

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Patricia Beegan [0085456]
Single Member Decision of: Rosalyn Hayles
Case Number: TRIB-004906
Date of decision: 13 December 2022

CHARGE:

The formal charge against the Regulated Member is:

'Between 1 January 2021 and 1 February 2022 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. An extension period was granted by RICS until 26 May 2022 by which date you had still failed to complete and record or cause to be recorded at least 20 hours of CPD on the RICS CPD Portal for the period between 1 January 2021 and 1 February 2022.'

Contrary to Rule 6 of the Rules of Conduct for Members 2007 version 6.

The Regulated Member is therefore liable to disciplinary action under Bye-law 5.2.2(c)

ALLEGED RULES/BREACH

1. Bye-law 5.2.2 provides:
*'A Member may be liable to disciplinary action under these Bye-Laws, whether or not he was a member at the time of the occurrence giving rise to that liability, by reason of:

...(c) a failure to adhere to these Bye-Laws or to Regulations or Rules governing Members' conduct ...'*
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 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 by 31 January.
- 4. The CPD requirements confirm that for a first breach of this rule the member would receive a Fixed Penalty Caution which will remain on the member's disciplinary record for a period of 10 years. A second breach will result in a further Caution and a Fixed Penalty Fine of £150 or equivalent. Non-payment of the Fixed Penalty 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.

MATERIALS CONSIDERED

- 5. I have been provided with and duly considered a bundle of 73 pages in total, consisting of the following documents: RICS Rules, Guidance, Law and Procedure; RICS's Investigation Report Part 1 – facts and liability to disciplinary action (submissions and evidence) which includes a statement made by RICS's Lead Investigator, Jamie Edwards, dated 17 October 2022 as well as a statement made by RICS's Regulations Team Support Manager, Claire Hoverd, dated 17 October 2022; RICS's Investigation Report Part 2 – Sanction (submissions and evidence) which includes a further statement made by each of Claire Hoverd and Jamie Edwards dated 17 October 2022; general correspondence with Ms Beegan (the Regulated Member), *'Disclosure and Response'*; Schedule of Costs; and the Head of Regulation's decision dated 18 November 2022.

BACKGROUND

- 6. The statement of Jamie Edwards within RICS's Investigation Report Part 1 exhibits printouts of records from RICS' electronic system relating to Ms Beegan's contact details (and preferred email address) and recorded CPD activity in the period from 2013 to 2020. Jamie Edwards' statement says that if the printouts do not show any entry for a particular year, that indicates that no CPD was recorded for that year.
- 7. In relation to Ms Beegan's records, Jamie Edwards states that the information shows that she recorded less than the required 20 hours of CPD in the following years within the period between 2013 and 2020: 2015 (when zero hours of CPD were recorded); and 2020 (when zero hours of CPD were recorded). The printout of Ms Beegan's *'CPD Annual Summary Associated View'* which is exhibited to Jamie Edwards' statement shows no completed CPD for the CPD years of 2015, 2020 or 2021. It records that for each of those three years no completed formal or informal hours of CPD were recorded.
- 8. The statement of Claire Hoverd with RICS's Investigation Report Part 1 sets out the communications which were sent to RICS members who had not completed the required CPD for the 2021 CPD year within the deadline (those communications being sent by email, to each member's preferred email address as recorded on their RICS profile).
- 9. Claire Hoverd states that Ms Beegan was identified as being one of the members who had not recorded the required number of CPD hours for the 2021 CPD year, and that she therefore would have been sent reminders about the requirements for completing and recording CPD on the following dates: 15 November 2021, 14 December 2021, 11 January 2022, 9 February 2022, 23 February 2022, 26 April 2022, 10 May 2022 and 7

June 2022. Ms Hoverd states that those reminders included also standard wording noting that: the recipient had failed to comply with RICS' CPD requirements on two or more occasions within the preceding ten-year period; and *'RICS' Sanctions Policy stipulates that such breaches may be referred to a Disciplinary Panel or a Single Member of the Regulatory Tribunal, and are likely to result in expulsion from the RICS'*.

10. Claire Hoverd states that a further mailing was sent out to such members (including Ms Beegan) in April 2022 which said (in summary) that, due to the possibility of inaccurate information having been included in the email which had been sent on 23 February 2022, RICS would allow the recipients a further 30 days in which to record their CPD for the 2021 CPD year. Subsequently, the *'final sanction mailing'* was issued on 7 June 2022.
11. The correspondence between RICS and Ms Beegan within the bundle before me includes an email sent by Ms Beegan in August 2022 (from the email address which is shown as her preferred email on her RICS profile, as exhibited to Jamie Edwards' statement) asking for assistance in uploading details of her CPD for the 2021 CPD year. Ms Beegan said that she had completed CPD but forgotten to upload it. Her email correspondence said that she works in property management, and that over the previous two years had been *'extremely busy with clients demanding weekly updates following covid restrictions which were put in place in march 2020. We are still dealing with some legacy issues even now'*. Ms Beegan also said that opportunities to engage in CPD had been limited *'due to the pandemic'*. Her email correspondence commented that she was *'a little surprised to receive your correspondence under the circumstances and if I'm still permitted I will submit my CPD forthwith'*. Ms Beegan also asked RICS to *'reconsider'* its decision and possible disciplinary action.
12. A response to Ms Beegan's email was sent by RICS (to Ms Beegan's preferred email address) requesting her to *'send over any CPD'* she had completed for the 2021 year, so that RICS could upload it for her, and confirming that her comments and information would be passed to the Head of Regulation for consideration. In the bundle before me, there is no indication of any further correspondence from Ms Beegan.

FINDINGS OF FACT

13. I refer to statement of Jamie Edwards within RICS's Investigation Report Part 1 which exhibits a printout of the record from RICS's electronic system relating to Ms Beegan's recorded CPD activity.
14. 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 Ms Beegan's CPD printout in respect of CPD year 2021. I note that there is no evidence that she applied for any RICS Exemption or Concession which would have allowed her to avoid compliance with that requirement.
15. Accordingly, I find the factual allegations proved, based on the documentary evidence produced by RICS.

LIABILITY FOR DISCIPLINARY ACTION

16. I am satisfied that RICS's requirements to complete and record CPD are reasonable and that Ms Beegan'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 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.
17. I am satisfied that Ms Beegan was given every opportunity to comply with the CPD requirements. In reaching that conclusion I have taken account of the evidence that Ms Beegan previously complied with the CPD requirements for CPD years 2013, 2014, 2016, 2017, 2018 and 2019 and it is therefore clear that she was aware of those requirements.
18. While I note the evidence of Claire Hoverd about the reminders that would have been sent to Ms Beegan concerning compliance with the CPD requirements during 2021 and 2022, I am mindful that in any event Ms Beegan's obligation to comply with the CPD requirements was not contingent on receiving any such reminders from RICS.
19. Accordingly, I am satisfied that Ms Beegan is liable to disciplinary action.

REGULATORY SANCTION

20. I note that the evidence from the CPD printout exhibited to Jamie Edwards' statements is that Ms Beegan did not record any CPD in the 2021 CPD year.
21. I take into account the Sanctions Policy and Ms Beegan's disciplinary history which is as follows (as set out within Jamie Edwards' further statement):
- 2015 caution
 - 2020 caution and fine.
22. In Jamie Edwards' statement she confirms that Ms Beegan paid the fine relating to the 2020 CPD year and paid her RICS membership fees for 2021. Ms Edwards's statement exhibits a copy of the letter which would have been sent by RICS's Head of Registration and Compliance to Ms Beegan relating to the caution and fine in respect of the 2020 CPD year. In considering sanction I have taken account of the fact that the letter stated that Mrs Beegan had been issued with a *'Fixed Penalty second caution for CPD non-compliance'*, that if she failed to comply with the CPD requirements in 2021 she would *'receive a further Fixed Penalty caution together with a fine of 150 GBP (or local equivalent) in line with our Sanctions Policy'* and that it did not refer to the possibility of a referral to a Disciplinary Panel in the event of such a failure.

23. In the bundle of evidence before me the statement of Claire Hoverd confirms that a minimum of 9 reminders were sent to Ms Beegan's preferred email address, at regular intervals, from November 2021 to June 2022. I am satisfied that the reminders were correctly addressed to the preferred address then held on file for Ms Beegan.
24. I note that Ms Beegan corresponded with RICS about her non-compliance with the CPD requirements for CPD year 2021 in August 2022 (as referred to above). In summary, Ms Beegan put forward her explanation about why she had not recorded the required CPD by the deadline, and said she would do so '*forthwith*' if permitted. It appears from the evidence before me that she did not reply to the RICS's subsequent offer to assist her in uploading the CPD she said that she had undertaken.
25. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is RICS's 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 CPD requirements are not dependent on the RICS sending reminders to its members.
26. 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. Sanctions must be proportionate to the breach and all the circumstances, and a decision should be reached having taken into account any mitigating and/or aggravating factors.
27. I am mindful that the Sanctions Policy sets out a presumption of expulsion in the event of a third breach of the CPD requirements within 10 years. That presumption can be rebutted, depending upon the circumstances of the case.
28. I consider that the following mitigating factors are present in this case:
- The information provided by RICS demonstrates that in each of the CPD years 2013, 2014, 2016, 2017, 2018 and 2019 Ms Beegan not only complied with the CPD requirements but recorded more than the minimum required number of CPD hours.
 - In correspondence with the RICS in August 2022 Ms Beegan suggested that both the '*limited*' opportunities to engage in CPD during the Covid-19 pandemic and her experience over the subsequent two years of clients '*demanding weekly updates*' had contributed to her having forgotten to upload her CPD for the 2021 CPD year.
29. I consider that the following aggravating factors are present in this case:
- Ms Beegan has not engaged with the regulatory process since August 2022, when she said she would upload her CPD '*forthwith*'. She has not taken up the offer of assistance to rectify the breach by uploading her CPD onto RICS's system subsequent to that communication.

- Ms Beegan clearly understands the CPD requirements, as she successfully completed and recorded CPD activity in 2013, 2014, 2016, 2017, 2018 and 2019.
- This is the third breach of the CPD requirements. While the letter that Ms Beegan received following her previous non-compliance (in respect of the 2020 CPD year) did not expressly refer to the possibility of a referral to a Disciplinary Panel should she fail to comply again, it did signpost her to RICS's Sanctions Policy (which clearly states that a third breach of the CPD requirements within a ten-year period will be referred to a Single Member or Disciplinary Panel with a presumption of expulsion).

30. I first considered whether to impose any sanction. I concluded that the repeated failure to record any CPD for the 2021 CPD year was serious, and in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. In reaching that conclusion I noted that Ms Beegan had been sent numerous reminders by RICS about the CPD requirements. Regardless of whether Ms Beegan actually received those reminders, it remained her responsibility to ensure her compliance with her obligations in terms of CPD.
31. 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 Ms Beegan'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 Ms Beegan's repeated failure to comply with the CPD requirements.
32. 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 members is kept up to date, ultimately in order to ensure public protection. In addition, I noted that in circumstances of limited engagement by Ms Beegan, and in the absence of any apology or expression of remorse or assurance about her future compliance, there is insufficient evidence suggesting that she would be likely to comply with any undertaking that was imposed. In any event I concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking, given that Ms Beegan should have been completing and recording her CPD as required in any event. I concluded that imposing such a sanction might undermine public trust and confidence in the regulatory process.
33. 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 simply imposing 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 had not resulted in Ms Beegan's subsequent compliance with the CPD requirements.

34. I went on to consider the possibility of imposing conditions. I took the view that imposing a condition may be appropriate in certain circumstances in response to non-compliance with CPD requirements. I considered that, in order to be satisfied that such a sanction was sufficient, I would need to be satisfied that Ms Beegan has demonstrated willingness to engage with the regulatory process and to comply with conditions. In this case given Ms Beegan's repeated failure to comply with the CPD requirements and the absence of any engagement by her with the regulatory process since August 2022, I could not be satisfied that she would comply with any conditions that were imposed. I have therefore concluded that in this case it would not be possible to formulate any conditions which would be realistic or achievable.
35. Having determined that imposing conditions would not meet the wider public interest, I concluded that Ms Beegan should be expelled from RICS membership. I recognised 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 Ms Beegan's case falls into this category as she has repeatedly failed to comply with the fundamental requirement to record her CPD, and has failed to demonstrate that she has any intention of complying in the future. I am satisfied that in these circumstances, any lesser sanction would be insufficient and would undermine public trust and confidence. In reaching that conclusion I have carefully balanced the wider public interest against Ms Beegan's interests. I have had regard to the impact that expulsion may have on her and her professional standing, but have concluded that her interests are significantly outweighed by the significant public interest concerns raised by this case. I am also mindful that paragraph 21.1 of the Sanctions Policy states that expulsion is likely where there is a third breach of Rule 6 of the Rules of Conduct for members within 10 years of receipt of a caution for breach of the same Rule.

ORDER MADE

36. In accordance with Part VI of the Regulatory Tribunal Rules I make the following order:

That Patricia Beegan shall be expelled from membership of the RICS.

TAKING EFFECT OF THE ORDER

37. In accordance with Part VI of the Regulatory Tribunal Rules, this order will take effect 14 days from service of the Single Member's decision upon the Regulated Member, unless notification in writing is received from the Regulated Member or RICS stating that they consider that the findings and/or the Regulatory Sanction imposed by the Single Member are wrong.

COSTS

38. In accordance with Part VI of the Regulatory Tribunal Rules I make the following order in respect of costs:

Ms Beegan will pay costs in the amount of £350.

PUBLICATION

39. In accordance with Part VI of the Regulatory Tribunal Rules the Single Member's Record of Decision will be published following the expiry of 14 days from service of the Single Member's decision upon the Regulated Member.