

SINGLE MEMBER OF THE REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2022

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member:	Thomas Heidelberg
Single Member Decision of:	Glenn Mathieson
Case Number:	CON001854
Date of Decision:	9 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.

ALLEGED RULE/S BREACH

Rules 1 and 2 of the Rules of Conduct.

MATERIALS CONSIDERED

In the course of my consideration of this matter, I have reviewed the following material:

- Investigation Report Part 1.
- Extracts from RICS's website detailing CPD requirements of members, as well as associated guidance.
- Statement of Samantha Bream dated 13 November 2023 and related exhibits (SB1, SB2 and SB3).

- Statement of Claire Hoverd dated 13 November 2023.
- Investigation Report Part 2.
- Additional statement of Claire Hoverd dated 22 November 2023.
- Additional statement of Samantha Bream dated 14 November 2023 and related exhibits (SB1 and SB2).
- Internal RICS correspondence in respect of Mr Heidelberger's CPD history and related sanctions.
- Correspondence between RICS and the Mr Heidelberger, including listing questionnaire, Statement of Means and Schedule of Costs.
- Head of Regulation Decision dated 16 January 2024.

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 on the RICS CPD portal. This obligation arises from Appendix A to the Rules of Conduct for Members 2021, which states that: *'Members must comply with CPD requirements set by RICS'*. The CPD requirements themselves are 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. Any earning undertaken in order to meet this requirement may count as formal CPD.
 - (iv) All members must record their CPD activity online by 31 January.
2. The CPD requirements state that a first breach of this rule would result in a Caution, to remain on the member's disciplinary record for 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

3. I have considered Ms Bream's statements and exhibits which clearly detail the fact of insufficient CPD hours being recorded on the RICS CPD portal for years 2017 (8 hours), 2021 (0 hours) and 2022 (16 hours). The CPD breach for 2022 is therefore not an isolated incident, and represents the third breach within a 10 year period.
4. It is clear that Mr Heidelberg is aware of the CPD requirements, as well as how to record such on the system. This is demonstrated by the fact of his compliance with the requirements in years other than those referred to above. It is also clear that Mr Heidelberg is aware of the seriousness with which RICS regards CPD breaches, and the consequences which may flow from such. This is demonstrated by the fact that he was previously issued with a caution and a further caution and fine in respect of the 2017 and 2021 breaches respectively. I am satisfied, from reviewing the statements and correspondence, that Mr Heidelberg was advised of, and reminded about, his CPD shortfall for 2022.
5. For these reasons, I have found the factual basis of the charge to be proved.

LIABILITY FOR DISCIPLINARY ACTION

6. I am satisfied that the RICS requirement to complete and record CPD is reasonable, and that a member's 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 has 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 also 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 am mindful of the fact 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.

7. I am satisfied that Mr Heidelbergger has had every reasonable opportunity to comply with the CPD requirements.
8. Accordingly, I am satisfied that Mr Heidelbergger is liable to disciplinary action under Bye-Law 5.2.2(c).

REGULATORY SANCTION

9. Breaches of CPD requirements are an inherently serious matter, and one which calls for a sanction, even in a single instance, save for exceptional circumstances. This is demonstrated by the sliding scale of sanctions indicated within the CPD requirements themselves.
10. I recognise that the purpose of sanctions is not to be punitive, although they may have that effect. Instead, 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.
11. Mr Heidelbergger has now breached the CPD requirements on 3 occasions in 10 years, and his most recent breach has been in spite of sanctions previously imposed. This demonstrates that those sanctions have failed to ensure that Mr Heidelbergger takes appropriate action to bring himself into compliance. Furthermore, I note the evidence that the previously issued fine remains unpaid.
12. In considering aggravating and mitigating factors, I consider that Mr Heidelbergger's disregard of the previous fine is significant. Also of significance is his failure to engage with present proceedings, or provide any response. This, therefore, means that there is no evidence of matters such as insight or remorse, or explanations for the breach, that could be taken into account as mitigating factors.

13. I am mindful of the need to consider each potential sanction in escalating order. In so doing, I have concluded that taking no action is clearly inappropriate in the circumstances. I note that a caution, and further caution and fine have been issued, but seemingly to no avail. Simply repeating such, therefore, would not, in my view, suffice. This is particularly so given that Mr Heidelbergger appears to have simply ignored the previous fine. I have also decided against Conditions, given that their effect would simply be to require the Registrant to comply with provisions about which he is already obliged, but has breached.
14. 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 Heidelbergger has repeatedly failed to comply with the CPD requirements of the profession. I consider that there is no sanction other than expulsion that is both proportionate and appropriate in this case and determine that Mr Heidelbergger should therefore be expelled from RICS.
15. In reaching my conclusion I have carefully balanced the wider public interest against the interests of Mr Heidelbergger and his professional standing. Whilst recognising that expulsion may have a major impact on Mr Heidelbergger, 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 depart from 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.

ORDER MADE

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

That Mr Heidelbergger is expelled from membership of RICS.

TAKING EFFECT OF ORDER

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

In accordance with Part VI of the Regulatory Tribunal Rules, I make the following order in respect to costs:

That Mr Heidelbergberger must pay costs in the amount of £350.

PUBLICATION

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.