

## DECISION SHEET

### RICS Regulatory Tribunal Rules 2020

#### Part VI, Regulatory Tribunal Single Member Decision

**Regulated Member: Richard Denness**

**Single Member Decision of: Mark A. Griffin**

**Case Number: CON001577**

**Date of Decision: 14 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. Rule 6 of the Rules of Conduct for Members 2007 version 6 states “Members shall comply with RICS’ requirements in respect of continuing professional development.”
2. The key RICS CPD requirements are set out online 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. The remainder can be informal CPD.
  - iii. All members must maintain a relevant and current understanding of our professional and ethical standards during a rolling three-year period. Any learning undertaken to meet this requirement may count as formal CPD.

- iv. Members must record their CPD activity online by 31 January.
- 3. The CPD requirements and obligations documentation sets out what happens if a member fails to complete and record the CPD requirements.
  - i. A member's first breach will result in a Fixed Penalty caution and will remain on the member's disciplinary record for ten years.
  - ii. A second breach (within ten years of the receipt of a caution) will result in a Fixed Penalty caution and a fine (of £150 or local equivalent).
  - iii. RICS will also publish on the RICS website a list of members who are non-compliant for a second time.
  - iv. Non-payment of the Fixed Penalty fine within 28 days of notification will lead to the fine being increased (to £250 or local equivalent).
  - v. If the fine remains unpaid, debt recovery action will be taken, and the member may be referred to a Disciplinary Panel.
  - vi. A third breach (within ten years of the receipt of a caution) will result in potential referral to a Disciplinary Panel which may result in expulsion from membership and likelihood of costs being awarded against the member.

## **MATERIALS CONSIDERED**

- 4. I have been provided with a hearing bundle of 68 pages which includes:
  - i. A statement of Jamie Edwards (RICS Lead Investigator) dated 18 November 2022 setting out the results of a review of the RICS CRM computer system and the records kept on that system relating to the Regulated Member including three exhibits:
    - o JE/1 – a printout of the Regulated Member's contact details as stored on RICS's systems.
    - o JE/2 – a printout showing the amount of CPD activity that the Regulated Member has recorded during the years 2014-2022.
    - o JE/3 – a printout showing any concessions that the Regulated Member has been granted for the relevant year.
  - ii. A statement of Claire Hoverd (RICS Regulations Support Team Manager) dated 18 November 2022 detailing bulk (mainly email) communications made in support of the CPD reminder process from November 2021 to June 2022.
  - iii. A second statement of Claire Hoverd (RICS Regulations Support Team Manager) dated 18 November 2022 giving an overview of bulk (hard copy) letters sent in support of the CPS reminder process from 2013 onwards.

- iv. A second statement of Jamie Edwards (RICS Lead Investigator) dated 18 November 2022 confirming that no other sanctions (not related to CPD) have been imposed against the Regulated Member and that CPD related sanctions had been imposed in 2013 (Caution) and 2019 (Caution and Fine). The statement confirms that at all relevant times the Regulated Member's record contained a postal and email address and includes two exhibits:
  - o JE/1 – a copy of the caution/caution and fine letter that ought to have been sent to the Regulated Member in this case (the statement confirms that the Regulated Member has paid the fine issued in 2020 for non-compliance in 2019 which resulted in caution and fine).
  - o JE/2 – a printout from AX Member Transactions confirming that the Regulated Member has paid membership fees in 2021.
- v. Correspondence between RICS and the Regulated Member.

## **BACKGROUND**

- 5. RICS sent an email to the Regulated Member 11 August 2022 stating that the RICS Head of Regulation would consider whether to refer the matter of non-compliance with CPD requirements to a Single Member of the Regulatory Tribunal and noting that the Regulated Member should provide any information relevant to this decision within 14 days.
- 6. There is no response to this email from the Regulated Member in the bundle.
- 7. RICS sent a letter by email to the Regulated Member 18 November 2022 stating that a report had been prepared for the RICS Head of Regulation to decide whether to refer the matter of non-compliance with CPD requirements to a Single Member of the Regulatory Tribunal and noting that the Regulated Member should provide any written representations, references, evidence etc. within 14 days.
- 8. There is no response to this letter from the Regulated Member in the bundle.

## **FINDINGS OF FACT**

- 9. 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.
- 10. The first statement of Jamie Edwards together with exhibit JE/2 indicate that only 12 hours of CPD have been recorded online by the Regulated Member for 2021. For the

years 2013 to 2020 at least 20 hours were recorded except for the years 2013 and 2019 where no hours were recorded.

11. The first statement of Jamie Edwards together with exhibit JE/3 indicate that no CPD concessions (exemptions) were granted to the Regulated Member for the 2021 CPD year.
12. The first statement of Claire Hoverd indicates that the Regulated Member would have received reminders about CPD requirements on eight occasions between November 2021 and June 2022. On each occasion the message was sent by email.
13. I have not been provided with any other evidence or representation from the Regulated Member.
14. I am satisfied that the Regulated Member was fully aware of the requirement to complete 20 hours CPD in the calendar year 2021. I have no explanation why only 12 CPD hours were recorded and I have no evidence that any other CPD hours were in fact completed as no details have been provided by the Regulated Member. I therefore find as a matter of fact that the Regulated member has failed to comply with the CPD requirements, and the formal charge is proved.

## **LIABILITY FOR DISCIPLINARY ACTION**

15. I am satisfied that the RICS' requirements to complete and record CPD are 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 decision, I have taken into account the fact that the CPD policy has been approved by the Regulatory Board and is expressly stated in RICS' Rules. 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, further, that members maintain up to date knowledge in their areas of expertise in the interests of protecting the public and the wider public interest in maintaining confidence in the profession, I also 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. I am satisfied that the Regulated Member has been given every opportunity to comply with the CPD requirements particularly as the time limit for recording CPD hours was extended until 26 May 2022.
16. Accordingly, I find that the Regulated Member is liable to disciplinary action.

## **REGULATORY SANCTION**

17. In addition to the failure to complete CPD hours in 2021, no CPD hours were recorded by the Regulated Member for the years 2013 and 2019. I note however, that CPD hours were recorded by the Regulated Member for other years.

18. I take into account the RICS Sanctions Policy and the Regulated Member's disciplinary history which is as follows:
  - i. 2013 Caution
  - ii. 2019 Caution and Fine
19. The bundle documents indicate that the Regulated Member has paid the fine issued in 2020 and paid membership fees for 2021.
20. I note from the bundle that numerous reminders were sent to the Regulated Member's preferred email and postal addresses.
21. I am satisfied that the Regulated Member was aware of his CPD responsibilities.
22. RICS is a professional membership organisation and sets 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 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.
23. I bear in mind that the purpose of sanctions is not to be punitive, although it may have that effect. The purpose of the 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 taking into account any mitigating and/or aggravating factors.
24. I have not been provided with any mitigation by or on behalf of the Regulated Member.
25. I consider that the following aggravating factors are present in this case:
  - i. The Regulated Member has been a member since 1982 and clearly understands the process of recording CPD hours as hours were successfully recorded in other years
  - ii. This is the Regulated Member's third breach of the regulation in nine years
  - iii. The Regulated Member has not engaged with the investigation process despite frequent reminders
26. 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.
27. 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 the Regulated Member's repeated failures.

28. 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.
29. I then considered whether to impose a fine. I note that a fine was imposed on the Regulated Member for failing to record CPD hours for the year 2019 and this fine has been paid. I considered whether the fact that the Regulated Member had paid the fine might justify the imposition of a further caution and fine but concluded that it would not be appropriate as the financial penalty had not resulted in compliance with the CPD requirements.
30. 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 the Regulated Member to comply with CPD requirements. Conditions are unlikely to be appropriate for breaches of CPD requirements.
31. 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 CPD requirements and has not engaged with the investigation and subsequent disciplinary process. The evidence before me 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.
32. 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 RICS Sanction Policy, March 2020 paragraph 21.1 which 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 rules.

## **ORDER MADE**

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

**Mr. Richard Dennis shall be expelled from membership of the RICS**

## **TAKING EFFECT OF ORDER**

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**

In accordance with Part VI of the Regulatory Tribunal Rules, I make the following order in respect to costs:

**Mr. Richard Dennis will pay costs in the amount of £350**

## **PUBLICATION**

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.