

Disciplinary Panel Meeting

Case of

**Miss Zainab Musaji [6498352]
London, NW9, UK**

On

Tuesday 31 July 2018

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

Panel

John Anderson (Lay Chair)
Patrick Bligh-Cheesman (Lay Member)
Christopher Pittman (Surveyor 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. Miss Musaji had not responded at all to the Notice of Hearing. 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 Miss Musaji's work 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 stated: "*If you fail to comply with CPD requirements in 2017, you will be referred to a Disciplinary Panel*". Miss Musaji would also have been sent a number of emailed reminders as a result of missing the 31 January 2018 deadline for recording her CPD. These made it explicit that she risked a sanction unless she took immediate action.

Service

6. A Notice of Hearing and the evidence bundle were sent by emails dated 28 and 29 June 2018 respectively to Miss Musaji's preferred email address held by RICS. A copy of the Notice and electronic delivery receipts for the service emails had been produced to the Panel. Miss Musaji had not responded to the emails. 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. Miss Musaji had been advised of her 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 21 June 2018 setting out Miss Musaji's online CPD record and exhibiting the relevant records. This showed that she had not recorded any CPD for 2017. She had not received any concession from RICS for that year which would exempt her from the requirement to undertake and record CPD.
9. The RICS records contained a note of telephone conversation between Miss Musaji and Joe Poole on 22 February 2018 as follows:

“Spoke to Miss Musaji and she advised me that she hasn't done any CPD for 2017 just down to high work volumes and not having the time. Mentioned that she may have done more than she actually realised and referred to the Annex A on the website. She said she would have a look at this and if she has done enough she will get on and record this but understands the circumstances if she doesn't record any CPD. Asked what happens in relation to her membership and advised about this in terms of the DD already set up.”
10. Miss Musaji had not subsequently logged any CPD for 2017.
11. The Panel bundle contained a further statement from Joe Poole dated 21 June 2016 which indicated that Miss Musaji had received a Caution for failure to comply with the CPD requirements in 2016 and a Caution and Fine in 2016 for a further breach. This was therefore Miss Musaji's third such breach.
12. Accordingly the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

Liability to Disciplinary Action

13. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Miss Musaji'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.
14. Accordingly, the Panel was satisfied that Miss Musaji was liable to disciplinary action.

Sanction

Panel's Approach

15. 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.

16. 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.

Decision

17. The Panel did not have the benefit of any submissions from Miss Musaji that would help explain her failure to comply with the CPD requirements.

18. 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 from the note of the telephone conversation with Joe Poole on 22 February 2018 that Miss Musaji understood that she was subject to the CPD requirements and was informed of the consequences of non-compliance. She had apparently decided not to remedy the issue despite this.

19. 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.

20. 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 Miss Musaji had been sent numerous reminders by RICS. As noted above, she was clearly aware of her responsibility to ensure that she complied with her CPD obligations.

21. 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 Miss Musaji 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 Miss Musaji's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.

22. In considering whether to require Miss Musaji 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 is 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 Miss Musaji 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.

23. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. She had previously received a fine for a breach of the CPD requirements but this had clearly not served as an adequate warning. Miss Musaji's repeated failure to abide by her professional responsibilities was simply unacceptable for someone who wished to remain part of a respected profession.
24. For similar reasons, the Panel considered and dismissed the imposition of a condition on Miss Musaji's continuing membership as an adequate response to the misconduct demonstrated by this case. It also noted that Miss Musaji was required to complete and record CPD in any event and it was not clear what purpose it might serve to impose a condition relating to her future completion of CPD in the circumstances.
25. 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. Given that Miss Musaji had not offered any explanation of her conduct, the Panel considered there was no good reason in this case to depart from the Sanctions Policy. Having carefully balanced the aggravating and mitigating factors, the Panel concluded that the only appropriate sanction in this case was expulsion. It therefore ordered that Miss Musaji be expelled from membership of RICS.

Publication

26. 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

27. RICS applied for costs of £400.
28. 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.

29. The Panel concluded that it was appropriate for Miss Musaji 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.
30. The Panel orders that Miss Musaji pays to RICS costs in the sum of £400.

Appeal Period

31. Miss Musaji has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
32. 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.