

## **Disciplinary Panel Hearing**

### **Case of**

**Ms Cai Ping Xu [149428]  
China**

### **On**

Tuesday 26 November 2019

### **Via**

Telephone Conference

### **Panel**

Ian Hastie (Surveyor Chair)  
Ferdinand Balfourt (Lay Member)  
Rosalyn Hayles (Lay Member)

### **Legal Assessor**

Margaret Obi

### **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. Ms Cai Ping Xu did not attend the hearing by telephone.
2. The Panel was provided with a copy of the Notice of Hearing and a witness statement from a Regulatory Tribunal Executive confirming that the notice, dated 28 October 2019, had been sent to Ms Cai Ping Xu's registered address by special delivery post and by email. The Regulatory Tribunal Executive confirmed that the postal and email addresses are the preferred addresses which are held on the RICS system, within the Relevant Person's contact record. The email delivery receipt showed that the email was 'relayed' on 28 October 2018 and the postal delivery receipt showed that the notice and enclosures arrived at the delivery office in China on 6 November 2019.
3. The Panel was satisfied that Notice had been properly served in accordance with Rule 23 as it:
  - (i) was sent by Special Post;
  - (ii) confirmed the charge;
  - (iii) confirmed the date, time and venue of the hearing;
  - (iv) enclosed the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended);
  - (v) invited Ms Cai Ping Xu to confirm that she would be attending the hearing by telephone so that she could be provided with the relevant conferencing details.
4. The Panel was satisfied that the requisite period of notice of 28 days has been given in accordance with Rule 43(a) Disciplinary, Registration and Appeal Panel Rules, 1 April 2009, as amended from 1 January 2017, (the Rules) and that the Notice of Hearing had been properly served.

### **Proceeding in Absence**

5. The Panel determined that it was fair, reasonable and in the public interest to proceed in Ms Cai Ping Xu's absence for the following reasons:
  - a) Ms Cai Ping Xu has not engaged with the regulatory process despite reasonable efforts to make contact with her and despite being put on notice of the hearing. There has been no response to the Notice of Hearing. In these circumstances, the Panel was satisfied that it was reasonable to conclude that Ms Cai Ping Xu has chosen not to

engage with these proceedings. Therefore, the Panel was satisfied that her non-participation is deliberate and demonstrates a voluntary waiver of her right to submit written submissions or to attend an oral hearing by telephone conference.

- b) There has been no application to adjourn and no indication from Ms Cai Ping Xu that she would be willing to attend on an alternative date and therefore re-listing this hearing would serve no useful purpose.
- c) There is a strong public interest in ensuring that substantive hearings take place as expeditiously as possible which outweighs any disadvantage to Ms Cai Ping Xu in not being able to make representations to the Panel.

## Background

- 6. RICS members are obliged to complete and record, or cause to be recorded, 20 hours CPD activity by 31 December of each calendar year.
- 7. Rule 6 provides: **“Members shall comply with RICS requirements in respect of continuing professional development.”**
- 8. The key CPD requirements for members are: –
  - All members must undertake a minimum of 20 hours CPD each calendar year (January to December).
  - Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal 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 by 31 January.
- 9. The CPD requirements confirm that for a first breach the member would receive a Fixed Penalty caution which will remain on the member’s disciplinary record for a period of 10 years. A second breach will result in a further caution and a fixed penalty of £150 or equivalent. Non-payment of the fixed penalty fine within 28 days of notification will lead to

the fine being increased to £250. A third CPD breach is likely to result in a referral to a Disciplinary Panel.

10. For the convenience of the RICS' China members and in recognition of the occasional difficulties in accessing the website due to occasional disruptions caused by the Chinese government firewall, China members may record their CPD via excel spreadsheet. Members email the spreadsheet to RICS who then upload the entries onto the RICS system. There is a dedicated regulatory officer on the China team to assist members with this process. Consequently, 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.

### **Findings of Fact**

11. The Panel was provided with a hearing bundle which included a CPD printout from RICS' online system held for Ms Cai Ping Xu and a witness statement from a CPD Administrator.
12. The Panel accepted that if the printout does not contain an entry for a particular year that indicates that no CPD was recorded for that year. There was no entry on Ms Cai Ping Xu's CPD printout for the year 2018. The Panel noted that there is no evidence that Ms Xu has applied for any RICS Exemption or Concession which would have allowed her to avoid that requirement.
13. Accordingly, the Panel found the factual allegations proved, based on the documentary evidence produced.

### **Liability to Disciplinary Action**

14. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Ms Cai Ping Xu's failure to comply with these 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. In addition, the Sanctions Policy makes it clear that even a single breach of the CPD requirements is sufficient to give rise to liability to disciplinary action. The Panel noted that the purpose of the CPD requirements is to ensure that there are consistent standards within the profession and that members

maintain up to date knowledge in their area of expertise in the interests of protecting the public and the wider public interest. The Panel also 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 satisfied that Ms Cai Ping Xu was given every opportunity to comply with the CPD requirements.

15. Accordingly, the Panel was satisfied that Ms Cai Ping Xu was liable to disciplinary action.

## **Sanction**

### Panel's Approach

16. The Panel noted that in addition to 2018, there were no CPD hours recorded by Ms Cai Ping Xu or on her behalf in the years 2013, 2015 and 2016. However, there was a record of 20.50 hours in 2014 and 30.5 hours relating to 2017. In these circumstances, the Panel concluded that Ms Cai Ping Xu:

- (i) Did not record any CPD hours for 2013, 2015 and 2016;
- (ii) Recorded 20.50 hours in 2014 and 30.50 hours of CPD for 2017.

17. The Panel took into account the RICS Sanctions Policy and Ms Cai Ping Xu's disciplinary history which is as follows:

2013 – Caution

2015 - Caution and fine.

2016 – Referral to a Disciplinary Panel (14 March 2018)

18. 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

19. 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 additional options are given to members in China. Compliance is not optional. The CPD requirements are not dependent on the RICS sending reminders to its members. However, the Panel noted that it is likely that Ms Cai Ping Xu was sent several emails reminders, at regular intervals from November 2018, all of which contained the following paragraph:

*“Our records show that you have not yet recorded this minimum requirement. As per the RICS Rules of Conduct for Members and Sanction Policy, because you have already been in breach twice of the CPD Rules of Conduct for Members, and received a Fixed Penalty (Caution & Fine) within the last 10 years, if you do not complete and record the 2018 required minimum of 20 hours of CPD (including 10 hours of formal CPD), you may be in breach for the third time and therefore at risk of referral to Disciplinary Panel with presumption of expulsion.”*

20. The Panel noted that on 14 March 2018, a previous disciplinary panel imposed a reprimand and a fine of £500 for breaching CPD requirements in 2016. However, the Fine has not been paid, neither has payment been made for the fixed penalty fine issued in 2016 for non-compliance in 2015. However, Ms Cai Ping Xu has made payment for membership fees in 2017, 2018 and 2019.

21. The Panel was unable to identify any mitigating factors.

22. The Panel considered that the following aggravating factors were present in this case:

- Ms Cai Ping Xu has been a member since August 2008 and clearly understands the process of recording CPD as 30.50 hours were recorded in 2017 and 20.50 hours in 2014;
- There has been no engagement from Ms Cai Ping Xu despite frequent reminders.
- The third breach was dealt with by way of reprimand and a fine which has not been paid.
- This is the fourth breach of the CPD requirements.

23. 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 Ms Cai Ping Xu had been sent numerous reminders by RICS. However, whether Ms Cai Ping Xu received these reminders or not, it remained her responsibility to ensure that she complied with her CPD obligations. Furthermore, Ms Cai Ping Xu recorded CPD hours in 2014 and 2017 and there was no evidence before the Panel that she had contacted RICS regarding any subsequent difficulties in recording her CPD online.

24. 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 Ms Cai Ping Xu's repeated failure to comply with the requirement to complete, record or cause to be recorded CPD on the RICS portal.
25. 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 Ms Cai Ping Xu should have been completing and recording her 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 undermine public trust and confidence in the regulatory process.
26. The Panel then considered whether to impose a fine. The Panel was mindful that a fine was imposed on Ms Cai Ping Xu for failing to record her CPD hours for the years 2015 and 2016, both of which have not been paid. The Panel concluded that, in these circumstances, to impose a further financial penalty would serve no useful purpose as it had not resulted in compliance with the CPD requirements to date. Instead a further fine would undermine the need to uphold the standards expected of all members and the deterrent effect on other members of the profession.

27. 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 Ms Cai Ping Xu has demonstrated a willingness to engage with the regulatory process and a willingness to comply with any condition imposed. As Ms Cai Ping Xu has repeatedly failed to comply with the CPD requirements in the past and has failed to respond to written reminders to record her CPD, the Panel could not be satisfied that she would 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 Ms Cai Ping Xu's non-compliance with the CPD requirements demonstrated a blatant disregard for the purpose of regulation and consequently undermines public trust and confidence and is fundamentally incompatible with continued membership.

28. Having determined that conditions would not meet the wider public interest the Panel determined that Ms Cai Ping Xu should be expelled from RICS membership. The Panel recognised that expulsion is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. The Panel decided that Ms Cai Ping Xu's case falls into this category as she has repeatedly failed to comply with the fundamental requirement to record CPD and has failed to demonstrate that she has any intention of complying in the future. The Panel was satisfied that, in these circumstances, any lesser sanction would undermine public trust and confidence. In reaching this conclusion the Panel balanced the wider public interest against Ms Cai Ping Xu's interests. The Panel had regard to the impact expulsion may have on Ms Cai Ping Xu but concluded that her interests were significantly outweighed by the Panel's duty to give priority to the significant public interest concerns raised by this case. 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**

29. 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**

30. RICS applied for costs of £400.00. The application represented a request for a contribution towards the costs incurred by RICS in preparing for the hearing and the hearing itself.

31. The Panel concluded that it was appropriate for Ms Cai Ping Xu to contribute towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole. The Panel was satisfied that the preparation costs were fair and reasonable.

32. Therefore, the Panel ordered that Ms Cai Ping Xu pay to RICS costs in the sum of £400.00 or equivalent.

## **Appeal Period**

33. Ms Cai Ping Xu has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

34. 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.