

## **Disciplinary Panel Hearing**

### **Case of**

**Mr Matthew Brown MRICS [1242189]  
London, E14 UK**

### **On**

Monday 8 April 2019

### **At**

RICS 55 Colmore Row, Birmingham, B3 2AS

### **Panel**

Dr Angela Brown (Lay Chair)  
Gillian Seager (Lay Member)  
Ian Hastie (Surveyor Member)

### **Legal Assessor**

Peter Steel

### **RICS Presenting Officer**

Mr James Lynch

### **Hearing Officer**

Mrs Jae Berry

The formal charge is:

Between 1 January 2017 and 1 February 2018 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 Brown had not responded at all to the Notice of Hearing. 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 2017 correspondence was sent by email to members reminding them about the necessity to comply with their CPD obligations. A letter was also sent by post to Mr Brown dated 9 March 2017, informing him of the Fixed Penalty caution and fine of £150 that had been imposed as a result of his failure to record CPD in 2016. The letter made explicit that a third breach within a ten year period would result in his referral to a Disciplinary Panel.

**Service**

6. Mr Lynch on behalf of RICS applied for the Panel to proceed in the absence of Mr Brown, who was not present and was not represented. A Notice of Hearing, dated 8 February 2019, was sent by special delivery (enclosing the hearing bundle) Mr Brown's correspondence address held by RICS at the relevant time. A copy of the Notice and a certificate of postal delivery for the letter had been produced to the Panel. The Panel were also referred to a statement by Manisha Hirani, a paralegal employed by RICS, dated 4 April 2019, detailing the other unsuccessful steps RICS had taken to contact Mr Brown including attempting him to call him on the telephone numbers held by RICS, internet searches and contacting his previous employers. The Notice and bundle had also been sent to the email address held by RICS but this had been returned as undeliverable. The Panel was satisfied on the basis of the proof of postal delivery that Notice had been properly served in accordance with Rule 23 of the Disciplinary, Appeals and Registration Panel Rules 2009 (the Rules).
7. Mr Brown had been advised of his right to an oral hearing in the Notice of Hearing but had not responded. Having received advice from the legal assessor and having considered all the circumstances, the Panel concluded that it was nonetheless right to proceed in Mr Brown's absence. It was Mr Brown's responsibility to maintain an effective contact address with RICS; further, it seemed implausible that he was not aware of the requirement to communicate with RICS about his membership. He had done so in order to record and submit CPD in 2013 and 2014 and, in 2015, had emailed RICS to amend his contact details. In the Panel's view, there was little more RICS could have done to attempt to contact Mr Brown. As the case of *GMC v Adeogba [2016] EWCA Civ 162* makes clear, members have to a duty subject to with their regulator. Members who fail to do so are:

“unlikely to provide a reasonable explanation for failure to participate in the process, sufficient to require the Panel to adjourn consideration of a fixed disciplinary hearing” (paragraph 21 of *Adeogba*).

## Findings of Fact

8. The Panel was provided with a statement from Joe Poole, CPD Administrator at RICS dated 30 May 2018 setting out Mr Brown's online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD at all since 2014. He had not been granted any exemptions for 2017.
9. The Panel bundle contained a further undated statement from Joe Poole which indicated that Mr Brown had received a Caution for failure to comply with the CPD requirements in 2015 and a Caution and Fine in 2016 for a further breach. This was therefore Mr Brown's third such breach.
10. Accordingly the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

## **Liability to Disciplinary Action**

11. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Brown'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.
12. Accordingly, the Panel was satisfied that Mr Brown was liable to disciplinary action.

## **Sanction**

### Panel's Approach

13. 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.
14. 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.

### Decision

15. The Panel noted that Mr Brown had not recorded any CPD since 2014 nor had he paid his membership fees for the last three years. He had apparently fallen out of touch with RICS. In the absence of any response from him, the Panel could not identify any mitigating factors.
16. 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.
  - It was clear from his submission of CPD in 2013 and 2014 that Mr Brown understood that he was subject to the CPD requirements and it remained his responsibility either to comply or to take effective steps to regularise the situation.
  - He had been sent a number of prompts by email and letter that he risked disciplinary action if he did not comply which he had apparently ignored; and
  - He had not paid the fine imposed for his previous breach of the requirements.

17. 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.
18. 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. In reaching this conclusion the Panel noted that Mr Brown had been sent numerous reminders by RICS. As noted above, he should have been aware of his responsibility to ensure that he complied with his CPD obligations.
19. 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 Brown had already received two Fixed Penalties for previous breaches. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Brown's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.
20. In considering whether to require Mr Brown 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 is 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 Mr Brown 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.
21. 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. Mr Brown's repeated failure to abide by his professional responsibilities was simply unacceptable for someone who wished to remain part of a respected profession.
22. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Brown's continuing membership as an adequate response to the misconduct demonstrated by this case. It also noted that Mr Brown was required to complete and record CPD in any event and it was not clear what purpose it might serve to impose a condition relating to his future completion of CPD in the circumstances.
23. 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. In the absence of any response explaining Mr Brown's failure to complete and/or record CPD in 2017, 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 Mr Brown be expelled from membership of RICS.

### **Publication**

24. 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**

25. RICS applied for costs of £1,725.00.

26. 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.

27. The Panel concluded that it was appropriate for Mr Brown 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.

28. The Panel orders that Mr Brown pays to RICS costs in the sum of £1,725.00.

### **Appeal Period**

29. Mr Brown has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

30. 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.