

## **Disciplinary Panel Hearing**

### **Case of**

**Mr David Bussey [0089125]  
Northants  
NN11 6DL**

### **On**

Wednesday 4 April 2018

### **Paper Hearing**

By telephone

### **Panel**

Mr John Anderson (Lay Chair)  
Ms Gillian Seager (Lay Member)  
Mr Ian Hastie (Surveyor Member)

### **Legal Assessor**

Ms Margaret Obi

### **The formal charge is:**

On 2 June 2017 you were convicted of fraud contrary to section 1 of the Fraud Act 2006 and sentenced to 18 months imprisonment suspended for 12 months.

You may therefore be liable to disciplinary action under RICS Bye-Law 5.2.2(d)

## Response

1. Mr Bussey responded to the Listing Questionnaire. He signed the form on 7 March 2018 and according to the date stamp it was received by RICS on 9 March 2018. In response to the question at paragraph 1 of the form, '*Do you admit/deny the charge?*' Mr Bussey had crossed through the word '*deny*' and had added the word '*yes*', which indicated that the charge was admitted. In response to the statement at paragraph 2 of the form which states, '*I request an oral hearing and that the case is heard before a Panel sitting in public*', Mr Bussey did not cross through the '*yes/no*' option but he did put a cross through the number '2'.
2. Above his signature Mr Bussey added a handwritten note describing his personal circumstances.

## Service and Proceeding in Absence

3. A Notice of Hearing, dated 6 March 2018, was sent to Mr Bussey. The Notice was sent by email to Lionheart (support charity for RICS professionals) on the understanding that it would be forwarded to Mr Bussey and by Special Delivery to his postal address. A copy of the Notice of Hearing, a Royal Mail delivery receipt, a copy of the email to Lionheart (which included the Notice of Hearing and other attachments) and a signed witness statement from Mrs Emma Jones from the Regulatory Tribunals Executive was produced as proof that the Notice was sent. The witness statement confirmed that the Notice of Hearing was posted on 6 March 2018 and that the postal address it was sent to was the address held on the RICS system within Mr Bussey's contact record.
4. Rule 23 of the Disciplinary, Registration and Appeal Panel Rules (Version 7) (the Rules) confirms that good service requires RICS to:
  - confirm the charge;
  - confirm the date, time and venue of the hearing;
  - enclose the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended);
  - invite the Relevant Person to indicate whether he wishes to request an oral hearing.
5. Rule 43a of the Rules, which relates to paper hearings, states:
  - The Head of Panel Management will give the Relevant Person notice of the hearing which shall not be less than 28 days from the date of the letter.
  - The Relevant Person and RICS will submit documents on which they intend to rely and written representations to the Disciplinary Panel no later than 14 days before the date of the hearing.
6. The Panel was satisfied that RICS had complied with Rule 23 and Rule 42a. Therefore, the Panel concluded that good service had been effected.

7. Having determined that service of the Notice of Hearing had been properly effected, the Panel went on to consider whether to proceed with the paper hearing or adjourn in order to conduct an oral hearing.
8. The Panel determined that it was fair, reasonable and in the public interest to proceed with a paper hearing, in Mr Bussey's absence, for the following reasons:
  - a) Mr Bussey responded to the Notice of Hearing. The Panel noted that although Mr Bussey's response was ambiguous, in that he did not cross either of the 'yes/no' options on the Listing Questionnaire form in relation to a request for an oral hearing, he did cross through the paragraph number '2' which could be interpreted as an indication that he did not consider it to be applicable. In any event, the Panel noted that Mr Bussey had not made an express or implied request for an oral hearing. In these circumstances, the Panel was satisfied that it was reasonable to conclude that Mr Bussey had chosen not to request an oral hearing and had deliberately and voluntarily waived his right to make such a request on the understanding that the hearing would proceed as a paper hearing based on the written submissions from both parties.
  - b) There has been no application to adjourn and no indication from Mr Bussey that he would be willing to attend on an alternative date and therefore re-listing this hearing would serve no useful purpose.
  - c) The Panel concluded that any potential disadvantage to Mr Bussey is limited, as the facts and liability to disciplinary action are capable of being proved based on the documents alone and Mr Bussey has submitted written submissions.
  - d) There is a strong public interest in ensuring that substantive hearings take place as expeditiously as possible.

## **Background**

9. Mr Bussey MRICS has been a member of RICS since May 2002. He is the sole principal of David Bussey LLP (the Firm). The Firm has been regulated by RICS since September 2007.
10. On 2 June 2017, Mr Bussey was convicted of fraud, having pleaded guilty to the offence. On 3 July 2017 he was sentenced to 18 months imprisonment, suspended for 12 months and ordered to undertake an Unpaid Work Requirement of 150 hours.
11. The circumstances leading to Mr Bussey's conviction are as follows:

- Mr Bussey was the governor of a school. The school owned a piece of land and Mr Bussey was to assist in a project involving the development of that land. Mr Bussey, acting in his capacity as a school governor, approached a third party (JJ) to discuss the possibility of obtaining planning permission for the plot of land owned by the school.
- At some point prior to 1 January 2016, the school had indicated to Mr Bussey that they no longer wished to pursue the project. However, between January 2016 and August 2016, Mr Bussey made the false representation that he was authorised by the school to negotiate with JJ on the school's behalf.
- Mr Bussey continued to progress the purported development, despite knowing that the project was not going to proceed. In March 2016, Mr Bussey fraudulently obtained a £10,000 investigator's fee from Ainsworth Construction Ltd. To lend credibility to the fraud, Mr Bussey was involved in producing an 'option agreement', which had been incorrectly and fraudulently put together, containing the signature of a purported Trustee who did not properly exist.

## **Findings of Fact**

### Panel's Approach

12. The Panel was aware that the burden of proving the facts was on RICS. Mr Bussey did not have to prove anything, and the Allegation could only be found proved, if the Panel was satisfied, on the balance of probabilities.
13. In reaching its decision the Panel took into account the documentary evidence including the Certificate of Conviction, the Judge's Sentencing Remarks and the written representations from both parties. The Panel was aware that in accordance with Rule 41(b) of the Disciplinary, Registration and Appeal Panel Rules (version 7), it could not go behind the conviction and was required to accept the certification from Oxford Crown Court as conclusive proof of the conviction itself and Mr Bussey's commission of that offence.

## **Decision**

### Allegation – Found Proved

*'On 2 June 2017 you were convicted of fraud contrary to section 1 of the Fraud Act 2006 and sentenced to 18 months imprisonment suspended for 12 months.'*

14. The Panel was provided with a Certificate of Conviction in the name of Mr Bussey, which was signed by an officer of the court on 11 August 2017. The Panel accepted the Certificate of Conviction as conclusive evidence that Mr Bussey was convicted of Fraud on 2 June 2017 and on 3 July 2017 was sentenced to 18 months imprisonment suspended for 12 months with a 150 hours Unpaid Work Requirement. The Panel noted that the Judge's Sentencing Remarks confirm that Mr Bussey had pleaded to the offence.
15. Accordingly, the Panel found the factual allegations proved, based on the documentary evidence produced.

### **Liability to Disciplinary Action**

16. The Panel noted that the Judge in his Sentencing Remarks concluded that Mr Bussey's fraud demonstrated a high level of culpability by virtue of the breach of trust. The Judge observed that Mr Bussey fraudulently obtained monies to which he was not entitled and caused loss to be accrued by Ainsworth Construction Ltd in relation to the money they paid and the work they did on an effectively '*fictitious project*'.
17. The Panel concluded that Mr Bussey's conduct represented a significant breach of Rule 3 (Ethical Behaviour) which states, '*Members shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with their professional obligations.*' The Panel was satisfied that Mr Bussey's conduct fell far below the standard expected of a RICS member. Although Mr Bussey was appointed as a school governor in his private capacity, he was purporting to deal with property development which is a surveying activity and therefore, his professional status is likely to have supported his credibility and reliability. The Panel concluded that Mr Bussey's dishonest conduct and behaviour brought his profession into disrepute.
18. As a consequence, the Panel was satisfied that public confidence in the profession and in RICS as a regulator would be undermined if a finding of liability to disciplinary action was not made, given the nature and seriousness of the Mr Bussey's conviction.
19. Accordingly, the Panel concluded that Mr Bussey is liable to disciplinary action.

### **Sanction**

#### Panel's Approach

20. The Panel accepted the advice of the Legal Assessor. The Panel took into account the RICS Sanctions Policy and the overriding principles. The Panel was mindful that the purpose of any sanction is not to punish the Mr Bussey twice for the same offence, but to protect the public and the wider public interest. The public interest includes maintaining

public confidence in the profession and RICS as its regulator and upholding proper standards of conduct and behaviour. The Panel applied the principle of proportionality by weighing Mr Bussey's interests with the public interest and by considering each available sanction in ascending order of severity.

21. The Panel took into account the written submissions made by both parties, its factual findings and its determination that Mr Bussey is liable to disciplinary action.

### Decision

22. In determining the appropriate sanction, to impose the Panel first identified what it considered to be the mitigating and aggravating features of the case.

23. The Panel noted that Mr Bussey in an undated handwritten letter, which had been received by RICS on 10 November 2017, had set out what he appeared to consider to be the mitigating circumstances. He stated that his actions were '*...never for financial gain but to provide the school with a modern science block, alongside investment in the farm to create many more opportunities for the students and for their career choices.*' He went on to state in his letter that, '*[he] was in a system that [he] did not understand and it appeared that all were seeking the easiest option (legal) to get it over with as soon as possible and [he] went along with it because [he] was not strong enough to fight another battle.*' He also stated that, '*It was obvious that no-one in the legal process understood the concept of an option and the risk that it would not come to fruition at any time during the process. No one really bothered to find out either.*' With regards to his personal circumstances Mr Bussey stated that, '*only Lionheart have an inkling of what I was going through and being put through at that particular time. I only need say that the attempt on my own life shows how low it had put me.*'

24. The Panel identified the same mitigating factors that were referred to in the Judge's Sentencing Remarks. The mitigating factors were as follows:

- Mr Bussey's previous good character and the absence of any of previous disciplinary findings;
- his guilty plea to the criminal charge;
- his initial involvement in the project was altruistic;
- his difficult personal circumstances as a result of the conviction;
- his current ill health.

25. The Panel identified the following aggravating factors:

- The fraud was committed in breach of trust;
- Mr Bussey made a financial gain and a third party made a financial loss;
- Mr Bussey received a significant term of imprisonment, albeit suspended;
- There has been no evidence of insight, remorse or remediation.

26. The Panel first considered taking no action. The Panel concluded that, in view of the nature and seriousness of Mr Bussey's dishonest criminal behaviour, to take no action on his RICS membership would be wholly inappropriate. Furthermore, in the absence of exceptional circumstances the Panel concluded that taking no action would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.
27. The Panel then considered a Caution and a Reprimand. The Panel noted paragraph 15.1 of the Sanctions Policy which states: '*A caution is likely to be given in circumstances where the breach is minor and is unlikely to be repeated*' and paragraph 16.1 which states, '*A reprimand may be given where there has been/is a risk of harm.*' The Panel determined that a Caution was not appropriate, as the risk of repetition was not sufficiently low, given the absence of any meaningful insight. The Panel also took the view that Mr Bussey's underlying behaviour could not be described as limited or minor in nature. With regard to a Reprimand the Panel took the view that it would fall well short of meeting the wider public interest in terms of declaring and upholding proper standards or maintain public confidence in the profession. Furthermore, the Panel noted that neither a Caution nor a Reprimand would impose any restriction on Mr Bussey's practice and therefore concluded that these sanctions would not provide any public protection.
28. The Panel went on to consider Undertakings. The Panel noted that Mr Bussey's fraud conviction and the underlying facts upon which it is based, involved dishonest conduct which is not amenable to Undertakings, as the basis for this type of behaviour is an attitudinal failing. The Panel also concluded that such behaviour is not amenable to a financial penalty, either on its own or in combination with another sanction, as it would not address the public interest concerns raised by this case.
29. The Panel went on to consider conditions. The Panel concluded that a criminal conviction for a dishonesty offence has the potential to seriously undermine the trust and confidence the public are entitled to expect from all RICS members. The Panel considered that not only is Mr Bussey's conviction and underlying dishonest behaviour inherently difficult to remediate, but in the absence of any evidence of insight, remorse or remediation the Panel concluded that there was also no evidence of any realistic prospect that he was willing or able to address these deficiencies in the future. Therefore, the Panel concluded that it was not possible to formulate workable conditions, and in any event, such an order would not adequately meet the wider public interest.
30. The Panel also took into account the case of *CRHP v GDC and Fleischman* [2005] EWHC 87 Admin, where it was made clear that if a relevant person has been convicted of a serious criminal offence and is still serving their sentence at the time the matter comes before a Panel, the Panel should not normally permit the relevant person to resume their practice until that sentence has been satisfactorily completed. The Panel noted that Mr Bussey is currently subject to a suspended sentence which is not due to expire until July 2018. It would be wholly inappropriate for Mr Bussey to resume practice, with or without restrictions, whilst subject to such requirements.

31. In these circumstances, the conditions would not be sufficient to protect the public or the wider public interest.
32. Having determined that a condition would be insufficient the Panel determined that Mr Bussey should be expelled from RICS membership. In reaching this conclusion the Panel took into account paragraphs 20.1 of the Sanctions Policy which states that in the absence of extenuating circumstances the following types of cases are likely to result in expulsion:
- Fraud, dishonesty or a lack of integrity;
  - Conviction of a serious criminal offence (an offence for which the penalty could be a custodial sentence).
33. The Panel noted that expulsion is the sanction of last resort. However, the Panel concluded that there was no other way to adequately protect the public and the wider public interest. The Panel concluded that Mr Bussey put his own interests above the interests of the school, the third parties and his professional obligation to act with honesty and integrity at all times. Despite the passage of time and the opportunity for reflection Mr Bussey appeared to be keen to blame others rather than accept responsibility for his wrongdoing. Given the gross breach of trust and the absence of insight the Panel did not consider that there was any way to protect the public other than through expulsion. Furthermore, it is the Panel's view that the public would consider Mr Bussey's behaviour to be so serious that it must be marked by imposing the ultimate sanction. Any sanction short of expulsion would fail to declare and uphold proper standards and would fail to maintain public confidence in the profession and RICS as its regulator.
34. Accordingly, the Panel determined that expulsion is the appropriate, necessary and proportionate sanction in this case.
35. The Panel had regard to the impact expulsion may have on Mr Bussey. However, the Panel concluded that Mr Bussey's personal and professional interests have already been damaged as a consequence of his conviction and was satisfied that his interests were significantly outweighed by the Panel's duty to give priority to the significant public interest concerns raised by this case.

## Publication

36. The Panel has considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website and in the RICS magazine Modus.

## Costs



37. RICS applied for costs of £600.00

38. The Panel considered carefully the issue of costs. The costs figure represents a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel had no reason to doubt that the costs application was fair and reasonable.

39. The Panel concluded that it was appropriate for Mr Bussey to contribute towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole.

40. The Panel ordered Mr Bussey to pay to RICS costs in the sum of £600.00

### **Appeal Period**

41. Mr Bussey has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

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