

Disciplinary Panel Hearing by way of written submissions

Case of

**Mr Scott Tonneson MRICS, MAI [1297215]
Atlanta, USA**

On

Monday 11 November 2019

By telephone conference

Panel

Angela Brown (Lay Chair)
Jane Bishop (Lay Member)
Nick Turner (Surveyor Member)

Legal Assessor

Peter Steel

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.

Response

1. Mr Tonneson had responded to an email from the RICS Conduct team on 31 October 2019 as follows: "*I choose to waive full notice, accept short notice of the bundle, and the hearing proceeds on 11 November 2019.*" He had not however indicated whether he accepted the charge or returned the Listing Questionnaire.

2. The Panel therefore proceeded on the basis that the above charge was not admitted.

Summary

3. From January 2013 RICS members were obliged to complete 20 hours CPD activity by 31 December of each calendar year.
4. Rule 6 provides: “Members shall comply with RICS requirements in respect of continuing professional development.”
5. 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.
6. For the CPD year 2018 correspondence was sent by email to members reminding them about the necessity to comply with their CPD obligations. Mr Tonneson was also sent a letter to his preferred address dated 30 January 2019 warning him of the impending deadline for submitting his 2018 CPD. This made it explicit that he would be referred to a Disciplinary Panel if he failed to comply with the CPD requirements in 2018.

Service

7. At the outset of the hearing, the Panel was unsure whether in fact the Notice of Hearing had been sent to Mr Tonneson’s preferred address or to the address of his new employer. It therefore requested further details of the attempts made to serve him, which demonstrated that Mr Tonneson had been in communication with the RICS Conduct team, had received the Notice of Hearing with supporting papers and had responded to it indicating that he was content for the case to continue on 11 November 2019 without an oral hearing. The Panel therefore concluded that it was fair and appropriate to proceed to deal with the case as a paper hearing in accordance with Rule 43a. of the Disciplinary, Registration and Appeals Panel Rules 2009.

Findings of Fact

8. The Panel was provided with a statement from Joe Poole, CPD Administrator at RICS, dated 22 May 2019 setting out Mr Tonneson's CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2018. There was no evidence in front of the Panel that Mr Tonneson had been granted any concessions for that year.
9. Accordingly the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

Liability to Disciplinary Action

10. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Tonneson'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, as they prevent the RICS from monitoring compliance thus ensuring public protection and maintaining confidence in the profession.
11. Accordingly, the Panel was satisfied that Mr Tonneson was liable to disciplinary action.

Sanction

Panel's Approach

12. The Panel took into account all the evidence contained in the Bundle provided to it as well as the RICS Sanctions Policy.
13. 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 the 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.
14. The Panel bundle contained a further statement from Joe Poole also dated 22 May 2019, which indicated that Mr Tonneson had received a Caution for failure to comply with the CPD requirements in 2013 (he had apparently completed sufficient CPD for the year but had not recorded it in time) and a Caution and Fine in 2015 for a further breach. This was therefore Mr Tonneson's third such breach.

Decision

15. As noted above, Mr Tonneson had not provided a response explaining his failure to comply with the CPD requirements. It was therefore difficult to identify any specific mitigation, though the Panel did note his expression of regret for not providing evidence of his CPD or up-to-date contact information following his change of jobs.
16. The Panel considered it some mitigation that Mr Tonneson had engaged with these proceedings, albeit he had not provided any evidence of completing CPD or any real explanation. The Panel was also not informed of any other disciplinary history other than the CPD breaches.
17. 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 and it was clear from his compliance in previous years that he must understand those requirements;
 - He had not paid the fine imposed on him for failure to comply in 2015; and
 - 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.
18. The RICS is a professional membership organisation and sets standards for its members as a condition of membership. Even taking in to account the occasional difficulties members may experience in recording CPD, the system for doing so is not difficult however busy a member's professional or personal life may be. Compliance is not optional.
19. 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. As noted above, Mr Tonneson ought to have been aware of his responsibility to ensure that he complied with his CPD obligations yet had repeatedly failed to record his CPD. In addition the Panel noted that Mr Tonneson had been sent numerous reminders by the RICS, despite the fact that the RICS was not obliged to do so.
20. 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 Tonneson had already received a caution and then a caution and a fine for the previous breaches. The Panel also considered the imposition of a reprimand, but concluded that a reprimand on its own would not reflect the seriousness of Mr Tonneson's repeated failure to comply with the requirement to complete and record CPD as required.
21. In considering whether to require Mr Tonneson 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 are 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 Tonneson 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.

22. 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, indeed it had never been paid. Mr Tonneson's repeated failure to abide by his professional responsibilities was simply unacceptable for someone who wished to remain part of a respected profession.
23. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Tonneson's continuing membership as an adequate response to the misconduct demonstrated by this case. Mr Tonneson had not provided any evidence of having undertaken CPD in 2018, nor any proper explanation of his failure to comply with the requirements despite having had a number of opportunities to do so. He had not assured the Panel that he understood his professional responsibilities or had any real insight into the seriousness of his breach of the rules. Mr Tonneson was required to complete and record CPD in any event. It was therefore not clear what purpose it might serve to impose a condition relating to his future completion of CPD.
24. 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 Tonneson's failure to complete and/or record CPD in 2018, 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 Tonneson be expelled from membership of the RICS.

Publication

25. 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

26. RICS applied for costs in the sum of £400.

27. The Panel considered carefully the issue of costs. The costs figure represents a contribution towards the costs incurred by the 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.

28. The Panel concluded that it was appropriate for Mr Tonneson 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.

29. The Panel orders that Mr Tonneson pays to the RICS costs in the sum of £400.

Appeal Period

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

31. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of the RICS has 28 days, from the service of the notification of the decision, to require a review of this Decision.