

## **Disciplinary Panel Hearing**

### **Case of**

**Miss Katherine Barnett [1206556]  
Manchester**

### **On**

Monday 16 July 2018

### **Paper Hearing**

By Telephone Conference

### **Panel**

Ms Gillian Seager (Lay Chair)  
Ms Alison Sansome (Lay Member)  
Mr Justin Mason (Surveyor Member)

### **Legal Assessor**

Margaret Obi

### **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. Ms Barnett did not respond to the Listing Questionnaire. Therefore the Panel proceeded on the basis that the allegation was denied.

## Background

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 each calendar year, of which at least 10 hours must be formal CPD. The remainder can be informal CPD.
  - All members must maintain a relevant and current understanding of RICS’ professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD.
  - All members must record the CPD activity online.
  - Members are required to log their CPD via the RICS portal.
5. From 2013 members were issued with cautions for failing to record sufficient CPD, via the RICS online portal. For a subsequent failure members were issued with a caution and a fine. Members were informed in a letter 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

6. A Notice of Hearing, dated 15 June 2018, was sent to Ms Barnett. The Notice was sent to her by email as her email address was her ‘preferred’ correspondence address held by RICS at the relevant time. A copy of the Notice and a signed witness statement from a

Regulatory Tribunal Executive was produced as proof that the Notice was sent. The Panel was also provided with confirmation that the email had been delivered.

7. The Panel was satisfied that Notice had been properly served in accordance with Rule 23 as it:
  - i) confirmed the charge;
  - ii) confirmed the date, time and venue of the hearing;
  - iii) enclosed the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended);
  - iv) invited Ms Barnett to indicate within seven days whether she wished to request an oral hearing.
8. Having determined that service of the Notice of Hearing had been properly effected, the Panel went on to consider whether to proceed with a paper hearing, in Ms Barnett's absence or adjourn in order to conduct an oral hearing.
9. The Panel determined that it was fair, reasonable and in the public interest to proceed with a paper hearing, in Ms Barnett's absence, for the following reasons:
  - i) Ms Barnett did not respond to the Listing Questionnaire request and did not request an oral hearing. In these circumstances, the Panel was satisfied that it was reasonable to conclude that Ms Barnett had chosen not to make such a request and was content for the charge to be considered at a paper hearing. In these circumstances the Panel concluded that Ms Barnett had voluntarily waived her right to attend an oral hearing.
  - ii) There has been no application to adjourn and no indication from Ms Barnett that she would be willing to attend on an alternative date and therefore re-listing this hearing would serve no useful purpose.
  - iii) There is a strong public interest in ensuring that substantive hearings take place as expeditiously as possible.

### **Findings of Fact**

10. The Panel was provided with Ms Barnett's CPD printouts from the online system and a witness statement from a RICS CPD administrator. The Panel accepted based on this evidence that Ms Barnett did not record any CPD hours for the year 2017.
11. Accordingly, the Panel found the factual allegations proved, based on 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 Ms Barnett'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.
13. Accordingly, the Panel was satisfied that Ms Barnett was liable to disciplinary action.

## **Sanction**

### **Panel's Approach**

14. The Panel took into account the written submissions, on behalf of RICS, the RICS Sanctions Policy and Ms Barnett's disciplinary history which is as follows:
- 2015 – Caution
  - 2016 – Caution and fine
15. The Panel noted that no CPD hours have been recorded by Ms Barnett since the CPD year 2014.
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. 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. Compliance is not optional. The CPD requirements are not dependent on the RICS sending reminders to its members. However, the Panel noted that Ms Barnett was sent several email reminders and in a letter, dated 9 March 2017, she was put on notice that the Head of Conduct would consider referring her case to a disciplinary panel if she failed to comply with the CPD requirements in 2017.

18. The Panel was satisfied that it was Ms Barnett's responsibility to ensure that she complied with the RICS CPD requirements. As there has been no engagement from Ms Barnett the Panel was unable to identify any mitigating factors.
19. 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;
  - There has been no engagement from Ms Barnett;
  - There has been no apology, remorse or insight and as a consequence no recognition of the importance of recording CPD.
20. 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. Whether Ms Barnett received the RICS reminders or not, it remained her responsibility to ensure that she complied with her 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 a caution had already been imposed for previous breaches. The Panel also considered the imposition of a reprimand but concluded that similarly this did not reflect the seriousness of Ms Barnett's repeated failure to comply with the requirement to complete and record, or cause to be recorded, CPD on the RICS portal.
22. In considering whether to impose 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 Ms Barnett should have been completing and recording her 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 undermine public trust and confidence in the regulatory process.
23. The Panel then considered whether to impose a fine. The Panel was mindful that a fine was imposed on Ms Barnett for failing to record her CPD hours for the year 2016. The Panel concluded that, in these circumstances, to impose a further financial penalty would serve no useful purpose as it had not resulted in compliance with the CPD requirements to date. Instead a further fine would undermine the need to uphold the standards expected of all members.
24. The Panel went on to consider conditions. The Panel took the view that imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances. However, to impose such a sanction the Panel would need to be satisfied

that Ms Barnett has demonstrated a willingness to engage with the regulatory process and a willingness to comply with any condition imposed. As Ms Barnett has repeatedly failed to comply with the CPD requirements in the past and has failed to respond to written reminders to record her CPD, the Panel could not be satisfied that she would comply with conditions. Therefore the Panel concluded that it would not be possible to formulate conditions which would be realistic or achievable. Furthermore, in the absence of any remorse or insight the Panel concluded that Ms Barnett's non-compliance with the CPD requirements demonstrated a blatant disregard for the purpose of regulation and consequently undermines public trust and confidence and is fundamentally incompatible with continued membership.

25. Having determined that conditions would not meet the wider public interest the Panel determined that Ms Barnett should be expelled from RICS membership. The Panel recognised that expulsion is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. The Panel decided that Ms Barnett's case falls into this category as she has repeatedly failed to comply with the fundamental requirement to record CPD and has failed to demonstrate that she has any intention of complying in the future. The Panel was satisfied that, in these circumstances, any lesser sanction would undermine public trust and confidence. In reaching this conclusion the Panel balanced the wider public interest against Ms Barnett's interests. The Panel had regard to the impact expulsion may have on Ms Barnett but concluded that her interests were significantly outweighed by the Panel's duty to give priority to the significant public interest concerns raised by this case. The Panel was also 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.

## **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 £400.00.
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 Ms Barnett to contribute 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 Ms Barnett pays to RICS costs in the sum of £400.00

### **Appeal Period**

31. Ms Barnett 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.