

Disciplinary Panel Hearing

Case of

Ms Ling Ling Liu MRICS [1265074]

China

On

Tuesday 19 February 2019

Hearing on papers

Panel

Alison Sansome (Chair)

Richard Goodenough-Bayly (Lay Member)

Justin Mason (Surveyor Member)

Legal Assessor

Rosemary Rollason

The Formal Charge is:

That 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.

And that you are therefore liable to disciplinary action under Bye-law 5.2.2(c).

Preliminary matters – Decision to proceed with a paper hearing

1. RICS had received no communication from Ms Liu in response to the Notice of Hearing dated 20 December 2018.
2. The Panel first considered the issue of service of the Notice of Hearing and whether it was appropriate to proceed with the hearing on the papers. The Legal Assessor reminded the Panel that:
 - The case had been referred to the Disciplinary Panel under Rules 4(d) and 43(a) of the Disciplinary, Registration and Appeal Panel Rules 1 April 2009 (Version 7, 1 January 2017) (“the Rules”) for consideration in accordance at a hearing on the papers only (a “paper hearing”);
 - Rule 43a(a) requires that not less than 28 days’ notice of a paper hearing be given;
 - Rule 23(e) provides that in cases referred to the Panel under Rule 4(d), the Notice must require the Relevant Person to indicate within 7 days whether she requires an oral hearing;
 - Rule 43a(d) provides that there will be no oral hearing of the case unless an application has been made under Rule 23(e), or unless the Panel decides that it is necessary in the interests of justice or in the public interest to refer the case for an oral hearing.
3. The Panel considered the issue of service of the papers. The Panel received a witness statement from Ms Maria Choudhury, RICS Regulatory Tribunal Executive, dated 10 January 2019, setting out details of the service of the proceedings. The Notice of Hearing, together with the other documents required to be supplied, was sent to the Relevant Person by special post, at her last address known to RICS, on 20 December 2018.
4. The Panel received a witness statement dated 4 January 2019 from Xu Jie, a Regulation Officer based in RICS’ Beijing office, confirming that that he had arranged for the papers to be delivered by courier at Ms Liu’s address known to RICS. Documentary confirmation of delivery was produced.
5. The Panel noted that the Notice of Hearing informed Ms Liu that it was intended that the matter be considered as a paper hearing and she was given an opportunity in accordance with Rule 23(e) to request an oral hearing if she so wished by notifying RICS within 7 days. No such request was received from Ms Liu.
6. The Panel was satisfied that the requirements of the Rules for the case to be heard on the papers were satisfied. There had been no response from the Relevant Person and no request for an oral hearing.
7. The Panel was further satisfied that the matter could properly be dealt with on the papers and that it was not necessary to refer the case for an oral hearing. The Panel was also mindful of the general public interest in ensuring that RICS 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 matter as a paper hearing.

Response

8. No response to the charge had been received from Ms Liu.

Documents

9. The Panel received the hearing bundle prepared by RICS numbered pages 1 - 48, together with the correspondence and witness statements relating to service of the proceedings.
10. At the sanction stage of the hearing, the Panel considered a further bundle from RICS, numbered pages 1 - 70.

Summary

11. All RICS members are required to undertake a minimum of 20 hours Continuing Professional Development (CPD) each calendar year (January to December).
12. Rule 6 provides: "Members shall comply with RICS' requirements in respect of continuing professional development."
13. CPD requirements for members are set out in RICS' document "CPD Requirements and obligations".
14. Members must complete at least 20 hours CPD by 31 December in each calendar year and must record their CPD activity on line by the following 31 January through the RICS portal.
15. The Panel had sight of a witness statement of Ms A Joester dated 4 August 2017 which confirmed that on inspection of the CPD records relating to Ms Liu, no CPD hours had been recorded by her or on her behalf for the year 2016 by 31 January 2017. A print-out of Ms Liu's CPD record was exhibited to the witness statement.

Liability to Disciplinary Action

16. RICS submitted that it implemented a system in relation to CPD requirements. The requirement was reasonable and designed to ensure consistent standards within the profession. Members are required to maintain up to date knowledge in their area of expertise and, crucially, to demonstrate their compliance by completion of the CPD record. RICS submitted that the CPD scheme is in the interests of the maintenance of professional standards and of public protection.

17. RICS submitted that it had introduced a system for dealing with breaches of CPD obligations and that breaches must be treated as serious by RICS as the Regulator and by its disciplinary panels.
18. By her failure to comply, Ms Liu had disregarded a clearly expressed rule and a requirement imposed by her regulator. As a member of RICS she had accepted the obligation to comply with RICS' Rules, guidance and Bye-laws and also that she may be liable to disciplinary action if she failed to do so.
19. RICS submitted that a single breach of the requirements was sufficient to give rise to a liability to disciplinary action.
20. RICS accepted that RICS members in China could intermittently have difficulty in accessing RICS' website due to the China Government's firewalls. A witness statement from Raquel Loll, RICS Director of Professional Assurance and Corporate Affairs, Asia Pacific, dated 12 December 2017, explained the steps taken by RICS to ensure that members in China are informed of the CPD requirements. It also confirmed that in recognition of occasional difficulties in China in accessing RICS' website, China members are informed that they may record their CPD via an Excel spreadsheet which RICS will upload onto its systems on their behalf. Consequently, RICS submitted that the same standards apply to members in China and even a single failure to complete and record CPD may give rise to a liability to disciplinary action. Ms Liu had not submitted a record of any CPD for 2016 via this method.
21. RICS submitted that the Relevant Person, Ms Liu, was liable to disciplinary action under Bye-law 5.2.2(c).

Legal Advice

22. The Panel received and accepted the advice of the Legal Assessor. The Panel was mindful that the burden of proof of facts in RICS proceedings is upon the RICS which brings the charges. The standard of proof in RICS disciplinary proceedings is the civil standard, that is the balance of probabilities, meaning that before finding a fact proved, the Panel must be satisfied that it is more likely than not that it occurred.
23. The issue of whether there was liability to disciplinary action under Bye-law 5.2.2 (c) was a matter for the Panel's own judgment, rather than the legal standard of proof. Before finding liability established, the Panel should be satisfied that the failings in question were of a serious nature and fell far short of the standards expected of RICS members.

Panel decision on facts

24. The online CPD print out record was attached to the charge. The Panel noted the evidence of Ms Joester which confirmed that if no entry appeared in the CPD print-out for any particular year, this indicated that no CPD had been recorded for that year. The Panel examined the record for Ms Liu, and was satisfied that it showed that she had not

recorded any hours of CPD for the year 2016. The statement of Ms Joester further confirmed that Ms Liu had not submitted her CPD record for 2016 by the spreadsheet method and so had not caused any CPD hours to be recorded, as also alleged.

25. Accordingly, the Panel found the factual allegation proved based on the documentary evidence produced by RICS.

Panel decision on liability to disciplinary action

26. The Panel noted that Ms Liu had not paid her membership fee for the years 2015 onwards. The Panel understood that RICS in such circumstances, a member could be removed from membership of RICS administratively, but this had not happened in the case of Ms Liu and she remained a member at the date of the hearing.
27. The Panel concluded that Ms Liu's failure to comply with the CPD requirements and Rule 6 of the Code of Conduct for Members amounted to a serious falling short of her professional obligations. The Panel was mindful that Ms Liu had been sent explicit reminders of the requirements from RICS.
28. It was however Ms Liu's personal responsibility to ensure she was aware of and complied with her professional obligations regarding CPD. The Panel was concerned that the failure to comply with RICS' CPD requirements tended to undermine public confidence in the profession and frustrates RICS' ability to carry out its regulatory function.
29. In the circumstances, the Panel was satisfied that Ms Ling Ling Liu was liable to disciplinary action under Bye-law 5.2.2(c).

Sanction

30. No submissions had been received from the Relevant Person, Ms Liu.
31. The documents presented by RICS included a witness statement from Zoe Mobley, Head of Quality & Service, RICS, dated 04 August 2017, which informed the Panel of Ms Liu's CPD history. This confirmed that Ms Liu was issued with a Caution for non-compliance with CPD requirements for the year 2013. She recorded the required CPD hours in 2014. She was issued with a Caution and a fine for non-compliance for the year 2015. Ms Mobley's statement further confirmed that having checked RICS' systems, it was evident that Ms Liu had been sent notification of these decisions.
32. The Panel also received a witness statement from Margaret Wright, CPD Co-Ordinator for RICS, dated 9 August 2017, detailing the assistance that RICS provides to members in relation to CPD by way of reminders. However, RICS submitted that the requirement for compliance was not dependent on the sending to, or receipt by, members of such reminders from RICS.

33. The Panel's attention was directed to RICS' Sanctions Policy in respect of CPD breaches. Paragraph 21.1 provides that policy is as follows:

- the appropriate order for a single breach is a Fixed Penalty (Caution);
- for a second breach within 10 years of receipt of a Caution, a Fixed Penalty (Caution and fine);
- and for a third breach within 10 years of receipt of a Caution, referral to Disciplinary Panel with a presumption of expulsion.

Decision on Sanction

34. The Panel bore in mind that the purpose of a disciplinary sanction is not to be punitive, although that may be its effect. The purpose of a sanction 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 matters found proved.

35. The Panel accepted the advice of the Legal Assessor and referred to RICS' Sanctions Policy and the supplements. It considered carefully whether any mitigating or aggravating factors were present in this case. The Panel considered the issue of proportionality in weighing up the most appropriate response.

36. The Panel took the following matters into account in mitigation:

- Other than her CPD history, Ms Liu had no other previous disciplinary history;
- The Panel considered that it was possible that Ms Liu believed she was no longer a member of RICS as she had not paid her membership fee for the years 2015 onwards.

37. The Panel considered that the following aggravating factors were present:

- Ms Liu had not recorded, or caused to be recorded, any CPD for the previous years 2013 and 2015, despite reminders from RICS;
- She had previously been sanctioned in respect of CPD breaches on two occasions, namely a Caution for 2013 and a Caution and Fine for 2015.
- Ms Liu appeared to be aware of the requirements relating to CPD as she had recorded CPD for the year 2014 and used the method offered by RICS to members in China of having her CPD uploaded by RICS on her behalf.
- Ms Liu had not engaged with this investigation or the hearing process.

38. 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. The Panel was mindful of the personal obligation on RICS members to engage with RICS as their regulator and to respond to its communications.
39. The Panel referred to RICS' Sanctions Policy and its supplements. It first considered whether to impose a sanction. 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.
40. The Panel went on to consider a Caution, but concluded that the failure could not be described as minor. It concluded that neither a Caution nor a Reprimand would reflect sufficiently the seriousness of the case, recognising the cumulative pattern of non-compliance over two previous years and the fact that a Caution had already been imposed for the years 2013 and 2015, with a fine in addition in 2015. Given the wholesale failure by Ms Liu to engage in respect of her CPD obligations, the Panel did not consider that the imposition of undertakings, conditions or a fine would be effective or would mark the gravity of the finding in this case.
41. The Panel noted 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. Whilst the Panel had considered carefully its own discretion in relation to the appropriate sanction, it was satisfied that there was no reason to depart from the presumption regarding CPD cases set out in the Sanctions Policy and that the only proportionate sanction in the circumstances was expulsion.
42. The Panel's decision was to expel the Relevant Person, Ms Ling Ling Liu, from membership of RICS.

Costs

43. RICS applied for costs in the sum of £400.00 pursuant to Supplement 2 to the Sanctions Policy. The Panel noted that a schedule of costs had been provided to Ms Liu at least 24 hours in advance of this hearing, as required by Rule 34.
44. The Panel considered the costs claimed by RICS were fair and reasonable and directed that the Relevant Person, Ms Liu, pay the costs of RICS in the sum of £400.00.

Publication

45. The Panel considered the policy on publication of decisions as set out in the Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel decided that this decision will be published on the RICS website and in the RICS Modus.

Appeal Period

46. Ms Ling Ling Liu has 28 days from the service of the notification of the decision to appeal this decision in accordance with Rule 59 of the Rules.
47. 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.