

## RICS Regulatory Tribunal Rules 2020

### Part VI, Regulatory Tribunal Single Member Decision

**Regulated Member:** Mr J W Darbyshire  
**Single Member Decision of:** Gillian Seager  
**Case Number:** CON001571  
**Date of Decision:** 27 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 By-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 James Darbyshire (the Regulated Member) has not complied with the above requirement.

## **MATERIAL CONSIDERED**

4. A bundle of 70 pages has been provided which includes the following:
  - RICS Rules, Guidance, Law and Procedures (extracts)
  - Investigation report part 1
  - Statements of Ms J Edwards, Lead Investigator and exhibits.
  - CPD requirements and obligations and related documentation
  - Investigation report part 2
  - Statements of Ms C Hoverd, Regulations Support Team Manager
  - Correspondence with the Regulated Member
  - Schedule of costs
  - Head of Regulation recommendation, 27 January 2023
5. 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**

6. The Regulated Member (0849504) was admitted to RICS on 14 July 2004 and is based in the UK.

## **FINDINGS OF FACT**

7. 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.
8. I have considered the statement of the Lead Investigator which is signed and dated 16 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. I have also considered the statement of the Regulations Support Team Manager, signed and dated 17 November 2022, which explains how RICS communicates with Regulated Members reminding them of their CPD requirements. She confirms that the Regulated Member would have received reminders of the CPD process.
10. It is noted that 2.5 hours of CPD has been recorded online for 2021 by the Regulated Member.
11. 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.
12. While the burden of proving a disciplinary charge will always rest with RICS, the responsibility for recording CPD hours will always remain with the Regulated Member

13. Given the above, I am satisfied that there is sufficient cogent evidence to find the facts of the charge proved.

#### **LIABILITY TO DISCIPLINARY ACTION**

14. 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).
15. I am satisfied that the requirement of RICS to complete and record CPD is reasonable and that the Regulated 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 have taken into account the fact that the CPD policy has been approved by the Standards and Regulation Board and is an expressly stated RICS Rule.
16. In addition, the Sanctions Policy makes it clear that even a single breach of CPD requirements is sufficient to give rise to a liability to disciplinary action. I note that the purpose of the CPD requirements is to ensure that there are consistent standards within the profession and that 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. This is in the interest of protecting the public.
17. 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.
18. The Regulated Member has ignored a clearly expressed Rule and a requirement from their professional regulator. I consider 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. I am satisfied that the Regulated Member has been given every opportunity to comply with the CPD requirements, including an extension of time as detailed in the charge.

19. Accordingly, it is concluded that the Regulated Member is liable to disciplinary action under Bye-law 5.2.2 (c).

## **REGULATORY SANCTION**

20. 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.
21. The full range of available sanctions is set out at Rule 107 of the RICS Regulatory Tribunal Rules, March 2020 and is to 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")
22. 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 and consideration having been given to any mitigating and/or aggravating factors.
23. 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 Penalty caution and fine)

- Third breach (within ten years of receipt of a caution) referral to a Single Member or Disciplinary Panel with the presumption of expulsion.
24. Consideration has been given to the evidence and in particular the following:
- The statement of the Lead Investigator, signed and dated 16 November 2022, which states the Regulated Member has received the following in relation to CPD sanctions:
  - A caution in 2015 and a caution and a fine in 2017. The presumption is that the Regulated Member be expelled for a third breach unless there are mitigating circumstances.
  - I note that the Lead Investigator confirms that their reviews of the records indicate that at all relevant times the Regulated member's record contained a postal and email address. They have exhibited copies of notifications sent to members informing them of the earlier sanctions and therefore the Regulated Member ought to have been aware of any previous sanctions imposed.
  - The statement of the Regulations Support Team Manager, signed and dated 17 November 2022, clearly sets out the reminders which were sent to the Regulated Member. I am satisfied that the reminders were correctly addressed to the preferred address then held on file for the Regulated Member.
  - I am therefore satisfied that the Regulated Member would be aware of their CPD responsibilities.
  - The fixed penalty fine issued in 2018 in relation to non-compliance in 2017 has not been paid. Membership fees for 2021 have been paid.
25. The following features of the case are considered to aggravate the breach:

- The Regulated Member was sent numerous reminders by RICS, and an email on 3 August 2022 and there has been no engagement.
  - An extension was provided as set out in the charge and there remained a failure to comply.
  - This is the third breach within a ten year period.
  - Having received previous sanctions for non-compliance, the Regulated Member would be fully aware of their obligations.
  - The Regulated Member appears to understand the process of recording CPD and is able to do so, as they have successfully recorded CPD in other years.
  - There is no evidence of the CPD having been undertaken but not recorded and notifying RICS of such.
  - There has been no insight as to the importance of CPD, RICS being able to verify compliance and thereby ensure public protection.
26. There is no evidence of mitigation or explanation for the breach.
27. 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 breach, 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.
28. I consider the matter is too serious for no sanction to be imposed. This is a third breach of CPD requirements, and I conclude that imposing no sanction would be neither proportionate nor appropriate.
29. A caution would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance and noting that two cautions have

already been imposed for previous breaches. Similarly, a reprimand would not reflect the seriousness of the Regulated Member's repeated failures to comply with CPD requirements.

30. 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.
31. A fine has been previously imposed on the Regulated Member for failing to record CPD hours in 2017. The imposition of a further financial penalty on its own would serve no useful purpose as it has not resulted in full compliance with the CPD requirements. Simply imposing a further fine would, in my view, undermine the need to uphold the standards expected of all members and would undermine the deterrent effect on other members of the profession.
32. 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 comply with the conditions. In this case the Regulated Member has provided no indication of such. It is considered that a condition to comply with CPD requirements would therefore not be appropriate and/or proportionate in this case.
33. 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. The Regulated Member has repeatedly failed to comply with the CPD requirements of the profession and has not engaged with the investigation. The evidence is that the Regulated Member 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 the Regulated Member should be expelled from RICS.

34. In reaching my conclusion, I have carefully balanced the wider public interest against the interests of the Regulated Member and his professional standing. Whilst recognising that expulsion may have a major impact on the Regulated Member, I consider that the interests of the public and the profession far outweigh the interests of the Regulated Member in this case. Finally, I have found no reason to go against the presumption in the Sanctions Policy which states that expulsion is likely where there is a third breach of CPD there is a presumption of expulsion.

#### **ORDER MADE**

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

**Mr James Darbyshire shall be expelled from membership of RICS.**

#### **TAKING EFFECT OF THE ORDER**

36. 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.*

37. 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**

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

**Mr James Darbyshire will pay costs in the amount of £350.**

## **PUBLICATION**

39. 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.*