

## **Disciplinary Panel Hearing**

### **Case of**

**Mr Peter Goldsmith FRICS [0038758]**

**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 Goldsmith 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 Goldsmith is therefore liable to disciplinary action under Bye-law 5.2.2.

### **Notice/Proceeding in Absence:**

1. Mr Goldsmith 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 Goldsmith. 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 Goldsmith 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 Goldsmith has been in regular contact with RICS since at least 8 March 2019, according to the evidence provided, via the same preferred email address used for service of this notice. This has culminated in his submission of a listing questionnaire, received by RICS on 18 September 2019, in which he admits the charge. The Panel further took account of written submissions provided by Mr Goldsmith in respect of this case and recent correspondence from his GP and treating physicians, which referred to an ongoing medical condition that “limits his opportunity for travel”.
5. Whilst no express indication was given by Mr Goldsmith that he did not intend to attend or be represented, in the absence of any request for an adjournment and/or an oral hearing, the panel concluded that he has provided this material in full knowledge of this hearing and in lieu of his attendance.
6. The Panel duly concluded it was appropriate to proceed in his absence.

## **Evidence:**

7. 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 2 May 2019 (of which account was taken only in respect of the failure to record CPD for the year 2018).

## **Burden and standard of proof:**

8. 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 Goldsmith 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 Goldsmith's 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:**

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

## **Liability to Disciplinary Action:**

12. The Panel went on to consider whether Mr Goldsmith 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.
13. The Panel had regard to Mr Goldsmith's written submissions, in which he referred to the "severe" health problems he has suffered from for a number of years and which has led to him no longer being involved in valuations or other professional reporting. He explained that he has been undertaking a number of duties that were "in effect compatible with CPD" and "Mistakenly I believed this was acceptable to the RICS..."
14. However, the Panel noted that Mr Goldsmith had recorded no CPD activities for 2018, nor any for 2014 and 2015. This represents a pattern of failures which prevents RICS from monitoring his compliance with his professional obligations and tends to undermine public confidence in the profession.
15. The Panel noted that Mr Goldsmith accepted in his Listing Questionnaire that he was duly liable to disciplinary action, subject to the mitigation expressed in his written submissions.
16. 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.

17. For these reasons the Panel concluded Mr Goldsmith was liable to disciplinary action.

## **Sanction:**

18. Having found the charge proved and determined that Mr Goldsmith was liable to disciplinary action, the Panel referred to the written submissions on behalf of RICS regarding prior breaches of CPD obligations in 2014 and 2015, for which he received a Caution and a Caution and a Fine, respectively. It noted that he paid the fine issued in 2016 for the 2015 breach.
19. 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 Goldsmith about his CPD obligations, including a postal reminder of the consequences of a further breach.
20. 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.
21. 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.
22. The Panel was advised that in determining what, if any sanction to impose on Mr Goldsmith, 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:**

23. The Panel took account of Mr Goldsmith's correspondence with RICS, including those from his treating physicians, as well as his written submissions. The Panel accepted the evidence that he had been suffering from an adverse health condition that had led to his suffering from fatigue and resulting in a reduction in his professional engagements.
24. However, the Panel were not satisfied that this accounted fully or at all for Mr Goldsmith's breaches. His written submissions demonstrated that in spite of his condition, he has continued to undertake a number of professional duties and it was his own misunderstanding about the status of that work, rather than his health, that led to his failure to record his CPD. Further, the Panel observed that Mr Goldsmith had managed to record well over the minimum number of CPD hours in 2016 and 2017, without apparent difficulty.
25. That being said, the Panel were mindful of the fact that Mr Goldsmith had conducted a work over the relevant period that was likely to be CPD compliant. His failure was not to record it. Further, it took account of Mr Goldsmith's submission that he is about to embark on a new

medication regime that he hopes "...will alleviate my [symptoms] and enable me to work longer hours including attendance at CPD if required". The Panel considered this to be an indication that Mr Goldsmith intends to comply in future.

26. The following features of the case were considered to aggravate the breach:

- Prior cautions for similar breaches in 2014 and 2015
- Receipt of a fine for the 2015 breach

27. The following features of the case were considered to mitigate the breach:

- He has admitted the breach
- Adverse health may have contributed to his ability to comply

## Decision on Sanction:

28. 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.

29. The Panel were concerned by Mr Goldsmith's failures to record CPD during the 3 years in question. He and all members must understand the vital importance of recording CPD in order that RICS can monitor and verify the maintenance of professional standards and in order to protect the reputation of, and confidence in, the profession.

30. In light of the mitigating features of this case, the Panel considered the presumption of expulsion would be disproportionate in this case. 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 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, at least 10 hours of which must be formal, on the RICS CPD Portal by 31 January 2020."**

31. Failure to comply with this condition will result in Mr Goldsmith automatic expulsion.

32. In addition, the Panel concluded a fine of £500 was appropriate to mark the breach and to encourage future compliance.

## Publication

33. 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.

34. 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**

35. 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**

36. Mr Goldsmith 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.

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