

RICS, Disciplinary, Registration and Appeal Panel Rules 2019

Part VI, Regulatory Tribunal Single Member Decision.

Regulated Member: Stuart Carss
Case Number: REG0000157167
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 and record, 20 hours of CPD activity by 31 December of each calendar year, 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 71 pages which include a CPD printout from RICS' online system held for Mr Carss and a witness statement from a CPD Administrator.

- 6 The entry on Mr Stuart Carss' CPD printout for the year 2019 was of only 4 hours of informal CPD. I noted that there is no evidence that Mr Carss 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 Carss' 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. Carss was given every opportunity to comply with the CPD requirements.
- 9 Accordingly, I am satisfied that Mr. Carss is liable to disciplinary action.

SANCTION

- 10 I note that in addition to the shortfall of recorded hours in 2019 there were no CPD hours recorded by Mr Carss in the year 2016, and 2017. I note that CPD hours were recorded by Mr Carss, of which there were: 39 hours in 2013; 23 hours in 2014; 20.5 hours in 2015; and 21 hours in 2018.
- 11 I take into account the RICS Sanctions Policy and Mr Carss' disciplinary history which is as follows:
2016 – Caution
2017 – Caution and fine.

12 The bundle documents reveal the member's membership fees in 2019 and 2020 have been paid, and that the disciplinary fine issued in 2018 for the 2017 breach has been paid.

13 In the bundle, RICS confirms that a minimum of 9 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.

14 All Mr Carss' email addresses which I noted in the bundle are the preferred email address held on file for the Regulated Member. However, throughout the bundle documentation the Regulated Member is consistently addressed as Mr Carss. This may have originated from an initial typographical error, but the error is maintained throughout the bundle. I am satisfied that all RICS communications were delivered to Mr Carss' correct address.

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 I consider that the following mitigating factors were present in this case:
- The breach in 2019 was for only recording 4 hours of CPD, rather than no hours at all.
- 18 I considered that the following aggravating factors were present in this case:
- Mr. Carss has been a member since June 2008 and clearly understands the process of recording CPD, as hours were successfully recorded in 2013, 2014, 2015, and 2018.
 - There has been no engagement from Mr. Carss despite frequent reminders, to his correct email address.
 - This is the third breach of the regulation within a period of four 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. Carss had been sent numerous reminders by RICS. However, whether Mr. Carss 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. Carss' 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. Carss 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 2017. 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. Carss has demonstrated a willingness to engage with the regulatory process and a willingness to comply with any condition imposed. As Mr. Carss 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. Carss' 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. Carss 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. Carss' 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. Carss' interests, and his professional standing. I have had regard to the impact expulsion may have on Mr. Carss 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. Stuart Carss 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. Carss 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.*