

RICS, Disciplinary, Registration and Appeal Panel Rules 2019

Part VI, Regulatory Tribunal Single Member Decision.

Regulated Member: Magali Marton
Case Number: REG0000157089
Single Member Decision of: Ian F Hastie MRICS
Date of decision: 22nd October 2020

CHARGE:

The formal charge against the Regulated Member is:-

'Between 1 January 2019 and 1 February 2020 you have failed to comply with RICS' requirements in respect of Continuing Professional Developments (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)

BACKGROUND:

- 1 RICS Members are required to complete, 20 hours of CPD activity by 31 December of each calendar year, and record, or cause to be recorded.
- 2 Rule 6 of the Rules of Conduct for Members 2007 states: **Members shall comply with RICS' requirements in respect of continuing professional development.**

- 3 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 by 31 January.
- 4 The CPD requirements confirm that for a first breach of this rule the member would receive a Fixed Penalty Caution which will remain on the member's disciplinary record for a period of 10 years. A second breach will result in a further Caution and a Fixed Penalty Fine of £150 or equivalent. Non-payment of the Fixed Penalty within 28 days of notification will lead to the fine being increased to £250. A third CPD breach is likely to result in a referral to disciplinary proceedings.

FINDINGS OF FACT

- 5 I have been provided with a hearing bundle of 83 pages which include a CPD printout from RICS' online system held for Ms Marton and a witness statement from a CPD Administrator.
- 6 I accept that if the printout does not contain an entry for a particular year that indicates that no CPD was recorded for that year. There was no entry on Ms Magali Marton CPD printout for the year 2019. I noted that there is no evidence that Ms Marton has applied for any RICS Exemption or Concession which would have allowed her to avoid that requirement.
- 7 Accordingly, I find the factual allegations proved, based on the documentary evidence produced.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

8 I am satisfied that the RICS requirements to complete and record CPD is reasonable and that Ms Marton's failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I take into account the fact that the CPD policy has been approved by the Regulatory Board and is an expressly stated RICS rule. In addition the Sanctions Policy makes it clear that even a single breach of CPD requirements is sufficient to give rise to a liability for disciplinary action. I note that the purpose of the CPD requirements is to ensure that there are consistent standards within the profession and that members maintain up to date knowledge in their area of expertise in the interests of protecting the public and the wider public interest. I note 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. I am satisfied that Ms. Marton was given every opportunity to comply with the CPD requirements.

9 Accordingly, I am satisfied that Ms. Marton is liable to disciplinary action.

SANCTION

10 I note that in addition to 2019 there were no CPD hours recorded by Ms Marton in the years 2015 and 2018. I note that CPD hours were recorded by Ms Marton, of which there were: 46 hours in 2013; 26 hours in 2014; 26 hours in 2016; and 38 hours in 2017.

11 I take into account the RICS Sanctions Policy and Ms Marton's disciplinary history which is as follows:

2015 – Caution

2018 – Caution and fine.

12 The bundle documents reveal the member's membership fees in 2019 and 2020 have been paid, but that the disciplinary fine issued in 2019 for the 2018 breach has only been half paid.

13 In the bundle, RICS confirms that a minimum of 18 reminders were sent to the Regulated Member's preferred email address, at regular intervals from 29th October 2019 until 25th February 2020, all of which contained the following paragraph:

“Our records show that you have not yet recorded this minimum requirement. As per the RICS Rules of Conduct for Members and Sanction Policy, because you have already been in breach twice of the CPD Rules of Conduct for Members, and received a Fixed Penalty (Caution & Fine) within the last 10 years, if you do not complete and record the 2019 required minimum of 20 hours of CPD (including 10 hours of formal CPD), you may be in breach for the third time and therefore at risk of referral to Disciplinary Panel with presumption of expulsion.”

I am satisfied that the reminders were correctly addressed to the preferred address then held on file for the Regulated Member.

14 On 5 March 2020 the Regulated Member mailed RICS with issues trying to record her CPD on the RICS Portal, and RICS replied the same day with an explanation of the process.

On 12 June 2020 RICS mailed a further reminder, and on 15 June the member again mailed RICS with problems, stating, “if you have a simple process I can go through I have no doubt about my capacity to finish the task”. RICS sent the member a link to enable the recording.

On 6 July 2020 RICS sent a further reminder to the member, and on the 24 August RICS tried to telephone the member but the line would not connect.

15 RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is RICS' line of sight to ensure

compliance and in turn give protection to the public. Compliance is not optional. It is not difficult to record CPD online and the CPD requirements are not dependent on the RICS sending reminders to its members.

- 16 I bear 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 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.
- 17 In mitigation I can only find that the Regulated Person was initially having some difficulties recording her CPD, and whilst I have no evidence any CPD undertaken, the member was confident that if she could engage with a recording process she had no doubt about her capacity to finish this task
- 18 I considered that the following aggravating factors were present in this case: [REDACTED]
- Ms. Marton has been a member since October 2012 and clearly understands the process of recording CPD, as hours were successfully recorded in 2013, 2014, 2016, and 2017.
 - Although she has initially engaged with RICS, she has not responded nor recorded any CPD despite frequent reminders.
 - Had she been successful in recording her CPD in March 2020, she was already 2 months outside the cut off deadline for performing that task.
 - The second breach was dealt with by way of reprimand and a fine which has only been half paid.
 - This is her third breach of the regulation in a period of three years.
- 19 I first considered whether to impose any sanction. I 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. In reaching this conclusion I noted that Ms. Marton had been sent numerous reminders by RICS. However, whether Ms. Marton received these reminders or not, it remained her responsibility to ensure that she complies with his CPD obligations.

- 20 I went on to consider whether to impose a caution. I 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 previous breaches. I also considered the imposition of a reprimand but concluded that similarly this did not reflect the seriousness of Ms. Marton repeated failure to comply with the requirement to complete, record or cause to be recorded CPD on the RICS portal.
- 21 In considering whether to impose an undertaking I took into account the mandatory nature of the CPD requirements. I noted that the CPD requirements are designed to ensure that the skills and knowledge of RICS members is kept up to date and ultimately to ensure public protection. I concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking given that Ms. Marton should have been completing and recording her CPD online in any event. I concluded that imposing such a sanction would undermine public trust and confidence in the regulatory process.
- 22 I then considered whether to impose a fine. I was mindful that a fine was imposed on Ms. Marton for failing to record her CPD hours for the years 2018 which has only been half paid. Mindful of her attempts to record her 2019 CPD, and yet she did not so do, I concluded that, in these circumstances, a further financial penalty would be appropriate or proportionate as a sanction in this case.
- 23 I went on to consider conditions. I took the view that imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances. However, to impose such a sanction I would need to be satisfied that Ms. Marton has demonstrated a willingness to engage with the regulatory process and a willingness

to comply with any condition imposed. Ms. Marton has initiated an attempt to record her CPD but had not then followed this through to completion. [LSEP] consider a condition on the member to comply with her 2020 CPD requirements. This condition is no more than that required by the RICS Rules. However, if the member fails to comply with this condition the Head of Regulation WILL refer the matter to the Head of Regulatory Tribunals who will allocate the matter to a Disciplinary Panel. This sanction, combined with the sanction of a fine would be proportionate and appropriate to protecting the public and the wider public interest.

- 24 I went further to consider if Ms. Marton should be expelled from RICS membership. I recognised that expulsion is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. I decided that Ms. Marton's case does not quite fall into this category in that I believe her attempts to record her CPD were genuine. I accept that she has successfully recorded her CPD in previous years, and that she did not see her recording through to completion in 2019. However, in this case I think expulsion would be a step too far, and would be neither appropriate nor proportionate

DECISION

- 25 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 Ms. Magali Marton shall be fined as sum of £1,125.00, or equivalent, being £1,000 for this third breach, plus the £125 outstanding unpaid fine from the 2018 fixed penalty.

I also impose the following condition:

Ms. Magali Marton is directed to comply with RICS' CPD requirements for the year 2020 and recorded by 31st January 2021.

In accordance with Rule 110 of the Regulatory Tribunal Rules, if Ms Marton fails to comply with this condition the Head of Regulation WILL refer the matter to the Head of Regulatory Tribunals who will allocate the matter to a Disciplinary Panel.

COSTS

26 In accordance with Rule 119 of the DRAP Rules 2019 I make the following order in respect of costs:

Ms. Marton will pay costs in the amount of £350

Taking Effect of the Order

27 In accordance with Rule 119 of the Disciplinary Registration and Appeal Panel Rules

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.

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

Publication

28 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.*