

## **Disciplinary Panel Meeting**

### **Case of**

**Mr Graham Fry [0067936]  
Andover, Hants, SP10, UK**

### **On**

Tuesday 31 July 2018

**At RICS, 55 Colmore Row, Birmingham, B3 2AS**

### **Panel**

John Anderson (Lay Chair)  
Patrick Bligh-Cheesman (Lay Member)  
Christopher Pittman (Surveyor Member)

### **Legal Assessor**

Peter Steel

The formal charge is:

Between 1 January 2017 and 1 February 2018 you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not completed and recorded, or caused to be 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 Fry had not replied to the Notice of Hearing. The Panel therefore 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 2017 correspondence was sent by email to members reminding them about the necessity to comply with their CPD obligations. RICS also wrote to Mr Fry's home address on 9 March 2017 informing him of the Fixed Penalty which had been issued to him for CPD non-compliance in 2016. This letter stated: "*If you fail to comply with CPD requirements in 2017, you will be referred to a Disciplinary Panel*". Mr Fry would also have been sent a number of emailed reminders as a result of missing the 31 January 2018 deadline for recording his CPD. These made it explicit that he risked a sanction unless he took immediate action.

## Service

6. A Notice of Hearing was sent via email to Mr Fry's email address held by RICS on 28 June 2018. A copy of the Notice and electronic delivery receipts for it and the bundle (which was sent in 3 further emails on 29 June 2018) had been produced to the Panel. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a. Having considered the circumstances, the Panel was content that it was fair and in the public interest for it to proceed to consider the case.
7. Mr Fry had been advised of his right to an oral hearing in the Notice of Hearing but had not requested such a hearing.

## Findings of Fact

8. The Panel was provided with a statement from Joe Poole, CPD Administrator at RICS dated 20 June 2018 setting out Mr Fry's online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2017.
9. The statement also produced a note of a conversation between an employee of RICS and Mr Fry on 28 July 2017 as follows:

*"Dpa done*

*I called to advise about outstanding Professional Subscription form 2017.*

*He advised he spoke with colleague back in March to advise this and was advised about retired concession.*

*He has asked for this email to be forwarded across and if he wishes to resign he will email me back to confirm this."*

10. It appeared however that Mr Fry had not in fact taken the necessary steps to resign his membership or obtain the retired concession.
11. The Panel bundle contained a further statement from Joe Poole dated 20 June 2016 which indicated that Mr Fry had received a Caution for failure to comply with the CPD requirements in 2014 and a Caution and Fine in 2016 for a further breach. This was therefore Mr Fry's third such breach.
12. Accordingly the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

### **Liability to Disciplinary Action**

13. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Fry'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.
14. Accordingly, the Panel was satisfied that Mr Fry was liable to disciplinary action.

### **Sanction**

#### Panel's Approach

15. The Panel took into account the submissions of RICS as set out in the Case Summary in the bundle. It had regard to the RICS Sanctions Policy.

16. 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

17. The Panel noted from the papers that Mr Fry had clearly retired from practice during 2017, though had apparently not taken steps to resign his membership or obtain an appropriate concession. Nor had he made any response to these proceedings.

18. 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.
- It was clear from the evidence that Mr Fry must have understood that until he de-registered he was subject to the CPD requirements and he was clearly warned in correspondence that he risked disciplinary action if he did not comply with the CPD requirements in 2017.

19. 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 and regardless of employment status or age, compliance with the requirements is not optional.

20. The Panel first considered whether it was appropriate to impose any sanction at all. 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 Fry had been sent numerous reminders by RICS. As noted above, he was clearly aware of his responsibility to ensure that he complied with his CPD obligations.

21. 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 Mr Fry had already received two Fixed Penalties for previous breaches. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Fry's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.

22. In considering whether to require Mr Fry to give 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 Fry 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 be insufficient to maintain public trust and confidence in the regulatory process.

23. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. He had previously received a fine for a breach of the CPD requirements but this had clearly not served as an adequate warning. Mr Fry's repeated failure to abide by his professional responsibilities was simply unacceptable for someone who wished to remain part of a respected profession.
24. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Fry's continuing membership as an adequate response to the misconduct demonstrated by this case. It also noted that Mr Fry was required to complete and record CPD in any event and it was not clear what purpose it might serve to impose a condition relating to his future completion of CPD in the circumstances.
25. The Panel took into account paragraph 21.1. of the Sanctions Policy, which 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. Despite the background information that it derived from the email of 23 March 2018, the Panel considered there was no good reason in this case to depart from the Sanctions Policy. Having carefully balanced the aggravating factors and such mitigating factors as could be gleaned from the papers in from the papers, the Panel concluded that the only appropriate sanction in this case was expulsion. It therefore ordered that Mr Fry be expelled from membership of RICS.

## **Publication**

26. 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**

27. RICS applied for costs of £400.
28. 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.

29. The Panel concluded that it was appropriate for Mr Fry 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.

30. The Panel orders that Mr Fry pays to RICS costs in the sum of £400.

### **Appeal Period**

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

32. 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.