

Disciplinary Panel Hearing

Case of

**Mr Simon Milledge [0096413]
Dorset**

Remote Hearing On

Friday 14 April 2023

Panel

Dr Angela Brown (Lay Chair)
Ms Jane Bishop (Lay Member)
Mr Mohamed Shehata (Surveyor Member)

Presenting Officer

Mr Hugh O'Brien Quinn

Legal Assessor

Ms Margaret Obi

Hearing Officer

Mr Adeel Qureshi

The formal charge (as amended) is:

Between 1 January 2020 and 1 February 2021, you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not completed and recorded, or caused to be recorded, at least 20 hours of CPD on the RICS CPD portal.

Contrary to Rule 6 of the Rules of Conduct for Members version 6 and version 7.

Preliminary Matters

Application to Amend

1. Mr O'Brien Quinn, at the outset of the hearing, made an application on behalf of RICS, to amend the application. He invited the Panel to amend the charge by deleting "2007" and replacing it with "version 6 and version 7." He submitted that the application was being made on the basis that Rule 6 of the Rules of Conduct for Members (also referred to as the Rules of Conduct for Members 2007) was in effect for a part of the relevant period covering 1 January 2020 to 1 March 2020. However, version 6 of the Rules was replaced by version 7 with effect from 2 March 2020 and was in effect for the remainder of the relevant period, namely up to and after 1 February 2021.
2. Mr Milledge did not object to the application to amend.
3. The Panel accepted the advice of the Legal Adviser that amendments could be made at any time prior to making any findings of fact, provided that it would not cause any injustice or undermine Mr Milledge's right to a fair hearing.
4. The Panel concluded that the proposed amendment provides helpful clarification and avoids ambiguity as it more accurately reflects RICS' allegation and the relevant Rules. The Panel noted that the proposed amendment does not alter the substance of the allegation or heighten the seriousness. In these circumstances, the Panel was satisfied that the amendment would cause no injustice to Mr Milledge and would not undermine his right to a fair hearing. Therefore, the Panel granted RICS' application to amend the charge.

Background

5. Mr Milledge MRICS has been a professional Member of RICS since May 1995.
6. All Members of RICS (AssocRICS, MRICS and FRICS) are required to undertake a minimum of 20 hours of Continuing Professional Development (CPD) each calendar year. Of the minimum 20 hours CPD, at least 10 hours must be formal CPD. The remainder can be informal CPD. Members must not only complete the minimum required number of

hours of CPD but must record their CPD activity online. The activity must be recorded with RICS by 31 January of the following year.

7. By 31 January 2021, Mr Milledge failed to record any hours of CPD for the calendar year 1 January 2020 to 31 December 2020.
8. Mr Milledge's case was originally considered by a Single Member of the Regulatory Tribunal. That Single Member found the charge proved and imposed a sanction. Rule 115 of the Regulatory Tribunal Rules (version 1 with effect from 2 March 2020 to 1 February 2022) ('the Tribunal Rules') sets out the absolute right for a Regulated Member to reject the findings and/or sanction imposed by a Single Member of the Regulatory Tribunal. Mr Milledge exercised that right and as a consequence, Rule 118 of the Tribunal Rules requires this Disciplinary Panel to consider the matter afresh.

The CPD Rules

9. RICS' Rules of Conduct for Members (the Rules) were updated in 2020. Version 7 of the Rules came into effect on 2 March 2020. The previous version of the Rules (Version 6) was in effect from 1 January 2013 until 1 March 2020. Mr Milledge's breach occurred throughout 2020 but crystallised on 1 February 2021. Version 7 of the Rules of Conduct is the relevant version.
10. Rule 6 of the Rules of Conduct was not changed. It was the same in both Version 6 and Version 7 of the Rules. Rule 6 states: "*Members shall comply with RICS' requirements in respect of continuing professional development.*"
11. RICS' requirements in respect of CPD are set out on RICS' website together with supporting guidance. The stated requirements include the following:
 - All Members must undertake a minimum of 20 hours CPD each calendar year (January to December).
 - Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD. (For guidance, see below and download examples.)
 - All Members must maintain a relevant and current understanding of our professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD.
 - Members must record their CPD activity online by 31 January.

Agreed Facts

12. There is no dispute between RICS and Mr Milledge with regard to the relevant rules and CPD requirements throughout 2020 and 2021. In addition, the following is agreed between RICS and Mr Milledge:

Culpability

13. Mr Milledge did not record any CPD hours for the calendar year 1 January to 31 December 2020.
14. Mr Milledge is in breach of the requirements of Rule 6 of the Rules of Conduct for Members versions 6 and 7.
15. Mr Milledge has breached his obligations to complete and record the minimum number of hours of CPD activity on two previous occasions namely for calendar years 2013 and 2015.

Subsequent CPD Activity

16. Mr Milledge has completed and recorded 20 hours of CPD activity for the calendar year 2021; 12 of those hours being formal CPD.
17. Mr Milledge has completed and recorded 24 hours of CPD activity for the calendar year 2022; 14 of those hours being formal CPD.

Findings of Fact

18. As this is not an appeal Mr Milledge does not bear any evidential burden to prove that the Single Member's decision was wrong. The RICS bears the burden of proof.
19. Mr Milledge admitted that he did not record any CPD hours for the calendar year 1 January to 31 December 2020. The Panel noted that his admission is supported by the CPD printouts from RICS' online system and the witness statement of Aileen Lim who is a RICS Investigation Specialist.
20. Accordingly, the Panel found the factual allegations proved, based on Mr Milledge's admission and the documentary evidence produced.

Liability to Disciplinary Action

21. The Panel noted that all practising Members agree to adhere to the RICS Rules, Regulations and Bye-Laws and accept that they may be subject to disciplinary action if they fail to do so. In particular, all RICS practising Members are required to maintain their professional competence, as demonstrated, in part, by the completion and recording of CPD. The seriousness of any failure to comply with this core obligation is demonstrated by the fact that RICS' Sanctions Policy (version 9 with effect from 2 March 2020) clearly states in paragraph 22.1.c that for a third CPD breach the matter should be referred to a Single Member or Disciplinary Panel with the presumption of expulsion.
22. In these circumstances, the Panel was satisfied that Mr Milledge's failure to comply with the RICS requirement to complete and record CPD is sufficiently serious to give rise to a liability for disciplinary action.

Sanction

The Panel's Approach

23. The Panel took into account the written and oral submissions, on behalf of RICS and Mr Milledge, the RICS Sanctions Policy and Mr Milledge's disciplinary history which is as follows:
 - 2013 – Caution
 - 2015 – Caution and fixed penalty.
24. The Panel noted that Mr Milledge has no other adverse disciplinary history.
25. The Panel bore in mind that the purpose of sanctions is not to be punitive, although it may have that effect. The purpose 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 breach and all the circumstances, and a decision should be reached having taken into account any mitigating and/or aggravating factors.

The Evidence of Mr Bucknall

26. Mr Bucknall's evidence was taken out of sequence to accommodate his restricted availability. He had provided a witness statement which he relied on during his oral evidence.
27. Mr Bucknall informed the Panel that he is a RICS Fellow and has known Mr Milledge for about 25 years. He stated that he got to know Mr Milledge when he worked for other firms

in the region and more closely when Mr Milledge set up the Jackson-Stops office in Blandford in 2015.

28. Mr Bucknall informed the Panel that when Mr Milledge started his new business the first few years were very difficult. However, Mr Milledge gradually established his business and subsequently earned good instructions and sales. Mr Bucknall stated that he was in regular contact with Mr Milledge during the establishment of the business and was aware that the first COVID lockdown had a significant impact on the business. Mr Bucknall informed the Panel that this caused Mr Milledge to be extremely worried about the future.
29. In response to a question from the Panel, Mr Bucknall stated that his regular contact with Mr Milledge equated to telephone calls every week or at least every 10 days. Mr Bucknall stated that he was not privy to Mr Milledge's financial situation but frequently provided him with advice as he had experience of starting a business.

RICS Submissions

30. Mr O'Brien Quinn, on behalf of RICS, was neutral as to the appropriate sanction that should be imposed.
31. Mr O'Brien Quinn took the Panel through the relevant paragraphs of the Sanctions Policy (version 9) and submitted that it is a matter for the Panel to decide the extent of any mitigating circumstances and the weight to be attached to them. However, he reminded the Panel that Mr Milledge had breached Rule 6 on two previous occasions and that there is a presumption of expulsion as a sanction for a third breach. He also reminded the Panel that the previous breaches have been factored into the suggested presumptive sanction and should not count against Mr Milledge twice.

Mr Milledge's Evidence and Submissions

32. Mr Milledge relied on the written document that he had provided to the Panel in which he set out the mitigating circumstances.
33. Mr Milledge outlined his career background. He stated that in the 30 years leading up to 2016, he had been employed as a land agent and/or an estate agent and qualified as a surveyor whilst working for Savills. However, in 2016 he decided to turn down an offer of partnership with his then employers and to set up his business as an estate agent in Dorset. His first full year of trading was in 2017. Mr Milledge submitted that in the middle of 2016, only a month after signing an office lease and making a significant investment in setting up his new business, the property market went into decline due to a number of factors including Brexit. He further submitted that during the period leading up to and during 2020, he had an exceptional workload, and was experiencing extreme personal and financial pressure. He stated that he was trying to manage a "*fledgling business in a*

property market thrown into turmoil by an unpredictable set of political and economic factors.” Mr Milledge stated that the property market remained in decline through 2019 and started to recover in 2020 but was shut down again in March 2020 due to the Covid-19 pandemic.

34. Mr Miledge submitted that until 2019, he had always managed to complete his CPD, but in 2020 the enforced lockdown due to the pandemic put him under even more financial and time pressure. He stated that his circumstances were so dire that he consulted administrators and was faced with the prospect of closing his business, losing his savings and investment, and being liable for significant debts.
35. Mr Milledge informed the Panel that his turnover has now increased, and he broke even for the first time in 2020. He stated that the effort needed to reach that position was at the expense of maintaining his CPD. He further stated that his turnover has reached the planned target level in 2021 and 2022 and he has completed his CPD requirement for both those years. He acknowledged that he would have been offered help during those difficult years if he had sought it, but he stated that he was so “*overwhelmed*” that it did not occur to him to request help.
36. During his oral evidence, Mr Milledge informed the Panel that he anticipates that he will retire within the next decade. He stated that expulsion will have a limited effect on his current business but would have a significant effect on his future business plans. Mr Milledge explained that Mr Bucknall is due to retire as a valuer and the expectation is that he will take over his work and become a registered valuer. Mr Milledge stated that he would not be able to undertake valuations if he is expelled. Mr Milledge also informed the Panel that he has signed up to the RICS support package which will help to ensure that he continues to comply with his CPD requirements.
37. In response to questions from the Panel Mr Milledge stated that he should have asked for help but “*buried [his] head in the sand.*” He stated that his business was his priority and that his failure to comply with his CPD obligations was a personal failing. He acknowledged that he did not respond to requests for information from RICS with regard to the disciplinary process in a timely manner. He stated that his workload pressure had not lifted entirely and he “*hoped that it would go away.*” However, he informed the Panel that since matters have “*come to a head*” he has taken steps to plan his CPD and ensure compliance with the recording requirements. He stated that although he has subscribed to the CPD support package he has not used it yet as he already has 4 or 5 CPD events in his diary.

Decision

38. The Panel was mindful that RICS is a professional membership organisation and sets standards for its Members as a condition of membership. It is not difficult to record CPD

online. Compliance is not optional. Furthermore, the CPD requirements are not dependent on the RICS sending reminders to its Members.

39. The Panel identified the following features of Mr Milledge's case to be mitigating factors:

- He made a full and frank admission of the charge;
- He has no previous disciplinary history other than the two previous CPD breaches;
- He has expressed remorse which the Panel has accepted as genuine;
- He has taken appropriate steps to ensure that the breach is not repeated in future including signing up to RICS' online development package which helps Members facilitate CPD compliance. Furthermore, there is evidence that the steps taken have been effective as Mr Milledge has complied with his CPD and recording requirements for the years 2021 and 2022;
- He was experiencing significant personal circumstances due to the effects of the Covid-19 pandemic and the downturn in the property market during the period when he failed to complete and record his CPD.

40. The Panel considered that the following aggravating factors were present in Mr Milledge's case:

- He has not provided information, as agreed, in a timely fashion.
- The charge admitted and found proved represented a repeated breach of the CPD requirements.

41. The Panel first considered whether to impose any sanction. At all times it was Mr Milledge's responsibility to ensure that he complied with his CPD obligations, and he repeatedly failed to do so. The Panel concluded that the repeated failure to record CPD was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate.

42. The Panel went on to consider whether to impose a caution. The Panel concluded that a caution would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance and the fact that a caution had already been imposed for a previous breach. The Panel also considered the imposition of a reprimand but concluded that similarly this did not reflect the seriousness of Mr Milledge's repeated failure to comply with the requirement to complete and record CPD on the RICS online portal.

43. In considering whether to impose an undertaking the Panel took into account the mandatory nature of the CPD requirements. The Panel noted that the CPD requirements are designed to ensure that the skills and knowledge of RICS Members are kept up to date and ultimately to ensure public protection. The Panel concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking given that Mr Milledge should have been completing and recording his CPD online in any event. Even if an undertaking were to be combined with either a caution, reprimand or fine, the Panel concluded that imposing such a sanction would undermine public trust and confidence in the regulatory process.
44. The Panel then considered whether to impose a fine. The Panel was mindful that a fine was imposed on Mr Milledge for failing to record his CPD hours for the year 2015. However, the Panel was satisfied that a further financial penalty would be an appropriate sanction and concluded that it should be imposed alongside conditions. The Panel concluded that Mr Milledge sought and obtained the benefits of RICS membership but appeared unwilling to consistently accept the obligations that come with that privilege. The Panel took the view that Mr Milledge should be given one final opportunity to comply with his CPD obligations. The Panel decided that a fine of **£2,500** reflects the seriousness of Mr Milledge's failings.
45. The Panel also considered that a condition is proportionate and appropriate and adequately meets the public interest as it re-affirms the obligations required of all Members of the profession to comply with the RICS rules. The Panel imposed a condition in the following terms:
- i. As a condition of continuing membership Mr Milledge is directed to comply with the CPD requirements for the year 2023 by completing and recording his CPD hours by 31 January 2024.
 - ii. As a condition of continuing membership Mr Milledge is directed to comply with the CPD requirements for the next 5 years starting with the CPD requirements for 2023.
 - iii. Unless Mr Milledge has obtained a RICS extension or a RICS exemption from his CPD requirements, failure to comply with either condition (i) or (ii) will result in automatic expulsion from membership, without further reference to a Disciplinary Panel
46. The Panel was mindful that paragraph 21.1 of the Sanctions Policy states that expulsion is likely where there is a third breach of Rule 6 of the Rules of Conduct for Members within 10 years of a receipt of a caution for breach of the same rule. However, the Panel considered that to go beyond a fine and a condition would be disproportionate in the circumstances having balanced the aggravating and mitigating factors. In reaching this conclusion the Panel took the view that the effects of the Covid-19 pandemic on the

property market and the financial pressures that Mr Milledge was under amount to extenuating circumstances which justify departing from the presumption of expulsion.

Publication

47. The Panel considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website.

Costs

48. RICS applied for costs of £5,340.

49. The Panel carefully considered the issue of costs. The costs figure represents a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel had no reason to doubt that the costs application was fair and reasonable.

50. The Panel concluded that it was appropriate for Mr Milledge to contribute towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole.

51. The Panel orders that Mr Milledge pays to RICS costs in the sum of **£5,340**.

Summary

52. The Panel made the following orders:

- i. Mr Milledge's continued registration is subject to the conditions set out at paragraph 45 above;
- ii. Mr Milledge is to pay a fine in the sum of **£2,500**;
- iii. Mr Milledge is pay RICS' costs in the sum of **£5,340**.
- iv. The fine and costs (referred to above) must be paid in full by no later than **14 April 2024**. It will be for RICS and Mr Milledge to agree whether payments on account should be made before the full and final payment date is due.

Appeal Period

53. Mr Milledge has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 153 of the Tribunal Rules.

54. An application to Appeal must be served upon the Head of Regulatory Tribunals.