

Disciplinary Panel Meeting

Case of

**Mr Alan Hatley [0031343]
SOUTHERNWOOD, SOUTH AFRICA**

On

Monday 8 April 2019

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

Panel

Dr Angela Brown (Lay Chair)
Gillian Seager (Lay Member)
Ian Hastie (Surveyor Member)

Legal Assessor

Peter Steel

Hearings Officer

Jae Berry

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 Hatley had responded to the Notice of Hearing by email dated 22 March 2019 enclosing the completed Listing Questionnaire dated 18 March 2019. In the latter document, Mr Hatley admitted the charge against him and accepted that he was liable to disciplinary action. The Panel therefore proceeded on the basis that the above charge was admitted.

Summary

2. From January 2013 RICS members were obliged to complete and record 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 Hatley on 9 March 2018 regarding the Fixed Penalty Caution and Fine imposed on him for his failure to record the required amount of CPD in 2017. He was informed in that letter that in the event of a further breach he would be referred to a Disciplinary Panel.

Service

6. A Notice of Hearing, dated 11 March 2019, together with the evidence bundle was sent by email to Mr Hatley’s email address held by RICS. A copy of the Notice and a certificate of delivery had been produced to the Panel. Mr Hatley had not indicated that he wished to have an oral hearing. The Panel was therefore satisfied that Notice had been properly served in accordance with Rule 43a. Having considered the circumstances, the Panel was content that it was fair and in the public interest to proceed to consider the case.

Findings of Fact

7. The Panel was provided with a statement from Joe Poole, CPD Administrator at RICS dated 13 August 2018 setting out Mr Hatley's online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD hours for 2016 or 2017.
8. In the Listing Questionnaire dated 18 March 2019, Mr Hatley had admitted the alleged breach of the CPD requirements for 2017. He explained in his accompanying submission that he had sold his practice in 2016 and was contemplating retirement. However, he had found himself retained as an employee by the firm that had bought him out. He had completed CPD, but said he had simply not recorded it.
9. The Panel bundle contained a further statement from Joe Poole dated 13 August 2018 which indicated that Mr Hatley had received a Caution for failure to comply with the CPD requirements in 2014 and a Caution and Fine in 2016 for a further breach. This was therefore Mr Hatley's third such breach.
10. Accordingly the Panel found the factual allegations proved, on the basis of Mr Hatley's admission and the documentary evidence produced.

Liability to Disciplinary Action

11. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Hatley'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 any breaches of the RICS rule on CPD recording must be regarded as serious. Mr Hatley had himself accepted that he was liable to disciplinary action.
12. Accordingly, the Panel was satisfied that Mr Hatley was liable to disciplinary action.

Sanction

Panel's Approach

13. 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.
14. 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

15. The Panel gave Mr Hatley credit for his cooperation with RICS, in particular his prompt admission. Further, Mr Hatley had provided evidence that he had completed 21 hours of CPD in 2017 and had continued to undertake CPD in 2018 (which was not recorded either). The Panel noted Mr Hatley's explanation of his conduct, though this did not fully explain why he had failed to record the CPD he had undertaken.
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.
 - As a senior member of the profession, Mr Hatley was clearly aware of his professional obligations and the consequences of not complying.
 - He has not yet paid the fine for his previous breach of the CPD requirements which remained outstanding, though he has indicated his intention to do so.
17. RICS is a professional membership organisation and sets standards for its members as a condition of membership. CPD is an essential component of its regulation of the profession, which serves to reassure the public about the competence and professional standing of members. It is not difficult to record CPD online, as Mr Hatley himself accepted in evidence. Compliance is not optional.
18. The Panel first considered whether it was appropriate to impose any sanction at all. The Panel concluded that the 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, it was Mr Hatley's responsibility to ensure that he complied fully with his CPD obligations.
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, as cautions are generally appropriate for "minor breaches". Mr Hatley's evidence was that he was fully aware of the requirements yet despite this had failed to comply.
20. The Panel also considered the imposition of a reprimand, but concluded that this would not serve a useful purpose in bringing Mr Hatley into compliance.
21. The Panel then considered whether to impose a fine. It decided that a fine of £750 (in addition to the £250 outstanding as a result of the Fixed Penalty Caution and Fine imposed in 2017) was appropriate and proportionate in all the circumstances to mark the seriousness of the breach. The Panel decided that a condition would also be appropriate, in order to ensure compliance and meet the public interest, as it re-affirms the obligations

required of all members of the profession to comply with the RICS rules. The Panel therefore ordered as follows:

- Mr Hatley to pay a fine to RICS of £1,000 (inclusive of the £250 outstanding from the previous fine);
- As a Condition of continuing membership, Mr Hatley is directed to comply with the CPD requirements for the year 2019 by 31 January 2020; and
- Failure to comply with this Condition will result in automatic expulsion from membership, without further reference to a Disciplinary Panel.

22. The Panel was mindful in arriving at its decisions of the provisions of the Sanctions Policy. However, the Panel considered that to go beyond a condition and a fine would be excessive and disproportionate in the circumstances, having carefully balanced the aggravating and mitigating factors.

Publication

23. 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

24. RICS applied for costs of £400.

25. 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.

26. The Panel concluded that it was appropriate for Mr Hatley 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.

27. The Panel orders that Mr Hatley pays to RICS costs in the sum of £400.

Appeal Period

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

29. 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.