

Disciplinary Panel Hearing

Case of

Mr John Arthur Jones MRICS

On

Tuesday 9 October 2018

At

De Vere Offices,
Colmore Gate,
6 Colmore Row
Birmingham B3 2QD

Panel

Ian Hastie (Surveyor Chair)
Nick Hawkins (Lay Member)
Ron Barclay-Smith (Lay Member)

Legal Assessor

Alastair McFarlane

RICS Presenting Officer

Christopher Geering

Hearing Officer

Maria Choudhury

The formal charges are:

1. On 30 June 2016 you were convicted of 12 counts of recklessly or negligently acting in a manner likely to endanger an aircraft or any of the people therein and were sentenced to 18 months imprisonment.

You are therefore liable to disciplinary action in accordance with Bylaw 5.2.2 (d)

2. You acted dishonestly by causing or allowing your solicitor to send to RICS, a letter dated 11 October 2017, in which you state that you had previously written to RICS on 19 December 2014 at 8 December 2015 when you knew that those letters had not been sent to RICS.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

You are therefore liable to disciplinary action in accordance with Bylaw 5.2.2 (c)

3. Between the date of 15 November 2017 and 15 February 2018 you failed to cooperate fully with the RICS staff in that you did not respond substantively to RICS' letter dated 15 November 2017.

Contrary to Rule 9 of the Rules of Conduct for Members 2007

You are therefore liable to disciplinary action in accordance with Bylaw 5.2.2 (c)

DETERMINATION

Representation and Service

1. RICS was represented by Mr Geering and Mr Jones was not present and not represented.
2. The Panel had sight of a witness statement of Mrs Emma Jones, Regulatory Tribunal Executive, dated 12 September 2018, which confirmed that the Notice of this hearing dated 2 August 2018, was sent by registered post and emailed to the preferred email address notified by Mr Jones to RICS.
3. A copy of the notice letter was produced, correctly addressed to the address given by Mr Jones and sent by registered delivery and email. RICS also produced a copy of the e-mail delivery notification.
4. The Panel concluded that service had been properly effected in accordance with the Rules.

Proceeding in the Absence of Mr Jones

5. The Panel next considered its discretion to proceed in the absence of Mr Jones. It accepted the advice of the Legal Assessor and reminded itself of the case law including *Adeogba v GMC* and that its discretion must be exercised with the upmost care and caution.
6. The Panel noted that Mr Jones had solicitors acting for him, who wrote to RICS on 15 January 2018 indicating that Mr Jones no longer wished for solicitors to act on his behalf but that he had asked his solicitor to advise RICS "that he has no intention whatsoever responding to the issues raised

in your letter of 15 November 2017. His stance is that he duly notified RICS in writing on 8 December 2015 of his intention to retire as from 9 May 2016 from which date he would no longer be a member." The Panel also noted that those solicitors wrote to RICS' in a letter dated 4 October 2018 in which they repeated that they were no longer acting for Mr Jones and that "he terminated our instructions in January of this year". Nonetheless, the letter refers to Mr Jones as "our client" and it is clear from the content of the letter that the solicitors had been in contact with Mr Jones who informed those solicitors that he had "no intention of attending the hearing due to health issues". The solicitor's letter then repeats Mr Jones's assertion that RICS has no jurisdiction over him for these matters because he had resigned from membership of RICS in May 2016. Further, the letter exhibits Mr Jones's letter to RICS of 15 February 2017, in which he set out his case and exhibited an undated letter from ER Williams, and a letter dated 3 October 2018 from Berwyn Owen and a "witness statement" dated 14 September 2018 from Roy Gregson in support of Mr Jones.

7. In exercising its discretion whether or not to proceed in the absence of Mr Jones, the Panel was mindful that fairness to him was of prime importance but that fairness also involved fairness to RICS. It was mindful of the public interest, its duty to ensure the expeditious conduct of its business and the length of time which had passed. The Panel noted that Mr Jones had not specified what the health issues were that prevented him from attending the hearing and had not submitted any medical evidence to it or any application for an adjournment on a health basis or any other basis. It further noted that RICS had written to Mr Jones's former solicitors by email on 8 October 2018 encouraging Mr Jones to make an application for an adjournment if he considered that his health was such that he was unable to attend the hearing. The Panel considered it more likely than not that, in the circumstances, Mr Jones had voluntarily disengaged from the process and therefore waived his right to attend. The Panel is satisfied that it is in

the interest of justice to proceed with the hearing in the absence of Mr Jones.

Bias Determination

8. At the outset of the hearing, Mr Barclay-Smith made a declaration that he had served as an officer in the RAF until 1992. Mr Geering submitted that the informed observer would not consider that this fact disqualified Mr Barclay-Smith from sitting on this case. The Panel received the advice of the Legal Assessor. It noted that this information had been passed to Mr Jones in advance of the hearing and there had been no response to it.

9. The Panel was satisfied that a fair-minded and informed observer knowing the facts that Mr Barclay-Smith had served in the RAF until 1992 and that the conviction related to endangering RAF aircraft, would not conclude that there was a real possibility of bias in Mr Barclay-Smith continuing to sit. The case primarily involved consideration of a criminal conviction and did not involve an assessment of RAF witnesses and Mr Barclay-Smith had no connection whatsoever with the RAF base in question. The Panel considered the nature of the offence, and the fact that the owner of the aircraft was the RAF and was satisfied this was only of marginal relevance to the substance of the charge.

Preliminary Application

10. Mr Geering drew the Panel's attention to the fact that Mr Jones's solicitors letter of 4 October 2018 supplied further documentation in support of Mr Jones's case but that it had not been served in accordance with Rule 23A (which requires 28 days' clear service before the hearing) as it had only been sent last week. Mr Geering did not object to the Panel receiving this evidence despite the breach of Rule 23A.

11. The Panel was satisfied that it was in the interests of Mr Jones to admit this evidence. It reminded itself that the weight to attach to it was a matter for the Panel.

Background and RICS Submissions

12. Mr Jones has been a professional member of RICS since 1989.
13. In relation to Charge 1, On 30 June 2016, Mr Jones was sentenced to 18 months' imprisonment after being convicted of 12 counts of recklessly or negligently acting in a manner likely to endanger an aircraft or any persons or any of the people therein.
14. The case was due to be considered by a Disciplinary Panel on 18 October 2017. On 11 October 2017 Mr Jones' then solicitors sent a letter to RICS by way of written representations to be placed before the Panel. Attached that letter were four letters purportedly sent by Mr Jones and/or his wife. These were dated 19 December 2014, 8 December 2015, 1 December 2016 and 10 December 2016. While RICS accepted that the letters of the 1 and 10 December 2016 were sent to RICS, it relied on the witness statement of Kerry Pettifer, who confirmed that there were no record on RICS' system of the letters dated 19 December 2014 and 8 December 2015 ever having been received by RICS. RICS submitted that those letters were not sent to RICS and that Mr Jones was dishonest when he instructed his solicitor to send a letter exhibiting those letters as having been sent to RICS when he knew that not to be the case.
15. The letter of 19 December 2014 purports to notify RICS of Mr Jones' arrest for the offence forming the basis of Charge 1. RICS submitted that Mr Jones' motive in claiming that he had submitted the letter of 19 December

2014 was to defeat RICS' position that he had not disclosed his conviction and not co-operated with RICS.

16. The letter dated 8 December 2015 included Mr Jones notification of his decision to retire on 9 May 2016. RICS contended this letter was never sent to it. RICS further rely upon the facts that Mr Jones did not mention his resignation in his letter of 1 December 2016, which was received by RICS and further it was not mentioned in the letter of 10 December 2016 received by RICS and signed by Mr Jones's wife on his behalf, in support of its contention that the letter of 8 December 2015 was never sent to RICS by Mr Jones. RICS further submitted that Mr James's intention in sending the letter of 8 December 2015 was to create the impression that he resigned from membership before the date of his conviction and was an attempt to call into question RICS' jurisdiction to take action against Mr Jones. RICS also rely on the fact that Mr Jones had been invited to provide original electronic files for the letter of 19 December 2014 and 8 December 2015 and had refused to do so.
17. In relation to Charge 3, RICS wrote to Mr Jones on 15 November 2017 requesting the original electronic copies of the letters of 19 December 2014 on 8 December 2015. The documents requested were within Mr Jones's control and RICS contended it was not unreasonable to expect him to respond promptly to that request. Mr Jones solicitors refused to engage further with RICS maintaining that he resigned from membership on 9 May 2016. However RICS previously made clear that Mr Jones cannot retire until the proceedings are concluded. RICS submitted that Mr Jones's decision not to respond to the letter of 15 November 2017 was an attempt to frustrate the process of the investigation into his conduct.
18. RICS submitted that each of the charges separately was serious and sufficient to render him liable to disciplinary action.

Mr Jones Submissions

19. Mr Jones's primary submission was that the letters dated 19 December 2014 and 8 December 2015 were genuine letters that had been sent to RICS at those times. He contended that 8 December 2015 letter amounted to a resignation from RICS effective in May 2016. As he contended that he was no longer a member of RICS from May 2016, he submitted that RICS had no jurisdiction and, in effect, that all charges should be dismissed on this basis.

Findings of fact

20. The Panel carefully considered all the evidence it received. This included the RICS' bundle numbered pages 1-74, Mr Jones' solicitors' letter of 4 October 2018 with attachments.
21. The Panel reminded itself that the burden of proving the charges was on RICS alone and that the standard of proof was the ordinary civil standard, namely the balance of probabilities. The Panel accepted the advice of the Legal Assessor.

Jurisdiction

22. The Panel noted that Mr Geering accepted that if, contrary to his submissions, the Panel determined that the letters of 19 December 2014 and, more particularly, the letter of 8 December 2015 were genuine and

were sent to RICS that they would amount to written notification to RICS of a desire to terminate his membership from May 2016 and that therefore none of the charges would be proved as there was no jurisdiction over Mr Jones.

23. Accordingly, the Panel determined the issues in Charge 2, first as its findings on this charge related to whether there was jurisdiction over Mr Jones or not.

Charge 2

24. The Panel was satisfied on the balance of probabilities that is more likely than not that neither the letter of 19 December 2014 nor the letter of 8 December 2015 had been sent by Mr Jones to RICS at all. Its reasons are as follows.
25. The Panel was satisfied that it was clear on its face that Mr Jones's solicitor's letter of 11 October 2017 was sent on the instructions of Mr Jones. That letter exhibited among others letters of 19 December 2014 and on 8 December 2015, which Mr Jones purportedly sent to RICS on those dates.
26. The Panel has considered the signed witness statement of Kerry Pettifer, a senior administrator within RICS' regulation team. It contains a declaration of truth, and is dated 14 August 2018. Ms Pettifer confirmed that when hardcopy correspondence is received from a member, that correspondence is sent to the relevant department within RICS and "and tracked in" to the member's record on RICS' case management system. She confirmed that having reviewed Mr Jones's record on RICS' case management system, she had been unable to locate any evidence that those letters were received by RICS. The Panel found Mr Pettifer's witness statement to be credible and accurate.

27. The Panel considered that there was a whole range of letters before it from Mr Jones (or signed by his wife on his behalf) that were wholly inconsistent with Mr Jones' contention that he had sent the letter of 8 December 2015 which notified RICS of his intention to retire in May 2016. The Panel had regard to the letter of 1 December 2016 and two letters of 10 December 2016. These were all signed "pp J Arthur Jones" and used the personal pronoun "I". They were written when Mr Jones was in prison. The Panel noted that in Mr Jones's solicitors letter of 11 October 2017, it was asserted that Mr Jones was unaware of this correspondence and that within the letter of 10 December 2016 Mrs Jones had "mistakenly assumed that our client had not previously given notice of resignation...". The Panel rejected these assertions contained in 11 October 2017 letter as implausible. It was satisfied it was more likely than not that Mr Jones was fully aware of the letters his wife signed on his behalf and considered that their tone and content supported this conclusion. The Panel was satisfied that had it been the case that the letter of 8 December 2015 was genuine and had been sent to RICS, those letters signed by his wife would have immediately indicated to RICS that Mr Jones had already resigned. Those letters did not mention this assertion. Further, and significantly, the Panel noted that the second letter of 10 December 2016 informed the president of RICS as follows: "I feel I have no option therefore, and hereby give my notice of resignation as a member of the RICS". Had Mr Jones already resigned in May 2016, this sentence would never have been written. The Panel rejected as incredible the assertion that this letter of 10 December 2016 was written without Mr Jones' express knowledge and consent.
28. The Panel also placed reliance on the documents in the bundle that showed that at 18 March 2016 Mr Jones was paying to attend RICS CPD courses and that in February 2016 he was still logging CPD hours with RICS. The Panel considered it more likely than not that a member who had

notified an intention to resign in May 2016 would not have undertaken CPD so shortly before his intended retirement date.

29. Further, the Panel noted that Mr Jones's letter of 20 December 2016, signed pp by wife, stated that "I do not wish to renew my membership and have no wish to continue to be part of your organisation". If he had resigned in May 2016, this was otiose.
30. The Panel considered the account given by Mr Jones in his letter of the 15 February 2017, the undated letter of Mr Williams, the letter of Mr Berwyn Owen, dated 3 October 2018 and the witness statement of Mr Gregson dated 14 September 2018 (all submitted under cover of Mr Jones's solicitors letter of 4 October 2018) and admitted into evidence by the Panel this morning. These documents were all submitted in support of Mr Jones's contention that the letters of 19 December 2014 on 8 December 2015 were genuine and had been sent at the time to RICS and that he had effected his resignation by May 2016.
31. The Panel had considerable reservations as to the reliability of this evidence, and in particular Mr Gregson's witness statement, and how much weight it could properly attach to it. The Panel found the level of detail that Mr Gregson was purportedly able to recollect to be unlikely. He stated that in February 2016 he and Mr Jones had discussed Mr Jones's retirement and "I knew he was 65 the year before and I recall after stating that he had resigned from the RICS, taken his pension and would officially retire. I know he retired on 9 May 2016." Mr Gregson gives no explanation as to how he knows Mr Jones retired on 9 May 2016 and his evidence has not been tested by cross-examination. Further, Mr Gregson states that on 13 September 2018 he examined Mr Jones's computer and saw a folder marked RICS letters and saw that the letter of 8 December 2015 was modified at 1641 on 8 December 2015 and at the letter of 19 December 2014 was modified at 1519 on 19 December 2014. This evidence is

submitted no doubt to attempt to establish that those documents were created on those days. However, the Panel was extremely concerned that this evidence had come to RICS so late in the day. RICS was not able to test its accuracy and moreover neither Mr Jones or Mr Gregson had provided the metadata that RICS had specifically asked for in its letter of 15 November 2017. Mr Jones had thus not provided RICS with any opportunity to test the veracity of Mr Gregson's assertions. Considering all these factors, the Panel placed little weight on this evidence.

Dishonesty.

33. Having found that Mr Jones did not send the letters dated 19 December 2014 and 8 December 2015 to RICS, the Committee next considered whether Mr Jones' conduct was dishonest.

34. The Panel applied the test as set out by the Supreme Court in Ivey v Genting Casinos Limited. It specifically considered as far as it could on the information before it, what Mr Jones' belief was as to the facts. The Panel was satisfied that the documents purportedly sent to RICS had not been sent. It was satisfied that Mr Jones told his solicitors that he had sent those letters to RICS. The Panel was satisfied on the balance of probabilities that Mr Jones knew those letters had not been sent to RICS and were false letters. The Panel concluded that his most likely intention was deliberately to mislead RICS and were created for the purpose of exculpating him from any charges. The Panel rejected other possible bases for him telling his solicitor that these letters have been sent to RICS (for example by mistake, by carelessness or otherwise in error) to be implausible. The Committee bore in mind the nature of these documents, that they related to Mr Jones, they were of benefit only to him. It was therefore satisfied that Mr Jones knew the letters were false and had not been sent to RICS. It had no

hesitation in concluding that Mr Jones's conduct was dishonest according to the standards of ordinary decent people. Accordingly, Charge 2 was found proved.

Charge 1

35. The Panel has received the signed Certificate of Conviction from Mold Crown Court and, dated 21 October 2016. This certificate detailed that Mr Jones was convicted on 30 June 2016 of 12 counts of recklessly or negligently acting in a manner likely to endanger aircraft on any person therein. It stated that he was sentenced to 18 months' imprisonment concurrent on each count.
36. The Panel noted that under Rule 41b) the Certificate of Conviction is admissible as conclusive evidence of that conviction and of Mr Jones' commission of the offences.
37. By virtue of the certificate of conviction the Panel finds the Charge 1 proved.

Charge 3

38. The Panel was satisfied that between 15 November 2017 and 15 February 2018 Mr Jones did not respond substantively to RICS' letter of 15 November 2017. Under Rule 9 of the Rules, and particularly bearing in mind the serious nature of the allegation being investigated, the Panel was satisfied that he had a duty to respond to the letter as a professional. In failing to do so the Committee was satisfied that he failed to cooperate fully with RICS's investigation of the complaint. It was therefore satisfied that Charge 3 was proved. Panel was not persuaded that this duty was discharged by the subsequent correspondence Mr Jones submitted.

Liability for Disciplinary Action

39. RICS submitted that as each of the charges individually was sufficiently serious to render Mr Jones liable to disciplinary action under bylaw 5.2.2 (d) (Charge 1) and 5.2.2(c) for Charges 2 and 3.
40. The Panel accepted the advice of the Legal Assessor. It reminded itself that liability to disciplinary action was a matter for the judgment of the Panel. It was satisfied that Mr Jones' conduct amounted to a serious falling short of his professional obligations and had no doubt that each charge was sufficiently serious to render him liable to disciplinary action.

Sanction

41. The Panel next considered sanction. It noted the submissions of RICS. It accepted the advice of the Legal Assessor. It had regard to RICS Sanctions Policy and bore in mind the overriding principle of proportionality.
42. 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 RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
43. The Panel considered carefully the mitigating and aggravating factors of this case as well as the issue of proportionality in weighing up the most appropriate response.
44. The Panel considered that the following mitigating factors were present:
 - Mr Jones had no previous disciplinary record

45. The Panel considered that the following aggravating factors were present:
- The conviction was serious one, involving prolonged, repeated behaviour that presented a risk to life and resulted in a custodial sentence
 - The breaches were all deliberate conduct
 - Mr Jones was dishonest in his conduct towards his regulator
 - He had not fully co-operated with his regulator
 - Mr Jones had demonstrated no insight into the seriousness of his behaviour or its impact upon the standing and reputation of the profession
 - There was no expression of regret or apology. Indeed, in respect of the conviction, he continued to deny responsibility.
46. The Panel paid particular attention to the remarks of the sentencing judge. While it noted that it was not its function to re-sentence Mr Jones for his criminal conduct, the Panel considered it noteworthy that the judge described Mr Jones as cunning and manipulative and arrogant and that he had embarked upon a prolonged campaign of intimidation which was "highly reckless behaviour" and "potentially life-threatening behaviour".

Decision

47. The Panel reminded itself that acting honestly and with integrity and obeying the laws of the land are fundamental tenets of the profession and that the reputation of the profession is more important than the fortunes of any individual. Further, every professional had an obligation to co-operate fully with their professional body and to engage with it when any complaints were raised against the individual. Such cooperation was fundamental to the professional body being able to discharge its obligations a regulator to ensure protection of the public and to uphold the reputation of the profession.

48. The Panel considered the matters are too serious for no sanction at all to be imposed. They considered the sanctions in ascending order of restrictiveness.
49. The Panel was satisfied, in view of the seriousness of Mr Jones's conduct, which included dishonesty, that the sanctions of Caution, Reprimand and Fine and Conditions were insufficient to protect the public and maintain public confidence in the profession. Nor would they uphold proper standards of conduct.
50. The Panel determined that Mr Jones's behaviour was deplorable conduct and fundamentally incompatible with him remaining a member of RICS. It therefore considered that the only appropriate and proportionate sanction was that he be expelled from membership.

Publication

51. The Panel considered the policy on publication of decisions contained in the Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. This decision will be published on the RICS website and in the RICS magazine Modus. It saw no reason to depart from the presumption of publication.

Costs

52. RICS made application for costs in the sum of £8,220. It noted that RICS had reduced their original sum as the preparation had not taken as long as expected.
53. The Panel bore in mind all the circumstances and concluded that it was fair and reasonable to direct that Mr Jones pay RICS' costs in the sum of £8,220.

Appeal Period

54. Mr Jones has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

55. 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.