

Disciplinary Panel Hearing

Case of

**Mr Thomas Cleary FRICS
Dumbarton**

On

Tuesday 26 September 2017

At

RICS, Surveyor Court, Coventry

Panel

Helen Riley (Surveyor Chair)
Chris Boothman (Lay Member)
Gillian Seager (Lay Member)

Legal Assessor

Alastair McFarlane

The formal charges is:

Between 1 January 2016 on 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 activity on the RICS CPD portal.

Contrary to Rule 6 of the Rules of Conduct for Members 2007 version 6.

DETERMINATION

Representations and Service

1. Notice of this hearing dated 25 August 2017 was sent by email to the email address notified by Mr Cleary to RICS.
2. That email address is the preferred email address held on the RICS's system, which Mr Cleary has indicated is his preferred email address for correspondence with RICS.
3. The Panel concluded that service had been properly in accordance with the Rules.
4. The Panel noted that the case had been referred by the Head of Regulation in accordance with Rule 43 a) for a hearing on paper. No application was received by RICS from Mr Cleary for an oral hearing and the Panel is satisfied that it is in the interest of justice to proceed with a paper hearing in the absence of Mr Cleary.

Burden and standard of proof

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

Background

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

7. Rule 6 provides: “Members shall comply with RICS requirements in respect of continuing professional development.”
8. 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. Any learning undertaken in order to meet this requirement may count as formal CPD.
 - All members must record the CPD activity online by 31 January.
11. The online CPD record was attached to the charge. It is a matter of record. The record for Mr Cleary for the calendar year 2016 does not show any CPD recorded.

Findings of Fact

12. The Panel noted the witness statement of James Lynch a solicitor employed by RICS. Mr Lynch undertook a review of the RICS CRM computer system and the records kept on that system relating to Mr Cleary. Mr Lynch confirmed that no CPD was recorded for Mr Cleary in 2016.
13. Accordingly the Panel finds the factual allegation proved on the basis of the record.

Liability for Disciplinary Action

14. The Panel was satisfied that Mr Cleary’s breach of Rule 6 of the Rules of Conduct for Members for 2016, renders him liable to disciplinary action. Its reasons are as follows.

15. Liability to disciplinary action is a matter of judgment for the Panel. While not every breach of the Rules amounts to liability to disciplinary action and each case is fact specific, the Panel's view was that Mr Cleary'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. The requirement to complete and record CPD is important to ensure that member keeps their knowledge up to date and to thereby ensure public protection. The Panel's view was that the failure to fulfil this professional obligation is likely to undermine public confidence in the profession. In the circumstances, the Panel was satisfied that Mr Cleary was liable to disciplinary action.

Sanction

16. The Panel next considered sanction. It considered RICS's Sanction Bundle. It had regard to RICS Sanctions Policy and bore in mind the overriding principle of proportionality and noted the presumption of expulsion for a third failure as set out in Rule 21 of the Sanctions Policy.
17. It noted that Mr Lynch's evidence shows that this was the third breach of the requirement to complete and record CPD by Mr Cleary.
18. Paragraph 21.1 of the sanctions policy provides that for those members who fail to comply with the rules relating to CPD in the first year, the sanction imposed is a caution. For those who fail to comply for a second year, the sanction imposed was a further caution and a penalty of £150. For the third year, members are referred to a Disciplinary Panel with a presumption of expulsion. The statement of Ms Mobley, Head of Quality & Service of RICS, confirms that Mr Cleary was issued a caution for his breach in 2014 and a caution and fine for his breach in 2015. While there is no obligation on RICS to send reminders to members, the Panel noted the statement of Ms Wright, CPD Co-ordinator, confirms that Mr Cleary was sent a series of reminders to his registered e-mail address about his CPD obligations.
19. The Panel considered that the following were aggravating factors:

- There has been no engagement with RICS at all
- This is the third CPD breach

20. The Panel considered that the following were mitigating factors:

- Mr Clearly has been a Member since 1981 with no other disciplinary record save for those relating to CPD

21. The Panel was mindful that from the inception of the compulsory recording of CPD online RICS has publicised its policy on sanctions for non-compliance. 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. Compliance is not optional.

22. The Panel was satisfied that it was appropriate in the circumstances to impose a sanction in this case. However, given all the circumstances, including the fact that this was the third failure, it did not consider that a caution was proportionate or sufficient. The Panel also considered that the imposition of a reprimand and/or a fine, would not adequately address the issue of compliance in this case and the risk to the public.

23. The Panel considered that Mr Cleary had demonstrated no insight into the importance of complying with his CPD obligations regarding recording. The lack of engagement was significant and led the Panel to conclude that conditions or undertakings would not be workable or appropriate. The Panel was mindful of the presumption in the Sanctions Policy in favour of expulsion, and having considered all of the evidence in this case, the Panel determined that this was the appropriate and proportionate sanction.

Publication

24. 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 the RICS website and in the RICS magazine Modus.

Costs

25. RICS made an application for costs for £400. The Panel considered it was fair and reasonable to order this sum in the circumstances.

Appeal Period

26. Mr Cleary has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
27. 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.