

SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member:	Greig Hanley [1158992]
Single Member Decision of:	Alison Sansome
Case Number:	CON001602
Date of Decision:	03 April 2023

CHARGE:

The 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

1. RICS requirements in respect of CPD are set out in the document 'CPD Requirements and obligations.' They include the requirement 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'.
2. 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 members 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 Fine within 28 days of the notification will lead to the fine being increased to £250. A third CPD breach within the 10-year period is likely to result in referral to disciplinary proceedings.

MATERIALS CONSIDERED

3. In assessing this case I have considered a submitted bundle of 72 pages, which included:
 - RICS Rules, Guidance, Law and Procedure

- CPD Requirements and Obligations, CPD Guidance and CPD FAQs
- Witness Statements of Claire Hoverd (RICS Regulation Support Team Manager)
- Witness Statements of Carol Kerr (RICS Lead Investigator)
- Member CPD Record, Summary Information and Payment Information System Extracts
- Correspondence from RICS to the Member on this matter
- Correspondence received from the Member on this matter.

BACKGROUND

4. Mr Hanley joined RICS in 2011 and the mandatory requirement to complete and record CPD on the RICS CPD Portal commenced from 2013. As detailed above the charges being considered here relate to the non-completion and/or failure to record CPD for the CPD year 2021 (1 January 2021 to the 1 February 2022).

5. I have considered this case in three distinct stages, moving to the next stage only if there is a requirement to do so as a result of the findings of the previous stage. These stages are:

- i. Stage 1 – Finding of Fact
- ii. Stage 2 – Liability for Disciplinary Action
- iii. Stage 3 – Sanction

FINDINGS OF FACT

6. Having reviewed the submitted material, I accept the witness statement of Carol Kerr that for the years 2013-2016, where the printout does not contain an entry for a particular year, it indicates that no CPD was recorded that year, and from 2017 a relevant row for each year will appear but the hours will be blank if no CPD is recorded.

7. I can see from the evidence presented that there are no hours recorded on Mr Hanley's CPD record printout from the RICS portal for the year 2021. I also note that there is no evidence of any application by Mr Hanley for Concessions or Exemptions for 2021 which, if granted, could have waived, or reduced, the CPD hours required.

8. Furthermore Mr Hanley submitted a completed Listing Questionnaire dated 25 November 2022 and I note that this includes an admission of the charge against him.

9. As a result I find the fact of the allegation proved on the basis of the documentary and system evidence produced and as admitted by the member.

LIABILITY FOR DISCIPLINARY ACTION

10. I am satisfied that the RICS requirement to complete and record CPD is reasonable and indeed is a key feature of most UK regulating bodies. It is an essential part of maintaining RICS professional standards.

11. I note that the purpose of the RICS CPD requirement is to ensure consistent standards within the profession, ensure that members maintain up to date knowledge in their area of expertise and ensure that members demonstrate this by the completion of a record on the RICS system. Ultimately

this maintains professional standards in the interest of ensuring protection of the public and the wider public interest.

12. All members, on joining RICS, agree to adhere to the RICS Rules, Regulations and Byelaws and accept that they may be liable to disciplinary action if they fail to do so.

13. Mr Hanley's failure to comply with the CPD requirements for 2021 therefore falls short of the expected standards and is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I have considered that the CPD requirement is expressly stated as a RICS Rule and is set out in a CPD Policy approved by the RICS Regulatory Board. I note that the RICS Sanctions Policy makes it clear that a single breach of CPD requirements is serious and sufficient to give rise to a liability for disciplinary action.

14. In his completed Listing Questionnaire I note that Mr Hanley admits the charge and accepts that he is liable for disciplinary action as a result.

15. Accordingly I find that Mr Hanley is liable to disciplinary action under Byelaw 5.2.2(c).

REGULATORY SANCTION

16. I note that in addition to recording no CPD hours for 2021, 14.5 hours were recorded in 2019 and a breach occurred in 2013 (however detailed hours data is not available for this year due to a system error). Mr Hanley was granted concessions and exemptions for 2020 and therefore this year does not feature in this consideration.

17. In other years Mr Hanley recorded 21 hours in 2014, 25.5 hours in 2015, 25 hours in 2016, 27 hours in 2018 and 20.5 hours in 2018. It can be seen that Mr Hanley met the CPD requirements in each of these years.

18. I take into account the RICS Sanctions Policy and Mr Hanley's disciplinary history, which is as follows:

2013 – Breach - a Fixed Penalty Caution issued

2019 – Breach - a Fixed Penalty Caution and Fine.

19. The bundle documents show that Mr Hanley has paid his membership fees for 2021, and additionally RICS confirms that he has paid the fine imposed for the 2019 breach. The payment of this fine suggests that the member had knowledge of his 2019 breach and therefore should have been more aware of his CPD related obligations. However the pandemic period was a challenging time for many people and companies.

20. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is fundamental to allow RICS to ensure compliance to these standards and so enable public protection and confidence in the profession. Compliance is not optional.

21. Although RICS do send reminders to assist members, I would note that compliance with RICS Rules and CPD requirements, is the member's responsibility and therefore not directly dependent on

the sending or receipt of such reminders. The recording of CPD hours online is not a complex task and RICS provides guidance to support members in achieving this requirement.

22. I also note that an extension period was granted to Mr Hanley to submit his CPD by 26th May 2022, due to a concern that a previous reminder may not have contained accurate information about potential sanctions. This resulted in an additional reminder being issued advising of this extension.

23. The documentary evidence provided by RICS indicates that at least 8 reminders about the need to record his CPD on the system were sent at regular intervals to Mr Hanley between 15 November 2021 and 7 June 2022. These were sent by email to the preferred address provided by the member and held on his record, although three were also sent as a hard copy mailing to the members recorded address.

24. These reminders explicitly stated:

'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.'

25. Further emails were sent to Mr Hanley on 11 August 2022 and 1 November 2022, with the latter containing a letter advising of disciplinary proceedings. In addition RICS attempted to contact Mr Hanley by telephone on 11 August 2022 but there was no answer. However I note that Mr Hanley did finally respond to RICS on 29 November 2022, following the letter sent to him on the 1 November 2022.

26. I am therefore satisfied that the reminders and emails were correctly addressed to the preferred email address provided by Mr Manley and held on his record.

27. It is clear that Mr Hanley has been given every opportunity to comply with the CPD requirements.

28. I would highlight that the purpose of sanctions is not to be punitive, though they may have that effect. The purpose of sanctions is to protect the public, declare and uphold the standards of the profession and safeguard the reputation of the profession and of RICS as its regulator. Sanctions also have a deterrent effect.

29. I am also mindful that sanctions must be proportionate and therefore started by considering the lowest sanction, moving up the scale of gravity only when the sanction under consideration was insufficient to meet the public interest. I considered carefully the mitigating and aggravating factors of this case.

30. I consider the following are aggravating factors in this case:
- ~ Mr Hanley clearly understands the process of recording CPD, as hours were successfully recorded in 2014, 2015, 2016, 2017 and 2018. However he has recorded insufficient hours for 2013, 2019 and no hours for 2021.
 - ~ Whilst there has now been some limited engagement this was late in the process.
31. The mitigating factors in this case are:
- ~ In correspondence Mr Hanley admitted the charge and recognised his liability to disciplinary action.
 - ~ He accepts that there is no real excuse for his failure to record CPD and recognises that this stems from his own failings, which demonstrates an acceptance of responsibility.
 - ~ Mr Hanley has cited the difficulty that the COVID Lockdown(s) caused on the company and that during this period he completed CPD, and regular coaching activity, informally but failed to log it.
 - ~ Mr Hanley states that as of November 2022 he is actively logging and recording his CPD for 2022, although no evidence to support this was available in the bundle.
32. I firstly considered whether to impose a sanction at all. I concluded that the repeated failure to record sufficient CPD was very serious and in the absence of exceptional circumstances imposing no sanction would be neither proportionate nor appropriate.
33. I went on to consider whether to impose a caution. I concluded that a caution would not reflect the seriousness of the case, recognising that a caution had previously been given and not resulted in compliance. I also considered the imposition of a reprimand, but again concluded that a reprimand alone was insufficient to reflect the seriousness of the repeated non-compliance with CPD requirements.
34. In considering whether to impose an undertaking I took into account the mandatory nature of the CPD requirements, as a condition of membership. I also note the commitment given by Mr Hanley on joining RICS to comply with this requirement, which he had now failed to do on more than one occasion. I therefore determined that it would not be appropriate or proportionate to impose an undertaking and indeed doing so in such circumstances could undermine public trust and confidence in the regulatory process. I also considered conditions. As these are similar to undertakings in outcome as regards CPD, I determined that it would not be appropriate or possible to formulate conditions to address this failing, which would be realistic or achievable.
35. Next, I considered whether to impose a fine. I was mindful that a fine was previously imposed on Mr Hanley for failing to meet his CPD requirements in 2019. Although this fine had been paid, the sanction has not resulted in ongoing compliance. I am informed that Mr Hanley had applied for and was granted concessions and exemptions in 2020 and had therefore proactively managed his CPD obligations following the imposed fine.
36. I gave serious consideration to expulsion. This is a serious breach and the third non-compliance of CPD requirements within 10 years and indeed the sanctions policy presumes expulsion to be the likely outcome in such cases.

37. However I also gave consideration to the fact that the first breach leading to regulatory action was some years ago in 2013, when the current system of mandatory recording of CPD was first introduced. Following this Mr Hanley had met the CPD requirements consistently for 5 years. I also took account of the correspondence received from Mr Hanley in which he took full responsibility for his failure to record his CPD for 2021 and indicated his clear intent and action to record CPD going forward stating that as of November 2022 he was logging and recording CPD for the 2022 CPD year.

38. In these circumstances I determined that expulsion would be disproportionate and weighing the evidence I am of the view that Mr Hanley should have a further opportunity to comply with the CPD requirements going forward. He should however be in no doubt about the seriousness with which repeated failure to meet CPD requirements is viewed. As a result I determined that a reprimand and a fine should be issued to note the severity of this third breach in meeting his CPD obligations.

ORDER MADE

39. Having read all the papers provided and carefully considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules, I make the following order:

Mr Hanley shall receive a Reprimand and the imposition of a Fine of £500.

TAKING EFFECT OF ORDER

40. In accordance with Part VI of the Regulatory Tribunal 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

41. RICS made an application for costs of £350, details of which were included in the letter of 1 November 2022 advising of these disciplinary proceedings. In accordance with Part VI of the Regulatory Tribunal Rules, I make the following order in respect to costs:

Mr Hanley shall pay costs in the amount of £350.

PUBLICATION

42. In accordance with Part VI of the Regulatory Tribunal Rules, the Single Member's Record of Decision will be published following the expiry of 14 days from service of the Single Member's decision upon the Regulated Member.