Disciplinary Panel Hearing

Case of

Hinson Parry & Company [014001]

Mr Charles Bedson MRICS [0095606]

Ms Rebecca Evans MRICS [5033289]

John German Estate Agents [752500]

On

11 – 12, 15 – 16, 22, 24 – 26 and 30 – 31 May 2023

At 55 Colmore Row, Birmingham on 15 and 16 May
Virtual by Microsoft Teams on all other dates

Panel

Alison Sansome (Lay Chair)
Ron Barclay-Smith (Lay Member)
Mark Griffin (Surveyor Member)

Legal Adviser

Peter Steel

The formal charges are:

Hinson Parry & Company

1. Between 7 June 2017 and 18 January 2019, having entered into a fee-sharing arrangement with John German Estate Agents in relation to the marketing and sale of W Barn a primary purpose of which was to conceal relevant information from HS2 Ltd, Hinson Parry & Co acted dishonestly by:

    a. Advising John German by email on 4 September 2017 to obtain signed marketing terms from Mr and Mrs A to be used purely as evidence in support of

a Need to Sell application with the intention of concealing from HS2 Ltd the true fee-sharing agreement that would supersede the John German marketing terms and thereby conceal John German's financial interest in a successful Need to Sell application; and/or

b. Advising Mr and Mrs A by letter on or about 14 September 2017 to sign marketing terms of engagement with John German purely as evidence for an intended Need to Sell application and which marketing terms of engagement would be superseded by signing the letter of 14 September 2017 with the intention of concealing from HS2 Ltd the true fee-sharing agreement that would supersede the John German marketing terms; and/or

c. Asking John German by email on 10 January 2019 to amend the guide price contained in their initial market appraisal letter of 30 July 2017 from £2,250,000 to £2,500,000 in order to conceal the original lower figure from HS2 Ltd; and/or

d. Completing and submitting a Need to Sell application in relation to W Barn supported by an amended initial marketing appraisal letter dated 30 July 2017 with the intention of concealing from HS2 Ltd the figure of £2,250,000 quoted in the original letter; and/or

e. Completing and submitting a Need to Sell application in relation to W Barn supported by a copy of a sole agency agreement dated 18 September 2017 signed by Mr and Mrs A and on behalf of John German knowing that that sole agency agreement was a sham designed to mislead HS2 Ltd as to John German's financial interest in a successful Need to Sell application; and/or

f. Completing and submitting a Need to Sell application in relation to W Barn without disclosing the genuine fee-sharing agreement between Hinson Parry & Co and John German which was signed by Mr and Mrs A on 18 September 2017 with the intention of concealing John German's financial interest in a successful Need to Sell application from HS2 Ltd.

2. Between 7 June 2017 and 18 January 2019, knowing that the guidance provided by HS2 Ltd in relation to a Need to Sell application stipulated that if an applicant entered into an agreement with an estate agent who would gain financially from the sale of the

property to the Government under an HS2 scheme any market appraisal, feedback or other evidence provided by that agent would not be able to be taken into account by the panel or decision maker, Hinson Parry & Co acted without integrity by:

a. Entering into a fee-sharing arrangement with John German Estate Agents in relation to the marketing and sale of W Barn a primary purpose of which was to conceal relevant information, namely John German's financial interest in a successful Need to Sell application, from HS2 Ltd in any subsequent Need to Sell application; and/or

b. Advising John German by email on 4 September 2017 to obtain signed marketing terms from Mr and Mrs A to be used purely as evidence in support of a Need to Sell application with the intention of concealing from HS2 Ltd the true fee-sharing agreement that would supersede the John German marketing terms and thereby conceal John German's financial interest in a successful Need to Sell application; and/or

c. Advising Mr and Mrs A by letter on or about 14 September 2017 to sign marketing terms of engagement with John German purely as evidence for an intended Need to Sell application and which marketing terms of engagement would be superseded by signing the letter of 14 September 2017 with the intention of concealing from HS2 Ltd the true fee-sharing agreement that would supersede the John German marketing terms; and/or

d. Asking John German by email on 10 January 2019 to amend the guide price contained in their initial market appraisal letter of 30 July 2017 from £2,250,000 to £2,500,000 in order to conceal the original lower figure from HS2 Ltd; and/or

e. Completing and submitting a Need to Sell application in relation to W Barn supported by an amended initial marketing appraisal letter dated 30 July 2017 with the intention of concealing from HS2 Ltd the figure of £2,250,000 quoted in the original letter; and/or

f. Completing and submitting a Need to Sell application in relation to W Barn supported by a copy of a sole agency agreement dated 18 September 2017

signed by Mr and Mrs A and on behalf of John German knowing that that sole agency agreement was a sham designed to mislead HS2 Ltd as to John German's financial interest in a successful Need to Sell application; and/or

g. Completing and submitting a Need to Sell application in relation to W Barn without disclosing the genuine fee-sharing agreement between Hinson Parry & Co and John German which was signed by Mr and Mrs A on 18 September 2017 with the intention of concealing John German's financial interest in a successful Need to Sell application from HS2 Ltd.

Contrary to Rule 3 of the Rules of Conduct for Firms
Hinson Parry & Co is therefore liable to disciplinary action under Bye-law 5.3.2(c)

Mr Charles Roger Bedson MRICS

3. Between 7 June 2017 and 18 January 2019, knowing that the guidance provided by HS2 Ltd in relation to a Need to Sell application stipulated that if an applicant entered into an agreement with an estate agent who would gain financially from the sale of the property to the Government under an HS2 scheme any market appraisal, feedback or other evidence provided by that agent would not be able to be taken into account by the panel or decision maker, Charles Roger Bedson acted dishonestly by:

a. Entering into a fee-sharing arrangement with John German Estate Agents in relation to the marketing and sale of W Barn a primary purpose of which was to conceal relevant information, namely John German's financial interest in a successful Need to Sell application, from HS2 Ltd in any subsequent Need to Sell application;

b. Causing or permitting an employee of Hinson Parry & Co to:
   i. Advise John German by email on 4 September 2017 to obtain signed marketing terms from Mr and Mrs A to be used purely as evidence in support of a Need to Sell application with the intention of concealing from HS2 Ltd the true fee-sharing agreement that would supersede the John German marketing terms and thereby conceal John German's financial interest in a successful Need to Sell application; and/or

ii. Advise Mr and Mrs A by letter on or about 14 September 2017 to sign marketing terms of engagement with John German purely as evidence for an intended Need to Sell application and which marketing terms of engagement would be superseded by signing the letter of 14 September 2017 with the intention of concealing from HS2 Ltd the true fee-sharing agreement that would supersede the John German marketing terms; and/or

iii. Ask John German by email on 10 January 2019 to amend the guide price contained in their initial market appraisal letter of 30 July 2017 from £2,250,000 to £2,500,000 in order to conceal the original lower figure from HS2 Ltd; and/or

iv. Complete and submit a Need to Sell application in relation to W Barn supported by an amended initial marketing appraisal letter dated 30 July 2017 with the intention of concealing from HS2 Ltd the figure of £2,250,000 quoted in the original letter; and/or

v. Complete and submit a Need to Sell application in relation to W Barn supported by a copy of a sole agency agreement dated 18 September 2017 signed by Mr and Mrs A and on behalf of John German knowing that that sole agency agreement was a sham designed to mislead HS2 Ltd as to John German's financial interest in a successful Need to Sell application; and/or

vi. Complete and submit a Need to Sell application in relation to W Barn without disclosing the genuine fee-sharing agreement between Hinson Parry & Co and John German which was signed by Mr and Mrs A on 18 September 2017 with the intention of concealing John German's financial interest in a successful Need to Sell application from HS2 Ltd.

4. Between 7 June 2017 and 18 January 2019, knowing that the guidance provided by HS2 Ltd in relation to a Need to Sell application stipulated that if an applicant entered into an agreement with an estate agent who would gain financially from the sale of the

property to the Government under an HS2 scheme any market appraisal, feedback or other evidence provided by that agent would not be able to be taken into account by the panel or decision maker, Charles Roger Bedson acted without integrity by:

a. Entering into a fee-sharing arrangement with John German Estate Agents in relation to the marketing and sale of W Barn a primary purpose of which was to conceal relevant information, namely John German's financial interest in a successful Need to Sell application, from HS2 Ltd in any subsequent Need to Sell application;

b. Causing or permitting an employee of Hinson Parry & Co to:

   i. Advise John German by email on 4 September 2017 to obtain signed marketing terms from Mr and Mrs A to be used purely as evidence in support of a Need to Sell application with the intention of concealing from HS2 Ltd the true fee-sharing agreement that would supersede the John German marketing terms and thereby conceal John German's financial interest in a successful Need to Sell application; and/or

   ii. Advise Mr and Mrs A by letter on or about 14 September 2017 to sign marketing terms of engagement with John German purely as evidence for an intended Need to Sell application and which marketing terms of engagement would be superseded by signing the letter of 14 September 2017 with the intention of concealing from HS2 Ltd the true fee-sharing agreement that would supersede the John German marketing terms; and/or

   iii. Ask John German by email on 10 January 2019 to amend the guide price contained in their initial market appraisal letter of 30 July 2017 from £2,250,000 to £2,500,000 in order to conceal the original lower figure from HS2 Ltd; and/or

   iv. Complete and submit a Need to Sell application in relation to W Barn supported by an amended initial marketing appraisal letter dated 30 July

2017 with the intention of concealing from HS2 Ltd the figure of £2,250,000 quoted in the original letter; and/or

v. Complete and submit a Need to Sell application in relation to W Barn supported by a copy of a sole agency agreement dated 18 September 2017 signed by Mr and Mrs A and on behalf of John German knowing that that sole agency agreement was a sham designed to mislead HS2 Ltd as to John German's financial interest in a successful Need to Sell application; and/or

vi. Complete and submit a Need to Sell application in relation to W Barn without disclosing the genuine fee-sharing agreement between Hinson Parry & Co and John German which was signed by Mr and Mrs A on 18 September 2017 with the intention of concealing John German's financial interest in a successful Need to Sell application from HS2 Ltd.

Contrary to Rule 3 of the Rules of Conduct for Members
Charles Roger Bedson is therefore liable to disciplinary action under Bye-law 5.2.2(c)

Ms Rebecca Evans MRICS

5. Between 7 June 2017 and 18 January 2019, in the knowledge that Hinson Parry & Co had entered into a fee-sharing arrangement with John German Estate Agents in relation to the marketing and sale of W Barn, Rebecca Evans acted dishonestly in that she:

   a. attempted to conceal the fee sharing arrangement with John German from HS2 Ltd by:

      i. Advising John German by email on 4 September 2017 to obtain signed marketing terms from Mr and Mrs A which must not refer to HS2 and would be superseded by the true fee sharing agreement between Hinson Parry & Co and John German; and/or

      ii. Advising Mr and Mrs A by letter on or about 14 September 2017 to sign marketing terms of engagement with John German purely as evidence for

an intended Need to Sell application and which would be superseded by the true fee sharing agreement between Hinson Parry & Co and John German; and/or

iii. Completing and submitting a Need to Sell application in relation to W Barn supported by a copy of a sole agency agreement dated 18 September 2017 signed by Mr and Mrs A and on behalf of John German knowing that that sole agency agreement was a sham designed to mislead HS2 Ltd as to John German's financial interest in a successful Need to Sell application; and/or

iv. Completing and submitting a Need to Sell application in relation to W Barn without disclosing the genuine fee-sharing agreement between Hinson Parry & Co and John German which was signed by Mr and Mrs A on 18 September 2017 with the intention of concealing John German's financial interest in a successful Need to Sell application from HS2 Ltd; and/or

b. concealed the original guide price provided by John German for W Barn by:
   i. asking John German by email on 10 January 2019 to amend the guide price contained in their initial market appraisal letter of 30 July 2017 from £2,250,000 to £2,500,000; and/or
   ii. Completing and submitting a Need to Sell application in relation to W Barn supported by an amended initial marketing appraisal letter dated 30th July 2017 with the intention of concealing from HS2 Ltd the figure of £2,250,000 quoted in the original letter.

6. Between 7 June 2017 and 18 January 2019, knowing that the guidance provided by HS2 Ltd in relation to a Need to Sell application stipulated that if an applicant entered into an agreement with an estate agent who would gain financially from the sale of the property to the Government under an HS2 scheme any market appraisal, feedback or other evidence provided by that agent would not be able to be taken into account by the panel or decision maker, Rebecca Evans acted without integrity by:

a. attempting to conceal the fee sharing arrangement with John German from HS2 Ltd by:

   i. Advising John German by email on 4 September 2017 to obtain signed marketing terms from Mr and Mrs A which must not refer to HS2 and would be superseded by the true fee sharing agreement between Hinson Parry & Co and John German; and/or

   ii. Advising Mr and Mrs A by letter on or about 14 September 2017 to sign marketing terms of engagement with John German purely as evidence for an intended Need to Sell application and which would be superseded by the true fee sharing agreement between Hinson Parry & Co and John German; and/or

   iii. Completing and submitting a Need to Sell application in relation to W Barn supported by a copy of a sole agency agreement dated 18 September 2017 signed by Mr and Mrs A and on behalf of John German knowing that that sole agency agreement was a sham designed to mislead HS2 Ltd as to John German's financial interest in a successful Need to Sell application; and/or

   iv. Completing and submitting a Need to Sell application in relation to W Barn without disclosing the genuine fee-sharing agreement between Hinson Parry & Co and John German which was signed by Mr and Mrs A on 18 September 2017 with the intention of concealing John German's financial interest in a successful Need to Sell application from HS2 Ltd. and/or

b. concealing the original guide price provided by John German for W Barn by:

   i. asking John German by email on 10 January 2019 to amend the guide price contained in their initial market appraisal letter of 30 July 2017 from £2,250,000 to £2,500,000; and/or

   ii. Completing and submitting a Need to Sell application in relation to W Barn supported by an amended initial marketing appraisal letter dated

30th July 2017 with the intention of concealing from HS2 Ltd the figure of £2,250,000 quoted in the original letter.

Contrary to Rule 3 of the Rules of Conduct for Members

Rebecca Evans is therefore liable to disciplinary action under Bye-law 5.2.2(c)

John German Estate Agents Ltd

7. Between 3 September 2017 and 16 January 2019, John German acted dishonestly by:

    a. Causing Mr and Mrs A, on or after 18 September 2017, to sign a sole agency agreement with John German in relation to the marketing and intended sale of W Barn which did not refer to HS2 when John German knew that:
        i. there was, or was to be, a joint agency agreement with Hinson Parry & Co that would supersede the sole agency agreement; and
        ii. the sole agency agreement was a sham intended only to be used as evidence in a potential Need to Sell application to be made by Hinson Parry & Co on behalf of Mr and Mrs A; and/or

    b. Amending an initial market appraisal letter relating to W Barn dated 30 July 2017, on or around 10 January 2019, by altering the sum quoted from £2,250,000 to £2,500,000 knowing that the express purpose of that amendment was to conceal the original sum quoted from HS2 Ltd in a Need to Sell application so as to try to ensure that HS2 Ltd did not require W Barn to be marketed at £2,250,000.

8. Between 3 September 2017 and 16 January 2019, John German acted without integrity by:

    a. Entering into a fee-sharing arrangement with Hinson Parry & Co in relation to the marketing and sale of W Barn when they knew or ought to have known that a primary purpose of the arrangement was to conceal relevant information, namely John German's financial interest in a successful Need to Sell application, from HS2 Ltd in any subsequent Need to Sell application; and/or

b. Causing Mr and Mrs A, on or after 18 September 2017, to sign a sole agency agreement with John German in relation to the marketing and intended sale of W Barn when John German knew that:

   i. there was or was to be a joint agency agreement with Hinson Parry & Co; and

   ii. that the sole agency agreement was a sham intended only to be used as evidence in a potential Need to Sell application to be made by Hinson Parry on behalf of Mr and Mrs A and/or

c. Amending an initial market appraisal letter dated 30 July 2017, on or after 10 January 2019, by altering the sum quoted from £2,250,000 to £2,500,000 knowing that the express purpose of that amendment was to conceal the original sum quoted from HS2 Ltd in a Need to Sell application so as to try and ensure that HS2 Ltd did not require W Barn to be marketed at £2,250,000.

Contrary to Rule 3 of the Rules of Conduct for Firms
John German is therefore liable to disciplinary action under Bye-law 5.3.2(c)

Preliminary Issues

1. The Panel was asked to consider as a preliminary issue Ms Evans' application that the proceedings against her be stayed as an abuse of process as set out in her letter to RICS dated 5 April 2023.

2. That application relied on four grounds:

   a. Delay, in that Ms Evans said that the length of time the investigation had taken to come to hearing was a breach of her rights under Article 6 of the European Convention on Human Rights (ECHR);

   b. That the investigation had presumed her guilt, again in breach of her Article 6 ECHR rights;

c. That she had not been informed promptly, in a language which she understood, of the nature and cause of the accusations against her, again in breach of her Article 6 ECHR rights; and

d. That the conduct of the initial HS2 investigation was unfair such as to amount to an abuse of process.

3. Mr Rich, acting on behalf of RICS, resisted the application on grounds set out in detail in his document entitled "RICS Skeleton In Response To Issues Raised By Rebecca Evans dated 2 May 2023" but which could be summarised as follows:

a. The case law required Ms Evans to establish that not only was there an unjustifiable delay in the investigation of the complaint, but that it was also such that it was impossible for her now to have a fair hearing;

b. Ms Evans had not established that as a result of any delay or for any other reason she could not have a fair hearing;

c. The key evidence in the case was documentary, and as a result the case law (*R v Buzalek & Schiffer* [1991] Crim L.R. 115 CA) suggested that the possibility of a fair hearing is less likely to be affected;

d. If the time taken does cause difficulties for any of the accused parties, this Panel was perfectly capable of taking that into account when reaching conclusions on particular parties or charges; and

e. None of Ms Evans' other complaints suggested any unfairness such as would justify staying the proceedings as an abuse of process.

Determination on application for a stay of the proceedings as an abuse of process

4. The Panel read the written submissions provided to it with great care and took note of the further oral submissions by Ms Evans and Mr Rich. The Panel accepted the advice of the Legal Adviser as to the relevant law.

5. The Panel in particular noted that a stay on the grounds of abuse of process in disciplinary proceedings was generally an exceptional step, and likely only to arise if one of the two categories in *R v Maxwell* [2011] 1 WLR 1837 is established, namely that (a) it would be impossible to give the accused a fair hearing, or (b) a hearing would offend [the court's] sense of justice and propriety in the particular circumstances of the case.

6. Dealing with each of Ms Evans' grounds for her application in turn, the Panel determined as follows:

Delay

7. The Panel did not consider the amount of time that the investigation concerning Ms Evans had taken to come to hearing was unreasonable or unjustifiable. It noted that the case law (*Attorney General's Reference (no. 2 of 2001)* [2004] 2 AC 72) suggested that for the purposes of considering a breach of the reasonable time requirement under Article 6(1), i.e. in criminal proceedings, as a general rule the relevant period began at the earliest time at which a person was officially alerted to the likelihood of proceedings against them. In Ms Evans' case, as she had accepted, she was first notified that RICS were investigating her (as opposed to her firm) by a letter dated 15 November 2021. This matter had therefore taken a little over 15 months to come to hearing.

8. Further, there was nothing the Panel could identify which established that Ms Evans could not have a fair hearing of the allegations against her. The evidence produced by RICS was essentially documentary, and as had been noted by RICS, the case law indicated that delay was likely to be less relevant as a factor impeding fairness in such cases. It was the function of this Panel, independent of RICS, to establish the truth of the allegations against her and it would do so, as always, following a fair procedure and with the benefit of independent legal advice.

Presumption of innocence

9. The Panel did not agree that any view had been taken of Ms Evans' guilt in advance of this hearing. It was for this Panel, as noted above, to decide on the allegations and it would do so as fairly as it could.

Right to be informed promptly etc.

10. Ms Evans had been notified formally of the investigation by RICS by a letter dated 15 November 2021. RICS wrote to her notifying her of the detailed allegations against her on 15 March 2022. The Panel considered that she had therefore been informed promptly of the nature and cause of the accusations against her, in accordance with the requirements of the ECHR.

11. The Panel accepted that the case involved a significant amount of documents and was complicated by the number of parties involved. It also accepted that Ms Evans' dyslexia might make it more difficult for her to interpret the allegations against her.

12. However, the Panel did not consider that the degree of complexity contained in the allegations was more than Ms Evans might encounter in the course of her professional work. RICS published a significant amount of material which explained its disciplinary process and had in Ms Evans' case attempted to assist her in understanding the case against her. The Panel had and would take steps to ensure that Ms Evans could participate adequately in the hearing.

HS 2 investigation

13. The Panel agreed with the submissions on behalf of RICS that, on the face of matters, how HS2 Ltd had conducted its investigation was of limited relevance to the prospect of a fair hearing in this case. Ms Evans could make any relevant points she wished to in the course of this hearing.

14. For all the reasons outlined above, the Panel concluded that there was no basis on which the proceedings against Ms Evans should be stayed and therefore dismissed the application.

Background

15. The case before this Panel concerned the operation of the Need to Sell (NTS) scheme, which was created to help home-owners in areas around the HS2 rail link deal with potential difficulties selling their properties. It is operated by HS2 on behalf of the

Government.

16. In essence the owner is required to make reasonable efforts to sell the property on the open market, at the price that would be expected if it were not blighted. If that proves impossible because of blight caused by the HS2 plans, they can apply to the NTS scheme for HS2 to buy the property at an unblighted price.

17. HS2 has put in place an application process designed to ensure that genuine efforts have been made to sell the property before the application is made. It issues guidance, which is regularly updated, setting out how the application should be made, and what sort of evidence HS2 will require to satisfy itself that it should buy the property. HS2's decision is discretionary. If it is satisfied its criteria are met it will normally buy the property. In exceptional circumstances it may buy the property even if the criterial are not fully met.

18. The NTS scheme was designed for homeowners to be able to do the application themselves. However, some homeowners choose to pay an agent to prepare and submit the application for them. At the relevant time, Hinson Parry (HP), a firm of Chartered Surveyors regulated by RICS, often acted as an agent to owners applying to the NTS scheme.

19. In late 2016/early 2017, the NTS guidance was changed to prevent agents supplying evidence for the application if they would benefit financially from a sale of the property to HS2. Both the April 2017 and the December 2018 Guidance (which was the guidance in force at the relevant times) stated under the heading "*Criterion 3 – Effort to sell and the impact of blight*" :

    "If you choose to use a paid representative who is also your estate agent, or if you enter into an agreement with an estate agent who would gain financially from the sale of the property specifically to the Government under an HS2 scheme, please note that any market appraisal, feedback or other evidence provided by this agent ***will not be able to be taken into account by the panel or decision maker****. This is to protect both applicants and the interests of the taxpayer by only considering advice from agents who are deemed to be independent and therefore do not have a vested interest in profiting from the sale of the property to the Government.*"

(emphasis in original)

20. HP was aware of the new guidance and had corresponded with HS2 staff about the effect it would have, with a view to getting the latter to change the guidance. HP disagreed with the HS2 policy as it meant that the firm could not market any property while also trying to sell it via one of the HS2 schemes. If marketed by another agent and that agent sold the property, then HP would lose out on a commission.

21. Mr and Mrs A were the owners of a property called W Barn (the Property). The Property was within a few hundred metres of the proposed HS2 line. This was likely to affect the value of the property. Mr and Mrs A intended to sell their property and on 7 June 2017, Rebecca Evans (RE), a Chartered Surveyor employed by HP, met them to discuss the intended sale of the Property.

22. On 8 June 2017 RE emailed Mr and Mrs A as follows:

    "*I think Roger* [Charles Roger Bedson, a Chartered Surveyor and director of HP, also a respondent to these proceedings (CRB)] *and I may have a company we can work with to market your property with us in the background working on the Need to Sell application. We are just in discussions with a gentleman at the moment to see if we can come to some agreement. This would allow us to actively work with them to get the application through and get the right evidence*".

23. On 16 June 2017 RE sent a letter to Mr and Mrs A advising that the NTS scheme may be the best way forward for them. RE set out the 5 criteria stipulated in the NTS guidance. In relation to criterion 3 ("Effort to sell and the impact of blight"), RE wrote:

    "*The new guidance states that apparently if you use representation (for instance Hinson Parry and Co) to undertake your application and market the property, the evidence submitted will have little or no weight to the application and will not be considered. Therefore at this time we would be unable to market the property and do the application ....*"
    "*We are currently in discussions with HS2's Need to Sell Department to see if we can amend the guidance to allow us to be your Marketing Agent and your Need to Sell Agent"*

"We are also in discussions with other local Estate Agents to see if we can work together to try and market your property and allow us to work in the background to undertake your Need to Sell Application."

24. On 6 July 2017, CRB sent an email to Mr Pollitt, an employee of JG, as follows:

"*Ref Need to sell schemes, we discussed that as an agent acting for a landowner, we* (sic) *hs2 have changed the rules so we can't now market the property if we're going to pursue a need to sell application. Bonkers but there we are*.

We would like you to assist with marketing and suggest the following: If we sell the property to HS2 via a Need to Sell scheme application following marketing and unsuccessful sale to the public you would get 0.4% plus VAT and we would get the remaining commission. There only has to be a three month marketing period.

If the property is sold on the open market we would split the commission 50/50, I propose a commission of 1.25%.

If the client withdraws from our services before an open market sale or a successful Need to Sell Scheme we would get our usual withdrawal fees charged to the client. I presume yours is around £500 plus VAT?

Could you let me have your thoughts on this please. I may have one or two that we could get started on now."

25. On 11 July 2017 Mr Pollitt responded to CRB as follows:

"*All looks fair to me*, *please let me know if and when!*"

26. On 28 July 2017 a valuer from JG, Martin Ashleigh, met Mr and Mrs A to carry out a market appraisal of the Property.

27. On 30 July 2017 Mr Ashleigh sent a market appraisal letter to Mr and Mrs A. The suggested guide price in that letter was £2,250,000. Mr and Mrs A forwarded the market appraisal letter to RE on 10th August 2017.

28. Mr and Mrs A consulted a second estate agency, Fisher German. They emailed Mr and Mrs A on 10 August 2017 giving a guide price figure of £2,500,000 for the Property. However, the email stated that the proximity of the HS2 route would make that figure unfeasible. Fisher German stated that they were willing to advise as to the best way forward other than an open market sale in the circumstances.

29. On 4 September 2017 RE sent an email to Mr Pollitt of JG. That email was copied to CRB's personal email address (though CRB maintained that he had not been aware of having received it at the time, and only became aware of the email after RICS had begun its investigation). The relevant part of the email read as follows:

    "*The clients would like to instruct us and yourselves to work jointly together to market the property and for us to work in the background to pull together the Need to Sell application if it does not sell within the first 3-4 months.*

    I wanted to ensure that you and Martin were still in agreement with the terms that you and Roger had previously discussed? If this is the case then I would suggest that I ask the clients to contact yourself to get marketing underway. However we will need to have marketing terms signed purely for evidence required for the Need to Sell Criterion 3 (efforts to sell) with a letter signed by the client with our joint terms that would then supersede the marketing agreement. We would need to ensure that the marketing terms do not mention anything to do with HS2 as this would make the evidence invalid if used as part of the Need to Sell guidance.

    If you are still happy with what you and Roger discussed (email attached below), do let me know and I will get the clients to contact you, or in fact I can give you their contact details."

30. The email attached the exchange between CRB and Mr Pollitt on 6 and 11 July 2017.

31. RE sent a further email to Mr Pollitt on 5 September 2017 confirming that Mr and Mrs A were happy with the arrangement and again asking if the fee sharing arrangement was still agreed.

32. On either 12 or 14 September 2017 (the file copy is dated 12 September, but the signed copy is dated 14 September 2017), RE sent a letter containing the joint terms to Mr and Mrs A. That letter confirmed that there was an agreement with JG to market the property while HP worked on the application in the background. RE also wrote:

    "*I note that John German may ask you to sign marketing terms of engagement but these are purely as evidence for the Need to Sell application and I can confirm that these terms* [i.e. the HP enclosed joint terms] *supersede their marketing terms of engagement*."

33. On or about 18 September 2017 Mr and Mrs A also signed a sole agency agreement with JG. The agreement was countersigned by Mr Ashleigh. A copy of the sole agency agreement was served with the Need to Sell Application.

34. On 9 October 2017 (according to the later NTS application) JG began to market the property at a price of £2,500,000 (and it remained on the market until about June 2019).

35. On 5 July 2018 RE sent two emails to Mrs A. The first email set out some of the information required to complete the NTS application and advised as to the requirement to market the property at a reduced price for at least one month; the second asked her whether she would now be willing to drop the asking price for the property by £200,000 to £2,300,000.

36. Later on the same day, JG wrote a letter to Mr and Mrs A. confirming the reduction in the guide price to £2,300,000 and enclosing updated marketing documents.

37. Between July 2018 and January 2019 RE collected the necessary documents and evidence required to make the NTS application. On 9 January 2019 RE emailed Mrs A. That email stated that the application was going to be sent the next day, however, she was mindful that although the property had originally been placed on the market at £2,500,000, the price first recommended by JG had been £2,250,000 (as per Mr Ashleigh's market appraisal letter of 30 July 2017). The price reduction to £2,300,000 was still higher than the original price suggested by JG. RE advised that it would be prudent to reduce the price of the property further to the figure of £2,250,000 as HS2 might request that to be done.

38. It would appear that Mr and Mrs A rejected this suggestion, as on 10 January 2019 RE emailed Sarah Hill, an employee of JG to request that the initial market appraisal letter of 30 July 2017 be amended so as to change the guide price from £2,250,000 to £2,500,000. RE explained as follows:

    "*The reason for this is I know that HS2 will ask for the property to be marketed at this value and it is not something the clients wish to do*."

39. The initial market appraisal letter dated 30 July 2017 was amended by JG and the amended letter was included within the documents provided to HS2 to support the Need to Sell application which was submitted to HS2 on or around 16 January 2019.

40. The Need to Sell application also included a copy of JG's Property Performance Report in the form of a letter from JG to Mr and Mrs A dated 2 January 2019.

41. The Property Performance Report included the following entry:

    "*CONFIDENTIAL AND NO PARTY TO BE ADVISED BUT THIS INSTRUCTION IS ON A JOINT AGENCY BASIS WITH HINSON PARRY BECAUSE IF THIS PROPERTY DOES NOT ATTRACT A BUYER WITHIN 3 – 4 MONTHS THIS JOINT AGENT WILL PROBABLY PURSUE A 'NEED TO MOVE' BUY BACK CLAIM FROM HS2. WE WILL GET A SHARED FEE IN EITHER CASE (COMMISSION FEES ON THE FILE).*"

42. This entry disclosed the fact to HS2 that JG had a financial interest in the success of the application. As a result of that the application was referred to the HS2 Ltd Counter Fraud and Business Ethics Team on 1 February 2019.

43. HS2 wrote to Mr and Mrs A and HP on 29 April 2019 stating that a discrepancy had been found and that the NTS application was not proceeding at that time. Further emails were exchanged between HP and HS2 between 18 and 21 June 2019 with respect to a proposed meeting. That meeting did not take place.

44. On 21 June 2019, Mr and Mrs A confirmed that they wished to withdraw their NTS application and subsequently withdrew their property from the market.

45. On 3 March 2020, HS2 reported the matter to RICS, which commenced the investigation that had resulted in this hearing.

Documents

46. The Panel received a bundle of documents prepared by RICS consisting of 825 pages and a bundle containing the statements of Mr Parry, Mr Bedson, Ms Evans and Mr Morgan, together with various supporting documents consisting of a further 146 pages. In advance of the hearing, the Panel was also supplied with a 33-page Case Summary prepared by Mr Rich, acting on behalf of RICS and a 16-page skeleton argument prepared by Mr Fowler acting on behalf of HP and CRB.

47. Before it retired to consider the facts, all the parties provided the Panel with written closing submissions.

Evidence on behalf of RICS

48. RICS did not call any witnesses to give oral evidence, as the evidence of its witnesses (Mr Alexander Peter Spittall, Head of Property Services at HS2, and Ms Francesca Laura Richards, Regulatory Technical Specialist at RICS) were agreed and the authenticity of the documents they produced was not in dispute.

Evidence of William Thomas Parry

49. Mr Parry gave evidence on behalf of HP and his partner in the business, CRB. He denied that HP had been dishonest or lacked integrity in the way it had dealt with the NTS application on behalf of Mr and Mrs A.

50. In answer to questions in cross examination by Mr Rich, he confirmed that HP was a small firm consisting of (at the time of the events in question) two partners, himself and CRB, four assistants or associates and three support staff. Mr Parry confirmed that he had not known about the NTS Application on behalf of Mr and Mrs A at the time, and his first involvement had been when RICS wrote to the firm.

51. Mr Parry said that NTS applications were not part of his work, but he was aware that the firm conducted such applications and of the issue of blight caused by HS2.

52. Mr Parry said that he and CRB took decisions on behalf of the firm and managed the staff of the firm. He said that supervision of staff was functionally divided, meaning that CRB dealt with compulsory purchase and HS2 work. RE, who was the principal person dealing with NTS worked under CRB.

53. Mr Parry said that CRB's email address ending in @btinternet.com had been for some time HP's sole email address. Prior to 2016 it had been CRB's sole email address. However, in about 2016 the firm had provided @hinsonparry.co.uk email addresses for all staff. At the time of the events in question, CRB was in the process of transferring to working with the new address.

54. Mr Parry confirmed that HP had commissioned a forensic examination to see whether CRB had read RE's email of 4 September 2017 and he endorsed what CRB had said about that in his witness statement. Mr Parry recalled that after the RICS investigation had begun, CRB had come to him to say that he had just opened the email. Mr Parry said that he had not subsequently audited the @btinternet.com inbox to find out whether any other important emails had been missed.

55. In answer to questions from the Panel, Mr Parry said that there had not been any written guidance, processes or procedures for staff covering the HS2 work.

Evidence of Charles Roger Bedson

56. CRB gave evidence on his own behalf and on behalf of HP. He was cross-examined by Mr Rich and Mr Morgan, and was questioned by the Panel.

57. CRB said that he did not deal with NTS Applications, had never dealt with one and that within HP they were solely undertaken by RE. CRB had no involvement in the preparation of Mr and Mrs A's application and never discussed it with RE. The application was submitted 16 months after the fee-sharing agreement with JG (the FSA) was made. He asserted that he had not seen any of the emails of 4 September 2017 and

10 January 2019 or the letter of 14 September 2017 drafted by RE in connection with the matter prior to the RICS investigation.

58. CRB said that he understood that the NTS guidance had been amended in April 2017 to state that any market appraisal, feedback or other evidence produced by an agent who would benefit financially from a sale to HS2 would not be taken into account by the decision maker. He said that RE had brought the new guidance to his attention in about early June 2017, in the context of a conversation about Mr and Mrs A wishing to sell the Property on the open market rather than make an NTS application with all the attendant stress. CRB said that RE was perplexed that the same agent could not market the Property and then deal with the NTS application, and she wasn't sure how she was going to find another agent willing to invest time and money into marketing a property which was blighted by HS2 and therefore unlikely to sell.

59. CRB reported that RE had called him into a telephone call on 15 June 2017 with Andrew Champion, a Discretionary Scheme Manager at HS2 and his colleague Charlotte Walker.

60. The call addressed what CRB and RE saw as the issue arising from the revised guidance, which was that on the one hand it would be very difficult to get an agent to market a property blighted by HS2 without some form of contingency fee, but on the other hand the evidence of actual exposure to the market was likely to be the best evidence available to HS2 of an owner's efforts to sell. CRB maintained that he had not read the updated NTS guidance in full or in detail at that time but may have skim read extracts that RE had shown him.

61. CRB said that the conversation with Mr Champion did not provide any satisfactory answers and that he and RE had asked for a further discussion. Mr Champion emailed CRB and RE on 19 June 2017 about the revised guidance. CRB replied to that email on 20 June 2017 and indicated that he expected a response from Mr Champion, but none was forthcoming.

62. CRB maintained that his understanding was always that the NTS scheme was subject to an overriding discretion. Accordingly, he believed that whatever issues arose from the restriction contained within the revised guidance that evidence from a firm with a financial

interest in selling to HS2 would be disregarded was merely guidance and did not have to be followed by the decision maker.

63. As a result of RE's difficulty in identifying an agent to market the Property, CRB suggested an approach to Mr Pollitt of JG, and following a telephone call sent the email dated 6 July 2017 referred to above proposing the FSA. The FSA was primarily intended to allow Mr and Mrs A an opportunity to market the Property prior to making any NTS application. CRB maintained that his only involvement in the events was to propose the FSA, which was, he asserted, an entirely usual and proper arrangement. He said he had no further involvement with Mr and Mrs A's NTS application until HS2 raised concerns about it in April 2019.

64. CRB said that he believed that the FSA would be disclosed in an NTS application and the marketing material could be taken into account under HS2's general discretion. In particular, CRB stated that the FSA was formulated to ensure that JG was incentivised to achieve an open market sale, and therefore had no vested interest in a sale under the NTS Scheme instead.

65. CRB denied that HP sought to make a profit by way of any of the matters alleged against it. In fact, he said it would be to HP's benefit to encourage clients not to put properties on the open market, so as to ensure that they got the full fee from a sale through the NTS scheme. CRB disputed that the FSA was in any way against the interests of HP's clients, HS2 or the taxpayer. He strenuously denied that he had in any respect been dishonest or lacking integrity in the ways alleged.

66. In answer to questions from Mr Rich in cross-examination, CRB confirmed that in his view the Property was unsaleable on the open market. He also said that he had specifically instructed RE to disclose the FSA to HS2, or alternatively to use evidence of three rejection letters from agents refusing to market the Property in support of the NTS application.

67. In answer to a question from Mr Morgan about whether the request contained in RE's email of 10 January 2019 to amend the initial market appraisal letter of 30 July 2017 had been a fair request to make of JG, CRB said that the amendment merely reflected what had happened on the ground, though with hindsight he felt that RE could have acted

differently. CRB said that if he had been consulted on the email, he would not have done things that way, but would have explained the position in the application instead.

68. In answer to questions from the Panel, CRB said that he had not provided any specific instructions to RE about how the FSA would work.

Evidence of Rebecca Evans

69. RE gave oral evidence and was cross-examined by Mr Rich, Mr Fowler and Mr Morgan. She was questioned by the Panel.

70. RE denied acting dishonestly or without integrity in respect of the charges or at any time in her professional practice. She accepted that she should have performed some tasks differently and had made mistakes in this case.

71. RE said that the FSA was designed to incentivise an open market sale, and to make an NTS application a last resort, as Mr and Mrs A wanted. The Property was marketed for 1¼ years before an NTS application was made.

72. RE said that it was always her intention that the FSA would be disclosed in the application, although she accepted that she could have expanded further and would have done so if asked for further information by the NTS case officer. The omission of the joint fee terms dated 18 September 2017 from the NTS application was a mistake which would have been corrected had HS2 engaged with RE about the application.

73. RE stated that she concentrated solely on the NTS Application and left JG to market the property independently. Her email and letter of 4 and 12 September 2017 respectively were misguided and an error of judgement. RE said that she was caught between her client's instructions and the changing NTS Guidance stating that evidence from agents charging a fee or agents dealing with a case would not be taken into account. RE said it was an also an error of judgement on her part to ask JG not to mention HS2 in their marketing terms document..

74. RE said that the NTS scheme was discretionary, and she had expected that if HS2 did not like the JG evidence, they would approach her as they had in the past and there would be discussions about it. RE considered that JG would need their own marketing

terms anyway, and only the fee element would have been superseded by the FSA. The FSA was supplied to HS2 as it was part of the overall evidence.

75. RE said that the change she had requested in the email dated 10 January 2019 to the initial JG market appraisal letter dated 30 July 2017 had reflected the notes Mr Ashleigh of JG wrote in the Property Performance Report, indicating that Fisher German (the other estate agents who had given a market appraisal figure of £2,500,00) had appraised the Property at the same level as him and that the clients wanted the Property to go on the market at £2.5 million.

76. In answer to questions from Mr Rich, RE confirmed that she alone had undertaken the NTS application for Mr and Mrs A. She said that she was not covering up for CRB or Mr Parry and admired them immensely. RE accepted that she was aware that a fee sharing agreement with JG would make the latter's evidence invalid for the purposes of an NTS application under the new guidance.

77. RE also accepted that her email of 4 September 2017 was on the face of it a straightforward request to JG to create marketing terms that were not truthful and that there had been no need for her to write in those terms if her intention had always been to declare the FSA to HS2. RE maintained that there had never been any intention to conceal anything.

78. RE said that she did not recall CRB telling her directly that the FSA would have to be disclosed, but the intention was always to disclose.

79. In answer to questions from Mr Fowler, RE said that her intention was that HP would do the NTS application and that JG would do the marketing and she did not think that such an arrangement fell foul of the guidance. The intention was to keep things separate and she thought it was okay if the marketing was done independently.

Evidence of James Morgan

80. Mr Morgan, a director and shareholder of JG, gave oral evidence and was cross-examined by Mr Rich, Mr Fowler and Ms Evans, and was questioned by the Panel.

81. Mr Morgan indicated that he had no role at all in the events that were the subject of this case. He had only become involved as a result of the RICS investigation.

82. In answer to questions from Mr Rich about why the three JG employees involved in the events had not given witness statements or been called to give evidence to this Panel, Mr Morgan said that he did not believe there was any requirement for them to be at the hearing. He said that there had been no request from the RICS investigators for such statements. Mr Morgan said that he was placed in an awkward position as a lay person. He had no reason to doubt what the three individuals had said to him.

Submissions on behalf of RICS

83. Mr Rich submitted that on the face of the documents, which were uncontested, an agreement was entered into by HP and JG that could only achieve its objective if it was concealed from HS2. He said that the parties had provided various explanations of why any inference that there was a plan to conceal the agreement would not be justified. However, these explanations were either contradicted by unchallenged documents, implausible or irrelevant.

84. As regards CRB, Mr Rich observed that CRB claimed always to have intended that the agreement between JG and HP would be revealed to HS2. Mr Rich invited the Panel to reject those submissions because there was no indication anywhere in the documents of such an intention, or discussion with the clients or JG what would happen if the FSA was disclosed.

85. Mr Rich also invited the Panel to reject as implausible the idea that HP could rely on the residual discretion of the NTS panel, or that if the JG marketing evidence was rejected, the application could rely on rejection letters.

86. Mr Rich submitted that even if CRB had not read the 4 September 2017 email, CRB subjectively knew that: the new NTS guidance would make the JG evidence invalid if their financial interest were to be revealed; that the decision-maker was highly unlikely to exercise the discretion to negate the new guidance because the change had only recently been introduced and it was considered important to protect the taxpayer and the applicant; that HS2, through Andrew Champion, had made it clear they stood by the

guidance, and did not accept that it would make the NTS scheme impractical; that the JG evidence was an important part of the NTS application; that neither HP nor JG were intending to reveal JG's financial interest to HS2; and that RE was aware of these facts and would prepare the application accordingly.

87. Mr Rich submitted that given that state of knowledge, CRB's actions in making the agreement with JG, and causing or permitting RE to write to other parties and then prepare the application on that basis, were dishonest by the standards of reasonable and honest people. In the alternative, and depending on the Panel's conclusions about CRB's knowledge, Mr Rich said that those actions displayed a lack of integrity.

88. As regards RE, Mr Rich submitted that she was clearly aware of the need to conceal the FSA. Her email of 4 September 2017 was explicit on the need to conceal and the reasons for it. Her later explanation that this was just to keep things separate was self-serving and unconvincing, given the explicit terms of the email and the subsequent letter of 12/14 September 2017. Mr Rich said that RE had been unable to explain in oral evidence why, if it was always intended to reveal the FSA, she would write emails or letters not only asking for concealment, but setting out the obvious motive for it.

89. Similarly, the request to amend Mr Ashleigh's letter of 30 July 2017 was not to correct a mistake or reflect reality but to deal with the issue that, as she believed, HS2 would require the Property to be marketed at the lower price contained in the letter. These actions, and the submission of the NTS application containing the purely for evidence JG marketing terms and amended letter, were dishonest, or in the alternative, lacking in integrity.

90. Mr Rich submitted that actions of CRB and RE could be attributed to HP and so the firm itself had acted dishonestly or without integrity.

91. Mr Rich submitted that the actions of Mr Pollitt, Mr Ashleigh and Ms Hill could also be attributed to JG, and in the creation of the 'just for evidence' single agency marketing terms and the amendment of the initial market appraisal letter dated 30 July 2017, and for those reasons JG could be found to be either dishonest or lacking in integrity.

Submissions of behalf of Hinson Parry and Charles Roger Bedson

92. Mr Fowler invited the Panel to dismiss in their entirety the charges against HP and CRB.

93. He submitted that CRB's proposal of a fee-sharing arrangement in July 2017 was done honestly and with integrity, with the interests of the clients and HS2 foremost and without regard to HP's own interests. There was therefore no need and no intention for this to be concealed. He suggested that RICS' case was characterised by a will to construe every fact in the most sinister way possible and was wrong. Mr Fowler submitted that placed in its proper context, the dishonest interpretation of the events argued for by RICS was manifestly implausible.

94. CRB's sole involvement in these matters had been to propose a fee-sharing arrangement between HP and JG, unconnected with any individual property. This arrangement was entirely usual and proper. CRB had believed that any such fee-sharing agreement would be disclosed in an NTS application and the marketing material could be taken into account under HS2's general discretion. In particular, the agreement had been formulated to ensure that JG was incentivised to achieve an open market sale, and therefore had no vested interest in a sale under the NTS Scheme instead.

95. Mr Fowler submitted that HP had not sought to make a profit by way of any of the matters alleged against it. Indeed, it would have been to HP's benefit to encourage clients not to put properties on the open market, so as to ensure that they obtained a full fee from a sale through the NTS scheme. In all the circumstances, the notion that HP or CRB had masterminded a dishonest scheme to game an NTS application was wholly implausible. That implausibility was underlined by the openness of the parties about the FSA and there was no sense from the correspondence that the parties were taking care to conceal anything.

96. Mr Fowler observed that RE had not implicated CRB. This was a reflection of the reality of the situation, which was nothing she did was directed or caused by CRB. In this context, Mr Fowler submitted that her statements that no one else at HP was involved in "causing or permitting" her actions in relation to the fee-sharing agreement or the NTS application should be accorded real weight.

97. Mr Fowler submitted that RICS had misunderstood the nature of the NTS guidance, which was subject to an overriding discretion which CRB believed would be exercised favourably when it was clear that JG had no vested interest, because the incentive to sell on the open market was much higher.

98. Mr Fowler contended that RICS had also failed to understand the nature of the parties' agreements. There was no joint agency agreement and the marketing terms produced by JG were not a sham, as RICS had asserted. There were in fact three separate agreements in place – a marketing agreement between JG and the clients; an agreement to undertake an NTS application between HP and the clients; and a fee-sharing agreement between HP and JG. It was only on this basis that the FSA could be understood, i.e. that any fees payable to either agent under their separate agreements would be shared between them. This was the unambiguous meaning of CRB's proposal to Mr Pollitt of 6 July 2017. It was inconsistent with a joint marketing agreement, which would not provide for the sharing of fees in this way.

99. Further, there had been a misunderstanding by RICS about the knowledge to be attributed to HP, as a matter of fact or law. Mr Fowler submitted that the doctrine of corporate attribution requires that a corporation will only be fixed with the knowledge of the person or persons who are its directing mind and will, relying on the authority of *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705; and *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153. Mr Fowler asserted that there was no principle of vicarious liability in the regulatory field, based on the case of *Akodu v SRA* [2009] EWHC 3588.

100. Mr Fowler submitted that knowledge of the FSA and/or how it was to be operated could only (as a matter of law) be attributed to HP if it was the knowledge of CRB; or an act carried out with CRB's instruction; or followed inextricably from something directed by CRB. There was no evidence that beyond the email of 6 July 2017 CRB had any notion how the FSA was to be operated, save for CRB's evidence that it was to be disclosed to HS2 and would not fall foul of the NTS guidance. As a consequence, Mr Fowler submitted that it was not the case that the only way in which this scheme could conceivably be put into practice was dishonest, such that HP was fixed with that dishonesty.

101. Mr Fowler said RICS had sought during the course of this hearing to introduce a new case against HP that did not require it to prove the necessary link between the company and the knowledge of its officers, as required by law. RICS had argued that this line of authority did not apply, and a dishonest act by any employee of a firm within the performance of the firm's business was attributable to the firm to render the firm dishonest. Mr Fowler said that this was wrong in law, and it was procedurally unfair to raise a case of that sort without proper notice.

Submissions by Rebecca Evans

102. In her closing submissions, RE reiterated her case as outlined in her witness evidence. She told the Panel that she had always cooperated throughout the investigation. She said that she had held her hands up from the start in admitting that mistakes were made, and things could have been undertaken differently but she denied the allegations against her.

103. RE submitted that her overriding behaviour in everything she did was always to act in the best interests of her clients and to be honest over dishonest. She said there was no benefit to her as an individual to be dishonest and conceal things, there was no financial or professional incentive and nor positive outcome to her doing so. She told the Panel she would not risk her career.

Submissions on behalf of John German Estate Agents Ltd

104. Mr Morgan on behalf of JG submitted that the actions of JG's employees should not be attributed to JG, as no director of the firm was aware of either the creation of the FSA or the alteration of the initial market appraisal letter dated 30 July 2017.

105. Mr Morgan said that Mr Pollitt did not know the detail of how the FSA would work in practice. Mr Pollitt had relied on the expertise of HP and had assumed that the plan was a viable one for HP to have proposed it. It was clear there was no communication by RE to Mr Pollitt before she had sent him the email of 4 September 2017. This was important because when that email arrived, he was in hospital and did not see it.

106. Mr Morgan said that in any event, there was no reason for anyone at JG to believe that the FSA was dishonest. There were very good reasons to put it into effect; JG had no reason to believe that HP would not disclose it to HS2; and those involved were relying on HP's expertise and as had been asserted by Mr Fowler, HP had a plan which was to rely on HS2's discretion.

107. Mr Morgan disputed that the sole agency agreement produced by JG was a sham or false. He submitted that JG was the only agent marketing the Property, so the true agreement was a sole agency agreement. This was to be contrasted with the situation under a joint agency agreement, which provides that two or more agents carry out the marketing of the property (and only one gets a fee upon sale) which is not what happened in this case. Only JG had done any marketing. Martin Ashleigh had genuinely believed he was the sole agent appointed and had the genuine intention to sell the property on the open market. Mr Ashleigh had acted on that basis in sending out the sole agency agreement. The sole agency agreement had not been produced in collusion with anyone else.

108. Mr Morgan said that the purpose of Mr Ashleigh's file note dated 26 September 2017 was that the fact of HS2's possible purchase was sensitive and confidential, not the fact that HP was involved or was paying a shared fee. Mr Morgan queried why JG would have recorded a dishonest scheme on the file and then provided it to HP to disclose to HS2.

109. As regards the amended initial market appraisal letter, Mr Morgan said that JG had not considered there was a dishonest intention to the request and Sarah Hill did not perceive it that way. She had thought it was a necessary request by HP who were leading that side of things and were the experts. She had therefore given it little thought and had dealt with it as an administrative task which was necessary to reflect facts on the ground.

110. Mr Morgan accepted that there should have been better supervision and that Ms Hill should have taken it on herself to refer it to a director, but it was not accepted that this demonstrated dishonesty or lack of integrity on the part of JG. Mr Morgan submitted that the allegations against JG were fundamentally allegations of a failure to supervise employees. However, RICS had not chosen to bring a charge targeted at JG's supervision or oversight but instead had alleged lack of integrity.

111. In all other respects, Mr Morgan indicated that he adopted Mr Fowler's submissions.

Legal Advice

112. The Panel was reminded that RICS was required to prove the factual allegations to the civil standard of proof; that it was more likely than not that any fact alleged occurred. The burden of proof was upon RICS, which brought the charges, and it was not for any of the respondents to prove their innocence.

113. The Panel was reminded of the words of Lord Hoffman in *Re B* [2009] 1 AC 11 to the effect that there is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not and that common sense, not law requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities.

114. As regards the Panel's approach to the evidence in the case, it noted the warning derived from the case of *Gestmin SGPS SA v Credit Suisse UK Ltd* [2021] 1 CLC 428 to the effect that human memory is fallible and unreliable, particularly when it comes to recalling past beliefs and that it is particularly vulnerable to interference when a person is presented with new information about an event in circumstances where that person's memory is already weak due to the passage of time. It accepted that in consequence, the most reliable starting point in considering the allegations might be the available documents.

115. Dishonesty was alleged against all the respondents. The Panel was advised that the test relating to dishonesty is as set out by the Supreme Court in the case *of Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. The judgement stated as follows:

"*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the*

question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

116. RICS had also alleged against all the respondents that, in the alternative to dishonesty, there was a lack of integrity. The Panel was referred to the guidance given in the case of *Wingate & Evans v SRA, SRA v Malins* [2018] EWCA Civ 368. At paragraphs 96 to 103, the Court of Appeal said that integrity is a separate and broader concept than dishonesty. It refers to the higher standards which society expects from a professional person and which the professions expect from their members. Integrity connotes adherence to the ethical standards of the profession and applies not only to what professionals say, but what they do. It is linked to the manner in which the particular profession professes to serve the public.

117. The Panel was reminded that, given the nature of the charges, it should take into account the respondents' unblemished good characters prior to the matters which are the subject of this case, as well as the character references presented by CRB and RE.

118. As to the question of corporate liability, the Panel was advised that this was not a point explicitly dealt with by RICS guidance, or its Charter, Bye-laws and Regulations. The Bye-laws (at 5.3) made clear however that rules of conduct apply to regulated firms as well as to RICS members.

119. The fact that there were separate Rules of Conduct for Firms also indicated that there must be a separate burden of compliance on firms as opposed to their constituent members who were regulated by RICS. As a matter of principle RICS must therefore be able to take action against a regulated firm without there necessarily needing to have been misconduct by that firm's controlling minds. It was otherwise difficult to understand what would be the point in RICS separately regulating firms, particularly in the circumstances where the regulated entity was the unincorporated practice of a sole practitioner RICS member.

120. However, in circumstances where an allegation against a firm required the establishment of a state of mind, for instance dishonesty, it was equally hard to how see

that could be made out without identifying a natural person acting for or on behalf of the firm in the course of their employment.

121. The question of whether or not any facts found proved would give rise to liability to disciplinary action was a matter for the Panel's judgment. Not every factual finding or breach of the rules of conduct would automatically result in liability to disciplinary action – the falling short of required standards must be serious.

Findings of fact

122. The Panel carefully considered all the evidence it had heard and read. It considered the detailed submissions of all the parties. It accepted the advice of the Legal Adviser. Having done so, it found as follows:

Hinson Parry

Charge 1 a. - Proved

123. The Panel considered that RE had sent the email of 4 September 2017 on behalf of HP to further the firm's business in accordance with the FSA put in place by CRB.

124. The FSA had been proposed following a conversation and exchange of emails between CRB and HS2 in June 2017. In the Panel's view, those exchanges could not on any reasonable construction have led to the conclusion that the NTS panel or decision makers would seek to disapply the recently implemented new Guidance restricting the use of marketing evidence from agents who had a financial interest in a sale to HS2. Indeed this was a point which the authors of the Guidance chose to put in bold, indicating its importance.

125. CRB accepted that he disagreed with the new Guidance, to the extent that he considered it "*bonkers*". The FSA proposal was clearly conceived to defeat the Guidance, and in the Panel's finding, could only achieve that aim if the financial interest of JG in a sale to HS2 was concealed from HS2. Although the Panel noted CRB's assertion that he was not very familiar with the Guidance, he had written to Mr and Mrs A on 28 April 2016 advising them on the terms of the NTS scheme as it then applied, and as his email to

Andrew Champion of 20 June 2017 demonstrated, he clearly knew enough about the Guidance to debate the revisions to Criterion 3. Accordingly, the Panel considered that he had a sufficient understanding of the NTS scheme to recognise the need to conceal the FSA in order for JG's marketing evidence to remain valid.

126. Whether or not CRB saw the email of 4 September 2017, the Panel concluded that it was quite clear that having been tasked with putting the FSA into effect, RE was attempting to fill in the gaps. RE's email was therefore congruent with the scheme set out in CRB's email of 6 July 2017. The fact that RE copied the email to CRB implied that she thought that CRB was still involved in the matter. Further, in an email to the clients on 4 September 2017, RE states:

" I have now spoken to Roger regarding what happens if the valuation achieved from the Need to Sell Valuations do not reflect what you were looking to achieve after receiving those un-blighted market appraisals."

It was therefore clear, despite statements to the contrary, that RE did discuss this application with CRB on or around 4 September 2017 and the panel notes that this email was sent shortly after the email that RE sent to Mr Pollitt.

127. As to the 4 September 2017 email to JG, the Panel considered that its meaning was unambiguous. It demonstrated that RE knew that Criterion 3 of the revised NTS Guidance was an obstacle to the arrangement she was seeking with JG, and that the way around this obstacle was to conceal JG's financial interest from HS2 by creating marketing terms that did not mention HS2 "signed purely for evidence" and that were to be superseded by a letter signed by the clients containing the (real) joint terms

128. This was clearly dishonest by the standards of ordinary, reasonable people. RE had, to some extent, signaled her awareness that what she had done was wrong by her acceptance in evidence to this Panel that the email was mistaken, and in the comment contained in her initial response to the RICS investigation that she was caught between her client's instructions and the changing NTS guidance.

129. As Mr Rich had observed in his closing submissions, if it was always intended to reveal the FSA, it was inexplicable why RE had written not only requesting concealment but setting out the obvious motive for it.

130. The Panel took careful note of the arguments advanced by Mr Fowler to the effect that there could be no finding of dishonesty by HP absent the direct involvement of one of its controlling minds, i.e. CRB or Mr Parry. The Panel considered that RICS had the ability to regulate firms under the Rules of Conduct for Firms 1 April 2009, which under Rule 3 imposed a requirement on firms (separate to regulated members) to act with integrity. In this instance, the Panel concluded that RE had been working under the direction of CRB to implement a plan – the FSA – which was necessarily going to involve concealment of certain information from HS2. The steps taken in furtherance of that plan, including the sending the 4 September 2017 email, could rightly be attributed to HP.

Charge 1 b. - Proved

131. As indicated above, the Panel considered that the advice to Mr and Mrs A contained in the letter 14 September 2017, to sign marketing terms of engagement with JG purely as evidence for an intended Need to Sell application and that those marketing terms of engagement would be superseded by signing the letter of 14 September 2017, was congruent with the overall intention of the FSA, which was to conceal from HS2 JG's financial interest in any sale to HS2.

132. The respondents all maintained that in fact this was a misunderstanding of the situation, and that RE's intention was to keep matters separate. In other words, it was suggested that there were three separate and conceptually unrelated agreements. JG had agreed to market the Property as sole agents for Mr and Mrs A; in the event that the Property did not sell on the open market, HP had agreed with Mr and Mrs A to undertake an NTS application; and HP and JG had agreed to split the fee obtained as a result of either of those two arrangements resulting in a sale of the Property.

133. The Panel considered that whether there were three separate agreements or one, or whether there was in fact a single agency agreement or a joint agency agreement (as Mr Ashleigh appears to have understood, to judge by his file note of 26 September 2017) was immaterial, because the fundamental issue was that JG would secure a fee under

the arrangement with HP if there was a successful sale through the NTS Scheme. It was, or ought to have been, obvious to CRB and RE that JG therefore had a financial interest that, under the NTS Guidance which as it stood, would exclude the use of JG's marketing evidence.

134. The Panel considered that the request contained in the 14 September 2017 letter was again obviously dishonest. RE was asking her clients to sign a document which she knew was not in fact the complete real agreement, and which she knew would be used for the purpose of concealing the real agreement from HS2. That was plainly dishonest by the standards of ordinary, reasonable people. For the reasons outlined above, the steps taken by RE in enacting the FSA as directed by CRB could rightly be attributed to HP.

Charge 1. c – Proved

135. As RE's email of 10 January 2019 explicitly indicates, RE knew that if the original initial market appraisal letter dated 30 July 2017 (which indicated a guide price of £2,250,000) was sent to HS2 as part of the NTS application, HS2 would ask for the property to be marketed at that price and that her clients did not want to do that. She therefore asked Ms Hill of JG to amend the 30 July 2017 letter so that it reflected the price at which the property was placed on the market (£2,500,000).

136. RE had access to the original initial market appraisal letter and therefore knew that it stated: "*Having considered the current market conditions* [i.e. as at 30 July 2017]*, I would recommend approaching the market with a guide price of £2,250,000.*" Mr Morgan confirmed his view that this reflected Mr Ashleigh's honest opinion as at the date of the letter. RE nonetheless requested JG to amend the letter despite knowing that this amendment would not reflect the actual market appraisal conducted by Mr Ashleigh. The Panel noted that RE had accepted that this email and/or the request to amend the letter was a mistake. In the Panel's view, the request to amend the email was an obviously dishonest act.

137. The Panel considered that in so doing, RE was acting in the course of her employment by HP, in an area of work for which she was principally responsible according to Mr Parry and CRB. As noted above, the Panel was not persuaded that a regulated firm could only

be found to have breached the Rules of Conduct for Firms in circumstances where there was a culpable failure of a controlling mind of the firm. In this instance, the Panel considered the actions of RE could correctly be attributed to HP.

Charge 1. d. - Proved

138. RE later submitted the amended initial market appraisal letter to HS2 as part of the NTS application.

139. The amended letter was a false document and was designed to persuade the NTS decision makers that the Property had been fully marketed at an appropriate price. In the Panel's view, it was irrelevant what the Property was actually worth in 2017 or 2019, or what guide price JG adopted in marketing the Property. RE knew that the amended letter was a false document and nonetheless deployed it in an attempt to deceive the NTS decision makers. This was plainly dishonest by the standards of ordinary, reasonable people.

140. For the reasons set out above in paragraph 137, the Panel again considered the actions of RE could correctly be attributed to HP.

Charge 1. e. – Proved

141. The marketing terms submitted by RE with the application did not reflect the actual agreement that would apply in the event of a sale. The document indicated that it was a sole agency agreement (when clearly HP remained involved and communicated with the clients) and it referred to "*Our fees*" (i.e. JG's fees, based on a percentage commission of 1.25%, the standard joint agency commission). RE had informed the clients that this document was superseded by the fee sharing agreement between JG and HP and so knew that the sole agency agreement did not represent the true, or complete position.

142. The Panel therefore considered that inclusion of the Single Agency Marketing Terms with the NTS application was part of the false paper trail that was designed to mislead HS2. Mr Fowler and CRB had both suggested that the FSA was in the clients' best interests, as it avoided the risk of "Double Commission", whereby an estate agent may

claim a fee for a subsequent sale by another agent. However the Panel viewed that this was not an excuse for creating an FSA with a false audit trail. In any event, were such a clause to be invoked for a property in a subsequent NTS application it would also potentially create a financial interest and have the effect of invalidating the marketing evidence.

143. The Panel considered that CRB knew that the FSA would necessarily involve concealment of information from HS2, and that RE would therefore take the necessary steps to advance an application to the NTS Scheme that relied on that concealment. The submission of the NTS application, which included a sole agency agreement which did not accurately reflect the FSA, was obviously dishonest, and attributable to HP through the knowledge of RE and CRB as outlined above.

Charge 1. f. – Proved

144. As noted above, the sole agency agreement between JG and Mr and Mrs A was disclosed as part of the NTS application, but not the agreement set out in the letter of 14 September 2017 signed by Mr and Mrs A on 18 September. HP, CRB and RE had all argued that it had always been intended to disclose the FSA , that the note of Mr Ashleigh dated 26 September 2017 contained in the Property Performance Report was intended to be the disclosure of the FSA; and that it was always intended to ask the NTS decision makers to exercise their discretion to admit the JG evidence despite the fact that JG's financial interest in a sale to HS2 would exclude its use under the revised Guidance.

145. The Panel considered that had it really been intended to rely on the NTS decision makers' discretion, it is inexplicable why this was not properly explained at the point of application. In order for the NTS decision makers to exercise their discretion in HP's favour, they would have had to have known the full facts.

146. None of the parties at any point produced any internal guidance, file notes or anything similar which referred to seeking NTS's discretion. The only document available to the Panel (and to CRB/RE at the relevant time) which provided any steer about how the NTS Guidance would be applied was the email from Andrew Champion dated 19 June 2017. As noted previously, this gave no hint there would be any relaxation of Criterion 3. The

restriction on agents marketing a property having any financial interest in a sale to NTS had only recently been added to the Guidance and was highlighted in bold. This, along with Mr Champion's robust support for the scheme in discussion with CRB and RE, did not suggest to the Panel that this was an area over which the NTS Panel could or would apply its discretion.

147. In addition, RE's email to Mr and Mrs A of the 8 June 2017 indicates that she and CRB had already discussed working with another firm under some kind of agreement. There was therefore ample opportunity for HP to raise this potential 'solution' in their discussion with HS2 on 15 June 2017 and seek advice or confirmation on how this would need to be set up and/or presented to be valid. The lack of reference to this plan suggests that CRB and RE also viewed discretion on this aspect to be unlikely.

148. Further, the Panel considered it telling that when HS2 raised its concerns in its letter of 5 February 2020 to HP about "*the financial relationship between Hinson Parry and John German in relation to the Need To Sell Application*", Mr Parry's response dated 10 February 2020 did not assert that the disclosure of Mr Ashleigh's file note had been deliberate, or mention the subject of discretion under the NTS scheme at all. In the Panel's view, that would surely have been the point to explain this to HS2.

149. Despite the attempts of HP, CRB and RE to persuade the Panel otherwise, it did not believe that Mr Ashleigh's note contained in the Property Performance Report was a deliberate disclosure and the mechanism by which RE intended to disclose the FSA to HS2.

150. First of all the note recorded that the instruction was on a joint agency basis, which according to all the respondents was incorrect, as on their account there had never been a joint agency agreement. Second, it was puzzling that RE or anyone else would consider that incorrect note sufficient explanation as to why the NTS decision makers should disapply the Scheme Guidance. Third, the note appeared on Page 18 of the NTS application as an unexplained note in the body of a multi-page report. Lastly, RE did not disclose the 14 September 2017 letter signed by Mr and Mrs A on 18 September, which referenced the real financial arrangement and which was clearly a relevant document if it was always intended to reveal the FSA.

151. The Panel considered that HP, CRB and RE's case in this respect was clearly an attempt to justify their actions after the fact and to make a virtue out of the apparently accidental disclosure of the note.

152. As per paragraph 143 above, the Panel considered that CRB knew that in order to rely on JG's marketing evidence, the FSA would necessarily have to be concealed from HS2, and that RE would therefore take the necessary steps to advance an application to the NTS Scheme that relied on that concealment. The submission of the NTS application without disclosure of the genuine FSA was obviously dishonest, and attributable to HP through the knowledge of RE as outlined above.

Charge 2

153. Charge 2 was put as an alternative to charge 1. Having found charge 1 proved in its entirety, the Panel did not therefore need to consider charge 2.

Charles Roger Bedson

Charge 3. a. – Proved

154. See paragraphs 123 to 126 above. CRB had accepted that there was a fee sharing arrangement (the FSA) between HP and JG. Given the proximity in time between CRB's dialogue with HS2 and the continuing telephone conversation and email exchange with Mr Pollitt to enact the agreement, the FSA appeared to the Panel to be a direct response to the clear indication by Andrew Champion that Criterion 3 was not subject to any flexibility.

155. The FSA was therefore a plan to get around the "*bonkers*" guidance which, as CRB knew, was always going involve the concealment of any financial interest of JG in a sale to the Government. It was clear from the evidence (including his own evidence) that CRB did not agree with the restriction in Criterion 3 which meant that marketing evidence from agents with a financial interest in a sale under NTS would be disregarded. While the Panel makes no comment on the validity of the concerns CRB may have had regarding

the NTS scheme, such concerns valid or otherwise cannot provide a defence for seeking to circumvent the NTS guidance in a covert manner.

156. The Panel placed little weight on the notion that the parties were open about this arrangement. The knowledge of the fee sharing arrangement was restricted to a limited number of employees of HP and JG who were all party to the FSA. Importantly, as set out above, the Panel did not find that the existence and operation of the scheme was intentionally revealed to HS2.

157. As per paragraph 125 above, the need for concealment of JG's financial interest in a sale of the Property to HS2 must have been recognised by CRB from the outset and was an inherent part of the plan to circumvent the Guidance. To seek to conceal that information from the decision makers administering the NTS Scheme was clearly objectively dishonest by the standards of ordinary, reasonable people.

Charge 3. b. – Not proved

158. CRB's case was that he had no further involvement with Mr and Mrs A's application to the NTS Scheme, until HS2 subsequently complained about it. He denied seeing any of the emails or letters sent by RE in connection with the application. RE's evidence was to the effect that she had indeed dealt with the application herself and had not sought supervision by CRB. As set out in paragraph 126 above, there appeared to have been some discussion between RE and CRB on or around 4 September 2017 about what to do if the Need to Sell valuations of the Property did not reflect what Mr and Mrs A were looking to achieve.

159. While the Panel considered that CRB was the architect of an arrangement that was dishonest, in that it would inevitably involve the concealment of relevant information from HS2 as it had found in respect of charge 3.a., it was not persuaded that there was sufficient evidence that he knew at the time of any of the further specific dishonest steps that RE took in furtherance of that dishonest scheme. The Panel did not therefore consider that on the balance of probabilities it was established that he had acted dishonestly by causing or permitting those steps, even if they were a logical result of the scheme he had set in train.

Charge 4.a.

160. As a result of the Panel's finding at charge 3.a. above, this charge fell away.

Charge 4.b. – Proved

161. While the Panel had found (as set out at paragraph 159 above) that there was insufficient evidence that CRB knew of the specific dishonest steps taken by RE to complete the NTS application and conceal the financial interest of JG in a sale to HS2, it was a logical consequence of the FSA put in place by CRB that RE would submit an application that concealed relevant information from HS2.

162. As RE's line manager, CRB knew that RE had some personal difficulties around this time. Although both RE and CRB were of the view that she was capable of dealing with the application on her own, CRB made no effort to undertake any form of supervision or ensure that the application was correct and complete. He thereby failed to identify any of the matters itemised at charge 4.b.i. – vi. That he did not do so represented in the Panel's view a failure to adhere steadily to acceptable professional standards and therefore a failure to act with integrity in accordance with Rule 3 of the Code of Conduct for Members.

Rebecca Evans

Charge 5 a. i. – Proved

163. For the reasons identified at paragraphs 127– 129, RE acted dishonestly in the conduct of the NTS Scheme application on behalf of Mr and Mrs A In respect of the 4 September 2017 email to JG, RE was seeking to confirm the FSA with JG. The Panel considered that the meaning of the email was unambiguous. It demonstrated that RE knew that Criterion 3 was an obstacle to the arrangement that she was seeking to confirm with JG, and that the way around this obstacle was to conceal JG's financial interest from HS2. This was clearly dishonest by the standards of ordinary, reasonable people.

Charge 5 a. ii. – Proved

164. The Panel's reasons were as set out above in paragraphs 131 - 134. In addition, in evidence both RE and CRB said that the letter of 14 September 2017 did not supersede the sole agency terms The Panel did not accept that evidence. All parties acted on the basis and accepted that the FSA would apply if the Property were sold on the open market or to HS2.

Charge 5 a. iii. – Proved

165. The Panel's reasons were as set out above in paragraphs 141 – 143.

Charge 5 a. iv. – Proved

166. The Panel's reasons were as set out above in paragraphs 144 – 152.

Charge 5 b. i. – Proved

167. The Panel's reasons were as set out in paragraphs 135 – 136 above.

Charge 5 b. ii. – Proved

168. The Panel's reasons were as set out in paragraphs 138 – 139 above.

Charge 6

169. Charge 6 was put as an alternative to charge 5. Having found charge 1 proved in its entirety, the Panel did not therefore need to consider charge 6.

John German Estate Agents Limited

Charge 7 a. i. – Not proved

170. The evidence available to the Panel (namely the sole agency agreement itself, which appeared to be based on a standard template) suggested to the Panel that JG had gone about marketing the Property in their usual fashion, which would have included the

provision to the clients of an agreement in those terms, which did not refer to HS2 anyway.

171. On the face of the correspondence, in particular RE's email of 4 September 2017, JG were in possession of information that should clearly have prompted further inquiry on their part. However, the Panel accepted JG's evidence to the effect that they were not expert in how the NTS Scheme worked and therefore did not understand that the FSA might in itself be problematic. The Panel also considered that there was nothing in the evidence before it that indicated that JG knew how RE/HP were going to present the evidence that JG provided to HP, or that HP were not going to disclose the FSA. The Panel did not therefore find this charge proved.

Charge 7 a. ii. – Not proved

172. It was not clear from the evidence who at JG had acted on the 4 September 2017 email in Mr Pollitt's absence, but clearly somebody had, leading to the production of the sole agency agreement dated 18 September 2017 signed by the clients and by MA on behalf of JG.

173. The Panel could not identify any evidence that established JG or its employees understood the sole agency agreement to be a sham or that it was going to be employed by HP in such a way as to deceive HS2. The Panel were not persuaded therefore that in causing Mr and Mrs A to sign a sole agency agreement, JG had acted dishonestly.

Charge 7 b. – Not proved

174. It appeared to the Panel that in a similar way to the actions of its employees following receipt of RE's 4 and 5 September 2017 emails, having been requested by RE to do something that should have rung alarm bells, a JG employee had again slavishly followed RE's direction without further thought.

175. On the basis that JG had marketed the property at a guide price of £2,500,000, Ms Hill of JG appeared to have accepted without question that it was alright for the letter to be amended (and the email might be read as suggesting as such). Mr Morgan observed,

and the Panel accepted, that the 10 January 2019 email did not make explicit to JG that this letter was to be included in the application in the manner that it was.

176. Further JG were, as indicated previously, not involved in NTS applications, whereas RE/HP were. In the Panel's view, while the initial appraisal letter should clearly not have been amended (as Mr Morgan accepted) and the email of 10 January 2019 should have prompted some inquiry by JG as to why HP was asking to amend the letter, it was not necessarily clear to the casual reader of the email that the express purpose of the amendment was to conceal the initial appraisal value from HS2 Ltd. On this basis, the Panel stopped short of finding dishonesty proved against JG.

Charge 8. a. – Proved

177. However for all the reasons identified above, in particular the apparent lack of inquiry about the NTS scheme and the requests made by HP, the lack of internal controls, and the fact that HP's scheme was apparently agreed and implemented without the knowledge or input of any of JG's directors, the Panel concluded that JG had demonstrated a failure to comply with the requirement under Rule 3 of the Rules of Conduct for Firms to act with integrity. Staff had, with a startling lack of curiosity, involved the firm in a scheme which was intended to deceive HS2/the NTS Panel, whether they realised that was the intent or not.

Charge 8. b. – Proved

178. As set out above in paragraphs 170 and 171, RE's email of 4 September 2017 contained ample clues that the FSA might not be an entirely ethical scheme for JG to be involved in.

179. While the Panel did not consider this failure to pick up on the clues or inquire further, or indeed have any more senior employees involved in the matter, amounted to dishonesty, it did demonstrate a failure by JG to adhere steadily to appropriate professional standards. The Panel therefore concluded that in causing Mr and Mrs A to sign a sole agency agreement in circumstances where its employees dealing were told that this was

to be “for evidence only” and would be superseded by another agreement, JG had acted without integrity.

Charge 8. c. – Proved

180. As set out at paragraphs 174 – 176, clearly the letter should not have been amended and Mr Morgan accepted that this was so (and that JG’s systems were inadequate to deal with the situation at the time). The Panel considered that in this respect, JG had clearly failed to act with integrity in breach of Rule 3 of the Rules of Conduct for Firms 1 April 2009.

Liability to Disciplinary Action

181. Under Bye-law 5.2.2(c) a Member may be liable to disciplinary action under the Bye-laws for any failure to adhere to the Bye-laws or to Regulations or Rules governing Members’ conduct. Under Bye-law 5.3.2(c) firms regulated by RICS are similarly liable to disciplinary action for any breach of the rules governing conduct.

182. The Panel considered separately the liability of HP, CRB, RE and JG to disciplinary action. The Panel accepted the advice of the Legal Assessor. It bore in mind that liability to disciplinary action is a matter for the Panel’s judgment. Not every falling short of accepted standards or breach of RICS’ rules will give rise to disciplinary action. The falling short in question must be of a serious nature.

Hinson Parry

183. The Panel had found the entirety of charge 1 proved against HP. The firm had involved itself, through the dishonest actions of CRB and RE in a scheme to circumvent the NTS Scheme Guidance by concealing the fact that JG, on whose marketing evidence it was intended to rely, had a financial interest in any sale to HS2.

184. Honesty is the bedrock of any profession and therefore any act of dishonesty has the potential to seriously undermine trust in the profession. The dishonesty found by the Panel in this case was a deliberate and planned attempt to avoid the strictures of the new guidance, the consequences of which were clearly evident to CRB and RE.

185. CRB and RE, in creating and enacting a dishonest scheme, had fallen far short of the standards required of RICS professionals. The Panel had found CRB and RE's actions attributable to HP for the reasons set out above. The firm too had thereby fallen lamentably short of the standards expected of regulated firms.

186. The Panel was satisfied the facts found proved against HP amounted to a serious breach of Rule 3 of the Rules of Conduct for Firms, which requires all firms to act with integrity and avoid actions which are inconsistent with their professional obligations. The Panel therefore concluded that HP was liable to disciplinary action.

Charles Roger Bedson

187. The Panel had found charges 3.a. and 4.b. proved against CRB. The effect of these findings was that the Panel was satisfied on the balance of probabilities that: (a) CRB had acted dishonestly in entering the FSA with JG knowing that this would involve concealing relevant information from the NTS decision makers; and (b) he had acted without integrity in causing or permitting RE to take the various further dishonest steps to enact that scheme itemised in the charge.

188. As noted above, any proven act of dishonesty by a RICS Member has the potential to seriously undermine trust in the surveying profession as a whole. The Panel considered that CRB's failure to act with integrity in this case was also likely to damage confidence in the profession generally. The facts proved against CRB were serious breaches of Rule 3 of the Rules of Conduct for Members and the Panel therefore concluded that he was clearly liable to disciplinary action under Bye-law 5.2.2(c).

Rebecca Evans

189. The Panel had found the entirety of charge 5 proved against RE in that she had acted dishonestly by attempting to conceal the FSA from HS2 by the creation of the 'purely for evidence' terms, submitting an NTS application that enclosed those terms and not the actual terms of agreement, and attempting to conceal the original guide price given by JG by asking the latter to amend their initial market appraisal letter and submitting that amended letter with the NTS application.

190. For the reasons outlined above, dishonesty is clearly a serious finding and the Panel therefore concluded that in respect to the findings it had made RE was undoubtedly liable to disciplinary action under Bye-law 5.2.2(c).

John German Estate Agents Limited

191. The Panel had found charge 8 proved against JG. As noted above, the Panel had found that JG employees had involved the firm in a scheme which was intended to deceive HS2/the NTS Panel, whether they had appreciated that was the case or not. The firm's systems had failed to prevent this. Those facts amounted to a serious breach of Rule 3 of the Rules of Conduct for Firms and in the Panel's conclusion rendered JG liable to disciplinary action under Bye-law 5.3.2(c).

Sanction

192. The Panel considered what, if any, sanction to impose. It bore in mind that the purpose of a sanction is not to punish a member or firm, although it may have a punitive effect. The purpose of a sanction is to protect the public; to declare and uphold the standards of the profession; to maintain the reputation of the profession, and of RICS as its regulator; and to demonstrate to the public and to RICS members that RICS takes firm action to promote regulatory compliance in the public interest and to deter other members and firms from future non-compliance.

193. The Panel must first decide whether to impose a sanction. The Panel was mindful that if it decided that a sanction was required, it must adopt a proportionate approach in determining the appropriate sanction. This means that the Panel commences at the lowest sanction, and only if it decides that sanction is not appropriate does it consider further sanctions. The Panel bore in mind that sanctions may be combined together but that the overall sanction must be proportionate to the nature and seriousness of the conduct in question.

194. The Panel had regard to RICS Sanctions Policy (Version 9 with effect from 2 March 2020) (the Sanctions Policy). It took into account the submissions of the parties and accepted the advice of the Legal Adviser. It noted in particular the case of *Hassan v General Optical Council* [2013] EWHC 1887 as both Mr Rich and Mr Fowler had invited it to as authority for the proposition that there was no presumption in favour of striking off in any case involving dishonesty unless exceptional circumstances applied. It considered the question of sanction in respect of each respondent separately.

Hinson Parry

195. The Panel gave careful consideration to Mr Fowler's oral submissions on behalf of HP.

196. The Panel considered the following were mitigating factors in HP's case:

- no previous disciplinary findings against the firm;
- the firm had engaged properly with RICS' investigation and the disciplinary process;
- the fact that action against the firm could have serious ramifications both for the firm's other employees and for the continuance of the firm's run off cover, which the Panel was told could result in Mr Parry and CRB being liable personally for any subsequent claims against HP;
- although the failings identified by the Panel extended over a period of 16 months, they concerned a single matter in only one area of HP's business; and
- there had been no repetition of the conduct since the events in question and the Panel considered such conduct was unlikely to be repeated.

197. The Panel considered the following were aggravating features:

- the breach involved deliberate dishonesty by two of the firm's employees, including one of its directors;

- the scheme, even if ultimately unsuccessful, could have resulted in HS2 purchasing the Property on the basis of an application relying on false information, and it had thereby created a potential risk to the taxpayer;
- the firm was highly experienced in the work in question; and
- though the firm had cooperated with the RICS investigation, neither it or the responsible employee and director had fully taken responsibility for the failings evident in the case.

198. The Panel considered that the findings made against HP, which included findings of dishonesty, were too serious to justify taking no action. It therefore considered the available sanctions in ascending order.

199. The Panel took the view that HP's conduct could not be described as 'minor' and, therefore, a caution was not an appropriate or sufficient sanction.

200. For similar reasons, the Panel determined that reprimanding HP on its own would be insufficient to mark the seriousness of the charges.

201. The Panel considered whether to impose undertakings on HP as to its future conduct. The Panel was of the view that it was not possible to formulate undertakings which would address the fundamental failings of honesty which CRB and RE were found to have committed in (respectively) devising and enacting the FSA in the course of HP's work for Mr and Mrs A.

202. For similar reasons, the Panel concluded it would neither be appropriate nor workable to impose conditions on HP's registration for regulation, such as restricting the forms of work that the firm was able to undertake.

203. The Panel gave considerable thought to the misconduct demonstrated by HP in this case. It bore in mind paragraph 21.1 of the Sanctions Policy, which states that in the absence of extenuating circumstances instances of fraud, dishonesty or lack of integrity are likely to result in removal of a firm's registration for regulation. The Panel recognised

however that removal should not be regarded as an automatic outcome following a finding of dishonesty.

204. In light of the mitigation offered on behalf of HP, in particular the fact that this was a single case in an otherwise positive regulatory history and the stark consequences for its employees and clients of a sanction of removal, the Panel concluded that it would not be proportionate to remove the firm's registration. The inevitable concerns this case raised about public trust and confidence in the surveying profession could, in the Panel's view, be adequately addressed by the imposition of a reprimand and a significant fine.

205. The Panel wished HP to note the seriousness with which it had viewed the conduct of the firm and its employees in this case. The Panel's decision on sanction was finely balanced, and it was only narrowly persuaded that HP's conduct was not fundamentally incompatible with continuing registration. The sanction of a reprimand and a fine of £35,000 was a measure of that seriousness, and would signal to members of the public and RICS members and firms the unacceptable nature of the firm's conduct.

206. In arriving at the level of the fine, the Panel had regard to the information it had been provided about HP's finances. The Panel therefore directed that HP be reprimanded and pay a fine of £35,000 to RICS within 28 days.

Mr Charles Roger Bedson

207. The Panel gave similarly careful consideration to the submissions made on behalf of CRB by Mr. Fowler.

208. The Panel considered the following were mitigating factors in CRB's case:

- no previous disciplinary findings;
- he had engaged with the disciplinary process;
- the character references attesting to his good character; and
- his previous involvement in and contribution to the work of RICS.

209. The Panel considered the following were aggravating factors:

- CRB had been the prime mover in setting in train the FSA and its subsequent consequences;
- his conduct involved deliberate dishonesty;
- he had not demonstrated any understanding or acceptance that what he and his firm had done was improper; and
- he was experienced member of the profession and indeed the senior person at HP involved in the matter.

210. The Panel considered that the findings made against CRB, which included a finding of dishonesty, combined with actions that demonstrated a lack of integrity, were too serious to justify taking no action. It therefore considered the available sanctions in ascending order.

211. In the Panel's view, CRB had been the architect of the agreement with JG intended to defeat the revised NTS Guidance. He was in a position of responsibility at the time, and his actions had, in the Panel's findings, led to the dishonest steps taken by RE to progress Mr and Mrs A's application.

212. Accordingly, for the same reasons as set out in relation to HP above, the Panel determined that a caution, a reprimand on its own, undertakings or conditional membership would not be appropriate sanctions.

213. Again, the Panel gave significant thought as to whether the appropriate sanction in CRB's case was expulsion from membership, given his disregard over an extended period for the professional values that are the hallmark of RICS membership, aggravated by the position of seniority and responsibility he held.

214. However, the Panel considered that given the fact that this case represented a single instance in a lengthy career, it might fairly be viewed as an aberration. Though, the Panel

was in no doubt about the degree of opprobrium that should be attached to CRB for promoting a scheme that was intended to conceal relevant information from a scheme that was disbursing Public money (even though that outcome did not materialise), it again narrowly concluded that his conduct in this case was not fundamentally incompatible with continued membership of RICS and that expulsion from membership would be disproportionate and punitive in all the circumstances.

215. The Panel again determined that a reprimand and a significant fine would demonstrate to the profession and the wider public the unacceptability of CRB's proven conduct in this case. Having had regard to the information it had been provided about CRB's income and assets, the Panel determined that a fine of £20,000 would be appropriate.

216. In arriving at the level of the fine, the Panel carefully considered the financial information that CRB had supplied. The Panel directed that CRB be reprimanded and pay a fine of £35,000 to RICS within 28 days.

Ms Rebecca Evans

217. The Panel took careful account of the submissions made by RE on her own behalf.

218. The Panel considered the following were mitigating factors in RE's case:

- no previous disciplinary findings;
- she had engaged with the disciplinary process;
- the character references attesting to her good character;
- her voluntary work particular in support of the Central Association of Agricultural Valuers and on behalf of RICS;
- her relative youth and lack of seniority at the time of the events in question; and
- her personal circumstances at that time and the effect on her of the subsequent investigation.

219. The Panel considered the following were aggravating factors:

- She was experienced even at the time in NTS work;
- her conduct involved deliberate dishonesty; and
- she had not demonstrated any real acceptance that what she had done was improper.

220. The Panel had found that RE had acted dishonestly in a number of respects, including submitting documents that she knew were false in support of Mr and Mrs A's application. Again, the Panel swiftly concluded that this was too serious a matter to justify taking no action. It therefore considered the available sanctions in ascending order.

221. It was troubling to the Panel that RE had not unequivocally recognised the nature of her misconduct in putting into action the scheme designed by CRB. It recognised however that she was taking CRB's lead, as he was her line manager, and that to a considerable extent her subsequent dishonest actions flowed from the direction he had set.

222. As it had decided in respect of HP and CRB, the Panel determined that a caution, a reprimand on its own, undertakings or conditional membership would not be appropriate sanctions in RE's case.

223. The Panel similarly gave serious consideration to expelling RE from membership.

224. However, the Panel concluded that RE too could be given some credit in the assessment of sanction for the isolated nature of the incident and that she was following the plan put in place by CRB, as well as for her undoubtedly difficult personal circumstances at the time coupled with a considerable degree of work pressure.

225. The Panel therefore just concluded that RE's conduct was not fundamentally incompatible with continued membership of RICS and that expelling her from membership would be disproportionate and punitive in all the circumstances.

226. Having taken account of RE's financial circumstances, the Panel concluded that the appropriate sanction was a reprimand and a fine of £5,000. The Panel wished her to understand that her conduct in this case was not only mistaken, but also a lamentable failure to comply with acceptable professional standards and any repetition would undoubtedly not meet such leniency.

227. The Panel therefore directed that RE be reprimanded and pay a fine of £5,000 to RICS within 28 days.

John German Estate Agents Ltd

228. The Panel listened carefully to Mr Morgan's submissions on behalf of JG.

229. The Panel considered the following were the relevant mitigating factors as regards JG:

- there had been no previous disciplinary findings against the firm, which otherwise had an excellent local and national reputation;
- the firm had engaged properly with RICS' investigation and the disciplinary process;
- the firm had taken steps to tighten up its procedures (in particular as regards the amendment of initial market appraisal letters), and had as a result of the findings against it instituted a further policy that fee sharing arrangements and introduction fees must be approved at a senior level;
- there had been an appropriate expression of regret on behalf of the firm;
- this was an isolated incident; and
- there had been no repetition of the conduct since the events in question and the Panel considered such conduct was unlikely to be repeated.

230. The Panel considered the following were aggravating features:

- the findings had exposed a significant lack of staff awareness/training and internal controls, though the firm had taken steps since to address those issues.

231. The Panel's findings had been to the effect that JG's staff had apparently involved the firm in a scheme to deceive the NTS Scheme decision makers without asking the questions that this proposal ought to have raised or indeed without reference to more senior staff within the firm. The Panel had found that this behaviour had lacked integrity. It was therefore clear that to impose no sanction on JG would be inappropriate.

232. The Panel decided that that JG's conduct could not be described as 'minor' and, therefore, a caution was not an appropriate or sufficient sanction.

233. The Panel also took the view that reprimanding JG on its own would be insufficient to mark the seriousness of the charges, but bearing in mind its findings against the firm, the isolated nature of the complaint and the steps that JG had taken to address the issues identified by the case, the Panel concluded that a reprimand and a fine would be an appropriate measure of the gravity of the case.

234. As a check on its thinking, the Panel nonetheless considered whether to impose undertakings or conditions of registration on JG but took the view that there were no workable undertakings or conditions that would sensibly address its findings in this case. In any event, JG had itself already taken steps to prevent recurrence of similar problems.

235. Taking into account its view of JG's overall culpability in the case, as well as the information that it had been supplied about the firm's finances, the Panel determined and directed that JG should be reprimanded and pay a fine of £10,000 to RICS within 28 days.

Publication

236. The Panel received submissions from all the parties on the question of publication of its determination. All parties accepted that in the normal course of events RICS would publish regulatory decisions in the interests of transparency and accountability.

237. Mr Morgan submitted that however RICS chose to publish the determination, it should be clear what the findings against JG had been and that these findings could not be confused with the more serious findings against the other parties.

238. The Panel considered the policy on publication of decisions contained in the Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. It accepted the advice of the Legal Adviser. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website.

239. The Panel took account of Mr Morgan's submissions but considered that its findings about JG in this determination were clear. RICS would be publishing a version of this determination (suitably redacted to remove any sensitive personal information), so the Panel did not think that there was a risk that JG's role in this matter, or the Panel's findings, would be misunderstood

Costs

240. RICS applied for its costs totaling £58,867.00, supported by a detailed schedule of costs.

241. Mr Fowler, on behalf of HP and CRB accepted that RICS were entitled to an award of its just and reasonable costs. However, he submitted that the length of the investigation had meant that the costs in the case were much greater than they need to be. For that reason, RICS had been asked for a breakdown of RICS' costs by quarter, which had been supplied to the Panel.

242. Mr Fowler observed that little or no reference had been made in the course of proceedings to the witness statements of Mr Spittal and Ms Richardson, and there was no reference at all to their evidence in Mr Rich's closing submissions. RICS's costs should therefore be reduced. Mr Fowler also submitted that an appropriate apportionment of the costs would be 25% for each respondent.

243. RE drew the Panel's attention to the information she had supplied about her financial circumstances. Any award of costs would have a further detrimental effect on her financial position.

244. Mr Morgan submitted that the amount of hearing costs sought by RICS was misleading, as the relevant RICS policy at the time (Supplement 2 to the Sanctions Policy: Fines, Costs and Administration Fees as from 2 March 2020) did not specify that the standard amount of hearing costs that RICS could claim (£2,650) was for each day of hearing rather than in total, regardless of the length of the hearing.

245. Mr Morgan also referred the Panel to the note of a without prejudice telephone conversation between counsel for JG and Mr Rich on 22 October 2022 and some further correspondence between JG's then solicitors and RICS marked "without prejudice save as to costs".

246. Mr Morgan said that the purpose of the approaches was to see whether a settlement could be reached. He said the door had been closed firmly by RICS, who had claimed in correspondence that the evidence against JG was clear, In Mr Morgan's submission, the evidence was not at all clear, as half the charges against JG were not found proved.

247. Mr Morgan said that RICS' actions in joining JG with the other parties prevented some form of discussion which could have saved considerable time and costs. He emphasised that there were no circumstances in which JG would have admitted to dishonesty, which was clear from correspondence and telephone note supplied to the Panel. In conclusion, Mr Morgan said that JG had acted responsibly and attempted to resolve matters fairly in advance of a hearing and the costs awarded should be reduced on that basis.

248. The Panel considered carefully the issue of costs. It accepted the advice of the Legal Adviser, particularly as to the effect of the case of *Baxendale-Walker v The Law Society* [2007] EWCA Civ 233 in the light of the more recent Supreme Court decision in the case of *Competition and Markets Authority (Respondent) v Flynn Pharma & Pfizer (Appellants)* [2022] UKSC 14.

249. The costs figure represents a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel had no reason to doubt that the costs application was a fair and reasonable one to make, though it accepted the respondents' submissions that to some extent the costs had been inflated by the length of the investigation. The Panel did not accept that JG's approaches to RICS could be a

basis for reducing the costs. All parties had arrived at the hearing disputing all the allegations, and JG had not made any concrete proposals of admissions at any point.

250. The Panel concluded that it was appropriate for the respondents to make a fair contribution towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole. Having taken into account the points made by or on behalf of the respondents about costs, the Panel assessed that a reasonable total amount for the costs claimed by RICS would be £50,000. Taking into account the submissions of all the parties about their financial circumstances, it considered that this sum should be apportioned as follows: HP: £20,000, CRB: £10,000, RE: £5,000; and JG: £15,000.

251. The Panel therefore ordered that Hinson Parry pays costs in the sum of £20,000 to RICS within 28 days; Charles Roger Bedson pays costs in the sum of £10,000 to RICS within 28 days; Rebecca Evans pays costs in the sum of £5,000 to RICS within 28 days; and John German Estate Agents Ltd pays costs in the sum of £15,000 to RICS within 28 days.

Appeal Period

252. The respondents have 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 153 of the Tribunal Rules.

253. In accordance with Rules 166 and 167 of the Tribunal Rules, RICS' Chair of Governing Council may require a review of this decision on the grounds of undue leniency within 28 days.

Summary of decision

254. The Panel ordered as follows:

- Hinson Parry is reprimanded and ordered to pay a fine of £35,000 and costs of £20,000 to RICS within 28 days;

- Charles Roger Bedson is reprimanded and ordered to pay a fine of £20,000 and costs of £10,000 to RICS within 28 days;

- Rebecca Evans is reprimanded and ordered to pay a fine of £5,000 and costs of £5,000 to RICS within 28 days; and

- John German is reprimanded and ordered to pay a fine of £10,000 and costs of £15,000 to RICS within 28 days.