

Disciplinary Panel Hearing

Case of

David Gowland [0097421]

On

Monday 2 December - Wednesday 4 December 2024

Held Remotely via Teams

Panel

Nick Hawkins (Lay Chair)

Dr. Amit Jinabhai (Lay Member)

Jennifer Hobart (Surveyor Member)

Legal Advisor

Tim Grey

Representatives for the parties

Chris Geering appeared on behalf of RICS

David Gowland did not attend and was not represented

Regulatory Tribunal Executive

Adeel Qureshi

1. Between 22 November 2020 and 25 December 2021, Mr Gowland, having undertaken to complete a lease renewal application pursuant to section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 in relation to a flat at Maurice Court [“the Flat”], failed to carry out his professional work with due skill, care and diligence in that:
 - a) Having been unable to reach agreement with the landlord as to the terms of the lease renewal, he failed to make an application for the tribunal to determine the matters in dispute within six months of the landlord’s counter-notice or at all, thereby causing or allowing the lease renewal application to be deemed withdrawn, and/or
 - b) He failed to inform his client of the deadline by which an application to the tribunal had to be made, and/or
 - c) He failed to inform his client that the lease application could be deemed withdrawn should there be no agreement as to terms or no application made to the tribunal within six months of the landlord’s counter-notice, and/or
 - d) He failed to inform his client that the lease renewal application had been deemed withdrawn, and/or
 - e) He failed to inform his client of a letter dated 4 October 2021 from the landlord’s solicitors requiring payment of the landlord’s legal costs in relation to the failed lease renewal application, and/or
 - f) He failed to respond adequately to an email from his client dated 8 December 2021.

Contrary to Rule 4 of the Rules of Conduct for Members version 7 or Rule 3 of the Global Rules of Conduct 2021

Mr Gowland is therefore liable to disciplinary action under RICS Bye Law B5.2.2(c)

2. Mr Gowland failed to provide a good quality and diligent service in relation to a Lease Renewal Application in that he failed to respond, adequately or at all, to correspondence sent by his client on or around:
 - a) 2 February 2022
 - b) 12 April 2022

Contrary to Rule 3 of the Global Rules of Conduct 2021

Mr Gowland is therefore liable to disciplinary action under RICS Bye Law B5.2.2(c)

3. Mr Gowland failed to comply with his professional obligations to RICS in that he failed to respond, adequately or at all, to requests for action/information from RICS dated on or around:

- i.7 June 2022
- ii.28 February 2023
- iii.14 March 2023
- iv.31 March 2023
- v.11 October 2023

Contrary to Rule 1 of the Global Rules of Conduct 2021

Mr Gowland is therefore liable to disciplinary action under RICS Bye Law B5.2.2(c)

Response

Mr. Gowland was neither present nor represented. In correspondence he provided no indication as to whether or not he admitted any of the Allegations. The Panel therefore proceeded on the basis that all Allegations were denied.

Preliminary Applications

1. On behalf of RICS Mr. Geering made an application to proceed in the absence of Mr. Gowland. In so submitting he outlined the steps taken to ensure compliance with the Rule 53 service provisions. He submitted that it was clear service had been properly affected in line with the Rules and that Mr. Gowland was aware of the hearing. Mr. Geering took the Panel to recent correspondence between RICS and Mr. Gowland in which Mr. Gowland acknowledged the hearing date, explained he was not intending to attend and that he was content for the hearing to proceed in his absence. In one such email he alluded to not feeling well enough to attend, but at no point did he provide any medical evidence. Mr. Geering further submitted that balancing the public interest against those of Mr. Gowland required the hearing go ahead.
2. The Panel accepted the advice of the Legal Advisor. It was advised that the decision to proceed in the absence of Mr. Gowland was a decision to be taken with the utmost care and caution. The Panel had regard to the relevant criteria set out in *R v Jones* [2002] UKHL 5 and the guidance in the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162.
3. The Panel noted that the Member had been informed in good time and in compliance with Rule 53, that the hearing would be taking place and the nature of the proceedings. The Panel concluded that the Member had been given sufficient notice had he wished to attend, be represented and take an active part in the hearing.
4. The Panel went on to consider whether it was fair in all the circumstances to proceed to hear the case in Mr. Gowland's absence. It concluded that the Mr. Gowland had known of the hearing date and chosen not to attend or make representations. He had

therefore voluntarily absented himself from the proceedings. The Allegations concerned events dating back to 2020/21. The evidence presented on behalf of RICS was largely documentary and not reliant on witness recollection.

5. The issues raised went to public safety in so far as they alleged an abrogation of Mr. Gowland's duty to his client, Mr. Horden. The Panel reminded itself that there is a public interest in the fair, economical and expeditious resolution of complaints. The Member had not sought an adjournment, indeed had acknowledged the case could proceed in his absence and that he was content it did so. In all the circumstances, the Panel concluded that there would be no merit in adjourning the case. In balancing the interests of the Member with the interests of the public in protecting the public, protecting the wider public interest and conducting an expeditious hearing the Panel concluded it was both fair and just to proceed in the absence of Mr. Gowland. The Panel drew no adverse inference from the Member's absence.
6. Mr. Geering made a second application in relation to Allegation 1. He submitted that it was pleaded in the alternative both under the 2021 Conduct Rules and under the old Conduct Rules. He submitted that the old Rules ought properly to be applied, the allegations being concerned with events that took place when those Rules were in force. However, he conceded that the Regulatory framework was not entirely clear on the point and that the Panel could conclude that the new Rules were applicable, given RICS only had knowledge of the complaint after the new Rules came into force.
7. The Panel received and accepted the advice of the Legal Advisor. It was advised that for Rules codifying the manner of behaviour that was alleged to have amounted a breach, the Rules in force at the time ought normally to apply. It would be potentially perverse for a Regulated individual to find themselves in breach of a rule that hadn't existed at the time the breach was alleged to have taken place. Whilst there was a possible lacuna in the bye-laws, that suggested that might be the case, in the absence of a definitive answer the Panel ought properly to interpret the rules as a whole ensuring the most favourable interpretation to the member. In this case that was to adopt the Rules in force at the time, rather than requiring compliance with later Rules.
8. The Panel noted that there was, in reality no material difference between the two sets of rules. However, in so far as it was required to ensure clarity and fairness to all parties, it determined to adopt the new Rules in relation to Allegation 1 and the later Rules (as pleaded) in relation to Allegations 2 and 3. If Mr. Geering's application was to amend the Allegation to remove the alternatively pleaded Rules in Allegation 1 (if that was necessary) the Panel would accede to that application.

Background

9. In September 2020 Mr Horden, the complainant, sought to apply for a lease extension/renewal for his flat in a block called Maurice Court in Hounslow (the Flat). The landlord was the London Borough of Hounslow (the Council). Acting on a recommendation from his solicitors, Roger Brooker & Co, Mr Horden engaged the services of Mr Gowland of DG Surveyors Ltd to make the application on his behalf and to carry out any necessary negotiations to facilitate the lease renewal.
10. Whilst no formal contract was signed, it appears not to be in dispute between the parties that some form of agreement was entered into by Mr. Gowland and Mr. Horden to the effect that Mr. Gowland would obtain the lease renewal on behalf of Mr. Horden, in consideration of which Mr. Gowland would be paid for his services. In furtherance of that agreement, the two exchanged a number of emails, the first of those being on 9 September 2020, that suggested the agreement was understood by both parties to be operational.
11. The process of obtaining a renewal of the lease was governed by the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). Upon agreeing to obtain the renewal, Mr Gowland issued the necessary notice under s. 42 of the Act. The Council submitted a counter-notice on 23 November 2020 pursuant to s.45 of the Act, requiring the parties to agree terms within two months or failing that seek to make an application for a tribunal determination of the matter within six months of the issue of the counter-notice, pursuant to s.48(2) of the Act. Absent such agreement or an application to the tribunal within the requisite six months, the renewal would be deemed to have been withdrawn pursuant to s.53 of the Act.
12. From 23 January 2021 onwards Mr. Horden was entitled to apply for a tribunal determination. If he did not do so by 22 May 2021 the application would be considered withdrawn.
13. Ultimately, no agreement was reached with the Council, and no application was made to the tribunal. As a result, the lease renewal was deemed to have been withdrawn. In his complaint to RICS Mr. Horden asserted that he had no idea of this chronology until he received an email on 2 December 2021 from the Council's solicitors seeking their costs, he having heard nothing from Mr. Gowland who he had retained to renew the lease on his behalf.
14. There followed correspondence between Mr. Horden and Mr. Gowland which did nothing to assuage Mr. Horden's concerns as to the way the matter had been handled by Mr. Gowland. On 2 February 2022 Mr Horden asked Mr Gowland for a copy of his complaints handling procedure. He received no response. On 12 April 2022 he asked for details of the firm's Alternative Dispute Resolution (ADR) provider. He received no response. Albeit Mr. Horden may not have been put on notice of it, the firm had been wound up in September 2021 and no longer existed.

15. On 26 February 2022 Mr. Horden made a complaint to RICS. During the course of its investigation, RICS contacted Mr. Gowland on several occasions in order to request information from him. RICS asserts that Mr. Gowland did not provide the information sought in response to its communications and has still not provided the information.

The Hearing

16. The Panel was provided with extensive documentary evidence on behalf of RICS, including two witness statements and numerous exhibits from Mr. Horden, three witness statements from Ms. Carol Kerr of RICS and a witness statement from Mr. Adeel Qureshi the Panel secretary, concerning service.
17. Whilst Mr. Gowland had corresponded with RICS both in relation to these proceedings and prior to these proceedings, he had chosen to provide only one substantive response of a single page that provided some information, albeit limited in detail. Mr. Gowland had alluded both in that letter and in other emails to the fact that he would provide further evidence, but at no point has he done so.
18. Having heard Mr. Geering in opening the Panel determined that it did not have any questions to ask of any of the witnesses prayed in aid of RICS' case and it therefore invited closing submissions from Mr. Geering immediately thereafter.

Opening & Closing Submissions

19. On behalf of RICS, Mr. Geering submitted that whilst there was no written contract and no email before the Panel setting out the terms of engagement between Mr. Gowland and Mr. Horden, the agreement could be easily inferred from the correspondence between the two. Mr. Geering took the Panel to an email sent by Mr. Gowland to Mr. Horden in which he updated Mr. Horden that the application had been submitted and he was waiting for the Council to reply.
20. Mr. Geering took the Panel through the legislative framework of the Act and submitted that there was ample evidence that Mr. Gowland was representing Mr. Horden in the renewal of the lease. The Council had been corresponding with Mr. Gowland and when the application was deemed withdrawn for want of action, it was Mr. Gowland who was informed of that fact by the Council's solicitor, rather than Mr. Horden.
21. Mr. Geering further submitted that Mr. Horden's evidence before the Panel in the form of his witness statements made it clear that he had retained Mr. Gowland for the purposes of renewing the lease on his behalf, specifically he had instructed Mr. Gowland and his firm: *"to assist with my lease renewal for the property by providing a Property valuation, calculating the proposed Marriage Value and negotiating with*

the freeholders, Hounslow Council to arrive at a final figure for the lease extension. As part of this process Mr Gowland was instructed to make representations on my behalf to The Mayor and Burgesses of the London Borough of Hounslow (the council) the respondent in my lease renewal.”

22. There was, Mr. Geering submitted, clear evidence that Mr. Gowland was representing Mr. Horden in the renewal of his lease.
23. Thereafter, Mr. Geering addressed each of the Allegations in turn. In relation to Allegation 1(a) Mr. Geering submitted that no application was made to the tribunal, or any agreement reached. This was clear from the Council's correspondence and its application for costs, made after the renewal had been deemed withdrawn. Mr. Gowland “*failed*” to submit the application in time. Mr. Gowland had agreed to manage the lease renewal application. It was implicit within such an agreement that he undertook to abide by the statutory framework for doing so. Whether he did not appreciate the deadline or he forgot is immaterial. He should have submitted an application in time and he did not.
24. In relation to Allegations 1(b) and (c), Mr. Geering submitted that it is was clear from Mr. Horden's evidence that he did not appreciate that an application had to be made to the tribunal within six months of the counter notice or else the application would fail. Not only was that plain from Mr. Horden's statement, but it was the overwhelming inference to be drawn from the correspondence. He chased Mr. Gowland about the lease application on 1 May 2021, 13 July 2021 and 21 October 2021, when in fact the deadline had long since passed by the time the second two emails were sent, the application having been deemed withdrawn in May 2021.
25. It was, Mr. Geering submitted, a matter of basic professionalism and common sense that Mr. Gowland should have informed him of the deadline and the consequences of missing it. Mr. Gowland was managing this process and Mr. Horden was entitled to rely upon his expertise. This involved being aware of the statutory structure for making the application and keeping Mr. Horden apprised.
26. In relation 1(d) and (e), Mr. Geering drew the Panel's attention to the correspondence and in particular noted that Mr. Horden wrote to Mr. Gowland on 8 December 2021 to say he had been told his lease application had been deemed to have been withdrawn. Mr. Geering submitted that the evidence showed Mr. Gowland had been told as much months earlier, on 4 October 2021. He had not passed on the information. When Mr. Horden asked Mr. Gowland for an explanation he did not claim to have already told Mr. Horden. Mr. Geering further submitted that there was no doubt but that Mr. Gowland was under a duty to inform his client that the application failed and the reasons why. This obligation was all the greater when his client was potentially going to be liable for costs as a result.
27. In relation to 1(f) Mr. Geering submitted that the response provided to Mr Horden's

email of 8 December 2021 clearly required Mr. Gowland to explain how it was the application had failed, and how he failed to lodge an application within six months of the counter-notice. His response ignored that issue. Whilst Mr. Gowland did address the issue of costs in the response he did so erroneously. The Act allows for the Council to recover the costs of a failed application. Due to Mr Gowland's inaction, the power rendered Mr. Horden liable. Instead Mr. Gowland had said the following: "*at no time did [the Council] have any legal recourse for such fees with you as there was never a contract which was legally enforceable*". Mr. Geering submitted this was plainly wrong as a matter of law and fact.

28. In relation to Allegation 2 Mr. Geering submitted that Mr. Gowland was under a duty to communicate with Mr. Horden when the latter asked for a complaints policy and for ADR. Mr. Geering accepted that as a matter of fact Mr. Gowland was not under an obligation to have a complaints policy, or have an ADR provider, since those obligations are and were owed by RICS registered firms, not individuals, and at the time Mr. Gowland's firm no longer existed. However, Mr. Gowland did not explain as much to Mr. Horden. He failed to respond. Mr. Geering submitted that he had ignored Mr. Horden and that to do so was unprofessional.
29. In relation to Allegation 3, Mr. Geering submitted that as with all regulated individuals Mr. Gowland has obligations to his regulator. These include the obligation to co-operate with its investigations and requests for information. RICS had asked Mr. Gowland to respond to Mr. Horden. It also asked for relevant information necessary to properly investigate the complaint and for information as to the regulatory status of Mr. Gowland's firm. He failed to provide the information requested at the time of the request and has failed to do so at any point thereafter. In doing so, Mr. Geering submitted that Mr. Gowland was making a nonsense of the self-regulation of the profession. If the regulatory process could be derailed by a member refusing to hand over documents which were plainly relevant to investigating the matter under review, then RICS would be precluded from undertaking its key role of acting to protect the public and the wider public interest. The only substantive response sent by Mr. Gowland had been received long after the requests reflected in Allegation 3, and even then did not provide the information sought.
30. Thereafter, Mr. Geering addressed the Panel as to Mr. Gowland's liability to disciplinary action. He submitted that the failings in this case were serious. The consequences for Mr. Horden, financially and personally, were significant. He was entitled to trust the professionalism of the RICS member he engaged. He was entitled to expect that Mr. Gowland would communicate with him professionally. The public at large and RICS were entitled to expect that Mr. Gowland would observe his regulatory obligations and engage constructively with his regulator answering its questions and providing information to the investigation. None of this had happened. Mr. Geering therefore submitted that this required a regulatory response in the public interest.

Legal Advice

31. The Panel received and accepted the advice of the Legal Advisor. It was advised that RICS bore the burden of proof and the standard to be applied was the balance of probabilities. The Panel was advised that where the word “failed” appeared in the Allegation, it was for RICS to prove to the required standard that there was a duty upon Mr. Gowland to act or not act in a particular way and that he had not done so. In other words, it meant the Panel had to find it to be a culpable failing.
32. Thereafter the Panel was advised that if it found any of the Allegations proved it should go on to consider whether that rendered the Member liable to disciplinary action. The Panel was advised that at this stage there was no burden or standard of proof. The question of liability to disciplinary action was a matter for the Panel’s collective judgment. The Panel was further advised that for such a liability to exist the identified conduct must be serious. The Panel was advised to adopt the approach in *Roylance v GMC [2000] 1 AC 311* & *Nandi v GMC [2004] EWHC 2317*, liability to disciplinary action being akin to the definition of misconduct in those proceedings.
33. The Panel was advised that in the absence of Mr. Gowland it should take special care to take into account all those matters that might be in his favour and weigh them in the balance when assessing the evidence as a whole.

Determination on the Facts

34. In reaching its determination the Panel took careful account of all the evidence it had read.
35. Before turning to consider each allegation in turn the Panel noted the apparent dispute between Mr. Horden and Mr. Gowland as to the whether there was, in fact an agreement between them. Whilst the Panel noted that in his sole substantive response Mr. Gowland asserted that: *On no occasion was any payment requested or received in relation to this matter from Mr Horden contrary to the assertion and as the costs from HB Law were later waived he did not incur any actual financial losses relating to this matter. Furthermore there was no formal agreement with Mr Horden for any particular services which were to be provided.*
36. Notwithstanding this response, it was not absolutely clear to the Panel that Mr. Gowland was disputing the existence of some form of agreement, albeit not a formal agreement. Whether in dispute or not, by recourse to the evidence, the Panel was left in little doubt that there was an agreement in place at the material time. The evidence demonstrated Mr. Gowland corresponding with the Council on Mr. Horden’s behalf. In correspondence with Mr. Horden the Council’s solicitors referred to Mr. Gowland as Mr. Horden’s representative. The Council notified Mr. Gowland that the lease renewal had been deemed withdrawn, not Mr. Horden. Latterly Mr. Gowland apologised to Mr. Horden for his lack of communication and agreed to waive his fees. Taken together with Mr. Horden’s evidence, the Panel was left in no doubt that Mr.

Gowland had agreed to act in the renewal on Mr. Horden's behalf and had agreed a sum to be paid to him in consideration of such agreement.

Allegation 1(a)

37. The Panel noted that there was clear evidence before it that the Council had heard nothing from Mr. Gowland seeking a tribunal hearing when the time for agreement had passed. The date for a response had been 21 May 2021, a date known to Mr. Gowland but not to Mr. Horden as was apparent from the latter's ignorance later in the process. It was clear that no tribunal hearing had been arranged and that none took place. It was therefore an irresistible inference when taken together with the letter from the Council's solicitors to Mr. Horden indicating as much, that Mr. Gowland had not made an application for the tribunal to determine the matters in dispute within six months of the landlord's counter-notice.
38. In light of its findings in relation to the agreement between Mr. Horden and Mr. Gowland the Panel considered that Mr. Gowland owed a duty to ensure the renewal of the lease was properly undertaken and all reasonable steps gone through to seek such a renewal. In circumstances where his client was not aware of the position, the duty on Mr. Gowland to ensure those steps were taken was all the more profound. The Panel therefore determined that in not making an application to the tribunal within the statutory time limits Mr. Gowland was guilty of a culpable failing.
39. The Panel therefore found Allegation 1(a) proved.

Allegation 1(b)(c)(d) and (e)

40. Whilst the Panel considered each limb of Allegation 1 separately, it noted that the evidential nexus of 1(b) - (e) was similar. There was evidence from Mr. Horden that Mr. Gowland had not informed him of the deadline by which the application to the tribunal had to be made, had not informed him that the lease application could be deemed withdrawn should there be no agreement as to terms or no application made to the tribunal within six months of the landlord's counter-notice, had not informed him that the lease renewal application had been withdrawn and had not informed him of a letter of 4 October 2021 from the landlord's solicitors requiring payment of costs. Mr. Horden's evidence was supported, at least in part, by the documentary evidence before the Panel, in the form of emails and letters confirming the same.
41. Mr. Gowland had provided no account to answer the evidence presented and whilst he was under no obligation to provide any such account, in the absence of an explanation, the Panel was satisfied that the evidence before it was sufficiently cogent so that on the balance of probabilities the Panel could find Allegation 1(b) - (e) proved, if Mr. Gowland owed a duty to Mr. Horden to undertake the actions reflected therein.
42. In light of the Panel's findings that there was an agreement between Mr. Horden and Mr. Gowland, that Mr. Gowland would represent Mr. Horden in renewing the lease,

the Panel was content that Mr. Gowland had a duty to undertake each of the steps listed at Allegations 1(b) - (e) and that in not doing so Mr. Gowland was guilty of a culpable failing in each instance.

43. The Panel therefore found Allegations 1(b) - (e) proved.

Allegation 1(f)

44. Mr. Horden wrote to Mr. Gowland on 8 December 2021, wanting to know what had gone wrong with his lease renewal and why he was being asked for costs by the Council's solicitors. The Panel determined that in light of the agreement it had found between the two, Mr. Horden was entitled to know the answers and to receive advice. The Panel could find no evidence before it that Mr. Horden had received such advice. To the contrary, Mr. Horden asserted he had not. Instead Mr. Gowland has not addressed the reasons for the withdrawal in either of his responses dated 8 December and 24 December 2021. In relation to costs he had asserted that the Council had no contract with Mr. Horden and therefore no recourse to costs.

45. The Panel agreed with Mr. Geering that such a contention was both factually and legally baseless. The existence of the costs liability came from the operation of the Act not from a contractual relationship between the lessee and lessor. The Panel therefore determined that the failure to address the reasons for withdrawal and the issuing of erroneous advice regarding costs liability meant that Mr. Gowland had failed to respond adequately to Mr. Horden's email of 8 December 2021.

46. The Panel therefore found Allegation 1(f) proved.

Allegation 2

47. In relation to both pieces of correspondence sent by Mr. Horden, one on 2 February 2022 and one on 12 April 2022, there was no evidence before the Panel that Mr. Gowland had provided any response at all. The Panel noted that in the correspondence, Mr. Horden had first sought a copy of the complaints policy and second ADR information. The Panel accepted that because Mr. Gowland was not a registered RICS firm he was under no duty to have either a complaints policy or an ADR process. The Panel noted that Mr. Gowland's firm, DG Surveyors, had been in existence at the time the two entered into their agreement and had only ceased to exist in September 2021, a fact that, it appeared by implication, had not been communicated to Mr. Horden.

48. Notwithstanding the limit of Mr. Gowland's regulatory duties, The Panel considered that any registered professional, had a duty to correspond diligently and to answer reasonable requests for information from a client. Mr. Horden's requests were reasonable and Mr. Gowland had a duty to inform him that he had no complaints policy or ADR process. On the balance of probabilities, the Panel determined Mr. Gowland did not tell Mr. Horden either of those things in circumstances where he had a duty to do so.

49. The Panel therefore found Allegation 2 proved in its entirety.

Allegation 3

50. The Panel paid close regard to the evidence of Carol Kerr and noted that RICS had written to Mr. Gowland on five occasions over a period of 16 months in 2022 and 2023. In each case it had sought information from him to enable it to fulfil its functions as a regulator. In each case Mr. Gowland ignored those requests. At no point to date has he provided the information sought. Appendix A: Professional Obligations to RICS Paragraph 2 of the Rules of Conduct 2021 makes clear the obligation of all members of RICS to co-operate with its investigations. On the evidence before it the Panel was clear that Mr. Gowland had failed in that obligation.

51. The Panel therefore found Allegation 3 proved in its entirety.

Liability to Disciplinary Action

52. Having found Allegations 1 - 3 proved the Panel considered whether the facts rendered the Member liable to disciplinary action.

53. The Panel noted that it had found proved a successive series of failures on Mr. Gowland's part to observe his fundamental duty to his client to communicate and act in his client's best interests. Whilst a single failing might not be sufficiently serious to render him liable to disciplinary action the Panel was clear that the cumulative effect of his failings in Allegations 1 and 2 were so serious that regulatory intervention was necessary. Mr. Gowland's conduct represented a serious abrogation of his responsibility to his client and one that other members of the profession would consider deplorable.

54. In relation to Mr. Gowland's failure to co-operate with RICS, the Panel agreed with Mr. Geering's submission that such conduct was likely to be serious in most cases, given it frustrated the whole purpose of the regulatory process and exposed the public and the wider public interest to real risk. In this case the Panel was left in no doubt that the failures to co-operate occurred over a lengthy period, caused RICS real difficulty in bringing the matter to a close in an expeditious manner such that the public were put at risk for longer than necessary by the inaction and failings of Mr. Gowland. The Panel therefore considered his failings in this regard to be equally serious to the failings identified in Allegations 1 and 2.

55. In the Panel's judgment the cumulative effect of its factual findings is to render Mr. Gowland liable to disciplinary action.

Sanction

56. The Panel next turned to consider sanction.

Submissions

57. On behalf of RICS, Mr. Geering made no positive submission as to the necessary sanction. He submitted that the Panel should adopt a proportionate approach and commended the Sanctions Policy to the Panel. He drew the Panel's attention to the listed aggravating and mitigating factors.

58. In so doing, Mr. Geering submitted that the following aggravating factors listed within the Guidance applied in this case: there had been a significant impact on Mr. Gowland's client, the failings were repeated over a course of a prolonged period, particularly regarding Allegation 3.

59. In relation to mitigating factors, Mr. Geering submitted Mr. Gowland's good character should be taken into account, but given his relative lack of engagement in the process to date, Mr. Geering was unable to identify any other mitigating factors.

60. In relation to the risk of repetition, Mr. Geering submitted that there was no evidence before the Panel that demonstrated Mr. Gowland having any insight into his failings. Nor had he shown any remorse or remediation. In those circumstances Mr. Geering submitted that there remained a risk of repetition, even if the specifics of this case could be put down to ignorance of the law at the time, given there was no evidence of a change in Mr. Gowland's approach to this issue or to client handling in general. There remained a clear public interest dimension that required a sanction to be imposed.

61. In relation to publicity, Mr. Geering invited the Panel to make an order for publicity. Mr. Geering submitted there were no exceptional circumstances in this case that warranted departure from the normal order.

62. In relation to costs, Mr. Geering made an application for costs in the sum of £13,925.

Legal Advice

63. The Panel received and accepted the advice of the Legal Advisor. The Panel was advised that in considering sanction there is no burden or standard of proof. The

question of sanction is a matter for the Panel's judgment. The Panel was advised that having found liability to disciplinary action, it was required to consider what if any sanction to impose. It was advised that the purpose of sanctions is not to be punitive but to protect the public and the public interest in the wider sense, namely to maintain public confidence in the profession and to declare and uphold standards.

64. 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 practitioner and taking the minimum action necessary to protect the public and the wider public interest. The Panel was advised that every regulated individual has the right to put forward a defence and need not accept the case against them. However, the Panel was entitled to consider the level of insight Mr. Gowland had shown into the events in question and consider what remediation he had demonstrated.

Determination on Sanction

65. The Panel began by identifying the aggravating and mitigating factors present. In relation to Allegation 1, the Panel considered that the conduct was aggravated by the length of time it persisted and the risk such lack of communication and inaction posed to Mr. Horden, with no discernible steps taken by Mr. Gowland to rectify the position. The Panel could find no evidence of Mr. Gowland taking any responsibility for his failings, save that he had waived his fees.
66. In relation to Allegation 2, the Panel bore in mind the first supplement to the Sanctions Policy (version 8). The Panel noted that not only had Mr. Gowland delayed in dealing with the complaint issue, but had not replied to Mr. Horden at all. So far as the Panel was aware the complaint had never been advanced as Mr. Gowland had not engaged with Mr. Horden on the issue at any stage since.
67. In relation to Allegation 3, the Panel considered the length of time over which Mr. Gowland had failed to co-operate to be a significant aggravating factor. To date the Panel had still seen nothing of any real substance from him, in spite of persistent requests since 2021 for information. It had seen no real attempts on Mr. Gowland's part to produce any information, which he was on notice, that was important for his Regulator to have, in order to resolve its investigation.
68. Against the backdrop of aggravating factors the Panel took careful account of a number of mitigating factors. It noted Mr. Gowland's relatively lengthy career, during which he had no previous disciplinary history. It noted that whilst this case involved persistent conduct it was limited to a single client and to Mr. Gowland's interaction

with his regulator. The Panel also bore in mind that Mr. Gowland appeared not to have profited in any way from his conduct, having agreed to take no fee.

69. Notwithstanding the mitigating factors, the Panel determined that the aggravating factors marked the conduct out as towards the higher end of seriousness. The conduct in Allegations 1 and 3 demonstrated that Mr. Gowland had shown a persistent and reckless disregard for his obligations both to his client and to his Regulator. He had risked potentially significant loss to his client as a consequence.
70. Having assessed the aggravating and mitigating factors, the Panel next considered the risk to the public and the risk of repetition. The Panel had been provided with no comfort at all that Mr. Gowland would not act in a similar manner in the future. He had provided no evidence of any insight into his failings, had shown no remorse or remediation and appeared to take no real responsibility either for his conduct towards Mr. Horden or for his conduct in failing to co-operate with RICS. To the contrary, his conduct up to and including in relation to the hearing had been marked by a singular failure on his part to enter into any meaningful dialogue or to provide any information to the Panel to enable it to understand the issues. The Panel therefore regarded the likelihood of repetition and in light of the possible consequences of such repetition the Panel considered the risk to the public to be high.
71. The Panel further determined that a Member failing to provide a competent and reasonable standard of service to a client, showing a reckless disregard for his client, thereafter failing to provide any information on how the client could complain and wholesale failing to engage with his Regulator, had a clear and profound impact on the confidence the public could repose in the profession.
72. The Panel next considered the possible sanctions available to it, in ascending order of seriousness. In light of the persistent nature of the findings made and the lack of any demonstrable insight, the Panel was in no doubt that the sanctions of caution and reprimand were both insufficient to properly protect the public and insufficient to safeguard the wider public interest.
73. The Panel next considered undertakings and conditions. It considered that no undertakings had been offered and in light of Mr. Gowland's lack of engagement, undertakings were unrealistic. The Panel concluded that in this case conditions were unworkable. Mr. Gowland had singularly failed to engage in any meaningful way with the disciplinary process, such that there was no likelihood of him engaging with conditions in a meaningful manner. Nor could such conditions be formulated to meet the need to protect the public and the wider public interest.

74. The Panel next considered whether to fine Mr. Gowland. It considered that whilst a fine at the appropriate level might go some way to marking the gravity of Mr. Gowland's conduct, it was insufficient to properly assure public confidence in the profession and the upholding and declaring of proper professional standards. A fine would do nothing to protect the public.

75. The Panel next considered expulsion from the profession. Whilst the Panel gave very careful consideration to whether a lesser sanction could be imposed in circumstances where the conduct related to a single client in an otherwise unblemished career, it considered that expulsion was the only sanction available to it, to ensure the public was protected from a professional who had demonstrated a reckless disregard for his client's interests, persistently failed to engage with his client and his Regulator, and had demonstrated a level of incompetence in carrying out what work he had undertaken, most particularly when advising Mr. Horden on his liability for costs.

76. The Panel therefore concluded that Mr. Gowland should be expelled from membership.

Costs

77. The Panel noted the costs application from RICS in the sum of £13,925. The Panel had been provided with no information by Mr. Gowland as to his means, nor had he chosen to make any representations as to the appropriate costs order. The Panel therefore determined to make an order for costs in the sum of £13,925.

Publicity

78. The Panel noted there is a presumption in favour of publicity. In the absence of any factors indicating publicity was not appropriate, the Panel determined to make an order for publicity in accordance with the publication policy.