



ROYAL INSTITUTION OF CHARTERED SURVEYORS

Disciplinary Panel Hearing

Case of

**Malcolm White [0061119]
Newton Abbot, Devon**

On

Tuesday 18 June 2024

At

remotely via Microsoft Teams

Panel

Alison Sansome (Lay Chair/Chair)
Ron Barclay-Smith (Lay Member)
Ben Davies (Surveyor Member)

Legal Adviser

Emma Boothroyd

RICS Representative

Hugh O'Brien Quinn

Tribunal Executive

Jae Berry

Introduction

1. Mr White attended and was not represented.

The Charge:

2. The charge against Mr White 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

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

Response

3. Mr White stated in response that he accepted the charge in that he did complete, but did not record, his CPD.

Background

4. Mr White has been a professional Member of RICS since October 1982.
5. RICS' requirements in respect of CPD are set out in the document 'CPD Requirements and Obligations'. They include requirements that 'All members must undertake a minimum of 20 hours CPD each calendar year (January to December), of which at least 10 hours must be formal CPD. Members are required to log CPD via the RICS online portal, and must record their CPD activity by 31 January after the CPD year.
6. It is alleged that by 31 January 2023, Mr White had failed to record any hours of CPD for the calendar year 1 January 2022 to 31 December 2022.
7. Given that this was Mr White's third alleged breach of his CPD requirements, his case was initially referred to a Single Member of the Regulatory Tribunal. That Single Member found the charge proved and imposed a sanction.
8. RICS 115 of the Regulatory Tribunal Rules, (version 2, with effect from 2 February 2022), ("the Rules"), sets out the absolute right for RICS to reject the findings and/or sanction imposed by a Single Member of the Regulatory Tribunal if they consider that

the findings made by the Single Member are wrong and/or considers that the Regulatory Sanction imposed by the Single Member is wrong. RICS exercised this right on 27 February 2024 and notified Mr White accordingly.

9. The matter is therefore before the Disciplinary Tribunal to consider afresh.

Evidence

10. At the start of the hearing the Chair confirmed with Mr White that he was content to waive the notice period of 56 days as required by the Rules and he had received all the documentation.
11. The Panel had before it the RICS solicitor's bundle of documents, consisting of 79 pages. The Panel also received the witness statement of Ms Berry consisting of 1 page together with 8 pages of exhibits relating to service of the notice of today's hearing. Mr White confirmed to the Panel that he had received this documentation and he had nothing further to present to the Panel.

Submissions

12. Mr O'Brien Quinn submitted that this was the third breach of CPD requirements within a 10-year period, and that no concessions were recorded for the 2022 year. He submitted that Mr White breached the CPD rules in 2015 and was given a Caution. Mr O'Brien Quinn told the Panel that there was a further breach in 2021 and Mr White was given a Caution and a fine of £150. He submitted that the fine remained unpaid. He submitted that it was clear from the documentary evidence presented that Mr White had not completed and recorded the CPD as required by the Rules. Further, he submitted that the Panel should find Mr White is liable to disciplinary action
13. Mr White submitted that he had undertaken the CPD for the year but accepted that he had failed to record it. Mr White told the Panel that both he and his Firm took CPD seriously but he erroneously believed that he was no longer required to record CPD once he reached retirement age. Mr White told the Panel that he had no recollection of being sent any reminders or any notification about the fine for the breach in 2021 and he has never been sent an invoice or told that the fine is overdue. Mr White told the Panel that he had no defence to the matter and accepted that he was in breach of the Rules.

Findings of fact

14. In reaching its decision on the facts, the Panel reminded itself that where the facts are in dispute, the burden of proof rests with RICS and that the standard of proof applicable in these proceedings is the civil standard. This means that the Panel must not find a fact proved unless it is satisfied, on the balance of probabilities that it is true, i.e. that it is more likely than not to have occurred as alleged.
15. The Panel considered the statement from Mohammed Adeel, RICS Lead Investigator, dated 9 November 2023, the CPD printouts within the RICS bundle relating to Mr

White's CPD activity, and the information contained within the RICS website setting out the CPD requirements and obligations for members.

16. The Panel also considered the statements from Ms Hoverd, who provided details of the communications sent to Mr White as part of the bulk communications exercise in relation to CPD.
17. Mr White did not challenge this evidence. He accepted that he did not record the CPD for the relevant year, albeit he said he did complete it.
18. The Panel was satisfied, having seen the information on the RICS website, and taken account of the relevant provisions that there was an obligation on Mr White to complete 20 hours of CPD activity in the 2022 year and to record his CPD on the RICS portal by 31 January 2023. He had not done so, and accepted that he had not done so. The Panel determined that the documentary evidence before the Panel supported this conclusion. The Panel therefore found the factual allegation proved.
19. The Panel had regard to Rules 1 and 2 of the Rules of Conduct which state,

Rule 1: "Members and firms must be honest, act with integrity and comply with their professional obligations, including obligations to RICS".

Rule 2: "Members and firms must maintain their professional competence and ensure that services are provided by competent individuals who have the necessary expertise."

20. The Panel was satisfied that Mr White's failure to complete his CPD and record it online amounted to a breach of Rules 1 and 2 of the Rules of Conduct.

Decision on liability to disciplinary action

21. The Panel's view was that Mr White's failure to comply with the CPD requirements and his breach of Rules 1 and 2 of the Rules of Conduct amounted to a serious falling short of his professional obligations. It is the duty of an RICS member to ensure that they are aware of the CPD requirements and to comply with them. The CPD requirements are designed to ensure consistent standards within the profession, that individuals maintain up to date knowledge in their area of expertise, and that members demonstrate this by completion of a record on the RICS system. The purpose of the record is so that RICS can monitor compliance.
22. CPD obligations are an important part of RICS membership, and all members of RICS agree to abide by their professional obligations. The Panel was informed that RICS had sent Mr White reminder emails to complete and record his CPD, however he still failed to do so and did not respond to any of the reminders. This was the third such failure in a 10-year period. Members of the public are entitled to expect that members of RICS are competent and up to date with recognised professional standards. The failure to fulfil professional obligations is likely to seriously undermine public confidence

in the profession.

23. The Panel was satisfied that there was credible evidence to show these reminder emails were sent to Mr White as his email address was correctly recorded with RICS on its database. Moreover, the Panel noted that it was the responsibility of members to undertake CPD in accordance with their membership obligations. In these circumstances, the Panel was satisfied that Mr White was liable to disciplinary action.

Submissions on sanction

24. Mr O'Brien Quinn referred the Panel to the Sanctions Policy, and reminded the Panel that there was a presumption of expulsion for a third breach of RICS' CPD rules in the absence of extenuating circumstances. He informed the Panel that Mr White has completed and exceeded his CPD requirements for the 2023 CPD year.
25. Mr White submitted that he, and his firm, take CPD requirements seriously. He told the Panel that he supports others to develop and maintain their CPD. He apologised to the Panel and expressed regret that the matter had necessitated a hearing. He told the Panel that he accepted and understood why the matter was before a Panel. He told the Panel that he had never intentionally refused to pay the earlier fine and if he had been sent an invoice or been chased for payment he would have immediately recognised that this was something to which he should attend. Mr White told the Panel that he had undertaken CPD for the relevant period but accepts that he failed to record it as required. He told the Panel that he was hoping to retire initially in Easter of 2024 but now that was likely to be Easter 2025 and he was arranging the handover of his business.

Decision as to sanction

26. The Legal Assessor advised the Panel that the purpose of a sanction is to protect the public, safeguard the reputation of the profession and to declare and uphold proper standards of conduct and behaviour. Further, any sanction imposed must be proportionate. If the Panel is minded to impose a sanction, it must consider the sanctions in order of severity, starting with the least severe. It must satisfy itself that any sanction it imposes is the minimum necessary to meet the public interest.
27. The Legal Assessor referred the Panel to the RICS Sanctions Policy, (version 9 with effect from 2 February 2022), ("the Policy"). This states, at paragraph 21.1, that in the absence of extenuating circumstances, a third breach of Rule 2 of the Rules of Conduct within 10 years of receipt of a Caution for breach of that rule, is likely to result in expulsion. Nevertheless, the Legal Assessor's advice was that it was incumbent upon the Panel to consider and balance any aggravating and mitigating factors, and to approach the sanctions in ascending order of seriousness, as stated above.
28. The Panel identified a number of aggravating factors.
29. First, the failures to comply with RICS' CPD recording requirements were repeated.

This was Mr White's third breach of his CPD obligations within a 10-year period. Mr White first breached the Rules in 2015 and was given a Caution. He breached the Rules for the second time in 2021 and was given a Caution and a fine which remained unpaid. The Panel attributed significant weight to this as an aggravating factor. Its view was that these repeated breaches were indicative of a cavalier attitude to his professional obligations set out by the RICS. RICS is a professional membership organisation which sets standards for its members as a condition of membership. From the inception of the compulsory recording of CPD online, RICS has publicised its policy on sanctions for non-compliance.

30. In mitigation, the Panel accepted that Mr White has had a long career. Further, he admitted the charge at an early stage and has fully engaged in the process. Mr White has apologised and expressed regret.
31. The Panel noted that Mr White had undertaken and recorded more than the minimum CPD required for the year 2023. The Panel considered that this indicated developing insight into the importance of both completing and recording CPD.
32. The Panel considered that Mr White had been open and honest with the Panel and in particular the Panel considered that the failure to pay the fine imposed from the previous breach was not deliberate. The Panel could not be satisfied that Mr White was ever notified that he was required to pay an enhanced fine for late payment or that he was reminded that the fine was outstanding.
33. Taking these factors into account the Panel was satisfied that Mr White now understood the importance of the requirement not only to undertake but to record CPD.
34. The Panel noted Mr White's submission that he was in the process of retiring, however, it attached little weight to this aspect as it considered that this was not a relevant mitigating factor.
35. The Panel first considered whether to take no action. It decided that the matters were too serious for no sanction to be imposed.
36. It next considered a Caution. A Caution is likely to be imposed in circumstances where the breach is minor and is unlikely to be repeated. The Panel decided that a Caution was inappropriate. Mr White has been cautioned on two previous occasions, but this sanction had been insufficient to prevent a further breach.
37. The Panel then considered a Reprimand; however, it decided that a Reprimand was insufficient to meet the public interest. It would not serve to prevent any repetition, and would not be sufficient to maintain public confidence in the profession and uphold proper standards of conduct.
38. The Panel considered undertakings and decided that this was not a case in which undertakings would be appropriate. Noting the mandatory nature of CPD requirements as a condition of membership, the panel considered an undertaking would serve no additional purpose and indeed could undermine public trust in the regulatory process.

39. The Panel then considered whether to impose a fine. It decided that this would be appropriate as it considered that Mr White had demonstrated remorse and developing insight. The Panel considered a fine of £2000 would be a final opportunity, together with associated conditions for Mr White to demonstrate that he was willing to comply with his regulatory obligations.
40. The Panel considered that it would be appropriate to impose conditions on Mr White's membership to address the regulatory breach. It was mindful that any conditions must be specific, measurable, achievable, realistic and time bound. Its view was that Mr White had some insight into the seriousness of his failure to uphold the standards of RICS, and that he had expressed remorse and an apology. The imposition of conditions on his membership to pay the imposed fine together with the outstanding fine would, in the Panel's view, be sufficient in all the circumstances to uphold the public interest. It would be a strong enough message to Mr White, the public and the profession that all members must uphold the standards imposed by RICS at all times and that compliance is mandatory. The Panel considered that a failure to comply with these conditions should result in expulsion rather than further disciplinary action.
41. The Panel did consider Expulsion very carefully. It had weighed the aggravating and mitigating factors above, and concluded that there was evidence that Mr White understood the nature of his obligations and that aside from these matters had a long and unblemished career. The Panel considered that expulsion in these circumstances was unduly punitive.
42. The Panel therefore made an order to pay a fine of £2000 in respect of this breach. The Panel also imposes conditions in the following terms:
- (i) As a condition of continuing membership Mr White is directed to pay the fine of £2000 within 30 days after expiry of the appeal period.
 - (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 White is directed to pay the outstanding fine of £150 imposed for the previous breach of his CPD requirements in 2021, within 30 days after expiry of the appeal period.
 - (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

43. Mr White made no submissions in relation to publication of the decision.
44. The Panel considered the guidance as to publication of its decisions set out in Supplement 3 to the Sanctions Policy, (with effect from 14 March 2024). It bore in mind that there is a presumption in favour of publication of decisions of the Disciplinary Panel.
45. The Panel heard no argument to dissuade it from making a publicity order. It therefore

ordered that this decision should be published in Modus and on the RICS website, in accordance with the provisions of Supplement 3.

Costs

46. There was no application for costs.

Appeal Period

47. Mr White 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.
48. 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.

