

Disciplinary Panel Hearing

Case of

Mr Gill Winfield MRICS [143955]

Devon

On

Tuesday 19 February 2019

At

Hearing on papers

Panel

Alison Sansome (Chair)

Richard Goodenough-Bayly (Lay Member)

Justin Mason (Surveyor Member)

Legal Assessor

Rosemary Rollason

The Formal Charge against Mr Gill Winfield is:

On 17 April 2018 you were convicted at Plymouth Magistrates Court of Stalking, Assault by beating and Actual Bodily Harm (ABH) and sentenced to 15 months imprisonment suspended for two years.

You are therefore liable to disciplinary action in accordance with Bye-Law 5.2.2(d).

Preliminary matters – Decision to proceed with a paper hearing

1. The Panel first considered the issue of service of the Notice of Hearing and whether it was appropriate to proceed with the hearing on the papers. The Legal Assessor reminded the Panel that:
 - The case had been referred to the Disciplinary Panel under Rule 9(c) and 43(a) of the Disciplinary, Registration and Appeal Panel Rules 1 April 2009 (Version 7, 1 January 2017) (“the Rules”) for consideration in accordance at a hearing on the papers only (a “paper hearing”);
 - Rule 43a(a) requires that not less than 28 days’ notice of a paper hearing be given;
 - Rule 23(e) provides that in cases referred to the Panel under Rule 9(c), the Notice must require the Relevant Person to indicate within 7 days whether he requires an oral hearing;
 - Rule 43a(d) provides that there will be no oral hearing of the case unless an application has been made under Rule 23(e), or unless the Panel decides that it is necessary in the interests of justice or in the public interest to refer the case for an oral hearing.
2. The Panel considered the issue of service of the papers. The Panel received a witness statement from Ms Maria Choudhury, RICS Regulatory Tribunal Executive, dated 10 January 2019, setting out details of the service of the proceedings. The Notice of Hearing, together with the other documents required to be supplied, was sent to the Relevant Person, Mr Winfield, by special post, at his last address known to RICS, on 3 January 2019.
3. The Panel had sight of an exhibit to Ms Choudhury’s witness statement, a Royal Mail Proof of Delivery document confirming that the Notice was delivered on 4 January 2019 at 11.29am and signed for “Anon”.
4. The Panel noted that Mr Winfield had been in communication with RICS at the time of the sending of the Notice of Hearing and so appeared to be aware of the hearing date.
5. The Panel noted that the Notice of Hearing informed Mr Winfield that it was intended that the matter be considered as a paper hearing and he was given an opportunity to request an oral hearing if he so wished by notifying RICS within 7 days. No such request had been received from Mr Winfield.
6. The Panel was satisfied that the requirements of the Rules for the case to be heard on the papers were satisfied. There had been no request from Mr Winfield that an oral hearing be held.
7. The Panel was further satisfied that the matter could properly be dealt with on the papers and that it was not necessary to refer the case for an oral hearing on the grounds that it was in the interests of justice or in the public interest. The Panel was satisfied the matter would be considered fairly on the basis of the papers and was mindful that its decision could, if it so decided, be published once made.

8. The Panel was also mindful of the general public interest in ensuring that RICS disciplinary cases are dealt with as expeditiously possible. Taking account of all the above factors, the Panel determined that it was in the public interest to proceed with the matter as a paper hearing.

Response

9. Mr Winfield had not submitted a substantive response to the Notice of Hearing, nor had he returned the Listing Questionnaire sent to him with the Notice.

Documents

10. The Panel received a hearing bundle of 27 pages and the witness statement of Ms M Choudhury dated 10 January 2019, with exhibits, in relation to service of the Notice of Hearing.
11. The hearing bundle included letters and character references submitted by, or in support of, Mr Winfield. Mr Winfield had not provided any further written submissions for the purpose of the hearing.

Summary

12. Mr Gill Winfield MRICS has been an RICS member since 17 May 2007. He is one of the two principals of Winfield's Chartered Surveyors, a firm regulated by RICS. The firm undertakes survey, professional advice and design-related work.
13. On 17 April 2018, Mr Winfield was convicted at Plymouth Magistrates Court of Stalking, Assault by beating and ABH. On 13 September 2018, at Exeter Crown Court, he was sentenced to 15 months' imprisonment suspended for two years. He was also made the subject of a restraining order in respect of the victim and other persons for a period of 10 years.
14. The circumstances of the offences arose from an intermittent personal relationship which Mr Winfield had had with a woman, Ms H, since 2016.
15. The first offence occurred in or around November/December 2017, when during a heated argument between Mr Winfield and Ms H at Ms H's home, Mr Winfield grabbed Ms H's wrist and squeezed it hard leaving a bruise.
16. On 18 February 2018, Mr Winfield and Ms H were in his car and had been arguing. Without warning Mr Winfield struck Ms H on the right side of her face. When they reached her house, Ms H ran in and locked the door. She then put Mr Winfield's belongings outside the front door

for him to collect. Thereafter she ceased contact with him and blocked his number on her mobile telephone.

17. Mr Winfield continued to send emails to Ms H. On 26 February 2018 she took her child and went to stay with a friend, Ms T. She asked Ms T to send an email to Mr Winfield telling him to cease all contact with Ms H. However, Mr Winfield persisted, leaving several voicemails on Ms H's mobile telephone on or about 28 February 2018 and texting her stating that he was outside the house. He was also seen sitting in his parked car near the house by Ms H and Ms T. Mr Winfield continued in his attempts to contact Ms H, despite her sending an email stating that she wished him to leave her alone.
18. On 2 March 2018, Mr Winfield knocked at the door of Ms T's house. When she answered he asked to speak to Ms H. Ms T refused and shut the door. On the following day Mr Winfield arrived again at Ms T's home asking to speak to Ms H. Over the following days, Mr Winfield left a number of voicemails messages and sent a number of emails. He continued in his attempts to contact Ms H and spoke to her friends asking them to intervene. His contact was later described by the sentencing Judge in the criminal proceedings as "*persistent and obstinate*" and stated that the conduct "*harassed and stressed*" Ms H. The Judge noted that there were implied threats to place material in the public domain which would be embarrassing to Ms H in relation to her professional position.
19. In March 2018, solicitors acting on behalf of Ms H gave Mr Winfield two warnings to stop harassing Ms H. He still continued and on 1 April 2018, arrived at Ms H's home, knocked on the door and attempted to speak to her through the letterbox, He then left a letter for Ms H, indicating that he had followed her to Plymouth.
20. On 16 April, Ms H contacted the police and Mr Winfield was arrested and interviewed. He subsequently pleaded guilty to the three offences in the Plymouth Magistrates Court on 17 April 2018 and was convicted. Mr Winfield was sentenced by his Honour Judge David Evans in Exeter Crown Court on 13 September 2018 to 15 months' imprisonment suspended for 2 years. He was also made the subject of a restraining order prohibiting him from making any form of contact with Ms H, Ms T and another person, or from visiting Ms H's address, for a period of 10 years.
21. On 19 April 2018, RICS was informed by Ms Lynn Robinson, RICS Regional Director for UK South and Wales, that Mr Winfield had informed RICS via herself her of the police case against him and that the matter would appear in the local news. Mr Winfield informed Ms Robinson that he would step down from his role as Chair of the Torbay and Teignbridge Local Member Group and as South West Regional Award Judge with immediate effect.

Submissions in relation to Facts and Liability to Disciplinary Action

22. In its written submissions, RICS submitted that the facts were proved by the copy Certificate of Conviction from Exeter Crown Court, upon which the Panel was able to rely as proof of the conviction in accordance with Rule 41b.
23. In relation to liability to disciplinary action, the Panel was referred to the transcript of the sentencing remarks of His Honour Judge David Evans which highlighted the persistent nature of Mr Winfield's stalking of Ms H when it was clear she wished to cease all contact and despite two warnings from her lawyers. The Judge referred to the serious alarm, distress and feelings of harassment which Mr Winfield's behaviour caused to Ms H.
24. RICS submitted that the Judge's decision that it was necessary to impose a restraining order upon Mr Winfield for a substantial period of ten years compounded the serious nature of the convictions.
25. In RICS' submission, the gravity of the matter was evident from the sentencing remarks and the matter plainly rendered Mr Winfield liable to disciplinary action in accordance with Bye-Law 5.2.2(d).

Submissions of Mr Gill Winfield

26. No submissions had been received from Mr Winfield. However, the Panel took account of the letters that he and his solicitors had submitted.

Legal Advice

27. The Panel received and accepted the advice of the Legal Assessor. In relation to the facts, the Panel was mindful that the burden of proof of facts in RICS proceedings is upon RICS which brings the charges. The standard of proof in RICS disciplinary proceedings is the civil standard, that is the balance of probabilities, meaning that before finding a fact proved, the Panel must be satisfied that it is more likely than not that it occurred.
28. The Panel was referred to Rule 41b, which provides that where the Relevant Person has been convicted of a criminal offence a certified copy of the conviction or equivalent shall be admissible as proof of that conviction and of the Relevant Person's commission of that offence.
29. The issue of whether there was liability to disciplinary action under Bye-law 5.2.2(d) was a matter for the Panel's own judgment, rather than the legal standard of proof. Bye-law 5.2.2(d) referred to a conviction for a criminal offence which could result in a custodial sentence, as was the case in this matter. Before finding liability established, the Panel should be satisfied that the matter in question was of a serious nature and fell far short of the standards expected of RICS members.

Panel decision on facts

30. The Panel had sight of the certified copy Certificate of Conviction from Exeter Crown Court dated 24 September 2018. The Panel found the conviction proved in accordance with Rule 41b.
31. Accordingly, the Panel found the factual allegation proved.

Panel decision on liability to disciplinary action

32. The Panel concluded that Mr Winfield's conviction for the offences in question was serious and he was the subject of a significant sentence imposed by the Crown Court. His conduct brought the surveyors' profession into disrepute and had potential to undermine public confidence in the profession and in RICS as its regulator.
33. In the circumstances, the Panel was satisfied that Mr Gill Winfield was liable to disciplinary action under Bye-law 5.2.2(d).

Submissions on Sanction

34. RICS' written submissions directed Panel's attention to RICS' Sanctions Policy and the supplements. They referred to the limited reflection upon the gravity of the offences or acceptance demonstrated by Mr Winfield and to his focus on the impact of the past events upon himself, rather than other parties involved.
35. RICS noted that Mr Winfield had failed to identify any steps taken to remedy his behavior to avoid risk of repetition in the future.

Decision on Sanction

36. The Panel accepted the advice of the Legal Assessor and referred to RICS' Sanctions Policy and the supplements. The Panel was reminded that the purpose of a disciplinary sanction is not to be punitive, although that may be its effect. In the case of a criminal conviction, it is not the purpose of a sanction to punish the individual for a second time. The Panel was reminded that it should bear in mind the sentence imposed upon Mr Winfield in the criminal proceedings, which is still in effect, in the light of the authority in the regulatory case of *Council for the Regulation of Health Care Professionals v General Dental Council and Fleischmann* [2005] EWHC 87. In that case it was stated that, as a general principle, a practitioner should not be permitted to return to practice until he had satisfactorily completed his sentence and only circumstances which plainly justified a different course should permit otherwise.

37. The Panel bore in mind that the purpose of a sanction 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.

38. The Panel considered carefully whether any mitigating or aggravating factors were present in this case and, as advised, adopted a proportionate approach when determining whether to impose a sanction upon Mr Winfield and what the sanction should be.

39. The Panel considered and took account of material in the hearing bundle which had been submitted by Mr Winfield and by others in his support. This included an email from Mr Winfield, a letter from solicitors who represented him in the criminal proceedings and testimonial letters from colleagues and friends, all addressed to RICS and sent in late 2018.

40. The Panel took into account the following mitigating factors:

- Mr Winfield has no previous convictions and no previous disciplinary history;
- He has a long and unblemished previous professional career and has supported RICS by his involvement in professional activities at regional and local level;
- He reported the police proceedings promptly to his local RICS office and stood down with immediate effect from his RICS role;
- He has apologised to RICS for the embarrassment caused;
- In the sentencing remarks, the Judge noted that Mr Winfield had by the time of the sentencing hearing demonstrated some understanding of his past conduct, although the Judge considered this was undermined by the attempt to alter the guilty plea;
- Mr Winfield had submitted supportive testimonials as to his character from friends and colleagues.

41. The Panel considered that the following aggravating factors were present:

- Mr Winfield has failed to engage with the RICS hearing;
- He had demonstrated an unwillingness to accept the findings of the criminal court, having stated in his letter to RICS of 18 November 2018 *"I hope that you, or the members of any professional disciplinary panel, are able to read between the lines of the statement made by the judge which were one-sided and subject to conjecture"* and indicating that he was seeking to refer his case to the Criminal Cases Review Commission. The sentencing transcript also indicates that he sought to retract his guilty plea in the Crown Court;
- He has failed to demonstrate in the RICS proceedings that he has reflected or developed adequate insight into his past conduct in relation to those affected and in terms of the impact on the reputation of the profession. He continues to focus on the impact upon himself, rather than Ms H and the other persons affected.

42. Taking account of the above factors, the Panel first considered whether to impose a sanction. The Panel concluded that the criminal conviction was of too serious a nature to impose no sanction.
43. The Panel went on to consider a Caution, but concluded that the conduct in question could not be described as minor. It concluded that neither a Caution nor a Reprimand would reflect sufficiently the seriousness of the case, nor safeguard the public interest, nor would either of these sanctions be proportionate or appropriate.
44. Given the nature of the case and in the light of Mr Winfield's lack of insight and failure to engage with this hearing, the Panel took the view that the matter was not suitable for either undertakings or conditions. The Panel could have no confidence that Mr Winfield would comply with such orders or that they could achieve any purpose.
45. The Panel next considered the imposition of a fine, but did not consider that a fine would be effective or would mark the gravity of the finding in this case.
46. The Panel concluded that this matter involved a conviction for criminal offences of a serious nature and a substantial sentence had been imposed by the criminal court. This was still effective and the Panel considered it would be inappropriate for a person to remain an RICS member whilst still subject to such a sentence. The Panel considered that in the absence of being satisfied that Mr Winfield had full insight into his past conduct, it could not be satisfied that there was no risk of repetition of such conduct in the future. The Panel was further concerned in relation to the public interest, in the light of the impact of Mr Winfield's conviction and the publicity surrounding it upon the reputation of the surveyors' profession and of RICS. There was a resulting impact on public confidence. The Panel concluded that the only proportionate sanction in the circumstances was expulsion from membership.
47. The Panel's decision was to expel the Relevant Person, Mr Gill Winfield, from membership of RICS.

Costs

48. RICS applied for costs in the sum of £600.00 pursuant to Supplement 2 to the Sanctions Policy. The Panel noted that a schedule of costs had been provided to Mr Winfield at least 24 hours in advance of this hearing, as required by Rule 34. Mr Winfield had not submitted any information as to his means, but the Panel took into account information from the papers in relation to the criminal case which indicated that his means may be limited.

49. The Panel considered however that the costs claimed by RICS were fair and reasonable and directed that the Relevant Person, Mr Gill Winfield, pay the costs of RICS in the sum of £600.00.

Publication

50. The Panel considered the policy on publication of decisions as set out in the Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel decided that this decision will be published on the RICS website and in RICS Modus.

Appeal Period

51. Mr Gill Winfield has 28 days from the service of the notification of the decision to appeal this decision in accordance with Rule 59 of the Rules.

52. 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.