



ROYAL INSTITUTION OF CHARTERED SURVEYORS

Disciplinary Panel Hearing

Case of

Mr Edward Prempeh (6419402)

On

Wednesday 27 September 2023

At

Held remotely via Microsoft Teams

Panel

Paul Watkinson (Chair)
Rosalyn Hayles (Lay Member)
Jane Bishop (Lay Member)

Legal Adviser

Fiona Barnett

RICS Representative

Donna Carr

Tribunal Executive

Adeel Qureshi

Introduction

1. Mr Prempeh appeared unrepresented before the RICS Disciplinary Panel in connection with the following allegations:

Charge

Between 1 January 2020 and 1 February 2021, 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

Mr Prempeh is therefore liable to disciplinary action under Bye-law 5.2.2(c)

RICS application to amend the charge

2. Ms Carr invited the Panel to amend the charge, which alleges that the breach is in respect of "Rule 6 of the Rules of Conduct for Members 2007."
3. Ms Carr applied to delete "2007" and replace it with the words, "version 6 and version 7". She explained that version 6 of the Rules of Conduct for Members (also referred to as the Rules of Conduct for Members 2007) was in effect for part of the relevant period covering 1 January 2020 to 1 March 2020. This was then replaced by Version 7 from 2 March 2020, which was in effect for the remainder of the relevant period, namely up to and after 1 February 2021. The wording of Rule 6 in both version 6 and version 7 is identical and the CPD requirements themselves did not change at any stage during the relevant time.
4. Ms Carr referred the Panel to Rule 122 of the Regulatory Tribunal Rules, version 1, ("the Rules"), which gives the Panel a discretion to amend the charge if the amendment can be made without injustice.
5. Mr Prempeh did not object to the application.
6. The Panel was satisfied that the amendment was administrative in nature, and would cause no injustice to Mr Prempeh. The Panel granted the application.

The charge as amended

Charge

Between 1 January 2020 and 1 February 2021, 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 version 6 and version 7
Mr Prempeh is therefore liable to disciplinary action under Bye-law 5.2.2(c)**

Response

7. Having accepted in his Listing Questionnaire that he was was liable to disciplinary action, at the hearing, Mr Prempeh denied the allegation.

Summary

8. Mr Prempeh (AssocRICS) has been a professional Member of RICS since 12 June 2013.
9. All Members of RICS are required to undertake a minimum of 20 hours of Continuing Professional Development (CPD) each calendar year. Of the minimum 20 hours CPD, at least 10 hours must be formal CPD. The remainder can be informal CPD.
10. In addition, Members must record their CPD activity online. The activity must be recorded with RICS by 31 January of the following year.
11. It is alleged that Mr Prempeh failed to comply with RICS' CPD requirements for the 2020 CPD year and that this is his third breach of CPD requirements within a 10 year period.
12. Mr Prempeh's case was referred to a Single Member of the Regulatory Tribunal. That Single Member found the charge proved and imposed a sanction.
13. Rule 115 of the Regulatory Tribunal Rules version 1, with effect from 2 March 2020, ("the Rules") sets out the absolute right for a Regulated Member to reject the findings and/or sanction imposed by a Single Member of the Regulatory Tribunal. Mr Prempeh exercised that right, and the matter is before the Disciplinary Tribunal to consider afresh.

Burden and standard of proof

14. The burden of proof is on RICS and where the Disciplinary Panel must determine issues of fact, the standard of proof will be on the balance of probabilities. This means that the Panel can find a fact proved if it is more likely than not to have occurred as alleged.

Evidence

15. The Panel was provided with a bundle of documents numbering 131 pages.
16. Within the bundle, there were two written responses from Mr Prempeh. These were entitled:

- “Rejection of the Decision” [of the Single Member] dated 9 March 2022, (“the first letter”, and,
- “Defendant’s statement of defence” [for Disciplinary Panel hearing], dated 24 July 2023, (“statement of defence”)

17. The content of the first letter can be summarised as follows:

- Mr Prempeh explained that he had taken a career break from his employment from July 2014 to February 2016. He accepted that he completed no CPD for 2014, and that his CPD for 2015 was logged on the RICS portal late following his return to work in February 2016. He said his employer did not inform RICS of his absence.
- Mr Prempeh said he had no access to his work email during his career break. He had no knowledge of the Caution issued for the 2014 breach, and no knowledge of the Caution and fine issued for the 2015 breach, which was paid by his employer. He said these two CPD breaches were not as a result of “wilful neglect” on his part.
- Mr Prempeh said he had completed/logged the requisite CPD hours for the 2020 CPD year, but maintained there must have been a fault in the RICS portal as only 18 hours were showing.
- He accepted that he had received email correspondence from RICS in relation to the 2020 CPD year, but given that he had completed his CPD, he was suspicious that this correspondence may have been spam/phishing emails.

18. Mr Prempeh gave evidence to the Panel, explaining in detail the matters that were set out in his statement of defence. He said that his CPD was all completed in the year 2020. The 18 hours recorded was for a 3 day course, and the 2 hours was for a 2 hour course. He waited until 2 weeks before the deadline to record it. He went on to the RICS portal and thought he had recorded the CPD in the specified period, however, the date he entered for completion of the course was an error, as it was shown as having been completed on the day it was recorded.

19. Mr Prempeh explained that he thought emails received from RICS were spam, because he had already recorded his CPD and was not expecting to receive any email correspondence from RICS. He said he went into his RICS personal account, thinking that a copy of any correspondence would be filed there, but it was not. He said he also tried to call the telephone number on the reminder, but the call did not go through. Having then received further emails from RICS, he became concerned that spam email was trying to infiltrate his system.

20. When the final email arrived from RICS, it was headed “legal proceedings” and had several attachments. He opened this email to discover that the single member had considered the case, and made a decision. He then contacted RICS immediately.
21. Mr Prempeh said he had made an administrative error in the recording of his CPD. This was not intentional, not dishonest, and did not impact on the public because he had completed the full CPD requirement. Mr Prempeh said he attends conferences in the course of his work, and reads professional bulletins, constantly keeping abreast of his requirements. He said he recognises the importance of completing his CPD, and even completed his CPD in 2018 when he was away from work for several months for health reasons.
22. In relation to the two previous CPD breaches, Mr Prempeh explained that he was unaware of these and did not know that a fine had been levied and paid by his employers. He was unaware that he should have sought a concession from RICS when he took a career break in 2014. He reiterated the information which was set out in his first letter (above).
23. Mr Prempeh apologised to the Panel, and said his conduct was unlikely to be repeated, as he now records his CPD on the RICS portal as soon as it is completed.
24. In response to Panel questions, Mr Prempeh said he thought that the 2 hours of CPD were completed in mid 2020. He also provided the Panel with details of a 3 day CPD course he had undertaken, which had comprised 18 hours of CPD over 3 days, September 2020. This was run by legal training providers, (Bond Solon), and incorporates training for surveyors who may be required to give evidence in legal proceedings.
25. Mr Prempeh told the Panel that although his employers deal with administration of RICS matters centrally, he now fully accepts that the responsibility for all CPD matters lies with him.
26. The Panel also heard evidence from Mr Andrew Sofola, who is Mr Prempeh’s current line manager. Mr Sofola had also provided a letter to RICS, dated 26 July 2023. Mr Sofola confirmed he has known Mr Prempeh for around 20 years. He said he has been Mr Prempeh’s line manager since 2019. He told the Panel that Mr Prempeh has a clean disciplinary record and has been a patient and diligent team member. In relation to the CPD matter, Mr Sofola confirmed that Mr Prempeh has always completed CPD learning over and above the minimum requirements for RICS.
27. Mr Sofola explained the nature of the work undertaken by his team. He also provided the Panel with further details of the long course which Mr Prempeh said he had undertaken during 2020. Mr Sofola described this course as, “pretty full on”, and agreed that it includes much preparation and post course work.

28. Mr Sofola said that RICS membership is important for his team. He said that if Mr Prempeh is not allowed to retain his membership, there is likely to be an impact on his employment. He said the implications of Mr Prempeh losing his membership of RICS could be quite serious.
29. Mr Sofola explained that Mr Prempeh would not have been aware that a RICS fine was paid by his employer on his behalf, given that at that time, such matters were dealt with centrally by an administration team who did not liaise directly with individuals.

Findings of fact

RE Charge

30. In reaching its decision, the Panel had regard to all the evidence before it. It considered the “CPD requirements and obligations” set out on the RICS website. The website states:

*“All members....must record their CPD activity online....
All members must complete 20 hours of CPD activities by 31 December. You have until 31 January to record your completed activities online.*

CPD requirements for members

1. *All members must undertake a minimum of 20 hours CPD each calendar year (January to December).*
 2. *Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD. (For guidance, see below and download examples.)*
 3. *All members must maintain a relevant and current understanding of our professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD.*
 4. *Members must record their CPD activity online by 31 January.*
31. The Panel also had regard to the witness statement of Claire Hoverd, dated 6/1/23. Ms Hoverd stated that she has been employed by RICS since 23 June 2014. From March 2019 she obtained the role of Regulations Support Team Manager within the Regulation department. Ms Hoverd stated:
- “RICS’ records show that on 12 January 2021 Mr Prempeh recorded two separate CPD entries. The first entry was for 18 formal hours and the second was for 2 formal hours. However Mr Prempeh recorded the CPD activity dates as 12 January 2021. As the activity date was after the activity deadline of 31 December 2020, although it was recorded in time for 2020, it would have counted towards his 2021 activities and not 2020.*
32. The Panel accepted this evidence, which was not challenged by Mr Prempeh, and was in fact adopted by him in its entirety as a correct account of what had occurred when he entered his CPD on the RICS system in January 2021.

33. The Panel also accepted Mr Prempeh's evidence that he had completed the requisite number of CPD hours for the 2020 CPD year and that he had done so within the required timeframe. Mr Prempeh was able to give evidence of the CPD courses that he had undertaken, and this was supported by Mr Sofola, who was aware of the Bond Solon course, and the efforts required to complete that course over a period of time.
34. It was common ground between the parties that Mr Prempeh had recorded his CPD in January 2021, but that he had made an error when he recorded it, by recording the CPD "activity date" as the date on which he recorded it, rather than the date on which he completed it. The issue for the Panel was whether this amounted to a breach of the RICS CPD requirements.
35. The Panel was satisfied that the error made by Mr Prempeh in recording his CPD did amount to a breach of the CPD requirements as set out above.
36. Although Mr Prempeh did record his CPD activity online by the deadline date, the error he made when he recorded it, (which was accepted by him), meant that his CPD hours did not count for the 2020 CPD year and were not visible in the portal for the 2020 CPD year.
37. The RICS CPD rules are clearly intended to ensure that members complete the requisite CPD hours for a given CPD year and accurately record them in a way which would enable their CPD activity to be viewed and monitored by the regulator. In the Panel's view, given that Mr Prempeh made an error when recording his CPD, and his CPD was not properly recorded for the 2020 year, he had not complied with the letter of the CPD obligations. The Panel therefore found the facts alleged in the charge proved, and was satisfied that this constituted a breach of Rule 6, albeit this could, in the particular circumstances, be categorised as a "technical breach".

Submissions by RICS Presenting Officer

38. Ms Carr submitted that this was Mr Prempeh's third CPD breach, and as such, he should be liable to disciplinary action.

Liability to disciplinary action

39. The Panel had found that Mr Prempeh breached rule 6 of the Rules of Conduct for Members. However, this breach had arisen solely as a result of a careless error made by him when he recorded his CPD.
40. The Panel was satisfied that the full 20 hours of CPD had been undertaken by Mr Prempeh, and that he had completed it within the required timeframe.
41. The Panel was mindful that not all breaches of the RICS Rules of Conduct will necessarily render a member liable to disciplinary action. The Panel's view was that the error made in recording the CPD, although giving rise to a breach of Rule 6, was not a serious error. It was

a minor error and a simple mistake. It was satisfied that although a “technical” breach of Rule 6 had occurred, this was not sufficiently serious so as to render Mr Prempeh liable to disciplinary action. His conduct had not fallen significantly short of the standards expected of a RICS member.

Costs

42. RICS applied for costs totaling £3,770.00. This was supported by a detailed schedule of costs which had been served on Mr Prempeh, and he had provided a detailed statement of means.
43. Ms Carr said that RICS had made efforts to communicate with Mr Prempeh but that he did not respond. She said that the matter was then dealt with by the Single Member, and it was not until after that that Mr Prempeh engaged with RICS. She submitted that costs could have been avoided if Mr Prempeh had engaged earlier.
44. Mr Prempeh said that he had been under the impression that the costs requested would be around £2,000.00. He invited the Panel to reduce the costs further.
45. The Panel carefully considered the RICS schedule of costs. It was mindful that Mr Prempeh had not engaged with RICS when he should have done so. However, it was also mindful that after the Single Member decision was made and after Mr Prempeh engaged with RICS, RICS carried out further enquiries and new information came to light which was relevant to the case. These enquiries could also have been undertaken at a much earlier stage and some of the costs incurred by RICS could have been avoided.
46. The Panel decided that a costs order should be made, otherwise the full cost of these proceedings would fall on the profession as a whole. However, it decided to deduct £1,000.00 from the amount requested by RICS, (this was shown on the schedule as 5 hours of lawyer costs). It concluded that £2,770.00 was a fair amount for Mr Prempeh to pay in costs in all the circumstances.

Publication

47. Ms Carr invited the Panel to make an order for publication.
48. Mr Prempeh told the Panel that he did not want this matter to be published in the public domain. He said that to do so would tarnish the reputation of his employer, and damage his own reputation as an individual.
49. The Panel considered the policy on publication of decisions contained in the Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. It accepted the advice of the Legal Adviser. The Panel was not satisfied that the reasons advanced by Mr Prempeh were sufficient to justify not making an order for publication. It did not accept that publishing this

decision would necessarily damage Mr Prempeh's reputation, or that of his employer, particularly given the decision of the Panel that he was not liable to disciplinary action.

50. The Panel therefore ordered that the decision be published in accordance with the Sanctions Policy, Supplement 3.

Appeal Period

51. Mr Prempeh has a right of appeal against this decision.

52. An application to Appeal must be served upon the Head of Regulatory Tribunals within 28 days of service of notification of the decision to be appealed.

53. In accordance with Rules 166 and 167 of the Tribunal Rules, RICS' Chair of Governing Council may require a review of this decision on the grounds of undue leniency within 28 days.