

## RICS, Disciplinary, Registration and Appeal Panel Rules 2019

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

**Regulated Member:** Sivalingham Kumar  
**Case Number:** REG0000157120  
**Single Member Decision of:** Ian F Hastie MRICS  
**Date of decision:** 22<sup>nd</sup> 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 it 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 77 pages which include a CPD printout from RICS' online system held for Mr Kumar 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 Mr Sivalingham Kumar's CPD printout for the year 2019. I noted that there is no evidence that Mr Kumar has applied for any RICS Exemption or Concession which would have allowed him 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 Mr Kumar'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 Mr. Kumar was given every opportunity to comply with the CPD requirements.

- 9 Accordingly, I am satisfied that Mr. Kumar is liable to disciplinary action.

## **SANCTION**

- 10 I note that in addition to 2019 there were no CPD hours recorded by Mr Kumar in the year 2018, and that only 10 hours were recorded in 2017. I note that CPD hours were recorded by Mr Kumar, of which there were: 25 hours in 2015; and 22 hours in 2016.
- 11 I take into account the RICS Sanctions Policy and Mr Kumar's disciplinary history which is as follows:  
2017 – 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 is still outstanding.

13 In the bundle, RICS confirms that a minimum of 12 reminders were sent to the Regulated Member's preferred email address, at regular intervals from October 2019, 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. Mr Kumar, had engaged in 2019 with RICS regarding a membership matter, but had not responded to any CPD reminder.

14 Correspondence sent to the members postal address was returned as undeliverable, and RICS submit that the member may not have received communication of a caution and fine (second year breach). He was sent an email asking him to update his contact address on RICS systems, which produced no response. Members are required at all times to keep RICS updated with their current details.

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 The only mitigating factor I could find was that the breach in 2017, was for only recording 10 hours of CPD, rather than no hours at all.
- 18 I considered that the following aggravating factors were present in this case:
- There has been no engagement from Mr. Kumar despite frequent reminders.
  - The second breach was dealt with by way of caution and a fine which has not been paid. I take account that the member may be unaware of this fixed penalty.
  - Mr. Kumar has been a member since February 2015 and clearly understands the process of recording CPD, as hours were successfully recorded in 2015, and 2016.
  - This is his 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 Mr. Kumar had been sent numerous reminders by RICS. However, whether Mr. Kumar received these reminders or not, it remained his

responsibility to ensure that he 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 Mr. Kumar's 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 Mr. Kumar should have been completing and recording his 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 Mr. Kumar for failing to record his CPD hours for the years 2018 which has not been paid. I concluded that, in these circumstances, to impose a further financial penalty would serve no useful purpose, as it had not resulted in compliance with the CPD requirements to date. Instead a further fine would undermine the need to uphold the standards expected of all members and the deterrent effect on other members of the profession.
- 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 Mr. Kumar has demonstrated a willingness to engage with the regulatory process and a willingness to comply with any condition imposed. As Mr. Kumar has repeatedly failed to comply

with the CPD requirements in the past and has failed to respond to written reminders to record his CPD, I could not be satisfied that he would comply with conditions. Therefore, I concluded that it would not be possible to formulate conditions which would be realistic or achievable. Furthermore, in the absence of any mitigation, remorse or insight I concluded that Mr. Kumar's non-compliance with the CPD requirements demonstrated a blatant disregard for the purpose of regulation and consequently undermines public trust and confidence and is fundamentally incompatible with continued membership.

- 24 Having determined that conditions would not meet the wider public interest I determined that Mr. Kumar 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 Mr. Kumar's case falls into this category as he has repeatedly failed to comply with the fundamental requirement to record CPD and has failed to demonstrate that he has any intention of complying in the future. I am satisfied that, in these circumstances, any lesser sanction would undermine public trust and confidence. In reaching this conclusion I have carefully balanced the wider public interest against Mr. Kumar's interests, and his professional standing. I have had regard to the impact expulsion may have on Mr. Kumar but concluded that his interests were significantly outweighed by my duty to give priority to the significant public interest concerns raised by this case. I am also mindful that paragraph 21.1. of the Sanctions Policy states that 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.

## **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 Mr. Sivalingham Kumar shall be expelled from membership of the RICS**

## **COSTS**

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

**Mr. Kumar 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.*