



ROYAL INSTITUTION OF CHARTERED SURVEYORS

Disciplinary Panel Hearing

Case of

Robert Heald [0060676]

Epsom, Surrey

On

Monday 07 – Friday 11 October 2024

At

Held remotely via Microsoft Teams

Panel

Alison Sansome (Lay Chair)

Patrick Bligh-Cheesman (Lay Member)

Eleanor Spencer (Surveyor Member)

Legal Adviser

John Bromley-Davenport KC

RICS Representative

Ben Rich

Tribunal Executive

Jae Berry

Introduction

Mr Robert Heald, who is the sole principal of his firm Wallakers, appears before the RICS Disciplinary Panel in connection with the following allegations.

Allegations:

Sandown House

1. *On or about 19 December 2016, Wallakers ('the Firm') was instructed by or on behalf of the leaseholders of Sandown House to assist them with regard to a dispute between the leaseholders and the Freeholder of Sandown House ["the Property"] over the cost of insuring the property ["the Insurance Instruction"]. In dealing with the Insurance Instruction, Robert Heald failed to carry out his professional work with due skill, care and diligence in that he did not, between around August 2017 and July 2018 submit a valid application to the First Tier Tribunal, or alternatively explain why such an application had not been submitted.*

Contrary to Rule 4 of the Rules of Conduct for Members version 6

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

2. *In dealing with the Insurance Instruction, Robert Heald:*
 - a. *Made some or all of the representations set out in Schedule A;*
 - b. *At the time of making the relevant representation he knew it to be untrue.*
3. *His conduct in respect of 2a. above was:*
 - a. *Misleading;*
 - b. *Dishonest*

Contrary to Rule 3 of the Rules of Conduct for Members Version 6

Robert Heald is therefore liable to disciplinary action under RICS Byelaw 5.2.2 (c)

4. *In dealing with the Insurance Instruction, Robert Heald acted without integrity in that he:*

- a. *Made some or all of the representations set out in Schedule A;*
- b. *At the time of making the relevant representation he knew or ought to have known that the relevant representation was inaccurate and/or misleading.*

Contrary to Rule 3 of the Rules of Conduct for Members Version 6

Robert Heald is therefore liable to disciplinary action under RICS Byelaw 5.2.2 (c)

5. *On or about 19 September 2017, Wallakers was instructed by or on behalf of the leaseholders of Sandown House to assist them with regard to a dispute between the leaseholders and the freeholder of Sandown House over the cost of major building works done at the property [“the Major Works Instruction”], and the amount of money that might be needed to rectify deficiencies in the work. In dealing with the Major Works Instruction, Robert Heald failed to carry out his professional work with due skill, care and diligence in that he:*

- a. *Failed to obtain and/or provide to the Leaseholders a quotation for producing a report from Bentley Pugh, a surveyor, alternatively failed to inform the Leaseholders why it was not possible to obtain such a quotation.*
- b. *Failed to appoint, or recommend for appointment, an independent building surveyor to assess the cost of remedying the defects in the major work or inform the leaseholders that he could not identify a suitable surveyor to instruct;*
- c. *Failed to inform the leaseholders that he had not appointed an independent building surveyor;*
- d. *Submitted to the Tribunal his own valuation report on the cost of remedying the defective works despite having no instruction to do so.*

- e. *Prejudiced the Leaseholders case before the Tribunal by acting as their representative, thereby preventing the Court from taking account of his report on the Major Works;*
- f. *Failed to inform the leaseholders of the outcome of the hearing promptly, or at all, on or after 17 September 2019;*
- g. *Failed to inform the leaseholders of the Tribunal's decision within the 28-day appeal period;*
- h. *Failed to inform the leaseholders that the Freeholders had made a costs application in respect of the proceedings;*
- i. *Failed to revert to the leaseholders about how the money owed to the leaseholders for the substandard works could be obtained.*
- j. *Failed promptly to acknowledge a formal complaint ["the Complaint"] made by the leaseholders on or around 29th October 2019.*
- k. *Failed to respond formally to the Complaint;*

Contrary to Rule 4 of the Rules of Conduct for Members Version 6

Robert Heald is therefore liable to disciplinary action under RICS Byelaw 5.2.2 (c)

Cherwell Court

- 6. *Between around 2016 and 2021 Wallakers were the appointed managing agents of Cherwell Court.*
- 7. *In or around January 2021 Wallakers were instructed by or on behalf of the Cherwell Court Board to begin formal recovery, via solicitors, of some outstanding service Allegations ["the Arrears Instruction"]. In dealing with the Arrears Instruction, Robert Heald failed to carry out his professional work with due skill, care and diligence in that he:*
 - a. *Failed to instruct solicitors to recover the arrears;*

- b. *Failed to inform the Cherwell Court Board that he had not instructed solicitors to recover the arrears;*
- c. *Failed to inform the Board as to why he had not instructed solicitors to recover the arrears.*

Contrary to Rule 4 of the Rules of Conduct for Members version 7

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

8. *In dealing with the Arrears Instruction, Robert Heald:*

a. *Made representations to the following effect:*

- i) *On or around 15 March 2021 – that he had been advised by solicitors that the arrears had been collected;*
- ii) *On or around 2 June 2021 – that he had asked Howell Jones and Partners to deal with recovery of the arrears and/or that he had asked Howell Jones for a copy of their file so he could see what action had been taken.*

b. *At the time of making representation i) and/or ii) above he knew it to be untrue.*

9. *His conduct in respect of 8a. above was:*

- a. *Misleading*
- b. *Dishonest*

Contrary to Rule 3 of the Rules of Conduct for Members version 7

Robert Heald is therefore liable to disciplinary action under byelaw 5.2.2(c)

10. *In dealing with the Arrears Instruction, Robert Heald acted without integrity in that he:*

- a. *Made representations to the following effect:*
 - i) *On or around 15 March 2021 – that he had been advised by solicitors that the arrears had been collected;*
 - ii) *On or around 2 June 2021 – that he had asked Howell Jones and Partners to deal with recovery of the arrears and/or that he had asked Howell Jones for a copy of their file so he could see what action had been taken.*
- b. *At the time of making representation i) and/or ii) above he knew or ought to have known that the relevant representation was inaccurate and/or misleading.*

Contrary to Rule 3 of the Rules of Conduct for Members version 7

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

- 11. *In or around October 2020, the occupants of Flat 32, Cherwell Court [“the Flat”] prepared an insurance claim [“the Flood Claim”] relating to costs incurred as a result of a flood at the flat.*
- 12. *Wallakers had, or assumed, responsibility for submitting the Flood Claim to the insurer.*
- 13. *In dealing with the Flood Claim, Robert Heald failed to carry out his professional work with due skill, care and diligence in that he:*
 - a. *Failed to submit the insurance claim or ensure that it was submitted;*
 - b. *Failed to inform the occupants of Flat 32 that he had not submitted the Claim or ensured that it was submitted;*
 - c. *Failed to inform the occupants of Flat 32 as to why he had not submitted the Claim or ensured that it had been submitted.*

Contrary to Rule 4 of the Rules of Conduct for Members version 7

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

14. *In dealing with the Flood Claim, Robert Heald:*

a. *Made representations to the following effect:*

- i) *On or around 12 February 2021 to the occupants of Flat 32 – that the insurance monies for the claim had been received and/or that he intended to send them the money by transfer; and/or*
- ii) *On 28 April 2021 to Shabir Khan – that the claims had been “sorted” and would be “on the payment run this week”.*

b. *At the time of making the representation(s) in i) and/or ii) above, he knew it to be untrue.*

15. *His conduct in respect of 10a. above was:*

- a. *Misleading;*
- b. *Dishonest.*

Contrary to Rule 3 of the Rules of Conduct for Members version 7

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

16. *In dealing with the Flood Claim, Robert Heald acted without integrity in that he:*

a. *Made representations to the following effect:*

- i) *On or around 12 February 2021 to the occupants of Flat 32 – that the insurance monies for the claim had been received and/or that he intended to send them the money by transfer; and/or*
- ii) *On 28 April 2021 to Shabir Khan – that the claims had been “sorted” and would be “on the payment run this week”.*

- b. *At the time of making the representation(s) in i) and/or ii) above, he knew or ought to have known that the relevant representation was inaccurate and/or misleading.*

Contrary to Rule 3 of the Rules of Conduct for Members version 7

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

Blakes Avenue

17. *On or around 30 November 2020, Robert Heald was instructed to act as Party Wall Surveyor by the owner of an address in Blakes Avenue, in New Malden in Surrey [“the Party Wall Instruction”]. In dealing with the Party Wall Instruction, Robert Heald failed to carry out his professional work with due skill, care and diligence or provide good quality and diligent service in that he:*

- a. *Failed on one or more occasions to respond promptly, or at all, to communications about the Instruction;*
- b. *Failed to progress the Instruction in a timely manner;*
- c. *Stated that he had issued a “14 letter before County Court proceedings” without providing an explanation of what it was;*
- d. *In making the representation at c above Mr Heald:*
 - i) *Misled his client in that he claimed to have issued a letter before action when he had not done so, alternatively*
 - ii) *Issued a letter before action which he had no instructions to issue.*
- e. *Failed to respond promptly, or at all, to a complaint from the owner.*

Contrary to Rule 4 of the Rules of Conduct for Members version 7 and/or Rule 3 of the Rules of Conduct with effect from 2 February 2022

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

18. *On or around 25 May 2022, while acting as a Party Wall Surveyor in relation to a property in Blakes Avenue, New Malden, Robert Heald stated in an email that he had issued a '14 letter before County Court proceedings'. In making that representation, Mr Heald acted without integrity in that:*

- i) He claimed to have issued a letter before action when he had not done so, alternatively*
- ii) He issued a letter before action which he had no instructions to issue.*

Contrary to Rule 1 of the Rules of Conduct with effect from 2 February 2022

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

Cedars Resident Management Limited

19. *Between 6 August 2013 and 6 June 2022, while Robert Heald was the registered company secretary of Cedars Resident Management Limited (CRML):*

- a. Robert Heald knew that the sole director of CRML, Mr W, had tendered his resignation as director on 7 August 2013;*
- b. Robert Heald informed Mr W on 7 August 2013 that he would arrange his resignation at Companies House and that Mr W did not have to do anything else;*
- c. Robert Heald did not terminate Mr W's director appointment until 6 June 2022;*
- d. Robert Heald did not inform Companies House that CRML had no directors;*
- e. Robert Heald did not appoint a new director until 6 June 2022 at which time he was appointed as the sole director of CRML;*
- f. Robert Heald, as company secretary of CRML, caused or allowed CRML to operate without anyone with legal responsibility for CRML.*

Robert Heald, by doing or by failing to do any or all of those matters set out in b) to f) above, acted without integrity.

Contrary to Rule 3 of the Rules of Conduct for Members version 6 and/or Rule 3 of the Rules of Conduct for Members version 7 and/or Rule 1 of the Rules of Conduct with effect from 2 February 2022

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

20. *Between around 28 February 2015 and 13 April 2022, Robert Heald as company secretary of CRML, completed or caused to be completed, and filed or caused to be filed with Companies House on behalf of CRML eight Directors' Report and Financial Statements (the annual reports) for the years ending June 2014, June 2015, June 2016, June 2017, June 2018, June 2019, June 2020 and June 2021.*

- a. Each of the annual reports named Mr W as the sole director of CRML;*
- b. Each of the annual reports bore forged signatures purporting to be the signature of Mr W.*

Robert Heald acted dishonestly in that he:

- i) Named Mr W as a director of CRML on the annual reports when he knew that Mr W had tendered his resignation on 7 August 2013 or alternatively to i)*
- ii) Caused or allowed another to name Mr W as a director of CRML on the annual reports when he knew that Mr W has tendered his resignation on 7 August 2013 and/or*
- iii) Falsified Mr W's signature on the annual reports or alternatively to iii)*
- iv) Caused or allowed Mr W's signature to be falsified on the annual reports and/or*
- v) Filed the annual reports with Companies House knowing that they contained false information or alternatively to v)*
- vi) Caused or allowed the annual reports to be filed with Companies House knowing that they contained false information.*

Contrary to Rule 3 of the Rules of Conduct for Members version 6 and/or Rule 3 of the Rules of Conduct for Members version 7 and/or Rule 1 of the Rules of Conduct with effect from 2 February 2022

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

21. *Between around 28 February 2015 and 13 April 2022, Robert Heald, as company secretary of CRML, completed or caused to be completed, and filed or caused to be filed with Companies House on behalf of CRML eight Directors' Report and Financial Statements (the annual reports) for the years ending June 2014, June 2015, June 2016, June 2017, June 2018, June 2019, June 2020 and June 2021.*

- a. *Each of the annual reports named Mr W as the sole director of CRML;*
- b. *Each of the annual reports bore forged signatures purporting to be the signature of Mr W.*

Robert Heald acted without integrity in that he:

- i) *Named Mr W as a director of CRML on the annual reports when he knew that Mr W had tendered his resignation on 7 August 2013 or alternatively to i)*
- ii) *Caused or allowed another to name Mr W as director of CRML on the annual reports when he knew that Mr W had tendered his resignation on 7 August 2013 and/or*
- iii) *Falsified Mr W's signature on the annual reports or alternatively to iii)*
- iv) *Caused or allowed Mr W's signature to be falsified on the annual reports and/or*
- v) *Filed the annual reports with Companies House when he knew or ought to have known that they contained false information or alternatively to v)*
- vi) *Caused or allowed the annual reports to be filed with Companies House when he knew or ought to have known that they contained false information.*

Contrary to Rule 3 of the Rules of Conduct for Members version 6 and/or Rule 3 of the Rules of Conduct for Members version 7 and/or Rule 1 of the Rules of Conduct with effect from 2 February 2022

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

22. Between 1 December 2014 and 22 December 2015, Robert Heald, as the company secretary of CRML, filed or caused to be filed with Companies House on behalf of CRML the following documents:

- a. Form AR/01 for the year ending 21 December 2014 in which Mr W was listed as the sole company director; and/or*
- b. Form AR/01 for the year ending 21 December 2015 in which Mr W was listed as the sole company director.*

Robert Heald was dishonest in that he knew:

- i) That Mr W had resigned as a director on 7 August 2013 and/or*
- ii) That CRML had no effective director.*

Contrary to Rule 3 of the Rules of Conduct for Members version 6

Robert Heald is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

23. Between 1 December 2014 and 22 December 2015, Robert Heald, as the company secretary of CRML, filed or caused to be filed with Companies House on behalf of CRML the following documents:

- a. Form AR/01 for the year ending 21 December 2014 in which Mr W was listed as the sole company director; and/or*
- b. Form AR/01 for the year ending 21 December 2015 in which Mr W was listed as the sole company director.*

Robert Heald acted without integrity in that he knew or ought to have known:

- i. That Mr W had resigned as a director on 7 August 2013 and/or*
- ii. That CRML had no effective director.*

Contrary to Rule 3 of the Rules of Conduct for Members version 6

Robert Heald is therefore liable to disciplinary action under RICS Bye-Law 5.2.2 (c)

SCHEDULE A

On or around the date indicated, Robert Heald made the representation indicated, or a representation to that effect:

- a. 16 August 2017 – that a valid application had been sent to the First Tier Tribunal;*
- b. 26 August 2017 – an implied representation that a valid application had been sent to the FTT (in explaining the lack of acknowledgement of the court by reference to the usual delay in receiving an acknowledgement).*
- c. September 2017 – that an acknowledgement had been received.*
- d. 9 October 2017 that “the file is before the Chair of the panel so that directions can be issued”.*
- e. 15 November 2017 – that the application was ready and/or that he was awaiting a date from the Tribunal, and/or that he had spoken to the Tribunal that morning, and/or that he had been informed that the hearing would likely take place towards the end of January 2018.*
- f. 7 December 2017 – that a hearing date had been confirmed for 30th January 2018, and/or that there was a deadline for the evidence bundle of 16th December 2017.*
- g. January 2018 – that the hearing had been postponed because of a clash.*
- h. February 2018 – that he was due to receive a new hearing date that coming week.*
- i. 28 February 2018 – that the hearing date had been set for 27th or 28th March 2018.*
- j. 16 March 2018 – that there was a two-day window for the hearing, and/of it would be held in London or Cambridge, and/or that he would know the details the following week.*
- k. 20 March 2018 – that the hearing would take place on 28th March 2018.*

- l. 12 June 2018 – that the hearing had gone ahead and that he had been told that the Tribunal had directed a new valuation should be undertaken due to the two valuations being so different.*
- m. 25 June 2018 – that the Tribunal had made a determination that the two valuations provided by the leaseholder and the freeholder were too far apart and the Tribunal had therefore instructed that a new valuation be done.*
- n. 29 June 2018 – that he was preparing a report with his recommendations.*
- o. 21 July 2018 – that the Tribunal had ordered an independent valuation to determine whether the insurance premium was excessive, and/or that he had provided suggested valuers to the Tribunal, and/or that he understood the Freeholders had done the same and or that the suitability of the suggested valuers was being assessed.*
- p. 24 July 2018 – that there had been a misunderstanding and/or that the Tribunal had not made a determination and/or the matter was still ongoing.*
- q. 26 July 2018 – that he had spoken to Chris Last about a strategy, and/or he (Robert Heald) was instructing a local surveyor at his own cost to prepare a comparable reinstatement cost valuation to support the leaseholders' case at the Tribunal.*

Preliminary Matters

1. On behalf of RICS, Mr Rich highlighted that RICS Bye-laws provide that the rules which apply to disciplinary cases are those which were in force at the time that the matter came to the attention of RICS (Bye-law 5.6). As this case covers four separate concerns raised with RICS on different dates, these concerns span three sets of rules. These are the Disciplinary and Appeal Panel Rules v8 in force on 11 December 2019, the Regulatory Tribunal Rules v1 in force on 14 June 2021 and the Regulatory Tribunal Rules v2 in force on 11 December 2023.
2. The provisions of all three sets of rules referred to above are in near identical terms. In order to provide consistency, it was suggested that it was most appropriate that the Regulatory Tribunal Rules v2 with effect from 2 February 2022 should apply throughout, but that this was a matter for the Panel. Mr Heald had no objection to the adoption of this approach.

3. The Panel assured itself that no prejudice arises in relation to the Member by the application of the Regulatory Tribunal Rules with effect from 2 February 2022 and determined that this was the appropriate course of action in the interests of consistency and fairness.

Notification of Service

4. The Panel noted the witness statement of Jae Berry, Regulatory Tribunal Executive and were content that notice had been served on Mr Heald on 29 August 2024. In her statement Ms Berry stated that “the notice was not served in accordance with Rule 53 of the Regulatory Tribunal Rules (56 days’ notice), as Mr Heald has agreed to waive the formal notice period.” Mr Heald was present and confirmed that he was indeed content to waive the formal notice period to allow the hearing to be scheduled and proceed.

Response

5. Mr Robert Heald admitted the following Allegations. Some were admitted at the outset and others during the course of the hearing.

Allegations admitted

6. The following Allegations were admitted:

- Allegation 1 and Schedule A apart from f and g in the schedule.
- Allegation 2 a and b
- Allegation 3 a and b
- Allegation 5 b, c, d, e, j and k
- Allegation 6
- Allegation 11
- Allegation 12
- Allegation 14 a i) and ii)
- Allegation 17 a and d i)

- Allegation 18 and 18 i)
- Allegation 19 a, b, c, d and e
- Allegation 20 a

7. All the above were proved by way of admission. Additionally, where an allegation included dishonesty or lack of integrity, the Panel did not rely solely on the admission but applied the appropriate tests to make a specific determination.

Introduction

8. Mr Heald is the sole principal of Wallakers, an established firm which amongst other services, undertakes Property Management for a number of clients. The Firm is not regulated by RICS. Mr Heald is also a RICS Registered Valuer.

Background

9. RICS received a number of complaints about Mr Heald between 2019 and 2022, and this case is based on complaints in connection with four properties:

- a. Complaints raised by Emily Lodge with regard to Sandown House in December 2019, although these concerns relate to events which took place between 2017 and 2019. These complaints allege that Mr Heald failed to lodge an application with the First Tier Tribunal (FTT) relating to an insurance premium and misled Ms Lodge for a year as to the status of the application. It is also alleged that in relation to some 'Major Works' Mr Heald failed to follow instructions from his client. The leaseholders say they have suffered financial loss as a result.
- b. Complaints raised by the Directors of Cherwell Court. These allege that Mr Heald, who was acting as property manager for Cherwell Court at this time, falsely assured the Board of Directors that he had instructed solicitors to recover an unpaid service charge and misled the Board about progress. It is further alleged that Mr Heald failed to submit an insurance claim subsequently making further false statements about the matter.

- c. Complaints raised by Viviane MacCallum with regard to Blakes Avenue in September 2022. These allege a failure to deal with party wall issues promptly, or at all, and that he failed to respond to a formal complaint about the matter.
- d. Concerns relating to Cedars Resident Management Limited (CRML), received from Mr W. These include a failure to notify Companies House of the resignation of the sole director in 2013 and repeated dishonest submissions to Companies House relating to CRML.

10. Mr Heald provided a witness statement and e-mail exhibits, which formed the basis of his evidence to the Panel. He also gave oral evidence, which was subjected to cross-examination by Mr Rich, on behalf of RICS.

Burden and Standard of Proof

11. The burden of proving the allegations is on RICS and the standard of proof required is the balance of probability. There is no burden of proof on Mr Heald

Evidence

12. The Panel were provided with considerable documentary evidence on behalf of RICS including witness statements and exhibits from Ms Lodge (Sandown House), Mr Ackerley and Mr Khan (Cherwell Court), Ms MacCallum (Blakes Avenue) and Mr W (CRML). The Panel were also provided with witness statements from Carol Kerr, the RICS Lead Investigator.

13. The witness statements of the above witnesses were not contested by Mr Heald, who indicated that he had no questions to put and did not wish to cross-examine any witnesses, therefore none of these witnesses were called to give oral evidence.

14. The primary evidence from Mr Heald came in the form of a witness statement he had provided. This was supplemented by his oral evidence which was tested under cross-examination by Mr Rich.

Submissions by RICS

Allegations relating to Sandown House

15. On behalf of RICS, Mr Rich clarified with regard to Sandown House, that it was more accurate to say that Wallakers were instructed, and Mr Heald assumed responsibility for the instruction as sole principal, and by virtue of the fact that it was with Mr Heald that the Leaseholders dealt for the important matters.

16. Mr Rich also explained that he would continue to refer to the party on the other side of the FTT disputes throughout as “the Freeholder” to avoid unnecessary confusion, despite a change in title part way through the period (Landlord/Reversioner).

17. Mr Rich submitted that as the Leaseholders were concerned that the Freeholder was over-charging them for buildings insurance based on an excessively high valuation, Ms Lodge asked Mr Heald to do a valuation on the property, which Mr Heald completed dated 28 March 2017.

18. On 8 June 2017 the Leaseholders instructed Mr Heald to make an application to the First Tier Tribunal (FTT) regarding the buildings insurance charge and paid a fee of £1,500 + VAT for the service.

19. In July and early August 2017, having heard nothing from Mr Heald about the application, Ms Lodge sent chasing emails to him. Mr Heald said he was working on the application.

20. Ms Lodge chased Mr Heald on the 3rd, 7th and 8th August 2017. Mr Heald replied saying that he understood the urgency of the application and was “making finishing touches” having taken some advice from officials at the First Tier Tribunal. On 14th August 2017, Mr Heald sent Ms Lodge a statement and supporting documents he had drafted to support the application.

21. In relation to Allegations 2 and 3, Mr Rich submitted that on 16th August Ms Lodge emailed Mr Heald to ask if the application had been sent to the FTT. Mr Heald responded that day saying, “yes gone”. This statement was false. Mr Heald was later to admit that no application to the Tribunal had been submitted.

22. From this point on Mr Heald continued making false representations about what was going on with the FTT application. For example, on 26th August 2017, Ms Lodge emailed Mr Heald to ask if the FTT had confirmed receipt of the application. Mr Heald replied on 29th August “Not as yet normally takes around 14 days to get registered and a file opened but may [sic] be a little longer in the holiday period”.

23. Mr Rich stated that Mr Heald knew at this point that the reason there had been no confirmation from the FTT was not administrative delay or the holiday periods, but because no application had been lodged.

24. Mr Rich went on to submit that between August 2017 and the following July, Mr Heald successively told Ms Lodge that an acknowledgement had been received; that “the file is before the Chair of the panel so that directions can be issued”; that a provisional, then a final, date had been set for the hearing; and then that the hearing had been postponed because of a clash. He gave her details of a new hearing date and the venue for the hearing. He claimed that the hearing had actually gone ahead but Tribunal had directed a new valuation, that he was preparing a report with his recommendations, that he had made recommendations for independent valuers to the Tribunal and that he was instructing a local surveyor at his own cost to prepare a comparable reinstatement valuation.

25. Given that, at this point, no application had been made to the FTT, none of these representations can have been true, and Mr Heald must have known that.

26. In late July 2018, Ms Lodge continued to chase Mr Heald for more information about the case. Finally, on 31 July 2018 she managed to reach him on the telephone. He then admitted that he had never submitted an application to the FTT and had been lying about the hearing and the determination. Mr Heald said he would engage a solicitor and sort the issue out at his own cost.

27. Mr Heald did not dispute Ms Lodge’s account of the phone call which she put in an email on 3 August 2018 stating, “When we spoke on Tuesday and you told me that despite all the updates and info you hadn’t ever done the Insurance Tribunal, nor attended the Hearing you told me you did, you promised me that you would work to resolve this ...”. Mr Heald replied on 7 August 2018 “I have seen all the various emails on this which appears to give a clear summary of the situation”.

28. The whole process of application then had to be started. It was submitted and signed for at the FTT on 13th August 2018, a hearing was held on 25th March 2019 and a decision was handed down on 1st April 2019.

29. Mr Rich submitted that Mr Heald was under a duty to submit the application to the FTT long before August 2018. He accepted instruction to do so, and thereby assumed responsibility for it. During all the correspondence he at no point suggested this was a responsibility that fell on another person or organisation. Alternatively, even if he were not responsible for submitting the application, he should have informed the Leaseholders that no application had been made

30. Mr Rich submitted that Mr Heald knew the following facts at the material times:

- a. He had accepted instructions to make an application to the FTT.
- b. He was therefore under a duty to make the application or, if for some reason that was impossible, inform the Leaseholders accordingly.
- c. Neither he, nor anyone else, had made the application to the FTT in this matter.
- d. The various statements he made about the process were therefore untrue.
- e. Ms Lodge would rely on his representations about the application.

31. Mr Rich further submitted that if the Panel determines that Mr Heald was fully or partially in the subjective state of mind indicated above, it is submitted that making those representations would be regarded as dishonest by the standards of ordinary decent people. He referred the Panel to case law on this matter as set out in *Ivey vs Genting Casinos* [2017] UKSC 67.

32. In terms of Allegation 5 – Major Works Instruction, Mr Rich made the following submissions.

33. The costs of major works done by the Freeholders, had been passed on to the Leaseholders in their service charges. It was the view of the Leaseholders that those works had been inadequately and incompletely performed. The Leaseholders had obtained a quotation to remedy the defects in the works of £156,000 + VAT.

34. Alongside the Insurance work, on behalf of the Leaseholders, Ms Lodge instructed Mr Heald to pursue an FTT claim on the matter of the 'Major Works' issue.

35. After some delays and difficulties, an application was submitted to FTT on 29 August 2018. There followed an unsuccessful attempt at mediation during which the Freeholder put the cost of rectifying the defective works at around £30,000.

36. On 24 January 2019, Ms Lodge suggested that Mr Heald go through the Landlord's report identifying items that were not included. Mr Heald replied suggesting to Ms Lodge that they needed to commission their own professional building surveyor to report on whether the original works had been done, and to advise on the value of the work done and its quality. Ms Lodge asked him if he could recommend a surveyor to do this, although she wanted a further discussion with Mr Heald and the solicitor, Mr Last, before committing to the cost of any independent surveyor's report. She also suggested that a strong letter to the Landlord be sent advising them that there were items missing from their report.

37. On 25 February 2019, Mr Heald emailed Ms Lodge with the name of a local building surveyor. In an exchange of emails it was agreed that Mr Heald would speak to the surveyor. Ms Lodge continued to chase the letter which she had asked to be sent to the Freeholder.

38. On 4 March 2019 Mr Heald wrote to Ms Lodge in the following terms: “The [FTT] directions provide for us to file our surveyors report by 15th March and send through to the other side. It will have to be an independent report based on a review of the building contract the quality of the works and materials and a schedule of works costed to include incomplete works and works not completed. The surveyor will act for us and nobody else and provide his own report and not have sight of the Greenyer report at this stage. If he requires access at a high level we can assist as we have a contractor who has a cherry picker and can be brought to site.”

39. On 19 March 2019 Mr Heald wrote to Ms Lodge: “... in the absence of your instructions to appoint a building surveyor to produce a report ... I submitted our own report”. Mr Heald suggested that the Freeholders were now prepared to offer £60,000 to settle the case.

40. Ms Lodge states she was horrified to hear that his report had been submitted to the Tribunal. She emailed Mr Heald on 19 March 2019 saying that Mr Heald had never been instructed not to pursue an independent surveyor, nor had he been instructed to submit his own report to the FTT. She stated that the £60,000 offer was unacceptable but might have to be considered in the situation they faced.

41. Mr Rich submitted that Mr Heald must have known that he was instructed to find a suitable independent surveyor, get a quote and then either instruct the surveyor to provide a report or recommend the surveyor to the Leaseholders. Mr Heald himself had told the Leaseholders that the surveyor had to be independent, and so knew that he could not provide his own report to the court. He failed either to find a suitable surveyor or revert back to the Leaseholders if he could not find one.

42. At no point in the documents, or the evidence of Ms Lodge, is it suggested that Mr Heald should submit his own report without referring to the Leaseholders.

43. On 21 March 2019, an application by the Leaseholders for an adjournment was refused.

44. On 3 April 2019, Ms Lodge wrote to Mr Heald again reiterating there was never an instruction not to appoint an independent surveyor, asking why Mr Heald had submitted his own report, and asking what the ramifications were of not following the direction to submit an independent surveyor's

report. Mr Heald responded on 10th April saying he had inspected Sandown House and that in his submission he had covered everything that had been previously agreed.

45. The hearing went ahead on 5 September 2019 with Mr Heald representing the Leaseholders. Ms Lodge was not present. The claim related to the unreasonableness of the service charges, given that the work done was said to be incomplete, or not properly done. The judgment reveals that the Court reminded Mr Heald that he could not be both an expert for the Leaseholders, and their representative. He chose to be the representative, which meant that his report could not be used to support the Leaseholders' case.

46. In the judgment the court held that "having considered the documentation included in the bundle, the Tribunal agreed with the Respondents [the Freeholder] that it contained no evidence on which [the Application] could succeed". It mentioned that the Leaseholders had not supplied an independent surveyor's report to establish their case, and in the absence of other evidence supplying that lack, there was, effectively, no case for the Freeholder to meet. The application was dismissed, with directions made about an application for costs by the Freeholder.

47. The judgment was handed down on 10 September 2019. Mr Heald did not inform the Leaseholders or supply them with a copy. Ms Lodge chased him on 9, 17 and 24 October 2019, and eventually called the Tribunal herself. She was told that the judgment had been sent out on 17 September 2019.

48. Ms Lodge emailed Mr Heald on 29 October 2019, informing him that she knew the judgment had already been sent out. He responded sending a copy of the judgment and undertaking to get back to her about what could be done to get any money from the Landlord. Ms Lodge also asked Mr Heald if there had been an application from the Landlord for costs.

49. By the time Mr Heald supplied the judgment, the 28-day period for an appeal had already passed.

50. Ms Lodge received no reply to her enquiry about costs. The Leaseholders therefore remained ignorant of the fact that costs had been applied for on 25 September 2019 and awarded against them. On 17 October 2019 the deadline for the Leaseholders to make submissions about costs passed, and on 16 December 2019 the costs decision was therefore made purely on the basis of the respondent's material.

51. On 29 and 31 October 2019, Ms Lodge sent Mr Heald a formal complaint. He did not acknowledge it, so she chased him up on 16 November 2019. Mr Heald acknowledged the complaint on 18 November 2019 but, despite being chased on 2 December 2019 Mr Heald never provided a response.

52. Ms Lodge made a complaint to RICS on 11 December 2019, some months before she discovered, on 2 March 2020, that costs had been awarded against the Leaseholders.

53. Ms Lodge chased Mr Heald on 4, 6 and 11 March 2020 asking how he intended to help the Leaseholders recover at least the £30,000 which the Freeholder had acknowledged was needed to repair defects in the major works. She received no reply to these emails.

54. In his May 2023 response, Mr Heald sets out a number of health factors, which, he suggests, may have affected him psychologically. He also notes that much of this activity took place during the Covid pandemic.

Allegations relating to Cherwell Court

54. In relation to Allegations regarding Cherwell Court Mr Rich made the following submissions.

55. Concerns were reported to RICS in June 2021. At the relevant time, Mr Heald was acting as property manager for Cherwell Court.

56. RICS relies on the statements of Mr Ackerley and Mr Khan; Mr Shabir Khan was a proxy board director at Cherwell Court at the relevant time and Mr Philip Ackerley was the Chair of the Cherwell Court Board (King River Flats Ltd) at the relevant time.

57. Wallakers, Mr Heald's firm, was appointed managing agents of Cherwell Court in 2016.

Allegations 6-10 – the Arrears Instruction:

58. Mr Ackerley explains that one of Cherwell Court's residents, Mr Pytel, had been withholding his service charges. Numerous requests for payment of the service charge had been made to Mr Pytel and not complied with. In January 2021 the Board instructed Mr Heald to begin the formal recovery process via solicitors.

59. On 15 March 2021, Mr Heald emailed Mr Ackerley and other Cherwell Court Board members saying "Pytel arrears now collected I am advised by the solicitors!"

60. On 26 May 2021 Mr Ackerley emailed Mr Heald reminding him that no confirmation had been provided to the Board that the Pytel arrears had been paid, and that the current information available to the Board suggested that Mr Pytel still owed around £7,000 in arrears.

61. Mr Ackerley emailed Mr Heald again on 1 June, this time asking for documentary evidence of Mr Heald's correspondence with the solicitors. Mr Heald replied on 2 June saying that he had instructed Howell Jones and Partners to deal with it, and that he had asked for a copy of the file for Mr Ackerley. The same day Mr Ackerley asked for the details of the contact in the solicitors, and asked Mr Heald to authorise the solicitors to talk to the Board.

62. On 25 June 2021, Mr Ackerly discovered that Howell Jones had never been instructed by Mr Heald to recover the arrears from Mr Pytel.

63. Mr Rich submits that Mr Heald knew that neither he, nor anyone at Wallakers, had instructed Howell Jones and Partners in this matter. He therefore knew that his statements as set out in the allegations were untrue. To act in this way is dishonest by the standards of decent and honest people.

Allegations 11-16 – the Flood Claim:

64. In his witness statement, Shabir Khan explains that in early April 2021, he met with the occupants of Flat 32 Cherwell Court. They informed him verbally that back in October 2020 they submitted an insurance claim for hotel expenses to Wallakers, relating to flood damage to their flat which had occurred in October 2020. They asked for Mr Khan's help in recovering these costs.

65. The resident of Flat 32, Jonathan Parker, forwarded to Mr Khan various emails between himself and Robert Heald, one of which was dated 12 February 2021. In this email, Mr Heald writes "Insurance funds received can you provide bank details for the transfer please?" Mr Parker wrote back on the same day giving the bank information and Mr Heald replies "... will arrange the transfer".

67. On the 22 April 2021, Mr Khan met again with the residents who informed him that nothing had been received. Mr Khan emailed Mr Heald on 23 April 2021 and requested an update in relation to the reimbursement of expenses incurred by the residents of Flat 32.

68. Mr Heald informed Mr Khan on 28 April 2021 that the expenses had been "sorted" and would be 'on the payment run this week'. The money was not transferred.

69. The board of KRF decided in April 2021 to terminate the appointment of Wallakers as their managing agents and appointed a new company, Haus, to manage the building.

70. In May 2021 KRF Ltd had still not received the insurance claim money and instructed Haus to pursue the claim. The Board was informed by Haus in June 2021, that after multiple enquiries, the insurers had stated that no claim had ever been filed regarding flood damage and repair to Flat 32.

71. Haus then had to start a retrospective claim.

72. Mr Rich submitted that Mr Heald's conduct was dishonest. Applying the Ivey test it is submitted that Mr Heald knew the following:

- a. That Wallakers, and/or he personally, had assumed responsibility for submitting an insurance claim for expenses incurred by the tenants in connection with a flood at Flat 32, Cherwell Court.
- b. That no such insurance claim had in fact been submitted.
- c. That no money had been received by Wallakers in settlement of the occupants' claim.

73. If the Panel were to find that Mr Heald was wholly or partially in the state of mind outlined above, his conduct in making the representations he did was dishonest by the standards of ordinary decent people.

74. Mr Heald, in his May 2023 account, states that Mr Khan had tried to deal with the arrears for six months, before handing it back to Mr Heald. He states an issue had arisen with flooding from Mr Pytel's flat, which affected No 32 below and meant the occupants had to be rehoused [so it is linked to the Insurance Instruction]. Mr Heald says that this was the time of Covid, and Mr Pytel's wife was a medical professional with a young daughter so would not allow contractors into the flat to sort out the leaks.

75. Mr Heald states that he was consulted over whether it would be covered by the insurance. He states "Insurers refused to accept the cost of the alternative accommodation and due to our error, we agreed to pay for this. The resultant damage within the flat was not accepted as an insurance claim due to the known disrepair of the building in place".

76. He goes on to say that "during this time, Mr Pytel had refused to pay his service charge and action was being pursued separately through our Company's Solicitors for debt recovery, Messrs Howell Jones".

Allegations relating to Blakes Avenue

77. On Allegations relating to Blakes Avenue Mr Rich made the following submissions. (Allegations 17-18)

78. Ms Viviane MacCallum was an adjoining owner in a Party Wall matter. On 30 November 2020 Ms MacCallum appointed Mr Heald to act on her behalf in the matter. Ms MacCallum's property is situated at Blakes Avenue, Surrey.

79. Ms MacCallum was concerned about a number of issues that arose in relation to the works done by her neighbour. During 2021, Ms MacCallum raised with Mr Heald that, among other things, the Party Wall Agreement stated that works could only happen during certain times/dates, however this was not followed. She was also concerned that her wall had been damaged by the neighbours' work.

80. She states that she often had to chase Mr Heald for a response to her concerns. For example, on 13 May 2021 Ms MacCallum wrote to Mr Heald following a site visit he made to add additional concerns. He replied that he would pass it to the builder's surveyor. Ms MacCallum then chased him on 21 June, 25 June and 7 July 2021. He replied on 8 July 2021 that he was trying to arrange a visit with the other surveyor. Ms MacCallum then emailed him further on 23 July, 9 August, and 23 August 2021 as he appeared not to have managed a meeting with the other surveyor in the three months since his site visit.

81. On 10 January 2022, Ms MacCallum emailed Mr Heald asking what the latest was concerning outstanding works, given that her neighbours had been back in residence since December. She chased him on 24 January 2022, and he replied saying he was organising a final survey.

82. Ms MacCallum then chased Mr Heald on 23 February 2022, and he replied saying that he had been chasing the neighbours' surveyor. In fact it was apparent from a string of emails Mr Heald forwarded to Ms MacCallum on 26 February 2022 and that he had contacted the other surveyor on the days that Ms MacCallum emailed him, suggesting that it took her prompt to get him to act at all.

83. There was an exchange of emails on 26 and 27 February 2022 about arranging possible dates. Mr Heald did not reply to the email of 27 February 2022. Ms MacCallum chased again on 14 March 2022 and an inspection visit on 17 March 2022 was arranged.

84. Ms MacCallum heard nothing after the visit. She emailed Mr Heald on 26 April 2022, 16 and 25 May 2022, when she complained that her emails and multiple calls to his office had been ignored.

85. The 25 May 2022 email prompted a response from Mr Heald: “I haven’t had a response from them!”. He went on to claim to have issued a “14 letter before County Court proceedings”. Mr Heald did not explain what this is, although paragraph 14.3 of the Pre-action Protocol for Professional Negligence talks of giving a professional 14 days written notice of court action.

86. If that is what Mr Heald was referring to, he had no instructions to send any such letter and should have explained to Ms MacCallum that he had decided to initiate the protocol and sought her agreement to that course of action before embarking on it. If he had not in fact written such a letter, then in stating that he had, in the knowledge that he had not, he was dishonest.

87. After that point Mr Heald stopped responding to Ms MacCallum. Emails of 12 August and 15 August 2022 went unanswered, as did a formal complaint on 9 September 2022.

88. Ms MacCallum then complained to RICS. RICS initially wrote to Mr Heald about Ms MacCallum’s concerns on 26 October 2022. RICS did not initially receive a response to that letter, although Mr Heald sent a series of emails to the RICS investigator in March 2023, and provided a general response to all the concerns in these proceedings in May 2023.

89. In an email on 6 March 2023, Mr Heald states that he did act promptly when issues with the works were raised with him, the neighbours’ surveyors were advised about damage to Ms MacCallum’s property and inspections were done at the request of Ms MacCallum. He states that the problem in pursuing matters after the works were complete were caused by the difficulty in contacting the neighbours’ surveyor, who had gone abroad. He states, “I have tried throughout this instruction to act in a proper and professional manner and whilst I can understand the complainant frustration this was outside my control in the main”.

90. Seen as a whole, Mr Heald’s conduct of the case shows a lack of diligence and care. He needed to be prodded into action, then appeared to subside into inaction for long periods. Ultimately, he stopped responding at all, including to a formal complaint.

Allegations relating to Cedars Resident Management Ltd (CRML)

91. On Allegations relating to Cedars Resident Management Ltd [CRML] Mr Rich made the following submissions, (Allegations 19-23).

92. Cedars Resident Management Limited [CRML] is the management company for a property in Norbiton called The Cedars; the property consists of 13 residential flats. Mr Heald is the managing

agent for the property and is also the company secretary of CRML. He was appointed as Company Secretary in February 2004. Mr Heald was appointed as a director of CRML on 6 June 2022 and remains listed as the company secretary and sole director of CRML.

93. Mr W owned flat 13 at The Cedars until he sold it in August 2013. Mr W had been a director of CRML from February 1992. When he sold his flat, Mr W resigned his position as director of CRML. Mr W notified Mr Heald of his resignation as director of the company on 7 August 2013. Mr Heald confirmed on the same day that he would arrange Mr W's resignation with Companies House; Mr W had nothing else to do or complete in that regard.

94. Mr Heald did not notify Companies House of Mr W's resignation until 6 June 2022 which is also the date at which Mr Heald was appointed the sole director of CRML although he continued in his role as company secretary.

95. A search of documents filed on behalf of CRML with Companies House reveals that, between 21 March 2015 and 12 April 2022, eight Directors' Report and Financial Statements were filed on behalf of CRML. Each of those reports named Mr W as the company director and Mr Heald as the Company Secretary. The reports each bear a signature purporting to be that of Mr W; the signature appears twice on each report.

96. Mr W has confirmed that the signatures are not his.

97. During that time-period there were no other active directors of CRML listed with Companies House. It is submitted that there is a strong inference to be drawn that Mr Heald, as the only active company officer, drew up those reports and that he named Mr W as a director of the company despite knowing that he had resigned in 2013. Similarly, it is alleged that it was Mr Heald who forged Mr W's signature on each report, and Mr Heald who submitted or caused those reports to be submitted to Companies House.

98. In addition to those eight reports, Companies House records show that two annual returns (AR01 Forms) were submitted to Companies House. The first was received on 22 December 2014; the second was received on 21 December 2015. They both name Mr W as the sole company director.

99. On 6th June 2022, Companies House received a form notifying the termination of Mr W's appointment as director of CRML. That form had to be authorised by an officer of the company of which there was only one at that time, namely Mr Heald.

100. Mr W became aware of the termination of his appointment in late 2023. Having researched the documentation available on Companies House, he contacted Mr Heald by email on 15 December 2023. Having had no response, Mr W contacted Mr Heald again the following day. On 17 December 2023, Mr Heald replied saying that he was unaware of the matter and surrounding circumstances but would look into it urgently.

101. On 20 December 2023, Mr Heald sent a further email saying that he had been investigating the matter with his team to get an understanding of what had been happening. He did not say who that team was, nor did he divulge any results of his investigation. Mr Heald asked to arrange a call to discuss the matter. Mr W declined as he wanted there to be a written record of any communication. Mr Heald has not made any further contact with Mr W.

102. Mr Heald has provided a response to the allegations raised regarding this particular matter. The response was by way of email dated 11 March 2024. In summary, Mr Heald has said that after Mr W sold his flat in 2013, Mr Heald wrote to the shareholders (other flat owners) advising that Mr W would be resigned as director but only after an alternate shareholder was appointed. Mr Heald states that he received no response from the shareholders, so Mr W remained as the sole director. Mr Heald states that in 2022 he made further requests for shareholders to come forward as directors without success, so he became the director.

103. Mr Heald's response does not explain why he did not tell Mr W, given that Mr W had resigned. It does not explain why he waited nearly nine years before taking on the role of director which he could have done in 2013. The response does not deal with the issue of the forged signatures at all.

Submissions by Mr Heald

104. Mr Heald provided a witness statement and provided oral evidence on his own behalf.

105. Mr Heald submitted that he was a very experienced property manager for a number of developments in the Surbiton area covering all aspects of repairs, maintenance, budgets, service charge collections etc. and also including Section 20 major works.

106. With regard to the allegations and the Witness Statements put forward by RICS he said *"Turning now to the Witness Statements provided which are before the Disciplinary Panel which we have reviewed in detail and sought legal advice in respect of these. Contrary to the legal advice obtained, we do not intend to contest these and have confirmed to the Panel that we do not require*

witnesses to be present to be questioned by us. We do this to try and assist the Panel without the need to go through the voluminous Witness Statements Bundle in detail.”

107. Mr Heald made some statements “from our side” regarding the four complaints received.

EMILY LODGE re SANDOWN HOUSE

108. Regarding Sandown House, Mr Heald submitted the following statements:

- a. *“We were originally instructed by Ms Lodge to act on behalf of the Lessees in preparing a valuation for purchase of the Freehold Interest by way of Collective Enfranchisement”.*
- b. *“This was completed and following service of the statutory notice and counter-notice received, we entered into detailed negotiations with the Freeholders and their Surveyors and following an application to the Tribunal this was eventually settled at the eleventh hour on the day before the date of the Tribunal”.*
- c. *“Part of the reasons that they wished to acquire the Freehold Interest was due to the ineffective management put in place by the Freeholder, the poor quality of recent major works completed with a high cost, quality of work etc. and also the high level of insurance premiums imposed in accordance with the Lease by the Freeholder”.*
- d. *“Ms Lodge had already submitted an application to the Tribunal for a determination in respect of the level of premiums and she wished me to take this over”.*
- e. *“Following a review of the application as this was something we had not done previously and discussing with other professionals, it was considered that the application was incomplete and needed further evidence etc. to be provided”.*
- f. *“We were instructed jointly with Solicitors who acted for her in the purchase of the Freehold to submit separate applications in respect of the insurance and major works which in turn resulted in a mediation at the Tribunal Offices in Portsmouth which after a day long session resulted in a without prejudice offer of £60,000 to settle this matter which despite strong recommendations from the Solicitors and ourselves Ms Lodge rejected”.*
- g. *“Both the Solicitors and ourselves fully explained the uncertainties of progressing this to the Tribunal and that there were no guarantees of success”.*

- h. "Hearings in respect of the insurance and major works applications were subsequently held with the Solicitors dealing with the insurance and ourselves dealing with the major works but both applications were unsuccessful".*
- i. "It should be noted that we have not charged, with the exception of our work on the Freehold Enfranchisement, which was successful, for any other aspect of our involvement in this matter and indeed we have paid for the costs of the application for the FTT and an independent valuation for insurance purposes of the property ourselves".*
- j. "Ms Lodge has raised a complaint about our actions to the RICS but we understand has not filed any complaints about the actions of the Solicitors involved in this matter".*
- k. "Despite her alleged grievance about our services, she has not pursued any legal recompense from us in this matter".*
- l. "However, having reviewed the Witness Statement and considered our actions in this matter and upon reflection we do not consider it was appropriate for us to become involved the FTT Hearings for the Insurance and major works. This was outside our level of expertise and experience and we had no prior experience with dealing with FTT matters in these connections".*
- m. "We have FTT experience in respect of Lease extensions and Freehold Enfranchisement cases over a number of years".*

DIRECTORS OF CHERWELL COURT

109. Regarding Cherwell Court, Mr Heald submitted the following statements.

- a. "We took over the management of Cherwell Court following the recommendations from the Directors as Cherwell Court is also part of King's River Gardens, an estate of 129 houses and flats to include Cherwell Court, for which we have managed for over fifteen years dealing with the estate and grounds maintenance of this 30-acre site for residents".*
- b. "There is a particular Lessee at Flat 36, Mr Pytel, who has caused considerable difficulties during our management of King's River Gardens due to non-payment of service Allegations, questioning contracts, expenditure etc. but when we took over the management of Cherwell Court, whilst we were aware of his residence at the property we were unaware of the history and the difficulties that he posed to the Directors and the previous Agents".*

- c. *"By way of explanation, Mr Pytel has a top floor penthouse flat with three roof terraces which are accessed through his flat or in extreme circumstances from the top of the building dropping down onto his terraces. It transpires that he had suffered from a number of leaks over the years from the roof and his terraces internally to his flat, which had not been satisfactorily dealt with. At his own expense, he employed the services of a Building Surveyor with whom we met with on site and produced a long list of defects for the Company's compliance".*
- d. *"Mr Shabir Khan, a proxy Director on behalf of his brother who owned the adjoining flat at the same level, took over the responsibility to try and deal with Mr Pytel and deal with the outstanding issues. We provided various recommendations as to Contractors etc. who could assist with these works".*
- e. *"After months of dealing with him, the relationship between them fell apart and it was passed back to us to take over and resolve".*
- f. *"At that time, COVID restrictions were in place and due to his wife working within the medical profession and his young daughter, he denied access to Contractors etc. from within the flat".*
- g. *"During the times of heavy rain, a leak occurred into Flat 32 beneath from the roof terrace resulting in the Lessees having to be re-housed in temporary accommodation. I was consulted as to whether this would be covered under the insurance and considered that it would be but as this occurred over the weekend would be unable to check until the Brokers Offices re-opened in the week".*
- h. *"Insurers refused to accept the cost of the alternative accommodation and due to our error, we agreed to pay for this. The resultant damage within the flat was not accepted as an insurance claim due to the known disrepair of the building in place".*
- i. *"During this time, Mr Pytel had refused to pay his service charge and action was being pursued separately through our Company's Solicitors for debt recovery, Messrs Howell Jones".*
- j. *"Due to these factors, our relationship with the Directors of Cherwell Court broke down and we were given notice to terminate our services".*

VIVIANE MACCALLUM (BLAKES AVENUE)

110. Regarding Blakes Avenue, Mr Heald submitted the following statements.

- a. *"This matter refers to a Party Wall Agreement where we were employed by Ms Maccallum as her Adjoining Owner Surveyor in respect of works notified by the Building Owner of the adjoining property".*
- b. *"A Party Wall Agreement was entered into following a meeting on site with the Building Owners Surveyors and also the Complainant and the Award put in place".*
- c. *"During the works, Ms Maccallum complained about the hours of working by the Building Owners Contractors and representations were made by us to the Building Owners Surveyors".*
- d. *"We also attended during these works following concerns in respect of damage to the property, which were photographed and notified to the Building Owners Surveyors for inclusion within the final Schedule of Condition Inspection upon completion of the works. Copies of the email correspondence are attached".*
- f. *"The Building Owners Surveyors, despite numerous chasers, failed to respond to carry out the final inspection with us".*
- g. *"After representations directly with the Building Owner, the Building Owners Surveyors have finally contacted us and requested dates and times for this to be carried out. To date Ms Maccallum has failed to respond to requests for attendance and confirmation thereof".*
- h. *"We do not consider that this complaint is substantiated and we have acted properly in this matter".*
- i. *"This matter has also been referred to the Property Redress Scheme of which we are members and we attach hereto correspondence in respect of this and a decision has been made. Although we do not agree with the claim against us, we have paid the amount due to her and as far as we are concerned this matter is closed".*

THE CEDARS RESIDENT MANAGEMENT LIMITED

111. Regarding Cedars Resident Management Limited, Mr Heald submitted the following statements.

- a. *“By way of background in this matter, we have acted as the Managing Agents for this property which comprises a detached building of 13 purpose-built flats over three/four floors for approximately 20 years. Our Mr Heald is also the Company Secretary”.*
- b. *“Mr W was the Sole Director and sold his flat in August 2013. Whilst he wished to resign as Director, we were unable to register this at Companies House without a further Shareholder coming forward to take his place”.*
- c. *“Despite repeated requests to Lessees for them to come forward to take his place, this was never forthcoming”.*
- d. *“In our capacity as the Managing Agents for CRM Limited and Company Secretary, our role is to the Company as a whole and as Company Secretary we arrange for filing of Dormant Accounts at Companies House in order to maintain the registration of the Company and to ensure that the Company was active so sales and re-mortgages of the flats could continue”.*
- e. *“Responsibility for the Accounts is with ourselves as Company Secretary and Managing Agents and eventually, after discussions with Companies House, in order to resign Mr W as Director, I took over the role as Director notwithstanding the Memorandum and Articles of Association in order to regularise the situation”.*
- f. *“I contest that there was any dishonesty but as Company Secretary I have a role and responsibility to all the Shareholders in order to maintain filing of the Accounts at Companies House”.*
- g. *“I nor Wallakers have not benefited financially from any actions taken in this regard”.*

112. Mr Heald also provided additional oral evidence during cross-examination. Following his oral evidence Mr Heald was offered the opportunity to consider overnight and bring forward any additional documentary evidence which would assist him. He did not submit any further evidence regarding the facts of the case.

Legal Advice

113. The Panel received and accepted the advice of the Legal Adviser. It was advised that RICS bore the burden of proof and the standard to be applied was the balance of probabilities. In addressing the issue of dishonesty, the Panel were advised to adopt the two-stage test from *Ivey v*

Genting Casinos [2017] 3 WLR 1212. In so far as lack of integrity was concerned the Panel was advised to adopt the definition set out in the case of Wingate and Others v SRA [2018] EWCA Civ 366. The Panel were also referred to Dutta vs GMC [2020] EWHC 1974 (Admin) in relation to the importance of contemporaneous documentary evidence.

Determination on the Facts

114. The Panel carefully considered all the evidence put forward and the submissions of the parties. It heard and accepted the Legal advice provided by Mr Bromley-Davenport. It considered all the evidence carefully and bore in mind throughout that the burden of proving the allegations on the balance of probabilities lay with the RICS and that there was no burden of proof on Mr Heald.

115. In reaching its determination, the Panel took full account of the evidence it had heard and read. It carefully considered all the documents before it, the witness statements relied on by the RICS and the written and oral evidence of Mr Heald.

116. The Panel noted that the statements of the witnesses for RICS all contained references to documentary evidence, much of it contemporaneous. They also noted that Mr Heald had accepted these witness statements and declined the opportunity to cross-examine or contest the evidence that they provided. The Panel considered each of the Allegations in turn.

Sandown House

Allegation 1 – Admitted

Allegation 2 a and b – proved except for Schedule A f and g

117. Allegation 2 a included reference to a schedule of representations made by Mr Heald, which was Schedule A items a – q. All of these representations were admitted by Mr Heald except for items c, f and g. The action at c was admitted during cross-examination and the facts of item f and item g were also admitted, however Mr Heald submitted that the contents of these two items were true and therefore they did not contribute to any allegation of dishonesty.

118. For Schedule A item f the panel heard evidence from Mr Heald that he had been in discussion with the First Teir Tribunal and was working towards the date of the 30 January 2018. The email in question did not state that the date was confirmed, just that there was a date for it, which could imply that the date was set. However, the Panel accepted Mr Heald's evidence and does not find that Schedule A item f amounts to dishonesty.

119. For Schedule A item g the Panel heard from Mr Heald that he did have a genuine clash with another commitment. The Panel accepted Mr Heald's account and therefore does not find that Schedule A item g amounts to dishonesty.

Allegation 3 a and b – proved in its entirety (admitted)

120. This allegation is based on Allegation 2 and therefore Schedule A and was admitted notwithstanding the findings on Schedule A items f and g above. Mr Heald admitted Allegation 3a) at the outset and admitted 3b as part of cross-examination. As 3b is an allegation of dishonesty the Panel explicitly considered the Allegation applying the test set out in *Ivey vs Genting Casinos* [2017] UKSC 67, despite the admissions. The Panel finds that Mr Heald knew the representations that he made as shown in Schedule A (other than f and g) to be untrue when he made them and the Panel considered that in light of that knowledge Mr Heald's representations at Schedule A items a – q (except items f and g) were, by the standards of ordinary, decent people, dishonest.

Schedule A items a – e and items h – q proved.

Schedule A items f and g – representations proved but not found to contribute to dishonesty

Allegation 4 – not pursued as it was an alternative to Allegation 3.

Allegation 5 – proved in its entirety

121. In regard to Allegation 5 a There was no documentary evidence that a quotation had been requested from an independent building surveyor for the production of a report. Nor was there any evidence to support the provision of such a quotation to the Leaseholders of Sandown House. Mr Heald submitted that he had in fact obtained a quote verbally from Bentley Pugh, a local surveyor, for £1000 + VAT. However, he went on to state that Bentley Pugh would not be interested in accepting the commission due to the nature of the work and the passage of time. He offered no evidence of any further action he took to provide an actionable quote. Mr Heald accepted that he did not revert to Ms Lodge on this, instead saying that he had a telephone conversation with an unnamed leaseholder.

122. The Panel were satisfied that Mr Heald had a duty to provide the Leaseholders with a quotation that could be taken up or to inform the Leaseholders why it was not possible to obtain such a quotation. There was no direct evidence to establish that either of these duties had been carried out. The Panel bore in mind the frequent use of email as the main form of communication and that Ms

Lodge's witness statement had been accepted by Mr Heald and Ms Lodge's account of events unchallenged. The information regarding a verbal quote was mentioned for the first time during cross-examination and was not substantiated in any other correspondence or evidence. This concerned the Panel given the length of time that Mr Heald had been aware of this allegation and thus limited the credibility that the Panel gave Mr Heald's account. The Panel therefore determined this Allegation was proved on the balance of probabilities.

Allegations 5 b, c, d and e - admitted

123. In response to Allegation 5 f the Panel noted that Mr Heald admitted that he attended the FTT on 5th September 2019 and by his own admission was acting as the Leaseholder's representative. He was therefore fully aware of the FTT outcome immediately, although he stated that he was awaiting the formal decision before informing the Leaseholders. The evidence shows that the decision was handed down on 10 September 2019 and the judgement sent out on 17 September 2019. The Panel was satisfied that Mr Heald clearly had a duty to inform the Leaseholders of the FTT outcome promptly and yet the Panel could see from the documentary evidence that Ms Lodge chased Mr Heald four times in October 2019 for the outcome. The Panel noted that Mr Heald did not respond to Ms Lodge until her email of the 29 October 2019, in which she confirmed that she had been told by the FTT that the judgement had been issued in September. Mr Heald then sent the judgement within hours suggesting that it was already in his possession. The Panel noted the length of the delay and determined that this resulted in the Leaseholders not being promptly informed of the FTT outcome.

124. Given the delay by not informing the Leaseholders of the FTT outcome until the 29 October 2019, the Panel noted that this date was after the expiry of the appeal period and therefore the Panel find Allegation 5 g proved

125. On Allegation 5 h, Mr Heald did not pass on any information to the Leaseholders about the likelihood of a costs application, despite his presence at the FTT and the fact that he, or his company, was the notified contact for such correspondence. The Panel noted that on his own account Mr Heald has considerable experience of dealing with FTT procedures, albeit on different matters. The Panel was satisfied that there was a responsibility on Mr Heald, as the Leaseholders representative, to ensure that accurate and timely information was made available and yet the Leaseholders did not find out about the costs issue until some months later. Again, by his own admission, he did not provide any information on costs to the leaseholders, as he stated in his oral

evidence that he did not see the cost order. Given his attendance at the FTT and the prompt from Ms Lodge to follow up on this matter in October 2019, Mr Heald was aware of the potential costs issue yet failed to provide any information to the Leaseholders. The Panel therefore find the Allegation at 5 h proved.

126. With regard to Allegation 5 i in his email of the 29 October 2019, Mr Heald undertook to get back to Ms Lodge about what could be done to get any money from the Landlord for the substandard works that still needed remedying, following what had transpired with the FTT. The Panel noted that in her witness statement, which was not challenged by Mr Heald, Ms Lodge states that she sent a number of emails to Mr Heald following up on this matter to which she never received a reply. In oral evidence Mr Heald suggested that nothing could be done in this area given the FTT outcome, but this did not address his lack of response to Ms Lodge to explain the position. The Panel therefore find the Allegation at 5 i proved.

Allegations 5 j and k– admitted

127. By virtue of findings at 5 a – k the Panel finds that Mr Heald failed to carry out his professional work with due skill, care and diligence.

Cherwell Court

Allegation 6 – admitted

Allegation 7 a, b and c– proved in its entirety

128. With regard to Allegation 7, the Panel noted the witness statements of both Mr Ackerley and Mr Khan, which were agreed and not challenged by Mr Heald. Both witnesses stated that Howell Jones had not been engaged on the arrears matter at Cherwell Court, although an email from Mr Heald had stated that they had. Mr Heald had a responsibility to progress the arrears issue as a result of client instructions received as part of his role as property manager for Cherwell Court, or to advise that he had not done so. There was no other information from Mr Heald about any other company who had been engaged in this matter. Further there was no resolution or progress on the issue or recovery of the arrears, although there was correspondence over several months prompting action on this issue. The Panel therefore find proved the Allegation that Mr Heald failed to carry out his professional work with due skill, care and diligence.

Allegation 8 a i) and ii,) and b – proved in its entirety

129. The Panel considered the representations that Mr Heald made to the Cherwell Court Board that, on 15 March 2021, he had been advised by solicitors that arrears had been collected. When chased on this matter by Mr Ackerley, Mr Heald stated on 2 June 2021 that he had asked Howell Jones and partners to recover the arrears and was seeking their case file. Given the findings at Allegation 7 above, there was no evidence to support Mr Heald's account and indeed there was evidence that Howell Jones had never been engaged in this matter. Here, and in some other instances, Mr Heald blamed his unidentified members of his accounts team for failure to act, errors and giving him incorrect information, however the Panel had grave doubts about the credibility of Mr Heald's account. Mr Heald was the sole principal of his firm, and this matter had been repeatedly raised with him by clients, which would have allowed Mr Heald to correct any accidental misinformation at the time had it occurred. The Panel was therefore satisfied that Mr Heald knew his representations were untrue.

Allegation 9 a and b proved in its entirety

130. Given the allegations proved in Allegations 7 and 8 and on application of the test set out in Ivey vs Genting Casinos, the Panel finds that Mr Heald knew the representations that he made at 8 above to be untrue when he made them, and the Panel considered that in light of that knowledge Mr Heald's representations were, by the standards of ordinary, decent people, both misleading and dishonest.

Allegation 10 – not pursued as it was an alternative to Allegations 8 and 9.

Allegation 11 – admitted

Allegation 12 – admitted

Allegation 13 a, b and c – proved in its entirety

131. With regard to Allegation 13 the Panel considered the witness statement of Mr Khan relating to an insurance claim by a resident at Cherwell Court, which was submitted to Wallakers, Mr Heald's company, in October 2020. The Panel noted that in February 2021 Mr Heald emailed the resident to say, 'insurance funds received, can you provide bank details for the transfer please?' Despite these details being provided no payment was made. When chased on this matter by Mr Khan, Mr Heald responds that the matter has been 'sorted', yet still no payment is made. There was no documentary or other supporting evidence for Mr Heald's contention that he had submitted the

insurance claim. Further the Panel noted that there were conflicting accounts provided by Mr Heald, which undermine the credibility of his explanations. In his witness statement he said that the insurers rejected the insurance claim in its entirety, but that his company would meet the claim for alternative accommodation. In his oral evidence and cross-examination, he stated for the first time that the insurers paid the accommodation element but provided no evidence of the existence of such monies. The Panel gave weight to the fact that no monies had ever been paid to the residents or the Board and determined on the balance of probability that it was more likely than not that a claim had never been submitted. The Panel therefore find proved the Allegation that Mr Heald failed to carry out his professional work with due skill, care and diligence.

Allegation 14 – proved in its entirety

Allegation 14 a i) and ii) – admitted during cross-examination

132. On Allegation 14 b given the findings at Allegation 13 above, the Panel determined that the emails sent by Mr Heald on the insurance claim misrepresented the facts and that Mr Heald knew them to be untrue at that time. As a result, the Panel finds this Allegation proved.

Allegation 15 a and b – proved in its entirety

133. With regard to allegation 15, the Panel noted that the wording of the allegation made erroneous reference to allegation 10 a, when it should have referred to Allegation 14, which immediately preceded it. The Panel considered that there was no prejudice to the Member in correcting this minor typographical error, as all other case papers and correspondence had made clear what the Member was being charged with and therefore the Member was fully aware of the charges he faced.

134. Given the allegations found proved in Allegation 14 above, on application of the test set out in Ivey vs Genting Casinos, the Panel finds that Mr Heald knew the representations he made at 14 above to be untrue when he made them and the Panel considered that in light of that knowledge Mr Heald's representations were, by the standards of ordinary, decent people, both misleading and dishonest.

Allegation 16 - not pursued as it was an alternative to Allegations 14 and 15

Blakes Avenue

Allegation 17 – proved except for 17 b and c which are not proved

135. With regard to Allegation 17 a, Mr Heald admitted that he had accepted an instruction from Ms MacCallum in November 2020 to act as a Party Wall Surveyor. He also admitted that on one or more occasions he had failed to respond promptly to Ms MacCallum on this matter. The Panel had sight of many chasing emails sent by Ms MacCallum trying to progress matters.

Allegations 17 b and c not proved.

136. On Allegation 17 b, the Panel accepted Mr Heald's account on these matters that he did repeatedly try to progress the instruction, but experienced difficulty in obtaining a response from the other party's surveyor, who had moved abroad. The Panel noted that it was the case that Mr Heald's emails seeking to progress were often prompted by correspondence from Ms MacCallum, however he did take action, and stated that the delays were outside his control, although he understood Ms MacCallum's frustration.

137. On Allegation 17 c, Mr Heald accepted that he had stated that he had issued a '14 day letter before Court proceedings' but submitted that there had been a telephone call in which this was informally discussed. The Panel again accepted Mr Heald's assertion that there had been reference to this matter in a call, where it was suggested as a tool to prompt a response from the other party's surveyor.

Allegation 17 d i) – admitted and 17 d ii) falls away

138 With regard to Allegation 17 d i), as explained above Mr Heald admitted that he had made representations that he had sent a 14-day letter before action, when he had not done so.

139. On Allegation 17 e in his oral evidence Mr Heald confirmed that he had not responded to the formal complaint raised by Ms MacCallum. He submitted that he had ultimately satisfactorily completed the instruction and dealt with the Party Wall matter. He further submitted that Ms MacCallum had sent her formal complaint to Mr Heald at the same time that she had launched a dispute resolution claim and therefore in the event her complaint was dealt with by that latter route, and he did not need to respond. The Panel noted that documentary evidence showed that Ms MacCallum submitted her formal complaint to Mr Heald on the 9 September 2022 and only when

she got no response from him, did she raise a claim with the Property Redress Service. Therefore, the Panel find Allegation 17 e proved on the balance of probability.

Allegation 18 i) proved and 18 ii) falls away

140. This Allegation repeats the facts of 17 d i), which Mr Heald admitted and also alleges that Mr Heald acted without integrity in making the admitted representation. On consideration of the SRA vs Wingate case, the Panel determined that Mr Heald misled the client by stating that he had issued a letter which he had not, did amount to a lack of integrity.

Cedars Resident Management Limited (CRML)

Allegation 19 – proved in its entirety

141. With regard to Allegation 19, Mr Heald admitted that between 6 August 2013 and 6 June 2022 he was the registered Company Secretary of CRML. Mr Heald further admitted Allegations 19 a – 19 e in connection with his actions in that role.

142. On Allegation 19 f given Mr Heald's admissions at 19 a – e above and following the resignation of Mr W as a director of CRML on the 7 August 2013, Mr Heald admitted that he did not either terminate Mr W's directorship at Companies House, inform Companies House of the resignation or take effective steps to appoint a new director. This meant that for the period from 7 August 2013 to 6 June 2022, he allowed CRML to operate without anyone having proper legal responsibility for the company. Mr Heald submitted in oral evidence that because Mr W was still listed at Companies House as a Director of CRML, technically CRML still had a director.

143. However, Mr Heald admitted under cross-examination that Mr W took no active role and was not even aware that he was still listed as a director and therefore Mr Heald accepted that there was not an effective director in place. The Panel determined that it was Mr Heald's actions in not informing Companies House of Mr W's resignation that allowed this state of affairs to continue for a period of 9 years, Therefore the Panel finds Allegation 19 f proved.

Allegation 20 a and b ii), iv) and vi) – proved

144. In considering this allegation, the Panel noted the admissions made as to the fact and the knowledge of that fact at 20 a, but also noted that Mr Heald did not admit dishonesty at 20 b. Mr

Heald did however admit in cross-examination that he had allowed Mr W to be named on the Annual and Director Reports for CRML, when he knew that Mr W had tendered his resignation on 7 August 2013. Mr Heald further admitted that he caused or allowed Mr W's signature to be falsified on the annual reports and that he caused or allowed these reports containing that false information to be filed with Companies House. However, Mr Heald submitted that there was no dishonesty because he believed that he was acting in the best interests of CRML, its shareholders and residents. He further believed that the technicality of not having informed Companies House of Mr W's resignation made the presentation of Mr W as a director permissible.

145. Although Mr Heald stated that his accounts department prepared these documents, Mr Heald also admitted that, as Company Secretary, he approved all of the Companies House reports and returns. Therefore, he was fully aware that each Directors Report purported to contain Mr W's signature, and he knew that Mr W had not signed those reports. As a result, regardless of his belief that showing Mr W as a Director was permissible because he was still 'on the record', he had full knowledge that the reports had not been signed by Mr W but contained falsified signatures. He still approved their submission to Companies House. On application of the test set out in *Ivey vs Genting Casinos*, the Panel finds that Mr Heald knew the reports to contain false information when he approved them for submission as Company Secretary. The Panel considered that in light of that knowledge Mr Heald's repeated actions over 9 years were, by the standards of ordinary, decent people, both misleading and dishonest.

Allegation 21 – not pursued as it is an alternative to Allegation 20

Allegation 22 – not proved

Allegation 23 – Proved [in the alternative to Allegation 22]

146. With regard to Allegation 23 a and b the Panel determined that Mr Heald knew that Mr W had resigned as a director of CRML on 7 August 2013, indeed Mr Heald admitted that he did know this to be the case. As explained at Allegation 20 above Mr Heald tried to convince himself that he was acting in the best interests of others and that his actions were not fraudulent because this was a standard form that did not require a signature and because Mr W was still listed as a Director at Companies House (erroneously). Misguided as this may have been, the Panel accepted that this was his belief and therefore found Mr Heald acted with a lack of integrity rather than acting dishonestly in the matter of the AR01 form submissions.

Liability to Disciplinary Action

147. Having found the Allegations listed as proved above, the Panel considered whether these facts rendered the Member liable for disciplinary action.

148. The Panel noted that it had made multiple findings of dishonesty and lack of integrity. It also found a series of actions that showed an absence of the due skill, care and diligence required by professional standards for RICS members.

149. The Panel considered that the facts proved demonstrated very serious and persistent breaches on multiple occasions and over an extended time period.

150. In the circumstances the Panel were in no doubt that the facts as proved rendered Mr Heald liable to disciplinary action. Mr Heald did himself accept that the Allegations he had admitted did give rise to a liability to disciplinary action.

Sanction

151. Having made the above findings on fact and liability to disciplinary action, the Panel now turned to consider sanction.

RICS Submissions on Sanction

152. On behalf of RICS, Mr Rich made no positive submission as to the necessary sanction. He submitted that the Panel should adopt a proportionate approach and referred the Panel to the Sanctions Policy.

153. Mr Rich highlighted the seriousness of the findings, which involved dishonesty and lack of integrity, and drew the Panel's attention to aggravating and mitigating factors. He submitted that the following aggravating factors listed within the Guidance applied in this case: Mr Heald had been dishonest over a prolonged period; that his actions were deliberate in making false representations to cover up actions or inaction on client matters, 'fobbing them off' and that this was not a one-off failure but an ongoing pattern of behaviour. Mr Rich further submitted that Mr Heald's actions and failures had certainly prejudiced his client's interests and in some cases resulted in financial loss to them. The false representations with one client continued for well over a year and with another, Mr Heald had approved false submissions to Companies House for 9 years. Mr Rich went on to say

that Mr Heald failed to understand the seriousness of the wrongdoing that had occurred and that he sought to blame others of his staff.

154. Mr Rich also brought a previous case from 2017 to the Panel's attention, where there had been a finding of a lack of integrity and where Mr Heald had offered as a defence, that this was an error and a miscommunication from his accounts team. Mr Rich emphasised that Mr Heald had advanced the same defence in some aspects of this case and went on to argue that the 2017 decision should have put Mr Heald on notice as to the seriousness with which RICS viewed such events, but it did not appear to have done so. Mr Rich submitted this illustrated a fundamental lack of insight from Mr Heald. Similarly, in regard to the interaction with Companies House on CRML, Mr Rich submitted that even now Mr Heald sought to defend his actions and false submissions, not accepting that these were dishonest.

155. In mitigation, Mr Rich acknowledged that Mr Heald had co-operated with the investigation and engaged fully with RICS on the case and hearing. He also recognised that Mr Heald had made a number of admissions.

Member Submissions On Sanction

156. Mr Heald stated that he had been an active Chartered Surveyor for 42 years and a Fellow since 1989. In this time, he had built a large and successful practice serving small to medium sized clients, which traded on its good reputation. He submitted that he couldn't be as successful as he was if he had been systematically providing a poor service. He stated that he and his firm were respected in the local community and that his firm employed 17 people.

157. Mr Heald drew the Panel's attention to a number of complimentary testimonials from a variety of clients about services provided by him and his company, which he said had been unsolicited notes of appreciation for his efforts on their behalf. He added that the most recent regulatory visit from the RICS confirmed that all aspects and accountability of his practice were up to date and produced a satisfactory/good result.

158. Mr Heald further emphasised that he and his company took complaints very seriously and in the case of Ms MacCallum had cooperated fully with the redress scheme and made immediate payment against a finding of poor service. However, he also highlighted that this client instruction had subsequently been completed satisfactorily. He went on to outline a number of process

changes that he had made following the Interim Measures Hearing to address some of the failings identified.

159. In relation to the false representations to clients, Mr Heald stated that he had to rely on his team and sometimes it transpired that the information from them that he had provided on to clients was incorrect. He contested the inference that Mr Rich drew from the previous 2017 case that this gave rise to a pattern of behaviour and highlighted that the parties involved in that case were still clients of his firm.

160. With regard to CRML and Companies House Mr Heald submitted that he was in an impossible position because no-one had come forward to take up the Director role, saying that as Company Secretary he had a duty to the shareholders and residents to keep the company operating.

161. Finally, Mr Heald emphasised that neither he nor his company had benefited financially from the issues raised in this case, but that in fact in many cases it had cost his firm money as they worked to rectify any issues without additional payment.

Legal Advice

162. The Panel received and accepted the advice of the Legal Adviser. The Panel was advised that in considering sanctions there is no burden or standard of proof. The question of sanction is a matter for the Panel's judgment. The Panel was reminded that in deciding upon sanction it should have regard to the Sanctions Policy, and apply the principle of proportionality, weighing the interests of the public with those of the member. The Panel was further advised that each case must be considered on the basis of the facts found proved, taking into account the aggravating and mitigating features. The Panel must act proportionately in making the decision and should do no more than is necessary to achieve the overriding objectives of protecting the public, declaring and upholding proper professional standards and protecting the reputation of the profession. The Panel should therefore start by considering the least serious sanction, working up to the sanction they consider to be appropriate and proportionate in all the circumstances of the case.

Aggravating and Mitigating Factors

163. The Panel began by identifying the aggravating and mitigating factors present in this case. It considered that Mr Heald's conduct was aggravated by:

1. The seriousness of the multiple findings of dishonesty and lack of integrity.
2. The length of time over which this conduct occurred.
3. The deliberate pattern of repeated dishonesty in dealing with a variety of clients and official bodies (i.e. Companies House).
4. A fundamental lack of insight into the serious nature of the allegations proved.
5. The earlier disciplinary finding against him of a lack of integrity, which involved similar behaviours in providing inaccurate information to clients and similar claims that others had erred in providing incorrect information to him.

164. In mitigation the Panel recognised that Mr Heald had:

1. Received no direct financial benefit from the failings and had borne the costs of undertaking further work to try to address issues in some cases.
2. Promptly paid the sum of money ordered by the redress scheme in respect of Blakes Avenue.
3. Cooperated fully with the RICS investigation, although the Panel note that this is the expectation.
4. Made numerous admissions and taken some responsibility for some of the failings.
5. Expressed regret for what had happened, and the trouble caused to others as a result.
6. Showed some learning in identifying and implementing a number of procedural and structural changes to strengthen operations within his firm in order to prevent recurrence of some of the failings identified.
7. Relied on a good reputation locally in running his established business.

165. Having assessed the mitigating and aggravating factors the Panel next considered the risk to the public. Although Mr Heald had described some changes that he had made within the firm to address some of the areas which had been problematic, none of these addressed his dishonesty or lack of integrity. The Panel were of the view that he demonstrated no real insight into the very serious nature of his dishonesty and lack of integrity, perpetrated to cover up his failures to follow

client's instructions or take timely action. This pattern of behaviour has continued over many years and across different clients, despite frequent prompts from those clients at the time highlighting issues. These should have afforded him the opportunity to take timely remedial action, however Mr Heald often continued to make even more false representations in response, until his position became untenable. This lack of insight and difficulty in fully recognising his dishonesty means that the risk to the public and in particular his clients, is significant. The Panel therefore considered that there was a risk of repetition despite the procedural changes he has made.

Decision as to Sanction

166. The Panel carefully considered all the submissions made and first determined whether a sanction was necessary at all. Given the seriousness of the findings the Panel determined it was clearly necessary to impose a sanction in this case to protect the public and to declare and uphold professional standards.

167. The Panel next considered the possible sanctions available to it, in ascending order of seriousness. The Panel bore in mind that the purpose of sanctions is not to punish although the sanction may have a punitive effect. The purpose is to protect the public, declare and uphold proper professional standards and to maintain the reputation of the profession.

168. In considering a caution order or a reprimand the Panel noted the fundamental and persistent nature of the findings. The Panel were in no doubt that a caution order or a reprimand would be insufficient to mark the gravity of the charges found proved nor would they protect the wider public.

169. The Panel next considered undertakings on Mr Heald as to his future conduct and noted that no undertakings had been offered. In any event the Panel was of the view that it was not possible to formulate any meaningful undertakings which would address the fundamental failings of honesty and integrity.

170. The Panel moved on to consider the imposition of a fine. It noted that the fine imposed by a previous panel in a case in 2017 had not deterred Mr Heald from repeating that behaviour in this case. Indeed, the Panel further noted that some of the issues in this case dated back to the time-period immediately following that previous case. The Panel therefore concluded that such a sanction would not be appropriate or proportionate and that it had no grounds for concluding that a further fine would achieve the objective of deterring the repetition of the type of conduct found proved in this case.

171. Turning to consider the imposition of conditions on Mr Heald's registration. The Panel concluded that it would be neither proportionate nor appropriate to impose conditions given the nature of the conduct to be addressed. It was difficult to identify any workable conditions that would be measurable and achieve the objectives. Honesty and integrity are already conditions of RICS membership and therefore imposing further specific conditions would not address public interest requirements.

172. The Panel finally considered expulsion of the Member from RICS. This sanction reflected the serious shortcomings found and addressed the risk of repetition in order to protect the public, maintain the reputation of the profession and uphold proper professional standards. The Panel considered that the gravity and nature of Mr Heald's conduct, the extent of the breaches for which he was responsible, and the lack of integrity and dishonesty displayed by Mr Heald over a prolonged period were not compatible with his continued membership of RICS.

173. In all the circumstances, the Panel concluded that the appropriate and proportionate sanction was that **Mr Heald should be expelled from RICS membership.**

Publication

174. 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 and noted that it had not received any submissions against publication. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website.

Costs

175. RICS applied for its costs totaling £21,907, supported by a detailed schedule of costs. The Panel noted that this figure had been reduced from the original calculation to reflect the reduction in hearing days required.

176. The costs figure represents a contribution towards the costs incurred by RICS in investigation of complaints, preparation for the hearing and the hearing itself. The Panel also had sight of financial information submitted by Mr Heald. However, the Panel had no reason to doubt that the costs application was a fair and reasonable one to make.

177. The Panel concluded that it was appropriate for Mr Heald 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.

178. The Panel therefore determined to make **a cost order in the sum of £21,907 to be paid to RICS within 28 days.**

Appeal Period

179. Mr Heald may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rule 152 of the Regulatory Tribunal Rules.

180. For completeness, in accordance with Rules 166 and 167 of the Tribunal Rules, RICS' Chair of Governing Council may require a review of any decision on the grounds of undue leniency within 28 days.