

Disciplinary Panel Hearing

Case of

Mr T P Chimuriwo
Zimbabwe

On

Tuesday 3 October 2017

At

Surveyor Court, Westwood Way, Coventry CV4 8JE

Chairman

Catherine Audcent, Lay Member

Members

Helen Riley, Surveyor Member
Imran Benson, Lay Member

Legal Assessor

Fiona Barnett

HEARING ON BASIS OF WRITTEN REPRESENTATIONS

Service

1. Mr Chimuriwo did not attend the hearing.
2. Notice of this hearing dated 25 August 2017 was sent to Mr Chimuriwo by tracked postal delivery on that date to the address held by RICS on their register of members. The DHL Express Track and Trace document shows that the notice was delivered on 28 August 2017.
3. The Panel was satisfied that the requisite period of notice had been given in accordance with Rule 43(a) Disciplinary, Registration and Appeal Panel Rules, 1 April 2009, as amended from 1 January 2017, (the Rules) and that the notice was properly served.

4. The notice of hearing sent to Mr Chimuriwo expressly referred to this hearing as a “hearing by way of written representations (paper hearing)” and stated that should Mr Chimuriwo wish to request an oral hearing, he should do so within seven days. The Panel noted that Mr Chimuriwo had not requested an oral hearing.
5. The Panel was therefore satisfied that Mr Chimuriwo should be aware of the hearing; it would be appropriate in the circumstances to deal with this case without an oral hearing on the basis of the written representations before it.

The Charges:

The charge against Mr Chimuriwo 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

Response

6. There was no response from Mr Chimuriwo.

Background

7. RICS’ requirements in respect of CPD are set out in the document ‘CPD Requirements and obligations’. They include requirements that ‘All members must undertake a minimum of 20 hours CPD each calendar year (January to December)’ and that ‘Members must record their CPD activity online by 31 January.’ Members are required to log CPD via the RICS portal.
8. It is alleged that Mr Chimuriwo did not complete the requisite number of CPD hours for 2016 and record these via the RICS portal by 31 January 2017.

Evidence

9. The Panel had before it the RICS solicitor’s bundle of documents, running to 27 pages.

Findings of fact

10. In reaching its decision on the facts, the Panel reminded itself that where the facts are in dispute, the burden of proof rests with RICS and that the standard of proof applicable in these proceedings is the civil standard. This means that the Panel must not find a fact proved unless

it is satisfied, on the balance of probabilities that it is true, i.e. that it is more likely than not to have occurred as alleged.

11. The Panel considered the statement from James Lynch, RICS Solicitor, and the printouts within the RICS bundle relating to Mr Chimuriwo entitled “*CPD Annual Summary Associated...*” and “*CPD Activity Associated View*”.
12. The Panel accepted the evidence from James Lynch, who explained in his written statement that if the printout does not contain a written entry for a given year, this indicates that no CPD was completed for that year. The printouts showed that no CPD was recorded on the RICS online portal by Mr Chimuriwo for the year 2016.
13. The Panel therefore found the factual allegation proved.
14. The Panel was satisfied that Mr Chimuriwo’s failure to record his CPD online amounted to a breach of Rule 6 of the Rules of Conduct for Members Version 6.

Liability to disciplinary action

15. The Panel’s view was that Mr Chimuriwo’s failure to comply with the CPD requirements and his breach of Rule 6 of the Rules of Conduct for Members amounted to a serious falling short of his professional obligations. It is the duty of a RICS member to ensure that he is aware of the CPD requirements and to comply with them. The CPD requirements are designed to ensure consistent standards within the profession, that individuals maintain up to date knowledge in their area of expertise and that members demonstrate this by the completion of an online record at RICS. The purpose of the record is so that RICS can monitor compliance and ultimately ensure public protection. The failure to fulfil professional obligations is likely to undermine public confidence in the profession. In the circumstances, the Panel was satisfied that Mr Chimuriwo is liable to disciplinary action.

Submissions

16. At this stage, the Panel was provided with bundle 2, which comprised 18 pages.
17. In the written submission from RICS which was contained within bundle 2, they stated that Mr Chimuriwo received a Caution for his breach of the CPD requirements for the 2013 CPD year, and a Caution and fine for his failure to comply with the RICS CPD requirements for 2014. They referred the Panel to paragraph 21.1 of the Sanctions Policy which states that where there is a third breach of the CPD policy within 10 years of a Caution, there should be a referral to a Disciplinary Panel with a presumption of Expulsion.
18. No submissions were received from Mr Chimuriwo.

Decision as to sanction

19. The Legal Assessor advised the Panel that the purpose of a sanction is to protect the public, to safeguard the reputation of the profession and to declare and uphold proper standards of conduct and behaviour. Further, any sanction imposed must be proportionate. If the Panel is minded to impose a sanction, it must consider the sanctions in order of severity, starting with the least severe. It must satisfy itself that any sanction it imposes is the minimum necessary to meet the public interest.
20. The Panel had regard to the RICS indicative sanctions guidance, (the Guidance). It noted that for a third failure to comply with CPD requirements, the Guidance states that Expulsion is the likely sanction.
21. The Panel found the following aggravating factors:
- The failures to comply with RICS CPD recording requirements were repeated. This was Mr Chimuriwo's third breach of his CPD obligations.
 - There was no engagement from Mr Chimuriwo.
22. The Panel found the following mitigating factors:
- There was no record of any other disciplinary findings against Mr Chimuriwo, save for the CPD matters on his record.
23. In making its decision on sanction, the Panel reminded itself that RICS is a professional membership organisation which sets standards for its members as a condition of membership. From the inception of the compulsory recording of CPD online, RICS has publicised its policy on sanctions for non-compliance. It is not difficult to record CPD online. Compliance is not optional.
24. The Panel first considered whether to impose a sanction and concluded that the matters were too serious for no sanction to be imposed. It decided that neither a Caution nor Reprimand would mark the seriousness of the breach or bring Mr Chimuriwo into compliance. The Panel's view was that this was not a case in which undertakings would be appropriate as undertakings would require engagement from Mr Chimuriwo.
25. The Panel then considered whether to impose a fine. It decided that this would not be appropriate as Mr Chimuriwo has previously been fined but the imposition of the fine did not result in compliance by him of the RICS CPD obligations.
26. The Panel also considered conditions. It's view was that conditions could be appropriate where there has been engagement from the member. However, given Mr Chimuriwo's lack of engagement, the Panel decided conditions would not be appropriate or workable.

27. The Panel was mindful that the Sanctions Policy suggests that Expulsion is the appropriate penalty for a third breach of the CPD requirements. In this case, in the absence of any response from Mr Chimuriwo, and in the light of his repeated failures to comply with his CPD obligations, it was satisfied that Expulsion from RICS membership is the only appropriate and proportionate sanction. Any sanction less than Expulsion would not serve to protect the public, maintain confidence in the profession and uphold proper standards of conduct for RICS members. The Panel therefore decided to expel Mr Chimuriwo from RICS membership.

Publication

28. The Panel considered the guidance as to publication of its decisions. It ordered that this decision should be published in Modus and on the RICS website.

Costs

29. RICS requested costs in the sum of USD 525.99

30. In the absence of any response from Mr Chimuriwo, the Panel decided that it was fair and reasonable to make a costs order of USD 525.99 to be paid by Mr Chimuriwo to RICS.

Appeal Period

31. Mr Chimuriwo has 28 days from service of the notification of this decision to appeal this decision in accordance with Rules 58 and 60 of the Disciplinary, Registration and Appeal Panel Rules.

32. In accordance with Rules 59 and 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days, from service of the notification of this decision, to require a review of this Decision.