

## **Disciplinary Panel Hearing**

### **Case of**

**Ms Min Jie Lu MRICS [1235505]**

**China**

### **On**

Tuesday 11 December 2018

### **At**

55 Colmore Row, Birmingham, B3 2AS

### **Panel**

Helen Riley (Chair)

Patrick Bligh Cheesman (Lay Member)

Christopher Pittman (Surveyor Member)

### **Legal Assessor**

Rosemary Rollason

### **RICS Case Presenter**

James Lynch

### **Member**

Not present or represented

### **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 in absence**

1. The Relevant Person, Ms Min Jie Lu, did not attend the hearing. RICS had received no written communication from her in response to the Notice of Hearing.
2. 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 17 October 2018, 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 04 September 2018.
3. The Panel was also informed that Mr T Hong, of RICS' China office, had confirmed on 12 September 2018 that he contacted Ms Lu and she had provided a new address, which had not been updated on RICS records. Mr Hong arranged for the papers to be served by courier at that address and documentary confirmation of delivery was produced.
4. It was further confirmed that on the morning of the hearing, Mr Hong had contacted Ms Lu. A transcript of the Skype conversation between Mr Lynch and Mr Hong was provided, in which Mr Hong confirmed that he had telephoned Ms Lu this morning and she had called him back. She had told Mr Hong that she did not wish to participate in the hearing.
5. The legal assessor reminded the Panel of the provisions as to service set out in Rule 23 of the Disciplinary, Registration and Appeal Panel Rules of 01 April 2009, version 7, 01 January 2017 ("the Rules"). The Notice therefore gave more than the required 56 days' notice of the hearing date. Accordingly, the Panel was satisfied that the requirements of the Rules had been met and notice of hearing had been properly served.
6. The Panel next considered whether to proceed in the absence of Ms Lu. The legal assessor's advice was sought and accepted. The Panel was referred to the guidance set out in the cases of ***R v Jones [2002] UKHL 5*** and ***GMC v Adeogba; GMC v Visvardis [2016] EWCA Civ 162***.
7. There is a public interest in conducting professional regulatory proceedings expeditiously. The Panel must consider matters such as whether the person had requested an adjournment, whether the person would be likely to attend any adjourned hearing, or whether, in all the circumstances, the Member had voluntarily absented herself from the hearing. Where a person is ill it will usually be unfair to proceed in their absence. There is no such indication in this case. A decision to proceed in the absence of the person facing the allegation should be taken with great care and caution, and with the fairness of the hearing at the forefront of the Panel's mind.

The Panel noted the guidance in the case words of **Adeogba** (cited above): “*Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.*”

8. The Panel took into account that Ms Lu had not responded to the Notice of Hearing. She had not requested an adjournment for any reason, nor had she indicated that she wished to attend or be represented. The Notice of Hearing informed Ms Lu that the Panel could decide to proceed with the hearing in her absence. The Panel noted the information concerning the conversation between Mr Hong and Ms Lu of this morning. Whilst this was hearsay evidence, the Panel considered that it provided additional confirmation that Ms Lu was aware of the hearing today and was not seeking an adjournment for any reason. She had indicated she did not wish to participate.
9. The Panel therefore concluded that Ms Lu had voluntarily and deliberately absented herself from the proceedings and there appeared to be no prospect that she would attend on a future date if the hearing were to be adjourned. An adjournment today would therefore serve no useful purpose.
10. 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 hearing in Ms Lu’s absence.

### **Response**

11. No response to the charge had been received from Ms Lu. The Panel proceeded on the basis that it was denied.

### **Documents**

12. The Panel received the Stage 1 and 2 hearing bundle prepared by RICS numbered pages 1 – 50, together with the correspondence and witness statements relating to service of the proceedings.
13. At Stage 3, the Panel received a further bundle from RICS, numbered pages 1 - 69.

### **Summary**

14. All RICS members are required to undertake a minimum of 20 hours Continuing Professional Development (CPD) each calendar year (January to December).
15. Rule 6 provides: “Members shall comply with RICS’ requirements in respect of continuing professional development.”
16. CPD requirements for members are set out in RICS’ document “CPD Requirements and obligations”.

17. 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.
18. 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 Lu, no CPD hours had been recorded by her or on her behalf for the year 2016 by 31 January 2017. A print-out of the Ms Lu's CPD record was exhibited to the witness statement.

### **Liability to Disciplinary Action**

19. 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.
20. 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.
21. By her failure to comply, Ms Lu 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.
22. RICS submitted that a single breach of the requirements was sufficient to give rise to a liability to disciplinary action.
23. RICS accepted that RICS members in China could intermittently have difficulty in accessing RICS' website due to China Government 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 Lu had not submitted a record of any CPD for 2016 via this method.
24. Mr Lynch on behalf of RICS submitted that the Relevant Person, Ms Lu, was liable to disciplinary action under Bye-law 5.2.2(c).

### **Legal Advice**

25. 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.

26. 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**

27. 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 Lu, and was satisfied that it showed that she had not recorded the requisite hours of CPD for the year 2016. The statement of Ms Joester further confirmed that Ms Lu had not submitted her CPD record by the spreadsheet method and so had not caused her CPD hours to be recorded, as also alleged.
28. Accordingly, the Panel found the factual allegation proved based on the documentary evidence produced by RICS.

#### **Panel decision on liability to disciplinary action**

29. The Panel concluded that Ms Lu'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 Lu had been sent explicit reminders of the requirements from RICS.
30. It was however Ms Lu's 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.
31. In the circumstances, the Panel was satisfied that Ms Min Jie Lu was liable to disciplinary action under Bye-law 5.2.2(c).

#### **Sanction**

32. No submissions had been received from the Relevant Person, Ms Lu.
33. The documents presented by RICS included a witness statement from Zoe Mobley, Head of Quality & Service, RICS, dated 01 August 2017, which informed the Panel of Ms Lu's CPD history. This confirmed that the Relevant Person was issued with a Caution for non-compliance with CPD requirements for the year 2014. She was issued with a Caution and a fine for the year 2015. Ms Mobley's statement further confirmed that having checked RICS' systems, it was evident that the Relevant Person had been sent notification of these decisions. Mr Lynch informed the Panel that the fine remained unpaid.

- 34.** 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.
- 35.** 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**

- 36.** The Panel bore in mind that the purpose of a disciplinary sanction is not to be punitive, though 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.
- 37.** 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.
- 38.** The Panel took account in mitigation that, other than her CPD history, Ms Lu had no other previous disciplinary history.
- 39.** The Panel considered that the following aggravating factors were present:
- Ms Lu had not recorded, or caused to be recorded, any CPD for the preceding years 2014 and 2015, despite reminders from RICS;
  - She had previously been sanctioned in respect of CPD breaches on two occasions, namely a Caution for 2014 and a Caution and Fine for 2015. The fine remained unpaid.
  - Ms Lu appeared to be aware of the requirements relating to CPD as she had recorded CPD for the year 2013.
  - Ms Lu had not engaged with this investigation or the hearing process. The Panel noted from the information provided during this hearing that Ms Lu appears to have disengaged entirely from RICS' processes.

40. 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.
41. The Panel 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.
42. 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 2014 and 2015, with a fine in 2015. Given the wholesale failure by Ms Lu 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.
43. 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.
44. The Panel's decision was to expel the Relevant Person, Ms Min Jie Lu, from membership of RICS.

### **Costs**

45. RICS applied for costs in the sum of £1725.00 pursuant to Supplement 2 to the Sanctions Policy. The Panel noted that a schedule of costs had been provided to Ms Lu at least 24 hours in advance of this hearing, as required by Rule 34.
46. The Panel considered the costs claimed by RICS were fair and reasonable and directed that the Relevant Person, Ms Lu, pay the costs of RICS in the sum of £1725.00.

### **Publication**

47. 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**

48. Ms Min Jie 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.

49. 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.