



ROYAL INSTITUTION OF CHARTERED SURVEYORS

Disciplinary Panel Hearing by way of written representations

Case of

**Mr Kevin Hudson [0084426]
Portsmouth**

On

Tuesday 16 July 2024

At

Held remotely via Microsoft Teams

Panel

Dr Angela Brown (Lay Chair)
Amit Jinabhai (Lay Member)
Mohamed Shehata (Surveyor Member)

Legal Adviser

Peter Steel

Tribunal Executive

Jae Berry

Introduction

1. The formal charge is:

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 Rules 1 and 2 of the Rules of Conduct (Global) ("the Rules of Conduct") with effect from 2 February 2022.

Response

2. Mr Hudson had replied to an email from the RICS on 7 March 2024 as follows:

"I can probably save you the trouble of convening further meetings and deliberations, I have been proud to be a member of the RICS for over 30 years however I am not in a position for personal and health reasons to pursue this matter further at this juncture and I am happy to stand down as a member of the RICS forthwith. I would ask only that you confirm this back to me or pass this on to the relevant body.

I am not disputing the CPD record - like many trying to work through pandemic we all had to prioritise what we could and could not do and what was most important at that time.

As feedback I can honestly say I was not aware of the previous fine and have no correspondence in that regard - if the communication was by text or some such medium that may not be the most reliable means but I will leave that with you."

3. The Panel nonetheless proceeded on the basis that the charge was not admitted.

Summary

4. From January 2013 RICS members were obliged to complete 20 hours CPD activity by 31 December of each calendar year.

5. Rule 1 of the Rules of Conduct provides:

"Members and firms must be honest, act with integrity and comply with their professional obligations, including obligations to RICS."

6. Core obligation 1 of the Rules of Conduct requires Members to comply with the CPD requirements:

"1. Members must comply with the CPD requirements set by RICS."

7. Rule 2 states:

"Members and firms must maintain their professional competence and ensure that services are provided by competent individuals who have the necessary expertise."

8. Rule 2 details an example behaviour:

“2.5 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.”

9. The CPD requirements for RICS members, which are set out with guidance on the RICS’ website, are:
 - Members must complete at least 20 hours CPD each calendar year, of which at least 10 hours must be formal CPD.
 - All members must maintain a relevant and current understanding of the 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.
 - Members must record their CPD activity online by 31 January.
10. For the CPD year 2022, correspondence was sent by email to members reminding them about the necessity to comply with their CPD obligations. Members located in the UK will have received 6 email reminders, followed by a hard copy letter, containing a consistent message as follows:

“All practising RICS members are required to complete at least 20 hours of CPD (including 10 hours of formal CPD) by 31 December 2022 and record it online by 31 January 2023.”
11. The RICS wrote to the preferred address held for Mr Hudson in 2022 informing him of the Fixed Penalty (second caution and fine) which had been issued to him for CPD non-compliance in 2021. This letter stated: *“This breach will remain on your record for 10 years. If you fail to meet the requirements again during that time, a further penalty will apply.”*

Burden and standard of proof

12. The Panel was reminded that the RICS was required to prove the factual allegations to the civil standard of proof; that it was more likely than not that any fact alleged occurred. The burden of proof was upon the RICS, which brought the charges, and it was not for Mr Hudson to prove his innocence.

Preliminary matters

Service

13. In the light of Mr Hudson's email of 7 March 2024, the RICS had replied to him proposing making an application to consider the case on the papers, and had asked him to confirm that he was happy to proceed in that manner. The RICS also asked Mr Hudson to confirm his position on a statement of agreed facts that had been sent to him.
14. Mr Hudson replied on 27 May 2024 to confirm that the case could proceed on the papers and that he had nothing further to add to his previous correspondence. The Chair of this Panel subsequently granted the RICS' application for the matter to be dealt with on the papers on 5 June 2024.
15. The Panel was provided with a statement by Jae Berry, the RICS's Regulatory Tribunal Manager, dated 16 July 2024, which confirmed that the notice of this hearing, together with a copy of the evidence bundle, had been served on Mr Hudson's preferred address in accordance with Rule 53(b)(ii) and 54(a) of the Regulatory Tribunal Rules (Version 2 with effect from 2 February 2022) ("the Rules") on 12 June 2024.
16. Mr Hudson had stated in his email to the RICS dated 27 May 2024: "*I can confirm that you can precede on the papers without need for convening a meeting.*" The Panel therefore concluded that Mr Hudson had been given proper notice of this hearing, had previously indicated his consent to the case being dealt with on the papers, and it was therefore right for it to proceed to consider the case today.

Findings of Fact

17. The Panel was provided with a statement from Sadia Dookanwala, Investigation Specialist at the RICS dated 23 November 2023 setting out Mr Hudson's online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2022 and he had not been granted any concessions for that year. Further, Mr Hudson had indicated in his email to the RICS dated 7 March 2024 that he was "*not disputing the CPD record*".
18. Accordingly, the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

Liability to Disciplinary Action

19. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Hudson's failure to comply with those requirements is sufficiently serious to give rise to a liability for 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 was also satisfied that breaches of the RICS rule on CPD recording must be regarded as serious as they prevent the RICS from monitoring compliance and thus ensuring public protection.

20. Accordingly, the Panel was satisfied that Mr Hudson was liable to disciplinary action in accordance with Bye-law 5.2.2.

Decision as to sanction

Panel's Approach

21. The Panel took into account the submissions of RICS as set out in the Case Summary in the bundle. It had regard to the RICS Sanctions Policy (Version 9 with effect from 2 February 2022).
22. The Panel bore in mind that the purpose of sanctions is not to be punitive, although it 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 a decision should be reached having taken into account any mitigating and/or aggravating factors.
23. The Panel bundle contained a further statement from Sadia Dookanwala, also dated 23 November 2023 which indicated that Mr Hudson had received a caution for failure to comply with the CPD requirements in 2018 and a caution and fine for a further breach in 2021. This was therefore Mr Hudson's third such breach within a 10-year period.

Decision

24. Mr Hudson had referred in his email of 7 March 2024 to "*personal and health reasons*" which meant that he was happy to relinquish his RICS membership. He did not, however, provide any specific reasons for his failure to record any CPD for 2022. The Panel noted that other than the previous Fixed Penalties, Mr Hudson did not have any disciplinary history with the RICS.
25. The Panel considered that the following aggravating factors were present in this case:
- The charge found proved represented a repeated breach of the CPD requirements, in circumstances where Mr Hudson was clearly fully aware of them, as demonstrated by his previous CPD submissions.
 - There was no indication in Mr Hudson's recent emails that he had any insight into the seriousness of his repeated failure to comply with the CPD requirements.

- He had been sent a number of prompts by email and letter that he risked disciplinary action if he did not comply, to which he had not responded.
26. 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, however busy a member's professional or personal life may be. Compliance is not optional.
27. The Panel first considered whether it was appropriate to impose any sanction at all. 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. As noted above, Mr Hudson must have been fully aware of his responsibility to ensure that he complied with his CPD obligations. Mr Hudson had mentioned personal and health matters as a reason for his non-compliance. However, he had not sought a CPD exemption for the year 2022. In addition the Panel noted that Mr Hudson had been sent numerous reminders by RICS, even though RICS is not obliged to do so.
28. 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 Mr Hudson had already received a caution and a caution and a fine for previous breaches. The Panel also considered the imposition of a reprimand but concluded that similarly this did not reflect the seriousness of Mr Hudson's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.
29. In considering whether to require Mr Hudson to give an undertaking, the Panel took into account the mandatory nature of the CPD requirements and the fact that Mr Hudson had repeatedly failed to comply with the rules. 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 Hudson 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 be insufficient to maintain public trust and confidence in the regulatory process.
30. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. Mr Hudson had previously received a fine for a breach of the CPD requirements, but this had clearly not served as an adequate warning. Indeed, the statement from the RICS's Investigation Specialist confirmed that it had not been paid. Mr Hudson's repeated failure to abide by his professional responsibilities was simply unacceptable for someone who wished to remain part of a respected profession.
31. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Hudson's continuing membership as an adequate response to the non-compliance demonstrated by this case. It also noted that Mr Hudson had not fully engaged with the RICS

and was required to complete and record CPD in any event. It was therefore not clear what purpose it might serve to impose a condition relating to his future completion of CPD in the circumstances.

32. The Panel took into account paragraphs 21.1 and 22.1. of the Sanctions Policy, which indicate that expulsion is likely where there is a third breach of Rule 2 of the Rules of Conduct for members within 10 years of receipt of a caution for breach of the same rule. In the absence of any proper explanation of Mr Hudson's failure to complete and/or record CPD in 2022, the Panel considered there was no good reason in this case to depart from the Sanctions Policy. Having carefully considered all facets of the case, including the need to uphold proper professional standards and maintain public confidence in the surveying professions, the Panel concluded that the only appropriate sanction in this case was expulsion. It therefore ordered that Mr Hudson be expelled from membership of RICS.

Publication and Costs

Publication

33. 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 unable to identify any reason to depart from the usual presumption that decisions will be published on the RICS' website.

Costs

34. There was no application for costs in this matter and so the Panel did not make any order for costs.

Appeal Period

35. Mr Hudson 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.