

Disciplinary Panel Hearing by way of written submissions

Case of

**Dr Marc Langenbach [1248792]
Dusseldorf, Germany**

On

Tuesday 24 September 2019

By telephone conference

Panel

Sally Ruthen (Lay Chair)
Ron Barclay-Smith (Lay Member)
Christopher 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. Dr Langenbach responded to the Notice of Hearing dated 15 August 2019 in a completed Listing Questionnaire dated 9 September 2019. In that document, Dr Langenbach did not admit the charge against him on the basis that he said that he had technical problems submitting information from his place of work via the RICS webpage, which he suggested were the fault of RICS. Dr Langenbach did not accept that he was liable to disciplinary

action either. 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 2018 correspondence was sent by email to members reminding them about the necessity to comply with their CPD obligations. Dr Langenbach had also been sent letters as a result of missing the 2016 and 2017 deadlines for recording his CPD. These too made it explicit that he risked a further sanction unless he took steps to comply with the CPD requirements.

Service

6. As indicated above, Dr Langenbach had clearly received the Notice of hearing and had responded to it. Dr Langenbach had been advised of his right to an oral hearing in the Notice of Hearing in accordance with Rule 23 but had not requested such a hearing.

Findings of Fact

7. The Panel was provided with a statement from Joe Poole, CPD administrator at RICS, dated 14 May 2019 setting out Dr Langenbach’s CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2018. There was no evidence in front of the Panel that Dr Langenbach had been granted any concessions for that year. The Panel noted an email from RICS to Dr Langenbach dated 9 September 2019, which indicated that on 23 August 2019, two days after Dr Langenbach had received the RICS hearing bundle, he had recorded his CPD for 2018, albeit out of time.

8. Accordingly the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

Liability to Disciplinary Action

9. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Dr Langenbach'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 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 thus ensuring public protection and maintaining confidence in the profession.
10. Accordingly, the Panel was satisfied that Dr Langenbach 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 and the explanation Dr Langenbach had submitted in the Listing Questionnaire dated 9 September 2019. 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 14 May 2019, which indicated that Dr Langenbach had received a Caution for failure to comply with the CPD requirements in 2016 and a Caution and Fine in 2017 for a further breach. This was therefore Dr Langenbach's third such breach.

Decision

14. As noted above, Dr Langenbach had provided a response disputing the allegation. The Panel understood from it that Dr Langenbach had experienced technical problems in recording CPD online as a result of his workplace's internet access policy, which he had raised with RICS Germany in April 2019. He said that he was still waiting for RICS Germany to respond to him with a solution. However, the Panel considered that Dr Langenbach's suggestion that his failure to record his CPD for 2018 was somehow RICS'

fault was somewhat undermined by the fact that he had been able to record his CPD online late following receipt of the hearing bundle. The Panel observed that recording CPD was a personal obligation placed on all members and that Dr Langenbach, being aware of the restrictions in place at his workplace, ought to have made other arrangements to ensure timely submission of his 2018 CPD record.

15. The Panel considered it some mitigation that Dr Langenbach had belatedly complied with the CPD requirements in 2018. However, failure to record CPD inhibited RICS in its work monitoring compliance. Dr Langenbach seemed to the Panel not to have demonstrated any insight into the seriousness of that default.
16. The Panel also gave Dr Langenbach some credit for engaging with these proceedings. The Panel was also not informed of any other disciplinary history other than the CPD breaches.
17. 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, which Dr Langenbach clearly understood. Indeed, he had not met the CPD requirements in any of the years they applied to him;
 - He had failed to pay the fine imposed on him for failing to comply with the CPD requirements in 2017; and
 - He had been sent a number of prompts by letter and email that he risked disciplinary action if he did not comply which he had apparently ignored.
18. RICS is a professional membership organisation and sets standards for its members as a condition of membership. Even taking into account the occasional difficulties members may experience in recording CPD, the system for doing so is not difficult however busy a member's professional or personal life may be. Compliance is not optional.
19. 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, Dr Langenbach was aware of his responsibility to ensure that he complied with his CPD obligations yet repeatedly failed to record his CPD. In addition the Panel noted that Dr Langenbach had been sent numerous reminders by RICS, despite the fact that RICS was not obliged to do so.
20. 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 Dr Langenbach had already received a caution and then a caution and a fine for the previous breaches. The Panel also considered the imposition of a reprimand, but concluded that a reprimand would not reflect the seriousness of Dr Langenbach's repeated failure to comply with the requirement to complete and record CPD as required.

21. In considering whether to require Dr Langenbach 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 are 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 Dr Langenbach 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.
22. 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. Indeed, the fine had not been paid. Dr Langenbach's repeated failure to abide by his professional responsibilities was simply unacceptable for someone who wished to remain part of a respected profession.
23. For similar reasons, the Panel considered and dismissed the imposition of a condition on Dr Langenbach's continuing membership as an adequate response to the misconduct demonstrated by this case. He was required to complete and record CPD in any event. It was therefore not clear what purpose it might serve to impose a condition relating to his future completion of CPD in the circumstances.
24. 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. Dr Langenbach had not demonstrated any contrition for his failure to comply with RICS' regulation; in fact quite the opposite. He had disputed that he was responsible for a clear breach of the CPD requirements and had not provided any real explanation for his failure to comply. The Panel considered there was no good reason in this case to depart from the Sanctions Policy. Having carefully considered all facets of the case, the Panel concluded that the only appropriate sanction in this case was expulsion. It therefore ordered that Dr Langenbach be expelled from membership of RICS.

Publication

25. 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

26. RICS applied for costs in the sum of £400.

27. 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.

28. The Panel concluded that it was appropriate for Dr Langenbach 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.

29. The Panel orders that Dr Langenbach pays to RICS costs in the sum of £400.

Appeal Period

30. Dr Langenbach has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

31. 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.