

Disciplinary Panel Hearing by way of written representations

Case of

**Mr Stuart Perren MRICS
Dorset, BH18**

On

Thursday 14 June 2018

Via Telephone Conference

Panel

John Anderson (Lay Chair)
Rosalyn Hayles (Lay Member)
Chris Pittman (Surveyor 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 Perren did not complete and return the Listing Questionnaire indicating whether or not the charge is admitted and the Panel therefore proceeded on the basis that the charge was not admitted.

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 15 May 2018, was sent to Mr Perren. The Notice was sent by email as Mr Perren’s email address was his ‘preferred’ correspondence address held by RICS at that time. A copy of the Notice and a signed witness statement dated 6 June 2018 from the panel management officer, Emma Jones, 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 Perren 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 the 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) – which there hasn't been in this case - 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 was mindful of the need to consider very carefully whether this case could properly – and fairly – be considered without Mr Perren 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 Perren's absence, for the following reasons:
 - a) Mr Perren had not engaged with the regulatory process. The Panel noted that Mr Perren did not respond to the Listing Questionnaire and has not requested an oral hearing. In these circumstances, the Panel was satisfied that it was reasonable to conclude that Mr Perren has chosen not to engage with these proceedings and that Mr Perren's non-participation was deliberate and demonstrated a voluntary waiver of his right to submit written submissions or to attend an oral hearing;
 - b) There has been no application to adjourn by Mr Perren and no indication from him that he would be willing to attend a hearing on an alternative date if that were possible and therefore re-listing this matter as an oral hearing would appear to be able to serve no useful purpose;
 - c) There is a strong public interest in ensuring that regulatory proceedings take place as expeditiously as possible and adjourning this matter for an oral hearing to take place – something which has not been requested – would not secure that very important objective.

Findings of Fact

11. The Panel was provided with Mr Perren's CPD records from the RICS online system which were exhibited to a witness statement dated 2 May 2018 from Joe Poole who is employed by RICS as a CPD administrator.

The Panel accepted, based on this evidence, that Mr Perren did not:

- (i) Complete and record any CPD between 1 January 2017 and 1 February 2018;
- (ii) 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 proved, based on 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 Perren's failure to comply with those requirements is sufficiently serious to give rise to a liability for disciplinary action.

14. 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. RICS sent out a number of reminders to RICS members reminding them of the need to complete – and record - RICS and the sanctions that could apply if they don't. 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.

15. Accordingly, the Panel was satisfied that Mr Perren is liable to disciplinary action.

Sanction

Panel's Approach

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

- 2013 -Caution
- 2016 -Caution and fine.

17. The Panel notes that a partial exemption was granted to Mr Perren by RICS in relation to his CPD obligations for the 2014 year. The following year Mr Perren completed his CPD and recorded it as required but failed to do so in 2016 and again in 2017 without any explanation having been given to the RICS and despite having been sent a number of reminders about his CPD obligations as referred to in the witness statement of Hayley Moore dated 8 May 2018. The witness statement of Joe Poole dated 2 May 2018 confirms

that the RICS records at the relevant time held contact details for Mr Perren in order for those reminders to be sent out.

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.

Decision

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 and compliance is not optional. The CPD requirements are not dependent on the RICS sending reminders to its members.
20. The Panel found that Mr Perren had not shown a complete disregard for his CPD obligations having completed and recorded some CPD in 2014 and 2015. However, the charge found proved represented a third breach of the CPD requirements, Mr Perren having failed to record his CPD over three separate years despite having been sent a number of reminders by RICS of the importance of doing so and the consequences that could follow for failing to comply. Previous sanctions in relation to those CPD breaches had not ensured that Mr Perren complied with his CPD obligations and the Panel considered that to be a serious aggravating feature of this case.
21. Having considered all of the circumstances, the Panel first considered whether to impose any sanction at all. The Panel concluded that the repeated failure by Mr Perren 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.
22. The Panel went on to consider whether to impose a caution. The Panel concluded that a caution was appropriate and proportionate but that it would not, of itself, 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. The Panel therefore also imposed a fine of £500 payable to RICS within 21 days of the notification of this decision to Mr Perren, in addition to a caution.
23. The Panel noted that Mr Perren had received a caution and a fine for a previous CPD breach and therefore considered that a condition is also appropriate and justified in this case to allow Mr Perren one final opportunity to comply with his CPD obligations. The Panel therefore imposed a condition in the following terms:

- As a condition of continuing membership Mr Perren 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.

The Panel went on to consider whether to impose a reprimand or an undertaking but felt that a fine, caution and a condition on Mr Perren's membership giving him a final chance to comply with his CPD obligations, was proportionate and justified in this case.

24. 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 Perren had demonstrated some regard to his CPD obligations in previous years including having engaged with the RICS in 2014 in order to obtain an exemption from the requirements and having completed his CPD in full in 2015, the Panel considered that expulsion is not an appropriate and proportionate sanction to impose, provided Mr Perren complies with his CPD obligations in full for 2018. If he doesn't he will be expelled from membership.

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 did not apply for any costs and the Panel therefore makes no order in relation to costs.

Appeal Period

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