

RICS, Disciplinary, Registration and Appeal Panel Rules 2019

Part VI, Regulatory Tribunal Single Member Decision.

Regulated Member: Matthew Cleary
Case Number: REG0000157249
Single Member Decision of: John Anderson
Date of decision: 27 October 2020

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 from membership of RICS.

REASONS FOR DECISION

1. Background

This case concerns the obligation for RICS members to complete and record annually 20 hours of Continuing Professional Development (CPD) online.

Rule 6 of the Rules of Conduct for Members 2007 states:

Members shall comply with RICS' requirements in respect of continuing professional development.

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

I have been provided with and fully considered the case bundle, the key parts of which comprise:

- a statement from RICS' Head of Regulation submitting that it is considered that there is a reasonable prospect that the facts in this case will be established on the balance of probabilities leaving the Regulated Member liable to Disciplinary Action;
- a copy of the Regulated Member's CPD records from the RICS online CPD system;
- witness statements from RICS employees Claire Hoverd and Jamie Edwards dated 31/7/20 and 2/9/20 respectively;
- an investigation report which sets out:
 - the facts underpinning the allegation;
 - why in the view of RICS that the alleged facts render the Regulated Member liable to disciplinary action;
 - RICS' position on sanction;
 - details of communication between RICS and the Regulated Member;
- schedule of costs amounting to the sum of £350;
- an indication of no response being received from the Regulated Member concerning these proceedings in relation to CPD obligations for 2019.

2. Alleged Rule Breach

The 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 Development (CPD) on that you have not completed and recorded, or caused to be recorded, at least 20 hours of CPD on the RICS CPD portal.”

3. Facts

In support of the charge and Liability to Disciplinary action, RICS submits a case bundle containing an Investigation Report which sets out the key points upon which the Institution seeks to rely.

- the obligation upon all RICS members to comply with the above CPD processes and requirements;
- that the Regulated Member has recorded 0 hours CPD online for 2019;
- Jamie Edward's statement which indicates that in addition to 2019, the Regulated Member did not record CPD for years 2018 and 2017;
- No concessions apply to the Regulated Member, who therefore is required to complete and record CPD;
- The Regulated Member has previously recorded CPD in 2013, 2014 and 2016 and accordingly demonstrated awareness of CPD obligations;
- That in the period 29/10/20 up to and including 21/1/20, five reminders to complete and record CPD by 31/12/19 and 31/1/20 respectively were emailed to the address provided by the Regulated Member. A final reminder was emailed on 22/6/20.
- That the obligation to complete and record CPD is contained in the Rules and is therefore not dependent upon the Regulated Member receiving a CPD reminder from RICS;
- Hard copy reminders were sent in mid-February 2020 to those members in UK and EMEA region who did not have a successful email address;
- Telephone calls made by RICS to the contact number provided by the Regulated Member as set out below:

| Call Date | Outcome |
|------------------|---|
| 12/12/19 | Call went to Voicemail and message was left |
| 14/1/20 | Spoke to Regulated Member giving a reminder about CPD obligations and deadline date |
| 5/2/20 | Spoke to Regulated Member giving a reminder about CPD obligations and deadline date. Regulated Member stated this would be attended to 'next week'. |

I have also read the letter dated 7/9/20 informing Mr Cleary that the case has been referred by the Head of Regulation to a Single Member of the Conduct and Appeal Committee for

consideration. This letter, which accompanied the case bundle, requested an emailed return of the enclosed listing questionnaire and any written representations upon which the Regulated Member wished to rely within 14 days of that letter.

No documentation has been received.

4. Decision

As is stated in paragraph three above, Mr Cleary, along with the rest of RICS membership, was on notice of the need to complete and record CPD, from the numerous communications from RICS over a considerable period of time.

Based upon the evidence in the bundle, I find it more likely than not that the Regulated Member is in breach of the requirements of Rule 6 and that RICS went over and above what was required by sending numerous reminders to the Regulated Member's preferred email address. I am also satisfied that all said reminders were correctly addressed to the preferred address then held on file for the Regulated Member. Reminder telephone calls were also made to the contact number provided by the Regulated Member. I also accept that no written communication has been received from the Regulated Member in response to the allegations as requested in RICS' letter dated 7/9/20.

Accordingly, I find the charge proved on the balance of probabilities.

Turning to the matter of Liability to Disciplinary Action, I have taken into account that the CPD policy has been approved by the Regulatory Board and is an expressly stated RICS rule. 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. CPD is intended to ensure consistent standards within the profession so that members maintain up to date professional knowledge and are able to demonstrate this through proper and accurate recording of their CPD. The requirement for Members to complete and record CPD is important in the interests of ensuring public protection and confidence in the profession and RICS as a regulator. Completing and

recording CPD is also RICS' only line of sight to ensure a member's compliance - something which is not optional.

Notwithstanding the Regulated Member's own responsibility to comply, I note the extra steps taken by RICS to inform and remind members of their CPD obligations. Despite this, Mr Cleary still fell short of meeting these obligations for the calendar year 2019. Therefore, I am satisfied that in all the circumstances this single failure is sufficiently serious to give rise to liability to disciplinary action.

Accordingly, in relation to the above, I find Mr Cleary Liable to Disciplinary action.

5. Regulatory Sanction

At this stage I took into account all the written submissions, the RICS Sanctions Policy and Mr Cleary's disciplinary history which is as follows in regard to CPD related sanctions:

- 2017 - Caution
- 2018 - Caution and fine.

I bore 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 approached my decision having taken into account any mitigating and/or aggravating factors.

6. Decision on Sanction

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 and compliance is not optional.

The charge found proved represented a third breach of the CPD requirements within 10 years, the Regulated Member having failed to complete and record, or cause to be recorded, the required number of hours of CPD over three consecutive years (2017, 2018, and 2019) despite having been sent a number of reminders by the RICS of the importance of doing so and of the consequences that could follow for failing to comply. The central tenet of Regulation is protection the public through guarding against repetition of acts or omissions which fall short of expected standards. Previous regulatory responses (also in relation to CPD compliance) appear not to have the desired effect and therefore I consider that to be a serious aggravating feature of this case. There has been no explanatory information presented by or communication received from the Regulated Member, and therefore I am unable to find much by way of mitigation.

Having considered all of the circumstances of this case, I first considered whether to Impose any sanction at all. I have concluded that the failure by the Regulated Member to complete and record CPD on three separate occasions was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate.

I then considered whether to impose a caution and concluded that a caution was not appropriate because it would not adequately reflect the seriousness of the conduct, recognising the repeated non-compliance. A caution had already been imposed for a previous breach and this had not ensured that the Regulated Member had consistently complied with professional obligations as set out in Rule 6.

I also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of the Regulated Member's repeated failure to comply with the requirement to complete and record CPD.

In considering whether to require the Regulated Member to give an undertaking, I took into account the mandatory nature of the CPD requirements which Members have already undertaken to comply with through their membership. CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date which is ultimately

to ensure public protection. I concluded that it would not be appropriate or proportionate to impose an undertaking given that the Regulated Member should have been completing and recording his CPD online in any event and concluded that imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.

I then considered whether to impose a fine and decided that a fine would not be an appropriate sanction. Mr Cleary had previously received a fine for a breach of the CPD requirements but this had not ensured compliance.

For similar reasons, and because of his lack of engagement in relation to these regulatory proceedings, I did not consider the imposition of a condition on the Regulated Member's continuing membership to be an adequate, workable and proportionate response to the misconduct demonstrated by this case.

I took into account paragraph 21.1. of the Sanctions Policy, which states that in the absence of extenuating circumstances 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. Having carefully considered all aspects of the case including the Regulated Member's disciplinary history, and all possible sanctions available to me, I concluded that the appropriate and proportionate sanction in this case was expulsion. It therefore ordered that Mr Cleary be expelled from membership of RICS.

7. Costs

I have received no statement of means from Mr Cleary, thus in accordance with Rule 119 of the Disciplinary Registration and Appeal Panel Rules I make the following order costs against the Regulated Member in the amount of £350.

8. 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.

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

9. 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.*