

RICS - Regulation

RICS Regulatory Tribunal Rules (Version 1 with effect from 2 March 2020)

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

Regulated Member: Nial Gallagher (0084343)

Case Number: REG0000046780

Single Member Decision of: Paul A Watkinson FRICS

Date of Decision: 19th September 2022

CHARGE:

The formal charge against the Regulated Member is:

That he has been found guilty to eight counts of fraud by abuse of position relating to 8 separate payments totalling £270,490 that he received between 26th February 2013 and 6th November 2014.

In accordance with RICS Bye-law 5.2.1(d) and RICS Bye-law 5.2.2(d) respectively it is considered that the Regulated Member is liable to disciplinary action as:

- i. he has failed to disclose promptly in writing to the RICS that he has been charged with or been convicted of a criminal offence carrying on first conviction the possibility of a custodial sentence.
- ii. he has been convicted of a criminal offence would could result in a custodial sentence.

BACKGROUND:

1. The Regulated Member has been a Professional Member of RICS (MRICS) from qualification on 30th November 1990.
2. A concern had been initially raised on 7th January 2019 with the RICS by Mr Sean MacMahon, CEO of MACM (NI) Ltd, as to the advertising and practice of the Regulated Member's firm while subject to a bankruptcy order. Subsequently he had informed the RICS on 27th June 2020 that the Regulated Member was under criminal investigation by Police Service Northern Ireland (PSNI).
3. RICS had communicated with the Regulated Member on 14th December 2020 requesting information regarding the potential criminal charges with a reminder under Bye Law B5.2.1(d) (i) regarding the obligation to notify the RICS.

4. RICS was notified on 4th January 2022 by the Police Service Northern Ireland (PSNI) as to the 8 counts of Fraud by Abuse of Position that the Regulated Member had pleaded guilty to on 4th June 2021. Such counts comprising payments he was not entitled to for work (totalling £270.490) relating to the Regulated Members employment as a Quantity Surveyor.
5. Sentencing was initially due to be heard on 3rd September 2021 but was adjourned initially to 8th October 2021 and subsequently adjourned again on the grounds of ill health.
6. On 24th June 2022 the Regulated Member was sentenced at Belfast Crown Court on 8 counts of fraud by abuse of position. He was sentenced to a period of imprisonment of 2 years and 6 months, suspended for a period of 3 years.
7. RICS was provided with a copy of the Certificate of Conviction on 24th June 2022.
8. At no point has the Regulated Member informed the RICS as to the criminal offences with which he was charged, found guilty and ultimately convicted of.

FINDINGS OF FACT:

9. I have been provided with a hearing bundle of 40 pages, which I have carefully considered.
10. I specifically note that the Regulated Member pleaded guilty to the offences with which he had been charged and accordingly accepted that he had fraudulently accepted funds during the course of exercising his professional obligations as a Quantity Surveyor.
11. Incorporated within the papers is the Certificate of Conviction on 24th June 2022, which provided documentary evidence as to the nature of the conviction and the sentence given.
12. Accordingly, I find the factual allegations proven, based on the documentary evidence produced.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION:

13. I have reviewed the documentary evidence and had due regard to the RICS Bye-Laws and RICS Regulatory Tribunal Rules (Version 1 with effect from 2nd March 2020).
14. Failure to have notified the RICS as to any proceeding criminal charges against the Regulated Member along with the subsequent conviction and sentence are clear breaches of the RICS Bye-Laws and Rules of Conduct. As a condition of membership 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.
15. I am therefore satisfied that the Regulated Member is liable to disciplinary action.

SANCTION:

16. I have taken into account the RICS Sanctions Policy: Guidance to RICS Disciplinary, Registration and Appeal Panel Rules (Version 9 with effect from 2nd March 2020).
17. RICS is a professional membership organisation and sets standards for its members as a condition of membership. Accordingly its membership understand that any breach of Bye-Laws, standards and rules will result in the appropriate sanction being imposed on the Regulated Member.
18. I bear in mind that the purpose of sanctions is not to be punitive, although it may have that effect. The purpose of sanction 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. In line with the overriding principles of the Sanctions Policy they should be proportionate to the breach and all the circumstances, and a decision should be reached having taken into account the relevant factors when considering the seriousness of a breach and possible sanction. This should include any mitigating and/or aggravating factors that may be identified.
19. The charge that has been made against the Regulated Member and his subsequent conviction is of a significant seriousness that there is clear evidence Sanction should be duly imposed to protect the public and the reputation of the profession.
20. The Regulated Member has at no stage notified or co-operated with the RICS in regard to requests for information regarding the criminal prosecution. The criminal conviction has also resulted in a custodial sentence. Accordingly the Regulated Member is in breach of RICS Bye-law 5.2.1(d) and RICS Bye-law 5.2.2(d) and is liable to disciplinary action. Additionally the Regulated Member has not complied with Rules 3, 8 and 9 from the Rules of Conduct for Members (Version 7 with effect from 2nd March 2020) .
21. The documentary evidence within the bundle indicates that the nature of the fraudulent activity of the Regulated Member was directly as a result of his work as a Quantity Surveyor and was sustained over a period of time between 26th February 2013 and 6th November 2014 (as detailed within the 8 counts that he was convicted of). This demonstrates repeated incidents, rather than a single professional aberration, and occurred as a direct result of exercising his professional obligations. As a Chartered Surveyor there is a professional responsibility to uphold the standards that afford public trust. These repeated incidents that have resulted in a criminal conviction of the Regulated Member have clearly demonstrated a wanton disregard for such standards.
22. Having considered the evidence presented to me and the aggravating factors that I have detailed above I am unable to find any mitigating factors.
23. I first considered whether to impose any sanction. I concluded that given the serious nature of the criminal conviction, as it pertained to multiple counts of fraud undertaken in the exercise of his professional obligations, imposing no sanction would be neither proportionate nor appropriate.
24. I went onto consider the imposition of a caution, a fine or apply conditions to the Regulated Member as alternative sanctions.

25. Having determined that such alternative options by way of sanction would not meet the wider public interest, I determined that the Regulated Member should be expelled from RICS membership. I recognise the 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.

DECISION:

26. Having read the papers and considered the evidence, in accordance with Part VI of the RICS Regulatory Tribunal Rules (Version 1 with effect from 2nd March 2020) I make the following order:

Mr Nial Gallagher (0084343) shall be expelled from membership of the RICS.

27. This decision is in line with Rule 107 (f) (ii) which states that such an order may be imposed where:

ii the Single Member is satisfied that the Regulated Member has been convicted of a criminal offence which could result in a custodial sentence.

COSTS:

28. In accordance with Rule 119 of the RICS Regulatory Tribunal Rules I make the following order in respect of costs:

Mr Nial Gallagher (0084343) will pay costs in the amount of £650 (six hundred and fifty pounds),

29. Such costs are as detailed within the Schedule of Costs incorporated within the bundle, which accord with the guidance set out in Supplement 2 of the Sanctions Policy: Fines, Costs and Administration fees (Version 9 with effect from 2nd March 2020).

TAKING EFFECT OF THE ORDER:

30. 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 Regulated Sanction imposed will take effect forthwith, unless notification has been received under Rule 116.

The Regulated Member must therefore 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.

PUBLICATION:

31. 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 decisions 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.*