

COUNCIL FOR LICENCED CONVEYANCERS

ADJUDICATION PANEL

IN THE MATTER OF:

CONVEY LAW Ltd

Appellant

V

COUNCIL FOR LICENSED CONVEYANCERS

Respondent

DECISION ON COSTS

Background

1. The Appellant is a Licensed Body, regulated by the Respondent.
2. On 3 February 2022, the Respondent issued the Appellant with a Warning Notice, setting out its intention to impose a sanction in the form of a financial penalty upon it in respect of breaches of the Respondent's Code of Conduct.
3. The Appellant responded to the Warning Notice on 10 March 2022 disputing the matters set out in the Warning Notice. On 29 April 2022, the Respondent then issued the Appellant with a Enforcement Decision Notice.
4. On 25 May 2022, the Appellant notified the Respondent that it intended to appeal the Enforcement Decision Notice. The Respondent forwarded that notification to the Adjudication Panel.
5. On 26 May 2022, the Adjudication Panel Chair set directions for the Appellant to submit a formal Notice of Appeal. Those directions were complied with on 1 June 2022. Further directions were set listing the appeal for hearing.
6. The hearing of the appeal was listed first on 16 August 2022, but relisted for 24 November 2022 when it became apparent that the Appellant was unavailable on 16 August 2022.
7. A case management hearing was listed and took place on 31 October 2022. At that hearing further directions were set to ensure the appeal was ready to be heard on 24 November 2022. At that hearing Mr Davies, Managing Director of the Appellant Licensed Body, appeared on behalf of the Appellant, and the Respondent was represented by Ms Ellson of Fieldfisher LLP, a law firm instructed on its behalf.
8. On 7 November 2022 the Appellant confirmed that it had instructed Blake Morgan as its legal representative, and requesting an adjournment of the 24 November 2022 hearing, as there was insufficient time to prepare given their recent instruction. That request was

opposed by the Respondent but acceded to by the Adjudication Panel Chair as being in the interests of justice.

9. On 5 December 2022, the Appellant, through its legal representative, withdrew the appeal. The Adjudication Panel chair accepted the withdrawal on behalf of the Panel. The Respondent indicated that it intended to seek its costs in relation to the withdrawn appeal. Directions were set for written submissions by the parties on the issue of costs, and it was agreed by consent that the Adjudication Panel chair could decide the matter without a hearing and sitting alone as the Adjudication Panel, under Rule 21.1(a) Adjudication Panel Procedure Rules 2015 (as amended).
10. The parties each submitted written submissions together with appendices of documents on which they sought to rely, which have been carefully considered by the Adjudication Panel.

Applications

11. The Appellant seeks an order that the Respondent pays its costs in the sum of £14,700 plus VAT on the basis that the Respondent failed to deal with Enforcement Decision Notice matter appropriately, in the correct forum and without reference to the Enforcement Decision Notice procedure. In addition, the Appellant submits that the costs incurred by the Respondents are in themselves excessive and unreasonable. The Appellant has not submitted a schedule of its own costs, but broken it down to indicate that its legal fees amount to £2,700 plus VAT and its own fees for preparation of the appeal amount to £12,000 plus VAT.
12. In the alternative, the Appellant asks that the parties' applications for costs be adjourned until the outcome of an investigation by the Legal Services Board into the conduct of the Respondent. The Adjudication Panel has received no information in relation to the status of any investigation by the Legal Services Board.
13. The Respondent seeks an order that the Appellant pays its costs in the sum of £12,418.83 plus VAT in relation to the withdrawn appeal of the Enforcement Decision Notice dated 29 April 2022. In support of its application, it has submitted a schedule of its costs.

Decision and reasons

Appellant's application

14. Dealing first with the request to adjourn the applications pending the outcome of an investigation by the Legal Services Board. The Adjudication Panel has no information about whether an investigation is ongoing into this matter (and therefore no indication of its status or how long it would take to conclude, if it is ongoing). There is no supporting request from the Legal Services Board to delay making a decision on these applications. In those circumstances, it is not in the interests of justice or in furtherance of the overriding objective of the Adjudication Panel (as set out at rule 2 of the Adjudication Panel Procedure Rules 2015), to delay the conclusion of this matter. The Appellant's request to adjourn the applications is therefore refused.
15. Dealing next with the principle of the Appellant's application for an order for payment of its costs by the Respondent. The Adjudication Panel could not make such an order on the basis

sought without making a finding that the Respondent erred or failed in some way in relation to the Enforcement Decision Notice. That would have been the subject of the appeal. The appeal was withdrawn, and is therefore no longer a matter of which the Adjudication Panel is charged with determining. The only extant matter is the question of costs.

16. The Adjudication Panel may make an order for payment of the Appellant's costs, under rule 9(1) Adjudication Panel Procedure Rules 2015 (as amended) ("the Procedure Rules"), either on application or on its own initiative. The Procedure Rules are in themselves silent as to the criteria for consideration prior to making such an order. The only other references to the provision for making an order for costs are in the Adjudication Panel Sanctions Guidance of March 2018, which repeats the provision within Rule 9 of Procedure Rules, and in the Administration of Justice Act 1985, which makes it clear that the Adjudication Panel can make such order in relation to costs as it sees fit.
17. However the Adjudication Panel is satisfied that an order could reasonably be made on its own initiative, for example, if the Adjudication Panel found that the Respondent acted so unreasonably in their conduct of the proceedings (rather than in their decision to issue the Enforcement Decision Notice itself, for the reasons set out in paragraph 12 above) as to make it in the interests of justice that an award for costs be made against them.
18. Having considered the conduct of the Respondent during these proceedings, together with the submissions made on behalf of the Appellant, the Adjudication Panel does not find that conduct to be unreasonable, nor has it found any other reason to consider that it is in the interests of justice to make an order for their payment of the Appellants' costs.
19. Having concluded that in principle there is no justification for making an order for costs against the Respondent, the Adjudication Panel has not gone on to consider at this stage the whether the Appellant's costs in themselves are excessive or unreasonable as it is unnecessary to do so. That can properly be considered if a decision is made in principle to order the Appellant to pay the Respondent's costs.
20. The Adjudication Panel therefore refuses the Appellant's application for an order for their costs to be paid by the Respondent.

Respondent's application

21. The Respondent, in its application for an order that the Appellant pay its costs in these proceedings, relies on having put the Appellant on notice that "the CLC's costs will be claimed on any appeal" in the covering letter to the Enforcement Decision Notice dated 29 April 2022.
22. The Respondent also relies on the following submissions:
 - a. The Appellant made the decision to appeal, which put the Respondent to the expense of instructing legal representatives to defend the appeal
 - b. It has conducted the matter reasonably and proportionately
 - c. The Appellant has not conducted the matter reasonably because it has delayed in seeking legal representation, which has consequently increased the costs of the CLC
 - d. The Enforcement Decision Notice stems from the Appellant's own non-compliance with regulatory requirements
 - e. An order for costs will avoid the wider Licenced Conveyancers community paying for the enforcement action
 - f. The Appellant has sufficient means to pay
23. The Adjudication Panel is satisfied, as above, that it has jurisdiction in principle to make an order for costs, under rule 9(1) Adjudication Panel Procedure Rules 2015 (as amended).

24. The Adjudication Panel has carefully considered the chronology of this matter, and the correspondence it has seen between the parties.
25. The Appellants submit that the Respondents indication in the covering letter of 29 April 2022 (a copy of which has been provided to the Adjudication Panel) that

“Please note that the CLC’s costs will be claimed on any appeal (currently such costs total approximately £3,500)”

does not sufficiently inform the Appellants that the Respondent would intend to instruct legal representatives if an appeal was lodged or that they had already done so, and therefore it was reasonable for the Appellants to conclude that the CLC would be self-representing at any appeal hearing.

26. The Appellants also submit that, arising from the same comment, it was reasonable for them to conclude that the total amount of the Respondent’s costs in defending any appeal would be £3,500 – it is noted that at one point in their submissions the Appellants suggest the total would have amounted to £3,000 but the Adjudication Panel is satisfied that was an error on their part and they meant £3,500 as they rely on the letter of 29 April 2022 which states that figure in terms.
27. The Adjudication Panel notes that by the early part of June 2022, there is direct communication between the Appellants and Fieldfisher LLP, who were instructed as the Respondent’s legal representatives.
28. It agrees that the letter of 29 April 2022 does not make it clear that the costs incurred by the Respondent in any appeal would include costs of instructing a legal representative or that Fieldfisher LLP was already instructed, and therefore at that stage it was reasonable that the Appellant would assume the Respondent would be self-representing at any appeal.
29. It does not however agree that the wording of the 29 April 2022 letter made it reasonable to conclude that the final and total costs of the Respondent in an appeal would be £3,500 – the letter states that *“currently such costs total approximately £3,500”* and therefore there is a clear inference that that amount could increase with time and further work becoming necessary.
30. The Adjudication Panel also finds that by the early part of June 2022, it was no longer the case that it was reasonable for the Appellants to assume that the Respondents would not instruct legal representatives at the (by then) forthcoming appeal hearing. It notes that in his email to Ms Smith, Administrative Support Officer to the Adjudication Panel dated 31 October 2022, Mr Davies acknowledges that “at some point over the summer” the Respondents appointed “their own Solicitors”. Around 9 June 2022 Fieldfisher LLP were in direct contact with the Appellant. The Panel is therefore satisfied that Mr Davies and the Appellant were aware during the summer of 2022 that the Respondent was legally represented, and there is therefore a reasonable inference to be drawn that its costs would include those of its representatives in preparing for and conducting the hearing.
31. The Appellant’s notification of its decision to withdraw the Enforcement Decision Notice indicates the decision was made on the basis of the likely costs involved, having received advice from Blake Morgan, and that those costs would be disproportionate. In its submissions on this application, the Appellant suggests that to award costs against it would be unfair as it would hinder it and other regulated bodies and individuals from exercising their right to appeal for fear of facing significant costs penalties.
32. The Appellant chose to appeal the Enforcement Decision Notice. It also chose to withdraw its appeal, having received legal advice. The Adjudication Panel makes no criticism of either

decision, and the consideration of the imposition of an order for costs is not by way of imposing a penalty or sanction, albeit the Adjudication Panel appreciates that it will have financial implications for the Appellant.

33. However, the Appellant could have taken legal advice at any earlier stage, and the Adjudication Panel does not agree that it would have needed the Respondent to indicate it was permissible for it to do so. Regulatory action being taken by its regulator is a serious matter, and one on which the taking of legal advice, particularly when contemplating appealing to an independent Adjudication Panel, would be entirely reasonable.
34. In simple terms, the Respondent's costs have been incurred because of decisions and actions by the Appellant, and in furtherance of its regulatory obligation. There is an impact on the wider regulated body if the Respondent is not able to recover those costs, in both financial terms and in upholding the need for the regulatory process to be taken seriously.
35. The Panel does not agree that to award costs against the Respondent would hinder its and other regulated individuals and bodies from relying on its right to appeal decisions or notices in future. It agrees it may lead to more careful consideration of the potential for costs implications if appeals are withdrawn or lost. If that is the case, the Panel does not consider that to be an unfair consequence.
36. Having carefully considered all the submissions made by both parties, the Panel has decided that it is appropriate, in furtherance of its overriding objective and in the interests of justice, to order the Appellant to pay towards the costs of the Respondent in this matter, for the reasons set out above.
37. Turning then to quantum, given that the Panel agrees that because of the wording of the 29 April 2022 letter it would not have been clear at that time that legal representatives were instructed by the Respondent, but from sometime in June 2022 it would have been, the Panel is not minded to award the Respondent the entirety of the costs claimed.
38. It has also considered carefully the Appellant's submission on the reasonableness of the costs claimed by the Respondent. It notes that the Appellant sets out the extensive work it undertook to prepare for the appeal, and the proposed directions set out by the Appellant at the end of October which gave a flavour of the extent of the dispute between the parties. Finally, it noted the quantum of costs suggested by the Appellant's solicitors in the letter accompanying the notice of withdrawal which was significantly in excess of those claimed by the Respondent.
39. In those circumstances and having considered the schedule of costs itself, the Panel does not find the Respondent's costs to be unreasonable or excessive.
40. Having balanced all the above, the Panel has decided that it is reasonable to exclude the Respondent's claimed legal costs for the period up to 25 May 2022, amounting to £1,236.00, and to reduce the remaining legal costs of £8,412.50 by one seventh to reflect the period up to the end of June 2022.
41. The panel has found there is no reason why the entirety of the costs incurred by the CLC itself should not be awarded, in the sum of £2669.33.
42. Therefore, the decision of the Panel is that the **Appellant is ordered to pay the costs of the Respondent in the sum of £9,880.04.**