

Disciplinary Panel Meeting

Case of

**Mr Richard Johns [1135247]
Vale of Glamorgan, CF71, 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 Johns had replied to the Notice of Hearing by email on 2, 6, 26 and 30 July 2018 and had spoken to the RICS Solicitor on 27 July 2018. The effect of these emails and conversation was that Mr Johns had effectively not been practising since 2013 but had not applied for the non-practising concession. He asserted that he had undertaken more

than 20 hours informal CPD in 2017, though had not realised he had an obligation to record that CPD. 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 Johns would also have been sent a number of chaser emails, 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 and the evidence bundle were sent via separate emails to Mr Johns' email address held by RICS on 29 June 2018. A copy of the Notice and electronic delivery receipts had been produced to the Panel. Mr Johns had responded to those emails in an email dated 2 July 2018. The Panel was consequently satisfied that Notice had been properly served in accordance with Rule 43a. The RICS Hearing Officer had asked him in an email dated 30 July 2018 whether he wished to have the meeting on 31 July 2018 adjourned. Mr Johns did not take up that offer and in a subsequent email timed at 16.22 on 30 July 2018 stated: "*I am just boarding a flight and unable to speak at the moment, but will be available by telephone or email at any point tomorrow.*" Following a further email from RICS' Hearing Officer on 31 July 2018, Mr Johns confirmed that there were no further representations or documents he wished to bring to the attention of the Panel. Having considered the circumstances, the Panel was content that it was fair and in the public interest to proceed to consider the case.

7. Mr Johns 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 Johns' 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 concessions for that year. The statement also produced a note of a telephone conversation between Mr Johns and RICS on 29 March 2018 as follows:

*"Enquired about Non Prac[tice] concession
Has been non prac for years
Spoke with sim and agreed to apply
Sent docs"*

9. In an email contained in the bundle dated 30 July 2018, RICS' Solicitor had written to Mr Johns:

"...I write to confirm that we discussed this matter over the telephone on Friday 27 July 2018.

You confirmed to me that you had been non-practising since approximately 2013. You told me that you do not currently hold yourself out as MRICS, nor do you undertake work (such as Red Book valuations) for which you must be MRICS.

You told me that you were not aware of the requirement to obtain a non-practising concession but that you will apply for one now.

You indicated that even though you did not realise that you had a formal obligation to record CPD, you still completed a large amount of informal CPD throughout 2014-2018. This took the form of reading various journals and attending training and networking events. You were unable to give an indication of how many hours this accounted for but thought that in 2017 it exceeded or met the 20 hours requirement.

We discussed the forthcoming hearing and agreed that I would email you with a summary of our conversation and then you would confirm by return that it was accurate..."

10. Mr Johns replied the same day as follows:

"That accurately reflects our conversation. The only additional point I would raise is that I did speak to one of your colleagues in March, who suggested that the non practicing

category of membership was best suited to me. Perhaps incorrectly, my understanding was that I would be included in this category at membership renewal next January...”

11. The Panel bundle contained a further statement from Joe Poole also dated 21 June 2016 which indicated that Mr Johns 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 Johns’ 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 Johns’ 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 Johns 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 Mr Johns’ explanation of his circumstances as set out in his conversation with the RICS Solicitor on 27 July 2018. In particular, the Panel took into account that he had not practised or held himself out as a Member of RICS for some years and that he had in fact undertaken CPD (or at least informal CPD) during 2017 but had simply not logged it. It gave Mr Johns some credit for engaging with RICS, though

clearly he had not managed to regularise the position by applying for a concession (or recording his CPD) in sufficient time to avoid disciplinary action.

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 documents in front of the Panel that Mr Johns understood that he was subject to the CPD requirements, though he apparently misunderstood the requirement to record his CPD.

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 Johns 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 Johns 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 Johns's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.

22. In considering whether to require Mr Johns 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 imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.

23. Having considered Mr Johns' explanation, in particular the fact that he was no longer practising and had not held himself out as a Member, the Panel concluded that imposing the following condition on Mr Johns' continued membership was a proportionate and appropriate sanction in this case:

It is a condition of Mr Johns' continued membership of RICS that:

- a. He must apply to RICS and secure the "Non-practising (NOT offering any professional advice)" concession by 31 December 2018;

OR IF HE FAILS TO SECURE SUCH CONCESSION:

- b. He must comply in full with the CPD requirements for 2018;

and in default of compliance with either a. or b. above he shall be automatically expelled from membership of RICS without further reference to a Disciplinary Panel.

24. The Panel also considered whether to impose a caution or fine in addition to the above sanction, but concluded that in the circumstances of this case it would be disproportionate to do so.
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. Having carefully considered the aggravating and mitigating factors, the Panel concluded that in this case, the imposition of a condition was more than adequate to reflect the nature of the breach.

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

Appeal Period

31. Mr Johns 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.