

RICS Disciplinary, Registration and Appeal Panel Rules 2019

Part VI, Regulatory Tribunal Single Member Decisions

Regulated Member:	Chi Keung Lau
Case Number:	REG0000163048
Single Member Decision of:	Alison Sansome
Date of Decision:	28th 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 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

The Regulated Member is therefore liable to disciplinary action under Bye-law 5.2.2(c).

BACKGROUND

1. All RICS Members are required to complete a minimum of 20 hours of Continuing Professional Development (CPD) activity each calendar year.
2. Rule 6 of the Rules of Conduct for Members 2007 states that **'Members shall comply with RICS' requirements in respect of continuing professional development.'**
3. The requirements of the rule are further detailed as follows:
 - i. All RICS members must undertake a minimum of 20 hours of CPD each calendar year (January to December).

- ii. Of the 20 hours at least 10 hours must be formal CPD. The remainder can be formal or 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 the following 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 members 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 Fine within 28 days of the notification will lead to the fine being increased to £250. A third CPD breach within the 10-year period is likely to result in referral to disciplinary proceedings.

PROCEDURE

5. I have considered this case in three distinct stages, only moving to the next stage if there is a requirement to do so. These are:
 - i. Stage 1 – Finding of Fact
 - ii. Stage 2 – Liability for Disciplinary Action
 - iii. Stage 3 – Sanction

FINDINGS OF FACT

6. In considering this case I have been provided with a hearing bundle of 67 pages, which includes a CPD printout from the RICS online system held for Mr Lau and a witness statement from Ms Jamie Edwards, a Lead Investigator for RICS and a witness statement from Ms Claire Hoverd, whose duties include communication relating to CPD compliance.
7. I accept that where the printout does not contain an entry for a particular year, it indicates that no CPD was recorded that year. There were no hours recorded on Mr Lau's printout for the year 2020. I also note that there is no evidence of any application by Mr Lau for

Concessions or Exemptions which, if granted, could have waived, or reduced, this requirement.

8. As a result I find the fact of the allegations proved on the basis of the documentary and system evidence produced.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

9. I am satisfied that the RICS requirement to complete and record CPD is reasonable and indeed is a key feature of most UK regulating bodies. It is an essential part of maintaining RICS professional standards.
10. I note that the purpose of the RICS CPD requirement is to ensure consistent standards within the profession, ensure that members maintain up to date knowledge in their area of expertise and ensure that members demonstrate this by the completion of a record on the RICS system. Ultimately this maintains professional standards in the interest of ensuring protection of the public and the wider public interest.
11. All members agree to adhere to the RICS Rules, Regulations and Bye-laws and accept that they may be liable to disciplinary action if they fail to do so.
12. Mr Lau's failure to comply with the CPD requirements therefore falls short of the expected standards and is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I have considered that the CPD requirement is expressly stated as a RICS Rule and is set out in a CPD Policy approved by the RICS Regulatory Board. I note that the RICS Sanctions Policy makes it clear that a single breach of CPD requirements is sufficient to give rise to a liability for disciplinary action.
13. Although RICS do send reminders to assist members, I would note that compliance with RICS Rules and CPD requirements, is the member's responsibility and therefore not directly dependent on the sending or receipt of reminders. The recording of CPD hours online is not a complex task and RICS provides guidance to support members in achieving this requirement. Mr Lau has therefore been given every opportunity to comply with the CPD requirements.

14. No representations from the member have been received as there has been no contact from Mr Lau.
15. Accordingly I am satisfied that Mr Lau is liable to disciplinary action under Bye-law 5.2.2(c).

SANCTION

16. I note that in addition to no hours being recorded for 2020, there were no CPD hours recorded in 2013 or 2014 by Mr Lau. The following CPD hours were recorded by Mr Lau: 25.50 hrs in 2015, 47 hrs in 2016, 21 hrs in 2017, 20 hrs in 2018 and 32 hrs in 2019 and indeed he fully met the requirements for those years.
17. I take into account the RICS Sanctions Policy and Mr Lau's disciplinary history, which is as follows:
 - 2013 – a Fixed Penalty Caution
 - 2014 – a Fixed Penalty Caution and Fine
18. The bundle documents show that Mr Lau has paid his membership fees for 2020 and that the fine issued in 2015 for the 2014 breach had been paid.
19. In the documentary evidence provided RICS indicates that at least 7 reminders were issued to Mr Lau at regular intervals between 17 November 2020 and 4 May 2021. These were sent predominantly by email to the preferred email address provided by the member and held on the member's record although a final hard copy mailing is also noted.
20. These reminders explicitly stated
 - 'All practising RICS members are required to complete at least 20 hours of CPD (including 10 hours of formal CPD) by 31 December 2020 and record it online by 31 January 2021.'*
 - 'Our records show that you have not yet recorded this minimum requirement. As per the RICS Rules for Conduct for Members and Sanction Policy, because you have already been in breach twice of the 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 2020 required minimum of 20 hours of CPD (including 10 hours of formal CPD) you may be in breach for a third time and therefore at risk of referral to Disciplinary Panel with presumption of expulsion.'

21. In addition RICS states that Mr Lau was sent a further email on 4 January 2021 and contact was made by telephone on 30 March 2021, to alert him to the outstanding requirement to record CPD. Further contact by phone was attempted on 7 October 2021, which was unsuccessful, but an email was sent that same day.
22. I am satisfied that a preferred email address held on file for the regulated member was used for these emails.
23. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is fundamental to allow RICS to ensure compliance to these standards and so enable public protection and confidence in the profession. Compliance is not optional.
24. I kept in mind that the purpose of sanctions is not to be punitive, though they may have that effect. The purpose of sanctions is to protect the public, declare and uphold the standards of the profession and safeguard the reputation of the profession and of RICS as its regulator. Sanctions also have a deterrent effect.
25. I was also mindful that sanctions must be proportionate and therefore started by considering the lowest sanction, moving up the scale of gravity only when the sanction under consideration was insufficient to meet the public interest. I also considered carefully the mitigating and aggravating factors of this case.
26. A mitigating factor in this case is that following the previous breaches and sanctions applied in 2013 and 2014, Mr Lau has consistently recorded his CPD and met the requirements for the last 5 years, generally completing substantially more than the required minimum.
27. I considered the following to be aggravating factors in this case:

- ~ Mr Lau clearly understands the process of recording CPD, as he successfully recorded CPD hours in 2015, 2016, 2017, 2018 and 2019.
- ~ There has been no engagement from Mr Lau despite frequent reminders.

28. I firstly considered whether to impose a sanction at all. 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.

29. 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 that a caution had previously been given, and on its own had had little effect. I also considered the imposition of a reprimand, but again concluded that on its own it was insufficient to adequately reflect the seriousness of the non-compliance with CPD requirements.

30. In considering whether to impose an undertaking I took into account the mandatory nature of the CPD requirements, and the commitment given by Mr Lau on joining RICS and as a condition of membership, to comply with this requirement, which he had now failed to do on more than one occasion. I therefore determined that it would not be appropriate or proportionate to impose an undertaking and indeed doing so in such circumstances could undermine public trust and confidence in the regulatory process.

31. I went on to consider whether to impose a fine. I was mindful that a fine was previously imposed on Mr Lau for failing to meet his CPD requirements in 2014 Mr Lau had promptly paid this fine and he had subsequently recorded his CPD consistently, successfully meeting the CPD requirement for the next five years, until this year - 2020.

32. I also considered conditions. For a sanction of conditions to be effective and appropriate Mr Lau would need to have demonstrated a willingness to engage with the regulatory process, which he had not done. I therefore determined that it would not be possible to formulate conditions to address this failing, which would be realistic or achievable.

33. I gave serious consideration to expulsion. This is a serious breach and the third non-compliance of CPD requirements within 10 years and indeed the sanctions policy

presumes expulsion to be the likely outcome in such cases. As Mr Lau had not provided any information or explanation it was impossible to know whether he had experienced any challenges or difficulties in meeting the CPD requirements, especially in such a disrupted year. This lack of engagement does indicate a lack of regard for the importance of regulatory requirements.

34. However, I also gave consideration to the fact that the previous breaches were some years ago in 2013, when the current system of mandatory recording of CPD was first introduced and 2014 when Mr Lau received a Fixed Penalty Fine. I also considered Mr Lau's positive behaviour in the period since the fine imposed for his 2014 CPD breach. That penalty was promptly paid, and he had consistently met and exceeded the requirements over the last 5 years. In these circumstances I determined that expulsion would be disproportionate and weighing the evidence I am of the view that Mr Lau should have one final chance to comply with the CPD requirements going forward.

35. I have concluded that the public interest and need for future compliance could be met with a combination of a Reprimand for this failing and a Fine to reflect the seriousness of this third non-compliance with CPD requirements. Mr Lau should be in no doubt as to the seriousness with which any further breaches would be viewed and the likely consequences.

DECISION

36. Having read all the papers provided and considered the evidence, in accordance with Part VI of the Disciplinary Registration and Appeal Panel Rules, I make the following order:

That Mr Chi Keung Lau shall receive a Reprimand and the imposition of a fine of £750.

COSTS

37. RICS made an application for costs of £350. In accordance with Rule 119 of the DRAP Rules 2019 I make the following order in respect of costs:

Mr Lau shall pay costs in the amount of £350

TAKING EFFECT OF THE ORDER

38. In accordance with Rule 119 of the Disciplinary Registration and Appeal Panel Rules
Following the expiry of 14 days from the service of the Single Members 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/she does not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

PUBLICATION

39. 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 expiry of the 14 days following the 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 charges 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.