

Disciplinary Panel Hearing

Case of

Name **Wai Ching Venus CHAN [6867542]**

Location **Hong Kong**

On

Tuesday 12 December and Wednesday 13 December 2023

At

Virtual hearing held on Teams

Panel Chair

Dr Angela Brown

Panel Members

Dr Stephen Moore (Surveyor Member)

Rosalyn Hayles (Lay Member)

Legal Adviser

Rosemary Rollason

Regulatory Tribunal Executive

Maria Choudhury-Rahman

Representatives

Neither party was in attendance

Introduction

A Panel of RICS' Tribunal considered the following charges against RICS APC Candidate, Ms Wai Ching Venus Chan ("Ms Chan"):

- 1(a) On or around 24 May 2021 Ms Chan inappropriately submitted an APC case study which she had copied in part from Mr Tom's case study.
- 1(b) Her actions at (a) above lacked integrity in that she should have known by submitting her case study she was representing it was all her own work and that to a material extent it was not.
- 1(c) Her actions at (a) above were dishonest in that she knew she was representing the case study as all her own work and she knew to a material extent it was not.

Contrary to Rule 3 Rules of Conduct for Members

Ms Chan is therefore liable to disciplinary action under byelaw 5.2.2(c)

Service

1. The Panel had sight of a Notice of Hearing dated 16 October 2023 which was sent to Ms Chan by email at her preferred RICS email address, in compliance with Rule 53 of the RICS Regulatory Tribunal Rules (Version 1 with effect from 2 March 2020) ("the Rules").
2. The Panel noted that the details relating to service were confirmed in the witness statement of the RICS Regulatory Tribunal Executive dated 29 November 2023.

Hearing on the papers

3. In an email to RICS dated 29 November 2023 Ms Chan applied for her case to be heard as a paper hearing. RICS did not object to the application.

4. On 5 December 2023, the Chair of the Panel considered the application in accordance with paragraph 67(c) of the Rules. Having taken account of the representations of Ms Chan and RICS, the Chair agreed to Ms Chan's application and directed that this hearing should take place on the papers.
5. This hearing has therefore proceeded in the absence of the parties and the Panel considered the case based on the papers.

Preliminary matter

6. The Panel was mindful that this matter arises from Ms Chan's application in connection with RICS' Assessment of Professional Competence process ("APC") with a view to becoming a member of RICS. The Panel therefore considered as a preliminary point whether Ms Chan, who is not a full RICS member, can properly be regarded as subject to RICS' disciplinary jurisdiction.
7. In this connection, the Panel was advised that Ms Chan's status is as a Candidate for the APC. The Panel noted paragraph 3 of the witness statement of Ms Elaine Beebee, RICS Investigation Specialist, dated 11 October 2023, where Ms Beebee stated that "*Ms Chan is currently an Assessment of Professional Competence (APC) candidate member of RICS (membership number 6867542).*"
8. The Panel also had regard to the terms of the Candidate Enrolment Declaration for the APC (included in the hearing bundle as Exhibit D2) which confirms that the candidate has read and undertakes "*to comply and act in accordance with the Charter, Bye-laws, Regulations and Rules of RICS as they now exist or as they may in the future be amended, also comply with such other requirements as Governing Council may determine.*"
9. Having noted the above, the Panel was satisfied that it had jurisdiction to consider Ms Chan's case in accordance with RICS disciplinary procedures.

Documents

10. The Panel received an electronic hearing bundle comprising 407 pages. This contained the documentation considered at this hearing, including:
- RICS' case summary dated 11 October 2023
 - RICS' evidence, including witness statements and documents
 - Communications/submissions from Ms Chan.

Response to the charges

11. In the RICS listing questionnaire, which Ms Chan signed and dated 16 November 2023, Ms Chan admitted the facts of all the charges. She also admitted that she is liable to disciplinary action.

Summary

12. Ms Chan joined RICS on 28 February 2019. She was a candidate for the RICS Assessment of Professional Competence ("the APC"). APC candidates are required to submit a case study. The APC guidance warned candidates against plagiarism and stressed the importance of adhering to high ethical standards.

13. The evidence indicates that Ms Chan submitted her case study on or around 24 May 2021. She was required to sign a declaration which stated as follows:

"By uploading this document I declare that this submission is my own work; it represents my own learning and was written by me in my own words. I declare that where other sources of information have been used, I have acknowledged and referenced this. I understand that failing to acknowledge other materials will be treated as plagiarism."

14. As a matter of routine, RICS reviewed Ms Chan's case study using Turnitin, an online plagiarism detection technology. The Turnitin report identified a 45% similarity between Ms Chan's case study and a case study previously submitted by another RICS member, Mr Tom. As a result, RICS opened an investigation into the matter.

15. Mr S.Grinnell, Lead Investigator, RICS Regulation, then undertook a detailed comparison of the two case studies. He noted that both case studies had identical formatting and near identical headings and sub-headings. Mr Grinnell also noted that substantial portions of the text were near identical. Mr Grinnell produced a comparison table demonstrating the extent of the similarities.
16. As a result of these investigations, a letter was sent to Ms Chan by RICS on 3 December 2021 setting out the concerns and seeking Ms Chan’s comments.
17. Ms Chan responded on 17 December 2021. She stated that she and Mr Tom had both been employed by Hong Kong Housing Authority (“HKHA”). She said they had both been seconded to the HKHA Estate Management Division and had participated in redecoration projects for public rental housing estates. Ms Chan said that she chose a redecoration project as the subject matter for her case study. Mr. Tom had participated in a similar redecoration project.
18. In her response to RICS of 17 December 2021, Ms Chan stated:

“I closely communicated and discussed with him [Mr Tom] for some experience sharing, challenging cases and asked for advice through the cycle of my facing and handling of the redecoration project. In RICS assessment, redecoration project of PRH was considered and applied as my case study because I had extensive exposure and involvement in different stages of the project. In considering of similar approach and point of view under MSG [defined earlier as “Maintenance Surveying Graduate”], I had sought advice from Mr. Tom regarding the approach. He also shared his valuable experience in case study submission with me showing as professional manner in written aspect. Therefore, I have possessed his case study prior to my submissions. Since it was my first time to submit of the RICS assessment which was really new and unfamiliar to me, I took Mr. Tom case study as a reference for the approach of works.”

19. Ms Chan also stated:

“I admitted that I took reference about the ideas and approaches from Mr. Tom’s case study, because we are in very similar approach, nature, point of view and extent of work scope in

redcoration project. With very similar situations encountered and, I have sought advice from Mr. Tom especially for common practice adopted in HKHA in handling of contractor's submissions and contract administration. I have adopted his approach for the analysis on my professional involvement, including the use of the similar headings and sub- headings. All the situations encountered in my case study were real cases with my own experience including my personal involvement, problem solving and professional judgement. However, I found the action of viewing Mr. Tom's submission prior to my works was a serious wrong decision which affected my personal interpretation of those works, and duplication in wording was found in my case study that presenting in same situation. It was unintentional but I was very regret with this serious lapse of judgement which may constitute plagiarized content in my work."

20. RICS received confirmation from HKHA that Mr Tom's training period was from 1 September 2016 to 31 August 2018. Ms Chan's training took place from 19 December 2018 to 18 December 2020. There was therefore no overlap between their respective training periods.
21. RICS also contacted Mr Tom. Mr Tom stated that he had known Ms Chan, although not well. He stated he had had no contact with her until January 2020, when she invited him to an HKHA alumni event. However, Mr Tom stated that he had been unable to attend as he was not in Hong Kong at that time.
22. Mr Tom stated he had not had any contact with Ms Chan since March 2020 and that he did not give any assistance to her regarding the preparation of her case study. Mr Tom stated that he did not provide Ms Chan with a copy of his case study. He had only shown his work to juniors, HKHA intakes in 2017, for reference, in 2020. Mr Tom provided a witness statement to RICS dated 11 October 2023 confirming these matters.
23. On 9 September 2022, RICS wrote again to Ms Chan seeking any further comments from her. This letter set out the allegation that she had acted dishonestly or without integrity as a result of her having plagiarised Mr Tom's case study.

24. Ms Chan responded:

“I admitted the allegations which results in contrary to Rule 3 of the Rules of Conduct for Members 2020. Although the case study was my real case which involve my personal involvement and professional experience, I admitted that I failed to cite or use my own wordings in presentation of my own experience. I accepted that my actions may liable to disciplinary action under RICS Bye-Law 5.2.2 (c).”

25. In response to a further enquiry from RICS as to why Ms Chan’s account differed substantially from Mr. Tom’s, Ms Chan replied on 1 March 2023, stating:

“He did not provide me the copy of the case study and I admitted that he may not realise that I will choose redecoration as the final case for RICS submission.”

Submissions

26. RICS provided a case summary dated 11 October 2023 setting out the background and its case in respect of the facts of the charges. It was submitted on behalf of RICS that any instance of dishonesty or lack of integrity engages the reputation of RICS and that in this instance, there is a strong public interest in maintaining the integrity of the APC process.

27. As noted above, Ms Chan completed the listing questionnaire for this hearing indicating that she admitted the facts of all the heads of charge and that she is liable to disciplinary action.

28. Ms Chan stated in the questionnaire:

“I cannot attend the hearing in person as I have to company my family for the medical appointments. I have provided supporting documents and attended the courses regarding the RICS rules and Conduct and I fully understand the importance of strictly complying with the professional conduct as a RICS member. The investigation has been last for 2 years and I have a deeply reflections on my behaviour. I declare that I will demonstrate my absolute commitment to strictly comply with the RICS rules of conduct in my coming submissions.”

29. Ms Chan also submitted information about continuing professional development courses she has attended, as well as some testimonial letters. The Panel considered this information would be relevant as mitigation at the sanction stage, if reached.

Legal Advice

30. The Panel received and applied the advice of the legal assessor.

31. The Panel was reminded that the burden of proof is upon RICS, which brings the charges, throughout. The standard of proof to be applied in relation to the facts is the civil standard, that is the balance of probabilities. This means that before finding a fact proved the Panel must be satisfied that it is more likely than not that it occurred.

32. The Panel should consider and make findings only on the charges brought by RICS and consider each of the particulars of the charge separately. The Panel was able to take account of the admissions made by Ms Chan.

33. In respect of the allegation of lack of integrity in Particular 1(b), the Panel was referred to the guidance set out in the case of *Wingate and Others v SRA [2018] EWCA Civ 366*. In that case, the Court of Appeal said that integrity connotes adherence to the ethical standards of one's own profession and that professional integrity is linked to the manner in which that particular profession professes to serve the public. The Court explained that the concept of integrity is "*a useful shorthand to express the higher standards which society expects from professional persons*".

34. In respect of the allegation of dishonesty in particular 1(c), the Panel was referred to the test set out in *Ivey v Genting Casinos t/a Crockfords [2017] UKSC 67*.

35. In relation to liability to disciplinary action, the question of whether or not any facts admitted or found proved give rise to liability is a matter for the Panel's own judgment. However, in order

to establish liability, the conduct in question must be serious. The Panel was referred to the guidance in the case of ***Roylance v GMC [2000] 1 AC 311***, liability to disciplinary action being akin to the definition of misconduct in those proceedings. The Panel was advised that for liability to disciplinary action to be proved, the falling short of the standards must be serious.

Findings of fact

36. The Panel took account of the admissions to all three factual charges made by Ms Chan, as set out in the listing questionnaire which she signed and dated 16 November 2023.
37. Whilst the Panel accepted Ms Chan's admissions, it also carefully considered the evidence of RICS as presented in the hearing bundle. The Panel considered the written statements and exhibits of the witnesses on behalf of RICS, Ms E Beebee, RICS Investigation Specialist (dated 11 October 2023) and Mr T H F Tom, (dated 11 October 2023). Both statements were signed and contained statements of truth. The Panel accepted this evidence and it was not contested by Ms Chan. The Panel was mindful when reading Ms Chan's submissions that English may not be her first language.
38. The Panel had sight of relevant documentation in the hearing bundle which included the case studies submitted respectively by Ms Chan and by Mr Tom, the APC Guidance (August 2020), the comparison schedule prepared by Mr Grinnell concerning the case studies of Ms Chan and Mr Tom and the Turnitin Report dated 26 June 2021.

Particular 1(a)

On or around 24 May 2021 Ms Chan inappropriately submitted an APC case study which she had copied in part from Mr Tom's case study.

39. The Panel was satisfied on the basis of its own review of the evidence and the admissions made by Ms Chan that the facts alleged in particular 1(a) were proved.
40. It was clear from the evidence that Ms Chan copied substantial extracts from Mr Tom's case study. This was confirmed by the Turnitin report as amounting to a 45% similarity and was also reflected in Mr Grinnell's comparison document.

41. The Panel was entirely satisfied that this was inappropriate behaviour. It was clear from the APC documentation that the intention of the process was that the case study should relate to the candidate's own work and experience. It should demonstrate how the candidate had addressed the problems and issues which they encountered on the project they had chosen to use in their case study.
42. The Panel noted the declaration which Ms Chan signed when uploading the case study to ARC for approval. The declaration provides a clear warning regarding plagiarism. This states:

“Declaration

By uploading this document, I declare that this submission is my own work: it represents my own learning and was written by me in my own words. I declare that where other sources of information have been used, I have acknowledged and referenced this. I understand that failing to acknowledge other materials will be treated as plagiarism.”

43. Even had it been appropriate for Ms Chan to use parts of another case study, she did not reference or attribute any part of her case study to Mr Tom. The Panel also bore in mind the evidence from Mr Tom that he did not provide his case study to Ms Chan, did not give her permission to use it and was not aware that she had done so.
44. The Panel was mindful that the APC process exists to assess the competence of candidates who seek admission to membership of RICS. Such candidates must be suitable to assume all the responsibilities which membership of such a professional body entails. The Panel was satisfied that submitting a case study which was not the applicant's own work could undermine the integrity of the APC process and was therefore inappropriate, as alleged.

Particular 1(b)

Her actions at a. above lacked integrity in that she should have known by submitting her case study she was representing it was all her own work and that to a material extent it was not.

45. The Panel took account of Ms Chan's admission but undertook its own consideration, in the light of the advice given by the legal adviser, as to whether Ms Chan's actions lacked integrity as explained in the guidance in the case of ***Wingate and Evans***.
46. The Panel was in no doubt, for the same reasons as indicated under 1(a) above, that Ms Chan's actions did not reflect the high ethical standards which RICS, as the professional regulator for the surveying profession, expects from its members. The Panel concluded that Ms Chan's conduct in representing the case study for the purposes of the APC process as all her own work, when she was fully aware that it was not, constituted a lack of integrity.

Particular 1(c)

Her actions at (a) above were dishonest in that she knew she was representing the case study as all her own work and she knew to a material extent it was not.

47. The Panel took into account that Ms Chan had admitted that she acted dishonestly.
48. The Panel also considered the first element of the ***Ivey*** test in relation to dishonesty. In respect of Ms Chan's state of knowledge or belief as to the facts, the Panel was satisfied that Ms Chan was fully aware that the case study was required to be her own work. This was made very clear in the APC guidance and in the declaration, which gave an express warning about the consequences of plagiarism. In short, Ms Chan made a representation that the case study was her own work. She was fully aware that it was not and that it was based to a material extent on the work of Mr Tom, which she had also used without his permission. The Panel concluded the conduct was intentionally dishonest, with a view to Ms Chan securing success in the APC in order to further her career in the surveying profession.
49. In relation to the second element of the ***Ivey*** test, the Panel was further satisfied that Ms Chan's conduct was dishonest by the standards of ordinary, decent people. It is a basic societal norm that work for professional examinations is expected to be the candidate's own work. Further, any member of the public who was aware of the clear guidance given to APC

candidates, and to the declaration which they were required to sign, would consider Ms Chan's actions in this case to be dishonest.

50. The Panel next considered Rule 3 of RICS' Rules of Conduct for Members 2007:

“Ethical behaviour

3. Members shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with their professional obligations.”

51. In the light of its findings of fact that Ms Chan had acted with a lack of integrity and had acted dishonestly, the Panel concluded that her actions were gravely inconsistent with the professional obligations which RICS requires of its members. The Panel was satisfied that Ms Chan was therefore clearly in breach of Rule 3.

Liability to disciplinary action

52. The Panel noted that it was alleged that Ms Chan is liable to disciplinary action pursuant to Bye-law 5.2.2(c), that is, failure to adhere to the rules and regulations governing members' conduct.

53. The Panel had found that Ms Chan's actions were in breach of Rule 3 of the Rules of Conduct. This was a serious breach which fell far short of expected standards as it involved findings of lack of integrity and dishonesty. The Panel was satisfied that Ms Chan was liable to disciplinary action.

Sanction

54. Having found that liability to disciplinary action was established, the Panel considered what if any sanction it should impose. The Panel received and accepted the advice of the legal adviser as to the available sanctions and the appropriate approach to its consideration of sanction. The Panel referred to RICS Sanctions Policy (March 2020, Version 9) and its supplements.

55. RICS had not made any submissions proposing a specific sanction, nor had Ms Chan provided any submissions on the issue of sanction.

56. In considering sanction, the Panel bore in mind that the purpose of sanctions in RICS proceedings is:

- The need to demonstrate to society and to other Members or Firms that RICS takes firm action in order to protect the public interest and promote regulatory compliance;
- The need to act in the public interest by protecting the public, the reputation of the profession and to declare and uphold proper standards;
- The necessity to deter the Regulated Member and other Members or Firms from future non-compliance.

57. The Panel bore in mind that that the purpose of a sanction is not to be punitive, though a sanction may have a punitive effect.

58. Given the gravity of its findings in this case, the Panel first concluded that a sanction was required.

59. In considering the appropriate level of sanction, the Panel applied the principle of proportionality. A sanction must be proportionate to the breach and all the circumstances. Proportionality requires the Panel to weigh the interests of the public with those of Ms Chan.

60. The Panel was mindful that it should impose the lowest sanction which appropriately met the requirements of public protection and the public interest. The Panel adopted a proportionate approach, considering the available sanctions in ascending order of seriousness.

61. The Panel referred to Supplement 1 and considered the aggravating factor present was Ms Chan's initial response during RICS' investigation, when she told RICS that Mr Tom had provided his case study to her and that she had consulted him for advice, which she subsequently admitted was not true. The Panel took the view that this amounted to a false and misleading statement and concealing facts from RICS.

62. The charges themselves involved findings of lack of integrity and dishonesty and so to that extent, those matters had already been taken account of in the Panel's decision.

63. As mitigating factors, the Panel noted the following:

- Ms Chan has no previous RICS disciplinary history;
- She has offered an apology and expressed some remorse for her conduct;
- She has co-operated and engaged with this process;
- She has provided evidence of two courses she has undertaken relating to professional ethics;
- She has provided testimonial letters, although these were not addressed to RICS and it was not clear that the writers were aware of these proceedings or of the charges in this case.

64. Despite Ms Chan's statement as to her remorse and as to her commitment to rectifying her past conduct in the future, the Panel could not have confidence that Ms Chan had gained real insight into the significance of the issues in this case, namely the importance in maintaining high standards of honesty and integrity for those seeking to join RICS by means of the APC process.

65. In weighing these factors, the Panel concluded that there was limited mitigation in this case. In particular, whilst the Panel acknowledged Ms Chan's ultimate admissions to the charges, these were undermined, in the Panel's view, by the untruthful initial accounts she provided during RICS' investigation. The full admissions were only forthcoming once RICS had obtained direct evidence from Mr Tom which contradicted Ms Chan's earlier account.

66. The Panel was concerned that Ms Chan does not appear to have reflected in sufficient depth on her past actions and she has provided no explanation as to why she acted as she did. Although she has undertaken further training on ethical issues, dishonest conduct is attitudinal and is not readily remediable by training unless accompanied by a demonstration of real insight and understanding of the issues. In these circumstances, the Panel could not feel confident that the risk of repetition of Ms Chan's past dishonest conduct is low.

67. Having reached these conclusions, the Panel proceeded to consider the sanctions available to it, in ascending order of seriousness.
68. In light of the serious nature of the findings made, the Panel was in no doubt that the sanctions of caution and reprimand were both insufficient properly to protect the public. They would be insufficient to safeguard the wider public interest.
69. The Panel next considered undertakings. The Panel did not consider that the conduct found proved in this case, namely dishonesty and lack of integrity, was readily amenable to undertakings. The Panel also concluded such a sanction would not be an appropriate response to the issues of the maintenance of professional standards and public confidence in the surveyors' profession and in RICS as its regulator. In the view of the Panel, the same considerations applied to an order imposing conditions.
70. Similarly, the Panel concluded that in this case a fine would neither protect the public nor would it address the issues of the maintenance of professional standards, and of public confidence in the surveyors' profession and in RICS as its regulator.
71. The Panel next considered the sanction of expulsion from membership of RICS. The Panel reached the conclusion that in the circumstances of this case, this was the necessary and appropriate sanction. The findings were serious and there was limited mitigation. These considerations in the Panel's view outweighed the interest of Ms Chan. The Panel considered that only expulsion would uphold RICS' ethical standards and ensure that public confidence in the APC process and in RICS was maintained.
72. The Panel's conclusion was that the dishonesty and lack of integrity found proved in Ms Chan's case was fundamentally incompatible with continued candidate membership of RICS. The Panel therefore concluded that Ms Chan should be expelled from candidate membership.

Costs

73. The Panel accepted the advice of the legal adviser and referred to Supplement 2 to the Sanctions Policy.
74. The Panel noted the costs application from RICS in the total sum of £3,495.50.
75. The Panel noted that RICS had sent the Schedule of Costs to Ms Chan on 8 December 2023 which met the requirement of 24 hours in Rule 92 of the Rules.
76. No information as to means or submissions in relation to costs had been provided by Ms Chan.
77. In the circumstances, the Panel saw no reason not to award costs in the sum claimed by RICS. The Panel concluded it should make a costs order in the sum of £3,495.50.

Publication

78. The Panel referred to Supplement 3 to the Sanctions Policy.
79. The Panel noted there is a presumption in favour of publicity. In the absence of any submissions from the parties indicating publicity was not appropriate, the Panel determined to make an order for publicity in accordance with RICS' publication policy.
80. The Panel was mindful of the importance of publication of the decision of the Tribunal in maintaining public confidence in RICS and deterring similar conduct in the future.

Right of Appeal

81. Ms Chan has 28 days, from the service of the notification to appeal this decision, in accordance with Rules 152-154 of the Rules.

82. In accordance with Rules 166 and 167 of the Rules, the Chair of RICS' Governing Council may require a review of this decision on the grounds of undue leniency within 28 days.