

## **Disciplinary Panel Meeting**

### **Case of**

**Mrs Guniz Celen FRICS [1174263]  
Istanbul, Turkey**

### **On**

Wednesday 12 September 2018

**At RICS, 55 Colmore Row, Birmingham, B3 2AS**

### **Panel**

Ian Hastie (Surveyor Chair)  
Sue Heads (Lay Member)  
Rosalyn Hayles (Lay Member)

### **Legal Assessor**

Peter Steel

The formal charge is:

Between 1 January 2017 and 1 February 2018 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 2007 version 6.

### **Response**

1. Mrs Celen had responded to the Notice of Hearing dated 14 August 2018 the same day by email. She had subsequently provided some evidence about the CPD she had undertaken in 2017 and 2018 by email on 11 and 12 September 2018 respectively, but

had not returned the Listing Questionnaire or unequivocally admitted the charge. The Panel therefore proceeded on the basis that the above charge was not admitted.

## Summary

2. From January 2013 RICS members were obliged to complete 20 hours CPD activity by 31 December of each calendar year.
3. Rule 6 provides: “Members shall comply with RICS requirements in respect of continuing professional development.”
4. 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.
  - All members must record the CPD activity online.
5. For the CPD year 2017 correspondence was sent by email to members reminding them about the necessity to comply with their CPD obligations. RICS also wrote to Mrs Celen’s registered address on 9 March 2017 informing her of the Fixed Penalty which had been issued to her for CPD non-compliance in 2016. This letter warned that a failure to comply with CPD requirements in 2017 would result in referral to a Disciplinary Panel. Mrs Celen was also sent a number of emailed reminders as a result of missing the 31 January 2018 deadline for recording her CPD. These also made it clear that she risked a sanction unless she took immediate action.

## Service

6. A Notice of Hearing, together with the evidence bundle was sent under cover of 4 separate emails to Mrs Celen’s preferred address held by RICS on 14 August 2018. A copy of the emails and electronic delivery receipt for them had been produced to the Panel. Mrs Celen had responded by email the same day, demonstrating that she had received the Notice. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a. Having considered the circumstances, the Panel was content that it was fair and in the public interest for it to proceed to consider the case.
7. Mrs Celen had been advised of her right to an oral hearing in the Notice of Hearing in accordance with Rule 23 but had not requested such a hearing.

## **Findings of Fact**

8. The Panel was provided with a statement from Joe Poole, CPD Administrator at RICS dated 13 August 2018 setting out Mrs Celen's online CPD record and exhibiting the relevant records. This showed that she had not recorded any CPD for 2017 and she had not been granted any concessions for that year.
9. Accordingly the Panel found the factual allegation proved, on the basis of the documentary evidence produced.

## **Liability to Disciplinary Action**

10. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mrs Celen's failure to comply with those requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion the Panel took into account the fact that the CPD policy has been approved by the Regulatory Board and is an expressly stated RICS rule. The Panel noted that all 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. The Panel was also satisfied that breaches of the RICS rule on CPD recording must be regarded as serious as they prevent RICS from monitoring compliance and thus ensuring public protection.
11. Accordingly, the Panel was satisfied that Mrs Celen was liable to disciplinary action.

## **Sanction**

### Panel's Approach

12. The Panel took into account the submissions of RICS as set out in the Case Summary in the bundle. It had regard to the RICS Sanctions Policy.
13. The Panel bore in mind that the purpose of sanctions is not to be punitive, although it may have that 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 breach and all the circumstances and a decision should be reached having taken into account any mitigating and/or aggravating factors.
14. The Panel bundle contained a further statement from Joe Poole also dated 13 August 2018 which indicated that Mrs Celen had received a Caution for failure to comply with the CPD requirements in 2015 and a Caution and Fine in 2016 for a further breach. This was therefore Mrs Celen's third such breach.

### Decision

15. Mrs Celen had provided evidence that she had in fact undertaken CPD in 2017. It appeared to the Panel that what she had done would likely have fulfilled the CPD requirements. Mrs Celen said that she had attempted, but failed, to record it. She had also provided evidence of similar CPD activity in 2018. The Panel considered that these facts did provide some mitigation for her failure to comply with the CPD requirements. It also noted that she had complied with the CPD requirements in previous years. Lastly the Panel gave Mrs Celen credit for engaging with RICS, albeit belatedly.
16. The Panel considered that the following aggravating factors were present in this case:
- The charge found proved represented a repeated breach of the CPD requirements.
  - She had been sent a number of prompts by email and letter that she risked disciplinary action if she did not comply, which she had apparently ignored up until the point she was sent notice of these proceedings.
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 however busy a member's professional or personal life may be. Compliance is not optional.
18. The Panel first considered whether it was appropriate to impose any sanction at all. 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. In reaching this conclusion the Panel noted that Mrs Celen had been sent numerous reminders by RICS. As noted above, she should have been aware of her responsibility to ensure that she complied with her CPD obligations.
19. 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 Mrs Celen had already received two Fixed Penalties for previous breaches. The Panel also considered the imposition of a reprimand, but concluded that on its own this would not reflect the seriousness of Mrs Celen's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.
20. In considering whether to require Mrs Celen to give 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 Mrs Celen should have been completing and recording her 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 be insufficient to maintain public trust and confidence in the regulatory process.

21. Having considered all the facts of this case, the Panel considered that the appropriate and proportionate sanction would be a reprimand combined with a condition requiring compliance with the 2018 CPD requirements. It therefore ordered as follows:

- Mrs Celen receive a reprimand.
- As a condition of her continuing membership, Mrs Celen is directed to comply with the CPD requirements for 2018 by completing her CPD hours for the year 2018 by 31 December 2018 and recording her CPD hours online by 31 January 2019.
- Failure to comply with this condition will result in automatic expulsion from membership, without further reference to a Disciplinary Panel.

22. The Panel wished to draw Mrs Celen's attention to the requirement not only to undertake CPD, but to record it online in RICS' standard format. This was important so as to allow RICS to monitor compliance with the rules effectively. It would not be acceptable for her simply to email evidence of her 2018 CPD, as she had done in advance of these proceedings.

23. The Panel took into account paragraph 21.1. of the Sanctions Policy, which 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. The Panel was persuaded in this instance that because Mrs Celen had undertaken CPD during 2017 and had at least attempted to record it, to go beyond a reprimand and condition in her case would be punitive and disproportionate.

## **Publication**

24. The Panel has 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 and in the RICS magazine Modus.

## **Costs**

25. RICS applied for costs of €444.38 (i.e. the sum of £400 in Euros as at 10 August 2018).

26. The Panel considered carefully 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.

27. The Panel concluded that it was appropriate for Mrs Celen to make a contribution towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole.

28. The Panel orders that Mrs Celen pays to RICS costs in the sum of €444.38.

### **Appeal Period**

29. Mrs Celen has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

30. 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.