

ROYAL INSTITUTION OF CHARTERED SURVEYORS**DISCIPLINARY PANEL HEARING BY WAY OF WRITTEN REPRESENTATIONS**

Date Monday 30 March 2015

Via telephone conference

Case of Mr James Fry [5813149]
Yeovil, BA22

Chairman John Anderson
Member Andrew Winscom

CHARGES HEARD

The Panel considered the following:

1. Mr J Fry may be liable to disciplinary action under Bye-law B5.2.2(d) by reason of having been convicted of a criminal offence, namely that on 23 July 2012 he was convicted at Gloucester Crown Court for an offence of Grievous Bodily Harm.

DETERMINATION**Findings of Fact**

2. The Panel considered whether service had been effected under Rule 23 of the Disciplinary and Appeal Panel Rules 2009 ("The Rules"). The charge letter had been sent by post and email on 18 December 2014. Mr Fry had responded by returning a completed Listing Questionnaire. On 10 March 2015 RICS informed Mr Fry of an adjournment to 30 March 2015. The Panel found that adjournment to be in accordance with The Rules and that service was made in accordance with Rule 23.

3. The Panel next considered whether the case was suitable to be heard by way of Written Representations. The bundle included a Certificate of Conviction. Mr Fry had agreed to the case being heard by way of Written Representations confirming this on his returned Listing Questionnaire. The Panel found this to be appropriate and decided to proceed.

4. Mr Fry was a student member of RICS when this incident occurred, whilst he was a first year undergraduate degree student at Royal Agricultural University, Cirencester. The Panel was not provided with references of good character but understood that these were provided to the Crown Court.

5. The offence occurred in and adjacent to a nightclub premises in Cirencester. Mr Fry was in the company of a fellow student who was also brought up on similar charges. The sentencing remarks show that the Court considered the actions of both co-defendants to be totally out of character. Those remarks also referred to the character evidence, which was heard at trial, being impressive

evidence and the essential reason why the Judge did not impose a custodial sentence.

6. The Panel did not have the benefit of the trial transcript. Therefore the Panel relied on the papers submitted to it for the description of the events which took place leading to this conviction. This Panel has not drawn inference from the description of events as outlined in the newspapers contained in the bundle. In summary, Mr Fry and his co-defendant attacked the victim in this case, Mr C, during a social evening at a night club. In the process, Mr C sustained injuries which required hospitalisation and an operation to rectify a broken jaw which, according to the sentencing remarks was due to a blow from Mr Fry.

7. Mr Fry pleaded not guilty to the Section 20 charge and the Panel understood that this plea was not changed during the trial. The Panel had regard to the representation to the RICS by the solicitor who acted at trial for Mr Fry and the suggestion that there was a possibility of a miscarriage of justice in this case. However it is not for this Panel to look behind Mr Fry's conviction at the trial before a jury.

8. Mr Fry was sentenced to undertake 200 hours unpaid community service within twelve months and was barred from entering the nightclub where the events took place for a period of twelve months. The co-defendant was similarly sentenced. The sentencing remarks indicate that the Judge was aware that Mr Fry was expecting to receive other sanctions from the academic institution he was attending. The Panel had no evidence before it that the Crown Court sentence took any note of likelihood of sanctions under RICS disciplinary rules.

Panel's Decision

9. Mr Fry has admitted the fact of the conviction, which is proved by the certificate of conviction and therefore the Panel found the charge brought by RICS proved.

10. The offence could have resulted in a custodial sentence. The Panel found that due to the seriousness of the offence, Mr Fry is liable to disciplinary action.

Penalties

11. The purpose of sanctions is not to be punitive, although that may be their effect. Sanctions are to enforce and uphold proper standards of professional conduct, to uphold the reputations of the profession and that of its regulatory function, and to protect the public. Here, the conviction relates to a matter outside work. However behaviour outside work by a member, can also impact on public trust of Chartered Surveyors and the reputation of RICS.

12. The panel has considered carefully its indicative sanctions guidance. That guidance indicates that first the panel must consider whether to impose a disciplinary sanction. If it decides to do so it starts at the lowest sanction, and only if it considers that sanction inadequate does it move onto the next sanction. Before deciding upon a sanction, the Panel checks to make sure that the next sanction up is not disproportionate before coming to a conclusion. The Panel will consider carefully both mitigating and aggravating factors before arriving at a conclusion.

13. Grievous Bodily Harm is a serious offence involving violence. The reputation of a profession requires that its members behave in their personal lives in a manner that is consistent with being a fit and proper person to have been admitted to membership of a reputable and learned profession.

14. In mitigation, Mr Fry's representation to RICS has included that he has completed his 200 hours Community Order or, in other words, complied with the sentence imposed. The Panel noted that the Mr. Fry showed remorse for his non compliance with some RICS procedures, by his admission in his letter of 2 May 2014. The Panel was mindful that Mr Fry was at a stage of the beginning of qualifying as a chartered surveyor. The Panel noted that Mr Fry has cooperated with RICS throughout this matter.

15. The written representation on his behalf refers to Mr Fry's expressed remorse for his actions, though the Panel found no explicit statement to that effect by Mr Fry within the bundle, only remorse that someone was injured. This was a serious assault of which Mr Fry was an integral part. It was a blow by Mr Fry that was considered by the Court to have caused the fracture to the victim's jaw although the Judge did not differentiate a seriousness of actions between each of the co-defendants.

16. Having given full weight to the above factors, the Panel carefully considered the question of sanction. The matter is too serious for there to be no sanction. Attaching to a finding of liability to disciplinary action for breach of Bye-law B 5.2.2(d), there is a disciplinary presumption of expulsion unless there are extenuating circumstances, under the RICS Sanctions policy 2008 v.6 (2014) paragraph 22.1.

17. This is not a minor matter and therefore a Caution is inappropriate. In the sentencing remarks transcript, reference is made to this being an isolated incident and totally out of character. A Reprimand would, in the Panel's decision, be more appropriate than a Caution in that circumstance but other matters have further bearing. The Panel found that there is no suitable additional Undertaking which it could impose, which goes beyond the expected behaviour of all members. The Panel went on to consider whether a fine should be ordered but in this case as no monetary benefit was gained by Mr Fry from his actions, its effect would be only punitive. Conditions on practice are inappropriate as the matter did not relate to professional work.

18. The Panel has considered most carefully the sentencing remarks in relation to the role of alcoholic drink in the actions and noted that the Court believed there to be reasons additional to intoxication for the attack on Mr C. The Panel found that should alcohol have been a contributing factor, it does not excuse behaviour that it considered was in breach of the standards expected by members of the Institution. Although the Court considered this to be an isolated incident the Panel also took into account that Mr Fry's actions were described as three separate attacks over a short time and the Judge remarked that it was essentially a totally unprovoked, mindless act of violence.

19. The Panel concluded that there were insufficient extenuating circumstances to be found in the evidence considered. Therefore the appropriate and proportionate sanction in this case is to expel Mr Fry from membership of RICS and the Panel so orders.

Determination on Publication and Costs

Publication

20. The Panel directs publication in accordance with Supplement 3 to the Sanctions policy.

Costs

21. The Panel orders that Mr Fry pay costs in the amount of £600.

Appeal Period

22. Mr Fry has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.

23. 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.