

Disciplinary Panel Hearing

Case of

Ms Gloria Bugada

Valencia, Spain

(Not present and not represented)

On

Thursday 29 April 2021

Via Microsoft Teams

Panel

Miss Gillian Seager (Lay Chair)

Miss Catherine Brown (Lay Member)

Mr Nick Turner FRICS (Surveyor Member)

Legal Advisor

Mr Ben Kemp

RICS Presenting Officer

Mr Shaun Moran

Hearing Officer

Miss Maria Choudhury

Audio Recording

Mr Jamie Kim, Two Main

The formal charge as notified to Ms. Bugada (the Member) is:

“Between 27 November 2019 and 01 March 2019, the Member failed to submit documents for the purpose of a valuer registration review as reasonably required by the RICS Regulatory Board.

Contrary to Rule 8 of the Rules of Conduct for Members 2007.

The Member is therefore liable to disciplinary action under Bye-Law 5.2.2”

Introduction

1. The Member was not in attendance or represented at the hearing.

Preliminary Matters

2. The Legal Advisor noted and placed on record that he had approximately five years previously worked professionally with the RICS Presenting Officer at another organisation. The Presenting Officer had worked for approximately twelve months as a solicitor within the department for which the Legal Advisor had overall responsibility. The Presenting Officer did not report directly to the Legal Advisor, and was physically based in a different geographic location and office. They had not worked together in any capacity in respect of this case nor at the time in relation to any RICS matter. Mr Moran confirmed the circumstances in which he and the Legal Advisor had worked together, and that he did not consider that those circumstances gave rise to a conflict or risk of bias, actual or apparent.
3. The Panel retired without the Legal Advisor to consider the matter. It noted that the professional relationship had been of relatively short duration and some five years previously. There was no question of actual conflict in relation to the circumstances of this case. It was satisfied that there was no risk of apparent conflict or bias, and in particular that a fair-minded and informed observer would not have grounds for considering that the independence of the Legal Advisor, Panel or its decision-making were compromised. Having considered the point carefully, it was satisfied that it was appropriate to proceed. The Panel noted that these circumstances had been disclosed in writing to both parties prior to the hearing, and that no concern had been raised by either party.

Proceeding in Absence

4. A Notice of Hearing was served by email (with a delivery receipt) upon the Member to her preferred address held by RICS on 17 March 2021 (English original) and 22 March 2021 (Spanish translation). A copy of the electronic delivery receipt for the Notice of Hearing was produced to the Panel, confirming that electronic delivery had been

effected. The evidence bundle had been sent separately to the Member by email and postal delivery.

5. The Panel was satisfied that Notice had been properly served in accordance with Rule 35 of the RICS Disciplinary Registration and Appeal Panel Rules 2009 (the Rules), this being a resumed/ adjourned hearing in accordance with that Rule. The Panel next considered whether to proceed in the absence of the Member. The Legal Advisor's advice was sought and accepted. The Panel was referred to the case of R-v -Jones [2002] UKHL 5, which the case of Tait v The Royal College of Veterinary Surgeons (RCVS) [2003] UKPC 34 states is also applicable to professional conduct proceedings.

6. The Panel, whilst recognising that it should only proceed with caution, also had regard to the case of General Medical Council v Adeogba [2016] EWCA Civ 162. It noted in particular the observations of Sir Brian Leveson P in that case in relation to the distinction in this context between criminal and disciplinary proceedings, and of the importance of ensuring the, "*fair, economical, expeditious and efficient disposal*" of disciplinary allegations against professional people. The Court in Adeogba noted that, unlike in criminal proceedings, the professional regulator cannot enforce the attendance of a Member and suggested that the responsibility of the regulator, "*is to communicate with the practitioner at the address he has provided; neither more nor less. It is the practitioner's obligation to ensure the address is up to date...*"

7. The Panel noted the Member had corresponded with RICS, by email dated 19 April 2021, indicating that she would not be attending the hearing. She stated as follows:

"Finally I will not be able to attend the hearing.

At this time, unfortunately, it is impossible for me for personal reasons. I am not in a position to attend a situation that I regret very much after such a long process."

8. Having been informed by the RICS Presenting Officer that the Panel, "*has the power to hear the case in your absence*", the Member further replied by email of 19 April 2021:

"Given my inability to attend given my current personal circumstances, I will be absent from the hearing and I do not object to proceeding if this is the way to close the problem and that my relationship with RICS really ceases."

9. The RICS Tribunal Executive, at the request of the Panel Chair, then wrote again to the Member, on 20 April 2021, advising her of the option to seek an adjournment, in accordance with Rule 35, should she wish to do so. The Member replied by further email, also on 20 April 2021, as follows:

"Please proceed in my absence.

I am tired of this affair that has been going on for two years now."

10. The Panel was satisfied in the circumstances that it was appropriate and in the public interest for it to proceed to consider this case, in the absence of the Member. It considered further that the Member had voluntarily waived her right to attend or be represented at the hearing.

Application to amend the Charge

11. The Presenting Officer applied to amend the charge. The version as notified began, *“Between 27 November 2019 and 01 March 2019...”* The Presenting Officer confirmed that the first of these dates should read *“27 November 2018”*.
12. The Panel was satisfied that this was a typographical error, that the correct period was evident from the context and that no injustice to the Member arose as a result. Having consulted its Legal Advisor, the Panel was satisfied that it was appropriate to allow this amendment, in accordance with Rule 41 (h). The application had been previously and timeously notified to the Member, who had offered no objection.

Background

13. The Member has been registered as a Member with RICS since 06 August 2010. She is currently a Professional Member of RICS (MRICS). In around February 2020 she applied to RICS to terminate her membership, but this has been refused for the time being by RICS pending the conclusion of these proceedings.
14. The Member applied to join and was approved onto the RICS Valuer Registration Scheme on 17 March 2016. As such she was subject to the Rules of the Scheme, including specifically the requirement to submit to audit by the RICS. Further, the Member was as a member of the Scheme subject to the applicable version of the RICS Rules for Registration of Schemes. These included specifically the obligation to, *“submit in a timely manner such information, and in such form, as the Regulatory Board may reasonably require”*; to, *“co-operate fully with RICS staff and any person appointed by the Regulatory Board”*; and to, *“comply with the requirements of the scheme(s)”*. (Rule 4.1(f), (g) and (k) of Version 4 of the RICS Rules for Registration of Schemes 2010.)
15. The objectives of the Valuer Registration Scheme are to ensure that property valuations are being conducted in accordance with the RICS ‘Red Book’, and to provide Members with advice and assistance to encourage and support high standards in valuation work. The ‘Red Book’ is the name by which the RICS ‘rule book’ of standards applicable to

valuation work is commonly known. It contains mandatory rules, best practice guidance and related commentary for all members undertaking property valuation work.

16. A condition of the Valuer Registration Scheme (the Scheme) is as stated that members of the Scheme are subject to periodic audit of their valuation work. This case relates to the first such audit which RICS sought to undertake in relation to the Member following her joining the Scheme.

Burden and standard of proof

17. The burden of proof is on RICS and the standard of proof is the balance of probabilities.

Findings of Fact

18. The Panel had available to it the RICS bundle, including all relevant documentation and correspondence in the case. This included correspondence between RICS and the Member relating to the subsequent disciplinary investigation and process.
19. On 27 November 2018, RICS contacted the Member and advised that an 'Off-site audit' would shortly be taking place in relation to valuation work undertaken by the Member. RICS asked the Member to provide, "*at least two commercial or three residential files*" within 14 days and also to complete a pre-audit questionnaire.
20. The Member has to date failed to provide either the requested files or completed questionnaire. This is the case notwithstanding a number of RICS reminders. By correspondence of 13 December 2018, RICS extended the deadline to 03 January 2019. When this extended deadline was not complied with, RICS again wrote to the Member on 18 January 2019, warning the Member that a Fixed Penalty of £150 would be imposed if the requested information was not submitted within a further 7 days. On 01 February 2019, RICS wrote again advising the Member that a fixed penalty of £150 had now been imposed, in respect of a breach of Rule 8 of the RICS Rules of Conduct for Members 2017, the Member having failed to submit required documentation in a timely manner when requested to do so.
21. The Member having still failed to comply with the request, on 01 March 2019 RICS wrote again to the Member, advising that the Fixed Penalty had been increased to £250. RICS wrote again on 08 July 2019 advising the Member that, in the absence of either

compliance with its information request or payment of the fine, the decision had been taken to refer the matter to a Disciplinary hearing. RICS stated that it would not however proceed with the disciplinary referral if she complied by 15 July 2019.

- 22.** To date, the Member has neither complied nor engaged substantively with the RICS information request. The Fixed Penalty imposed by RICS remains unpaid. The Member has in correspondence reiterated her wish to leave RICS. The material facts are not however disputed.
- 23.** The Panel is satisfied that the RICS has taken reasonable steps to ensure that the Member understood what was required of her. This has included repeated attempts to ensure compliance and providing Spanish translations of key correspondence, at the request of the Member. RICS has also provided a professionally translated Spanish version of the full hearing bundle. The Member has corresponded with RICS, in both English and Spanish, but has not responded substantively to or complied with the actual information request giving rise to this matter. In particular, the Panel notes that, by email of 22 March 2021, the Member stated as follows:
- “The truth is, I consider this entire process excessive. Although it is true that I would not send the Registered Valuer documentation, it is also true that I did not renew it for the next year, since I have not carried out evaluations (sic) according to RICS standards for a long time and that is why I request the unsubscribe of RICS.”*
- 24.** The Panel accordingly finds the facts relevant to the Charge to be established, as undisputed and in any event proved to the relevant standard from the evidence before it.

Liability to Disciplinary Action

- 25.** On the basis of the facts found the Panel had to decide whether or not the Member is liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the Legal Advisor. This question was one for the Panel’s judgment.
- 26.** The Panel had no difficulty, upon the basis of the facts as established, in finding that the Member had breached, as charged, Rule 8 of the RICS Rules of Conduct for Members. In particular, the Member had failed to, *“submit in a timely manner such information, and in such form, as the Regulatory Board may reasonably require”*.

27. The requirements of the Scheme are quite clear and the RICS request and expectation entirely reasonable in accordance with the Rules and objectives of the Scheme.
28. The Scheme is one of the ways by which RICS discharges its regulatory function to protect the public interest. The cooperation and engagement of members of the Scheme is essential to RICS' ability to discharge that function effectively, on behalf of the surveyors' profession. The Member in this case failed persistently without any proper explanation to cooperate with RICS as her regulator. From one perspective, the necessity for these proceedings is, as she states, excessive. But that is only because she has failed persistently to engage appropriately with RICS in relation to the matter. She has been allowed numerous opportunities to do so.
29. In the circumstances the Panel has no hesitation in finding the Member liable to disciplinary action.

Sanction

30. The Panel next considered sanction. It 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.
31. The Panel paid careful heed to the advice of the Legal Advisor (delivered in open forum), and to the indicative sanctions guidance of the RICS. It considered carefully the mitigating and aggravating factors of this case. In mitigation, the Panel noted that the Member had no previous disciplinary record. She had referred in the correspondence to an unspecified health condition(s), although had not provided any substantive information about this, or how it might affect her ability to cooperate with RICS. RICS had invited the Member to explain the relevance of any health condition(s), but she had not done so. The Member had offered no substantive explanation for her failure to cooperate. It might be that she had not fully understood the RICS requirements, possibly as a result of language difficulties. On the other hand, she had corresponded with RICS in both English and Spanish and key documents, including the hearing bundle, had been translated for her into Spanish. The Member had not suggested misunderstanding as an explanation for her conduct. To the contrary, her email of 22 March 2021 specifically suggested that she was aware of what was required, and that she had knowingly failed to comply ("*..it is true that I would not send the Registered Valuer documentation...*"). Overall the Panel was not persuaded that there was any fundamental lack of understanding in this case, and this had not been advanced by the Member as a (purported) explanation.

32. Considering the aggravating factors in this case, the Panel was troubled by the Member's singular and persistent failure to produce information which ought readily to have been within her control and gift. The information sought was of significant importance from a public interest perspective, in particular in allowing RICS to discharge its public interest function. The Member had failed to provide any proper response or to engage substantively with RICS. She had corresponded but failed to offer any substantive response or cooperation, notwithstanding repeated reminders and opportunity to address the issue, and over a significant length of time.
33. The Panel had decided that the Member is liable to disciplinary action. Having done so it first has to decide whether to impose a sanction, and if it so decides the Panel commences at the lowest sanction, and only if it decides that that sanction is not appropriate does it move to the next level of sanction. Having arrived at a sanction that it is minded to impose, the Panel then reviews the next sanction above so as to satisfy itself that this would be too severe a sanction. The Panel bears in mind that more than one sanction may be imposed. If conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.
34. The Panel was satisfied that it was appropriate in the circumstances to impose a sanction in this case. It considered the sanctions available, having regard to the relevant RICS Sanctions guidance. It was concerned at the Member's persistent failure to cooperate with RICS in its regulatory role, which it considered to be serious and, as such, would not be sufficiently reflected by either a caution or a reprimand. The Panel considered imposing undertaking(s), but had no basis in the circumstances to have any confidence that these would now be complied with. The Panel considered imposing a fine, but did not consider that this would address the underlying issue, in circumstances where the Member had demonstrated a deliberate and persistent failure to comply. Again, the Panel did not consider that conditions would be likely to serve any useful purpose, in circumstances where the fundamental concern was the Member's failure to cooperate and comply.
35. The Panel was deeply troubled in this case by the Member's persistent and wilful failure to comply with the RICS Rules of Conduct. The conduct in this case consisted of a serious and repeated failure to cooperate with RICS over a significant period of time. This goes directly to the critical relationship between the profession and its regulator. Without the cooperation of members, RICS cannot discharge its regulatory function effectively, or in a way such as to command the confidence of the public and protect the reputation of the profession. The compliance breach in this case was no isolated bureaucratic oversight, but deliberate and persistent. The Member has had numerous opportunities to explain

her conduct, but has failed to offer any explanation, or insight. In all of the circumstances, the Panel has concluded that her conduct is incompatible with her ongoing membership of RICS. Accordingly, and with some reluctance, it has no alternative but to impose the sanction of expulsion. The Member is therefore expelled from membership of RICS.

Publication

36. The Panel considered the guidance as to publication of its decisions. It accepted the Legal Advisor'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. The Panel sees no reason to depart from the normal practice in this case. 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.
37. The Panel orders that this decision is published on the RICS website and in Modus.

Costs

38. The RICS Presenting Officer asked for costs, and had provided a schedule to the Member in advance of the hearing, in accordance with the Rules. The Member had not responded to a request by RICS for information about her financial means.
39. The Panel considered carefully the costs sought. It noted in particular that translation costs had been incurred as a result of the Member's request that the hearing papers should be translated. It considered the costs sought to be reasonable in the overall context of this case.
40. The Panel accordingly orders that the Member pays to RICS its costs as sought, totalling **£6,168.37**.

Appeal Period

41. The Member has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
42. 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.