

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

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

**Regulated Member: Simon Roberts**

**Case Number: REG0000157261**

**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 81 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 Recommendation

The Head of Regulation's Recommendation submits 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

I confirm I have seen a letter dated 7/9/20 informing Mr Roberts that the allegation has been referred to a Single Member for consideration and determination. This was emailed to the Regulated Member's preferred email address and I note a delivery receipt is provided. Mr Roberts responded on 25/9/20 saying he wished to resign. No listing questionnaire was provided

## 2. Alleged Rule Breach

The charge against Mr Roberts 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 3/9/20 setting out Mr Robert's online CPD record and exhibiting the relevant records. This showed that he had only recorded 5 hours CPD for 2019, under the minimum required. It also showed he had not been granted any concessions for that year and therefore was required to complete and record CPD.

This statement also says that Mr Roberts did not record CPD in 2014, 2015 and 2017. However, it confirms he had previously recorded sufficient CPD in 2013, 2016 and 2018 demonstrating awareness of his 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 the Mr Robert's 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.

#### **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 Mr Roberts liable to disciplinary action.

I am satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Robert'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 Mr Roberts 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 3/9/20 which confirms the following sanctions for previous failures by Mr Roberts to comply with CPD requirements resulting in breaches of Rule 6:

- Caution for a breach in the year 2014
- Caution and Fine for a second breach in 2015
- Reprimand, Condition and Fine of £1000 for a third breach in 2017, imposed by a disciplinary panel

The breach in 2019 was therefore the fourth breach of CPD requirements within 10 years.

I note that other than these previous CPD breaches, Mr Roberts 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 Mr Roberts did complete and record 5 hours formal CPD in 2019. However, I am unable to identify any other mitigating features.

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

- The charge found proved represents a fourth breach of the CPD requirements

- Previous regulatory responses, including referral to a disciplinary panel, have not ensured ongoing compliance
- Mr Roberts has said he has “*more important things to do*” and has made it clear he does not intend to complete CPD saying “*my failure to complete CPD will continue*”. There is a wilful disregard of his CPD obligations.

I note Mr Roberts has said he would like to resign from RICS as “*it doesn’t represent what I need at my time of life*”. Members are unable to resign whilst disciplinary proceedings are underway.

However, I am mindful of Rule 107 in the Disciplinary Registration and Appeal Panel Rules, which says a Single Member may impose expulsion where the Regulated Member has expressed a wish to withdraw from RICS membership and the Single Member is satisfied that the matter is sufficiently serious to merit expulsion in the circumstances of the case. This may be relevant considered in conjunction with paragraph 22.1 of the Sanctions Policy referred to above.

I have considered the range of sanctions starting from the bottom.

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, he should have been aware of his responsibility to ensure that he complied with his CPD obligations. 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.

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 Mr Roberts has complied with Rule 6 consistently. Also, I consider the imposition of a reprimand would not address the seriousness and bear in mind a previous reprimand has not ensured ongoing compliance.

Given Mr Roberts has not engaged with the RICS process and has said he is not intending to complete CPD, I consider an undertaking would be inappropriate.

I considered whether to impose a fine but decided it would not be an appropriate sanction. The Regulated Member had previously received two fines for breaches of the

CPD requirements, but these have clearly not served as an adequate warning to comply.

For similar reasons, and because of his lack of engagement in relation to these regulatory proceedings or lack of willingness to comply, I do not consider the imposition of a condition on Mr Roberts' continuing membership to be an adequate, workable and proportionate response to the misconduct demonstrated by this case.

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 any mitigating features for the most recent breach, and the history of prior breaches, I consider the presumption of expulsion must apply in this case. Having carefully considered all aspects of this case and the lesser sanctions available, I conclude that the appropriate and proportionate sanction in this case is expulsion.

I therefore order that Mr Roberts be expelled from membership of RICS.

## **6. Costs**

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

In accordance with Rule 119 of the Disciplinary Registration and Appeal Panel Rules I order Mr Roberts 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.*

Mr Roberts 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.

## **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.*