

Disciplinary Panel Hearing by way of written submissions

Case of

**Mr Jesse Romain MRICS [1220309]
Bristol, BS8**

On

Tuesday 24 September 2019

By telephone conference

Panel

Sally Ruthen (Lay Chair)
Ron Barclay-Smith (Lay Member)
Chris Pittman (Surveyor Member)

Legal Assessor

Peter Steel

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.

Response

1. Mr Romain had responded to the Notice of Hearing dated 14 August 2019 by telephone and by an email dated 6 September 2019 containing the completed Listing Questionnaire. In the Listing Questionnaire, Mr Romain had admitted the charge and

that he was liable to disciplinary action The Panel therefore proceeded on the basis that the above charge was 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 by the required date.
5. For the CPD year 2018 correspondence was sent by email to members reminding them about the necessity to comply with their CPD obligations. RICS wrote to the preferred address held for Mr Romain on 21 March 2018 informing him of the Fixed Penalty caution and fine which had been issued to him for CPD non-compliance in 2017. This letter stated: “*If you fail to comply with CPD requirements in 2018, then you will be referred to a Disciplinary Panel*”. RICS also attempted to ring Mr Romain regarding recording his CPD for 2018, though it was not obliged to do so.

Service

6. As noted above, Mr Romain had responded to the Notice of Hearing and had indicated that he was content for matters to be dealt with on the papers.

Findings of Fact

7. The Panel was provided with a statement from Joe Poole, CPD Administrator at RICS dated 10 May 2019 setting out Mr Romain’s online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2018 and he had

not been granted any concessions for that year. Mr Romain had also admitted the charge in the Listing Questionnaire dated 5 September 2019.

8. Accordingly, the Panel found the factual allegations proved, on the basis of the documentary evidence produced and Mr Romain's admission.

Liability to Disciplinary Action

9. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Romain'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 as they prevent RICS from monitoring compliance and thus ensuring public protection.

10. Accordingly, the Panel was satisfied that Mr Romain was liable to disciplinary action.

Sanction

Panel's Approach

11. 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.
12. 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.
13. The Panel bundle contained a further statement from Joe Poole, also dated 10 May 2019 which indicated that Mr Romain had received a Caution for failure to comply with the CPD requirements in 2015 and a Caution and Fine for a further breach in 2017. This was therefore Mr Romain's third such breach.

Decision

14. The Panel gave Mr Romain some credit for engaging with RICS, for his admission of the charge and for his apology for his failure to complete and record his CPD. It noted that he was undertaking a full-time Masters' degree, which might have met some or all of his CPD requirements, though he had not attempted to explain how it was relevant or to

provide details of any other relevant CPD he had undertaken. The Panel felt that the risk Mr Romain might otherwise present to members of the public was reduced because he was clearly not practising at present. It noted that other than the previous Fixed Penalties, he had no disciplinary history with RICS.

15. 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;
 - Mr Romain had not proactively sought to manage his absence from practice during his period of study by contacting RICS to see if any concessions were available; and
 - He had been sent a number of prompts by email and letter that he risked disciplinary action if he did not comply to which he had not responded.
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 however busy a member's professional or personal life may be. Compliance is not optional.
17. 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. As noted above, he should have been aware of his responsibility to ensure that he complied with his CPD obligations. In addition the Panel noted that Mr Romain had been sent numerous reminders by RICS, even though RICS is not obliged to do so.
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 Mr Romain had already received a caution and a caution and a fine for previous breaches. The Panel also considered the imposition of a reprimand on its own, but concluded that similarly this did not reflect the seriousness of Mr Romain's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.
19. For similar reasons, the Panel considered and dismissed requiring an undertaking from him as an adequate response to the misconduct demonstrated by this case. Mr Romain was required to complete and record CPD in any event. It was therefore not clear what purpose it might serve to require an undertaking relating to his future completion of CPD in the circumstances.
20. 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.
21. The Panel then considered whether to impose a fine. It decided that a fine of £350 was appropriate and proportionate in all the circumstances. The Panel decided that a condition would also be appropriate, in order to meet the public interest, as it re-affirms

the obligations required of all members of the profession to comply with the RICS rules. The Panel therefore ordered as follows:

1. Mr Romain be reprimanded and pay a fine to RICS of £350;
 2. As a Condition of continuing membership Mr Romain is directed to comply with the CPD requirements for the year 2019 by completing his CPD hours for the year 2019 by 31 December 2019 and recording his CPD hours by 31 January 2020; and
 3. Failure to comply with this condition will result in automatic expulsion from membership, without further reference to a Disciplinary Panel.
22. The Panel was 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. However, the Panel considered that to go beyond a reprimand, condition and a fine would be excessive and disproportionate in the circumstances, having carefully balanced the aggravating and mitigating factors.

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 Romain 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. The Panel considered that the amount claimed was reasonable.
27. The Panel orders that Mr Romain pays to RICS costs in the sum of £400.

Appeal Period

28. Mr Romain 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.