

Disciplinary Panel Hearing

Case of

Mr Matthew Harris Assoc RICS [6548908]

UK

On

Tuesday 1 October 2019

At

By Telephone conference

Panel

John Anderson (Lay Chair)
Jane Bishop (Lay Member)
Ian Hastie (Surveyor Member)

Legal Assessor

Chris Hamlet

RICS Representative

This was a paper hearing, with written representations prepared on behalf of RICS.

The formal charges are:

The charge against Mr Harris 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.'

Mr Harris is therefore liable to disciplinary action under Bye-law 5.2.2.

Notice/Proceeding in Absence:

1. Mr Harris was given notice by Special Delivery and email of 15 August 2019 that this case was to proceed by way of written representations ie: a paper hearing, in accordance with Rules 4d and 43a of the Disciplinary, registration and Appeal Panel Rules version 7 (the "Rules").
2. The Panel received advice from the Legal Assessor as to the Rules regarding service in respect of paper hearings. It concluded Notice had been properly served in accordance with R43a(a).
3. The Panel next considered whether to proceed in the absence of Mr Harris. The Legal Assessor's advice was sought and accepted. The Panel was referred to the case of R-v-Jones [2002] UKHL 5, which Tait v The Royal College of Veterinary Surgeons (RCVS) [2003] UKPC 34 states is also applicable to professional conduct proceedings. The Panel were further referred to the case of GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162, in which the Court of Appeal ruled that the regulator's responsibility was to communicate the Notice of Hearing to the address provided by the Registrant and no more.
4. The Panel in this case took account of the fact, confirmed by the statement of Mrs Emma Jones dated 18 September 2019, that Mr Harris has been emailed and served by post the Notice and bundle of evidence in accordance with the Rules, to his preferred email and postal addresses as notified to RICS. The Panel noted that Mr Harris has responded to prior correspondence sent to his email address by way of the return of a completed listing questionnaire, a statement of means and written representations dated 16 September 2019. Mr Harris has confirmed therein his intention to be neither present nor represented at the hearing. The Panel considered Mr Harris' decision to decline an oral hearing and to provide written submissions as a request to take these into account in lieu of his attendance.
5. The Panel duly concluded it was appropriate to proceed in his absence.

Evidence:

6. The Panel received a bundle containing material relevant to each stage of the proceedings. On advice from the Legal Assessor, the Panel initially took account of the material only insofar as it was relevant to its decision on the charge and liability to disciplinary action. This included a Case Summary produced on behalf of RICS and statements from Mr Joe Poole, RICS CPD administrator, dated 6 August 2019. (of which account was taken only in respect of the failure to record CPD for the year 2018).

Burden and standard of proof:

7. RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. That is a single unwavering standard of proof, though the more unlikely an allegation the more careful an examination of the evidence might be required before a Panel find it proved. There is no requirement for Mr Harris to prove anything. The Panel had in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and proceeds upon the basis that the Human Rights Act 1998 will apply. It bears in mind in particular Mr Harris' right to a fair trial and respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment.

Facts:

8. The Panel had regard to the evidence produced that Mr Harris, as a matter of fact, had completed and recorded only 9 hours of CPD between 1 January 2018 and 1 February 2019. That evidence comprised of a print out of Mr Harris' CPD record and the statements on behalf of RICS referred to above.
9. It was noted that there is no evidence that Mr Harris has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement. The Panel observed from Mr Harris' response to the Listing Questionnaire dated 16 September 2019 that he accepted the charge.
10. The Panel concluded that as a matter of fact the charge was proved.

Liability to Disciplinary action:

11. The Panel went on to consider whether Mr Harris was liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the Legal Assessor. This question is one for the Panel's judgment. The Panel considered that failure to carry out a condition of membership which is there to ensure members retain current knowledge and skills, is serious.
12. The Panel took account of the fact that Mr Harris has recorded only 9 hours of CPD activities over this period, well short of the minimum of 20 hours he is obligated to record. Whilst the Panel had regard to his written submissions, in which he explained that his CPD for 2019 "is much improved", the failure for 2018, in the context of his history of similar failures in 2015 and 2016 prevents RICS from monitoring his compliance with his professional obligations and tends to undermine public confidence in the profession.
13. The Panel noted that Mr Harris accepted in his Listing Questionnaire that he was duly liable to disciplinary action.
14. The Panel took into account the fact that the CPD policy was 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.
15. It concluded that Mr Harris was liable to disciplinary action.

Sanction:

16. Having found the charge proved and determined that Mr Harris was liable to disciplinary action, the Panel referred to the written submissions on behalf of RICS regarding prior breaches of CPD obligations in 2015 and 2016, for which he received a Caution and a Caution and a Fine, respectively. It noted that he paid the fine issued in 2017 for the 2016 breach. He has acknowledged, in his written submissions, his understanding of the importance of CPD and has expressed a commitment to improve his CPD in 2019.
17. In addition, the Panel took account of the statement from Ms Hayley Moore, Business Improvement and Performance Team Manager at RICS, confirming the mailings sent to Mr

Harris about his CPD obligations, including a postal reminder of the consequences of a further breach.

18. The Panel bore in mind that the purpose of sanctions is not to be punitive, though that may be their 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 matters found proved.
19. The Panel paid careful heed to the advice of the Legal Assessor and to the Sanctions Policy of RICS. It considered carefully the mitigating and aggravating factors of this case.
20. The Panel was advised that in determining what, if any sanction to impose on Mr Harris, Rule 21.1 of the Sanctions Policy provides for a presumption of expulsion in the event of a third breach of CPD obligations within 10 years. However, this presumption is capable of being displaced if the circumstances permitted. The advice, in keeping with the approach of other regulators, was that any sanction imposed must be proportionate, and therefore ought to involve consideration of the lowest sanctions available first and only moving to the next level of sanction if it decides the lesser sanction is inappropriate or otherwise fails to meet the public interest. The Panel bore in mind that more than one sanction may be imposed. If conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.

Mitigating/Aggravating features:

21. The Panel took account of Mr Harris' correspondence with RICS, which acknowledged, inter alia, that his CPD for 2018 was "poor" and due to a "lack of attention". However, the Panel was mindful that this did not account for the repeated breaches over 3 years and there was little attempt to explain how he would prevent a recurrence going forward.
22. The following features of the case were considered to aggravate the breach:
 - Prior cautions for similar breaches in 2016 and 2017
 - Receipt of a fine for the 2017 breach
23. The following features of the case were considered to mitigate the breach:
 - He has acknowledged and admitted the breach
 - He recorded almost half the required minimum hours in 2018 and more than double the required minimum in 2017

Decision on Sanction:

24. The Panel considered the matter too serious for no sanction to be imposed. It took account of the guidance at paragraph 21 of the Sanctions Policy which provides that a third breach of Rules regarding CPD within 10 years of receipt of a caution raises a presumption of expulsion.
25. The Panel noted that on the basis of the written submissions provided, Mr Harris recognised his breach and had expressed an intent to "continue to improve with further CPD" going forward. However, the Panel was concerned that Mr Harris' submissions did not reflect a clear insight into the seriousness of the breach, nor had he offered an apology nor any

explanation as to what had led to the breaches or the steps he will take to ensure compliance in future.

26. The Panel wished to emphasise to Mr Harris and all members the vital importance of recording CPD so that RICS can monitor and verify the maintenance of professional standards and in order to protect the reputation of, and confidence in, the profession.
27. Having said that, in light of the mitigating features of this case, the Panel considered the presumption of expulsion would be disproportionate in this case. It wished to give Mr Harris one last chance. It gave careful consideration to all lesser sanctions available to them within the Sanctions Policy. It concluded that the public interest could be met with a Reprimand, in the first instance, in respect of his failure to conduct and record the minimum number of CPD hours, as well as the following Condition:

“You will comply with RICS’ requirements in respect of Continuing Professional Development (CPD) for the period 1 January 2019 to 31 December 2019 by completing and recording, or causing to be recorded, at least 20 hours of CPD, of which at least 10 hours must be formal, on the RICS CPD Portal by 31 January 2020.”

28. Failure to comply with this condition will result in Mr Harris’ automatic expulsion.
29. In addition, the Panel concluded a fine of £500 was appropriate to mark the breach and to encourage future compliance.

Publication

30. The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor’s advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS’ website and in RICS Modus. The Panel sees no reason for departing from the normal practice in this case.
31. The Panel orders that this decision be published on RICS’ website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

32. RICS made an application for costs in the sum of £400. The Panel acceded to that application in order that the costs of the hearing are not borne by the profession.

Appeal Period

33. Mr Harris may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rules 58 – 70 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.
34. The Honorary Secretary of RICS may require a review of a finding or penalty imposed by a Disciplinary Panel within 28 days from service of the notification of the decision, in

Regulation



accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.