Disciplinary Panel

Paper Hearing

Case of

Ms Helle Lindhardt MRICS

On

Thursday 26 September 2019

Panel

Alison Sansome (Lay Chair)
Paul Watkinson (Surveyor Member)
Rosalyn Hayles (Lay Member)

Legal Assessor

Mark McConochie

The formal charge is:

Between 1 January 2018 and 1 February 2019, 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 6 of the Rules of Conduct for Members 2007 version 6.

Service

1. A Notice of Hearing, dated 7 August 2019, was sent to Ms Lindhardt by email and special delivery post to the address held on Ms Lindhardt's RICS Member contact record as her preferred means of communication with the RICS. A copy of the Notice and a signed witness statement dated 19 September 2019 from Mrs Jae Berry, Regulatory Tribunal Manager at the RICS, was produced by the RICS as proof that the Notice had been served.

2. As evidenced by Mrs Berry's witness statement, the email sent to Ms Lindhardt by the RICS on 7 August 2019 attaching the Notice was delivered on 7 August 2019 and read on 11 August 2019. The letter sent by special delivery enclosing the Notice and accompanying materials was delivered on 15 August 2019.

3. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a of the Disciplinary Registration and Appeal Panel Rules 2009, as amended, ("the DRAP Rules") giving the required 28 days' notice of the hearing because it had been sent to the last known address recorded or held by RICS for Ms Lindhardt.

   The Notice:

   i) confirmed the charge;
   ii) gave the required 28 days' notice of the date and time of the hearing;
   iii) enclosed the DRAP Rules;
   iv) enclosed the RICS bundle of documents including the evidence upon which the RICS relied and a Listing Questionnaire for completion by Ms Lindhardt;
   v) Invited Ms Lindhardt to confirm within seven days whether she wished to request an oral hearing.

4. As pointed out in the Notice, the case against Ms Lindhardt was to be considered by way of written representations, unless Ms Lindhardt requested an oral hearing. Ms Lindhardt has not requested an oral hearing and in these circumstances, the Panel considered that she had voluntarily waived her right to attend.

5. In all of the circumstances, taking into account the interests of justice and the wider public interest, the Panel considered it fair to proceed by way of written representations in accordance with section 43(a)(d) of the DRAP Rules.

Background

6. RICS members are required to complete and record 20 hours of CPD activity by 31 January each year, relating to CPD completed during the previous calendar year.

7. Rule 6 of the Rules of Conduct for Members provides: "**Members shall comply with RICS requirements in respect of continuing professional development."**

8. CPD requirements for members are: –

- Members must complete at least 20 hours CPD, of which at least 10 hours must be formal CPD.
- All members must maintain a relevant and current understanding of RICS' professional and ethical standards during a rolling three-year period.
- All members must record their CPD activity online.

Findings of Fact

9. Ms Lindhardt had not indicated whether or not the charge was admitted and in these circumstances the Panel proceeded on the basis that the charge was not admitted.

10. The Panel was provided with a copy of Ms Lindhardt's CPD records from the RICS online CPD system which were exhibited to a witness statement dated 5 June 2019 from Mr Joe Poole, a CPD administrator working for the RICS.

    The Panel found, based on this evidence, that Ms Lindhardt:

    (i) Had not completed and recorded, or caused to be recorded, any hours of CPD between 1 January 2018 and 1 February 2019 as alleged; and

    (ii) Did not have in place any full or partial concession from RICS in relation to the completion of her CPD for that year.

11. Taking this evidence into account, the Panel found the charge proved.

Liability to Disciplinary Action

12. The Panel took into account that the CPD policy had been approved by the Regulatory Board and is an expressly stated RICS rule. The Panel noted 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. CPD is intended to ensure consistent standards within the profession and so that members maintain up to date professional knowledge and are able to demonstrate this through proper and accurate recording of their CPD. The requirement for Members to complete and record CPD is important in the interests of ensuring public protection and confidence in the profession, and the RICS as regulator, and it is not optional.

13. The witness statement from Hayley Moore, Improvement and Performance Manager, RICS, dated 5 June 2019 details the steps that are taken by the RICS to inform members of their CPD requirements and to assist them in complying with those requirements.

14. Despite the steps that had been taken by RICS, Ms Lindhardt still failed to comply with her professional obligations in the 2018 calendar year.

15. The Panel were of the view that a single failure to comply with CPD requirements is sufficiently serious to give rise to liability to disciplinary action. The Panel considered that any breaches of the RICS rules relating to CPD and its recording are serious as they prevent RICS from monitoring compliance and thus ensuring public protection.

16. Accordingly, the Panel was satisfied in all of the circumstances of the breach that Ms Lindhardt's conduct was sufficiently serious as to render her liable to disciplinary action.

Sanction

17. For the CPD year 2013 members who had not recorded sufficient CPD via the RICS online portal were issued with a caution. For the CPD year 2015 members who had not recorded sufficient CPD in either one of the two previous years, and who had again failed to record sufficient CPD in 2015 via the RICS online portal, were issued with a caution and a fine. Members were informed that a third breach within a 10-year period would be referred to a Disciplinary Panel and that this was likely to result in expulsion from the RICS.

Panel's Approach

18. The Panel took into account the written submissions made on behalf of RICS, the RICS Sanctions Policy and Ms Lindhardt's disciplinary history which is as follows for CPD related sanctions:

2016 - Caution
2017 - Caution and fine.

RICS indicated that Ms Lindhardt had not paid the fine imposed in 2017.

19. Ms Lindhardt had not advanced any explanation for failing to comply with her professional obligations, or any personal mitigation by way of written representations.

20. The Panel bore 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 the RICS as its regulator and to protect the public. Sanctions must be proportionate to the breach and all of the circumstances, and the Panel approached its decision having taken into account any mitigating and/or aggravating factors.

Decision on Sanction

21. The RICS is a professional membership organisation and sets standards for its members as a condition of membership. It is not difficult to record CPD online and compliance is not optional.

22. The charge found proved represented a third breach of the CPD requirements, Ms Lindhardt having failed to complete and record, or cause to be recorded, the required number of hours of CPD over three separate and consecutive years (2016, 2017 and 2018) despite having been sent a number of reminders by RICS of the importance of doing so and of the consequences that could follow for failing to comply. Previous sanctions in relation to those CPD breaches had not ensured that Ms Lindhardt had complied with her CPD obligations and the Panel considered that to be a serious aggravating feature of this case.

23. There was evidence before the Panel that two attempts had been made by RICS to contact Ms Lindhardt by telephone (on 27 and 28 February 2018 in relation to the 2017 CPD year) to remind her about her CPD obligations and that a voicemail message was left on both occasions to which Ms Lindhardt did not respond.

24. The Panel took into account the fact that Ms Lindhardt had not shown a complete disregard of her professional obligations having complied with her CPD obligations in 2015.

However, despite demonstrating that she was aware of the requirement, and how to record her CPD on-line, Ms Lindhardt had offered no explanation for why she had failed to comply with her professional obligations, or any mitigation, relating to the subsequent breaches of the Rules which had occurred over three consecutive calendar years. This meant that the RICS had no evidence upon which to assess whether she was up to date with professional developments consistent with ongoing practice. Ms Lindhardt had not engaged with the RICS about the ongoing breach of her professional obligations and this is not consistent with someone wanting to remain a member of a regulated profession.

25. Having considered all of the circumstances of this case, the Panel first considered whether to impose any sanction at all. The Panel concluded that the failure by Ms Lindhardt to complete and record CPD on three separate occasions was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. The Panel found no such exceptional circumstances to be present.

26. The Panel considered whether to impose a caution. The Panel concluded that a caution was not appropriate because it would not adequately reflect the seriousness of the conduct, recognising the repeated non-compliance. A caution had already been imposed for a previous breach and yet Ms Lindhardt had still failed to comply with her professional obligations.

27. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Ms Lindhardt's repeated failure to comply with the requirement to complete and record CPD.

28. In considering whether to require Ms Lindhardt to give an undertaking, the Panel took into account the mandatory nature of the CPD requirements which Members have already undertaken to comply with through their membership. CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date which is ultimately to ensure public protection. The Panel concluded that it would not be appropriate or proportionate to impose an undertaking given that Ms Lindhardt should have been completing and recording her CPD online in any event and concluded that imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.

29. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. Ms Lindhardt had previously received a fine for a breach of the CPD requirements but this had not ensured compliance.

30. For similar reasons, and because of her lack of engagement, the Panel considered and dismissed the imposition of a condition on Ms Lindhardt's continuing membership as an adequate, workable and proportionate response to the misconduct demonstrated by this case.

31. The Panel took into account paragraph 21.1. of the Sanctions Policy, which states that in the absence of extenuating circumstances expulsion is likely where there is a third breach of Rule 6 of the Rules of Conduct for members within 10 years of a receipt of a caution for breach of the same rule. Having carefully considered all aspects of the case, and all possible sanctions available to it, the Panel concluded that the appropriate and proportionate sanction in this case was expulsion. It therefore ordered that Ms Lindhardt be expelled from membership of RICS.

Publication

32. The Panel has considered the RICS policy on publication of decisions - The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website and in the RICS magazine Modus and ordered publication accordingly.

Costs

33. There was an application by RICS for costs in the sum of £400 which had been served on Ms Lindhardt in accordance with the DRAP Rules. The Panel considered this to be a fair and reasonable amount to impose by way of costs and considered it fair for Ms Lindhardt to pay these costs rather than them fall on the Membership as a whole and ordered Ms Lindhardt to pay £400 to the RICS within 21 days of notice having been served on her of this decision.

Appeal Period

34. Ms Lindhardt has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 58 of the DRAP Rules.

35. In accordance with Rule 59 of the DRAP Rules, the Honorary Secretary of RICS has 28 days, from the service of the notification of the decision, to require a review of this Decision.