

IN THE MATTER OF:

COUNCIL FOR LICENSED CONVEYANCERS

(Applicant)

AND

MELLEN & CO

AND

JUNE MELLEN

(Respondents)

PANEL DECISION

1. A three-member panel of the Adjudication Panel, comprising a lawyer-member, a lay member, and a legally qualified chair, convened remotely for the hearing of the allegations against Mellen & Co and June Mellen on 14 October 2022. It was agreed by all parties that the hearing could be heard fairly and properly via remote means.
2. The Council for Licensed Conveyancers (CLC) was represented by Ms Ellson. Mrs Mellen was present but not legally represented.
3. The panel confirmed that, prior to the hearing, it had read all the documents with which it had been provided by the parties.

Preliminary issues

4. Prior to the allegations being put to Mrs Mellen the panel chair asked whether there were any preliminary matters.
5. Ms Ellson asked the panel for permission to amend one of the allegations (Allegation 2(d)(ii) to remove the reference to paragraph 9.1.2 of the Accounts Code. The panel agreed to the amendment because it was satisfied that there was no detriment to the Respondents in so doing, as it reduced the seriousness of that particular allegation.

ALLEGATIONS (with the Respondents' admission or denial noted in red)

Whilst a sole Director and Manager of Mellen and Co ('the Practice') you acted in such a way as to amount to a breach of the Council for Licensed Conveyancers (CLC) codes in that:

Allegation 1:

(a) In response to a CLC Monitoring Inspection Report addressed to you and/or the Practice dated 8 March 2018 which required you, under Action 12, via email on 20 April 2018 in response to the relevant action, "*not to conduct any work that you are not permitted to do so under your CLC license [sic]...*" you stated via email on 20 April 2018 in response to the relevant action "*Noted*". **Admitted**

(b) You performed Probate activities and/or estate administration work on the following matters:

(i) H00146.0001 between on or about 26 February 2018 and 31 October 2018; **Admitted as to performing estate administration work, denied as to probate** and/or

(ii) F00026.0001 between on or about 31 May 2016 and 14 October 2019; **Admitted as to performing estate administration work, denied as to probate** and/or

(iii) L00028.0001 between on or about 1 March 2016 and 14 October 2019. **Admitted as to performing estate administration work, denied as to probate**

(c) You undertook work on the matters listed above at (b)(i) and/or (b)(ii) and/or (b)(iii) above when the Practice was:

(i) not licensed to perform the reserved legal activity of Probate; **Admitted as to performing estate administration work, denied as to probate** and/or

(ii) not permitted to perform the non-reserved activity of estate administration.
Admitted

(d) Consequently, you:

(i) Breached overriding principles 1 (in that your conduct lacked integrity), Denied 2 and/or 3 and/or 5 of the Code of Conduct; **Admitted** and/or

(ii) Failed to achieve outcome 5.1 of the Code of Conduct; **Admitted** and/or

(iii) Failed to comply with specific requirement 22 of the Recognised Body Code; **Admitted** and/or

(iv) Failed to comply with specific requirement 6 of the Continuing Professional

Development Code; **Admitted** and/or

(v) Failed to comply with specific requirement 3 of the Professional Indemnity Insurance Code. **Admitted**

Allegation 2:

(a) In response to a CLC Monitoring Inspection Report addressed to you and/or the Practice dated 8 March 2018 which required you, under Action 13, to “ensure that only CLC regulated monies are held in the firm’s accounts...” , you stated, via email on 20 April 2018 in response to the relevant action “...Noted.” **Admitted**

(b) You permitted the Practice’s client account work in the following matters:

(i) H000146.0001 between on or about 26 February 2018 and 31 October 2018; **Admitted** and/or

(ii) F00026.0001 between on or about 31 May 2016 and 14 October 2019; **Admitted** and/or

(iii) L00028.0001 between on or about 1 March 2016 and 14 October 2019. **Admitted**

(c) You permitted the Practice's client account to be used without any underlying legal transaction in the following matters:

(i) G00007.0001 between on or about 30 November 2014 and 4 October 2021; **Denied** and/or

(ii) J00093.0001 between on or about 30 September 2019 and 7 April 2021; **Admitted** and/or

(iii) H000225.0001 between on or about 30 March 2020 and 13 April 2021. **Admitted**

(d) Consequently, you:

(i) Breached overriding principles 1 and/or 5 of the Code of Conduct; **Admitted** and/or

(ii) Failed to comply with paragraphs **9.1.2 and/or** 9.1.3 of the Accounts Code (in force until 30 September 2020) and/or specific requirements 2.2 and/or 2.3 of the Accounts Code (in force from 30 September 2020). **Admitted**

Allegation 3:

(a) In response to a CLC Monitoring Inspection Report addressed to you and/or the practice dated 8 March 2018, which required you, under Action 1, to

“confirm that your Practice will cease to act on all conflict of interest matters going forward”, you stated via email on 20 April 2018, *“We note the comments made by the Inspector and have put this in place”*. **Admitted**

(b) You acted on both sides of the same transaction on the following matters:

(i) B00291-001 (purchase of 37 Glenridding Drive) and S00056-009 (sale of 37 Glenridding Drive) between on or about 12 April 2021 and 22 September 2021;

Admitted and/or

(ii) W00237-001 (purchase of 13 Roding Green) and A00103-001 (sale of 13 Roding Green) between on or about 15 February 2021 and 10 August 2021;

Admitted and/or

(iii) H00284-001 (sale of 10 Anchor Road) and M0300-001 (purchase of 10 Anchor Road) between on or about 28 June 2021 and 6 October 2021. **Admitted**

(c) You did not inform the clients in matters (b)(i) and/or (b)(ii) and/or (b)(iii) that you had been asked to act for another client in the transaction. **Admitted that did not inform clients in writing, but gave information verbally**

(d) You did not obtain informed written consent in matters (b)(i) and/or (b)(ii) and/or (b)(iii) above. **Admitted**

(e) Consequently, you:

(i) Breached overriding principles 1 and/or 2 and/or 3 and/or 5 of the Code of Conduct; **Admitted** and/or

(ii) Failed to achieve outcomes 3.1 and/or 3.5 of the Code of Conduct; **Admitted** and/or

(iii) Failed to comply with specific requirements 6 and/or 7 and/or 8 and/or 9 of the Conflicts of interest Code. **Admitted**

Evidence

6. The panel took oral evidence from Mrs Mellen only. The CLC did not rely on any oral evidence. There were no witness statements provided, and the CLC relied entirely on documentary evidence.

7. The evidence is not repeated here but referred to when relevant within the panel's findings at the first stage, which were as follows:

FINDINGS OF FACT

Allegation 1

8. The panel noted that Mrs Mellen admitted all of allegation 1, save that she denied carrying out probate work, admitting only that she undertook estate administration. She accepted that she did so whilst Mellen & Co was not licenced to perform estate administration or probate work. Where matters were admitted, the panel accepted those admissions and found those parts of the allegation **proved (1a), b) as to estate administration c) and d).**
9. As Mrs Mellen denied that she undertook probate work, the panel went on to consider the evidence produced by the CLC in relation to that part of the allegation. It noted the definition of probate work as set out at s119 of the Courts and Legal Services Act 1990, which is
“the drawing up or preparing of any papers on which to found or prove a grant of probate and the administration of an estate”.
10. The panel noted that in one case (H146.1), the first entry in the matter ledger was the payment of a HMCS court fee in relation to the grant of probate. There was also evidence of the proceeds of the estate being placed in the firm’s accounts between July and October 2018.
11. The panel also noted that in another matter, F26.1, the name of the matter in the ledger included the word “probate”, and in her evidence Mrs Mellen accepted she had assisted with the submission of the application for probate. There was also evidence in that case of a Court fee being paid, and estate monies being paid into the firm’s account then being distributed, between 2016 and 2019.
12. Finally, in matter L28.1, Mrs Mellen told the panel she was an executor of the estate, the matter was opened in 2016 and between 2016 and 2019 over £1 million of estate monies were collected.
13. The panel was satisfied that in all three cases, the work undertaken by Mrs Mellen met the definition of probate under the Courts and Legal Services Act 1990.
14. The panel accepted Mrs Mellen’s account that for all three matters, the deceased had been a long-standing client, as had their families, and she had agreed to act for

them to help them at a difficult time. Nonetheless, the panel found that she knew she and the firm were not licensed or permitted to do so by the CLC.

15. The panel found that this amounted to a breach of integrity, accepting Mrs Mellen's account that she had not acted dishonestly, but because she had agreed not to do that work in her email responses to the CLC.
16. The panel also found that in doing so, Mrs Mellen had not acted with the required high standards or in her client's best interests (because she was not licenced or able to demonstrate the required level of competence in order to obtain the necessary licence). She had also not acted in a transparent way with her regulator, because she had indicated in her responses to their emails that she would not undertake that work yet continued to do so. This in turn amounted to a failure to comply with her regulatory arrangements, by acting outside of her licenced activities.

Allegation 2

17. The panel noted that Mrs Mellen admitted all of allegation 2 in relation to all client matters alleged save for file G7.1. Mrs Mellen told the panel that file related to her late mother's estate, and monies that remained in the account for payment for a headstone, which remained unresolved at the time period covered by the allegations.
18. The panel heard that the client matters set out at allegation 2(b) were estate-related matters, in which sums between £141,000 and in excess of £1 million were placed.
19. So far as allegation 2(c) is concerned, there were three client account ledgers where there was no underlying legal transaction, yet funds were placed on those ledgers. The panel accepted that one related to Mrs Mellen's mother as set out above. The second also related to an estate, and the third related to Mrs Mellen assisting a local family in cashing in a bond. It was clear to the panel there was no underlying legal transaction for any of these matters.
20. The panel noted that the use of the Practice client account for matters not related to legal transaction was highlighted to Mrs Mellen as an issue by the CLC in 2018, but Mrs Mellen continued to use the account for these matters. The panel found this to breach overriding principles 1 and 5 of the Code of Conduct. She was also clearly

using the Practice client account as a banking facility, particularly for the family she assisted in cashing in a bond.

Allegation 3

21. The panel noted that Mrs Mellen admitted all parts of the allegation save for allegation 3(c), where she admitted she had not informed clients in writing that she had been asked to act for another client in the transaction, but she maintained she had informed them verbally. She accepted that she was unable to prove evidentially that she had given clients that information.
22. The panel considered that informing a client that you were acting for both parties in a transaction was extremely important information, which should have been recorded in writing and the potential implications for each client made clear. It noted that Mrs Mellen was the sole conveyancer in the practice, and therefore she would personally be undertaking the work on both transactions.
23. It noted Mrs Mellen's evidence that she had not believed that she was doing anything other than acting in both clients' interests, as these transactions would proceed quicker if she was dealing with all aspects herself. She was able to acknowledge with hindsight that this was not in fact acting in either client's best interests, particularly if a potential conflict had arisen in relation to the transactions.
24. The panel saw evidence that there had been no attempt to hide the fact that Mrs Mellen was conducting both sides of the transactions, with the client ledgers being noted to show this (marked "S and P" to reflect acting on both sale and purchase). It found this to be evidence of the level of complacency Mrs Mellen was showing at that time.
25. The panel also saw evidence that this issue was brought to Mrs Mellen's attention in April 2018, but she continued to act on both sides of transactions, and the matters which form allegation 3(b) were undertaken in 2021, some three years later.
26. The panel found that there was no way in which the potential conflict in acting on both side of the transaction could be surmounted when Mrs Mellen was the only authorised conveyancer in the practice.
27. The panel found Mrs Mellen's actions in relation to this allegation to amount to a lack of integrity in renegeing on her response to the CLC's Monitoring Inspection

Report of 2018 by saying that “we note the comments made by the Inspector [in relation to this issue] and have put this in place”. The CLC were entitled to rely on that assertion as protecting future clients. The panel also found this to be evidence of not acting in the client’s best interests.

28. The panel was also shown an insurance proposal form for probate work. It noted that form to have been partially completed, indicating that Mrs Mellen was responsible for supervision and oversight of the Probate department, and refers to drafting wills and codicils. Mrs Mellen told the panel that the insurance had been agreed and put in place. The panel was very concerned that, had there been cause to claim on that insurance, it was at least likely that the insurer would decline the claim in the circumstances that surround these allegations (namely not being authorised to undertake the work), which would have left clients at significant financial risk. However, there was no separate allegation to address this, and therefore the panel made no finding.

MISCONDUCT

29. The matters found proved were all serious, both individually and collectively.
30. Mrs Mellen, in her evidence to the panel, referred to her being ‘ignorant’ rather than intending to act in breach of the Code of Conduct and the regulatory requirements made of her as a consequence of her licence. The panel was not satisfied that she was ignorant, but rather that she had become complacent, and allowed convenience and habit to inform her practice, cutting corners and disregarding the clear requirements and duties set out in the Code of Conduct and the accompanying CLC codes.
31. The panel assessed the seriousness of each of the allegations found proved, and then considered the totality of the conduct. It found that this amounted to serious misconduct, with those matters found at allegation 3 to be the most serious. The fact that Mrs Mellen had been warned in 2018 about her conduct but disregarded that warning and continued to act other than in her clients’ best interests caused the panel significant concern. The panel was also significantly concerned about Mrs Mellen’s actions in providing assurances to the CLC which she went on to disregard repeatedly.

SANCTION

32. Having found misconduct, the panel took submissions from both parties on the appropriate sanction to apply in this case.

33. The CLC, through Ms Ellson, reminded the panel of the Sanctions Guidance (March 2018) and of the purpose of sanctions, set out for clarity below:

3.1 To uphold the CLC's regulatory objective of protecting the public and consumers of legal services;

3.2 To maintain and uphold public confidence in the reputation of the profession;

3.3. To declare and uphold proper standards of conduct; and

3.4. To promote public and professional confidence in the CLC's complaints and disciplinary processes.

3.5. To mark the seriousness (actual or potential) of the proven misconduct. It is well established that the purpose of imposing sanctions is not to punish the respondent, but to protect the public. This is consistent with and does not prevent the imposition of a sanction which may have a punitive effect on the respondent when it is necessary to meet its objectives at 3.1 to 3.2 above.

34. The CLC told the panel that Mrs Mellen and the Practice had no prior disciplinary history, and the CLC had not received any complaints from clients about the matters in the allegations, or indeed any other matters.

35. It highlighted Mrs Mellen's sustained lack of integrity and asked the panel to conclude that her claim to have been acting in ignorance of the rules was unacceptable, in that it does not protect consumers or uphold the reputation of the profession. The CLC invited the panel to issue a reprimand against Mrs Mellen and the practice, and a fine. It submitted that conditions were not an appropriate sanction in this case, that supervision was unlikely to be helpful and it did not invite the panel to consider disqualification, although accepted that it was within the panel's power to do so.

36. Mrs Mellen told the panel that she now, with the benefit of hindsight, had a clear understanding of where she had erred, and that she felt remorse for her actions. She relied on her lengthy unblemished career and told the panel that it is her intention to retire within the next few months and was winding down the practice. She described her practice as being a well-established high street practice in a rural area where clients had come to rely on her, and where she had represented families over many years and generations. She repeated that she had acted in what she had felt were the clients' best interests at the time, although she could now see that was wrong. She told the panel that she had not acted in any of the ways set out in the allegations since 2021. She also told the panel she had made donations to local charities of £2000 to reflect fees she had been paid to act in matters where she had not been authorised, so that she did not benefit financial from those matters.
37. The panel bore in mind that it must impose sanctions against both Mrs Mellen individually and against the Practice, although in reality in this case the Practice was effectively Mrs Mellen, as she was a sole practitioner.
38. The panel had the following sanctions therefore available against the Respondents:
- Taking no further action
 - A reprimand
 - A fine and/or
 - Conditions on licence
 - Suspension from practice
 - Disqualification

Harm

39. The panel began its consideration of sanctions looking at the harm caused by the Respondents' misconduct. It concluded that there was no direct evidence of harm caused to individual clients by their misconduct, but there was significant harm caused to the reputation of the profession.

Insight

40. The panel was unable to identify any real insight into the Respondents' misconduct.

Aggravating factors

41. The panel found the following aggravating factors in this case:

- Failure to self-report to the CLC
- Serious breach of the CLC's regulatory arrangements
- Repeated failure and/or pattern of behaviour
- Increased likelihood of damage to reputation of the profession

Mitigating factors

42. The panel found the following mitigating factors in this case:

- No previous findings of misconduct

43. The panel then considered their available sanctions, starting with the least onerous and working up the sanctions ladder.

No further action

44. Given the seriousness of the reputational harm and lack of integrity, the panel found that taking no further action would not adequately address the misconduct.

Reprimand

45. The panel noted that Mrs Mellen was in the process of winding down the practice, that she had an otherwise unblemished lengthy career, that there was no finding of dishonesty and the lack of integrity found was not financial, and that there was no evidence of actual harm to clients. In those circumstances, the panel was satisfied that a reprimand was an appropriate sanction, but insufficient alone to adequately address the misconduct.

Fine

46. The panel found that the imposition of a fine alongside the reprimand appropriately met the seriousness of the misconduct found.

47. Having borne in mind the seriousness of the misconduct, and the financial circumstances of the Respondents, the panel therefore imposed the following sanctions:

Mellen & Co – a **Reprimand** and a **Fine of ... £5,000.00**

June Mellen – a **Reprimand** and a **Fine of ...£10,000.00**

The fines are to be paid within 28 days, i.e. by 11 November 2022.

Costs

48. The CLC indicated at the end of its submissions on sanction that there was an application for costs, in the sum of £19,399.80

49. The panel bore in mind Mrs Mellen's statement of means.

50. The panel concluded that it was appropriate to award a contribution to the costs of the CLC, in the sum of ...£12,000, to be paid within 28 days, i.e. by 11 November 2022.

Victoria Goodfellow

[Legally Qualified] Chair

Andrew Hudson

Lay panel member

John Jones ...

Licensed Conveyancer panel member