

## **Disciplinary Panel Re-Hearing**

### **Case of**

**Mr Michael Durham [0042674]  
Bury St Edmunds, Suffolk, IP30**

### **On**

Wednesday 14 June 2017

### **At**

RICS, Parliament Square, London

### **Panel**

John Anderson (Lay Chair)  
Imran Benson (Lay Member)  
Chris Pittman (Surveyor Member)

### **Legal Assessor**

Mark McConochie

### **RICS Representative**

Annabel Joester

### **The Panel considered the following charge:**

That you were convicted on 19 May 2015 at Willesden Magistrates Court for offences contrary to sections 194(1) (a) and (2) of the Town and Country Planning Act 1990, and sections 3 and 6 of the Forgery and Counterfeiting Act 1981.

### **Introduction**

Mr Durham attended the Disciplinary Panel hearing by telephone and was not represented. The Panel found it helpful to hear from Mr Durham.

RICS was represented by Annabel Joester.

## **Burden and standard of proof**

RICS is required to prove the allegations against Mr Durham to the civil standard; that is on the balance of probabilities.

## **Evidence**

The Panel read the RICS bundle of documents, consisting of 50 pages. RICS did not call any witnesses of fact.

The Panel heard evidence and representations from Mr Durham and took into account written representations from Mr Durham dated 6 June 2017. Mr Durham confirmed that he had no additional written evidence or representations to put before the Panel.

## **Findings of Fact**

RICS produced a copy of a memorandum of an entry entered in the register of the North West London Magistrates' Court confirming that Mr Durham was convicted on 19 May 2015 at Willesden Magistrates Court for offences contrary to sections 194(1)(a) and 2 of the Town and Country Planning Act 1990 and sections 3 and 6 of the Forgery and Counterfeiting Act 1981.

Paragraph 41(b) of the Disciplinary Appeal Panel and Registration Panel Rules provides that where a Relevant Person 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 Relevant Person's commission of that offence.

Mr Durham had the benefit of legal advice in the criminal proceedings and pleaded guilty to the charges. He admitted that he been convicted as alleged by RICS.

The Panel finds the convictions proved.

## **Liability to Disciplinary Action**

RICS Bye Law 5.2.2(d) provides that a Member may be liable to disciplinary action by reason of having been convicted of a criminal offence which could result in a custodial sentence.

On 19 May 2015 Mr Durham was convicted by Willesden Magistrates' Court of two offences contrary to section 194 of the Town and Country Planning Act 1980 and two offences contrary to sections 3 and 6 of the Forgery and Counterfeiting Act 1981. He was fined £3,000 and ordered to pay prosecution costs of £2,286 and a victim surcharge of £120.

Section 194 of the Town and Country Planning Act 1980 makes it an offence for any person to knowingly or recklessly make a statement which is false or misleading in a material particular for the purpose of procuring a particular decision on an application for the issue of a certificate of lawfulness of the existing use of premises. It is an offence which carries a maximum sentence on indictment of two year's imprisonment.

The offence of using an instrument which a person knows or believes to be false with the intention of inducing someone to accept it as genuine contrary to section 3 of the Forgery and Counterfeiting Act 1981 carries a maximum penalty on indictment of 10 year's imprisonment.

The facts leading to the convictions – which Mr Durham admitted – are set out in the statement at pages 25 and 26 of the RICS bundle. A statutory declaration and three tenancy agreements signed by Mr H - Mr Durham's client - were submitted to a public inquiry by Mr Durham in support of Mr H's appeal against a planning enforcement notice issued by London Borough of Brent. Mr Durham submitted these documents – which were not genuine - in his capacity as planning agent on behalf of Mr H as part of Mr H's application for a certificate of lawfulness and as part of his evidence to a public inquiry on appeal with the intention of misleading the Council.

Mr Durham accepted that he was liable to disciplinary action. The Panel found that the conduct was sufficiently serious to render Mr Durham liable to disciplinary action. The offences for which Mr Durham was convicted were very serious and clearly related to his work as a surveyor.

### **Decision as to sanction**

The Panel bore in mind 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.

The Panel paid careful heed to the advice of the Legal Assessor and to the indicative sanctions guidance of RICS.

Mr Durham said that he had pleaded guilty to the offences in the interests of dealing with the criminal proceedings quickly. He said that he had very little time to prepare for the hearing and had been advised to plead guilty by his legal team to get matters resolved in the Magistrates Court. He accepted that he had submitted the forged tenancy agreements but said that he did so "unwittingly" although did not say that he had been wrongly convicted. Mr Durham said that the documents had been provided to him by Mr H at the time he was instructed to act in the matter.

The Panel accepted the advice from the legal assessor that the circumstances would have to be exceptional for it to go behind the convictions. It did not find the circumstances exceptional in this case. They were arrived at following a fair and proper process throughout which Mr Durham had the benefit of legal advice. The Panel therefore found that Mr Durham used the three forged tenancy agreements contrary to sections 3 and 6 of the Forgery and Counterfeiting Act 1990 by submitting them as part of his client's application and he knew they were false or had believed them to be false. Contrary to section 194 of the Town and Country Planning Act 1980 he knew, or was reckless as to whether, the facts contained in those agreements were false or misleading in a material way.

The offences committed by Mr Durham are very serious and the submission of forged documents with the state of mind that was present in this case undermines the confidence that members of the public have in the profession as a whole and the standards and integrity that is rightly expected of chartered surveyors.

It considered carefully the mitigating and aggravating factors of this case. The Panel took into account that Mr Durham has been a RICS member for 45 years with no previous disciplinary record. He pleaded guilty to the offences in the Magistrates' Court and has apologised to the RICS in his written representations. The Panel accepted Mr Durham's evidence that he had not gained financially.

However, there are a number of aggravating features in this case. Mr Durham had made false and misleading statements on behalf of a client's application and in a subsequent public inquiry. There had been a number of media articles arising from the convictions which resulted in adverse publicity for the profession as a whole. Mr Durham did not voluntarily bring the convictions to the attention of RICS but RICS conceded that this did not cause undue delay in the regulatory proceedings.

The Panel considered the matters too serious for no sanction to be imposed, and considered that a caution or reprimand would not adequately reflect the gravity of the conduct which had been found proved. The Panel considered whether an undertaking or the imposition of a fine would be appropriate but decided that in order to uphold the standards of the profession and to safeguard its reputation and that of RICS and to protect the public, expulsion from membership was a justified and proportionate sanction. The Panel was mindful of paragraph 20.1 of the Sanctions Policy which provided in the absence of extenuating circumstances, conduct amounting to a lack of integrity and in cases of conviction of a serious criminal offence for which the penalty could include imprisonment, expulsion was likely. The Panel expelled Mr Durham from membership.

The Panel's decision replaces the decision made in 17 March 2016 by a previous Panel to expel Mr Durham from membership. The Panel invites RICS to take into account the time for which Mr Durham had already been expelled from membership before today's hearing when considering any application for re-admission.

## **Publication and Costs**

### **Publication**

The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus. The Panel sees no reason for departing from the normal practice in this case. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.

The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6. The Panel invites RICS to take this opportunity to correct any existing RICS publicity relating to the decision on 17 March 2016 to ensure, in the interests of fairness to Mr Durham, the position is stated correctly.

### **Costs**

There was no application by RICS for costs

Mr Durham may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rules 58 – 70 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.

The Honorary Secretary of RICS may require a review of a finding or penalty imposed by a Disciplinary Panel within 28 days from service of the notification of the decision, in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.