

## **Disciplinary Panel**

### **Case of**

**Mr Nam Nguyen MRICS**

### **On**

Thursday 17 October 2019

### **Panel**

John Anderson (Lay Chair)  
Paul Watkinson (Surveyor Member)  
Rosalyn Hayles (Lay Member)

### **Legal Assessor**

Mark McConochie

### **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. A Notice of Hearing, dated 15 August 2019, was sent to Mr Nguyen by email and international special delivery post to the address held on Mr Nguyen's RICS Member contact record as his preferred means of communication with the RICS.
2. A copy of the Notice and a signed witness statement dated 8 October 2019 from Mrs Emma Jones, Regulatory Tribunal Executive at the RICS, was produced by the RICS as proof that the Notice had been served.
3. As evidenced by Mrs Jones' witness statement, the email sent to Mr Nguyen by the RICS on 15 August 2019 attaching the Notice was delivered on 15 August 2019. The letter sent by international special delivery post, enclosing the Notice and accompanying materials, was delivered on 22 August 2019.
4. The Panel was satisfied that Notice had been properly served in accordance with Rule 43a of the Disciplinary, Registration and Appeal Panel Rules 2009, as amended, ("the DRAP Rules") giving the required 28 days' notice of the hearing. This is because the Notice had been sent by "special post" within the meaning of the DRAP Rules to the last known address held on RICS records for Mr Nguyen.

The Notice:

- i) confirmed the charge;
  - ii) gave the required 28 days' notice of the date and time of the hearing;
  - iii) enclosed the DRAP Rules;
  - iv) Invited Mr Nguyen to confirm within seven days whether he wished to request an oral hearing.
5. As pointed out in the Notice, the case against Mr Nguyen was to be considered by way of written representations, unless Mr Nguyen requested an oral hearing. Mr Nguyen has not

requested an oral hearing and in these circumstances, the Panel considered that he had voluntarily waived his right to attend.

6. In all of the circumstances, taking into account the interests of justice and the wider public interest, the Panel considered it fair to proceed by way of written representations in accordance with section 43(a)(d) of the DRAP Rules.

## Background

7. RICS members are required to complete and record 20 hours CPD activity by 31 January each year, relating to CPD completed during the previous calendar year.
8. Rule 6 of the Rules of Conduct for Members provides: **“Members shall comply with RICS requirements in respect of continuing professional development.”**
9. 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.
10. For the CPD year 2013, members who had not recorded sufficient CPD via the RICS online portal were issued with a caution. For the CPD year 2015, members who had not recorded sufficient CPD in one of the two previous years, and who had again failed to record sufficient CPD in 2015 via the RICS online portal, were issued with a caution and a fine. Members were informed that a third breach within a 10-year period would be referred to a Disciplinary Panel and that this was likely to result in expulsion from the RICS.

## **Findings of Fact**

11. Mr Nguyen had not indicated whether or not the charge was admitted and in these circumstances the Panel proceeded on the basis that the charge was not admitted.
12. The Panel was provided with a copy of Mr Nguyen's CPD records from the RICS online CPD system which were exhibited to a witness statement dated 23 May 2019 from Mr Joe Poole, a CPD administrator working for the RICS.

The Panel found, based on this evidence, that Mr Nguyen:

- (i) Had not completed and recorded, or caused to be recorded, any hours of CPD between 1 January 2018 and 1 February 2019 as alleged; and
  - (ii) Did not have in place any full or partial concession from RICS in relation to the completion of his CPD for that year.
13. Taking this evidence into account, the Panel found the charge proved.

## **Liability to Disciplinary Action**

14. The Panel took into account that the CPD policy had 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. CPD is intended to ensure consistent standards within the profession and so that members maintain up to date knowledge and are able to demonstrate this through proper and accurate recording of their CPD. Ensuring that Members complete and record CPD is an important requirement in the interests of ensuring public protection and confidence in the profession and in the RICS as regulator. Completion and recording of CPD is not optional.

15. The witness statement from Hayley Moore, Business Improvement and Performance Manager, RICS, dated 23 May 2019 details the steps that are taken by the RICS to inform members of their CPD requirements and to assist them in complying with those requirements.
16. Despite the steps that had been taken by RICS, Mr Nguyen had still failed to comply with his professional obligations in the 2018 calendar year.
17. The Panel were of the view that a single failure to comply with CPD requirements is sufficiently serious to give rise to liability to 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 considered that any breaches of the RICS rules relating to CPD and its recording are serious as they prevent RICS from monitoring compliance, thereby ensuring public protection.
18. Accordingly, the Panel was satisfied in all of the circumstances of the breach that Mr Nguyen's conduct was sufficiently serious as to render him liable to disciplinary action.

## **Sanction**

19. The Panel took into account the written submissions made on behalf of RICS, the RICS Sanctions Policy and Mr Nguyen's disciplinary history which is as follows in related to CPD related sanctions:

2016        - Caution  
2017        - Caution and fine.

RICS indicated that Mr Nguyen had not paid the fine imposed in 2017.

20. The Panel bore in mind that the purpose of sanctions is not to be punitive, although they 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 the RICS as its regulator

and to protect the public. Sanctions must be proportionate to the breach and all the circumstances, and the Panel approached its decision having taken into account any mitigating and/or aggravating factors.

### **Decision on Sanction**

21. The 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 compliance is not optional.
22. The charge found proved represented a fourth breach of the CPD requirements, Mr Nguyen having failed to complete and record, or cause to be recorded, any hours of CPD over four separate years (2013, 2016, 2017 and 2018), despite having been sent a number of reminders by RICS of the importance of doing so and the consequences that could follow for failing to comply. Previous sanctions in relation to CPD breaches imposed in 2016 and 2017 had not ensured that Mr Nguyen has consistently complied with his CPD obligations and the Panel considered that to be a serious aggravating feature of this case. Mr Nguyen had completed and recorded CPD in 2014 and 2015 so was clearly aware of the requirements and how to record CPD on-line yet he had not offered any explanation to the Panel for failing to comply with his professional obligations in other years, or any personal mitigation by way of written representations.
23. There was evidence before the Panel that RICS had contacted Mr Nguyen by telephone on 26 February 2018 relating to the 2017 CPD year to remind him about his CPD obligations. Mr Nguyen said that he would record his CPD but did not do so.
24. Mr Nguyen has not engaged with the RICS at all about these proceedings, has offered no explanation or mitigation to the Panel in relation to the breach, and this is not consistent with someone wanting to remain a member of a regulated profession.
25. Having considered all of the circumstances of this case, the Panel first considered whether to impose any sanction at all. The Panel concluded that the failure by Mr Nguyen to complete and record CPD on four separate occasions was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. The Panel found no such exceptional circumstances to be present.

26. The Panel considered whether to impose a caution. The Panel concluded that a caution was not appropriate because it would not adequately reflect the seriousness of the conduct, recognising the repeated non-compliance. A caution had already been imposed for a previous breach and yet Mr Nguyen had still failed to consistently comply with his professional obligations.
27. The Panel also considered the imposition of a reprimand, but concluded that similarly this did not reflect the seriousness of Mr Nguyen's repeated failure to comply with the requirement to complete and record CPD.
28. In considering whether to require Mr Nguyen to give an undertaking, the Panel took into account the mandatory nature of the CPD requirements which Members should not have to undertake to comply with. CPD requirements are designed to ensure that the skills and knowledge of RICS members are kept up to date which is ultimately to ensure public protection. The Panel concluded that it would not be appropriate or proportionate to impose an undertaking given that Mr Nguyen should have been completing and recording his CPD online in any event and concluded that imposing such a sanction would be insufficient to maintain public trust and confidence in the regulatory process.
29. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction. Mr Nguyen had previously received a fine for a breach of the CPD requirements 2017. This fine had not yet been paid which is a serious aggravating feature of this case and demonstrates a lack of respect for the regulatory process.
30. For similar reasons, the Panel considered and dismissed the imposition of a condition on Mr Nguyen's continuing membership as an adequate and proportionate response to the misconduct demonstrated by this case in the light of Mr Nguyen's complete lack of engagement.
31. The Panel took into account paragraph 21.1. of the Sanctions Policy, which states that in the absence of extenuating circumstances 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. The Panel considered there to be no such extenuating circumstances present in this case. Having carefully considered all aspects of the case, and all possible sanctions available to it, the Panel concluded that the appropriate and

proportionate sanction in this case was expulsion. It therefore ordered that Mr Nguyen be expelled from membership of RICS.

### **Publication**

32. 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 and ordered publication accordingly.

### **Costs**

33. There was an application by RICS for costs in the sum of £400 which had been served on Mr Nguyen in accordance with the DRAP Rules. The Panel considered this to be a fair and reasonable amount to impose by way of costs and ordered Mr Nguyen to pay £400 to the RICS within 21 days of notice having been served on him of this decision.

### **Appeal Period**

34. Mr Nguyen has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 58 of the DRAP Rules.

35. In accordance with Rule 59 of the DRAP 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.