

Disciplinary Panel Hearing

Case of

Mr Jacob Lunding

On

Wednesday 27 March 2024

At

By Video conference

Panel

Nick Turner (Chair, FRICS)
Gregory Hammond (Lay Member)
Niru Uddin (Lay Member)

Legal Assessor

Chris Hamlet

RICS Representative

Ms M Frankie

Registrant Representative:

Mr Lunding represented himself

The formal charges are:

The charge against Mr Lunding is:

- 1) 'Between 1 January 2021 and 1 February 2022 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. An extension period was granted by RICS until 26 May 2022 by which date you had still failed to complete and record or cause to be recorded at least 20 hours of CPD on the RICS CPD Portal for the period between 1 January 2021 and 1 February 2022.'

Rules of Conduct for Members 2007 version 7 with effect from 2 March 2020

The Regulated Member is therefore liable to disciplinary action under Bye-Law 5.2.2(c) ’

- 2) ‘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 effective from 2 February 2022
The Regulated Member is therefore liable to disciplinary action under Bye-Law 5.2.2(c)**

Notice:

1. Mr Lunding was given notice by email on 30 January 2024, in accordance with Rule 43a(a).
2. He represented himself at the hearing. The Legal Assessor, in the presence of Ms Frankie, explained the procedure to Mr Lunding before the opening of the hearing.

Evidence:

3. The Panel received a bundle of material produced on behalf of RICS. No additional material was produced by or on behalf of Mr Lunding.

Burden and standard of proof:

4. RICS is required to prove the allegations to the civil standard; that 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 care should be taken to examine the evidence. There is no requirement for Mr Lunding to prove anything.
5. The Panel had in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and proceeded upon the basis that the Human Rights Act 1998 will apply. It bore in mind in particular Mr Lunding’s right to a fair trial and respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act. 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.

Facts:

6. The Panel had regard to the evidence produced that Mr Lunding, as a matter of fact, had not completed and recorded 20 hours of CPD between 1 January 2021 and 1 February 2022. RICS extended the compliance period until 26 May 2022, by which time Mr Lunding had recorded only 3 formal hours of CPD for the 2021 calendar year. By 1 February 2023, he had recorded only 6 hours of CPD for the 2022 calendar year.
7. That evidence comprised a copy of Mr Lunding’s CPD record and statements on behalf of RICS from Ms Natasha Reid, dated 9 November 2022, Ms Claire Hoverd, dated 9 November 2022 [x2], 27 September 2023 [x2] and Mr Jamie Edwards, dated 27 September 2023 and 21 November 2023.

8. It was noted that there is no evidence that Mr Lunding has previously applied for any RICS Exemption or Concession which would have allowed him to avoid the requirement that he complete the minimum of 20 hours CPD per year.
9. Mr Lunding admitted the facts as charged.
10. On the basis of those admissions and the evidence presented, the Panel concluded that as a matter of fact the charges were made out.

Liability to Disciplinary action:

11. The Panel went on to consider whether Mr Lunding was liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the Legal Assessor. This question is one for the Panel's judgment and applies in respect of the specific charge found proved. The Panel considered that failure to carry out a condition of membership which is there to ensure members retain current knowledge and skills, is serious. Mr Lunding has provided no evidence that more than 3 hours of CPD activities were undertaken in 2021, or six hours in 2022, which prevents RICS from monitoring his compliance with his professional obligations and undermines public confidence in the profession.
12. The Panel observed, having taken account of the statements from Ms Claire Hoverd on behalf of RICS, that numerous mailings and reminders were sent to Mr Lunding via email regarding the CPD requirements and that Mr Lunding did not respond to those messages from his professional body.
13. The Panel took into account the fact that the CPD policy was 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.
14. Mr Lunding accepted he was liable to disciplinary action.
15. The Panel concluded that Mr Lunding was liable to disciplinary action.

Sanction:

16. Having found the charges proved and determined that Mr Lunding was liable to disciplinary action, the Panel took account of the evidence from Ms Natasha Reid that Mr Lunding recorded only 9 hours of formal CPD for the year 2018 and no CPD at all for the year 2020. As a product of this, Mr Lunding received a Caution in 2018 (the First Breach), and a Fixed Penalty second caution in 2020 (the Second Breach).
17. It follows that Mr Lunding has now failed to comply with his obligations relating to CPD on four occasions (in 2018, 2020, 2021 and 2022).
18. Again, the Panel took account of the statements from Ms Claire Hoverd, Regulations Support Team Manager at RICS, confirming the mailings sent to Mr Lunding about his CPD obligations, including a postal reminder of the consequences of a further breach. No responses were received.

19. The Panel bore in mind that the purpose of sanctions is not to be punitive, though that may be their 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 to the matters found proved.
20. The Panel paid careful heed to the advice of the Legal Assessor and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case.
21. The Panel was advised that in determining what, if any, sanction to impose on Mr Lunding, Rule 21.1 of the Sanctions Policy provides for a presumption of expulsion in the event of a third breach of CPD obligations within 10 years. However, this presumption is capable of being displaced if the circumstances permitted. The advice, in keeping with the approach of other regulators, was that any sanction imposed must be proportionate, and therefore ought to involve consideration of the lowest sanction available first and only moving to the next level of sanction if it decided lesser sanctions were inappropriate or otherwise failed to meet the public interest. The Panel bore in mind that more than one sanction may be imposed. If conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.

Mitigating/Aggravating features:

22. The Panel took account of the fact that Mr Lunding appeared to have responded to RICS correspondence and reminders on only four occasions: on 23 June 2023, to exercise his right under Rule 115 to have the issue of his non-compliance considered by a panel; on 5 September 2023 to explain that he had been on summer vacation; on 7 September 2023, to assert by telephone that he had completed his 2021 CPD but failed to record it; and on 18 March 2024, to request a postponement of the hearing. The Panel was concerned that Mr Lunding had repeatedly failed to engage with RICS over a protracted period of time, including in response to a 'letter before disciplinary action' letter sent on 5 August 2022 and various emails to an evidently effective email address.
23. Mr Lunding stated during the hearing that he has been a real estate agent for 20 years and works at one of the biggest real estate agencies in Denmark. However, no substantive attempt had been made to explain his breaches which the Panel could draw upon in mitigation. He accepted during the hearing that he had not taken the obligations to record CPD seriously enough.
24. The following features of the case were considered to mitigate the breaches:
 - Admissions to the charges and liability to disciplinary action
 - He has apologised for the breaches
 - He recorded the full 20 hours for 2022, albeit late
25. The following features of the case were considered to aggravate the breaches:
 - Prior cautions for similar breaches in 2018 and 2020
 - Four breaches in total, over a 10 year period

- Repeated failures, without explanation, to respond to RICS correspondence and engage meaningfully with the proceedings
- Lack of insight into the importance of compliance with the CPD obligations

Decision on Sanction:

26. The Panel considered the matter too serious for no sanction to be imposed. It took account of the guidance at paragraph 21 of the Sanctions Guidance which provides that a third breach of Rules regarding CPD within 10 years of receipt of a caution raises a presumption of expulsion.
27. Having accepted the advice of the Legal Assessor regarding the need to take a proportionate approach, the Panel considered the full range of sanctions available to it, starting with the least stringent. Whilst conditions were considered as an alternative to expulsion, the Panel took the view that there was insufficient evidence before it to conclude that Mr Lunding was likely to engage with RICS and meet his CPD obligations in full in future, nor were there sufficient mitigating features present to disapply the presumption of expulsion. The Panel considered that members of the public would expect, in that context, the ordinary presumption to apply, in order that trust and confidence in the profession and the regulator is maintained.
28. Accordingly, the Panel orders Mr Lunding be expelled from membership.

Publication

29. The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus. The Panel sees no reason for departing from the normal practice in this case.
30. The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

31. RICS made an application for costs in the sum of £3650.00. Mr Lunding did not challenge those costs. The Panel acceded to that application in order that the costs of the hearing are not borne by the profession.

Appeal Period

32. Mr Lunding may appeal to an Appeal Panel against this decision within 28 days of notification of this decision, in accordance with Rules 58 – 70 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.
33. The Honorary Secretary of RICS may require a review of a finding or penalty imposed by a Disciplinary Panel within 28 days from service of the notification of the decision, in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7.

