

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Mr Shunmugam Naidoo - 1270190

Single Member Decision of: Ms Gillian Seager

Case Number: CON001677

Date of Decision: 3 February 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 Shunmugam Naidoo (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 Natasha Reid, 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, 9 August 2022, 28 November 2022.
 - Schedule of costs.
 - Head of Regulation recommendation, 13 January 2023

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 (1270190) was admitted to RICS on 15 April 2016. The Regulated Member is based in South Africa and the contact details record him as being a Contracts Manager with WK Construction (SA) Pty Ltd.

FINDINGS OF FACT

8. I have considered the statement of the Lead Investigator which is signed and dated 28 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 2021.
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 the requirement is to
 - Ensure consistent standards within the profession
 - Ensure 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 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. Accordingly, it is concluded that the Regulated Member is liable to disciplinary action under Bye-law 5.2.2(c).

REGULATORY SANCTION

25. 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.
26. 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")

27. 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.
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. Consideration has been given to the evidence and in particular the following:
 - The statement of the Lead Investigator, which is signed and dated 28 November 2022 and confirms that this is the Regulated Member's third breach of the requirement to complete and record their CPD online in accordance with Rule 6 of the Rules of Conduct for Members 2007.
 - A caution was received in 2017 and a caution and a fine for a breach in 2020.
 - The Lead Investigator exhibits copies of notifications which ought to have been sent to the Regulated Member informing them of the earlier sanctions and therefore they Regulated Member ought to have been aware of any previous sanctions imposed.
 - The statement of the Regulations Support Team Manager, signed and dated 28 November 2022 clearly sets out the reminders which were sent to the Regulated Member.

- It is noted that the Regulated Member has previously been issued with a caution (first breach) and a caution and fine (second 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 2021 for the breach in 2020 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 had the intention to practise without complying with CPD requirements.
30. The following features of the case are considered to aggravate the breach:
- The Regulated Member has breached on two previous occasions with this being the third within a ten-year period. This would suggest there has been a disregard for the Rule.
 - The Regulated Member was sent numerous reminders by RICS, including an email on 9 August 2022. The Regulated member replied on the same day, apologising and asked for 30 days to update his CPD records for the last three years. However, there appears to have been no further contact from him and it has been confirmed in the Head of Regulation decision of 13 January 2023 that the CPD records have not been updated as at that date. There has been no reply to the investigation report.
 - 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.
 - Having received previous sanctions for non-compliance, the Regulated Member would be fully aware of their obligations.
 - 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.

31. There is no evidence of mitigation or explanation for the breach.
32. 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.
33. It is considered that the matter is too serious for no sanction to be imposed.
34. 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.
35. 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.
36. A fine has been previously imposed on the Regulated Member for failing to record CPD hours in 2020. 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. Simply imposing a further fine would undermine the need to uphold the standards expected of all members and the deterrent effect on other members.

37. 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 would comply with conditions. As above, the Regulated Member requested additional time in August 2022 to update their CPD records but there has been no evidence of such. It is considered that a condition to comply with CPD requirements would therefore not be appropriate and/or proportionate in this case.
38. The public would 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.
39. I have seen no reason to depart from the presumption of expulsion and consider it to be an proportionate and appropriate sanction.

ORDER MADE

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

Mr Shunmugam Naidoo is expelled from membership of RICS

TAKING EFFECT OF THE ORDER

41. 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.

42. 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

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

Mr Shunmugam Naidoo will pay costs in the amount of £350.

PUBLICATION

44. 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.*