

M A Hatton, Solicitor
RICS Legal Services
The Royal Institution of
Chartered Surveyors
12 Great George Street
Parliament Square
London SW1P 3AD

ADDRESS FOR CORRESPONDENCE

Ms N Klosterkotter-Dit-Rawé

[]
[]
[]

4 September 2008

(By 'Recorded Delivery')

Dear M Hatton,

I acknowledge receipt of your letter dated 21 August 2008.

1. Your threat of proceedings within 14 days of your 21 August 2008 letter

In the first paragraph of your 21 August 2008 letter, you state:

"[my] letter dated 18 August 2008 and note that you are in effect refusing to remove the references to RICS and the Royal Institution of Chartered Surveyors from your website"

As your Institution is widely referred to in the public domain, it cannot be that I have unknowingly breached a total ban on "referring" to your Institution by making references to it on my website. And, indeed, you do not state this in your letters of 14 and 21 August 2008.

In my 18 August 2008 letter, I asked that you provide me with precise detail of your accusations.

Rather than address my perfectly legitimate questions for clarification, in your letter of 21 August 2008, you state:

"Therefore, having already given you notice that your web references identify the Institution and clearly have an intention to damage the reputation of the RICS, we now intend to commence legal action against you for damages for slander and legal costs, if all the said references are not removed within 14 days"

1. "Slander" is the 'spoken word', and 'libel' the 'written word'.
2. My 'written' references to your Institution have been on my website for nearly two years. The limitation period for filing a claim for defamation is one year.

However, as I pay paramount importance to the integrity of my website, including making 'fair comments', this one year limitation does not preclude addressing your concerns - which I neither admit nor deny - as I do not know what you are complaining about.

3. I refer you to the Defamation Act 1996 "The plaintiff must prove that the words complained of are defamatory"
4. I also refer you to the CPR 'Pre-action protocol for defamation', 'Letter of claim':

"s.3.3.2 - The letter of Claim should include the following information..."

the words complained of...;

factual inaccuracies or unsupportable comment within the words complained of; the Claimant should give a sufficient explanation to enable the Defendant to appreciate why the words are inaccurate or unsupportable;

details of any special facts relevant to the interpretation of the words complained of and/or any particular damage caused by the words complained of.

s.3.3.3 *"It is desirable for the Claimant to identify in the Letter of Claim the meaning(s) he/she attributes to the words complained of"*

2. Martin Russell Jones

The last sentence of your letter states:

"No doubt Martin Russell Jones will also be taking similar legal action against you"

1. You are threatening me with a legal action you cannot carry out.
2. Your comment reflects a complete turnaround of your Institution's position. Indeed, I refer you to the enclosed letter of 28 May 1992¹ from your Institution to one of my contacts. It states:

"The Institution's Royal Charter imposes a duty on the Institution to "maintain and provide the usefulness of the professional for the public advantage" and the Institution's disciplinary powers and proceedings have to be viewed in that context.

Any professional body which attempts to enforce a code of conduct on its members will rely largely on members of the public to report allegations of misconduct.

Such complainants cannot be expected to be experts on the Institution's disciplinary code and if they find themselves at risk of defamation proceedings they are less likely to be forthcoming with their complaints.

The Institution has always and will therefore continue to take a dim view of such threats and such action may in some circumstances lead to a charge of "conduct unbecoming a Chartered Surveyor".

The threat of legal action by your member against my contact was reported by Private Eye, in its 4 May 2001 issue stating, among other *"The threat was firmly criticised by the Royal Institution of Chartered Surveyors, and did not develop into legal action".*

Not only does your Institution evidently no longer *"takes a dim view"* of the threat of defamation proceedings by your members against members of the public who complain of their misconduct, and then expose them in the public domain due to lack of action by your Institution, it is clear that you now actively encourage them to do so.

And, without any evidence in support of your accusations, I am bound to conclude that your Institution adopts the same approach against members of the public when faced with criticisms about the manner in which you handle complaints against your members.

Considering the comments I am receiving on my website from leaseholders in other blocks, I suspect that a rather large courtroom will be required for the proceedings.

¹ 28 May 1992 letter from RICS to one of my contacts

3. As it stands, I regard your conduct as amounting to offences against me under:

1. The Malicious Communications Act 1988

"(1) Any person who sends to another person

(a) a letter...which conveys

(ii) a threat...

is guilty of an offence if his purpose, or one of his purposes, in sending it is that it should, so far as falling within paragraph (a) or (b) above, cause distress or anxiety to the recipient..."

2. Protection from Harassment Act 1997

"1. - (1) A person must not pursue a course of conduct-

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

7. - (1) This section applies for the interpretation of sections 1 to 5.

(2) References to harassing a person include alarming the person or causing the person distress.

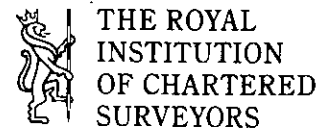
(3) A "course of conduct" must involve conduct on at least two occasions"

Yours sincerely

N Klosterkotter-Dit-Rawé

Our Ref: PC/VS/Ng/31418

28 May 1992



PRIVATE AND CONFIDENTIAL

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Dear Sir

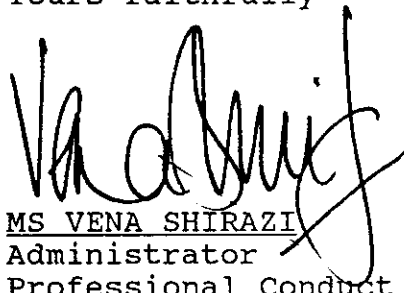
I must apologise for my delay in responding to your letter of 1 May 1992 of which the contents are noted. However, this has been due to my preparing the papers for re-submission to the Monitoring and Investigation Committee on 3 June 1992. I will respond to your first two paragraphs after that meeting.

In respect of the letter you have received from Mr Kane's solicitors, I would comment as follows.

The Institution's Royal Charter imposes a duty on the Institution "to maintain and provide the usefulness of the professional for the public advantage" and the Institution's disciplinary powers and procedures have to be viewed in that context. Any professional body which attempts to enforce a code of conduct on its members will rely largely on members of the public to report allegations of misconduct. Such complainants cannot be expected to be experts on the Institution's disciplinary code and if they find themselves at risk of defamation proceedings they are less likely to be forthcoming with their complaints. The Institution has always and will therefore continue to take a dim view of such threats and such action may in some circumstances lead to a charge of "Conduct unbecoming a Chartered Surveyor".

Mr Kane has been advised of the Institution's position. I will contact you again after 3 June 1992.

Yours faithfully



MS VENA SHIRAZI
Administrator
Professional Conduct



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Your Receipt

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