

## **ROYAL INSTITUTION OF CHARTERED SURVEYORS APPEAL PANEL HEARING**

### **Case of**

**Mr James Fry [5813149]  
Yeovil Somerset BA22**

### **On**

Wednesday 05 August 2015

### **At**

RICS Parliament Square London SW1P 3AD

### **Chairman**

Julian Weinberg

### **Members**

Jack McKinney (Member)

Christopher Pittman (Member)

### **Legal Assessor**

Stephen Murfitt

### **RICS Representative**

Vicki Buckley

### **Background**

1. This is an appeal by James Fry against the decision of a Disciplinary Panel dated 30 March 2015.
2. In January 2014 Mr Fry submitted an application to RICS as an APC candidate and disclosed a criminal conviction. At Gloucester Crown Court on 23 July 2012 Mr Fry was convicted of the offence of inflicting grievous bodily harm contrary to section 20 of the Offences Against the Person Act 1861. He was sentenced on 20 August 2015 to a 12 month Community Order requiring him to carry out 200 hours of unpaid work.

3. In summary the facts of the offence were that Mr Fry was a student at the Royal Agricultural College in Cirencester Gloucestershire and he was involved with another man in an incident that took place in a night club in Cirencester. Mr Fry was found to have punched this person causing him to sustain a broken jaw.
4. RICS commenced disciplinary proceedings under Bye-Law 5.2.2(d) as Mr Fry had been convicted of a criminal offence that could have resulted in a custodial sentence. Mr Fry chose the option of having his case heard by written representations.
5. The Disciplinary Panel Hearing by way of written representations took place on 30 March 2015. The Panel concluded that there were insufficient extenuating circumstances to be found in the evidence considered and that the proportionate sanction was one of expulsion from membership of RICS.
6. Mr Fry entered a Notice of Appeal on 27 April 2015 when the stated grounds of appeal were that the sanction was disproportionate and inconsistent with previous decisions of the Disciplinary Panel (Case References 6496071 and 0090512). Furthermore the trial judge at the criminal trial accepted that Mr Fry's case had not passed the custody threshold and the sentence was one of a Community Order.

#### **Disciplinary Registration and Appeal Panel Rules**

7. Rules 59 to 70 of the Disciplinary Registration and Appeal Panel Rules 2009 ("the Rules") govern appeals against decisions of Disciplinary Panels. Rule 59b provides that a relevant person, in this case Mr Fry, may appeal a finding or penalty imposed by a Disciplinary Panel.
8. Rules 61 and 62 provide that any appeal shall be lodged with RICS within 28 days of service of notification of the decision to be appealed, and that the appeal shall be in the form prescribed by RICS and specify the grounds relied on in support of the appeal. RICS takes no point with regard to the service and content of the notice of appeal.
9. Rules 64 requires the Appeal Panel to review the decision of the Disciplinary Panel with regard to:
  - a. The evidence presented to the Disciplinary Panel
  - b. Any representations made to the Disciplinary Panel if available in written form, including any transcript of any hearing
  - c. The Appellant's grounds of appeal
  - d. Any representations which the Appellant or the Head of Regulation may wish to make to the Appeal Panel regarding the findings and/or penalties imposed by the Disciplinary Panel
10. Rule 65 provides that the parties may not provide new evidence to an Appeal Panel without leave.
11. Rule 66 of the Rules provides that the burden rests with Mr Fry to satisfy the Appeal Panel that the order being sought should be made.

12. Rule 68 of the Rules states that only when an Appeal Panel considers that a decision of a Disciplinary Panel is wrong, may it then allow an appeal.
13. By virtue of Rule 69, if the Appeal Panel allows an appeal, it may either:
  - a. Vary the Disciplinary Panel's finding that the relevant person (the appellant) was liable to disciplinary action
  - b. Vary the penalty imposed to one of greater or lesser severity or
  - c. Refer the matter back to a Disciplinary Panel for a new hearing or consideration.

## **DETERMINATION**

### **Panel's Decision**

14. The Appeal Panel has carefully considered the papers before it which included the original Disciplinary Panel decision the transcript of His Honour Judge Mercer QC at the criminal trial. It also considered the oral submissions of both parties at the appeal hearing.
15. In accordance with Rule 64 of the Rules, an appeal is by way of a review not a re-hearing. Importantly therefore it is not for the Appeal Panel to consider afresh all the evidence before the Disciplinary Panel and substitute its own decision. The role of the Appeal Panel is to review the decisions of the Disciplinary Panel and consider only whether or not Mr Fry satisfies the Panel that the decisions were wrong. Only if Mr Fry satisfies the Panel that the decisions were wrong can the appeal be allowed. As already mentioned, under Rule 66 the burden remains on Mr Fry.
16. The Appeal Panel was advised and accepted that to be 'wrong' the earlier decision must have exceeded the generous ambit within which a reasonable disagreement is possible, and that the Disciplinary Panel must have erred in principle in its approach, or must have left out of account, or taken into account some features that it should, or should not have considered, or not balanced the various factors fairly in the scale. Just because the Panel might have made a different decision is not reason enough to conclude that the decision is wrong.
17. Mr Fry cannot go behind the conviction, and he does not seek to do so. The appeal in this case by Mr Fry is against sanction when Mr Fry submits that the appropriate sanction is one of Reprimand.
18. Mr Fry does rely on two previous decisions of the Disciplinary Panel (reference numbers 6496071 and 0090512) and argues by reference to those cases the sanction imposed upon him was disproportionate and inconsistent.
19. Mr Fry advances an argument that the sentencing judge did not consider the case so serious that it passed the custody threshold. The Appeal Panel was referred by the Legal Assessor to the recent case of *PSA v Wilson* when Mrs Justice Laing said that a sentence imposed by a criminal court is not always a reliable guide to the task before a Disciplinary Panel and in particular to the maintenance of public confidence in the profession. Mrs Justice Laing referred to the case of *Bolton v Law Society* when Sir Thomas Bingham said the 'reputation of the profession is more important than the fortunes of an individual member'. A conviction

of grievous bodily harm is a significant factor in a regulatory context because of the effect upon public interest considerations that apply.

20. The Appeal Panel agrees that Mr Fry's conduct fell substantially below the standard expected of a member of RICS. The Appeal Panel notes the sentencing judge had remarked that it was a totally unprovoked, mindless act of violence. To the extent that alcohol may have been a contributing factor, the Appeal Panel is satisfied that it does not excuse behaviour that is in breach of the standards expected of the profession.
21. It is the view of the Appeal Panel that Mr Fry has discharged the burden placed upon him to persuade the Panel that the decision of the Disciplinary Panel was wrong. The Panel is so satisfied for two reasons. Firstly the Panel is satisfied that the Panel took into account the fact that 'Mr Fry's actions were described as three separate attacks over a short time'.(paragraph 18). Although the Disciplinary Panel made clear that it had not drawn inferences from the description of events as outlined in the newspapers contained in the bundle (paragraph 5) the only reference to 'three separate attacks' is within the newspaper accounts. The judge in his sentencing remarks (page 32 of the bundle) made reference to 'Mr Fry joined in and on the evidence it was a hard punch from you which broke his jaw'. The Appeal Panel is satisfied that the Disciplinary Panel took into account material that suggested a more serious assault than the evidence established, in deciding which sanction to impose.
22. Secondly, the Disciplinary Panel stated at paragraph 15 of its decision that it could find no explicit statement in the hearing bundle as to Mr Fry's expressed remorse, referring only to the fact that Mr Fry had expressed remorse that someone was injured. The Appeal Panel does not agree with that assessment of the evidence. On 11 February 2014 Mr Fry wrote to RICS and his letter was before the Disciplinary Panel. In his letter Mr Fry stated 'I am remorseful, I feel extremely bad that someone was injured'. The Appeal Panel does consider that to be an explicit statement of remorse to which the Disciplinary Panel did not attach sufficient weight.
23. The Appeal Panel is therefore satisfied that for these reasons the Disciplinary Panel was wrong in its decision.
24. The Appeal Panel has decided by reference to Rule 69 of the Disciplinary Registration and Appeal Panel rules 2009 to vary the penalty imposed upon Mr Fry. The Appeal Panel considers the failings on the part of Mr Fry to be serious and in those circumstances it would not be proportionate to impose no penalty. The Appeal Panel considers the imposition of a sanction to be both necessary and proportionate to protect the public interest and that the imposition of a caution would not meet that requirement.
25. The Appeal Panel considers that a proportionate response is the imposition of a Reprimand and so orders. The imposition of any other sanction would be disproportionate.

### **Publication and Costs**

26. Neither Mr Fry nor RICS make an application for costs The Appeal Panel therefore makes no such order.

27. Mr Fry requests publication of the decision and RICS make no objection. The Appeal Panel therefore orders publication in accordance with the Sanctions Policy, namely in Modus, on the RICS website and in a newspaper local to Mr Fry.

