

## RICS, Regulatory Tribunal Rules, March 2020

### Part VI, Regulatory Tribunal Single Member Decision.

**Regulated Member:** Mr Christian Simanek  
**Case Number:** REG0000163051  
**Single Member Decision of:** Ian F Hastie MRICS  
**Date of decision:** 24<sup>th</sup> March 2022

#### CHARGE:

The formal charge against the Regulated Member is:-

*‘Between 1 January 2020 and 1 February 2021 you have failed to comply with RISC’ requirements in respect of Continuing Professional Developments (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.**

**The Regulated Member is therefore liable to disciplinary action under Bye-law 5.2.2(c)**

#### BACKGROUND:

- 1 RICS Members are required to complete 20 hours of CPD activity by 31 December of each calendar year, and record, or cause it to be recorded,.
- 2 Rule 6 of the Rules of Conduct for Members 2007 states: **Members shall comply with RICS’ requirements in respect of continuing professional development.**
- 3 The requirements of the Rule are as follows:
  - (i) All RICS members must undertake a minimum of 20 hours CPD each calendar year (January to December).

- (ii) Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD
  - (iii) All RICS 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
  - (iv) All members must record their CPD activity online by 31 January.
- 4 The CPD requirements confirm that for a first breach of this rule the member would receive a Fixed Penalty Caution which will remain on the member's disciplinary record for a period of 10 years. A second breach will result in a further Caution and a Fixed Penalty Fine of £150 or equivalent. Non-payment of the Fixed Penalty within 28 days of notification will lead to the fine being increased to £250. A third CPD breach is likely to result in a referral to disciplinary proceedings.

## FINDINGS OF FACT

- 5 Before considering any evidence, I reminded myself of the burden and standard of proof in these proceedings. The burden of proving the charges rests with RICS throughout. The standard of proof is the civil standard, normally described as the balance of probabilities. Another way of expressing this is to ask whether a fact in issue is more likely than not to have occurred.
- 6 I have been provided with a hearing bundle of 82 pages which include a CPD printout from RICS' online system held for Mr **Simanek** and a witness statement from a CPD Administrator.
- 7 I accept that if the printout does not contain an entry for a particular year that indicates that no CPD was recorded for that year. There was no entry on Mr **Simanek**'s CPD printout for the year 2020. I noted that there is no evidence that Mr **Simanek** has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement.
- 8 Mr **Simanek**, has engaged with RICS, and has admitted the charge.

9 Accordingly, I find the factual allegations proved, based on the documentary evidence produced, and the member's own admission..

## **DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION**

10 I am satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr **Simanek**'s failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I take into account the fact that the CPD policy has been approved by the Regulatory Board and is an expressly stated RICS rule. In addition the Sanctions Policy makes it clear that even a single breach of CPD requirements is sufficient to give rise to a liability for disciplinary action. I note that the purpose of the CPD requirements is to ensure that there are consistent standards within the profession and that members maintain up to date knowledge in their area of expertise in the interests of protecting the public and the wider public interest. I note 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. I am satisfied that Mr. **Simanek** was given every opportunity to comply with the CPD requirements.

11 Mr. **Simanek** has also accepted that he is liable to disciplinary action. Accordingly, I am satisfied that Mr. **Simanek** is liable to disciplinary action.

## **SANCTION**

12 I take into account the RICS Sanctions Policy and Mr **Simanek**'s disciplinary history which is as follows:

2017 – Caution

2018 – Caution and fine.

13 The bundle documents reveal that Mr **Simanek**'s membership fees in 2020 have been paid, but that the Fixed Penalty fine for his 2018 breach has not been paid.

14 In the bundle, RICS confirms that a minimum of seven reminders were sent to the

Regulated Member's preferred email address, between 17 November 2020 and the final one on 4 May 2021, all of which contained the following paragraph:

*“Our records show that you have not yet recorded this minimum requirement. As per the RICS Rules of Conduct for Members and Sanction Policy, because you have already been in breach twice of the CPD Rules of Conduct for Members, and received a Fixed Penalty (Caution & Fine) within the last 10 years, if you do not complete and record the 2020 required minimum of 20 hours of CPD (including 10 hours of formal CPD), you may be in breach for the third time and therefore at risk of referral to Disciplinary Panel with presumption of expulsion.”*

I am satisfied that the reminders were correctly addressed to the preferred address then held on file for the Regulated Member.

- 15 RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is RICS' line of sight to ensure compliance and in turn give protection to the public. Compliance is not optional. It is not difficult to record CPD online and the CPD requirements are not dependent on the RICS sending reminders to its members.
- 16 I bear 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 I considered that the following aggravating factors were present in this case: [REDACTED]
- The member was sent numerous reminders by RICS as the deadline for CPD submission approached and in the weeks immediately following. No CPD was recorded for 2020.
  - This is the third breach of the regulation in a period of four years.
  - The second breach was dealt with by way of caution and a fine, which has been

[REDACTED] not been paid. [REDACTED] .

- Having received sanctions of two fixed penalties for not completing his CPD in previous years, Mr **Simanek** cannot be unaware of his obligation as a member to comply with the CPD rules.

18 I consider that the following mitigating factors were present in this case:

- The breach in 2020 was recorded one year late. He had completed 25 hours of CPD
- The member has latterly, this year, co-operated with RICS.
- He admits the charge and apologises to RICS [REDACTED]
- He asks that illness and the death of a close family member during the period concerned to be taken into consideration, and I do so.
- RICS emails had gone into his spam folder.
- The member explains that he had changed his employer, and that RICS activities and payments have been organized by his new employer since he left his old one.
- The member explains in mitigation that he is a co-founder and very active member of an RICS dispute resolution group in Germany.
- He says that he will make sure that all meetings, workshops and activities are documented and recorded in the future

19 I first considered whether to impose any sanction. I 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. In reaching this conclusion I noted that Mr. **Simanek** had been sent numerous reminders by RICS. The obligation to complete and record CPD is contained within the rules and is not dependent upon the member receiving reminders from RICS.

20 I went on to consider whether to impose a caution. I concluded that a caution would not adequately reflect the seriousness of the case, repeated non-compliance and the fact that a caution had already been imposed for previous breaches. I also considered the imposition of a reprimand but concluded that similarly this did not reflect the seriousness of Mr. **Simanek's** repeated failure to comply with the requirement to

complete, record or cause to be recorded CPD on the RICS portal. [SEP]

- 21 In considering whether to impose an undertaking I took into account the mandatory nature of the CPD requirements. I noted that the CPD requirements are designed to ensure that the skills and knowledge of RICS members is kept up to date and ultimately to ensure public protection. I concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking given that Mr. **Simanek** should have been completing and recording his CPD online in any event. I concluded that imposing such a sanction would undermine public trust and confidence in the regulatory process.
22. I then considered whether to impose a fine. I was mindful that a fine was imposed on Mr. **Simanek** for failing to record his CPD hours for the year 2019, and that fine has not yet been paid. In the balance of mitigating factors in this case I am prepared to surmise that nonpayment may have gone unheeded between his change of employers. I take into account that he had completed his 2020 CPD, but had only recorded it twelve months out of time.. I concluded that, in these circumstances, to impose a further financial penalty would serve as part of a proportionate sanction for this breach.
- 23 I went on to consider conditions. I took the view that imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances. Mr. **Simanek** has completed four continuous years of compliance, and one late recording, in 2020. I considered his indication of future compliance, and his works in the RICS dispute resolution group. I consider that a condition on the member to comply with his 2022 CPD requirements, would be proportionate in this case. A condition which will indicate to Mr. **Simanek** that any further digressions from CPD compliance will have the most serious consequences. This sanction, combined with the sanction of a fine would be proportionate and appropriate to protecting the public and the wider public interest.
- 24 I went further to consider if Mr. **Simanek** should be expelled from RICS membership.

I recognise that expulsion is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. . I consider the total weight of mitigation in this case and I am of the opinion that in this case expulsion would be a step too far, and would be neither appropriate nor proportionate

## **DECISION**

25 Having read the papers and considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules 2020, I make the following order:

**That Mr. Christian Simanek shall be fined a sum of £750.00 for the 2020 breach, plus a further £250.00 being the late payment fine for the 2018 breach which remains unpaid. A total fine of £1,000.00, or equivalent.**

**I also impose the following condition:**

**As a condition of his continuing membership, Mr.Christian Simanek is directed to comply with RICS' CPD requirements for the year 2022, and recorded by 31<sup>st</sup> January 2023. Any breach of this condition will be dealt with in accordance with Rule 110 and referred to the Disciplinary Panel.**

## **COSTS**

26 In accordance with Rule 119 of the Regulatory Tribunal Rules 2020 I make the following order in respect of costs:

**Mr. Christian Simanek will pay costs in the amount of £350**

**Taking Effect of the Order**

27 In accordance with Rule 114 of the Regulatory Tribunal Rules 2020

*114. Following the expiry of 14 days from the service of the Single Member's decision upon the Regulated Member, The Regulatory Sanction will be deemed to be accepted by the Regulated Member and the Regulatory Sanction imposed will take effect forthwith, unless notification has been received under Rule 116.*

The Regulated Member must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this decision, if he does not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

## **Publication**

28 This decision will be published in accordance with Rule 120 of the Regulatory Tribunal Rules 2020, which states the following:

*120. in accordance with the Regulatory Sanctions Publication Policy.*

- a pending the expiry of 14 days following service of the record of decision upon the parties, the Regulated Member's name, charge/s and Single Member's decision as to whether the charge/s were found proved or not proved, and Regulatory Sanction if applicable will be published in accordance with the Regulatory Sanctions Policy and*
- b the Single Member's Record of Decision will be published following the expiry of 14 days.*