

APPEAL PANEL HEARING

Case of

Mr Stephen Ansell [0053165]
Southend-on-Sea, SS3

On

Wednesday 31 August 2016

At

RICS, Parliament Square, London

Chairman

Julian Weinberg (Lay Chair)

Members

Ian Hastie (Surveyor Member)

Imran Benson (Lay Member)

Legal Assessor

Alastair McFarlane

RICS Representative

Annabel Joester

Background

1. Mr Ansell was referred to a Disciplinary Panel in respect of the following charge:

"you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not recorded your CPD activity for 2015 online contrary to Rule 6 of the Rules of Conduct for Members 2007."

2. The charge was heard by the Disciplinary Panel on 26 April 2015. RICS' requirements in respect of CPD include the obligation on all members to undertake a minimum of 20 hours of CPD each calendar year, and the obligation to record their CPD activity online.
3. Between 15 October 2015 and 28 January 2016 RICS sent Mr Ansell 10 emails reminding him of his CPD requirements and specifically that the CPD should be completed by 31 December 2015 and recorded online. Mr Ansell was contacted in January 2016 and informed that although the deadline had passed, he could record his CPD online until the end of January 2016.
4. Mr Ansell admitted that he failed to complete his online record of CPD by the end of January 2016. He did however complete the record on 1 February 2016.
5. The Disciplinary Panel imposed the sanction of expelling Mr Ansell from membership of RICS. Mr Ansell's application for appeal seeks to appeal against this sanction.
6. Mr Ansell maintains that during the calendar year 2015, he did complete 20 hours CPD in accordance with the rules and attempted with the assistance of his wife to register this CPD from his home computer on the evening of Sunday 31 January 2016, but was unable to do so.
7. RICS accepts that where the Disciplinary Panel referred to completion of CPD within an "extended grace period" (i.e. the period ending 31 January 2016), this was factually incorrect. The requirement was to complete the CPD by 31 December 2015 and recorded online by 31 January 2016. Therefore RICS concedes that in so far as the Panel's decision on sanction relied on the apparent fact that there was an "extended grace period" or that Mr Ansell had failed to comply with an extended time limit, it should be revisited.
8. Mr Ansell also accepted that he had two previous failures to log CPD. He apologised for his omissions. He contended that his failure amounted to logging the informal element of the CPD some 9 hours after the deadline, which he had attempted to meet. He had a new computer and despite the assistance of his wife had been unable to log the CPD successfully on 31 January 2016. He emphasised that he had completed and logged his formal CPD within the time limit. He accepted that he should not have allowed himself to delay the recording of his CPD until the last day, and indicated that it is his firm intent to comply with all CPD obligations. He submitted his pride in being a member of the Institution and will have been a chartered surveyor for 40 years in 2017. He submitted that the CPD he has undertaken has always been relevant to the nature of his work and that before the mandatory requirement for CPD, he had undertaken extensive voluntary CPD education over the preceding decades. He submitted supportive testimonials and referred to other RICS decisions where similar breaches had not resulted in expulsion from membership.

DETERMINATION

Panel's Decision

9. The Panel has carefully considered the documentary evidence before it, consisting of the RICS bundle, numbered pages 1-64, and Mr Ansell's bundle of documents and references

as well as the submissions of Ms Joester, Solicitor for RICS, and Mr Ansell on his own behalf.

10. The Panel accepted the advice of the Legal Advisor and reviewed the Disciplinary Panel's decision having regard to those matters listed in Rule 64 of the Rules. It noted that only where the Panel consider the decision of the Disciplinary Panel to have been wrong may it allow the appeal and that the burden of satisfying the Appeal Panel that the order being appealed was wrong, is on Mr Ansell.
11. The Panel had specific regard to the RICS Sanctions Policy – Guidance to RICS Disciplinary, Registration and Appeal Panel Rules, and the principle of proportionality. While it noted under paragraph 22.1 of that Guidance that a third breach of Rule 6 within 10 years was listed as an example of an instance likely to result in a Panel ordering expulsion, it reminded itself – as emphasised at paragraph 22.2 – that each case must be considered on its own facts. It accepted that Mr Ansell had attempted to log his CPD within the time period and that he did successfully log this CPD the very next day. It also had specific regard to the length of his career and the positive and supportive testimonials he has submitted. In all the circumstances it considered that the sanction of expulsion, even though there had been 2 earlier similar breaches, to be disproportionate and therefore, wrong.
12. The Panel therefore determined to quash the decision of the Disciplinary Panel to expel Mr Ansell from membership of RICS. It nonetheless determined that sanction was appropriate to reflect the seriousness of Mr Ansell's repeated failures to comply with RICS' CPD requirements. The Panel considered the range of sanctions available to it, starting least severe. It considered the following to be mitigating factors: Mr Ansell's acceptance of the breach; his attempt to submit his CPD on time; the fact that he had done the CPD; the delay beyond the deadline was only a matter of hours; his apology and his long and otherwise unblemished career and the standing in the profession in which he is held and which has been evidenced by the testimonials. It accepted that attendance at this hearing had been a salutary lesson and intends to comply fully with his obligations in the future. It considered that it was an aggravating factor that this was Mr Ansell's third breach of rule 6.
13. Considering all the circumstances, the Panel was of the view that a further caution was inadequate to mark the seriousness of the admitted breach. It was however persuaded that the appropriate and proportionate sanctions were:
 - a Reprimand
 - a Fine of £1,000
 - a Condition on Mr Ansell's continuing membership of RICS as follows:

Mr Ansell shall ensure that he has complied with RICS' requirements for CPD 2016 and 2017 by 31 January 2017 and of 31 January 2018 respectively, and if in default, shall be automatically expelled from membership.

Determination on Publication and Costs

Publication

13. The Panel directs publication in accordance with Supplement 3 to the Sanctions Policy. This decision will be published on RICS' website, its RICS magazine Modus but not in a local newspaper.

Costs

14. The Panel determined that as Mr Ansell has won his appeal, it is not appropriate to award costs.