

## ROYAL INSTITUTION OF CHARTERED SURVEYORS

### DISCIPLINARY PANEL HEARING BY WAY OF WRITTEN REPRESENTATIONS

#### Case of

Wing Sze Law MRICS [0091041]

Hong Kong

#### On

Thursday 21 April 2016

#### Via telephone conference

#### Panel

Helen Riley (Member Chair)

Carolyn Tetlow (Lay Member)

### CHARGE HEARD

#### The Panel considered the following:

You have failed to comply with RICS' requirements in respect of continuing professional development ("CPD") in that you have not recorded your CPD activity for 2015 online **contrary to rule 6 of the Rules of Conduct for Members 2007 version 6.**

### DETERMINATION

#### 1. Service

By Rule 23 notice of a hearing must be given by "special post". In the Disciplinary Registration and Appeal Panel Rules the definition of special post is "special post means a method of delivery by which delivery of the post can be confirmed". "Post" is not a defined term.

Notice of this hearing was sent by email to the email address notified by the Relevant Person to RICS.

The notice of the hearing was posted by email, and such notice complies with the Rules. The service of the notice was evidenced by a copy of the email, correctly addressed to the address given by the Relevant Person, and by a printout from the sending email account stating that the email had been delivered to that address.

The Panel noted that the Relevant Person had responded to the email, giving such submissions as she wished the Panel to consider and had not asked for an adjournment. The Relevant Person had not asked for an oral hearing, and her submissions to the Panel were clearly written in the expectation that the hearing would proceed in her absence. The Panel has taken those submissions as indicating the Relevant Person's consent to a paper hearing. The Panel therefore decided that it was appropriate to proceed with a paper hearing.

2. The burden of proof is on RICS and the standard of proof is the balance of probabilities.

### **Findings of fact**

3. From January 2013 RICS members were obliged to complete 20 hours CPD activity by 31 December of each calendar year.
4. Rule 6 provides: "Members shall comply with RICS requirements in respect of continuing professional development."
5. CPD requirements for members are: –
  - Of the 20 hours 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. Any learning undertaken in order to meet this requirement may count as formal CPD.
  - All members must record their CPD activity online.
6. The online CPD record was attached to the charge. It is a matter of record. The record for the Relevant Person for the calendar year 2015 does not show 20 hours CPD recorded. There are no submissions from the Relevant Person that the record is inaccurate and she has apologised for not completing her CPD requirements in 2015.
7. Accordingly the Panel finds the allegation proved.

### **Sanction**

8. The Panel next considered sanction. The RICS rules about CPD require members to undertake and to record online 20 hours CPD each year. For those who failed to comply with that rule in the first year, the sanction imposed was a caution. For those

who failed to comply for a second year the sanction was a further caution and a penalty of £150. This is the third year of compulsory recording of CPD online. The Relevant Person is charged with failing to record CPD for the calendar year 2015, and had received the two cautions and paid the fine of £150 (HKD1790) imposed last year.

9. From the inception of the compulsory recording of CPD online RICS has publicised its policy on sanctions for non-compliance. For a third failure the Sanctions Policy at paragraph 22 indicated that expulsion was the likely sanction.
10. Several telephone calls were made to the Relevant Person reminding her to record her CPD and warning that failure to do so could result in her expulsion from membership. She was also sent several email reminders. In a telephone conversation on 4 December 2015 she said she would record her CPD before the deadline and in a further telephone call on 10 December 2015 she promised to record her CDP within two weeks. She has not done so.
11. The explanation offered by the Relevant Person was that she has experienced extremely difficult personal circumstances over the last two years, those difficulties having become particularly acute in the second half of 2015. The Panel noted that the Relevant Person did not mention her circumstances during the telephone calls with RICS on 4 or 10 December 2015. However, she has now provided documentary evidence of her extenuating circumstances. She also states that, as a result of those circumstances, her RICS membership is very important to her in order to maintain her livelihood. She has acknowledged and apologised for her failure to complete her CPD requirements.
12. The Panel accepted the evidence provided of the Relevant Person's unusually difficult personal circumstances as mitigation for her failure to complete her CPD in 2015. Accordingly the Panel has decided not to expel the Relevant Person from membership of RICS with immediate effect.
13. The Relevant Person must, however, comply with the requirement to undertake and record 20 hours of CPD for 2016 by 31 December 2016. Failure to do so will result in her automatic expulsion from membership of RICS without further recourse.

### **Publication**

14. The Panel has considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. This decision will be published on RICS' website, in RICS' magazine Modus, but not in a local newspaper.

### **Costs**

15. RICS asked for costs of £600, the standard charge for a paper hearing. This is a straightforward matter, and the standard fee is in excess of what may realistically be expected to be the costs incurred in bringing the charge. The Panel orders that the Relevant Person pays costs of £100.

### **Appeal Period**

16. The Relevant Person has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.
17. 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.