

SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Stephen Doyle

Single Member Decision of: Gregory Hammond

Case Number: CON001582

Date of Decision: 14 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)

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 version 6 states: **Members shall comply with RICS’ requirements in respect of continuing professional development.**
3. The requirements of the Rules 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 may 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 £150.00 or equivalent. Non-payment of this fixed penalty within 28 days of notification will lead to the fine being increased to £250.00. A third CPD breach is likely to result in a referral to disciplinary proceedings.

FINDINGS OF FACT

5. I have been provided with a hearing bundle of 71 pages which includes a CPD printout from RICS' online system held for Mr Doyle and a witness statement from a CPD administrator.

6. I accept that if the printout does not contain an entry for a particular year, this indicates that no CPD was recorded for that year. There were only 3 hours' CPD recorded on Mr Doyle's CPD printout for the year 2021 and I note that there is no evidence that Mr Doyle has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement.

7. On the listing questionnaire signed by Mr Doyle on 7 November 2022, he has answered 'Yes' to the question asking whether he admits the charge against him.

8. I find the factual allegation proved based on the documentary evidence provided and Mr Doyle's admission.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

9. Mr Doyle has answered in his returned listing questionnaire that he does not accept that he is liable for disciplinary action. He has set out the following "*Reasons for not completing CPD during the period:*

- *I was working on a project that took up all my time
 - *the team went from 18 people to 5 people post covid*
 - *I had taken on more responsibility than was manageable.**
- *I was working 7 days a week and doing over 15+ hour days.*
- *I had no additional team resources.*
- *My company didn't allow for CPD and professional development.*
- *It has been mentioned in the documents provided that other colleagues in my company were in the same position, so you will see that this was a company case and point.*
- *Company wouldn't cover CPD training without a contractual payback. I could not justify nor financially commit to this during the year.*
- *I had a new born and was off on paternity leave for a period.*
- *I have been trying to sort out a new job as my current role was about to end due to the completion of the project.*
- *I notice from the report that only one call was made to me, and it did not dial through.*
- *I acknowledge that it is my responsibility to complete my CPD however I appreciate that emails were made to notify me of this as I can receive anything up to 300 emails a day and therefore I miss lots of emails."*

10. I have read Mr Doyle's submission carefully and consider that many of his points fall into the category of mitigation, rather than being justifiable reasons for his not being liable for disciplinary

action. I am satisfied that the RICS' requirements to complete and record CPD are reasonable and that Mr Doyle's failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this decision, I have taken into account the fact that the CPD policy has been approved by the Regulatory Board and is expressly stated in RICS' Rules. 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, further, that members maintain up to date knowledge in their areas of expertise in the interests of protecting the public and the wider public interest in maintaining confidence in the profession. 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. I am satisfied that Mr Doyle has been given every opportunity to comply with the CPD requirements.

11. Accordingly, I find that Mr Doyle is liable to disciplinary action.

SANCTION

12. I have borne in mind that the purpose of sanctions is not to be punitive, although they 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, and my decision must take account of all the circumstances of the case including any aggravating and mitigating factors.

13. I have noted that, in addition to only 3 hours' CPD being recorded by Mr Doyle for 2021, only 5 hours were recorded for 2017 and no hours at all for 2020. Sufficient CPD was recorded by Mr Doyle for the years 2016, 2018 and 2019.

14. I have taken into account the RICS Sanctions Policy, and Mr Doyle's disciplinary history for his 2017 and 2020 CPD failures, which is as follows:

2018 – Caution

2021 – Caution and fine

15. The case bundle sets out that Mr Doyle's RICS membership fees have been paid, as has the disciplinary fine issued in 2021 for the 2020 breach.

16. In the evidence bundle RICS confirms that a minimum of eight reminders were sent to the Regulated Member's preferred email address, and on three occasions also postal address, at regular intervals from November 2021. All of the written reminders contained the following paragraphs:

"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."

17. In April 2022, RICS noticed potential data discrepancies in migrating to a new system and send an additional mailing which contained the following paragraph:

“It has come to our attention that our most recent email to you on 23 February 2022 may have contained some inaccurate information regarding the possible sanction to be imposed as a result of your failure to record your 2021 CPD online. We apologise for any confusion this may have caused. Accordingly, we are giving you a further 30 days in which to record your 2021 CPD.”

18. On 11 August 2022 RICS attempted unsuccessfully to telephone Mr Doyle to remind him of his obligations.

19. I am satisfied that RICS has made reasonable efforts to contact the Regulated Member to remind him of his obligations. In paying his membership fee, Mr Doyle has engaged with this aspect of his RICS membership, but he did not respond to any of the CPD reminders.

20.. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is an RICS requirement to ensure the maintenance of professional standards and in turn give protection to the public and uphold the reputation of the profession. Compliance is not optional. It is not difficult to record CPD online and the CPD requirements are not dependent on RICS sending requirements to members.

21. In addition to the reasons he submitted for not being liable to disciplinary action in his returned listing questionnaire, Mr Doyle wrote the following in mitigation:

- *I will try to undertake CPD for the year Jane [sic] 2021 to Feb 2022.*
- *I will take time to schedule RICS [sic] CPD training, so as not to avoid missing the period.*

22. I find the following aggravating factors in this case:

- The charge found proved is Mr Doyle’s third breach of the CPD requirements in five years.
- Mr Doyle has already received a caution for his first CPD breach, and a caution and fine for his second CPD breach.
- Mr Doyle failed to respond to the several reminders sent from RICS to his registered email and postal addresses.

23. I find the following mitigating features:

- Mr Doyle’s admission to the charge and acceptance of his responsibility to complete his CPD.
- The willingness he has expressed to complete his CPD for 2021 and intent to schedule time to do so.

24. I did not accept Mr Doyle’s description of the busyness of his job as mitigation because it is his professional obligation as a member of RICS to complete his CPD. However, I did take account of his paternity leave, although personal mitigation carries less weight in regulatory than in criminal proceedings.

25. I first considered whether to impose no sanction. However, I concluded that Mr Doyle’s repeated failure to record CPD on time was serious and, in the absence of any exceptional circumstances, imposing no sanction would not be appropriate or proportionate. In reaching this decision, I noted that Mr Doyle has been sent numerous reminders by RICS. Whether or not he received these reminders, it is his responsibility to ensure that he complies with his CPD obligations.

26. I went on to consider imposing a caution. I decided that a caution would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance and the fact that a caution has already been imposed for the first breach and a caution and fine for the second breach.

27. I next considered the imposition of a reprimand. I determined that this is an appropriate sanction in this case but considered that a reprimand alone would not reflect the seriousness of the Regulated Member's failure to again comply with the requirement to complete and record CPD. I concluded that the sanction needed an additional component or components given the seriousness of the breach.

28. In considering whether to impose an undertaking in addition to a reprimand I took into account the mandatory nature of the CPD requirements. I noted that the CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date and ultimately to ensure public protection. I concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking in addition to a reprimand given that the Regulated Member should have been completing and recording online his CPD in any event.

29. I then considered whether to also impose a fine and decided that a fine would be an appropriate additional component of the sanction. I note that, in line with the approved regulatory policy, a £150.00 fixed-penalty fine in addition to a caution was imposed on the Regulated Member for failing to record his CPD hours for the year 2020, which was his second breach of his obligation to record CPD. I considered that this policy approach seeks to mark the increased severity of repeated breaches of the CPD requirement within a 10 year period, noting that a first breach is marked with a caution, a second breach with a caution and a fine, and a third breach gives rise to a presumption of expulsion. Although I am not ordering that Mr Doyle be expelled, for reasons explained below, I decided that the increased severity of a third breach and the need to uphold the public interest must be suitably marked by a fine that is significantly larger than the first fine. I therefore also impose a fine of £750.00.

30. I went on to consider conditions as a further component of the sanction. Imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances but I concluded that it would not be possible to formulate conditions which provide an adequate, workable and proportionate response in the circumstances.

31. I was mindful of the RICS Sanctions Policy paragraph 22.1 which states that there is a "*presumption of expulsion*" in respect of 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 Rule. However, I found that the circumstances of this case justify a departure from the presumption. Expulsion is a sanction of last resort and is rightly reserved for that category of case where there is no other means of protecting the public or marking the wider public interest. Having carefully considered all aspects of the case including the Regulated Member's disciplinary history, CPD history and all possible sanctions available to me, and having carefully balanced the aggravating and mitigating factors, I decided that Mr Doyle's case does not fall into this category. I considered that to go beyond a reprimand and a fine would be disproportionate in all the circumstances.

DECISION

31. Having read all the evidence and written submissions in this case, in accordance with Part VI of the Regulatory Tribunal Rules, I make the following order:

That Mr Stephen Doyle receives a Reprimand and is Fined in the sum of £750.00

TAKING EFFECT OF THE ORDER

32. The following Rule of the Regulatory Tribunal Rules 2020 applies in this case:

“114. Following the expiry of 14 days from 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.”

33. Mr Doyle, as the Regulated Member, must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this Single Member decision if he does not accept the decision, failing which the order will be deemed accepted by Mr Doyle and will take effect.

COSTS

34. RICS has submitted that costs should be determined by the Single Member and calculated in line with Supplement 2 to the Sanctions Policy – Fines, Costs and Administration Fees.

35. In accordance with Rule 119 of the Regulatory Tribunal Rules 2020, I make the following order in respect of costs:

That Mr Doyle shall pay costs in the amount of £350.00

PUBLICATION

36. Supplement 3 to the Sanctions Policy para 3.2 states that there is a “*presumption in favour of publication of Single Member decisions and decisions of the Disciplinary and Appeals Panel*”, and Rule 120 of the Regulatory Tribunal Rules 2020 states the following:

“120. 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 the 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.”*

37. I find that there are no exceptional circumstances in this case that would justify departing from RICS’ normal publication policy. I therefore order that publication takes place in accordance with Rule 120.

38. This concludes the determination.