

Disciplinary Panel Hearing

Case of

Mr Rupert Cowling MRICS

On

Thursday 14 June 2018

Telephone Hearing

Panel

John Anderson (Lay Chair)
Rosalyn Hayles (Lay Member)
Chris Pittman (Surveyor Member)

Legal Assessor

Mark McConochie

The formal charge is:

Between 1 January 2016 and 1 February 2017, you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not completed and 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 Cowling has completed and returned a Listing Questionnaire in which he 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 the 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 16 May 2018, was sent to Mr Cowling. The Notice was sent by email and post to Mr Cowling’s preferred correspondence addresses held by RICS at that time. A copy of the Notice as sent and a signed witness statement dated 6 June 2018 from the panel management officer, Emma Jones, was produced by RICS 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 2019 (read with Rule 43a) because the Notice:
 - 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 Cowling to indicate within seven days whether he wished to request an oral hearing.

7. Having determined that service of the Notice of Hearing had been properly effected 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 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.
9. The Panel considered all of the circumstances and the need for the proceedings to be conducted fairly but also the public interest in ensuring that regulatory proceedings are dealt with promptly. The Panel noted that Mr Cowling had indicated in his completed listing questionnaire that he did not wish to make a request for an oral hearing under the Rules and had therefore waived his right to be present. The Panel determined that in these circumstances it was fair, reasonable and in the public interest to proceed with a paper hearing in Mr Cowling's absence.

Findings of Fact

10. The Panel was provided with a copy of Mr Cowling's CPD records from the RICS online system exhibited to a witness statement dated 9 February 2018 from James Lynch, who is employed by RICS as a solicitor.
11. The Panel found, based on this evidence and Mr Cowling's admission, that he did not complete and record any CPD hours between 1 January 2016 and 1 February 2017 as alleged by RICS and did not have in place any full or partial concession from RICS in relation to the completion of his CPD for that year.
12. Accordingly, the Panel found the factual allegations – and the charge – proved.

Liability to Disciplinary Action

13. The Panel was satisfied that the RICS requirement to complete and record CPD is a reasonable one and that Mr Cowling's failure to comply with those requirements is sufficiently serious to give rise to liability to 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. CPD is intended to ensure consistent standards within the profession and it is very important to ensure 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, and can properly demonstrate that they have completed, CPD is a very important requirement in the interests of ensuring public protection and confidence in the profession and RICS as regulator.

14. Accordingly, the Panel was satisfied that Mr Cowling was liable to disciplinary action.

Sanction

15. The Panel took into account the written submissions made on behalf of RICS, the RICS Sanctions Policy and Mr Cowling's disciplinary history which is set out in the witness statement of Zoe Mobley dated 4 August 2017 and is as follows in related to CPD related sanctions:

2014 – a caution

2015 – a caution and fine

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. The Panel was mindful that 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. 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 and compliance is not optional. CPD is a vitally important requirement to ensure public protection and uphold standards across the membership.

18. The Panel accepted Mr Cowling's evidence – as set out in written representations that accompanied his listing questionnaire – that he had not updated his contact details with RICS when leaving a previous employer in 2014 and that as consequence some emailed reminders and letters about his CPD requirements had not been received between October 2014 and April 2017. However, the CPD requirements are not dependent - and should not be dependent - on the RICS sending reminders to its members and it is the responsibility of members to ensure that RICS has up to date contact details for them at all times. It is

not an acceptable excuse for Members not to comply with their CPD obligations by saying they didn't receive reminders from their regulator about the requirements.

19. Ms Cowling clearly understands the process of completing and recording CPD as hours were recorded by him in 2013 – before he changed employer - and more recently in 2017 and 2018. The charge which the Panel has found proved represents a repeated breach of the CPD requirements, Mr Cowling having been issued with disciplinary sanctions for the same breach in 2014 and 2015. The Panel considers this to be a very serious aggravating feature of this case.
20. The Panel considered whether, in all of the circumstances, any sanction should be imposed. 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. The Panel considered there to be no such exceptional circumstances in this case.
21. The Panel considered whether to impose a caution. The Panel concluded that a caution is appropriate and justified in this case but that it would not, of itself, reflect the seriousness of the repeated breaches of CPD requirements that are present in this case. The Panel therefore also imposed a fine of £350 on Mr Cowling to be paid to RICS within 21 days of the date of notification to him of the Panel's decision.
22. The Panel was mindful that in a case of repeated breaches of the CPD requirements such as this, there is a presumption in favour of expulsion and the Panel gave that very careful consideration. What was apparent to the Panel from the evidence is that despite historical failures to comply, Mr Cowling has - in 2017 – demonstrated compliance with his CPD obligations and has also completed some CPD for the current year. This, in the Panel's view, weighs against expelling Mr Cowling from membership at this time as it demonstrates that he is now taking his CPD responsibilities seriously having brought himself back into compliance. For that reason, on balance, the Panel has decided not to expel Mr Cowling but he should be left in no doubt that any further breaches of these very important requirements would be treated very seriously indeed.
23. The Panel also considered the imposition of a reprimand, undertakings or conditions on Mr Cowling's membership but concluded that a caution and fine in the circumstances was a proportionate and justified sanction.

Publication

24. The Panel has considered the RICS 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 and so orders in this case.

Costs

25. RICS applied for costs of £400.
26. The Panel considered carefully the issue of costs. The costs claimed 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.
27. The Panel concluded that it was appropriate for Mr Cowling to contribute towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole.
28. The Panel therefore orders that Mr Cowling pays to RICS costs in the sum of £400.00

Appeal Period

29. Mr Cowling has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
30. 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.