

DECISION OF THE ADJUDICATION PANEL OF THE COUNCIL FOR LICENSED CONVEYANCERS

Licensed Conveyancer: Josephine Filler
Complainant: Council for Licensed Conveyancers (“CLC”)
Date of Final Hearing: 23 February 2021

Panel:

Victoria Goodfellow (Chair)
Catherine Fewings (Professional Member)
Harsha Shewaram Hildebrand (Lay Member)

CLC was represented by Ms Sarah Ellson

Josephine Filler was represented by Mr Jon Goodwin

The hearing was held remotely via videoconference

ALLEGATIONS CONSIDERED

Whilst practising as a Licensed Conveyancer you:

- 1. Did not treat the Client A’s affairs confidentially in that between 8 August 2019 and 13 December 2019, in your capacity as an employee of Cripps Pemberton Greenish Solicitors, you;*
 - (a) Accessed documents on Client A’s file when you had no reason to do so;*
 - (b) Spoke to residents who lived in Client A’s properties to tell them a letter was to be expected from Client A;*

Contrary to paragraph 3.6 of the CLC’s Code of Conduct.

- 2. Your actions at 1 did not keep the interests of the Client A’s paramount contrary to Overriding Principle 3(b) of the CLC’s Code of Conduct, in that you accessed that file for your personal interests, and not the interests of Client A.*

3. *Your actions at 1-2 lacked integrity.*
4. *Your actions at 1-3 amount to misconduct.*

REASONS AND DECISION OF THE ADJUDICATION PANEL

The Allegation

At the beginning of the hearing Ms Filler admitted the allegation in its entirety. The panel had read the hearing bundle in advance of the hearing and were content to accept Ms Filler's admissions. They therefore found allegation paragraphs 1 to 3 **found proved**.

Misconduct

The panel noted that in admitting allegation paragraph 4, Ms Filler admitted that her actions in allegations 1 to 3 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 that Ms Filler had admitted to accessing Client A's file because she had a personal interest in a potentially contentious matter between Client A and the residents of properties which had been purchased from Client A. Ms Filler was one of those residents.

In 2019 Ms Filler received notification that one of the New Home warranty providers for Client A had gone into liquidation. In September 2019 Ms Filler spoke to a Solicitor in the firm she was then working (the Firm) about her concern about the warranty providers being in liquidation. That Solicitor told her he could not discuss the matter with her as he acted for Client A. Another Solicitor (and Director) in the firm also told her that they could not discuss the matter with her as there was a conflict of interests between her and Client A.

The Firm were subsequently instructed to advise Client A on the warranty issues. Ms Filler became aware that her employer had been so instructed and reviewed their electronic file in relation to that matter, in order to update herself on Client A's position.

Ms Filler admitted to accessing documents on two of Client A's files, one relating to the purchase of her property and the other relating to the warranty, both before and after the conversations with her colleagues referred to above, including a letter sent to Client A from the residents concerned, and several emails between Client A and the Firm. There was no legitimate reason for her having accessed the documents.

Ms Filler also admitted that she had spoken to two other residents on the development, to tell them they should expect a letter soon from Client A, and that she told one resident "it was not looking good". This comment was based on information she had obtained from looking at the file.

Ms Filler was subject to a disciplinary meeting at the Firm, following which she was dismissed.

The panel was satisfied that Ms Filler had breached paragraph 3.6 of the CLC's Code of Conduct, which requires that

“Clients’ affairs are treated confidentially (except as required or permitted by law or with the Client’s consent”,

and that she had acted in a manner contrary to Overriding Principle 3(b) of the CLC’s Code of Conduct which states

“You keep the interests of the Client paramount (except as required by the law or the CLC’s regulatory arrangements”.

The panel noted that Ms Filler had admitted accessing Client A’s file for her own personal interests and not those of Client A and that those actions amounted to a lack of integrity.

The panel considered that integrity, and keeping client affairs confidential, is a fundamental tenet of the profession, and that members of the public are entitled to expect that when they instruct a Licensed Conveyancer to act on their behalf, they can trust that Licensed Conveyancer with their information and their affairs.

In assessing the seriousness of Ms Filler’s conduct, the panel also noted in particular the following:

- (i) The period of time over which Ms Filler accessed two of Client A’s files without legitimate reasons, and the repetition of her actions. The CLC were able to produce evidence of her accessing documents on the files on at least 17 occasions over a period of more than 4 months.
- (ii) Ms Filler accessed Client A’s files both before and after discussions about the issue of conflict of interests and confidentiality, thus ignoring the clear advice of two senior members of staff in the firm.
- (iii) Whilst she made no financial gain from her actions, there was a gain in confidential information relating to her personal interests to which she was not entitled and a potential advantage gained in what may have become contentious proceedings.
- (iv) Ms Filler had undergone training on GDPR and the Information Security Policy of the Firm (a copy of which had been provided to the panel) gave clear and firm guidance on the issue of confidentiality in addition to her training as a Licensed Conveyancer and the panel considered that she should have been fully aware of the importance of maintaining confidentiality of clients’ affairs.
- (v) Ms Filler had shared information she obtained through her actions, with two other people.

For all those reasons the panel found that Ms Filler’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 on behalf of the CLC and Ms Filler.

In assessing the appropriate sanction, the panel were 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 to

- (a) 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.

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)

The parties' submissions on sanction

The CLC asked the panel to impose a reprimand and a modest fine, noting that it had considered whether the imposition of a condition not to supervise other fee earners would be appropriate but had concluded that it was unlikely to be workable in Ms Filler's current role and may therefore have a disproportionate impact. On behalf of Ms Filler, Mr Goodwin asked the panel to consider that this was one of those exceptional cases, because of Ms Filler's prompt self-referral, her full co-operation with the CLC during their investigation, and her significant personal mitigation, that no action could be taken.

Panel's reasoning

The panel assessed the harm caused by Ms Filler's misconduct and noted that there was harm caused to Client A in so far as the breach of trust they placed in the Firm, because an employee of that firm had accessed their confidential information for her own purpose. Harm was caused to the Firm, because Ms Filler's actions potentially undermined their professional relationship with Client A and could have led to loss of business and reputation. The panel also noted the impact on reputation and potential loss of trust in the profession as a whole.

The panel saw evidence that Ms Filler had apologised to the Firm but did not see evidence that she had recognised the impact on or apologised to Client A, nor that she had properly understood the impact on the reputation of and trust in the profession. The panel noted that in her self-reporting email to the CLC, Ms Filler explained she thought that the Firm had dismissed her because they continued to act for Client A and there would be an ongoing conflict of interests between her and Client A. She did not appear to consider that she was dismissed for a breach of trust and lack of integrity.

She also went on to say that she believed that the situation would not arise again in the future, because there will not be the same type of conflict in any other firm she would work

for. Again, the panel considered this demonstrated a lack of proper insight into her actions and their impact, because she did not appear to understand the reason for her actions being so serious.

The panel noted Ms Filler's admissions to the allegation in its entirety, and her self-referral to the CLC following her dismissal, but taking into consideration its concerns about her understanding of the impact of her behaviour, it was unable to conclude that she had full insight into the seriousness of her actions.

The panel was very clear that this is a matter which directly impacts on the reputation of the profession, and there is a public interest in maintaining confidence in the CLC's regulatory process. It was also clear that there should be a deterrent effect in whatever sanction it imposed, while maintaining proportionality.

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

Aggravating

Abuse of position/breach of trust

Motivated by desire for personal advantage

Respondent gained (a potential) advantage as a result of wrongdoing

Limited insight

Serious breach of the CLC's regulatory arrangements

Repeated failure or pattern of behaviour

Increased likelihood of damage to reputation of the profession

Mitigating

Prompt self-report to the CLC

Open and honest about wrongdoing

Full co-operation with CLC investigation

Repetition unlikely

Clear demonstration of remorse

Relevant positive references

No previous findings of misconduct

The panel also considered it an aggravating feature that Ms Filler only stopped accessing Client A's file only when she was challenged about it in the disciplinary process instituted by the Firm.

The panel heard additional personal mitigation from Mr Goodwin on behalf of Ms Filler, which the panel took into consideration but were unable to find amounted to exceptional circumstances, such that it significantly affected their assessment of appropriate sanction.

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

This was not a case where no action could be taken. Ms Filler's misconduct amounted to a serious breach of the CLC's Code of Conduct which, although not at the upper end of seriousness, the panel considered had impacted on a client and the firm and had the potential to cause significant harm to the reputation of the profession and public trust in the Licensed Conveyancer.

The panel then considered whether a reprimand would be an appropriate sanction. It was satisfied that Ms Filler's misconduct warranted particular attention being drawn to it to help ensure that there would be no further repetition by her, and with the intention that the deterrent effect of attention being drawn by way of a reprimand would protect the public from future similar misconduct by others.

The panel was also satisfied that Ms Filler's actions had been remediated, and that she had demonstrated insight, although that insight was not full and was limited as set out above.

The panel also considered whether it would be appropriate to issue a fine. It noted that a fine is punitive in nature, but found that in this case, Ms Filler's misconduct was serious, her insight was limited, and the imposition of a reprimand alone would not mark the seriousness of her actions. It was therefore satisfied that imposing a reprimand and a fine together would mark the seriousness, act as a deterrent, and was proportionate to the reputational harm caused by Ms Filler's actions.

In assessing the level of fine to impose, the panel took into consideration Ms Filler's statement of means, as well as the gravity of her misconduct. It determined that a fine of £1000.00 was the least it could impose.

The sanction imposed therefore was a **reprimand, and a fine of £1000.00.**

Application for costs

The panel were then invited to consider an application by the CLC for Ms Filler to pay their costs in the sum of £4000.00, which had been agreed between the parties before the hearing. A schedule of costs was provided to both the panel and Ms Filler in advance, and Ms Filler had provided a statement of her financial circumstances.

The panel noted the parties' agreement and was satisfied that the claim was reasonable. It therefore made an order for costs in favour of the CLC in the sum of **£4000.00.**

Signed:

**Victoria Goodfellow
Chair**

23 February 2021

