

## **Disciplinary Panel Hearing by way of written representations**

### **Case of**

**Mr Ross Etherson [11211959]  
Glasgow, G12**

### **On**

Wednesday 16 March 2016

### **Via Telephone Conference**

### **Chairman**

Catherine Audcent (Lay Chair)

### **Member**

Andrew Winscom (Surveyor Member)

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

1. Mr Ross Etherson may be liable to disciplinary action under Bye-law 5.2.2(d) by reason of having been convicted of a criminal offence which could result in a custodial sentence, namely that on 26 February 2015 he was convicted at Isleworth Crown Court for 21 counts of Supplying articles for use in fraud, contrary to section 7(1) of the Fraud Act 2006.

## **DETERMINATION**

### **Findings of Fact**

2. The Panel considered whether service had been effected under Rule 23 of the Disciplinary, Registration and Appeal Panel Rules 2009 ("The Rules"). The charge letter had been sent by special delivery, first class post and email on 9 February 2016, and signed for by 'E.Etherson'. The Panel found 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 RICS bundle included a Certificate of Conviction, which related to the RICS charge. Mr Etherson had agreed to the case being heard by way of written representations, confirming this on his returned Listing Questionnaire, and he had submitted written representations and provided supporting documents to the Panel. The Panel found this to be appropriate and decided to proceed.

4. The offence occurred whilst Mr Etherson was in the employment of a recruitment agency, as part of and in the course of his work for that employer and it involved the alteration of candidates' CVs. The work was not related to surveying activities.
5. Mr Etherson pleaded guilty. He was sentenced to 2 years imprisonment, suspended for 12 months.

### **Panel's Decision**

6. Mr Etherson has admitted the fact of the conviction, which is proved by the Certificate of Conviction and therefore the Panel found the facts of the charge brought by RICS proved.
7. The Panel found that due to the seriousness of the offence, which could have resulted in a custodial sentence, Mr Etherson is liable to disciplinary action under Bye-law 5.2.2(d).

### **Penalties**

8. 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 reputation of the profession and that of its regulatory function, and to protect the public. Here, the conviction relates to a matter outside work as a surveyor. However all behaviour by a member, can also impact on public trust of Chartered Surveyors and the reputation of RICS.
9. 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.
10. The Panel had regard to Mr Etherson's representation that he was not a member of RICS from 2009 to 2013, but the Panel has not received documentary evidence of this. The RICS submission is that he has been a member since 2008. The Panel noted that Byelaw 5.2.2 (d) applies to members whether or not they were a member at the time of an occurrence giving liability to disciplinary action.
11. The Panel was not provided with any references of good character but noted that the Crown Court Judge, in his sentencing remarks, commented that he had been impressed by the character witnesses at trial and by Mr Etherson's attitude in his Pre-Sentence Report.
12. The Judge also remarked, "I feel compelled to pass a wholly exceptional sentence" and in imposing a suspended sentence stated, "... in the unlikely event you commit an offence in the next 12 months, you will go to prison for 2 years". The Panel noted that this was for many reasons including, not exhaustively, Mr Etherson's early acceptance of guilt, his full and frank confession, his assistance to prosecution, a probation finding of no significant likelihood of his re-offending, and the years of delay in the case being brought to court. The Panel understood these reasons supported the Court's decision to impose only a suspended custodial sentence.

13. In mitigation, Mr Etherson's representation to RICS has included that by the time of this hearing his 12 months suspended sentence will have been completed. The Panel noted that Mr Etherson showed remorse for his actions. The Panel noted that Mr Etherson has co-operated with both the criminal and RICS investigations throughout this matter and there is no evidence to suggest there have been any other concerns about his personal or professional conduct since the time that the offences took place in 2009 and 2010.
14. Fraud is a serious offence, which goes to the heart of public confidence. Any criminal conviction involving dishonesty on the part of a professional person must be a cause for significant concern from a public interest perspective. This is true both from the point of view of protecting the public, as well as from the perspective of the public interest in the reputation of the surveyors' profession. In this case, the Panel acknowledges that the risk of Mr Etherson repeating the behaviour is low, and therefore there is little direct risk to the public. However, the reputation of a profession requires that its members behave in their professional and 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. The upholding of these standards is fundamental to the maintenance of the reputation of the profession.
15. Having given full weight to the above factors, the Panel carefully considered the question of sanction, having regard to the RICS Sanctions Policy 2008 v.6 (2014). The matter is too serious for there to be no sanction.
16. This is not a minor matter and therefore neither a Caution nor a Reprimand is appropriate. 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 Etherson from his actions, its effect would be only punitive. Conditions on practice are inappropriate as the matter did not relate to professional work.
17. The Panel has considered most carefully the sentencing remarks, particularly the reference by the judge to passing a wholly exceptional sentence. Whilst there are many matters of mitigation, including the fact that the offence took place 6 years ago, in respect of the standards expected of a professional member of RICS, the Panel concluded that there were insufficient extenuating circumstances to fully mitigate the seriousness of the offence of fraud. Therefore the appropriate and proportionate sanction in this case is to expel Mr Etherson from membership of RICS and the Panel so orders.
18. The Panel noted there is a current Interim Measures order in place for Mr Etherson. Since this disciplinary matter has been considered by this Panel and has now been concluded, in accordance with Rule 20 the Panel ordered that the Interim Measures order is revoked.

## **Determination on Publication and Costs**

### **Publication**

19. The Panel directs publication in Modus and on RICS' website.

### **Costs**

20. The Panel orders that Mr Etherson pay costs in the amount of £600.

## Appeal Period

21. Mr Etherson 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.
22. 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.