

Disciplinary Panel Meeting

Case of

**Mr Peter Nicholson [0079530]
Sunderland, SR2, 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 Nicholson had responded to the Notice of Hearing by email dated 29 June 2018 and then in a Listing Questionnaire dated 16 July 2018. In the latter document, Mr Nicholson 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 Nicholson on 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, dated 27 June 2018, together with the evidence bundle was sent by special delivery to Mr Nicholson’s contact address held by RICS. A copy of the Notice and a certificate of delivery had been produced to the Panel. Mr Nicholson had completed and returned the standard listing questionnaire indicating that he did not wish to request an oral hearing. 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 to proceed to consider the case.

Findings of Fact

7. The Panel was provided with a statement from Abbie Atkins, CPD Administrator at RICS dated 1 June 2018 setting out Mr Nicholson’s online CPD record and exhibiting the relevant records. This showed that he had recorded 19 hours CPD for 2017. Of this total,

he had recorded 7 hours of formal CPD (as against the required total of 10 hours formal CPD) and 12 hours of informal CPD.

8. In the Listing Questionnaire dated 16 July 2018, Mr Nicholson had mentioned that he was only working part-time, received an extremely modest salary and continued to suffer significant ill health.
9. RICS' records also showed that Mr Nicholson had been granted a partial exemption from the CPD requirements in 2016 (when he had recorded 16 hours CPD) on the basis of his ill health.
10. The Panel bundle contained a further statement from Joe Poole dated 5 June 2016 which indicated that Mr Nicholson had received a Caution for failure to comply with the CPD requirements in 2013 and a Caution and Fine in 2014 for a further breach. This was therefore Mr Nicholson'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 Nicholson'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 any breaches of the RICS rule on CPD recording must be regarded as serious, though it observed that Mr Nicholson's had breached the requirements in 2017 by a relatively narrow margin.
13. Accordingly, the Panel was satisfied that Mr Nicholson 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 gave Mr Nicholson credit for his cooperation with RICS, in particular his prompt admission. Further, this was not a case in which the member had simply ignored his professional obligations. Mr Nicholson had managed to record 19 hours of CPD in 2017, against a background of some personal difficulty, including ill health and partial employment. The Panel took the view that this was a narrow failure to comply with the CPD requirements, given that Mr Nicholson may have been successful in obtaining a partial exemption on the same grounds as in 2016, had he thought to apply for one.
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.
 - Mr Nicholson was clearly aware of his professional obligations and the consequences of not complying or seeking an exemption as appropriate.
18. RICS is a professional membership organisation and sets standards for its members as a condition of membership. CPD is an essential component of its regulation of the profession, which serves to reassure the public about the competence and professional standing of members.
19. The Panel first considered whether it was appropriate to impose any sanction at all. In normal circumstances, a repeated failure to record CPD would be considered serious and would generally lead to a sanction. However, the Panel took the view in this case that the overall picture in this case was of a responsible professional, who was attempting to comply despite the challenge of managing a serious illness. Mr Nicholson had received Fixed Penalties in 2013 and 2014 (the first two years of the CPD requirements) but thereafter had clearly taken steps to complete and record his CPD. He had fallen short in 2017 by a small margin. The Panel therefore took the view that this was therefore an exceptional case and one in which the only fair and proportionate disposal would be to impose no sanction.
20. 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. However, for the reasons set out above, the Panel considered that it was appropriate in this case to depart from the Sanctions Policy. Mr Nicholson should nonetheless be aware that any further breach of the CPD requirements would be unlikely to be treated as leniently.

Publication

21. 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

22. RICS applied for costs of £400.

23. 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. However, taking into account Mr Nicholson's financial circumstances, the Panel ordered that he pay the reduced sum of £200 towards RICS' costs.

24. The Panel concluded that it was appropriate for Mr Nicholson 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.

25. The Panel orders that Mr Nicholson pays to RICS costs in the sum of £200.

Appeal Period

26. Mr Nicholson has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

27. 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.