

## **Disciplinary Panel Hearing**

**Case of**  
**Matthew Moore**  
**Leicester**

**On**  
29 October 2019, via telephone conference

**Chairman**  
Gillian Seager

**Members**  
Justin Mason, Surveyor  
Christopher Pittman, Surveyor

**Legal Assessor**  
Fiona Barnett

## **HEARING ON BASIS OF WRITTEN REPRESENTATIONS**

### **Service**

1. The Panel had before it a Service Bundle, which included a witness statement from Maria Choudhury, RICS Regulatory Tribunal Executive, dated 3 September 2019. Ms Choudhury confirmed that Notice of this hearing dated 12 July 2019 was sent to Mr Moore by email and by post on that date, to the preferred addresses held by RICS on their register of members. Ms Choudhury confirmed that following a telephone conversation with Mr Moore, his email address was updated and the notice was sent to the new email address on 13 August 2019.
2. The Royal Mail Track and Trace document showed that the notice was delivered on 2 August 2019, and the Panel was also provided with a delivery receipt for the email sent to Mr Moore's updated email address.
3. The Panel was satisfied that the requisite period of notice had been given in accordance with Rule 43(a) Disciplinary, Registration and Appeal Panel Rules, 1 April 2009, as amended from 1 January 2017, (the Rules) and that the notice was properly served.

4. The notice of hearing sent to Mr Moore expressly referred to this hearing as a “hearing by way of written representations” and stated that should he wish to request an oral hearing, he should do so within seven days. Mr Moore has not asked for an oral hearing. The Panel therefore decided that it would be fair and in the public interest to deal with this case in his absence, without an oral hearing, on the basis of the written representations before it.

### **The Charge:**

The charge against the Member 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’**

The Member is therefore liable to disciplinary action under Bye-law 5.2.2

### **Response**

5. The Panel has not received a completed listing questionnaire from Mr Moore.

### **Background**

6. RICS’ requirements in respect of CPD are set out in the document ‘CPD requirements and obligations’. They include requirements that ‘All members must undertake a minimum of 20 hours CPD each calendar year (January to December)’, of which at least 10 hours must be formal CPD. Members must record their CPD activity online by 31 January. Members are required to log CPD via the RICS portal.
7. It is alleged that Mr Moore did not complete the requisite number of CPD hours for 2018 and record these via the RICS portal by 31 January 2019.

### **Evidence**

8. The Panel had before it the RICS solicitor’s bundle of documents. It reminded itself that it must only refer to the documents which were relevant to the particular stage of the proceedings being considered.

### **Findings of fact**

9. In reaching its decision on the facts, the Panel reminded itself that where the facts are in dispute, the burden of proof rests with RICS and that the standard of proof applicable in these proceedings is the civil standard. This means that the Panel must not find a

fact proved unless it is satisfied, on the balance of probabilities that it is true, i.e. that it is more likely than not to have occurred as alleged.

10. The Panel considered the statement from Joe Poole, RICS CPD administrator, and the CPD printouts within the RICS bundle relating to Mr Moore's CPD activity.
11. The Panel accepted the evidence from Mr Poole who confirmed that Mr Moore did not have any concessions granted for the 2018 year, and that his CPD for 2018 was 0.
12. The Panel therefore found the factual allegation proved.
13. The Panel was satisfied that Mr Moore's failure to complete and record his CPD online amounted to a breach of Rule 6 of the Rules of Conduct for Members Version 6.

### **Liability to disciplinary action**

14. The Panel's view was that Mr Moore's failure to comply with the CPD requirements and his breach of Rule 6 of the Rules of Conduct for Members amounted to a serious falling short of his professional obligations. It is the duty of a RICS member to ensure that he is aware of the CPD requirements and to comply with them. The CPD requirements are designed to ensure consistent standards within the profession, that individuals maintain up to date knowledge in their area of expertise and that members demonstrate this by the completion of a record at RICS. The purpose of the record is so that RICS can monitor compliance. The failure to fulfil professional obligations is likely to undermine public confidence in the profession. In the circumstances, the Panel was satisfied that Mr Moore was liable to disciplinary action.

### **Submissions**

15. RICS submitted that this was Mr Moore's third breach of the RICS CPD requirements. His CPD compliance history was as follows:

2013 – 23 hours  
2014 – 24 hours (only 4 formal hours)  
2015 – 7.50 hours  
2016 – 22 hours  
2017 – 20 hours  
2018 – 0 hours

16. RICS stated in their written submissions that a Caution was issued for his failure to comply in 2014, and a Caution and Fine was issued for his failure to comply in 2015. The Panel was informed that Mr Moore has paid the fine issued in 2016 for non-compliance in 2015, and has paid membership fees in 2017 and 2018. RICS also stated, "In mitigation, the Member has recorded CPD in 2013, 2014, 2015, 2016 and 2017, albeit the requisite hours were not met in 2014 and 2015."

17. The Panel was aware, from the sanction documentation before it, that Mr Moore has been communicating with RICS during September and October 2019 about his current position. In an email to RICS dated 9 October 2019, he provided information which he requested be considered as part of the disciplinary process. Mr Moore explained that he is presently unemployed and unable to obtain employment until March 2020 at the earliest. He set out a timeline of events. This showed that his employer sold 100% of the equity in their business to another business in April 2018. He said there was significant change in the business between April and November 2018 with the majority of the team leaving, so it was a difficult environment to obtain CPD as, "...we were still finding our parameters as to what we could/couldn't attend in business hours etc".
18. Mr Moore explained that he was placed on "gardening leave" in November 2018 for 6 months with restrictions on his employment activities; in April 2019, his contract was formally terminated with post termination restrictions until March 2020. Mr Moore expressed regret that he has been unable to fulfil his CPD requirements. He said that he wishes to continue as a member of RICS and fulfil his CPD requirements in future.

### **Decision as to sanction**

19. The Legal Assessor advised the Panel that the purpose of a sanction is to protect the public, to safeguard the reputation of the profession and to declare and uphold proper standards of conduct and behavior. Further, any sanction imposed must be proportionate. If the Panel is minded to impose a sanction, it must consider the sanctions in order of severity, starting with the least severe. It must satisfy itself that any sanction it imposes is the minimum necessary to meet the public interest.
20. The Panel had regard to the RICS Sanctions Policy, version 7. This states, at paragraph 21.1, that there is a presumption of expulsion for a third breach of Rule 6 of the Rules of Conduct for Members within 10 years of receipt of a caution for breach of that rule. Nevertheless, it was incumbent upon the Panel to consider and balance any aggravating and mitigating factors, and to approach the sanctions in ascending order of seriousness, as stated above.
21. The Panel found the following aggravating factors:
  - The failures to comply with RICS CPD recording requirements were repeated. This was Mr Moore's third breach of his CPD obligations having not completed and recorded the full amount of CPD hours required in 2014 and 2015.
  - Mr Moore seemed to lack insight into his personal responsibility as a RICS member to complete CPD regardless of his working hours/conditions. Compliance with RICS rules of conduct is his responsibility alone; it is not the responsibility of an employer to allow time and/or make provision for compliance.
22. The Panel found the following mitigating factors:

- Mr Moore has admitted the breach in correspondence with RICS.
- He has engaged with RICS.
- Mr Moore has encountered some difficult personal circumstances which included the loss of his employment and restriction upon gaining further employment until March 2020.

23. In making its decision on sanction, the Panel reminded itself that RICS is a professional membership organisation which sets standards for its members as a condition of membership. From the inception of the compulsory recording of CPD online, RICS has publicised its policy on sanctions for non-compliance. It is not difficult to record CPD online. Compliance is not optional.

24. The Panel first considered whether to impose a sanction and concluded that the matters were too serious for no sanction to be imposed.

25. It next considered a Caution, and Reprimand, in ascending order (Caution first) and decided that neither a Caution nor Reprimand would be sufficient to mark the serious nature of the breach. The Panel was also of the view that this was not a case in which undertakings would be appropriate.

26. The Panel then considered whether to impose a fine. It decided that a fine would be an appropriate sanction and determined that £500 would be an appropriate and proportionate sum to reflect a third breach of CPD requirements.

27. The Panel decided that whilst a fine is an appropriate penalty, it would not of itself suffice to meet the public interest and ensure future compliance. The Panel decided to combine the fine with the conditions below and was satisfied that this combination of penalties was appropriate, proportionate and the minimum necessary to meet the public interest. The conditions are as follows:

- As a condition of continuing membership of RICS, Mr Moore is directed to comply with the CPD requirements for the year 2019 by 31 December 2019.
- Failure to comply with this condition will result in automatic expulsion from membership, without further reference to a Disciplinary Panel

28. The Panel was mindful that the Policy suggests that Expulsion is the likely penalty for a third breach of CPD requirements. However, the Panel decided that the disruption to Mr Moore's professional circumstances amounted to mitigation which would justify not progressing through the range of sanctions to Expulsion. Its view was that to go beyond the sanction imposed would be excessive and disproportionate having balanced the aggravating and mitigating factors. The combination of sanctions imposed should protect the public and maintain public confidence in the profession, whilst allowing Mr Moore an opportunity to return to full compliance and uphold the standards required of a RICS member.

## **Publication**

29. The Panel considered the guidance as to publication of its decisions set out in Supplement 3 to the Sanctions Policy. It bore in mind that there is a presumption in favour of publication of decisions of the Disciplinary Panel.
30. The Panel therefore ordered that this decision should be published in Modus and on the RICS website, in accordance with the provisions of Supplement 3.

## **Costs**

31. RICS requested costs in the sum of £400.00
32. Mr Moore made no submission on the issue of costs.
33. The Panel decided to make a costs order of £400 to be paid by Mr Moore to RICS.

## **Appeal Period**

34. Mr Moore has 28 days from service of the notification of this decision to appeal this decision in accordance with Rules 58 and 60 of the Rules.
35. In accordance with Rules 59 and 60 of the Rules, the Honorary Secretary of RICS has 28 days, from service of the notification of this decision, to require a review of this Decision.