

## **Disciplinary Panel Hearing**

### **Case of**

**Mr Paul Morton [0000140529]  
Portsmouth, Hants, PO6 2TU**

### **On**

Friday 25 May 2018

### **Paper Hearing**

By telephone

### **Panel**

Mr Ian Hastie (Surveyor Chair)  
Ms Sally Ruthen (Lay Member)  
Mr Christopher Pittman (Surveyor Member)

### **Legal Assessor**

Ms Margaret Obi

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

'On 6 and 17 July 2017, you were convicted of three criminal offences that could have resulted in a custodial sentence.'

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

## Response

1. Mr Morton did not respond to the Listing Questionnaire.

## Service and Proceeding in Absence

2. A Notice of Hearing, dated 26 April 2018, was sent to Mr Morton. The Notice was sent by email and by Special Delivery to the postal address held on the RICS system. A copy of the Notice of Hearing, was produced as proof that the Notice was sent.
3. 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.
4. 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.
5. The Panel was satisfied that RICS had complied with Rule 23 and Rule 42a. Therefore, the Panel concluded that good service had been effected.
6. 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.
7. The Panel determined that it was fair, reasonable and in the public interest to proceed with a paper hearing, in Mr Morton's absence, for the following reasons:
  - a) Mr Morton did not respond to the Notice of Hearing. In these circumstances, the Panel was satisfied that it was reasonable to conclude that Mr Morton had chosen not to engage with these proceedings and had deliberately and voluntarily waived his right to make a request for an oral hearing.
  - b) There has been no application to adjourn and no indication from Mr Morton 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 Morton is limited, as the facts and liability to disciplinary action are capable of being proved based on the documents alone.
- d) There is a strong public interest in ensuring that substantive hearings take place as expeditiously as possible.

## Background

- 8. Mr Morton MRICS has been a member of RICS since 23 June 2000. He is the sole principal of his own firm Paul Morton Chartered Surveyors (the Firm). The Firm is also regulated by RICS. Mr Morton has indicated that the firm has now closed.
- 9. On 13 December 2017 Mr Morton made a self-declaration to RICS, in which he confirmed that he had pleaded guilty to a criminal offence at Winchester Crown Court. He also confirmed that he had not completed any CPD during 2017 and would not be renewing his RICS membership for 2018.
- 10. On 18 January 2018, Mr Morton provided RICS with a copy of the Certificate of Conviction. The certificate, dated 23 August 2017, confirms that Mr Morton was convicted on 6 July 2017, at North Hampshire Magistrates' Court, of the following offence:
  - (i) xx.
- 11. The certificate also confirms that on 17 July 2017, at Winchester Crown Court, Mr Morton was convicted of the following additional offences:
  - (ii) xx;
  - (iii) xx.
- 12. On 23 August 2017 Mr Morton was sentenced for all 3 offences. [xx] The sentence imposed was a Community Order for 36 months. [xx]
- 13. On 9 February 2018 Mr Morton sent an email to RICS in which he provided the 'facts' in relation to his convictions. [xx]

## Findings of Fact

### Panel's Approach

14. The Panel was aware that the burden of proving the facts was on RICS. Mr Morton did not have to prove anything, and the Allegation could only be found proved, if the Panel was satisfied, on the balance of probabilities.
15. In reaching its decision the Panel took into account the documentary evidence including the Certificate of Conviction, the Judge's Sentencing Remarks, the email from Mr Morton dated 9 February 2018 and the written representations from RICS. 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 Winchester Crown Court as conclusive proof of the conviction itself and Mr Morton's commission of that offence.

## **Decision**

### **Allegation – Found Proved**

*“On 6 and 17 July 2017, you were convicted of three criminal offences that could have resulted in a custodial sentence.”*

16. The Panel was provided with a Certificate of Conviction in the name of Mr Morton, which was signed by an officer of the Crown Court on 23 August 2017. The Panel accepted the Certificate of Conviction as conclusive evidence that Mr Morton was convicted of three criminal offences on 6 July 2017 and on 17 July 2017, was sentenced by way of a 36 month Community Order and made subject to a SHPO for five years.
17. The Panel accepted RICS' submission that all three offences are capable of attracting a custodial sentence either individually or collectively. Therefore, the Panel was satisfied that the criminal offences could have resulted in a custodial sentence.
18. Accordingly, the Panel found the factual allegations proved, based on the documentary evidence produced.

### **Liability to Disciplinary Action**

19. The Panel noted that the Judge in her Sentencing Remarks concluded that Mr Morton [xx] represents a *'significant concern.'*
20. The Panel was satisfied that Mr Morton's conduct was serious and fell far below the high standards of personal conduct expected of a RICS member. The Panel concluded that Mr Morton's conduct and behaviour brought his profession into disrepute. 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 Morton's convictions.

21. Accordingly, the Panel concluded that Mr Morton is liable to disciplinary action.

## **Sanction**

### Panel's Approach

22. 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 Morton 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 Morton's interests with the public interest and by considering each available sanction in ascending order of severity.

23. The Panel took into account its factual findings and its determination that Mr Morton is liable to disciplinary action.

### Decision

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

25. The Panel identified the following mitigating factors:

- Mr Morton's previous good character and the absence of any previous disciplinary findings;
- his guilty plea to the criminal charge;
- his self-referral to RICS

26. The Panel identified the following aggravating factors:

- The sexual offences, within the context of criminal offences, are towards the high end of the spectrum;
- Mr Morton has expressed no remorse and has demonstrated no insight into the impact on his conduct and behaviour;
- Mr Morton as stated by the Sentencing Judge is in denial of his offending and as a consequence there is an ongoing risk of repetition.

27. The Panel first considered taking no action. The Panel concluded that, in view of the nature and seriousness of Mr Morton's criminal behaviour, to take no action in relation to 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.
28. 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 or any evidence of remediation. The Panel also took the view that Mr Morton'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 substantially short of meeting the wider public interest in terms of declaring and upholding proper standards or maintaining public confidence in the profession. Furthermore, the Panel noted that neither a Caution nor a Reprimand would impose any restriction on Mr Morton's practice and therefore concluded that these sanctions would not provide any public protection.
29. The Panel went on to consider Undertakings. The Panel noted that Mr Morton's conviction and the underlying facts upon which it is based, involved conduct of a sexual nature outwith his professional role as a surveyor and therefore is not amenable to Undertakings, as the basis for this type of behaviour is an attitudinal or behavioural 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.
30. The Panel went on to consider conditions. The Panel concluded that a criminal conviction for an offence of a sexual nature 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 Morton's conviction and underlying 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.
31. 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 Morton is currently subject to a Community Order which is not due to expire until August

2020 and the SHPO is not due to expire until 2022. It would be wholly inappropriate for Mr Morton to resume practice, with or without restrictions, whilst subject to such requirements.

32. In these circumstances, the conditions would not be sufficient to protect the public or the wider public interest.

33. Having determined that conditions would be insufficient the Panel determined that Mr Morton 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:

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

34. 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 Morton put his own interests above his professional obligation to uphold the highest standards of personal conduct and behaviour at all times. Given the gross breach of the high standards expected of registered RICS members 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 Morton'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.

35. Accordingly, the Panel determined that expulsion is the appropriate, necessary and proportionate sanction in this case.

36. The Panel had regard to the impact expulsion may have on Mr Morton. However, the Panel concluded that Mr Morton'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

37. 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. However, given the nature of Mr

Morton's convictions the Panel was satisfied that, as suggested by RICS, only a redacted version of the outcome of these proceedings should be published. [xx]

## Costs

38. RICS applied for costs of £600.00

39. 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.

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

41. The Panel ordered Mr Morton to pay to RICS costs in the sum of £600.00

## Appeal Period

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

43. 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.