

Disciplinary Panel

Paper Hearing

Case of

Mr Z Mohd Zain AssocRICS

On

Thursday 17 October 2019

Panel

John Anderson (Lay Chair)
Paul Watkinson (Surveyor Member)
Rosalyn Hayles (Lay Member)

Legal Assessor

Mark McConochie

The formal charge is:

Between 1 January 2018 and 1 February 2019, 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.

Service

1. A Notice of Hearing, dated 15 August 2019, was sent to Mr Mohd Zain by email and international special delivery post to the address held on Mr Mohd Zain's RICS Member contact record as his preferred means of communication with the RICS. A copy of the Notice and a signed witness statement dated 9 October 2019 from Mrs Emma Jones, Regulatory Tribunal Executive at the RICS, was produced by the RICS as proof that the Notice had been served.
2. As evidenced by Mrs Jones' witness statement, the email sent to Mr Mohd Zain by the RICS on 15 August 2019 attaching the Notice was delivered on 15 August 2019. Mrs Jones' statement confirmed that the letter sent by special delivery post enclosing the Notice and accompanying materials was delivered on 23 August 2019.
3. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a of the Disciplinary, Registration and Appeal Panel Rules 2009, as amended, ("the DRAP Rules") giving the required 28 days' notice of the hearing because it had been sent to the last known address recorded or held by RICS for Mr Mohd Zain.

The Notice:

- i) confirmed the charge;
 - ii) gave the required 28 days' notice of the date and time of the hearing;
 - iii) enclosed the DRAP Rules;
 - iv) Invited Mr Mohd Zain to confirm within seven days whether he wished to request an oral hearing.
4. As pointed out in the Notice, the case against Mr Mohd Zain was to be considered by way of written representations, unless he requested an oral hearing. Mr Mohd Zain has not

requested an oral hearing and in these circumstances, the Panel considered that he had voluntarily waived his right to attend.

5. In all of the circumstances, taking into account the interests of justice and the wider public interest, the Panel considered it fair to proceed by way of written representations in accordance with section 43(a)(d) of the DRAP Rules.

Background

6. RICS members are required to complete and record 20 hours of CPD activity by 31 January each year, relating to CPD completed during the previous calendar year.
7. Rule 6 of the Rules of Conduct for Members provides: **“Members shall comply with RICS requirements in respect of continuing professional development.”**
8. CPD requirements for members are: –
 - Members must complete at least 20 hours CPD, of which at least 10 hours must be formal CPD.
 - All members must maintain a relevant and current understanding of RICS’ professional and ethical standards during a rolling three-year period.
 - All members must record their CPD activity online.

Findings of Fact

9. Mr Mohd Zain had not indicated whether or not the charge was admitted and in these circumstances the Panel proceeded on the basis that the charge was not admitted.

10. The Panel was provided with a copy of Mr Mohd Zain's CPD records from the RICS online CPD system which were exhibited to a witness statement dated 28 May 2019 from Mr Joe Poole, a CPD administrator working for the RICS.

The Panel found, based on this evidence, that Mr Mohd Zain:

- (i) Had not completed and recorded, or caused to be recorded, any hours of CPD between 1 January 2018 and 1 February 2019 as alleged; and
- (ii) Did not have in place any full or partial concession from RICS in relation to the completion of his CPD for that year.

11. Taking this evidence into account, the Panel found the charge proved.

Liability to Disciplinary Action

12. The Panel took into account that the CPD policy had 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. CPD is intended to ensure consistent standards within the profession and so that members maintain up to date professional knowledge and are able to demonstrate this through proper and accurate recording of their CPD. The requirement for Members to complete and record CPD is important in the interests of ensuring public protection and confidence in the profession and the RICS as regulator. Completing and recording of CPD is not optional.
13. The witness statement from Hayley Moore, Business Improvement and Performance Manager, RICS, dated 28 May 2019 details the steps that are taken by the RICS to inform members of their CPD requirements and to assist them in complying with those requirements.
14. Despite the steps that had been taken by RICS, Mr Mohd Zain had failed to comply with his professional obligations in the 2018 calendar year.

15. The Panel were of the view that a single failure to comply with CPD requirements is sufficiently serious to give rise to liability to disciplinary action. The Panel considered that any breaches of the RICS rules relating to CPD and its recording are serious as they prevent RICS from monitoring compliance and thereby ensure public protection.
16. Accordingly, the Panel was satisfied in all of the circumstances of the breach that Mr Mohd Zain's conduct was sufficiently serious as to render him liable to disciplinary action.

Sanction

17. For the CPD year 2013 members who had not recorded sufficient CPD via the RICS online portal were issued with a caution. For the CPD year 2015 members who had not recorded sufficient CPD in either one of the two previous years, and who had again failed to record sufficient CPD in 2015 via the RICS online portal, were issued with a caution and a fine. Members were informed that a third breach within a 10-year period would be referred to a Disciplinary Panel and that this was likely to result in expulsion from the RICS.

Panel's Approach

18. The Panel took into account the written submissions made on behalf of RICS, the RICS Sanctions Policy and Mr Mohd Zain's disciplinary history which is as follows for CPD related sanctions:

- 2014 - Caution
- 2015 - Caution and fine.

- 2016 - Mr Mohd Zain was referred to a Disciplinary Panel on 5 October 2017 in relation to a breach of the CPD requirements in 2016. The Panel found him liable to disciplinary action and made Mr Mohd Zain's continuing membership of the RICS conditional on him complying with the RICS CPD requirements for 2017 by 31 December 2017, failing which he would be expelled from membership without further reference to a Disciplinary Panel.

19. The Panel bore in mind that the purpose of sanctions is not to be punitive, although they 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 the RICS as its regulator and to protect the public. Sanctions must be proportionate to the breach and all of the circumstances, and the Panel approached its decision having taken into account any mitigating and/or aggravating factors.

Decision on Sanction

20. The 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 and compliance is not optional.

21. The charge found proved represented a fourth breach of the CPD requirements, Mr Mohd Zain having failed to complete and record, or cause to be recorded, the required number of hours of CPD over four separate years (2014, 2015, 2016 and 2018) despite having been sent a number of reminders by RICS of the importance of doing so and of the consequences that could follow for failing to comply. Previous sanctions in relation to those CPD breaches had not ensured that Mr Mohd Zain had complied with his CPD obligations and the Panel considered that to be a serious aggravating feature of this case.

22. There was evidence before the Panel that two attempts had been made by RICS to contact Mr Mohd Zain by telephone (on 8 February and 27 February 2019 in relation to the 2018 CPD year) to remind him about his CPD obligations. On both occasions Mr Mohd Zain said that he would comply and yet he failed to do so.

23. The only year in which the Panel had evidence that Mr Mohd Zain had complied with his CPD obligations was in 2017, the consequences of him failing to do so in that year being that he would have been expelled from membership by order of a Disciplinary Panel. Having avoided that consequence by completing his CPD in 2017, he yet again failed to comply in 2018, without any explanation. The Disciplinary Panel that considered Mr Mohd Zain's conduct in October 2017, found that at that time he had demonstrated only limited insight into the importance of complying with his professional obligations but decided to give him one last chance to come into compliance. Mr Mohd Zain yet again finds himself before a Disciplinary panel and has failed to engage with the RICS about the further breach of his professional

obligations. This is not consistent with someone who understands the importance of regulatory compliance necessary to remain a member of a regulated profession. Mr Mohd Zain has been given one last chance to comply, and that has not ensured that he has consistently done so. He has not paid the fine imposed by the previous Panel and this is also a significant aggravating feature of this case.

24. Having considered all of the circumstances, the Panel first considered whether to impose any sanction at all. The Panel concluded that the failure by Mr Mohd Zain to complete and record CPD on four separate occasions was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. The Panel found no such exceptional circumstances to be present.
25. The Panel considered whether to impose a caution. The Panel concluded that a caution was not appropriate because it would not adequately reflect the seriousness of the conduct, recognising the repeated non-compliance. A caution had already been imposed for a previous breach and yet Mr Mohd Zain had still failed to comply with his professional obligations.
26. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Mohd Zain's repeated failure to comply with the requirement to complete and record CPD.
27. In considering whether to require Mr Mohd Zain to give an undertaking, the Panel took into account the mandatory nature of the CPD requirements which Members have already undertaken to comply with through their membership. CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date which is ultimately to ensure public protection. The Panel concluded that it would not be appropriate or proportionate to impose an undertaking given that Mr Mohd Zain should have been completing and recording his CPD online in any event and concluded that imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.
28. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. Mr Mohd Zain had previously received a fine for a breach of the CPD requirements – a fine which he had failed to pay – and this had not ensured compliance.

29. For similar reasons, and because of his lack of engagement, the Panel considered and dismissed the imposition of a condition on Mr Mohd Zain's continuing membership as an adequate, workable and proportionate response to the misconduct demonstrated by this case. A previous condition imposed by a Disciplinary Panel as "one last chance" for him to come into compliance had not resulted in his ongoing compliance.
30. The Panel took into account paragraph 21.1. of the Sanctions Policy, which states that in the absence of extenuating circumstances 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. Having carefully considered all aspects of the case, and all possible sanctions available to it, the Panel concluded that the appropriate and proportionate sanction in this case was expulsion. It therefore ordered that Mr Mohd Zain be expelled from membership of RICS.

Publication

31. The Panel has considered the RICS 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 and ordered publication accordingly.

Costs

32. There was an application by RICS for costs in the sum of £400 which had been served on Mr Mohd Zain in accordance with the DRAP Rules. The Panel considered this to be a fair and reasonable amount to impose by way of costs and considered it fair for Mr Mohd Zain to pay these costs rather than them fall on the Membership as a whole and ordered Mr Mohd Zain to pay £400 to the RICS within 21 days of notice having been served on him of this decision.

Appeal Period

33. Mr Mohd Zain has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 58 of the DRAP Rules.
34. In accordance with Rule 59 of the DRAP 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.