

## **Appeal Panel Hearing**

Case of

**RICS v Jem Erol**

**On**

Tuesday 27 April 2021

**Heard remotely via Microsoft Teams**

### **Chairman**

Sir Michael Burton GBE

### **Members**

Christopher Pittman (Surveyor Member)

Ruth Brutnall (Lay Member)

### **Legal Assessor**

Fiona Barnett

### **RICS Representative**

Christopher Geering, Counsel

### **Tribunal Executive**

Jae Berry

1. Mr Erol attended and was not represented.

## **APPLICATION FOR ADMISSION OF FURTHER EVIDENCE**

2. Mr Erol provided the Appeal Panel with a written submission and a bundle of further testimonials/documents. He apologised for the late submission of these and made an application for late admission. He explained that his personal and professional commitments had left him with little time to collate such documentation in advance.

3. Mr Geering objected to the late admission of the testimonials and additional documents. He submitted that these could have been obtained in advance of the initial hearing and were not strictly relevant to this review.
4. The Appeal Panel was concerned that the new information was submitted so late. However, it was satisfied that the testimonials, which were up to date, were potentially relevant to its considerations, and may be of assistance to the Appeal Panel. It therefore granted Mr Erol's application for late admission of this evidence.

## Background

5. On 23 July 2014, Mr Erol entered a guilty plea at Luton Crown Court to conspiracy to kidnap and false imprisonment. On 18 December 2014 he was sentenced to six years imprisonment, to run concurrently on both counts. In determining the appropriate sentence, the judge reduced the sentence by 20% to reflect Mr Erol's guilty plea, which he had entered at a, "late stage". The time spent in custody prior to the sentencing was also deducted from the sentence.
6. Following his conviction, Mr Erol joined RICS as a student member on 4 October 2016, (whilst in prison). He subsequently began his application to become a Trainee Member in January 2019 and declared that he could not complete his application due to his criminal conviction.
7. On 25 November 2020, a Disciplinary Panel of the RICS considered Mr Erol's case. The allegation before the Disciplinary Panel was as follows:

**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)**

8. Mr Erol argued that the Disciplinary Panel had no jurisdiction to consider his case. He maintained that he had disclosed the conviction to the RICS when he applied for student membership, and consequently, his case should be heard by a Registration Panel, not by a Disciplinary Panel. The Disciplinary Panel rejected this argument.
9. The Panel was informed that the background to the conviction, obtained from the judge's sentencing remarks, was as follows:

- Mr Erol and VA, an acquaintance of Mr Erol, were both involved in growing cannabis in a remote cottage in North Bedfordshire. VA rented the cottage. Mr Erol had a financial interest in the crop.
  - VA befriended a local resident, DH, who was a frequent visitor at the cottage. VA bought drugs from DH. VA was said to have owed DH around £500.
  - On 14 October 2013, VA moved out of the cottage and into a hotel in Brighton. 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 Mr Erol and two others who ambushed DH. Both Mr Erol and VA thought DH had stolen the crop of cannabis as well as VA's pet dog because of the monies owed. There appeared to have been a burglary some weeks earlier in which DH denied involvement.
  - DH went to the cottage with his girlfriend, CB, at around midnight that night. CB saw men with baseball bats beat DH to the ground and witnessed them binding his feet together with tape. CB begged them to stop; she was taken into the house. CB was searched and her handbag and coat were taken. She was then taken to a downstairs toilet. CB overheard DH being questioned by the men who asked, "Where's the stash? Where's the dog?" A masked man told CB that they would take DH. CB saw the men in the living room pick DH up and take him out.
  - CB heard a vehicle door bang outside and the masked men, including Mr Erol and others, handed CB the keys to DH's van. She was told not to call the police and that she could leave twenty minutes later.
  - DH, who was beaten, gagged, blindfolded, and bound up, was in the back of what he thought was a transit van. His pockets had been searched and his phone and money taken.
  - The van pulled up and DH was transferred to a car. From the car, DH was transferred to what he thinks was a first floor flat. He was further assaulted and taken to an address in London where he eventually made his escape to a nearby convenience store.
  - DH was found by police, "absolutely petrified" and "a crying wreck".
10. The Disciplinary Panel was informed that Mr Erol was found to have carried out the kidnapping with the associated violence and that it appeared he had a financial interest in the cannabis. Further, it was informed that the judge had said the offences were pre-planned, involving a conspiracy of at least three people that used violence and threats on the victim. The victim was falsely imprisoned for some eight and a half hours, and the background of the offence included involvement in the illicit drugs market.
11. The Disciplinary Panel found that Mr Erol had been convicted of conspiracy to kidnap and false imprisonment, and that he was liable to disciplinary action. It imposed a Reprimand by way of sanction.
12. The Honorary Secretary of RICS believes this sanction was unduly lenient, and has referred the matter to the Appeal Panel for review.

## GROUNDINGS OF REVIEW

13. The grounds of review and submissions of the RICS can be summarised as follows:

### **Ground 1: The Panel erred in its analysis of the conviction and/or Mr Erol's insight into it.**

14. The Panel failed to have regard to the fact that Mr Erol's commission of the offences was directly linked to his involvement in the drugs industry.
  - a. The Panel noted that the offence was committed against the background of the illicit drugs trade. However, in its analysis, it did not indicate that Mr Erol had a financial interest in the cannabis which was a motivation behind his actions
  - b. Comments made by the Chair during the hearing were to the effect that the conviction did not mention drugs and she would be concentrating on the conviction itself.
  - c. The Panel found that Mr Erol had insight into his conviction despite the fact that he denied this important aggravating feature as a motivation for his conduct.
15. The Panel should have proceeded on basis that there was an explicit drug connection between Mr Erol and the offences. This was an aggravating feature the sentencing judge was entitled to take into account and the Panel should have adopted the Judge's characterisation of the offending in full. Had the Panel done so, that assessment would have impacted on its analysis of insight. Mr Erol significantly underplayed the extent of his criminality.

### **Ground 2 – the Panel was wrong to consider a Reprimand adequately addressed the public interest.**

16. The conviction was of the utmost seriousness and was incompatible with membership of RICS. The offence was planned, involved a conspiracy of at least three people, was associated with significant violence and threats of violence, involved the use of weapons, involved a significant period of detention for the victim, and was connected with the drug trade. The guidance suggests that a serious criminal offence which **could** result in a custodial sentence will ordinarily result in expulsion absent extenuating circumstances.
17. The Panel failed to evaluate the weight to be attached to the aggravating and mitigating factors and did not properly reflect on the extent of the criminality. It enumerated various extenuating factors, but these fall far short of justifying the description of an "exceptional" course, or justifying the course taken.

18. The Panel noted the age of the conviction, (six years). However, Mr Erol was in prison for the first three years of this period. Only one month separated the expiration of Mr Erol's sentence from the date of the RICS hearing. The age of the conviction was wholly insufficient in the circumstances to justify the decision.
19. The Panel noted the lack of repetition and the rehabilitative steps taken. However, Mr Erol was in prison for much of this time or serving the remainder of his sentence on parole. Whilst the Panel was entitled to find that he was unlikely to repeat his conduct, this does not justify an exceptional course of action. The purpose of the sanction is not simply to prevent recurrence, but to safeguard the reputation of the profession and public confidence in it. This mitigation warranted limited weight only. The public interest could only be maintained by the sanction of expulsion.

### **Ground 3 – The Panel provided inadequate reasons to justify issuing a reprimand**

20. The Panel's reasons were inadequate to support the decision reached. It did not appropriately explain how much weight it attached to the various aggravating and mitigating factors and failed to explain how it reached the view that Mr Erol had full insight when his version of events consistently failed to engage with the full extent of the criminality identified by the judge.
21. The Panel failed to explain how the public interest was protected by the imposition of a Reprimand. It did not consider how an informed member of the public will react to the fact that a member of this profession had just finished serving a sentence for an offence of this nature.
22. Mr Geering invited the Panel to overturn the sanction and impose a sanction of Expulsion

### **MR EROL'S RESPONSE**

23. Mr Erol provided the Appeal Panel with a written "interim submission", setting out his response to the grounds of review and he elaborated on this during the hearing. His submission can be summarised as follows:

#### **Ground 1:**

24. Mr Erol submitted that the Disciplinary Panel did not make an error of law in its analysis of the conviction. He referred the Appeal Panel to parts of the Disciplinary Panel's decision in which that Panel referred to the sentencing remarks of the Crown Court Judge. He pointed out that the Disciplinary Panel made reference in their decision to the aggravating factors identified by the sentencing Judge, which included that he and his co-defendant were "equally responsible", and that the kidnap took place against

the background of the illicit drugs market. He accepted that the offences were very serious.

25. Mr Erol referred the Appeal Panel to his participation in the Forgiveness Project during his incarceration as evidence of his insight into his conviction. Mr Erol said that he has now graduated from University, secured employment, and supports young people and members of the local community. He told the Appeal Panel that he has used education as a means of reform and rehabilitation and that the Disciplinary Panel had accepted this.

## **Ground 2:**

26. Mr Erol said that the Disciplinary Panel was not wrong to consider that a Reprimand adequately addressed the public interest. He set out the various roles and responsibilities he has undertaken since his conviction and emphasised that he has been placed in positions of trust over a period of time. These included his volunteer work as a mentor in prison, his work as a peer support member, his move to open prison conditions and the permissions he was granted to leave prison to work in the local community and to travel abroad. He set out his career history, which included graduation from the University of Westminster, and his employment with GHR Construction from 2017 to 2019 and Claritas Group. Mr Erol submitted that he has committed no breach of trust or misconduct over a seven year period and that the Disciplinary Panel had the benefit of this hindsight. He pointed out that the conviction occurred some three years before he applied to become a student member of the RICS, and six years before his application to become a trainee member.

27. Mr Erol said that the Disciplinary Panel had considered Expulsion, but rejected it.

## **Ground 3:**

28. Mr Erol submitted that the Disciplinary Panel had provided reasons and justifications for their decision which were, "equal to or more elaborate" than other cases where a Reprimand was issued. He submitted that having regard to all the rehabilitative steps he has taken, an informed member of the public would consider that his circumstances were extenuating.
29. In addition to the above, Mr Erol explained that his guilty plea at the Crown Court was entered late following a disagreement with his legal team; he said he entered his guilty plea when his new legal team was appointed.
30. Mr Erol was questioned by the Chair of the Appeal Panel about his explanation for the offences. He said he was advised by his Counsel that he might lose credit in sentencing if he maintained that his offending was only about the stolen dog. He

maintained that his involvement was more, “emotional”, and was based on the way his co-accused described the circumstances to him, rather than about his personal interest in the cannabis.

## **CLOSING SUBMISSIONS**

31. Mr Geering submitted that Mr Erol played down his involvement in the offending, denied his motive for it, and misled the Disciplinary Panel. He said that it is clear that he still does not fully accept his involvement in the offending.
32. Mr Geering said that the Disciplinary Panel had not properly analysed the aggravating factors and had not objectively identified the extenuating circumstances referred to in their decision. He said that the public interest was not compatible with someone who has committed an offence of this nature being a member of the profession, and the Disciplinary Panel should have found that Mr Erol's insight into his offending was limited.
33. Mr Erol re-iterated that during his conference with Counsel before the sentencing hearing, he was advised that he would lose credit if he maintained that his involvement in the offence was motivated only by the theft of his co-defendant's dog.

## **PANEL DECISION ON GROUNDS OF REVIEW**

### **Ground 1: The Panel erred in its analysis of the conviction and/or Mr Erol's insight into it.**

34. It was evident from the sentencing transcript, (which was admitted to this Panel as new evidence) and the Judge's sentencing remarks, that Mr Erol was sentenced on the basis that his participation in the offences was motivated by his interest in the crop of cannabis being grown at the cottage. This was accepted by his own counsel during the plea in mitigation advanced on his behalf.
35. Mr Erol did not accept this during the Disciplinary Hearing. He maintained that he was helping a friend whose home had been burgled and whose dog had been stolen, and he denied that his motivation was based on his interest in the drugs.
36. It was evident from the transcript of the Disciplinary Hearing that the Chair had said that she would be concentrating on the conviction itself, which did not mention drugs. Although the Judge's sentencing remarks were referenced in the written decision of

the Disciplinary Panel, there was no mention in the rationale for their decision of Mr Erol's involvement in the offences being motivated by his connection to the drugs.

37. The Appeal Panel therefore found that the Disciplinary Panel had made an error in the way that it had analysed the conviction. It had failed to properly take account of the context and an important aggravating feature which had been identified by the sentencing judge.
38. The Appeal Panel also found that the Disciplinary Panel had made an error in its analysis of Mr Erol's insight into the conviction. It attributed him with having full insight into the conviction, when in fact, he did not accept a significant aggravating factor, that being, that his motivation for the offending was based on his connection with the crop of illicit drugs. If the Disciplinary Panel had adopted the judge's analysis of the full extent of Mr Erol's criminality, that assessment would undoubtedly have impacted on its subsequent analysis of his insight. Minimisation of the offences, which was described by his own counsel to the sentencing judge as "unfortunate", was repeated to the RICS in his defence, to the Disciplinary Panel at that hearing and to an extent still today in his submissions.

## **Ground 2: The Panel was wrong to consider a Reprimand adequately addressed the public interest.**

39. The Appeal Panel accepted that the Disciplinary Panel was wrong to decide that a Reprimand adequately addressed the public interest. It was satisfied that the offences which gave rise to the conviction were very serious. They were planned, involved a conspiracy of several people, were associated with significant violence and threats of violence, involved the use of weapons and a long period of detention for the victim, and were motivated by Mr Erol's connection to the drugs trade. The offences attracted a lengthy custodial sentence of six years.
40. The Disciplinary Panel did not reflect the full assessment of Mr Erol's criminality when it made its decision on sanction. It did not take account of the fact that a motivating factor for the offending was a connection to drugs. It based its decision on an inaccurate assessment of his insight, and without a full evaluation/explanation of the aggravating and mitigating factors. It referred to various "extenuating" factors, however these amounted to mitigation rather than factors which would justify a course other than Exclusion, given the seriousness of the conviction.
41. The Disciplinary Panel took the view that the mitigation was sufficient to justify a sanction other than one of Expulsion. However, given the seriousness of the offence, in spite of any mitigation, the Disciplinary Panel was wrong to take the view that a Reprimand adequately addressed the need to maintain the reputation of the profession and uphold proper standards of conduct and behaviour.



## **Ground 3: The Panel provided inadequate reasons to justify issuing a reprimand**

42. The Appeal Panel agreed that the Disciplinary Panel provided inadequate reasons to justify issuing a Reprimand.
43. The Disciplinary Panel did not appropriately explain how much weight it attached to the various aggravating and mitigating factors it had identified. It also failed to explain how it reached the view that Mr Erol had full insight into his offending, when it was evident that he continued to deny the basis on which he had been sentenced in the Crown Court. There was also no explanation within the decision as to how an informed member of the public would react to a person with a conviction for these offences being allowed to continue his membership of the profession when he had only just finished serving a lengthy custodial sentence for such serious offences.

## **CONCLUSION**

45. The Appeal Panel decided that the sanction imposed by the Disciplinary Panel was wrong on the basis that it was unduly lenient. The Appeal Panel concluded that having regard to the material facts, the decision reached by the Disciplinary Panel did not have due regard for the safety of the public and the reputation of the profession and was not one which it could reasonably have imposed, having regard to the relevant facts and the object of disciplinary proceedings, which is to uphold the public interest.
46. Having heard from Mr Erol today, it was evident to the Appeal Panel that he still does not fully accept that his motivation for the offending was his connection to the drugs. He maintained that his Counsel advised him at the Crown Court that he would lose credit in sentencing if he advanced that his involvement was to assist in the recovery of his friends' dog, and consequently, he said it was advanced on his behalf that the motivation was his connection to the drugs. The Appeal Panel was of the view that Mr Erol had misled the Disciplinary Panel. He had denied that his motivation was his connection to the cannabis and he had also informed the Panel that his guilty plea was entered early, which it was not.
47. The Appeal Panel decided to exercise its powers to vary the penalty imposed by the Disciplinary Panel. It was mindful that any penalty imposed must be proportionate and must balance the interests of Mr Erol as well as the need to uphold the public interest. It accepted that Mr Erol has taken significant steps to improve himself through education and employment, that he has been a trustworthy and competent employee and has carried out much community work since he was convicted. However, given the seriousness of the offence and the aggravating factors outlined by the sentencing judge, its view was that the only penalty which would ensure that proper standards of conduct are upheld and confidence in the profession is maintained, is one of Expulsion from student membership.

The appeal Panel therefore ordered that Mr Erol be expelled from student membership of the RICS.

48. It will be open to Mr Erol in due course to re-apply for membership. Such an application could be successful if Mr Erol accepts full responsibility for his involvement in organised crime and can demonstrate that he is a fit and proper person to be re-admitted to the RICS.

## **COSTS**

49. Mr Geering applied for costs in the sum of £5, 716. He submitted that the Disciplinary Panel had been misled into making errors, that the application for review was properly brought and the amount claimed was proper and reasonable for this type of appeal.
50. Mr Erol submitted that given his financial circumstances, he would need to work for between five to six months to find the money to repay this amount of costs.
51. The Appeal Panel had regard to the submissions. It was satisfied that the application for review was properly brought. However, taking into account Mr Erol's current financial circumstances, it decided that £1500 was a fair and reasonable sum for him to pay in costs. The Appeal Panel ordered that Mr Erol pay £1500 to the RICS in costs.

## **PUBLICITY**

52. Mr Erol invited the Appeal Panel not to make a publicity order, or not to name him in any publicity.
53. The Panel had regard to the principle of open justice. It could identify no reason why it should not make an order for publicity naming Mr Erol in accordance with the terms set out in supplement 3 to the sanctions policy.

## **EFFECTIVE DATE OF ORDER**

54. This order will take immediate effect.