

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: MICHAEL SMITH - 1176967
Single Member Decision of: NICK TURNER FRICS
Case Number: CON001720
Date of Decision: 03 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 RULE/S BREACH

Rule 6 of RICS' Rules of Conduct for Members 2007 Version 6 requires that **Members shall comply with RICS' requirements in respect of continuing professional development.**

MATERIALS CONSIDERED

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.'

Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD.

All members must maintain a relevant and current understanding of our professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD.

BACKGROUND

1. RICS members are required to complete 20 hours of CPD activity by 31 December of each calendar year and record or cause it to be recorded.

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. 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 a referral to disciplinary proceedings.

FINDINGS OF FACT

5. Before considering any evidence, I reminded myself of the burden and standard of proof in these proceedings. The burden of proving the charges rests with RICS throughout.

The standard of proof is the civil standard, normally described as the balance of probabilities. Another way of expressing this is to ask whether a fact in issue is more likely than not to have occurred.

6. I have been provided with a bundle of 70 pages which include a CPD print out from RICS' online system for the member and some email correspondence between the member and the investigator.
7. I have considered the statement of Fay Reaney, the investigator. Mr Smith's CPD record for the years 2013 to 2021 is set out at paragraph 6 of that statement. At least 20 hours are recorded each year from 2013 to 2018. In 2019 11.5 hrs were recorded. No hours have been recorded for 2020 nor 2021.
8. I am satisfied that the member did not have any relevant concessions for 2021 as none are recorded by RICS.
9. I have also considered the statements of Claire Hoverd who explains how RICS communicates with members reminding them of their CPD requirements. She confirms that Mr Smith would have received reminders in November 2021 through to and including June 2022, totalling 8 in all. On each occasion the message reminding the member the importance of *"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."*
10. Pages 63 to 66 of the bundle contains email correspondence sent to Mr Smith informing him fully of the situation
11. Whilst the burden of proving a disciplinary charge will always rest with RICS, the responsibility for recording CPD hours will always remain with the member.
12. I have not been provided with any other evidence or representations from Mr Smith
13. I am satisfied that Mr Smith was fully aware of the requirement to complete 20 hours CPD in the calendar year 2021 and I therefore find as a matter of fact that Mr Smith has failed to comply with the CPD requirements, and the formal charge is proved.

LIABILITY FOR DISCIPLINARY ACTION

14. I am satisfied that the RICS requirement to complete and record CPD is reasonable and that the member's failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I take into account the fact that the CPD policy have 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 also 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. I am satisfied that Mr Robinson was given every opportunity to comply with the CPD requirements.

15. Accordingly, I am satisfied that Mr Smith is liable to disciplinary action.

REGULATORY SANCTION

16. I note that, in addition the failure to complete the required amount of CPD in 2019, no CPD hours were recorded by Mr Smith in 2020 or 2021. I note however, that CPD hours were recorded by the member in other years.
17. I take into account the RICS Sanctions Policy and Mr Smith's disciplinary history which is as follows

2019 - Caution

2020 – Caution and Fine
18. The bundle documents reveal Mr Smith has paid his fixed penalty for a second-year breach in 2020 and has paid his 2021 membership fees. Payment of fixed penalty may suggest the Member acknowledges the second-year breach and therefore would have been aware of his obligations to comply.
18. I note from the bundle that numerous reminders were sent to the Mr Smith's preferred email addresses. I am satisfied that the reminders were correctly addressed to the preferred address then held on file for the Regulated Member
19. I am therefore satisfied that the Mr Smith was aware of his CPD responsibilities.
20. RICS is a professional membership organisation and set standards for its members as a condition of membership. The completion and recording of CPD is an essential part of membership and provides protection to the public and ensures that professional standards are maintained. The overwhelming majority of RICS members complete and record at least 20 hours CPD each year. It is not unreasonable for RICS to impose sanctions on those members who do not do so.
21. I bear in mind that the purpose of sanctions is not to be punitive, although it may have that 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 have been taken into account any mitigating and/or aggravating factors.

22. I have not been provided with any mitigation by or on behalf of Mr Smith
23. I consider that the following aggravating factors are present in case:
 - There has been no engagement from the member despite frequent reminders
 - Mr Smith has been a member since 2008 and clearly understands the process of recording CPD as hours were successfully recorded in other years
 - This is his third breach of the regulation in a period of 10 years
24. I first considered whether to impose any sanction at all. This is a third breach of CPD requirements, and I conclude that imposing no sanction would be neither proportionate nor appropriate.
25. I went on to consider whether to impose a caution. I concluded that a caution would not adequately reflect the seriousness of this case given that this is a third offence and noting that two cautions have already been imposed for previous breaches. I also considered the imposition of a reprimand but similarly concluded that this would not reflect the seriousness of Mr Smith's repeated failures.
26. I considered whether to impose an undertaking and noted the mandatory nature of the CPD requirements. I do not consider it would be appropriate or proportionate to impose an undertaking on a member that merely sets out his professional obligations. Further I conclude that imposing such a sanction would undermine public trust and confidence in the regulatory process.
27. I then considered whether to impose a fine. I note that a fine was imposed on Mr Smith for failing to record his CPD hours for the year 2020. I conclude that it would not be appropriate to impose a further financial penalty as the last one had not resulted in compliance with the CPD requirements. Indeed, a further fine could, and in my view would, undermine the need to uphold the standards expected of all members and would undermine the deterrent effect on other members of the profession.
28. I went on to consider conditions. It is my view that it would not be possible to formulate conditions that would be realistic or achievable as any conditions would merely set out the requirements for the member to remember to comply with CPD regulations. Conditions are not likely to be appropriate for breaches of CPD requirements.

29. Having considered all sanctions short of expulsion and determined that none would meet the wider public interest, I have considered expulsion. I recognise that expulsion is the ultimate sanction 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 satisfied that a case of repeated failures to complete and record CPD hours is such a case. Mr Smith has repeatedly failed to comply with the CPD requirements of the profession, and he has not engaged with the investigation and subsequent disciplinary process. The evidence before me is that Mr Smith has committed a third breach of CPD requirements. I consider that there is no sanction other than dismissal that is both proportionate and appropriate in this case and determine that Mr Smith should be expelled from RICS.
30. In reaching my conclusion I have carefully balanced the wider public interest against the interests of Mr Smith and his professional standing. Whilst recognising that expulsion may have a major impact on Mr Smith, I consider that the interests of the public and the profession far outweigh the interests of the member in this case. Finally, I have found no reason to go against the presumption in paragraph 21.1 of the Sanctions Policy which 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 rules.

Order Made

31. Having read the papers and considered the evidence, in accordance with Part VI of the Disciplinary Registration and Appeals Panels Rules, I make the following order:

That Mr Michael Smith shall be expelled from membership of the RICS

Taking Effect of the Order

32. In accordance with Part VI of the Disciplinary Registration and Appeal Panels 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

33. In accordance with Part VI of the DRAP Rules 2019 I make the following order in respect of costs:

Mr Michael Smith will pay costs in the amount of £350

Publication

34. This decision will be published in accordance with Part VI of the Disciplinary Registration and Appeal Panel Rules, which states the Single Members Record of Decision will be published following the expiry of 14 days from the service of the Single Member's decision upon the Regulated Member
35. The Single Member's recorded decision will be published following the expiry of 14 days.