

Disciplinary Panel Hearing

Case of

Mr Danny O'Reilly MRICS

On

Thursday 22 November 2018

At

55 Colmore Row, Birmingham

Panel

Carolyn Tetlow (Chair)
Rosalyn Hayles (Lay Member)
Ian Hastie (Surveyor Member)

Legal Assessor

Alastair McFarlane

Hearing Officer

Maria Choudhury

RICS Presenter

Kelly Sherlock

The Formal Charge is:

That 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.

And that you are therefore liable to disciplinary action under Bye-law 5.2.2(c).

Notice

1. The Panel received a witness statement from Maria Choudhury, Regulatory Tribunal Executive for RICS, dated 8 November 2018. The statement confirmed that the Notice of Hearing had been sent to the Relevant Person on 25 September 2018, to the postal address held on RICS' system. The postal letter was exhibited to the statement of Ms Choudhury.
2. The Panel accepted the advice of the Legal Assessor and was satisfied that the notice of hearing had been sent in accordance with the Rules. Mr O'Reilly attended by telephone and indicated he only recently became aware of the hearing, but did not seek an adjournment and was ready to deal with the case today.

Response

3. Mr O'Reilly had made one e-mail response on 1 March 2018 to RICS, when he indicated that he was experiencing difficulties recording his CPD online. Today, he indicated that he admitted the facts of the charge and that, in his view he was liable to disciplinary action.

Documents

4. The Panel received hearing bundles prepared by RICS numbered pages 1 – 35 and 1 - 37.

Summary

5. All RICS members are required to undertake a minimum of 20 hours Continuing Professional Development (CPD), each calendar year (January to December).
6. Rule 6 provides: “Members shall comply with RICS’ requirements in respect of continuing professional development.”
7. CPD requirements for members are set out in RICS’ document “CPD Requirements and obligations”.
8. Members must complete at least 20 hours CPD including 10 hours formal CPD and must record their CPD activity on line by 31 January through the RICS portal.
9. The Panel had sight of a witness statement of Mr Joe Poole, a RICS CPD Administrator, dated 30 May 2018, which confirmed that on inspection of the CPD records relating to the Relevant Person, no CPD hours had been recorded by or on behalf of the Relevant Person for the year 2017 by 31 January 2018. Print outs of the Relevant Person’s CPD record were exhibited to the witness statement.

Liability to Disciplinary Action

10. RICS submitted that it implemented a system in relation to CPD requirements. The requirement was reasonable and designed to ensure consistent standards within the profession. Members are required to maintain up to date knowledge in their area of expertise and, crucially, to demonstrate their compliance by completion of the CPD record. RICS submitted that the CPD scheme is in the interests of the maintenance of professional standards and hence of public protection.
11. RICS submitted that it had introduced a system for dealing with breaches of CPD obligations and that breaches must be treated as serious by RICS as the Regulator and by its disciplinary panels.
12. By his failure to comply, the Relevant Person had disregarded a clearly expressed rule and a requirement imposed by his regulator. As a member of RICS he had accepted the obligation to comply with RICS’ Rules, guidance and Bye-laws and also that he may be liable to disciplinary action if he failed to do so.

13. RICS submitted that a single breach of the requirements was sufficient to give rise to a liability to disciplinary action.

14. RICS submitted that the Relevant Person was liable to disciplinary action under Bye-law 5.2.2(c).

Legal Advice

15. The Panel received and accepted the advice of the Legal Assessor. The Panel was mindful that the burden of proof of facts in RICS proceedings is upon the RICS, which brings the charges. The standard of proof in RICS disciplinary proceedings is the civil standard, that is the balance of probabilities, meaning that before finding a fact proved, the Panel must be satisfied that it is more likely than not that it occurred.

16. The issue of whether there was liability to disciplinary action was a matter for the Panel's own judgment rather than the legal standard of proof. Before finding liability established, the Panel should be satisfied that the failings in question were sufficiently serious to reach the threshold for liability to disciplinary action.

Panel decision on facts

17. The online CPD print out record was included in the documentation. The Panel noted the evidence of Mr Poole, which confirmed that if no entry appeared in the CPD print out for any particular year, this indicated that no CPD had been recorded for that year. The Panel examined the record for Mr O'Reilly and was satisfied that it showed that he had not recorded the any hours of CPD for the year 2017 and that Mr O'Reilly did not have any relevant concessions for 2017.

18. The Panel found the factual allegation proved based on the documentary evidence produced by RICS and his admission.

Panel decision on liability to disciplinary action

19. The Panel concluded that the Relevant Person's failure to comply with the CPD requirements and Rule 6 of the Code of Conduct for Members amounted to a serious falling short of his professional obligations. It also noted the Relevant Person accepted he was liable to disciplinary action.

20. It was the Relevant Person's responsibility to ensure he was aware of and complied with his professional obligations regarding CPD. The Panel was concerned that the failure to record CPD tended to undermine public confidence in the profession.

21. In the circumstances, the Panel was satisfied that Mr O'Reilly was liable to disciplinary action.

Sanction

22. At the sanction stage, the Panel considered a sanction bundle prepared by RICS, numbered pages 1-20.

23. The documents presented included a second statement from Mr Joe Poole, dated 30 May 2018, which informed the Panel of the Relevant Person's CPD history. He confirmed that the Relevant Person was issued with a Caution for non-compliance with CPD requirements for the year 2013, when he recorded no hours and that he was issued with a Caution and a fine for the year 2016, when no hours were recorded. A statement from Ms Hayley Moore, RICS Global Workflow Team Manager confirmed that having checked RICS' systems, it was evident that the Relevant Person had been sent notification of these decisions.

24. The Panel's attention was directed to RICS' Sanctions Policy in respect of CPD breaches. Paragraph 21.1 provides that policy is as follows:

- the appropriate order for a single breach is a Fixed Penalty (Caution);
- for a second breach within 10 years of receipt of a Caution, a Fixed Penalty (Caution and fine);
- and for a third breach within 10 years of receipt of a Caution, referral to Disciplinary Panel with a presumption of expulsion.

Decision on Sanction

25. The Panel bore in mind that the purpose of a disciplinary sanction is not to be punitive, though that may be its effect. The purpose of a sanction 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.

26. The Panel paid careful heed to the advice of the Legal Assessor and to RICS' sanctions guidance. It considered carefully whether any mitigating or aggravating factors were present in this case. The Panel considered the issue of proportionality in weighing up the most appropriate response.

27. The Panel was able to identify the following mitigating factors.

- The Relevant Person had difficult domestic and personal issues over 2016/2017 including the health and death of family member, which the Panel accepted distracted him from his professional obligations
- He expressed his apology for the failure
- He expressed his intention to comply with his CPD obligations in the future
- He has insight into the importance of recording CPD
- He has already undertaken significant CPD for the year 2018
- He has belatedly engaged with RICS

28. The Panel considered that the following aggravating factors were present:

- The Relevant Person had previously been sanctioned in respect of CPD breaches on two occasions, namely a Caution for 2013 and a Caution and Fine for 2016.
- He has not paid the fine for 2016
- He failed to comply despite multiple reminders from RICS and he had previously complied with his obligations so was clearly aware of the process for doing so

29. 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.

30. The Panel first considered whether to impose a sanction. 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.

31. The Panel went on to consider a Caution, but concluded that the failure could not be described as minor. It concluded that a Caution would not reflect sufficiently the seriousness of the case, recognising the cumulative pattern of non-compliance over two previous years and the fact that a Caution had already been imposed for the years 2013 and 2016. The Panel did not consider that its concerns in this case, including the risk to the public, would be adequately addressed by the imposition of a reprimand. Recording is necessary so RICS can ensure that members comply with the requirements and this promotes professional standards and enables RICS to protect the public.

32. The Panel was mindful that paragraph 21.1 of the Sanctions Policy provides for a presumption of expulsion 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 mindful of the fact that the Relevant Person does appear to recognise the importance of undertaking and recording CPD and in the circumstances considered that a Condition and a Fine were appropriate and proportionate. However, the Panel considered that to go beyond a Condition

accompanied by a Fine would be excessive and disproportionate in the circumstances having balanced the aggravating and mitigating factors.

33. The Panel's decision was to impose a fine of £750 (to include the 2016 fine of £250 which had not been paid) and to impose a Condition in the following terms:

- As a condition of continuing membership Mr O'Reilly is directed to comply with the RICS CPD requirements for 2018 by completing his CPD hours for the year 2018 by 31 December 2018 and recording his 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.

Costs

34. RICS applied for costs in the sum of £1,950 pursuant to Supplement 2 to the Sanctions Policy. The Panel noted that a schedule of costs had been provided to Mr O'Reilly with the Notice of Hearing.

35. The Panel noted that Mr O'Reilly did not detail his financial circumstances but made a general observation about his ability to pay the entire sum sought immediately. The Panel noted that the hearing had taken less time than the estimate and therefore considered it fair to reduce the sum claimed by £200 in relation RICS' attendance. Accordingly it directed that Mr O'Reilly pay the costs of RICS in the sum of £1,750.

Publication

36. The Panel 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 and in the RICS Modus.

Appeal Period

37. Mr O'Reilly has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 58 of the Rules.

38. In accordance with Rule 59 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.