

Regulatory Tribunal Single Member Decision

Regulated Member: Yuen Mei Rebecca Hung
Date of admission: 27 March 2013
Reference: REG0000162707/6367812
Decision of: Gillian Seager
Date of decision: 1 April 2022

Charge

‘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 Bye-law 5.2.2(c)

Background

1. Rule 6 of the Rules of Conduct for Members 2007 states that members shall comply with RICS’ requirements in respect of CPD.
2. Members of RICS are required to complete 20 hours of CPD activity by 31 December of each calendar year, and record, or cause it to be recorded.
3. The requirements of Rule 6 are as follows:
 - (i) All 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, and the remainder can be informal.

- (iii) All members must maintain a relevant and current understanding of the professional and ethical standards during a rolling three-year period. Any learning undertaken 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 and obligations documentation sets out the disciplinary action which happens if a member fails to complete and or record their CPD.
- On the first breach the member would receive a Fixed Penalty caution which will remain on their disciplinary record for a period of ten years.
 - A second breach (within ten years of a receipt of a caution) will result in a further Fixed Penalty caution and a fine of £150, or the local equivalent. This will be published. Non-payment of the fine within 28 days of notification will lead to the fine being increased to £250, or the local equivalent.
 - A third breach (within ten years of a receipt of a caution) is a potential referral to a Disciplinary Panel which may result in expulsion.
5. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The purpose of the CPD requirement is to ensure consistent standards within the profession and ensure that individuals maintain up to date knowledge in their area of expertise and ensure that members demonstrate this by the completion of a record at RICS. Compliance is not optional. The CPD requirements are not dependent upon RICS sending reminders to its members.

Evidence

6. A bundle has been provided containing material relevant to each stage of the proceedings. The material has been assessed in the requisite stages. Initially account has been taken of the material only insofar as it was relevant to the decision on the charge. This included a statement produced by an Investigation

Specialist on behalf of RICS dated 21 December 2021 (of which account was taken only in respect of the failure to record any CPD for the year 2020).

Burden and standard of proof

7. RICS is required to prove the charge to the civil standard. There is no requirement for the member to prove anything.

Facts

8. Considering the evidence which has been produced as noted above, it is a matter of fact that the Regulated Member has only completed and recorded seven hours of CPD between 1 January 2020 and 1 February 2021. The evidence also comprised of a printout showing that there had been no concessions granted for the Regulated Member.
9. It is concluded that as a matter of fact the charge is made out based on the documentary evidence.

Liability to disciplinary action.

10. The next stage to consider is that of liability to disciplinary action under Bye-law 5.2.2(c).
11. It is noted that the CPD policy has been approved by the Standards and Regulation Board, which in RICS' submission, gives a clear indication of the seriousness with which failures to complete and record CPD are viewed.
12. On becoming a member of RICS, the regulated person has accepted to adhere to RICS' Rules, Regulations and Bye-laws and that they may be liable to disciplinary action if they fail to so adhere. The Regulated Member has ignored a clearly expressed Rule

13. 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
14. RICS requirement to complete and record CPD is reasonable and legitimate for a regulator to impose and an apparent breach on the part of the Regulated Member, as evidenced in this case, to comply with the requirement must be regarded and treated as serious. As such the policy recognises that even one breach is sufficiently serious to give rise to a liability to disciplinary action.
15. The requirement to complete and record CPD is designed to ensure that members' knowledge is up to date and ultimately to ensure public protection.
16. Accordingly, it is concluded that the Regulated Member is liable to disciplinary action.

Sanction

17. Having found the charge proved and determined that the Regulated Member is liable to disciplinary action, the next stage is that of sanction.
18. It has been borne in mind that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as the regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
19. Consideration has been given to all the evidence and in particular the following:
 - The statement of the Investigation Specialist on behalf of RICS dated 21 December 2021 notes that the Regulated Member received a caution for a breach in 2015 and a caution and fine for a breach in 2016.
 - The statement of the Regulations Support Team Manager dated 21 December 2021 clearly sets out the reminders which were sent to the Member. Written representations also set out the communications in detail.

- The evidence indicated that the Regulated Member paid their fixed penalty fee for the fine issued in 2017 for non-compliance in 2016.

Mitigating and Aggravating features

20. The following features of the case are considered to aggravate the breach:

- It is noted that the Regulated Member has failed to provide any explanation to RICS for the breach of 2020.
- The Regulated Member has received cautions for similar breaches in 2015 and 2016
- A fine has been issued for the 2016 breach
- The Regulated Member was sent numerous reminders by RICS. This also includes emails in October 2021 and attempts to call but there was no contact until December 2021.
- This is the third breach of the CPD requirements within the last ten-year period.
- Having received previous sanctions for non-compliance, the Regulated Member would be fully aware of their obligations.
- The Regulated Member appears to clearly understand the process of recording CPD, as they have previously recorded CPD in 2013, 2014, 2017, 2018 and 2019.

21. The following features of the case are considered to mitigate the breach:

- The Regulated Member has recorded in excess of the minimum hours in 2013, 2014, 2017, 2018 and 2019.
- The Regulated Member did make eventual contact in an email dated 22 December 2021 and stated they would update, “within this weekend for 3 years CPD record”. A return email of the same date advised the CPD should have been recorded by the end of January 2021.

Decision on sanction

22. In determining what sanction to impose, consideration has been given to Rule 21.1 of the Sanctions Policy which provides for a presumption of expulsion in the event of a third breach of CPD obligations within 10 years. However, this presumption is capable of being displaced if circumstance permit. Any sanction imposed must be proportionate, and therefore ought to involve consideration of the lowest sanction available first and only moving to the next level of sanction if it is decided that the lesser sanction is inappropriate, or otherwise fails to meet the public interest.
23. It is considered that the matter is too serious for no sanction to be imposed.
24. 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. Similarly, a reprimand would not reflect the seriousness of the Regulated Member's repeated failure to comply with CPD requirements.
25. In considering whether to impose an undertaking, consideration was given to the mandatory nature of CPD requirements. CPD requirements are designed to ensure that the skills and knowledge of RICS members is kept up to date and ultimately to ensure public protection. It would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking given that the Regulated Member should have been completing and recording CPD online in any event. Imposing such a sanction would undermine public trust and confidence in the regulatory process.
26. A fine was imposed on the Regulated Member for failing to record CPD hours for 2016. The imposition of a further financial penalty would serve no useful purpose as it has not resulted in compliance with the CPD requirements to date.
27. Imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances. However, to impose such a sanction would require some reassurance that the Regulated Member has demonstrated a willingness to

engage with the regulatory process and comply with the conditions. There has been no such reassurance.

28. Furthermore, in the absence of any mitigation, remorse or insight, it is concluded that the Regulated Member's non-compliance with the CPD requirements demonstrates a complete disregard of regulation and consequently undermines public trust and confidence. The conduct is fundamentally incompatible with continued membership.

29. It is concluded that taking all the above into account, there is no reason to depart from the presumption of expulsion. 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. The Regulated Member's case falls into this category as they have repeatedly failed to comply with fundamental CPD requirements. Any lesser sanction in this case would undermine public trust and confidence.

30. In reaching this conclusion, careful consideration has been given to balancing the wider public interest against those of the Regulated Member and the potential impact of expulsion. The interests of the Regulated Member are far outweighed by the public interest.

Decision

31. Having considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules 2020, the following order is made:

Yuen Mei Rebecca Hung shall be expelled from membership of RICS.

Costs

32. In accordance with Rule 119 of the Regulatory Tribunal Rules 2020, the following order is made in respect of costs:

Yuen Mei Rebecca Hung will pay costs in the amount of £350

Taking Effect of the Order

33. Rule 114 of the Regulatory Tribunal Rules 2020

'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.'

34. The Regulated Member must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this decision, if they do not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

Publication

35. This decision will be published in accordance with Rule 120 of the Regulatory Tribunal Rules 2020, which states the following:

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.*