

## RICS, Disciplinary, Registration and Appeal Panel Rules (version 8, 2019)

### Part VI, Regulatory Tribunal Single Member Decision.

**Regulated Member:** Katarzyna Jaskiewicz

**Case Number:** REG0000157038

**Single Member Decision of:** Helen Riley

**Date of decision:** 16/11/20

#### DECISION

Having read the papers and considered the evidence, in accordance with Part VI of the Disciplinary Registration and Appeal Panel Rules, I make the following order that:

**The Regulated Member is expelled and pays costs of £350**

#### REASONS FOR DECISION

##### 1. Background

This case concerns the obligation on RICS Members to comply with Rule 6 of the Rules of Conduct for Members 2007, which states:

**Members shall comply with RICS' requirements in respect of continuing professional development (CPD).**

The requirements of the Rule are as follows:

- (i) All RICS members must undertake a minimum of 20 hours CPD each calendar year (January to December).
- (ii) Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD
- (iii) All RICS 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

- (iv) All members must record their CPD activity online

RICS sends reminders to its members to help them comply with this Rule. However, RICS are not obliged to send such reminders but do so to assist members' compliance with their regulator.

I confirm I have received and carefully considered the RICS Bundle of 79 pages setting out:

- RICS Rules, Guidance, Law and Procedure
- Investigation Report (P1)– Facts and Liability to Disciplinary Action (submissions and evidence)
- Investigation Report (P2) – Sanction (submissions and evidence)
- General Correspondence with Regulated Member, Disclosure and Response
- Head of Regulation's Recommendation

The Head of Regulation's recommendation submits that it is considered that there is a realistic prospect that the facts in this case will be established on the balance of probabilities, leaving the Regulated Member liable to disciplinary action

I confirm I have seen a letter dated 19/10/20 informing Ms Jaskiewicz that the allegation has been referred to a Single Member for consideration and determination. This was emailed to Ms Jaskiewicz's preferred email address and I note there are delivery/read receipts provided. No Listing Questionnaire was returned, and I have not seen any response to this letter from Ms Jaskiewicz.

## 2. Alleged Rule Breach

The charge against Ms Jaskiewicz is:

*"Between 1 January 2019 and 1 February 2020 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 version 6**

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

## 3. Facts

In the Bundle provided I have seen a statement from Jamie Edwards, Senior Investigation Officer at RICS, dated 5/10/20 setting out Ms Jaskiewicz's online CPD record and exhibiting the relevant records. This showed that she had not recorded any CPD online for 2019. It also showed she had not been granted any concessions for that year and that therefore she was required to complete and record her CPD.

This statement also shows that Ms Jaskiewicz did not record any CPD in 2017 and 2018. However, it confirms she had previously recorded in excess of the required CPD in 2015 and 2016 demonstrating awareness of her CPD obligations.

For the period between 29/10/20 and 25/2/20, RICS confirms in a statement by Claire Hoverd dated 31/7/20 that nine reminders about completing and recording CPD were sent to Ms Jaskiewicz's then preferred email address held on RICS' records. However, the obligation on a member to complete and record CPD is not dependent upon receiving a reminder from RICS. It is the member's responsibility to ensure compliance. I address the matter of Ms Jaskiewicz's change in email address below.

I have not had sight of any written submissions or documentation from Ms Jaskiewicz responding to the letter dated 19/10/20 from RICS (referred to above).

#### **4. Decision**

I find the factual allegations proved, on the basis of the documentary evidence produced.

Having found the facts proved, I have considered whether the breach is sufficiently serious to render Ms Jaskiewicz liable to disciplinary action.

I am satisfied that the RICS requirement to complete and record CPD is reasonable and that Ms Jaskiewicz's failure to comply with those requirements is sufficiently serious as to give rise to a liability for disciplinary action.

In reaching this conclusion I have taken into account the fact that the CPD policy has been approved by the Standards and Regulation Board and is a clearly expressed RICS Rule. I have 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. CPD is intended to ensure consistent standards within the profession so that members maintain up to date professional knowledge and demonstrate this by recording online. I am also satisfied that breaches of the RICS Rule on CPD recording must be regarded as serious as they prevent RICS from monitoring compliance and thus ensuring public protection and confidence in the profession and RICS as a regulator.

Accordingly, I am satisfied Ms Jaskiewicz is liable to disciplinary action.

## 5. Regulatory Sanction

For this stage I have taken into account all the written submissions and the RICS Sanctions Policy.

I note a further statement from Jamie Edwards at RICS, also dated 5/10/20 which confirms the following sanctions for previous failures by Ms Jaskiewicz to comply with CPD requirements resulting in breaches of Rule 6:

- Caution for the year 2017
- Caution and Fine for a further breach in 2018. (In the same statement, RICS confirm this fine has not been paid)

The breach in 2019 was therefore her third breach of CPD requirements within 10 years.

I note that other than these previous CPD breaches, Ms Jaskiewicz has no disciplinary history with RICS.

I bear in mind that the purpose of sanctions is not to be punitive although they 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 of the circumstances and I approach my decision taking into account any mitigating and/or aggravating factors.

I am also mindful of paragraph 22.1 of the RICS Sanctions Policy, which states the policy for CPD breaches is that a third breach within 10 years of receipt of a caution has the presumption of expulsion. Also, paragraph 21.1 gives the example of a third breach of Rule 6 of the Rules of Conduct for Members within 10 years of receipt of a caution for breach of the same Rule as being likely to result in expulsion in the absence of extenuating circumstances.

I note in July 2020 that Ms Jaskiewicz said she was “*very sorry*” to RICS and that “*I would like to comply with my RICS obligations*” but there has been no further explanation or engagement. I have not been able to identify any other mitigating features.

I consider that the following aggravating factors are present in this case:

- The charge found proved represents a repeated breach of the CPD requirements (the third time within three years)
- She said she did not do “*evidences of my training during the year*” (referring to 2019). It is unclear whether this means she did any training, but I note she says there is no evidence.
- Whilst there was limited engagement with RICS on this case initially, Ms Jaskiewicz has not engaged with RICS since 21/7/20.
- Her fine from a previous sanction (from the 2018 breach) is unpaid

I note Ms Jaskiewicz says her email address changed on 30 November 2019 and that she did not appear to receive any RICS’ emails until March 2020 (as a result of an automatic reply email she set up around that time). It is a member’s responsibility to update RICS on any changes in contact details and in any event RICS are not obliged to remind members of their obligations. They only do so to assist. Ultimately it is the member’s responsibility to adhere to mandatory requirements.

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. Ms Jaskiewicz refers to “*a lot of work*” but I consider she should have appropriately prioritised and incorporated her CPD obligations within the rhythm of her busy professional activities and other circumstances.

I consider that the repeated failure to record CPD is serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. As noted above, she should have been aware of her responsibility to ensure that she complied with her CPD obligations.

I considered whether to impose a caution but concluded that the failure could not be described as minor. A caution would not reflect sufficiently the seriousness of the case, recognising the cumulative pattern of non-compliance and the fact that cautions have already been imposed in previous years. These cautions have not ensured Ms Jaskiewicz has complied with Rule 6 consistently. Also, I consider the imposition of a reprimand, does not reflect the seriousness of Ms Jaskiewicz’s repeated failure to comply with her CPD requirements.

In considering whether to require Ms Jaskiewicz to give an undertaking, I took into account the mandatory nature of the CPD requirements and the fact that she has not

sufficiently engaged with this process. I concluded that it would not be appropriate or proportionate to impose an undertaking given that she should have been completing and recording her CPD online in any event.

I considered whether to impose a fine but decided it would not be an appropriate sanction. She had previously received a fine for a breach of the CPD requirements, but this had clearly not served as an adequate warning to comply. Furthermore, RICS have confirmed that this fine has not been paid. (Meanwhile I note RICS confirms membership fees have been paid in 2019 and 2020.)

I do not consider the imposition of a condition on Ms Jaskiewicz's continuing membership as an adequate or workable response to the misconduct demonstrated by this case. She has not sufficiently engaged with RICS and was required to complete and record CPD in any event. It is therefore not clear what purpose it might serve to impose a condition relating to her future completion of CPD in the circumstances.

As referred to above, I am mindful of paragraph 22.1 of the Sanctions Policy, which states there is a presumption of expulsion 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. In paragraph 21.1 it says such expulsion is likely in the absence of extenuating circumstances.

In the absence of significant mitigation, and the history of prior breaches, I consider the presumption of expulsion must apply in this case. I have carefully considered the lesser sanctions available but conclude that expulsion is the appropriate and proportionate sanction in the circumstances.

Accordingly, I order that Ms Jaskiewicz be expelled from membership of RICS.

## **6. Costs**

I have been provided with a Schedule of Costs by RICS amounting to £350. Ms Jaskiewicz has not provided a statement of means.

In accordance with Rule 119 of the Disciplinary Registration and Appeal Panel Rules I order Ms Jaskiewicz to pay £350 in respect of costs.

## **7. Taking Effect of the Order**

The order will take effect in accordance with Rule 114 of the Disciplinary Registration and Appeal Panel Rules, which states the following:

*114. Following the expiry of 14 days from the service of the Single Member's decision upon the Regulated Member, The Regulatory Sanction will be deemed to be accepted by the Regulated Member and the Regulatory Sanction imposed will take effect forthwith, unless notification has been received under Rule 116.*

Ms Jaskiewicz must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this decision, if she does not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

## **8. Publication**

This decision will be published in accordance with Rule 120 of the Disciplinary Registration and Appeal Panel Rules, which states the following:

- 120. In accordance with the Regulatory Sanctions Publication Policy.*
- a pending the expiry of 14 days following service of the record of decision upon the parties, the Regulated Member's name, charge/s and Single Member's decision as to whether the charge/s were found proved or not proved, and Regulatory Sanction if applicable will be published in accordance with the Regulatory Sanctions Policy and*
  - b the Single Member's Record of Decision will be published following the expiry of 14 days.*