

**ADJUDICATION PANEL HEARING
S28 ADMINISTRATION OF JUSTICE ACT 1987**

IN THE MATTER OF:

COUNCIL OF LICENCED CONVEYANCERS

Applicant

V

NIKKI FULLER

Respondent

**DECISION ON APPLICATION FOR AN ORDER
REVOKING THE RELEVANT LICENCES HELD BY
THE RESPONDENT ON GROUNDS OF
FRAUD OR ERROR**

Allegations

Allegation 1

1. On 01 January 2020 you applied to the Council for Licensed Conveyancers (Applicant) for registration as a Licensed Conveyancer and indicated that you had passed required part of the Level 6 Diploma in Conveyancing Law and Practice.

Allegation 2

2. In or around October 2021 your certificate in HG1G Managing Client and Office Accounts (Conveyancing) (the required part of the Level 6 Diploma) was revoked, and your qualification was withdrawn by the Scottish Qualifications Authority (SQA) for the reason that you were

not assessed according to SQA assessment conditions.

Allegation 3

3. You knew or ought to have known that your qualification Level 6 in HG1G Managing Client and Office Accounts (Conveyancing) was obtained improperly for the following reasons:

- a. You received and read the assessment materials on approximately 3 weeks before the examination and/or;
- b. You were told by Ms A that the paper you had been handed was the examination paper and/or;
- c. You sat the exam in the Jasmin Suite of the Convey Law offices during the week of 14 October 2019 having had in the region of 3 weeks with the exam paper and/or;
- d. You gained an unfair advantage in the attainment of your qualification.

Allegation 4

4. Your application to join the CLC was dishonest.

Allegation 5

5. For the reasons above the CLC licence was issued to you as a result of:

- a. Fraud; or
- b. Error

1. **The Respondent denied allegations 1, 2, 4 and 5a. She admitted allegation 5b.**

Background and evidence

2. The Respondent worked for Convey Law for 16 years, from 2006 to 2022, first as a paralegal and over the years progressed to being a conveyancer, fee earner and supervisor.
3. She qualified as a Chartered Legal Executive in 2016 and attained fellowship in 2018.
4. In May 2018 she took a break from work and on her return in June 2019 she was asked if she would be interested in working in the Conveyancing Academy, training internal candidates, and assessing and invigilating external candidates. She agreed and began in April 2020, helping with both internal and external candidates. It was the Respondent's evidence that the Conveyancing Academy is the part of Convey Law set up for training purposes.
5. Around October 2019, the Respondent was approached by a director of Convey Law, Mr Davies, who advised that one of the other directors was leaving the practice and asked if the Respondent would become a director in his place. She agreed.

6. There as significant pressure placed on the Respondent at this time. In order for the Respondent to replace the departing director on various mortgage company panels, which was necessary for the viability of the business, the Respondent was required to obtain a CLC licence. This in turn required her obtaining an SQA qualification. As she was a Fellow of the Chartered Institute of Legal Executives (a "FILEX"), she was only required to pass one exam in order to apply for a CLC licence. She was however required to achieve this within three weeks as that was the timescale for her to replace the departing director. She sat that exam at the end of October 2019 and passed it. Evidence of her pass mark was not presented to her by the CLC, but the panel accepted the Respondent's evidence that she had passed with a high mark.
7. The Respondent was concerned that she only had very limited time to prepare for the exam, and shared those concerns with Ms A, the Head of Learning and Development, who gave her a bundle of papers.
8. The Respondent took the papers home with her and looked through them, and discovered what she believed to be a past exam paper. She was accustomed to using past papers as a revision tool when she had undertaken her exams for CILEX. She told the panel she used them to gain an idea of the themes of questions and the frequency of them appearing in exam papers.
9. The Respondent told the panel that she looked briefly through the exam paper, not in detail at any of the questions but identifying the themes, and she was relieved to note that there was no question on Wills and Probate. This was because she had not previously studied or practiced in the area of Wills and Probate, and had already decided she did not have sufficient time to learn or revise that area as it was so unfamiliar to her. She also saw there was a question on Drafting a Client Statement, which she was pleased about because it was very familiar to her in practice, as she drafted client statements two to three times a day in her working week.
10. A day or two later, the Respondent again spoke to Ms A, and asked her if she could have some more papers like the one she had been given the day before, as this would be helpful towards the end of her revision to test her knowledge. Ms A then told her that the paper was not a past exam paper, but the actual paper she would be sitting.
11. The Respondent described being shocked and uncomfortable with this information, and on her return home that evening discussing it with her husband. She felt she had only two options –
 - a. Challenge her employer on the ethics of their actions and refuse to undertake that exam for reasons of having sight of the paper.
 - b. Discard the paper, accepting that she now had knowledge of the broad themes arising within it, but without recalling the exact questions and proceed to study diligently as I had begun.
12. The Respondent told the panel that she faced this dilemma against the background of significant pressure from her employers to obtain the CLC licence, as without it the firm would be unable to continue to operate within a couple of weeks. The Respondent felt, as a consequence of behaviours that she had previously witnessed, that if she took option (a) she would lose her job. She felt that she had no option but to proceed with option (b).
13. The Respondent told the panel that she took the exam and passed with a high mark. In her view she had had a small advantage in having known the themes to revise, but she was satisfied that, based on her academic and professional knowledge and experience, and her previous exam performance for CILEX, as well as how she felt she performed in this exam, that she would in any event have passed the exam.

14. The Respondent applied on 8 January 2020 to the Applicant for a licence, relying on her having passed the exam, and the licence was granted.
15. Following this matter being reported to the SQA, they undertook their own investigation into this matter, which included interviewing the Respondent on 21 April 2021. The Applicant relies on the Respondent's comments and answers to the SQA's questions including:

"Mrs Fuller knew she shouldn't have carried on with it, but she was led by Ms [A]. She said that she had put in the work and learned what was necessary, but that as she was aware of the trends, this gave her an advantage to concentrate her revision on the areas known to be tested"

16. The panel heard oral evidence from the Respondent, who it found to be an honest and truthful witness whose evidence was compelling. It noted that no matters of previous bad character or dishonesty were raised by the Applicant and so the panel took the Respondent to be of good character.
17. The panel clarified with Counsel for the Applicant that it was their case that by making the application for a licence, knowing that it was contingent on her having passed the exam, and knowing that she had had an advantage in having seen the exam paper three weeks prior to the exam, the Respondent was dishonest and her application was therefore fraudulent. It was the Applicant's case that the Respondent knew that what she was doing was dishonest, and that the ordinary decent person would also find it to be dishonest.

The panel's considerations

18. The panel noted that it is for the Applicant to prove their case, to the standard of the balance of probabilities.
19. The relevant law in relation to dishonesty is the two-stage test set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*. The panel applied that test.
20. The panel clarified with Counsel for the Applicant whether there was any relevant case law to assist with what amounted to an error, so far as this legislation was concerned, and it was agreed that the ordinary dictionary definition was the only definition which should be applied.
21. The panel was urged by the Applicant not to be swayed by sympathy for the Respondent, or for the circumstances in which she found herself. The panel's decision making was not influenced by emotive factors, but based on the evidence before it.
22. The panel noted that s28 Administration of Justice Act 1987 sets out that any fraud must be perpetrated by the individual who applies for the licence, and so whilst the panel had significant concerns about what appeared to have been the practice of the Respondent's employers at the relevant time in 2019, that could not form part of its decision making so far as the allegations against the Respondent individually.

The panel's findings

23. Allegations 1 and 2 did not require formal findings, as they were simply setting out the factual background, with which the parties were agreed.
24. Allegation 3 – the panel accepted the Respondent's evidence that she believed that she had properly been awarded the Level 6 Diploma, despite having been provided with the exam paper three weeks prior to the exam. The panel accepted that evidence because:
 - a. Its assessment of the Respondent as a compelling and credible witness who had a clear understanding of what amounted to dishonesty
 - b. At the time she looked at the exam paper, she did not know it was the actual paper she would be sitting

- c. It accepted that whilst she had looked broadly at the exam paper before she knew it was the actual paper she would be sitting, she had not looked at the questions in sufficient detail to allow her to know exactly what would be asked.
 - d. The panel found that the Respondent knew that she had some advantage over other candidates because of this. However, it accepts her evidence that:
 - i. She had already identified that she would not revise the topic of Wills and Probate because it was a subject she found particularly difficult and did not have enough time to learn adequately and she was able to explain that she had previously been taught as an exam technique to focus revision on areas of strength and to avoid questions on subjects where her knowledge was weaker
 - ii. It was an advantage that she could be reassured that the topic would not be covered in the exam;
 - iii. she knew that there would be a question on drafting client statements (although did not know the detail of the question) and this was an area in which she was already particularly strong, because of her extensive practical experience in drafting client statements
 - iv. she passed the exam with a good mark and had a strong academic track record throughout her legal studies (which the APPLICANT did not seek to rebut)
 - v. she had clearly made revision a priority over those three weeks, including taking steps to rearrange her family life and committing significant amounts of time to revise extensively, which was inconsistent with someone who already knew all the questions they would be asked and could have shortcut the need for such extensive revision
 - vi. therefore, the advantage she gained was not sufficiently significant to amount to her having obtained the qualification improperly as it is more likely than not that she would have passed the exam if she had not had access to the paper prior to the exam day.
 - e. The panel found compelling the Respondent's evidence that, as soon as she learned that the exam paper she had been given was the actual exam paper she would sit, she discussed it with her husband and immediately destroyed the paper, so did not look at it again. Therefore, whilst it was provided to her three weeks before the exam, the panel found no evidence that she had looked at it more than once, in broad terms, and the three week period did not provide any greater advantage in itself.
 - f. For the same reasons, the panel does not find that the Respondent ought to have known that her qualification was obtained improperly.
25. Allegation 4 – the panel bore in mind that a finding of dishonesty against a professional is particularly serious, and therefore requires particularly cogent evidence, especially where a professional has no previous findings of misconduct or dishonesty.
26. The panel noted that the Respondent's application for a licence was made to the CLC on 8 January 2020. The SQA did not make its finding as to the validity of the qualification until 14 October 2021.
27. The panel has also noted that all the evidence in the case came from the Respondent herself, that she disclosed that she had been given the exam paper, and she was very open with both the SQA and the CLC about the events in question. The panel accepts however the Applicant's submission that being honest in one instance does not automatically mean that one cannot be dishonest in another.
28. The panel applied the two stage test in *Ivey*.

29. The Applicant's case was predicated on the premise that the Respondent knew that she had improperly obtained the Level 6 qualification, that the qualification was an essential component of her application for a licence, and therefore in submitting her application she was relying on a qualification she was not entitled to have.
30. Addressing the first stage of the *Ivey* test, the panel has found that Respondent did not know or believe that she had obtained the qualification improperly. Next, applying the second stage of the test to the facts as found including the Respondent's knowledge and belief, the panel found that it was unlikely that the ordinary decent person would find that to make the application was a dishonest act.
31. Therefore the panel did not find that the Respondent's application was dishonest
32. Allegation 5a) - having not found that the Respondent's application was dishonest, the panel did not find that the licence was issued as a result of fraud.
33. Allegation 5b) – the panel took care to ask Counsel for the Applicant for submissions on the definition of error within the context of the legislation, and how this would apply. The panel noted the (undisputed) evidence of the Respondent that she was a FILEX, and that the Applicant had taken a decision at some point that in any event any applicant who was also a FILEX would not need to undertake any further qualification to be eligible for a licence. The panel had not been provided with any evidence that there was any other bar to the Respondent being granted a licence. It was not clear at what stage that revision of policy had occurred.
34. The panel was unclear as to the Applicant's case on what the error was said to have been. Counsel for the Applicant submitted that the Respondent was not entitled to rely on her qualification because the exam certificate should not have been obtained, because she should not have sat the exam at all, and the licence therefore should not have been held. The panel did not find that argument compelling, not least because it had accepted the Respondent's evidence that she believed she had been appropriately awarded the qualification.
35. However, the panel noted that in her written response to the allegations on 20 October 2022, the Respondent submitted

“As for the allegations against me, I fully accept that due to the unfair advantage given to me that my licence was granted in error”

36. The panel accept however, that the action of the SQA in revoking the qualification means that it is taken never to have been granted.
37. The panel finds therefore that, based on the fact solely that the examining authority withdrew the award of the qualification, there was a procedural error, but in light of the panel's other findings, that was not an error attributable to Ms Fuller and the panel found no fault lay with her.
38. Having reached that conclusion, the panel finds that Allegation 5(b) is proved, and the licence was granted in error. The panel considers it in the interests of justice, accordingly, where the licence was granted in error, to revoke it under Section 28(1) Administration of Justice Act 1985.

VICTORIA GOODFELLOW – ADJUDICATION PANEL CHAIR

7 JULY 2023