

RICS Regulatory Tribunal Rules 2020

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

Regulated Member: Mr Michael Bull
Case Number: REG0000162808
Single Member Decision of: Jane Bishop
Date of decision: 17 June 2022

CHARGE

The formal charge against the Regulated Member (Mr Bull) 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 version 6.

Mr Bull is therefore liable to disciplinary action under Bye-law 5.2.2(c).

REASONS FOR DECISION

BACKGROUND

1. The Rules of Conduct for Members 2007 “set out the standards of professional conduct and practice expected of Members of RICS.” Rule 6 states “Members shall comply with RICS’ requirements in respect of continuing professional development.”
2. RICS’ CPD requirements are set out online and are:
 - 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 CPD. The remainder can be informal CPD;
 - 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; and
 - iv. Members must record their CPD activity online by 31 January.
3. In some circumstances, Members can request RICS to grant them an exemption of their CPD requirements.

- The CPD requirements and obligations documentation sets out what happens if a Member fails to complete and record the CPD requirements. A Member's first breach will attract a Fixed Penalty caution and will remain on the Member's disciplinary record for a period of ten years. A Member's second breach (within ten years of the receipt of a caution) attracts a Fixed Penalty caution and a fine of £150 or the local equivalent. RICS will also publish a list of Members who fail to meet the CPD requirements a second time on the RICS website. A Member's third breach (within ten years of the receipt of a caution) attracts the potential to be referred to a Disciplinary Panel which may result in the Member being expelled from RICS membership and costs being awarded against them.

Has the charge been proved?

- The undated statement of Ms Aileen Lim (RICS Investigation Specialist) sets out Mr Bull's online CPD records. The statement and RICS' records indicate Mr Bull's CPD each year as follows:

2013	111.50 hours
2014	85.50 hours
2015	67.50 hours
2016	85.00 hours
2017	0.00 hours
2018	38.75 hours (recorded late)
2019	0.00 hours
2020	0.00 hours.

- Ms Lim's stated Mr Bull's records indicated no CPD concessions (exemptions) were granted for the 2020 CPD year and this was consistent with the relevant RICS records.
- Mr Bull completed and signed a "Listing Questionnaire" dated 16 May 2022. In response to the question "Do you admit the charge against you?" Mr Bull wrote "yes". I accept Mr Bull has admitted the charge.
- Based on the evidence, the charge has been proved to the civil standard and Mr Bull has admitted the charge against him.

Is Mr Bull liable to disciplinary action?

- In response to the question "Do you accept that you are liable for disciplinary action?" Mr Bull wrote "no." He provided a statement and a spreadsheet outlining his 2020 CPD activities of 31 hours.
- Mr Bull complied with his CPD requirements from 2013 to 2016 and was aware of his ongoing CPD obligations. That obligation is not onerous and should have been incorporated into his professional activities.

11. I am satisfied RICS' requirement to complete and record 20 hours of CPD each year is reasonable. The CPD policy has been approved by RICS' Regulatory Board. CPD requirements are a RICS rule, and a single breach can give rise to a liability to disciplinary action. The purpose of ongoing CPD is to ensure public protection by consistent standards within the profession and to ensure RICS Members' have current knowledge in their area of expertise. RICS Members demonstrate compliance with their CPD requirements by recording their CPD activities online by 31 January following the CPD year.
12. Members of RICS agree to adhere to the RICS Rules, Regulations and Bye-Laws and accept that failure to do so could give rise to disciplinary action.
13. I am satisfied Mr Bull is liable to disciplinary action.

REGULATORY SANCTION

14. The purpose of sanctions is not to be punitive, although it may have that effect. Their purpose is to uphold the standards of a profession, safeguard the reputation of the profession, safeguard the reputation of RICS as the regulator, and to protect the public. Sanctions must be proportionate to the breach after considering all the circumstances of a case.
15. RICS first contacted Mr Bull by email on 6 October 2021 about his failure to complete his CPD 2020 activities and was invited to record them. He responded on 24 October 2021 and stated he was sure he had completed his 20 hours because he runs his own business. On 3 November 2021 RICS sent a further email to Mr Bull stating no entries had been made in his CPD activities. He was invited again to record his CPD activities as a matter of urgency. On 3 November 2021 Mr Bull advised RICS he was having trouble using the RICS App (to record his CPD activities).
16. In May 2022 Mr Bull stated his reasons for not meeting his CPD obligations for 2020 was because:
 - he founded his business in 2001 and in 2020 the COVID-19 pandemic had a profound impact. His priority was keeping his business afloat, and his professional staff employed. His priority was not fulfilling and recording his CPD obligations;
 - he worked more than 10 hours a day six days a week and was continually exhausted; and
 - he was struggling to use the RICS App in November 2021 and requested RICS help which was not forthcoming. He continued to struggle with the RICS App in May 2022.
17. Ms Hoverd's statement dated 24 March 2022 states that from 2017 RICS sent out hard copies of the fine and caution sanctions related to CPD non-compliance. Ms Lim's statement confirmed that at all relevant times RICS held a postal and email address for Mr Bull. I am satisfied Mr Bull received a caution for non-compliance of his CPD requirements in 2017 and a fine for non-compliance of his CPD

requirements in 2019. Mr Bull has not paid the fine issued in 2020 but has paid his membership fees.

18. This is Mr Bull's third breach of non-compliance with RICS' CPD requirements. He was aware of the CPD requirements and, as a member of RICS, obligated to abide by RICS' rules. Despite being cautioned and fined he has failed to record his CPD activities in 2020. The breach is serious and RICS' Sanction Policy states there is a presumption of expulsion in the event of a third breach of Rule 6 (within ten years of the receipt of a caution). In the circumstances, imposing no sanction, another caution or a reprimand would not be appropriate given the seriousness of the breach. Nor would an undertaking be appropriate given RICS' CPD requirements are mandatory.
19. Mr Bull first qualified in January 1986. From 2013 to 2016 he recorded CPD activities well above the required 20 hours. In 2020 he submitted COVID-19 had a profound impact on his business and he was working 10 hours a day six days a week managing, amongst other things, furloughs, redundancies and cashflow issues. In May 2022 he engaged with the regulatory process and provided a spreadsheet of his 2020 CPD activities totally 31 hours. He stated in May 2022 that he has sought technical advice and now has access to the RICS App. He stated this would ensure his completion of his CPD activities "from now on".
20. Mr Bull was fined in 2019 and that fine has not been paid. Imposing another fine would not reflect the seriousness of the continuing non-compliance of Mr Bull's CPD requirements. However, a fine in combination with a condition could be appropriate in the circumstances.
21. On balance imposing a condition would be an appropriate sanction in this case. Conditions should be specific, measurable, achievable, realistic and time bound. I accept the COVID-19 pandemic had a profound impact on Mr Bull's business and his workload. He has engaged with the regulatory process, provided evidence of completing some CPD activities in 2020 and has taken steps to rectify his difficulties in recording his CPD activities on the RICS App. In all the circumstances, I am satisfied Mr Bull intends to meet his CPD obligations in the future.
22. There is a presumption of expulsion for a third breach of RICS' CPD requirements. However, expulsion is a sanction of last resort and should be reserved for cases where there are no other means of protecting the public or the wider public interest. For the reasons outlined above, protecting the public and the wider public interest can be addressed by imposing the following condition:

"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."
23. Failure to comply with that condition will result in Mr Bull's automatic expulsion from RICS membership.
24. Mr Bull was fined £150 in 2019 and that fine remains unpaid. I have decided that, to mark the seriousness of Mr Bull's breach, imposing a fine of £300 is appropriate and proportionate in the circumstances.

DECISION

25. Having considered all the evidence, in accordance with Part IV of the Regulatory Tribunal Rules (with effect from March 2020) the following order is made:

- i. Mr Bull's RICS' membership shall be subject to the following condition:
“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”;
- ii. Failure to comply with that condition will result in Mr Bull's automatic expulsion from RICS membership; and
- iii. **Mr Bull will pay a fine of £300.**

COSTS

26. RICS has applied for costs in accordance with Supplement 2 to the Sanctions Policy: Fines, Costs and Administrative Fees. Mr Bull was found liable to disciplinary action. He has made no submissions about his financial situation.

27. To ensure the costs of bringing these proceedings do not burden the whole RICS membership it is appropriate Mr Bull bear RICS reasonable costs.

28. In accordance with the Regulatory Tribunal Rules the following order is made in respect to costs:

Mr Bull will pay RICS' costs of £350.

TAKING EFFECT OF THE ORDER

29. Rule 114 of the RICS Regulatory Tribunal Rules states:

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 is received under Rule 116.

30. If Mr Bull considers the findings of this decision is wrong or the sanctions imposed by this decision is wrong, he must notify the Head of Regulatory Tribunals in writing within 14 days of receipt of this decision.

PUBLICATION

31. There are no factors indicating this decision or any part of it should not be made public in accordance with Rule 120 of RICS Regulatory Tribunal Rules. Rule 120 states:
- 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 the 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.