

## **Disciplinary Panel Meeting**

### **Case of**

**Mr David Hughes [0384088]  
Ringwood, UK**

### **On**

Wednesday 18 July 2018

### **At**

RICS 55 Colmore Row, Birmingham, B3 2AS

### **Panel**

John Anderson (Lay Chair)  
Dr Angela Brown (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. Mr Hughes 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. A letter was also sent by post, dated 9 March 2017, to members who had failed to log CPD for the three preceding years. The members were informed in that letter that a third breach within a ten year period would be referred to a Disciplinary Panel and was likely to result in expulsion from RICS.

## Service

6. A Notice of Hearing, dated 15 June 2018, was sent by email to Mr Hughes’ email address held by RICS at the relevant time. A copy of the Notice and a certificate of delivery had been produced to the Panel. Mr Hughes had not responded to the email. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a.
7. Mr Hughes 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 7 June 2018 setting out Mr Hughes’s online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD at all since 2013. He had however been granted full CPD exemptions for 2014 and 2016, apparently on the basis that he was

working in Rwanda as a charity worker (and not therefore practising) and had no way of completing CPD there.

9. In an email contained in the bundle dated 27 March 2018, Mr Hughes had written:

*“My parents recently received a letter from Mr Ian Holme regarding my MRICS membership. I am still living in Rwanda and have no options for CPD training on the ground here. I am very keen to stay a member, but am unsure what I can do with the circumstances. I really appreciate this is third year (sic) running, but as there are no options for CPD in the area I don’t know what do.*

*I am running a charity here with my wife, but of course I need to keep my qualifications as I could well return to practising one day ( I still pay my membership each year). Any advice would be very much appreciated.”*

10. RICS had responded on 5 April 2018 to the effect that this information would be conveyed to the Head of Regulation to perform a review. The outcome of the review was (presumably) that Mr Hughes’ case was referred to the Disciplinary Panel.
11. The Panel bundle contained a further statement from Joe Poole dated 15 June 2016 which indicated that Mr Hughes had received a Caution for failure to comply with the CPD requirements in 2013 and a Caution and Fine in 2015 for a further breach. This was therefore Mr Hughes’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 Mr Hughes’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 Mr Hughes 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 noted that Mr Hughes had not recorded any CPD since the introduction of the requirements. He was apparently however not practising as a surveyor and was instead working for a charity in Rwanda. It appeared to the Panel from the email correspondence between Mr Hughes and RICS in the bundle before it, that Mr Hughes may have been confused about the need to apply on an annual basis for an exemption. Further it was not clear whether RICS had advised him on that possibility, as he had requested. The Panel also gave Mr Hughes some credit for engaging with RICS about this issue, even if that contact was sporadic.
18. While the Panel noted RICS' submission to the effect that even in Rwanda it might be possible to complete informal CPD and/or access formal CPD online, Mr Hughes had been granted an exemption from the CPD requirements in previous years on the basis of the same prevailing conditions (i.e. that he was abroad and not practising). It seemed to the Panel that he might then have been entitled to an exemption for the CPD year 2017 had he applied for one. If his situation remained unchanged, he might similarly be granted an exemption for subsequent years, though the Panel observed that Mr Hughes might be better advised to consider applying for the non-practising concession.
19. 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 correspondence that Mr Hughes understood that he was subject to the CPD requirements and it remained his responsibility either to comply or to take effective steps to regularise the situation.
20. 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.
21. 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 Mr Hughes had been sent

numerous reminders by RICS. However, whether Mr Hughes received these reminders or not, it remained his responsibility to ensure that he complied with his CPD obligations. It was clear from his subsequent emails that he was fully aware of the requirements, though as indicated above, it appeared to the Panel that he may have retained some confusion about his ability to apply for a further exemption.

22. 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 Hughes had already received two Fixed Penalties for previous breaches.
23. The Panel then considered the imposition of a reprimand. In the particular circumstances of this case and taking into account that it appeared that Mr Hughes would have been eligible for a further exemption from the CPD requirements, the Panel concluded that a reprimand was a fair and proportionate sanction to reflect the seriousness of Mr Hughes's repeated failure to comply with the requirement to complete and record CPD on the RICS portal. In arriving at this decision, the Panel took into account the relatively low risk presented by Mr Hughes.
24. The Panel was mindful that paragraph 21.1. of the Sanctions Policy 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. However, the Panel considered that to go beyond a reprimand given the facts presented to it in this case would be excessive and disproportionate in the circumstances, having carefully balanced the aggravating and mitigating factors.

## **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 Hughes 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 Hughes pays to RICS costs in the sum of £400.

### **Appeal Period**

30. Mr Hughes 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.