

Disciplinary Panel Meeting

Case of

**Mr Wai Lun Mok MRICS, MHKIS [1191299]
Kowloon, Hong Kong**

On

Tuesday 18 September 2018

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

Panel

Ian Hastie (Surveyor Chair)
Ron Barclay-Smith (Lay Member)
Nick Hawkins (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 Mok had not responded to the Notice of Hearing dated 16 August 2018. 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. Mr Mok was also sent a number of emailed reminders as a result of missing the 31 January 2018 deadline for recording his CPD. These too 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 under cover of 5 separate emails to Mr Mok’s preferred email address held by RICS on 16 August 2018. A copy of the emails and electronic delivery receipt for them had been produced to the Panel. The Panel was accordingly satisfied that Notice had been properly served in accordance with Rule 43a. Having considered the circumstances (in particular the fact that Mr Mok had contacted RICS using his preferred email address in March 2018) the Panel was content that it was fair and in the public interest for it to proceed to consider the case.
7. Mr Mok 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 3 July 2018 setting out Mr Mok’s online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2017 prior to 31 January 2017 (though he had subsequently recorded 25 hours after the deadline) and he had not been granted any concessions for that year.

9. Accordingly the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

Liability to Disciplinary Action

10. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Mok'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.
11. Accordingly, the Panel was satisfied that Mr Mok 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 further statement from Abbie Atkins dated 3 July 2018 which indicated that Mr Mok had received a Caution for failure to comply with the CPD requirements in 2014 and a Caution and Fine in 2015 for a further breach. This was therefore Mr Mok's third such breach.

Decision

15. Mr Mok had not provided a specific response to the Notice of Hearing. However, following receipt of an email from RICS dated 21 March 2018, he had emailed RICS on 30 March 2018 to indicate he had now recorded his 2017 CPD and apologising for the late recording. He continued: *"To improve my CPD reporting, I have started recording 2018 CPD now on some completed and planned activities. I will continue to manage and update CPD*

regularly online to avoid the same situation from happening.” Mr Mok’s online record for 2018 showed that he had in fact begun recording CPD for the year. The Panel noted that he had complied with the CPD requirements in 2013 and 2016.

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

- The charge found proved represented a repeated breach of the CPD requirements, which Mr Mok clearly understood.
- He had been sent a number of prompts by email and letter that he risked disciplinary action if he did not comply which he had apparently ignored until 21 March 2018.
- He had not engaged with these proceedings.

17. 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 however busy a member’s professional or personal life may be. Compliance is not optional.

18. The Panel first considered whether it was appropriate to impose any sanction at all. 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. As noted above, he should have been aware of his responsibility to ensure that he complied with his CPD obligations. In addition the Panel noted that Mr Mok had been sent numerous reminders by RICS.

19. 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 Mok had already received two Fixed Penalties for previous breaches. The Panel also considered the imposition of a reprimand, but concluded that a reprimand would not reflect the seriousness of Mr Mok’s repeated failure to comply with the requirement to complete and record CPD on the RICS portal.

20. In considering whether to require Mr Mok 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 Mok 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.

21. Mr Mok had demonstrated some insight by belatedly recording his 2017 CPD and beginning to record his CPD for 2018, which assured the Panel that he understood his professional responsibilities. The Panel concluded that it would be proportionate and would sufficiently address the misconduct in this case to impose a fine and a condition. It therefore ordered:

- Mr Mok pay a fine of £750.
- As a condition of his continuing membership, Mr Mok 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.

22. 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 to impose a more severe sanction than a fine and a condition in this case, would in the Panel's view, be excessive and disproportionate.

Publication

23. 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

24. RICS applied for costs of HKD 4038.76 (i.e. the sum of £400 in Hong Kong dollars as at 10 August 2018).

25. 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.

26. The Panel concluded that it was appropriate for Mr Mok 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.

27. The Panel orders that Mr Mok pays to RICS costs in the sum of HKD 4038.76.

Appeal Period

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

29. 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.