

## **Disciplinary Panel**

Paper Hearing

## **Case of**

**Mr Pedro Izquierdo Gil MRICS**

## **On**

Thursday 17 October 2019

## **Panel**

John Anderson (Lay Chair)  
Paul Watkinson (Surveyor Member)  
Roselyn Hayles (Lay Member)

## **Legal Assessor**

Mark McConochie

## **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.**

## Service

1. A Notice of Hearing, dated 15 August 2019, was sent to Mr Izquierdo Gil by email and international special delivery post to the address held on Mr Izquierdo Gil's RICS Member contact record as his preferred means of communication with the RICS. A copy of the Notice and a signed witness statement dated 26 September 2019 from Mrs Emma Jones, Regulatory Tribunal Executive at the RICS, was produced by the RICS as proof that the Notice had been served.
2. As evidenced by Mrs Jones' witness statement, the email sent to Mr Izquierdo Gil by the RICS on 15 August 2019 attaching the Notice was delivered on 15 August 2019. However, the letter sent by special delivery post enclosing the Notice and accompanying materials was not delivered and was returned to the RICS.
3. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a of the Disciplinary, Registration and Appeal Panel Rules 2009, as amended, ("the DRAP Rules") giving the required 28 days' notice of the hearing because it had been sent to the last known address held or recorded by RICS for Mr Izquierdo Gil and the Panel noted that Mr Izquierdo Gil had responded to the Notice as proof that he had received it. The fact that the letter sent by special delivery post was returned as undelivered does not invalidate service for the purpose of the DRAP Rules.

The Notice:

- i) confirmed the charge;
- ii) gave the required 28 days' notice of the date and time of the hearing;
- iii) enclosed the DRAP Rules;
- iv) Invited Mr Izquierdo Gil to confirm within seven days whether he wished to request an oral hearing.

4. As pointed out in the Notice, the case against Mr Izquierdo Gil was to be considered by way of written representations, unless he requested an oral hearing. Mr Izquierdo Gil has indicated in his completed listing questionnaire that he did not wish to request an oral hearing.
5. In all of the circumstances, taking into account the interests of justice and the wider public interest, the Panel considered it fair to proceed by way of written representations in accordance with section 43(a)(d) of the DRAP Rules.

### **Background**

6. RICS members are required to complete and record 20 hours of CPD activity by 31 January each year, relating to CPD completed during the previous calendar year.
7. Rule 6 of the Rules of Conduct for Members provides: **“Members shall comply with RICS requirements in respect of continuing professional development.”**
8. 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 their CPD activity online.

### **Findings of Fact**

9. Mr Izquierdo Gil has indicated in his completed listing questionnaire that he admits the charge.
10. The Panel was provided with a copy of Mr Izquierdo Gil's CPD records from the RICS online CPD system which were exhibited to a witness statement dated 23 May 2019 from Mr Joe Poole, a CPD administrator working for the RICS.

The Panel found, based on this evidence, that Mr Izquierdo Gil:

- (i) Had not completed and recorded, or caused to be recorded, the required number of hours of CPD between 1 January 2018 and 1 February 2019 as alleged; and
  - (ii) Did not have in place any full or partial concession from RICS in relation to the completion of his CPD for that year.
11. Taking this evidence into account, the Panel found the charge proved.

### **Liability to Disciplinary Action**

12. The Panel took into account that the CPD policy had 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. CPD is intended to ensure consistent standards within the profession and so that members maintain up to date professional knowledge and are able to demonstrate this through proper and accurate recording of their CPD. The requirement for Members to complete and record CPD is an important requirement in the interests of ensuring public protection and confidence in the profession and in the RICS as regulator. Completion and recording of CPD is not optional.

13. The witness statement from Hayley Moore, Improvement and Performance Manager, RICS, dated 23 May 2019 details the steps that are taken by the RICS to inform members of their CPD requirements and to assist them in complying with those requirements.
14. Despite the steps that had been taken by RICS, Mr Izquierdo Gil still failed to comply with his professional obligations in the 2018 calendar year. Mr Izquierdo Gil has indicated in his completed listing questionnaire that he accepts that he is liable to disciplinary action.
15. The Panel were of the view that a single failure to comply with CPD requirements is sufficiently serious to give rise to liability to disciplinary action. The Panel considered that any breaches of the RICS rules relating to CPD and its recording are serious as they prevent RICS from monitoring compliance thereby ensuring public protection.
16. Accordingly, the Panel was satisfied in all of the circumstances of the breach that Mr Izquierdo Gil's conduct was sufficiently serious so as to render him liable to disciplinary action.

### **Sanction**

17. For the CPD year 2013 members who had not recorded sufficient CPD via the RICS online portal were issued with a caution. For the CPD year 2015 members who had not recorded sufficient CPD in either one of the two previous years, and who had again failed to record sufficient CPD in 2015 via the RICS online portal, were issued with a caution and a fine. Members were informed that a third breach within a 10-year period would be referred to a Disciplinary Panel and that this was likely to result in expulsion from the RICS.
18. The Panel bore in mind that the purpose of sanctions is not to be punitive, although they 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 the RICS as its regulator and to protect the public. Sanctions must be proportionate to the breach and all the circumstances, and the Panel approached its decision having taken into account any mitigating and/or aggravating factors.

19. The Panel took into account the written submissions made on behalf of RICS, the RICS Sanctions Policy and Mr Izquierdo Gil's disciplinary history which is as follows for CPD related sanctions:

2015 - Caution

2017 - Caution and fine.

RICS indicated that Mr Izquierdo Gil had not paid the fine imposed for non-compliance in 2017.

20. Mr Izquierdo Gil has engaged with the RICS in relation to these proceedings. In an email sent to RICS dated 16 September 2019 Mr Izquierdo Gil accepted that he was at fault for failing to comply with his professional obligations. He said that due to replacement of his laptop he had lost his connection to the RICS on-line portal and the contact details for RICS representatives in Spain. He added that he had moved house during the same period and that he was therefore no longer receiving RICS surveys and publications for that reason.

21. Mr Izquierdo Gil stated that he had completed 18 modules in relation to the 'Fundamentals of Project Management' during 2018 and produced copies of certificates in support of this but admitted that he had failed to record his CPD on the RICS CPD on-line portal as required. He said that each module was of 1.5 hours' duration.

### **Decision on Sanction**

22. The 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 and compliance is not optional.

23. The charge found proved represented a third breach of the CPD requirements, Mr Izquierdo Gil having failed to complete and record, or cause to be recorded, the required number of hours of CPD over three separate years (2015, 2017 and 2018) despite having been sent a

number of reminders by RICS of the importance of doing so and of the consequences that could follow for failing to comply. Previous sanctions in relation to those CPD breaches had not ensured that Mr Izquierdo Gil had consistently complied with his CPD obligations every year despite being clearly aware of the requirements and the Panel considered that to be a serious aggravating feature of this case.

24. Whilst Mr Izquierdo Gil has provided evidence about CPD he had undertaken in 2018 but not recorded, which the Panel accepted, the Panel attached little weight to the explanation he has provided for failing to record it as required. The replacement of a laptop is not adequate justification for failing to comply with professional obligations. Mr Izquierdo Gil was clearly aware of the need to complete and record CPD and if he did not have access to a computer at the relevant time it would not have been difficult for Mr Izquierdo Gil to have contacted the RICS to explain the difficulties he was having with on-line recording and to have arranged an alternative way of submitting his CPD entries to the RICS. The Panel does not accept that it would not have been possible for Mr Izquierdo Gil to have found some way of obtaining contact details for RICS offices in Spain in order to do so.
25. Mr Izquierdo Gill also said that he had moved home in 2018. A failure to comply with professional obligations is not excusable because a Member has changed home address and as a consequence is no longer receiving communications from RICS. Members should not need reminding to comply with their professional obligations and in any event, have a professional responsibility to ensure RICS has up to date contact details for them.
26. Having considered all of the circumstances of this case, the Panel first considered whether to impose any sanction at all. The Panel concluded that the failure by Mr Izquierdo Gil to complete and record CPD on three separate occasions was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. The Panel found no such exceptional circumstances to be present.
27. The Panel considered whether to impose a caution. The Panel concluded that a caution was not appropriate because it would not adequately reflect the seriousness of the conduct, recognising the repeated pattern of non-compliance. A caution had already been imposed for a previous breach in 2017 and yet Mr Izquierdo Gil had still failed to comply with his professional obligations in 2018.

28. In considering whether to require Mr Izquierdo Gil to give an undertaking, the Panel took into account the mandatory nature of the CPD requirements which Members have already undertaken to comply with through their membership. CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date which is ultimately to ensure public protection. The Panel concluded that it would not be appropriate or proportionate to impose an undertaking given that Mr Izquierdo Gil should have been completing and recording his CPD online in any event and concluded that imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.

29. The Panel then considered whether to impose a fine. The Panel decided that whilst a fine would be an appropriate and proportionate sanction taking into account the seriousness of the conduct, it was not sufficient of itself and was therefore imposed as well as other sanctions. The Panel imposed a fine on Mr Izquierdo Gil of £500 payable to RICS within 21 days of notification of this decision to him. The Panel noted that Mr Izquierdo Gill had not paid the fine imposed in 2017 which is a significant aggravating feature of this case. It is not acceptable for Members to ignore regulatory sanctions imposed upon them as it shows a lack of respect for the regulatory process. Mr Izquierdo Gill should be mindful that if he does not pay both of the outstanding fines this will undoubtedly be treated very seriously indeed by the RICS and any Panel should he find himself facing any further regulatory proceedings in the future.

30. The Panel also considered that the imposition of a condition on Mr Izquierdo Gil's continuing membership was a proportionate and justified response to the misconduct demonstrated by this case. The Panel ordered that Mr Izquierdo Gil's membership be subject to the following condition:

- To comply with the RICS CPD requirements for 2019, which include completion of the required number of hours of CPD by 31 December 2019 and the recording of those hours on the RICS CPD portal by 31 January 2020.
- Any breach of this condition will result in Mr Izquierdo Gil being expelled from membership of RICS without further reference to a Disciplinary Panel.



31. The Panel took into account paragraph 21.1. of the Sanctions Policy, which states that in the absence of extenuating circumstances 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. Having carefully considered all aspects of the case, the Panel, on balance, did not consider expulsion to be appropriate or justified in this case. The conduct was very serious indeed and Mr Izquierdo Gil should be in no doubt about the consequences of any future failures to comply with his professional obligations. However, taking into account Mr Izquierdo Gil's admission of fault, engagement in relation to these proceedings and the evidence having been submitted of CPD having been completed but not recorded in 2018, the Panel did find there were justifiable reasons not to expel Mr Izquierdo Gil on this occasion in order to give him one final chance to demonstrate that he would respect his professional obligations and comply in the future.

### **Publication**

32. 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 and ordered publication accordingly.

### **Costs**

33. There was an application by RICS for costs in the sum of £400 which had been served on Mr Izquierdo Gil in accordance with the DRAP Rules. Having taken into account Mr Izquierdo Gil's statement of means, the Panel considered this to be a fair and reasonable amount to impose by way of costs and considered it fair for Mr Izquierdo Gil to pay these costs rather than for them to fall on the Membership as a whole and ordered Mr Izquierdo Gil to pay £400 to the RICS within 21 days of notice having been served on him of this decision.

### **Appeal Period**

34. Mr Izquierdo Gil has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 58 of the DRAP Rules.
  
35. In accordance with Rule 59 of the DRAP 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.