



ROYAL INSTITUTION OF CHARTERED SURVEYORS

Disciplinary Panel Hearing

Case of

**Samuel Verth [1181507]
Exeter**

On

Wednesday, 23 August 2023

Held

Remotely via Microsoft Teams

Panel

Gillian Seager (Lay Chair)
Gregory Hammond (Lay Member)
Ben Davies (Surveyor Member)

Legal Adviser

Margaret Obi

RICS Representative

Hugh O'Brien Quinn

Tribunal Executive

Adeel Qureshi

Introduction

1. Charge 1 is an alleged breach of the CPD requirements for the year ending 1 February 2022. It was originally considered by a Single Member of the Regulatory Tribunal. That Single Member found the charge proved and imposed a sanction. Rule 115 of the Regulatory Tribunal Rules (version 1 with effect from 2 March 2020 to 1 February 2022) ('the Tribunal 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 Verth exercised that right and, as a consequence, Rule 118 of the Tribunal Rules requires this Disciplinary Panel to consider the matter afresh. This is not an appeal by Mr Verth, it is a fresh hearing; Mr Verth does not bear any evidential burden to prove that the Single Member's decision was wrong. RICS must prove the case and, if it is found to be proved, this Panel must decide upon the appropriate sanction based solely on the material before it at this hearing.
2. In the interim, there has been a further alleged breach of the CPD requirements for the year ending 1 February 2023. Charge 2 is before this Panel as it is a similar alleged breach; it raises the same issues for the Panel to resolve and it is in the interests of justice for the same Panel to determine both charges.
3. The allegations against Mr Verth are 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 CPD Portal for the period between 1 January 2021 and 1 February 2022.*

**Contrary to Rule 6 of the Rules of Conduct for Members version 7
Mr Verth is therefore liable to disciplinary action under Bye-law 5.2.2(c)**

2. *Between 1 January 2022 and 1 February 2023, 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 7 and contrary to Rule 2 and Mandatory Professional Obligation 1 of the Rules of Conduct effective from 2 February 2022

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

Background

4. Mr Verth MRICS has been a professional Member of RICS since November 2008.

5. 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 can be informal CPD. Members must not only complete the minimum required number of hours of CPD but must record their CPD activity online. The activity must be recorded with RICS by 31 January of the following year.
6. In respect of Charge 1 by 31 January 2022, Mr Verth failed to record any hours of CPD for the calendar year 1 January 2021 to 31 December 2021. RICS granted an extension period for Members to record their CPD hours; the extension period allowed Members to record their activity by 26 May 2022 without the risk of disciplinary action. Mr Verth did not record any hours of CPD activity by 26 May 2022.
7. In respect of Charge 2 by 31 January 2023, Mr Verth failed to record any hours of CPD for the calendar year 1 January 2022 to 31 December 2022.

Agreed Facts

8. The following matters are agreed as facts between RICS and Mr Samuel Verth:
 - i. Mr Verth MRICS is a regulated Member of RICS and has been since November 2008.

Rules and CPD Requirements:

- ii. Rule 6 of the Rules of Conduct for Members version 7 states: *Members shall comply with RICS' requirements in respect of continuing professional development.*
- iii. Version 7 of the Rules of Conduct for Members was in effect from 2 March 2020 to 1 February 2022.
- iv. Rule 2 of the Rules of Conduct with effect from 2 February 2022 states: *Members and firms must maintain their professional competence and ensure that services are provided by competent individuals who have the necessary expertise.*
- v. Example behaviour 2.5 of the Rules of Conduct states: *Members maintain and develop their knowledge and skills throughout their careers. They identify development needs, plan and undertake continuing professional development (CPD) activities to address them and are able to demonstrate they have done so. Firms encourage and support directors, partners and employees to maintain and develop their knowledge and skills, and check that they are complying with CPD requirements set by RICS.*

- vi. Appendix A to the Rules of Conduct sets out three Mandatory Professional Obligations for RICS Members. Mandatory Professional Obligation 1 states: *Members must comply with the CPD requirements set by RICS.*
- vii. 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.
- viii. Of the minimum 20 hours CPD, at least 10 hours must be formal CPD. The remainder can be informal CPD.
- ix. Members of RICS are required to record their CPD activity for each calendar year online by 31 January the following year.
- x. The RICS CPD requirements set out in Agreed Facts 7 to 9 above were in force throughout 2021 and 2022. They remain unchanged to date.

Recorded CPD:

- xi. Mr Verth did not record any CPD hours for the calendar year 1 January to 31 December 2021.
- xii. Mr Verth did not record any CPD hours for the calendar year 1 January to 31 December 2022.
- xiii. Mr Verth has breached his obligations to complete and record the minimum number of hours of CPD activity on two previous occasions namely for calendar years 2018 and 2020.
- xiv. In 2018 Mr Verth completed and recorded 1 hour of CPD activity which was marked as formal CPD. A further 9 hours of formal CPD activity were recorded as being planned but were never completed or recorded as having been completed.
- xv. In 2020 Mr Verth completed and recorded 12.5 hours of CPD activity all of which was marked as formal CPD. A further 4.5 hours of formal CPD activity were recorded as being planned but were never completed or recorded as having been completed.
- xvi. Mr Verth did not have the benefit of any CPD exemptions for calendar years 2021 and 2022.

Response from Mr Verth:

xvii.



- xviii. [REDACTED]
- xix. On 5 August 2021, Mr Verth completed a Manual Handling Course that provided one CPD hour.
- xx. On 24 and 24 November 2021, Mr Verth attended a two-day event held by GEO Business at ExCel in London.
- xxi. On 3 December 2022, Mr Verth completed a five-day Site Management Safety Training Scheme.

Private Matters

9. The Panel noted that there is reference, within the hearing bundle, to matters relating to Mr Verth's health. The Panel determined at the outset of the hearing that the health matters should not form part of the public record.

Oral Evidence

10. Mr Verth chose to give oral evidence. He explained that in 2020 he was involved in a project which involved lifting approximately 1000 manhole covers. [REDACTED]
[REDACTED] Mr Verth explained that he took time off from work and that for a period of time his emails were being monitored by his business partner.
11. In response to questions from Mr O'Brien Quinn, Mr Verth confirmed that he was aware of his obligation to complete 20 hours of CPD every year and that he had received a caution for a CPD breach in 2018, a caution and fixed penalty fine for a CPD breach in 2020. Mr Verth also acknowledged that he had been given an exemption in 2019. However, he stated that the exemption related to [REDACTED] and could not recall RICS offering him any help when he told them about his own medical problems. Mr Verth was unable to recall if he had completed another 3 hours in the year 2020/2021 over above the 17 hours evidenced within the hearing bundle. He acknowledged that the GEO Business course took place face-to-face in London. He stated that his business partner had driven him to London and therefore logistically it was not that challenging. He also stated that the conference took place when his medical condition was not as acute. Mr Verth informed the Panel that due to his poor health the recording of his CPD "*may have slipped down [his] of priorities*". He stated that he was not living a normal life. He could not explain why he had completed in excess of the minimum CPD requirements for the year 2022/2023 but had not recorded any of this activity other than the fact that he was not in a regular routine. He stated that his RICS membership is very important to him.
12. Mr Verth, in response to questions from the Panel, stated that he stopped working after he saw a doctor in November 2021 and thereafter did not return to a normal work pattern until

May 2023. He stated that CPD is very important as it ensures that Members keep up to date with current developments in their area of practice and that non-compliance has the potential to undermine trust and confidence in the profession.

Findings of Fact

13. Mr O'Brien Quinn, at the outset of the hearing, invited the Panel to take into account Mr Verth's health issues and determine at the fact-finding whether his circumstances amounted a "reasonable excuse".

Charge 1 - Between 1 January 2021 and 1 February 2022, you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) - Found Proved

14. The Panel noted and accepted that Rule 6 of the Rules of Conduct for Members version 7 states: *Members shall comply with RICS' requirements in respect of continuing professional development.* Version 7 of the Rules of Conduct for Members was in effect from 2 March 2020 to 1 February 2022. The Committee also noted that Rule 2 of the Rules of Conduct with effect from 2 February 2022 states: *Members and firms must maintain their professional competence and ensure that services are provided by competent individuals who have the necessary expertise.* In these circumstances, the Panel was satisfied that Mr Verth had a duty to complete and record a minimum of 20 hours of CPD each calendar year.
15. The Panel noted that there was documentary evidence within the hearing bundle which confirmed that in 2021 Mr Verth undertook 16 hours of CPD by attendance at GEO Business on 24 and 25 November 2021. In addition, he completed a one-hour manual handling course on 5 August 2021. The third certificate, issued by High Speed Training, provides confirmation that Mr Verth completed a Workplace First Aid Training course. The certificate does not disclose the number of hours involved, but it was issued on 16 November 2020 and therefore does not provide evidence of CPD activity for 2021. The Panel also noted that Mr Verth stated during his oral evidence that he was unable to recall if he had completed another 3 hours of CPD for the year 2021/2022. In these circumstances, the Panel concluded that it was unlikely that Mr Verth had completed more than 17 hours during that calendar year.
16. The Panel went on to consider whether Mr Verth had recorded his CPD hours and whether his health issues amounted to a "reasonable excuse".
17. The Panel acknowledged that serious ill-health may prevent a Member from seeking an exemption or from recording CPD activity online and in certain circumstances may amount to a reasonable excuse. Although Mr Verth was unwell for a prolonged period of time, the Panel was not persuaded that he was debilitated to the extent that he was unable to record his CPD activity. In reaching this conclusion, the Panel noted that there was no medical evidence to support any contention that Mr Verth was physically or mentally unable to record his CPD hours. Furthermore, Mr Verth was able to attend conferences either online or in person and continued working until November 2021.

18. The Panel concluded that Mr Verth had ample opportunity to record his CPD hours for the year 2021/2022 and did not do so. Although he had health issues during this period these issues did not prevent him from being able to record his CPD hours and therefore do not amount to a reasonable excuse.

Charge 2 - Between 1 January 2022 and 1 February 2023, you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) - Found Proved

19. The Panel accepted that Mr Verth completed more than the minimum CPD hours required for the year 2022/2023. The Panel was provided with documentary evidence in the form of an attendance certificate which confirmed Mr Verth completed a Site Management Safety Training Scheme on 3 December 2022. The certificate bears an issue date of 9 December 2022. The certificate does not state the length of the course undertaken but it was accepted by RICS that it was a five-day course which attracted 37.5 hours of CPD.

20. The Panel noted that Mr Verth at some point returned to work during 2022 and worked from home. The Panel accepted his evidence that he was not following a normal work pattern and received assistance from his business partner. However, the Panel concluded that if Mr Verth was able to undertake work, even with reduced hours and restricted activities, and was able to complete his CPD hours, he was able to record those hours. For these reasons and the reasons stated in paragraph 17 above the Panel concluded that Mr Verth's health condition does not amount to a reasonable excuse.

Liability to Disciplinary Action

21. The Panel noted that all practising 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. In particular, all RICS practising Members are required to maintain their professional competence, as demonstrated, in part, by the completion and recording of CPD. The seriousness of any failure to comply with this core obligation is demonstrated by the fact that RICS' Sanctions Policy (version 9 with effect from 2 March 2020) clearly states in paragraph 22.1.c that for a third CPD breach the matter should be referred to a Single Member or Disciplinary Panel with the presumption of expulsion.

22. In these circumstances, the Panel was satisfied that Mr Verth's failure to comply with the RICS requirement to complete and record CPD is sufficiently serious to give rise to a liability for disciplinary action.

Sanction

The Panel's Approach

23. The Panel took into account the oral submissions made on behalf of RICS and Mr Verth's oral evidence. The Panel also took into account the RICS Sanctions Policy and Mr Verth's disciplinary history which is as follows:

- 2018 – Caution
- 2020 – Caution and fixed penalty

24. The Panel noted that Mr Verth has no other adverse disciplinary history.

25. The Panel bore in mind that the purpose of sanctions is not to be punitive, although it may have that effect. The purpose 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 breach and all the circumstances, and a decision should be reached having taken into account any mitigating and/or aggravating factors.

RICS Submissions

26. Mr O'Brien Quinn, on behalf of RICS, was neutral as to the appropriate sanction that should be imposed.

27. Mr O'Brien Quinn took the Panel through the relevant paragraphs of the Sanctions Policy (version 9) and submitted that it is a matter for the Panel to decide the extent of any mitigating circumstances and the weight to be attached to them including the medical evidence relating to Mr Verth's health during the relevant periods. However, he reminded the Panel that Mr Verth had breached Rule 6 on two previous occasions and that there is a presumption of expulsion as a sanction for a third breach. He also reminded the Panel that the previous breaches have been factored into the suggested presumptive sanction and should not count against Mr Verth twice.

Mr Verth's Submissions

28. Mr Verth stated that he would like to remain a chartered surveyor. He indicated that he would accept the Panel's decision but highlighted the impact expulsion would have on the individuals that he mentors and on his business partner who is not RICS registered.

Decision

29. The Panel was mindful that 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. Compliance is not optional. Furthermore, the CPD requirements are not dependent on the RICS sending reminders to its Members.

30. The Panel identified the following features of Mr Verth's case to be mitigating factors:

- He had a health condition during the relevant periods;
- He demonstrated that he understands the importance of CPD and the impact of non-compliance on the profession as a whole;

- He completed 17 CPD hours in 2021/2022 and more than the minimum 20 CPD hours in 2022/2023.

31. The Panel considered that the following aggravating factors were present in Mr Verth's case:

- He was reminded of his professional obligation to complete and record his CPD hours on numerous occasions;
- In 2018 and 2020 he was made subject to disciplinary sanctions for failing to comply with his CPD requirements;
- The financial penalty imposed in 2020 has not been paid;
- He is a very experienced chartered surveyor and is a mentor to junior members of the profession.

32. The Panel first considered whether to impose any sanction. At all times it was Mr Verth's responsibility to ensure that he complied with his CPD obligations, and he repeatedly failed to do so. 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.

33. 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 a caution had already been imposed for a previous breach.

34. In considering whether to impose 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 Verth 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 undermine public trust and confidence in the regulatory process.

35. The Panel then considered whether to impose a fine. The Panel was mindful that a fine was imposed on Mr Verth for failing to record his CPD hours for the year 2020 which to date has not been paid. The Panel concluded that no useful purpose would be served by imposing a further financial penalty.

36. The Panel took the view that Mr Verth should be given one final opportunity to comply with his CPD obligations and that the gravity of his non-compliance with his CPD requirements could be met with the imposition of a reprimand and conditions. The Panel also considered

that a condition is proportionate and appropriate and adequately meets the public interest as it re-affirms the obligations required of all members of the profession to comply with the RICS rules.

37. The Panel was mindful that paragraph 21.1. of the Sanctions Policy 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. The Panel considered expulsion very carefully but, on balance, having weighed the aggravating and mitigating factors, decided that to go beyond a condition and a reprimand would be disproportionate in all the circumstances.

38. The Panel imposed a condition in the following terms:

- i. As a condition of continuing membership Mr Verth is directed to comply with the CPD requirements for the year 2023 by 31 January 2024.
- ii. Failure to comply with condition (i) will result in automatic expulsion from membership, without further reference to a Disciplinary Panel or Single Member of the Regulatory Tribunal.
- iii. As a condition of continuing membership Mr Verth is directed to pay the outstanding fine imposed for the breach of his CPD requirements in 2020, by 30 September 2023.
- iv. Failure to comply with condition (iii) will result in automatic expulsion from membership, without further reference to a Disciplinary Panel or Single Member of the Regulatory Tribunal.

Publication

39. The Panel 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.

Costs

40. RICS applied for costs of £4,870.00.

41. The Panel carefully considered the issue of costs. The costs figure represents a contribution towards the costs incurred by 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. The Panel concluded that it was appropriate for Mr Verth to contribute towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole. The Panel concluded that the only reduction should be the sum of £400.00 to reflect the reduced time that Mr O'Brien Quinn was required to address the Panel.

42. The Panel orders that Mr Verth pays to RICS costs in the sum of **£4,470.00**.

Summary

43. The Panel made the following orders:

- i. Mr Verth is subject to a reprimand;
- ii. Mr Verth's continued registration is subject to the completion and recording of his CPD hours for the year 2022/2023 by 31 January 2024 and payment of his 2020 fine by 30 September 2023;
- iii. Mr Verth is to pay RICS' costs in the sum of **£4,470.00**.
- iv. It will be for RICS and Mr Verth to agree whether the costs may be paid in instalments.

Appeal Period

44. Mr Verth has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 152 of the Regulatory Tribunal Rules.

45. 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.