

Disciplinary Panel Hearing

Case of

Mr Christopher Gadsden MRICS [1150964]

UK

On

Wednesday 25 July 2018

At

By Telephone conference

Panel

Angela Brown (Lay Chair)
Ruth Brutnall (Lay Member)
Joshua Askew (Surveyor Member)

Legal Assessor

Chris Hamlet

RICS Representative

This was a paper hearing, with written representations prepared on behalf of RICS.

The formal charges are:

The charge against Mr Gadsden 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.'

Mr Gadsden is therefore liable to disciplinary action under Bye-law 5.2.2(c).

Notice/Proceeding in Absence:

Mr Gadsden was given notice by email of 21 June 2018 that this case was to proceed by way of written representations ie: a paper hearing, in accordance with Rule 43a(a).

The Panel received advice from the Legal Assessor as to the Rules regarding service in respect of paper hearings. It concluded Notice had been properly served in accordance with R43a(a).

The Panel next considered whether to proceed in the absence of Mr Gadsden. The Legal Assessor's advice was sought and accepted. The Panel was referred to the case of R-v-Jones [2002] UKHL 5, which Tait v The Royal College of Veterinary Surgeons (RCVS) [2003] UKPC 34 states is also applicable to professional conduct proceedings. The Panel were further referred to the case of GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162, in which the Court of Appeal ruled that the regulator's responsibility was to communicate the Notice of Hearing to the address provided by the Registrant and no more.

The Panel in this case took account of the fact, confirmed by the statement of Ms Emma Jones dated 6 July 2018, that Mr Gadsden has been emailed the Notice in accordance with the Rules, to his preferred email address as notified to RICS, and he has responded by way of written representations within a listing questionnaire dated 2 July 2018. The Panel duly concluded it was appropriate to proceed in his absence.

Evidence:

The Panel received a bundle containing material relevant to each stage of the proceedings. On advice from the Legal Assessor, the Panel initially took account of the material only insofar as it was relevant to its decision on the charge and liability to disciplinary action. This included Case Summaries on behalf of RICS and statements from Mr Joe Poole, RICS CPD administrator, (of which account was taken only in respect of the failure to record CPD for the year 2017).

Burden and standard of proof:

RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. That is a single unwavering standard of proof, though the more unlikely an allegation the more cogent the evidence that the Panel might require to prove it. There is no requirement for Mr Gadsden to prove anything. The Panel has in mind throughout its deliberations that the right to practice a profession is involved in these proceedings and proceeds upon the basis that the Human Rights Act 1998 will apply. It bears in mind in particular Mr Gadsden's right to a fair trial and respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment.

Facts:

The Panel had regard to the evidence produced that Mr Gadsden, as a matter of fact, had not completed and recorded any CPD between 1 January 2017 and 1 February 2018. That evidence comprised a print out of Mr Gadsden's CPD record and the statements on behalf of RICS referred to above.

It was noted that there is no evidence that Mr Gadsden has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement.

The Panel concluded that as a matter of fact the charge was made out.

Liability to Disciplinary action:

The Panel went on to consider whether Mr Gadsden was liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the Legal Assessor. This question is one for the Panel's judgment. The Panel considered that failure to carry out a condition of membership which is there to ensure members retain current knowledge and skills, is serious. Mr Gadsden has provided no evidence of CPD activities having been undertaken over this period, which prevents RICS from monitoring his compliance with his professional obligations and tends to undermine public confidence in the profession.

The Panel took into account the fact that the CPD policy was 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.

It concluded that Mr Gadsden was liable to disciplinary action.

Sanction:

Having found the charge proved and determined that Mr Gadsden was liable to disciplinary action, the Panel referred to a further bundle of material concerning sanction. This contained further written submissions on behalf of RICS regarding prior breaches of CPD obligations in 2015, for which he received a Caution and 2016, for which he received a Caution and a Fine. In addition, the Panel took account of statements from Ms Hayley Moore, Global Workflow Team Manager at RICS, confirming the mailings sent to Mr Gadsden about his CPD obligations, including a postal reminder of the consequences of a further breach.

The Panel bore in mind that the purpose of sanctions is not to be punitive, though that may be their 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 matters found proved.

The Panel paid careful heed to the advice of the Legal Assessor and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case.

The Panel was advised that in determining what, if any sanction to impose on Mr Gadsden, Rule 21.1 of the Sanctions Policy provides for a presumption of expulsion in the event of a third breach of CPD obligations within 10 years. However, this presumption is capable of being displaced if the circumstances permitted. The advice, in keeping with the approach of other regulators, was that any sanction imposed must be proportionate, and therefore ought to involve consideration of the lowest sanctions available first and only moving to the next level of sanction if it decides the lesser sanction is inappropriate or otherwise fails to meet the public interest. The Panel bore in mind that more than one sanction may be imposed. If conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.

Mitigating/Aggravating features:

The Panel took account of Mr Gadsden's written submissions, including the assertion that a change of employment to a smaller firm early 2017 had led to a "change of work patterns and somewhat clumsy email administration". He suggested that prior to the change, there had been internally generated "group reminder emails" that assisted him in completing his CPD log.

The Panel were not persuaded by this explanation given the clear evidence that Mr Gadsden had failed to record any CPD in 2015 and 2016, as well as 2017.

However, the Panel did acknowledge that Mr Gadsden's had subsequently complied with his CPD recording obligations for 2017, albeit in March 2018, had apologised and undertaken to ensure it would not occur again. This tended to mitigate the breach.

The following features of the case were considered to aggravate the breach:

- Prior cautions for similar breaches in 2015 and 2016
- Receipt of a fine for the 2016 breach

The following features of the case were considered to mitigate the breach:

- He was a relatively new member of the profession – being admitted only in May 2013
- There has been full compliance with the 2017 CPD recording obligations, albeit late
- He has provided an apology and a commitment to ensure the breach does not occur again

Decision on Sanction:

The Panel considered the matter too serious for no sanction to be imposed. It took account of the guidance at paragraph 21 of the Sanctions Guidance which provides that a third breach of Rules regarding CPD within 10 years of receipt of a caution raises a presumption of expulsion.

However, the Panel considered that in the circumstances of Mr Gadsden's subsequent compliance with his CPD recording obligations for 2017, the presumption of expulsion should not apply. It gave careful consideration to the lesser sanctions available to them within the Sanctions Guidance. It concluded that whilst a further Caution was inadequate in view of the history of prior cautions, a Caution, together with a further fine of £300, was an appropriate and proportionate response in order to mark the seriousness of the breach, maintain public confidence and trust in the profession and uphold proper standards of conduct.

Accordingly, the Panel orders Mr Gadsden be issued a Condition and a fine of £300.

The Condition is made in the following terms:

"As a condition of continuing membership, Mr Gadsden is directed to comply with the CPD requirements for the year 2018 by the required deadline. Failure to comply with this condition will result in automatic expulsion from membership, without further reference to a disciplinary panel."

Publication

The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of

the Panel to be published on RICS' website and in RICS Modus. The Panel sees no reason for departing from the normal practice in this case.

The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

RICS made an application for costs in the sum of £400. The Panel acceded to that application in order that the costs of the hearing are not borne by the profession.

Appeal Period

Mr Gadsden may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rules 58 – 70 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.

The Honorary Secretary of RICS may require a review of a finding or penalty imposed by a Disciplinary Panel within 28 days from service of the notification of the decision, in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.