

## RICS Regulatory Tribunal Rules 2022

### Part VI, Regulatory Action by Single Members of the Regulatory Tribunal

<b>Regulated Member:</b>	<b>Yun Tong Fung</b>
<b>RICS Membership No:</b>	<b>1224901</b>
<b>Single Member Decision of:</b>	<b>Gregory Hammond</b>
<b>Case Number:</b>	<b>CON001841</b>
<b>Date of Decision:</b>	<b>19 February 2024</b>

#### 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 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)**

#### 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. Rule 1 of the Rules of Conduct effective from 1 February 2022 is as follows:

**Members and firms must....comply with their professional obligations, including obligations to RICS.**

Rule 2 is as follows:

**Members and firms must maintain their professional competence and ensure that services are provided by competent individuals who have the necessary expertise.**

3. The requirements of the Rules 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 may 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.

4. The CPD requirements confirm that for a first breach of this Rule the member will 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 £150.00 or equivalent. Non-payment of this fixed penalty within 28 days of notification will lead to the fine being increased to £250.00. A third CPD breach is likely to result in a referral to disciplinary proceedings.

#### **FINDINGS OF FACT**

5. I have been provided with a hearing bundle of 70 pages which includes a CPD printout from RICS' online system held for Mr Fung and a witness statement from a CPD administrator.

6. I accept that if the printout does not contain an entry for a particular year, this indicates that no CPD was recorded for that year. There was no CPD recorded on Mr Fung's CPD printout for the year 2022 and I note that there is no evidence that Mr Fung has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement.

7. Mr Fung has subsequently provided a statement attached to his email to RICS of 21 January 2024 listing 9.5 hours of informal CPD he says he conducted during January to June 2022. However, this was not recorded correctly by the deadline of 31 January 2023, nor was this sufficient CPD to satisfy the requirement for at least 20 hours of which a minimum of 10 hours must be formal CPD.

8. I find the factual allegation proved based on the documentary evidence provided.

#### **DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION**

9. Mr Fung says in his 21 January 2024 email, *"Because of COVID restriction imposed in Hong Kong, I didn't attend CPD training arranged by external parties. Besides, my whole family was relocated from Hong Kong to UK in August 2022 and therefore didn't attend any CPD training in later 2022. Apologise again and hope you will understand my difficulty in failure of fulfilling CPD requirement in 2022."* An earlier email from Mr Fung on 10 January 2024 stated, *"I apologise that I cannot comply with the CPD requirements in 2022. The reason behind is that I moved with my whole family from Hong Kong to UK in mid of 2022 which occupied a lot of my time in such relocation. I also had spent my effort on adopting the new environment. I noted from previous notification in mid of 2023 that my case of this failure was under reviewed by RICS but don't know I could reply and explain my difficulties and reasons for my failure."* [sic]

10. I have read Mr Fung's emails carefully and consider that his points fall into the category of mitigation, rather than being justifiable reasons for his not being liable for disciplinary action. I am satisfied that the RICS' requirements to complete and record CPD are reasonable and that Mr Fung's failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this decision, I have taken into account the fact that the CPD policy

has been approved by the Regulatory Board and is expressly stated in RICS' Rules. 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 consider that the purpose of the CPD requirements is to ensure that there are consistent standards within the profession and, further, that members maintain up to date knowledge in their areas of expertise in the interests of protecting the public and the wider public interest in maintaining confidence in the profession. I am aware 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. I am satisfied that Mr Fung was aware of the CPD requirements as a longstanding member of RICS who has previously completed CPD.

11. Accordingly, I find that Mr Fung is liable to disciplinary action.

### **SANCTION**

12. I have borne in mind that the purpose of sanctions is not to be punitive, although they 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, and my decision must take account of all the circumstances of the case including any aggravating and mitigating factors.

13. I have noted that, in addition to no CPD being recorded on time by Mr Fung for 2022, no CPD was recorded by him for 2017 and only 3 hours for 2018. Sufficient CPD was recorded by Mr Fung for the years 2013, 2014, 2015, 2016, 2019, 2020 and 2021.

14. I have taken into account the RICS Sanctions Policy, and Mr Fung's disciplinary history for his 2017 and 2018 CPD failures, which is as follows:

2017 – Caution

2018 – Caution and fine

15. The case bundle sets out that Mr Fung's RICS membership fees have been paid, as has the disciplinary fine issued in 2019 for the 2018 breach.

16. In the evidence bundle RICS confirms that a minimum of seven reminders were sent to the Regulated Member's preferred email address at regular intervals from November 2022. All of the written reminders contained the following paragraphs:

*“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.”*

17. Whilst RICS was unable to make a telephone call to Mr Fung because the telephone number on their system was still a Hong Kong number, despite his relocation to the United Kingdom, I am satisfied that RICS has made reasonable efforts to remind Mr Fung of his obligations. In paying his

membership fee, Mr Fung has engaged with this aspect of his RICS membership, but he did not respond to any of the emailed CPD reminders.

18. RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is an RICS requirement to ensure the maintenance of professional standards and in turn give protection to the public and uphold the reputation of the profession. Compliance is not optional. It is not difficult to record CPD online and the CPD requirements are not dependent on RICS sending requirements to members.

19. I find the following aggravating factors in this case:

- The charge found proved is Mr Fung's third breach of the CPD requirements.
- Mr Fung has already received a caution for his first CPD breach, and a caution and fine for his second CPD breach.
- Mr Fung failed to respond to the several reminders sent from RICS to his registered email address.

20. I find the following mitigating features:

- Mr Fung's emailed apologies for his failure.
- The evidence he provided, albeit late, of his having completed 9.5 hours' informal CPD in 2022.
- The lack of formal CPD hours being due to Covid restrictions in Hong Kong, albeit this would only have been applicable for the part of the year when he was resident there and he did not provide further evidence, nor did he attempt any of the online formal CPD training that is available.
- His statement that his relocation of his family from Hong Kong to the United Kingdom consumed a lot of his energies in the second half of the year, although personal mitigation carries less weight in regulatory than in criminal proceedings.

21. I first considered whether to impose no sanction. However, I concluded that Mr Fung's repeated failure to record CPD on time was serious and, in the absence of any exceptional circumstances, imposing no sanction would not be appropriate or proportionate. In reaching this decision, I noted that Mr Fung has been sent numerous reminders by RICS. Whether or not he received these reminders, it is his responsibility to ensure that he complies with his CPD obligations.

22. I went on to consider imposing a caution. I decided that a caution would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance and the fact that a caution has already been imposed for the first breach and a caution and fine for the second breach.

23. I next considered the imposition of a reprimand. I determined that this is an appropriate sanction in this case but considered that a reprimand alone would not reflect the seriousness of the Regulated Member's failure to again comply with the requirement to complete and record CPD. I concluded that the sanction needed an additional component or components given the seriousness of the breach.

24. In considering whether to impose an undertaking in addition to a reprimand I took into account the mandatory nature of the CPD requirements. I considered that the CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date and ultimately to ensure public protection. I concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking in addition to a reprimand given that the Regulated Member should have been completing and recording online his CPD in any event.

25. I then considered whether to also impose a fine and decided that a fine would be an appropriate additional component of the sanction. I took account that, in line with the approved regulatory policy, a £150.00 fixed-penalty fine in addition to a caution was imposed on the Regulated Member for failing to record his CPD hours for the year 2018, which was his second breach of his obligation to record CPD. I considered that this policy approach seeks to mark the increased severity of repeated breaches of the CPD requirement within a ten-year period, noting that a first breach is marked with a caution, a second breach with a caution and a fine, and a third breach gives rise to a presumption of expulsion. Although I am not ordering that Mr Fung be expelled, for reasons explained below, I decided that the increased severity of a third breach and the need to uphold the public interest must be marked by a fine that is significantly larger than the first fine and I consider that a multiple of five times the fine for the second breach would be appropriate. I therefore impose a fine of £750.00 in addition to the reprimand.

26. I went on to consider conditions as a further component of the sanction. Imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances but I concluded that it would not be possible to formulate conditions which provide an adequate, workable and proportionate response in the circumstances.

27. I was mindful of the RICS Sanctions Policy paragraph 22.1 which states that there is a “*presumption of expulsion*” in respect of a third breach of Rule 2 (CPD) within ten years of receipt of a caution for breach of the Rule. However, I find that the circumstances of this case justify a departure from the presumption. Expulsion is a sanction of last resort and is rightly reserved for that category of case where there is no other means of protecting the public or marking the wider public interest. Having carefully considered all aspects of the case including the Regulated Member’s disciplinary history, CPD history and all possible sanctions available to me, and having carefully balanced the aggravating and mitigating factors, I decided that Mr Fung’s case does not fall into this category. I considered that to go beyond a reprimand and a fine would be disproportionate in all the circumstances of the case.

## DECISION

28. Having read all the evidence and written submissions in this case, in accordance with Part VI of the Regulatory Tribunal Rules, I make the following order:

**That Mr Yun Tong Fung receives a Reprimand and is Fined in the sum of £750.00**

## TAKING EFFECT OF THE ORDER

29. The following Rule of the Regulatory Tribunal Rules 2022 applies in this case:

*“114. 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 and the Regulatory Sanction imposed will take effect forthwith, unless notification has been received under Rule 116.”*

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

### **COSTS**

31. RICS has submitted that costs should be determined by the Single Member and calculated in line with Supplement 2 to the Sanctions Policy – Fines, Costs and Administration Fees.

32. In accordance with Rule 119 of the Regulatory Tribunal Rules 2022, and having taken account of the submission by RICS, I make the following order in respect of costs:

**That Mr Fung shall pay costs in the amount of £350.00**

### **PUBLICATION**

33. Supplement 3 to the Sanctions Policy para 3.2 states that there is a *“presumption in favour of publication of Single Member decisions and decisions of the Disciplinary and Appeals Panel”*, and Rule 120 of the Regulatory Tribunal Rules 2022 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 the 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 Record of Decision will be published following the expiry of 14 days.”*

34. I find that there are no exceptional circumstances in this case that would justify departing from RICS’ normal publication policy. I therefore order that publication takes place in accordance with Rule 120.

35. This concludes the determination.