

Disciplinary Panel Hearing

Case of

Mr John Oswald FRICS [0046084]

ISLE OF WIGHT, Cowes

On

Wednesday 15 November 2017

At

Surveyor Court, Coventry

Panel

John Anderson (Chair)

Gillian Seager (Lay Member)

Chris Pittman (Surveyor Member)

Legal Assessor

Chris Hamlet

RICS Representative

This was a paper hearing, with representations prepared by Mr James Lynch

The formal charges are:

The charge against Mr Oswald is:

'Between 1 January 2016 and 1 February 2017 you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not completed and 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.'

Mr Oswald is therefore liable to disciplinary action under Bye-law 5.2.2(c).

Notice/Proceeding in Absence:

Mr Oswald was given notice by letter of 10 October 2017 that this case was to proceed by way of written representations ie: paper hearing, in accordance with Rule 43a(a).

The Panel received advice from the Legal Assessor as to the Rules regarding service in respect of paper hearings. It concluded Notice had been properly served in accordance with R43a(a).

The Panel next considered whether to proceed in the absence of Mr Oswald. The Legal Assessor's advice was sought and accepted. The Panel was referred to the case of R-v-Jones [2002] UKHL 5, which Tait v The Royal College of Veterinary Surgeons (RCVS) [2003] UKPC 34 states is also applicable to professional conduct proceedings.

The Panel in this case took account of the fact that Mr Oswald has returned a listing questionnaire in response to this Notice confirming thereby his awareness of the hearing and providing written submissions to be taken account by the Panel. The Panel duly concluded it was appropriate to proceed in his absence.

Evidence:

The Panel received material in the form of two bundles. It accepted and adopted the written submission of Mr Lynch on behalf of RICS not to read or have regard to the second bundle until the decision on liability to disciplinary action had been made.

Burden and standard of proof

RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. That is a single unwavering standard of proof, though the more unlikely an allegation the more cogent the evidence that the Panel might require to prove it. There is no requirement for Mr Oswald to prove anything. The Panel has in mind throughout its deliberations that the right to practice a profession is involved in these proceedings and proceeds upon the basis that the Human Rights Act 1998 will apply. It bears in mind in particular Mr Oswald's right to a fair trial and respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment.

In this instance, the Panel took particular account of the indication by Mr Oswald in the listing questionnaire that he admitted the charge.

Liability to Disciplinary action:

The Panel had regard to the evidence produced that Mr Oswald, as a matter of fact, had not completed or recorded any CPD between 1 January 2016 and 1 February 2017.

It was noted that there is no evidence that Mr Oswald has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement.

The Panel duly concluded that as a matter of fact, and in consideration of his admission in the listing questionnaire, the charge was made out.

The Panel went on to consider whether Mr Oswald was liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the Legal Assessor. This question is one for the Panel's judgment. The Panel considered that failure to carry out a condition of membership which is there to ensure members retain current knowledge and skills is serious. It was noted that in this case, the breach appears to arise not merely from a failure to record the CPD, which allows the RICS to monitor compliance, but to undertake it at all. Mr Oswald has provided no evidence of CPD activities having been undertaken over this period.

It concluded that Mr Oswald was liable to disciplinary action, in accordance with the guidance set out in the RICS Sanctions Policy paragraph 21.1.

Sanction:

The Panel bore in mind that the purpose of sanctions is not to be punitive, though that may be their 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 matters found proved.

The Panel paid careful heed to the advice of the Legal Assessor and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case.

The Panel had decided that Mr Oswald was liable to disciplinary action. Having done so it first has to decide whether to impose a sanction, and if it so decides the Panel commences at the lowest sanction, and only if it decides that sanction is not appropriate does it move to the next level of sanction. The Panel bears in mind that more than one sanction may be imposed. If conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.

Mitigation

The Panel has taken account of Mr Oswald's written submissions, including his admission of the charge. Account was also taken of his submission that he has not received correspondence from RICS during this period nor has he practised as a chartered surveyor "...over the last two years". However, the Panel did not consider that either factor served as substantive mitigation for breaches that date back to 2014.

Aggravation:

The following features of the case were considered to aggravate the breach:

- Prior cautions for similar breaches in 2014 and 2015
- Receipt of a fine for the 2015 breach

The Panel considered the matters too serious for no sanction to be imposed. It took account of the guidance at paragraph 21 of the Sanctions Guidance which provides that a third breach of Rules regarding CPD within 10 years of receipt of a caution raises a presumption of expulsion.

Whilst the Panel gave careful consideration to the lesser sanctions available to them within the Sanctions Guidance, it concluded that in the circumstances of this case, and the aggravating

features, expulsion was the only appropriate and proportionate response in order to maintain public confidence and trust in the profession and uphold proper standards of conduct.

Accordingly, the Panel orders that sanction.

Publication and Costs

Publication

The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus. Mr Oswald did not oppose this. The Panel sees no reason for departing from the normal practice in this case. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.

The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

RICS made an application for costs in the sum of £400. The Panel acceded to that application.

Appeal Period

Mr Oswald may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rules 58 – 70 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.

The Honorary Secretary of RICS may require a review of a finding or penalty imposed by a Disciplinary Panel within 28 days from service of the notification of the decision, in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.

