

## **Disciplinary Panel Hearing by way of written representations**

### **Case of**

**Mr Kamol Asavawatana [1256794]  
Bangkok, Thailand**

### **On**

Tuesday 24 September 2019

### **By telephone conference**

### **Panel**

Sally Ruthen (Lay Chair)  
Ron Barclay -Smith (Lay Member)  
Christopher Pittman (Surveyor Member)

### **Legal Assessor**

Peter Steel

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.

### **Response**

1. Mr Asavawatana had not responded to the Notice of Hearing dated 15 August 2019. The Panel therefore 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 by the required date.
5. For the CPD year 2018 correspondence was sent by email to members reminding them about the necessity to comply with their CPD obligations. RICS wrote to the preferred address held for Mr Asawatana in March 2015 informing him of the Fixed Penalty caution and fine which had been issued to him for CPD non-compliance in 2014. This letter stated: "*If you fail to comply with CPD requirements, including online recording, for 2015, then you will be referred to a Disciplinary Panel*". Mr Asawatana was also sent an email reminder on 14 January 2019 urging him to record his CPD immediately to avoid a disciplinary hearing.

## Service

6. A Notice of Hearing, together with the evidence bundle was sent by special post to Mr Asawatana's preferred address held by RICS on 15 August 2019. A copy of the postal delivery receipt for the Notice of Hearing and bundle had been produced to the Panel showing that delivery had been effected on 17 September 2019.
7. The Panel was satisfied that Notice had been properly served in accordance with Rule 23A. The Panel next considered whether to proceed in the absence of Mr Asawatana. The legal assessor's advice was sought and accepted. The Panel was referred to the case of *R-v-Jones [2002] UKHL 5*, which the case of *Tait v The Royal College of Veterinary Surgeons (RCVS) [2003] UKPC 34* states is also applicable to professional conduct proceedings.
8. The Panel also had regard to the case of *General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 162*, in particular the comments of Sir Brian Leveson P that : "*...it is important to bear in mind that there is a difference between continuing a criminal trial in the absence of the defendant and the decision under Rule 31 to continue a disciplinary hearing. This latter decision must also be*

*guided by the context provided by the main statutory objective of the GMC, namely, the protection, promotion and maintenance of the health and safety of the public as set out in s. 1(1A) of the 1983 Act. In that regard, the fair, economical, expeditious and efficient disposal of allegations made against [medical] practitioners is of very real importance.*

*It goes without saying that fairness fully encompasses fairness to the affected [medical] practitioner (a feature of prime importance) but it also involves fairness to the GMC ... In that regard, it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator."*

9. Sir Brian Levenson went on to add that the duty of the regulator in these circumstances: *"...is very simple. It is to communicate with the practitioner at the address he has provided; neither more nor less. It is the practitioner's obligation to ensure the address is up to date."*
10. Having considered all the circumstances, the Panel was content that it was fair and in the public interest for it to proceed to consider the case.

## **Findings of Fact**

11. The Panel was provided with a statement from Joe Poole, CPD Administrator at RICS dated 15 May 2019 setting out Mr Asavawatana's online CPD record and exhibiting the relevant records. This showed that he had not recorded any CPD for 2018 and he had not been granted any concessions for that year.
12. Accordingly, the Panel found the factual allegations proved, on the basis of the documentary evidence produced.

## **Liability to Disciplinary Action**

13. The Panel was satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr Asavawatana'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 as they prevent RICS from monitoring compliance and thus ensuring public protection.

14. Accordingly, the Panel was satisfied that Mr Asavawatana was liable to disciplinary action.

## **Sanction**

### Panel's Approach

15. The Panel took into account the submissions of RICS as set out in the Case Summary in the bundle. It had regard to the RICS Sanctions Policy.

16. 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.

17. The Panel bundle contained a further statement from Joe Poole, also dated 15 May 2019 which indicated that Mr Asavawatana had received a Caution for failure to comply with the CPD requirements in 2013 and a Caution and Fine for a further breach in 2014. This was therefore Mr Asavawatana's third such breach.

### Decision

18. Mr Asavawatana had not responded to the Notice of Hearing. The Panel could not therefore identify any particular mitigation for his failure to record any CPD for 2018. It noted that other than the previous Fixed Penalties, he had no disciplinary history with RICS.

19. 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; and
- He had been sent a number of prompts by email and letter that he risked disciplinary action if he did not comply to which he had not responded.

20. 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 however busy a member's professional or personal life may be. Compliance is not optional.

21. The Panel first considered whether it was appropriate to impose any sanction at all. 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. As noted above, he should have been aware of his responsibility to ensure that he complied with his CPD obligations. In addition the Panel

noted that Mr Asavawatana had been sent numerous reminders by RICS, even though RICS is not obliged to do so.

22. 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 Mr Asavawatana had already received a caution and a caution and a fine for previous breaches. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Asavawatana's repeated failure to comply with the requirement to complete and record CPD on the RICS portal.
23. In considering whether to require Mr Asavawatana to give an undertaking, the Panel took into account the mandatory nature of the CPD requirements and the fact that Mr Asavawatana had not engaged with the process. The Panel noted that the CPD requirements are designed to ensure that the skills and knowledge of RICS members are 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 Asavawatana 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.
24. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. He had previously received a fine for a breach of the CPD requirements but this had clearly not served as an adequate warning. Mr Asavawatana's repeated failure to abide by his professional responsibilities was simply unacceptable for someone who wished to remain part of a respected profession.
25. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Asavawatana's continuing membership as an adequate response to the misconduct demonstrated by this case. It also noted that Mr Asavawatana had not engaged with RICS and was required to complete and record CPD in any event. It was therefore not clear what purpose it might serve to impose a condition relating to his future completion of CPD in the circumstances.
26. The Panel took into account paragraph 21.1. of the Sanctions Policy, which 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. In the absence of any response explaining Mr Asavawatana's failure to complete and/or record CPD in 2018, the Panel considered there was no good reason in this case to depart from the Sanctions Policy. Having carefully considered all facets of the case, the Panel concluded that the only appropriate sanction in this case was expulsion. It therefore ordered that Mr Asavawatana be expelled from membership of RICS.

## **Publication**

27. 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**

28. RICS applied for costs of £400.

29. 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.

30. The Panel concluded that it was appropriate for Mr Asavawatana 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. The Panel considered that the amount claimed was reasonable.

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

## **Appeal Period**

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

33. 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.