

Disciplinary Panel Hearing

Case of

**Mr Kok Keong Low, MRICS [1240972]
Malaysia**

On

Thursday 13 September 2018

Paper Hearing At

RICS, 55 Colmore Row, Birmingham, B3 2AS

Panel

Ian Hastie (Surveyor Chair)
Gregory Hammond (Lay Member)
Patrick Bligh-Cheesman (Lay Member)

Legal Assessor

Margaret Obi

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 Low did not respond to the Listing Questionnaire and therefore the Panel proceeded on the basis that the above charge was not admitted.

Background

2. From January 2013 RICS members were obliged to complete and record 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. The key CPD requirements for members are: –
 - All members must undertake a minimum of 20 hours' CPD each calendar year (January to December).
 - Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD.
 - All members must maintain a relevant and current understanding of RICS' professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD.
 - All members must record the CPD activity online by 31 January.
5. For a first breach members who had not recorded sufficient CPD via the RICS online portal were issued with cautions. Members who failed to record sufficient CPD for a second time, via the RICS online portal, within a 10-year period, were issued with a caution and a fine. In accordance with the RICS Sanctions Policy a third breach within a 10-year period would be referred to a Disciplinary Panel and was likely to result in expulsion from RICS.

Service and Proceeding in Absence

6. A Notice of Hearing, dated 15 August 2018, was sent to Mr Low. The Notice was sent to him by email as his email address was his 'preferred' correspondence address held by

RICS at the relevant time. A copy of the Notice and a signed witness statement from the Regulatory Tribunal Executive was produced as proof of that the Notice was sent and the Panel was provided with the email delivery receipt.

7. The Panel was satisfied that Notice had been properly served in accordance with Rule 23 and 43(a) as it:
 - i) confirmed the charge;
 - ii) confirmed the date and time period of the hearing;
 - iii) enclosed the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended);
 - iv) invited Mr Low to indicate within seven days whether he wished to request an oral hearing.

8. Having determined that service of the Notice of Hearing had been properly effected, the Panel went on to consider whether to proceed with a paper hearing, in Mr Low's absence, or adjourn in order to conduct an oral hearing.

9. The Panel determined that it was fair, reasonable and in the public interest to proceed with a paper hearing, in Mr Low's absence, for the following reasons:
 - a) Mr Low did not request an oral hearing on the Listing Questionnaire. The Panel was satisfied that it was reasonable to conclude that Mr Low had chosen not to make such a request and was content for the charge to be considered at a paper hearing. In these circumstances the Panel concluded that Mr Low had voluntarily waived his right to request an oral hearing.
 - b) There has been no application to adjourn and no indication from Mr Low that he would be willing to attend on an alternative date and therefore re-listing this hearing would serve no useful purpose.
 - c) There is a strong public interest in ensuring that substantive hearings take place as expeditiously as possible.

Findings of Fact

10. The Panel was provided with Mr Low's CPD printouts from the online system. The records confirmed that Mr Low recorded 16 hours in 2017 of which 12 hours were formal CPD and the remaining 4 hours were informal CPD. There was no evidence or suggestion that Mr Low had been granted a concession.

11. Accordingly, the Panel found the factual allegations proved, based on the documentary evidence produced.

Liability to Disciplinary Action

12. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Low'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 noted that RICS had made efforts to communicate with members via email to remind them of their obligations in respect of CPD. However the Panel was satisfied that whether the reminders were received or not, it is the Members' obligation to complete and record CPD.

13. Accordingly, the Panel was satisfied that Mr Low was liable to disciplinary action.

Sanction

Panel's Approach

14. The Panel took into account the written submissions, on behalf of RICS, the RICS Sanctions Policy and Mr Low's disciplinary history. The Panel noted that Mr Low, in addition to only partially recording his CPD hours for 2017, had also failed to record any CPD hours in 2013 and 2014 for which he was sanctioned as follows:

- 2013 – Caution
- 2014 – Caution and fine

15. 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.

Decision

16. 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. Compliance is not optional. Although the CPD requirements are not dependent on the RICS sending reminders to its members, the Panel noted that Mr Low was sent several email reminders

and either knew or ought to have known that if he did not comply with the CPD requirements in 2017 he would be referred to the RICS Disciplinary Committee.

17. Although Mr Low did not respond to the Listing Questionnaire and did not provide any written representations the Panel noted that he recorded 31 CPD hours in 2015, 22.5 hours in 2016 and 16 hours in 2017 of which 12 hours was formal CPD and the remaining 4 hours was informal CPD. The Panel was satisfied that Mr Low's partial compliance was a mitigating factor. The Panel was unable to identify any other mitigating factors.

18. The Panel considered that the following aggravating factors were present in this case:

- Mr Low has not engaged with the regulatory process
- There was no evidence of insight or remorse.

19. The Panel concluded that the repeated failure to record CPD was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. Whether Mr Low received the RICS reminders or not, it remained his responsibility to ensure that he complied with his CPD obligations. Furthermore, the Panel noted that Mr Low completed and recorded his CPD hours in 2015 and 2016 and partially completed his CPD hours for 2017. There was no evidence before the Panel that he had contacted RICS regarding any subsequent difficulties in recording his CPD online.

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 a caution had already been imposed for previous breaches.

21. In considering whether to impose 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 is 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 Low should have been completing and recording his CPD online in any event. Even if an undertaking were to be combined with either a caution or a fine, the Panel concluded that imposing such a sanction would undermine public trust and confidence in the regulatory process.

22. The Panel then considered whether to impose a fine. The Panel was mindful that a fine was imposed on Mr Low for failing to record his CPD hours for the year 2014. Even though Mr Low had only narrowly failed to comply with his CPD requirements on this occasion, his lack of engagement and insight were aggravating factors. However, the Panel was satisfied that, in light of the mitigating circumstances, a fine would be an appropriate sanction and concluded that it should be imposed alongside conditions. The

Panel concluded that Mr Low sought and obtained the benefits of RICS membership but appeared unwilling to consistently accept the obligations that comes with that privilege. The Panel took the view that Mr Low should be given one final opportunity to comply with his CPD obligations. The Panel decided that a fine of £300 reflects the seriousness of Mr Low's failings.

23. The Panel also considered that a condition is proportionate and appropriate and adequately meets the public interest as it re-affirms the obligations required of all members of the profession to comply with the RICS rules. The Panel imposed a condition in the following terms:

- As a condition of continuing membership Mr Low is directed to comply with the CPD requirements for the year 2018 by 31 December 2018 and record his CPD hours by 31 January 2019.
- Failure to comply with this condition will result in automatic expulsion from membership, without further reference to a Disciplinary Panel.

24. The Panel was mindful that paragraph 21.1. of the Sanctions Policy 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, the Panel considered that to go beyond a condition would be excessive and disproportionate in the circumstances having balanced the aggravating and mitigating factors.

Publication

25. 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

26. RICS applied for costs of \$514.53.

27. The Panel considered carefully the issue of costs and noted that Mr Low had not provided any evidence of his financial circumstances. 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.

28. The Panel concluded that it was appropriate for Mr Low to contribute towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole.

29. The Panel orders that Mr Low pays to RICS costs in the sum of \$514.53.

Appeal Period

30. Mr Low has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

31. 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.