

Appeal Panel Hearing

Case of

**Mr Bruce Riley [1126789]
Wallasey, Wirral**

On

Wednesday 31 May 2017

At

RICS, Parliament Square, London

Panel

Julian Weinberg (Lay Chair)
Chris Boothman (Lay Member)
Chris Pittman (Surveyor Member)

Legal Assessor

Chris Hamlet

RICS Representative

James Lynch

Background

On 6 December 2016, a Disciplinary Panel of RICS determined that Mr Riley failed to comply with RICS requirements in respect of Continuing Professional Development (CPD) in that he had failed to record his CPD activity for the years 2014 and 2015 online. The Panel concluded that as a third failure to record CPD within three years, Mr Riley should be expelled from RICS.

Mr Riley appeals the finding and penalty imposed by that Panel.

He appeals the finding on the basis that RICS failed to send correspondence regarding the CPD issue and the disciplinary hearing to his correct address.

He appeals the penalty on the basis that it was “unreasonably severe”.

Submissions by the Appellant Mr Riley

Mr Riley provided the Panel with written grounds of appeal. These were supplemented with oral evidence in which he clarified that he did not challenge the findings of fact of the original Panel, in that he failed to record his CPD as alleged, and was liable to disciplinary action, but considered the sanction of expulsion was disproportionate in view of the fact that correspondence from RICS leading up to the original hearing was sent to his old address.

Submissions by the RICS Presenting Officer

Mr Lynch on behalf of RICS submitted that the Panel's decision on sanction was in accordance with the sanctions guidance and invited the Panel to reject the appeal.

Panel's Decision

The Panel gave careful consideration to the evidence, both oral and written and to the submissions of both parties.

The Panel had regard to Rules 58-70 of the Disciplinary, Registration and Appeal Panel Rules. They noted that they may only allow the appeal if they consider the original decision to have been "wrong". They accepted the advice of the Legal Assessor that in determining that issue, they should consider either whether the original decision was not one which was available to it, or fell outwith the range of reasonable responses available to it, in accordance with the Rules and Sanctions Guidance. The Panel was advised to consider all the circumstances which led to the original decision, including the issue raised regarding the address used for correspondence, insofar as this was of relevance to the sanction decision. In addition, they were directed to the sanctions guidance, in particular paragraph 20 and 21, regarding the circumstances in which expulsion might be appropriate.

The Panel considered the decision reasoning of the original Panel as recorded in the minutes of 6 December 2016. It was noted that at paragraph 15 of those minutes, the Panel rejected Mr Riley's explanation that he had not received RICS correspondence and concluded that he lacked "...insight into the seriousness of his repeated non-compliance with the RICS CPD requirements."

Though the precise reasoning of the original Panel was unclear on this point, this Panel concluded that the decision to expel Mr Riley was based centrally on the conclusion that he had been in receipt of correspondence from RICS relating to these proceedings when he had asserted that he had not. This Panel considered that reasoning to be unsustainable in light of the acknowledgement by the original Panel at paragraph 2 of the minutes of "uncertainty" as to whether some correspondence had been sent to his "...actual current address". This Panel concluded that this uncertainty, which was amplified by the fact that none of the correspondence from RICS relating to these proceedings had been sent to his current home address or office address, gave rise to the real possibility that Mr Riley had not in fact received key items of correspondence in the lead up to the original hearing. The Panel noted in response to a question put to Mr Riley that some personal correspondence in relation to his RICS membership renewal had been sent to his office address. This supports Mr Riley's view that RICS was aware of a current communication address and he would not have expected RICS to be sending correspondence to his old home address.

Whilst this did not excuse Mr Riley's failure to comply with the CPD recording obligations, this Panel considered it relevant to the issue of his knowledge of the proceedings and to his insight regarding

his non-compliance, specifically whether the breach had occurred in the knowledge that RICS had reminded him of his professional obligations in that regard.

This Panel was of the view that in those circumstances, the original panel was wrong to conclude that Mr Riley lacked insight into the seriousness of his non-compliance, such that they had “...no alternative” but to expel him from membership. In this Panel’s view, that conclusion fell outwith the range of reasonable responses to this breach.

In allowing the appeal, the Panel determined to vary the order and took into account RICS’s published sanctions guidance.

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.

In reaching a decision on sanction the Panel considered carefully the mitigating and aggravating factors. The Panel considered that the following mitigating factors were present in Mr Riley’s case:

- He had admitted the charge;
- He had apologised for his breach;
- He had engaged with RICS’ disciplinary process;
- Whilst the obligation to comply with CPD recording obligations rested with Mr Riley, the Panel accepted he had not received written reminders from RICS as to that obligation

The Panel considered that the following aggravating factors were present:

- This was the third year in which Mr Riley had breached the CPD requirements;

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.

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.

This Panel went on to consider a Caution but concluded that the failure could not be described as minor. It concluded that neither a Caution nor a Reprimand would adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance over several years and the fact that a caution had already been imposed for the years 2013 and 2014. This Panel did not consider that the concerns in this case would be adequately addressed by the imposition of an Undertaking.

The Panel then considered whether to impose a fine. It decided that a fine of £1,000 would be an appropriate and proportionate response to the serious and prolonged failings in this case.

The Panel went on to consider Conditions. The Panel was mindful of the fact that Mr Riley did appear to recognise, to some extent, the importance of conducting and recording CPD. The Panel decided that a Condition was proportionate and appropriate and adequately meets the public interest.

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 Condition would be excessive and disproportionate in the circumstances, having balanced the aggravating and mitigating factors.

The Panel imposed a Condition in the following terms:

- As a condition of continuing membership Mr Riley is directed to comply with the CPD requirements for the year 2017 by 31 December 2017.
- Failure to comply with this condition will result in automatic expulsion from membership, without further reference to a Disciplinary Panel.

This decision varies the previous decision made in 2016 in relation to the breach charged in this case.

Publication and Costs

Publication

The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus. Mr Riley did not oppose this. The Panel sees no reason for departing 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.

The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

No application for costs was made by either party. No order was made.