

Disciplinary Panel Hearing

Case of

Mr Hai Feng Zhang MRICS [6640748]

On

Friday 14 December 2018

Panel

Alison Sansome (Lay Chair)
Justin Mason (Surveyor Member)
Nick Hawkins (Lay Member)

Legal Assessor

Mark McConochie

The formal charge is:

Between 1 January 2016 and 1 February 2017, 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.

Service and Proceeding in Absence

1. Mr Zhang did not attend the hearing and was not represented. RICS invited the Panel to proceed in Mr Zhang's absence.
2. A Notice of Hearing, dated 4 September 2018, was sent to Mr Zhang by courier to the address held on Mr Zhang's RICS member contact record. A copy of the Notice and a signed witness statement dated 17 October 2018 from Maria Choudhury, Regulatory Tribunal Executive at RICS, was produced by RICS as proof that the Notice had been sent. A witness statement from Mr Tong Hong dated 29 October 2018 confirmed that the Notice had been delivered and signed for by Mr Zhang.
3. The Panel was satisfied that Notice had been properly served in accordance with Rule 23 of the Disciplinary Registration and Appeal Panel Rules 2009.

The Notice:

- i) confirmed the charge;
 - ii) gave the required 56 days' notice of the date, time and venue of the hearing;
 - iii) enclosed the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended);
 - iv) enclosed the RICS bundle of documents including the evidence upon which the RICS relied and a Listing Questionnaire for completion by Mr Zhang.
4. Having determined that service of the Notice of Hearing had been properly given in accordance with the Rules, the Panel went on to consider whether to proceed in the absence of Mr Zhang.
 5. The Panel accepted the advice of the legal assessor about the need to consider very carefully whether to exercise its discretion to proceed in the absence of Mr Zhang and the factors it should consider when doing so.

6. The Panel considered all of the circumstances and the need for regulatory proceedings to be conducted fairly but also the public interest in ensuring that regulatory proceedings are dealt with promptly. The Panel was mindful of the need to consider very carefully whether this case could properly – and fairly – be considered without Mr Zhang being able to present his case in person, or through a representative, and bore in mind as a general principle that a Member who is facing a disciplinary allegation has the right to be present and represented at a hearing.
7. When considering the potential prejudice to Mr Zhang the Panel was mindful of the range of possible sanctions available to it should liability be found against him, including the possibility of expulsion from membership. A disciplinary hearing is a very serious matter for any professional person and it is right that Members should be given the opportunity to attend and participate.
8. However, the Panel was mindful of the public interest in ensuring that regulatory proceedings take place as expeditiously as possible. Mr Zhang had been informed in the Notice of Hearing that he could attend the hearing by telephone – with the assistance of a translator if necessary – and had been informed that the Panel may proceed in his absence if he did not participate. An attempt had been made by RICS to contact Mr Zhang by telephone on the morning of the hearing to see if he wished to participate.
9. Mr Zhang had not engaged with the regulatory process and the Panel was satisfied that in these circumstances he had voluntarily waived his right to attend. For that reason the Panel did not consider adjourning the hearing would lead to any reasonable prospect that Mr Zhang would attend on a future date.
10. When considering the risk of prejudice to Mr Zhang, the Panel took into account that whether or not the required number of hours of CPD have been completed and recorded by a Member – which is central to the charge in this case - is a matter of documentary record and that any

prejudice arising from a Member not being able to test the evidence in such a case was to be assessed accordingly.

11. Having carefully weighed all of the considerations above, the Panel decided that in all of the circumstances the hearing could proceed fairly in the absence of Mr Zhang.

Background

12. From January 2013 RICS members were obliged to complete 20 hours CPD activity by 31 December of each calendar year.

13. Rule 6 provides: **“Members shall comply with RICS requirements in respect of continuing professional development.”**

14. 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.

15. For the CPD year 2013 members who had not recorded sufficient CPD via the RICS online portal were issued with a caution. For the CPD year 2015 members who had not recorded sufficient CPD in either one of the two previous years, and who had again failed to record sufficient CPD in 2015 via the RICS online portal, were issued with a caution and a fine.

Members were informed that a third breach within a 10-year period would be referred to a Disciplinary Panel and was likely to result in expulsion from RICS.

Findings of Fact

16. Mr Zhang had not returned a completed Listing Questionnaire despite having been invited to do so and had not otherwise indicated whether or not he admitted the charge. The Panel therefore proceeded on the basis that the charge was not admitted.
17. The Panel was provided with a copy of Mr Zhang's CPD records from the RICS online CPD system which were exhibited to a witness statement dated 7 August 2018 from Annabel Joester, a solicitor working for the RICS.

The Panel found, based on this evidence, that Mr Zhang:

- (i) Had not completed and recorded, or caused to be recorded, any hours of CPD between 1 January 2016 and 1 February 2017 as alleged; and
 - (ii) Did not have in place any full or partial concession from RICS in relation to the completion of his CPD for that year.
18. Mr Zhang had not submitted any evidence or representations to suggest that the RICS documentary record relating to his CPD was inaccurate. Accordingly, the Panel found the charge proved.

Liability to Disciplinary Action

19. The Panel took into account that the CPD policy had 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. CPD is intended to ensure consistent standards within the profession and so that members maintain up to date knowledge and are

able to demonstrate this through proper and accurate recording of their CPD. Ensuring that Members complete CPD is an important requirement in the interests of ensuring public protection and confidence in the profession and RICS as regulator.

20. The witness statement from Raquel Loll, Director of Professional Assurance and Corporate Affairs, Asia Pacific, RICS, dated 12 December 2017 at page 19 of the RICS bundle details the steps that are taken by RICS to inform members of their CPD requirements and to assist them in complying with those requirements in the event of intermittent internet blackouts that can be experienced in China which can lead to difficulties accessing the RICS website. This includes the option of Members being able to submit their CPD entries in the form of a spreadsheet which would be uploaded by RICS onto the CPD system.
21. RICS took a number of steps to remind members of their CPD obligations, including via SMS messaging. Mr Zhang still failed to comply with his obligations.
22. The Panel were of the view that a failure to comply with CPD requirements without any explanation is sufficiently serious to give rise to 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 considered that breaches of the RICS rule on CPD recording are serious as they prevent RICS from monitoring compliance and thus ensuring public protection.
23. Accordingly, the Panel was satisfied in all of the circumstances of the breach that Mr Zhang's conduct is sufficiently serious as to render him liable to disciplinary action.

Sanction

Panel's Approach

24. The Panel took into account the written submissions made on behalf of RICS, the RICS Sanctions Policy and Mr Zhang's disciplinary history which is as follows in related to CPD related sanctions:

2014 - Caution

2015 - Caution and fine. RICS indicated that Mr Zhang had not paid this fine.

25. The Panel bore in mind that the purpose of sanctions is not to be punitive, although they 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 the Panel approached its decision having taken into account any mitigating and/or aggravating factors.

Decision on Sanction

26. 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 and compliance is not optional.

27. The charge found proved represented a third breach of the CPD requirements, Mr Zhang having failed to complete and record, or caused to be recorded, the required number of hours of CPD over three separate years, despite having been sent a number of reminders by RICS of the importance of doing so and the consequences that could follow for failing to comply. Previous sanctions in relation to those CPD breaches had not ensured that Mr Zhang had complied with his CPD obligations and the Panel considered that to be a very serious aggravating feature of this case. Mr Zhang has provided no explanation to the RICS for his failings or presented any evidence or representations by way of mitigation.

28. Having considered all of the circumstances of this case, the Panel first considered whether to impose any sanction at all. The Panel concluded that the repeated failure by Mr Zhang to complete and record CPD was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. The Panel found no such exceptional circumstances to be present.

29. The Panel went on to consider whether to impose a caution. The Panel concluded that a caution was not appropriate because it would not adequately reflect the seriousness of the conduct, recognising the cumulative pattern of non-compliance. A caution had already been imposed for a previous breach and yet Mr Zhang continued to show a disregard for his professional obligations.
30. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Zhang's repeated failure to comply with the requirement to complete and record CPD.
31. In considering whether to require Mr Zhang to give an undertaking the Panel took into account the mandatory nature of the CPD requirements and lack of engagement in this matter. 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 Zhang should have been completing and recording his CPD online in any event and concluded that imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.
32. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. Mr Zhang had previously received a fine for a breach of the CPD requirements (which remained unpaid) and this had clearly not served as an adequate warning sufficient to bring Mr Zhang back into compliance. Mr Zhang's repeated failure to abide by his professional responsibilities was unacceptable for someone who wished to remain part of a respected profession.
33. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Zhang's continuing membership as an adequate and proportionate response to the misconduct demonstrated by this case.
34. The Panel took into account paragraph 21.1. of the Sanctions Policy, which states that in the absence of extenuating circumstances 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. In the absence of any response explaining Mr Zhang's failure to complete and/or record CPD in 2014, 2015 and 2016, the Panel considered there was no good reason in this case to depart from the Sanctions Policy. Having carefully considered all aspects of

the case, the Panel concluded that the appropriate and proportionate sanction in this case was expulsion. It therefore ordered that Mr Zhang be expelled from membership of RICS.

Publication

31. 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 and ordered publication accordingly.

Costs

32. RICS have applied for costs in the sum of £1,725 and the Panel considered it fair, just and reasonable for Mr Zhang pay those costs rather than let them fall on the membership generally and therefore makes an order that he pay RICS £1,725 within 21 days of the date of this decision.

Appeal Period

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

34. 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.