

Disciplinary Panel Meeting

Case of

**Mr Gregory Cox FRICS, FCABE, MAE, MCI Arb [0086455]
Surbiton, KT5, UK**

On

Tuesday 11 September 2018

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

Panel

Helen Riley (Surveyor Chair)
Imran Benson (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. Mr Cox replied to the Notice of Hearing by a letter dated 21 August 2018. In the letter, Mr Cox did not explicitly admit the charge but indicated that he had been "*totally preoccupied*" with health issues over the last two years and indicated that it was an

oversight that he had let his RICS membership “run on”. 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 Mr Cox’s home address on 9 March 2017 informing him of the Fixed Penalty which had been issued to him for CPD non-compliance in 2016. This letter stated: “*If you fail to comply with CPD requirements in 2017, you will be referred to a Disciplinary Panel*”. Mr Cox was also sent a number of emailed reminders as a result of missing the 31 January 2018 deadline for recording his CPD. These made it explicit that he risked a sanction unless he took immediate action.

Service

6. A Notice of Hearing, together with the evidence bundle was sent via email to Mr Cox’s preferred email address held by RICS on 13 August 2018. A copy of the Notice and electronic delivery receipt for it had been produced to the Panel. A statement from Maria Choudhury, Regulatory Tribunal Executive, dated 20 August 2018 confirmed that the evidence bundle had also been sent by email with the Notice of Hearing. Mr Cox’s subsequent response dated 21 August 2018 suggested that he 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. Mr Cox had been advised of his right to an oral hearing in the Notice of Hearing 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 20 June 2018 setting out Mr Cox's online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2017 and he 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 Mr Cox'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 Mr Cox 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 20 June 2018 which indicated that Mr Cox 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 Mr Cox's third such breach.

Decision

15. In his letter dated 21 August Mr Cox had written:

"I make the following submissions:

I have retired largely due to ill health ...

In the two years prior to terminating my membership I cancelled my valuer registration and reduced my membership to part-time. I also stopped carrying out building surveys as too risky health wise, I only did party walls and contract management.

I should have retired earlier but I am not being replaced and therefore there is no-one to hand over to.

Over the last two years or so I have been totally preoccupied with health issues ... I should have cancelled my RICS membership earlier, it was an oversight that I let it run on."

The Panel took into account the fact that Mr Cox had no previous disciplinary history, had been unwell and that he had apparently intended to retire and cancel his membership but had not done so in time.

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.
- It was clear that Mr Cox had understood the CPD requirements and indeed had understood the need to explain to RICS that he was only working part-time, but had not sought any relevant concession exempting him from the CPD requirements such as the retirement concession.
- His comment in his email of 10 July 2018 that: "...I fail to understand the importance of undertaking CPD in one's final year of work, it does seem to me to be a futile exercise" suggested a lack of understanding of the importance to the public and the profession of compliance with the rules.
- He had been sent a number of prompts by email and letter that he risked disciplinary action if he did not comply which he had apparently ignored up until the point he was informed that the matter would be referred to a Disciplinary Panel.

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. As noted above, Mr Cox should have been aware of his responsibility to ensure that he complied with his CPD obligations. In addition, the Panel noted that he had been sent numerous reminders by RICS.
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 Mr Cox had already received two Fixed Penalties for previous breaches. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Cox's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.
20. In considering whether to require Mr Cox 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 Mr Cox should have been completing and recording his 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. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. He had previously received a fine for a breach of the CPD requirements but this had clearly not served as an adequate warning. Mr Cox's repeated failure to abide by his professional responsibilities was not acceptable regardless of his current circumstances. A fine would not address the issue of compliance in this case.
22. Having taken into account all the information before it, the Panel decided that it would be proportionate and appropriate to the risk in this case to impose the following condition:
 - As a condition of his continuing membership, Mr Cox is directed to comply with the 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.

23. If Mr Cox is intending to retire, he should apply for the appropriate concession, which if granted, allows a CPD exemption, or alternatively resign his membership.
24. 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. Having carefully considered all facets of the case, the Panel considered that to do so at this stage would be excessive and disproportionate.

Publication

25. 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

26. RICS applied for costs of £400.
27. 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.
28. The Panel concluded that it was appropriate for Mr Cox 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.
29. The Panel orders that Mr Cox pays to RICS costs in the sum of £400.

Appeal Period

30. Mr Cox has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
31. 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.