

SINGLE MEMBER OF THE REGULATORY TRIBUNAL DECISION SHEET

RICS Regulatory Tribunal Rules 2022

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Mr Robert Horne

Single Member Decision of: Eleanor Spencer

Case Number: CON002029

Date of Decision: 17 February 2025

CHARGE

The charge against the Regulated Member is:

"Between 1 January 2023 and 1 February 2024, 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).

ALLEGED RULE/S 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:

'All RICS members must undertake a minimum of 20 hours CPD each calendar year (January to December).'

'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. In assessing this case I have considered:

- RICS Rules, Guidance, Law and Procedure
- An Investigation Report
- Witness Statement of Koli Khatun (RICS Regulatory Support & CPD officer)

- Witness Statement of Kieron Cathcart (RICS Regulation Support Team Manager)
- Correspondence between the RICS and the Member on this matter.
- Schedule of Costs
- Head of Regulation Decision

BACKGROUND

8. Mr Horne has been required to comply with the annual CPD requirement from its introduction in 2013, as he was already a member of the RICS. The charges being considered here relate to the non-completion and recording of CPD for the year 2023 (1 January to the 31 December 2023, to be recorded by 31 January 2024).

9. I have considered this case in three stages. These stages are:

Stage 1 – Finding of Fact

Stage 2 – Liability for Disciplinary Action

Stage 3 - Sanction

FINDINGS OF FACT

10. Having reviewed the evidence provided by the RICS I note that there were 0 hours CPD recorded by Mr Horne for the year 2023. I further note that Mr Horne had no concessions or exemptions in place for 2023 which, if granted, could have waived or reduced the CPD hours required.

11. The notes of a telephone call between the RICS and Mr Horne on 24th May 2024 show that Mr Horne was willing to provide evidence of CPD completion however subsequent correspondence shows that this was not ultimately provided by Mr Horne.

12. I find that Mr Horne failed to meet the CPD requirements for 2023 and note that this is the member's 4th breach of the CPD requirements within 10 years.

LIABILITY FOR DISCIPLINARY ACTION

13. I am satisfied that RICS' requirements to complete and record CPD are reasonable and an essential part of maintaining professional standards. Mr Horne's failure to comply with the CPD requirements for 2023 falls short of the expected standards and Mr Horne is therefore liable to disciplinary action. In reaching this 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.

14. 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 in maintaining confidence in the profession.

15. 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 Horne was given every opportunity to comply with the CPD requirements. Mr Horne has previously complied with CPD requirements from 2013 - 2019. I am therefore satisfied that Mr Horne was aware of the CPD requirements expected of members. There has been limited contact from Mr Horne and no exceptional circumstances have been provided regarding his failure to meet the CPD requirements.

17. The evidence provided shows reminders have been sent to Mr Horne concerning compliance with the CPD requirements from 15th November 2023 – 15th April 2024. I am mindful, however, that in any event it is the member's responsibility to comply with the CPD requirements and is not contingent on receiving any such reminders from RICS.

18. I am satisfied that by failing to meet his CPD requirement Mr Horne is liable to disciplinary action.

REGULATORY SANCTION

19. In addition to Mr Horne failing to record any hours of CPD completion for 2023, I note that no CPD hours were recorded for 2020, 2021 and 2022.

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

2020 – caution

2021 – fixed penalty caution and fine

2022 – fixed penalty caution and fine

I note that the Member had a third-year breach in 2022 but due to a data issue this was recorded as a second caution & fine. This third breach was therefore not referred for consideration by a Single Member of the Disciplinary Tribunal.

21. The documents provided show that previous fines have been paid and Mr Horne has paid his membership fees for 2023/2024.

22. The documents provided by the RICS show that 6 reminders were sent to Mr Horne from the 15 November 2023 to the 13 March 2024 via e-mail to the preferred address held on the members record and a further hard copy letter was issued on 15 April 2024 to the address held on the system.

23. 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 2023 and record it online by 31 January 2024.'

'Our records indicate that, within a ten-year period, you have failed to comply with our 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.'

24. A further telephone call was made to Mr Horne on 24th May 2024 and a further e-mail following this call.

25. 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 the RICS 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.

26. I bear 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.

27. 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.

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

- Mr Horne evidently understands the requirements and process of recording CPD as hours were successfully recorded in 2013, 2014, 2015, 2016, 2017, 2018 and 2019.
- There has been limited engagement from Mr Horne despite frequent reminders being issued.

29. I did not identify any mitigating factors.

30. In determining an appropriate sanction, I started by considering the lowest sanction and moved by the scale of gravity to ensure the sanction was proportionate and sufficient to meet the public interest.

31. I firstly considered whether to impose a sanction at all. I concluded, however, 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.

32. I then 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 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.

33. I then considered whether to impose an undertaking. I took into account the mandatory nature of the CPD requirements, as a condition of membership. I noted the commitment given by Mr Horne on joining RICS to comply with this

requirement, which he had then failed to do on several occasions. 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.

34. I went on to consider whether to impose a fine. I was mindful that a fine was previously imposed on Mr Horne for failing to meet his CPD requirements in 2021. Although Mr Horne paid this fine, this sanction has not resulted in any attempt at compliance for the following years.

35. I next considered conditions. For a sanction of conditions to be effective and appropriate Mr Horne would need to have demonstrated a willingness to engage with the regulatory process and with RICS as his regulator, which he has not done. I therefore determined that in these circumstances conditions would not be appropriate and may undermine public trust and confidence in the regulatory process.

36. Having carefully considered the above sanctions and concluded that these were not proportionate or appropriate to the circumstances of this case, I determined that Mr Horne 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 as Mr Horne has failed to comply with a fundamental requirement to record CPD on multiple occasions. I am concerned that the application of a sanction for 2020 failings had not resulted in compliance or engagement in 2021 and 2022. I am also mindful that this is a serious breach and the fourth non-compliance of CPD requirements within 10 years. Indeed, although not prescriptive, the sanctions policy presumes expulsion to be the likely outcome for three breaches and it was only due to a data issue that Mr Horne was not the subject of a Single Member Decision after three breaches in 2022.

37. Mr Horne has had limited engagement with RICS on this matter despite numerous reminders being issued. This clearly indicates a lack of regard for the importance of essential regulatory requirements that are a fundamental part of RICS membership.

38. In these circumstances any other course of action would be likely to undermine public trust and confidence in the profession and in RICS.

39. In reaching this decision I have carefully weighed the wider public interest against Mr Horne's interests but have concluded that in this case the individual's interests were outweighed by the significant public interest concerns that non-compliance with CPD requirement raises.

ORDER MADE

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

Mr Horne shall be expelled from membership of RICS.

TAKING EFFECT OF ORDER

41. 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

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

Mr Horne shall pay costs in the amount of £350.

PUBLICATION

43. 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.