

Disciplinary Panel Hearing by way of written representations

Case of

**Mr Richard Kingston [1288952]
Pontyclun, Mid Glamorgan, CF72**

On

Thursday 21 December 2017

Via telephone conference

Panel

Catherine Audcent (Lay Chair)
Gillian Seager (Lay Member)
Chris Pittman (Surveyor Member)

Legal Assessor

Ben Kemp

1. Charge

The formal charge is:

On 21 December 2016, you were convicted of 2 counts of falsifying, concealing, destroying or disposing of a document relevant to a complex/serious fraud investigation and were sentenced to twelve months imprisonment.

2. Service and proceeding in absence

- 2.1 The provisions as to service set out in Rules 23(b), 23A(a) and 43a(a) and (b) of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7 (the Rules) have been complied with, as the notice of the hearing, with other documents required to be supplied, were sent by email and special post to Mr Kingston on 22 November 2017, so giving more than the required 28 days' notice of this hearing. RICS has produced a witness statement from its Panel Management Officer, Mrs Emma Jones, speaking to evidence of service, in the form of appropriate delivery receipts, which were also produced.

- 2.2 RICS has referred this case for a paper hearing in accordance with Rules 43a and 9(c). Mr Kingston has confirmed in writing that he does not wish to exercise his right to an oral hearing. The Panel was in the circumstances also satisfied that it was not necessary in the interests of justice or the public interest to refer the matter to a public hearing.
- 2.3 The Panel accordingly proceeded to consider this case by way of a paper hearing.
- 2.4 The burden of proof is on RICS and the standard of proof is the balance of probabilities.

3. Findings of fact

- 3.1 The relevant person, Mr Kingston has been a Fellow of RICS since 2010. Mr Kingston admits the charge.
- 3.2 The circumstances giving rise to these proceedings are that, on 21 December 2016, Mr Kingston was sentenced to twelve months' imprisonment after being convicted by the Crown Court in England of two instances of concealing, destroying or otherwise disposing of two mobile telephones, relevant to a Serious Fraud Office (SFO) investigation. The conduct in question occurred during the course of 2015.
- 3.3 The Panel is led to understand that the criminal conviction related to an investigation by the SFO into suspected bribes paid by a construction and professional services company for which Mr Kingston previously worked as Managing Director.
- 3.4 The Panel has had the benefit of a documentary bundle, including the relevant certificate of conviction and a transcript of sentencing observations made by the judge sitting in the criminal case. In addition, RICS has produced evidence in the form of news releases from the SFO and correspondence between RICS and Mr Kingston. Mr Kingston has produced two sets of written representations, to which the Panel has had careful regard, along with written representations from the RICS solicitor.
- 3.5 The Panel finds the facts of the Charge proved, as admitted, and in any event upon the basis of the documentary evidence, including in particular the relevant extract conviction.

4. Discussion and conclusion

- 4.1 On the basis of the facts found the Panel has had to decide whether or not Mr Kingston is liable to disciplinary action. In coming to its conclusion the Panel has accepted the advice of the Legal Assessor. This question is one for the Panel's judgment. The Panel has decided that the circumstances in this case do give rise to a liability to disciplinary action in terms of RICS Bye-Law 5.2.2(d). Mr Kingston has been convicted of two serious criminal offences, resulting in him serving a custodial sentence. Moreover, the nature of those convictions was such as to bring into question his professional integrity.
- 4.2 The Panel considers in the circumstances that it has no option but to find Mr Kingston liable to disciplinary action.

5. Mitigating and Aggravating Considerations

- 5.1 RICS invites the Panel to note the observation of the Sentencing Judge, to the effect that this was an offence, *“in many ways on a par with perverting the course of justice”*, which is *“invariably a serious matter”*.

It submits that the conduct of Mr Kingston fell seriously below the standard expected of an RICS member. It argues that Mr Kingston has failed to demonstrate insight into the seriousness of his conduct.

- 5.2 Mr Kingston has provided mitigation as follows. He previously enjoyed a successful career, having worked hard to build his business in the United Arab Emirates. He and his family have suffered significantly, personally and financially, as a result of the criminal investigations and convictions giving rise to these proceedings. He has worked hard while in prison to understand the seriousness of his convictions, and the reasons behind them.
- 5.3 Mr Kingston is now out of prison, having been released on probation after approximately 3 months, as a low risk and exemplary prisoner. He is now back in employment, but his role he says is dependent upon his status as a member of RICS.
- 5.4 Mr Kingston states further that the SFO are no longer investigating any involvement that he may have had in the allegation that bribes were paid by his former employer.
- 5.5 He has expressed regret and apologised for the fact that his conduct fell below the standards expected of a member of RICS. He has, he says, made a mistake. He says that he feels ashamed of his conduct and accepts full responsibility for his actions.
- 5.6 Mr Kingston has highlighted in particular the following passages in the Judge's Sentencing remarks:

“Looking at all the circumstances of this offence and the defendant and making the sentence as lenient as I possibly can, the least sentence I can impose is one of 12 months’ imprisonment.....”; and

“It is of course no pleasure to have to sentence a man with your background. You worked hard in your business.....”

Mr Kingston points to judicial recognition in these passages of his hard working background, and to the judge's inclination towards leniency, not least given that this was apparently the first case of its sort to come before the court.

- 5.7 There has been no previous disciplinary finding against Mr Kingston.

6. Decision as to sanction

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

- 6.2 The Panel paid careful heed to the advice of the Legal Assessor and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case. The Panel has considered carefully the written submissions provided by Mr Kingston.
- 6.3 The Panel has decided that Mr Kingston is liable to disciplinary action. Having done so it first has to decide whether to impose a sanction, and if it so decides the Panel commences at the lowest sanction, and only if it decides that that sanction is not appropriate does it move to the next level of sanction. The Panel bears in mind that more than one sanction may be imposed.
- 6.4 The Panel considers the circumstances of this case to be too serious for no sanction to be imposed. Similarly, it does not consider that a caution or reprimand would be sufficient, recognising that Mr Kingston received two convictions in respect of a serious offence which arose directly from his professional role and were such as to bring into question his integrity. The Panel does not consider that there is any purpose to be served in this case by the imposition of undertakings or conditions. The Panel notes and accepts the remarks of the sentencing judge, to the effect that a reoccurrence is unlikely. It does not consider that the nature of this case, given its seriousness, is such as could be appropriately or sufficiently addressed through the payment of a fine.
- 6.5 The Panel is concerned both by the seriousness of the conduct in this case, and by the fact that it involved an element of repetition. Mr Kingston may now characterise his conduct as mistaken, but if so it was a serious mistake that went directly to Mr Kingston's professional integrity and did not have the character of an isolated lapse. Moreover, the Panel notes in this respect the comment of the sentencing judge to the effect that this was, "*a deliberate course to try and stay out of the way of the investigators to buy himself time and to suppress any information that might be contained in that [mobile phone]....*"
- 6.6 This case is about, in essence, a serious professional misjudgement, one moreover continued over an extended period of time. Mr Kingston was in a senior position of professional responsibility. He fell seriously short of the standards of integrity and trust expected of him. The Panel recognises the steps Mr Kingston has taken to rebuild his life, both professional and personal, and hopes that he will in due course be in a position to complete his rehabilitation. In the meantime, however, it considers that it has no choice but to expel Mr Kingston from membership. His conduct was such as to be incompatible with membership of RICS, and risked bringing the profession into disrepute.
- 6.7 The Panel accordingly orders expulsion. It will be open to Mr Kingston to reapply for membership, should he so wish, in due course, in accordance with the applicable RICS rules.

7. Publication and Costs

7.1 Publication

The Panel has considered the guidance as to publication of its decisions. It accepts the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus. The Panel sees no reason for departing from the normal practice in this case. 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 orders that this decision is published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

7.2 Costs

RICS has asked for costs and has provided a schedule to Mr Kingston in advance of the hearing.

The Panel has considered carefully the costs sought and determined that they are reasonable and proportionate. The Panel orders that Mr Kingston pays to RICS costs of £600.

8. Appeal Period

- 8.1 Mr Kingston may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rules 58 – 70 of the Rules.
- 8.2 The Honorary Secretary of RICS may require a review of a finding or penalty imposed by a Disciplinary Panel within 28 days from service of the notification of the decision, in accordance with Rule 59 of the Rules.