

Disciplinary Panel Hearing

Case of

Matthew Ainger AssocRICS [0851836]

(Present and representing himself)

On

Thursday 2 May 2024 at 10.00

At

Held remotely via Microsoft Teams

Panel

Alison Sansome (Lay Chair)

Mohamed Shehata (Surveyor Member)

Glen Mathieson (Lay Member)

Legal Adviser

Rosemary Rollason

RICS Representative

Donna Carr

Tribunal Executive

Adeel Qureshi

Introduction

1. The charge to be considered by the Disciplinary Panel against the Regulated Member, Mr Matthew Ainger (“Mr Ainger”), is as follows:
 1. *Between 1 January 2021 and 1 February 2022, 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. An extension period was granted by RICS until 26 May 2022 by which date you had still failed to complete and record or cause to be recorded at least 20 hours of CPD on the RICS Portal for the period between 1 January 2021 and 1 February 2022.*

Contrary to Rule 6 of the Rules of Conduct for Members 2007

The Regulated Member is therefore liable to disciplinary action under Bye-law 5.2.2(c)

Documents

2. The Panel received a hearing bundle (118 pages) and service documents from RICS.
3. On the morning of the hearing the Panel accepted from Mr Ainger, with the agreement of Mrs Carr on behalf of RICS, a CPD log and a copy of Mr Ainger’s letter of 10 February 2023 to RICS.

Response

4. Mr Ainger attended the hearing and represented himself.

5. Mr Ainger confirmed that he admitted the facts set out in the charge and that there was liability to disciplinary action.

Background

6. RICS provided a case summary setting out the background to the charge. The case summary confirmed that Mr Ainger has been a professional member of RICS since 12 June 2013 (this was later corrected by Mr Ainger who stated that he has been a qualified surveyor since 2001). As an RICS member, Mr Ainger is required to undertake Continuing Professional Development (CPD) in each year in accordance with Rule 6 of RICS' Rules of Conduct for Members. All Members of RICS (AssocRICS, MRICS and FRICS) 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 may be informal CPD. Members must complete the minimum required number of hours of CPD and record their CPD activity online by 31 January of the following year.
7. RICS' requirements in respect of CPD are set out on RICS' website together with supporting guidance. Copies of the published requirements and the supporting guidance were included in the hearing bundle. The stated requirements relating to CPD include the following:
 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 RICS' 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 of the next calendar year.
8. RICS' records indicate that Mr Ainger failed to complete or record any CPD for the year 2021-2022 by the usual due date, 31 January 2022, or by the extended date of 26 May 2022.
9. It was noted that Mr Ainger had been found to have breached the requirements of Rule 6 of the Rules on 2 previous occasions. He received a caution for a CPD breach in 2016, when he only recorded 8 formal hours. He received a caution and fixed penalty fine for a CPD breach in 2020, when no CPD hours were recorded. The current breach, if proved, would therefore be Mr Ainger's third breach of Rule 6 within a 10-year period. It was noted that Mr Ainger has no adverse disciplinary history other than the two previous Rule 6 breaches
10. RICS' Investigation team wrote to Mr Ainger and informed him of the disciplinary action against him. Mr Ainger responded in a letter dated 10 February 2020, although it was actually sent to RICS was 10 February 2023. Mr Ainger's letter set out mitigation. Mr Ainger stated that he was no longer using the address held by RICS as his preferred email address.
11. Mr Ainger stated in his letter: *'I am proud to be a member of the RICS and am profoundly concerned that I have found myself faced with the charges and potential sanctions. I repeat that I fully accept the charges made but hope that in mitigation the exceptional circumstances detailed above can be considered. I also wish to fully cooperate with the institution to bridge the consequential gap in my CPD records during this period.'*
12. As this was a third breach of Rule 6, this matter was referred, in accordance with RICS' usual practice, to a Single Member of the Regulatory Tribunal for the matter to be considered on the papers.

13. On 19 April 2024 Mr Ainger was informed that the Single Member had considered the allegation against him and had decided to impose a sanction.
14. In an email dated 2 May 2023, Mr Ainger exercised his right under Rule 115 of the Tribunal Rules to reject the findings and/or sanction imposed by the Single Member. Mr Ainger did not provide any reasons for rejecting the decision. He requested that the matter be referred to the Tribunal for an oral hearing.
15. The matter was passed to RICS' Enforcement team to prepare for a Disciplinary Hearing. A letter dated 9 August 2023 was emailed to Mr Ainger setting out the actions required from him in order to progress the matter for a hearing. This email was sent to the same email address which Mr Ainger had used to respond to the Tribunal Executive on 2 May 2023.
16. A chasing email enclosing the letter dated 9 August and the attachments was sent on 4 September 2023. Mr Ainger was asked to confirm whether he would like the matter to be heard on the papers and he was offered the opportunity of a telephone call to discuss and queries in person. No response was received to this email. An unsuccessful attempt was made to contact Mr Ainger by telephone on 20 October 2023 and no message was left.
17. A final chasing letter dated 7 November 2023 was sent to Mr Ainger via Royal Mail special delivery. The letter was signed for by 'Ainger' on 9 November 2023. RICS has received no further correspondence from Mr Ainger until shortly before this hearing.
18. In accordance with Rule 118 of the Tribunal Rules, the matter was referred to the Disciplinary Panel to consider the matter afresh.

Submissions of RICS

19. Mrs Carr, in her case summary and oral submissions on behalf of RICS, reminded the Panel that this was not an appeal by Mr Ainger, it was a fresh hearing. Mr Ainger did not bear any

evidential burden to prove that the Single Members' decision was wrong. RICS must prove the case and, if it were found to be proved, this Panel would have to decide upon the appropriate sanction, if any, based solely on the material before it at this hearing.

20. Ms Carr stated that Mr Ainger had already been sanctioned for the 2016 and 2020 breaches and that the Panel was not asked to consider these breaches in relation to the facts of the charge.

21. Ms Carr submitted that if Mr Ainger was experiencing difficulties during the 2021 CPD year, he was entitled to seek an exemption. However, no membership concession or CPD exemption was in place. Mr Ainger remained a Member of RICS and was subject to the Rules of Conduct. The individual Member is responsible for informing RICS of any circumstances which may affect their ability to meet the CPD requirements. Whilst a member may be eligible for an exemption, they will not be exempt from the CPD requirements until they have applied for and been granted an exemption. As such, a member may still be liable for disciplinary action for failure to complete CPD even when they are eligible for an exemption. Ms Carr stated that Mr Ainger had not applied for or been granted any exemption.

22. Ms Carr submitted that the Panel should find the facts alleged in the charge proved.

Submissions of Mr Ainger

23. Mr Ainger had told the Panel today that he did undertake CPD in 2021, but he accepted that he did not record it. He stated he had not realised that he could submit this information "retrospectively" at an earlier stage in the disciplinary investigation and before this hearing. Mr Ainger said he accepted the facts alleged on the basis that he did not log his CPD for 2021.

Panel decision on facts

24. The Panel accepted the advice of the Legal Assessor and bore in mind that the burden of proof of the facts is upon RICS and Mr Ainger does not have to prove his innocence. The standard of proof in RICS proceedings is the civil standard, that is on the balance of probabilities.
25. The Panel took note of the admission to the facts made by Mr Ainger but the Panel scrutinised all the evidence presented in support of the charge to satisfy itself as to proof of the facts.
26. The Panel reviewed the documentary evidence provided by RICS in the hearing bundle. This included copies of information and guidance sent to members regarding RICS' requirements for the completion and recording of CPD. The Panel also had sight of the witness statements of Jamie Edwards, RICS Lead Investigator dated 11 October 2022, who set out details of Mr Ainger's CPD including a print-out of his CPD record. The Panel also had sight of the witness statement of Claire Hoverd, RICS Regulation Support Team Manager, dated 11 October 2022 which set out details of reminder communications sent to RICS members regarding their CPD obligations. The Panel was satisfied that this documentation clearly confirmed that for the calendar year 2021, Mr Ainger did not complete and record the required 20 hours of CPD by the due date of 1 February 2022.
27. The Panel noted that the CPD log submitted by Mr Ainger included a list of CPD activity recorded for the CPD year 2021. The Panel noted that this information was submitted by Mr Ainger late in the day and the Panel was concerned that it had not been provided to RICS at an earlier stage. However, the Panel was mindful that Mr Ainger does not bear any burden to prove his innocence in this matter and noted that RICS has not objected to the admission of the CPD log showing the CPD from 2021. The Panel also noted that the content of the log for 2021 was broadly consistent with what Mr Ainger had told RICS about the CPD he had undertaken in his earlier correspondence. The Panel accepted on the balance of probabilities that Mr Ainger undertook CPD during 2021, but it was satisfied that he did not comply with the obligation to which RICS members are subject which is to "complete and record CPD", as alleged in the charge.

Liability to disciplinary action – Submissions of RICS

28. Mrs Carr submitted that If the Panel was satisfied that Mr Ainger had breached Rule 6 and that this was his third breach within a 10-year period, then the Panel would need to decide whether Mr Ainger is liable to disciplinary action (Rule 123 (e) of the Tribunal Rules).

29. Mrs Carr submitted that the requirement for Members of RICS to maintain their professional competence, as demonstrated in part by the completion and recording of CPD, is a core obligation of membership.

Submissions of Mr Ainger

30. Mr Ainger accepted that, on the basis of the facts he had admitted, liability to disciplinary action was established.

Panel decision on liability

31. Having found the facts found proved, the Panel next considered whether Mr Ainger was liable to disciplinary action. The Panel accepted the advice of the Legal Adviser and bore in mind this was a matter for its own judgment and that a finding of fact does not automatically lead to liability to disciplinary action.

32. The Panel considered the submissions of Ms Carr, on behalf of RICS, that the conduct alleged, if found proved, would significantly damage public confidence in the profession.

33. The Panel noted that the breach was a significant departure from conduct expected of a professional. The Panel considered that the behaviour had the potential to significantly undermine public confidence in the profession and in the RICS. RICS' CPD requirements are important; they are in place to ensure that Members of the profession stay up to date

with their professional obligations, which in turn, serves to protect the public. The need to record CPD undertaken is important to ensure that members can demonstrate they have addressed any development needs, and to ensure that that RICS can access these records to allow it to sample them for review.

34. The Panel was satisfied that the conduct found proved means Mr Ainger is liable to disciplinary action.

Sanction

35. The Panel accepted the advice of the Legal Adviser and considered the submissions of the parties. The Panel referred to RICS' Sanctions Policy and its supplements. The Panel reminded itself of RICS' overriding principles as set out in the Sanctions Policy and kept in mind that a regulatory sanction is not intended to be punitive, but may have a punitive effect.

36. The Panel considered the aggravating and mitigating factors present and considered the available sanction options in a proportionate manner, considering the least restrictive sanction first.

37. As an aggravating factor, the Panel took into account Mr Ainger's previous history and that the current breach in 2021 was the third within a ten-year period. The Panel took into account that there was therefore repeated conduct.

38. The Panel concluded that the following mitigating factors were present:

- The Panel had accepted that Mr Ainger had undertaken some CPD activity for the year 2021. The Panel was mindful that the obligation upon RICS members is to complete **and** record CPD and both elements are of importance. However, the Panel took the view that the fact that Mr Ainger did undertake CPD was a mitigating factor.

- The Panel had accepted Mr Ainger's account of the difficult situation in which he found himself in his role as a senior manager of his company dealing with the issues arising from the COVID 19 lockdowns in 2020 and 2021. He described how this pressure impacted upon his level of stress and his health condition, with the result that, in the absence of receiving reminders from RICS about his CPD (which he acknowledged did not remove his CPD obligations), he lost sight of keeping up to date with the logging of his CPD.
- The Panel noted that, aside from the previous breaches of the CPD requirements, there was no other disciplinary history and that this was the first time Mr Ainger had been before a Panel.

39. The Panel proceeded to consider the available sanctions in ascending order of gravity. The Panel first considered whether a caution would be sufficient. The Panel was of the view that a further caution would be inappropriate in light of the seriousness of a third breach.

40. The Panel next considered a Reprimand. It noted the reference in the Sanctions Policy that a Reprimand may be appropriate where there was a risk of harm to the public. The Panel did not consider there were direct issues related to public protection in light of Mr Ainger having undertaken CPD, but it did consider there was a risk of harm to the wider public interest. The Panel did not consider that a Reprimand alone would be a sufficient means of marking the seriousness of the breaches found proved and moved on to consider possible further, or additional, sanctions.

41. The Panel considered undertakings but did not think these were appropriate or workable in the circumstances of this case. To impose undertakings would be to formally require Mr Ainger to do something which he is already required to do under the Rules of Conduct. Undertakings would therefore be inappropriate and disproportionate.

42. The Panel considered the imposition of a fine. The Panel concluded that in the circumstances of Mr Ainger's case, and weighing the aggravating and mitigating factors, the imposition of a fine together with a Reprimand could adequately mark the seriousness of the breach in this case and would maintain public confidence in the profession and in RICS as its regulator.
43. The Panel considered conditions but took the view that conditions were neither workable nor appropriate, given the nature of the conduct found proved.
44. The Panel moved to consider whether expulsion would be appropriate and proportionate. It noted that the Sanctions Policy indicated that expulsion was the presumption in cases of this type. It was mindful that standards of the profession must be upheld and that public confidence in the profession is likely to be undermined by a breach of CPD requirements.
45. However, the Panel bore in mind that the direct risk to the public was low as CPD had been undertaken. The Panel took into account that Mr Ainger has, albeit late in the day, engaged with this hearing process and shown a commitment to his RICS membership. He has satisfied the Panel that he now recognises the importance of undertaking **and** recording his CPD. The Panel therefore determined that the conduct fell short of requiring expulsion and this was not necessary to achieve the regulatory objectives.
46. However, Mr Ainger should be in no doubt that the Panel considered the possibility of expulsion very carefully. It ultimately decided that expulsion was not necessary or proportionate, given the mitigating factors present. Mr Ainger should, however, note that any further breaches, if proved, would be likely to result in a future panel of the Regulatory Tribunal deciding to impose the ultimate sanction of expulsion.
47. The Panel concluded that the appropriate sanction to be imposed was a combination of a Reprimand and a fine. The Panel recognised that the financial aspect of the sanction would have a punitive effect. However, this sanction was the most appropriate and proportionate to

mark the seriousness of the breaches identified. Taking the seriousness into account, the Panel determined that the correct level of fine was £2,000.00.

Publication and Costs

Publication

48. 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.
49. Mr Ainger did not wish to make any submissions on the issue of publication. The Panel was unable to identify any reason to depart from the presumption that decisions of panels of the Regulatory Tribunal will be published on the RICS website and on line Modus. There was nothing exceptional in this case which meant there was a good reason not to publish. The Panel took the view that it was necessary to publish the findings and the sanction imposed in the usual manner, in order to uphold the reputation of the profession.

Costs

50. RICS applied for its costs totalling £3,270.00 supported by a schedule of costs. Mrs Carr confirmed this was served on the parties at 17.25 on Tuesday 30 April 2024 and so met the requirement of Rule 92 that it be provided at least 24 hours before the hearing.
51. The costs figure represented a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel was satisfied that the costs application was a fair and reasonable one. The Panel noted that the costs of the decision of the Single Member had been removed from the schedule and these were not claimed by the RICS.

52. The Panel then noted that Mr Ainger had not chosen to make any submissions on the issue of costs, nor to submit information as to his means. Mr Ainger mentioned that he would hope to agree a payment schedule with RICS.

53. The Panel was mindful that if it did not order the payment of costs, these would fall on the profession as a whole. It therefore concluded that it was appropriate for Mr Ainger to pay the costs of bringing this case.

54. The Panel therefore ordered that Mr Ainger pays costs in the sum of £3,270.00 to RICS within 28 days.

Appeal Period

55. Mr Ainger may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rule 152 of the Regulatory Tribunal Rules.