

RICS Regulatory Tribunal Rules

Part VI, Regulatory Tribunal Single member decision

Regulated Member **Stephen Miller**
Case Number **CON001668**
Single Member Decision of Nick Hawkins
Date of decision **7th 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 regard 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 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

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 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 pounds. 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 74 pages which include a CPD print out from RICS' online system for the member and some email correspondence between the member and RICS staff.
7. I have considered the statement of Natasha Reid, the investigator. Mr Miller's CPD record for the years 2013 to 2020 is set out at paragraph 6 of that statement. Only 8 hours were recorded in 2015 and only 10 hours were recorded in 2016. At least 20 hours are recorded each other year in this period.
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 statement of Claire Hoverd who explains how RICS communicates with members reminding them of their CPD requirements. She confirms that Mr Miller would have received reminders on eight occasions between November 2021 and June 2022. On each occasion the message was sent by email.
10. Pages 65 to 69 give details for a phone call between Natasha Reid and Mr Miller, followed up by an email dated 5 December 2022. In short Mr Miller accepted that he was behind with his CPD requirements but stated that he would rectify the situation in 2022. I have no information about whether or not he did so, but that does not affect my decision as to the facts alleged.
11. I am satisfied that Mr Miller was fully aware of the requirement to complete 20 hours CPD in the calendar year 2021. I have no reason not to accept the account he has given to the investigator, but the fact remains that he has not completed or recorded the correct CPD hours for 2021. I therefore find as a matter of fact that Mr Miller has failed to comply with the CPD requirements, and the formal charge is proved.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

12. I am satisfied that the RICS requirement to complete and record CPD is reasonable and that the members 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 disciplinary action if they fail to do so. I am satisfied that Mr Miller was given every opportunity to comply with the CPD requirements, particularly as the time limit for recording CPS hours was extended until 26 May 2022.
13. Accordingly, I am satisfied that Mr Miller is liable to disciplinary action. The fact that he has engaged with the investigator does not alter this finding.

SANCTION

14. I note that, in addition the failure to complete or record CPD hours in 2021, only 8 CPD hours were recorded by Mr Miller in 2020 and only 6 hours were recorded in 2018. I note however, that CPD hours were recorded by the member in other years.
15. I take into account the RICS Sanctions Policy and Mr Miller's disciplinary history which is as follows:
- a. 2015- Caution
 - b. 2019 - Caution and Fine
16. Natasha Reid confirms that Mr Miller has not paid his fine for 2019, despite being sent a reminder. He has paid his membership fees in 2022.
17. I note from the bundle that there has been communication between Mr Miller and RICS. I have carefully considered the Listing Questionnaire dated 7 December 2022 in which Mr Miller explicitly acknowledges his CPD obligations.
18. I am therefore satisfied that the Mr Miller was aware of his CPD responsibilities.
19. 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.

20. 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 having been taken into account any mitigating and/or aggravating factors.
21. I have been provided with mitigation by Mr Miller as well as a means form. I have taken his means into account. I find his engagement with RICS during this process to be a mitigating factor as it shows insight and a wish to remediate his breach.
22. I consider that the following aggravating factors are present in case:
 - Mr Miller has not paid his fine from 2019
 - Mr Miller has been a member since at least 2013 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 6 years
23. 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.
24. 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 Miller repeated failures.
25. 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.
26. I then considered whether to impose a fine. I note that a fine was imposed on Mr Miller for failing to record his CPD hours for the year 2019. Non-payment of a fine is a significant aggravating feature as it shows a lack of respect for the disciplinary process. On the other hand, Mr Miller's engagement with the process might exceptionally allow for a sanction short of expulsion
27. 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 members to comply with CPD regulations. Conditions are not likely to be appropriate for breaches of CPD requirements.

28. Before reaching a conclusion, I have 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 and there is a presumption of expulsion in a case involving a third breach of CPD requirements. However, notwithstanding Mr Miller's non-payment of his 2019 fine, I have exceptionally concluded that he should be given one final chance to demonstrate that he is worthy of RICS membership and have concluded that a fine is the most appropriate sanction

29 In reaching my conclusion I have carefully balanced the wider public interest against the interests of Mr Miller and his professional standing. For the reasons stated above the balance of interests can exceptionally be met with a sanction short of expulsion.

30 It is my considered view that Mr Miller should be required to pay a significant fine in this case. In reaching a figure I have noted that he should have paid £250 in 2019. That figure should be added to any fine imposed for the 2021 breach and it would not be unreasonable to impose a more significant fine. Taking into account the totality principle (which requires me to consider all of the financial implications of my decision) I consider that a sum of £400 is the minimum that reflects a third breach. The fine imposed should include the earlier non-payment and is therefore increased to £650.

DECISION

31 Having read the papers and considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules, I make the following order:

That Mr Miller shall be fined £650

COSTS

32 In accordance with rule 119 of the Regulatory Tribunal Rules 2020 I make the following order in respect of costs:

Mr Miller will pay costs in the amount of £350

TAKING EFFECT OF THE ORDER

33 In accordance with Rule 119 of the Regulatory Tribunal Rules

114 Following the expiry of 14 days from the service of the record 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

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

PUBLICATION

34 This decision will be published in accordance with Rule 120 of the Regulatory Tribunal Rules, which 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 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 recorded decision will be published following the expiry of 14 days.*