

**Case Number: REG0000151906**

**Disciplinary Panel Hearing**

**Case of**

**Mr Jem Erol**

**On**

Wednesday 25 November 2020

**At**

Remotely by Microsoft Teams

**Panel**

Helen Riley (Surveyor Chair)  
Ferdinand Balfourt (Lay Member)  
Catherine Brown (Lay Member)

**Legal Assessor**

Alastair McFarlane

**RICS Presenting Officer**

Shaun Moran

**Hearing Officer**

Jae Berry

**The formal charges are:**

1. On 23 July 2014 at Luton Crown Court, you were, upon your own confession, convicted on indictment of the following:
  - a. Conspiracy to kidnap; and
  - b. False imprisonment.

**You are therefore liable to disciplinary action in accordance with Bye-law 5.2.2 (d)**

## **DETERMINATION**

### **SERVICE**

2. The Panel was satisfied that service of the notice of hearing dated 1 July 2020 had been effected in accordance with the Rules.

### **PRELIMINARY MATTER**

3. The Relevant Person made an application that the Panel, in effect, had no jurisdiction to hear this case as he had “not signed up to” byelaw 5.2.2 (d) when he joined RICS. He also submitted that he had declared his conviction in 2016 to RICS by sending details of it by post and that therefore when he was accepted as a student member they were aware of this conviction. In addition, he submitted that his case should be before a Registration Panel.
4. Mr Moran, for RICS, opposed the application, submitting that it was “wholly misconceived”. While he conceded that RICS had not pursued an allegation case that the Relevant Person had not declared the conviction, he submitted that RICS were unaware of it until 2019, when the Relevant Person sought to change his membership status. He submitted that whether the notification had not been sent, whether it was lost in the post or whether it was due to RICS oversight in 2016, was not material. The Relevant Person had been granted membership and RICS were not aware of the conviction until 2019, by which time he had been a member for three years. The relevant body to deal with this issue was the Disciplinary Panel and

the Registration Panel could not have jurisdiction, as he was a Member. Mr Moran submitted the clear wording of byelaw 5.2.2 gave the Disciplinary Panel jurisdiction over the Relevant Person for a conviction that had occurred before he was a member. Further, he submitted that as there had been no previous decision in the knowledge of his conviction by RICS, this panel was not estopped from hearing this case and the facts could not amount to an abuse of process.

5. The Panel noted the submissions of both parties and accepted the advice of the Legal Assessor.
6. The Panel rejected the Relevant Person's application and was satisfied that it did have jurisdiction over him and this issue. Its reasons were as follows.
7. The Panel noted the allegation before it, and that there was no allegation against the Relevant Person of not declaring his conviction. It was not necessary therefore and, in any event, there was insufficient evidence before it to make a determination whether the notification was sent or not received or missed by RICS. It is clear, however, that the Relevant Person has continued to be a student member since 2016 and that no body within RICS has substantively dealt with the issue of the Relevant Person's conviction before. The Panel was satisfied that there was an overwhelming public interest both in terms of the profession and public confidence in it that this should be dealt with. It was satisfied that a Registration Panel would not have jurisdiction because the Relevant Person is, and has been since 2016, a member.
8. The Panel rejected any argument that it was estopped from dealing with this matter as no previous panel of RICS has been seized of it. Further, the Panel also rejected any argument that it dealing with the matter amounted to an abuse of process. There was no question at any stage that RICS had ever given the Relevant Person an assurance that he would not face a disciplinary panel. There was no representation from RICS, unequivocal or otherwise, that he could not be subject to a disciplinary panel in relation to this conviction. Further, there was no question that the Relevant Person had acted on a representation, equivocal or otherwise, to his detriment, because the Panel was satisfied that no such representation, express or implied, was ever made to the Relevant Person.

9. The Panel was satisfied that byelaw 5.2.2 clearly conveyed jurisdiction to it to deal with the Relevant Person's case.

## **Background and RICS Submissions**

10. The Relevant Person has been a student member of RICS since 4 October 2016.
11. On 18 December 2014, the Relevant Person was convicted of one count of "conspiracy to kidnap" and one count of "false imprisonment". He was sentenced to six years imprisonment.
12. RICS relied upon the Judge's sentencing remarks, which indicated that the Relevant Person and VA his acquaintance, were both involved in growing cannabis in a remote cottage in North Bedfordshire. A local resident, DH, was a frequent visitor at the cottage and VA bought drugs from him. VA was said to have owed DH around £500. On 14 October 2013, VA set up DH to attend the cottage under the guise of meeting him there in connection with the debt. However, DH was met by the Relevant Person and two others, who ambushed DH when he went to the cottage at around midnight. DH was beaten, gagged, blindfolded and bound and was transferred to a car and then another property where he was further assaulted, and then to an address in London from where he made his escape. He was found by police "absolutely petrified" and a "crying wreck".
13. The Relevant Person was found to have carried out the kidnapping with the associated violence. The Learned Judge commented that the offences were pre-planned, used violence and threat on the victim, who was falsely imprisoned for some eight and a half hours and that the background to the crime involved the illicit drugs market.

14. RICS relied upon the certificate of conviction, dated 16 July 2019 and the operation of Rule 41 (b) under which a certified copy of conviction is conclusive evidence of the conviction and of the Relevant Person's commission of that offence.
15. RICS submitted that the Panel is entitled to rely upon the certificate of conviction as conclusive proof of the conviction and that therefore the facts in the charge should be found proved.

### **Mr Erol's Submissions**

16. The Relevant Person in his response to RICS confirmed the conviction and sentence and that he recognised and regretted the seriousness of his case and had accepted responsibility for his actions by entering an early guilty plea. He outlined that he had taken part in a number of volunteer opportunities and was committed to local charity work and engaged positively during his incarceration.

### **Findings of fact**

17. The Panel carefully considered the documentary evidence before it and the submissions of Mr Moran for RICS and evidence of Mr Erol on his own behalf, when he admitted the allegation.
18. The Panel reminded itself that the burden of proving the charge was 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.

19. The Panel has received the signed Certificate of Conviction from Luton Crown Court, dated 16 July 2019. This certificate recorded a conviction of conspiracy to kidnap and false imprisonment on 23 July 2014 with a sentence of 6 years imprisonment.
20. The Panel noted that under Rule 41(b) the Certificate of Conviction is admissible as conclusive evidence of that conviction and of the Relevant Person's commission of the offence.
21. By virtue of the certificate of conviction and the Relevant Person's admission, the Panel finds the factual allegation proved.

### **Liability for Disciplinary Action**

22. RICS submitted that the Relevant Person's conduct and resulting criminal conviction demonstrated that he had fallen seriously below the highest standards of behaviour that RICS expects from its members both in their professional and personal lives. RICS submitted that the conviction was sufficiently serious to render the Relevant Person liable to disciplinary action under bylaw 5.2.2 (d). In relation to liability to disciplinary action, RICS submitted the matter was plainly serious given the nature of the offences and the custodial sentence imposed and that this is a matter which attracts high public interest. It submitted that the Relevant Person's actions were calculated and a deliberate act intended to cause harm to another individual and that the Relevant Person's conduct was wholly unacceptable, bringing the reputation of the profession into disrepute. RICS emphasised its duty to maintain public confidence in its reputation by demanding the highest standards of behaviour from members in their professional and personal lives and submitted that the Relevant Person's conduct fell far below these standards and that he was therefore liable to disciplinary action.

23. The Relevant Person admitted that the conviction was serious enough to render him liable to disciplinary action.
24. 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 the Relevant Person's conduct amounted to a serious falling short of his professional obligations. He was convicted of serious offences and received a lengthy custodial sentence. It also took into account the public interest and the adverse impact of such a conviction on the reputation of the profession in its judgment as to whether it rendered him liable to disciplinary action. For these reasons, the Panel had no doubt that that it was sufficiently serious to render him liable to disciplinary action.

## **Sanction**

25. The Panel next considered sanction. It noted the submissions of RICS and the written evidence from the Relevant Person, including 8 supportive testimonials as well as the oral submissions. It accepted the advice of the Legal Assessor. It had regard to RICS' Sanctions Policy and bore in mind the overriding principle of proportionality.
26. The Panel reminded itself 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.
27. While mindful that its function was not to re-sentence the Relevant Person for the criminal conviction, the Panel had regard to observations of the sentencing judge in assessing the seriousness of the conduct. It noted that the Learned Judge stated that the Relevant Person "carried out the kidnap with associated violence" and that he and his co-defendant were equally responsible for any violence used and that the preplanning of the offences, the violence used and threatened and the long time of the

false imprisonment following the kidnap against the background of the illicit drugs market were all aggravating factors. The Judge further noted that the Relevant Person had pleaded guilty “at a late stage” but was given a credit of 20% for that plea and was treated as a man of good character.

28. The Panel considered carefully any mitigating and aggravating factors of this case as well as the issue of proportionality in weighing up the most appropriate response.
29. The Panel identified the following mitigating factors:
  - The Relevant Person pleaded guilty to the offences and admitted the facts to the Panel
  - The character references are positive, describing him as a “hardworking individual who would go the extra mile to help”, as someone who is “extremely respectful” and has demonstrated “a commitment in developing himself and supporting others”.
  - He has admitted the allegation and expressed regret and remorse for his actions
  - There was no previous disciplinary history
  - The Relevant Person had demonstrated to the Panel an appreciation of and insight into the impact of such serious offending on the reputation of the profession
  - The Relevant Person had taken active steps to rehabilitate himself since his conviction in 2014 including rehabilitation work with other offenders and during his membership of the profession.
30. The Panel considered that the following aggravating factors were present:
  - The conduct involved offences which were of the utmost seriousness and were planned
  - A criminal conviction and a lengthy custodial sentence resulted

## Decision



31. The Panel reminded itself that not committing serious criminal offences and acting within the law are fundamental tenets of the profession and that the reputation of the profession is more important than the fortunes of any individual.
32. The Panel considered the matters are too serious for no sanction at all to be imposed. They considered the sanctions in ascending order of severity.
33. 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".
34. While the Panel had specific regard to the seriousness of the conviction and the highly detrimental impact such serious behaviour has upon the standing and reputation of the profession, it was satisfied, given the extensive mitigation in this case, the active steps the Relevant Person had taken and the length of time that had elapsed since the commission of the offence, that exceptionally a reprimand was the appropriate and proportionate sanction. It did consider whether this should be accompanied by a fine but, given the factors set out above, determined this was not necessary in this case. The Panel would add that it did not consider that undertakings or conditions were appropriate or relevant given the nature of the case and had in the light of paragraph 20 in the Guidance also specifically considered whether or not expulsion was the appropriate disposal. The Panel did consider that there were extenuating circumstances in the Relevant Person's case, in particular the age of the conviction, the lack of repetition and the significant rehabilitative steps since 2014 that justified not expelling him from membership. In those particular circumstances, it was the Panel's judgment that it was not fundamentally incompatible for him to remain a member of the profession.

## Publication

35. The Panel was satisfied that no justifiable basis was advanced 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**

36. RICS made application for costs in the sum of £4855 and had submitted a statement of costs. The Relevant Person provided oral evidence as to his financial position as he stated he had not had time to complete the statement of means.
37. The Panel was satisfied that it was appropriate to make an award of costs in this case in favour of RICS. It was further satisfied that the sum claimed by RICS was fair and reasonable for the work done and time spent on this case. The Panel noted the Relevant Person's earnings and expenses and determined that it was appropriate to make some small reduction in the costs claimed to take account of his financial position. It was satisfied that it was appropriate, fair and proportionate to award costs in the sum of £4,000.

### **Appeal Period**

38. The Relevant Person has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 60 of the Rules.

