

SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member:	Adam Wright
Single Member Decision of:	Rosalyn Hayles
Case Number:	CON001767
Date of Decision:	3 February 2023

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 76 pages in total, consisting of the following documents: RICS Rules, Guidance, Law and Procedure; RICS' Investigation Report Part 1 – Facts and LDA, which includes a statement made by RICS' Investigation Specialist, Fay Reaney (dated 19 October 2022), as well as a statement made by RICS' Regulations Team Support Manager, Claire Hoverd (dated 19 October 2022); RICS' Investigation Report Part 2 – Sanction, which includes a further statement made by each of Claire Hoverd and Fay Reaney (both statements also dated 19 October 2022); general correspondence with Member, Disclosure and Response; Schedule of Costs; and the Head of Regulation's decision dated 5 December 2022.

BACKGROUND

6. The statement of Fay Reaney within RICS' Investigation Report Part 1 exhibits printouts of records from RICS' electronic system relating to Mr Wright's contact details (including his preferred email address) and recorded CPD activity in the period from 2013 to 2021. Fay Reaney's statement says that if the printouts do not show any entry for a particular year between 2013-2016, that indicates that no CPD was recorded for that year, and if the printouts show a blank row for any year between 2017-2019, that also indicates that no CPD was recorded.

7. In relation to Mr Wright's records, Fay Reaney states that the information shows that he recorded zero hours of CPD in 2016 and 2017 and that he only recorded nineteen hours of CPD in 2020 and four hours of CPD in 2021. Mr Wright also did not record any CPD for the 2019 CPD year, but that did not amount to a breach, as he had the benefit of a CPD concession that year. The exhibited printout of Mr Wright's 'CPD Annual Summary Associated View' (exhibit FR/2) confirms the information set out in Fay Reaney's statement. The exhibited printout of Mr Wright's RICS Record (exhibit FR/3) also states that he has the benefit of a CPD concession for the CPD year 2022.
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 by 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 Mr Wright 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 he therefore ought to have been sent email 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 standard wording noting that: the recipient had failed to comply with RICS' CPD requirements on two or more previous occasions within the preceding ten-year period; and *'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 the RICS'*.
10. Claire Hoverd states that in mid-February 2022 a hard copy mailing was sent out to any member who did not have an email address or had an incorrect email address stored on RICS' system. A further mailing was sent out in April 2022 which said (in summary) that, due to the possibility of inaccurate information about potential sanction 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.

FINDINGS OF FACT

11. I refer to the statement of Fay Reaney within RICS' Investigation Report Part 1, which exhibits a printout of the record from RICS' electronic system relating to Mr Wright's recorded CPD activity.
12. 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 Mr Wright's CPD printout in respect of the 2021 CPD year. I note that there is no evidence that he applied for any RICS Exemption or Concession which would have allowed him to avoid compliance with that requirement during that period.
13. Accordingly, I find the factual allegations proved, based on the documentary evidence produced by RICS.

LIABILITY FOR DISCIPLINARY ACTION

14. I am satisfied that RICS' requirements to complete and record CPD are reasonable and that Mr Wright'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.
15. I am satisfied that Mr Wright was given every opportunity to comply with the CPD requirements. In reaching that conclusion I have taken account of the evidence that Mr Wright previously complied with the CPD requirements for CPD years 2015 and 2018 and it is therefore clear that he was aware of those requirements. I have also noted that Mr Wright successfully applied for a concession in 2019, and it would therefore appear that he is aware of the possibility of a concession being granted for an individual CPD year.
16. While I note the evidence of Claire Hoverd about the reminders that would have been sent to Mr Wright in 2021 and 2022 concerning compliance with the CPD requirements, I am mindful that in any event Mr Wright's obligation to comply with the CPD requirements was not contingent on receiving any such reminders from

RICS.

17. Accordingly, I am satisfied that Mr Wright is liable to disciplinary action.

REGULATORY SANCTION

18. I note that the evidence from the CPD printout exhibited to Fay Reaney's statement is that Mr Wright did not record any CPD in the 2021 CPD year.

19. I take into account the Sanctions Policy and Mr Wright's disciplinary history which is as follows (as set out in Fay Reaney's statement within Part 2 of RICS' Investigation Report):

2016 caution

2017 caution and fine.

20. In Fay Reaney's statement she states that Mr Wright has not made payment issued in respect of his non-compliance in the 2017 CPD year, but that Mr Wright had paid his RICS membership fees for 2021. Ms Edwards' statement exhibits a copy of the letter which ought to have been sent to Mr Wright relating to the caution and fine in respect of the 2017 CPD year. That letter stated that if Mr Wright failed to comply with the CPD requirements in 2018 he would be referred to a Disciplinary Panel.

21. In the bundle of evidence before me the evidence of Claire Hoverd confirms that a minimum of 9 reminders would have been sent to Mr Wright's preferred email address, at regular intervals, from November 2021 to June 2022. I am satisfied that the reminders would have been correctly addressed to the preferred address then held on file for Mr Wright.

22. I note that on 11 November 2022 Mr Wright responded to a letter of the same date from Fay Reaney explaining his potential referral for a Single Member Decision and enclosing a listing questionnaire for him to complete. Mr Wright's reply said: *'I can't say I'm surprised about this, however I haven't been working much over the last 18-months following a string of redundancies and problems in holding a job down'*. Mr Wright also admitted that he had not completed the required CPD for the 2021 year, and said that there was *'no need for an inquest'*. Mr Wright said that in the autumn of 2021 he was in a *'high pressure job ... which I struggled to hold down and subsequently lost pretty much my entire liquid wealth following the stock market crash in March'*. Mr Wright said that he would like to remain a member of RICS but cannot pay the costs of £350, and at present does not expect to be able to afford RICS' membership fee for 2023. Mr Wright concluded by asking for leniency.

23. Mr Wright provided further information in a follow up email he sent to Fay Reaney on 23 November 2022. In that email Mr Wright asked for various factors to be treated as mitigating:

- He said that he is a 'severe TBI' (traumatic brain injury) sufferer, and that this means he has difficulties with memory and planning.
- He said that he has over a period of 18 months lost his '*entire liquid wealth (including and beyond the full compensation from the TBI) in excess of £300,000 by way of trading FX, commodity index and crypto derivatives*' which had led to (undiagnosed) depression.
- He had struggled to hold down a full-time role since being made redundant in July 2021, but was considering moving to Riyadh to work there.

24. Mr Wright does not appear to have completed and returned either the listing questionnaire or a statement of means, despite being reminded to do so in an email from Fay Reaney dated 24 November 2022.

25. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is RICS' 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 2015 and 2018 Mr Wright complied with the CPD requirements.

- Mr Wright's failure to comply with the requirement to complete his CPD in the 2021 CPD year may have been affected by ill-health, including a long-term condition which affects his memory and planning ability.
- Mr Wright's breach of the requirement for the 2021 CPD year may also have been contributed to by financial and employment difficulties which he experienced as of July 2021.
- Mr Wright has engaged with the regulatory process and has said that he would like to remain a member of RICS.

29. I consider that the following aggravating factors are present in this case:

- Mr Wright clearly understands the CPD requirements, as he successfully completed and recorded CPD activity in 2015 and 2018. It would appear that he also understands the procedure for obtaining a concession, as he was previously granted a concession in 2019.
- This is the third breach of the CPD requirements.
- Mr Wright has not expressly apologised for his breach, or given any assurance of his future compliance with the CPD requirements.
- Mr Wright has not paid the fine issued in respect of his non-compliance in the 2017 CPD year.

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 Mr Wright had been sent numerous reminders by RICS about the CPD requirements. Mr Wright has not suggested that he did not receive the reminders, and even if he did not receive those reminders, it remained his responsibility to ensure his compliance with his 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 by itself 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 Mr Wright's subsequent compliance with the CPD requirements.

32. I also considered imposing a reprimand, but concluded that such a sanction would be inappropriate, in light of the Sanctions Policy which advises that a reprimand may be given where there has been/is a risk of public harm. I also considered that a reprimand by itself would be inadequate to reflect the seriousness of Mr Wright's repeated failure to comply with the CPD requirements.
33. 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. I concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking, given that Mr Wright should have been completing and recording his CPD as required in any event. I concluded that imposing such a sanction might undermine public trust and confidence in the regulatory process.
34. 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 recognised that there was a cumulative pattern of non-compliance and that a fine had already been imposed in response to a previous breach, which had not been paid, and which had only resulted in compliance in the CPD year immediately following the issue of the fine (2018).
35. 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 conditions may be appropriate in certain circumstances in response to non-compliance with the CPD requirements. However, I concluded that, as Mr Wright has been granted a concession for the 2022 CPD year, there is no relevant and appropriately time-bound condition that could be imposed in this case.
36. Having determined that imposing conditions would not meet the wider public interest, I concluded that Mr Wright 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. While I acknowledged that there are mitigating factors in this case (in particular, Mr Wright's long-term ill-health, which I regarded as being a particularly significant mitigating factor) I was also mindful that:
- The completion of CPD is required by RICS in order to ensure that RICS members remain professionally competent, and it thereby serves an

important purpose in terms of both protecting the public and maintaining public confidence in the profession.

- Mr Wright has only completed the minimum number of CPD hours in two CPD years (2015 and 2018).
- Mr Wright has not suggested that he completed any CPD at all in the 2021 CPD year.
- Mr Wright has not offered an apology, demonstrated any understanding of the importance of CPD, or given any assurance about his future compliance (subsequent to the 2022 CPD year, for which he has obtained a concession).

I concluded on balance that any sanction other than expulsion would be insufficient and would undermine public trust and confidence. In reaching that conclusion I carefully balanced the wider public interest against Mr Wright's interests. I had regard to the impact that expulsion may have on him and his professional standing, but concluded that his interests are significantly outweighed by the significant public interest concerns raised by this case. I was 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

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

That Adam Wright shall be expelled from membership of the RICS.

TAKING EFFECT OF THE ORDER

38. 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

39. I have given careful consideration to Mr Wright's submissions about his current financial position (albeit he has not completed the statement of means sent to him). In light of Mr Wright's statement that he has found it difficult to obtain stable employment for some time and has lost all of his *'liquid wealth'*, and in recognition that his ill- health may affect his immediate employment prospects, I have

concluded that it would be appropriate to reduce the amount of RICS' costs that Mr Wright is ordered to pay. I therefore make the following order in respect of costs, in accordance with Part VI of the Regulatory Tribunal Rules:

Mr Wright will pay costs in the amount of £350.

PUBLICATION

40. 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.