

Disciplinary Panel Hearing

Case of

Maisie Joyce Kwan

China

On

9 November 2018

At

RICS offices, 55 Colmore Row,
Birmingham B3 2AS

Chair

Alison Sansome (Lay Chair)

Members

Justin Mason (Surveyor Member)

Ron Barclay-Smith (Lay Member)

Legal Assessor

Fiona Barnett

RICS Representative

James Lynch

1. Ms Kwan was neither present nor represented.

Service

2. The Panel had sight of the notice of hearing letter dated 4 September 2018. This was sent to Ms Kwan by post to her RICS registered address on 4 September 2018.
3. The Panel was satisfied that the service requirements of the Disciplinary, Registration and Appeal Panel Rules 2009 (DRAPR) have been met, and that proper notice of the hearing was given.

Proceeding in absence

4. Mr Lynch submitted that the Panel should proceed in Ms Kwan's absence. He said that the notice had been served in accordance with the rules, and there was no evidence that she would attend on a future date.
5. In deciding whether to proceed in absence, the Panel bore in mind that whilst it has a discretion to commence and conduct proceedings in the absence of the member, it should exercise that discretion with the utmost care and caution. The Committee had regard to the factors set out by Lord Bingham in the case of **R v Jones 2002 UKHL 5** and the case of **General Medical Council v Adeogba and Visvardis 2016 EWCA Civ 162**.
6. The notice of hearing has been delivered to Ms Kwan's registered address and so she should be aware of the hearing. There has been no response from her and in the Panel's view there was no reason to believe that she would be more likely to attend on a future occasion. Ms Kwan engaged some time ago with the RICS in relation to CPD matters, but has not done so since these proceedings commenced. The Panel was satisfied that she has disengaged from the process and voluntarily absented herself. It acknowledged that there may be some prejudice to Ms Kwan if the hearing proceeds in her absence, however it was satisfied that the public interest in proceeding outweighed Ms Kwan's interests. The Panel concluded that it was fair in all the circumstances to proceed in her absence.

The Charges:

The charge against Ms Kwan 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.

It alleged that Ms Kwan is therefore liable to disciplinary action under Bye-law 5.2.2(c).

Response

7. There was no response to the charges from Ms Kwan.

Summary

8. RICS' requirements in respect of CPD are set out in the document 'CPD Requirements and obligations'. They include requirements that 'All members must undertake a minimum of 20 hours CPD each calendar year (January to December)' and that 'Members must record their CPD activity online by 31 January.'
9. Members are required to log CPD via the RICS portal or, if based in China, members may alternatively send a spreadsheet detailing their CPD hours to RICS, or submit their local professional body CPD certificate.
10. It is alleged that Ms Kwan did not complete and record, or cause to be recorded, her CPD for 2016 on the RICS portal.

Evidence

11. The Panel had before it the RICS solicitor's bundle of documents, running to 50 pages.

Findings of fact

12. The Panel reminded itself that where the facts set out in the charge are denied, the burden of proof rests on the RICS. The RICS is required to prove the allegations to the civil standard, in otherwords, that it is more likely than not that the events occurred as alleged.
13. The Panel had regard to the statement of Annabel Joester, RICS solicitor, and the documents exhibited by her. Ms Joester's evidence was unchallenged. She confirmed that 4 hours of CPD were recorded by Ms Kwan for 2016.
14. It also had regard to the unchallenged evidence of Raquel Loll, RICS Director of Professional Assurance and Corporate Affairs, Asia Pacific region. Ms Loll explained that in recognition of occasional difficulties in accessing the RICS portal for members based in China, it is permissible for members in that region to submit a spreadsheet to RICS with CPD details, or to submit a CPD certificate from a local professional body. Ms Loll confirmed that Ms Kwan did not record sufficient CPD for 2016, nor did she submit a spreadsheet or local CPD certificate in lieu.
15. Having considered the evidence of Ms Joester and Ms Loll, the Panel found the facts proved. It was satisfied that Ms Kwan had not complied with her obligations to complete and record CPD on the portal, or cause CPD to be recorded, and that this failure amounted to a breach of Rule 6 of the Rules of Conduct for Members.

16. The Panel's view was that Ms Kwan's failure to comply with the CPD requirements and her breach of Rule 6 of the Rules of Conduct for Members amounted to a serious falling short of her professional obligations. Ms Kwan has logged CPD hours in the past, which, in the Panel's view, demonstrated that she was aware of her obligations and knows how to log CPD hours on the portal, or how to cause her CPD hours to be logged.
17. It is the duty of a RICS member to ensure that she is aware of the CPD requirements and to comply with these on a continuing basis. The CPD requirements are designed to ensure consistent standards within the profession, that individuals maintain up to date knowledge in their area of expertise and that members demonstrate this by the completion of a record at RICS which enables RICS to monitor compliance. The failure to fulfil professional obligations is likely to undermine public confidence in the profession. In the circumstances, the Panel was satisfied that Ms Kwan was liable to disciplinary action.

Decision as to sanction

18. At the sanction stage, the Panel was referred to a further bundle of documents numbering 89 pages.
19. The Legal Assessor reminded the Panel, amongst other matters, that any sanction imposed must be proportionate. If the Panel is minded to impose a sanction, it must consider the sanctions in order of severity, starting with the least severe. It must satisfy itself that any sanction it imposes is the minimum necessary to meet the public interest.
20. The Panel had regard to the RICS indicative sanctions guidance (the Guidance). It considered carefully the mitigating and aggravating factors of this case.
21. The Panel considered whether there were any mitigating factors. It bore in mind that Ms Kwan had told the RICS in correspondence in 2016 that she had terminated her RICS membership. It was brought to her attention at that time that her resignation had not been received and she was advised of the process she should follow should she wish to resign. There was no evidence to demonstrate that she had in fact formally resigned. In the circumstances, the Panel did not accept that this constituted a mitigating factor, nor could the Panel identify any other mitigation.
22. The Panel considered that the following aggravating factors were present:

- This is Ms Kwan's third breach of RICS CPD requirements.
 - Ms Kwan was clearly aware of the importance of maintaining professional standards, having made this clear in her correspondence with RICS in 2016 in which she criticised standards in China. Nonetheless, she has repeatedly breached the CPD requirements.
23. The Panel first considered whether to impose a sanction. It decided that the matters were too serious for no sanction to be imposed, given that this was Ms Kwan's third breach of Rule 6.
24. The Panel also decided that a Caution would be insufficient. Ms Kwan had previously been cautioned for failures to comply with CPD but this had not prevented her from repeatedly breaching the CPD requirements.
25. The Panel also found that a Reprimand would be insufficient to meet the public interest, given that there has been a pattern of behaviour by Ms Kwan, and previous measures have had not been successful in preventing repetition. The Panel therefore concluded that a Reprimand would not address the public interest. The Panel also ruled out a fine, as Ms Kwan has been fined previously for similar matters and this has not served as a deterrent from further breaches.
26. The Panel also considered whether it would be appropriate to impose conditions. However, given that Ms Kwan expressed her desire in 2016 to resign as a RICS member, the Panel's view was that conditions would not be workable.
27. The Panel then considered excluding Ms Kwan from membership. This was Ms Kwan's third breach of CPD requirements within 10 years of a Caution having been imposed. The Panel had not identified any mitigating factors in this case, and was satisfied that Exclusion was an appropriate and proportionate response to the matters proved. Given the repeated nature of the misconduct, and the fact that previous administrative sanctions have not served as a deterrent, the Panel was satisfied that an Exclusion order was the minimum sanction necessary to ensure that the public is protected, that public confidence in the profession is maintained, and proper standards of conduct are upheld.
28. The Panel balanced the public interest with Ms Kwan's interests and bore in mind that she expressed a desire to resign from RICS in any event; consequently, a sanction of Exclusion should not cause her undue hardship.
29. Accordingly the Panel orders that Ms Kwan be excluded from membership.

Costs

30. Mr Lynch made no application for costs on behalf of the RICS.

Publication

31. The Panel considered the guidance as to publication of its decisions. It ordered that this decision should be published in Modus and on the RICS website.

Appeal Period

32. Ms Kwan has 28 days from service of the notification of this decision to appeal this decision in accordance with Rules 58 and 60 of the Disciplinary, Registration and Appeal Panel Rules.
33. In accordance with Rules 59 and 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days, from service of the notification of this decision, to require a review of this Decision.