

**RICS Regulatory Tribunal Rules 2022**  
**Part VI, Regulatory Tribunal Single Member Decision**

**Regulated Member:** Gabor Borbely  
**Single Member Decision of:** Peter Baker  
**Case Number:** CON001804  
**Date of Decision:** 23 January 2023

**CHARGE**

The charge against the Regulated Member is:

Between 1 January 2022 and 1 February 2023, 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.

**Contrary to Rules 1 and 2 of the Rules of Conduct**

**The Regulated Member is therefore liable to disciplinary action under Bye-law 5.2.2(c)**

**RULES & CPD REQUIREMENTS**

1. Rule 1 of the Rules of Conduct states: *Members and firms must be honest, act with integrity and comply with their professional obligations, including obligations to RICS.*
2. Appendix A of the Rules of Conduct set three mandatory professional obligations for RICS members. Mandatory professional obligation 1 states: *Members must comply with the CPD requirements set by RICS.*
3. Rule 2 of the Rules of Conduct states: *Members and firms must maintain their professional competence and ensure that services are provided by competent individuals who have the necessary expertise.*
4. Example *behaviour* 2.1 of the Rules of Conduct states: *Members and firms only undertake work that they have the knowledge, skills and resources to carry out competently.*

5. RICS' CPD requirements for members are:

- All members must undertake a minimum of 20 hours CPD each calendar year (January to December).
- Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD.
- All members must maintain a relevant and current understanding of our professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD.
- Members must record their CPD activity online by 31 January.

### **MATERIALS CONSIDERED**

6. I have been provided with an evidence bundle of 66 pages arranged in five sections:

- Section A - RICS Rules, Guidance, Law and Procedure
- Section B - Investigation Report Part 1 – Facts and LDA (submissions and evidence), including:
  - RICS' CPD requirements and obligations, and CPD FAQs
  - Statement of Fay Reaney dated 2 November 2023 with three exhibits.
  - Statement of Claire Hoverd dated 2 November 2023
- Section C - Investigation Report Part 2 – Sanction (submissions and evidence), including:
  - Statement of Claire Hoverd dated 2 November 2023
  - Statement of Fay Reaney dated 2 November 2023 with two exhibits.
- Section D - General Correspondence with Member, Disclosure and Response, including
  - Internal RICS emails concerning fine payment
  - Letter sent to the member concerning the disciplinary proceedings
  - Schedule of Costs
- Section E - Head of Regulation Decision

### **BACKGROUND**

7. Mr Borbely was admitted to RICS on 20 July 2012.

8. The RICS Rules of Conduct set out the standards of professional conduct and practice expected of RICS members. The Rules of Conduct place a professional obligation on members to comply with the CPD requirements set by RICS. RICS may grant concessions to the 20-hour minimum CPD requirement in certain circumstances. Members need to apply to RICS in order to gain a concession.

9. RICS' case is that Mr Borbely failed to carry out and record any hours of CPD for the calendar year 1 January 2022 to 31 December 2022. RICS submit that no concessions to this requirement applied to Mr Borbely for the year in question.
10. RICS also submit that Mr Borbely was contacted by RICS on six occasions by email and once by hard copy letter between 16 November 2022 and 13 March 2023 to remind him to record his CPD online for 2022. RICS used contact information held for Mr Borbely on RICS' systems.
11. Following a RICS investigation, Mr Borbely was notified in a letter dated 3 November 2023 of the referral of his case to the Head of Regulation for a decision over disciplinary action and was sent documents on which RICS intended to rely in support of their case. Mr Borbely was invited to respond to the charge and provide written representations, references and evidence in support of his case.
12. RICS' Head of Regulation referred Mr Borbely's case on 8 January 2024 to a Single Member of the Regulatory Tribunal for consideration and determination.

## **FINDINGS OF FACT**

13. The burden of proving the charge against Mr Borbely rests with RICS. The standard of proof is the civil standard (also described as the balance of probabilities) whereby the evidence supports that it is more likely than not that the event material to the charge occurred.
14. RICS rely on the following to prove the charge:
  - RICS' CPD Requirements and Obligations document and associated CPD FAQs;
  - A statement of Fay Reaney dated 2 November 2023 and exhibiting the following printouts:
    - FR/1 – The member's contact details stored on RICS' systems as of 2 November 2023
    - FR/2 – The amount of CPD activity that the member recorded for the years 2013-2022
    - FR/3 – Any concessions that the member was granted for the 2022 CPD year.
15. I have considered the statement of Fay Reaney. Mr Borbely's CPD record for the years 2013 to 2022 is set out in paragraph 6 of the statement and in exhibit FR/2. No completed CPD hours are recorded for 2017, 2018 or 2022 indicated by blank rows on the printout. Mr Borbely recorded over 20 hours in the other years. Exhibit FR/3 shows that no relevant concessions were recorded by RICS for the 2022 CPD year.

16. I have not been provided with any response to the charge, evidence or representations from Mr Borbely.
17. I am satisfied that Mr Borbely was under a mandatory professional obligation to carry out and record his CPD in 2022. I am also satisfied that RICS' records are accurate and show that 0 (zero) hours of CPD were recorded for the 2022 CPD year, and that Mr Borbely had not been granted a concession from the CPD requirements for that year.
18. I therefore find the facts as alleged are proved.

#### **LIABILITY FOR DISCIPLINARY ACTION**

19. In deciding on liability for disciplinary action I have taken into account the fact that RICS' CPD policy has been approved by its Standards and Regulation Board and is clearly expressed in Rules and a mandatory professional obligation. The purpose is to ensure consistent standards of competence in 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.
20. I also note that all practising RICS 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. In particular, all RICS practising members are required to maintain their professional competence as demonstrated, in part, by the completion and recording of CPD.
21. The seriousness of any failure to comply with this core obligation is also reflected in RICS' Sanctions Policy which makes clear that a single breach of CPD requirements is sufficient to give rise to a liability for disciplinary action. The Sanctions Policy also confirms that a third breach of CPD Rules within 10 years of receipt of a caution has a presumption of expulsion when referred to a Single Member or Disciplinary Panel.
22. RICS' CPD documents are readily available and clearly set out the requirements and obligations on members. The documents explain the circumstances in which concessions to the 20-hour minimum CPD requirement may be granted, provides guidance on how to input CPD onto the RICS portal and the support available for members who encounter difficulties in doing so, and explains the potential consequences for members who do not comply with the requirements.
23. I am satisfied that Mr Borbely was aware of his professional obligations and was given every opportunity to comply with the CPD requirements. In reaching that conclusion I have taken account of the evidence of Fay Reaney that Mr Borbely recorded his CPD on the RICS portal for the years 2013 to 2016 and 2019 to 2021. The statement of Claire Hovard in Section B of the bundle also confirms that numerous reminders were sent to

Mr Borbely about his need to record his CPD for 2022. I am satisfied that these reminders were correctly addressed and sent using the preferred contact details held on RICS' systems, and I am mindful that Mr Borbely's obligation to comply with the CPD requirements is not contingent on receiving reminders from RICS.

24. I am therefore satisfied that RICS' requirements to complete and record CPD are reasonable and that Mr Borbely's failure to comply with these requirements is sufficiently serious to give rise to liability for disciplinary action.

### **REGULATORY SANCTION**

25. In deciding on an appropriate and proportionate regulatory sanction I have taken into account RICS' written submission, the statements of Faye Reaney and Clare Hoverd in Section C of the bundle, RICS' Sanctions Policy, and Mr Borbely's disciplinary history which is as follows:

- 2018 – Caution
- 2019 – Caution and fixed penalty

26. I note that Mr Borbely has no other adverse disciplinary history.

27. I have borne in mind that the purpose of sanctions is not to be punitive, although it may have that effect. The purpose 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.

28. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The completing and recording of CPD is an essential part of membership, ensures that standards of professional competence are maintained, and provides protection for the public. It is not difficult to record CPD online, nor is it unreasonable for RICS to impose sanctions on members who do not do so. The CPD requirements are not dependent on RICS sending reminders to its Members.

29. The statement of Fay Reaney confirms that Mr Borbely did not pay the fixed penalty fine issued in 2019 for his second CPD breach in 2018. The fine was originally 197EUR and was increased to 329EUR when payment was not received within 28 days. Mr Borbely paid his RICS membership fees in 2022 and 2023.

30. I have not been provided with any mitigation from, or on behalf of, Mr Borbely.

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

- Mr Borbely has been a member of RICS since 2012, is a qualified professional member, and understands the process of recording CPD as he successfully recorded hours in other years.
  - This is the third breach of CPD requirements.
  - Mr Borbely failed to pay a fine for non-compliance in 2018 indicating a disregard for RICS' CPD requirements and regulatory sanctions.
  - Mr Borbely was sent numerous reminders to record his CPD in 2022 and has not engaged in the disciplinary process indicating a disregard for CPD requirements and regulatory processes.
32. I have first considered whether to impose any sanction at all. This is a third breach of CPD requirements and I have concluded that imposing no sanction would be neither proportionate nor appropriate.
33. A caution would not adequately reflect the seriousness of this case given the cumulative pattern of non-compliance. Two cautions have already been imposed for previous CPD breaches and have not achieved Mr Borbely's sustained compliance with CPD requirements.
34. I have also considered the imposition of a reprimand but concluded that this would not reflect the seriousness of Mr Borbely's repeated failures.
35. I do not consider that it would be appropriate or proportionate to impose an undertaking as to Mr Borbely's future conduct. Compliance with RICS' CPD requirements is clearly expressed in Rules and in a mandatory professional obligation which Mr Borbely should be complying with in any event as a condition of membership. Imposing such a sanction would undermine public trust and confidence in the regulatory process.
36. I have then considered whether to impose a fine, either on its own or in combination with another sanction. A fine was imposed on Mr Borbely in 2019 for failing to record his CPD hours for 2018. I have concluded that it would not be appropriate to impose a further financial penalty. The last fine was not paid and its imposition did not result in Mr Borbely's sustained compliance with RICS' CPD requirements. A further fine in these circumstances would also undermine the deterrent effect on other members of the profession and confidence in the regulatory process.
37. I have considered the possibility of imposing conditions on continued membership, mindful that any conditions must be specific, measurable, achievable, realistic and time-bound. It is my view that it would not be possible to formulate such conditions as they would merely set out the requirements for a member to comply with expressly stated CPD obligations.

38. After carefully exploring other sanctions, I have considered whether it is necessary to order Mr Borbely's expulsion from RICS membership. Expulsion is the ultimate sanction and should be reserved for those cases where there is no other means of protecting the public or the wider public interest.
39. Mr Borbely is an experienced member of RICS, understands the requirements of the profession to carry out and record CPD and has repeatedly failed to do so. He has demonstrated a disregard for RICS' CPD requirements and sanctions, and has not engaged with the disciplinary process. This is Mr Borbely's third breach of CPD requirements. I have found no reason to go against the presumption in the Sanctions Policy of expulsion for a third breach of the Rules of Conduct requirements for CPD within 10 years of receipt of a caution.
40. I therefore determine that expulsion from membership of RICS is both a proportionate and appropriate sanction in this case.

#### **ORDER MADE**

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

**That Garbor Borbely shall be expelled from membership of RICS**

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

42. 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**

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

**Garbor Borbely will pay costs in the amount of £350**

#### **PUBLICATION**

44. 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.