

Disciplinary Panel Hearing

Case of

**Dr Kamarul Bin Salleh, BSc(Hons), MRICS [1133015]
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 Bin Salleh did not respond to the Listing Questionnaire and therefore the Panel proceeded on the basis that the above charge was not admitted. The Panel noted that the only contact from Mr Bin Salleh was a phone call on 12 February 2018, in response to a telephone call that had been made to him by RICS. The record of the return call stated that *[Mr Bin Salleh]...was reminded of his outstanding 2017 CPD submission which is due since 31 Jan 2018. He was also informed that if he fails to submit, his case would be referred to a disciplinary panel as he had previously receive a fine and caution from us. [Mr Bin Salleh] mentions he has been busy and would get to it as soon as possible.'*

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 Bin Salleh. 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 a copy of 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 Bin Salleh 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 Bin Salleh'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 Bin Salleh's absence, for the following reasons:
 - a) Mr Bin Salleh did not request an oral hearing on the Listing Questionnaire. The Panel was satisfied that it was reasonable to conclude that Mr Bin Salleh 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 Bin Salleh had voluntarily waived his right to request an oral hearing.
 - b) There has been no application to adjourn and no indication from Mr Bin Salleh 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 Bin Salleh's CPD printouts from the online system. The records confirmed that Mr Bin Salleh did not record any CPD hours for 2017. There was no evidence or suggestion that Mr Bin Salleh 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 Bin Salleh'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 Bin Salleh 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 Bin Salleh's disciplinary history. The Panel noted that Mr Bin Salleh, in addition to failing to record any CPD hours in 2017, had also failed to record any formal CPD hours in 2014 and any CPD hours at in 2015 for which he was sanctioned as follows:

- 2014 – Caution
- 2015 – 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 Bin Salleh was sent several email reminders and in a letter, dated 9 March 2017, in relation to the Caution and Fine for the 2016 breach, he was put on notice that if he did comply with the CPD requirements in 2017 he would be referred to the RICS Disciplinary Committee.

17. The Panel was unable to identify any mitigating factors. The Panel noted that Mr Bin Salleh stated in his telephone call with RICS on 12 February 2018, that he had been 'busy'. However, the Panel took the view that that did not amount to a mitigating factor.

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

- Mr Bin Salleh's engagement with the regulatory process has been minimal as it was limited to the return of a telephone call from RICS.
- There was no evidence that any CPD hours had been recorded at all for the year 2017.
- There was no evidence of insight, remorse or any attempt to remediate.

19. The Panel noted that Mr Bin Salleh had stated during his telephone call with RICS on 12 February 2018, that he had been '*busy and would get to it as soon as possible.*' However, there had been no further communication from him which strongly indicated that he had no insight into the importance of compliance with RICS' professional standards.

20. 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 Bin Salleh received the RICS reminders or not, it remained his responsibility to ensure that he complied with his CPD obligations. Furthermore, Mr Bin Salleh completed and recorded 28 hours of CPD for the year 2016 and there was no evidence before the Panel that he had contacted RICS regarding any subsequent difficulties in recording his CPD online.

21. 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.

22. 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 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 Bin Salleh 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.

23. The Panel then considered whether to impose a fine. The Panel was mindful that a fine was imposed on Mr Bin Salleh for failing to record his CPD hours for the year 2015. The Panel concluded that, in these circumstances, to impose a further financial penalty would serve no useful purpose as it had not resulted in consistent compliance with the CPD requirements to date. Instead a further fine would undermine the need to uphold the standards expected of all members and the deterrent effect on other members of the profession.
24. The Panel went on to consider conditions. The Panel took the view that imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances. However, to impose such a sanction the Panel would need to be satisfied that Mr Bin Salleh has demonstrated a willingness to engage with the regulatory process and a willingness to comply with any condition imposed. As Mr Bin Salleh has repeatedly failed to comply with the CPD requirements in the past and has failed to respond to written reminders to record his CPD, the Panel could not be satisfied that he would comply with conditions. Therefore the Panel concluded that it would not be possible to formulate conditions which would be realistic or achievable. Furthermore, in the absence of any mitigation, remorse or insight the Panel concluded that Mr Bin Salleh's non-compliance with the CPD requirements demonstrated a blatant disregard for the purpose of regulation and consequently undermines public trust and confidence and is fundamentally incompatible with continued membership.
25. Having determined that conditions would not meet the wider public interest the Panel determined that Mr Bin Salleh should be expelled from RICS membership. The Panel recognised that expulsion is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. The Panel decided that Mr Bin Salleh's case falls into this category as he has repeatedly failed to comply with the fundamental requirement to record CPD and has failed to demonstrate that he has any intention of complying in the future. The Panel was satisfied that, in these circumstances, any lesser sanction would undermine public trust and confidence. In reaching this conclusion the Panel balanced the wider public interest against Mr Bin Salleh's interests. The Panel had regard to the impact expulsion may have on Mr Bin Salleh but concluded that his interests were significantly outweighed by the Panel's duty to give priority to the public interest concerns raised by this case. The Panel was also 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. The Panel was unable to identify any good reason to depart from the presumption.
26. Accordingly the Panel determined that Mr Bin Salleh should be expelled from membership of RICS.

Publication

27. 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

28. RICS applied for costs of \$514.53.

29. The Panel considered carefully the issue of costs and noted that Mr Bin Salleh 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.

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

31. The Panel orders that Mr Bin Salleh pays to RICS costs in the sum of \$514.53.

Appeal Period

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

33. 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.