

RICS, Disciplinary, Registration and Appeal Panel Rules 2020

Part VI, Regulatory Tribunal Single Member Decision.

Regulated Member: Mr Bent Jensen
Case Number: REG0000162805
Single Member Decision of: Christopher Pittman FRICS
Date of decision: 25 February 2022

CHARGE:

The formal charge against the Regulated Member is:

'Between 1 January 2020 and 1 February 2021 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.

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, which they must record, or cause to be recorded, on the online system maintained by RICS for the recording of CPD activity.
- 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.

5 I have been provided with and fully considered the case bundle of 77 pages, the key parts of which comprise:

- a statement from RICS' Head of Regulation dated 14 January 2022 submitting that there is a reasonable prospect that the facts in this case are such that the Regulated Member is 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 both dated 15/11/2021;
- an investigation report which sets out:
 - the alleged facts underpinning the allegation;
 - why in the view of RICS the alleged facts render the Regulated Member liable to disciplinary action;
 - RICS' position on sanction;
- details of communication between RICS and the Regulated Member including the letter dated 17/01/2022 informing the Regulated Member that the case has been referred by the Head of Regulation to a Single Member of the Conduct and Appeal Committee¹ 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;

¹ The letter erroneously refers to the Conduct and Appeal Committee rather than the Regulatory Tribunal. I am satisfied that this is a mere slip and accordingly that the letter satisfies the notification requirements of rule 8.6 of the RICS Regulatory Tribunal Rules 2020.

- schedule of costs amounting to the sum of £350

FINDINGS OF FACT

6 I accept the submissions from RICS that:

- The CPD records show that the Regulated Member recorded no CPD for 2020.
- No concessions apply to the Regulated Member for 2020, who therefore is required to complete and record CPD for that year.
- 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
- RICS sent an email to the Regulated Member's designated contact address (his business address) on 28 September 2021 regarding his shortfall of recorded CPD hours but did not receive a response other than an automated response advising them he had left the business. RICS then followed this up with an email on the same day to the Regulated Member's registered personal email address. No reply was received.
- RICS engaged in email correspondence with the Regulated Member's former business on 18 and 19 October seeking contact information and were provided with a telephone number on 25 October 2021.
- RICS tried to contact the Regulated Member by telephone on two occasions. Firstly on 28 September (using the number provided by the Regulated Member) and a second time on 25 October 2021 (using the number provided by the Regulated Member's former employer).
- The Regulated Member's recording of CPD in 2013, 2014, 2016, 2017, and 2019 demonstrates awareness of his CPD obligations.

7 I note also that the letter to the Regulated Member dated 17 January 2022 informing him that this matter was being referred to a Single Member of the Regulatory Tribunal was sent to the Regulated Members registered personal email address as well as to his registered preferred correspondence address.

8 Accordingly, I find the facts of the charge proved, based on the documentary information provided.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

- 9 I am satisfied that the RICS requirement to complete and record CPD is reasonable and that the circumstances of this case are such that the Regulated Member's single failure to comply with these requirements is sufficiently serious to give rise to a liability to disciplinary action.
- 10 In reaching this decision I took into account the fact that the CPD policy has been approved by the Regulatory Board and is an expressly stated RICS rule. 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. The Sanctions Policy makes it clear to Members that even a single breach of CPD requirements is sufficient to give rise to a potential liability for disciplinary action. 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 professional area of expertise in the interests of ensuring public protection and confidence in the profession and RICS as a regulator. The recording of CPD is RICS' line of sight to ensure compliance and in turn give protection to the public. Compliance is not optional. The CPD obligation is not onerous, and it is not difficult to record CPD online.
- 11 Moreover, I am satisfied that notwithstanding the Regulated Member's own obligation to comply, the Regulated Member was given several reminders of his CPD obligations and an opportunity to bring himself into compliance ahead of further regulatory action. Despite this, the Regulated Member still fell short of meeting his obligations for the calendar year 2020.

SANCTION

- 12 I am satisfied that a regulatory sanction is appropriate and proportionate. In reaching this decision I took into account all the written submissions, the RICS Sanctions Policy and the Regulated Member's disciplinary history which is as follows in regard to CPD related sanctions:
- 2015 – Caution
 - 2018 - Caution and fine.
- 13 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 I approached my decision as to sanction having taken into account any mitigating and/or aggravating factors.
- 14 Mitigating factor in this case are:
- that in 2013, 2014, 2016 and 2017 the Regulated Member has exceeded the number of hours required of him.

- The 2015 breach is mitigated by an overall total of 44 hours CPD being recorded (of which 8 hours rather than the required 10 hours was formal CPD).

15 There has been no explanatory information presented by or communication received from the Regulated Member, and therefore I am not aware of any further mitigating factors. I note however that the Member was exempt from the requirement to undertake CPD in 2019.

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

- The Regulated Member has been a member since January 2012 and clearly understands the process of recording CPD, as hours were successfully recorded in 2013, 2014, 2015, 2016 and 2017.
- The member has previously breached this rule on two occasions, in 2015 and 2016. For these breaches he received the sanctions of a Caution, and then a Caution and a Fine respectively. The Regulated Member therefore cannot be unaware of his obligation as a member to comply with the CPD requirement.
- This current breach is now a third breach of the regulation within ten years of receiving a caution. Though I consider the severity of the first breach (2015) is significantly mitigated by the extent of CPD carried out by the Regulated Member in that year.
- There has been no engagement from the Regulated Member.

17 Having considered all the circumstances of the case I first considered whether to impose any sanction. I concluded that failure to record CPD was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate.

18 I went on to consider whether to impose a caution. I concluded that a caution would not adequately reflect the seriousness of the case, also recognising that although cautions had already been imposed for previous breaches a further breach had taken place.

19 I then considered the imposition of a reprimand. I determined that this is an appropriate sanction in this case but concluded that a reprimand alone did not reflect the seriousness of the Regulated Member's failure to again comply with the requirement to complete and record CPD and the sanction needed an additional component or component given the seriousness of the breach.

20 In considering whether to impose an undertaking in addition to a reprimand 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 in addition to a reprimand given that the Regulated Member should have been completing and recording online his CPD in any event.

- 21 I then considered whether to also impose a fine and decided that a fine would be an appropriate additional component of the sanction. I note that in line with the approved regulatory policy a fine in addition to a caution was imposed on the Regulated Member for failing to record his CPD hours for the year 2018 (his second breach of his obligation to record CPD). I am of the view that this policy approach seeks to mark the increased severity of repeated breaches of the CPD requirement within a 10 year period, noting that a first breach is marked with a caution, a second breach with a caution and a fine, and a third breach gives rise to a presumption of expulsion. Although I am not ordering that the Regulated Member be expelled, for reasons explained below, I am of the view that the increased severity of a third breach needs to be suitably marked. I therefore also impose a fine of £500.00.
- 22 I went on to consider conditions as a further component of the sanction. Imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances but I concluded that it would not be possible to formulate conditions which provide an adequate, workable and proportionate response in the circumstances.
- 23 I am mindful that paragraph 21.1. of the Sanctions Policy 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. I would therefore identify why I believe the circumstances of this case are such as justifies a departure from the presumption. Expulsion is a sanction of last resort and is rightly reserved for that category of cases where there is no other means of protecting the public or the wider public interest. Having carefully considered all aspects of the case including the Regulated Member's disciplinary history, CPD history (particularly the nature of the first breach) and all possible sanctions available to me, and having carefully balanced the aggravating and mitigating factors, I decided that the Regulated Member's case does not falls into this category. I considered that to go beyond a reprimand and a fine would be excessive and disproportionate in the circumstances.

DECISION

24 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 Bent Jensen receives a Reprimand and is fined in the sum of £500

COSTS

25 In accordance with Rule 119 of the RICS Regulatory Tribunal Rules 2020 having satisfied myself that an estimate of costs has been provided to the Regulated Member, I make the following order in respect of costs:

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

Taking Effect of the Order

26 In accordance with Rule 144 of the RICS Regulatory Tribunal Rules 2020

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 Jensen must notify the Head of Regulatory Tribunals in writing within 14 days of receipt of this decision, if he considers that the findings made by the Single Member are wrong and/or considers that the Regulatory Sanction imposed by the Single Member is wrong, failing which the order will be deemed accepted by the Regulated Member and will take effect.

Publication

27 This decision will be published in accordance with Rule 120 of the RICS Regulatory Tribunal Rules 2020, 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 Sanctions Policy and*
- b the Single Member's Record of Decision will be published following the expiry of 14 days.*