

Disciplinary Panel Hearing

Case of

**Mr Patrick Banting MRICS [0101015]
London, N5**

On

Tuesday 9 July 2019

At

55 Colmore Row, Birmingham

Panel

Ian Hastie MRICS (Surveyor Chair)

Ron Barclay-Smith (Lay Member)

Chris Pittman FRICS (Surveyor Member)

Legal Assessor

Alastair McFarlane

Hearing Officer

Emma Jones

RICS Presenting Officer

James Lynch

The formal charges are:

1. Between 01 July 2014 and 30 September 2015 you were dishonest when you deliberately concealed payee details, in one or more of the following ways, in an attempt to misappropriate monies from your employer and/or its clients:
 - a. By way of an e-mail dated 17 September 2015, sent on behalf of your employer, you instructed a third party to pay the sum of £5,499.13 into a bank account held by The Society of St James, but you provided your personal bank account details for payment instead;
 - b. By way of an e-mail dated 9 December 2014, sent on behalf of your employer, you instructed a third party to pay the sum of £2,750 into a bank account held by Sandpiper Limited, but you provided your personal bank account details for payment instead;
 - c. By way of an e-mail chain dated 7 October 2014 to 17 December 2014, sent on behalf of your employer, you instructed a third party to pay the sum of £969.94 into a bank account held by Melanie Boyd, but you provided your personal bank account details for payment instead;
 - d. By way of an e-mail chain dated 30 June 2014 to 1 July 2014, sent on behalf of your employer, you instructed a third party to pay the sum of £8,522.20 into a bank account in the name of 'High Wire Common Receipt Account', but you provided your personal bank account details for payment instead;
 - e. On or around 10 August 2015, you provided your personal bank account details to Arthur Gallagher for him to pay to you the sum of £1036.99 when you knew that you were not entitled to those sums.

Contrary to Rule 3 of the Rules of Conduct for Members 2007.

You are therefore liable to disciplinary action under RICS Bye-law 5.2.2.

DETERMINATION

Representation and Service

1. RICS was represented by Mr Lynch and Mr Banting was not present and not represented.
2. The Panel had sight of a witness statement of Mrs Emma Jones, Regulatory Tribunal Executive, dated 22 May 2019, which confirmed that the Notice of this hearing, dated 20

March 2019, was sent by registered post and emailed to the preferred email address notified by Mr Banting to RICS.

3. A copy of the notice letter was produced, correctly addressed to the address given by Mr Banting and sent by registered delivery and email. RICS also produced a copy of the e-mail delivery notification.
4. The Panel was satisfied on the documentation provided that service had been properly effected in accordance with the Rules.

Proceeding in the Absence of Mr Banting

5. The Panel next considered its discretion to proceed in the absence of Mr Banting. It accepted the advice of the Legal Assessor and reminded itself of the case law including *Adeogba v GMC* and that its discretion must be exercised with the upmost care and caution.
6. The Panel noted that the Proceeding in Absence Bundle submitted by Mr Lynch and showed that between 10 April 2019 and 5 July 2019, RICS made repeated attempts by letters, e-mails and telephone calls to contact Mr Banting regarding his participation in this case – all without success. It further noted that Mr Banting had not responded to RICS' attempts to contact him throughout RICS' investigation into this matter nor had he engaged with RICS about this case apart from one occasion when RICS successfully contacted Mr Banting via telephone on 20 April 2018. During that telephone call Mr Banting confirmed that he had taken monies whilst working at the Firm and stated that this occurred on two separate occasions. He confirmed that, at his then current employment, he was not involved with money handling. Mr Banting also indicated that he would be willing to engage with the investigation. The only contact from Mr Banting after the notice of hearing was an email dated 5 July 2019 to RICS in which he stated that he had "purposefully not answered [RICS'] enquiries on the advice of [his] legal team". He did not provide any details of who this legal team was. He indicated that he "will not be attending the hearing..." and that he "had no intention whatsoever of fighting this matter and effectively tried to resign last April". He further indicated that RICS' "haranguing and pressure to pursue this case has made me ill." He did not specify what his illness

was and has not provided any medical report or any details as to this to substantiate that he is medically unfit to attend a hearing.

7. In exercising its discretion whether or not to proceed in the absence of Mr Banting, the Panel was mindful that fairness to him was of prime importance but that fairness also involved fairness to RICS. It was mindful of the public interest and its duty to ensure the expeditious conduct of its business. The Panel noted that Mr Banting had not submitted any application for an adjournment. The Panel was satisfied that Mr Banting had voluntarily disengaged from the process and therefore waived his right to attend. The Panel is satisfied that it is in the interest of justice to proceed with the hearing in the absence of Mr Banting.

Background

8. Mr Banting has been a member of RICS since 23 May 1997. The allegations in this case arose during Mr Banting's employment at CBRE ("the Firm"). Mr Banting was employed as a Senior Property Surveyor at the Firm. He left the employment of the Firm on 30 September 2015. Mr Banting had been employed at CBRE for a period of some 8 years.
9. On 19 January 2018 RICS received notification from the Firm of a misappropriation of client funds. RICS undertook an investigation, which ascertained that the allegations were that Mr Banting sought to misappropriate funds from his employer and/or its clients. It is alleged that he abused his position as a senior surveyor within the Firm to divert funds into his personal bank account. RICS' case was that this involved requesting payments from third parties and then concealing the true payee details by inserting his own bank details. This took place over two years and in total about £18,500 was diverted into Mr Banting's bank account.
10. RICS ascertained that Firm had reported the matters to the police. The police confirmed in a letter, dated 18 December 2017 that a conditional caution had been administered to Mr Banting by a senior police officer. The conditions were that Mr Banting paid full compensation to the Firm of £18,778.29 and write a letter of apology to the Firm. The police confirmed that "the offender has admitted the

offence and has agreed to comply with the conditions". Mr Banting repaid the monies owed on 18 December 2017 and wrote a letter of apology to the Firm, dated 19 December 2017.

RICS Submissions

11. RICS relied primarily upon the written statement of Ms Mash, the Firm's Compliance Officer, who undertook the Firm's investigation into Mr Banting's alleged conduct and who produces the paper trail in relation to each of the charges. It further relied on the written witness statements of two members of RICS' staff, Ms Leeder and Ms Lewis.

Charge 1(a)

12. Ms Mash explains that payment of £5499.13 was to be made by the Firm to The Society of St James. However, Mr Banting provided his bank details for the payment, on notepaper, headed with the name "The Society of St James" attached to his email of 17 September 2015. Payment was subsequently made to Mr Banting's account. RICS submitted that this demonstrated that Mr Banting had attempted to obtain payment for the amounts of approximately £5033.10 and £466.03 by using a forged document. The statement of Mrs C J M Leeder, FCA, RICS' Professional Assurance Accountant and her Regulatory Report supports the statement provided by Ms Mash.

Charge 1(b)

13. Ms Mash's statement details that, Mr Banting requested the sum of £2750 to be made to Sandpiper Limited, and he had provided his bank account details in e-mail correspondence. Ms Mash produced the e-mail dated 9 December 2014 from Mr Banting to Ms Mikaela Jubb of Asset. RICS submitted that the e-mail, dated 9 December 2014, and Mr Banting's bank

account details as held on payroll by the Firm established that Mr Banting had attempted to obtain payment for the amount of approximately £2,750. Again Mrs Leeder's statement and report supported Mrs Mash's statement.

Charge 1(c)

14. Ms Mash statement details that the Firm discovered an e-mail dated 17 December 2014 in which Mr Banting states to a representative of Arthur J Gallagher: *"Please find enclosed my responses to your enquiries listed in red below."* The e-mail following this, dated 7 October 2014, states in red *"We have agreed to pay the Client directly. Can you please pay directly to: Account holder – Mrs [MB] Account no – [XXX] Sort Code – [XXX]"*. The bank details provided coincide with Mr Banting's bank details as held by the Firm's Human Resources department. Again Mrs Leeder's statement and report supported Mrs Mash's statement. It is submitted that there is sufficient information to demonstrate Mr Banting had attempted to obtain payment for the amount of approximately £969.94.

Charge 1(d)

15. Ms Mash's statement details that, in an e-mail chain dated 30 June 2014 to 1 July 2014 between Mr Banting and Hurst Warne & Partners LLP, Mr Banting provides his personal bank account details for payment of £8522.20 which was due to be paid to a client following the sale of a property, Wellington Park. Again Mrs Leeder's statement and report supported Mrs Mash's statement. RICS submitted that the e-mail chain dated 30 June 2014 to 1 July 2014, and Mr Banting's bank account details as held on payroll by the Firm, demonstrated that Mr Banting had attempted to obtain payment for the amount of £8522.20.

Charge 1(e)

16. Following a review of Mr Banting's bank statements, the police discovered that a further payment of £1036.99 was made to Mr Banting's personal bank account on 10 August 2015 by Arthur J Gallagher. In an e-mail chain dated 3 November 2017 to 6 November 2017, the police

had confirmed this with a representative at Arthur J Gallagher The police informed the Firm of this further payment on 15 November 2017.

17. RICS submitted that the Panel may rely upon the fact that a requirement of the conditional caution issued to Mr Banting was to re-pay the Firm the total sums misappropriated, £18778.29. This payment included the payment of £1036.99 he received from Arthur J Gallagher. Ms Mash confirms that Mr Banting had re-paid the sum owed to the Firm on 18 December and 2017. RICS contended that Mr Banting would not have agreed to repay the sums owed if he had not received payment of £1036.99 from Arthur J Gallagher. In the circumstances, it would be appropriate to infer that Mr Banting did indeed obtain payment from Arthur J Gallagher on 10 August 2015.

Mr Banting Submissions

18. Apart from the telephone attendance note of the conversation with Mr Banting on 20 April 2018 and his email of 5 July 2019, the Panel had no information from Mr Banting and no submissions from him to the charges.

Findings of fact

19. The Panel carefully considered the evidence it received. This consisted of the large volume of documentary evidence. It exercised caution when working from documents alone. It reminded itself that it had not heard oral evidence from any of RICS witnesses, and that RICS had relied alone on their written witness statements, which contained a declaration of truth. It took account of these matters in considering what weight to attach to RICS' evidence.
20. The Panel reminded itself that the burden of proving the charges were on RICS alone and that the standard of proof was the ordinary civil standard, namely the balance of probabilities. The Panel accepted the advice of the Legal Assessor. It is noted that Mr Banting, apart from the caution for the subject matter of these allegations, was of good character and put this into the balance in his favour in relation to likelihood of him having so acted. The Panel considered the evidence in relation to each limb of charge 1 separately.

21. The Panel accepted the evidence of Ms Mash, Ms Leeder and Ms Lewis as credible, comprehensive, clear, accurate and reliable. It attached considerable weight to the evidence of Ms Mash, who produced the audit trail of documentation in this case which included emails written by Mr Banting himself. In addition, the Panel also put weight on the fact, that it accepted, that Mr Banting agreed to a police caution in relation to this conduct and that he had paid a total sum of £18,778.29 to the Firm, which is the total of the money is detailed in charges 1a to 1e.
22. The Panel considered the evidence in relation to charge 1a, 1b, 1c, and 1d separately including that as detailed in paragraphs 12 to 15 above. It was satisfied that in respect of each of these allegations, that Mr Banting had intervened with monies payable to his employer or its clients as particularised in each of these stems of charge and had substituted his own bank details to divert the monies to him as is set out in the particulars of each charge. Accordingly, given its acceptance of and reliance upon RICS' witnesses and they have produced that each of the charges 1a, 1b, 1c and 1d were proved.

Charge 1e

23. The Panel is satisfied that the facts alleged in this charge were uncovered by the police and noted the email from PC Ben Collins dated 15 November 2017 confirming the location on Mr Banting's bank statement of this sum. In addition, the Panel relied on the fact that Mr Banting repaid the entire sum. It therefore infers that it is more likely than not that he provided his bank details to Mr Gallagher in an attempt to misappropriate those monies. Accordingly, it was satisfied that allegation 1e was proved.

Dishonesty

24. The Panel was satisfied that the facts alleged at 1a to 1e were proved; it was satisfied that on each occasion Mr Banting had deliberately concealed the true payee details and substituted his own bank account details. The Panel then considered whether this conduct was dishonest.

25. The Panel applied the test as set out by the Supreme Court in Ivey v Genting Casinos Limited. It specifically considered as far as it could on the information before it, what Mr Banting's belief was as to the facts. The Panel was satisfied that Mr Banting deliberately concealed the true payees' details in each of the ways set out in charges 1a to 1e. The Panel concluded that Mr Banting's most likely intention was to secure for himself, monies which were not his. It is satisfied that Mr Banting knew he was not entitled to the money and knew it did not belong to him and that to obtain this money he had falsely to conceal the true payee details. The Panel rejected other possible bases for the conduct it has found proved (for example by mistake, by carelessness or otherwise in error) to be implausible. The Committee took into account that Mr Banting accepted a conditional caution from the Police in respect of his conduct and repaid to his Firm the total amount appropriated of £18,778.29 as evidence of his likely state of mind at the time of his conduct. The misappropriation of funds through deception was clearly dishonest. It had no hesitation in concluding that Mr Banting's conduct was dishonest according to the standards of ordinary decent people. Charge 1 in its entirety was therefore found proved.

Liability for Disciplinary Action

26. RICS submitted that the charge was sufficiently serious to render Mr Banting liable to disciplinary action under Bye-law 5.2.2 a) – conduct liable to bring RICS into disrepute – and 5.2.2 c) – breach of the Rules governing members conduct (Rule 3 – the obligation to behave at all times with integrity and avoid actions that are inconsistent with professional obligations).
27. The Panel accepted the advice of the Legal Assessor. It reminded itself that liability to disciplinary action was a matter for the judgment of the Panel. It was satisfied that Mr Banting's dishonest conduct was very serious and was clearly conduct liable to bring RICS into disrepute and clearly breached the obligation on all members to act at all times with integrity. The Panel had no doubt that that it was sufficiently serious to render him liable to disciplinary action.

Sanction

28. The Panel next considered sanction. It noted the submissions of RICS and Mr Banting. It accepted the advice of the Legal Assessor. It had regard to RICS Sanctions Policy and bore in mind the overriding principle of proportionality.
29. 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.
30. The Panel considered carefully the mitigating and aggravating factors of this case as well as the issue of proportionality in weighing up the most appropriate response.
31. The Panel considered that the following mitigating factors were present:
 - Mr Banting had no previous disciplinary record
 - He had repaid the full sum appropriated to the Firm
 - He had written an apology to the Firm
32. The Panel noted that the last two bullet points were conditions for the disposal of the criminal investigation into his conduct. The Panel also noted that in his letter of apology to the Firm, dated 19 December 2017, Mr Banting stated that he could not explain why the situation arose.
33. The Panel considered that the following aggravating factors were present:
 - Misappropriation of client money
 - The conduct was fraudulent, dishonest and indicated a want of integrity
 - It was planned and deliberate with the forgery of bank details
 - The conduct was repeated over numerous occasions over a prolonged period of time
 - In his telephone call with RICS on 20 April 2018, while confirming he did take money, he indicated to his regulator it happened only on two separate occasions which was untrue
 - The conduct was a serious abuse of a position of trust
 - There has been no expression of apology or remorse to RICS
 - Mr Banting has shown no insight into the seriousness of his behaviour or into the damage such behaviour causes to the reputation of the profession and public confidence in the

profession. His email of 5 July 2019 to RICS gave no indication that he took any responsibility for his own actions

- Mr Banting did not cooperate with the RICS investigation.

Decision

34. The Panel reminded itself that acting with integrity is a fundamental tenet of the profession and that the reputation of the profession is more important than the fortunes of any individual.
35. The Panel considered the matters are too serious for no sanction at all to be imposed. They considered the sanctions in ascending order of restrictiveness.
36. The Panel considered that a Caution was insufficient to mark the seriousness of the behaviour and to adequately maintain the reputation of the profession and the failings could not be described as "minor".
37. The Panel was not satisfied that a Reprimand would be a sufficient or proportionate sanction given the seriousness of the conduct involving prolonged repeated and deliberate dishonesty. Further, it did not consider that the imposition of a fine or conditions were sufficient or proportionate sanctions as neither would adequately protect the reputation of the profession or the public in the circumstances.
38. The Committee determined that his behaviour was fundamentally incompatible with Mr Banting remaining a member of RICS. The conduct involved repeated dishonesty and was a serious departure from professional standards. The Committee was satisfied that the only appropriate and proportionate sanction sufficient to uphold the reputation of the profession and to maintain and declare proper standards of conduct was expulsion from membership. It was satisfied that there was no other way of protecting the public interest.

Publication

39. The Panel rejected as ill-founded what may be interpreted as Mr Banting's objections to publicity in his email of 5 July 2019. The Panel was satisfied that there is a clear public interest in the publication of this decision and it did not consider that Mr Banting's interests outweighed the

public interest in RICS' regulatory decisions being published and were not a sufficient basis for departing from the presumption of publication. The Panel considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. This decision will be published on the RICS website and in the RICS magazine Modus.

Costs

40. RICS made application for costs in the sum of £8,100 - adjusted downwards from £8800 (as set out in RICS' schedule of costs) as RICS' solicitor's attendance is less as the case will conclude in one day.
41. The Panel noted that this case was listed for two days, but will conclude within one day, given the non-attendance of Mr Banting. It was satisfied that it was appropriate to award costs against Mr Banting in this case. Mr Banting indicated in his 5 July 2019 email that he has "no money" and "no assets whatsoever" but has not supplied a schedule of costs in accordance with the rules as he was advised to do. The Panel accepted RICS' submission that as Mr Banting only indicated on 5 July 2019 that he would not be attending, despite repeated attempts to ascertain this well in advance of the hearing, the other costs detailed on its schedule of costs were incurred in any event despite the case concluding within one day. In all these circumstances the Panel was satisfied that it was fair and reasonable to direct that Mr Banting pay RICS' costs in the sum of £8,100.

Appeal Period

42. Mr Banting has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 60 of the Rules.
43. In accordance with Rule 59 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.