

SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Karel Konecny [5976011]
Single Member Decision of: Rosalyn Hayles
Case Number: CON001632
Date of Decision: 9 May 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)

ALLEGED RULES/BREACH

1. Bye-law 5.2.2 provides:

'A Member may be liable to disciplinary action under these Bye-Laws, whether or not he was a member at the time of the occurrence giving rise to that liability, by reason of:

...(c) a failure to adhere to these Bye-Laws or to Regulations or Rules governing Members' conduct ...'

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 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 or equivalent. Non-payment of the Fixed Penalty within 28 days of notification will lead to the fine being increased to £250. A third CPD breach is likely to result in referral to disciplinary proceedings.

MATERIALS CONSIDERED

5. I have been provided with and duly considered a bundle of 74 pages in total, consisting of the following documents: RICS Rules, Guidance, Law and Procedure; RICS' Investigation Report Part 1 – Facts and LDA, which includes a statement made by RICS' Lead Investigator, Natasha Reid, dated 19 January 2023, as well as a statement made by RICS' Regulations Team Support Manager, Claire Hoverd, dated 19 January 2023; RICS' Investigation Report Part 2 – Sanction, which includes a further statement made by each of Claire Hoverd and Natasha Reid (dated 19 January 2023); general correspondence

with Member, Disclosure and Response; Schedule of Costs; and the Head of Regulation decision dated 12 April 2023.

BACKGROUND

6. The statement of Natasha Reid within RICS' Investigation Report Part 1 exhibits printouts of records from RICS' electronic system relating to Mr Konecny's contact details (including his preferred email address) and recorded CPD activity in the period from 2013 to 2021. Natasha Reid's statement says that if the printouts do not show any entry for a particular year between 2013-2016, that indicates that no CPD was recorded for that year, and blank rows for any year between 2017-2019 indicates that no CPD was recorded for that year.
7. In relation to Mr Konecny's records, Natasha Reid states that the information shows that he recorded zero hours of CPD in 2016, 2020 and 2021. The exhibited printout of Mr Konecny's '*CPD Annual Summary Associated View*' (exhibit NR/2) confirms the information set out in Natasha Reid's statement. The exhibited printout of Mr Konecny's RICS Record (exhibit NR/3) also states that he did not have the benefit of a CPD concession.
8. The statement of Claire Hoverd with RICS's Investigation Report Part 1 sets out the communications which were sent to RICS members who had not completed the required CPD for the 2021 CPD year by the deadline (those communications being sent by email to each member's preferred email address as recorded on their RICS profile).
9. Claire Hoverd states that Mr Konecny was identified as being one of the members who had not recorded the required number of CPD hours for the 2021 CPD year, and that he therefore ought to have been sent email reminders about the requirements for completing and recording CPD on the following dates: 9 February 2022, 23 February 2022, 10 May 2022 and 7 June 2022. Ms Hoverd states that those reminders included standard wording noting that: the recipient had failed to comply with RICS' CPD requirements on two or more previous occasions within the preceding ten-year period; and *'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 the RICS'.

10. Claire Hoverd states a further mailing was sent out in April 2022 which said (in summary) that, due to the possibility of inaccurate information about potential sanction having been included in the email which had been sent on 23 February 2022, RICS would allow the recipients a further 30 days in which to record their CPD for the 2021 CPD year. Subsequently, the *'final sanction mailing'* was issued on 7 June 2022.

FINDINGS OF FACT

11. I refer to the statement of Natasha Reid within RICS' Investigation Report Part 1, which exhibits a printout of the record from RICS' electronic system relating to Mr Konecny's recorded CPD activity.
12. I accept that if the printout does not contain an entry for a particular year, that indicates that no CPD was recorded for that year. There is no entry on Mr Konecny's CPD printout in respect of the 2021 CPD year. I note that there is no evidence that he applied for any RICS Exemption or Concession which would have allowed him to avoid compliance with that requirement during that period.
13. Accordingly, I find the factual allegations proved, based on the documentary evidence produced by RICS.

LIABILITY FOR DISCIPLINARY ACTION

14. I am satisfied that RICS' requirements to complete and record CPD are reasonable and that Mr Konecny's failure to comply with those requirements is sufficiently serious to give rise to liability for disciplinary action. In reaching that conclusion I have taken into account the fact that the CPD policy has 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 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.

15. I am satisfied that Mr Konecny was given every opportunity to comply with the CPD requirements. In reaching that conclusion I have taken account of the evidence that Mr Konecny previously complied with the CPD requirements for CPD years 2013, 2014, 2017, 2018 and 2019 and it is therefore clear that he was aware of those requirements.

16. While I note the evidence of Claire Hoverd about the reminders that would have been sent to Mr Konecny in 2022 concerning compliance with the CPD requirements, I am mindful that in any event his obligation to comply with the CPD requirements was not contingent on receiving any such reminders from RICS.

17. Accordingly, I am satisfied that Mr Konecny is liable to disciplinary action.

REGULATORY SANCTION

18. I note that the evidence from the CPD printout exhibited to Natasha Reid's statement is that Mr Konecny did not record any CPD in the 2021 CPD year.

19. I take into account the Sanctions Policy and Mr Konecny's disciplinary history which is as follows (as set out in Natasha Reid's statement within Part 2 of RICS' Investigation Report):

2015 caution

2016 caution and fine

2020 referral to Disciplinary Panel not pursued due to lapse in membership

20. In Natasha Reid's statement she states that Mr Konecny paid the fine issued in 2017 for his non-compliance with the CPD requirements in the 2016 CPD year. Mr Konecny has not paid his membership fees for 2021, but he has paid the membership fees for 2022 (as evidenced in the internal RICS correspondence exhibited to Natasha Reid's second statement). That statement also exhibits a copy of the letter which ought to have been sent to Mr Konecny relating to the caution and fine in respect of the 2016 CPD year. That letter stated that if Mr Konecny failed to comply with the CPD requirements in 2017 he would be referred to a Disciplinary Panel. The letter also said that any repeat of his failure to meet the CPD requirements in the

ten years following the letter's issue (in 2017) would result in a *'further penalty'*.

21. In the bundle of evidence before me the evidence of Claire Hoverd confirms that a minimum of 4 reminders would have been sent to Mr Konecny's preferred email address, at regular intervals, from February to June 2022. I am satisfied that the reminders would have been correctly addressed to the preferred address then held on file for Mr Konecny.
22. I note that material in the bundle of evidence before me (including the decision of the Head of Regulation decision dated 12 April 2023) indicates that Mr Konecny remains a member of RICS. The bundle of evidence includes some correspondence between Mr Konecny and the RICS in relation to payment of the 2021 subscription fees, but it contains no correspondence from Mr Konecny in response to the emails sent to him by RICS staff in 2022 and 2023 about his non-compliance with the CPD requirements.
23. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is RICS' line of sight to ensure compliance and in turn give protection to the public. Compliance is not optional. It is not difficult to record CPD online and the CPD requirements are not dependent on the RICS sending reminders to its members.
24. I bear in mind that the purpose of sanctions is not to be punitive (although a sanction may have a punitive 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 taken into account any mitigating and/or aggravating factors.
25. I am mindful that the Sanctions Policy sets out a presumption of expulsion in the event of a third breach of the CPD requirements within 10 years. That presumption can be rebutted, depending upon the circumstances of the case.
26. I consider that the following mitigating factors are present in this case:

- The information provided by RICS demonstrates that in 2013, 2014, 2017, 2018 and 2019 Mr Konecny complied with the CPD requirements.

27. I consider that the following aggravating factors are present in this case:

- Mr Konecny clearly understands the CPD requirements, as he successfully completed and recorded CPD activity in several prior years, as set out above.
- This is the fourth breach of the CPD requirements.
- Mr Konecny has not apologised for his breach, given any assurance about his future compliance with the CPD requirements, or engaged with the regulatory process.

28. I first considered whether to impose any sanction. I concluded that the repeated failure to record any CPD for the 2021 CPD year was serious, and in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. In reaching that conclusion I noted that Mr Konecny had been sent numerous reminders by RICS about the CPD requirements. Mr Konecny has not suggested that he did not receive the reminders, and even if he did not receive those reminders, it remained his responsibility to ensure his compliance with his obligations in terms of CPD.

29. I then considered whether a caution would be a sufficient sanction in this case. I concluded that a caution by itself would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance, as well as the fact that a caution had already been imposed in response to previous breaches, and had not resulted in Mr Konecny's subsequent compliance with the CPD requirements.

30. I also considered imposing a reprimand, but concluded that such a sanction would be inappropriate, in light of the Sanctions Policy which advises that a reprimand may be given where there has been/is a risk of public harm. I also considered that a reprimand by itself would be inadequate to reflect the seriousness of Mr Konecny's repeated failure to comply with the CPD

requirements.

31. In considering whether an undertaking would be the appropriate sanction, I took into account the mandatory nature of the CPD requirements. I also noted that the CPD requirements are designed to ensure that the skills and knowledge of members are kept up to date, ultimately in order to ensure public protection. I concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking, given that Mr Konecny should have been completing and recording his CPD as required in any event. I concluded that imposing such a sanction might undermine public trust and confidence in the regulatory process.
32. I considered whether imposing a fine would be a sufficient sanction in this case (either on its own, or in combination with another sanction). I recognised that there was a cumulative pattern of non-compliance and that a fine had already been imposed in response to a previous breach, which had only resulted in compliance for CPD years 2017, 2018 and 2019.
33. I went on to consider the possibility of imposing conditions, mindful that any condition imposed must be specific, measurable, achievable, realistic and time-bound as well as being proportionate and addressing all the issues. I took the view that imposing conditions may be appropriate in certain circumstances in response to non-compliance with the CPD requirements. However, I concluded that, in the absence of any engagement by Mr Konecny with the regulatory process, it would not be appropriate to impose conditions, as there is no evidence before me to indicate that he is likely to comply with any condition that might be imposed. I also concluded that imposing such a sanction might undermine public trust and confidence in the regulatory process in circumstances where the Member has breached the CPD requirements for a fourth time and has failed to provide any explanation for his actions or any assurance about his future compliance.
34. Having determined that imposing conditions would not meet the wider public interest, I concluded that Mr Konecny should be expelled from RICS membership. I recognised that expulsion is a sanction of last resort 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 had regard to

the mitigation (albeit limited) in this case, as set out earlier in this decision. I was also mindful that:

- The completion of CPD is required by RICS in order to ensure that RICS members remain professionally competent, and it thereby serves an important purpose in terms of both protecting the public and maintaining public confidence in the profession.
- Mr Konecny has not suggested that he completed any CPD at all in the 2021 CPD year.
- Mr Konecny has not offered an apology, demonstrated any understanding of the importance of CPD, or given any assurance about his future compliance.

I concluded on balance that any sanction other than expulsion would be insufficient and would undermine public trust and confidence. In reaching that conclusion I carefully balanced the wider public interest against Mr Konecny's interests. I had regard to the impact that expulsion may have on him and his professional standing, but concluded that his interests are significantly outweighed by the significant public interest concerns raised by this case. I was also mindful that paragraph 21.1 of the Sanctions Policy states that expulsion is likely where there is 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.

ORDER MADE

35. In accordance with Part VI of the Regulatory Tribunal Rules I make the following order:

That Karel Konecny shall be expelled from membership of the RICS.

TAKING EFFECT OF THE ORDER

36. 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

37. I note that Mr Konecny has not made any submission about the application made by RICS for costs. I therefore make the following order in respect of costs, in accordance with Part VI of the Regulatory Tribunal Rules:

Mr Konecny will pay costs in the amount of £350.

PUBLICATION

38. 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.