

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING BY WAY OF WRITTEN REPRESENTATIONS

Case of

Name: Alan Gregory

Surrey

Location:

London

On

12 January 2017

0930

Hearing upon the basis of written representations conducted

Panel

Catherine Audcent (lay Chair)

Carolyn Tetlow (lay member)

Joshua Askew (Member)

Legal Assessor

Chris Hamlet

CHARGE HEARD

The Panel considered the following charge:

You have failed to comply with RICS' requirements in respect of continuing professional development ("CPD") in that:

(a) you have not recorded your CPD activity for year 2014 online;

(b) you have not recorded your CPD activity for 2015 online.

Contrary to rule 6 of the Rules of Conduct for Members 2007, version 6.

DETERMINATION

Service

1. Notice of this hearing dated 7 December 2016 was sent by registered post and emailed to the email address notified by Mr Gregory to RICS.
2. A copy of the notice letter was produced. A postal certificate of delivery was produced dated 9 December 2016, along with an email 'read' receipt dated 21 December 2016.
3. Mr Gregory confirmed that he was content for the hearing to proceed by way of written representations.
4. The Panel concluded that service had been properly undertaken and that it was appropriate to proceed to consider the case upon the basis of written representations, in accordance with the Rules.

Burden and standard of proof

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

Findings of fact

6. From January 2013 RICS members were obliged to complete 20 hours CPD activity by 31 December of each calendar year.
7. Rule 6 provides: "Members shall comply with RICS requirements in respect of continuing professional development."
8. CPD requirements for members are: –
 - Members must complete at least 20 hours CPD, of which at least 10 hours must be formal CPD.
 - All members must maintain a relevant and current understanding of RICS' professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD.

- All members must record the CPD activity online.
9. The online CPD record was within the bundle at page 33. It is a matter of record. The record for Mr Gregory does not show any CPD recorded.
 10. Accordingly the Panel finds the factual allegation in relation to charge (b) proved, upon the basis of both the documentary evidence produced and in any event on Mr Gregory's admissions, on 1 February 2015, that "...I do not believe I can fully comply with the requirement" and on 16 May 2016 that "...I have not actually logged the required hours, I cannot plead otherwise to the charge". The Panel did not consider charge (a) in recognition of the fact that it had been already addressed by way of a fixed penalty, which had been duly paid.
 11. The Panel finds Mr Gregory for these reasons to be in breach of Rule 6 of the Rules of Conduct for Members, and liable to disciplinary action.

Sanction

12. The Panel next considered sanction. The RICS rules about CPD require members to undertake and to record online 20 hours CPD each year. For those who failed to comply with that rule, the sanction imposed was a caution. For those who failed to comply for a second year the sanction was a further caution and a penalty of £150. This was increased to £250 for non-payment and was ultimately paid by Mr Gregory. This is the third year of failure to comply with compulsory recording of CPD online. Mr Gregory has been found to have failed to record any CPD since 2013, despite reminders from RICS to do so. This was therefore an aggravating consideration.
13. From the inception of the compulsory recording of CPD online RICS has publicised its policy on sanctions for non-compliance. For a third failure the sanctions policy indicated that expulsion was the likely sanction.
14. The Panel noted that reminder emails concerning the requirement to complete and record CPD were sent by RICS to Mr Gregory's email address on 5 February 2014, 11 November 2014 and 13 January 2015. Since Mr Gregory responded to RICS on 1 February 2015 by means of the same email address, the Panel was satisfied that he had received and was aware of that correspondence.
15. Mr Gregory has not offered an apology for his non-compliance. Whilst accepting his failure to comply with Rule 6 of the Rules of Conduct for Members, he has asserted that he nonetheless keeps "abreast of current developments" and is "more than satisfied that I comply with the 10 hours informal CPD". The Panel observed that no evidence of that informal CPD has been provided.

16. The Panel took further account of Mr Gregory's email of 30 October 2016 in which he suggested that the "...Institution consider in future amending the regulations by making the CPD requirement a 'recommendation' rather than a requirement". The Panel considered this to reflect a concerning lack of insight by Mr Gregory into the vital importance of conducting and recording the professional development activities, and that this applies to all members.
17. 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.
18. The Panel was satisfied that it was accordingly appropriate to impose a sanction in this case. It considered a caution, but did not believe that this would reflect sufficiently the seriousness of the case, recognising the cumulative pattern of non-compliance and the fact that a caution had already been imposed in 2013 and a fine imposed in 2014. It further considered the imposition of a reprimand, but concluded that this similarly did not reflect the seriousness of the repeated non-compliance in this case in the face of repeated reminders by RICS. Mr Gregory is in active practice and compliance with CPD requirements is specifically relevant and important in his case from a public interest perspective. The Panel did not consider that its concerns in this case would be adequately addressed by the imposition of an undertaking, fine or conditions. In view of Mr Gregory's submissions in response to the breach that the Rules should be changed in his favour, they did not consider he was likely to address the requirement to conduct and record CPD going forward. He had expressed no willingness or intention to so comply.
19. The Panel had regard to the potential prejudice which had been occasioned to Mr Gregory in this case as a result of an earlier hearing which, by agreement with Mr Gregory, RICS had invited the Panel to disregard, with consequential delay through no fault of Mr Gregory. It remained concerned as to Mr Gregory's lack of insight, and the resulting risk to the public, and was mindful of the presumption in the sanctions policy in favour of expulsion. Having considered all of the evidence in this case, the Panel determined that it had no alternative but to expel Mr Gregory from membership, with immediate effect. It so orders.
20. This decision supersedes the previous decisions in relation to the breach of b) charged in this case, and the penalty arising from that earlier hearing, which is accordingly to be treated as having been formally set aside.

Publication

21. The Panel has considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. This decision will be published on the RICS website, in the RICS magazine Modus, but not in a local newspaper.

Costs

22. RICS made no application for costs.

Appeal Period

23. Mr Gregory has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
24. 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.