

Regulatory Tribunal Single Member Decision

Regulated Member: Glynis Hampton
Date of admission: 5 August 2016
Reference: REG0000162975/6716069
Decision of: Gillian Seager
Date of decision: 1 April 2022

Charge

'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. Rule 6 of the Rules of Conduct for Members 2007 states that members shall comply with RICS' requirements in respect of CPD.
2. Members of RICS are required to complete 20 hours of CPD activity by 31 December of each calendar year, and record, or cause it to be recorded.
3. The requirements of Rule 6 are as follows:
 - (i) All 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, and the remainder can be informal.

- (iii) All members must maintain a relevant and current understanding of the professional and ethical standards during a rolling three-year period. Any learning undertaken 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 and obligations documentation sets out the disciplinary action which happens if a member fails to complete and or record their CPD.
- On the first breach the member would receive a Fixed Penalty caution which will remain on their disciplinary record for a period of ten years.
 - A second breach (within ten years of a receipt of a caution) will result in a further Fixed Penalty caution and a fine of £150, or the local equivalent. This will be published. Non-payment of the fine within 28 days of notification will lead to the fine being increased to £250, or the local equivalent.
 - A third breach (within ten years of a receipt of a caution) is the potential referral to a Disciplinary Panel which may result in expulsion.
5. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The purpose of the CPD requirement is to ensure consistent standards within the profession and ensure that individuals maintain up to date knowledge in their area of expertise and ensure that members demonstrate this by the completion of a record at RICS. Compliance is not optional. It is not difficult to record CPD online and the CPD requirements are not dependent on RICS sending reminders to its members.

Evidence

6. A bundle has been provided containing material relevant to each stage of the proceedings. The material has been assessed in the requisite stages. Initially account has been taken of the material only insofar as it was relevant to the decision on the charge. This included a statement produced by an Investigation Specialist on

behalf of RICS dated 16 December 2021 (of which account was taken only in respect of the failure to record any CPD for the year 2020).

Burden and standard of proof

7. RICS is required to prove the charge to the civil standard. There is no requirement for the member to prove anything.

Facts

8. Considering the evidence which has been produced as noted above, it is a matter of fact that the Regulated Member had not completed and recorded any CPD between 1 January 2020 and 1 February 2021. The evidence also comprised of a printout showing that there were no concessions granted for the Regulated Member.
9. It is concluded that as a matter of fact the charge is made out based on the documentary evidence.

Liability to Disciplinary action.

10. The next stage to consider is that of liability to disciplinary action under Bye-law 5.2.2 (c).
11. It is noted that the CPD policy has been approved by the Standards and Regulation Board which gives a clear indication in RICS' submission of the seriousness with which failures to complete and record CPD are viewed.
12. On becoming a member of RICS, the regulated person has accepted to adhere to RICS' Rules, Regulations and Bye-laws and that they may be liable to disciplinary action if they fail to so adhere. The Regulated Member has ignored a clearly expressed Rule
13. 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

14. RICS requirement to complete and record CPD is reasonable and legitimate for a regulator to impose and an apparent breach on the part of the Regulated Member, as evidenced in this case, to comply with the requirement must be regarded and treated as serious. As such the policy recognises that even one breach is sufficiently serious to give rise to a liability to disciplinary action.
15. The requirement to complete and record CPD is designed to ensure that members' knowledge is up to date and ultimately to ensure public protection.
16. Accordingly, it is concluded that the Regulated Member is liable to disciplinary action.

Sanction

17. Having found the charge proved and determined that the Regulated Member is liable to disciplinary action, the next stage is that of sanction.
18. It has been borne in mind that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as the regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
19. Consideration has been given to all the evidence and in particular the following:
 - The statement of the Investigation Specialist on behalf of RICS dated 16 December 2021 notes that the Regulated Member received a caution for a breach in 2018 and a caution and fine for a breach in 2019.
 - The statement of the Regulations Support Team Manager dated 16 December 2021 clearly sets out the reminders which were sent to the Member. Written representations also set out the communications in detail.
 - The evidence indicates that the Regulated Member has not paid the fixed penalty fee issued for 2019 but has paid membership fees up to 2020.

Mitigating and Aggravating features

20. The following features of the case are considered to aggravate the breach:

- The Regulated Member has received cautions for similar breaches in 2018 and 2019. This would indicate that no CPD has been undertaken and recorded for a period of three consecutive years.
- Receipt of a fine for the 2019 breach and non-payment of such
- The Regulated Member was sent numerous reminders by RICS. This also included emails in October and November 2021 and many telephone calls.
- This is the third breach of the CPD requirements within the last ten-year period.
- Having received previous sanctions for non-compliance, the Regulated Member would be fully aware of their obligations.
- The Regulated Member appears to clearly understand the process of recording CPD, as they have previously recorded CPD in 2017.

21. The following features of the case are considered to mitigate the breach:

- On 15 February 2022, the Regulated Member provided submissions and has admitted the charge and liability to disciplinary action. They state that they have now updated their account with the correct contact details and have apologised for not having done so earlier and offered to pay the outstanding penalty. It is understood that RICS advised not to pay the fine until this matter has been determined. They have been on long term sick leave since January 2021 and say that RICS has advised they request deferment on compassionate grounds for 2021/2022 until they return to work full time.
- They also apologise for not undertaking CPD in 2019 and say this was a stressful time. In 2020 they decided to work part time due to family health

issues. Staff were then furloughed due to the pandemic and her workload increased.

- The Regulated Member recorded in excess of the minimum hours in 2017.

Decision on sanction

22. In determining what sanction to impose, consideration has been given to Rule 21.1 of the Sanctions Policy which provides for a presumption of expulsion in the event of a third breach of CPD obligations within 10 years. However, this presumption is capable of being displaced if circumstance permits. Any sanction imposed must be proportionate, and therefore ought to involve consideration of the lowest sanction available first and only moving to the next level of sanction if it is decided that the lesser sanction is inappropriate, or otherwise fails to meet the public interest.
23. It is considered that the matter is too serious for no sanction to be imposed.
24. 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. Similarly, a reprimand would not reflect the seriousness of the Regulated Member's repeated failure to comply with CPD requirements.
25. In considering whether to impose an undertaking, consideration was given to the mandatory nature of CPD requirements. 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. It would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking given that the Regulated Member should have been completing and recording CPD online in any event. Imposing such a sanction would undermine public trust and confidence in the regulatory process.
26. A fine was imposed on the Regulated Member for failing to record CPD hours for 2019. The imposition of a further financial penalty on its own would serve no useful

purpose as it has not resulted in compliance with the CPD requirements to date. Simply imposing a further fine would undermine the need to uphold the standards expected of all members and the deterrent effect on other members.

27. Imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances. To impose such a sanction would require some reassurance that the Regulated Member has demonstrated a willingness to engage with the regulatory process and comply with the conditions. In this case the Regulated Member has detailed her significant health issues which have been over a period of time and has indicated a willingness to comply in the future. It is considered that a condition to comply with CPD requirements would be appropriate and proportionate in this case. The condition will indicate that any similar future breach will have the most serious consequences. This combined with a fine would be proportionate and appropriate to protecting the public and the wider public interest.
28. It is concluded that in this case there are mitigating circumstances to depart from the presumption of expulsion. The Regulated Member has suffered with ill health and over a period of time. 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.
29. It is has been noted that the Regulated Member has breached on two occasions in the past and did not keep their contact details up to date. It is further noted that their employer has paid their membership fees for 2022. However, given the mitigation, the Regulated Member is being afforded a final opportunity to comply with CPD requirements before the presumption should apply.

Decision

30. Having considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules 2020, the following order is made:

“You will comply with RICS’ requirements in respect of Continuing Professional Development (CPD) for the period 1 January 2023 to 31 December 2023 by completing and recording, or causing to be recorded, at least 20 hours of CPD, of which at least 10 hours must be formal, on the RICS CPD Portal by 31 January 2024.”

31. In addition, Glynis Hampton is ordered to pay a fine for non-compliance of £400

Costs

32. In accordance with Rule 119 of the Regulatory Tribunal Rules 2020, the following order is made in respect of costs:

Glynis Hampton will pay costs in the amount of £350

Taking Effect of the Order

33. Rule 114 of the Regulatory Tribunal Rules 2020

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.

34. The Regulated Member must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this decision, if they do not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

Publication

35. This decision will be published in accordance with Rule 120 of the Regulatory Tribunal Rules 2020, which states the following:

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.*