

Disciplinary Panel Meeting

Case of

**Mr Neil Hendry [143318]
Twickenham, TW1, UK**

On

Wednesday 1 August 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 Hendry had replied to the Notice of Hearing by email on 11 July 2018. He had also returned the standard listing questionnaire in which he had admitted the charge against him and accepted that he was liable to disciplinary action. The Panel therefore proceeded on the basis that the above charge was 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 Mr Hendry’s home address on 9 March 2017 informing him of the Fixed Penalty which had been issued to him 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*”. Mr Hendry was also sent a number of emailed reminders as a result of missing the 31 January 2018 deadline for recording his CPD, though on his account he had not received these until he had “unlocked” his email account on 9 July 2018. These made it explicit that he risked a sanction unless he took immediate action.

Service

6. A Notice of Hearing was sent via email to Mr Hendry’s email address held by RICS on 21 June 2018. A copy of the Notice and electronic delivery receipts for it and the bundle (which was sent in 3 further emails on 21 June 2018) had been produced to the Panel. Mr Hendry had responded to the Notice by email on 11 July 2018. The Panel was therefore 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. Mr Hendry 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 19 June 2018 setting out Mr Hendry's online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2017 nor had he been granted any concession for the year.

9. In the completed Listing Questionnaire dated 11 July 2018, Mr Hendry gave the following explanation:

"For the past six years I have worked as a contractor in Nigeria providing services to the local affiliate of a major oil company.

For the past 2 – 3 years I have experienced issues with my email account, and only managed to unlock this finally on Monday (9th July) finding myself facing more than 30,000 unread emails.

I returned to the UK on 10th July and came across RICS communications concerning CPD compliance. I did in (sic) complete the necessary 20 hours CPD during 2017 however, I failed to record this and upload to the CPD Log by the due date.

Since I have been asked to respond by close of business today (11th July) I am doing so, but I will review my records and forward details of qualifying CPD under separate cover.

Whilst I should have informed the Institution and provided an alternative email address, I did not do so; consequently, I am not going to offer any excuses and will accept the decision of the panel."

10. The Panel bundle contained a further statement from Joe Poole dated 19 June 2016 which indicated that Mr Hendry had received a Caution for failure to comply with the CPD requirements in 2015 and a Caution and Fine in 2016 for a further breach. This was therefore Mr Hendry's third such breach.

11. Accordingly the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

Liability to Disciplinary Action

12. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Hendry'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.

13. Accordingly, the Panel was satisfied that Mr Hendry was liable to disciplinary action.

Sanction

Panel's Approach

14. 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.

15. 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

16. The Panel noted the points Mr Hendry advanced in the Listing Questionnaire, in particular the issues with his email account and his assertion that he had undertaken the necessary 20 hours CPD during 2017 but had failed to record it. Mr Hendry has demonstrated some degree of cooperation with RICS, though has not subsequently provided evidence of his 2017 CPD as he had promised to do in his email of 11 July 2018. The Panel gave him some credit for his relatively prompt and candid admission.

17. 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 Hendry understood that he was subject to the CPD requirements and was aware that he risked disciplinary action if he did not take steps to comply.
- He accepted that it was his duty to provide RICS with an effective email address but had not done so. This was unacceptable behaviour for a regulated professional.

18. 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.

19. 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 Hendry 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.

20. 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 Hendry 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 Hendry's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.
21. In considering whether to require Mr Hendry 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 Hendry 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.
22. 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 Hendry's repeated failure to abide by his professional responsibilities was simply unacceptable for someone who wished to remain part of a respected profession.
23. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Hendry's continuing membership as an adequate response to the misconduct demonstrated by this case. It also noted that Mr Hendry 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.
24. 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. The Panel considered there was no good reason in this case to depart from the Sanctions Policy. As Mr Hendry candidly accepted in his submissions to the Panel, he could not offer any excuses for his failure to comply. 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 Mr Hendry be expelled from membership of RICS.

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 Hendry 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 Hendry pays to RICS costs in the sum of £400.

Appeal Period

30. Mr Hendry 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.