

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING BY WAY OF WRITTEN REPRESENTATIONS

Case of

Mr Gary Bonner [1110528]

Kent, ME16

On

Tuesday 10 January 2017

RICS Surveyor Court, Westwood Way, Coventry, CV4 8JE

Panel

Catherine Audcent (Lay Chair)

Ian Hastie (Member)

Gillian Seager (Lay Member)

Legal Assessor

Margaret Obi

CHARGES HEARD

The Panel considered the following:

The formal charge is:

Mr Bonner may be liable for Disciplinary action under Bye-Law 5.2.2(d) by reason of having been convicted by the Crown Court of Maidstone on 10 April 2015 for the following offences:

1. Producing a Class B controlled drug - cannabis
2. Possessing with intent to supply a controlled drug of Class B – cannabis
3. Abstracting electricity

Preliminary Matters

The Panel was satisfied that Mr Bonner had been properly served with notice of the hearing by Special Delivery on 7 December 2016. The Panel was also satisfied that Mr Bonner had agreed to the hearing proceeding by way of written representations.

Summary

Mr Bonner has been a professional member of RICS since 2003. After being made redundant Mr Bonner started to grow cannabis in his property and to supply it to others. He was arrested in July 2013, but was not charged until March 2015. He was convicted, having pleaded guilty at Maidstone Crown Court in April 2015 and sentenced to two years imprisonment. Although Mr Bonner has since been released he remains on licence.

Panel's Approach

The Panel bore in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and it proceeded on the basis that the Human Rights Act 1998 will apply. It bore in mind in particular Mr Bonner's rights to a fair hearing and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act.

The question of whether or not the charges gave rise to liability to disciplinary action is a matter for the Panel's judgment.

Evidence

As this is a case involving criminal convictions the Panel is required to accept the Certificate of Conviction as conclusive evidence of that conviction and Mr Bonner's commission of the offences. Furthermore, a finding of a court in the United Kingdom is prima facie evidence of the facts found.

The Panel carefully considered the RICS solicitor's bundle of documents and the written submissions made on behalf of RICS. The documentary bundle included relevant correspondence between RICS

and Mr Bonner, the Certificate of Conviction, and the Judge's Sentencing Remarks. The Panel also took into account Mr Bonner's written submissions outlining the mitigating circumstances, a copy of his curriculum vitae and the other documents he provided. These documents included the witness statement of a forensic scientist provided for the purposes of the Proceeds of Crime Act 2002 (POCA) proceedings, Mr Bonner's two statements in response to the POCA proceedings and a letter from Berry & Lambert Solicitors to Mr Bonner.

Written Submissions by RICS presenting solicitor

The RICS solicitor submitted that the charges against Mr Bonner gave rise to a liability to disciplinary action by virtue of having been convicted of criminal offences which could result in a custodial sentence in accordance with Bye-law 5.2.2(d) . She submitted that Mr Bonner's criminal conduct demonstrated a serious failure to uphold the high standards of the profession, which adversely impacted upon the reputation of RICS and its members.

The RICS also submitted that given the seriousness of the criminal conviction, resulting in a two year custodial sentence, the Panel should have regard to paragraph 22 of the RICS Sanctions Policy which indicates that in the absence of extenuating circumstances such convictions are likely to result in expulsion.

The Panel was invited to order publication and award costs of £600.

Written Submissions by Mr Bonner

Mr Bonner in his written representations set out the background circumstances which led to his decision to engage in criminal activity to solve his financial problems. He made reference to his redundancy, the breakdown of his marriage, the loss of his house and his attempts at the relevant time to secure alternative employment. Mr Bonner also explained that initially he was informed by the police that no further action would be taken but after a significant delay this decision was reversed. In the interim he had obtained employment as surveyor.

Mr Bonner stated that having pleaded guilty to the offences, he spent 8 months in custody before being released on licence. He stated that he will continue to be under the supervision of his probation officer until April 2017.

Mr Bonner stated that since being released he has found employment with a civil engineering and building company. He expressed remorse and invited the Panel to permit him to remain an RICS member.

DETERMINATION

Liability to disciplinary action

The Panel found that the charges gave rise to liability to a disciplinary action.

The Panel was satisfied that the nature and gravity of Mr Bonner's convictions are serious and noted that he received a two year custodial sentence. The Panel accepted the sentencing judge's remarks that Mr Bonner's actions demonstrated 'careful planning, organization [and] meticulous preparation'. In particular his decision to resort to criminal activity to address his financial difficulties had the potential to significantly undermine public trust and confidence in the profession. The Panel concluded that the need to uphold the highest standards of conduct and behaviour of RICS members would be further undermined if a finding of liability to disciplinary action was not made.

Decision as to sanction

The Panel bore in mind that the purpose of sanctions is not to be punitive, though they may have that effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of the RICS as its regulator and to protect the public. Sanctions must be proportionate.

The Panel took into account the indicative sanctions guidance of the RICS. It considered carefully the mitigating and aggravating factors of this case.

The Panel, having determined that Mr Bonner is liable to disciplinary action, first had to decide whether to impose a sanction, and if it so, start by considering the lowest sanction, moving up the scale of gravity only if the sanction under consideration was insufficient to meet the public interest.

The Panel considered that the charges are serious and are aggravated by the following considerations:-

- Mr Bonner received a significant term of imprisonment;
- serious failure to uphold the high standards of the profession;
- the offence involved 'meticulous preparation' and 'business acumen'.
- notified RICS 11 months after conviction;

The Panel took into account that the following mitigating factors:

- absence of any of previous disciplinary findings against Mr Bonner;
- his full admissions to the criminal charges;
- he notified RICS of his conviction, albeit belatedly;
- Mr Bonner's difficult personal circumstances resulting in his life being in a 'state of collapse' at the time of the offences;
- the long delay between arrest and charge;
- genuine expressions of remorse.

The Panel first considered taking no action. The Panel concluded that in view of the nature and seriousness of Mr Bonner's repeated persistent and dishonest criminal behaviour and in the absence of exceptional circumstances, to take no action would be wholly inappropriate. Furthermore it would be insufficient to maintain public confidence and uphold the reputation of the profession.

The Panel similarly considered that the imposition of a reprimand would be insufficient, given the gravity of the criminal offences and the underlying facts. The Panel also did not consider that undertakings or a fine would adequately address the public interest concerns raised by this case.

The Panel went on to consider conditions. The Panel concluded that criminal activity including dishonesty is not amenable to conditions, as the basis for this type of behaviour, is an attitudinal failing. The Panel was unable to formulate conditions which would be workable, verifiable or proportionate. Furthermore, conditions would not adequately address the serious nature of Mr Bonner's premeditated criminal activity and so would undermine public confidence in the profession and the need to uphold standards of conduct and behaviour.

Having ruled out conditions, the Panel determined that it had no option but to expel Mr Bonner from RICS. In reaching this conclusion the Panel had regard to paragraph 22 of the Sanctions Policy which states:

'in the absence of extenuating circumstances, the following are examples of instances likely to result in a Panel making or upholding a decision to expel a Member ...:

... Conviction of a serious criminal offence (an offence for which the penalty could be a custodial sentence)...'

The Panel accepted Mr Bonner's expressions of remorse as genuine. The Panel also accepted that there were mitigating circumstances which led to Mr Bonner making a serious error of judgement. However, the Panel concluded that these factors do not amount to 'extenuating circumstances' sufficient to deviate from the expectation as set out in the Sanctions Policy. Mr Bonner, despite his challenging circumstances, had a choice and chose to disregard the high standards expected of him and embarked on a premeditated course of criminal conduct. The Panel took the view that expulsion is justified and proportionate in this case in order to maintain public trust and confidence in the surveyor's profession. The Panel had regard to the impact expulsion would have on Mr Bonner, but concluded that his interests were significantly outweighed by the Panel's duty to give priority to the significant public interest concerns raised by this case. As expressed in the case of *Bolton v The Law Society* [1994] 1 WLR 512:

"The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

The Panel also took into account the judgement in *CHRE v GDC and Fleishmann* [2005] EWHC 87 (Admin) where Mr Justice Newman stated:

'...as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence...The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.'

Mr Bonner's sentence does not expire until April 2017 and in the interim he remains on licence. As he is still serving his sentence this is likely to adversely impact on the reputation of the profession.

Accordingly the Panel orders Mr Bonner's expulsion from RICS membership.

Publication and Costs

The Panel considered the guidance regarding publication of its decision and the application for costs. The Panel was satisfied that a schedule of costs had been sent to Mr Bonner in advance of the hearing.

The Panel accepted the Legal Assessor's advice that it is usual for decisions to be posted on the RICS website and published in Modus, and in a newspaper local to the practice. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role. The Panel considers that this will be adequately addressed by publication on the RICS website and in Modus.

The Panel orders that this decision is published on the RICS website and in Modus.

The Panel considered carefully the issue of costs. The figure for the hearing is the average cost of a hearing day, and the Panel had no reason to doubt that the amount requested was reasonable.

The Panel concluded that it was fair to make a costs order in this case, otherwise the cost of the proceedings would fall on the profession as a whole.

The Panel orders that Mr Bonner pays to RICS its costs in the total sum of £600.

Appeal

Mr Bonner has 28 days to appeal against this decision in accordance with Rules 59 - 70 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009.

In accordance with Rule 60 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009 the Honorary Secretary has 28 days from the service of the notification of this decision to require a review of this decision.