

Disciplinary Panel Meeting

Case of

**Mr Nicola Martinelli MRICS [1258714]
Rome, Italy**

On

Tuesday 11 September 2018

At RICS, 55 Colmore Row, Birmingham, B3 2AS

Panel

Helen Riley (Surveyor Chair)
Imran Benson (Lay Member)
Roselyn Hayles (Lay 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 Martinelli had returned the Listing Questionnaire and a Statement of Means by email on 10 September 2018. Mr Martinelli had indicated in the Listing Questionnaire that he admitted the above charge and the Panel proceeded on that basis.

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 Martinelli’s registered address on 9 March 2017 informing him of the Fixed Penalty which had been issued to him for CPD non-compliance in 2016. This letter stated (in Italian): “*If you fail to comply with CPD requirements in 2017, you will be referred to a Disciplinary Panel*”. Mr Martinelli was also sent a number of emailed reminders as a result of missing the 31 January 2018 deadline for recording his CPD. These made it explicit that he risked a sanction unless he took immediate action.

Service

6. A Notice of Hearing, together with the evidence bundle was sent via 4 separate emails to Mr Martinelli’s preferred email address held by RICS on 13 August 2018. A copy of the emails attaching the Notice and bundle and electronic delivery receipts for them had been produced to the Panel. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a and it was clear from his email dated 10 September 2018 containing the completed Listing Questionnaire that he had in fact received the Notice. Having considered the circumstances, the Panel was content that it was fair and in the public interest for it to proceed to consider the case.
7. Mr Martinelli had been advised of his right to an oral hearing in the Notice of Hearing but had indicated that he did not require a hearing.

Findings of Fact

8. The Panel was provided with a statement from Abbie Atkins, CPD Administrator at RICS dated 6 July 2018 setting out Mr Martinelli's online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2017 and he had not been granted any concessions for that year.
9. Accordingly the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

Liability to Disciplinary Action

10. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Martinelli'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 breaches of the RICS rule on CPD recording must be regarded as serious as they prevent RICS from monitoring compliance and thus ensuring public protection. The Panel noted that Mr Martinelli had himself accepted that he was liable to disciplinary action.
11. Accordingly, the Panel was satisfied that Mr Martinelli was liable to disciplinary action.

Sanction

Panel's Approach

12. 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.
13. 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.
14. The Panel bundle contained a further statement from Abbie Atkins also dated 6 July 2018 which indicated that Mr Martinelli had received a Caution for failure to comply with the CPD requirements in 2015 and a Caution and Fine in 2016 for a further breach. This was therefore Mr Martinelli's third such breach.

Decision

15. The Panel noted Mr Martinelli had already completed and recorded his CPD requirements for 2018 as reported in the returned Listing Questionnaire. The RICS records confirmed this. This demonstrated that he understood the need to bring himself back into compliance and had done so fully. Mr Martinelli had no previous disciplinary history. The Panel also gave him some credit for engaging with RICS and his admission of the charge.
16. 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 Martinelli had not provided any explanation for failing to record any CPD in 2017.
 - He had been sent a number of prompts by email and letter that he risked disciplinary action if he did not comply.
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 however busy a member's professional or personal life may be. Compliance is not optional.
18. 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. As noted above, he should have been aware of his responsibility to ensure that he complied with his CPD obligations. In addition the Panel noted that Mr Martinelli had been sent numerous reminders by RICS.
19. 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 Martinelli had already received two Fixed Penalties for previous breaches.
20. The Panel concluded that it would sufficiently address the misconduct in this case to impose a reprimand. Mr Martinelli had demonstrated insight by completing his CPD for 2018 and had brought himself back into compliance before the hearing, which assured the Panel that he now understood his professional responsibilities.
21. 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

to impose a more severe sanction than a reprimand in this case, would in the Panel's view, be excessive and disproportionate.

Publication

22. 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

23. RICS applied for costs of €444.38 (i.e. the sum of £400 in Euros as at 10 August 2018).

24. 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.

25. The Panel concluded that it was appropriate for Mr Martinelli 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.

26. The Panel orders that Mr Martinelli pays to RICS costs in the sum of €444.38.

Appeal Period

27. Mr Martinelli 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.