

IN THE MATTER OF:

COUNCIL FOR LICENSED CONVEYANCERS

AND

(1) HOBSON & LATHAM LIMITED

(2) STEPHEN MCDONAGH

AND

(3) JANETTE SWEETMAN

PANEL DECISION

1. A three-member panel of the Adjudication Panel, comprising a professional member, a lay member, and a legally qualified chair, convened remotely for the hearing of the allegations against Hobson and Latham Limited, Stephen McDonagh and Janette Sweetman on 20th and 21st January 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) were represented by Mr Thomas (Counsel). Mr McDonagh and Ms Sweetman were present but not legally represented.
3. The panel confirmed that, prior to the hearing, it had read all the documents submitted by the parties.

PRELIMINARY ISSUES

4. There were no preliminary issues. However, during the course of the hearing, it became evident that Mr McDonagh and Ms Sweetman, on prompting by the panel, had located further documentation which was of assistance to the panel in making its decision. The CLC did not object to the late admission of that documentation, and on the basis that it was fair and in the interests of justice to do so, the panel agreed to that documentation being admitted into evidence.

ALLEGATIONS

Allegations Against Hobson & Latham Ltd (HOBSON AND LATHAM)

The allegations against HOBSON AND LATHAM are that, while a Recognised Body, HOBSON AND LATHAM acted or failed to act in such a way as to amount to a breach of the CLC's Code of Conduct in that:

1. *on or soon after 19 November 2019, when it received a written complaint from LM (a client), it failed to promptly notify its insurer in writing of a fact or matter*

which might give rise to a claim under its professional indemnity insurance policy.

Denied on the basis that there was no duty to do so
FOUND PROVED

2. it failed to be open and honest in its dealings with the CLC, namely by stating in an email sent on 23 July 2020 that LM had withdrawn his complaint from the Legal Ombudsman when this was not in fact the case

Denied
FOUND PROVED

3. it repeatedly failed to comply promptly and fully with a CLC direction or request, by failing to provide the CLC with a copy of LM's complete transaction file including when requested to do so by the CLC on 30 July 2020, 19 January 2021, 3 February 2021 and 12 February 2021

Initially denied but later admitted
FOUND PROVED

4. it failed to co-operate with a CLC investigation by failing to provide complete information in connection with LM's complaint when requested to do so by the CLC on 3 July 2020, 13 July 2020 and 23 July 2020

Initially denied but later admitted
FOUND PROVED

5. it failed to report to the CLC a breach of the CLC's Code of Conduct by it having not notified its insurers about LM's complaint of 19 November 2019 as required by Rule 5.1(k) of the Code of Conduct Requirement 5.1(o) of the Code of Conduct (notifying the CLC of any material breach of the Code of Conduct).

Denied
FOUND PROVED

6. it failed to treat LM's complaint seriously and provide appropriate redress options resulting in LM having to commence County Court proceedings in February 2020 ("the Proceedings") in order to obtain redress

Denied
NOT FOUND PROVED

7. it failed to deal with LM's complaint fairly and within 28 days by:

(a) failing to comply with the applicable Pre-Action Protocol; **Denied – NOT FOUND PROVED**
and

(b) not resolving LM's complaint until the Proceedings were issued and settled by HOBSON AND LATHAM and LM entering into a Consent Order on 20 June 2020 **Denied – FOUND PROVED**

8. it failed to provide LM with a high standard of legal services and/or to use care, skill and diligence in relation to its review and negotiation of a lease and Deed of Variations and/or in failing to adequately advise LM in connection with the same

Denied
FOUND PROVED

Allegations against Stephen McDonagh

The allegations against Stephen McDonagh are that, while a Licensed Conveyancer, he acted or failed to act in such a way as to amount to a breach of the CLC's Code of Conduct in that he:

1. allowed, on or soon after 19 November 2019 and when HOBSON AND LATHAM had received a written complaint from LM, HOBSON AND LATHAM to fail to promptly notify its insurer in writing of a fact or matter which might give rise to a claim under its professional indemnity insurance policy

Denied on the basis that there was no duty to do so

FOUND PROVED

2. allowed HOBSON AND LATHAM to repeatedly fail to comply promptly and fully with a CLC direction or request through its failure to provide the CLC with a copy of LM's complete transaction file including when HOBSON AND LATHAM was requested to do so by the CLC on 30 July 2020, 19 January 2021, 3 February 2021 and 12 February 2021

Denied

FOUND PROVED

3. failed to comply promptly and fully with a CLC direction or request by failing to provide the CLC with a copy of LM's complete transaction file after being requested to do so by the CLC on 30 July 2020

Denied

FOUND PROVED

4. allowed HOBSON AND LATHAM to fail to co-operate with a CLC investigation through its failure to provide complete information in connection with LM's complaint when requested to do so by the CLC on 3 July 2020, 13 July 2020 and 23 July 2020

Denied

NOT FOUND PROVED

5. allowed HOBSON AND LATHAM to fail to report to the CLC a breach of the CLC's Code of Conduct through its failure to notify its Insurers about LM's complaint of 19 November 2019 as required by Rule 5.1(k) of the Code of Conduct

Denied

FOUND PROVED

6. allowed HOBSON AND LATHAM to fail to treat LM's complaint seriously and provide appropriate redress options resulting in LM having to commence County Court proceedings in February 2020 (the Proceedings) in order to obtain redress

Denied

NOT FOUND PROVED

7. allowed HOBSON AND LATHAM to fail to deal with LM's complaint fairly and within 28 days through its failure to:

*(a) comply with the applicable Pre-Action Protocol **Denied**; **NOT FOUND PROVED** and*

*(b) resolve LM's complaint until the Proceedings were issued and settled by HOBSON AND LATHAM and LM entering into a Consent Order on 20 June 2020 **Denied** **FOUND PROVED***

8. allowed HOBSON AND LATHAM to fail to provide LM with a high standard of legal services and/or to use care, skill and diligence in relation to its review and negotiation of a lease and Deed of Variations and/or in allowing it to fail to adequately advise LM in connection with the same

Denied

FOUND PROVED

9. failed to provide LM with a high standard of legal services and/or to use care, skill and diligence in relation to the review and negotiation of a lease and Deed of Variations and/or in failing to adequately advise LM in connection with the same.

Denied

FOUND PROVED

Allegations Against Janette Sweetman

The allegations against Janette Sweetman are that, while a Licensed Conveyancer, she acted or failed to act in such a way as to amount to a breach of the CLC's Code of Conduct in that she:

1. failed to be open and honest in her dealings with the CLC, namely by stating in an email sent on 23 July 2020 that LM had withdrawn his complaint from the Legal Ombudsman when this was not in fact the case

Denied

NOT FOUND PROVED

2. repeatedly failed to comply promptly and fully with a CLC direction or request by failing to provide the CLC with a copy of LM's complete transaction file including when requested to do so by the CLC on 30 July 2020, 19 January 2021, 3 February 2021 and 12 February 2021

Denied

FOUND PROVED

3. failed to co-operate with a CLC investigation by failing to provide complete information in connection with LM's complaint when requested to do so by the CLC on 3 July 2020, 13 July 2020 and 23 July 2020

Denied but later admitted

FOUND PROVED

6. The panel took oral evidence from Mr McDonagh and Ms Sweetman. The CLC did not call any witnesses to give live evidence but relied on written statements and documents. The panel was provided with a schedule of facts agreed between the parties.

7. The evidence from witnesses, Mr McDonagh and Ms Sweetman is not repeated here but referred to when relevant within the panel's findings at the first stage.

BACKGROUND AND AGREED FACTS

8. The background to the case is that Mr McDonagh and Ms Sweetman, at the material time, were managers of Hobson and Latham Ltd. Both Mr McDonagh and Ms Sweetman held individual licences and manager licences with the CLC. Hobson and Latham as a practice was also licenced by the CLC. Luke Mosson (LM) instructed Hobson and Latham in connection with the purchase of a leasehold flat in November 2013. The flat was subject to a short lease, and Hobson and Latham agreed a lease extension with the freeholder, via a Deed of Variation, with effect from the completion of the purchase of the flat in March 2014. That Deed of Variation provided for an increase in the ground rent over time, namely the greater of £250 or £1 less than 2/3 of the flat's rentable value. At that time, Hobson and Latham employed a fee earner (DM) who worked on LM's case. LM specifically questioned the ground rent provisions in the lease but was not advised of the provision prior to completion of the purchase. He was told that the increase in ground rent when a lease was extension was 'standard procedure'. In a Lease Report on 18 February 2014, he was advised that the ground rent would be £250 per annum.
9. In 2015, the freeholder of LM's flat sought to enforce the new ground rent clause, to obtain £325 per month (based upon the flat's rentable value).
10. Hobson and Latham negotiated two further Deeds of Variation (April 2015 and March 2017) in an attempt to address the issue to LM's satisfaction. Hobson and Latham paid the freeholder's consideration and legal costs for each Deed of Variation, which they assert amounted to approximately £50,000. In a letter to LM on 23 February 2017, Hobson and Latham said,

"Should you experience any difficulties at the time of your sale as a result of entering into the latest Deed of Variation on the express advice of the firm we ... will remain liable for any losses incurred".
11. However, the new ground rent clause agreed in the March 2017 Deed of Variation resulted in the flat becoming an assured shorthold tenancy, from 25 June 2024, which would make the lease unattractive to lenders and therefore potentially harder to sell. An attempted sale, in which LM had again instructed Hobson and Latham, collapsed in December 2019.
12. On 19 November 2019, LM complained in writing to Hobson and Latham about poor communication, and about the impact of the last Deed of Variation. LM requested that they negotiate and agree a further Deed of Variation to resolve the ground rent issue. On 5 December 2019 Stephen McDonagh replied (through his secretary SC) to LM by email. He stated that a further Deed of Variation had been agreed with the managing agents. He apologised if "communications were not as they should have been". The panel saw an email from Stephen McDonagh to LM dated 28

November 2019 where the managing agent indicates the cost of the further Deed of Variation would be £1,500 plus costs.

13. Unhappy with that response, LM instructed a firm of solicitors, Thomson Snell and Passmore, and through them issued proceedings in the County Court for damages falling professional negligence, in the sum of £27,986.58. A letter, forming a Preliminary Notice as defined in the Pre-Action Protocol for Professional Negligence in the Civil Procedure Rules, was sent by Thomson Snell and Passmore to Hobson and Latham, dated 10 December 2019. That letter set out the basis of LM's claim against Hobson and Latham and proposed that Hobson and Latham enter into a 'standstill agreement' with LM for a period of 12 months, to allow time to try and resolve the dispute without the need for court intervention. This 'standstill agreement' would have the effect of stopping the clock on the limitation period for issuing proceedings. Hobson and Latham were asked to respond to the proposal by 1 January 2020, and Thomson Snell Passmore, on behalf of LM, asked that Hobson and Latham inform their professional indemnity insurers, if any, immediately. No substantive response was received, and therefore LM issued proceedings with Particulars of Claim, which the panel has seen, dated 7 February 2020.
14. On 25 June 2020, LM wrote to the CLC to complain about Hobson and Latham, informing them he was taking Court action for damages following alleged professional negligence. He raised a number of questions relating to Hobson and Latham's Professional Indemnity Insurance, and whether they had valid cover.
15. On 30 June 2020, a Consent Order was agreed in which Hobson and Latham agreed to pay LM the sum of £15,634 in full and final settlement of his claim, to be paid in instalments between 6 July 2020 and 6 February 2021. At the time of the hearing, that payment had been made in full.
16. On 3 July 2020 LM informed the CLC that a settlement had been agreed but indicated that the settlement "only covers the costs of rectifying the lease and the costs incurred when our house sale fell through."
17. Having received LM's complaint, the CLC contacted Hobson and Latham on 3 July 2020 asking for clarification of whether they were aware of the matter, whether the matter had been referred to Hobson and Latham's insurer, and what the current status of LM's complaint was. No response was received, despite chasers, until 23 July 2020 when Janette Sweetman emailed the CLC stating "we understand that LM has withdrawn his complaint from the Legal Ombudsman and have asked him to make sure this has been done".
18. On 24 July 2020 however, LM informed the CLC via email that his complaint had not been withdrawn. They in turn contacted Hobson and Latham to indicate that LM's complaint was ongoing, and that he wished to raise service and conduct issues, including an alleged failure to refer the matter to insurers. Stephen McDonagh replied to the CLC on the same day, saying "We did not report it to our insurers as

we were of the opinion our excess payment would probably be around the same figure required to settle the claim”.

19. As part of its investigation, the CLC requested a copy of LM’s transaction file from Hobson and Latham, to be provided by 6 August 2020. A partially complete file was sent by Hobson and Latham to the CLC on 6 August 2020, but it did not include any material correspondence relating to LM’s complaint.
20. On 19 January 2021 the CLC requested the ‘complaint file (all correspondence relating to the complaint) and any other related documents’ by 2 February 2021. On 12 February 2021 Stephen McDonagh telephoned the CLC to apologise for not replying to email requests from the CLC, saying it was his fault for not forwarding emails, and indicating that the issues had now been sorted. In a subsequent email on 12 February 2021, Mr McDonagh indicated that Hobson and Latham “believe we acted in LM’s best interest by settling as this allowed him to sell his property rather than going through lengthy process”. No complaints file was ever sent to the CLC.
21. On 19 February 2021, the CLC sent a Notice of Disciplinary Investigations to Hobson and Latham.

HOBSON AND LATHAM, STEPHEN MCDONAGH AND JANETTE SWEETMAN’S RESPONSE TO THE ALLEGATIONS

22. Mr McDonagh and Ms Sweetman replied collectively to the allegations, both on their own behalf and on behalf of Hobson and Latham. They provided a background statement which the panel read before the hearing.
23. So far as the allegations relating to failing to report to their insurers was concerned, they asserted initially (in a written response) that it was accepted that Hobson and Latham had failed to promptly notify its insurer about LM’s complaint and the issues arising from his Deeds of Variation, indicating that it was important to note this was a “unique/unusual case”. In oral evidence, Mr McDonagh disputed that neither Hobson and Latham nor he nor Ms Sweetman was under a duty to notify their insurers, outside of the annual report they submitted each year, as this was an issue they were resolving, and they had decided not to make a claim on their insurance. They maintained throughout their evidence that they believed they acted in LM’s best interests by seeking a further Deed of Variation which would have cost £1,500 instead of the costs he incurred by issuing Court proceedings, and that if they had notified their insurers, they would not have been able to resolve the matter informally and at lower cost.
24. So far as the allegation of failing to be open and honest with the CLC because of the content of Ms Sweetman’s email to the CLC of 23 July 2020 indicating that LM had withdrawn his complaint to the Legal Ombudsman, Ms Sweetman told the panel that on receipt of the email from the CLC on 23 July 2020 asking about the progress of the complaint, she had immediately asked Mr McDonagh what was happening. Her account was that Mr McDonagh told her he had spoken to LM’s solicitors

(because it had been his and Ms Sweetman's understanding that the Consent Order was in full and final settlement of any complaint or claim), and they informed him that LM was withdrawing the complaint. She then relayed that information to the CLC in her email of 23 July 2020. Ms Sweetman therefore told the panel that she acted in good faith believing that information to be true.

25. Mr McDonagh told the panel that he had telephoned Thomson Snell Passmore, and asked why LM was continuing with his complaint when the Consent Order recorded that it was in full and final settlement. His account was that Thomson Snell Passmore told him they would advise their client to withdraw the complaint. He agreed with Ms Sweetman's account however that he told her that LM was withdrawing the complaint, and therefore suggested that the fault lay with him in not communicating clearly.
26. So far as the allegations of failing to provide files to the CLC when requested, Mr McDonagh and Ms Sweetman both told the panel they had been very busy, the practice had been through unprecedented times as a result of the Covid-19 pandemic and they acknowledged they had not given the requests the attention they deserved. However, they believed that they had provided all the information they had. They told the panel that they hold one central complaints file, where all complaints are held in sub-folders for each client, rather than each complaint having its own file. The panel noted however that they were able to produce documentation at the panel's request during the oral hearing, which had not previously been provided to the CLC.
27. So far as the allegations relating to the handling of LM's complaint were concerned, Mr McDonagh told the panel he felt he had resolved LM's complaint in his email of 5 December 2019, by offering a solution to the problem with the ground rent, and by apologising for any poor communication.
28. Mr McDonagh and Ms Sweetman agreed that whilst all the Directors in Hobson and Latham were equal, Mr McDonagh took the leading role at the time with which this panel was concerned, he was responsible for dealing with any complaints, and he took a lead role in managing the practice. They told the panel that subsequently, the roles in managing the practice have been more equally shared between them.

PANEL'S FINDINGS OF FACT

29. The panel bore in mind that the burden of proof lies with the CLC in this case, and the standard of proof is the balance of probabilities.
30. Underlying all the allegations, the panel applied the admission that Mr McDonagh and Ms Sweetman were together managers of the practice on a day-to-day basis, but that the responsibility for the vast majority of the management of the practice, and the matters to which these allegations relate, was taken by Mr McDonagh.

31. The panel carefully considered all the evidence it had read and heard and made the following findings. For ease of understanding, these are separated into the four areas covered by the allegations, referred to as “Insurance” (allegations A1, B1, A5 and B5), “Openness and co-operation with the CLC” (allegations A3, A4, B2, B3, B4, C2, C3) “Complaint” (A6, A7, B6, B7,) and “Standard of Service” (A8, B8, B9).

32. Insurance

- a. The panel noted that paragraph 5.1(k) of the Code of Conduct has no discretionary element. It states
*“You must **promptly** notify insurers in writing of any facts or matters which may give rise to a claim under CLC-approved professional indemnity insurance”*
Under the CLC’s Glossary, “promptly” is defined as “within 2 working days”.
- b. The panel was satisfied that LM’s letter of 19 November 2019, and the subsequent letters from Thomson Snell and Passmore of 4th and 10th December 2019 were matters which met the definition of “may give rise to a claim” and therefore required notification to Hobson and Latham’s insurers.
- c. The panel saw evidence, which was admitted late by Mr McDonagh and Ms Sweetman and had not been provided to the CLC at any time before the hearing, that the only evidence of reference to the matter in reports to their insurers was in their annual report in 2021.
- d. The panel did not accept the respondents’ submission that they had appropriately taken the decision to resolve the matter directly with LM because in their view the cost of resolution would be less than the excess payable to the insurers, nor that it was an appropriate decision not to notify their insurers because a direct resolution would save LM time and money. Neither position obviated the respondents’ duty to notify their insurers within 2 working days of the letter of 19 November 2019, or at the latest by 2 working days after 10th December 2019, when they received notification that LM was considering Court action.
- e. The panel was satisfied that the duty to report fell on Hobson and Latham as a practice, and that Mr McDonagh, as a manager of that practice, had a duty to carry out that notification if he knew that no other manager (i.e. Ms Sweetman) was not so doing. The panel noted that Mr McDonagh did not suggest that, if there was a duty, it was not his responsibility.
- f. Therefore, the panel was satisfied that the failure was made out as to both Hobson and Latham, and Mr McDonagh, and therefore found allegations A1 and B1 proved.
- g. Having made those findings, the panel noted that paragraph 5(o) of the Code of Conduct required both Hobson and Latham as a practice, and Mr McDonagh and Ms Sweetman as individuals, to “notify the CLC of any material breach of this Code, whether by you, the entity or any other person”. Mr McDonagh and Ms Sweetman did not acknowledge, even during the hearing, that they had breached 5(k) of the Code of Conduct, and therefore it follows that they did not notify the CLC of that breach. The panel has found they did breach that provision, and therefore as a matter of course, the panel finds allegations A5 and B5 found proved.

33. Openness and co-operation with the CLC

- a. In essence, the CLC alleged that the respondents failed to be open and co-operate with the CLC by failing to provide the full transaction file and full complaints file relating to LM to them within the timeline specified, or at all (in relation to the complaints file). The CLC also alleges that Ms Sweetman mis-represented the position to them in regard to whether LM had withdrawn his complaint.
- b. The panel noted that the CLC did not allege that the respondents had acted dishonestly.
- c. The panel noted that Hobson and Latham's practice was to have one generic complaints file, and not to have a separate file for each complaint. Mr McDonagh told the panel the documents and correspondence relating to each complaint were filed under separate tabs in one general file. The panel was satisfied, based on the manner in which the documentation was located and presented late, the gaps in the recorded correspondence and the evidence seen from LM's file, as well as some comments made by the respondents during the hearing, that the filing system was somewhat chaotic, and there was at least a risk that some documentation would be misfiled. The panel accepted that Mr McDonagh and Ms Sweetman had not set out to deliberately withhold information and documentation either from the CLC or the panel.
- d. However, the requests from the CLC to Hobson and Latham for the transaction and complaints files were clear, and the panel saw evidence of emails including the requests being sent to both Mr McDonagh and to Ms Sweetman.
- e. The panel noted the agreed facts, that the first request for the transaction file was on 30 July 2020, with a deadline of 6 August 2020. Whilst some documentation was provided to the CLC by 6 August 2020, the transaction file was incomplete, in that it did not include correspondence covering the transition from the transaction to the complaint.
- f. A further request, this time specifying that the complaint file was also required, was sent on 19 January 2021 by the CLC to the respondents. The panel noted with some concern the delay on the part of the CLC between 6 August 2020 and 19 January 2021, but understood this was due to staffing issues, which were by then resolved. In any event, that delay did not obviate the duty upon the respondents.
- g. The CLC submitted that they have never received the full files they requested, from 6 August 2020. The panel agrees with that submission. The very fact that documentation that had not previously been provided to the CLC was located during the hearing itself, proves that the full files were never submitted.
- h. The panel was satisfied that the requests for those files were made to both Mr McDonagh and Ms Sweetman on all dates other than on 3 July 2020, 13 July 2020 and 23 July 2020, when they were made only to Ms Sweetman. The panel therefore found allegations A3 and A4 proved against Hobson and Latham. It follows it also found allegations B2 and B3 proved against Mr McDonagh, and allegations C2 and C3 proved against Ms Sweetman.

- i. However, as the requests specified in allegation B4 related to dates on which only Ms Sweetman was contacted by the CLC, the panel did not find allegation B4 proved against Mr McDonagh.
- j. Finally, in allegation A2 and C1 the CLC alleged that Hobson and Latham and Ms Sweetman misrepresented the position to the CLC in relation to LM's complaint.
- k. The panel accepted both Mr McDonagh's and Ms Sweetman's evidence on this matter and concluded that Ms Sweetman was acting in good faith when she relayed the information in the email to the CLC on 23 July 2020, and that this was not a case of not being open or honest on her part. The error came about because Mr McDonagh had not paid sufficient attention to the words he used when he responded to Ms Sweetman, which in fact did misrepresent the actual position. The panel considered this was indicative of him not paying sufficient attention to the importance of communicating with the CLC in an accurate, timely and clear manner. The panel also found that in being blasé about his response in this way, Mr McDonagh would have known that he was allowing the CLC to believe that the complaint had been withdrawn.
- l. Mr McDonagh did not seek to blame Ms Sweetman for the wording of the communication, which was to his credit.
- m. The panel therefore found the allegation as against Ms Sweetman (allegation C1) not proved. However, in providing information which in fact misrepresented the position, and which left the CLC with the understanding that LM's complaint had been withdrawn when it clearly had not, the panel found that Hobson and Latham (through Mr McDonagh's actions in providing inaccurate information to Ms Sweetman) had failed to be open with the CLC and therefore that allegation (A2) was found proved.

34. Complaint

- a. These allegations (A6, A7, B6, B7,) related to whether Mr McDonagh (and thereby, Hobson and Latham) responded to LM's complaint fairly and within 28 days, and whether it treated his complaint seriously and provided appropriate redress options which would have meant he did not need to resort to issuing Court proceedings.
- b. The panel noted that Mr McDonagh referred in evidence to telephone conversations with LM after receipt of his complaint on 19 November 2019, in which he discussed the complaint and apologised for problems which had arisen. However, there was no documentary evidence, in the form of attendance notes or emails, to confirm the content of those discussions.
- c. The documentary evidence indicated that Mr McDonagh responded to the complaint by attempting to persuade LM to allow a further Deed of Variation to be negotiated and put in place, which Mr McDonagh believed would resolve the root of the problem. It did not however address the complaint LM had made, which was about lack of communication, lack of progress, and lack of report to their insurers.
- d. The panel saw a response from Mr McDonagh which apologised broadly for poor communication. This however, in the panel's assessment, was in no

way sufficient to properly answer the complaints raised by LM in his email of 19 November 2019.

- e. The panel also concluded that Hobson and Latham did not have a sufficiently robust complaints procedure, because despite requests from the panel to see the documented complaints procedure, none was forthcoming. Whilst it is not for the respondents to disprove the case, the panel's request was for information which would show that the complaint had been dealt with in line with the practice's protocol. The panel concluded that the practice, at that time, dealt with complaints on an ad hoc basis without following an appropriate procedure. The panel also heard from the respondents that since these events, a new protocol has been introduced.
- f. However, the allegations are worded such that the respondents' failures are linked to a failure to comply with the Pre Action-Protocol for professional negligence, and a failure to avoid LM having to issue Court proceedings. The decision to do so was LM's and the panel concluded that there were other options available to him, including agreeing the Deed of Variation. It noted that there were ongoing negotiations with Hobson and Latham in relation to paying costs incurred by LM. Therefore, the panel concluded that whilst the complaint was poorly handled, the respondents were not under a **duty** as alleged, to respond to a Pre Action-Protocol, or to act in a certain way based on a decision made by LM, however sensible that decision may have been.
- g. Therefore, allegations A6 and A7(a), and B6 and B7(a) are not found proved.
- h. However, allegations A7(b) and B7(b) relate to Hobson and Latham, and Mr McDonagh, not resolving LM's complaint until Court proceedings were issued and subsequently settled with a Consent Order on 20 June 2020. The panel found that there was clear evidence in the correspondence that the complaint was not resolved until the agreement of the Consent Order, and therefore those allegations were made out and found proved.

35. Standard of Service

- a. The final allegations related to the standard of service provided to LM. The panel noted the agreement about the lack of appropriate advice to LM about the ground rent issue.
- b. The panel also noted the agreement in 2017 that Hobson and Latham would remain liable for any losses incurred as a result of entering into the latest Deed of Variation, again an indication of a failure to advise properly. The panel noted that Hobson and Latham had in fact paid out over £50,000 in respect of those losses.
- c. Mr McDonagh placed heavy reliance on the fact that freeholders had recently taken advantage of a provision in the Housing Act 1983 which enabled them to increase ground rent significantly on a lease extension, which could then turn the lease into an Assured Shorthold Tenancy. The panel asked the CLC for provide information of when that practice became common knowledge, but it was unable to do so. The panel however noted that in fact the provision was within the 1983 Act and therefore something which should have been at least considered in transactions after that Act came into effect.

- d. The panel was satisfied that the service provided to LM in relation to the lease and Deeds of Variation was therefore not a high standard, and that (at times) care, skill and diligence had not been used. It was also satisfied that there was a failure in the advice provided. Therefore, allegations A8, B8 and B9 were found proved.

MISCONDUCT

36. The panel noted that the allegations found proved against the respondents covered four areas of conduct, and that their conduct had resulted in complaints to the practice, to the CLC and to the Legal Ombudsman, as well as Court proceedings. Whilst it was of course LM's decision where and to whom to complain, it is indicative of the seriousness of the impact on LM and potentially on the reputation of the profession that such action was deemed necessary by LM. Each of the four areas of failures were serious, some more than others. In failure to provide required files and information to the CLC, their actions undermined the CLC's ability to regulate, as well as indicating a disregard or lack of priority in relation to the practice's relationship with its regulator. Whilst there was no finding of dishonesty, there were findings of poor advice, poor responses to a complaint, and failure to report to insurers which could have significantly impacted on the ability of LM to obtain redress for the other failures. The panel concluded that when combined together, the conduct of the respondents was so serious that it fell seriously below the standard expected of the profession, and that it amounted to misconduct.

SANCTION

37. Having found misconduct, the panel took submissions from both parties on the appropriate sanction to apply in this case.
38. The CLC, through Mr Thomas, 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.

39. Mr Thomas clarified that proceedings had been brought against Mr McDonagh, Ms Sweetman and Hobson and Latham Limited and therefore the panel must consider sanctions against Mr McDonagh and Ms Sweetman as well as the firm.

40. The panel had the following sanctions therefore available to it in respect of Mr McDonagh and Ms Sweetman

- Taking no further action
- A reprimand
- A fine and/or
- Conditions on licence
- Suspension
- Disqualification

41. Mr Thomas invited the panel to consider all available sanctions.

42. Mr McDonagh and Ms Sweetman told the panel that none of their failures as found proved had been intentional, they had tried to do their best by LM as they did by all their clients, and that they had learned lessons from their mistakes and from the disciplinary process.

Harm

43. The panel began its consideration of sanctions looking at the harm caused by the respondents' misconduct. It concluded that the harm caused to LM was financial and in the form of stress and inconvenience. There were repeated failures, and it was evident in LM's communications with the CLC and Hobson and Latham that the whole process had been extremely difficult for him. Hobson and Latham had sought to mitigate the harm, and the panel found that they had in fact mitigated the harm to a degree by paying for the cost of rectification, and reaching the Consent Order agreement, although that must be set against LM's evidence that he still remained out of pocket even after that agreement.

44. The panel also considered the harm to the reputation of the profession and concluded that was not insignificant. Failures in advice, and then failure to properly address subsequent complaints, risk causing significant harm to the reputation of the profession. However, the panel bears in mind that the reasonably informed member of the public would be aware of the steps taken by Hobson and Latham to address the issues, albeit too late and not always appropriately.

45. The harm to the reputation of the regulator, and regulation itself, must also be considered in this and in any case where requests are ignored, and incomplete, inaccurate, or misleading information is provided to them.

46. On balance, the panel found the level of harm was moderate overall, taking all those factors into consideration.

Insight

47. The panel noted that there had been no admissions made before the hearing, and whilst there had been some facts agreed prior to the hearing, and some admissions made effectively during the course of the hearing, there was no evidence prior to now that the respondents understood the seriousness of their misconduct, or that it amounted to misconduct at all.
48. The panel was particularly concerned by the respondents' lack of insight into the need to place compliance with their regulator at the forefront of their management of the practice, and their individual work. The panel concluded that both Mr McDonagh and Ms Sweetman had been very focussed on the job of conveyancing, but not on the appropriate management of the firm. Examples of this were the lack of clear protocols and procedure for complaints, the chaotic way in which documents appeared during the hearing, and the careless communication by Mr McDonagh of the information about LM's complaint supposedly being withdrawn.
49. However, there was evidence of developing insight in that new procedures had been implemented as a result of this disciplinary process, and that the management duties for the practice were now shared out appropriately between managers, rather than Mr McDonagh having oversight of everything. This had been particularly problematic when combined with a practice of not carefully noting the content of all correspondence and communications.
50. The panel also accepted the reflections of both Mr McDonagh and Ms Sweetman throughout the hearing on their misconduct, and their developing understanding of the importance of prompt communication as well as a greater understanding of the need to report matters to their insurers.
51. On balance, the panel concluded that there was developing insight in both Mr McDonagh and Ms Sweetman.

Aggravating Factors

52. The panel identified the following aggravating factors as being present:
- Failure to self-report to the CLC
 - Serious breach of the CLC's regulatory arrangements
 - Repeated failure or pattern of behaviour
 - Increased likelihood of damage to reputation of the profession

Mitigating Factors

53. The panel identified the following mitigating factors as being present:
- Repetition unlikely
 - No previous findings of misconduct
 - No serious financial mismanagement

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

No further action

55. This was a case of misconduct across several areas of practice, including concerning lack of engagement with their regulator, and in order to uphold the reputation of the profession, confidence in the CLC and to provide the deterrent effect, taking no further action was not appropriate in this case.

Reprimand

56. Bearing in mind the measures taken to avoid repetition of the misconduct, which had been taken at the respondents' own volition and prior to the hearing, and bearing in mind the efforts made to recompense LM, the panel considered carefully whether a reprimand would effectively meet the purpose of sanctions.

57. The panel noted from the Sanctions Guidance and that a reprimand might be most appropriate in cases:

- "where an act or omission needs particular attention drawn to it, with the intention that the behaviour of the individual/body is changed
- Where the misconduct has now been remediated
- Where the respondent has demonstrated insight"

58. The panel agreed that the respondents' misconduct needed particular attention drawn to it, and the very fact of and process of the proceedings had had an impact on the respondents, such that they clearly have taken steps to avoid any similar future issues arising.

59. It also noted that, whilst LM had said he remained financially out of pocket, significant steps had been taken by the respondents to remediate his particular loss, and there had been some reflection on their part during the hearing process.

60. The panel had concluded that the respondents had developing insight.

61. Therefore, a reprimand was an appropriate sanction in this case, but on its own did not sufficiently mark the seriousness of the misconduct.

Fine

62. In this case, whilst a fine is by nature punitive, it would also serve to reinforce the importance of compliance with your regulator, and uphold the reputation and process of regulation, if imposed alongside a reprimand. It would send an appropriate and necessary message to the profession and to the public, about the importance of compliance with the Code of Conduct and the standards required of Licensed Conveyancers.

Sanction imposed

63. The panel therefore concluded that the least sanction it could fairly and properly impose in this case was one of a reprimand and a fine in respect of Hobson and Latham, and Mr McDonagh. Having taken into consideration the Statements of Means submitted by the respondents, the fine imposed on Hobson and Latham was one of £30,000, and the fine imposed on Mr McDonagh was one of £10,000.
64. Noting that Ms Sweetman's own misconduct was limited to one area, but also reflecting her role and duties as a manager in Hobson and Latham, the panel decided that the least sanction it could fairly and properly impose on her was one of a reprimand.

Costs

65. The panel received a Schedule of Costs incurred by the CLC in bringing these proceedings in the sum of £25,959.00, which it carefully considered alongside the financial information provided by the respondents. It also bore in mind the financial penalties already imposed and decided to **award a contribution to costs by Hobson and Latham, in the sum of £20,000.00. No separate order for costs was made against Mr McDonagh or Ms Sweetman.**

VICTORIA GOODFELLOW
CAROLYN TETLOW
ROBERT MCKELLAR

Adjudication Panel Chair
Lay panel member
Licensed Conveyancer panel member