

Disciplinary Panel

Case of

Mr Simon Light FRICS

On

Thursday 12 September 2019

Panel

Angela Brown (Lay Chair)
Justin Mason (Surveyor Member)
Nick Hawkins (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 12 July 2019, was sent to Mr Light by email and special delivery post to the address held on Mr Light's Member contact record as his preferred means of communication with the RICS. A copy of the Notice and a signed witness statement dated 3 September 2019 from Maria Choudhury, Regulatory Tribunal Executive at the RICS, was produced by the RICS as proof that the Notice had been served.
2. 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.

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) informed Mr Light that the RICS bundle of documents, including the evidence upon which the RICS relied and a listing questionnaire for completion by Mr Light would be provided separately by the Regulatory Enforcement Team;
 - v) Invited Mr Light to confirm within seven days whether he wished to request an oral hearing.
3. As pointed out in the Notice, the case against Mr Light was to be considered by way of written representations. Mr Light confirmed in his completed listing questionnaire that he did not wish to request an oral hearing. In these 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

4. RICS members are required to complete and record 20 hours of CPD activity by 31 January each year relating to CPD undertaken in the preceding calendar year.
5. Rule 6 of the Rules of Conduct for Members provides: **“Members shall comply with RICS requirements in respect of continuing professional development.”**
6. 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.
7. 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 was likely to result in expulsion from RICS.

Findings of Fact

8. The Panel was provided with a copy of Mr Light’s CPD records from the RICS online CPD system which were exhibited to a witness statement dated 13 May 2019 from Mr Joe Poole, a CPD administrator working for the RICS.

The Panel found, based on this evidence, that Mr Light:

- (i) Had not completed and recorded, or caused to be recorded, any 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.

9. Mr Light had indicated in his completed listing questionnaire that he admitted the charge *“but with qualifying circumstances, as detailed in this questionnaire.”* The Panel considered that whilst those circumstances may be relevant to mitigation should the Panel find the charge proved, they were not relevant to whether or not, as a matter of fact, the required number of CPD hours had been completed and recorded.

10. Taking all of the evidence into account, the Panel found the charge proved.

Liability to Disciplinary Action

11. 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 knowledge and are able to demonstrate this through proper and accurate recording of their CPD. Ensuring that Members complete CPD is an important requirement in the interests of ensuring public protection and confidence in the profession, and the RICS as regulator, and is not optional.

12. The witness statement from Hayley Moore, Improvement and Performance Manager, RICS, dated 17 May 2019 found at pages 41 to 43 of the RICS bundle, 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. Despite these reminders, Mr Light had still failed to comply with his professional obligations in 2018.

13. The Panel was of the view that a single failure to comply with the CPD requirements is sufficiently serious to give rise to liability to 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 considered that any breaches of the RICS rules on CPD recording are serious as they prevent RICS from monitoring compliance and thus ensuring public protection.

14. Accordingly, the Panel was satisfied in all of the circumstances of the breach that Mr Light's conduct was sufficiently serious so as to render him liable to disciplinary action.

Sanction

Panel's Approach

15. 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.

16. The Panel took into account the written submissions made on behalf of RICS, the RICS Sanctions Policy and Mr Light's disciplinary history which is as follows in related to CPD related sanctions:

2013 - Caution

2015 - Caution and fine. RICS indicated that Mr Light had paid this fine.

17. The Panel took into account the personal mitigation advanced by Mr Light by way of written representations as set out in his completed listing questionnaire, concerning the demands he was facing in his career during 2018 on account of a change of role and then a change of employer, and the difficult personal and family circumstances he was facing towards the end of 2018. Mr Light referred to having had "*an extraordinary year*" both personally and professionally during 2018 and that it was a "*genuine oversight*" that had led to him failing to comply with his CPD obligations in 2018.

18. The Panel had sympathy with the difficulties Mr Light had faced in his personal life but attached little weight to the demands and changes in his professional life having prevented

him from complying with his professional obligations. No matter how busy a Member is, making time for undertaking, and demonstrating to their regulator that they are undertaking, relevant and continuing professional development is of fundamental importance.

19. Mr Light referred to a number of activities that he had undertaken in 2018, which he described as “qualifying activity” including career counselling, coaching, time management, self-learning and mentoring. The Panel considered that whilst this was encouraging evidence of Mr Light taking responsibility for his professional development as part of his ongoing employment and career development, there was no specific evidence in front of the Panel as to how this activity had ensured that Mr Light had maintained a relevant and current understanding of RICS’ professional and ethical standards relating to his ongoing practice as a chartered surveyor which is the underlying purpose of CPD activity.

Decision on Sanction

20. 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.
21. The charge found proved represented a third breach of the CPD requirements, Mr Light having failed to complete and record, or caused to be recorded, the required number of hours of CPD over three separate years (2013, 2015 and 2018) despite having been sent a number of reminders by the RICS of the importance of doing so and the consequences that could follow for failing to comply.
22. Previous sanctions in relation to those CPD breaches had not ensured that Mr Light had consistently complied with his CPD obligations every year despite having been clearly aware of the requirements and the Panel considered that to be a serious aggravating feature of this case. Mr Light had offered no explanation why, having completed the required number of hours in 2014 following a caution for having failed to do so in 2013, he then again failed to comply with his professional obligations relating to CPD in 2015. This is evidence of a casual and intermittent approach to compliance which is not acceptable.

23. The Panel took into account Mr Light's admission of the charge and the fact that he had not shown a complete disregard of his professional obligations, having complied with the CPD requirements in 2014, 2016, 2017 and 2019. The Panel accepted the evidence of Mr Light that 2018 had been a particularly challenging year for him in his personal and professional life. The Panel took into account that he had engaged with RICS in relation to these proceedings and had shown sufficient insight to set out what remedial steps he would now be taking, including ongoing recording of his CPD as events happen and more active engagement with RICS.
24. 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 Light 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.
25. The Panel went on to consider 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 non-compliance. A caution had already been imposed for a previous breach and yet Mr Light had still failed consistently to comply with his professional obligations.
26. The Panel also considered the imposition of a reprimand, but concluded that similarly this would not reflect the seriousness of Mr Light's repeated failure to comply with the requirement to complete and record CPD.
27. In considering whether to require Mr Light to give an undertaking the Panel took into account the mandatory nature of the CPD requirements which should not require Members to give undertakings to comply with. CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date and are ultimately to ensure public protection. The Panel concluded that it would not be appropriate or proportionate to impose an undertaking given that Mr Light 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.
28. 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 concluded that,

on balance, expulsion was not justified and proportionate in this case. Mr Light had engaged with RICS and the regulatory process; had shown some degree of insight into his past failings; and had demonstrated that he was now taking a more responsible approach to his professional obligations having completed and recorded the required number of hours of CPD in 2019 in a timely manner.

29. However, whilst the Panel did not consider expulsion to be justified and proportionate at this time, Mr Light must now demonstrate that he had learnt from his past failings and that there would be no repeat of previous breaches.

30. The Panel therefore ordered that Mr Light's ongoing membership of the RICS is to be conditional on that Mr Light is required to comply with the RICS CPD requirements for 2020 which include completion of the required number of CPD hours by 31 December 2020 and the recording of those CPD hours by 31 January 2021. If Mr Light breaches this condition, he will be expelled from membership without further reference to a Disciplinary Panel.

31. The Panel considered a fine was also justified and proportionate taking into account the seriousness of the repeated failings in this case, and ordered that Mr Light pay the RICS a fine of £750 within 14 days of the date of notification of this decision to Mr Light.

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 no application by either party for costs.

Appeal Period

34. Mr Light 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.