as clear evidence that payment had been made in advance. For the remaining scheduled clients, SH and DS, the evidence that payment had been made in advance comes from print-outs of their bank account activity (Exhibit SH/02 and DS/04, respectively). Finally, each of the scheduled clients has provided a witness statement and each client explains within those witness statements that they did not receive a report. The Panel therefore determined that allegation 1(a) was found proved in respect of each individual named within the schedule.

The Panel determined that the failure to complete these reports was in breach of Mr Sands' professional obligations. It bore in mind that the public were likely to place a greater emphasis on professionalism where it used a RICS registered surveyor. It considered that taking money from clients but failing to provide a report, either within a timely manner or at all, was not professional.

The Panel considered that taking payment in advance and then failing to complete reports as alleged (and found proved), also fell far short of the standards expected of a professional. It therefore considered that this conduct lacked integrity. The Panel noted that in some circumstances, there was a suggestion that Mr Sands had undertaken the survey but had simply not produced the report. The Panel considered that even if this was the case, without the final report being passed to the client who had paid for that service, his conduct still lacked integrity and was in breach of his professional obligations.

The Panel finally determined, in respect of this allegation, whether the facts as found proved, represented conduct which was contrary to Rules 3 and / or 5 of the Conduct for Members 2007. It found that it clearly was, in light of the findings made at allegations 1(b)(i) and 1(b)(ii).

2.

- a. **Having failed to provide the services promised in a timely manner or at all, Stephen Sands failed to refund payment(s) made in advance by the client(s) set out in Schedule A,**
- b. **His actions at 2(a) above were:**
 - i. **In breach of his professional obligations**
 - ii. **Lacked integrity in that he should have known that this money should be returned to the client(s),**
 - iii. **Were dishonest in that he knew this money should be returned to the client(s) and he chose not to do so,**
 - iv. **Exposed RICS to risk of financial loss**

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

Found proved in relation to 2(a) and 2(b)(i) – (iv)

The Panel determined that the evidence supported the allegation that Mr Sands had failed to refund payments to the clients. It referred to the written requests for refunds, contained within the evidence bundle, which were made by YCL, CF, EM, CW, WW and IV. It also considered the information within each of the statements of these individuals, plus the witness statements of SH and DS, all of which supported the conclusion that payments were not refunded. The Panel therefore found allegation 2(a) proved.

The Panel determined that Mr Sands was both in breach of his professional obligations and lacked integrity in this regard. He should have known that the money was for services that he had failed to provide either in part, or in full, and as such, he should have known that the payments should have been returned. The Panel found that Mr Sands' actions fell short from what members of the public expect from a chartered surveyor, and also fell short of what those in the profession would expect from its members.

The Panel next considered the issue of dishonesty. It noted that the allegation related to a number of clients over a period of time. The Panel looked at the two-stage test as set out in *Ivey v Genting Casinos 2017 UKSC 67*. It considered that Mr Sands' actual knowledge and belief was that he knew he had taken payment from clients for the purposes of undertaking a survey and had, in some cases, carried out the surveys, but in other cases, had not. The Panel considered that Mr Sands knew that the services for which payment had been made,

had not been fulfilled. In those circumstances, he must have known that he was holding money that he should return, in that he was not entitled to keep the money until the report had been completed. The Panel noted that there is reference within the evidence to Mr Sands suggesting that as he had carried out a survey, he was entitled to keep the money (either in full or in part), notwithstanding that the subsequent report had not been prepared. The Panel had some serious reservations about whether this was Mr Sands' genuine belief as an experienced surveyor. However, it considered that even if this was Mr Sands' belief, this was dishonest, when applying the standards of the objective, ordinary decent person, who would not expect that payment was due until the client had received the report that they had paid for. Where reports were commissioned for the purposes of a property purchase, the fact a survey may have been undertaken is meaningless to the client, without a full written report being produced.

The Panel determined that RICS had been exposed to a risk of financial loss by virtue of Mr Sands' actions. As RICS has provision for members of the public to seek to recoup their losses from RICS directly, Mr Sands' conduct in failing to return money for works not done, gave rise to the risk that RICS would need to bear that loss.

The Panel then considered whether the facts as found proved, were contrary to Rule 3 of the Rules of Conduct for Members 2007. It determined that they were, given its findings on allegations 2(b)(ii) and (iv).

3. Stephen Sands failed to communicate in a timely manner or at all with one or more of the client(s) in that:

- a. He did not respond to emails sent by Stewart Hale on or around:**
 - i. 9 November 2020**
 - ii. 10 December 2020**
- b. He did not respond to emails/communications sent by Emile Moore, or by Emma Morris on his behalf, on or around:**
 - i. 16 December 2020**
 - ii. 5 January 2021**
 - iii. 20 January 2021**
- c. He did not respond to emails / texts sent by William Wharton on or around:**
 - i. 12 February 2021**
 - ii. 15 February 2021**

- iii. 22 February 2021
- iv. 26 February 2021
- d. He did not respond to emails sent by Ignor Viner on or around:
 - i. 21 April 2021
 - ii. 24 May 2021
- e. He did not respond to emails / texts / calls from Debbie Simpson on or around:
 - i. 14 June 2021
 - ii. 17 June 2021
 - iii. 18 June 2021
 - iv. 19 June 2021
 - v. 22 June 2021
 - vi. 23 June 2021

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

Found proved in relation to allegations 3(a) – 3(e)

The Panel adopted a methodical approach and looked at the emails, texts and records of telephone calls between each of the clients named in Schedule A and Mr Sands. It referred to Mr Geering's very helpful list of page references and satisfied itself that there was evidence for each of the individuals named, for each of the dates set out within the allegations, where communication had been made by the client and not responded to by Mr Sands. It therefore found this allegation proved in its entirety.

The Panel next considered whether this failure to communicate amounted to a breach of Rule 5. It found that it did; in the Panel's view, failing to respond to communications from clients did not show proper regard for good standards of service and customer care.

- 4.
 - a. **Stephen Sands failed to ensure that the Firm which he owned or controlled complied with CEDR awards in favour of Emile Moore and / or Stewart Hale.**
 - b. **His actions at 4(a) above:**
 - i. **Caused and / or exposed RICS to the risk of financial loss**
 - ii. **Lacked integrity**

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

Found proved in relation to 4(a) and 4(b)(i) and (ii)

The Panel received and accepted evidence that Mr Sands was the registered principal of the Firm. He was therefore its directing mind and was in control of it. The Panel also received and accepted evidence that the CEDR made awards in favour of EM and SH. It saw no evidence that the Firm had made efforts to pay these awards; to the contrary, the evidence from EM and SH was that the payments had not been made. The Panel therefore found allegation 4(a) proved.

The Panel next considered whether Mr Sand's actions caused and / or exposed RICS to the risk of financial loss. It considered that they did. As RICS has provision for members of the public to seek to recoup their losses from RICS directly, Mr Sands' conduct in failing to pay these awards made by CEDR, gave rise to the risk that RICS would need to bear that loss. The Panel determined that this failure by Mr Sands represented conducted which fell short of the standards expected of professionals and that therefore, his actions lacked integrity. Accordingly, the Panel also determined that Mr Sands' actions were contrary to Rule 3.

5. Stephen Sands failed to co-operate fully with RICS, in that he did not respond to communications from RICS staff or provide information requested, on or around:

- a. 26 April 2021
- b. 14 May 2021
- c. 21 May 2021
- d. 15 June 2021
- e. 17 June 2021
- f. 18 June 2021

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

Found proved in relation to 5(a) – (f)

The Panel considered the evidence available which demonstrated that RICS staff had communicated with Mr Sands and / or requested information on six separate occasions during the investigation. Those dates correspond with the dates as set out within the allegations. There was no evidence available to show that Mr Sands had responded to these communications or provided the information they had asked for. The Panel bore in mind that the Rules dictate that Registered Members should comply with RICS staff. It therefore

determined that the allegation was found proved, both in respect of the factual assertions and the breach of the relevant Rules.

The Firm

6. Between 19 October 2020 and 4 June 2021:

- a. Having undertaken to complete reports for one or more clients listed in Schedule A, and having taken payment in advance, the Firm failed to complete those reports within a reasonable time or at all.
- b. Its actions at 6(a) were:
 - i. In breach of his professional obligations
 - ii. Lacked integrity

Contrary to Rule 3 and / or Rule 5 of the Rules of Conduct Firms 2007

Found proved in relation to 6(a) and (b)(i) and (ii)

The Panel determined that Mr Sands and the Firm were 'one and the same', given Mr Sands was the registered principal of the Firm. It therefore determined that where he had failed to do something, the Firm had also failed to do the same thing where alleged, and vice versa.

Accordingly, as the Panel determined that allegation 1(a) had been found proved, it determined that allegation 6(a) was also found proved on the same basis.

7.

- a. Having failed to provide the services promised in a timely manner or at all, the Firm failed to refund payment(s) made in advance by the client(s) as set out in Schedule A,
- b. Its actions at 7(a) above were:
 - i. In breach of his professional obligations,
 - ii. Lacked integrity,
 - iii. Exposed RICS to risk of financial loss

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

Found proved in relation to 7(a) and (b)(i) – (iii)

As per the reasoning set out at allegation 6 above, as the Panel determined that allegation 2(a) had been found proved, it also found that allegation 7(a) was found proved on the same basis.

8. The Firm failed to communicate in a timely manner or at all with one or more of the clients listed in Schedule A in that:

- a. It did not respond to emails sent by Stewart Hale on or around:**
 - i. 9 November 2020**
 - ii. 10 December 2020**
- b. It did not respond to emails sent by Emile Moore and / or by Emma Morris on or around:**
 - i. 16 December 2020**
 - ii. 5 January 2021**
 - iii. 20 January 2021**
- c. It did not respond to emails / texts sent by William Wharton on or around:**
 - i. 12 February 2021**
 - ii. 15 February 2021**
 - iii. 22 February 2021**
 - iv. 26 February 2021**
- d. It did not respond to emails sent by Igor Viner on or around:**
 - i. 24 April 2021**
 - ii. 24 May 2021**
- e. It did not respond to emails / texts / calls sent by Debbie Simpson on or around:**
 - i. 14 June 2021**
 - ii. 17 June 2021**
 - iii. 18 June 2021**
 - iv. 19 June 2021**
 - v. 22 June 2021**
 - vi. 23 June 2021**

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

Found proved in relation to 8(a) – (e)

As per the reasoning set out at allegation 6 above, as the Panel determined that allegation 3(a) had been found proved, it also found that allegation 8(a) was found proved on the same basis.

9. The Firms failed to provide a copy of its Complaints Handling Procedure to:

- a. Emile Moore on 20 January 2021**
- b. William Wharton on 27 February 2021**
- c. Ignore Viner on 9 June 2021**

Contrary to Rule 7 of the Rules of Conduct for Firms 2007

Found proved in relation to 9(a), (b) and (c)

The Panel determined that the witness statements of each of these three individuals supported the allegation as drafted. It noted that there had been no challenge to any of these statements. It had no reason to question the credibility of any of these witnesses. It therefore found the allegation proved in its entirety.

10.

- a. The Firm failed comply with CEDR awards in favour of Emile Moore and / or Stewart Hale.**
- b. Its actions at 10(a) above:**
 - i. Caused and / or exposed RICS to the risk of financial loss**
 - ii. Lacked integrity**

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

Found proved in relation to 10(a), 10(b)(i) and (ii)

As per the reasoning set out at allegation 6 above, as the Panel determined that allegation 4(a) had been found proved, it also found that allegation 10(a) was found proved on the same basis.

11. The Firm failed to co-operate fully with RICS, in that it did not respond to communication from RICS staff or provide information requested, on or around:

- a. 26 April 2021**

- b. 14 May 2021
- c. 21 May 2021
- d. 15 June 2021
- e. 17 June 2021
- f. 18 June 2021

Contrary to Rule 15 of the Rules of Conduct for Firms 2007

Found proved in relation to 11(a) – (f)

As per the reasoning set out at allegation 6 above, as the Panel determined that allegation 5(a) had been found proved, it also found that allegation 11(a) was found proved on the same basis.

Liability to disciplinary action

On the basis of the facts found proved, the Panel were required to determine whether or not Mr Sands and / or the Firm are liable to disciplinary action. The Panel received submissions from Mr Geering, on behalf of RICS, that the conduct alleged, if found proved, would significantly damage public confidence in the profession. He invited the Panel to conclude that the conduct was so serious that liability for disciplinary action did follow. He referred to Mr Sands' pattern of behaviour demonstrating lack of integrity and dishonesty

The Panel accepted the advice of the legal assessor that the decision is one for the Panel's independent judgment, drawing upon the facts found proved; that a finding of fact does not automatically lead to liability to disciplinary action; and that account must be taken of the seriousness of the conduct and the context in which it occurred.

The Panel noted that these were serious breaches of the Rules and that the departures were a significant departure from what would ordinarily be expected of a professional. It considered that the behaviour had the potential to significantly undermine public confidence in the profession and in the RICS.

The Panel concluded that the charges proved in this case amounted to serious misconduct that breached sub-paragraph (c) of Bye-Laws 5.2.2 and 5.3.2. The Panel considered that the reputation of RICS and the reputation of the profession is at risk from such conduct and that

members of the public would be concerned to learn about what had taken place. The Panel concluded that the conduct found proved was liable to bring the profession into disrepute. It considered that it would be unconscionable not to take disciplinary action against an individual who had been found to have behaved dishonestly in this way, and against a Firm who had acted with such a lack of integrity.

The Panel were also concerned that an allegation had been found proved in respect of a failure to engage with RICS. The Panel was of the view that it is imperative that professionals engage with their regulator when required to do so and a failure to do so, had the potential to further damage public confidence in the profession.

Accordingly, the Panel found that the conduct found proved means that both Mr Sands and the Firm are liable to disciplinary action

Further application to be determined

Before the Panel moved to consider sanction it determined whether the second piece of evidence as referred to above, which Mr Geering applied to admit as late evidence, should be admitted at this stage. The document in question was a print-out from RICS confirming that it had borne the costs of two CEDR awards after the Firm had failed to honour them. The Panel determined that the evidence was relevant to this stage of the proceedings.

The Panel next considered whether it was fair to admit the evidence at this stage. The Panel noted that Mr Sands had not been given notice of this evidence. However, the Panel took the view that Mr Sands could not reasonably challenge this evidence which simply confirmed that RICS had suffered financial loss in respect of two of Mr Sands' clients. In the circumstances the Panel determined that it was fair to admit the evidence and considered that it needed to be aware of which clients had suffered financial loss (i.e. all but two, who had been compensated by RICS) in order to consider sanction in a proportionate manner. The Panel also paid regard to Mr Geering's submission that it had the power to order compensation to RICS in circumstances where RICS had suffered financial loss. Again, the Panel took the view that it needed to be aware of this information in order to properly consider matters at the sanction stage.

Sanction

Having found that both the Registered Member and the Firm were liable to disciplinary action the Panel next considered sanction.

Submissions

Mr Geering, on behalf of RICS, invited the Panel to conclude that Mr Sands' actions amounted to prolonged dishonest conduct. He referred to the fact that Mr Sands had continued taking on work – and therefore, continued to take payment in advance – when existing clients were already chasing him for work he had not completed. Mr Geering referred to the ongoing failures by Mr Sands to respond to requests for a refund, and that he failed to provide any refunds even on his own initiative, in light of failing to complete the work he had been commissioned to undertake.

Mr Geering invited the Panel to consider the financial loss to clients and also to RICS, who had compensated two clients who had received CEDR awards in their favour but for whom the Firm had failed to honour these. Mr Geering also invited the Panel to consider the risk of financial loss that RICS was exposed to by Mr Sands and the Firm operating in this way.

As Mr Sands was neither present nor represented, Mr Geering referred the Panel to the mitigating factors in this way. Mr Geering informed the Panel that Mr Sands was of previous good character and that he had alluded to matters of personal difficulty, both in respect of health and finances, in his email correspondence to RICS during the investigation. However, Mr Geering submitted that issues of personal mitigation were of less significance in regulatory proceedings as it was the reputation of the wider profession that was at risk, and that those personal mitigating factors do not address the issues of dishonesty and lack of integrity in any event.

Mr Geering informed the Panel that Mr Sands had been subject to a period of suspension following an interim measures hearing in August 2021.

The Panel received and accepted the advice of the Legal Assessor.

Determination on sanction

The Panel took the view that the following factors aggravated this case in respect of both Mr Sands and the Firm: dishonesty to clients; lack of cooperation with the regulator; financial benefit to Mr Sands and / or the Firm; repeated instances of wrongdoing; large number of breaches that spanned an eight-month period; clients and the regulator caused a financial loss; and lack of insight.

The Panel weighed these factors against those which it considered was present in mitigation for Mr Sands: no previous adverse disciplinary history; some engagement with RICS providing details of personal and financial difficulties, however the Panel noted that this information was 15 months old and no supporting evidence has been provided. The Panel could therefore only afford limited weight to these assertions.

With regard to the Firm, the Panel did not identify any mitigating factors. It bore in mind that the Firm had been registered in August 2020 and that the first matter complained of occurred in October 2020. The Firm had therefore not been in existence for very long before the complaints began.

The Panel was of the view that the reputation of the profession had been severely undermined by Mr Sands' actions and it was conscious that public confidence in RICS' role as regulator needed to be maintained. The Panel was unable to conclude that there was no risk of repetition of this conduct given it had no evidence that Mr Sands had any insight into his misconduct, and no evidence that any remediation had been undertaken.

The Panel looked at the sanctions available to it in order of increasing seriousness. It considered that given the intrinsic link between Mr Sands and the Firm, it was likely that the sanction to be imposed against each of them, would be the same. The Panel determined that there were no exceptional circumstances that would justify taking no action. The Panel next determined that neither a caution nor a reprimand would be suitable in this case as the breaches were too serious. Undertakings were not deemed to be appropriate either in light of the serious and repeated nature of the breaches and the lack of insight.

The Panel determined that a financial penalty on its own would not be proportionate to mark the seriousness of the breaches that have occurred. However, it considered that a financial penalty in the sum of £845.00 should be made to represent the money that RICS had paid out to clients of Mr Sands under the Client Money Protection Scheme. The Panel was not in receipt of any up-to-date financial information from either Mr Sands or the Firm. It was unaware as to the current status of the Firm. However, as the Panel had already determined at an earlier stage of proceedings that Mr Sands and the Firm were 'one and the same', it determined that the financial penalty should be awarded against Mr Sands. The Panel was concerned that Mr Sands and the Firm had ignored awards made by CEDR to two clients and noted that not all clients had been compensated in this way. It was regrettable that it could not compensate all of the clients but it noted that any financial penalty imposed would result in money being paid to RICS, who had suffered financial loss from settling these two CEDR awards that the Firm had failed to honour. It considered that imposing this order against Mr Sands was proportionate in light of the harm suffered.

The Panel then moved to consider conditions. However, the Panel determined that given the very serious breaches present here, and the number of aggravating factors identified, coupled with the lack of insight shown, conditions would be insufficient to protect the public and to uphold the public interest. It further determined that in light of the nature of the breaches and the repeated instances of dishonesty, appropriate conditions could not be formulated.

The Panel then considered expulsion / withdrawal of registration.

The Panel recognised that the Sanctions Guidance produced by RICS is guidance only. However, the Panel identified that there were a number of examples within the Guidance of instances likely to result in a decision to expel a member and / or withdraw a firm's registration. Those relevant were: gross, persistent or wilful failure to comply with a RICS Rule of Conduct; fraud, dishonesty or a lack of integrity; gross incompetence or recklessness in relation to the conduct or management of professional activities; persistent and / or serious failure to cooperate with RICS; gross mismanagement of finances; and misappropriation of clients' money.

The Panel was particularly concerned with the pattern of behaviour that gave rise to these allegations. It considered that the conduct was extremely serious and there was a real risk of

repetition, in light of the lack of insight expressed. The Panel considered the fact that Mr Sands had been suspended on interim measures for some considerable time in the context of whether expulsion was proportionate. The Panel also recognised that there was a discretion to depart from the Guidance. However, given the considerations it had already given to the lesser sanction of conditions, and given the seriousness and repetitive nature of the breaches present in this case, it determined that nothing less than expulsion of Mr Sands and withdrawal of the Firm's registration would be a proportionate regulatory response.

Costs

Mr Geering, on behalf of RICS, made an application for costs. He reduced the figure in the schedule from £20,675.00 to £17,500.00 to take account of the fact that the hearing has concluded in two days, rather than the three days scheduled.

The Panel noted that there had been extremely limited engagement from Mr Sands. It considered that had there been engagement from Mr Sands and / or the Firm, the costs figure was likely to have been reduced. The Panel was therefore minded to make a costs award in full. The Panel carefully considered whether doing so was proportionate given the ultimate sanction it had imposed. However, the Panel determined that as Mr Sands' behaviour had contributed to the level of costs incurred and as he had not provided any statement of means nor responded to the RICS' costs application which had been sent to him in accordance with the Rules, it was unfair to expect RICS – and therefore, the wider membership – to bear the costs in these circumstances.

Given the Panel's previous determination about the link between Mr Sands and the Firm and the lack of information available about the current status of the company, the Panel determined that the costs of £17,500.00 should be borne by Mr Sands. It made no order for costs against the Firm.

Publication

Mr Geering made an application for publication of the decision. He submitted that this was the usual policy and there was no reason to depart from that policy.

The Panel bore in mind that the starting point was that publication should take place and that the Panel should justify any reason to depart from this position. The Panel recognised that it is in the public interest for decisions such as these to be made publicly available and it did not identify any reasons that would justify departing from that usual principle. The decision will therefore be published 28 days after service of the decision, in the usual way.