

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING

Case of

Cheow Kean Wang BSc MRICS [0087159]

Malaysia 47300

On

Wednesday 23 May 2018 at 08.00

Panel

Ian Hastie (Surveyor Chair)
Patrick Bligh-Cheesman (Lay member)
Nick Hawkins (Lay Member)

Legal Assessor

Rosemary Rollason

Parties

Mr Cheow Kean Wang was not present or represented.

RICS was represented by Ms Jan Brewer of RICS

Hearings Officer

Ms Jae Berry

CHARGES HEARD

The Panel considered the following formal charge against Mr Wang:

1. On or around 15 March 2017 you spoke in an unprofessional and/or aggressive manner to Ms Yuen-Yee Leong, an employee of the Royal Institution of Chartered Surveyors (“RICS”).

Contrary to Rule 3 of the Rules of Conduct for Members 2007

2. You failed to co-operate with RICS in that you did not respond to communications sent to you on or around 22 May 2017 and/or 8 June 2017 and/or 27 June 2017 and/or 17 July 2017 asking for your comments in relation to the complaint raised by Ms Leong.

Contrary to Rule 9 of the Rules of Conduct for Members 2007.

In respect of both charges you are liable to disciplinary action in accordance with Bye-Law 5.2.2(c).

Preliminary issue – decision to proceed in the absence of the Member

3. Mr Wang did not attend the hearing. The Panel considered the issue of service of the papers. The Panel received a witness statement from Mrs J Berry, RICS Regulatory Tribunal Executive, dated 03 April 2018, setting out details of the service of the proceedings upon Mr Wang.
4. The legal assessor reminded the Panel of the provisions as to service set out in Rule 23 of the Disciplinary, Registration and Appeal Panel Rules of 01 April 2009, version 7, 01 January 2017 (“the Rules”). The Notice of Hearing, together with the other documents required to be supplied, was sent to Mr Wang on 01 March 2018, so giving more than the required 56 days’ notice of the hearing date. The Notice had also been sent to Mr Wang by email on the same date. Accordingly, the Panel found that the requirements of the Rules had been met and notice of hearing had been properly served.
5. The Panel next considered whether to proceed in the absence of Mr Wang. The legal assessor’s advice was sought and accepted. The Panel was referred to the guidance set out in the cases of *R v Jones [2002] UKHL 5* and *GMC v Adeogba; GMC v Visvardis [2016] EWCA Civ 162*.
6. The Panel was mindful that where a person is ill it will usually be unfair to proceed in his absence. However, there is a public interest in conducting professional regulatory

proceedings expeditiously. The Panel must consider matters such as whether the person had requested an adjournment, whether the person would be likely to attend any adjourned hearing, or whether, in all the circumstances, the Member had voluntarily absented himself from the hearing. A decision to proceed in the absence of the person facing the allegation should be taken with great care and caution, and with the fairness of the hearing at the forefront of the Panel's mind. The Panel noted the guidance in the case words of **Adeogba** (cited above): "*Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.*"

7. The Panel had sight of an email from Mr Wang to RICS, dated 02 March 2018, in response to the emailed Notice of Hearing sent to him on 01 March 2018. In his email Mr Wang stated that he had discontinued his RICS membership last year and was no longer an RICS member. There was a further email from Mr Wang, dated 12 March 2018, in response to an email from RICS dated 07 March 2018 informing Mr Wang that he was still an RICS member. Mr Wang's response repeated that he was no longer a member of RICS, that he no longer wished to receive communications from RICS and that he would not respond to any RICS' correspondence in any form.
8. The latest communication from Mr Wang was a response to information sent to him on 18 May 2018 concerning RICS' costs in the matter and which referred again to the date of the hearing. Mr Wang responded by email on 21 May 2018, again claiming that he had discontinued his RICS membership.
9. The Panel considered it was evident that Mr Wang had received RICS' emails referring to the hearing date. It was apparent that he was aware of today's hearing but had clearly stated that he did not intend to engage further with RICS. He had not requested an adjournment for any reason and had not availed himself of the opportunity offered to participate in the hearing by telephone. The Panel therefore concluded that Mr Wang had voluntarily and deliberately absented himself from the proceedings and there appeared to be no prospect that he would attend on a future date if the hearing were to be adjourned.
10. The Panel was also mindful of the general public interest in ensuring that disciplinary cases are dealt with as expeditiously possible. Taking account of all the above factors, the Panel determined that it was in the public interest to proceed with the hearing in Mr Wang's absence.

Amendment of Charge 1

11. The Panel amended a typographical error in Charge 1 to change the word "Institute" to "Institution".

Background

12. Mr. Wang has been a professional member of RICS since 29 November 1991.

13. On 03 March 2017, Ms Yuen Yee Leong, Operations Manager for RICS Regulation (Asia Pacific) was contacted by a colleague informing her that Mr Wang had sent a bank draft in respect of his 2017 subscription fee. However, it was noted that there was an unpaid fixed penalty fine of 400 US dollars outstanding from Mr Wang in respect of the CPD year 2015.
14. Ms Leong emailed Mr Wang on 10 March 2017 to confirm a time for her to call him to discuss whether he intended to appeal or to pay the CPD fine. She did not receive any response from Mr Wang and so she called his mobile phone on 15 March 2017. Ms Leong introduced herself to Mr Wang and informed him that she was calling from RICS Regulation in Singapore. She explained the situation regarding the outstanding CPD fine which she said he was required to pay before RICS' could process his 2017 membership renewal, failing which he would be referred to a disciplinary panel with the presumption of expulsion.
15. Mr Wang became angry when he heard about the CPD fine. He complained about the fee being too expensive. He said that RICS never thought of members' conditions and simply charged high fees to collect money from members. He refused to listen to Ms Leong's explanations. He kept cutting in whilst she was speaking and went into a temper immediately. He raised his voice and started to swear about RICS. He screamed and shouted the word "fuck" in almost every sentence, non-stop and loudly.
16. Ms Leong asked Mr Wang to calm down and listen to her explanation. He continued to complain and say he would not calm down. He made comments to the effect that RICS was treating its members the way the Malaysian government treated its citizens, that it was corrupt and that all RICS cared about was collecting money from members. He said that 400 US dollars was too costly when converted into Malaysian currency and that it would cover an individual household's monthly expenses. He said that he was nearly 60 years old and did not do CPD anymore. He said he was unable to record CPD online. In response, Ms Leong said that Mr Wang could request the excel spreadsheet on which to record his CPD. She told him that if he had experienced difficulties in recording CPD, he should have contacted RICS' membership team earlier to advise them and they would have given him advice.
17. Mr. Wang said that he joined RICS 25 years ago and the RICS had never listened to members' feedback. He demanded that either the CPD fine be waived or reduced or that RICS terminate his membership. He then terminated the call.
18. Ms Leong concluded that Mr. Wang had behaved very unprofessionally and very disrespectfully to her. He has been impolite and kept screaming swear words. He did not appear to regret his non-compliance and did not want to listen to Ms Leong's explanations.

19. Ms Leong was distressed by the conversation and could not understand why when she was simply doing her job. Her colleague saw her leave the office in tears after the call and reported the matter to her manager.
20. Subsequently Ms Leong checked Mr Wang's records and found that she had written to him in June 2016 in response to his appeal request, and that she had also at that time forwarded the CPD excel spreadsheet to him.
21. On 22 May 2017, RICS wrote to Mr Wang seeking his comments in respect of Ms Leong's complaint in relation to Rule 3 of the Rules of Conduct for Members. In the absence of any response, a further email was sent on 08 June 2017, to which, again, there was no response. On 27 June 2017, a further email was sent, and this advised Mr Wang that there was now also a potential breach of Rule 9 of the Rules of Conduct for Members. In the continued absence of any response, a further email was sent on 17 July 2017.

Response

22. Mr Wang had not submitted any response to the allegations. The Panel regarded them as denied for the purposes of its consideration.

Burden and standard of proof

23. RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. That is a single unwavering standard of proof, though the more unlikely an allegation the more cogent the evidence that the Panel might require to prove it.
24. The question of whether or not any facts admitted or found proved give rise to liability to disciplinary action is a matter for the Panel's judgment.
25. The Panel reminded itself that there was no requirement for Mr Wang to prove anything. The Panel had in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and proceeds upon the basis that the Human Rights Act 1998 will apply. It bore in mind in particular Mr Wang's right to a fair trial under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act.

Evidence

26. The Panel received a service bundle of 10 pages and RICS' hearing bundle, running to 42 pages. The Panel received recent email correspondence in connection with the service of notice of RICS' costs application upon Mr Wang.

27. In respect of Charge 1, the Panel considered a witness statement dated 24 January 2018 from Ms Yuen-Yee Leong, Operations Manager for RICS Regulation (Asia Pacific).
28. In RICS' hearing bundle, the Panel had sight of the emails sent to Mr Wang during RICS' investigation into the complaint dated 22 May 2017, 8 June 2017, 27 June 2017 and 17 July 2017. These were the communications referred to in the particulars of Charge 2.

DETERMINATION

Findings of fact

29. In respect of Charge 1, the Panel accepted the account of RICS' witness, Ms Leong, in her witness statement and exhibits. It found her written account to be clear and straightforward. She had set out her recollection of the telephone conversation she had with Mr Wang on 15 March 2017 and described clearly Mr Wang's aggressive and unprofessional manner and the distress which she was caused.
30. The Panel accepted the written evidence of Ms Leong. Rule 3 of the Rules of Conduct for Members provides that members shall at all times act with integrity and avoid situations that are inconsistent with their professional obligations. It was satisfied that Mr Wang was in breach of Rule 3 of the Rules of Conduct for Members, in that he had not avoided any actions or situations which were inconsistent with his professional obligations. The Panel was satisfied that the facts were proved on the balance of probabilities.
31. In respect of Charge 2, it was a matter of record that the emails referred to in the particulars were sent to Mr Wang and the Panel had had sight of them in the hearing bundle.
32. The Panel had noted that the email of 22 May 2017 referred to a due date for a response of 5 May 2017, a date which had by then already passed. Whilst noting this was in all likelihood an error, and that it was corrected in the next email, the Panel considered that the error in the email of 22 May 2017 added an element of confusion to the reader and it found the evidence in this respect unsatisfactory. The Panel therefore found this specific element of Charge 2 not proved.
33. The Panel was satisfied that Mr Wang had not responded to the communications and had failed to co-operate with RICS' investigation. The Panel found Charge 2 proved on the balance of probabilities, other than in respect of the email 22 May 2017.
34. Rule 9 provides that members shall co-operate fully with RICS staff and any person appointed by the Regulatory Board. The Panel was satisfied that Mr Wang was in breach of Rule 9 of the Rules of Conduct for Members as alleged.

Liability to disciplinary action

35. On the basis of its findings on the facts the Panel considered whether or not Mr Wang was liable to disciplinary action under Bye-Law 5.2.2(c). In coming to its conclusion, the Panel accepted the advice of the Legal Assessor. This question is one for the Panel's judgment.
36. The Panel had found that Mr Wang's actions were in breach of Rules 3 and 9 of the Rules of Conduct for Members. In the Panel's view these were not minor or trivial breaches and the Panel was satisfied they were of the gravity and seriousness to indicate that Mr Wang was liable to disciplinary action under Bye-Law 5.2.2(c). The Panel considered that the two types of conduct in the charges reflected a consistent theme of unprofessional behavior and disregard of the professional obligations upon a member of RICS.

Decision as to sanction

37. The Panel received and accepted the advice of the legal assessor. It bore in mind that the purpose of a sanction is not to be punitive, though that may be its 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 a regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
38. The Panel referred to RICS' Indicative Sanctions Policy 01 January 2008 and its supplements.
39. The Panel must first consider whether to impose a sanction. If it decided a sanction was required, the Panel must commence at the lowest sanction, and only if it decides that sanction is not appropriate should it move to the next level of sanction. Having arrived at a sanction that is minded to impose, the Panel then reviews the next sanction above so as to satisfy itself that this would be too severe a sanction. The Panel bears in mind that more than one sanction may be imposed.
40. The Panel considered carefully the mitigating and aggravating factors of this case. Mr Wang had not put forward any submissions in mitigation.
41. In respect of Charge 1, the Panel did not identify any mitigating factors.
42. In relation to aggravating factors, the Panel noted that Mr Wang had not accepted his actions or shown any remorse, for example by offering an apology to Ms Leong. He had demonstrated no insight of the impact of his behaviour upon Ms Leong. She was

a member of RICS' staff simply endeavouring to carry out her professional duties. The Panel was mindful that as such, Ms Leong had done her best to respond professionally to Mr Wang's aggressive and unprofessional attitude to her. The distress she described was, in the Panel's view, a further aggravating factor

43. In respect of Charge 2, the Panel did not identify any mitigating factors.
44. The Panel considered that aggravating factors were the deliberate and repeated nature of Mr Wang's actions. He had demonstrated no remorse or insight into his conduct. Rather he had repeatedly expressed in his emails to RICS that he did not wish to engage with RICS or to continue to be a member, and that he would not respond to further correspondence.
45. The Panel also took into account as an aggravating factor Mr Wang's attitude to these proceedings. He had failed to engage with the process and demonstrated a wholesale disregard for RICS' regulatory responsibilities and his own obligations as a regulated member of RICS. His conduct in the period prior to the hearing, and also his attitude to his obligations in relation to RICS' CPD requirements, were a further manifestation of the attitude he had demonstrated in the matters which were the subject of the charges in this case.
46. Mr Wang had not demonstrated any understanding of the need for RICS to be able to regulate its members in the public interest. This was amply illustrated by his failure to respond to the legitimate questions RICS had put to him about the allegations.
47. The Panel moved to consider the question of sanction. It considered the matters too serious for no sanction to be imposed, and so considered first whether a caution was appropriate. The Panel concluded that the breaches found proved were not minor in nature and concluded therefore that a caution would not address the seriousness of the situation.
48. The Panel was of the view that these were not trivial offences. Mr Wang's breaches created a real risk to the public and the reputation of the profession and of RICS as its regulator. Further, the failure to engage with RICS undermines its regulatory efforts to the detriment of all members. For those reasons, the Panel concluded that a reprimand would not meet the justice of the situation.
49. The Panel considered whether undertakings or conditions would be appropriate. Mr Wang had not complied with his regulator in any meaningful way in the course of these proceedings and indeed had expressly stated "*I will NOT respond to any of your correspondences in any form*". In these circumstances the Panel could not have confidence that he would engage or comply with such sanctions and therefore they would not be appropriate or serve a useful purpose.
50. The Panel considered whether a fine would be an appropriate sanction and noted that there was already an outstanding fine in relation to the earlier CPD issue. The

Panel also concluded that a fine would not address the seriousness of the failures in his practice.

51. The Panel concluded that Mr Wang's actions as whole demonstrated a disregard of his regulatory obligations to RICS. He had in fact repeatedly stated he did not wish to remain a member or engage with RICS. The Panel was of the view that RICS' regulatory role was fundamentally undermined by this attitude and conduct and decided that the only appropriate sanction was expulsion.
52. The Panel determined that Mr Cheow Kean Wang should be expelled from membership of RICS.

Publication

53. The Panel considered the guidance as to publication of its decisions. It accepted the legal assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus.
54. The Panel saw no reason for departing from the normal practice in this case. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.
55. The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

Costs

56. The RICS Presenting Officer applied for costs in the sum of £4967.50 and had provided a schedule to Mr Wang in advance of the hearing, on 18 May 2018. Mr Wang had not submitted any response on the amount of costs sought and had not provided any information as to his means or ability to pay.
57. The Panel considered carefully the costs sought and concluded that it was fair to make a costs order in this case. If the Panel declined to make a costs order, the cost of the proceedings falls on the profession as a whole.
58. The Panel therefore concluded that it should order Mr Wang to pay the sum of £4,967.50 as sought by RICS.

Appeal Period

Mr Cheow Kean Wang has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.

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.