

RICS, Disciplinary, Registration and Appeal Panel Rules 2019

Part VI, Regulatory Tribunal Single Member Decision.

Regulated Member: Mr Yushi Muto

Member Number: 6596582

Case Number: REG0000162794

Single Member Decision of: Ron Barclay-Smith

Date of decision: 11 August 2022

DECISION

Having read the papers and considered the evidence, in accordance with Part VI of the Disciplinary Registration and Appeal Panel Rules, I make the following orders:

1. That the Member shall be expelled from membership of RICS.
2. That the Member shall pay costs of £350 to RICS.
3. That this decision be published on the RICS website and in Modus.

REASONS FOR DECISION

1. Background

Mr Muto (“the Member”) is a Member of the RICS. The Head of Regulation, on the basis of her delegated authority so to do, decided to refer alleged failure by the Member to record CPD during 2020 to a single member of the Regulatory Tribunal for a single member decision (SMD).

2. Alleged Rule Breach

Members are required to comply with Rule 6 of the Rules of Conduct for Members 2007, which states that:

Members shall comply with RICS’ requirements in respect of continuing professional development.

The requirements of the Rule 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 can 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.

3. Facts

For the 2020 CPD year, the Member was, beyond reasonable doubt, contacted by email on at least three occasions at the email address held on RICS' records to remind him of the requirement to complete his CPD. The member, on the basis of the evidence provided, has throughout failed to engage with RICS on the matter of his CPD completion, nor has he offered any circumstances or facts by way of mitigation. I must therefore rely on the statements and documentation provided by RICS as the evidence in relation to this case.

4. Decision

I have carefully considered the statements and documentation submitted by RICS. As is stated in paragraph 3 above, the Regulated Member, along with the rest of RICS membership, was on clear notice of the need to complete and record CPD, from the email communications from RICS over the relevant year. It is reasonable to assume that the Member had received the reminder emails since those emails were sent to the address contained in the member's records.

In the bundle, RICS confirms that it sent relevant reminders to the Regulated Member's preferred email address over time. The recording of CPD is RICS' only way to ensure a member's compliance and, in turn, give protection to the public. I am satisfied that the reminders were correctly addressed to the preferred email address then held on file for the Regulated Member. The recording of the Member's CPD activity on-line

could, and should, have been appropriately prioritised and incorporated within the span of the Regulated Member's professional activities. The Regulations are clear, and it is not acceptable to fail to comply with CPD.

As a result of these considerations, I find that the facts are proved and that the Member is in breach of his professional obligation to record CPD for 2020.

5. Regulatory Sanction

The Regulated Member has not made any statement of regret for his failure to record CPD. The rules (as quoted in paragraph 2, above) are completely clear and require Regulated Members to complete 20 hours of CPD per calendar year. The reasonable assumption must be that he was well aware of the annual requirement. Furthermore, the member has failed to engage with RICS and has not expressed any regret for his lack of action in relation to CPD, nor has he offered any explanation by way of mitigation for his failure to complete CPD training in 2020. I therefore have come to the conclusion that the Member is liable to regulatory sanction.

In coming to this conclusion, I have carefully balanced the impact of the failure to complete CPD on the Regulated Member's professional standing, and the public interest.

I note that this is the third breach of CPD requirements within a ten-year period. In reaching my decision as to sanction, I have taken careful note of the relevant Guidance, in particular the Sanctions Policy 2020 (Paragraphs 15.1, 21.1 and 22.1). I note that Paragraph 22.1 of the RICS Sanctions Policy Guidance, 2020, is clear as to the sanction which is appropriate for a third breach. In all the circumstances, expulsion from membership is both proportionate and appropriate, as Regulation is pivotal in protecting the public and in maintaining the public's confidence in Chartered Surveyors and trust in the RICS. I therefore order that the Member be expelled from membership of the RICS.

6. Costs

In accordance with Rule 119 of the Disciplinary Registration and Appeal Panel Rules I make the following order in respect of costs: that the member shall be liable for costs of £350.

7. Taking Effect of the Order

The order will take effect in accordance with Rule 114 of the Disciplinary Registration and Appeal Panel Rules, which states the following:

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 Governance and Tribunals within 14 days of receipt of this decision, if he does not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

8. Publication

This decision will be published in accordance with Rule 120 of the Disciplinary Registration and Appeal Panel 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.*

