

## **Disciplinary Panel Hearing**

### **Case of**

**Mr Zsolt Molnar MRICS**

**Hungary**

### **On**

Tuesday 12 February 2019

### **At**

By Telephone conference

### **Panel**

Gillian Seager (Lay Chair)

Ron Barclay-Smith (Lay Member)

Nick Turner FRICS (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 Molnar is:

'Between 1 January 2017 and 1 February 2018 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 Molnar is therefore liable to disciplinary action under Bye-law 5.2.2(c).

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

1. Mr Molnar was given notice by email and special delivery post of 14 January 2019 that this case was to proceed by way of written representations ie: a paper hearing, in accordance with Rule 43a(a).
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 Rule 43a(a).
3. The Panel next considered whether to proceed in the absence of Mr Molnar. 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 was 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 Ms Maria Choudhury dated 28 January 2019, that Mr Molnar has been emailed and sent the Notice in accordance with the Rules, to his preferred email and postal address as notified to RICS. However, he has not responded.
5. The Panel concluded it was appropriate to proceed in Mr Molnar's absence on the bases that he had not engaged with RICS in any correspondence before the Panel regarding the issues or the proceedings themselves and was unlikely to engage in future were the Panel to adjourn for that purpose. The Panel considered there was a strong public interest in ensuring that substantive hearings take place as expeditiously as possible.

### **Evidence:**

6. The Panel received a bundle containing material relevant to each stage of the proceedings. On advice from the Legal Assessor, the Panel took care to ensure it account of the material only insofar as it was relevant to its decision at each of those stages.

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

7. 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 care should be taken to examine the evidence. There is no requirement for Mr Molnar to prove anything.
8. The Panel had in mind throughout its deliberations that the right to practice a profession is involved in these proceedings and proceeded upon the basis that the Human Rights Act 1998 will apply. It bore in mind in particular Mr Molnar'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 Molnar, as a matter of fact, had not completed and recorded any CPD between 1 January 2017 and 1 February 2018. That evidence comprised a copy of Mr Molnar's CPD record and a statement on behalf of RICS from Mr Joe Poole, dated 14 January 2019.
10. It was noted that there is no evidence that Mr Molnar has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement.
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 Molnar 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 and applies in respect of the specific charge found proved. 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. Mr Molnar has provided no evidence of CPD activities having been undertaken over this period, which prevents RICS from monitoring his compliance with his professional obligations and tends to undermine public confidence in the profession.
13. The Panel observed, having taken account of the statement from Ms Hayley Moore on behalf of RICS, that numerous reminders were sent out to Mr Molnar, with no response forthcoming.
14. 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.
15. It concluded that Mr Molnar was liable to disciplinary action.

**Sanction:**

16. Having found the charge proved and determined that Mr Molnar was liable to disciplinary action, the Panel referred to a further bundle of material concerning sanction. This contained further written submissions and a statement from Ms Hayley Moore on behalf of RICS regarding prior breaches of CPD obligations in 2013 and 2016 (when no CPD was recorded), and for which he received, respectively, a Caution and a Caution and a Fine. Again, the Panel took account of the statements from Ms Hayley Moore, Global Workflow Team Manager at RICS, confirming the mailings sent to Mr Molnar about his CPD obligations, including a postal reminder of the consequences of a further breach.

17. 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.
18. The Panel paid careful heed to the advice of the Legal Assessor and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case.
19. The Panel was advised that in determining what, if any sanction to impose on Mr Molnar, 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 sanction available first and only moving to the next level of sanction if it decided lesser sanctions were inappropriate or otherwise failed 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:**

20. The Panel took account of the fact that Mr Molnar had not engaged with RICS at all with respect to these proceedings and therefore had offered no explanation or apology for his breaches which the Panel could draw upon in mitigation.
21. The following features of the case were considered to aggravate the breach:
  - Prior cautions for similar breaches in 2013 and 2016
  - Receipt of a fine for the 2016 breach
  - No engagement at all with RICS

#### **Decision on Sanction:**

22. 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 Guidance which provides that a third breach of Rules regarding CPD within 10 years of receipt of a caution raises a presumption of expulsion.
23. Having accepted the advice of the Legal Assessor regarding the need to take a proportionate approach, the Panel considered that in the absence of any mitigating features, the presumption of expulsion should apply in this case. It gave careful consideration to the lesser sanctions available to it within the Sanctions Guidance but concluded that in the absence of any evidence that Mr Molnar was likely to address the breaches or avoid repeating them in future, there was no public interest or other proper basis to impose a sanction other than expulsion.
24. Accordingly, the Panel orders Mr Molnar be expelled from membership.

## **Publication**

25. 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.
26. 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**

27. 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**

28. Mr Molnar 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.
29. 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.