

SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Ms Polly Simpson
Single Member Decision of: Alison Sansome
Case Number: CON001922
Date of Decision: 22 January 2024

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 Rule 1 and 2 of the Rules of Conduct for Members

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

ALLEGED RULE/S BREACH

1. RICS’ requirements in respect of CPD are set out in the document ‘CPD Requirements and obligations.’ They include the requirement that ‘All members must undertake a minimum of 20 hours CPD each calendar year (January to December)’ and that ‘Members must record their CPD activity online by 31 January.’
2. 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 members 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 Fine within 28 days of the notification will lead to the fine being increased to £250. A third CPD breach within the 10-year period is likely to result in referral to disciplinary proceedings.

MATERIALS CONSIDERED

3. In assessing this case I have considered a submitted bundle of 70 pages, which included:

- RICS Rules, Guidance, Law and Procedure
- An Investigation Report
- CPD Requirements and Obligations, CPD Guidance and CPD FAQs
- Witness Statements of Mohammed Adeel (RICS Lead Investigator)
- Witness Statements of Clare Hoverd (RICS Regulation Support Team Manager)
- Member CPD Record, Summary Information and Payment Information System Extracts
- Correspondence from RICS to the Member on this matter
- Any correspondence received from the Member on this matter (none)

BACKGROUND

4. Ms Simpson qualified for membership of RICS in October 2015 and as a result was not required to complete CPD until 2016, however she did record some CPD hours for both 2014 and 2015. Ms Simpson has, however, been required to comply with the annual CPD requirement from the start of the CPD recording year on 1 January 2016. As shown above the charges being considered here relate to the non-completion and recording of CPD for the CPD year 2022 (1 January 2022 to the 31 December 2022, to be recorded by 31 January 2023).

5. I have considered this case in three distinct stages, moving to the next stage only if there is a requirement to do so as a result of the findings of the previous stage. These stages are:

- i. Stage 1 – Finding of Fact
- ii. Stage 2 – Liability for Disciplinary Action
- iii. Stage 3 – Sanction

FINDINGS OF FACT

6. Having reviewed the submitted material, I accept that for the years 2013-2016, where the printout does not contain an entry for a particular year, it indicates that no CPD was recorded that year, and from 2017 a row appears for each year, which is blank if hours have been submitted.

7. I can see from the evidence presented that there were no hours recorded on Ms Simpson's CPD record printout from the RICS portal for the year 2022. I further note that there

is no evidence of any application by Ms Simpson for Concessions or Exemptions for 2022 which, if granted, could have waived, or reduced, the CPD hours required.

8. As a result I find the fact of the allegation proved on the basis of the documentary and system evidence provided.

LIABILITY FOR DISCIPLINARY ACTION

9. I am satisfied that the RICS requirement to complete and record CPD is reasonable and indeed CPD is a key feature of most UK regulating bodies. In this case the CPD requirement is an essential part of maintaining RICS professional standards.

10. I note that the purpose of the RICS CPD requirement is to ensure consistent standards within the profession, ensure that members maintain up to date knowledge in their area of expertise and ensure that members demonstrate this by the completion of a record on the RICS system. Ultimately this maintains professional standards in the interest of ensuring protection of the public and the wider public interest.

11. As part of their membership, all RICS members agree to adhere to the RICS Rules, Regulations and Byelaws and accept that they may be liable to disciplinary action if they fail to do so.

12. Ms Simpson's failure to comply with the CPD requirements for 2022 therefore falls short of the expected standards and is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I have considered that the CPD requirement is expressly stated as a RICS Rule and is set out in a CPD Policy approved by the RICS Regulatory Board. I note that the RICS Sanctions Policy makes it clear that a single breach of CPD requirements is serious and sufficient to give rise to a liability for disciplinary action.

13. Although RICS do send reminders to assist members, I would note that compliance with RICS Rules and CPD requirements, is the member's responsibility and therefore not directly dependent on the sending or receipt of such reminders. The recording of CPD hours online is not a complex task and RICS provides guidance to support members in achieving this requirement.

14. Ms Simpson has therefore been given every opportunity to comply with the CPD requirements. No representations or exceptional circumstances have been received from the member, as there has been no contact from Ms Simpson.

15. Accordingly I find that Ms Simpson is liable to disciplinary action under Byelaw 5.2.2(c).

REGULATORY SANCTION

16. I note that in addition to no hours being recorded for 2022, there were no CPD hours recorded in 2021, whilst in 2018 only 2.50 hours were recorded so the minimum hours required was not met by Ms Simpson in that year.

17. The following CPD hours were successfully recorded by the member in other years: 24.5 hours in 2016, 47 hours in 2017, 22 hours in 2019 and 20.5 hours in 2020; Ms Simpson therefore met or exceeded the requirements in each of these years.

18. I take into account the RICS Sanctions Policy and Ms Simpson's disciplinary history, which is as follows:

2018 – a Fixed Penalty Caution

2021 – a Fixed Penalty Caution and Fine.

19. The bundle documents show that Ms Simpson has paid the fine issued in 2022 for the 2021 breach and paid her membership fees for both 2022 and 2023.

20. The documentary evidence provided by RICS indicates that at least 6 reminders about the need to record her CPD on the system were sent at regular intervals to Ms Simpson between 16 November 2022 and 8 March 2023. These were sent by email to the preferred address held on the member's record, although a further reminder was sent by hard copy letter to the members recorded address on 13 March 2023.

21. These reminders explicitly stated:

'All practising RICS members are required to complete at least 20 hours of CPD (including 10 hours of formal CPD) by 31 December 2022 and record it online by 31 January 2023.'

'Our records indicate that, within a ten-year period, you have failed to comply with our CPD requirements on two or more previous occasions.'

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 RICS.'

22. A further email was sent to Ms Simpson on 23 November 2023, containing a letter advising of the disciplinary proceedings.

23. I am satisfied that the reminders and emails were correctly addressed to the preferred email address provided by Ms Simpson and held on her record.

24. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is fundamental to allow RICS to ensure compliance to these standards and so enable public protection and confidence in the profession. Compliance is not optional.

25. I kept in mind that the purpose of sanctions is not to be punitive, though they may have that effect. The purpose of sanctions is to protect the public, declare and uphold the standards of the profession and safeguard the reputation of the profession and of RICS as its regulator. Sanctions may also have a deterrent effect.

26. I was also mindful that sanctions must be proportionate and therefore started by considering the lowest sanction, moving up the scale of gravity only when the sanction under consideration was insufficient to meet the public interest. I also considered carefully the mitigating and aggravating factors of this case.

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

- ~ Ms Simpson clearly understands the process of recording CPD, as hours were successfully recorded in 2016, 2017, 2019 and 2020.
- ~ There has been no engagement from Ms Simpson despite frequent reminders being issued.

28. I did not identify any mitigating factors.

29. I firstly considered whether to impose a sanction at all. I concluded that the repeated failure to record the required amount of CPD was very serious and in the absence of exceptional circumstances imposing no sanction would be neither proportionate nor appropriate.

30. I went on to consider whether to impose a caution. I concluded that a caution would not reflect the seriousness of the case, recognising that a caution had previously been given for the 2018 breach and not resulted in compliance. I also considered the imposition of a reprimand, but again concluded that it was insufficient to reflect the seriousness of the non-compliance with CPD requirements.

31. In considering whether to impose an undertaking, I took into account the mandatory nature of the CPD requirements, as a condition of membership. I also note the commitment given by Ms Simpson on joining RICS to comply with this requirement, which she had then failed to do on more than one occasion. I therefore determined that it would not be appropriate or proportionate to impose an undertaking and indeed doing so in such circumstances could undermine public trust and confidence in the regulatory process.

32. I went on to consider whether to impose a fine. I was mindful that a fine was previously imposed on Ms Simpson for failing to meet her CPD requirements in 2021. Although this fine has been paid, this sanction has not resulted in any attempt at compliance for the following year (2022).

33. I next considered conditions. For a sanction of conditions to be effective and appropriate Ms Simpson would need to have demonstrated a willingness to engage with the regulatory process and with RICS as her regulator, which she had not done. I therefore determined that it would not be possible to formulate conditions to address this failing, which would be realistic or achievable.

34. Having carefully considered the above sanctions and concluded that these were not proportionate or appropriate to the circumstances of this case, I determined that Ms Simpson should be expelled from RICS membership. I recognise that expulsion is a sanction of last resort, to be used in cases where there is no other means of protecting the public and the wider public interest. I determined that this is such a case. Ms Simpson has failed to comply with a fundamental requirement to record CPD on multiple occasions. I am concerned that the application of a sanction for 2021 failings had not resulted in compliance or engagement for the 2022 year. I am also mindful that this is a serious breach and the third non-compliance of CPD requirements within 10 years. Indeed although not prescriptive, the sanctions policy presumes expulsion to be the likely outcome in such cases.

35. Further Ms Simpson has failed to engage with RICS on this matter despite reminders being issued. She has therefore given no indication that she has any intention of complying in the future. In these circumstances any other course of action would be likely to undermine public trust and confidence in the profession and in RICS. Such lack of engagement does indicate a lack of regard for the importance of regulatory requirements.

36. In reaching this decision I have carefully weighed the wider public interest against Ms Simpson's interests but have concluded that in this case the individual's interests were outweighed by the significant public interest concerns that non-compliance raises.

ORDER MADE

37. Having read all the papers provided and carefully considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules, Version 2, I make the following order:

Ms Simpson shall be expelled from membership of RICS.

TAKING EFFECT OF ORDER

38. In accordance with Rule 114, Part VI of the Regulatory Tribunal Rules, this order will take effect following the expiry of 14 days from service of the Single Member's decision upon the Regulated Member. The Regulatory Sanction will be deemed to be accepted by the Regulated Member, unless notification in writing has been 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

39. RICS made an application for costs of £350, details of which were included in the email of 23 November 2023 advising of these disciplinary proceedings. In accordance with Part VI of the Regulatory Tribunal Rules, I make the following order in respect to costs:

Ms Simpson shall pay costs in the amount of £350

PUBLICATION

40. In accordance with Rule 120 of Part VI of the Regulatory Tribunal Rules, the Regulated Member's name, charges and decision as to whether the charges were found proved or not proved and any Regulatory Sanction ordered will be published in line with the Sanctions Policy.

41. The Single Member's Record of Decision will be published following the expiry of 14 days from service of that record of decision upon the Regulated Member.