

ADJUDICATION PANEL OF THE COUNCIL FOR LICENSED CONVEYANCERS

Application re: **Carol Hill, former manager of Carol Hill Conveyancing (a Licensed Conveyancer)**

Date of Adjudication Panel Hearing: **15 June 2020**

Panel:

Victoria Goodfellow (Chair)

John Jones (Professional Member)

Carolyn Tetlow (Lay Member)

CLC was represented by Ms Dwomoh-Bonsu

Ms Hill was not present or represented

The hearing was held remotely via videoconference

ALLEGATIONS CONSIDERED

“Whilst practising as a Licensed Conveyancer with a Manager’s licence, you failed to maintain proper governance, management, supervision, financial and risk management arrangements and controls in that you:

1. Failed to ensure there was no debit balance on the client side of a client ledger account nor a credit balance on the office side of a client ledger account, contrary to paragraph 9.1.5 of the CLC’s Accounts Code and Guidance, in that

a. as at 30 April 2019 there were debit balances on the Client Account amounting to £136,925.39 in Matter 1

b. as at 10 May 2019, there were debit balances on the Client Account amounting to £11,910.00 in Matter 2

2. Failed to replace without delay a shortage of £285,029.95 as at 10 May 2019 to the Client Account contrary to paragraph 12.5 of the CLC’s Accounts Code in that as at on 29 May 2019, £136,925.39 remained outstanding

3. Withdrew money from Client Account to Office Account for purposes not related to the provision of services regulated by the CLC contrary to paragraph 9.1.3 of the CLC’s Accounts Code in that you made the following transfers:

Date	Amount	£
a.	10 August 2018	15,000.00
b.	12 November 2018	12,000.00
c.	2 January 2019	3,000.00

d.	4 January 2019	8,500.00
e.	7 January 2019	2,000.00
f.	29 January 2019	5,063.60
g.	12 February 2019	9,000.00
h.	21 February 2019	5,000.00
i.	28 February 2019	1,000.00

4. Failed to keep client money entirely separate from your money contrary to paragraph 7 of the CLC's Accounts Code in that on:

a. 7 January 2019, £15,000.00 was deposited into the Practice's client account by your friend Miss A

b. 28 January 2019, £18,100.00 of your personal money was deposited into the Practice's client account

5. Contrary to paragraph 13.9.1 of the CLC's Accounts Code and Guidance, you failed to prepare bank reconciliation statements for the following months:

- a. October 2016
- b. November 2016
- c. December 2016
- d. January 2017
- e. February 2017
- f. March 2017
- g. April 2017
- h. May 2017
- i. June 2017
- j. July 2017
- k. August 2017
- l. September 2017
- m. October 2017
- n. November 2017
- o. December 2017
- p. January 2018

- q. February 2018
- r. March 2018
- s. April 2018
- t. May 2018
- u. June 2018
- v. July 2018
- w. August 2018
- x. September 2018
- y. October 2018
- z. November 2018
- aa. December 2018
- bb. January 2019
- cc. February 2019
- dd. March 2019

6. Contrary to paragraph 16.2 of the CLC’s Accounts Code the Practice failed to provide the following Accountants’ Reports within 6 months of the end of the relevant accounting period:

Summary of Facts

	Year End	Due Date	Date Provided	Days Late
a)	30 June 2017	30 December 2017	26 February 2018	58
b)	30 June 2018	30 December 2018	Not provided	-

REASONS AND DECISION OF THE ADJUDICATION PANEL

Proceeding in Ms Hill’s absence

The panel noted its power under Rule 25 of the Adjudication Panel Procedure Rules 2013 (as amended) to proceed. In the absence of a party if:

- a) It is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and*
- b) It? considers that it is in the interests of justice to proceed with the hearing*

The panel were provided with a copy of an email from Ms Hill dated 27 May 2020, in response to an email from the CLC setting out the date and time of the hearing, and the fact that it was to take place remotely, in which Ms Hill said:

“I confirm that I have no objection to the hearing taking place virtually. I do not intend to be present.”

Ms Hill had earlier asked for notification of the date of the hearing, indicating that she may submit written representations for consideration by the panel. By the date of the hearing, no representations had been submitted by Ms Hill in relation to the allegation, but the panel did receive her completed statement of means in response to the CLC's costs application.

The panel was therefore satisfied that Ms Hill had been notified of the hearing and had clearly set out her intention not to attend.

Furthermore, given the seriousness of the allegations, it was in the interests of justice to proceed with the hearing.

Amendments to the Allegation

Shortly before hearing closing submissions on behalf of the CLC, the panel invited the CLC to apply to amend allegation 1a) to read

As at 16 May 2019 there were debit balances on the Client Account amounting to £136,925.39 in Matter 1

The panel noted that in the evidence on which the CLC relied to prove allegation 1a) (a client account ledger) the date on which the client account was in debit to the amount of £136,925.39 was in fact 16 May 2019 and not 30 April 2019, as set out in the allegation.

The panel reminded itself of its power under rules 4(1), (2) and (3)(c), and rule 5(2)(b) of the Adjudication Panel Procedure Rules 2013 (as amended) which allows it to direct the amendment of a document within the course of a hearing. It also reminded itself of its overarching objective, to deal with cases fairly and justly.

It considered that the amendment properly reflected the case put by the CLC, that the mischief alleged was the fact the client account ledger was in debit, and the amount by which it was in debit. The amendment of the date, 17 days later than that stated in the original allegation, would not materially affect the substance of the allegation against Ms Hill, and the panel was satisfied that there would be no injustice to her by its amendment without her being given prior notice. The panel noted that she had not provided any defence to any of the allegations to date, and the panel did not consider it reasonable or likely that the amendment would change that position, particularly as the client account ledger had been provided to Ms Hill well in advance of the hearing, and the amendment to the allegation merely reflected what was in fact on the ledger. The panel considered the date of 30 April 2019 on the original allegation to have been an error in drafting by the CLC, and to make no finding on the basis of that error would not be in the interests of justice.

The panel therefore granted the amendment, so that allegation 1a) as considered by the panel was as follows:

As at 16 May 2019, there were debit balances on the Client Account amounting to £136,925.39.

The Allegation

In considering the allegation (as amended), the panel read the material provided to it by the CLC and took oral evidence from Reena Saimbi, a Regulatory Supervision Manager for the CLC, who was a witness relied upon by the CLC. Ms Saimbi had provided a written witness statement, which was within the bundle read by the panel and provided in advance to Ms Hill.

When considering the evidence presented to it on behalf of the CLC and Ms Hill, the panel bore in mind that the burden of proof is on the CLC, and the standard of proof to which the panel must be satisfied is the balance of probabilities.

The panel bore in mind its overriding objective, to deal with cases fairly and justly

Having read and heard all the evidence, the panel made the following findings:

Allegation 1a) (as amended) – Allegation Proved

The panel was satisfied that the CLC had provided sufficient objective evidence, in the form of the Client Account Ledger for Matter 1, to prove that there were debit balances on the Client Account in the amount of £136,925.39 on 16 May 2019.

Allegation 1b) – Allegation Proved

The panel was satisfied that the CLC had provided sufficient objective evidence, in the form of the Client Account Ledger for Matter 2, to prove that there were debit balances on the Client Account in the amount of £11,910.00 on 10 May 2019.

Allegation 2 – Allegation withdrawn by the CLC

Having heard the evidence of Ms Saimbi, and having read her witness statement, alongside the documentary evidence in the bundle, the panel was concerned that nowhere in the evidence was there reference to a shortage in the client account of £285,029.95. The panel therefore invited the CLC to show them this evidence. After a break to consider their position and try to locate that evidence, the CLC were unable to do so, and withdrew the allegation. The panel therefore made no finding on this allegation.

Allegation 3 – Allegation not proved

The panel noted the wording of the allegation as drafted, that Ms Hill *“withdrew money from the Client Account for purposes not related to the provision of services regulated by the CLC”*.

The panel questioned Ms Saimbi closely on this matter, as she had undertaken the second inspection and the intervention into Carol Hill Conveyancing on 28 and 29 May 2019. Ms Saimbi in her evidence confirmed that she had identified the amounts set out in this allegation as being suspicious because they were round sum figures. The panel questioned Ms Saimbi specifically about allegation 3(f) – the sum of £5,063.60 on 29 January 2019 – and Ms Saimbi could not recall why she had selected that withdrawal as being suspicious. The panel noted that on 11 January 2019 there was an almost identical transaction in the sum of £5,216.20, and asked Ms Saimbi why that was not therefore similarly suspicious, but Ms Saimbi could not provide an explanation.

She told the panel she asked Ms Hill generally about the sums, but when questioned by the panel, could not say whether she had asked Ms Hill about each individual sum, and why the transfer had been made. Unfortunately, Ms Saimbi did not make a record of her conversations with Ms Hill

about these amounts, and she fairly told the panel she could not remember exactly what was said, only that Ms Hill did not offer an explanation.

She told the panel that usually a closing meeting would take place at the end of the day of intervention, but that did not happen in this case because Ms Hill was extremely upset and left the premises within an hour of the CLC's arrival.

The panel was concerned that the allegation as drafted, if to be found proved, would require it being satisfied on the balance of probabilities that either it was known why the amounts had been transferred and that reason was one which fell outside of the provision of services regulated by the CLC, or alternatively that the panel was satisfied that it could not have been transferred for any reason to do with the provision of such services.

On the evidence before it, the CLC could not say why the monies were transferred, only that a random selection had been identified and alleged, because Ms Saimbi had considered them to be suspicious, and Ms Hill had not provided an explanation in general. They could not say that Ms Hill had been asked specifically about each of the sums.

The panel considered there could be potentially have been explanations for some of the sums, particularly that alleged in 3(f), but it would be wrong to speculate either way.

The panel reminded itself that the allegation was made by the CLC and it was for them to prove. During its closing submissions, the CLC accepted it was not in a position to say which amounts had been put to Ms Hill, and accepted that in order for the allegation to be proved, it would need to prove that the purpose of each of the transfers individually was not related to the provision of relevant services. The CLC accepted that it was not clear why the monies were transferred or what they related to.

Having considered all the evidence before it, and reminding itself of the overarching objective, the panel was not satisfied that the CLC had proved this allegation on the balance of probabilities. It considered whether it could reasonably consider allegation 3(f) separately, not being a round sum, and found that would be unreasonable, given all the other concerns about the evidence in support of this allegation. The panel therefore found allegation 3 in its entirety to be not proved.

Allegation 4 a)– Allegation Proved

The panel was satisfied that the CLC had provided sufficient objective evidence, in the form of the relevant client account bank statement, and the letter from Miss A, to prove that on 7 January 2019, £15,000.00 was deposited into the Practice's client account by Ms Hill's friend Miss A, which amounted to failing to keep client money entirely separate from Ms Hill's money, in this case a gift from a friend, breaching the CLC's Accounts Code para 7.

Allegation 4 b) – Allegation Proved

The panel was satisfied that the CLC had provided sufficient objective evidence, in the form of the relevant client account bank statement, and Ms Saimbi's evidence on this point, to prove that on 28 January 2019, £18,100.00 of Ms Hill's personal money was deposited into the Practice's client account, which amounted to failing to keep client money entirely separate from Ms Hill's money, breaching the CLC's Accounts Code para 7.

Allegation 5 a) to dd) – Allegation Proved

The panel accepted the evidence of Ms Saimbi that Ms Hill had failed to prepare bank reconciliation statements for the months as alleged which breached the CLC's Accounts Code and Guidance (para 13.9.1)

Allegation 6 a)- Allegation Proved

The panel was satisfied on the basis of the evidence of Ms Saimbi and the emails between Ms Hill, her accountants and the CLC within the hearing bundle, that Carol Hill Conveyancing had failed to provide Accountants Reports within 6 months of the accounting period ending 30 June 2017. It noted that Ms Hill had requested an extension to 31 January 2018, and that Ms Saimbi could not confirm whether that extension was granted, although agreed that at that time, there were no known concerns about Ms Hill's practice and so it may have been. Nonetheless, even if it were granted, the accountants' report was not provided until 26 February 2018, which is a breach of paragraph 16.2 of the CLC's Accounts Code, and therefore the panel found the allegation proved.

Allegation 6 b) – Allegation Proved

The panel was satisfied on the basis of the evidence of Ms Saimbi and the emails between Ms Hill, her accountants and the CLC within the hearing bundle, that Carol Hill Conveyancing had failed to provide Accountants Reports within 6 months of the accounting period ending 30 June 2018, and in fact had failed to provide them at all, which is a breach of paragraph 16.2 of the CLC's Accounts Code.

Misconduct

The panel went on to consider whether Ms Hill's conduct as found proved amounted to misconduct. Misconduct is conduct which falls far below the standard expected of licensed conveyancers, and that falling far below is serious.

The panel noted it had found that there were debit balances in client accounts in Ms Hill's practice of very significant amounts. The matters proved amounted to mismanagement of client money, which is a serious breach of trust. Furthermore, Ms Hill had failed to reconcile her accounts over a more than two-year period, which is a serious failing. She also failed to promptly submit her accountant's reports in 2018 and failed to submit them at all in 2019.

The panel noted the Code of Conduct, Principle 1 (acting with independence and integrity) and particularly Outcome 1.3 (Client money is kept separately and safely). Ms Hill's conduct amounted to a fundamental breach of that Principle and Outcome.

The panel also found Ms Hill's conduct to amount to a breach of Overriding Principle 2 (Maintain High Standards of Work) and particularly Outcome 2.3 (appropriate arrangements, resources,

procedures, skills and commitment are in place to ensure Clients always receive a high standard of service), noting sub paragraph 2(i): you maintain proper governance, management, supervision, financial and risk management arrangements and controls.

It also found Ms Hill had breached Overriding Principle 5 (Deal with regulators and ombudsmen in an open and co-operative way), which has a specific requirement that “you notify the CLC of any material breach of this Code, whether by you, the entity or any other person”. Ms Hill did not self-report to the CLC, and the matters found proved by the panel only came to the CLC’s attention when a routine inspection was carried out by the CLC.

The panel noted that the CLC has paid out sums in the region of £200,000.00 from the Compensation Fund to clients affected by Ms Hill’s conduct, which has a direct impact on the profession. Ms Hill’s conduct also has a significant impact on the reputation of Licensed Conveyancers by the potential for erosion of trust in them.

For all those reasons the panel found that Ms Hill’s conduct amounted to misconduct and fell far below the standards expected of a Licensed Conveyancer.

Sanction

The panel then went on to consider the appropriate sanction to impose and heard submissions from the CLC.

In assessing the appropriate sanction, the panel was mindful of the Sanctions Guidance issued by the CLC in March 2018, which sets out the sanctions to be considered in the event the allegations were found to be proved.

It bore in mind that the purpose of sanctions is

- (a) To uphold the CLC’s regulatory objective of protecting the public and consumers of legal services.
- (b) To maintain and uphold public confidence in the reputation of the profession.
- (c) To declare and uphold proper standards of conduct; and
- (d) 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 as set out in 3 (a) and 3(b) above.

Ms Dwomoh-Bonsu drew the panel’s attention to s24(3) and s26(2) of the Administration of Justice Act 1985. The CLC has confirmed that Ms Hill does not currently hold a licence. We do, however, note that, at the time the alleged conduct took place, Ms Hill was a licence holder.

On that basis, the only sanctions available to the panel under s26 Administration of Justice Act 1985 were:

- No further action
- A reprimand (s26(2)(f))
- A fine (s26(2)(e))

Or disqualification (whether for a fixed period or permanent) (s26(2)(b))

In deciding what sanction to impose the panel considered the following factors:

Proportionality

Harm (impact on client, clients in general, on the profession)

Insight

The public interest (impact on the reputation of the profession, confidence in the CLC's regulatory process and the deterrent effect)

Aggravating factors (which may cause sanction to be increased)

Mitigating factors (which may cause sanction to be reduced)

CLC submissions on sanction

The CLC invited the panel to disqualify Ms Hill for a lengthy fixed period. They submitted that Ms Hill was guilty of serious breaches of the Code of Conduct, which included financial mismanagement. They told the panel that Ms Hill had held a licence for a long time and therefore should be well aware of her regulatory requirements. They submitted that there were repeated failures, over a lengthy period of time (two and a half years) but acknowledged that there had been no concerns about Ms Hill or her practice between 2006 and 2016.

Panel's reasoning

The panel assessed the harm caused by Ms Hill's misconduct and noted that there was direct harm to her clients who were ultimately compensated by the CLC's compensation fund, and to other members of the profession who are required to contribute to that compensation fund. It noted the impact on the profession also included the impact on reputation and potential loss of trust.

The panel had no information or submissions from Ms Hill and so was unable to find any insight or remorse on her part. There was no evidence of her having made an apology.

The panel considered that Ms Hill's financial mismanagement was serious, including as it did the serious mismanagement of her client account as well as failings to submit Accountant's reports. In particular any mismanagement of client funds is particularly serious.

The panel found the following factors aggravating and mitigating factors (as set out in the Sanctions Guidance) to apply:

Aggravating

Failure to self-report to the CLC

Failure to co-operate with the CLC investigation

Lack of insight

Lack of remorse

Lack of explanation for actions

Serious breaches of the CLC's regulatory arrangements

Serious financial mismanagement

Repeated failures and a pattern of behaviour

Significant risk of harm to others (particularly in the high sum of Compensation Fund awards)

Increased likelihood of damage to the reputation of the profession

Mitigating

No previous findings of misconduct

The panel noted that Ms Hill has informed the CLC she does not intend to apply for another licence, but could not take that into account in their consideration of sanction, as that position could change at any time, and in any event it fell outside of the purpose of sanctions.

The panel started its consideration of the appropriate sanction from the least serious.

This was not a case where no action could be taken. The seriousness of Ms Hill's failings must be marked, particularly where there were multiple breaches of the Code of Conduct which included serious financial mismanagement.

Similarly, a reprimand was not an appropriate sanction in this case. The reputational harm was significant. Given that there was no evidence of remorse or insight, a reprimand would not meet the seriousness of Ms Hill's misconduct.

The panel considered whether a fine would be appropriate but conclude that it would not. It noted that Ms Hill has been made bankrupt, and is in financial difficulties, and in this case, it would only be punitive in nature. In addition, it would not adequately meet the public concern about a licensed conveyancer who serious failed to manage her practice and mishandled client money.

Therefore, the least onerous sanction the panel could impose was disqualification for a specified period of time. It noted that the Sanctions Guidance indicated (at paragraph 11.2) that "*findings of serious breaches of the Accounts Code (such as shortage to client account) which fall short of dishonesty, ... are also likely to received more severe sanctions because of the potential of direct harm to clients, damage to the reputation and confidence of the profession.*"

The panel considered this was a case of serious misconduct, with a lack of insight, remorse, and without remediation. There had been no explanation for Ms Hill's misconduct, and the panel considered in those circumstances the likelihood of repetition of such conduct, if she continued to practice, was high. The panel noted that the only partial explanation given (to the Trustee in Bankruptcy) was that Ms Hill had problems with her accountancy software.

This was misconduct repeated over a lengthy period. The panel acknowledged that Ms Hill had been a Licensed Conveyancer for a long time, but it would therefore expect that Ms Hill would have

understood the seriousness of her actions, and self-reported to the CLC. Failing to do so caused the panel very significant concerns.

In considering the appropriate length of disqualification, it determined that the shortest period it could impose which was proportionate to the level of misconduct found, was a period of 10 years.

The panel did not consider that permanent disqualification was appropriate or necessary in this case.

The sanction imposed therefore was a period of **10 years' disqualification from holding a licence.**

Application for costs

The panel was then invited to consider an application by the CLC for Ms Hill to pay the costs of the proceedings, in the sum of £1,280.00 A schedule of costs was provided to both the panel and Ms Hill in advance, and Ms Hill provided a statement of her financial circumstances.

The panel agreed that Ms Hill should pay a contribution towards the costs. It considered that the amount of costs sought was broadly reasonable, but noted a number of careless mistakes in preparation of the bundle (including the use of incorrect names in headings – the costs application itself was in another name) which suggested short cuts had been taken, and considered an excessive amount of time was charged for the preparation of a very short statement. The panel therefore considered an appropriate sum to award was **£1,080.00.**

Signed:

**Victoria Goodfellow
Chair**

15 June 2020