

SINGLE MEMBER REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2022 Regulatory Tribunal Single Member Decision

Regulated Member: Marina Smirnova (56066378)

Single Member Decision of: Gillian Seager

Case Number: CON001923

Date of Decision: 14 February 2024

CHARGE

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)

ALLEGED RULE/S BREACH

1. The Rules of Conduct for Members Rule 6 states:
'Continuing Professional Development [CPD]- 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 Ms Marina Smirnova (the Regulated Member) has not complied with the above requirement.
4. RICS is required to prove the charge to the civil standard. There is no requirement for the member to prove anything.

MATERIAL CONSIDERED

5. A bundle of some 70 pages has been provided which includes, but is not limited to, the following:
 - RICS Rules, Guidance, Law and Procedure (extracts)
 - CPD requirements and obligations and related documentation
 - Statements of Sadia Dookanwala, Investigation Specialist and exhibits, 26 October 2023 and 29 November 2023.
 - Statements of Claire Hoverd, Regulations Support Team Manager, 29 November 2023
 - Schedule of costs.
 - Head of Regulation recommendation, 9 January 2024.
6. 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, consideration is given to decide what sanction, if any, will be imposed.

BACKGROUND

7. The Regulated Member (5606378) was admitted to RICS on 10 February 2011.

FINDINGS OF FACT

8. I have considered the statement of the Investigator which is signed and dated 26 October 2023. It is stated that no hours of CPD were recorded online for 2022. A screen shot has been provided which indicates that no concessions have been granted for the relevant years.
9. Given the evidence confirms that no concession(s) were granted for the relevant period for the Regulated Member, they were required to complete and record their CPD for 2022. However, the evidence indicates that no CPD was recorded for this period.
10. Given the above, I am satisfied that there is sufficient cogent evidence to find the facts of the charge proved.

LIABILITY TO DISCIPLINARY ACTION

11. 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).
12. RICS is a professional membership organisation and sets standards for its members as a condition of membership. RICS has chosen to instigate a system that requires members to complete and record 20 hours of CPD per year. This is required by Rules 1 and 2 of the Code of Conduct.
13. The purpose of this requirement is to
 - Ensure consistent standards within the profession
 - Ensure 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.

14. It is submitted by RICS that it is reasonable to impose such requirement and it is in the interests of the maintenance of professional standards and public protection. Further, the failure to comply is sufficiently serious as to give rise to a liability to disciplinary action.
15. It is noted that the CPD policy has been approved by the Standards and Regulation Board which gives a clear indication, in RICS' submission, of the seriousness with which failures to complete and record CPD are viewed both within and without the surveying community.
16. The Regulated Member appears to have disregarded a clearly expressed Rule and a requirement from their professional regulator. As a member of RICS they accepted the requirement to adhere to RICS' Rules, Regulations and Bye-laws and they may be liable to disciplinary action if they fail to do so.
17. If it is accepted that the requirement to complete and record CPD is legitimate for RICS to impose, then to be meaningful, any breaches must be regarded as, and treated as, serious, by both the regulator and the tribunal. If they are not, then the requirement would be meaningless.
18. The RICS Sanctions Policy makes it clear that even one sole breach of the requirement is sufficient to give rise to a liability for disciplinary action.
19. I am of the view that the requirement of RICS to complete and record CPD is reasonable and legitimate for a regulator to impose and an apparent breach on the part of the Regulated Member, as evidenced in this case, to comply with the requirement must, as above, be regarded and treated as serious.
20. The requirement to complete and record CPD is designed to ensure that members' knowledge is up to date and ultimately to ensure public protection.
21. It is acknowledged that the obligation to complete and record CPD is not dependent on the member receiving a CPD reminder from RICS. However, the evidence suggests that RICS has made efforts to communicate with members

to remind them of their obligations. Details of such have been set out in the statement of Claire Hoverd.

22. There were no concessions and the Regulated Member paid her fees for 2022 and continued to practise.
23. I am of the view that public confidence in the profession and RICS as a professional regulator would be undermined if a finding of liability to disciplinary action was not made.
24. Accordingly, I have concluded the Regulated Member is liable to disciplinary action under Bye-law 5.2.2(c).

REGULATORY SANCTION

25. 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, if any to be imposed.
26. The full range of available sanctions is set out at Rule 107 of the RICS Regulatory Tribunal Rules, Version 2 with effect from 2 February 2022 and must be read in conjunction with paragraphs 15.1, 21.1 and 22.1 of the RICS Sanctions Policy: Guidance to the Regulatory Tribunal Rules, Version 9 with effect from 2 February 2022 ("Sanctions Policy 2022")
27. Paragraph 22.1 of the Sanctions Policy 2022 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 Penalties caution and fine)
 - Third breach (within ten years of receipt of a caution) referral to Single Member or Disciplinary Panel with the presumption of expulsion.
28. 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.

29. Consideration has been given to the evidence and in particular the following:

- The statement of the Investigator which indicates that this is the Regulated Member's third breach of the requirement to complete and record their CPD online in accordance with their obligations set out in Rule 6 of the Rules of Conduct for members, version 6 and 7.
- Exhibits have been provided with the Investigator's statement which set out the Regulated Member's contact details as stored on RICS' system as at the date of the statement (SD/1). In addition, there is an exhibit of the amount of CPD activity recorded during the years 2013-2022 (SD/2). I am advised the hours were cross referenced with the systems and the CPD recorded is as follows:

2013 – 20 hours

2014 – 10 hours+10 informal hours

2015 – 14 hours+10 informal hours

2016 - 0 hours (CPD breach recorded, caution)

2017 - 0 hours (CPD breach recorded, caution and fine)

2018 - 10 hours + 20 informal hours

2019 – 28 hours + 5 informal hours

2020 – 10 hours + 10 informal hours

2021- 32 hours

2022 – 0 hours

- It would therefore appear that the Regulated Member received a caution for a breach in 2016 and a caution and fine for a breach in 2017. It is submitted that copies of notifications were 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 presumption is that the Regulated Member be expelled for a third breach unless there are mitigating circumstances. It is noted that the Regulated Member has previously recorded CPD in 2013, 2014, 2015, 2018, 2019, 2020 and 2021 and are therefore well aware of their CPD obligations.

- In relation to disciplinary history, I have not been informed of any sanctions (aside from those related to CPD) which have been imposed against the Regulated Member.
- The Regulated Member paid her membership fees for 2022 which RICS submits suggests an intention to practise without complying with CPD requirements.
- The statement of the Regulations Support Team Manager clearly sets out the reminders which were sent to the Regulated Member.
- It would appear that the fine issued in 2018 for non-compliance in 2017 for non-compliance has not been paid.

Mitigating and Aggravating features

30. The following features of the case are considered to aggravate the breach:
- The Regulated Member was sent numerous reminders by RICS.
 - There were no concessions and the Regulated Member continued to practise.
 - There is no evidence of CPD being undertaken but not recorded.
 - Having received previous sanctions for non-compliance, the Regulated Member would be fully aware of their obligations.
 - There has been no response to the investigation report or any explanation for the alleged breach. Therefore, there has been no insight as to the importance of CPD, RICS being able to verify compliance and thereby ensure public protection.

- The Regulated Member has not paid their earlier fine and this could indicate a further disregard for her CPD obligations.
 - In mitigation there appears to be no previous regulatory history, save for the CPD breaches.
31. 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 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.
32. It is considered that the matter is too serious for no sanction to be imposed.
33. A caution would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance and the fact that cautions have already been imposed for previous breaches. Similarly, a reprimand would not reflect the seriousness of the Regulated Member's repeated failure to comply with CPD requirements.
34. 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.
35. A fine has been previously imposed on the Regulated Member for failing to record CPD hours. The imposition of a further financial penalty on its own would

serve no useful purpose as it has not resulted in compliance with the CPD requirements. Simply imposing a further fine would undermine the need to uphold the standards expected of all members and the deterrent effect on other members.

36. 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 there is no such reassurance.
37. The public would also expect that action would be taken by the professional regulator bearing in mind the CPD requirement is based upon the maintenance of professional standards and public protection. A failure to comply with the Rules is a serious matter and demonstrates a lack of professional responsibility and a disregard for the regulatory process.
38. Given all of the above, I have seen no reason to depart from the presumption of expulsion and consider it to be a proportionate and appropriate sanction.

ORDER MADE

39. Having considered the evidence, in accordance with Part V1 of the Regulatory Tribunal Rules 2022, the following order is made:

Ms Marina Smirnova is expelled from membership of RICS.

TAKING EFFECT OF THE ORDER

40. Rule 114 of the Regulatory Tribunal Rules 2022 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.

41. Within 14 days of service of this decision, the Regulated Member or RICS must notify the Head of Regulatory Tribunals in writing, if they consider the findings are wrong and/or consider the sanction is wrong.

COSTS

42. In accordance with Rule 119 of Part V1 of the RICS Regulatory Tribunal Rules, 2022, the following order is made in respect of costs:

Ms Marina Smirnova will pay costs in the amount of £350.

PUBLICATION

43. This decision will be published in accordance with Rule 120 of the RICS Regulatory Tribunal Rules 2022, 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 Sanctions Policy and*
- b the Single Member's Record of Decision will be published following the expiry of 14 days.*