

RICS Regulatory Tribunal Rules 2020

Regulated Member:	Thomas Doyle
Case Number:	CON001583
Single Member Decision of:	Alison Sansome
Date of Decision:	20th 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 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 version 6 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 67 pages, which includes a CPD printout from the RICS online system held for Mr Doyle, a witness statement from Ms Carol Kerr, 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 for the years 2013-2016, where the printout does not contain an entry for a particular year, it indicates that no CPD was recorded that year and from 2017 each year is listed. There were no hours recorded on Mr Doyle's CPD record printout for the year 2021. I also note that there is no evidence of any application by Mr Doyle for Concessions or Exemptions which, if granted, could have waived, or reduced, the CPD hours required.
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 Doyle'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 such reminders. The recording of CPD

hours online is not a complex task and RICS provides guidance to support members in achieving this requirement.

14. I also note that an extension period was granted to Mr Doyle to submit his CPD by 26th May 2022, due to a concern that a previous reminder may not have contained accurate information about potential sanctions. This resulted in an additional reminder being issued advising of this extension.

15. Mr Doyle has therefore been given every opportunity to comply with the CPD requirements.

16. No representations have been received as there has been no contact from Mr Doyle.

17. Accordingly I am satisfied that Mr Doyle is liable to disciplinary action under Byelaw 5.2.2(c).

SANCTION

18. I note that in addition to no hours being recorded for 2021, there were no CPD hours recorded in 2014 and only 2 hours were recorded in 2020 by Mr Doyle. The following CPD hours were recorded by the member in previous years: 54 hours in 2015, 21.50 hours in 2016, 25 hours in 2017, 23 hours in 2018 and 32 hours in 2019. Mr Doyle met the CPD requirements in each of these years.

19. I take into account the RICS Sanctions Policy and Mr Doyle's disciplinary history, which is as follows:

2014 – a Fixed Penalty Caution

2020 – a Fixed Penalty Caution and Fine

20. The bundle documents show that Mr Doyle has paid the fine issued for the 2020 breach and has paid his membership fees for 2022.

21. The documentary evidence provided RICS indicates that a total of 8 reminders the need to record his CPD on the system were sent at regular intervals to Mr Doyle. The first 5 of

these were sent predominantly by email between 15 November 2021 and 23 February 2022.

22. 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 2021 and record it online by 31 January 2022.'

'Our records indicate that, within a ten-year period, you have failed to comply with our CPD requirements on two or more previous occasions.

The 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 RICS.'

23. In April 2022 RICS discovered a system issue which raised potential data discrepancy concerns. As a result a further letter was sent in April 2022 by email and in hard copy to the member address held on record. This letter stated:

"It has come to our attention that our most recent email to you on 23 February 2022 may have contained some inaccurate information regarding the possible sanction to be imposed as a result of your failure to record your 2021 CPD online. We apologise for any confusion this may have caused. Accordingly, we are giving you a further 30 days in which to record your CPD."

24. This resulted in two further reminders, with the final mailing being issued 7 June 2022.

25. Further emails were sent to Mr Doyle on 3 August 2022 and 31 October 2022, with the latter containing a letter advising of disciplinary proceedings.

26. I am satisfied that the reminders and emails were correctly addressed to the preferred email address provided by Mr Doyle and held on his record.

27. 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.

28. 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.
29. 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.
30. I consider the following are aggravating factors in this case:
- ~ Mr Doyle clearly understands the process of recording CPD, as hours were successfully recorded in 2015, 2016 2017, 2018 and 2019. However he has recorded 2 hours for 2020 and no hours for 2021.
 - ~ There has been no engagement from Mr Doyle despite frequent reminders being issued.
31. 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.
32. I went on to consider whether to impose a caution. I concluded that a caution would not 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 reflect the seriousness of the non-compliance with CPD requirements.
33. In considering whether to impose an undertaking I took into account the mandatory nature of the CPD requirements, and the commitment given by Mr Doyle 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.

34. I went on to consider whether to impose a fine. I was mindful that a fine was previously imposed on Mr Doyle for failing to meet his CPD requirements in 2020. Although this fine had been paid, this sanction had not resulted in compliance the following year.

35. I next considered conditions. For a sanction of conditions to be effective and appropriate Mr Doyle 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.

36. 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 Doyle 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 Doyle has failed to comply with a fundamental requirement to record CPD on multiple occasions. I am concerned that the application of a sanction for 2020 failings has not resulted in compliance or engagement. I am also mindful that this is a serious breach and the third non-compliance of CPD requirements within 10 years and indeed the sanctions policy presumes expulsion to be the likely outcome in such cases.

37. Further Mr Doyle 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.

38. In reaching this decision I have carefully weighed the wider public interest against Mr Doyle's interests but have concluded that in this case the individual's interests were outweighed by the significant public interest concerns that non-compliance raises.

DECISION

39. Having read all the papers provided and considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules, I make the following order:

That Mr Doyle shall be expelled from membership of RICS.

COSTS

40. RICS made an application for costs of £350. In accordance with Rule 119 of the Regulatory Rules 2020 I make the following order in respect of costs:

Mr Doyle shall pay costs in the amount of £350

TAKING EFFECT OF THE ORDER

41. In accordance with Rule 114 of the Regulatory Tribunal 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 rules 115 and 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

42. This decision will be published in accordance with Rule 120 of the Regulatory Tribunal 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.