

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING BY WAY OF WRITTEN REPRESENTATIONS

Case of

Steven Garbett MRICS [0085681]

Telford, TF2

On

Wednesday 27 April 2016

Via telephone conference

Panel

Helen Riley (Member Chair)

Chris Boothman (Lay Member)

CHARGE HEARD

The Panel considered the following:

You have failed to comply with RICS' requirements in respect of continuing professional development ("CPD") in that you have not recorded your CPD activity for 2015 online **contrary to rule 6 of the Rules of Conduct for Members 2007 version 6.**"

DETERMINATION

1. Service

By Rule 23 notice of a hearing must be given by "special post". In the Disciplinary Registration and Appeal Panel Rules the definition of special post is "special post means a method of delivery by which delivery of the post can be confirmed". "Post" is not a defined term.

Notice of this hearing was posted by email, special delivery and first class post, and such notice complies with the Rules. The service of the notice was evidenced by a signed copy of a Royal Mail proof of delivery form at 10.24am on 22 March 2016.

The Panel noted that the Relevant Person had responded to the notice by returning the Listing Questionnaire signed and dated 1 April 2016. He did not indicate that he would be attending the hearing and did not ask for an adjournment. He did not request an oral hearing, and so consented to a paper hearing.

The Panel decided that it was appropriate to proceed with a paper hearing.

2. The burden of proof is on RICS and the standard of proof is the balance of probabilities.

Findings of fact

3. From January 2013 RICS members were obliged to complete 20 hours CPD activity by 31 December of each calendar year.

4. Rule 6 provides: "Members shall comply with RICS requirements in respect of continuing professional development."

5. CPD requirements for members are: –

- Of the 20 hours 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. Any learning undertaken in order to meet this requirement may count as formal CPD.
- All members must record their CPD activity online.

6. The online CPD record was attached to the charge. It is a matter of record. The record for the Relevant Person for the calendar year 2015 does not show 20 hours CPD recorded. There are no submissions from the Relevant Person that the record is inaccurate.

7. In the Listing Questionnaire signed and dated 1 April 2016, the Relevant Person admitted to the charge.

8. Accordingly the Panel finds the allegation proved.

Sanction

9. The Panel next considered sanction. The RICS rules about CPD require members to undertake and to record online 20 hours CPD each year. For those who failed to comply with that rule, the sanction imposed was a caution. For those who failed to comply for a second year the sanction was a further caution and a penalty of £150. This is the third year of compulsory recording of CPD online. The Relevant Person is

charged with failing to record CPD for the calendar year 2015, and had received the two cautions and paid the fine of £150 imposed last year.

10. From the inception of the compulsory recording of CPD online RICS has publicised its policy on sanctions for non-compliance. For a third failure the Sanctions Policy at paragraph 22 indicated that expulsion was the likely sanction.
11. Further to the notice of this hearing from RICS dated 21 March 2016, the Relevant Person has admitted the charge but offered no explanation for the failure to record 20 hours CPD online during 2015. However, the Panel noted in a telephone conversation between RICS and the Relevant Person on 15 January 2016, that the Relevant Person said he was a “technophobe” and therefore RICS assisted him by checking the member check tool and email address. These were in order. The Relevant Person had said he would try using the CPD online and the Panel noted he had recorded one hour CPD for 2015, showing he was able to use the system. The Panel also noted that, during this conversation on 15 January, RICS explained the next step for non-compliance was a disciplinary panel. RICS has sent many reminders by email, post and telephone regarding the Relevant Person’s CPD obligations over the last three years (and one month). Furthermore, the Relevant Person has shown he was aware of the requirement and of his non-compliance as, for example, in the telephone conversation on 15 January 2016 and by payment of the fine in 2015. Despite this he still did not actually record any CPD other than the one hour in 2015.
12. This is the third successive year the Relevant Person has failed to comply with the obligation to record 20 hours of CPD online in a calendar year. 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. There is no excuse for failing to comply with such a rule. Compliance is not optional.
13. Those who do not comply with the rules of RICS cannot expect to remain members of it. Accordingly, as indicated in paragraph 22 of the Sanctions Policy, the Panel decided to expel the Relevant Person.

Publication

14. The Panel has considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. This decision will be published on RICS’ website, in RICS’ magazine Modus, but not in a local newspaper.

Costs

15. RICS asked for costs of £600, the standard charge for a paper hearing. This is a straightforward matter, and the standard fee is in excess of what may realistically be expected to be the costs incurred in bringing the charge. The Panel orders that the Relevant Person pay costs of £100.

Appeal Period

16. The Relevant Person has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.
17. 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.