

Disciplinary Panel Hearing

Case of

**Mr Trevor Durant [1136268]
Doncaster, South Yorkshire, DN9 3JQ**

On

Thursday 6 July 2017

At

RICS Surveyor Court, Westwood Way, Coventry, CV4 8JE

Panel

John Anderson (Lay Chair)
Christopher Boothman (Lay Member)
Christopher Pittman (Surveyor Member)

Legal Assessor

Margaret Obi

The formal charge 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

1. Mr Durant did not respond to the Listing Questionnaire and therefore the Panel proceeded on the basis that the above charge was not admitted.

Summary

2. From January 2013 RICS members were obliged to complete 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 2016 correspondence was sent by post and email to members reminding them about the necessity to comply with their CPD obligations. A letter was also sent by post, dated 9 March 2017, to members who had failed to log CPD for the three preceding years. The members were informed in that letter that a third breach within a ten year period would be referred to a Disciplinary Panel and was likely to result in expulsion from RICS. These letters were sent to Mr Durant.

Service and Proceeding in Absence

6. A Notice of Hearing, dated 15 May 2017, was sent by Special Delivery to Mr Durant’s correspondence address held by RICS at the relevant time. A copy of the Notice and a postal certificate of delivery was produced in the hearing bundle. The Panel noted that the Notice of Hearing was also sent by email. The Panel was satisfied that Notice had been properly served in accordance with Rule 23 as it:
 - i) was sent by Special Post;
 - ii) confirmed the charge;
 - iii) confirmed the date, time and venue of the hearing;
 - iv) enclosed the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended);
 - v) invited Mr Durant to indicate within seven days whether he wished to request a oral hearing.
7. Having determined that service of the Notice of Hearing had been properly effected, the Panel went on to consider whether to proceed in Mr Durant’s absence.

8. The Panel determined that it was fair, reasonable and in the public interest to proceed in the Mr Durant's absence for the following reasons:
- a) Mr Durant has not engaged with the regulatory process. The Panel noted that his last communication with RICS was during a telephone conversation that took place on 25 April 2017. During that conversation Mr Durant explained that he had a lot of CPD activities to record and enquired whether, if these were logged, he could avoid paying the £250 fine. Having been advised to log his CPD and informed that he would still have to pay the outstanding fine, Mr Durant said that he would resign. The Panel noted that Mr Durant did not respond to the Listing Questionnaire or to any other correspondence from RICS relating to his CPD recording obligations. In these circumstances, the Panel was satisfied that it was reasonable to conclude that Mr Durant has chosen not to engage with these proceedings and that his non-participation was deliberate and demonstrated a voluntary waiver of his right to submit written submissions or to attend an oral hearing.
 - b) There has been no application to adjourn and no indication from Mr Durant that he would be willing to attend on an alternative date and therefore re-listing this hearing would serve no useful purpose.
 - c) There is a strong public interest in ensuring that substantive hearings take place as expeditiously as possible.

Findings of Fact

9. The Panel was provided with Mr Durant's online CPD record. The record for the calendar year 2016 showed that no CPD was recorded by the due date.
10. Accordingly the Panel found the factual allegations proved, on the basis of 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 Durant'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 breaches of the RICS rule on CPD recording must be regarded as serious.

12. Accordingly, the Panel was satisfied that Mr Durant was liable to disciplinary action.

Sanction

Panel's Approach

13. The Panel took into account the written submissions of Ben Chapman, on behalf of RICS and 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 was unable to identify any mitigating factors within the hearing bundle, other than his completion of 9 hours of CPD in 2014. The Panel did not consider Mr Durant's assertion that he has completed a lot of CPD, during his telephone conversation with RICS on 25 April 2017, to be a mitigating factor particularly, as more than two months later, it has still not been recorded. 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;
- There has been no engagement from Mr Durant;
- There is an absence of insight, in that, there is no evidence that Mr Durant has considered his conduct with a self-critical eye, acknowledged his fault and apologised; nor has he not taken the opportunity to persuade the Panel that he has learned a lesson from the experience.

16. 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.

17. The Panel first considered whether to impose any sanction. The Panel concluded that the repeated failure to record CPD was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. In reaching this conclusion the Panel noted that Mr Durant had been sent numerous reminders by RICS. However, whether Mr Durant received these reminders or not, it remained his responsibility to ensure that he complied with his CPD obligations. Furthermore, Mr Durant recorded 29 hours and 9 hours of CPD for the year 2013 and 2014 respectively and there was no evidence before the Panel that he had contacted RICS with regard to any subsequent difficulties in recording his CPD online.

18. 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, recognising the cumulative pattern of non-compliance and the fact that a caution had already been imposed for previous breaches. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Durant's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.
19. In considering whether to impose an undertaking the Panel took into account the mandatory nature of the CPD requirements. The Panel noted that the CPD requirements are designed to ensure that the skills and knowledge of RICS members is kept up to date and ultimately to ensure public protection. The Panel concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking given that Mr Durant should have been completing and recording his CPD online in any event. Even if an undertaking were to be combined with either a caution, reprimand or fine, the Panel concluded that imposing such a sanction would undermine public trust and confidence in the regulatory process.
20. The Panel then considered whether to impose a fine. The Panel was mindful that Mr Durant's 2015 fine for failing to record his CPD remains outstanding. The record of the telephone conversation, that RICS had with Mr Durant on 25 April 2017, indicated that he was prepared to log his CPD if the fine could be avoided. The Panel concluded that, in these circumstances, to impose a further financial penalty would serve no useful purpose. Instead a fine would undermine the need to uphold the standards expected of all members and the deterrent effect on other members of the profession.
21. The Panel went on to consider conditions. The Panel took the view that imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances. However, to impose such a sanction the Panel would need to be satisfied that Mr Durant has demonstrated a willingness to engage with the regulatory process and a willingness to comply with any condition imposed. As Mr Durant has repeatedly failed to comply with the CPD requirements in the past, has failed to take up RICS' offer to assist him in logging his CPD as set out in their email to him dated 16 February 2017 and has failed to respond to a verbal reminder to record his CPD, the Panel could not be satisfied that he would comply with conditions. Therefore the Panel concluded that it would not be possible to formulate conditions which would be realistic or achievable. Furthermore, in the absence of any mitigation, remorse or insight the Panel concluded that Mr Durant's non-compliance with the CPD requirements demonstrated a blatant disregard for the purpose of regulation and as a consequence undermines public trust and confidence and is fundamentally incompatible with continued membership.
22. Having determined that conditions would not meet the wider public interest the Panel determined that the Mr Durant should be expelled from RICS membership. The Panel recognised that Expulsion is a sanction of last resort and should be reserved for those

category of cases where there is no other means of protecting the public or the wider public interest. The Panel decided that Mr Durant's case falls into this category as he has repeatedly failed to comply with the fundamental requirement to record CPD and has failed to demonstrate that he has any intention of complying in the future, other than on his own terms. The Panel was satisfied that, in these circumstances, any lesser sanction would undermine public trust and confidence. In reaching this conclusion the Panel balanced the wider public interest against the Mr Durant's interests. The Panel had regard to the impact Expulsion may have on Mr Durant, but concluded that his interests were significantly outweighed by the Panel's duty to give priority to the significant public interest concerns raised by this case. The Panel was also mindful that paragraph 21.1. of the Sanctions Policy states that expulsion is likely where there is a third breach of Rule 6 of the Rules of Conduct for members within 10 years of a receipt of a caution for breach of the same rule.

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 Durant 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 Durant pays to RICS costs in the sum of £400.

Appeal Period

28. Mr Durant 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.