



SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2020

1. Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Anthony Murphy (1237010)
Single Member Decision of: Benjamin Davies
Case Number: CON001674
Date of Decision: 30th January 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 RULE/S BREACH

1. The Rules of Conduct for Members 2007 “set out the standards of professional conduct and practice expected of Members of RICS.”
2. Rule 6 states “Members shall comply with RICS’ requirements in respect of continuing professional development.”
3. RICS’ CPD requirements are set out online and are:
 - a. All Members must undertake a minimum of 20 hours CPD each calendar year (January to December);
 - b. Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD;
 - c. 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; and
 - d. Members must record their CPD activity online by 31 January.
4. The first year that a member fails to record sufficient CPD to meet the requirements of the CPD rule, they will have committed a breach and receive a Fixed Penalty caution.
5. This first CPD breach and the issue of a Fixed Penalty caution will remain on the member's disciplinary record for 10 years.
6. Should further breaches of the CPD requirements occur, the member will face further disciplinary action as follows:
 - Second CPD breach (within 10 years of receipt of caution):
 - Fixed Penalty caution and fine (of £150 or local equivalent).
 - RICS will also publish on the RICS website a list of members who are non-compliant for a second time.
 - Non-payment of the fixed penalty fine within 28 days of notification will lead to the fine being increased (to £250 or local equivalent).
 - If the fine remains unpaid, debt recovery action will be taken, and the member may be referred to a Disciplinary Panel.
 - Third CPD breach (within 10 years of receipt of caution):
 - Potential referral to Disciplinary Panel which may result in expulsion from membership and likelihood of costs being awarded against the member.
7. Continuing professional development is a commitment by members to continually update their skills and knowledge in order to remain professionally competent.

MATERIALS CONSIDERED

8. An Investigation Report bundle has been provided containing material relevant to each stage of the proceedings.
9. The material has been reviewed in the requisite stages. Initially account has been taken of the material only insofar as it was relevant to the decision on the charge.

10. The Investigation report is in sections including relevant RICS rules, submissions and evidence on facts and liability for disciplinary action, submissions and evidence on sanctions and correspondence with the regulated member.

BACKGROUND

11. 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...'
12. The Rules of Conduct for Members provides:-
'Continuing Professional Development [CPD]

6. Members shall comply with RICS' requirements in respect of continuing professional development.'
13. RICS' requirements in respect of CPD are set out in the document 'CPD Requirements and obligations'. They include requirements that 'All members must undertake a minimum of 20 hours CPD each calendar year (January to December)' and that 'Members must record their CPD activity online by 31 January.'
14. An email was sent to the Regulated Member dated 10th August 2022 with the heading:
'IMPORTANT: Letter before disciplinary action – non-compliance with CPD requirements.'
15. A letter was sent by email and post to the Regulated Member dated 26th November 2022 with the heading '2021 CPD Disciplinary Proceedings'.
16. A schedule of costs has been provided by the RICS.
17. The Regulated Member sent an email to the RICS Lead Investigator dated 28th November 2022 stating that

"I fully understand the situation..."
18. I am satisfied that no objectives to the Single Member Decision hearing has been made or an oral hearing requested.

FINDINGS OF FACT

19. RICS is required to prove the charge to the civil standard. There is no requirement for the member to prove anything.
20. The Regulated Member was admitted to the RICS on the 11th May 2010.
21. The Regulated Member stated in an email to the RICS Lead Investigator dated 28th November 2022, after the issue of the disciplinary proceedings email and letter that:

“I fully understand the situation and I have my own reasons for not submitting my CPD records”.

22. The statement by the RICS Lead Investigator dated 26th November 2022 provides a printout of contact details for the Regulated Member.
23. Evidence is also provided which comprises a printout showing CPD activity recorded during the years 2013 to 2020 and which is set out below.

2013	18.5 hours
2014	24.5 hours
2015	22 hours
2016	24.5 hours
2017	31.5 hours
2018	0 hours
2019	32.5 hours
2020	27.5 hours

24. The evidence also shows that only two hours of CPD have been recorded between 1st January 2021 and 1st February 2022.
25. A printout also provides evidence showing no concessions for the relevant years.
26. Considering the evidence produced and based on the documentary evidence I am satisfied that the above is sufficient to evidence the facts of the charge.

LIABILITY FOR DISCIPLINARY ACTION

27. The next stage to consider is that of liability to disciplinary action under Bye-law 5.2.2(c).
28. The RICS CPD system requires members to complete 20 hours of CPD per year.
29. The purpose of this requirement is to:
 - Ensure consistent standards within the profession,
 - 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.
30. The Standards and Regulation Board has approved the CPD policy. That policy requires not only the completion of CPD, but also that it is recorded.
31. It is accepted that the RICS requirement set out in the Policy is reasonable and legitimate for a regulator to impose.
32. The fact that RICS have made this policy and that the Policy recognises that even one breach is sufficiently serious to give rise to a liability to disciplinary action gives a clear indication of the seriousness with which failures to complete and record CPD are viewed and the seriousness of the breach evidenced in this case.

33. The Regulated Member has ignored a clearly expressed Rule and requirement from their professional regulator, further evidenced by the Regulated Members statement that he had his own reasons for not submitting CPD records.
34. On becoming a member of RICS, the Regulated Member 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.
35. 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.
36. The requirement to complete and record CPD is designed to ensure that members' knowledge is up to date and ultimately to ensure public protection.
37. Evidence has been provided of communications with the Regulated Member in relation to CPD for the 2021 CPD year.
38. The Regulated Member has previously recorded CPD for 2014, 2015, 2016, 2017, 2019 and 2020.
39. Accordingly, it is concluded that the Regulated Member is liable to disciplinary action under Bye Law 5.2.2 (c).

REGULATORY SANCTION

40. Having found the charge proved and determined that the Regulated Member is liable to disciplinary action, the next stage is that of sanction.
41. The purpose of sanctions is not to be punitive, although it may have that effect. Their purpose is to uphold the standards of a profession, safeguard the reputation of the profession, safeguard the reputation of RICS as the regulator and to protect the public. Sanctions must be proportionate to the breach after considering all the circumstances of a case.
42. Consideration has been given to all the evidence presented, and in particular the following matters.
43. The statement of the RICS Lead Investigator dated 26th November 2022 states the Regulated Member received a caution for a breach in 2013 and a caution and fine for a breach in 2018.
44. Evidence including the statement of the RICS Regulations Support Team Manager shows previous and numerous reminders issued from November 2021 to June 2022 after the Regulated Member was identified as one of those who had not yet recorded 20 hours of CPD online (including 10 hours of formal CPD) and who were not recoded on the system as being exempt.
45. The statement confirms payment of the 2019 fine for non-compliance in 2018.
46. Evidence shows the Regulated Member paid his membership fees in 2021.
47. The statement of the RICS Regulations Support Team Manager dated 26th November 2022 clearly sets out the reminders which were sent to the Regulated Members contact details.

48. The statement notes the changes in the CPD compliance communications arrangements covering the previous two breaches and the fact that the RICS does not hold a copy of the letter sent in 2013 (covering the first breach by the Regulated Member) but does retain a template copy.
49. Evidence of the caution and fine letter that would have been sent in 2018 was provided.
50. I am satisfied that the two previous breaches occurred based on the evidence provided and the confirmation of the payment of the Fixed Penalty Fine acknowledging the second breach.
51. The charge made therefore relates to a third breach within a 10-year period.
52. The following features of the case are considered to aggravate the breach:
- a. An extension to the deadline was granted by RICS until 26 May 2022 by which time the Regulated Member 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;
 - b. Cautions for previous breaches were issued in 2013 and 2018;
 - c. A fine was issued and paid by the Regulated Member for the breach in 2018;
 - d. Correspondence from the Regulated Member refers to having his own reasons for not submitting CPD records which demonstrates a lack of respect for the obligation to which he signed up to when he became a member in 2010.
 - e. This is a third breach in a 10-year period.
 - f. CPD was recorded in 2014, 2015, 2016, 2017, 2019, and 2020 and together with payment of the penalty, demonstrates acknowledgement of the obligations to comply.
53. The following features of the case are considered to mitigate the breach:
- a. CPD was recorded in excess of the minimum in 2014, 2015, 2016, 2017, 2019 and 2020.
 - b. No sanctions (not related to CPD) have been imposed against the Regulated Member.
 - c. The Regulated Member has entered into discussions and communications with the RICS.
 - d. RICS fees were paid for 2021.
 - e. CPD has been recorded for the 2022 year in excess of the minimum.
 - f. In an email dated 28th November 2022 the Regulated Member states:
“As I am sure you will understand, the past 24 months have been heavily focussed around saving our business due to the impact of the pandemic”.

54. In determining what sanction to impose, consideration has been given to 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.
55. 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.
56. It is considered that the matter is too serious for no sanction to be imposed.
57. 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.
58. 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.
59. A fine was imposed on the Regulated Member for failing to record CPD hours for 2018. 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.
60. 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. From the evidence provided related to the Regulated Members intention for continued membership and in relation to the third breach, I take no such reassurance.
61. 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.
62. 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.
63. 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.

ORDER MADE

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

Having considered the evidence, it is clear as to the sanction which is appropriate for a third breach. In all the circumstances, expulsion from membership is both 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.

I therefore order that the Regulated Member, Anthony Murphy (1237010) be expelled from membership of RICS.

TAKING EFFECT OF ORDER

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

In accordance with Part VI of the Regulatory Tribunal Rules, I make the following order in respect to costs:

RICS has applied for costs. The Regulated Member was found liable to disciplinary action and has made no submissions about his financial situation. To ensure the costs of bringing these proceedings do not burden the whole RICS membership it is appropriate that the Regulated Member bear RICS reasonable costs.

Order in respect to costs:

The Regulated Member, Anthony Murphy (1237010), will pay RICS' costs of £350.

PUBLICATION

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.