

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING BY WAY OF WRITTEN REPRESENTATIONS

Case of

Lo Kwong Yiu Lo [0076494]

Hong Kong

On

Tuesday 26 April 2016

Via telephone conference

Panel

John Anderson (Lay Chair)

Andrew Winscom (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 and proceeding in absence

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 he wished the Panel to consider and did not ask for an adjournment. The Relevant Person returned a signed Listing Questionnaire dated 1/4/16, had not asked for an oral hearing, and so consented to a paper hearing.

The Panel 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 by the extended grace period ending on 31st January 2016. There are no submissions from the Relevant Person that the record is inaccurate.
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, 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 contrary to rule 6 of the Rules of Conduct for Members 2007 version 6, and had received the two cautions and paid the fine of £150 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 indicated at paragraph 22 that expulsion was the likely sanction.
10. The Relevant Person offered no explanation for the failure to record 20 hours CPD online during 2015. The Relevant Person wrote by email to RICS on 3 February 2016 stating that "...I have no record for CPD in 2015...". While the deadline for recording CPD online was 31 December 2015, RICS has brought no allegation where CPD was recorded online by 31 January 2016. The Relevant Person was outside even the additional period of grace afforded by RICS. The Panel was aware that the Relevant Person may have had a further extended grace period. This was evidenced by the email from RICS dated 4 February 2016 which offered assistance in uploading his CPD records if returned to RICS in Excel format by 12 February 2016. The Panel noted that the Relevant Person confirmed in his email of 1 April 2016 that "...I have submitted my 2015 CPD records on 22nd March 2016...". Therefore the relevant Person was outside any periods of grace afforded by RICS.
11. This is the third successive year the Relevant Person has failed to comply with the obligation to record 20 hours of CPD online in a calendar year. The Panel had regard to submissions by the Relevant Person that he had health problems and was about to retire. However no specific details of health problems were provided and there was no evidence from a medical practitioner. RICS is a professional membership organisation and sets standards for all of its members as a condition of membership, whatever their seniority within the profession. It is not difficult to record CPD online. There is no excuse for failing to comply with such a rule. Compliance is not optional.
12. Those who do not comply with the rules of RICS cannot expect to remain members of it. Accordingly the Panel decided to expel the Relevant Person.

Publication

13. 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

14. 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 pay costs of £200.

Appeal Period

15. 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.
16. 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.