

## **SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET**

**RICS Regulatory Tribunal Rules 2020**

**Part VI, Regulatory Tribunal Single Member Decision**

**Regulated Member: Mr Hugh Rutherford**

**Single Member Decision of: Alison Sansome**

**Case Number: CON001712**

**Date of Decision: 1 February 2023**

### **CHARGE:**

The 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. RICS’ requirements in respect of CPD are set out in the document ‘CPD Requirements and obligations.’ They include the requirement 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'.

2. 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.

### **MATERIALS CONSIDERED**

3. In assessing this case I have considered a submitted bundle of 69 pages, which included:

- RICS Rules, Guidance, Law and Procedure
- CPD Requirements and Obligations, CPD Guidance and CPD FAQs
- Witness Statements of Claire Hoverd (RICS Regulation Support Team Manager)
- Witness Statements of Fay Reaney (RICS Investigation Specialist)
- Member CPD Record, Summary Information and Payment Information System Extracts
- Correspondence from RICS to the Member on this matter
- Any correspondence received from the Member on this matter (none)

### **BACKGROUND**

4. Mr Rutherford joined RICS in 1986 and the requirement to complete and record CPD on the RICS CPD Portal commenced from 2013. As shown above the charges being considered here relate to the non-completion and recording of CPD for the CPD year 2021 (1 January 2021 to the 1 February 2022).

5. I have considered this case in three distinct stages, moving to the next stage only if there is a requirement to do so as a result of the findings of the previous stage. These stages are:

- i. Stage 1 – Finding of Fact
- ii. Stage 2 – Liability for Disciplinary Action
- iii. Stage 3 – Sanction

## **FINDINGS OF FACT**

6. Having reviewed the submitted material, 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 whether or not CPD was recorded.

7. I can see from the evidence presented that there were no hours recorded on Mr Rutherford's CPD record printout from the RICS portal for the year 2021. I also note that there is no evidence of any application by Mr Rutherford for Concessions or Exemptions for 2021 which, if granted, could have waived, or reduced, the CPD hours required.

8. As a result I find the fact of the allegation proved on the basis of the documentary and system evidence produced.

## **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 Rutherford's failure to comply with the CPD requirements for 2021 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 Rutherford to submit her 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 Rutherford has therefore been given every opportunity to comply with the CPD requirements and no representations have been received, as there has been no contact from Mr Rutherford.

16. Accordingly I find that Mr Rutherford is liable to disciplinary action under Byelaw 5.2.2(c).

## REGULATORY SANCTION

17. I note that in addition to no hours being recorded for 2021, there were no CPD hours recorded in 2019 nor 2020 by Mr Rutherford. The following CPD hours were recorded by the member in previous years: 207 hours in 2013, 137 hours in 2014, 310 hours in 2015, 111 hours in 2016, 41.5 hours in 2018 and 53 hours in 2018. Mr Rutherford comfortably exceeded the CPD requirements in each of these years.

18. I take into account the RICS Sanctions Policy and MR Rutherford's disciplinary history, which is as follows:

2019 – a Fixed Penalty Caution

2020 – a Fixed Penalty Caution and Fine.

19. The bundle documents show that Mr Rutherford has paid his membership fees for 2021, however there is no record that he has paid the fine imposed in 2021 for the 2020 breach.

20. The documentary evidence provided by RICS indicates that at least 8 reminders about the need to record her CPD on the system were sent at regular intervals to Mr Rutherford between 15 November 2021 and 7 June 2022. These were sent by email to the preferred address provided by the member and held on the his record, although three were also sent as a hard copy mailing to the members recorded address.

21. 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.'*

22. Further emails were sent to Mr Rutherford on 10 August 2022 and 16 November 2022, with the latter containing a letter advising of disciplinary proceedings. In addition RICS attempted to contact Mr Rutherford by telephone.

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

24. 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.

25. 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.

26. 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.

27. I consider the following are aggravating factors in this case:

- ~ Mr Rutherford clearly understands the process of recording CPD, as hours were successfully recorded in 2013, 2014, 2015, 2016, 2017 and 2018. However he has recorded no hours for consecutive years 2019, 2020 and 2021.

- ~ Mr Rutherford has not paid the fixed penalty fine in respect of his 2020 breach
- ~ There has been no engagement from Mr Rutherford despite frequent reminders being issued.

28. One mitigating factor is that prior to 2019, Mr Rutherford was very diligent in completing and recording CPD as he far exceeded the minimum requirement for many years.

29. I firstly considered whether to impose a sanction at all. I concluded that the repeated failure to record CPD for the last 3 years was very serious and in the absence of exceptional circumstances imposing no sanction would be neither proportionate nor appropriate.

30. 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 repeated non-compliance with CPD requirements.

31. In considering whether to impose an undertaking I took into account the mandatory nature of the CPD requirements, as a condition of membership. I also note the commitment given by Mr Rutherford on joining RICS to comply with this requirement, which he had now 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.

32. I went on to consider whether to impose a fine. I was mindful that a fine was previously imposed on Mr Rutherford for failing to meet his CPD requirements in 2020. This fine does not appear to have been paid and the sanction has not resulted in compliance for the following year.

33. I next considered conditions. For a sanction of conditions to be effective and appropriate Mr Rutherford would need to have demonstrated a willingness to engage with the regulatory process and RICS as the regulator, 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.

34. Having carefully considered the above sanctions and concluded that these were not proportionate or appropriate to the circumstances of this case, I determined that Mr Rutherford 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 Rutherford has failed to comply with a fundamental requirement to record CPD on multiple consecutive occasions. I am especially concerned that the application of a sanction for 2020 failings had 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.

35. Further Mr Rutherford 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 with this requirement 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.

36. In reaching this decision I have carefully weighed the wider public interest against Mr Rutherford'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.

### **ORDER MADE**

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



**Mr Rutherford shall be expelled from membership of RICS.**

### **TAKING EFFECT OF 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. RICS made an application for costs of £350, details of which were included in the letter of 16 November 2022 advising of these disciplinary proceedings. In accordance with Part VI of the Regulatory Tribunal Rules, I make the following order in respect to costs:

**Mr Rutherford shall 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.