

## **Disciplinary Panel Hearing**

### **Case of**

**Mr Jason Barkworth MRICS [5044119]  
London SE7**

### **On**

Wednesday 21 November 2018

### **At**

RICS 55 Colmore Row, Birmingham

### **Panel**

Alison Sansome (Panel Chair)

Gillian Seager (Lay Member)

Joshua Askew (Surveyor Member)

### **Legal Assessor**

Christopher Hamlet

### **RICS Presenting Officer**

James Lynch

### **Respondents' Representative(s)**

Mr Barkworth, representing himself

### **Witnesses**

### **Hearing Officer**

Jae Berry

## **Background/Summary**

1. Mr Barkworth was referred to a Disciplinary Panel after being convicted on 5 May 2017 of Grievous Bodily Harm, arising out of an incident outside a London nightclub on 26 August 2016. He self-referred to RICS on 24 May 2017.

## Charges

2. The charge against Mr Barkworth is:

**“On 05 May 2017 you were convicted of inflicting grievous bodily harm upon a person without intent contrary to Section 20 of the Offences Against the Person Act 1861 and sentenced to 18 months imprisonment suspended for 12 months”**

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

## Response

3. The Respondent admitted the charge which, in any event, reflected his conviction.

## Evidence

4. The Panel considered a bundle of documents produced by RICS. The bundle included a self-referral letter dated 24 May 2017, a certificate of conviction dated 5 May 2017, Crown Court transcripts of the summing up and sentencing remarks, dated 4 and 5 May 2017, Police interview dated 27 October 2016 and witness statements pertaining to the criminal investigation. In addition, a number of character references were included from professional colleagues.
5. This material confirmed that the Respondent, on conviction, was sentenced to 18 months' imprisonment, suspended for 12 months, ordered to pay £140 victim surcharge, £500 compensation to the victim and ordered to carry out 120 hours unpaid work.
6. The Respondent provided a set of written submissions for the purposes of sanction.

## Submissions

7. Mr Lynch on behalf of RICS and the Respondent on his own behalf gave oral submissions to the Panel on the facts and liability. Mr Lynch reminded the Panel that Rule 41(b) required it to treat a memorandum of conviction as conclusive proof of the conviction. He submitted that the conviction was serious and gave rise to liability to disciplinary action. The Respondent conceded this.

### **Burden and standard of proof**

8. The Legal Assessor provided advice to the Panel that the burden of proving all charges rests with RICS and they must be proved to the civil standard, that is, such that they are more likely than not to have occurred as alleged. They were advised that that is a single unwavering standard of proof, though the more unlikely an allegation the more cogent the evidence that the Panel might require to prove it. There is no requirement for the Respondent to prove anything.

### **Convictions**

9. The Panel were advised that where the charge merely reflects a criminal conviction, the production of a memorandum of conviction serves as conclusive proof of that conviction. Since the Respondent in this case did not challenge the fact of his conviction the Panel were entitled to proceed on that basis.

### **References**

10. The Respondent provided a number of supportive references which the Panel took account of at the sanctions stage. Of particular relevance were those references which expressly commented on the conviction and the Respondent's character.

### **Decision on the Charges**

11. In view of the uncontested evidence received that the Respondent had been convicted as reflected in the charge, the charge was found proved.

## **Liability to disciplinary action**

12. The Panel considered the submissions from the parties on this issue, including the concession by the Respondent that he is liable to disciplinary action.
  
13. The Legal Assessor gave advice to the Panel that a decision on liability to disciplinary action was a matter for its independent determination. It is a distinct decision to a determination on the facts. It did not follow, therefore, that liability arose automatically upon a finding of fact. The decision required an application of judgment as to whether the matters proved, taken in the context of the circumstances at the time, and the Respondent's actions since, necessitated, at least in theory, a disciplinary response.
  
14. The conduct proved in this case was considered by the Panel to be very serious indeed. The Panel were advised that Grievous Bodily Harm, without intent, signifies in law that the assault caused really serious harm, in this case a broken jaw, albeit that level of harm was not an intended consequence of their actions. Such conduct damages the reputation of and trust in the profession. It also raises the question as to whether members of the public are at risk of further harm, should there be any likelihood of the Respondent repeating his actions.
  
15. The Panel concluded that the conviction did render the Respondent liable to disciplinary action.

## **Decision as to sanction**

16. The Panel heard further submissions from the parties as to sanction. The Respondent gave oral evidence. 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 the RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
  
17. The Panel paid careful heed to the advice of the Legal Assessor and to the indicative sanctions guidance of the RICS. It recognised that it had a duty to take a proportionate and fair approach to the issue of sanctions. It considered carefully the mitigating and aggravating factors of this case.
  
18. The Panel took account of the aggravating features of the case that were highlighted by RICS, including the fact that the Respondent was intoxicated at the time and had been at a function with members of the profession that evening.
  
19. However, against that background the Panel also considered there were a number of mitigating features of the case. The assault was not a sustained attack, but the product of a single punch to the victim. The Respondent was a student member of the profession at the time – his membership was granted only the day before this disciplinary hearing. He self-referred to the RICS. He has exhibited genuine remorse. He has no previous disciplinary history. References have been received which indicate that the offence was out of character. He has fully cooperated with RICS' investigation and these proceedings. In addition, the Panel noted that the Respondent has indicated that he has given up alcohol since the incident.

20. The Panel considered the matters too serious for no sanction to be imposed. The misconduct was serious and it was necessary to mark the wrongdoing to restore public confidence. However, the Panel was satisfied that this was the product of a momentary lapse of judgment by a junior member of the profession that was unlikely to be repeated. The Panel noted the Respondent's full acknowledgement of fault and recognition of the impact the conviction has had on the reputation of the profession. In addition, the Panel noted the work he has been conducting for Lionheart and support he has been giving to peers to raise the status of the profession in his community.

21. Taking all these factors into account, the Panel considered that a Caution would be inadequate in reflecting the gravity of the wrongdoing and in order to maintain public confidence in the profession. It was mindful that whilst there were significant mitigating features of the case, the conviction arose from a serious assault and there was a need to publicly mark that. The Panel concluded that a Reprimand was more appropriate and represented a proportionate response to this isolated event without unduly damaging the Respondent's career prospects.

22. Accordingly the Panel orders a Reprimand.

### **Publication and Costs**

23. 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 posted on the RICS website and published in Modus.

24. The Panel took account of the Respondent's submission that publication was in the best interests of the profession, whilst recognising that the decision was a matter for its independent determination. The Panel saw no reason for departing from the normal practice in this case, given the strong public interest in publicising the decision. 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.
25. The Panel orders that this decision be published on the RICS website and in Modus.
26. Both parties addressed the Panel regarding costs. The RICS presenting solicitor asked for costs and had provided a schedule to the Respondent in advance of the hearing. The Respondent also provided a statement of means to which the Panel had regard.
27. The Panel considered carefully the costs sought and the submissions made thereto. Taking into account the Respondent's limited means and junior status, it concluded that it was fair to make a costs order in the sum of £2,500.
28. The Panel orders that the Respondent pay to RICS costs of £2,500.

### **Appeal Period**

29. The Respondent may appeal against this decision within 28 days of notification of this decision, in accordance with Rules 59-70.

30. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules 2009, the Honorary Secretary of RICS has 28 days from service of the notification of the decision to require a review of this decision.