

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Action by Single Members of the Regulatory Tribunal

Regulated Member: David Williams
Case Number: REG0000163055
Single Member Decision of: Rosalyn Hayles
Date of decision: 7 March 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. 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 by 31 January of the following calendar year.
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 RICS document 'CPD requirements and obligations' (the CPD requirements) states:

'1. All members must undertake a minimum of 20 hours CPD each calendar year (January to December).

2. Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD.

3. *All members must maintain a relevant and current understanding of our professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD.*
 4. *Members must record their CPD activity online by 31 January.'*
4. The CPD requirements also confirm that for a first breach of this rule the member will receive a caution (a Fixed Penalty caution) which will remain on the member's disciplinary record for a period of 10 years. In the event of a second breach, the member will receive a further caution and a fixed penalty fine of £150 or equivalent. Non-payment of the fixed penalty fine within 28 days of notification will lead to the fine being increased to £250. A third CPD breach is likely to result in referral to disciplinary proceedings, which may result in expulsion from membership and costs being awarded against the member.

FINDINGS OF FACT

5. I have been provided with a hearing bundle of 74 pages which include a CPD printout from RICS' online system held for Mr Williams and a witness statement from a RICS Lead Investigator dated 30 November 2021.
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 is no entry on Mr Williams' CPD printout for the year 2020. I note that there is no evidence that Mr Williams applied for any RICS exemption or concession which would have allowed him to avoid that requirement in respect of the 2020 calendar year. I also note that when responding to notification of the listing of this matter, Mr Williams admitted the charge.
7. I find the factual allegations proved, based on the documentary evidence produced by RICS.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

8. I am satisfied that RICS' requirements to complete and record CPD are reasonable and that Mr Williams' failure to comply with those requirements is sufficiently serious to give rise to liability for disciplinary action. In reaching that conclusion I have taken

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 RICS 'Sanctions Policy: Guidance to the Regulatory Tribunal Rules' (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.

9. I am satisfied that Mr Williams was given every opportunity to comply with the CPD requirements. In reaching that conclusion I have taken account of the evidence that in the years 2013-2017 he complied with the CPD requirements and it is therefore clear that he was aware of those requirements. While I note the evidence of the RICS Regulations Support Team Manager about the reminders that would have been sent to Mr Williams concerning compliance with the CPD requirements during 2020 and 2021, I am mindful that in any event Mr Williams' obligation to comply with the CPD requirements was not contingent on receiving any such reminders from RICS.
10. I note that in his response to notification of the listing of this matter Mr Williams accepted liability to disciplinary action.
11. Accordingly, I am satisfied that Mr Williams is liable to disciplinary action.

SANCTION

12. I note that the evidence from the CPD printout is that Mr Williams did not record any CPD in the 2020 CPD year.
13. I take into account the Sanctions Policy and Mr Williams's disciplinary history which is as follows (as set out in the RICS' Lead Investigator's second witness statement dated 30 November 2021):

2018 caution
2019 caution and fine.

14. The statement of the RICS Lead Investigator within the bundle of evidence says that Mr Williams' membership fees in 2020 were paid, but that the fine issued in 2020 in respect of the 2019 breach is still outstanding. The bundle also includes a letter which was sent to Mr Williams on 11 March 2020 setting out the details of that fine, in addition to the email that would have been sent to his preferred email address. I note that that letter also contained a warning that, should Mr Williams fail to comply with the CPD requirements in 2020, he might be subject to a referral to a Disciplinary Panel.

15. The statement of the RICS Regulations Support Team Manager within the bundle confirms that six email reminders would have been sent to Mr Williams' preferred email address during 2020 and 2021 at regular intervals, 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 2020 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 the presumption of expulsion.'

I am satisfied that the reminders were correctly addressed to the preferred address then held on file for Mr Williams.

16. I note in addition that the RICS Regulations Support Team Manager's statement says that a hard copy reminder would have been sent to Mr Williams' postal address in mid-February 2021.

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 obligation to comply with the CPD requirements is not dependent on the member receiving reminders from the RICS.

18. I bear in mind that the purpose of sanctions is not to be punitive (although a sanction may have a punitive 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 (including by deterring the Regulated Member and others from future non-compliance). 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. I am mindful that the Sanctions Policy sets out a presumption of expulsion in the event of a third breach of the CPD requirements within 10 years. That presumption can be rebutted, depending upon the circumstances of the case.

20. I consider that the following mitigating factors are present in this case:

- Mr Williams has engaged with the RICS regulatory process. He admitted the charge and liability to disciplinary action.
- Mr Williams says that he has in fact completed the required CPD, although he failed to record it. He says he plans his CPD in advance, but did not allow time to record it. I accept that his breach of the CPD requirements was not intentional, that he has not benefited from the breach, and that the risk to public protection from his failure to record CPD that he had completed is lower than the risk associated with a Regulated Member failing to complete (as well as record) CPD.
- The information provided by RICS demonstrates that in each of the CPD years from 2013 – 2017 Mr Williams complied with the CPD requirements and indeed recorded a far greater number of CPD hours than required.
- Mr Williams has provided information about various mitigating personal circumstances. In summary, he says that during the two years since the start of the SARS-Covid-19 pandemic he has been constantly '*firefighting*' at work (which is a considerable commute from his family home), being required to work sometimes for twelve or more hours a day, in circumstances where the students he teaches have required a greater level of input and there have been fewer staff available to provide it. Mr Williams says that, in addition to his work commitments, he is the main carer for an elderly relative who lives some distance away. Mr Williams describes himself as being exhausted, and

refers to this as his only mitigation for the failure to comply with the requirements.

- Mr Williams has acknowledged the importance of CPD to his fellowship of the RICS, and referred to his membership of academic committees dealing with qualifications as demonstrating his understanding of the value of CPD.
- Mr Williams has apologised for his failure to comply with the CPD requirements. He says he is embarrassed to find himself in a position where he has not complied with the CPD requirements, particularly given his educational role in which he encourages students to engage with CPD.
- Mr Williams has co-operated with RICS' investigation, to the extent that: he engaged in a telephone call with the RICS Lead Investigator in October 2021; and he completed the listing questionnaire, in which he set out his explanation for his actions.

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

- Mr Williams understood the CPD requirements at the time of his non-compliance, as demonstrated by the fact that he had successfully completed and recorded CPD activity in previous years.
- RICS' evidence includes a note of a telephone call between the RICS Lead Investigator and Mr Williams in October 2021, documenting Mr Williams having said that he would upload his CPD as soon as possible and was very remorseful. Despite that assurance, Mr Williams did not take that opportunity to rectify the breach by uploading his CPD onto RICS' system subsequent to that telephone call.
- This is Mr Williams' third breach of the CPD requirements in a period of three years. It is therefore not an isolated failure. In addition, it occurred in circumstances where Mr Williams would have received several reminders from RICS about the CPD requirements.

- The second breach of the CPD requirements was dealt with by way of a caution and a fine, with that fine not having subsequently been paid.

22. I first considered whether to impose any sanction. I concluded that the repeated failure to record any CPD was serious, and in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate to the seriousness of the breach. In reaching that conclusion I noted that Mr Williams would have been sent numerous reminders by RICS about the CPD requirements. Regardless of whether Mr Williams actually received those reminders, it remained his responsibility to ensure his compliance with his obligations in terms of CPD.

23. I then considered whether a caution would be a sufficient sanction in this case. I concluded that a caution would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance, as well as the fact that a caution had already been imposed in response to previous breaches, and had not resulted in Mr Williams' subsequent compliance with the CPD requirements. I also considered imposing a reprimand, but concluded that doing so would be inadequate to reflect the seriousness of Mr Williams' repeated failure to comply with the CPD requirements.

24. In considering whether an undertaking would be the appropriate sanction, I took into account the mandatory nature of the CPD requirements. I also noted that the CPD requirements are designed to ensure that the skills and knowledge of Regulated Members is kept up to date, ultimately in order 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 Williams should have been completing and recording his CPD online in any event. I concluded that imposing such a sanction might undermine public trust and confidence in the regulatory process.

25. I considered whether imposing a fine would be a sufficient sanction in this case (either on its own, or in combination with another sanction). I concluded that simply imposing a fine would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance, as well as the fact that a fine had already been imposed in response to a previous breach and that fine remained unpaid and did not result in Mr Williams' subsequent compliance with the CPD requirements. However I concluded that the imposition of a fine could be appropriate, if conditions

were also imposed.

26. I went on to consider the possibility of imposing conditions, mindful that any condition imposed must be specific, measurable, achievable, realistic and time-bound as well as being proportionate and addressing all the issues. I took the view that imposing a condition may be appropriate in certain circumstances in response to non-compliance with the CPD requirements. I considered that, in order to be satisfied that such a sanction was sufficient, I would need to be satisfied that the Regulated Member had demonstrated willingness to engage with the regulatory process and to comply with conditions.
27. In this case, I am mindful that Mr Williams has engaged with the regulatory process, he has apologised for his non-compliance (which he says was limited to failing to comply with the requirement to record his CPD on RICS' systems, although he had completed it) and he has expressed his remorse for it. I am also mindful that prior to the 2018 CPD year, Mr Williams had consistently complied with the CPD requirements.
28. After very careful consideration I have concluded, on balance, that imposing a condition would be a sufficient sanction in this case, in light of Mr Williams' personal mitigation for his failure, his recognition of the importance of compliance with the CPD requirements, his history (prior to 2018) of compliance with those requirements, and his apology and remorse for his more recent non-compliance. In my view, it would be reasonable to infer from Mr Williams' expressed remorse that he intends to ensure that his failing will not be repeated in future.
29. In reaching that conclusion I gave consideration to whether it was necessary to order Mr Williams' expulsion from RICS membership. I noted 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 was also mindful that paragraph 21.1 of the Sanctions Policy states that expulsion is likely in the event of a third breach of Rule 6 of the Rules of Conduct for members within 10 years of receipt of a caution for a breach of the same rule, and paragraph 22.1 refers to a presumption of expulsion in such circumstances. I concluded that the presumption of expulsion should not apply in the specific circumstances of this case as set out above, as it is my view that the public interest can be adequately addressed by the imposition of the following condition on Mr Williams:

‘You will comply with RICS’ requirements in respect of Continuing Professional Development (CPD) for the period 1 January 2022 to 31 December 2022 by completing and recording, or causing to be recorded, at least 20 hours of CPD on the RICS CPD Portal by 31 January 2023’.

30. Failure to comply with that condition will result in Mr Williams’ automatic expulsion from RICS membership.

31. I have also decided that a fine of £300 is appropriate and proportionate to mark the seriousness of the breach.

DECISION

32. Having read the papers and considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules (with effect from 2 March 2020) I make the following order:

That the following condition shall be imposed on Mr Williams’ membership of RICS:

‘You will comply with RICS’ requirements in respect of Continuing Professional Development (CPD) for the period 1 January 2022 to 31 December 2022 by completing and recording, or causing to be recorded, at least 20 hours of CPD on the RICS CPD Portal by 31 January 2023’.

In addition:

Mr Williams will pay a fine of £300.

COSTS

33. RICS has applied for costs of £350, in line with Supplement 2 of the Sanctions Policy. Mr Williams has not disputed his liability to pay the requested costs or made any submissions about his own financial situation.

34. I accept that it is appropriate that Mr Williams should bear the costs reasonably incurred by RICS in bringing these proceedings, in order that those costs should not fall to be borne by the RICS membership as a whole. I note that the amount of costs applied for by RICS is in accordance with that specified in Supplement 2 of the Sanctions Policy.

35. In accordance with the Regulatory Tribunal Rules, I therefore make the following order in respect of costs:

Mr Williams will pay RICS' costs in the amount of £350

TAKING EFFECT OF THE ORDER

36. In accordance with Rule 114 of the RICS Regulatory Tribunal 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 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.

PUBLICATION

37. I am not aware of any factors in this case indicating that this decision or any part of it should not be published.

38. This decision will be published in accordance with [Rule 120 of the RICS Regulatory Tribunal 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.'