

SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Mr Iain Grant

Single Member Decision of: Gillian Seager

Case Number: CON001598

Date of Decision: 23 January 2023

CHARGE

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 of time 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 online. The Rules of Conduct for Members 2007, version 6 provides:

‘Continuing Professional Development [CPD]

6. Members shall comply with RICS’ requirements in respect of continuing professional development.’

2. RICS’ requirements in respect of CPD are set out in the document entitled ‘CPD Requirements and obligations’. The key requirements are as follows:
 - (i) All 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, and the remainder can be informal.
 - (iii) 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.
 - (iv) All members must record their CPD activity online by 31 January.
3. It is alleged that Mr Iain Grant (the Regulated Member) has not complied with the above requirement.
4. RICS is required to prove the charge to the civil standard. There is no requirement for the member to prove anything.

MATERIAL CONSIDERED

5. A bundle has been provided which includes the following:
 - RICS Rules, Guidance, Law and Procedures (extracts)
 - Investigation report part 1.
 - Statements of Carol Kerr, Lead Investigator and exhibits.
 - CPD requirements and obligations and related documentation
 - Investigation report part 2.
 - Statements of Claire Hoverd, Regulations Support Team Manager

- Correspondence with the Regulated Member, including email of 11 August 2022, letter 23 November 2022. Email from the Regulated Member 23 November 2022.
 - Schedule of costs.
 - Head of Regulation recommendation, 5 December 2022
6. The material has been considered in accordance with the three stages. In brief, the first stage is to consider whether RICS has proved the facts of the charge. If so, the next stage is to determine if the breach is so serious, that the Regulated Member is liable to disciplinary action. If that is the case then consideration is given to decide what sanction, if any, may be imposed.

BACKGROUND

7. The Regulated Member (0072687) was admitted to RICS on 12 December 1985.

FINDINGS OF FACT

8. I have considered the statement of the Lead Investigator which is signed and dated 23 November 2022. An exhibit to which is the Regulated Member's contact details as stored on RICS' system as at the date of the statement. In addition, there is an exhibit of the amount of CPD activity recorded for 2021 and a printout showing any concession(s) which the Regulated Member has been granted for the 2021 year.
9. It is noted that zero hours of CPD has been recorded online for 2021 by the Regulated Member.
10. The evidence confirms that no concession was granted for the relevant period for the Regulated Member and therefore they were required to complete and record their CPD for 2021.

11. Given the above, I am satisfied that there is sufficient cogent evidence to find the facts of the charge proved.

LIABILITY TO DISCIPLINARY ACTION

12. Given that the facts of the charge have been found proved, I have gone on to consider the next stage. This is to consider whether the breach is sufficiently serious as to render the Regulated Member liable to disciplinary action under Bye-law 5.2.2(c).
13. RICS is a professional membership organisation and sets standards for its members as a condition of membership. RICS has chosen to instigate a system which requires members to complete and record 20 hours of CPD per year.
14. 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.
15. It is submitted that it is reasonable of RICS to impose such requirement and it is in the interests of the maintenance of professional standards and public protection. Therefore, RICS submits the requirement to complete and record CPD is reasonable and the failure to comply is sufficiently serious as to give rise to a liability to disciplinary action.
16. It is noted that the CPD policy has been approved by the Standards and Regulation Board which gives a clear indication, in RICS' submission, of the seriousness with which failures to complete and record CPD are viewed both within and without the surveying community.
17. The Regulated Member has ignored a clearly expressed Rule and a requirement from their professional regulator. It is considered that on becoming a member

of RICS they accepted the requirement to adhere to RICS' Rules, Regulations and Bye-laws and that they may be liable to disciplinary action if they fail to do so.

18. If it is accepted that the requirement to complete and record CPD is legitimate for RICS to impose, then to be meaningful, any breaches must be regarded as, and treated as, serious, by both the regulator and the tribunal. If they are not, then the requirement would be meaningless.
19. The RICS Sanctions Policy makes it clear that even one sole breach of the requirement is sufficient to give rise to a liability for disciplinary action.
20. The requirement of RICS to complete and record CPD is reasonable and legitimate for a regulator to impose and an apparent breach on the part of the Regulated Member, as evidenced in this case, to comply with the requirement must be regarded and treated as serious.
21. The requirement to complete and record CPD is designed to ensure that members' knowledge is up to date and ultimately to ensure public protection.
22. The obligation to complete and record CPD is not dependent on the member receiving a CPD reminder from RICS. However, the evidence indicates that RICS has made efforts to communicate with members to remind them of their obligations.
23. There were no concessions and the Regulated Member continued to practise.
24. Public confidence in the profession and RICS as a professional regulator would be undermined if a finding of liability to disciplinary action was not made.
25. Accordingly, it is concluded that the Regulated Member is liable to disciplinary action under Bye-law 5.2.2 (c).

REGULATORY SANCTION

26. Having found the charge proved and determined that the Regulated Member is liable to disciplinary action, the next stage is that of considering the appropriate and proportionate sanction.
27. The full range of available sanctions is set out at Rule 107 of the RICS Regulatory Tribunal Rules, March 2020 and must be read in conjunction with paragraphs 15.1, 21.1 and 22.1 of the RICS Sanctions Policy: Guidance to the Regulatory Tribunal Rules, March 2020 (“Sanctions Policy 2020”)
28. Paragraph 22.1 of the Sanctions Policy 2020 states that the policy for CPD breaches is as follows:
 - First breach - Fixed Penalty (caution)
 - Second breach (within ten years of a receipt of a caution) - Fixed Penalties caution and fine)
 - Third breach (within ten years of receipt of a caution) referral to Single Member or Disciplinary panel with the presumption of expulsion.
29. It has been borne in mind that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as the regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
30. Consideration has been given to the evidence and in particular the following:
 - The statement of the Lead Investigator dated 23 November 2022 which states that this is the Regulated Member’s sixth breach of the requirement to complete and record their CPD online in accordance with Rule 6 of the Rules of Conduct for Members 2007.
 - Cautions were received in 2013 and 2014 and a caution and a fine for a breach in 2015. They were referred to a Disciplinary Panel for a

fourth breach in 2018 and for a fifth breach in 2019. The referrals to the Disciplinary Panel were overturned and did not proceed.

- It is submitted that the Lead Investigator exhibits copies of notifications sent to members informing them of the earlier sanctions and therefore the Regulated Member ought to have been aware of any previous sanctions imposed.
- The statement of the Regulations Support Team Manager dated 23 November 2022 clearly sets out the reminders which were sent to the Regulated Member.
- In terms of conduct and sanction this is considered to be the third breach. The Regulated Member has previously been issued with a caution (first year breach) and a caution and fine (second year breach). The presumption is that the Regulated Member be expelled for a third breach unless there are mitigating circumstances.
- The fixed penalty fine issued in relation to 2015 has been paid, along with membership fees for 2021. The former suggests that the Regulated Member acknowledges the second breach. The latter may suggest that the Regulated Member has the intention to practise without complying with CPD requirements.

Mitigating and Aggravating features

31. The following features of the case are considered to aggravate the breach:

- The Regulated Member has breached over several years, with this breach being the sixth. This would suggest there has been a complete disregard for the Rule until there was compliance in 2020.
- The Regulated Member was sent numerous reminders by RICS, an attempted telephone call and a subsequent email on 11 August 2022. There was no response.

- An extension was provided as set out in the charge and there remained a failure to comply.
 - There were no exemptions and the Regulated Member continued to practise.
 - In terms of sanction this is in effect the third breach within a 10 year period.
 - Having received previous sanctions for non-compliance, the Regulated Member would be fully aware of their obligations.
 - The Regulated Member appears to understand the process of recording CPD, as they recorded CPD in 2020 and at that time were in compliance.
 - There is no evidence of the CPD having been undertaken but not recorded
 - There has been no insight as to the importance of CPD, RICS being able to verify compliance and thereby ensure public protection.
32. There is no evidence of mitigation or explanation for the breach. On 23 November 2022, the Regulated Member responded to RICS and advised that he had confirmed his retirement with West Yorkshire Police and was presently working three days per week for a limited time until a replacement had been recruited. As such, he would not be renewing membership at the end of December.
33. In determining what sanction to impose, consideration has been given to Rule 22.1c of the RICS' Sanctions Policy which clearly states that for a third CPD the matter should be referred to a Single member or a Disciplinary Panel with the presumption of expulsion. However, this presumption is capable of being displaced if mitigating circumstances permit. 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.

34. It is considered that the matter is too serious for no sanction to be imposed.
35. A caution would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance and the fact that cautions have 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.
36. 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.
37. A fine has been previously imposed on the Regulated Member for failing to record CPD hours in 2015. The imposition of a further financial penalty on its own would serve no useful purpose as it has not resulted in compliance with the CPD requirements, save for that in 2020. Simply imposing a further fine would undermine the need to uphold the standards expected of all members and the deterrent effect on other members.
38. Imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances. 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. In this case the Regulated Member indicated that they will not be renewing their membership. It is considered that a condition to comply with CPD requirements would therefore not be appropriate and/or proportionate in this case.

39. The public would also expect that action would be taken by the professional regulator bearing in mind the CPD requirement is based upon the maintenance of professional standards and public protection. A failure to comply with the Rules is a serious matter and demonstrates a lack of professional responsibility and a disregard for the regulatory process.
40. I have seen no reason to depart from the presumption of expulsion and consider that to be the only proportionate and appropriate sanction.

ORDER MADE

41. Having considered the evidence, in accordance with Part V1 of the Regulatory Tribunal Rules 2020, the following order is made:

Mr Iain Grant is expelled from membership of RICS.

TAKING EFFECT OF THE ORDER

42. Rule 114 of the Regulatory Tribunal Rules 2020 states the following:

Following the expiry of 14 days from the service of the Single Member's 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 Rule 116.

43. The Regulated Member must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this decision, if they do not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

COSTS

44. In accordance with Rule 119 of the RICS Regulatory Tribunal Rules, version 1 2020, the following order is made in respect of costs:

Mr Iain Grant will pay costs in the amount of £350.

PUBLICATION

45. This decision will be published in accordance with Rule 120 of the Regulatory Tribunal Rules 2020, which states the following:

In accordance with the Regulatory Sanctions Publication Policy.

- a pending the expiry of 14 days following 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 charge/s 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.*