

Statement released to QS News by Michael Byng. Wednesday 16 November in relation to conduct panel decision of 14 November

On Monday 14th November 2005, I attended a hearing of the RICS Professional Conduct Panel to answer charges that I had:-

- i. Acted in a manner unbefitting a Chartered Surveyor
- ii. Had failed to co-operate with the Institution and
- iii. Had not supplied a copy of a Certificate in respect of my professional indemnity insurance in the time proscribed by the Institution.

I strenuously denied all of these charges and continue to do so; however the Panel found against me and, amongst other things, fined me heavily for the alleged breaches of the Institution's rules.

I had hoped to deal with these matters privately so as not to distract the fine work the Construction Faculty is doing to deliver the services and products its members seek to practice effectively, whilst attempting to promote the quantity surveying professionally nationally and internationally.

However during the course of last week, ending 12th November 2005, I became aware that the professional press were aware of this matter as they had asked me and Michael Sullivan, the Vice Chairman of the Faculty for comment. I made my disappointment at this breach of confidence known to Chairman of the Panel at the end of the hearing.

As the decision of the Panel will be published on the Institution's web site shortly, I wish to make members of the Institution aware of the circumstances surrounding charges against me to allow them to consider the issues involved.

- In March and April 2005, I made tentative approaches through my solicitors to acquire some of the assets of the building surveying and project management section of the Birmingham office of Chesterton after it had collapsed; my efforts were unsuccessful.
- In May, I was approached by some of the former directors of the company, amongst them some of those I had approached in March and April who made available to me a copy of a letter dated 17th May 2005 that they had received from the RICS making them aware of potential charges to be laid against them under the Institution's rules following the failure of the company.

The approach was made to me in my capacity as the then Vice Chairman of the Construction Faculty and I responded on 18th May 2005 by sending a request to the author of the offending letter asking him to cease or suspend any action against these employees until such time that there was a better understanding by the members of the Institution of why and how Chesterton had failed.

On the afternoon of 18th May 2005 I had a long but pleasant conversation with Steven Gould, The Head of Regulation and Consumer Protection at the

RICS, who rang me on behalf of the author of the original offending letter, and we had a thorough conversation in which we exchanged our views but we agreed to differ. I believed that the matter was closed.

In June 2005, the author of the original letter made an allegation against me that I had misled him by omitting the fact in my original request that my wife, who incidentally is a valuer and not a building surveyor, was a director of Chesterton at the time of its demise. The author did not suggest nor has he suggested that my wife and I colluded in any way.

My wife was not included in any capacity in my discussions in March and April nor was she aware of them. Furthermore she was neither covered by the facsimile request I made in May nor was she aware of it.

What the Institution contends is that I had a *perceived* conflict of interest.

As original faxed request was written in my capacity as an elected officer of the Institution and on behalf of members who belong to the Construction Faculty, I denied any conflict as the request was not made on behalf of my wife or anyone else not associated with the Faculty.

After taking legal advice, I placed the author on notice that his original statement was defamatory and I invited him to substantiate it or unreservedly withdraw it. I have repeated in writing my request for substantiation or retraction in at regular intervals between June and September of this year.

I eventually received a reply, written by another staff member of the Institution on behalf of the person who made the original statement, on 10th October 2005.

The only other correspondence I received from the Regulation and Consumer Protection were several letters asking me specifically to confirm the identity of my wife. I declined to reply as I believe, as I confirmed to the Professional Conduct Panel, that my personal life and business is no business of the Institution.

For declining to enter into correspondence about my personal life I was charged with failing to co-operate with the Institution.

With regards to the third charge about my PI insurance, the Institution has not suggested that I do not have PII or adequate insurance for my practice. What it claims is that I did not provide it with an internal certificate within the time proscribed by a letter it sent to me on 13th October 2005 giving me 7 days to provide it.

The letter dated 13th October 2005, reached me on 18th October 2005, gave me until 20th October 2005 to provide it. As I was out of the country on business until 22nd October 2005, I made the Institution aware of my absence and asked for permission to deliver it my hand on 24th October 2005, which I duly did.

In the intervening period, I have conversations with several senior officers and members of staff of the Institution offering to help with solutions to this problem, all of which I have willingly listened to but they have come to naught.

I am now taking legal advice about the original allegedly defamatory statement and possible abuse of process by the Institution so I do not intend to make any further comment about this part of the process.

However I feel that there are several issues that come out of my experience that members might well wish to consider:-

- Why is it that a senior elected officer of the Institution, the Chairman of the largest Faculty in it, cannot represent its members and the public in matter of public interest, without fear of being pursued in the manner I have.
- Should the Institution be allowed to pry into members' private lives and
- Given that the Institution admits that no client, member of the public or member of the Institution has made a complaint against me, why is staff, employed by Regulation and Consumer Protection Department, able to take matters into their own hands and promote the situation that has arisen with me?
- Who regulates the regulators in the Institution?

To me it is no coincidence that the affair has arisen at a time when I am actively involved in the discussions all of the Faculty Chairmen are having over the Faculties future, the Brooke review and the implementation of the Carsberg Report for discussion at a meeting of the International Governing Council's meeting in Cardiff on Monday 21st November 2005.

The Construction Faculty Board unanimously rejected the proposed replacement of democratically elected Faculties with Faculties selected in whole or in part by IGC at its meetings on 22nd and 23rd September 2005 and is playing a full role in a co-coordinated response by all of the other 15 Chairman of Faculties to this proposal that has been tabled by IGC.

Finally I am very pleased and honoured that I have been elected Chairman of the Board and have enjoyed the full support of my colleagues on the Construction Faculty Board throughout, in what has been to me a very difficult and trying time, but also a time of excellent achievement by the Construction Faculty Board.