

RICS Disciplinary, Registration and Appeal Panel Rules 2019

Part VI, Regulatory Tribunal Single Member Decisions

Regulated Member:	William Frankpitt
Case Number:	REG0000162597
Single Member Decision of:	Alison Sansome
Date of Decision:	23rd February 2022

CHARGE

The formal 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) 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

The Regulated Member is therefore liable to disciplinary action under Byelaw 5.2.2(c).

BACKGROUND

1. All RICS Members are required to complete a minimum of 20 hours of Continuing Professional Development (CPD) activity each calendar year.
2. Rule 6 of the Rules of Conduct for Members 2007 states that **'Members shall comply with RICS' requirements in respect of continuing professional development.'**
3. The requirements of the rule are further detailed as follows:
 - i. All RICS members must undertake a minimum of 20 hours of CPD each calendar year (January to December).

- ii. Of the 20 hours at least 10 hours must be formal CPD. The remainder can be formal or 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 the following 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 members 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 Fine within 28 days of the notification will lead to the fine being increased to £250. A third CPD breach within the 10-year period is likely to result in referral to disciplinary proceedings.

PROCEDURE

5. I have considered this case in three distinct stages, only moving to the next stage if there is a requirement to do so. These are:
 - i. Stage 1 – Finding of Fact
 - ii. Stage 2 – Liability for Disciplinary Action
 - iii. Stage 3 – Sanction

FINDINGS OF FACT

6. In considering this case I have been provided with a hearing bundle of 70 pages, which includes a CPD printout from the RICS online system held for Mr Frankpitt and a witness statement from Ms Jamie Edwards, a Lead Investigator for RICS and a witness statement from Ms Claire Hoverd, whose duties include communication relating to CPD compliance.
7. I accept that where the printout does not contain an entry for a particular year, it indicates that no CPD was recorded that year. There were no hours recorded on Mr Frankpitt's printout for the year 2020. I also note that there is no evidence of any application by Mr

Frankpitt for Concessions or Exemptions which, if granted, could have waived, or reduced, this requirement.

8. As a result I find the fact of the allegations proved on the basis of the documentary and system evidence produced.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

9. I am satisfied that the RICS requirement to complete and record CPD is reasonable and indeed is a key feature of most UK regulating bodies. It is an essential part of maintaining RICS professional standards.
10. I note that the purpose of the RICS CPD requirement is to ensure consistent standards within the profession, ensure that members maintain up to date knowledge in their area of expertise and ensure that members demonstrate this by the completion of a record on the RICS system. Ultimately this maintains professional standards in the interest of ensuring protection of the public and the wider public interest.
11. All members agree to adhere to the RICS Rules, Regulations and Byelaws and accept that they may be liable to disciplinary action if they fail to do so.
12. Mr Frankpitt's failure to comply with the CPD requirements therefore falls short of the expected standards and is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I have considered that the CPD requirement is expressly stated as a RICS Rule and is set out in a CPD Policy approved by the RICS Regulatory Board. I note that the RICS Sanctions Policy makes it clear that a single breach of CPD requirements is serious and sufficient to give rise to a liability for disciplinary action.
13. Although RICS do send reminders to assist members, I would note that compliance with RICS Rules and CPD requirements, is the member's responsibility and therefore not directly dependent on the sending or receipt of reminders. The recording of CPD hours online is not a complex task and RICS provides guidance to support members in achieving this requirement. Mr Frankpitt has therefore been given every opportunity to comply with the CPD requirements.

14. No representations have been received as there has been no contact from Mr Frankpitt.
15. Accordingly I am satisfied that Mr Frankpitt is liable to disciplinary action under Byelaw 5.2.2(c).

SANCTION

16. I note that in addition to no hours being recorded for 2020, there were no CPD hours recorded in 2018 or 2019 by Mr Frankpitt. The following CPD hours were recorded by the member in previous years: 22 hrs in 2013, 20 hrs in 2014, 22 hrs in 2015, 22 hrs in 2016, and 22 hrs in 2017, when he met the requirements.
17. I take into account the RICS Sanctions Policy and Mr Frankpitt's disciplinary history, which is as follows:
 - 2018 – a Fixed Penalty Caution
 - 2019 – a Fixed Penalty Caution and Fine
18. The bundle documents show that Mr Frankpitt has paid his membership fees for 2020 but the fine issued for 2019 remains outstanding.
19. In the documentary evidence provided RICS indicates that at least 6 reminders about the need to record his CPD on the system were sent at regular intervals to Mr Frankpitt between 17 November 2020 and 4 May 2021. These were sent predominantly by email to the preferred address held on the member's record, although the last communication was shown as a hard copy mailing.
20. These reminders explicitly stated
 - 'All practising RICS members are required to complete at least 20 hours of CPD (including 10 hours of formal CPD) 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 for Conduct for Members and Sanction Policy, because you have already been in breach twice of the Rules of Conduct for Members, and received a*

Fixed Penalty (Caution & Fine) within the last 10 years, if you do not complete and record the 2020 required minimum of 20 hours of CPD (including 10 hours of formal CPD) you may be in breach for a third time and therefore at risk of referral to Disciplinary Panel with presumption of expulsion.'

21. Further emails were sent to Mr Frankpitt on 27 September 2021, 18 October 2021, with a letter advising of disciplinary proceedings being issued on 17 January 2022.
22. I am satisfied that the reminders and emails were correctly addressed to the preferred email address provided by Mr Frankpitt and held on his record.
23. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is fundamental to allow RICS to ensure compliance to these standards and so enable public protection and confidence in the profession. Compliance is not optional.
24. I kept in mind that the purpose of sanctions is not to be punitive, though they may have that effect. The purpose of sanctions is to protect the public, declare and uphold the standards of the profession and safeguard the reputation of the profession and of RICS as its regulator. Sanctions also have a deterrent effect.
25. I was also mindful that sanctions must be proportionate and therefore started by considering the lowest sanction, moving up the scale of gravity only when the sanction under consideration was insufficient to meet the public interest. I also considered carefully the mitigating and aggravating factors of this case.
26. I consider the following are aggravating factors in this case:
 - ~ Mr Frankpitt clearly understands the process of recording CPD, as hours were successfully recorded in 2013, 2014, 2015, 2016 and 2017. However he has recorded 0 hours for 3 consecutive years 2018, 2019 and 2020.
 - ~ There has been no engagement from Mr Frankpitt despite frequent reminders and attempts to make contact by telephone.

~ The previous fine that was issued for non-compliance with CPD requirements remains outstanding.

27. I firstly considered whether to impose a sanction at all. 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.

28. 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 that a caution had previously been given and not resulted in compliance. I also considered the imposition of a reprimand, but again concluded that it was insufficient to adequately reflect the seriousness of the non-compliance with CPD requirements.

29. In considering whether to impose an undertaking I took into account the mandatory nature of the CPD requirements, and the commitment given by Mr Frankpitt on joining RICS and as a condition of membership, to comply with this requirement, which he had then failed to do on more than one occasion. I therefore determined that it would not be appropriate or proportionate to impose an undertaking and indeed doing so in such circumstances could undermine public trust and confidence in the regulatory process.

30. I went on to consider whether to impose a fine. I was mindful that a fine was previously imposed on Mr Frankpitt for failing to meet his CPD requirements in 2019. This fine had not been paid and the sanction had not resulted compliance.

31. I next considered conditions. For a sanction of conditions to be effective and appropriate Mr Frankpitt would need to have demonstrated a willingness to engage with the regulatory process, which he had not done. I therefore determined that it would not be possible to formulate conditions to address this failing, which would be realistic or achievable.

32. Having carefully considered the previous sanctions and concluded that these were not proportionate or appropriate to the circumstances of this case, I determined that Mr Frankpitt should be expelled from RICS membership. I recognise that expulsion is a sanction of last resort, to be used in cases where there is no other means of protecting the

public and the wider public interest. I determined that this is such a case. Mr Frankpitt has consistently failed to comply with a fundamental requirement to record CPD, recording 0 hours for each of the last 3 years, despite the application of sanctions in 2018 and 2019. I am mindful that this is a serious breach and the third (consecutive) non-compliance of CPD requirements within 10 years and indeed the sanctions policy presumes expulsion to be the likely outcome in such cases.

33. Further Mr Frankpitt has failed to engage with RICS on this matter despite reminders being issued. He has therefore given no indication that he has any intention of complying in the future. In these circumstances any other course of action would be likely to undermine public trust and confidence in the profession and in RICS. This lack of engagement does indicate a lack of regard for the importance of regulatory requirements.

34. In reaching this decision I have carefully weighed the wider public interest against Mr Frankpitt's interests but concluded that in this case the individual's interests were outweighed by the significant public interest concerns that it raises.

DECISION

35. Having read all the papers provided and considered the evidence, in accordance with Part VI of the Disciplinary Registration and Appeal Panel Rules, I make the following order:

That Mr Frankpitt shall be expelled from membership of RICS.

COSTS

36. RICS made an application for costs of £350. In accordance with Rule 119 of the DRAP Rules 2019 I make the following order in respect of costs:

Mr Frankpitt shall pay costs in the amount of £350

TAKING EFFECT OF THE ORDER

37. In accordance with Rule 119 of the Disciplinary Registration and Appeal Panel Rules

Following the expiry of 14 days from the service of the Single Members 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/she does not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

PUBLICATION

38. 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 expiry of the 14 days following the 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 charges 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.