

## **Disciplinary Panel**

### **Case of**

**Mr James Sellar MRICS**

### **On**

Thursday 12 September 2019

### **Panel**

Angela Brown (Lay Chair)  
Justin Mason (Surveyor Member)  
Nick Hawkins (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 12 July 2019, was sent to Mr Sellar by email and special delivery post to the address held on Mr Sellar'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 3 September 2019 from Maria Choudhury, Regulatory Tribunal Executive at the RICS, was produced by the RICS as proof that the Notice had been served.
2. As evidenced by Exhibit (1A) to Ms Choudhury's witness statement, the email sent to Mr Sellar by the RICS on 13 July 2019 attaching the Notice was returned as undeliverable. Ms Choudhury therefore made contact by telephone with Mr Sellar's executive assistant who advised sending the email to a different email address being best contact email for Mr Sellar. That email was confirmed as delivered on 14 August 2019.
3. It is the responsibility of Members to ensure that the RICS has up to date contact details on record and steps were taken by RICS to bring the Notice of hearing to the attention of Mr Sellar.
4. 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.

### 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) informed Mr Sellar that the RICS bundle of documents including the evidence upon which the RICS relied and a Listing Questionnaire for completion by Mr Sellar would be provided separately by the Regulatory Enforcement Team;

- v) Invited Mr Sellar to confirm within seven days whether he wished to request an oral hearing.
5. As pointed out in the Notice, the case against Mr Sellar was to be considered by way of written representations, unless Mr Sellar requested an oral hearing. Mr Sellar has not requested an oral hearing and in these circumstances, the Panel considered that he had voluntarily waived his right to attend.
6. 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

7. RICS members are required to complete and record 20 hours CPD activity by 31 January each year, relating to CPD completed during the previous calendar year.
8. Rule 6 of the Rules of Conduct for Members provides: **“Members shall comply with RICS requirements in respect of continuing professional development.”**
9. 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.

10. 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.

### **Findings of Fact**

11. Mr Sellar had not indicated whether or not the charge was admitted and in these circumstances the Panel proceeded on the basis that the charge was not admitted.
12. The Panel was provided with a copy of Mr Sellar's CPD records from the RICS online CPD system which were exhibited to a witness statement dated 16 May 2019 from Mr Joe Poole, a CPD administrator working for the RICS.

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

- (i) Had not completed and recorded, or caused to be recorded, any hours of CPD between 1 January 2018 and 1 February 2019 as alleged; 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.
13. Taking this evidence into account, the Panel found the charge proved.

### **Liability to Disciplinary Action**

14. 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 knowledge and are able to demonstrate this through proper and accurate recording of their CPD. Ensuring that Members 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.

15. The witness statement from Hayley Moore, Improvement and Performance Manager, RICS, dated 17 May 2019 at pages 42 to 44 of the RICS bundle 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.
16. Despite the steps that had been taken by RICS, Mr Sellar still failed to comply with his professional obligations in the 2018 calendar year.
17. The Panel was of the view that a single failure to comply with CPD requirements is sufficiently serious to give rise to liability to 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 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.
18. Accordingly, the Panel was satisfied in all of the circumstances of the breach that Mr Sellar's conduct was sufficiently serious as to render him liable to disciplinary action.

## **Sanction**

### **Panel's Approach**

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

- 2013 - Cautiona
- 2017 - Caution and fine.

RICS indicated that Mr Sellar had paid the fine imposed in 2017 and was up to date in relation to the payment of his annual membership fees.

- 20. Mr Sellar had not advanced any explanation for failing to comply with his professional obligations, or any personal mitigation by way of written representations.
- 21. 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.

### **Decision on Sanction**

- 22. 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.
- 23. The charge found proved represented a third breach of the CPD requirements, Mr Sellar having failed to complete and record, or caused to be recorded, the required number of hours of CPD over three separate years (2013, 2017 and 2018) despite having been sent a number of reminders by RICS of the importance of doing so and the consequences that could follow for failing to comply. Previous sanctions in relation to those CPD breaches had not ensured that Mr Sellar 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.
- 24. There was evidence before the Panel that an unsuccessful attempt had been made by RICS to contact Mr Sellar by telephone on 19 February 2019 to remind him about his CPD obligations for 2018 and that a message was left to which Mr Sellar did not respond. Whilst there was evidence before the Panel that could have meant emails sent by the RICS

reminding Mr Sellar of his obligations may not have been received on account of a change of an apparent email address, the Panel attached little weight to this. Members should not need reminding, or chasing, to comply with their professional obligations and it is their responsibility to ensure the RICS has up to date contact details.

25. The Panel took into account the fact that Mr Sellar had not shown a complete disregard of his professional obligations having complied with his CPD obligations in 2014, 2015, and 2016. However, Mr Sellar had offered no explanation for why he had failed to comply with his professional obligations or any mitigation relating to the breaches. He had failed to complete and record any CPD for the last two calendar years meaning the RICS had no evidence upon which to assess whether he was up to date with professional developments consistent with ongoing practice. Mr Sellar had not engaged with the RICS about the breach of his professional obligations and this is not consistent with someone wanting to remain a member of a regulated profession.
28. 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 Sellar 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.
29. 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 non-compliance. A caution had already been imposed for a previous breach and yet Mr Sellar had still failed to comply with his professional obligations.
30. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Sellar's repeated failure to comply with the requirement to complete and record CPD.
31. In considering whether to require Mr Sellar to give an undertaking, the Panel took into account the mandatory nature of the CPD requirements which Members should not have to undertake to comply with. 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 Sellar 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.

32. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. Mr Sellar had previously received a fine for a breach of the CPD requirements and to ensure compliance.

33. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Sellar's continuing membership as an adequate and proportionate response to the misconduct demonstrated by this case.

34. 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. The Panel considered there was no good reason in this case to depart from the Sanctions Policy. Having carefully considered all aspects of the case, and all possible sanctions available to it, the Panel concluded that the appropriate and proportionate sanction in this case was expulsion. It therefore ordered that Mr Sellar be expelled from membership of RICS.

## **Publication**

31. 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**

32. There was no application for costs by either party.



## **Appeal Period**

33. Mr Sellar 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.
34. 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.