

Disciplinary Panel Meeting

Case of

**Mr Jan Stolarski [0066989]
Surrey, GU24, 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. Mr Stolarski had replied to the Notice of Hearing by email on 9 July 2018 to the effect that he had written to RICS on 29 June 2018 notifying it of his resignation "*due to a change in my circumstances*". He did not provide any further representations other than

suggesting RICS would be better served in not pursuing a disciplinary 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. Mr Stolarski also received a letter by post, dated 21 March 2018, as a result of missing the 31 January 2018 deadline for recording his CPD. He was informed in that letter 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 Stolarski’s email address held by RICS on 28 June 2018. A copy of the Notice and the electronic delivery receipt had been produced to the Panel. Mr Stolarski had responded to the Notice by email dated 9 July 2018. The RICS Solicitor Respondent to that email on 28 July 2018 informing Mr Stolarski that his resignation could not be processed until these proceedings were concluded and that the matter would therefore remain listed for hearing. The Panel was therefore satisfied that Notice had been properly served in accordance with Rule 43a. Having considered all the circumstances, the Panel was content that it was fair and in the public interest to proceed to consider the case.
7. Mr Stolarski 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 21 June 2018 setting out Mr Stolarski's online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2017.
9. Mr Poole's statement also contained a note of a telephone conversation with Mr Stolarski on 15 February 2018 as follows:

"Mr Stolarski called me back and advised me that his circumstances have now changed and he hasn't had the time to record the CPD due to these circumstances. Considering letting his membership lapse and asked if he needed to let us know. Advised on resignation process and that if he did decide to come back into membership or renew then his CPD for 2017 would play a factor in his membership going forward. He understood this and the call then ended."

10. Mr Stolarski had not resigned nor had he logged any CPD for 2017.
11. The Panel bundle contained a further statement from Joe Poole dated 21 June 2016 which indicated that Mr Stolarski had received a Caution for failure to comply with the CPD requirements in 2014 and a Caution and Fine in 2015 for a further breach. This was therefore Mr Stolarski'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 Stolarski'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 Stolarski 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 the content of Mr Stolarski's email to RICS dated 9 July 2018, in particular his attempt to resign from RICS. Mr Stolarski had demonstrated some degree of cooperation with RICS, though had not made any specific representations to assist the Panel in these proceedings.

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 correspondence and the note of the telephone conversation on 15 February 2018 that Mr Stolarski understood that he was subject to the CPD requirements and was aware that he risked disciplinary action if he did not take urgent steps to comply.
- Despite having been informed of the resignation process and the professional consequences of failing to address the situation, Mr Stolarski had done nothing other than make a belated attempt to resign his membership. This suggested an unacceptably casual approach to his regulator and his professional responsibilities.

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 Mr Stolarski had been sent numerous reminders by RICS. As noted above, he was clearly aware of his responsibility to ensure that he complied with his 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 Mr Stolarski 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 Stolarski's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.

22. In considering whether to require Mr Stolarski 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 Mr Stolarski 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.
23. 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 Stolarski's repeated failure to abide by his 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 Mr Stolarski's continuing membership as an adequate response to the misconduct demonstrated by this case. It also noted that Mr Stolarski 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 his 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 the absence of any proper mitigation from Mr Stolarski, other than his intention to resign from RICS, 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 therefore expulsion. It therefore ordered that Mr Stolarski 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 Mr Stolarski 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 Mr Stolarski pays to RICS costs in the sum of £400.

Appeal Period

31. Mr Stolarski 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.