

Disciplinary Panel Hearing

Case of Mr Maurice Berry (00146491)

[REDACTED]

on

Tuesday 17 March 2020

By Telephone Conference

Panel

Angela Brown (Lay Chair)
Alison Sansome (Lay Member)
Nick Gray (Surveyor Member)

Legal Assessor

Ben Kemp

The formal charge is:

On 02 July 2019, at [REDACTED], the Member was convicted of the following:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

DETERMINATION

Introduction

1. The Panel convened by telephone conference call, Mr Berry (the Respondent) having elected to proceed by way of a paper rather than oral hearing. The relevant correspondence was produced and the Panel was accordingly satisfied that it was appropriate to proceed in the absence of the Respondent, by way of a paper hearing. It further considered that this was not a case in which the public interest required it to consider oral evidence. The Panel had regard to a documentary bundle comprising written submissions from both parties, relevant correspondence between the parties and a witness statement from RICS officer, Jae Berry. Mrs Berry spoke to notice of the hearing having been appropriately served, in accordance with the applicable version

(Version 7) of the RICS Disciplinary Rules (the Rules). The Panel was satisfied that notice had been appropriately served, by letter dated 16 January 2020, a copy of which was produced, along with relevant delivery receipts.

2. The documentary bundle included copy Certificate of Conviction relating to the Respondent. This recorded the fact that the Respondent had on 02 July 2019 been convicted by [REDACTED] of the offences referred to in the charge, and had as a result been sentenced to a total of thirteen years' imprisonment. A copy of the Judge's sentencing remarks was also produced.
3. The Panel received and accepted advice from its legal assessor.

Burden and standard of proof

4. The burden of proof is on RICS and the standard of proof is the balance of probabilities.

Background

5. The Respondent has been a registered RICS member since 12 October 2006.

Findings of Fact

6. In accordance with Rule 41(b) of the Rules, "*where the [Respondent] has been convicted of a criminal offence a certified copy of the conviction or equivalent shall be admissible as conclusive evidence of that conviction and of the [Respondent's] commission of that offence*".
7. The Panel is satisfied that the certified copy conviction produced provides such conclusive proof and that the facts as alleged in the charge are accordingly proved. The Panel so finds.

Liability for Disciplinary Action

8. The Panel determined that the Respondent was, upon the basis of the facts found proved, liable to disciplinary action. There can be no doubt that the offences of which the Respondent has been convicted, and in respect of which he is currently serving a substantial prison sentence, are of a very serious nature. The Panel takes account of the fact that that conviction, recent as it is, relates to circumstances which took place some 40 years ago. But the conviction itself is a recent one, and the Respondent has only relatively recently begun serving the consequential substantial prison sentence. The Respondent's conduct and conviction plainly had the potential to, and did in fact, through recent media coverage, bring the profession into disrepute.

9. The Panel notes that the Respondent pleaded not guilty in the criminal case, and has had regard to his stated intention to proceed with an appeal against his criminal conviction. It is not however in a position to assess the merits of any such appeal, nor would it be appropriate for it to do so. Moreover, it is not clear when such an appeal will be heard. In the circumstances, the Panel accepts the submission of RICS that it would be inappropriate to delay in the meantime dealing with this disciplinary case. The fact is that the Respondent has been convicted of a number of serious criminal offences. It is not appropriate for the Panel to look behind that conviction. In the event that the Respondent does succeed in having all or part of his criminal conviction overturned, RICS has confirmed that this decision will be subject to review. That seems to the Panel to be the appropriate approach, having regard to the overall public interest. The Panel accordingly finds the Respondent liable to disciplinary action.

Sanction

10. The Panel next considered sanction. The Panel was satisfied that it was appropriate in the circumstances to impose a sanction in this case. It considered the sanctions available, having regard to the relevant RICS Sanctions Guidance. The Panel noted that the Respondent had no previous disciplinary record. Given however the seriousness of the conviction and substantial prison sentence, the Panel concluded that it had no choice in this case but to expel the Respondent from membership of RICS. His conviction was plainly incompatible with ongoing membership of RICS as his professional body. The Respondent's conduct was such as to bring the profession into disrepute. The Respondent had been found guilty of a very serious breach of trust while in a position of public interest responsibility. His conduct thus risked undermining public confidence in the profession, and in the RICS. The Panel did not consider that any other sanction would appropriately reflect the seriousness of the conviction, or the risk to the reputation of the profession in this case. The Panel determines that the Respondent should be expelled from membership of RICS, with immediate effect.

Publication

11. The Panel has considered the RICS policy on publication of decisions. It directs publication of this decision in accordance with that policy, save that the published decision should be redacted so as not to mention the geographic location of the Respondent or of his immediate family, or the specific nature of the offences in question. The Panel in so determining seeks to mitigate the possible risk to the Respondent's family which might arise from further publicity relating to the specific circumstances of this case. The decision should otherwise be published, and the Respondent named, in accordance with the RICS policy guidance.

Costs

12. No costs application having been made in this case, no award was made.

Appeal Period

13. The Respondent has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
14. 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.