

Disciplinary Panel Hearing

Case of

Mr Graham Cant MRICS [0834461]

Victoria, Australia

On

Thursday 5 September 2019

At

By Telephone conference

Panel

Angela Brown (Lay Chair)

Rosalyn Hayles (Lay Member)

Justin Mason (Surveyor Member)

Legal Assessor

Chris Hamlet

RICS Representative

This was a paper hearing, with written representations prepared on behalf of RICS.

The formal charges are:

The charge against Mr Cant is:

'Between 1 January 2018 and 1 February 2019 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.'

Mr Cant is therefore liable to disciplinary action under Bye-law 5.2.2.

Notice/Proceeding in Absence

1. Mr Cant was given notice by International Special Delivery and email of 1 August 2019 that this case was to proceed by way of written representations ie: a paper hearing, in accordance with Rules 4d and 43a of the Disciplinary, registration and Appeal Panel Rules version 7 (the "Rules").
2. 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).
3. The Panel next considered whether to proceed in the absence of Mr Cant. 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 were further referred to the case of GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162, in which the Court of Appeal ruled that the regulator's responsibility was to communicate the Notice of Hearing to the address provided by the Registrant and no more.
4. The Panel in this case took account of the fact, confirmed by the statement of Ms Emma Jones dated 27 August 2019, that Mr Cant has been emailed and served by post the Notice and bundle of evidence in accordance with the Rules, to his preferred email and postal addresses as notified to RICS, and he has responded by way of written representations. This has included confirmation, in his response to the Listing Questionnaire dated 21 August 2019, that he intends neither to attend the hearing in person nor be represented, but has set out written representations in lieu of his attendance.
5. The Panel duly concluded it was appropriate to proceed in his absence.

Evidence

6. The Panel received a bundle containing material relevant to each stage of the proceedings. On advice from the Legal Assessor, the Panel initially took account of the material only insofar as it was relevant to its decision on the charge and liability to disciplinary action. This included a Case Summary produced on behalf of RICS and statements from Mr Joe Poole, RICS CPD administrator, dated 13 May 2019. (of which account was taken only in respect of the failure to record CPD for the year 2018).

Burden and standard of proof

7. 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 careful an examination of the evidence might be required before a Panel find it proved. There is no requirement for Mr Cant 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 Cant'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.

Facts

8. The Panel had regard to the evidence produced that Mr Cant, as a matter of fact, had not completed and recorded any CPD between 1 January 2018 and 1 February 2019. That evidence comprised a print out of Mr Cant's CPD record and the statements on behalf of RICS referred to above.
9. It was noted that there is no evidence that Mr Cant has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement. The Panel observed from Mr Cant's response to the Listing Questionnaire dated 21 August 2019 that he accepted the charge.
10. The Panel concluded that as a matter of fact the charge was made out.

Liability to Disciplinary action

11. The Panel went on to consider whether Mr Cant 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.
12. Whilst Mr Cant has referred to his having undertaken 20 hours of 'structured learning' in 2018, he has provided no evidence of CPD activities having been undertaken over this period, which prevents RICS from monitoring his compliance with his professional obligations and tends to undermine public confidence in the profession.
13. The Panel noted that Mr Cant accepted in his Listing Questionnaire that he was duly liable to disciplinary action.
14. The Panel took into account the fact that the CPD policy was 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.
15. It concluded that Mr Cant was liable to disciplinary action.

Sanction

16. Having found the charge proved and determined that Mr Cant was liable to disciplinary action, the Panel referred to the written submissions on behalf of RICS regarding prior breaches of CPD obligations in 2016 and 2017, for which he received a Caution and a Caution and a Fine, respectively. It noted that he paid the fine issued in 2018 for the 2017 breach and, when informed of the non-compliance in 2018, replied "...I'll get it done this week. Apologies for the delay."
17. In addition, the Panel took account of statements from Ms Hayley Moore, Global Workflow Team Manager at RICS, confirming the mailings sent to Mr Cant about his CPD obligations, including a postal reminder of the consequences of a further breach.
18. The Panel further took account of the written submissions by Mr Cant, in which he stated that "As a Senior member within my current employment, I regret to say that I have very little

time to participate in the organized CPD events which are available...”. He further referred to his challenging personal home circumstances.

19. 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.
20. 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.
21. The Panel was advised that in determining what, if any sanction to impose on Mr Cant, Rule 21.1 of the Sanctions Policy provides for a presumption of expulsion in the event of a third breach of CPD obligations within 10 years. However, this presumption is capable of being displaced if the circumstances permitted. The advice, in keeping with the approach of other regulators, was that any sanction imposed must be proportionate, and therefore ought to involve consideration of the lowest sanctions available first and only moving to the next level of sanction if it decides the lesser sanction is inappropriate or otherwise fails to meet the public interest. The Panel bore 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.

Mitigating/Aggravating features

22. The Panel took account of Mr Cant’s correspondence with RICS, which made reference, *inter alia*, to his challenging personal and home life. However, the Panel was mindful that this did not account for the repeated breaches over 3 years.
23. The following features of the case were considered to aggravate the breach:
 - Prior cautions for similar breaches in 2016 and 2017
 - Receipt of a fine for the 2017 breach
24. The following features of the case were considered to mitigate the breach:
 - He has provided details of 20 hours of unrecorded ‘structured learning’
 - He has experienced difficult personal and family circumstances over the period in question

Decision on Sanction

25. The Panel considered the matter 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.
26. The Panel considered that on the evidence provided by Mr Cant, there were some mitigating features in the form of his challenging personal and family circumstances, and the fact that he has conducted 20 hours of unrecorded structured learning. However, the Panel was concerned that Mr Cant has not offered an apology nor any commitment to fulfil the CPD recording obligations in future. In determining that the mitigating circumstances present were

of sufficient substance to displace the presumption of expulsion, the Panel wished nonetheless to underline to Mr Cant – indeed to all members of the profession – that the recording of all CPD conducted is an essential component of their professional membership.

27. As such, the Panel considered the presumption of expulsion should not apply in this case. It gave careful consideration to all lesser sanctions available to them within the Sanctions Guidance. It concluded that the public interest could be met with the following Condition:

“You will comply with RICS’ requirements in respect of Continuing Professional Development (CPD) for the period 1 January 2019 to 31 December 2019 by completing and recording, or causing to be recorded, at least 20 hours of CPD on the RICS CPD Portal by 31 January 2020.”

28. Failure to comply with this condition will result in Mr Cant’s automatic expulsion.
29. In addition, the Panel concluded a fine of £500 was appropriate to mark the breach and to encourage future compliance.

Publication

30. 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. The Panel sees no reason for departing from the normal practice in this case.
31. 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

32. RICS made an application for costs in the sum of £400. The Panel acceded to that application in order that the costs of the hearing are not borne by the profession.

Appeal Period

33. Mr Cant 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.
34. 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.