

## RICS Regulatory Tribunal Rules 2020

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

**Regulated Member:** Ian Dudley  
**Case Number:** REG0000162936  
**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 82 pages which include a CPD printout from RICS' online system held for Mr Dudley and a witness statement from a RICS Lead Investigator dated 29 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 Dudley's CPD printout for the year 2020. I note that there is no evidence that Mr Dudley applied for any RICS exemption or concession which would have allowed him to avoid that requirement in respect of the 2020 calendar year.
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 Dudley's 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 Dudley was given every opportunity to comply with the CPD requirements. In reaching that conclusion I have taken account of the evidence set out in the statement of RICS' Lead Investigator that in the years 2013, 2015, 2016, 2017 and 2018 Mr Dudley 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 Dudley (to his preferred email address and postal address) about compliance with the CPD requirements during 2020 and 2021, I am mindful that in any event Mr Dudley's obligation to comply with the CPD requirements was not contingent on receiving any such reminders from RICS.
10. I am also mindful that Mr Dudley responded to an email sent to him by RICS on 21 September 2021, in which he appeared to acknowledge his non-compliance with the CPD requirements, which he attributed to difficulties he had experienced in uploading the CPD he had completed (saying that RICS had failed to respond to several emails he sent and calls he made requesting assistance). However, Mr Dudley did not reply to RICS' subsequent correspondence to him, in which he was asked to provide details of those emails/calls and was advised about steps to take in order to record his CPD on RICS' system.
11. Accordingly, I am satisfied that Mr Dudley is liable to disciplinary action.

## **SANCTION**

12. I note that the evidence from the CPD printout is that Mr Dudley did not record any CPD in the 2020 CPD year.

13. I take into account the Sanctions Policy and Mr Dudley's disciplinary history which is as follows (as set out in the RICS' Lead Investigator's second witness statement dated 29 November 2021):

2014 caution

2019 caution and fine.

14. The statement of the RICS Lead Investigator within the bundle of evidence says that Mr Dudley's 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 would have been sent to Mr Dudley's preferred postal address on 11 March 2020 setting out the details of that fine. I note that that letter also contained a warning that, should Mr Dudley 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 Dudley's 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 would have been correctly addressed to the preferred address then held on file for Mr Dudley (as of 2018). I note that it was Mr Dudley's responsibility to update the details of his preferred email address when appropriate.

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 all the relevant factors (whether mitigating or aggravating).

19. I am mindful that the Sanctions Policy sets out that expulsion is likely in the event of a third breach of the CPD requirements within 10 years, unless extenuating circumstances are present.

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

- Mr Dudley informed the RICS Lead Investigator in September 2021 that he had in fact completed the required CPD for 2020, but had experienced difficulties in recording it on the RICS' system. However, Mr Dudley did not explain the nature of those difficulties, nor respond to the RICS' request for details of the various emails he said he sent to RICS or the various calls he said he made to RICS requesting assistance with uploading his CPD.
- The information provided by RICS demonstrates that in each of the CPD years 2013, 2015, 2016, 2017 and 2018 Mr Dudley complied with the CPD requirements and indeed recorded more CPD hours than required. Only in respect of CPD years 2019 and 2020 has he recorded no CPD.

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

- Mr Dudley 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 email correspondence with Mr Dudley in September 2021 informing him about the breach of the CPD requirements and offering him an opportunity to rectify the position by uploading details of the CPD he said that he had completed. Mr Dudley did not take that opportunity, or respond to the RICS Lead Investigator's other queries, even though he had been informed that his stated wish to resign from RICS' membership could not be actioned while the matter was under investigation.
- This is not an isolated failure, in that Mr Dudley did not comply with the CPD requirements in the preceding year (2019) as well as in 2014. In addition, this failure occurred in circumstances where Mr Dudley would have received several reminders from RICS about the CPD requirements, as well as a letter (notifying him about the caution and fine in respect of his breach of the CPD requirements in 2019) expressly warning him of the possibility of referral should he fail to comply with the CPD requirements in 2020.
- 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.
- Mr Dudley has not expressed any regret for the breach, and only offered limited co-operation with RICS' investigation (in that he ceased corresponding with the RICS Lead Investigator after 21 September 2021).

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 Dudley would have been sent numerous reminders by RICS about the CPD requirements. Regardless of whether Mr Dudley 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 Dudley's 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 Dudley's 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 Dudley 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 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 Dudley's subsequent compliance with the CPD requirements.

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 noted that Mr Dudley has not responded to the RICS' request for details of the CPD he said he had completed for the 2020 CPD year, and has not provided evidence in support of his account that he sent multiple emails and made various calls to RICS seeking assistance with uploading his CPD. Mr Dudley appears to have ceased corresponding with RICS following the email he sent on 21 September 2020

in which he said he wished to resign his membership, despite having subsequently been informed that such resignation was not possible while he was the subject of investigation. Further, Mr Dudley has not demonstrated any willingness to engage with the regulatory process or to comply with conditions. I concluded that conditions would not be an appropriate sanction in this case, given the absence of any indication of Mr Dudley's willingness to comply with conditions.

28. In addition, I considered that the absence of any evidence of remorse or insight on Mr Dudley's part into the seriousness of non-compliance with the CPD requirements appears to indicate a disregard for the purpose of regulation which is fundamentally incompatible with continued membership.

29. Having determined that conditions would not be an appropriate sanction, I have concluded that Mr Dudley should be expelled from RICS membership. I am mindful 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 decided that Mr Dudley's case falls into that category as he has repeatedly failed to comply with the fundamental requirement to record CPD (this being the third breach in a period of seven years) and he has failed to demonstrate that he has any intention of complying in future, or to apologise or demonstrate remorse for his past failure. I am satisfied that, in these circumstances, any lesser sanction would undermine public trust and confidence. In reaching this conclusion I have carefully balanced the wider public interest against Mr Dudley's interests, including his professional standing. I have had regard to the impact that expulsion may have on Mr Dudley, but concluded that his interests are significantly outweighed by the significant public interest concerns in the case.

30. I am 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. Having considered each of the less severe sanctions open to me as set out above, I have concluded that there is no reason to depart from that presumption of expulsion in the particular circumstances of this case.

## **DECISION**

31. 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 Mr Ian Dudley shall be expelled from membership of the RICS.**

## **COSTS**

32. RICS has applied for costs of £350, in line with Supplement 2 of the Sanctions Policy. I note that Mr Dudley has not made any submissions about his financial situation or about why he should not pay RICS' costs.

33. I accept that it is appropriate that Mr Dudley 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.

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

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

## **TAKING EFFECT OF THE ORDER**

35. 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**

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

37. 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.'*