

Disciplinary Panel Hearing

Case of

Yvonne DAVIES [1150441]

And Davies Rural Property Consultants [807173]

On

Monday 28 and Tuesday 29 November 2022

At

Virtual Hearing via MS Teams

Panel

Sally Ruthen (Lay Chair)

Ron Barclay-Smith (Lay Member)

Stephen Moore (Surveyor Member)

Legal Assessor

Rebecca Vanstone

RICS Presenting Officer

Christopher Geering

Respondents' Representative(s)

Melissa Toney

Hearing Officer

Adeel Qureshi

Introduction

Ms Davies (“the Member”) and Davies Rural Property Consultants (“the Firm”) appear before the RICS Disciplinary Panel in connection with the following allegations:

Member

1.

- a. ***Between 18 May 2018 and 25 February 2020, having accepted instructions to provide services to one or more clients as set out in Schedule A, and having received payment for these services:***
 - i. ***Yvonne Davies failed to complete these instructions to an adequate standard either within a reasonable time or at all,***
 - ii. ***Yvonne Davies failed to refund some or all of the fees obtained,***
- b. ***Yvonne Davies’ actions at 1a above demonstrated a lack of integrity in that:***
 - i. ***She was reckless as to whether you could fulfil the professional commitments she was taking on,***
 - ii. ***She should have made reasonable efforts to refund client money to one or more of the clients set out at Schedule A in a timely manner, and she did not do so,***
- c. ***Yvonne Davies’ actions at 1a ii were dishonest in that she knew she should refund client money to one or more of the clients set out at Schedule A and she did not do so,***

Contrary to Rule 3 of the Rules of Members 2007

Yvonne Davies is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

SCHEDULE A

BM, JD, TG, YV, Mr and Mrs White, DG, ZK, SS, MN, KO’R, JM

2. ***At an interim measures hearing on 16 July 2020:***

- a. ***Yvonne Davies informed the Tribunal that she had entered into a payment plan with / in relation to Mr Giles and / or Ms Duff, when she had not,***
- b. ***Yvonne Davies stated that she had provided refunds for Ms McManus and / or Mr Gratton and / or Mr Sullivan, when she had not,***
- c. ***Yvonne Davies actions at 2a and / or b above:***
 - i. ***Lacked integrity in that she misled the Tribunal and/or failed to take steps to correct the Tribunal's misapprehension,***
 - ii. ***Were dishonest in that she knew that no payment plan was in place and / or no refund had taken place, in respect of one or more of these clients.***

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Yvonne Davies is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

3.

- a. ***On or around 16 January 2020 Yvonne Davies notified / implied to client JD that her planning application had been submitted to the local council during the period of Christmas and New Year when it had not,***
- b. ***Yvonne Davies' actions at 3a above:***
 - i. ***Lacked integrity in that she misled the client,***
 - ii. ***Were dishonest in that she knew the application had not been submitted, and she therefore deliberately misled the client.***

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Yvonne Davies is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

4.

- a. ***On or around 24 October 2019, Yvonne Davies notified client Mr Giles that his certificate of lawfulness had been submitted to the local council when it had***

not,

- b. Yvonne Davies' actions at 4a above:**
 - i. Lacked integrity in that she misled her client,**
 - ii. Were dishonest in that she knew the application had not been submitted, and she therefore deliberately misled your client.**

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Yvonne Davies is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

5.

- a. Under Yvonne Davies' direction, the Firm she controlled failed to pay CEDR awards / fees relating to complaints brought by one or more of her clients as set out in Schedule B,**
- b. Her actions at 5a lacked integrity.**

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Yvonne Davies is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

SCHEDULE B

JD, TG, DG

- 6. Yvonne Davies failed to carry out her professional work with proper regard for the standards of service and customer care expected of her, in that:**
 - a. She failed to respond in an adequate manner, or at all to communications from one or more clients listed in Schedule A,**
 - b. She failed to respond to requests for a complaints handling policy relating to the Firm she controlled from Ms Nicholas, and / or Ms Duff and / or Mr Gratton,**
 - c. The Firm, which she controlled, failed to respond to the complaint submitted by Ms Miya.**

Contrary to Rule 5 of the Rules of Conduct for Members 2007

Yvonne Davies is therefore liable to disciplinary action under RICS Bye-law 5.2.2(c)

- 7. Between 6 November 2019 and 15 July 2020 Yvonne Davies failed to co-operate**

fully with RICS in that she did not provide information requested in a timely manner or at all.

Contrary to Rule 9 of the Rules of Conduct for Members 2007

Yvonne Davies is therefore liable for disciplinary action under RICS Bye-law 5.2.2 (c)

The Firm

8.

- a. ***Between 18 May 2018 and 25 February 2020, having accepted instructions and payment to provide services to one or more clients as set out in Schedule A, the Firm failed to refund some or all of these payments after the work commissioned was not completed in a timely manner, or at all, or to an adequate standard,***
- b. ***The Firm's actions at 8a above demonstrated a lack of integrity***

Contrary to Rule 3 of the Rules of Members 2007

Davies Property Consultants is therefore liable to disciplinary action under RICS Bye-law 5.3.2(c)

9.

- a. ***The Firm failed to pay CEDR awards / fees relating to complaints brought by one or more of clients as set out in Schedule B,***
- b. ***Its actions at 9a above lacked integrity.***

Contrary to Rule 3 of the Rules of Conduct for Firms 2007

Davies Property Consultants Is therefore liable for disciplinary action under RICS Bye-law 5.3.2 (c)

10. ***The Firm failed to carry out its professional work with proper regard for the standards of service and customer care expected of it, in that:***

- a. ***It failed to respond in an adequate manner, or at all to communications from one or more clients listed in Schedule A,***

- b. It failed to respond to requests for a complaints handling policy from Ms Nicholas, and / or Ms Duff and / or Mr Gratton,*
- c. The Firm failed to respond to the complaint submitted by Ms Miya.*

Contrary to Rule 5 of the Rules of Conduct for Members 2007

Davies Property Consultants is therefore liable to disciplinary action under RICS Bye- law 5.3.2(c)

- 11. Between 6 November 2019 and 15 July 2020 the Firm failed to co-operate fully with RICS in that it did not provide information requested in a timely manner or at all.***

Contrary to Rule 15 of the Rules of Conduct for Members 2007

Davies Property Consultants is therefore liable for disciplinary action under RICS Bye- law 5.3.2 (c)

Response

Ms Davies, on behalf of both herself and the Firm, and through her legal representative, produced an admissions document prior to the commencement of the hearing and dated 24 June 2022. Both Ms Davies and the Firm admitted the charges they respectively face. They admitted that each is liable to disciplinary action.

Ms Davies did not attend the hearing but was legally represented.

Preliminary matters

At the outset of the proceedings an application was made by Ms Toney on behalf of the Member for part of the hearing to be held in private session due to matters of health being discussed. The application was supported by Mr Geering, on behalf of RICS. The Panel received legal advice on the matter, which it accepted. The Panel noted that there was public interest in matters being heard in public, however it concluded that it was necessary to hear parts of this matter which related only to health, in private session. The remainder of the hearing would be in public.

Summary

Ms Davies is a Fellow of RICS (registered on 06 June 2005) and the sole principal of the Firm (registered with RICS on 17 November 2017). The case has arisen following multiple referrals received by RICS which alleged that the Member and the Firm accepted instructions from clients and requested payment in advance, before either failing to complete the commissioned work or completing it late and to a poor standard. Requests for refunds were said to have gone unanswered, and requests for a copy of the Firm's complaints policy were also ignored.

The complaints

In May 2018 Ms N commissioned the Member to assist in making a planning application, which was subsequently lodged in July 2018 after Ms N made payment of around £3,000.00. Further information was requested by the Member in August 2018, after which no further progress was made with the application and planning permission was not obtained. Ms N made efforts to contact the Member to ascertain the current position but these efforts went unanswered. In January 2020 Ms N requested a refund. In February 2020 she requested a copy of the complaints policy. The Member did not respond to either of these emails; a refund was not provided. She made a claim to the Centre for Effective Dispute Resolution ("CEDR") but as the Firm was no longer contracted with this ADR provider, she was unable to receive recompense.

In January 2019 Ms K engaged the services of the Member to provide valuation reports on her property, which were required to be renewed every three months. The initial report was satisfactory but the next report was received two months late. The third report was also received two months late. The failure to produce this report in time had the potential to undermine the sale of Ms K's property, although this did not occur. Ms K requested a refund, which was not provided.

In April 2019 Mr G instructed the Member to submit an application in respect of his barn, and made payment of £4,125.00 for the service. No application was ever submitted on his behalf and the Member failed to respond to efforts to contact her. It was said that the Member also told Mr G that she anticipated a site visit from the planners taking place in June 2019 and then emailed him in August 2019 to say that the planners had requested further information.

However, Mr G subsequently learned that the application had never been received. Mr G obtained a favourable order from CEDR but the Firm failed to pay this and RICS bore the cost.

In June 2019 Mr S instructed the Member to complete a valuation report and paid £750.00. No report was ever provided and efforts to contact the Member went unanswered. Mr S requested a refund but did not receive a response.

In September 2019 Ms D instructed the Firm to assist with a planning application, but this application was not submitted until February 2020. Notwithstanding this, the Member implied to Ms D that the planning application had in fact been submitted in December 2019; the truth was uncovered when Ms D spoke with the Local Authority who provided her with the date of when the application was lodged. Ms D requested a copy of the Firm's complaints-handling policy and a refund; this request went unanswered. Ms D obtained a favourable order from CEDR but the Firm failed to pay this and RICS bore the cost.

In October 2019 Ms M instructed the Firm to carry out a rent valuation and paid £300.00 for this service. A report was not received. The Member failed to respond to all efforts by Ms M to make contact and no refund was provided.

Also in October 2019 Mr G instructed the Firm to carry out a RICS Home Building Service and paid £320.00. The Member failed to complete the report and did not respond in a timely manner to communications from Mr G. Mr G requested a copy of the Firm's complaints procedure and a refund. There was no response to either of these requests. He received a favourable award from CEDR but the Firm failed to pay this.

In November 2019 Mr W and his wife commissioned the Member to produce a report; they paid £345.00. The Member did not make contact with the estate agent to view the relevant property. Mr W requested a refund; the Member responded to this request to say that she would refund the money owed. However, she failed to do so.

The same month Ms S instructed the Member to complete a survey, and paid £320.00. The Member agreed to provide the report by 12 December 2019 but failed to do so. She ignored various communications from Ms S until Ms S advised the Member that she would contact the police if she did not receive the report. The Member then advised Ms S she would provide the report on 16 January 2020.

Also in November 2019 Mr O'R instructed the Member to complete a valuation for £250.00. The Member did produce a report but it was unsigned and the Member ignored all efforts made to obtain her signature on the report.

That same month Ms M commissioned the Member to complete a report for £320.00. After considerable delays the report was produced on 06 January 2020 and Ms M was unhappy with the quality of it. The Member provided Ms M with the complaints policy and Ms M then made a complaint and requested a refund. The Member did not respond to the request and Ms M submitted a claim to CEDR. The Member then offered a refund if the CEDR claim was withdrawn. Ms M was prepared to agree to this but the refund was not forthcoming. CEDR made an award in Ms M's favour but the Member did not pay the award and by the time it had been made, the Firm had been suspended.

RICS suffered direct financial loss as a result of the Member failing to pay awards as it compensated clients under the Client Money Protection Scheme.

Interim Measures hearing

In July 2020 RICS applied for interim measures against the Member and the Firm. The Member attended the hearing, accepted she had made mistakes but drew attention to personal issues she had been suffering from at the time. The Member said that she had agreed payment plans with two individuals (Mr G and Ms D) but these were individuals for whom RICS had to cover the costs of the CEDR awards. The Member further said that she had given refunds to Ms M, Mr G and Ms S but this was untrue as none of these three clients had received a refund.

There was no factual dispute between the parties as to the case advanced by RICS.

Burden and standard of proof

The Panel received advice from the Legal Assessor as to the burden and standard of proof. The advice highlighted that RICS is required to prove the allegations to the civil standard; that is, it is more likely than not that any event material to those allegations occurred. That is a single unwavering standard of proof, though the more unlikely an allegation, the more cogent the evidence that the Panel might require to prove it. There is no requirement for the Firm or the Member to prove anything. The

question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment.

Evidence

The Panel has considered a significant bundle of documents, comprising material produced on behalf of RICS, the Firm and Ms Davies. The Panel did not hear any oral evidence called on behalf of either party as all of the evidence had been agreed.

Submissions

Mr Geering opened the case to the Panel and referred to his written opening note; he declined to make closing submissions in light of the admissions made and the fact that no live evidence had been called. Ms Toney, on behalf of the Member and the Firm, confirmed the admissions previously offered in writing.

Decision on the Charges

The Member

1.

- a. ***Between 18 May 2018 and 25 February 2020, having accepted instructions to provide services to one or more clients as set out in Schedule A, and having received payment for these services:***
 - i. ***Yvonne Davies failed to complete these instructions to an adequate standard either within a reasonable time or at all,***
 - ii. ***Yvonne Davies failed to refund some or all of the fees obtained,***
- b. ***Yvonne Davies' actions at 1 a above demonstrated a lack of integrity in that:***
 - i. ***She was reckless as to whether you could fulfil the professional commitments she was taking on,***
 - ii. ***She should have made reasonable efforts to refund client money to one or more of the clients set out at Schedule A in a timely manner, and she did not do so,***
- c. ***Yvonne Davies' actions at 1 a ii were dishonest in that she knew she should***

refund client money to one or more of the clients set out at Schedule A and she did not do so,

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Admitted and found proved.

In light of the significant documentation placed before the Panel, together with the admission to the charge, the Panel considered that the facts had been found proved in relation to each sub-allegation of head of charge 1. For each of the clients set out in Schedule A, there was unchallenged witness evidence. The Panel further considered that Ms Davies' acts as set out in this charge, demonstrated a lack of integrity and were dishonest, when applying the objective standards of ordinary, decent people.

The Panel was satisfied that the conduct found proved in relation to (1) was contrary to Rule 3 of the Rules of Conduct for Members to act at all times with integrity and avoid any actions or situations that are inconsistent with their professional obligations.

2. At an interim measures hearing on 16 July 2020:

- a. Yvonne Davies informed the Tribunal that she had entered into a payment plan with / in relation to Mr Giles and / or Ms Duff, when she had not,***
- b. Yvonne Davies stated that she had provided refunds for Ms McManus and / or Mr Gratton and / or Mr Sullivan, when she had not,***
- c. Yvonne Davies actions at 2 a and / or b above:***
 - i. Lacked integrity in that she misled the Tribunal and/or failed to take steps to correct the Tribunal's misapprehension,***
 - ii. Were dishonest in that she knew that no payment plan was in place and / or no refund had taken place, in respect of one or more of these clients.***

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Admitted and found proved.

In light of the significant documentation placed before the Panel, together with the admission to the charge, the Panel considered that the facts had been found proved. There was evidence demonstrating the comments made by Ms Davies at an Interim Measures Hearing, and this was

unchallenged. Such comments, made to a professional panel of the Regulator, lacked integrity and were dishonest; Ms Davies knew the comments were untrue at the time she made them.

The Panel was satisfied that the conduct found proved in relation to (2) was contrary to Rule 3 of the Rules of Conduct for Members to act at all times with integrity and avoid any actions or situations that are inconsistent with their professional obligations

3.

- a. ***On or around 16 January 2020 Yvonne Davies notified / implied to client JD that her planning application had been submitted to the local council during the period of Christmas and New Year when it had not,***
- b. ***Yvonne Davies' actions at 3 a above:***
 - i. ***Lacked integrity in that she misled the client,***
 - ii. ***Were dishonest in that she knew the application had not been submitted, and she therefore deliberately misled the client.***

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Admitted and found proved

The panel considered that the evidence from client JD, together with the admission by Ms Davies to the allegation, supported this head of charge. It found that Ms Davies' actions were misleading as she represented something had happened when it had not, and therefore, this lacked integrity. The panel further found that Ms Davies' actions were deliberately misleading and therefore dishonest, when applying the objective standards of ordinary decent people. The Panel was satisfied that the conduct found proved in relation to (3) was contrary to Rule 3 of the Rules of Conduct for Members to act at all times with integrity and avoid any actions or situations that are inconsistent with their professional obligations

4.

- a. ***On or around 24 October 2019, Yvonne Davies notified client Mr Giles that his certificate of lawfulness had been submitted to the local council when it had not,***
- b. ***Yvonne Davies' actions at 4 a above:***
 - i. ***Lacked integrity in that she misled her client,***

- ii. Were dishonest in that she knew the application had not been submitted, and she therefore deliberately misled your client.*

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Admitted and found proved

The Panel considered that the admission made to this allegation supported the evidence that had been placed before it and was unchallenged. It determined that Ms Davies' actions were deliberately misleading and therefore lacked integrity and were dishonest. The Panel was satisfied that the conduct found proved in relation to (4) was contrary to Rule 3 of the Rules of Conduct for Members to act at all times with integrity and avoid any actions or situations that are inconsistent with their professional obligations

5.

- a. Under Yvonne Davies' direction, the Firm she controlled failed to pay CEDR awards / fees relating to complaints brought by one or more of her clients as set out in Schedule B,*
- b. Her actions at 5 a lacked integrity.*

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Admitted and found proved

The Panel considered that the admission supported the evidence within its bundle provided by RICS. The witness statements from the clients in Schedule B demonstrated that CEDR awards had not been paid by the Firm, of which Ms Davies was the sole director. It found that the failure to pay must therefore have been at her direction; these actions lacked integrity.

The Panel was satisfied that the conduct found proved in relation to (4) was contrary to Rule 3 of the Rules of Conduct for Members to act at all times with integrity and avoid any actions or situations that are inconsistent with their professional obligations.

- 6 Yvonne Davies failed to carry out her professional work with proper regard for the standards of service and customer care expected of her, in that:**

- a. She failed to respond in an adequate manner, or at all to communications from*

- one or more clients listed in Schedule A,*
- b. She failed to respond to requests for a complaints handling policy relating to the Firm she controlled from Ms Nicholas, and / or Ms Duff and / or Mr Gratton,*
 - c. The Firm, which she controlled, failed to respond to the complaint submitted by Ms Miya.*

Contrary to Rule 5 of the Rules of Conduct for Members 2007

Admitted and found proved

The Panel determined that the evidence it had received supported the allegations that Ms Davies had failed to carry out her professional work with proper regard for the standards of service and customer care expected of her. The unchallenged witness evidence set out her failures in this regard. The Panel also bore in mind Ms Davies' admissions.

The Panel found that this conduct was contrary to Rule 5 of the Rules of Conduct for Members 2007 to carry out their professional work in a timely manner and with proper regard for standards of service and customer care expected of them.

- 7. Between 6 November 2019 and 15 July 2020 Yvonne Davies failed to co-operate fully with RICS in that she did not provide information requested in a timely manner or at all.*

Contrary to Rule 9 of the Rules of Conduct for Members 2007

Admitted and found proved

The evidence supports the allegation that Ms Davies did not provide information requested by RICS. This is a failure to fully cooperate and such conduct was contrary to Rule 9 of the Rules of Conduct for Members 2007 which states that members shall submit in a timely manner, such information and in such form, as the Regulatory Board may reasonably require.

The Firm

8.

- a. Between 18 May 2018 and 25 February 2020, having accepted instructions and payment to provide services to one or more clients as set out in Schedule A, the Firm failed to refund some or all of these payments after the work*

commissioned was not completed in a timely manner, or at all, or to an adequate standard,

- b. The Firm's actions at 8 a above demonstrated a lack of integrity*

Contrary to Rule 3 of the Rules of Members 2007

Admitted and found proved

The Panel determined that the evidence and the admissions supported this allegation that the Firm failed to refund payments when appropriate. The Panel concluded that this demonstrated a lack of integrity and was contrary to Rule 3 of the Rules of Conduct for Firms 2007 that a

Firm shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with its professional obligations.

9.

- a. The Firm failed to pay CEDR awards / fees relating to complaints brought by one or more of clients as set out in Schedule B,*
b. Its actions at 9 a above lacked integrity.

Contrary to Rule 3 of the Rules of Conduct for Firms 2007

Admitted and found proved

The Panel considered that the evidence and the admissions supported this allegation and that such conduct was contrary to Rule 3 of the Rules of Conduct for Firms 2007 that a Firm shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with its professional obligations.

10 The Firm failed to carry out its professional work with proper regard for the standards of service and customer care expected of it, in that:

- a. It failed to respond in an adequate manner, or at all to communications from one or more clients listed in Schedule A,*
b. It failed to respond to requests for a complaints handling policy from Ms Nicholas, and / or Ms Duff and / or Mr Gratton,

c. The Firm failed to respond to the complaint submitted by Ms Miya.

Contrary to Rule 5 of the Rules of Conduct for Members 2007

Admitted and found proved

The Panel determined that the unchallenged witness evidence and the admissions supported this allegation and that such conduct was contrary to Rule 5 of the Conduct for Firms 2007 which provides that a Firm shall carry out its professional work with expedition and with proper regard for standards of service and customer care expected of it.

11 Between 6 November 2019 and 15 July 2020 the Firm failed to co-operate fully with RICS in that it did not provide information requested in a timely manner or at all.

Contrary to Rule 15 of the Rules of Conduct for Members 2007

Admitted and found proved

The Panel considered that the evidence within the bundle, together with the admission, supported this allegation in full. It determined that such conduct was contrary to Rule 15 of the Rules of Conduct for Firms 2007 which provide that a Firm shall co-operate fully with RICS staff and any person appointed by the Regulatory Board.

Liability to disciplinary action

On the basis of the facts found proved, the Panel had to determine whether or not Ms Davies and / or the Firm are liable to disciplinary action. The Panel received written submissions from Mr Geering, on behalf of RICS, that the conduct alleged, if found proved, would significantly damage public confidence in the profession. He invited the Panel to conclude that the conduct was so serious that liability for disciplinary action did follow. Ms Toney, on behalf of Ms Davies and the Firm, accepted that this was a particularly serious matter and that whilst she would advance arguments in mitigation, the threshold for liability for disciplinary action had been passed.

The Panel accepted the advice of the legal assessor that the decision is one for the Panel's independent judgment, drawing upon the facts found proved; that a finding of fact does not automatically lead to liability to disciplinary action; and that account must be taken of the seriousness of the conduct and the context in which it occurred. The Panel noted that there were admissions from

both Ms Davies and the Firm that they were liable to disciplinary action; however, the Panel did not place weight on these admissions, noting that it was a question entirely for its own judgment.

The Panel noted that these were serious breaches of the Rules where substantial sums of client monies were lost, and where in some cases, RICS had to bear the cost of those, to the sum of over £7,500.00.

The Panel concluded that the charges proved in this case amounted to serious misconduct that breached sub-paragraphs (c) of Bye-Laws 5.2.2 and 5.3.2. In particular, the Panel took the view that the public would be concerned to learn of the conduct that had taken place and concluded that the conduct found proved was liable to bring the profession into disrepute.

Accordingly, the Panel found that the conduct found proved means that both Ms Davies and the Firm are liable to disciplinary action.

Sanction

Having found that both the Registered Member and the Firm were liable to disciplinary action the Panel next considered sanction.

Submissions

Mr Geering, on behalf of RICS, submitted that Ms Davies' dishonesty took three forms: lying to clients on two occasions, a dishonest failure to refund the money owed, and also a lie told to the regulator. He submitted that this represented widespread and repeated dishonesty, and that Ms Davies' conduct was deliberate. Mr Geering submitted that there were aggravating factors present that were significant and that they far outweighed mitigation, both in number and in weight.

On behalf of RICS Mr Geering invited the Panel to consider compensating RICS where it was required to pay awards made by the CEDR because the Member / the Firm had failed to do so. The cost to RICS was £7,509.25.

Ms Toney, on behalf of Ms Davies and the Firm, accepted the seriousness of the conduct giving rise to these allegations and submitted that Ms Davies has shown remorse. She referred to personal difficulties that Ms Davies had experienced around the time of the allegations and said that her conduct fell outside of her usual behaviour. She reminded the Panel that Ms Davies had no previous adverse regulatory history.

Ms Toney invited the Panel to deal with this matter by way of an order of conditions. She submitted that the breaches could properly be dealt with by Ms Davies being supervised and conditions would serve as a reminder to Ms Davies that if she did not comply with them, she was at risk of expulsion.

Mr Geering, on behalf of RICS, did not make an application for costs in this case, given this was the second hearing of the same facts. The first hearing had taken place some months ago, and whilst the Panel on that occasion had made a determination and imposed a sanction, that determination could not stand. Today's hearing was therefore a re-hearing.

Mr Geering did make an application for publication and he referred the Panel to the Third Supplement of the Sanctions Guidance which provides guidance on the issue of publication. He submitted that there was no reason to depart from the usual principles, particularly in light of the serious facts of this case.

Ms Toney, on behalf of Ms Davies and the Firm, opposed the application for publication. She referred the Panel to the fact that the previous decision had already been published, as well as the decision to impose interim measures on Ms Davies' registration. She said it would therefore be disproportionate for a further publication to take place. Ms Toney submitted that a third publication may cause damage and discredit Ms Davies and that this could prejudice her in the future if she sought to return to practice.

The Panel received and accepted the advice of the Legal Assessor.

Determination on sanction

The Panel took the view that the following factors aggravated this case: dishonesty to clients; dishonesty to her regulator; deliberate conduct; that Ms Davies obtained a financial benefit / use of client money; repeated instances of wrongdoing; large number of breaches that spanned a period of time; clients and the regulator caused a financial loss; and lack of insight.

The Panel weighed these factors against those which they considered were present in mitigation: no previous disciplinary history; the personal circumstances that existed at the time; full admissions to the allegations; latter cooperation with RICS and engagement in the hearing process which had meant witnesses did not need to attend the hearing and therefore saved hearing time; apology; and no repetition of behaviour since the interim measures were imposed.

The Panel carefully weighed these factors. The Panel expressed particular sympathy for Ms Davies' personal circumstances which it acknowledged were difficult; however, the Panel was of the view that the reputation of the profession had been severely undermined by Ms Davies' actions and it was conscious that public confidence in RICS' role as regulator needed to be maintained.

The Panel was concerned that there was limited insight expressed. It had not heard from Ms Davies as she did not attend the hearing. The Panel did not draw an adverse inference from her failure to attend but considered that Ms Davies' letter of apology did not display insight sufficient to persuade the Panel that she had either remediated her conduct, or that there was little or no risk of repeating it. The Panel determined that, in the absence of any full and true reflection by Ms Davies of her actions, it could not be satisfied that the conduct would not be repeated in future if Ms Davies found herself in a similar difficult period in her life.

The Panel looked at the sanctions available to it in order of increasing seriousness. It considered that given the intrinsic link between Ms Davies and the Firm, it was likely that the sanction to be imposed against each of them, would be the same. The Panel determined that there were no exceptional circumstances that would justify taking no action. The Panel next determined that neither a caution nor a reprimand would be suitable in this case as the breaches were too serious. Undertakings were not deemed to be appropriate either in light of the serious and repeated nature of the breaches and the lack of insight.

The Panel determined that a financial penalty on its own would not be proportionate to mark the seriousness of the breaches that have occurred. However, it considered that the application by Mr Geering for RICS' costs in covering the CEDR awards was well-founded and should be allowed. The Panel was concerned that the Member and the Firm had ignored awards made by CEDR to various clients and noted that not all clients had been compensated in this way. It therefore determined to order the Member and the Firm to repay the sum of £7,509.25 to ensure that the profession as a whole does not bear the cost of this failure. The total amount of £7,509.25 is to be split equally between the Member and the Firm, with each required to pay £3,754.62. The Panel took account of the Member's statement of means when making this order; it did not have any financial information from the Firm but considered that the financial information would be the same as Ms Davies' financial information. It considered that imposing this order was proportionate in light of the harm suffered.

The Panel then moved to consider conditions. It took account of Ms Toney's submission that the Panel could state that a breach of conditions would lead to automatic expulsion or removal, by way of a

further warning to Ms Davies and the Firm. However, the Panel determined that given the very serious breaches present here, and the number of aggravating factors identified, coupled with the lack of insight shown, conditions would be insufficient to protect the public and to uphold the public interest. It further determined that in light of the nature of the breaches and the repeated instances of dishonesty, appropriate conditions could not be formulated.

The Panel then considered expulsion / withdrawal of registration.

The Panel recognised that the Sanctions Guidance produced by RICS is guidance only. However, the Panel identified that there were a number of examples within the Guidance of instances likely to result in a decision to expel a member and / or withdraw a firm's registration. Those relevant were: gross, persistent or wilful failure to comply with a RICS Rule of Conduct; fraud, dishonesty or a lack of integrity; gross incompetence or recklessness in relation to the conduct or management of professional activities; persistent and / or serious failure to cooperate with RICS; gross mismanagement of finances; and misappropriation of clients' money.

The Panel was particularly concerned with the pattern of behaviour that gave rise to these allegations. Whilst it took account of the personal mitigation present, it considered that the conduct was extremely serious and there was a real risk of repetition, in light of the limited insight expressed. The Panel was also extremely concerned about the dishonesty expressed by Ms Davies to the panel dealing with the interim measures application and it did not consider that this had been properly addressed in Ms Davies' letter of apology.

Therefore, whilst the Panel recognised that there was discretion to depart from the guidance, given the considerations it had already given to the lesser sanction of conditions, and given the seriousness and repetitive nature of the breaches present in this case, it determined that nothing less than expulsion of the Member and withdrawal of the Firm's registration would be a proportionate regulatory response.

Costs

There was no application for costs and accordingly, no order is made.

Publication

The Panel then determined whether it should order publication of this decision. It bore in mind that the starting point was that publication should take place and that the Panel should justify any reason

to depart from this position. It considered the fact that the previous determination was removed from the website once it was found to be erroneous. Whilst it acknowledged that the determination may already have been read by members of the public it concluded that anyone reading this determination would not consider that this was a second set of allegations but, rather they would be aware that this was a re-hearing of the same set of allegations. Therefore, the Panel did not consider there was any undue prejudice to Ms Davies by the publication of this decision. The Panel recognised that it is in the public interest for decisions such as these to be made publicly available and it did not identify any reasons that would justify departing from that usual principle. The decision will therefore be published 28 days after service of the decision, in the usual way.