

SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Kyung Mi Oh [6712826]
Single Member Decision of: Rosalyn Hayles
Case Number: CON001682
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 67 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 30 November 2022), as well as a statement made by RICS' Regulations Team Support Manager, Claire Hoverd (dated 30 November 2022); RICS' Investigation Report Part 2 – Sanction, which includes a further statement made by each of Claire Hoverd and Natasha Reid (dated 30 November 2022);

general correspondence with Member, Disclosure and Response; Schedule of Costs; and the Head of Regulation's decision dated 27 March 2023.

BACKGROUND

6. The statement of Natasha Reid within RICS' Investigation Report Part 1 exhibits printouts of records from RICS' electronic system relating to Mrs Kyung Mi Oh's contact details (including her preferred email address) and recorded CPD activity in the period from 2017 to 2021. Natasha Reid's statement says that if the printouts show a blank row for any year between 2017-2019, that indicates that no CPD was recorded.
7. In relation to Mrs Kyung Mi Oh's records, Natasha Reid states that the information shows that she recorded 30 hours of CPD in 2017, zero hours in 2018, 20 hours in 2019, and zero hours in 2020 and 2021. The exhibited printout of Mrs Kyung Mi Oh's '*CPD Annual Summary Associated View*' (exhibit NR/2) confirms the information set out in Natasha Reid's statement. The exhibited printout of Mrs Kyung Mi Oh's RICS Record (exhibit NR/3) states that she did not benefit from a CPD exemption or concession.
8. The statement of Claire Hoverd with RICS' 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 Mrs Kyung Mi Oh 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 she therefore ought to have been sent email reminders about the requirements for completing and recording CPD on the following dates: 15 November 2021, 14 December 2021, 11 January 2022, 9 February 2022, 23 February 2022, 26 April 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 that 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 Mrs Kyung Mi Oh'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 Kyung Mi Oh's CPD printout in respect of the 2021 CPD year. I note that there is no evidence that she applied for any RICS Exemption or Concession which would have allowed her 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 Mrs Kyung Mi Oh'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 Mrs Kyung Mi Oh was given every opportunity to comply with the CPD requirements. In reaching that conclusion I have taken account of the evidence that she previously complied with the CPD requirements for CPD years 2017 and 2019, and it is therefore clear that she was aware of those requirements.
16. While I note the evidence of Claire Hoverd about the reminders that would have been sent to Mrs Kyung Mi Oh in 2021 and 2022 concerning compliance with the CPD requirements, I am mindful that in any event Mrs Kyung Mi Oh's obligation to comply with the CPD requirements was not contingent on receiving any such reminders from RICS.
17. Accordingly, I am satisfied that Mrs Kyung Mi Oh 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 Mrs Kyung Mi Oh did not record any CPD in the 2021 CPD year.
19. I take into account the Sanctions Policy and Mrs Kyung Mi Oh's disciplinary history which is as follows (as set out in Natasha Reid's statement within Part 2 of RICS' Investigation Report):
- 2018 caution
2020 caution and fine.
20. In Natasha Reid's statement she states that Mrs Kyung Mi Oh paid the fine issued in respect of her non-compliance in the 2020 CPD year, and that she paid her RICS membership fees for 2021. Natasha Reid's statement exhibits a copy of the letter which ought to have been sent to Mrs Kyung Mi Oh relating to the caution and fine in respect of the 2020 CPD year. That letter stated that if Mrs Kyung Mi Oh failed to comply with the CPD requirements in 2021, she might be referred to a Disciplinary Panel. It also said that a *'further penalty'* would apply in the event of a further breach by Mrs Kyung Mi Oh within the following ten years.

21. Claire Hoverd's statement confirms that multiple reminders would have been sent to Mrs Kyung Mi Oh's preferred email address, at regular intervals, between November 2021 and June 2022. I am satisfied that the reminders would have been correctly addressed to the preferred address then held on file for Mrs Kyung Mi Oh. I have considered the fact that the preferred email address (as set out in exhibit NR/1 to Natasha Reid's first witness statement) appears to contain an error in the spelling of Mrs Kyung Mi Oh's name, and that raises the possibility that the recorded details of the preferred email address are incorrect. However, I am mindful that; there is no evidence before me from Mrs Kyung Mi Oh about whether or not she received the reminders; and Mrs Kyung Mi Oh appears to have received correspondence which was sent by RICS to that email address, given that she paid the fine that was issued in respect of her non-compliance with the CPD requirements in the 2020 CPD year.
22. There is nothing in the bundle of evidence before me indicating that Mrs Kyung Mi Oh has engaged with the regulatory process in respect of her non-compliance with the CPD requirements for the 2021 year. There is evidence that Mrs Kyung Mi Oh was notified by RICS staff in August and November 2022 of the possibility of the matter being referred to a Single Member of the Regulatory Tribunal, and it would appear that she has not responded.
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 2017 and 2019 Mrs Kyung Mi Oh complied with the CPD requirements.

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

- Mrs Kyung Mi Oh clearly understands the CPD requirements, as she successfully completed and recorded CPD activity in 2017 and 2019. She also paid the fine issued in respect of her non-compliance with those requirements for the 2020 CPD year.
- This is the third breach of the CPD requirements.
- Mrs Kyung Mi Oh has not apologised for her breach, or given any assurance about 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 Mrs Kyung Mi Oh had been sent numerous reminders by RICS about the CPD requirements. Mrs Kyung Mi Oh has not suggested that she did not receive the reminders, and even if she did not receive those reminders, it remained her responsibility to ensure her compliance with her 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 Mrs Kyung Mi Oh'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 Mrs Kyung Mi Oh'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 Mrs Kyung Mi Oh should have been completing and recording her 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 has not resulted in her subsequent compliance.
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 Mrs Kyung Mi Oh with the regulatory process, it would not be appropriate to impose conditions as there is no evidence before me to indicate that she 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 two successive years and has failed to provide any

explanation for her actions or any assurance about her future compliance.

34. Having determined that imposing conditions would not meet the wider public interest, I concluded that Mrs Kyung Mi Oh 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 was mindful of limited evidence in mitigation in this case. 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.
- Mrs Kyung Mi Oh has not suggested that she completed any CPD at all in the 2021 CPD year.
- Mrs Kyung Mi Oh has not offered an apology, demonstrated any understanding of the importance of CPD, or given any assurance about her 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 Mrs Kyung Mi Oh's interests. I had regard to the impact that expulsion may have on her and her professional standing, but concluded that her 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 Kyung Mi Oh 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. Mrs Kung Mi Oh has not made any submissions about RICS' application for costs. I therefore make the following order in respect of costs, in accordance with Part VI of the Regulatory Tribunal Rules:

Mrs Kyung Mi Oh 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.