

## **Disciplinary Panel Meeting**

### **Case of**

**Mr Yin Ping Lu [1296207]  
Qingdao, China**

### **On**

Wednesday 12 July 2017

### **At**

RICS Surveyor Court, Westwood Way, Coventry, CV4 8JE

### **Panel**

Julian Weinberg (Lay Chair)  
Christopher Boothman (Lay Member)  
Ian Hastie (Surveyor Member)

### **Legal Assessor**

Peter Steel

### **The formal charge 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 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 Lu did not respond to the Notice of Hearing and the Listing Questionnaire and therefore the Panel proceeded on the basis that the above charge was not admitted.

### **Summary**

2. From January 2013 RICS members were obliged to complete 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. 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 the CPD activity online.
5. For the CPD year 2016 correspondence was sent by post and email to members reminding them about the necessity to comply with their CPD obligations. A letter was also sent by post, dated 9 March 2017, to members who had failed to log CPD for the three preceding years. The members were informed in that letter that a third breach within a ten year period would be referred to a Disciplinary Panel and was likely to result in expulsion from RICS. This letter was apparently sent to Mr Lu, though there was no evidence in front of the Panel establishing that he had in fact received it.

## **Service**

6. A Notice of Hearing, dated 26 May 2017, was sent by recorded delivery to Mr Lu’s correspondence address held by RICS at the relevant time. A copy of the Notice, a screenshot of the delivery history from the Chinese postal service and a translation of that document, showing that the letter had been received and signed for on 4 June 2017 had been produced to the Panel. The Panel was satisfied that Notice had been properly served in accordance with Rule 23.
7. Mr Lu had been advised of his right to an oral hearing in the Notice of Hearing but had not requested such a hearing.

## **Findings of Fact**

8. The Panel was provided with a document purporting to be Mr Lu's online CPD record which contained records for 2014 and 2017. This suggested that Mr Lu had completed sufficient CPD in 2014. There were no entries at all for the years 2015 and 2016.
9. The Panel considered that this document on its own would have been insufficient to establish that Mr Lu had not completed or recorded CPD in accordance with the requirements of RICS in 2015 and 2016. Nor was it clear whether it was being alleged that Mr Lu had failed to complete or record CPD in any other year.
10. The Panel bundle contained a further extract from RICS' record which indicated that Mr Lu had received a Fixed Penalty Fine on 19 April 2016 (but it did not show to what this fine related). However a member of RICS' staff had telephoned Mr Lu on 9 February 2017 about his CPD obligations. The telephone note of that conversation, which was in the Panel bundle, reported Mr Lu as saying "*...he couldn't find usefulness of being an RICS member, RICS only contacts him to ask for money and CPD hours, never think about members' needs. He said he wouldn't pay fine and record CPD, he would like to be expelled.*" This appeared to acknowledge that he had previously been fined for a (second) CPD breach and corroborated the (implied) assertion made by RICS in placing these documents before the Panel, which was to the effect that the alleged breach was in fact Mr Lu's third such breach.
11. Accordingly the Panel found the factual allegations proved, on the basis of 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 Lu'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 was also satisfied that breaches of the RICS rule on CPD recording must be regarded as serious.
13. Accordingly, the Panel was satisfied that Mr Lu was liable to disciplinary action.

### **Sanction**

#### Panel's Approach

14. The Panel took into account the written submissions of Danielle Metters, on behalf of RICS. It had regard to the RICS Sanctions Policy.
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. The Panel noted that Mr Lu had recorded 5.5 hours of informal CPD and 15.5 hours of formal CPD for the year 2014. Other than this, the Panel was unable to identify any mitigating factors within the hearing bundle. The Panel considered that the following aggravating factors were present in this case:
  - The charge found proved represented a repeated breach of the CPD requirements;
  - There has been no proper engagement from Mr Lu; and
  - Mr Lu's reported conversation with the RICS' employee on 9 February 2017 demonstrated a profound absence of insight, given the importance of CPD in ensuring proper standards of conduct among members.
17. 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.
18. The Panel first considered whether to impose any 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. In reaching this conclusion the Panel noted that Mr Lu had been sent numerous reminders by RICS. However, whether Mr Lu received these reminders or not, it remained his responsibility to ensure that he complied with his CPD obligations. Furthermore, Mr Lu had fulfilled his CPD obligations for the year 2014 and there was no evidence before the Panel that he had contacted RICS with regard to any subsequent difficulties in completing or recording his CPD online.
19. 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. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Lu's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.

20. 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 is 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 Lu should have been completing and recording his CPD online in any event. Even if an undertaking were to be combined with either a caution, reprimand or fine, the Panel concluded that imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.
21. The Panel then considered whether to impose a fine. The Panel was mindful that Mr Lu's 2016 fine for failing to record his CPD remains outstanding and indeed he has indicated that he does not intend to pay it. The record of the telephone conversation that RICS had with Mr Lu on 9 February 2017 indicated that he would not pay his fine and that he was prepared to cease being a member rather than comply with his CPD requirements. In the circumstances the Panel considered that a fine would be insufficient to uphold the standards expected of all members and the deterrent effect on other members of the profession.
22. 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 Lu has demonstrated a willingness to engage with the regulatory process and a willingness to comply with any condition imposed. As Mr Lu has repeatedly failed to comply with the CPD requirements in the past and has failed to respond to a verbal reminder to record his CPD and in light of his stated intention not to comply with his CPD obligations in the future, the Panel was satisfied that he would not 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 Lu's non-compliance with the CPD requirements demonstrated a blatant disregard for the purpose of regulation and as a consequence undermines public trust and confidence in the profession and is fundamentally incompatible with continued membership.
23. Having determined that conditions would not meet the wider public interest, the Panel determined that Mr Lu should be expelled from RICS membership which it so orders. The Panel recognised that expulsion is a sanction of last resort and should be reserved for those category of cases where there is no other means of protecting the public or the wider public interest. The Panel decided that Mr Lu's case falls into this category as he has repeatedly failed to comply with the fundamental requirement to record CPD and has demonstrated that he has no intention of complying in the future and indeed expressed his wish to be expelled. The Panel was satisfied that, in these circumstances, any lesser sanction would undermine public trust and confidence. 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.

## **Publication**

24. 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**

25. RICS applied for costs in the sum of £400.

26. The Panel considered carefully the issue of costs. 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.

27. The Panel concluded that it was appropriate for Mr Lu to make a contribution towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole.

28. The Panel orders that Mr Lu pays to RICS costs in the sum of £400.

## **Appeal Period**

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

30. 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.