RICS, Disciplinary, Registration and Appeal Panel Rules 2019

Part VI, Regulatory Tribunal Single member decision

Regulated Member	**Andrew GOSNEY**
Case Number	**CON001845**
Single Member Decision of	**Nick Hawkins**
Date of decision	**13 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 regard 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 2021

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

BACKGROUND

1. RICS members are required to complete 20 hours of CPD activity by 31 December of each calendar year and record or cause it to be recorded.

2. Annex A to the Rules of Conduct for Members 2021 states: **Members must comply with CPS requirements set by RICS.**

3. The CPS requirements 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. 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 pounds. A third CPD breach is likely to result in a referral to disciplinary proceedings.

FINDINGS OF FACT

5. 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.

6. I have been provided with a bundle of 63 pages which include a CPD print out from RICS' online system for the member and some email correspondence from RICS staff.

7. I have considered the statement of Jamie Edwards,, the investigator. Mr Gosney's CPD record for the years 2013 to 2022 is set out at paragraph 6 of that statement. No hours are recorded in 2022 and no hours were recorded in 2019 and 2021. At least 20 hours have been recorded each other year in this period.

8. I am satisfied that the member did not have any relevant concessions for 2022 as none are recorded by RICS.

9. I have also considered the statement of Claire Hoverd who explains how RICS communicates with members reminding them of their CPD requirements. She confirms that Mr Gosney would have received reminders on six occasions between November 2022 and March 2023. On each occasion the message was sent by email. 0n 13 March 2023 a seventh reminder was sent by post.

10. I am satisfied that Mr Gosney was fully aware of the requirement to complete 20 hours CPD in the calendar year 2022. I therefore find on the balance of probabilities that Mr Gosney did not complete his CPD hours. I therefore find that Mr Gosney has failed to comply with the CPD requirements, and the formal charge is proved.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

11. I am satisfied that the RICS requirement to complete and record CPD is reasonable and that the members failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I take into account the fact that the CPD policy have 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 also note that all members agree to adhere to the RICS Rules, Regulations and Bye-Laws and accept that they may be subject disciplinary action if they fail to do so. I am satisfied that Mr Gosney was given every opportunity to comply with the CPD requirements.

12. Accordingly, I am satisfied that Mr Gosney is liable to disciplinary action under Bye-Law 5.2.2(c).

SANCTION

13. I note that, in addition to the failure to complete CPD hours in 2022, no CPD hours were recorded by Mr Gosney in 2019 and 2021. I note however, that CPD hours were recorded by the Member in other years.

14. I take into account the RICS Sanctions Policy and Mr Gosney's disciplinary history which is as follows:

    a. 2019- Caution
    b. 2021 - Caution and Fine

15. Jamie Edwards confirms that Mr Gosney has not paid his fine for 2021. He has, however paid his membership fees in 2022.

16. As set out in paragraph 10 above, I am satisfied that Mr Gosney was aware of his CPD responsibilities.

17. 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 professional 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.

18. I bear in mind that the purpose of sanctions is not to be punitive, although it may have that 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 have been taken into account any mitigating and/or aggravating factors.

19. I have not been provided with any mitigation by or on behalf of Mr Gosney.

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

    - Ms Utting has been a Member since 2013 and clearly understands the process of recording CPD as hours were successfully recorded in other years.
    - This is his third breach of the regulation in a period of 4 years.
    - There has been no engagement from the member despite frequent reminders.

21. 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.

22. 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 Mr Gosney's repeated failures.

23. 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.

24. I then considered whether to impose a fine. I note that a fine was imposed on Mr Gosney for failing to record his CPD hours for the year 2022. I conclude that it would not be appropriate to impose a further financial penalty as the last one had not resulted in compliance with the CPD requirements. Indeed, a further fine could, and in my view would, undermine the need to uphold the standards expected of all members and would undermine the deterrent effect on other members of the profession.

25. 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 remember to comply with CPD regulations. Conditions are not likely to be appropriate for breaches of CPD requirements.

26. 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. Mr Gosney has repeatedly failed to comply with the CPD requirements of the profession. I consider that there is no sanction other than dismissal that is both proportionate and appropriate in this case and determine that Mr Gosney should be expelled from RICS.

27. in reaching my conclusion I have carefully balanced the wider public interest against the interests of Mr Gosney and his professional standing. Whilst recognising that expulsion may have a major impact on Mr Gosney, I consider that the interests of the public and the profession far outweigh the interests of the member in this case. Finally, I have found no reason to go against the presumption in paragraph 21.1.j. of the Sanctions Policy which states that expulsion is likely where there is a third breach of Rule 2 of the Rules of Conduct for members within 10 years of receipt of a caution for breach of the same rules.

DECISION

28. Having read the papers and considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules 2020, I make the following order:

That Mr GOSNEY is expelled from membership of RICS.

TAKING EFFECT OF THE ORDER

29. In accordance with Rule 114 of the Regulatory Tribunal Rules 2020

114 Following the expiry of 14 days from the service of the record of the Single Member's decision upon the Regulated Member, the Regulatory Sanction will be deemed to be excepted by the Regulated Member and the Regulatory Sanction imposed will take effect forthwith, unless notification has been received under Rule 116

The regulated member must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this decision, if he does not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

COSTS

1. In accordance with Rule 119 of the Regulatory Tribunal Rules 2020, I make the following order in respect of costs:

Mr GOSNEY will pay costs in the amount of £350.

PUBLICATION

2. This decision will be published in accordance with Rule 120 of the Regulatory Tribunal Rules 2020, which states the following:

120. 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 Regulatory Sanctions Policy and

b. the Single Member's recorded decision will be published following the expiry of 14 days.