

Disciplinary Panel Meeting

Case of

**Mr Wai Shing Peter Kwan MRICS [1168125]
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 Kwan 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. RICS wrote to all those who had received a caution and fine for a breach of the CPD requirements in 2014 to remind them of the RICS Regulatory Committee's policy on repeated breaches of the CPD policy. Mr Kwan 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 by registered post to Mr Kwan's postal address held by RICS on 16 August 2018. A copy of the letter and a "Track and Trace" delivery receipt 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 Kwan 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 Joe Poole, CPD Administrator at RICS dated 28 June 2018 setting out Mr Kwan's online CPD record and exhibiting the relevant

records. This showed that he had not recorded any CPD for 2017 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 Kwan'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 Kwan 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 Joe Poole also dated 28 June 2018 which indicated that Mr Kwan had received a Caution for failure to comply with the CPD requirements in 2013 and a Caution and Fine in 2014 for a further breach. This was therefore Mr Kwan's third such breach.

Decision

15. In the absence of any response from Mr Kwan, the Panel could not identify any mitigation for his failure to complete the CPD requirements for 2017. It noted however that he had complied with the CPD requirements in 2015 and 2016. In 2014 Mr Kwan had recorded

20 hours of CPD but this was all informal CPD and thus he was in breach of the requirements for that year.

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.
- 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.

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

20. In considering whether to require Mr Kwan 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 Kwan 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. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. He had previously received a fine for a breach of the CPD requirements but this had clearly not served as an adequate warning. Mr Kwan's repeated failure to abide by his professional responsibilities was simply unacceptable for someone who wished to remain part of a respected profession.

22. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Kwan's continuing membership as an adequate response to the misconduct demonstrated by this case. It also noted that Mr Kwan was required to complete and record CPD in any event and it was not clear what purpose it might serve to impose a condition relating to his future completion of CPD in the circumstances.
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. In the absence of any response explaining Mr Kwan's failure to complete and/or record CPD in 2017, the Panel considered there was no good reason in this case to depart from the Sanctions Policy. Having carefully considered all facets of the case, the Panel concluded that the only appropriate sanction in this case was expulsion. It therefore ordered that Mr Kwan be expelled from membership of RICS.

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 HKD 4038.76 (i.e. the sum of £400 in Hong Kong dollars 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 Kwan 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 Kwan pays to RICS costs in the sum of HKD 4038.76.

Appeal Period

29. Mr Kwan 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.