

ADJUDICATION PANEL HEARING

S26 ADMINISTRATION OF JUSTICE ACT 1987

IN THE MATTER OF:

COUNCIL FOR LICENCED CONVEYANCERS

Applicant

V

BRINDAJANI NICHOLSON (1)

JAYSHREE CHUDASAMA (2)

PATHMAJANI CHANDRASEKARAM (3)

QUALITY CONVEYANCING LIMITED (4)

Respondents

DETERMINATION AT FIRST STAGE

1. The Adjudication Panel convened on 16th to 20th January 2023 (“the hearing”) to hear allegations brought by the Council for Licensed Conveyancers (“CLC”) as against the Respondents Brindajani Nicholson (“BN”), Jayshree Chudasama (“JC”), Pathmajani Chandrasekaram (“PC”) and Quality Conveyancing Limited (“QC”).
2. This document relates to the first stage of those proceedings, up to and including the panel’s findings of misconduct. The hearing was then adjourned, to reconvene and consider what sanction, if any, to impose.
3. At the hearing the CLC were represented by Gethin Thomas of Counsel, and the Respondents attended and were represented by Ben Hubble KC.

Background

4. QC is, and has been, a CLC Recognised Body since 2012. BN is a managing partner and director of QC, and has been since March 2011. JC has worked at QC since October 2012, initially as an employee then as a director of QC since 2014. PC is the business development manager at QC and an employee. She has never been a director of QC.

5. BN is also the owner and sole director of PJBC Ltd ("PJBC"), which is a sole purpose vehicle used to purchase property. BN used QC to carry out the conveyancing for property purchases made by PJBC. The conveyancing was undertaken by JC.
6. PC is a solicitor, but did not undertake any legal work herself. She and her husband were employees of QC at the relevant time, working in Business Development. They were the first point of contact for new clients, and would deal with file opening and the preliminary matters prior to the conveyancing itself being undertaken. This included undertaking a preliminary risk assessment.
7. BN and PC are sisters. At some point from around 2009 BN began to lend PC money to help her with her financial difficulties. By 2020, BN and PC agreed that PC owed BN approximately £700,000.
8. CLC carried out two inspections of QC, in May 2017 and December 2020. The inspection in 2017 found that "overall the Practice (QC) is a well-run practice. From the review there is evidence to suggest that the Practice operates in compliance with the Code of Conduct in all areas inspected."
9. However, following the inspection in December 2020, a disciplinary referral report was made on 2 June 2021 in respect of a series of serious allegations, including alleged breaches of anti-money laundering requirements, and using a client account as a banking facility.
10. Preliminary investigation decisions were made by a single adjudicator between 5 and 9 August 2021, who found there was a case to answer in relation to the matters which now form the allegations. The single adjudicator dismissed three other allegations initially laid by the CLC. All four Respondents denied all the allegations.
11. The panel heard evidence on behalf of the CLC from Sebastian Harrison, a Regulatory Supervision Manager employed by the CLC who undertook the inspection of QC in 2020 and on whose inspection report the allegations were brought. After Mr Harrison's evidence had concluded, the panel were informed that he had been reading from notes on his laptop during cross-examination by Mr Hubble KC, a fact which was unknown at the time, but which was later brought to his attention by the Respondents who had observed it directly. The panel did not see the content of those notes, and they were not submitted in evidence. Mr Hubble KC later invited the panel to draw an inference from the fact that Mr Harrison had access to material when answering questions that others did not, and that his conduct was inappropriate. Mr Hubble KC and Mr Gethin Thomas were both provided with a copy of the notes which were described as an 'aide memoire'. Mr Hubble KC said that he did not wish to recall the witness. Whilst it was regrettable that Mr Harrison had access to notes to assist him in giving evidence that others did not, the panel did not find that his conduct was so inappropriate as to make him or his evidence unreliable.
12. The panel also heard evidence from the three Respondents, BN, JC and PC and the panel agreed that they could remain present throughout and listen to each other's evidence. They each submitted themselves to cross-examination, and the panel found them to be doing their best to assist the panel. It noted that each Respondent's evidence was consistent with the others.
13. Below are set out the allegations which the panel considered. Underneath each allegation is a summary of matters which were agreed by the parties and which therefore the panel did not have to make decisions on, but which it accepted and took into consideration when making its findings.

Allegation 1 (as against all four respondents)

(a) In relation to Matter 3609, loan repayments from Respondent 3 and Person B to Respondent 1 were permitted to come directly into the client account.

(b) In relation to Matter 3609, payments were made directly to Respondent 3 from the client account on 20 March 2020 (£25,000) and on 30 April 2020 (£134,000).

(i) The payments were unconnected to any underlying legal transaction.

(c) Consequently, Quality Conveyancing:

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

(ii) Failed to comply with specific requirements 9.1.2 and/or 9.1.3 and/or 12.2 of the previous Accounts Code (in force until 30 September 2020).

14. In relation to this allegation, the parties agreed that:

- a. BN and JC were legally responsible for the conduct of QC where it is relevant to this allegation.
- b. The Respondents agreed that BN intended to purchase a property, known as Matter 3609, via PBJC Limited. The initial payment into the client account allocated to Matter 3609 was made by PC via payments from her own bank account and her joint bank account with her husband.
- c. The first property purchase on Matter 3609 was aborted after the mortgage lender declined to lend on the property. After the purchase aborted, the funds were retained on the Matter 3609 client account.
- d. BN then attempted to purchase a different property again via PBJC Limited, using the same client account and Matter 3609. In the course of this purchase, two payments were made from the client ledger directly to PC (being £25,000 on 20 March 2020 and £134,000 on 30 April 2020). These were recorded in the client ledger as “returning monies” and “return of monies”. This transaction later aborted.

Panel’s findings

- The panel noted that BN and PC, in their evidence, agreed that PC and her husband made loan repayments to BN directly into the QC Matter 3609 PBJC Limited client account. A schedule of payments showed that multiple substantial sums were paid into this client account during the period 17/07/2019 to 13/10/20 from PC and her husband’s joint account, Stripez Limited (PC’s company) and from PC’s husband’s sole account. The panel noted that PC and her husband were not the client for this account and they were not party to the two aborted and one completed property purchases. The panel noted that the payments were made before a sale was agreed on the first property which was Matter 3609. The panel therefore found that the purpose of the payment was repayment of a loan rather than a payment towards a particular transaction, as no transaction was at that time ongoing.
- The panel also noted that at the time when the two payments were made to PC from the Matter 3609 client account, the Respondents accepted that they were made because of the PC’s anxiety about financial instability during the Covid-19 pandemic, and not in furtherance of an underlying legal transaction for which QC was acting.
- In their oral evidence, BN and JC agreed that to permit third party payments into and out of a client account in those circumstances was not their usual practice, and the panel has

concluded that the payments were only allowed to be made because BN and PC are sisters. It concluded that BN effectively used that client account as a personal banking facility, to accept money into by way of savings for a forthcoming property purchase that she was interested in and make funds available to PC when they were not required for a transaction.

- The panel noted that in a proposal form for professional indemnity insurance, BN indicated that the practice did not provide professional services for any client in which any Manager or Director had a financial interest, although that was clearly the case in relation to this ongoing matter.
 - In acting in such a way, the panel found that this was a breach of the requirements of independence and integrity, and a breach of a position of the trust placed in professionals. The panel found that the Respondents had allowed their independence to be compromised because they had treated the Matter 3609 PBJC Limited client account differently to how they would have allowed other, independent, clients' matters to be treated. They had breached the Accounts Code as alleged, had failed to act with diligence in relation to that Code and therefore there had been a breach of Overriding Principles 1 and 2 of the Code of Conduct.
15. The panel did not find that there was a breach of Overriding Principle 3 – acting in the best interests of your client. In effect BN was the client in this situation, and there was no direct detriment to her interests.
 16. It noted that whilst BN and JC managed QC, had oversight of the accounts as directors, and accepted responsibility for the actions of QC, PC did not have any involvement with the management of QC or its accounts.
 17. The panel therefore found the allegation **proved as against BN, JC and QC but not proved as against PC.**

Allegation 2 (BN and JC only)

a) In relation to Matter 3609 you provided a written answer to the CLC inspection that you knew, or ought to have known was false and/or misleading in that:

(i) Payments were directly made to Respondent 3 from the client account on 20 March 2020 (£25,000) and on 30 April 2020 (£134,000).

(ii) In written answers dated 26 January 2021, in response to being asked the reason for these payments, you stated that "During the pandemic [Respondent 3] had asked [Respondent 1] to return some of the loan repayments until such time as she would need it back. [Respondent 1] was happy to help out and as long as a repayment plan was put in place."

(iii) The written answers did not mention that Respondent 3 transferred £134,000 into the practice's office account in six payments from the first payment on 4 May 2020 to the final payment on 11 May 2020.

(b) Consequently, you:

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

18. In relation to this allegation, the parties agreed that:
- a. between 4 May and 11 May 2020, PC transferred £134,000 to the office account of QC in six separate payments.
 - b. in response to a query from the CLC about the transfers of £25,000 and £134,000 to PC from the Matter 3609 client account in March and April 2020, BN wrote in an email to the CLC on 26 January 2021 that *"During the pandemic [Respondent 3] had asked [Respondent 1] to return some of the loan repayments until such time as she would need it back. [Respondent 1] was happy to help out and as long as a repayment plan was put in place."*

Panel's findings

19. The panel is aware that this (together with allegation 3) was one of the most serious allegations faced by the Respondents, and therefore looked for particularly cogent evidence before reaching its decision.
20. In considering the evidence on which the CLC relied the panel looked at the question asked by Mr Harrison which prompted the answer that is the subject of this allegation. It noted that the question specifically asks, *"What was the reason behind returning these particular amounts of money just the [PC] at this particular time in the transaction?"*
21. The CLC's case in this allegation was posited on the proposition that the Respondents should have offered more information than was being specifically asked, in order that their answer was not misleading. The panel noted that in his evidence, Mr Harrison reflected that the question should perhaps have been worded differently. The panel agrees, and whilst the Respondents' answer was perhaps not as comprehensive as it might have been, in that if they had offered more information there could have been no criticism of them, their answer dealt with the specific matters about which they were being asked. Mr Harrison's question asked for specificity.
22. The panel also notes that it is accepted that the CLC was already in possession of the alleged omitted details (i.e. the subsequent payment of £137k into the office account by Respondent 3) having previously been provided with this information by the firm in response to earlier requests for information.
23. Therefore, the panel concluded that the Respondents' answer to the question was not misleading.
24. The panel, having accepted that there was a loan made by BN to PC, and that the transfer of monies related primarily to that loan, found that the answer was not false.
25. The panel therefore found this allegation **not proved as against BN and JC.**

Allegation 3 (BN and JC only)

(a) Your conduct in relation to allegation [2] was dishonest and/or a deliberate or reckless breach of the Code of Conduct.

26. The panel applied the two-stage test set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*.
27. Having found allegation 2 not proved as false and misleading, the panel found that the actual state of BN's and JC's knowledge or belief of the facts of the answer given to Mr Harrison was it was factually correct. The panel has agreed that it was factually correct, and

therefore did not find that their conduct was dishonest applying the standards of ordinary decent people.

28. The panel therefore found this allegation **not proved as against BN and JC**.

Allegation 4 (BN, JC and QC only)

(a) In relation to Matter 3609, Quality Conveyancing held money in the client account in the following periods without returning it to the client:

(i) After the purchase of 60 Hartington Road went abortive;

(ii) After the purchase of 8 Eastbourne Road went abortive.

(b) Consequently, Quality Conveyancing:

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

(ii) Failed to comply with specific requirement 9.1.7 of the previous Accounts Code

29. In relation to this allegation, the parties agreed that the monies were retained in the same client ledger.

Panel's findings

30. So far as allegation 4(a)(i) is concerned, the panel noted that, according to the agreed chronology, the sales memo for the second transaction (Eastbourne Road) was received on 29 January 2020 and the first purchase of Hartington Road was aborted on 31 January 2020. There was therefore in fact no overlap and so the panel did not find that the Respondents had failed to comply with the relevant Accounts Code. Consequently, this part of the allegation was **not found proved**.
31. So far as allegation 4(a)(ii) is concerned, however, the period when QC held money in the client account without returning it to the client is at least from 19 May 2020 (when the purchase of 8 Eastbourne Road went abortive) to 13 June 2020 at the earliest (when terms were agreed, subject to contract, for the purchase of 28 Hartington Road) if not until funds were required for the deposit payment made on 9 September 2020. In addition, the purchase of 28 Hartington Road was undertaken by a different Special Purpose Vehicle incorporated specifically for the purchase of that third property, and therefore effectively a new client.
32. The Respondents argued that there was an ongoing intention to purchase a property, and there was an ongoing 'retainer'. The panel did not accept either of those arguments as justifying retaining client monies that should have been returned to the client. So far as there being a purchase in contemplation, the Respondents accepted in their evidence that they would and should not permit a client to place money in client account in contemplation of a possible future transaction, and so it should not have happened in these circumstances either. It was the evidence of the Respondents that usually the sums of money being held in the client account of Matter 3609 should only ordinarily be placed on account shortly prior to exchange, which in relation to the third purchase was on 9 September 2020.
33. So far as there being an ongoing 'retainer', not only is that not set out in the provisions of the Accounts Code as being a reason for retaining monies without an underlying transaction,

but the client for the third purchase was a different company to that which instructed the firm on the second purchase. Any 'retainer' therefore was at an end when the second transaction aborted.

34. Therefore, the panel was satisfied that the monies were held in client account without an underlying transaction and **found allegation 4(a)(ii) proved.**
35. Having considered the Respondents' conduct as found proved, as against the Code of Conduct, the panel found that there were **breaches of Overriding Principle 1(a) and (b), and Overriding Principle 2.2(i) and 2.2(g).** The panel did not find a breach of Overriding Principle 3 because there was no detriment to the client, namely BN in the form of her two Special Purpose Vehicle companies.
36. The panel found that the Respondents' conduct was a **breach of the relevant Accounts Code rule 9.1.7.**

Allegation 5 – as against all four respondents

(a) Quality Conveyancing did not undertake adequate anti-money laundering risk assessments in the following matters:

- (i) 3564;*
- (ii) 3609;*
- (iii) 3773;*
- (iv) 3934;*
- (v) 3977;*
- (vi) 4196;*
- (vii) 4232;*
- (viii) 4249;*
- (ix) 4261.*

(b) Consequently, Quality Conveyancing:

- (i) Breached overriding principles 1 and/or 2 of the Code of Conduct; and/or*
- (ii) Breached principles 3 and/or 4 and/or 5 of the Anti-Money Laundering Combating Terrorist Financing Code; and/or*
- (iii) Failed to comply with the specific requirement at paragraph 6 and/or paragraph 7 and/or paragraph 9 (c) and/or paragraph 9 (e) of the Anti-Money Laundering & Combating Terrorist Financing Code.*

37. In relation to this allegation, the parties agreed that the Anti-Money Laundering ("AML") risk assessment documents created upon opening of the files were not themselves directly updated throughout the course of the matter, and they stated that the level of risk was "no risk".

Panel's findings

38. The panel noted the evidence of PC that she and her husband were employed to take the initial call from a new client, give a quote for fees, accept instructions and undertake the file opening and preliminary checks, before handing over the file to a fee earner. She and her husband were the Business Development and File Opening team.
39. The panel saw the QC 'risk assessment' forms on the files, and found that the questions which formed part of the assessment did not amount to an adequate assessment of the risk of money laundering if funds were to be accepted onto client account. For example, the form did not address source of funds and/or wealth. The panel found that the Respondents did not appear to have a clear understanding of what was required at the time of accepting funds onto client account, in order to carry out an adequate assessment of the risk of the client account being used for money laundering.
40. The panel noted that there was very little if any evidence contemporaneous with the acceptance of instructions and funds onto client accounts. The panel saw copies of passports/ID, bank statements and Veriphy reports for some files but the panel found that even where these had been obtained prior to accepting funds, these documents, in themselves, did not amount to an adequate risk assessment.
41. The panel accepts that at the material time, industry compliance with the AML requirements was known to be variable and that the CLC's guidance to firms is now much more detailed (including providing an example template risk assessment document). However, there was a clear requirement for firms to be undertaking adequate risk assessments and the panel found that this was not the case at QC.
42. Therefore, in relation to allegation 5 in its entirety, the panel **found the allegation proved (included the stated breaches of codes) as against BN, JC and QC**. It did not find the **allegation proved as against PC**, because she was an employee of the firm rather than a director with responsibility for the firm's compliance with the required codes.

Allegation 6 – as against all four respondents

(This allegation was subject to a minor amendment, simply in relation to the amounts detailed at (a)(i) and (ii), which was not objected to and which the panel allowed. The amounts set out below are the correct ones, and those upon which the panel reached its findings.)

a) In relation to matter 3609, Quality Conveyancing did not record and/or undertake source of funds checks in relation to the following funds:

(i) Respondent 3 and Person B (£327,000);

(ii) Respondent 3: (£65,000);

(iii) Person B: (£195,426);

(iv) Company A: (£80,250);

v) Person D: (£25,000).

(b) Consequently, Quality Conveyancing:

- (i) Breached overriding principles 1 and/or 2 of the Code of Conduct; and/or*
- (ii) Breached principles 2 and/or 3 and/or 4 and/or 5 of the Anti-Money Laundering & Combating Terrorist Financing Code; and/or*
- (iii) Failed to comply with specific requirement 11.3 of the Anti-Money Laundering & Combating Terrorist Financing Code*

43. In relation to this allegation, it is agreed between the parties that:
- a. Separate source of funds documentation in relation to the parties involved in the purchase of Matter 3609 was not retained in the permanent matter file.
 - b. JC recorded a note on the file, dated 13 July 2020, that “no proof of funds requested from the client, she is a Director of this Firm who I have worked with for 9 years”.

The panel’s findings

- 44. The Respondents, and particularly JC, relied on her personal knowledge of PC and her husband (Respondent 3 and Person B), BN’s husband (Person D) and Company A which was company owned by PC.
- 45. However, in her oral evidence cross examination it was clear that in fact her knowledge about source of funds and/or source of wealth was superficial and insufficient for the purposes of Anti-Money Laundering checks.
- 46. There were a number of reasons why these particular transactions should have had close scrutiny, including the unusual financial arrangements between PC and BN with PC repaying a loan into a client account and the large sums of money being paid in from several different sources. The panel concluded that any competent conveyancer would have considered a source of funds check was necessary.
- 47. The panel **therefore found the allegation proved in its entirety as against JC, as she was the fee earner responsible for the case, and as against BN as she was the Money Laundering Reporting Officer with responsibility for oversight of the application of appropriate Anti Money Laundering Checks. It follows that the allegation is also proved as against QC.**
- 48. The panel **did not find the allegation proved against PC.** She had no responsibility for the undertaking of Anti Money Laundering checks within the firm.
- 49. The conduct found proved against the first, second and fourth Respondents placed them in **breach of Overriding Principles 1b), 1m), 2f) 2i) and 2o), and paragraphs 2, 3, 5 and 11c of the Anti-Money Laundering Regulations** (there is in fact no 11(3) as per the allegation, but the panel considered this to be an oversight by the CLC).

Allegation 7 (as against all four respondents)

- (a) Between June 2017 and November 2020, Quality Conveyancing failed to provide employees and/or managers at the Practice with any and/or adequate training in relation to AML.*
- (b) Consequently, Quality Conveyancing:*
 - (i) Breached overriding principles 1 and/or 2 of the Code of Conduct; and/or*
 - (ii) Breached principles 2 and/or 3 and/or 4 and/or 5 of the Anti-Money Laundering & Combating Terrorist Financing Code; and/or*

- (ii) *Failed to comply with specific requirement 9(b) of the Anti-Money Laundering & Combating Terrorist Financing Code.*

50. In relation to this allegation, it is agreed between the parties that each Respondent held a responsibility to remain adequately up-to-date with AML training.

Panel's findings

- 51. The panel noted that whilst there were concerns about sufficient training not having been undertaken, following remedial action taken by the Respondents to properly record the training that they had undertaken, the panel was satisfied that a considerable amount of training was undertaken. It also noted that the CLC did not dispute that any of the recorded training had been actually completed.
- 52. However, it was evident from the oral evidence of BN, JC and PC that they did not have sufficient understanding of the requirements of effective anti-money laundering checks, particularly around source of fund checks and the recording of proper risk assessments. Adequate risk assessments were not undertaken or recorded. The panel therefore concluded that the training undertaken by the Respondents was therefore not adequate, and **found this allegation proved in its entirety in relation to BN, JC and QC but not found proved as against PC** as she was an employee and did not have a duty to provide training to other employees and managers.

Allegation 8 (BN only)

(a) On 14 May 2020, you signed a proposal form for the purposes of obtaining professional indemnity insurance.

(b) The following matters were not disclosed to the Practice's insurer, as part of the requirements of the application:

- (i) Respondent 3's Disciplinary tribunal hearing before the Solicitor's Disciplinary Tribunal;*

(c) Consequently, you demonstrated recklessness and:

- (i) Breached overriding principles 1 and/or 2 and/or 3 of the Code of Conduct.*

53. In relation to this allegation, it is agreed between the parties that:

- a. The AmTrust professional indemnity insurance renewal form requested disclosure of material information relating to both managers' and employees' disciplinary records with the CLC, the Solicitors Disciplinary Tribunal or other regulator].
- b. In May 2022 when completing the proposal form, BN did not state that PC had been subject to a sanction from the Solicitors Disciplinary Tribunal in 2011.

Panel's findings

- 54. The panel heard evidence from BN that she understood that QC's insurers were already aware of PC's disciplinary history because it had previously been disclosed, and that the relevant matter was of some considerable age and, when she later discussed it with her broker, did not in fact impact on the provision of or cost of QC's insurance form was reckless.
- 55. In her evidence she confirmed she was aware of the importance of properly completing insurance proposal forms. She had previously disclosed the information in preceding years and therefore knew it was relevant and required disclosure. Furthermore, the panel saw

evidence in other forms completed by BN within the bundles of documents agreed by the parties and placed before it, of BN not properly and comprehensively completing important forms. BN also described to the panel the difficult circumstances in which she found herself at the outset of the COVID-19 pandemic. Whilst the panel sympathised with BN's difficulties, it did not find that this amounted to a defence to the allegation or sufficiently explained why such important documents were not properly and comprehensively completed.

56. Therefore, **the panel found this allegation proved. BN's conduct breached Overriding Principles 1b) and 2(i).**

Allegation 9 (BN, JC and QC only)

a) *Quality Conveyancing charged fees for professional indemnity insurance without specifying the cost within the estimate for the client on the following matters:*

- (i) 3564;*
- (ii) 3818;*
- (iii) 3934;*
- (iv) 4196;*
- (v) 4232;*
- (vi) 4249;*
- (vii) 4261.*

(b) Quality Conveyancing did not explain to clients that the original estimate would be exceeded in the above matters and/or did not produce a revised estimate detailing the costs.

(c) Consequently, Quality Conveyancing:

- (i) Breached overriding principles 1 and/or 2 and/or 3 of the code of conduct; and/or*
- (ii) Breached principles 4 and/or 5 and/or 6 of the Estimates and Terms of Engagement Code; and/or*
- (iii) Failed to comply with specific requirement 8.3 and/or 8.5 and/or 9 of the Estimates and Terms of Engagement Code.*

57. The Respondents produced evidence of statements from the clients whose matters were referred to in the allegation, confirming that they understood that they were required to make a contribution towards the professional indemnity insurance for the firm, they were satisfied with the costs incurred and understood that the original estimate they received at the outset of the transaction could be exceeded. The panel also saw the client care documentation which set out the potential for an increased fee in some cases post-instructions. The panel accepted this evidence, and noted the CLC did not challenge its veracity.

58. Therefore, the panel **did not find this allegation proved.**

Allegation 10 (BN, JC and QC)

a) *Quality Conveyancing held money in its client account in relation to matter 3564 from 18 October 2019, when the matter completed, until 8 January 2021.*

- (i) *There was no underlying legal transaction that required the funds to be held during this time period.*

(b) Consequently, Quality Conveyancing:

- (i) *Breached overriding principles 1 and/or 2 and/or 3 of the Code of Conduct; and/or*
- (ii) *Failed to comply with specific requirement 2.2 and/or 4.3 of the Accounts Code.*

Panel's findings

- 59. The panel noted that this allegation was similar in nature to allegation 4, in that it related to holding client money in client account when there was no underlying transaction.
- 60. In her oral evidence, the panel heard from JC that she knew the client well, as he had previously instructed the firm and referred clients to her. She also told the panel that when the client's property purchase had completed, the client had informed her that he would be looking to buy another property, and so wanted the residual funds to remain in his client account in anticipation of that further transaction.
- 61. The panel heard evidence from the Respondents that it was not their usual practice to retain client monies without an underlying transaction. In this case JC gave evidence that she had done so on the express instructions of the client in anticipation of future property purchase. The monies were returned on 8 January 2021. In March 2021 the client instructed the firm on a new purchase, some five months after the first transaction had completed.
- 62. The panel noted the considerable length of time in which the monies were held without an underlying transaction, which was concerning.
- 63. As with allegation 4, the panel found that holding monies in client account without an underlying transaction was **in breach of the Accounts Code, in this allegation specific requirements 2.2 and 4.3.**
- 64. The panel therefore **found the allegation proved in its entirety, as against all three of the Respondents**, including BN as the panel heard from the Respondents that not only was she a director of the firm but also the director with direct oversight and responsibility for the firm's accounts.
- 65. The Respondents' conduct also **breached Overriding Principles 1(b) and 2(i) of the Code of Conduct.**

Allegation 11 (Re BN, JC and QC)

(a) Quality Conveyancing, in relation to matter 4232, did not record and/or undertake source of funds and/or source of wealth checks in relation to the following funds:

- (i) *A gift of £440,416.48 from Donor A;*
- (ii) *Approximately £51,656 provided by the clients.*

(b) Consequently, Quality Conveyancing:

- (i) *Breached overriding principles 1 and/or 2 of the Code of Conduct; and/or*
- (ii) *Breached principles 2 and/or 3 and/or 4 and/or 5 of the Anti-Money Laundering &*

Combating Terrorist Financing Code; and/or

(ii) *Breached specific requirement 11.3 of the Anti-Money Laundering & Combating Terrorist Financing Code.*

66. All four Respondents denied all the allegations.

67. Some facts were agreed, namely:

- a. So far as Anti Money Laundering risk assessment documents created at the opening of the files detailed in allegation 5, it was agreed by the parties that those risk assessment documents were not directly updated throughout the course of the matter, and that they stated that the level of risk on those files was “no risk”.

Panel’s findings

68. In relation to this allegation, the panel heard evidence from JC about her engagement with her client, and a FaceTime call with the donor as well as Google research she undertook. The panel found her evidence did not amount to source of funds or source of wealth checks in a case where, in its judgement, enhanced due diligence was required, noting:

- a. This was a high value transfer by a third-party donor
- b. The gift was from a foreign jurisdiction
- c. The information given to JC was relied on as self-report without any secondary sources of information to corroborate what was said.

69. The panel found that the following aspects of the checks into the transaction were particularly concerning:

- a. There was no record kept of searches made
- b. A simple “Google” search was undertaken by JC, which was in itself an unreliable tool to verify the information given to check against potential money laundering
- c. The bank account statement relied upon by JC did not disclose a balance which would justify or explain the amount of the gift, and therefore there must have been other sources of funds, which were not ascertained or checked
- d. At best this was an attempt at a check on proof of (some of) the funds, rather than source of wealth.

70. The panel found that, in light of the concerns about the transfer of £440,416.58 (allegation 11(a)(i)), the transfer into client account of £51,656.00 should also have been subject to similar scrutiny. Whilst JC ascertained the employment status of the clients, she did not undertake an adequate source of funds check or understand how the funds could be accrued from what appeared to be relatively low levels of income. In relation to the bank statements she saw, it was unclear to the panel what the various amounts which were deposited related to, and where and what the original source for those deposits was. JC was unable to tell the panel how she had verified those various deposits, or what they related to.

71. Given that the necessary checks were not undertaken, it follows that a proper assessment of risk was not undertaken.

72. The panel concluded that in a case where there was a foreign gift of high value, from a country with an informal banking system (on JC’s evidence), a competent conveyancer would have considered that enhanced due diligence was required.

73. Therefore, the panel **found that the allegation was proved, against JC as the fee earner with conduct of the case, BN as the Money Laundering Reporting Officer and a fellow director, and QC as the firm.**

74. The conduct of the Respondents as found proved amounted **to a breach of the Overriding Principles 1(b), 1(m) and 2.2(f) and (i), as well as principles 2, 3, 4 and 5 and specific requirement 11(c) of the Anti-Money Laundering and Combating Terrorism Finance Code**

SECOND STAGE HEARING – 14th March 2023

On 14th March 2023 the panel reconvened to hear submissions on sanctions and costs. The Respondents attended, and were represented by Mr Hubble KC. The CLC was represented by Ms Ellson, who was supported by Ms Rogers of Field Fisher.

- Submissions on sanctions and costs from Mr Thomas, Counsel for the CLC
- Submissions on sanctions and costs from Mr Hubble KC, Counsel for the Respondents
- A bundle of relevant authorities, submitted by Mr Thomas on behalf of the CLC
- Witness statements from each of the Respondents
- Statements of Means from Ms Nicholson and Ms Chudasama
- A bundle of correspondence between the Respondents and the CLC
- Schedule of costs of the CLC
- Schedule of costs of the Respondents

The panel heard submissions and decided on sanctions first, then on costs. It announced its decision on sanction before then hearing submissions on costs.

SANCTION STAGE

Purpose

The panel first considered the purpose of sanctions in this case. It identified the following purposes of imposing a sanction on the Respondents:

- To uphold the CLC's regulatory objective of protecting the public and consumers of legal services;
- To maintain and uphold public confidence in the reputation of the profession;
- To declare and uphold proper standards of conduct; and
- To promote public and professional confidence in the CLC's complaints and disciplinary processes.
- To mark the seriousness (actual or potential) of the proven misconduct.

Proportionality

Throughout its consideration of sanctions, the panel bore in mind proportionality. It was mindful of the need to achieve its purpose with the least restrictive sanction.

Harm

The panel consider harm as meaning the impact of misconduct found on specific clients, clients in general, and on the profession.

In assessing harm caused by the Respondents, it found the following:

- There was no evidence of actual harm to an individual client.
- There was harm to the reputation of the profession across all the allegations found proved.
- The misconduct arising from BN's erroneous completion of the Indemnity insurance proposal form had potential for direct significant harm, but also harm to the reputation of the profession. Insurers are regularly reassessing risk in considering what is important to them and how they will weigh any disclosure, and there was no certainty as to how they would have viewed the non-disclosure of PC's disciplinary record had the practice made a claim before the error was rectified.
- At very least there was a risk of the practice being underinsured or having invalid insurance; valid insurance is crucially important to clients and could have had widespread implications.
- When considering the harm caused by BN's actions in relation to the insurance form, the panel found it to have been a reckless action rather than deliberate.
- Money laundering is an area of particular concern within the conveyancing profession, which requires particular scrutiny, and conveyancing practices are a target for those intending to launder money. Therefore, any failure to have robust and consistent AML procedures and checks across the practice must amount to a potential for serious harm to the reputation of the profession and to all clients.

Insight

- The evidence of the Respondents at the hearing in January 2023 demonstrated a real lack of insight into the requirements of proper AML procedures and checks, as well as of the inappropriate nature of misconduct found proved in matter 3609.
- There continues to be some lack of insight into the seriousness of BN's recklessness with the insurance form; for example in her evidence at the January 2023 hearing there remained some dispute about what "professional services" amounted to in one of the questions on the forms she completed. The panel noted that there had been more than one error in the forms contained within the evidence bundles. The panel has not heard evidence from BN which satisfied the panel that she understands the level of harm potentially caused by such actions, as the panel assess it to be.
- The panel was careful not to equate lack of insight with a defence of the allegations, and the panel has borne in mind that there were allegations of dishonesty covering allegations which were found proved but where dishonesty was not found.
- However, in relation to the allegations found proved, the panel found the evidence against the Respondents to be strong and compelling, and the Respondents were clear that they did not accept any of their actions as amounting to misconduct. This demonstrates a lack of insight as of January 2023.
- The panel has borne in mind the steps taken since January 2023, which go some way to increase the insight they present as of today.
- However, the panel bears in mind that some of the evidence provided today relates to steps taken prior to January 2023, and the panel has found that at that time insight was lacking.

The public interest

- There is a clear public interest in taking disciplinary action against professionals whose misconduct relates to money laundering checks, securing and maintaining appropriate insurance, and managing finances and client money properly in circumstances where the accounts rules were breached.

Aggravating factors

- Failure to self-report to the CLC.
- Likelihood of repetition – the panel accepts that the same scenarios are unlikely to be repeated, but had some concern about the lack of insight particularly into the risks around inadequate money laundering checks. The instruction of firms to assist and support the practice, whilst helpful, is not a replacement for a sufficiently strong culture and robust understanding of the risks and requirements by the directors.
- Motivated by desire for personal advantage – the panel found this applied to the misconduct involving matter 3609. In their own evidence the Respondents accepted that this transaction (where BN was the client) was dealt with in a different way to how other clients matters would have been conducted.
- Lack of insight and learning was present, but was considered in relation to insight and was therefore not ‘double-counted’.
- Serious breach of regulatory requirements.
- Serious financial mismanagement in relation to the use of client account in matter 3609.
- A repeated failure or pattern of behaviour.
- Significant risk of harm to others – again present, but was considered in relation to harm and was therefore not ‘double-counted’.

Mitigating factors

- The Respondents had taken a responsible attitude to identifying additional support to help them comply with regulatory requirements.
- The panel saw evidence of much improved risk assessment forms and policy.
- There had been no previous findings of misconduct in relation to the Respondents against whom sanctions were being considered.
- There were clear demonstrations of remorse.
- The panel accepted relevant positive references.
- Relevant personal mitigation, contained within the Respondents’ written statements.

The panel then considered the sanctions ladder, starting with the least restrictive sanction, and bearing in mind the purpose of sanctions is not to punish. It bore in mind its power to impose more than one sanction, if it found it appropriate to do so.

No Further Action

Taking no further action would not mark the seriousness of the panel’s findings or purpose of sanctions

Reprimand

The panel considered that **a reprimand was an appropriate sanction against JC and BN**, which would mark the seriousness of their misconduct and act as a deterrent both to the Respondents and the wider profession in relation to any potential future misconduct. The panel did not however consider that the imposition of a reprimand alone would sufficiently meet the purpose of sanctions.

Licence conditions

The CLC invited the panel to consider imposing conditions on the licences of the Respondents, including a restriction on managing practices without prior approval of the CLC, and in relation to anti-money laundering requirements. The Respondents submitted that licence conditions would be overly onerous, restrict their ability to practice, and would not fulfil the purpose of sanctions in this case.

The panel agreed that it was important, in imposing sanctions, not to unreasonably restrict the Respondents' ability to practice. However, in order to uphold the purpose of public protection and ensure sustained and consistent compliance with Anti-Money laundering regulations and rules, the panel decided to **impose one condition on the practice licence of QC, namely:**

- **To provide the CLC with an independent audit report of QC's compliance with anti-money laundering requirements. The independent auditors are to be agreed between the CLC and the Respondents. The audit is to be undertaken in October 2024.**

Fine

In order to mark the additional levels of responsibility and gravity in relation to those allegations found proved against BN and QC, the panel also decided to impose a fine on those two Respondents only, without which the seriousness of the misconduct would not be properly reflected. The panel took into consideration the submitted statement of means and copy of the practice's draft accounts, and was satisfied that **a fine of £5,000 to BN and £10,000 to QC** would not be so onerous as to restrict their ability to practice.

COSTS STAGE

The panel then went on to consider whether to use its discretion under s26(2A) of the Administration of Justice Act 1985 and order a payment of costs, by the Respondents to the CLC or vice versa.

The panel heard applications for:

- An order that the BN, JC and QC jointly and severally pay the total costs of the CLC in bringing these proceedings. The total sum claimed was £127,611.00.
- An order that the CLC pay the costs incurred by PC, following none of the allegations against her being proved.
- An order that the CLC pay a percentage of the costs incurred by BN, JC and QC because a significant and serious allegation of dishonesty was not found proved, which had caused the majority of the work to be undertaken and had informed decisions on how the case was prepared and presented leading to increased costs on the part of the respondents.

- In essence, the Respondents' submission was the amount of costs to be paid by them to the CLC be offset against their costs to be paid by the CLC.

The panel heard extensive submissions on the costs applications, which are not rehearsed here, and was referred to three authorities (*Baxendale-Walker v Law Society* [2007] EWCA Civ 233, *Beresford v SRA* [2009] EWHC 3155 (Admin) and *Broomhead v SRA* [2014] EWHC 2772 (Admin)). In addition, Mr Hubble KC referred the panel to the SDT guidelines on sanctions, which sets out a helpful compendium on the law in relation to applications for costs in regulatory proceedings.

The panel first considered the applications made on behalf of the Respondents, for the CLC to pay towards their costs. The panel reached the following conclusions:

- PC successfully defended the allegations against her and incurred costs in doing so.
- However, she was involved in the practice's anti money laundering training, the on-boarding of new business, and asking the questions of clients which formed the risk assessment, so was an integral part of the business which was under scrutiny. Therefore, her role was such that a panel needed to decide whether her actions amounted to the conduct alleged.
- The allegations against the other Respondents in relation to dishonesty were serious and ones which the panel applied particular scrutiny to. Whilst the panel did not find dishonesty, it does not follow that there was no justification for making the allegations, and the panel was satisfied that all the allegations, both those against PC and against the other Respondents, were properly brought and reasonably conducted.
- The panel agreed with the principle outlined in *Broomhead v SRA* [2014] EWHC 2772 (Admin) at para 39 that

"The propriety of bringing unsuccessful charges is a good reason why the SRA should not have to bear the costs of the solicitor. The SRA is, after all, a regulator and should not be dissuaded from carrying out its task fearlessly because of a concern that it would have to pay costs if unsuccessful"

Therefore, the panel decided to make no order for the CLC to pay the costs of PC or the remaining three Respondents.

When deciding the application for an order for the payment of CLC costs, the panel found as matters of principle;

- this case was of such seriousness that the panel would not have endorsed an agreed outcome even with admissions and without the dishonesty allegation being laid. The public interest required a public hearing.
- Where allegations were not found, they were still properly brought.
- Dishonesty was not the only serious aspect of conduct under consideration, and there were a number of other very serious matters.
- There should be a reflection of the fact that the CLC was unsuccessful in relation to some of its allegations.
- So far as the work undertaken to prove the allegations against PC, it would have largely been undertaken in any event to prove the allegations against

the other Respondents, particularly QC Whilst there may have been some less work, it would not have been substantial.

- The panel does not accept that no admissions could have been made by the Respondents because of the dishonesty allegations remaining, and was not persuaded that the fact that there would in any event be a hearing of the dishonesty allegations was a reason not to make sensible admissions.
- A third of the allegations brought individually were not proved. (33 individual allegations, 22 proved). No allegations were proved against one respondent, PC.
- Whilst a third of the allegations were found not proved, the panel did not consider that those unproved allegations generated as much as a third of the CLCs costs in this matter.

Balancing these factors, the panel was satisfied that there should be some reduction in the costs payable to the CLC by the Respondents.

Based on the matters found proved, the starting point was that the Respondents should pay at least two thirds of the CLC costs.

Taking then into consideration the core preparation work involved in preparing and bringing these proceedings an appropriate additional amount to award would be half of the remaining amount, namely a further sixth of the costs.

Therefore, the appropriate amount to award is five sixths of the CLC costs claimed.

In relation to quantum of the CLC's costs, the panel carefully considered the arguments in relation to quantum and are not persuaded that the amounts claimed by the CLC are excessive in this case.

Therefore, the panel orders that BN, JC and QC pay to the CLC in relation to their costs, the sum of £106,342.50. We can find no reason not to make that order to be payable jointly and severally and so that will be our order.

VICTORIA GOODFELLOW

Adjudication Panel Chair

ISOBEL LEAVISS

Lay panel member

CATHERINE FEWINGS

Licensed Conveyancer panel member

5 April 2023