

Registration Panel Hearing

Case of

Jason Barkworth

On

Tuesday 20 November 2018

At

55 Colmore Row,
Birmingham

Panel

Carolyn Tetlow (Lay Chair)
Patrick Bligh-Cheesman (Lay Member)
Justin Mason (Surveyor Member)

Legal Assessor

Alastair McFarlane

RICS Representative

James Lynch

Hearing Officer

Maria Choudhury

DETERMINATION

Notice

1. This case had been listed for an application made by Mr Jason Barkworth, the Relevant Person, to be admitted for membership pursuant to Rule 47(b) of the Disciplinary, Registration and Appeal Panel Rules 1 April 2009 (Version 7, 1 January 2017) (“the Rules”).
2. The Panel received a witness statement from Mrs J Berry, Regulatory Tribunal Executive for RICS, dated 8 November 2018. The statement confirmed that the Notice of Hearing had been sent to the Relevant Person on 5 September 2018, to the email and postal address held on RICS’ system. The email and letter were exhibited to the statement of Mrs Berry. The Panel also had sight of the email and postal delivery receipt confirming delivery of the sending the Notice of Hearing.
3. The Panel accepted the advice of the Legal Assessor and was satisfied that the notice of hearing had been sent in accordance with the Rules.

Representation

4. Mr Barkworth appeared on his own behalf and was unrepresented. Mr Lynch appeared on behalf of RICS.

Background

5. Mr Barkworth is a student member of RICS. On 5 May 2017, he was convicted of a criminal offence of inflicting grievous bodily harm contrary to section 20 of the

Offences Against the Person Act 1861. He was sentenced to 18 months imprisonment, which was suspended for 12 months.

6. Mr Barkworth has now completed his Assessment of Professional Competence (“APC”) and applied to become a full member of RICS. Under Regulation 2.3.1(a)(iv) the Chief Executive was not satisfied that Mr Barkworth was a fit and proper person for membership given this conviction. He therefore referred his application to this Registration Panel for determining whether Mr Barkworth complied with Regulation 2.2.2 (namely whether he was a fit and proper person) and whether his application for membership should therefore be accepted or rejected accordingly.

RICS Submissions

7. As he was a student member at the time of the conviction, Mr Barkworth may be liable for disciplinary action under RICS Bye-Law 5.2.2 (d). Nonetheless, RICS and Mr Barkworth had agreed that his application to be admitted as a member of RICS will be considered by a Registration Panel and the issue of potential liability to disciplinary action arising from the conviction will be subsequently considered by a Disciplinary Panel.
8. As a result, RICS submitted that this Registration Panel is not concerned with the issue of sanction. If Mr Barkworth's application for full membership is determined by the Panel to be successful, he will face subsequent disciplinary proceedings to consider separate charges of misconduct and what, if any sanction should apply. If this application is not successful, Mr Barkworth may still be subject to disciplinary proceedings as a non-chartered member.

9. RICS submitted that this Panel must consider whether Mr Barkworth is a fit and proper person. It stated that there was no definition of this term within the Rules and that the Panel should apply its own judgment as to whether it believed Mr Barkworth to be a fit and proper person. It emphasised that his conviction does not automatically prevent the Panel from concluding him to be a fit and proper person for admission to full membership.
10. RICS did not adopt a positive case as to whether it considered Mr Bartlett to be a fit and proper person or not, but emphasised this was a matter for the Panel. It did however list what it considered to be the aggravating and mitigating factors surrounding the conviction.

Mr Barkworth's submissions

11. Mr Barkworth notified RICS of his conviction by letter dated 24 May 2017. He had pleaded not guilty at trial but indicated that he accepted the decision of the jury and took full responsibility for his actions, which led to the conviction. He acknowledged that the public trust and reputation of the profession can be impacted by a member's behaviour, including matters outside work and stated that he was "ashamed and devastated to be in this situation" and that "this type of conviction does not fall in line with the standards of behaviour expected of me as a member of the Institution". He indicated his remorse for the incident and the injury caused. He had apologised to the victim shortly after the incident and again, in court.

Decision

12. The Panel carefully noted the submissions of Mr Barkworth and those of Mr Lynch on behalf of RICS and all the documentary evidence before it.

13. The Panel accepted the advice of the Legal Adviser. It reminded itself that the burden of proving that he was a fit and proper person rested on Mr Barkworth. It accepted that it was a matter for the Panel's judgment and that it was not this Panel's function to impose any sanction on Mr Barkworth or to use a refusal of his application as a form of sanction.

14. The Panel paid close regard to the transcript and sentencing remarks of HHJ Davies, the sentencing judge at the Inner London Crown Court. The background events to the conviction were that on 26 August 2016 when Mr Barkworth was either "drunk or merry" he swung a punch at a doorman with sufficient force that it fractured the doorman's jaw in two places. The learned judge accepted that it was a single blow and an isolated incident. The judge accepted that his remorse was genuine and imposed a suspended custodial sentence with an unpaid work requirement of 120 hours and £500 compensation.

15. The Panel considered the following were aggravating factors:
 - the offence was a serious criminal offence of violence committed against a member of the public in an official role who sustained a serious injury
 - the incident occurred at a work social event
 - the incident occurred after Mr Barkworth had consumed excess alcohol
 - Mr Barkworth did not plead guilty, alleging self-defence, which was rejected by the jury
 - Mr Barkworth had a previous caution for common assault in 2007, when he was 17 years old
 - It is only 6 months since the suspended sentence order expired

16. The Panel considered the following were mitigating factors

- the incident involved a single punch
- there has been no repetition of the behaviour since August 2016
- Mr Barkworth has given up alcohol
- the Panel has seen positive and supporting references including from senior professionals post-dating his conviction and he is supported by his employer
- Mr Barkworth has pursued his APC
- Mr Barkworth has completed his sentence and the 120 hours of community service and paid the compensation
- Mr Barkworth has expressed his regret and remorse acknowledging the risks his conduct poses to the reputation of the profession
- he is trying to use his experience by training other young members of the profession
- he declared his conviction immediately and has fully engaged with RICS
- He has demonstrated commitment to his profession

17. In determining Mr Barkworth's fitness and propriety, the Panel had specific regard to public interest, which included declaring and upholding of proper standards of conduct and the maintenance of the reputation of the profession. It noted the seminal observations of Sir Thomas Bingham MR (as he then was) in Bolton v The Law Society [1994] 1WLR 512:

"A profession's most valuable asset is its collective reputation and the confidence which that inspires...The reputation of the profession is more important than the

fortunes of any individual member. Membership of the profession brings many benefits, but that is part of the price."

18. The Panel also noted the observations of the Court of Appeal in the GMC v. Dr Chandra [2018] EWCA Civ 1898, the court held that *"not only do the Bolton principles apply equally to doctors as solicitors, but the same principles and approach apply equally to both sanctions and restoration"*. The Panel considered that this approach in respect of restoration was analogous to the application for admission by Mr Barkworth.
19. The Panel was satisfied that Mr Barkworth had a genuine and sincere understanding of the gravity of his conduct upon the standing and reputation of the profession. It considered he was genuinely remorseful. He has made considerable efforts towards remediation. He has abstained from alcohol and has the support of his employers and is trying to use his experience by mentoring and training other young members of the profession.
20. The Panel bore in mind that each case was fact-specific and that Mr Barkworth's conviction was for a serious assault that resulted in an 18-month custodial sentence, albeit one that was suspended for 12 months. The Panel was mindful that Mr Barkworth has completed his sentence and that he did not breach the suspension, but that this only expired in May 2018.
21. Considering all the information before it, the Panel determined, on balance, that Mr Barkworth's application should be granted. It was satisfied that he was, today, "fit and proper" to be admitted to membership, despite the gravity of the conviction. The Panel considered that the measures Mr Barkworth has put in place were encouraging. It considered that he was genuine, and that since the conviction has taken positive steps to seek to prevent any re-occurrence. He has developed insight into the gravity of the behaviour and its impact on the profession. While the Committee considered that his

application for membership was made at the earliest juncture and was mindful that the suspended sentence concluded only 6 months ago, it accepted that he has developed genuine insight into the grave impact of the conviction on the profession's reputation. It was the Panel's judgment that he had taken meaningful and substantive steps in relation to remediation since the conviction in May 2017. He has abstained from alcohol since least 2017; he has continued with his qualifications; he has undergone counselling and become a Lionheart RICS charity ambassador assisting younger colleagues and detailing his experiences to them.

22. For all these reasons, the Panel considered that Mr Barkworth had discharged the burden on him to establish that he was fit and proper to be admitted to membership and granted his application.

Publication

23. The Panel noted that both parties supported 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.

