

## **Disciplinary Panel Hearing**

Case of:

Firm: Warwick Estates Property Management Ltd [724719]  
Essex, SS1

**Monday 13 March 2023**

**Remotely by Microsoft Teams**

### **Panel**

Mr Nick Hawkins (Lay Chairman)  
Ms Rosalyn Hayles (Lay Member)  
Mr Ben Davies (Surveyor Member)

### **Legal Assessor**

Alastair McFarlane

### **RICS Presenting Officer**

Mr Christopher Geering

### **Firm's Representative**

Mr Ross Hulmston

### **Hearing Officer**

Ms Jae Berry

## **The Firm**

The formal charge against the Firm is:

1. In or around 2013, the Firm failed to use due care, skill or diligence in producing service charge estimates for Cardiff Pointe.

### **Contrary to Rule 4 Rules of Conduct for Firms 2007**

2. The Firm failed to provide in a timely manner or at all information reasonably requested by RICS, namely:
  - a. Its Complaints Handling Policy;
  - b. A copy of the letter or email to Mr Harris providing him with a copy of the Complaints Handling Policy;
  - c. The evidence relied on in calculating the service charge estimate

### **Contrary to Rule 14 /15 Rules of Conduct for Firms 2007**

3. The Firm acted in breach of its professional obligations and / or without integrity in that:
  - a. In response to concerns that it had served accounts late, on or around 27 June 2017, the Firm represented to RICS that in the future delay would be escalated to the Regional Manager, and the tenant(s) would receive an explanation for the delay,
  - b. The Firm issued:
    - i. Accounts for the period ending 24 June 2016 on or around 4 October 2017
    - ii. Accounts for the period ending 24 June 2015 on or around 24 November 2017;

- c. In respect of its actions at (b), the Firm:
  - i. Failed to provide an adequate and / or timely explanation to tenant(s),
  - ii. Failed to escalate the matter to a Regional Manager;
- d. The explanation provided to RICS at (a) above represented an attempt to deal with a complaint by promising remedial action which the Firm did not / did not intend to institute.

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

- 4. The Firm acted in breach of its professional obligations and / or failed to demonstrate due care, skill or diligence in that:
  - a. Having been made aware of an emergency telephone system issue in a lift, it failed promptly to ensure adequate signage was placed in lift(s),
  - b. Failed to ensure that the fire safety recommendations and / or recommendations relating to safety signage were carried out promptly or at all;

**Contrary to Rules 3 and / or 4 Rules of Conduct for Firms 2007**

- 5. As of May 2019, the Firm failed to operate adequate procedures for managing client money in that:
  - a. It allowed one of its client accounts to become and / or remain overdrawn from around August 2018 to November 2018;

- b. It did not conduct adequate money reconciliation procedures in that:
  - i. It did not include bank accounts marked “Do Not Use” in the monthly reconciliation process;
  - ii. It did not evidence that the Principal of the Firm reviewed and / or signed off reconciliations on accounts marked “live accounts”;
  - iii. It did not evidence that the Principal of the Firm reviewed and / or signed off reconciliations on accounts marked “no longer managed”;
- c. It did not appropriately protect client accounts in that:
  - i. Not all client bank accounts included the full name of the Firm in their account titles;
  - ii. Not all client bank accounts had the word “client” in their titles;
  - iii. The Firm had not provided its bank with a complete and / or up to date list of the Firm’s client accounts;
- d. The Firm do not keep a record or receipt of when client cheques and/or cash were banked;
- e. The Firm received a payment of client money directly into its office account on 7 January 2019 which was not transferred to the client

account until 15 January 2019;

- f. The Firm held a balance of £11,305.84 of unidentified client money in a suspense account;
- g. One of the Firm's corporate accounts included the word 'client' in the account title.

### **Contrary to Rule 8 Rules of Conduct for Firms 2007**

- 6. Following its registration under the Designated Professional Body Scheme ("DPB"), the Firm failed to comply with its professional obligations in respect of its General Insurance Distribution Activities in that:
  - a. It did not include the required disclosures in the Terms of Engagement sent to clients;
  - b. It did not issue clients with its own Demands and Needs statement;
  - c. The Firm's DPB representative in place when RICS conducted an inspection in May 2019 had not undertaken adequate training in respect of the DPB scheme.

### **Contrary to Rule 3 of Rules of Conduct for Firms 2007**

- 7. Following its registration under the DPB, the Firm:

- a. Retained commission it received as a result of arranging insurance on clients' behalf, without the informed consent of those clients;
- b. It placed the commission it received in its office account, thereby exposing client money to risk.

**In respect of 3 a, contrary to Rule 3 and / or Rule 8 of Rules Conduct for Firms 2007**

**In respect of 3 b, contrary to Rule 8 of Rules of Conduct for Firms 2007**

**Warwick Estates Property Management is therefore liable to disciplinary action under RICS Bye-law 5.3.2 (c)**

## **DETERMINATION**

### **APPLICATION TO AMEND CHARGE**

1. The Firm admits in full the conduct set out at allegations 3, 4, 5, 6 and 7.
2. RICS considers that, in light of those admissions, there is no public interest in pursuing allegations 1 and 2. The facts relating to those particulars are set out in the case summary. The Tribunal will see these allegations are very old. They do not relate to dishonesty or lack of integrity. In our view they do not add significantly to the seriousness of the misconduct alleged against the Firm and it would be disproportionate to litigate them in light of the admissions made to the more serious allegations. In those circumstances the parties invite the Tribunal to amend the charge and delete them.
3. RICS was satisfied that in the specific circumstances of this case, admissions to the proposed 5 Charges would sufficiently address the culpability of the respective parties and meet the requirements of justice and fairness in this case. Mr Hulmston on behalf of the Respondents supported the application.
4. The Panel noted the submissions of the parties and accepted the advice of the Legal Assessor. It was satisfied by the reasons advanced by both Counsel that the amendment could be made without injustice and therefore granted the application under Rule 122.

### **ADMISSIONS**

5. Mr Hulmston indicated on behalf of the Firm that Charges 3,4,5,6 and 7 were admitted and Charges 1 and 2 were denied.
6. Mr Geering indicated that RICS was content with these admissions and in the circumstances did not seek to pursue Charges 1 & 2 against the Firm.
7. The Panel noted its power to vary its procedure under Rule 123(c) and determined, with the consent of the parties, that it was appropriate to find the facts proved on Charges 3,4,5,6, and 7 against the Firm on the basis of the admissions and then to consider the

sequential submissions of both Counsel on all issues and then determine sequentially the issues of liability to disciplinary action, and if appropriate, sanction, costs and publicity in one retiring.

## **BACKGROUND**

### The admitted allegations

#### Allegation 3

8. The Firm took over management of 8 Justines Place in 2015.
9. The Firm accepts that despite numerous requests, it failed to provide leaseholders with a summary of costs incurred or audited accounts. The 2016 accounts were provided to leaseholders on 4 October 2017. The 2015 accounts were provided on 24 November 2017.
10. RICS accepts that in part this delay can be ascribed to the previous managing agents, the Firm taking on management part way through the year and a delay in receiving instructions from its client. However, the Firm accepts it also shares responsibility for this failure.
11. In separate proceedings, concerning similar issues, the Firm sent RICS a letter on 27 June 2017 in which it set out remedial steps it proposed to take. This stated – in respect of delays in that case:

*“This matter has been investigated internally and appropriate action taken. In particular, further training in this area has been introduced and a much more effective tracking system has been implemented to ensure that, once accounts are certified by accounts, property managers must demonstrate to their regional managers that the accounts have been both signed or approved by client*



*company directors and circulated to lessees within an acceptable period of time or that a detailed explanation is provided to explain any delays.”*

12. The Firm agrees that in the current case no appropriate updates or explanations were provided. The case was not escalated to the regional manager. The new process set out in the letter of 27 June 2017 was not followed. The Firm accepts the reason new procedures failed to prevent a recurrence of the same conduct was because they were not properly instituted by the Firm. By making assurances to the regulator, and not adequately putting them into effect, the Firm demonstrated a lack of integrity. Whilst this does not reflect on the current management of the Firm who were not in place at the time, the Firm accepts it is guilty of a lack integrity.

#### Allegation 4

13. The parties agree it is relevant to note the Firm’s conviction for an earlier health and safety failing. In August 2014 a resident at a property managed by the Firm died when his lift broke down between two floors and he attempted to climb out. The emergency contact system in the lift did not work. This resulted in a Health and Safety prosecution and the Firm was convicted 27 June 2016 and fined £120,000. In doing so the court commented,

*“Investigation into this case has produced a wealth of evidence demonstrating that the lifts at Marsden House were prior to 30<sup>th</sup> August 2014 exhibiting serious problems. It’s axiomatic that an intermittently faulty auto-dialler system together as it happens with poor mobile telephone signal strength within the lifts would give rise to a high risk that passengers trapped within the lifts floors would, in the absence of assistance, attempt self rescue involving exposing themselves to the open shaft.”*

14. The case was considered by RICS and the Firm received a reprimand and a £20,000 fine.

15. In 2016, in the aftermath of the inquest into this earlier death, Mr Griffiths and others raised concerns about the lack of lift signage and other issues with the Firm. These concerns were not adequately addressed by the Firm at the time, even after another resident was trapped in a lift.

16. On 20 April 2016 a resident emailed the Firm:

*“This morning I discovered that on... 14 April the resident of flat 82 Oslo House was trapped in the lift for in excess of 2 hours.”*

17. On 19 May 2016 a resident raised the issue of signage in the lifts:

*“7 Otis lifts without call button facilities and two people known to have been trapped inside. There are no warning signs. This is an H & S issue as well as a serious service provision failure.”*

18. In minutes of a meeting with the Firm 2 September 2016 it notes:

*“PN re-iterated that lift companies had advised Warwick that the lifts were safe.*

*GG referred to the HSE prosecution and Directors requests that signs advising people what to do in an emergency were to be placed in all lifts irrespective of what the companies had said. These instructions had still not been carried out after weeks.”*

19. It is agreed by the Firm that appropriate steps to address the lack of signage were not taken promptly.
20. Further health and safety issues arose out of a Fire, Health and Safety Risk Assessment fire safety assessment dated September 2017. This flagged a number of fire safety issues. It noted – inter alia:

*“1.2.2 Have you removed or reduced the hazards, sources of ignition, fuel and oxygen that might cause a fire and pose a risk? No*

*...*

*1.3.10 Is there a weekly log for fire alarm call points being checked of any defects? No*

*CONSEQUENCE: 3; LIKELIHOOD: 3; RISK SCORE: 9*

*PRIORITY: HIGH;*

*TIMESCALE: IMMEDIATE*

*HAZARD LOCATION AND DESCRIPTION:*

*Egress in the event of fire;*

*1.3.10 There is no log of testing the fire alarm call points on site. If there is staff on site daily (e.g. a caretaker or concierge), this must be completed weekly*

*...*

*1.4.5.4 Is there a weekly log for AOV call points being checked of any defects? No*

*CONSEQUENCE: 3; LIKELIHOOD: 3; RISK SCORE: 9*

*PRIORITY: HIGH;*

*TIMESCALE: IMMEDIATE*

*...*

*1.5.2 Are Flat/Apartment Doors Fire Doors and fitted with self-closing devices? No*

*CONSEQUENCE: 3; LIKELIHOOD: 2; RISK SCORE: 6*

*PRIORITY: MEDIUM;*

*TIMESCALE: UP TO 3 MONTHS (31/01/2018)*

...

*1.5.6 Are any holes or gaps in walls, ceilings and floors properly sealed, e.g. where services such as ventilation ducts and electrical cables pass through them? No*

*Compartmentation where services enter the building should be improved.*

*CONSEQUENCE: 3; LIKELIHOOD: 3; RISK SCORE: 9*

*PRIORITY: HIGH;*

*TIMESCALE: IMMEDIATE*

*HAZARD LOCATION AND DESCRIPTION:*

*Egress in the event of fire; Spread of fire:*

*1.5.6 There are gaps/holes to Meter/Riser cupboards that compromise the Fire Proofing of the building*

...

*1.5.16 Do all fire resisting self-closing doors fit correctly, and retain original integrity? No*

*The following Fire Doors should be adjusted;*

*FD3001*

*FD1002*

*CONSEQUENCE: 3; LIKELIHOOD: 2; RISK SCORE: 6*

*PRIORITY: MEDIUM;*

*TIMESCALE: UP TO 3 MONTHS (31/01/2018)*

*HAZARD LOCATION AND DESCRIPTION:*

*Egress in the event of fire; Spread of fire:*

*1.5.16 Fire Doors in the above list do not fit correctly, therefore they do not offer the required protection*

...

*1.5.17 Are all Intumescent Strips/smoke seals in place and fitted correctly?  
No*

*The following Fire Doors have strips missing or damaged and should be replaced;*

*FD1002*

*CONSEQUENCE: 3; LIKELIHOOD: 2; RISK SCORE: 6*

*PRIORITY: MEDIUM;*

*TIMESCALE: UP TO 3 MONTHS (31/01/2018)*

*HAZARD LOCATION AND DESCRIPTION:*

*Egress in the event of fire; Spread of fire:*

*1.5.17 Fire strips have been painted over or are missing from various doors throughout the development"*

The following section dealt with signage, and noted – inter alia:

*"2.1.3 Floor Level Signage No*

*CONSEQUENCE: 3; LIKELIHOOD: 2; RISK SCORE: 6*

*PRIORITY: MEDIUM;*

*TIMESCALE: UP TO 3 MONTHS (31/01/2018)*

*Information Signs – Floors do not have signage indicating the floor level and door numbers, it is recommended that these are displayed in the lobbies at the top of each stairwell, to aid fire officers or emergency services in reaching the desired floor in an emergency, to conform to The Regulatory Reform (Fire Safety Order) 2005.*

*...*

*1.5.1 Fire Door Keep Shut*

*No*

*Signage is needed for the following doors;*

*FD4001/02*

*FD3001/02*

*FD2001/02*

*FD1001/02*

*FD0001/02*

*CONSEQUENCE: 3; LIKELIHOOD: 2; RISK SCORE: 6*

*PRIORITY: MEDIUM;*

*TIMESCALE: UP TO 3 MONTHS (31/01/2018)*

*Mandatory Signs – It was found that “Fire Door Keep Locked” signs were missing from or damaged on numerous doors and should be applied under The Regulatory Reform (Fire Safety Order) 2005.*

*How many are needed? 10*

#### *1.5.2 Emergency Lift Procedure No*

*CONSEQUENCE: 3; LIKELIHOOD: 2; RISK SCORE: 6*

*PRIORITY: MEDIUM;*

*TIMESCALE: UP TO 3 MONTHS (31/01/2018)*

*It is requested that the below wording is placed in the lift and or lift room for the attention of the Fire Brigade:*

*“ATTENTION: If Fire Brigade or Lift Engineers attend to release a person/persons from the lift please contact Warwick Estates on 0844 991 9968”*

*What to do in an emergency: [telephone number for contractor].*

*“UNDER NO CIRCUMSTANCES ATTEMPT TO SELF-RESCUE”*

*Mandatory Signs – During the inspection it was noted that signage was not present, informing users of the “Emergency Lift Procedure” during an entrapment or medical emergency; these should be clearly displayed as per The Regulatory Reform (Fire Safety Order) 2005.*

*How many are needed? 1*

*...*

#### *1.5.3 Lift Signage (Do Not Use in the Event of a Fire) No*

*Signage required;*

*4*

*... CONSEQUENCE: 3; LIKELIHOOD: 2; RISK SCORE: 6*

*PRIORITY: MEDIUM;*

*TIMESCALE: UP TO 3 MONTHS (31/01/2018)*

*Prohibition Signs – During the inspection it was noted that there was no signage outside of the lifts in the lift lobby, warning not to use the lift in the event of a fire; these should be clearly displayed as per The Regulatory Reform (Fire Safety Order) 2005.*

...

#### *1.5.4 Fire Zonal Plan No*

*CONSEQUENCE: 3; LIKELIHOOD: 2; RISK SCORE: 6*

*PRIORITY: MEDIUM;*

*TIMESCALE: UP TO 3 MONTHS (31/01/2018)*

*Information Signs – During the inspection it was noted that the fire zonal plan was not clearly displayed or not in place next to the alarm panel, to provide adequate support to investigating employees and Fire Officers investigating and supporting evacuation during a suspected fire; this should be displayed in properties that have a fire panel, as per The Regulatory Reform (Fire Safety Order) 2005.”*

21. The Firm agrees it made insufficient efforts to address these issues in a timely manner. It accepts that an assessment conducted the following year flagged a number of the same concerns. This assessment expressed renewed concerns about having compartmentisation in place to prevent the spread of fires. It noted concerns about fire doors, and it found lift signage was inadequate. There were no warnings in the lobby to stop the public using the lifts in the event of a fire on 3<sup>rd</sup> and 4<sup>th</sup> floor. Zonal fire plans were also not clearly displayed.
  
22. As of the Firm’s response to RICS in 2019, these concerns had not all been addressed. Lift signage had been dealt with. However:

*“1.5.6 Compartmentalisation These works have not yet been completed. We are liaising with South Wales Fire and Rescue Service regarding these works and would anticipate the same being completed during 2019. These works may be subject to Section 20 Consultation.”*

23. It is agreed that the management of these properties represented challenges. Century Wharf is a large complex of 34 blocks and 906 residents. It can take time to address complex structural issues and obtain instructions from clients on levels of expenditure. Nonetheless, the Firm accepts its actions in addressing these safety concerns was inadequate and exposed people to undue risk of harm.

#### Allegation 5

26. RICS client money review visits in 2017 and 2018 identified concerns respecting the Firm’s compliance with client money rules. As a result RICS visited the Firm in May 2019. The Firm accepts the following material failings were identified:

- One client account was overdrawn from 24 August 2018 to the 5 November 2018. Allowing an account to become overdrawn in this manner can place funds belonging to other clients or the Firm at risk.
- The Firm was not completing full month reconciliation processes. Regular reconciliations are fundamental to a system of good client money control.
- The Firm was performing monthly reconciliations for Client accounts marked as “*Live Accounts*”. However, there was no evidence the Principal at the Firm had in fact signed off on these reviews. A separate accounting team was reviewing client accounts marked “*no longer managed*” but again there was no evidence these reconciliations were reviewed by the Principal at the Firm.



- Eleven client accounts did not have the full name of the Firm in their titles. This is important to ensure they are covered by the RICS Client Money Protection Scheme and the firm's professional indemnity insurance.
- The bank had confirmed that it was aware certain accounts were client accounts. However, this confirmation did not extend to all client accounts. This also limits the extent to which those accounts are properly protected.
- There was no evidence that client money in the form of cheques or cash were being banked promptly.
- The Firm held funds of over £11,000 in a client account, which it could not account for.

27. In response to these concerns RICS accepts that the Firm did not contest the findings. It set out the changes it had made to address these points.

#### Allegation 6 and 7

28. On 17 July 2019 Kelly Cronogue, Professional Assurance Auditor, carried out a Designated Professional Body (DPB) Regulatory Review Visit (RRV). The Firm has held its DPB licence since November 2012 and this was its first DPB review.

29. The purpose of the visit was to establish that any General Insurance Distribution Activity ("GIDA") undertaken was compliant with the RICS DPB scheme licence granted under Part XX of the Financial Services and Markets Act 2000 (FSMA). It also aimed to assess the adequacy of the controls and procedures in place in accordance

with the relevant RICS rules for DPB activity. The legislative and regulatory background to being a DPB is set out in the case summary and there is no dispute between the parties.

30. As part of its DPB license the Firm had to comply with the DPB Rules and guidance:
  - To issue an appropriate Management Agreement/Terms of business to clients,
  - To issue appropriate Demands and Needs statement,
  - To disclose any commissions earned in connection with insurance activities to clients and obtain their informed consent for the Firm to retain that commission.
  
31. The DPB rules require that there is a contract between the DPB licensed firm (i.e. Warwick Estates) and the client (the individual residential management company). This is the Management Agreement and it must set out among other things the nature of any insurance distribution activities it can provide. This should include the nature and basis of any remuneration the DPB licensed firm may receive in respect of this work.
  
32. A Demands and Needs statement should outline the client's insurance requirements and detail how the insurance policy selected by the Firm meets those insurance requirements.
  
33. Under DPB Rule 13(g), DPB licenced firms must "*account to its Clients for the receipt of any pecuniary reward or other advantage (such as a commission) received from anyone other than the Firm's Clients in connection with any of its Regulated Activities.*"
  
34. A Firm may obtain insurance from an insurer where there is an Appointed Representative Agreement ("AR") in place. This is an agreement between an FCA-regulated insurance company/broker and an insurance intermediary (in this case the Firm), which allows the insurance intermediary to undertake GIDA under the insurance company's/broker's own FCA registration. In such a scenario, the insurance intermediary does not require its own DPB registration.

35. During the course of the inspection it was apparent that some of the Firm's insurance activity was conducted with a broker called Abaco. An AR was in place and, as a result, this element of the Firm's GIDA did not have to fall under RICS' DPB license. Other GIDA, however, was undertaken with another insurer – RIS – with which the Firm did not have an AR in place.
36. To comply with the license the Firm must inform clients that it is earning commissions from the insurance company / broker, and must set out the specific amount. If the Firm is going to keep this insurance, it should obtain clients' written informed consent to do so. This requirement applies to any remuneration earned by placing insurance on behalf of clients.
37. RICS' review identified the following issues:
- a. The Management Agreement did not contain all of the required disclosures. This was deemed **critical**;
  - b. The Firm had not disclosed to their clients the insurance commissions which it had earned from RIS. In addition, all insurance commissions earned from RIS had been paid to the office bank account. This was deemed **critical**;
  - c. The Firm issued the broker's Demands and Needs statement at renewal, not its own;
  - d. There was no evidence that the Firm's DPB representative, Craig Stevens, had undertaken relevant training.
38. The Firm accepts these.
39. The Firm also accepts the Management Agreement did not include the disclosures required to comply with the DPB Rules. Without the required disclosures clients may not be fully informed about the nature of the services being provided by the Firm. This

may give rise to a risk that clients are not aware of the nature of insurance services to be provided or that the Firm are not directly authorised by the FCA. This requirement is fundamental.

40. The Firm also accepts that it had not disclosed the insurance commissions which it had earned during the period of the DPB licence when it was not operating under an Appointed Representative Agreement. It had not asked for or obtained the clients' informed consent to retain that commission.
41. RICS' review identified that the total amount of commission earned between June 2016 – August 2017 amounted to £174,553.92. Statements prior to this date were not available to the reviewer. The precise figure of £174,553.92 is not accepted by the Firm as it was provided by previous management but it is accepted that a significant amount of commission was earned and the Firm does not put forward an alternate figure.
42. The Firm accepts it failed to obtain the informed consent of their clients to retain commission in the DPB licence period. The template Management Agreement contained no facility to specify the amount of commission being earned at the time the client signed the document. In fact, it is made clear that the client will be informed of the exact amount at a later date. It is accepted that signing this agreement cannot be sufficient for informed consent. In the absence of such consent, the commission did not belong to the Firm. It was client money.
43. The Firm accepts all the insurance commission obtained under the DPB licence period was being held in the office account. Client money should not be kept in the office bank account. Such money is not adequately protected in the event of the Firm having financial difficulties.
44. The RRV identified that the Firm needed to account to their clients for the commission earned to date under the DPB license, and obtain their informed consent to retain the

same. A commission disclosure procedure needed to be created to meet this obligation going forwards. Commission monies needed to be held in a client account whilst consent was pending.

45. The Firm also accepts it did not issue its own Demands and Needs Statement. A Firm is required to draft their own Demands and Needs statement and not rely on the Demands and Needs statement issued by the broker, as in this instance. By not doing so, there is a risk that clients will not have full information to make an informed decision about the insurance product being offered.

## **RICS SUBMISSIONS**

46. Mr Geering highlighted aggravating and mitigating factors,
47. Mr Geering made no submissions as to the appropriate sanction, which was a matter for the Panel. He submitted on costs that RICS would accept a contribution to costs in the sum of £10,000 and he submitted that there is no reason to depart from RICS' usual position on publication.

## **SUBMISSIONS ON BEHALF OF THE FIRM**

48. Mr Hulmston on behalf of the Firm accepted that the facts proved rendered it liable to disciplinary action.
49. Mr Hulmston made detailed submissions in mitigation on behalf the Firm.
50. In respect of Sanction, Mr Hulmston urged the Panel to consider all the mitigation set out in his written submissions and particularly the age of the matters and the change of management, which he contended reduced the risk of repetition.

## **Findings of fact**

51. As indicated above, the Panel found Charges 3,4,5,6 and 7 against the Firm proved by virtue of the admissions made. In the circumstances, and given the submissions of the parties, with which it agreed, the Panel found the Charges 1 and 2 not proved.

## **Liability for Disciplinary Action**

52. The Panel noted that Mr Hulmston accepted that the proved Charges did render the Firm liable to disciplinary action under bylaw 5.2.2 (c).
53. The Panel accepted the advice of the Legal Assessor. It reminded itself that liability to disciplinary action was a matter for the judgment of the Panel. It was satisfied separately that the conduct of the Firm amounted to breaches of its professional obligations that were wide ranging and serious and committed over a prolonged period. The Panel had no doubt that that these were individually and collectively sufficiently serious to render the Firm liable to disciplinary action, as its conduct fell well-below that to be expected of a Regulated Firm.

## **SANCTION**

54. The Panel next considered the matter of sanction It noted the submissions of RICS and of Mr Hulmston, including his written submissions, dated 10 March 2023. It accepted the advice of the Legal Assessor. It had regard to RICS' Sanctions Policy, and in particular the overriding principles of acting in the public interest, to protect the public, the reputation of the profession and to declare and uphold proper standards and bore in mind the overriding principles of proportionality.
55. The Panel reminded itself that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose of sanctions is to declare and uphold the

standards of the profession, to safeguard the reputation of the profession and of RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.

56. The Panel considered carefully any mitigating and aggravating factors of this case as well as the issue of proportionality in weighing up the most appropriate response.

57. The Panel identified the following mitigating factors in relation to the Firm:

- The Firm has made appropriate admissions and co-operated with the regulator
- The most recent misconduct dates back to 2019 and there has been no repetition since
- The Firm is now directed by entirely different management
- The Firm under its current management has shown some insight into the failings

58. The Panel considered that the following aggravating factors were present:

- In relation to accounts not being provided in an appropriate time, the Firm had a previous history of such failures and had given RICS an assurance that remedial action had been implemented.
- The attempt to avoid disciplinary action amounted to a lack of integrity which self-evidently was very serious
- In relation to the health and safety concerns the Firm had been subject to a conviction and disciplinary proceedings in relation to a death in a lift in 2016, but these concerns were raised only months later after the death, and there was a prolonged failure to put in place lift signage despite that fatality. Many of the remedies were easy to undertake but were not in fact remedied for a further year

- Issues of fire compartmentalisation were raised but not adequately addressed for years
- The Panel was mindful of the fundamental importance of health and safety procedures in large apartment blocks and the clear risk to residents the failures presented in the event of a fire
- In relation to client monies, the Firm's failures exposed clients to risk in a number of ways and previous concerns about their client money procedures had been raised with the Firm in two earlier review visits and not fully addressed
- In relation to the insurance failures the Firm accrued a significant sum of money to which it was not entitled, and the Panel accepted there was a "chaotic administration". It noted that the issue remained unresolved and the money has not been paid back to clients or given to charity.

## Decision

59. The Panel considered that the Firm's failures were wide ranging covering fundamental areas of good practice and occurred over a significant period of time. In the Panel's judgment, the failures were indicative of very poor management. It was also mindful that the Firm was not of good character and that its previous regulatory finding followed a conviction for health and safety offences in relation to fire safety and fire safety, is a concern of some of the admitted conduct before this Panel. Further, it was satisfied that the failures presented risks to the public and significantly undermined the reputation of the profession and public confidence in it. It was mindful that there is new management team and that the Firm has expressed remorse over its failings and that there has been no repetition of the behaviour for the last 4 years and of everything the new management structure has done to remedy the situation going forward.
60. The Panel considered the matters too serious for no sanction at all to be imposed. It considered the sanctions in ascending order of severity.



61. The Panel considered that a Caution was insufficient to mark the seriousness of the behaviour and to adequately maintain the reputation of the profession and the failings could not be described as "minor".
62. The Panel had specific regard to the seriousness of the conduct and the highly detrimental impact such serious behaviour has upon the standing and reputation of the profession. It was satisfied that, given the change in the management of the Firm, the mitigation advanced and the remediation undertaken and insight in this case, there was a low risk of repetition of the conduct. The Panel considered that the passing of time has significantly benefited the Firm given the changes that have occurred. Had this case come before it in 2019, the Panel is of the view that removing the Firm's registration would have been the likely disposal.
63. The Panel considered it was appropriate and proportionate to issue a Reprimand coupled with a Fine and a Condition on the Firm and that imposing such sanctions would serve to declare and uphold appropriate professional standards and maintain confidence in the profession. The Panel considered that the appropriate level of fine given the scale of the failings and their duration would have been £35,000. The Panel then took account of the Firm's means and its submitted accounts and noted its losses in considering whether to reduce the fine from this level. It decided that it was appropriate to do so. The Panel determined that the appropriate and proportionate fine on the Firm was one of £20,000. It further ordered in relation to the £174,553.92 of client monies still held by the Firm that the following condition be imposed:

*The Firm is to use its best endeavours to trace the individual clients and repay the monies owed to those clients by 13 September 2023. In default of this the Firm is to pay any monies not so repaid to clients, to a limit of £174,553.92 to the Lionheart Charity by 27 September 2023 and to provide RICS of proof of the same.*

## **Publication**

64. The Panel was satisfied that no justifiable basis was advanced for departing from the presumption of publication. The Panel considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. This decision will be published on the RICS website and in the RICS magazine Modus.

## **Costs**

65. RICS has submitted a statement of costs and the Firm has detailed its means. The parties have agreed that costs should be paid by the Firm in the sum of £10,000.
66. The Panel was satisfied that it was appropriate to make an award of costs in this case in favour of RICS. It was further satisfied that the costs agreed by the parties was appropriate and proportionate. Accordingly, it awarded RICS in the sum of £10,000.

## **Appeal Period**

67. The Relevant Person has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 152 of the Rules.