

## **Disciplinary Panel**

Paper Hearing

## **Case of**

**Mr James Craig MRICS**

## **On**

Thursday 26 September 2019

## **Panel**

Alison Sansome (Lay Chair)  
Paul Watkinson (Surveyor Member)  
Rosalyn Hayles (Lay Member)

## **Legal Assessor**

Mark McConochie

## **The formal charge 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.**

## Service

1. A Notice of Hearing, dated 7 August 2019, was sent to Mr Craig by email and special delivery post to the address held on Mr Craig's RICS Member contact record as his preferred means of communication with the RICS. A copy of the Notice and a signed witness statement dated 19 September 2019 from Mrs Jae Berry, Regulatory Tribunal Manager at the RICS, was produced by the RICS as proof that the Notice had been served.
2. As evidenced by Mrs Berry's witness statement, the email sent to Mr Craig by the RICS on 7 August 2019 attaching the Notice was delivered on 7 August 2019 and read on 8 August 2019. The letter sent by special delivery enclosing the Notice and accompanying materials was delivered on 8 August 2019.
3. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a of the Disciplinary Registration and Appeal Panel Rules 2009, as amended, ("the DRAP Rules") giving the required 28 days' notice of the hearing because it had been sent to the last known address held or recorded by RICS for Mr Craig and the Panel noted that Mr Craig had responded to the Notice as proof that he had received it.

The Notice:

- i) confirmed the charge;
- ii) gave the required 28 days' notice of the date and time of the hearing;
- iii) enclosed the DRAP Rules;
- iv) enclosed the RICS bundle of documents including the evidence upon which the RICS relied and a Listing Questionnaire for completion by Mr Craig;
- v) Invited Mr Craig to confirm within seven days whether he wished to request an oral hearing.

4. As pointed out in the Notice, the case against Mr Craig was to be considered by way of written representations, unless Mr Craig requested an oral hearing. Mr Craig had indicated in his completed listing questionnaire that he did not wish to request an oral hearing.
5. In all of the circumstances, taking into account the interests of justice and the wider public interest, the Panel considered it fair to proceed by way of written representations in accordance with section 43(a)(d) of the DRAP Rules.

## **Background**

6. RICS members are required to complete and record 20 hours of CPD activity by 31 January each year, relating to CPD completed during the previous calendar year.
7. Rule 6 of the Rules of Conduct for Members 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.
  - All members must record their CPD activity online.

## **Findings of Fact**

9. Mr Craig has indicated in his completed listing questionnaire that he admits the charge.

10. The Panel was provided with a copy of Mr Craig's CPD records from the RICS online CPD system which were exhibited to a witness statement dated 20 May 2019 from Mr Joe Poole, a CPD administrator working for the RICS.

The Panel found, based on this evidence, that Mr Craig:

- (i) Had not completed and recorded, or caused to be recorded, the required number of hours of CPD between 1 January 2018 and 1 February 2019 as alleged, having only recorded two hours of CPD for that year; and
- (ii) Did not have in place any full or partial concession from RICS in relation to the completion of his CPD for that year.

11. Taking this evidence into account, the Panel found the charge proved.

### **Liability to Disciplinary Action**

12. The Panel took into account that the CPD policy had 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. CPD is intended to ensure consistent standards within the profession and so that members maintain up to date professional knowledge and are able to demonstrate this through proper and accurate recording of their CPD. The requirement for Members to complete and record CPD is an important requirement in the interests of ensuring public protection and confidence in the profession, and the RICS as regulator, and it is not optional.
13. The witness statement from Hayley Moore, Improvement and Performance Manager, RICS, dated 20 May 2019 details the steps that are taken by the RICS to inform members of their CPD requirements and to assist them in complying with those requirements.

14. Despite the steps that had been taken by RICS, Mr Craig still failed to comply with his professional obligations in the 2018 calendar year. Mr Craig has indicated in his completed listing questionnaire that he accepts that he is liable to disciplinary action.
15. The Panel were of the view that a single failure to comply with CPD requirements is sufficiently serious to give rise to liability to disciplinary action. The Panel considered that any breaches of the RICS rules relating to CPD and its recording are serious as they prevent RICS from monitoring compliance and thus ensuring public protection.
16. Accordingly, the Panel was satisfied in all of the circumstances of the breach that Mr Craig's conduct was sufficiently serious as to render him liable to disciplinary action.

## **Sanction**

17. For the CPD year 2013 members who had not recorded sufficient CPD via the RICS online portal were issued with a caution. For the CPD year 2015 members who had not recorded sufficient CPD in either one of the two previous years, and who had again failed to record sufficient CPD in 2015 via the RICS online portal, were issued with a caution and a fine. Members were informed that a third breach within a 10-year period would be referred to a Disciplinary Panel and that this was likely to result in expulsion from the RICS.

## **The Panel's approach**

18. The Panel bore in mind that the purpose of sanctions is not to be punitive, although they 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 the RICS as its regulator and to protect the public. Sanctions must be proportionate to the breach and all the circumstances, and the Panel approached its decision having taken into account any mitigating and/or aggravating factors.

19. The Panel took into account the written submissions made on behalf of RICS, the RICS Sanctions Policy and Mr Craig's disciplinary history which is as follows for CPD related sanctions:

2015 - Caution

2017 - Caution and fine.

RICS indicated that Mr Craig had paid the fine imposed in 2017.

20. Mr Craig has engaged with the RICS – albeit very late in the day – in relation to these proceedings. In an email sent to RICS dated 24 September 2019 Mr Craig accepted that he was at fault; that he was keen to remain a Member of the RICS; and that *“he had overlooked the requests and reminders”* sent by RICS. He did refer to personal factors having played a part but had produced no evidence as to what those factors were or the impact that they may have had on him. He added that he worked in a small business and *“time is at a premium”*.

21. In his email of 24 September Mr Craig indicated that he had work experience students working for him during the summer of 2019 and that he stays up to date by reading industry journals.

22. Mr Craig provided details in his completed listing questionnaire – received by RICS the day before this hearing – of 25 hours of CPD which he had completed but not recorded during the 2018 calendar year.

### **Decision on Sanction**

23. The 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 compliance is not optional.

24. The charge found proved represented a third breach of the CPD requirements, Mr Craig having failed to complete and record, or caused to be recorded, the required number of hours of CPD over three separate years (2015, 2017 and 2018) despite having been sent a number of reminders by RICS of the importance of doing so and of the consequences that could follow for failing to comply. Previous sanctions in relation to those CPD breaches had not ensured that Mr Craig had consistently complied with his CPD obligations every year despite having been clearly aware of the requirements and the Panel considered that to be a serious aggravating feature of this case.
25. Whilst Mr Craig has provided information about CPD he had undertaken in 2018, he has given no clear explanation as to why he has not recorded it as required which is not consistent with someone who understands and appreciates the importance of regulatory compliance. A failure to comply with professional obligations is not excusable because a Member is too busy.
26. Having considered all of the circumstances of this case, the Panel first considered whether to impose any sanction at all. The Panel concluded that the failure by Mr Craig to complete and record CPD on three separate occasions was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. The Panel found no such exceptional circumstances to be present.
27. The Panel considered whether to impose a caution. The Panel concluded that a caution was not appropriate because it would not adequately reflect the seriousness of the conduct, recognising the repeated pattern of non-compliance. A caution had already been imposed for a previous breach and yet Mr Craig had still failed to comply with his professional obligations.
28. The Panel considered the imposition of a reprimand and although they considered it is was not sufficient alone to reflect the seriousness of the conduct in this case, the Panel considered that it was justified and proportionate in conjunction with other sanctions. The Panel therefore reprimanded Mr Craig.
29. In considering whether to require Mr Craig to give an undertaking, the Panel took into account the mandatory nature of the CPD requirements which Members have already undertaken to comply with through their membership. CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date which is ultimately to ensure public

protection. The Panel concluded that it would not be appropriate or proportionate to impose an undertaking given that Mr Craig should have been completing and recording his CPD online in any event and concluded that imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.

30. The Panel then considered whether to impose a fine. The Panel decided that whilst a fine would also be an appropriate and proportionate sanction taking into account the seriousness of the conduct, it was not sufficient of itself and was therefore imposed as well as other sanctions. The Panel imposed a fine on Mr Craig of £500 payable to RICS within 21 days of notification of this decision to him,.

31. The Panel also considered that the imposition of a condition on Mr Craig's continuing membership was a proportionate and justified response to the misconduct demonstrated by this case. The Panel ordered that Mr Craig's membership be subject to the following condition:

- To comply with the RICS CPD requirements for 2019, which include completion of the required number of hours of CPD by 31 December 2019 and the recording of those hours on the RICS CPD portal by 31 January 2020.
- Any breach of this condition will result in Mr Craig being expelled from membership of RICS without further reference to a Disciplinary Panel.

32. The Panel took into account paragraph 21.1. of the Sanctions Policy, which states that in the absence of extenuating circumstances 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. Having carefully considered all aspects of the case, the Panel, on balance, did not consider expulsion to be appropriate or justified in this case. The conduct was very serious indeed and Mr Craig should be in no doubt about the consequences of any future failures to comply with his professional obligations. However, taking into account Mr Craig's admission of fault and late engagement in relation to these proceedings, the Panel did find there were justifiable reasons not to expel Mr Craig on this occasion in order to give him one last chance to demonstrate that he would respect his professional obligations and comply in the future.



## **Publication**

33. 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 and ordered publication accordingly.

## **Costs**

34. There was an application by RICS for costs in the sum of £400 which had been served on Mr Craig in accordance with the DRAP Rules. The Panel considered this to be a fair and reasonable amount to impose by way of costs and considered it fair for Mr Craig to pay these costs rather than for them to fall on the Membership as a whole and ordered Mr Craig to pay £400 to the RICS within 21 days of notice having been served on him of this decision.

## **Appeal Period**

35. Mr Craig has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 58 of the DRAP Rules.

36. In accordance with Rule 59 of the DRAP 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.