



SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Harry Carter
Single Member Decision of: Rosalyn Hayles
Case Number: CON001558
Date of Decision: 23 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 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 94 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' Lead Investigator, Jamie Edwards, as well as a statement made by RICS' Regulations Team Support Manager, Claire Hoverd (dated 4 November 2022); RICS' Investigation Report Part 2 – Sanction, which includes a further statement made by each of Claire Hoverd (dated 4 November 2022) and Jamie Edwards (dated 7 November 2022); general correspondence with Member, Disclosure and Response; Schedule of Costs; and the Head of Regulation's decision dated 3 January 2023.

BACKGROUND

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

7. In relation to Mr Carter's records, Jamie Edwards states that the information shows that he recorded zero hours of CPD in 2019 and 2021 and that he recorded three hours of CPD in 2020. The printout of Mr Carter's '*CPD Annual Summary Associated View*' confirms the information set out by Jamie Edwards' statement.
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 Carter 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 would 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.

11. The correspondence between RICS and Mr Carter within the bundle before me includes various emails exchanged between Mr Carter and either Ms Jamie Edwards or Ms Choudhury-Rahman (Regulatory Tribunal Executive) in January 2023. Within that correspondence Mr Carter said (in summary) that:

- He had not received any of RICS' correspondence about his breach of the CPD requirements for the CPD year 2021 because the email address shown as his preferred email address on RICS' electronic system was incorrect (for an unknown reason) and RICS had not attempted to contact him by any additional means (such as his business email address or alternative personal email address) until 11 January 2023. Mr Carter said he would immediately update the email address shown on his personal profile within RICS' system.
- An email sent to him by Ms Edwards at an alternative email address on 3 January 2023 had been automatically routed to Mr Carter's 'spam' email.
- When RICS' telephone call to him on 3 August 2022 was unsuccessful (as referred to in RICS' Investigation Report) a voicemail message should have been left, and/or a further attempt should have been made to contact him by telephone.

- He had in fact completed the required CPD for CPD years 2020 and 2021, but had simply failed to record it on RICS' system, due to an oversight. As he had not received any of RICS' reminder emails, he had not been prompted to record his CPD on RICS' system, and work commitments had taken priority.
- He offered to record the details '*as quickly as possible to resolve the situation*'. He provided an assurance that he had carried out '*over and above the 20 hour minimum requirement*'. He said that he was sincerely sorry for the delay in uploading his CPD to RICS' portal and asked for support to assist him in updating his CPD record.
- He had also recorded more than the required minimum number of hours of CPD for CPD year 2019 (he had recorded 29 hours of CPD) and queried why RICS' system was showing him as being in default for that year and why he had received a caution. In response to Ms Choudhary-Rahman's clarification that Mr Carter had received a caution in respect of the 2019 CPD year because he had recorded his CPD on RICS' system after the deadline has passed (having uploaded his CPD to the system on 26 April 2020) Mr Carter said that he had been contacted about this at the time when he had explained the reason for the delay. He provided an email which he had sent to RICS' CPD email inbox on 19 March 2020 in which he said that he had completed '*well over the minimum 20 hours of CPD*' but had failed to upload it to RICS' system, as he had been unable to prioritise inputting his CPD due to the challenges posed by the Covid-19 pandemic in terms of ensuring that his business survived and continued to deliver a high level of service to clients. Within that email Mr Carter requested an extension of time '*to input my*

CPD record without the need of a fixed penalty'.

- He felt upset and disappointed about the level of communication and support provided by RICS during the relevant periods for CPD and in terms of the decision to refer the matter for consideration under the Regulatory Tribunal Single Member process. He said that RICS had failed to validate or seek confirmation that he had actually received the relevant correspondence before taking further action, and that he would have expected RICS to check receipt by telephone or by means of a recorded delivery letter. He said that, had RICS made appropriate checks that he had received notification of his default, he could have *'mitigated'* the situation *'a lot sooner and at the right time so I would not be forced into a single member review'*.
- In addition to the challenges posed to a small business by the Covid-19 pandemic (as referred to in his earlier correspondence with RICS) Mr Carter had also experienced the resignation of a previous business partner, which had caused *'further volatility during an already challenging period'*. He had also experienced long term health issues (details of which he provided) due to the stress of all the circumstances, and requested that this be taken into account in mitigation. He noted that he had nevertheless successfully fulfilled his duties to his clients.
- On 12 January 2023 Mr Carter confirmed that he had uploaded the details of his CPD for 2020, 2021 and 2022 onto RICS' system. He said that RICS' system now contained the following details of his CPD for the period 2019 – 2022: 29 hours in 2019; 23 hours in 2020;

24 hours in 2021; and 41 hours in 2022. Mr Carter said that for CPD years 2020, 2021 and 2022 he had in fact carried out *'a huge amount of additional learning'* which would qualify as CPD. He said that he strives to professionally develop himself as well as his team *'and actually go over and above the minimum to better myself, the services I offer to client and knowledge within the industry'*.

- He would *'make 100% sure moving forwards'* that his CPD is recorded *'in a timely fashion'*.
- He noted that he has no history of any misconduct or complaints against him, and that he fulfils his role *'to the highest professional standards'*, receiving only positive feedback from clients due to his level of commitment and high standard of service.

FINDINGS OF FACT

12. I refer to the statement of Jamie Edwards within RICS' Investigation Report Part 1, which exhibits a printout of the record from RICS' electronic system relating to Mr Carter's recorded CPD activity.

13. 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 Carter's CPD printout in respect of CPD year 2021. 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.

14. Accordingly, I find the factual allegations proved, based on the documentary evidence produced by RICS.

LIABILITY FOR DISCIPLINARY ACTION

15. I am satisfied that RICS' requirements to complete and record CPD are reasonable and that Mr Carter'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.
16. I am satisfied that Mr Carter was given every opportunity to comply with the CPD requirements. In reaching that conclusion I have taken account of the evidence that Mr Carter previously complied with the CPD requirements for CPD years 2015, 2016, 2017 and 2018 and it is therefore clear that he was aware of those requirements.
17. While I note the evidence of Claire Hoverd about the reminders that would have been sent to Mr Carter in 2021 and 2022 concerning compliance with the CPD requirements, as well as Mr Carter's account that he did not in fact receive those reminders, I am mindful that in any event Mr Carter's obligation to comply with the CPD requirements was not

contingent on receiving any such reminders from RICS.

18. Accordingly, I am satisfied that Mr Carter is liable to disciplinary action.

REGULATORY SANCTION

19. I note that the evidence from the CPD printout exhibited to Jamie Edwards' statement is that Mr Carter did not record any CPD in the 2021 CPD year.

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

2019 caution

2020 caution and fine.

21. In Jamie Edwards' statement she confirms that Mr Carter paid the fine relating to the 2020 CPD year and paid his RICS membership fees for 2021. Ms Edwards' statement exhibits a copy of the letter which ought to have been sent to Mr Carter relating to the caution and fine in respect of the 2020 CPD year. That letter stated that if Mr Carter failed to comply with the CPD requirements in 2021 he might be referred to a Disciplinary Panel.

22. 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 Carter'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

Carter (while I acknowledge that Mr Carter has since informed RICS that that email address was incorrect).

23. I note that in January 2023 Mr Carter provided a detailed explanation for his non-compliance, as set out earlier in this decision. In summary, Mr Carter apologised for having failed to upload the CPD which he had in fact completed for the 2021 CPD year. He said that he had not received any of RICS' reminders to do so, as the preferred email address held for him on RICS' system was incorrect and RICS had not made effective use of other potential methods of contacting him. He also said that he had completed the required number of hours of CPD in both 2019 and 2020, but similarly had failed to upload that information to RICS' system before the expiry of the relevant deadline. Mr Carter requested that mitigating circumstances (in relation to both challenging business circumstances at the time as well as his health) should be taken into account. He uploaded the outstanding information about his CPD to RICS' system, and provided an assurance of his compliance in future.

24. 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.

25. 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.

26. 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.

27. I consider that the following mitigating factors are present in this case:

- The information provided by RICS demonstrates that in each of the CPD years 2015, 2016, 2017 and 2018 Mr Carter complied with the CPD requirements.
- Mr Carter has demonstrated that he did complete the required number of hours of CPD in 2019, 2020 and 2021, but failed to upload the required information to RICS' system within the required timeframe.
- Mr Carter's failure to comply with the requirement to upload his CPD for each of those three years was the result of business pressures experienced due to the Covid-19 pandemic, which led to: him prioritising servicing his clients over complying with the CPD requirements; a long term ill-health issue, as a result of the stress associated with maintaining his small business throughout a difficult period.
- Mr Carter has apologised for his breach of the CPD requirements. He has uploaded details of the CPD that he completed for the 2020

and 2021 CPD years.

- He has provided an assurance of his future compliance, and has uploaded information about CPD he has completed for the 2022 CPD year.

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

- Mr Carter clearly understands the CPD requirements, as he successfully completed and recorded CPD activity in previous years (2015-2018).
- This is the third breach of the CPD requirements.
- Mr Carter appears to have received the letter relating to the breach for the CPD year 2020, as he paid the associated fine. That letter warned him that non-compliance in the 2021 CPD year could result in referral to a Disciplinary Panel.

29. 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 Carter had been sent numerous reminders by RICS about the CPD requirements. While acknowledging that Mr Carter says he did not receive those reminders because his preferred email address as shown on RICS' system was incorrect, I note that it remained his responsibility to ensure his compliance with his obligations in terms of

CPD.

30. 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 Carter's subsequent compliance with the CPD requirements.
31. I also considered imposing a reprimand, but concluded that such a sanction would be inappropriate, in light of the Sanctions Policy guidance which states 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 by itself to reflect the seriousness of Mr Carter's repeated failure to comply with the CPD requirements.
32. 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 Carter 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.
33. 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 resulted in Mr Carter's subsequent compliance with the CPD requirements. However, I concluded that in the circumstances of this case the imposition of a fine could be appropriate, if another sanction were also imposed.

34. 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 Carter has already completed and uploaded CPD for the 2022 CPD year, it would serve little purpose to impose a condition in respect of his compliance with the CPD requirements for the 2022 CPD year and that imposing such a sanction would not be appropriate.

35. Before reaching my conclusion about the appropriate sanction, I have given consideration to whether it is necessary to order Mr Carter's expulsion from RICS membership. I note 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. I am mindful that paragraph 21.1 of the Sanctions Policy states that expulsion is likely in the event of a third breach of Rule 6 of the Rules of Conduct for members within 10 years of receipt of a caution for a breach of the same rule, and paragraph 22.1 refers to a presumption of expulsion in such circumstances. However, on balance I have concluded that in light of the particular features in this case, including: Mr Carter's

engagement with the regulatory process; his apology for his non-compliance with the CPD requirements (which was limited to failing to comply with the requirement to record his CPD on RICS' systems for CPD years 2019,2020 and 2021, although he had completed sufficient CPD in each year); the mitigating circumstances in relation to his health; his previous compliance with the CPD requirements; and his assurance about his future compliance, the presumption of expulsion should not apply. It is my view that in the wholly exceptional circumstances of this case the public interest can be adequately addressed by the imposition of a further caution and a fine of £400 to mark the seriousness of the breach. Mr Carter should be in no doubt that any future non-compliance may result in a more severe sanction.

ORDER MADE

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

That Harry Carter shall receive a caution and fine of £400.

TAKING EFFECT OF THE ORDER

37. 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

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

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

PUBLICATION

39. 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.