



**SINGLE MEMBER OF REGULATORY TRIBUNAL  
DECISION SHEET**

**RICS Regulatory Tribunal Rules 2020**

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

**Regulated Member:** Wai Fung Dy  
**Single Member Decision of:** Rosalyn Hayles  
**Case Number:** CON001828  
**Date of Decision:** 22 January 2024

**CHARGE:**

The formal 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 Rule 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 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 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'.*
3. Appendix A to the Rules of Conduct sets out the core professional obligations for members and firms. It states that: *'The following professional obligations to RICS are mandatory for RICS members.*
  1. *Members must comply with the CPD requirements set by RICS'.*
4. 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'.*
5. RICS' requirements in respect of CPD are set out in the document *'CPD Requirements and obligations'* (the CPD requirements) and include requirements that:
  - (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.
6. 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 will result in referral to a disciplinary panel which may result in expulsion from membership and the award of costs against the member.

#### **MATERIALS CONSIDERED**

7. I have been provided with and duly considered a bundle of 66 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, Jamie Edwards (dated 18 December 2023), as well as a statement made by RICS' Regulations Team Support Manager, Claire Hoverd (dated 8 November

2023); RICS' Investigation Report Part 2 – Sanction, which includes a further statement made by each of Claire Hoverd and Jamie Edwards (each dated 8 November 2023); general correspondence with Member, Disclosure and Response; Schedule of Costs; and the Head of Regulation decision dated 8 January 2024.

## BACKGROUND

8. The statement of Jamie Edwards within RICS' Investigation Report Part 1 exhibits printouts of records from RICS' electronic system relating to Mr Wai Fung Dy's contact details (including his preferred email address) and recorded CPD activity in the period from 2013 to 2022. Jamie Edwards' statement says that: if the printouts show a blank row for any year between 2017-2021, that indicates that no CPD was recorded; and that for the years 2013-2016, if the printout does not contain an entry, that indicates that no CPD was recorded for that year.
  
9. In relation to Mr Wai Fung Dy's records, Jamie Edwards states that the information shows that he recorded 23.5 hours of CPD in 2014, 24 CPD hours in each of 2016, 2017 and 2019, but that he recorded only 10 CPD hours in 2018, 2 CPD hours in 2020 and zero hours in each of 2015 and 2022. The exhibited printout of Mr Wai Fung Dy's '*CPD Annual Summary Associated View*' (exhibit JE/2) confirms the information set out in Jamie Edwards' statement. The exhibited printout of Mr Wai Fung Dy's RICS Record (exhibit JE/3) shows that he did not benefit from a CPD exemption or concession for the 2022 CPD year. Jamie Edwards also states that no sanction was issued in respect of the 2020 CPD year '*due to Covid*'.

10. The statement of Claire Hoverd within RICS' Investigation Report Part 1 sets out the communications which were sent to RICS members who had not completed the required CPD for the 2022 CPD year by the deadline (those communications being sent by email to each member's preferred email address as recorded on their RICS profile).
11. Claire Hoverd states that Mr Wai Fung Dy was identified as being one of the members who had not recorded the required number of CPD hours for the 2022 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: 16 November 2022, 14 December 2022, 11 January 2023, 8 February 2023, 22 February 2023, 8 March 2023, and 13 March 2023. 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'*.

## FINDINGS OF FACT

12. I refer to the statement of Jamie Edwards within RICS' Investigation Report Part 1, which exhibits a printout of the record from RICS' electronic system relating to Mr Wai Fung Dy's recorded CPD activity.

13. 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 Wai Fung Dy's CPD printout in respect of the 2022 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.

14. Accordingly, I find the factual allegations proved, based on the documentary evidence produced by RICS.

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

15. I am satisfied that RICS' requirements to complete and record CPD are reasonable and that Mr Wai Fung Dy'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 Standards and Regulation Board and that compliance with the professional obligation regarding the CPD requirements set by RICS is expressly mandated within the RICS Rules of Conduct. 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 (and result in a Fixed Penalty (caution)). 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.

16. I am satisfied that Mr Wai Fung Dy was given every opportunity to comply with the CPD requirements. In reaching that conclusion I have taken account of the evidence that he previously complied with the CPD requirements for CPD years 2014, 2016, 2017 and 2019, and it is therefore clear that he was aware of those requirements.

17. While I note the evidence of Claire Hoverd about the reminders that would have been sent to Mr Wai Fung Dy in 2022 and 2023 concerning compliance with the CPD requirements, I am mindful that in any event Mr Wai Fung Dy's obligation to comply with the CPD requirements was not contingent on receiving any such reminders from RICS.

18. Accordingly, I am satisfied that Mr Wai Fung Dy is liable to disciplinary action.

#### **REGULATORY SANCTION**

19. I note that the evidence from the CPD printout exhibited to Jamie Edwards' statement is that Mr Wai Fung Dy did not record any CPD in the 2022 CPD year.

20. I take into account the Sanctions Policy and Mr Wai Fung Dy's disciplinary history which is as follows (as set out in Jamie Edwards' statement within Part 2 of RICS' Investigation Report):

2015 caution

2018 caution and fine.

21. In Jamie Edwards' statement she states that Mr Wai Fung Dy has not paid the fine issued in respect of his non-compliance in the 2018 CPD year, although he has paid his RICS membership fees for 2022 and 2023. Jamie Edwards' statement exhibits a copy of the letter which ought to have been sent to Mr Wai Fung Dy relating to the caution and fine in respect of the 2018 CPD year. That letter stated that if Mr Wai Fung Dy failed to comply with the CPD requirements on a further occasion in the next ten years a *'further penalty'* would apply. It also said that if Mr Wai Fung Dy failed to comply with the CPD requirements in 2019, he might be referred to *'a Disciplinary Panel'*.
22. Claire Hoverd's statement confirms that multiple reminders would have been sent to Mr Wai Fung Dy's preferred email address, at regular intervals, between November 2022 and March 2023. I am satisfied that the reminders would have been correctly addressed to the preferred address then held on file for Mr Wai Fung Dy.
23. There is nothing in the bundle of evidence before me indicating that Mr Wai Fung Dy has engaged with the regulatory process in respect of his non-compliance with the CPD requirements for the 2022 year. Mr Wai Fung Dy was notified on 8 November 2023 that the Head of Regulation was to consider whether to refer him to a Single Member of the Regulatory Tribunal in respect of his alleged non-compliance with the CPD requirements for the 2022 CPD year. It would appear that Mr Wai Fung Dy did not respond to that notification.
24. 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.

25. 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.

26. 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.

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

- The information provided by RICS demonstrates that in 2014, 2016, 2017 and 2019 Mr Wai Fung Dy complied with the CPD requirements.

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

- Mr Wai Fung Dy clearly understands the CPD requirements, as he successfully completed and recorded all of the required CPD

activity in 2014, 2016, 2017 and 2019.

- Mr Wai Fung Dy has not paid the fine issued in respect of his previous non-compliance with the CPD requirements in the 2018 CPD year.
- This is the third breach of the CPD requirements.
- Mr Wai Fung Dy has not apologised for his breach, or given any assurance about future compliance with the CPD requirements, or engaged with the regulatory process.

29. I first considered whether to impose any sanction. I concluded that the repeated failure to record any CPD for the 2022 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 Wai Fung Dy had been sent numerous reminders by RICS about the CPD requirements. Mr Wai Fung Dy 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.

30. 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 Wai Fung Dy's

subsequent compliance with the CPD requirements.

31. 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 Wai Fung Dy's repeated failure to comply with the CPD requirements.
32. 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 Wai Fung Dy 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.
33. 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 been paid and which has not resulted in Mr Wai Fung Dy's subsequent compliance. I therefore concluded that a fine would be an insufficient response to Mr Wai Fung Dy's repeated breach of the CPD

requirements.

34. 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 Wai Fung Dy with the regulatory process, it would not be appropriate to impose conditions as there is no evidence before me to indicate that he would be 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 failed to provide any explanation for his actions or any assurance about his future compliance.

35. Having determined that imposing conditions would not meet the wider public interest, I concluded that Mr Wai Fung Dy 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.

- Mr Wai Fung Dy has not suggested that he completed any CPD at all in the 2022 CPD year.
- Mr Wai Fung Dy 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 Wai Fung Dy'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 (unless there are extenuating circumstances) where there is a third breach of the Rules of Conduct requirements for CPD within 10 years of receipt of a caution for breach of the same Rule, and paragraph 22 of the Sanctions Policy refers to a '*presumption of expulsion*' in those circumstances.

#### **ORDER MADE**

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

**That Wai Fung Dy shall be expelled from membership of the RICS.**

## **TAKING EFFECT OF THE ORDER**

37. 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**

38. Mr Wai Fung Dy 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:

**Mr Wai Fung Dy will pay costs in the amount of £350.**

## **PUBLICATION**

39. 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.