

Disciplinary Panel Hearing

Case of

Mr Neil Glendinning MRICS [1120275]
London

On

Tuesday 24 July 2018

Telephone Hearing

Panel

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

Legal Assessor

Mark McConochie

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

Mr Glendinning has admitted the charge.

Background

1. From January 2013 RICS members were obliged to complete 20 hours CPD activity by 31 December of each calendar year.
2. Rule 6 provides: **“Members shall comply with RICS requirements in respect of continuing professional development.”**
3. 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 their CPD activity online.
4. For the CPD year 2013 members who had not recorded sufficient CPD via the RICS online portal were issued with a caution. For the CPD year 2015 members who had not recorded sufficient CPD in either one of the two previous years, and who had again failed to record sufficient CPD in 2015 via the RICS online portal, were issued with a caution and a fine. Members were informed that a third breach within a 10-year period would be referred to a Disciplinary Panel and was likely to result in expulsion from RICS.

Service and Proceeding in Absence

5. A Notice of Hearing, dated 20 June 2018, was sent to Mr Glendinning. The Notice was sent by postal delivery only to the address held on Mr Glendinning’s RICS member contact record. A copy of the Notice and a signed witness statement dated 6 July 2018 from Emma Jones, Regulatory Tribunal Executive at RICS, was produced as proof that the Notice was sent.

6. The Panel was satisfied that Notice had been properly served in accordance with Rule 23 of the Disciplinary Registration and Appeal Panel Rules 2009 (read with Rule 43a) as it:
 - i) confirmed the charge;
 - ii) gave the required 28 days' notice of the date, time and venue of the hearing;
 - iii) enclosed the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended);
 - iv) invited Mr Glendinning to indicate within seven days whether he wished to request an oral hearing.
7. Having determined that service of the Notice of today's hearing had been properly given in accordance with the Rules, the Panel went on to consider whether to proceed with a paper hearing or adjourn in order to conduct an oral hearing.
8. Rule 43(a) provides that there will be no oral hearing of this case unless an application has been made by the Member to have an oral hearing under Rule 23(e) or unless the panel decides that it is necessary in the interests of justice or in the public interest to refer the matter to an oral hearing. No application for an oral hearing had been made by Mr Glendinning in this case.
9. The Panel considered all of the circumstances and the need for regulatory proceedings to be conducted fairly but also the public interest in ensuring that regulatory proceedings are dealt with promptly. The Panel was mindful of the need to consider very carefully whether this case could properly – and fairly – be considered without Mr Glendinning being able to present his case in person, or through a representative, and bore in mind as a general principle that a Member who is facing a disciplinary allegation has the right to be present and represented at a hearing.
10. The Panel determined that it was fair, reasonable and in the public interest to proceed with a paper hearing in this case in Mr Glendinning's absence. There is a strong public interest in ensuring that regulatory proceedings take place as expeditiously as possible. Mr Glendinning had specifically indicated in his completed Listing Questionnaire that he did not wish to attend an oral hearing and he had submitted written representations which would be taken into account by the Panel when considering the case against him. The Panel considered that in these circumstances a fair consideration of the case against Mr Glendinning could take place without the need to adjourn for an oral hearing to be arranged.

Findings of Fact

11. The Panel was provided with Mr Glendinning's CPD records from the RICS online system which were exhibited to a witness statement dated 31 May 2018 from Joe Poole who is employed by RICS as a CPD administrator.
12. The Panel found, based on this evidence, that Mr Glendinning:
 - (i) Had not completed and recorded any CPD between 1 January 2017 and 1 February 2018;
 - (ii) Did not have in place any full or partial concession from RICS in relation to the completion of his CPD for that year.
13. Mr Glendinning has admitted the charge. The Panel found, based on the evidence in the RICS bundle and taking into account Mr Glendinning's admission, that he did not complete and record any CPD during 2017. Accordingly, the Panel found the charge proved.

Liability to Disciplinary Action

14. The Panel considered the question of whether or not Mr Glendinning was liable to disciplinary action to be a matter for its collective judgment, taking Mr Glendinning's admission into account.
15. The Panel was mindful that the CPD policy had 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. CPD is intended to ensure consistent standards within the profession and so that members maintain up to date knowledge and are able to demonstrate this through proper and accurate recording of their CPD. Ensuring that Members complete CPD is an important requirement in the interests of ensuring public protection and confidence in the profession and RICS as regulator. The completion and recording of CPD is not difficult and a failure to do so is a serious matter.
16. Accordingly, the Panel was satisfied in all of the circumstances that Mr Glendinning's conduct in not completing and recording any CPD in the 2017 year was sufficiently serious to render him liable to disciplinary action.

Sanction

Panel's Approach

17. The Panel took into account the written submissions submitted on behalf of RICS and Mr Glendinning, the RICS Sanctions Policy and Mr Glendinning's disciplinary history which is as follows in related to CPD related sanctions:

- 2015 - Caution
- 2016 - Caution and fine.

18. 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.
19. The Panel took into account the following mitigating circumstances:
- Mr Glendinning's admission of the charge in full;
 - That Mr Glendinning had not shown a total disregard for his CPD obligations having completed and recorded the required number of hours of CPD in 2013 and 2014. He had also provided evidence of some CPD completed so far in 2018 and of some informal CPD having been completed, but not recorded, at times when he had been practising in 2015. The Panel also took into account a CPD activity log – which appears to have been recently produced by Mr Glendinning - as evidence showing that he had completed 3 hours of CPD during 2017 and 11.5 hours CPD in 2018. The Panel also noted evidence in Mr Glendinning's letter dated 6 July 2018 (which was not disputed by RICS) as to some informal activities having been undertaken by him during 2017 and 2018 in order to stay up to date, although no details of those activities were made available;
 - That Mr Glendinning was not practising as a surveyor or offering any other form of professional advice to the public between April 2016 and May 2018 covering the period of time in 2017 material to the charge;
 - That reminders sent to Mr Glendinning about his CPD obligations during 2017 had been sent to an email address to which he did not have access at that time (and from May 2016) meaning he may not have received those reminders;
 - That Mr Glendinning was suffering from ill-health at the material time and was having to deal with some difficult challenges in his personal and business life.
20. However, the charge found proved represented a third breach of the CPD requirements, Mr Glendinning having failed to complete and record the required number of hours of CPD over three separate years. Previous sanctions in relation to those CPD breaches had not ensured that Mr Glendinning had complied with his CPD obligations and the Panel considered that to be a serious aggravating feature of this case. Mr Glendinning states that he did not receive any emails from RICS from May 2016. However, he

received a caution for a previous CPD breach relating to the 2015 year when he was practicing as a surveyor and would have been aware at that time, if not before, of the requirements and the possible consequences of failing to comply.

21. It would have been open to Mr Glendinning to apply to the RICS for a concession in relation to his CPD obligations during periods when he was not practising. He did not do so stating that he was not aware of the need to apply for a concession in advance and appears to have only taken action when he was put on notice of the possibility of disciplinary action by RICS. It is the responsibility of Members to ensure that they are familiar with all the professional rules and requirements of practice as a surveyor. That is part of the responsibilities and benefits of being a Member of the RICS and it is insufficient for Members to say they were not aware of their professional obligations – and any provision for them to apply for an exemption from those obligations - so for that reason didn't comply with them. Members of RICS have a professional responsibility to ensure that their contact details on the RICS system are up to date – that is an integral part of being a member of a regulated professional and doing so is not difficult.
22. Having carefully considered all of the mitigating and aggravating circumstances of this case, the Panel first considered whether to impose any sanction at all. The Panel concluded that the repeated failure by Mr Glendinning to complete and record CPD was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. The Panel found no exceptional circumstances to be present in this case.
23. The Panel considered whether to impose a caution. The Panel decided that a caution was not appropriate and proportionate because it would not adequately reflect the seriousness of the conduct, recognising the cumulative pattern of non-compliance and the fact that a caution had already been imposed for previous breaches.
24. The Panel also considered a reprimand but considered that to be inappropriate in this case where the risk of public harm on account of the breach – taking into account that Mr Glendinning was not practicing at the material time - to be low.
25. The Panel considered a condition to be appropriate and justified in this case to allow Mr Glendinning one final opportunity to comply with his CPD obligations. The Panel therefore imposed a condition in the following terms:
 - As a condition of his continuing membership Mr Glendinning 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.

26. The Panel went on to consider whether to impose or an undertaking or a fine but decided that a condition on Mr Glendinning's membership giving him a final chance to comply with his CPD obligations, was proportionate and justified in this case, also taking into account his ability to pay a fine.
27. 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, taking into account the particular circumstances and the history of this case and the fact that Mr Glendinning had demonstrated some regard to his CPD obligations in previous years and in this current year, the Panel considered that expulsion is not an appropriate and proportionate sanction to impose, provided Mr Glendinning complies with his CPD obligations in full for 2018. If he doesn't he will be expelled from membership.

Publication

28. The Panel considered the policy on publication of decisions - The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel considered there to be no reason to depart from the presumption that decisions will be published on the RICS website and in the RICS magazine Modus.

Costs

29. RICS have applied for costs in the sum of £400 and Mr Glendinning had submitted evidence as to his financial means which the Panel took into account. On balance, the Panel decided not to require Mr Glendinning to pay costs in this case taking into consideration his limited means.

Appeal Period

30. Mr Glendinning 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.