

## **Disciplinary Panel Meeting**

### **Case of**

**Mr David Lindenberg FRICS [0049483]  
Roggebaai, South Africa**

### **On**

Wednesday 12 September 2018

**At RICS, 55 Colmore Row, Birmingham, B3 2AS**

### **Panel**

Ian Hastie (Surveyor Chair)  
Sue Heads (Lay Member)  
Rosalyn Hayles (Lay Member)

### **Legal Assessor**

Peter Steel

The formal charge is:

Between 1 January 2017 and 1 February 2018 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.

### **Response**

1. Mr Lindenberg had not replied directly to the Notice of Hearing dated 14 August 2018. There had been some email correspondence between Mr Lindenberg and RICS prior to the issue of the Notice, though Mr Lindenberg had not addressed the charge above. The Panel therefore proceeded on the basis that the above charge was not admitted.

## Summary

2. From January 2013 RICS members were obliged to complete 20 hours CPD activity by 31 December of each calendar year.
3. Rule 6 provides: “Members shall comply with RICS requirements in respect of continuing professional development.”
4. 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 the CPD activity online.
5. For the CPD year 2017 correspondence was sent by email to members reminding them about the necessity to comply with their CPD obligations. RICS also wrote to Mr Lindenberg at his registered address on 9 March 2017 following the caution and a fine he had received in 2016 reminding him that he would be referred to a Disciplinary Panel in the event of a further default. Mr Lindenberg was also sent a number of emailed reminders as a result of missing the 31 January 2018 deadline for recording his CPD. These made it explicit that he risked a sanction unless he took immediate action.

## Service

6. A Notice of Hearing, together with the evidence bundle was sent via 4 separate emails to Mr Lindenberg’s preferred email address held by RICS on 14 August 2018. A copy of the emails attaching the Notice and bundle and electronic delivery receipts for them had been produced to the Panel. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a. Having considered the circumstances, the Panel was content that it was fair and in the public interest for it to proceed to consider the case.
7. Mr Lindenberg had been advised of his right to an oral hearing in the Notice of Hearing in accordance with Rule 23 but had not requested such a hearing.

## Findings of Fact

8. The Panel was provided with a statement from Abbie Atkins, CPD Administrator at RICS dated 13 August 2018 setting out Mr Lindenberg's online CPD record and exhibiting the relevant records. This showed that he had recorded 26 hours CPD for 2017, but only 6 hours of this total had been formal CPD. He had not been granted any concessions for that year.
9. The formal charge alleged that Mr Lindenberg had not completed and recorded, or caused to be recorded, at least 20 hours of CPD on the RICS CPD portal. The Panel found this factual allegation proved, on the basis that although he had in fact recorded more than 20 hours CPD, RICS required that at least 10 of those hours should be formal CPD. As indicated above, Mr Lindenberg had only recorded 6 formal hours.

### **Liability to Disciplinary Action**

10. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Lindenberg's failure to comply with those requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion the Panel took into account the fact that the CPD policy has 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. The Panel was also satisfied that breaches of the RICS rule on CPD recording must be regarded as serious as they prevent RICS from monitoring compliance and thus ensuring public protection. This was so even where, as in this case, there had been an attempt to comply and the breach might be considered relatively minor.
11. The Panel was therefore satisfied that Mr Lindenberg was liable to disciplinary action.

### **Sanction**

#### Panel's Approach

12. The Panel took into account the submissions of RICS as set out in the Case Summary in the bundle. It had regard to the RICS Sanctions Policy.
13. The Panel bore in mind that the purpose of sanctions is not to be punitive, although it 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. 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.
14. The Panel bundle contained a statement from Joe Poole dated 13 August 2018 which indicated that Mr Lindenberg had received a Caution for failure to comply with the CPD

requirements in 2013 and a Caution and Fine in 2016 for a further breach. This was therefore Mr Lindenberg's third such breach.

## Decision

15. Mr Lindenberg had not responded directly to the Notice of Hearing. The Panel noted that he had corresponded with RICS prior to the issue of the Notice, most recently on 16 July 2018 in which he indicated that he wanted to retire. The Panel therefore gave him credit for engaging with RICS to some extent. However the Panel noted that although he had failed to complete the necessary amount of formal CPD in 2017 (having completed only 6 hours of formal CPD against a required total of 10 hours), he had clearly taken some heed of the Fixed Penalties he had received and had recorded 26 hours of CPD in total. He had also complied in previous years.
16. The Panel considered that it was an aggravating factor that the charge found proved represented a repeated breach of the CPD requirements. He had also indicated in a letter dated 21 July 2017 provided to the Panel that "*I do not have the additional energy, time and motivation still to comply with the Institute's CPD requirements.*". Mr Lindenberg had also stated in the same letter that he did not intend to pay the Fixed Penalty fine "*...and if your regulations so require that my membership be cancelled then kindly action the necessary accordingly.*"
17. Further, Mr Lindenberg's response of 16 July 2018, in which he said that he did not have time to undertake CPD as a result of being "*extremely busy in business and private life*" suggested a complete lack of insight into the importance of compliance with RICS' professional standards, as well as a degree of contempt for his regulator.
18. In his letter of 21 July 2017, Mr Lindenberg had said "*...unfortunately you [RICS] do not acknowledge senior professionals by exempting them from the CPD compliance.*" The Panel considered that this demonstrated a lack of understanding on his part of the reasons why CPD is important for all RICS members, namely the need to keep up-to-date with developments in the profession in order to maintain the reputation of the profession and the public interest. RICS is a professional membership organisation and sets standards for all its members as a condition of membership. Compliance is not optional.
19. The Panel first considered whether it was appropriate to impose any sanction at all. The Panel concluded that the repeated failure to comply fully with the CPD requirements and Mr Lindenberg's attitude towards his regulator were serious matters. Imposing no sanction would be neither proportionate nor appropriate. In reaching this conclusion the Panel noted that Mr Lindenberg clearly understood his CPD obligations but had decided that he need not comply.

20. The Panel went on to consider whether to impose a caution. The Panel concluded that a caution would not adequately reflect the seriousness of the case, recognising the cumulative pattern of non-compliance and the fact that Mr Lindenberg had already received two Fixed Penalties for previous breaches.
21. In considering whether to require Mr Lindenberg to give an undertaking the Panel took into account the mandatory nature of the CPD requirements. The Panel noted that the CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date and ultimately to ensure public protection. The Panel concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking given that Mr Lindenberg should have been completing and recording his CPD online in any event. Even if an undertaking were to be combined with either a caution, reprimand or fine, the Panel concluded that imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.
22. The Panel then considered whether to impose a fine. Even though Mr Lindenberg had only narrowly failed to comply with the CPD requirements on this occasion, his apparent refusal to abide by the regulations and his professional responsibilities was unacceptable. In all the circumstances, the Panel decided that a reprimand, combined with a fine and a condition requiring compliance with the 2018 CPD requirements would be a proportionate disposal of the case. The Panel therefore ordered that:
- Mr Lindenberg receive a reprimand;
  - Mr Lindenberg shall pay a fine of £500;
  - As a condition of his continuing membership, Mr Lindenberg is directed to comply with the CPD requirements for 2018 by completing his CPD hours for the year 2018 by 31 December 2018 and recording his CPD hours online by 31 January 2019;
  - Failure to comply with this condition will result in automatic expulsion from membership, without further reference to a Disciplinary Panel.
23. The Panel took into account paragraph 21.1. of the Sanctions Policy, which states that 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. However, having carefully considered all the facets of the case, the Panel concluded that to order immediate expulsion in this case would be disproportionate and punitive.

## Publication

24. The Panel has considered the 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.

## **Costs**

25. RICS applied for costs of R6,964.11 (i.e. the sum of £400 in Rand as at 10 August 2018).
26. The Panel considered carefully the issue of costs. The costs figure represents a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel had no reason to doubt that the costs application was fair and reasonable.
27. The Panel concluded that it was appropriate for Mr Lindenberg to make a contribution towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole.
28. The Panel orders that Mr Lindenberg pays to RICS costs in the sum of R6,964.11.

## **Appeal Period**

29. Mr Lindenberg has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
30. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel 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.