

## ROYAL INSTITUTION OF CHARTERED SURVEYORS

### DISCIPLINARY PANEL HEARING

#### Case of

**Subramoniam Eswar [0000144405]**

**Ajman, United Arab Emirates 006.**

#### On

Tuesday 10 September 2019 and Wednesday 11 September 2019 at 0800.

#### At

RICS, 55 Colmore Row, Birmingham.

#### Chair

Mrs Helen Riley (Member)

#### Panel

Ms Catherine Brown (Lay member)

Mr Nick Gray (Member)

#### Legal Assessor

Ms Rosemary Rollason

#### RICS Representative

Ms Kelly Sherlock

#### Relevant Person

Mr Subramoniam Eswar did not attend the hearing and was not represented.

#### Hearings Officer

Miss Maria Choudhury

#### CHARGES

The Panel considered the following charges (as amended at the hearing) against Mr Eswar:

1. You failed to act with integrity and/or avoid actions and/or situations which were inconsistent with your professional obligations in that you acted contrary to PS2 (Ethics, Competency, Objectivity and Disclosures) section 2.1 of Red Book by:
  - a. failing to register with the Real Estate Regulatory Authority (“RERA”) in order to carry out valuations in Dubai; and/or
  - b. conducting valuations in Dubai when not permitted to do so due to the failure to register with RERA;

**Contrary to Rule 3 of the Rules of Conduct for Members 2007**

2. You failed to carry out your professional work with due skill, care and diligence and with proper regard for the technical standards expected of you, in that, in respect of file 1:
  - a. *[withdrawn]*;
  - b. you provided two significantly different valuations with no clear rationale;
  - c. there was no clarity as to how the assets were calculated; and/or
  - d. it was unclear who the client was as two different parties were noted within the report;
3. You failed to carry out your professional work with due skill, care and diligence and with proper regard for the technical standards expected of you, in that, in respect of file 2, you failed to:
  - a. provide evidence to support the normal range of yields;
  - b. take into account particular considerations in the application of the yield, including but not limited to:
    - i. the tenant having the right to occupy the property for 25 years;
    - ii. the lease commencement date was in 2004;
  - c. explain the discrepancies within the report of the upper limit rents;
4. You failed to carry out your professional work with due skill, care and diligence and with proper regard for the technical standards expected of you in that you, contrary to RICS valuation – Global Standards 2017 PS1, PS2, VPS1, VPS2, VPS3, VPS4 in one or more of the following ways:
  - a. Accepted valuation instructions which are outside of your demonstrable expertise;
  - b. Failed to comply with the minimum content of VPS 1, paragraph 3.1, including but not limited to:
    - i. Not including a statement of competency;
    - ii. Not including a detailed purpose of the valuation;
    - iii. Not including which bases of value were to be used;

- iv. Not specifying all sources of information to be relied upon;
  - v. Not including any assumptions made;
  - vi. Not including a restriction on use, distribution or publication;
  - vii. Not including information relating to the fee for the work;
  - viii. Not including a statement regarding an agreed liability cap with the client;
- c. Failed to include details regarding:
- i. Information gathered;
  - ii. Comparables;
  - iii. Analysis
- d. Failed to demonstrate a clear valuation calculation and/or valuations rationale, by failing to retain notes regarding:
- i. Key inputs;
  - ii. All calculations;
  - iii. Investigations and analysis considered;
- e. Prepared a report and/or reports which:
- i. lacked clarity;
  - ii. were unnecessarily long;
  - iii. were repetitious;
  - iv. were at times contradictory;
- f. Failed to comply with the minimum content of VPS 3, paragraph 2 in respect of File 1, including but not limited to:
- i. Not including a statement of competency;
  - ii. Not including a detailed purpose of the valuation;
  - iii. Using language such as 'approximately' and/or 'Certificate';
  - iv. Not dating the report;
- g. Failed to comply with the minimum content of VPS 3, paragraph 2 in respect of File 2, including but not limited to:
- i. Not including a detailed purpose of the valuation;
  - ii. Not dating the report;
- h. Used 'market value' and 'fair value' interchangeably;
- i. Used 'fair market value' which is not recognised in VPS4;
- j. Stated the purpose of the valuations was for internal financial reporting, which was incorrect;
- k. included a number of assumptions pertinent to the assets being valued, but with no particular order to the statements and/or directly linking them to the limitations in the scope of investigations and enquires, contrary to VPS 4, paragraph 8;

I. declared the 'traditional investment method' was use, which is no longer in use.

### **Contrary to Rule 4 of the Rules of Conduct for Members 2007.**

#### **Preliminary matters**

##### **Service**

1. A Notice of Hearing dated 10 July 2019 was sent to Mr Eswar by special post and also by email. The Panel had sight of a signed witness statement from Ms M Choudhury, dated 27 August 2019, confirming the sending of the Notice of Hearing to Mr Eswar's postal address held by RICS. The Panel also received a Royal Mail Track and Trace Receipt confirming delivery on 05 August 2019 and an email delivery confirmation dated 10 July 2019.
2. The Panel was satisfied that good service had been made in accordance with Rule 23 of the Disciplinary Registration and Appeal Panel Rules 01 April 2009, Version 7 with effect from 01 January 2017 ("the Rules").

##### **Application to proceed in absence**

3. Ms Sherlock on behalf of RICS submitted that the Panel should exercise its discretion to proceed in the Relevant Person's absence under Rule 30.
4. The Panel accepted the advice of the Legal Assessor. The Panel referred to the guidance provided by the authorities *R v Jones (Anthony) [2004] 1 AC 1HL* and *GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162*. Applying that guidance, the Panel was careful to remember that its discretion to proceed in absence is not unfettered and must be exercised with the utmost caution and with the fairness of the hearing at the forefront of its mind.
5. The Notice of Hearing informed Mr Eswar of the date and details of the hearing, and of his right to attend and be represented. The Notice set out the Panel's power to proceed in Mr Eswar's absence and offered him the opportunity to attend the hearing by Skype facilities. Mr Eswar was also informed of the sanctions and costs powers available to the Panel, should it find the charges proved.
6. It was apparent from email correspondence before the Panel that Mr Eswar had received the Notice of Hearing and was aware of the hearing date. In an email dated 01 September 2019, Mr Eswar confirmed he would not attend the hearing. The Panel also received an attendance note from Ms Choudhury, Regulatory Tribunal Executive, confirming her telephone conversation with Mr Eswar on the first morning of the hearing. During the conversation, Mr Eswar confirmed that he had received the Skype link for the hearing, but stated that he had said everything he wished to say in his emails and would not be attending the hearing.
7. The Panel considered the factors in *Jones* and *Adeogba*. It noted that there had been no request for an adjournment, nor was there any indication that Mr Eswar wished to attend the hearing, but for some reason was unable to do so. There was no suggestion that he had sought to instruct any representative. The Panel acknowledged there was likely to be a disadvantage to Mr Eswar in not being present at the hearing to put his defence to the Panel. However, not to attend was his

own choice. In the circumstances, the Panel concluded that Mr Eswar had voluntarily waived his right to attend and adjourning this hearing would serve no purpose.

8. The Panel was mindful that it must also consider fairness to RICS, whose case was ready to proceed today and whose expert witness was ready to be called to give evidence. The Panel took account of the public interest in the expeditious resolution of regulatory allegations and the impact of cost and delay caused by an adjournment upon other cases. Following the guidance in the case of *Adeogba*, and given that there was no good reason to adjourn the hearing, the Panel decided it was in the public interest to proceed in Mr Eswar's absence.
9. The Panel was mindful that in proceeding in absence, it should ensure that the hearing was as fair as circumstances permitted. It would not regard Mr Eswar's absence as an admission to the charges. The Panel was also mindful that, in Mr Eswar's absence, it should ask questions and consider points which may be in his interest and which were reasonably apparent from the evidence.

#### **Application to amend the charge**

10. Ms Sherlock applied to withdraw particular (a) of Charge 2. This had alleged that Mr Eswar had "*failed to make reference to IFRS standards*". Ms Sherlock stated that, having reviewed the expert report, RICS considered this particular was no longer supported by the evidence. The Panel noted that no prejudice was caused to Mr Eswar by this minor amendment which, if anything, reduced the scope of the charge. The Panel accepted the amendment and particular 2(a) was deleted.

#### **Documents**

11. The Panel received a hearing bundle comprising 549 pages, further copies of email correspondence between Mr Eswar and RICS numbered to page 558 and a further small bundle of documents relating to service.
12. No documents were submitted by Mr Eswar in addition to his emails which were included in the hearing bundle.

#### **Response**

13. Mr Eswar did not complete the RICS listing questionnaire. The Panel noted from the documentation that although he did appear to accept some factual, technical findings of the VR RRV, overall his responses were equivocal. It was clear that Mr Eswar did not accept that he had acted without integrity or was liable to disciplinary action. The Panel therefore determined that it was fair, in Mr Eswar's absence, to treat all charges as denied.

#### **Background**

14. Mr Eswar has been registered with RICS since 9 September 2011. He is a Fellow of RICS. He lives and works in the United Arab Emirates (“UAE”) and is employed by E&E Engineering Consultants LLC. His employer is not an RICS Regulated firm.
15. Mr Eswar joined RICS’ Valuer Registration scheme on 14 October 2013. In May 2018, he was the subject of a Valuer Registration (“VR”) Regulatory Review Visit (“RRV”). The VR RRV was conducted remotely by Peter Dixon BSc FRICS, Regulatory Surveyor employed by RICS. Mr Dixon’s VR RRV Report dated 22 May 2018 was included in the hearing bundle. The Report included Mr Eswar’s management responses to the findings.
16. During the review, two valuation files (File 1 and File 2) were reviewed, concerning the valuation of a property in Dubai and the valuation of Machinery and Equipment.
17. The RRV found a number of areas where Mr Eswar was not in compliance with Red Book, as now set out in the charges brought by RICS against Mr Eswar.
18. RICS also obtained an expert report from Mr Simon Townsend BSc (Hons) FRICS, an RICS Registered Valuer and a Senior Director and Head of Strategic Consultancy for CBRE Dubai LLC. Mr Townsend is based in UAE and is therefore familiar with the market in which Mr Eswar was carrying out the valuations. Mr Townsend’s report, dated 19 March 2019, was included in the hearing bundle, together with Mr Eswar’s comments.

### **RICS’ case**

19. Ms Sherlock relied on the VR RRV Report and the findings of Mr Peter Dixon. She also referred the Panel to copies of Files 1 and 2 in the hearing bundle.
20. Ms Sherlock called evidence from Mr Simon Townsend, RICS’ expert witness. He gave oral evidence from Dubai via a video link. Mr Townsend confirmed that in preparing his report, he had understood and complied with the expert witness’ duties. He confirmed his expert report of 19 March 2019 and that his opinion remained unchanged. Mr Townsend was questioned by Ms Sherlock and by the Panel.

### **Charge 1**

21. In respect of Charge 1, Ms Sherlock submitted that this concern arose from the expert report of Mr Townsend. At page 532 of his report, Mr Townsend stated:

*“..within Dubai, the regulations around the provisions of valuations and who is permitted to undertake valuations is governed by RERA (Real Estate Regulatory Authority) through the Dubai Lands Department.*

*To be a registered valuer within Dubai it is essential to be registered with RERA, attend the valuation course and pass the exam”*

22. The report further stated that Mr Townsend had “*checked the application and I am unable to see any registration either for the member of the company....I would comment that the provision of valuations without a RERA licence is in breach of the local laws*”.
23. Ms Sherlock informed the Panel that when this matter was put to Mr Eswar, he responded that he ‘*can’t have two visas for one country*’ and that his clients are aware that he is not registered with RERA. Ms Sherlock submitted that Mr Eswar had failed to acknowledge that not having registration with RERA and carrying out valuations within Dubai is in breach of local laws. She submitted that this is in contravention of the Red Book and RICS Rules of Conduct, whether or not the clients are aware of the position.
24. Ms Sherlock informed the Panel that RICS had sought clarification on this point. She referred the Panel to an email exchange between the Mr Townsend and the Head of Dubai Lands Department confirming the position.
25. Ms Sherlock submitted that it is clear that in order to legally carry out valuations in Dubai you need:
- A RERA registered valuer;
  - A RERA registered Firm;
  - Any applicable mandated training;
  - Compliance with the EBVS.
26. Ms Sherlock submitted that none of the above were the case in respect of Mr Eswar or his Firm.
27. Ms Sherlock referred to PS2 in the Red Book, “Ethics, Competency, Objectivity and Disclosures”, which provides that it is a mandatory requirement that members demonstrate “*compliance with any country or state legal regulations governing the right to practise valuation*”. She submitted this was clearly not the case in relation to Mr Eswar and his practice in Dubai. Ms Sherlock submitted that there was therefore clear evidence demonstrating a breach of the Red Book by the Member practising in Dubai without the requisite registrations.
28. It appeared that the Member was aware of the Dubai requirement as he did not dispute its existence, but rather considered that he did not need to comply with the requirement as his clients were aware of his lack of registration.

#### **Charges 2, 3 and 4**

29. Ms Sherlock explained that these allegations arose from the VR RRV undertaken by Mr Dixon and the opinion of RICS’ expert witness, Mr Townsend. Charge 2 related to File 1.
30. Ms Sherlock submitted that Mr Eswar’s response was that the client was aware of the situation and understood the rationale. Mr Eswar did not accept that his actions in respect of Charge 2 were contrary to Rule 4 of the RICS Rules of Conduct. She submitted Mr Eswar had failed to appreciate that it was not sufficient that the client was aware of the position: these issues were required to be explicit from reading the valuation report.



31. Ms Sherlock stated that in respect of charge 2d, Mr Eswar maintained that the confusion arose as a result of a typographical error but she submitted that this nevertheless demonstrated a lack of attention to detail which was present throughout the valuations. It was not a defence to state that the client was aware, and the report was required within two days: regardless of time constraints, all work should be undertaken with a high level of attention to detail and concentration to ensure that a valuation is reliable and accurate.
32. In respect of File 2, Ms Sherlock referred to the opinion of RICS' expert, Mr Townsend, that "*there is insufficient supporting information to understand the robustness of the information/ assumptions used in deriving the inputs into the valuations calculations*".
33. Allegation 4 arose from the VR RRV findings report. As noted above at paragraph 4, the Member advised that his response to the allegations was the same as noted in his management responses.
34. Ms Sherlock noted that in respect of the breach of PS1 of Red Book, Mr Eswar had stated "*I disagree with the findings which is primarily based on the outcome of the interview. This is the first time I have attended an interview in this regard and nervous over the intent*". Ms Sherlock submitted that whilst the information from the interview would have been taken into account, the VR RRV is also based on the documentary evidence in the form of the valuation files.
35. Ms Sherlock stated that Mr Eswar had stated recommendations in the VR RRV were '*noted*' which RICS assumed to mean they would be adhered to going forward. However, Ms Sherlock submitted that it was concerning that in the management responses Mr Eswar had provided information missing from the valuations, but has failed to recognise that the issue was that these matters should have been included explicitly from the start.
36. For example, the VR RRV findings report noted that "there was no statement regarding the fee for the work in the terms of engagement" and the Member had responded by advising the "*fee is based on negotiation*". The issue was that in order to comply with VPS 1, paragraph 3.1 there was a requirement as to the particular minimum content which the Member did not adhere to.
37. Ms Sherlock's summary submission was that the issues which formed the subject of the charges indicated an individual undertaking work without the required skill, care and diligence and without proper regard for the technical standards expected of a competent valuer. She referred to the expert's conclusion that "*the issues around the valuation methodologies highlighted...support the concerns of the RICS that these reports do not meet the standards required of the profession and not what would be expected from a prudent competent valuer with experience in that specific asset class and type*".

### **Legal Advice on facts**

38. The Panel was reminded that RICS is required to prove the factual allegations to the civil standard of proof; that it is more likely than not that any fact alleged occurred. The burden of proof is upon RICS, which brings the charges and it is not for Mr Eswar to prove his innocence.



39. In respect of Charge 1, which alleged a failure to act with integrity, the Panel's attention was drawn to the guidance as to the meaning of lack of integrity in the case of *Wingate and Evans v SRA; SRA v Malins [2018] EWCA Civ 366*, in which the Court of Appeal stated that integrity connotes adherence to the ethical standards of one's own profession, and professional integrity is linked to the manner in which that particular profession professes to serve the public. However, neither courts nor professional tribunals must set unrealistically high standards; the duty of integrity does not require professional people to be paragons of virtue. A professional disciplinary tribunal has specialist knowledge of the profession to which the respondent belongs and of the ethical standards of that profession.

### **Findings of Fact**

40. The Panel accepted the legal advice. It carefully considered all the oral and documentary evidence and the submissions.

#### *Mr Eswar*

41. In the absence of any evidence or submissions from Mr Eswar, the Panel considered his "management responses" as set out in the VR RRV Report and the comments in his email correspondence with RICS. The Panel was mindful that Mr Eswar had chosen not to attend the hearing to give oral evidence which could be tested in questioning. It was able to give limited weight to his responses and in many cases, found them to be rather unclear and general in nature. For example, in number of the management responses he did not appear to challenge Mr Dixon's technical findings but simply wrote "Noted" without further explanation.

#### *Mr Dixon*

42. The Panel considered the VR RRV Report of Mr Peter Dixon and found it to be careful, detailed and thorough. Mr Dixon undertook the review in his professional capacity as a Regulatory Surveyor employed by RICS. The Panel was satisfied that it could give considerable weight to Mr Dixon's written evidence and accepted his findings as recorded in the VR RRV Report.

#### *Mr Townsend*

43. The Panel considered that Mr Townsend was possessed of the relevant qualifications and experience for it to accept him as an expert witness who could provide assistance to the Panel on matters not within its knowledge and experience. He demonstrated detailed knowledge of valuation practice for valuers in the local area and of market conditions and had worked in the region for over 20 years. Mr Townsend informed the Panel that he participated in a working party regarding RERA.

44. The Panel found Mr Townsend to be a knowledgeable, consistent and credible witness. He was measured in his responses. He was prepared to say when a matter was not within his knowledge

or experience and was prepared to make appropriate concessions. The Panel had accepted and gave weight to Mr Townsend's evidence.

45. In considering the facts, the Panel was careful to review all the evidence relevant to each head of the charge. The Panel reviewed the documentary evidence, including the copies of Files 1 and 2, the VR RRV Report of Mr Dixon, the expert report of Mr Townsend and his oral evidence, and where available, the responses and comments of Mr Eswar.

46. The Panel's findings of fact were as follows:

**Charge 1(a) - proved.**

47. The Panel noted the evidence that, in order to undertake these valuations, it was necessary to be a RERA registered valuer and to meet the requirements of the Dubai Lands Department.

48. The Panel took into account the email exchange between Mr Townsend and the Head of Dubai Lands Department confirming that Mr Eswar was not registered with RERA. It noted that Mr Townsend had checked the application and was unable to identify any registration either for the member or the company. He also commented that the provision of valuations without a RERA licence is in breach of the local law. Mr Eswar had acknowledged that he was not registered. The Panel was satisfied that the charge was proved.

**Charge 1(b) – proved**

49. The evidence from the VR RRV Report clearly established that Mr Eswar had undertaken valuations in respect of Files 1 and 2. Mr Eswar did not dispute this. It followed from the Panel's finding in respect of Charge 1(a) that he had done so when not permitted to.

50. In respect of Charge 1, the Panel took into account the legal advice it had received as to the meaning of integrity in the professional context. It found proved that Mr Eswar had acted without integrity as alleged and had acted in contravention of PS2, "Ethics, Competency, Objectivity and Disclosure".

51. The facts found proved in charge 1 were alleged to be in breach of Rule 3 of the Rules of Conduct for Members 2007. This provides that "*Members shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with their professional obligations*". The Panel was concerned that Mr Eswar had disregarded the local regulatory requirements for undertaking valuations in Dubai. In so doing he, also disregarded PS2 of the Red Book. The evidence of Mr Townsend was that the requirements of RERA were well known in the community. Mr Eswar's response suggested he was aware as he claimed his clients were aware and had consented to the position. However, this was not acceptable and it was Mr Eswar's obligation to ensure that their interests were protected. It was incumbent on Mr Eswar to be aware of and comply with local requirements. In the Panel's judgment, this amounted to a breach of Rule 3.

**Charge 2(b) – proved.**

52. The Panel observed the two different figures of AED 126,485.00 and AED 689,352.00 given in the valuation within File 1 and the absence of any rationale. The report and oral evidence of Mr Townsend were clear. He stated this was misleading to the beneficiary in conveying two significantly different values for the same asset. He further stated that the prudent valuer should choose the most relevant approach and based on their experience, provide their opinion of value. The Panel noted Mr Eswar's response in his email dated 14 May 2019 that the valuation was provided with two options at the request of the client as a "depreciated value" and an "exit value".

#### **Charge 2 (c) – proved**

53. The particular was supported by the clear oral and written evidence of Mr Townsend. He stated that there was an absence of evidence in Appendices 1 and 2 to File 1 as to how the figures in the valuations were arrived at.

#### **Charge 2(d) – not proved**

54. The Panel observed that a different entity from the client was mentioned within the report. Mr Townsend took the view that this was an oversight through the template not being updated. However, the Panel considered that despite this minor error, it was not in fact unclear from the report who the client was.

55. The Panel was satisfied in respect of Charge 2 (b) and (c) that, in the light of the factual matters found proved, Mr Eswar had failed to carry out his professional work with due skill, care and diligence and with proper regard for technical standards expected of him.

#### **Charge 3 (a) – proved**

56. Charge 3 related to File 2. Mr Townsend's view was that the opinion expressed by Mr Eswar regarding the yield being between 6 and 12% was a very "*sweeping statement*" and that if he had evidence to support this statement, it was not disclosed in the report.

#### **Charge 3(b) (i) and (ii) – proved**

57. The Panel accepted the evidence of Mr Townsend as to the matters set out in his expert report which he stated were relevant in the application of the yield and which Mr Eswar did not appear to have taken into account.

#### **Charge 3(c) – proved**

58. The Panel accepted the evidence of Mr Townsend as to the discrepancies he observed in the report as to the upper limit rents, which were unexplained.

59. The Panel was satisfied in respect of Charge 3 that, in the light of the factual matters found proved, Mr Eswar had failed to carry out his professional work with due skill, care and diligence and with proper regard for technical standards expected of him.

## **Charge 4 - proved**

60. The particulars alleged in respect of Charge 4 arose from the issues identified in the VR RRV Report of Mr Dixon having examined the files during his visit. As stated above, the Panel found Mr Dixon's report to be careful and thorough and accepted its observations and findings.
61. RICS' expert witness, Mr Townsend, had had sight of Mr Dixon's report, together with access to the papers from Files 1 and 2. In his evidence to the Panel, he confirmed that he agreed with and endorsed Mr Dixon's findings. The Panel also considered the RRV Report and the files in respect of each of the individual particulars.
62. The matters alleged in particular (a) to (l) were largely matters of record arising from examination of the files. The Panel took account of Mr Eswar's comments in the Management Responses in the RRV Report and observed that he did not appear to challenge most of the findings.
63. The Panel was satisfied on this basis that all particulars, (a) to (l) of Charge 4 were proved.
64. The Panel was satisfied in respect of Charge 4 that, in the light of the factual matters found proved, Mr Eswar had failed to carry out his professional work with due skill, care and diligence and with proper regard for technical standards expected of him.
65. The Panel concluded that the facts found proved in Charges 2, 3 and 4 were in breach of Rule 4 of the Rules of Conduct for Members 2007. In the Panel's judgment, Mr Eswar's actions in failing to comply with the RICS Valuation Global Standards 2017, PS1, PS2, VPS1, VPS2, VPS3 and VPS 4 amounted to a serious breach.

## **Liability to Disciplinary Action**

### **Submissions of RICS**

66. In respect of liability to disciplinary action, Ms Sherlock submitted that in the light of its findings of fact, the multiple breaches of the RICS Global Standards it had found proved, its finding of lack of integrity in respect of Charge 1 and its findings that Mr Eswar had failed to comply with Rules 3 and 4 of the RICS' Rules of Conduct for Members, it should find that Mr Eswar was liable to disciplinary action under Byelaw 5.2.2 (c).

### **Legal Advice**

67. The Legal Assessor reminded the Panel that whether Mr Eswar was liable to disciplinary action was a matter for the Panel's judgment. Not every falling short of RICS' standards or breach of the Rules of Conduct will give rise to disciplinary action: the falling short in question must be of a serious nature, that is, a falling far short of the standards expected.

### **Panel decision on liability to disciplinary action**

68. The Panel accepted the legal advice. The findings in Charges 1(a) and (b) demonstrated a wholesale failure by Mr Eswar to comply with the regulatory obligations he had taken on by becoming an RICS member and joining the Valuer Registration Scheme. He had not complied with the local laws of the region in which he practised. The Panel had also made a finding in Charge 1 that Mr Eswar lacked integrity.
69. In Charges 2, 3 and 4, the Panel had found proved multiple breaches of RICS Global Valuation Standards. These are stated to be mandatory standards. Although the RRV reviewed only two valuation files, both were shown to have been deficient in a wide range of respects.
70. The Panel noted the statement RICS Global Standards state: *“Consistency, objectivity and transparency are fundamental to building and sustaining public confidence and trust in valuation. In turn, their achievement depends crucially on valuation providers possessing and deploying the appropriate skills, knowledge experience and ethical behaviour, both to form sound judgments and to report opinions of value clearly and unambiguously in accordance with globally recognised norms”*.
71. In finding the charges proved, the Panel had decided that Mr Eswar had failed to comply with Rules 3 of the Rules of Conduct for Members, that *“members shall at all times act with integrity and.....avoid any actions or situations that are inconsistent with their professional obligations”*, and Rule 4, that *“members shall carry out their professional work with due skill, care and diligence and with proper regard for the technical standards expected of them”*. The public expect that in the course of business, RICS members’ actions will be of a high standard and in keeping with professional obligations. In addition, clients need to be able to rely on work carried out by Members of RICS with confidence and assurance that such work was carried out by a competent professional with the necessary skill, knowledge, qualifications and/or registrations.
72. The Panel was satisfied that Mr Eswar’s actions fell far short of the standard expected of an RICS member and found that he was liable to disciplinary action.

### **Sanction**

73. The Panel considered the submissions of Ms Sherlock, who informed the Panel that Mr Eswar had no previous disciplinary history.
74. The Panel accepted the advice of the Legal Assessor and referred to RICS’ Sanctions Guidance and its supplements. The Panel approached the issue of sanction with RICS’ overriding principles in mind. The Panel thus bore in mind that the purpose of a disciplinary sanction is not to be punitive, though that may be its effect. The purpose of a sanction 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. A sanction may be necessary to deter the Member or other Members or Firms from future non-compliance.

75. The Panel was mindful that a sanction must be proportionate to the matters found proved. The Panel must commence its consideration at the lowest sanction, and only if it decides that sanction is not appropriate should it move to the next level of sanction. Having arrived at a sanction that it is minded to impose, the Panel should then review the higher sanctions so as to satisfy itself that these would be disproportionate.
76. The Panel carefully considered any mitigating factors. No formal submissions had been received from Mr Eswar. However, the Panel considered the following:
- There was no previous disciplinary history;
  - There had been some, limited, engagement by Mr Eswar in RICS' regulatory process, albeit he had decided not to participate in this hearing;
  - There was an apparent acceptance of some of the technical findings of Mr Dixon in the VR RRV and the indication of some willingness to adhere to the necessary requirements;
  - Mr Eswar had provided information in his email of 21 October 2018 indicating that he had attended courses which he said were relevant to valuation techniques. However, he gave no indication of when these courses were attended and provided no confirmatory evidence. Mr Townsend had not recognised any of the courses mentioned and they did not appear to be RICS accredited.
77. The Panel considered the following were aggravating factors:
- The multiple nature of the breaches;
  - The risk of potentially serious financial loss to clients given the high value of the assets in Files 1 and 2;
  - Only limited insight was shown into the significance of the identified failings, many of which appeared to be accepted;
  - Absence of evidence before the Panel of any attempt or credible intention on Mr Eswar's part to rectify his practice following the findings of the RRV in May 2018.
78. The Panel acknowledged that Mr Eswar has stated he has not undertaken any further valuations since May 2018. It is clear from charges proved and the evidence in this matter that Mr Eswar did not have the experience or expertise to undertake valuations of the nature of those in Files 1 and 2. If Mr Eswar were able to continue to conduct this area of practice, the public would be at risk of harm and public confidence in the profession would be undermined. He appeared not to have taken any steps to rectify his position regarding registration with RERA.
79. Whilst the Panel noted Mr Eswar's responses to the VR RRV Report and responses to RICS, they were not supported by any credible evidence of intention or active efforts to put matters right in his practice.
80. Taking account of RICS' overriding objectives, the Panel concluded its findings were of a sufficiently serious nature that a sanction was required to protect the public interest, to



maintain confidence in the surveyors' profession and to act as a deterrent to future non-compliance.

81. The Panel first considered whether to impose a caution, but considered that such a sanction would not be adequate. Referring to the Sanctions Guidance, it took the view that the matter proved was not minor. There was only limited insight on the part of Mr Eswar and an absence of evidence of attempts to rectify the concerns. The Panel therefore could not be reassured that there was no significant risk of repetition if Mr Eswar were able to continue to conduct valuations in the future.
82. The Panel considered that the imposition of a Reprimand may form part of an appropriate and proportionate sanction order. There had been, and remained, a risk of public harm.
83. The Panel concluded that a fine would serve no useful purpose, as it would not adequately mark the seriousness and address the public interest.
84. The Panel considered that an order imposing a condition which prevented Mr Eswar from undertaking valuations would address the issue of public protection. A Reprimand would also address wider public interest issues, namely public confidence in RICS members. These two orders in combination were, in the view of the Panel, proportionate in the circumstances of the case.
85. The Panel went on to consider whether a higher sanction was necessary. It was mindful that it had made a finding of lack of integrity in respect of one matter, Charge 1. It therefore gave careful consideration to whether expulsion from membership of RICS was required. The Panel took into account that expulsion is the sanction of last resort. The Panel bore in mind that the failings in this case occurred in one area of Mr Eswar's practice. Having considered the need for proportionality, the Panel was satisfied that the public protection and public interest concerns could be addressed by the combined sanction of Reprimand and Conditions, with a provision that if Mr Eswar breaches the condition that he may not undertake valuations, this will lead to automatic expulsion from RICS membership. The Panel was satisfied that this sanction would declare and uphold the standards expected of RICS members.
86. The Panel therefore directs that a Reprimand be imposed upon Mr Subramoniam Eswar and that he shall be subject to the following conditions:
  1. Mr Eswar shall not undertake valuations. For the avoidance of doubt, this includes RICS Red Book Valuations. [The effect of this condition is that Mr Eswar will be administratively removed from the Valuer Registration Scheme by RICS];
  2. If Mr Eswar fails to comply with Condition 1, then unless or until he has successfully re-applied for registration on the RICS Valuer Registration Scheme, he shall be automatically expelled from membership of RICS.

#### **Determination on Costs**



87. Ms Sherlock sought costs on behalf of RICS in the sum of £8,924.00. She acknowledged there may be a discount to reflect that the oral part of the hearing had taken one day, rather than the two scheduled days. Ms Sherlock had served a schedule on Mr Eswar as required by Rule 34.
88. The Panel noted that in accordance with Rule 34 of the Rules, it could impose a costs order which it considered fair and reasonable. The Panel concluded that a costs order against Mr Eswar was appropriate.
89. Mr Eswar had provided some information as to his financial circumstances and submitted to the Panel that the amount was beyond his ability to pay. The Panel took account of Mr Eswar's representations, but was satisfied that overall the costs claimed by RICS were properly incurred and reasonable. The Panel determined it would be appropriate to make a deduction of £1,000 to recognise that the attendance costs of RICS' presenting officer were only required for one sitting day rather than two. Other hearing costs were unaffected.
90. The Panel therefore ordered that Mr Subramoniam Eswar pay the costs of RICS in the amount of £7,924.00.

### **Publication**

91. Ms Sherlock submitted there should be publication of the decision in the usual form, in accordance with the RICS Regulatory Board publication policy. Mr Eswar had not made any representations regarding publication.
92. The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus.
93. The Panel saw no reason for departing from the normal practice in this case. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.
94. The Panel therefore ordered that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

### **Appeal Period**

95. Mr Subramoniam Eswar 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.

96. 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.