

Disciplinary Panel Hearing

Case of

Zhao Rong Li

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

Christopher Geering

Service

1. Mr Li was neither present nor represented.
2. The Panel had sight of the notice of hearing letter dated 9 September 2018. This was sent to Mr Li by post to his RICS registered address on 9 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 Geering submitted that the Panel should proceed in Mr Li's absence. He said it was clear from correspondence that Mr Li was aware that disciplinary proceedings had been commenced against him and that he had voluntarily absented himself.
5. In reaching its decision whether to proceed, the Panel accepted the advice of the Legal Adviser. It 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. There has been no response from Mr Li to the notice of hearing. However, the Panel bore in mind that he communicated with the RICS following a letter before disciplinary action, and that the notice was delivered to his registered address. He should therefore be aware that disciplinary proceedings have been commenced against him and should be aware of this hearing.
7. Mr Li informed the RICS in correspondence in 2017 that he has retired. The Panel therefore had no reason to believe that Mr Li would be more likely to attend on a future occasion. It was satisfied that he has disengaged from the process and voluntarily absented himself. The Panel acknowledged that there may be some prejudice to Mr Li if the hearing proceeds in his absence, however it was satisfied that the public interest in proceeding outweighed Mr Li's interests. The Panel concluded that it was fair in all the circumstances to proceed in his absence.

The Charges:

The charge against Mr Li 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 is alleged that Mr Li is therefore liable to disciplinary action under Bye-law 5.2.2(c).

Response

8. There was no response from Mr Li to the allegations.

Summary

9. 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.'
10. Members are required to log CPD via the RICS portal or, if based in China, members may send a spreadsheet detailing their CPD hours to RICS, or alternatively submit their local professional body CPD certificate.
11. It is alleged that Mr Li did not complete and record, or cause to be recorded, his CPD for 2016 on the RICS portal.

Evidence

12. The Panel had before it the RICS solicitor's bundle of documents, running to 45 pages.

Findings of fact

13. 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 other words, that it is more likely than not that the events occurred as alleged.
14. The Panel had regard to the witness statement of James Lynch, RICS solicitor, and the documents exhibited by him. Mr Lynch confirmed that Mr Li had not recorded any CPD for the 2016 CPD year. His evidence was unchallenged and the Panel accepted it.
15. The Panel 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 Mr Li did not record sufficient CPD for

2016, nor did he submit a spreadsheet or local CPD certificate in lieu. The Panel accepted this evidence.

16. The Panel had regard to an email from Mr Li which was sent to the RICS in July 2017. Mr Li stated in that email,

“I have retired in 2015 and is [sic] no longer involved in the activities of professional organizations....because I have retired, is not a violation of the code of conduct for members...”.

17. However, in spite of Mr Li’s assertion that he retired in 2015, he does not appear to have notified the RICS of this until July 2017. Furthermore, he remains a RICS member and does not appear to have requested any retirement concessions. In the circumstances, the Panel was satisfied that Mr Li was still bound by the obligations of a RICS member to complete and record, or cause to be recorded, at least 20 hours of CPD.

18. In the light of the evidence before it, the Panel was satisfied that Mr Li has not complied with his 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.

Liability to disciplinary action

19. The Panel’s view was that Mr Li’s failure to comply with the CPD requirements and his breach of Rule 6 of the Rules of Conduct for Members amounted to a serious falling short of his professional obligations. Mr Li logged CPD hours for 2013 which, in the Panel’s view, demonstrated that he was aware of his obligations and knew how to log CPD on the RICS portal, or how to cause it to be recorded.

20. Mr Li asserted in correspondence that he retired in 2015 however he remained a member of the RICS and was still bound by the CPD obligations.

21. It is the duty of a RICS member to ensure that he is aware of the CPD requirements and to comply with them 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 Mr Li was liable to disciplinary action.

Decision as to sanction

22. At the sanction stage, the Panel was referred to a further bundle of documents numbering 23 pages.
23. 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.
24. The Panel had regard to the RICS indicative sanctions guidance (the Guidance). It considered carefully the mitigating and aggravating factors of this case.
25. The Panel considered that the following mitigating factors were present:
 - The Caution and fine for 2015 were not sent by the RICS to Mr Li because there was no active email address to which the details could be sent.
26. The Panel considered that the following aggravating factors were present:
 - This is Mr Li's third breach of RICS CPD requirements.
 - There has been a lack of meaningful engagement from Mr Li.
 - Mr Li appears to have actively disengaged with his RICS requirements, following his decision to retire in 2015, even though he was still a member of the RICS.
 - Mr Li is aware of his CPD requirements having completed 31 hours of CPD in 2013.
27. The Panel first considered whether to impose a sanction. It decided that the matters were too serious for no sanction to be imposed.
28. The Panel next considered a Caution. Mr Li was issued with a Caution for his breach of his 2014 CPD obligations, however this clearly had not had a deterrent effect. The Panel therefore decided that a Caution would not be a sufficient penalty to meet the public interest. For these reasons, the Panel decided that Reprimand would also not be sufficient.
29. The Panel next considered whether to issue a fine. It was clear to the Panel, in the light of Mr Li's email to the RICS about his retirement, that he does not believe himself to be bound by the RICS Code of Conduct for members. In such circumstances, the Panel's view was that a fine would have no effect and would serve no useful purpose.

30. The Panel also considered conditions, but decided that if Mr Li has retired, workable conditions could not be formulated to ensure future compliance.
31. The Panel then considered excluding Mr Li from membership. The Panel bore in mind that it had found, as a mitigating factor, that Mr Li had not been informed of the Caution and fine that were issued in respect of his failure to comply with the CPD requirements for the 2015 CPD year. However, as against this, it had regard to the fact that Mr Li had not maintained valid contact email details and that this was Mr Li's third breach of CPD requirements within 10 years of a Caution having been imposed. Even though he had not been notified of the fine and Caution for his 2015 breach, he was aware of his CPD obligations and had made a conscious decision not to comply with them. Meeting the CPD requirements is a continuing obligation for a RICS member, unless concessions have been granted. There is no evidence that any concession was granted to Mr Li and he has not asserted that this was the case.
32. The Panel therefore decided, having balanced the aggravating and mitigating factors, that Exclusion was an appropriate and proportionate response to the matters proved. The mitigation was limited and insufficient to persuade the Panel that Exclusion was not an appropriate course. Given the repeated nature of the misconduct, and the fact that a previous administrative sanction has 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.
33. In reaching this decision, the Panel balanced the public interest with Mr Li's interests and bore in mind his assertion that he has retired; consequently, a sanction of Exclusion should not cause him undue hardship.
34. Accordingly, the Panel orders that Mr Li be excluded from membership.

Costs

35. Mr Geering provided the Panel with a costs schedule and asked the Panel to make a costs order in the sum of £1,283.00 against Mr Li. The Panel was also provided with an email dated 8 November 2018 from the RICS to Mr Li, attaching the costs schedule.
36. Mr Geering told the Panel that this matter had originally been listed as a paper case, however, there had been issues with service and so the matter had been listed for an oral hearing.
37. The Panel considered carefully the costs sought. It bore in mind that the facts were found proved, that Mr Li was found to be liable to disciplinary action and a

disciplinary sanction was imposed. It decided that a costs order should therefore be made.

38. However, the Panel also took account of the fact that the matter was originally listed for a paper hearing, and that the costs of a paper hearing would have been £600. The Panel decided that this was an appropriate starting point for a costs order. To this
39. amount, the Panel added £200 for costs of preparation (given the hourly rate of £200 per hour), and £200 for attendance of the RICS representative. The Panel decided that £1000 in total was an appropriate and reasonable sum for costs.
40. The Panel therefore orders that Mr Li pay to RICS costs of £1000.

Publication

41. The Panel considered the guidance as to publication of its decisions. There were no exceptional circumstances which would justify departing from the principle of open justice. The Panel therefore ordered that this decision should be published in Modus and on the RICS website.

Appeal Period

42. Mr Li 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.
43. 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.