

## RICS, Disciplinary, Registration and Appeal Panel Rules 2019

### Part VI, Regulatory Tribunal Single Member Decision

**Regulated Member:** Francois Menage  
**Case Number:** REG0000162984  
**Single Member Decision of:** Gregory Hammond  
**Date of Decision:** 11 June 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.
2. Rule 6 of the Rules of Conduct for Members 2007 version 6 states: **Members shall comply with RICS’ requirements in respect of continuing professional development.**
3. The requirements of the Rules 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 may 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 this 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 65 pages which includes a CPD printout from RICS' online system held for Mr Menage and a witness statement from a CPD administrator.

6. I accept that if the printout does not contain an entry for a particular year, this indicates that no CPD was recorded for that year. There was no entry on Mr Menage's CPD printout for the year 2020 and I note that there is no evidence that Mr Menage has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement. RICS has provided evidence in the witness statement of their investigator that Mr Menage recorded 20.5 hours of CPD for 2020, but out of time in October 2021 after an email reminder.

7. I find the factual allegation proved based on the documentary evidence provided.

## **DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION**

8. I am satisfied that the RICS' requirements to complete and record CPD are reasonable and that Mr Menage's failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this decision, I have taken into account the fact that the CPD policy has been approved by the Regulatory Board and is expressly stated in RICS' Rules. 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, further, that members maintain up to date knowledge in their areas of expertise in the interests of protecting the public and the wider public interest in maintaining confidence in the profession. 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 Menage has been given every opportunity to comply with the CPD requirements.

9. Accordingly, I find that Mr Menage is liable to disciplinary action.

## **SANCTION**

10. I have borne in mind that the purpose of sanctions is not to be punitive, although they 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, and my decision must take account of all the circumstances of the case including any aggravating and mitigating factors.

11. I have noted that, in addition to no hours' CPD being recorded on time by Mr Menage for 2020, no hours were recorded for 2017 and only 2 hours for 2018. Sufficient CPD was recorded by Mr Menage for the years 2013, 2014, 2015, 2016 and 2019.

12. I have taken into account the RICS Sanctions Policy and Mr Menage's disciplinary history, which is as follows:

2017 – Caution

2018 – Fine

13. The case bundle sets out that Mr Menage's RICS membership fees have been paid, but the disciplinary fine issued in 2019 for the 2018 breach remains outstanding.

14. In the evidence bundle RICS confirms that a minimum of five reminders were sent to the Regulated Member's preferred email address at regular intervals from October 2020, all of which contained the following paragraphs:

*"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 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 presumption of expulsion."*

15. RICS sent a further email to Mr Menage on 15 October 2021 regarding his shortfall of CPD hours, advising that an attempt to call his registered telephone number had failed to connect and advising him that a decision had been taken to refer his conduct for disciplinary proceedings. Mr Menage responded to this email saying:

*".....Given the practically non existant [sic] state of the RICS in France I have been considering of late how relevant the institution is for it's [sic] members here so including myself. If on top of that I'm being threatened with disciplinary action I will have to review the relevance of my membership altogether."*

16. I am satisfied that RICS has made reasonable efforts to contact the Regulated Member to remind him of his obligations. In paying his membership fee, Mr Menage has engaged with this aspect of his RICS membership, but has not responded to any of the CPD reminders.

17. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is an RICS requirement to ensure the maintenance of professional standards and in turn give protection to the public and uphold the reputation of the profession. Compliance is not optional. It is not difficult to record CPD online and the CPD requirements are not dependent on RICS sending requirements to members.

18. On 5 May 2022 RICS sent an email to Mr Menage advising him that the Head of Regulation had made a decision in relation to the Regulated Member's CPD for 2020 and attaching documents that required his attention. On the same day, Mr Menage responded as follows by email:

*"I neither have the time nor the inclination to read the five documents you have sent me including a 61 page document with a decision, whatever that decision might be. There will be no need to renew my membership. Please do not take the trouble to correspond with me again."*

19. I find the following aggravating factors in this case:

- The charge found proved is Mr Menage's third breach of the CPD requirements in four years.
- Mr Menage has already received a caution for his first CPD breach, and a fine for his second CPD breach.
- The fine has not been paid.

- Mr Menage's responses to RICS on this matter have displayed a lack of remorse or insight into the importance of CPD and attitudinal problems in respect of his RICS membership.

20. I find the following mitigating factors in this case:

- In October 2021 Mr Menage submitted CPD records for 2020.

21. I first considered whether to impose no sanction. However, I concluded that Mr Menage's repeated failure to record CPD on time was serious and, in the absence of any exceptional circumstances, imposing no sanction would not be appropriate or proportionate. In reaching this decision, I noted that Mr Menage has been sent numerous reminders by RICS. Whether or not he received these reminders, it was his responsibility to ensure that he complies with his CPD obligations.

22. I went on to consider imposing a caution. I decided 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 has already been imposed for the first breach.

23. I also considered the imposition of a reprimand, but determined that this also would not reflect the seriousness of Mr Menage's repeated failure to comply with his CPD obligations.

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 are kept up to date and ultimately to ensure public protection. I considered that Mr Menage's failure to record sufficient CPD on time for three years out of four, and the attitudinal problems exhibited in his email responses, indicated that he would be unlikely to comply with any undertaking. I therefore decided that it would not be appropriate or proportionate to impose an undertaking, and that 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 Menage for his second CPD breach in 2018. I noted that this fine has not been paid. I concluded that in these circumstances a further financial penalty would serve no useful purpose as the previous fine 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 imposing conditions. I took the view that imposing conditions for non-compliance with the CPD requirements could be proportionate in some circumstances. However, I would need to be satisfied that the Regulated Member had demonstrated a willingness to engage with the regulatory process and a willingness to comply with any conditions imposed. In this case, because Mr Menage has repeatedly failed to comply with the CPD requirements in the past, and has displayed attitudinal problems in respect of his RICS membership in his email responses, I could not be satisfied that he would comply with conditions. I therefore concluded that it would not be possible to formulate conditions which would be realistic or achievable. Furthermore, in the absence of any remorse or insight, I determined that Mr Menage's non-compliance with the CPD requirements demonstrates a blatant disregard of his obligations as a Regulated Member and consequently undermines public trust and confidence in the profession. I decided that conditions would therefore not be proportionate in this case.

27. Having decided that conditions would not be the appropriate sanction, I considered expulsion from RICS membership. I recognise that expulsion is the sanction of last resort and should be reserved for those cases where there is no other means of protecting the public or marking the wider public interest. I decided that Mr Menage's case falls into this category. His repeated failure to record CPD as required, his failure to pay the fine imposed for the 2018 breach, and the attitudinal problems towards his membership exhibited in response to communications from RICS, are actions that are fundamentally incompatible with continued membership. In reaching this conclusion, I was mindful of the RICS Sanctions Policy paragraph 22.1 which states that there is a "presumption of expulsion" in respect of a third breach of Rule 6 of the Rules of Conduct for members within 10 years of receipt of a caution for breach of the same Rule. I also considered that the following limbs of the guidance on expulsion in paragraph 21.1 were engaged in this case:

- *"Gross, persistent or wilful failure to comply with an RICS Rule of Conduct..."*
- *Persistent and/or serious failure to co-operate with RICS..."*

28. In reaching this conclusion, I have carefully balanced the wider public interest against Mr Menage's interests and his professional standing. I have had regard to the impact expulsion may have on Mr Menage, but determined that his interests are outweighed by my duty to give priority to the significant public interest concerns raised by this case. I am satisfied that, in these circumstances, any lesser sanction than expulsion would undermine public trust and confidence in the profession and in RICS.

## **DECISION**

29. Having read all the evidence and written submissions in this case, in accordance with Part VI or the Disciplinary, Registration and Appeal Panel Rules, I make the following order:

**That Mr Francois Menage shall be expelled from membership of RICS**

## **COSTS**

30. RICS has submitted that costs should be determined by the Single Member and calculated in line with Supplement 2 to the Sanctions Policy – Fines, Costs and Administration Fees.

31. In accordance with Rule 119 of the Disciplinary, Registration and Appeal Panel Rules, I make the following order in respect of costs:

**That Mr Menage shall pay costs in the amount of £350.00**

## **TAKING EFFECT OF THE ORDER**

32. The following Rule of the Disciplinary, Registration and Appeal Panel Rules applies in this case:

*"114. Following the expiry of 14 days from 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."*

33. Mr Menage, as the Regulated Member, must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this Single Member decision if he does not accept the decision, failing which the order will be deemed accepted by Mr Menage and will take effect.

#### **PUBLICATION**

34. Supplement 3 to the Sanctions Policy para 3.2 states that there is a "*presumption in favour of publication of Single Member decisions and decisions of the Disciplinary and Appeals Panel*", and Rule 120 of the Disciplinary, Registration and Appeal Panel Rules 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 the 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."*

35. I find that there are no exceptional circumstances in this case that would justify departing from RICS' normal publication policy. I therefore order that publication takes place in accordance with Rule 120.

36. This concludes the determination.