

RICS, Disciplinary, Registration and Appeal Panel Rules 2019

Part VI, Regulatory Tribunal Single Member Decision.

Regulated Member: William Bennett
Case Number: REG0000157243
Single Member Decision of: Ian F Hastie MRICS
Date of decision: 22nd November 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 80 pages which include a CPD printout from RICS' online system held for Mr Bennett 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 William Bennett's CPD printout for the year 2019. I noted that there is no evidence that Mr Bennett has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement.

- 7 I also note in the Listing Questionnaire included in the bundle that Mr Bennett admits the charge.

8 Accordingly, I find the factual allegations proved, based on Mr Bennett's admission and on the documentary evidence produced.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

9 I note in the Listing Questionnaire that Mr. Bennett accepts that he is liable for disciplinary action, but asks that the impact of covid-19, on his retirement plans, and business in 2020 is recognized.

10. The charge is the failure to complete and recording of CPD between 1st January 2019 and 1st February 2020. The impacts of covid-19 on Mr. Bennett he states as commencing in March 2020, which post-dates the charge.

11 I am satisfied that the RICS requirements to complete and record CPD is reasonable and that Mr Bennett'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. Bennett was given every opportunity to comply with the CPD requirements.

12 Accordingly, I am satisfied that Mr. Bennett is liable to disciplinary action.

SANCTION

13 I note that in addition to 2019 there were no CPD hours recorded by Mr Bennett in the years 2017, and 2018.

14 I take into account the RICS Sanctions Policy and Mr Bennett's disciplinary history which is as follows:

2017 – Caution

2018 – Caution and fine.

15 The bundle documents reveal that Mr Bennett'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.

16 In the bundle, RICS confirms that a minimum of 9 reminders were sent to the Regulated Member's preferred email address, between October 2019 and the final one on 25 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.

- 17 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.
- 18 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.
- 19 In mitigation Mr. Bennett does apologies for his lack of contact with RICS Regulation. He says his industry and companies operations have been severely effected by the Covid-19 pandemic. He accepts the breach and accepts responsibility. He explains his difficulties in having to delay his retirement, and that he could not walk away from his company "at a time where all shoulders to the wheel were needed". As such he has engaged with RICS Regulation in what has been a difficult period for all.
- 20 I considered that the following aggravating factors were present in this case:
- The member was sent numerous reminders by RICS as the deadline for CPD submission approached and in the weeks immediately following. No CPD was recorded for 2019 and the member has not provided any explanation for this. This was prior to the start of the pandemic.
 - This is the third breach of the regulation in a period of three years. The RICS records indicate that no record of any CPD has ever been submitted by the member.
 - The second breach was dealt with by way of reprimand and a fine, which has not been ^[L]_[SEP]paid. ^[L]_[SEP]In his email of 13 August 2020, the member maintains his

“fees have always been paid including additional penalties”. RICS records show that no fine has been paid. Non-payment of a fixed penalty demonstrates a disregard of RICS CPD obligations.

- Having received previous sanctions of two fixed penalties for not completing his CPD in consecutive years, Mr. Bennett cannot be unaware of his obligation as a member to comply with the CPD rules.
- Although Mr. Bennett apologises for his lack of contact with RICS Regulation, he shows no remorse for his failure to comply with RICS CPD requirements. He “accepts the breach and accepts responsibility”, but he does not inform if he has carried out any CPD in 2019, and the records show that he has not recorded any. He shows no insight into the importance of carrying out and recording CPD as a standard condition of his membership of RICS.

21 I note the member’s statement that he is working part time and is planning to retire so will not be renewing his 2021 membership with RICS. RICS state that they have had no prior notification of this.

22 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. Bennett had been sent numerous reminders by RICS. The obligation to complete and record CPD is contained within the rules and is not dependent upon the member receiving reminders from RICS.

23 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. Bennett’s repeated failure to comply with the requirement to complete, record or cause to be recorded CPD on the RICS portal.

24. 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. Bennett 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.
- 25 I then considered whether to impose a fine. I was mindful that a fine was imposed on Mr. Bennett 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.
- 26 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. Bennett has demonstrated a willingness to comply with any condition imposed. As Mr. Bennett 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, I concluded that Mr. Bennett's total 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.
- 27 Having determined that conditions would not meet the wider public interest, I

determined that Mr. Bennett 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. Bennett's case falls into this category as he has repeatedly failed to comply with the fundamental requirement to record CPD. 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. Bennett's interests, and his professional standing. I have had regard to the impact expulsion may have on Mr. Harindran 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

28 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. William Bennett shall be expelled from membership of the RICS

COSTS

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

Mr. Bennett will pay costs in the amount of £350

Taking Effect of the Order

30 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

31 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.*