

RICS, Disciplinary, Registration and Appeal Panel Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Rodrica Straker

Case Number: REG0000162695

Single Member Decision of: Sue Heads

Date of decision: 25 March 2022

CHARGE:

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

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 order:

The Charge is found proved and Mrs Straker is therefore liable for disciplinary action.

The following condition shall be imposed on Mrs Straker’s membership of RICS.

‘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’.

Any breach of this condition will be dealt with in accordance with Rule 110 and referred to the Disciplinary Panel.

In addition:

Mrs Straker will pay a fine of £250.

REASONS FOR DECISION

BACKGROUND

1. RICS Members are required to complete 20 hours of CPD activity by 31 December each calendar year and to record, or cause to be recorded, details of that CPD.
2. The CPD requirements confirm that for a first breach of this rule the Member will 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 a referral to disciplinary proceedings with a presumption of exclusion.

ALLEGED RULE BREACH

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

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

The requirements of the Rule are as follows:

- '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.'*

FACTS

4. I have been provided with a hearing bundle of 81 pages which includes a record of Mrs Straker's recorded CPD held on RICS' online system, a witness statement from a RICS Investigator and email correspondence between RICS and the Member.
5. 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 was no entry on Mrs Straker's CPD print out for the year 2020. There is no evidence that she applied for any RICS Exemption or Concession which would have allowed her to avoid that requirement.

6. Accordingly I find the factual allegations proved, based on the documentary evidence produced.

LIABILITY FOR DISCIPLINARY ACTION

7. I note that Members routinely receive a number of email reminders regarding the CPD requirements and RICS confirms in the bundle that these reminders were sent to Mrs Straker at her recorded email address. However, Members are aware of their professional obligations, and the requirement to undertake and record CPD is not dependent on email reminders being received. Further, Mrs Straker complied with the CPD requirement in the years 2014, 2015, 2016, 2018 and 2019 which indicates that she is aware of her professional obligation to complete and record CPD.
8. The recording of CPD is RICS' only line of sight to ensure a Member's compliance and in turn, to give protection to the public. I am satisfied that the reminders were correctly addressed to the preferred address then held on file for the Regulated Member. The recording of the Member's CPD activity online could and should have been appropriately prioritised and incorporated within the Regulated Member's professional activities and other circumstances, notwithstanding the Member's workload or other commitments.
9. I am satisfied that the RICS requirement to complete and record CPD is reasonable and that Mrs Straker's failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I take into account the fact that the CPD policy has been approved by the Regulatory Board and is an expressly stated RICS rule. All members agree to adhere to RICS Rules, Regulations and Bye-laws and accept that they may be subject to disciplinary action if they fail to do so. I am satisfied that Mrs Straker was given every opportunity to comply with the CPD requirements.
10. Accordingly I am satisfied that Mrs Straker is liable to disciplinary action.

REGULATORY SANCTION

11. I have carefully considered the bundle of documents provided, including the Member's regulatory history of CPD compliance and the representations made by Mrs Straker in email correspondence with the RICS investigator with regard to her personal circumstances during 2020.
12. I have considered the RICS Sanctions Policy and I bear in mind that the purpose of sanctions is not to be punitive, although they may have that 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.

13. In deciding on the appropriate sanction, I have considered the following mitigating factors:

- The Member advises that she had been working as the Manager of a holiday Park throughout 2020, in circumstances which were extremely challenging as a result of the Covid pandemic.
- [REDACTED]
- The Member advises that she experienced internet difficulties due to her rural location, which made participation in online training events difficult.
- She has recorded 14 hours of informal CPD for 2020, thereby meeting the required number of hours of informal training; however she has recorded no hours of formal CPD.
- The Member complied with her CPD requirements in 2014, 2015, 2016, 2018 and 2019.
- The Member has engaged with RICS, and has expressed remorse for her failure to meet her professional obligations. She has stressed her understanding of the importance of complying with CPD requirements.
- Mrs Straker has been a member of RICS for in excess of 30 years and is up to date with her membership fees.

14. I have also considered the following aggravating factors:

- The Member recorded 0 hours of CPD in 2013, for which she received a caution. The Member recorded 0 hours of CPD in 2017, for which she received a Fixed Penalty Fine of £150. The fine has been paid.
- Between November 2020 and April 2021 a number of emails were sent to Members who had not complied with CPD requirements, advising them of their non-compliance. A hard copy reminder was sent in May 2021. Those reminders contained the following message:

“All practising RICS members are required to complete at least 20 hours of CPD (including ten hours of formal CPD) record it online by 31 December 2020 and record it online by 31 January 2021.”

“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 and Fine) within the last 10 years, if you do not complete and record the 2020 minimum required 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 presumption of expulsion.”

15. It is therefore clear that the Member was fully aware of her professional responsibilities to complete and record CPD.
16. I first considered whether to impose any sanction. I concluded that the repeated failure to record CPD was serious and in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. In reaching this conclusion I noted that Mrs Straker had been sent numerous reminders by RICS. The obligation to complete and record CPD is contained within the Rules and is not dependent upon the Member receiving reminders from RICS.
17. I went on to consider whether to impose a caution. I concluded that a caution would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance and the fact that a caution had already been imposed for previous breaches of the CPD requirements. I also considered the imposition of a reprimand but concluded similarly that this did not reflect the seriousness of Ms Straker's repeated failure to comply with the requirement to complete, record or cause to be recorded CPD on the RICS portal.
18. 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 Mrs Straker should have been completing and recording her CPD online in any event. I concluded that imposing such a sanction could undermine public trust and confidence in the regulatory process.
19. 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 previous incidences of non-compliance, which resulted in a fine being imposed. However I concluded that the imposition of a fine could be appropriate, if conditions were also imposed.
20. 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.
21. In this case, I am mindful that Mrs Straker has engaged with the regulatory process and has expressed remorse for her failure to meet the CPD

requirements, together with an understanding of the importance of complying with her professional obligations with regard to CPD.

22. After very careful consideration I have concluded, on balance, that imposing a condition would be a sufficient sanction in this case, in light of Mrs Straker's difficult work circumstances [REDACTED] during 2020, together with her remorse and insight into the importance of undertaking CPD. In my view, it would be reasonable to infer from Mrs Straker's recent engagement that she intends to ensure that her failing will not be repeated in future.
23. In reaching that conclusion I considered whether it was necessary to order Mrs Straker's expulsion from RICS membership. I noted 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 was 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. I concluded that the presumption of expulsion should not apply in the specific circumstances of this case as set out above, as it is my view that the public interest can be adequately addressed by the imposition of the following condition on Mrs Straker:

'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'.

Any breach of this condition will be dealt with in accordance with Rule 110 and referred to the Disciplinary Panel.

24. I have also decided that a fine of £250 is appropriate and proportionate to mark the seriousness of the breach.
25. In coming to this conclusion, I have carefully balanced the impact of this sanction on the Regulated Member's professional standing, and the public interest. In all the circumstances it is 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.

DECISION

26. 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 the following condition shall be imposed on Mrs Straker's membership of RICS:

'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’.

Any breach of this condition will be dealt with in accordance with Rule 110 and referred to the Disciplinary Panel.

In addition:

Mrs Straker will pay a fine of £250.

COSTS

27. RICS has applied for costs of £350, in line with Supplement 2 of the Sanctions Policy. Mrs Straker has not made any representations regarding her liability to pay the requested costs or made any submissions about her financial situation.

28. I accept that it is appropriate that Mrs Straker should bear the costs reasonably incurred by RICS in bringing these proceedings, in order that those costs should not 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.

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

Mrs Straker will pay RICS’ costs in the amount of £350

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

31. The Regulated Member must notify the Head of Regulatory Tribunals in writing within 14 days of receipt of this decision if she 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

32. I have considered the Regulatory Sanctions Publications Policy and note that Mrs Straker has not made any representations regarding publication. I have decided that this decision should be published subject to removal of information relating to the Member’s health at Paragraph 13 above.

33. 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.'