

**ADJUDICATION PANEL HEARING**

**S28 ADMINISTRATION OF JUSTICE ACT 1987**

**IN THE MATTER OF:**

**COUNCIL FOR LICENSED CONVEYANCERS**

**Applicant**

**V**

**PHILLIP EDWARDS**

**Respondent**

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

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Allegations

*Allegation 1*

*1. On 07 October 2020 you applied to the Council for Licensed Conveyancers (CLC) for registration as a Licensed Conveyancer and indicated that you qualified for registration having completed both the Level 4 and Level 6 Diplomas in Conveyancing Law and Practice.*

*Allegation 2*

*2. In or around October 2021 your certificate in Landlord and Tenant (part of the Level 6 Diploma) was revoked and your qualification was withdrawn by the Scottish Qualifications Authority (SQA) for the reason that you were not assessed according to SQA assessment conditions.*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 in Landlord and Tenant was obtained improperly for the following reasons:*  
*a. You were sent the examination paper on 18 May 2020, 8 days before the examination*

*and/or;*

*b. You were offered guidance by the invigilator, Ms A and/or;*

*c. You were not invigilated while you completed the exam; and/or*

*d. You submitted your exam paper on 26 May 2020 but had in excess of 3 hours to complete this; and/or*

*e. 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 admitted allegations 1 and 2, and denied allegations 3, 4 and 5.**

#### Background and evidence

2. At the time of the hearing the Respondent had worked as a conveyancer for approximately 25 years, had worked for Convey Law for 18 years, beginning as an assistant and trainee conveyancer and culminating in being appointed a Legal Director of the practice in October 2019.
3. In October 2020, the Respondent applied to the CLC for an individual licence. Before a licence could be granted, the CLC required the Respondent to provide evidence that he had passed the Levels 4 and 6 Diplomas in Conveyancing Law and Practice. A component of the Level 6 Diploma was the Landlord and Tenant paper. The Respondent, in his application to the CLC, indicated that he had successfully passed the Levels 4 and 6 Diplomas.
4. The Respondent told the Panel that initially he had not been particularly interested in resitting the exam, as he did not require the qualification for his job, he was by then already a director of Convey Law, and he would not receive an increase in his salary if he were to pass. He told the Panel he had “no real reason” to resit the exam other than to be able to say he had finally passed after several previous attempts.
5. The Respondent told the Panel he was approached at Convey Law by Ms A in 2019, who was at that time the Head of Learning and Development at the Conveyancing Academy. The Panel heard that the Conveyancing Academy was part of Convey Law set up to offer training. The Panel saw correspondence between Ms A, the Respondent and the CLC which confirmed that she made contact with the CLC in 2019, initially requesting that the Respondent be granted a licence without having to resit the Landlord and Tenant paper. This however was refused. Consequently Ms A registered the Respondent as a candidate with the Scottish Qualification Authority (SQA) on 13 August 2019.
6. The Respondent told the Panel that he had never previously undertaken distance learning, and did not know what ‘normal procedure’ was. He had completed his conveyancing studies over a ten to fifteen year period, and all his courses and exams had been conducted face to face, with the exams being held at approved examination centre, where he was required to complete a paper booklet.
7. The Respondent told the Panel that he had sat the Landlord and Tenant paper on two previous occasions (2010 and 2011), and on each occasion failed by “a few marks”. In order to improve his chances of passing on the third occasion in May 2020, he told the Panel he had attended two day-long courses held by the CLC. The Respondent told the Panel he had

made various attempts in the past to finalise his qualifications. On each occasion he had been sent past papers in advance of the exam, by way of practice.

8. The Respondent denied being under any pressure to pass the exam. Convey Law already had sufficient licence holders to enable them to practice, and he had progressed as far as he could in the firm already.
9. The Respondent sat the exam on 26 May 2020, and it was marked by an employee at the Conveyancing Academy on 4 June 2020. It was then internally verified by an employee of Convey Law. The Respondent was informed on 11 June 2020 that he had passed the exam. The Panel saw the Examiners Report, and noted that the Respondent achieved a 54.5% mark. His results in 2010 and 2011 had been 45% and 47% respectively.
10. The Panel heard that Ms A sent the Respondent the exam paper on 18 May 2020, via email, along with an answer booklet. The email from Ms A to the Respondent dated 18 May 2020, said:

*“Good Morning Phil*

*Hope you had a good weekend.*

*I've attached the Landlord and Tenant paper and the answer booklet for you to put your responses together.*

*I'll be setting a new date for submission today so I will revert back as soon as it is confirmed.*

*There are 3 questions that are broken down into sections. It is more time consuming than difficult. If you are*

*struggling, let me know and I'll provide you will answer guidance.*

*It'll be fine”*

11. The Respondent told the Panel that he had not asked Ms A for the exam paper, nor had he questioned why she had sent it to him eight days in advance of the exam.
12. The Respondent understood he had 3 hours and 15 minutes to complete the exam, which was an “open book” exam, and it was to be undertaken online over “Moodle”, an online learning application which can invigilate through the inbuilt camera in a laptop and by providing statistics in relation to the way the candidate answers the questions. The Respondent was unclear whether his laptop had the remote invigilation facility activated during the exam.
13. It was the Respondent’s evidence that, whilst he had received the email from Ms A and its attachments, he did not open or read the content of the attachments until the day of the exam. The Respondent told the Panel that he had studied for a month prior to the exam and was feeling confident about passing. He had used some past papers and read through his previous notes and felt that he was “just recapping”.
14. When questioned about why Ms A would have sent her email and attachments of 18 May 2020, if it weren’t to give the Respondent an advantage and the opportunity to know what he would be asked in advance, and formulate his answers with the benefit of time, the Respondent told the Panel that Ms A knew that he was not proficient in IT, and he assumed her email was directed at reassuring him in relation to the practicalities of the exam. He told the Respondent that Ms A was not a conveyancer, and he therefore would not have assumed she knew anything about the content of the paper itself.
15. It later became clear that the paper that Ms A had sent the Respondent was in fact the actual exam paper he would sit on 26 May 2023. The Respondent accepted, therefore that

he had been afforded an opportunity to have advance information about the questions, and to prepare his answers before the exam. He was clear however that he had not availed himself of that opportunity.

16. He also asked the Panel to bear in mind that this examination was taken during the Covid-19 pandemic when emergency measures were in place across the UK.
17. In 2021, the SQA were notified that Ms A had informed them that she had send the Respondent the exam paper in advance of the exam. The SQA undertook a thorough investigation, including interviewing the Respondent in April 2021, and found that there had been malpractice identified in respect of breach of assessment conditions because the Respondent had had an opportunity of seeing the paper eight days in advance of the exam, and the exam was undertaken online without invigilation as required by the assessment conditions. The SQA concluded that those circumstances gave the Respondent an unfair advantage.
18. 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.
19. 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 him having passed the exam, and knowing that he had had an advantage in having seen the exam paper eight days before the exam, the Respondent was dishonest and his application was therefore fraudulent. It was the Applicant's case that the Respondent knew that what he was doing was dishonest, and that the ordinary decent person would also find it to be dishonest.

#### The Panel's considerations

20. The Panel noted that it is for the Applicant to prove their case, to the standard of the balance of probabilities.
21. 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.
22. 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.
23. The Panel noted the findings of the SQA at the end of their investigation into the matters which have led to these allegations, but reached its own conclusion based on the evidence before it, independently of any finding made by the SQA.
24. 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

25. Allegations 1 and 2 did not require formal findings, as they were simply setting out the factual background, with which the parties were agreed.
26. Allegation 3 – the Panel accepted the Respondent's evidence that he believed that he had properly been awarded the Level 6 Diploma, despite having been provided with the exam paper eight days 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. The Panel accepted that the Respondent had not looked at the paper before the exam. It found that, had the Respondent read the paper in advance, it was more likely than not that he would have achieved a higher mark and not made the errors which were referred to in the Examiner's Report.
  - c. The Panel accepted the Respondent's evidence that he had never before undertaken an online assessment or exam, and therefore did not know what was the usual format. The Panel found the Respondent credible in his evidence that he was aware of other family members who were undertaking exams online and therefore he did not find the concept of completing the exam at home without an invigilator present to be unusual.
  - d. The Panel also noted that the exam was to be undertaken through Moodle, which can include an option to invigilate remotely, although there was insufficient evidence before the Panel that the invigilation option had been used during the Respondent's exam.
  - e. However, the Panel did find that the Respondent had had the opportunity to prepare the exam answers during the eight day period leading up to the exam, and therefore had an advantage over other candidates.
  - f. The Panel found that the Respondent had a lot to lose from cheating in this exam, in light of his lengthy and successful career in conveyancing, and nothing significant to gain because of his position in the practice at that time.
27. Having weighed up the evidence and having drawn those conclusions, the Panel found that the Respondent had an unfair advantage over other candidates, but he did not avail himself of that advantage. The Panel has also found that the Respondent did not know he had an advantage, and in the context of his knowledge and experience of exams and online exams and the information provided to him, that it could not say that the Respondent ought to have known. Therefore the Panel did not find Allegation 3 proved.
28. 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.
29. The Panel noted that the Respondent's application for a licence was made to the CLC on 7 October 2020. The SQA did not make its finding as to the validity of the qualification until 14 October 2021.
30. The Panel had found that the Respondent did not know or ought to have known that his qualification was obtained improperly.
31. The Panel applied the two stage test in *Ivey*.
32. The Applicant's case was predicated on the premise that the Respondent knew that he had improperly obtained the Level 6 qualification, that the qualification was an essential component of his application for a licence, and therefore in submitting his application he was relying on a qualification he was not entitled to have.
33. Addressing the first stage of the *Ivey* test, the Panel has found that Respondent did not know or believe that he 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.
34. Therefore, the Panel did not find that the Respondent's application was dishonest
35. 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.
36. Allegation 5b) – the Panel heard submissions that the Applicant's case on error was based on there being an error in the award of the licence because it should never have been awarded, because the Respondent did not qualify for a licence (once the qualification was

- withdrawn by SQA). It was reminded that the reference to “error” in s28 Administration of Justice Act 1985 did not require the error to be attributed to one individual person or body.
37. The Panel accepts that the action of the SQA in revoking the qualification means that it is taken never to have been granted.
  38. 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 the Respondent.
  39. 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.
  40. The Panel carefully considered whether to make an award for costs in favour of the CLC. However, having concluded that the Respondent had not been dishonest, nor had the error found been attributable to him, the Panel concluded it would not be just or equitable to make an award for costs in this case.

VICTORIA GOODFELLOW  
ADJUDICATION PANEL CHAIR

9 AUGUST 2023