

**BEFORE THE ADJUDICATION PANEL
OF THE COUNCIL FOR LICENSED CONVEYANCERS**

BETWEEN:-

COUNCIL FOR LICENSED CONVEYANCERS

Applicant

-v-

(1) MICHAEL DAY

(2) MICHAEL DAY LICENSED CONVEYANCERS

Respondent

ADJUDICATION PANEL DECISION AND REASONS

1. This case relates to allegations of breaches of anti-money laundering (“AML”) safeguards and failures to co-operate with the Council for Licensed Conveyancers (“the CLC”) over a 5-year period between February 2018 and February 2023. The allegations are made against the Respondents, Michael Day as an individual Licensed Conveyancer, and against his practice, Michael Day Licensed Conveyancers (“the Practice”).
2. Mr Day was a sole practitioner at Michael Day Licensed Conveyancers, and he and the practice were regulated by the CLC. The practice closed on 30 June 2023.
3. The panel took a two-stage approach as follows:
 - a. deciding findings of fact and whether the found conduct amounted to misconduct,
 - b. then hearing submissions on, and deciding, the appropriate sanction to impose and whether to order the payment of costs.

BACKGROUND

4. The Practice was regulated by the CLC since approximately 2006. Between 2006 and 2023 there were three inspections undertaken by the CLC, in 2014, 2018 and 2022.

5. The Practice in 2014 was very small, with Mr Day the only fee earner and also working as a locum for other firms. The Practice grew over the period between 2014 and 2023 but remained as a sole-practitioner Practice.
6. At the conclusion of the 2014 inspection, the Practice was found to be substantially compliant. Problems with AML procedures were identified however, and six actions were identified. Mr Day provided assurances to the CLC that he had addressed the issues, which were accepted.
7. At the conclusion of the 2018 inspection, the Practice was found to be non-compliant, with similar AML issues (training and the AML policy) recurring, as well as business continuity planning and other issues. Again, actions were identified, Mr Day provided assurances to the CLC that he had addressed the issues, and they accepted the additional material he provided and the assurances he gave.
8. In October 2022, the third inspection concluded, and again the Practice was found to be non-compliant. Issues were identified with AML compliance (AML policy and source of funds checks), and business continuity planning, and through a process of reviewing the findings of the previous inspections, concerns were identified that assurances previously given had not come to fruition.
9. Prior to these proceedings, Mr Day and the Practice had no disciplinary history with the CLC, no complaints had been made to the CLC about him or the Practice, and there was no indication of any other concerns being raised by any other body.

THE ALLEGATIONS

10. The allegations against Mr Day and the Practice are set out in Schedule 1 to this decision.

PRELIMINARY ISSUES

11. Mr Day did not attend the hearing, and so as a preliminary issue, the panel waited for 20 minutes after the published hearing start time in case Mr Day had difficulties in

joining the hearing or was late. When he had not attended by 10:20am, the panel heard submissions from the CLC as to whether to proceed in his absence.

- 12.** The panel's power to proceed in absence is found in the Adjudication Panel Procedure Rules 2013 (as amended), rule 25, which states:

"If a party fails to attend a hearing the Adjudication Panel may proceed with the hearing if the Adjudication Panel –

(a) Is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) Considers that it is in the interests of justice to proceed with the hearing."

- 13.** The panel also bore in mind the guidance in *GMC v Adeogba [2016] EWCA Civ 162* and *R v Jones [2002] UKHL 5*.

- 14.** The panel received an 18-page bundle of documents which showed that Mr Day had been sent notification of the hearing, the fact that it was being held remotely over Zoom, and how to join the hearing, as well as who to contact if he had difficulties attending. That information was sent to him by email, and in a letter dated 25 September 2023 which was delivered by post, and Mr Day signed for delivery of the letter.

- 15.** The panel also heard that Mr Day had continued to correspond until recently with the CLC using the same email address as that to which the bundle of evidence and information about the date and location of the hearing had been sent.

- 16.** On the basis of that evidence, the panel was satisfied that Mr Day had been notified of the hearing.

- 17.** The panel then considered whether it was in the interests of justice to proceed. This was a matter for the panel's discretion. The panel concluded that it was in the interests of justice to proceed because:

- a. it was satisfied that Mr Day had made a deliberate decision not to attend the hearing,
- b. he had had service of the documents which the panel was considering and so knew the case against him,
- c. he had had opportunities prior to the hearing to give his account in relation to the allegations and indeed had provided a written response,
- d. the allegations had a strong public interest.
- e. the allegations spanned a period of 5 years, and any further delay would potentially harm public confidence in the process.
- f. it was not in the interests of the parties for there to be further delay, including not being in Mr Day's interests as the impact upon him of these allegations hanging over him would be onerous.

18. Having decided to proceed, the panel heard an application from the CLC to amend an allegation. It gave particularly close scrutiny to the allegation because of the absence of Mr Day.

19. The CLC sought to amend allegation 1(b)(ii) by replacing the date "4 October 2022" with the date "30 March 2023". This related to an allegation that the Practice did not provide or record regular AML training for employees.

20. The panel noted that allowing the amendment would extend the period of non-compliance if the allegation was found proved, and so there was potential for prejudice to Mr Day.

21. However, the date of 30 March 2023 was the date provided by Mr Day as being when the training was recorded, and so was a date he was aware of. The amendment would also reflect the evidence which had been disclosed to Mr Day. The panel found both those factors to be important and led it to conclude that whilst the period under consideration would be lengthened, this would not cause such prejudice to Mr Day as to render the proceedings unfair.

22. Therefore, the amendment was allowed in relation to both the allegations against Mr Day as an individual and the allegations against the Practice as a Recognised Body.

EVIDENCE

23. Prior to the hearing, the panel had read the evidence bundle which had also been provided to Mr Day. This contained witness statements from the inspector who had undertaken the 2022 inspection, and from the Regulatory Supervision Manager at the CLC who was responsible for overseeing the supervision of Mr Day and the Practice, as well as the Disciplinary Investigation Report dated 2 March 2023.

24. The panel heard oral evidence from the Regulatory Supervision Manager.

FINDINGS

25. The panel considered the evidence in relation to each allegation separately, both as against Mr Day and as against the Practice, to decide what was proved, before going on to consider whether the collective findings amounted to misconduct, and which sections of the Code of Conduct were breached.

26. Given that the allegations are mirrored and follow the same numbering as against Mr Day and the Practice, the panel's findings in relation to both Respondents are expressed below together.

Allegation 1(a) and (b) (i)

27. This allegation related to a failure to have an appropriate AML Policy between February 2018 and February 2023.

28. The panel noted that there had been three AML policies in place during the period between February 2018 and February 2023. The first was significantly out of date, in that it referred to outdated regulations and referral of suspicious transactions to NCIS, an organisation which had merged into the Serious Organised Crime Agency (SOCA) in 2006. This policy was submitted by Mr Day as being the policy in place both at the time

of the 2018 and the 2022 inspections, despite having been advised of its inappropriateness at the 2018 inspection and having been directed to update it.

- 29.** The second policy submitted by Mr Day, both as an updated policy after the 2018 inspection and in response to the AML survey undertaken by the CLC in 2020, was again out of date, referring to the 2007 AML Regulations which had been superseded by the 2017 AML Regulations. It also contained references to a different practice, and the panel concluded that Mr Day had taken a policy from a different practice and amended it to insert the details of Mr Day and the Practice but had not done so consistently. Importantly, at paragraph 10 of the policy, it states *“We require all members of the Company to follow carefully the procedures set out below in “Procedures for VH Law Ltd t/a Valerie Holmes Property Law”*. The policy made reference to a separate (now closed) CLC practice and a cash acceptance policy was referred to which was different to the information set out in the Practice Wide Risk Assessment submitted by Mr Day.
- 30.** Finally, the third policy, said to be in place at the 2022 inspection, had clearly been designed for a large law firm with references to an electronic case management system and an online AML checking service, neither of which were being used by the Practice according to the evidence seen by the panel.
- 31.** The panel noted that in his response to the allegations dated 29 March 2023, Mr Day suggested that he had fully complied with the requirements of the inspection and of the Money Laundering Regulations, that he always met face to face with clients *(“where at all possible) to collect the information required and will NOT proceed further without it ... and shows the utmost due diligence from a most important hands on practical approach and also as a paper exercise”*.
- 32.** The panel concluded that the evidence in relation to the three policies, all of which the panel had seen, clearly indicated that Mr Day and the Practice did not have a working policy addressing the risk around AML, and could not have been applying the policy because it included out of date regulations, reporting guidance that would not have

been possible to follow, and reliance on systems which were not in place in the Practice.

- 33.** In those circumstances, the panel found that there was no appropriate or viable AML policy in place during the relevant time period. There was clear evidence after the 2018 inspection that Mr Day had been given significant help to address the deficiencies in the policies he submitted, but he failed to properly address those deficiencies. The panel concluded, given the amount of help given, the repeated deficiencies in the policies, and in the absence of any explanation from Mr Day as to why the repeated failures occurred, that Mr Day did not consider that having an appropriate AML policy in place was important.

Allegation 1(a) and (b) (ii)

- 34.** This allegation relates to failing to provide and/or record regular AML training for employees between 15 June 2018 and (as amended) 30 March 2023.
- 35.** The panel noted that a finding of the 2014 inspection was that Mr Day, as the Practice's Money Laundering Reporting Officer ("MLRO") should undertake appropriate AML training and provide evidence that it had been done. He later confirmed to the CLC that he had undertaken the training and kept a record, and that further training would be undertaken in future. The panel saw an email from Mr Day to the CLC dated 30 January 2015 which said, "*confirmed AML training has been undertaken and a record kept, and regular further training and updates will be carried out by a mixture of in house, attendance of AML courses and distance learning courses*". The panel saw no evidence of the recording of that training.
- 36.** The panel saw evidence that at the 2018 inspection, it was noted that there was still no record of AML training, and further that training was required in relation to the new (2017) Money Laundering Regulations. Mr Day told the CLC that he would attend the CLC's compliance workshop on 14 June 2018. The panel considered that a compliance workshop would not amount to sufficient training on such a significant area of risk but noted that the CLC had responded to Mr Day that his attendance at the compliance

workshop would be the “very least” required. It could therefore be said that Mr Day could have considered that attendance there would suffice.

- 37.** Again, at the time of the 2020 AML survey, Mr Day replied that he had undertaken appropriate AML training, but no records were found of such training.
- 38.** However, prior to the 2022 inspection, in response to a request to provide AML training records apparently dated 18 September 2022, Mr Day wrote next to the request for “Staff AML training records” the words “None – N/A”.
- 39.** In his reply to the allegations dated 29 March 2023, Mr Day denied the allegation, and said that everything necessary to comply was in place, suggested it had been confirmed as satisfactory by CLC, and that training had been undertaken. The Regulatory Supervision Manager in his evidence denied confirming that satisfactory evidence had been produced by Mr Day and the Practice. The panel saw no evidence to support Mr Day’s response.
- 40.** In light of that evidence, and the lack of evidence of recorded training, the panel concluded that this allegation was found proved as against Mr Day and the Practice.

Allegation 2

- 41.** This allegation relates to a failure to complete and/or record matter-based risk assessments on eight separate matters relating to eight separate clients.
- 42.** The panel is satisfied that Mr Day and the Practice were under a duty to undertake such assessments, as set out in the 2017 AML Regulations (Regulation 28(12)(a)(ii) and 28(16)).
- 43.** The panel noted the evidence in the 2022 inspection report that no evidence of matter-based risk assessments had been found on any of the files reviewed. It also noted that Mr Day, in his response to the allegations, referred to the clients being “long standing

clients who we have acted for before personally on previous transactions (going back over 30 years to whom we have their details logged) and know them personally”) and again that everything was confirmed by the CLC as being in order.

- 44.** The panel found that Mr Day’s response was evidence of his lack of understanding of the importance of, and requirements of, exercising due diligence and undertaking proper risk assessments to identify the risk of money laundering within the transactions conducted by the Practice. It noted that, even if Mr Day had relied on his own personal knowledge of the clients, (which would not automatically meet the required level of due diligence), he had not recorded any form of assessment including that individual knowledge on the file, and there was no evidence therefore that he had considered and assessed the risk for each matter.
- 45.** The panel therefore found this allegation proved as against Mr Day and the Practice in its entirety.

Allegation 3

- 46.** This allegation relates to Mr Day and the Practice failing to obtain and/or record the source of funds in two matters relating to two separate clients.
- 47.** The panel was satisfied Mr Day, and the Practice were under a duty to carry out and record checks on the source of funds in relation to transactions it undertook, as set out in the Money Laundering Regulations 2017, Regulation 28(11), as well as the CLC’s Anti Money Laundering Code.
- 48.** The panel noted that allegation 3(a)(i) related to a transaction which was a cash purchase of a property valued at £235,000, which was undertaken between April and June 2022. There was no evidence of any check being made as to the source of the funds used in the transaction.
- 49.** Allegation 3(a)(ii) related to a transaction which was undertaken between February and May 2022, where the client had contributed £53,000 cash to the purchase of a

property as well as to obtaining a mortgage. Again, there was no evidence of any check being made as to the source of the cash used in the transaction.

50. The panel also noted that in the 2018 inspection, concerns had been raised that there were no source of funds checks being undertaken. At that time, Mr Day replied that he had asked the clients where the money had come from in those 2018 transactions, and that the monies had been received directly from accounts in clients' names. The panel considered that this was not an adequate check on the source of funds, because if the client was engaged in criminal activity, they would be very unlikely to reply honestly to Mr Day or the Practice. It is imperative to have an independent source of information to verify that there is no risk of money laundering when accepting client money (particularly cash) into the Practice's accounts.

51. Mr Day, in his written response, gave exactly the same account as he did to allegation 2 (relating to matter-based risk assessments) and the panel again found that this demonstrated Mr Day's lack of knowledge about the importance of appropriate checks and his lack of understanding of the requirements of the Regulations.

52. In light of this evidence, and the lack of evidence of any checks being undertaken, the panel found this allegation proved in its entirety.

Allegation 4

53. This allegation relates to a failure by Mr Day and the Practice to obtain and record client identification documents in relation to four separate matters relating to four separate clients.

54. The panel noted the evidence that in relation to two of the clients, whilst identification documents had been recorded for three clients, it had not been certified as required in the 2017 AML Regulations (28(1)) and the CLC Anti Money Laundering Code. For the fourth client, no identification documents at all had been recorded. It also noted that so far as the CLC Anti Money Laundering Code is concerned, it was only permissible to

proceed without certified identification if a practice already held up-to-date evidence and there was no reason to suspect that the client's details had changed. If that had been the case in relation to the three matters which are the subject of this allegation, the panel would have expected to see a file note which confirmed the position. No such file notes were recorded.

- 55.** Mr Day's response to this allegation was identical to his response to allegations 2 and 3, and the panel again found that this evidenced his lack of understanding of the importance of the requirements, and the risk to clients and the practice of failing to comply with those requirements.
- 56.** In light of the evidence available, the panel therefore found this allegation proved in its entirety as against Mr Day and the Practice.

Allegation 5

- 57.** This allegation related to Mr Day and the Practice's failure to have in place and/or document a business continuity plan between April 2018 and October 2022.
- 58.** The panel considered that, as a sole practitioner, it was particularly important for the clients of the Practice that there was a sound business continuity plan in place in the event of Mr Day being unable to continue to work.
- 59.** It noted that at the time of the 2018 inspection, there were informal arrangements in place (Mr Day reported having discussed plans with key individuals) but no written plan was in place. He was directed to produce a plan, but in response to the request to provide the up-to-date Business continuity Plan before the 2022 inspection, he wrote "N/A" indicating that there was no written plan.
- 60.** The panel did not see any evidence of a documented Business Continuity Plan being in place during the relevant period.

61. Mr Day, in his response to the allegations, said that one was in place and had been approved by the CLC. The Regulatory Supervision Manager did not agree that there was a plan in place, and Mr Day did not provide a copy of the document on which he relied. In those circumstances and in his absence, the panel did not find his response compelling.

62. Therefore, the panel found this allegation proved as against Mr Day and the Practice.

Allegation 6

63. This allegation related to failures by Mr Day and the Practice to comply, or adequately comply, in respect of actions and requests made by the CLC between April 2018 and February 2023 in relation to findings of the 2018 and 2022 inspections. The panel's findings are broken down below into the seven separate limbs of this allegation.

Allegation 6 (a) (i)

64. This allegation relates to a requirement to provide a compliant AML policy following the 2018 inspection. The panel saw evidence that Mr Day had sent an email dated 14 July 2018 to the CLC confirming that he had a compliant AML Policy but did not enclose a copy of the policy. Then, in response to the 2020 AML survey, he produced the same (non-compliant) policy as he had produced for the 2018 inspection.

65. In his written response to the allegations, Mr Day denies the allegation, repeats what he said earlier about having a compliant policy in place and that the CLC had confirmed that all was in order. Having already found that there was no compliant policy in place, the panel did not find Mr Day's response compelling.

66. Therefore, based on the evidence available, the panel found this allegation proved as against Mr Day and the Practice.

Allegation 6 (a) (ii) and (iv)

67. These allegations related to a request, following the 2018 inspection, to produce evidence of documented source of funds checks on all cases prior to exchange and

completion. In an email to the CLC dated 12 April 2018, Mr Day reported that this was “confirmed and implemented”. However, the 2022 inspection showed that in fact there was no evidence of documented source of funds checks being undertaken.

68. In his written response to the allegations, Mr Day indicated that he was personally undertaking the source of funds checks on all cases current at that time. The panel has already found that there were no source of funds checks documented on the files. Mr Day has not produced any further evidence of those checks being undertaken, and therefore the panel did not find his response compelling.

69. In those circumstances, the panel found that Mr Day and the Practice had not complied with the action required, and the allegations as against both are found proved.

Allegation 6 (a) (iii)

70. This allegation relates to a Mr Day and the Practice being required to ensure that an appropriate Business Continuity Plan was in place and documented, following the finding at the 2018 inspection that there was none.

71. In his email of April 2018 in response to the requirement, Mr Day indicated that this was “confirmed”. The panel saw evidence that this answer was accepted by the CLC, and he was informed that they would expect to see the plan at future inspections. However, at the 2022 inspection there was no documented Business Continuity Plan, and in response to the request for a copy of the plan ahead of the inspection, Mr Day replied saying “N/A”.

72. In his written response to the allegations, Mr Day again said that this had been done, and that it was in the Practice’s interests to do so, but in any event the CLC had confirmed everything was in order.

73. The panel notes that there is no evidence produced by Mr Day or the CLC which amounts to a Business Continuity Plan, and it would have expected Mr Day to produce a copy if there had been one in place. The panel has already found at allegation 5 that

there was no such plan in place, and in all the circumstances therefore the panel finds that Mr Day and the Practice failed to comply with this requirement and the allegation is proved as against both.

Allegation 6 (a) (v)

74. This allegation relates to a request to provide an amended AML policy which was compliant with the 5th Money Laundering Directive, following the 2020 AML survey. The panel noted that following a request for completion of the survey and production of copies of the AML policies and procedures, the Practice responded within the required time and provided copies of three documents. Amongst those documents was an AML policy which was identical to that produced for the 2018 inspection, which had been found to be deficient.

75. The panel noted that the Practice (and Mr Day) had not updated the policy as directed after the 2018 inspection, and the policy provided at the time of the 2020 survey remained out of date with references to superseded legislation and which was not compliant with the requirements of the 5th Money Laundering Directive.

76. Mr Day, in his written response to the allegations, suggested that there were ‘minor paper discrepancies and amendments to our AML policy which did not negate or nullify our AML policy in any way’ and goes on to give examples. The panel disagrees with his evaluation of the deficiencies in the policy, particularly given that the policy directed compliance with legislation which was out of date, and reporting to an organisation which no longer existed. The panel again finds this to be evidence of Mr Day not attaching importance to proper compliance with the requirements of AML legislation and procedures.

77. Given that the Practice and Mr Day were required to provide an updated policy, and they instead provided an outdated policy which Mr Day already knew was not compliant, the panel finds this allegation proved as against Mr Day and the Practice.

Allegation 6 (a) (vi)

- 78.** This allegation relates to a requirement to provide, by 15 January 2023, an AML policy which was appropriate for the Practice.
- 79.** The panel has seen the policy which was submitted in response to this request, and notes that it was clearly designed for a large practice with electronic AML checking systems (including one called Smartsearch, which the Practice did not have or use), and an electronic case management system called Redbrick which the Practice again did not have or use. It also related to areas of work not undertaken by the Practice.
- 80.** When these concerns were raised with Mr Day, he responded that he thought that “it better it covers all contingencies and if we take on staff and the like ... it has not been taken from a solicitors practice and with respect we take offence to your comments which are incorrect”.
- 81.** The panel did not find this response to be helpful or compelling – there is no evidence that Mr Day or the Practice had intentions at that time to expand or move into different areas of practice, and the policy would have not been able to be complied with at the time of submission because of its reliance on digital tools which were not in place.
- 82.** In those circumstances, the panel found this allegation proved as against Mr Day and the Practice.

Allegation 6 (a) (vii)

- 83.** This allegation relates to a requirement to provide an up-to-date Practice-Wide Risk Assessment.
- 84.** At the 2022 inspection, the panel has seen evidence that the inspector found that the Practice did not have an appropriate Practice-Wide Risk Assessment. The document submitted to the inspector was out of date and did not reflect that Mr Day was no longer meeting 100 % of clients in person. This is obviously an important difference particularly in relation to AML provisions, as it allows less certainty in relation to identification and potential for the involvement of third parties in the transaction.

- 85.** The Practice was initially required to produce the up-to-date assessment by 15 January 2023. The panel has seen email correspondence which indicates that on 27 January 2023 a chase-up email was sent by the CLC to Mr Day after no assessment had been received. He responded that he thought he had already provided it, and was unsure what else was required. A further email from the CLC dated 31 January 2023 set out exactly what was required from the Practice, giving a deadline of 8 February 2023. That deadline was not met.
- 86.** The panel considers that an up-to-date assessment is crucial to the effective management of a Practice given that it reflects the risks to clients and the business arising from the day-to-day work and circumstances of the Practice, and that it should be regularly reviewed to ensure it is current and accurate. A failure to do so indicates to the panel a lack of understanding of its importance and lack of attention to the risks which could arise and their implications for the profession and the public.
- 87.** Mr Day, in his written response to the allegations, suggests that he has complied with this requirement. It may be the case that he complied after the deadline, but the given that the panel has seen clear evidence that he and the Practice failed to provide the documented assessment by the date specified by the CLC, it finds this allegation proved as against Mr Day and the Practice.

MISCONDUCT

- 88.** Having made its findings in relation to the allegations, the panel then went on to consider whether the conduct found proved amounted to misconduct on the part of Mr Day and the Practice. Again, the panel considered the case against each respondent separately. It bore in mind that Mr Day was a sole practitioner and was responsible therefore for the actions of the Practice, but that there are different regulatory requirements for an individual Licensed Conveyancer and a Regulated Body.

89. So far as Mr Day is concerned, the panel found that the conduct proved amounted to a lack of regard for the regulatory requirements of a Licensed Conveyancer, particularly in the area of AML, and particularly given that Mr Day was the Practice's Money Laundering Reporting Officer which brings with it an additional burden of enhanced knowledge of the legislative and regulatory requirements. The panel was very concerned that Mr Day had not paid due attention to the requirements of the AML legislation and of running a practice which could be exposed to attempts to criminally pass money through its accounts. The lack of source of funds checks was particularly concerning, given that conveyancing is a high-risk profession for money laundering, and there is a clear and significant risk to clients, the Practice and the profession.

90. Mr Day's attitude and approach to his regulator was also of particular concern, given that he took a blasé approach to directions from the CLC and consistently and persistently failed to comply with requirements despite considerable assistance from staff at the CLC.

91. Applying the facts found to the CLC Code of Conduct, by which the Respondents were at the material time bound, the panel found that there had been breaches as follows:

Overriding Principle 1 – (c) and (m)

Overriding Principle 2 – (b), (f), (i), (n) and (o)

Overriding Principle 5 – (a), (b) and (j)

92. Given those concerns arising from its findings and the number of breaches of the Code of Conduct, the panel concluded that Mr Day's conduct fell far below the standard expected of a Licensed Conveyancer and amounted to misconduct.

93. Turning to the Practice, the panel had similar concerns. It also found that clients instructing and entrusting their funds to the Practice were potentially exposed to financial risk if money laundering occurred, and the panel was not satisfied that there were the necessary checks and requirements in place to guard against those risks.

94. In those circumstances, the panel also concluded that the Practice had fallen far below the standard expected of a CLC Regulated Body, and the matters found proved amounted to misconduct.

SANCTION

95. The panel then went on to consider the appropriate sanction to impose against each of the Respondents.

96. It heard submissions from Counsel for the CLC in relation to the appropriate sanction to impose. There were no submissions made by the Respondents, as Mr Day did not attend the hearing and no written mitigation had been sent to the panel. Nothing therefore was known about Mr Day's current personal circumstances, or why he conducted himself in the way the panel had found proved.

97. The panel considered and applied the guidance in the Sanctions Guidance of March 2018. It bore in mind that the decision as to the appropriate sanction for each of the Respondents was the panel's own decision, at the panel's discretion.

98. The panel also bore in mind that any sanction imposed should be fair and consistent, and comply with the purpose of sanctions, namely.

- a. To protect the public and consumers of legal services
- b. To maintain and uphold public confidence in the reputation of the profession.
- c. To declare and uphold proper standards of conduct.
- d. To promote public and professional confidence in the disciplinary process and
- e. To mark the seriousness of the proven misconduct.

99. The panel reminded itself that the purpose of imposing sanctions is not to punish the Respondents but to protect the public. That however does not prevent the imposition of a sanction which may have a punitive effect on the Respondents when it is necessary to meet its objectives.

100. In deciding the appropriate sanction to impose, the panel considered the least serious sanction first, only moving on to consider more serious sanctions after it had concluded that any lesser sanction would adequately address the principle of proportionality, weighing the interests of the public against those of the respondent.

101. When addressing proportionality, the panel considered the following:

- a. Harm or potential harm caused by the misconduct.
- b. Insight demonstrated by the Respondents.
- c. The public interest (to include the impact on the reputation of the profession, confidence in the regulatory process and the deterrent effect)
- d. Aggravating factors
- e. Mitigating factors

102. Harm – the panel concluded that so far as the misconduct of both Respondents was concerned, there was a potential for significant financial harm to be caused if, as a result of the lack of safeguards, checks and knowledge the Practice became involved in money laundering.

103. Insight – the panel saw no evidence whatsoever of insight on the part of Mr Day, and therefore of either Respondent.

104. Public interest – the panel concluded that there was a significant public interest in marking the seriousness of this misconduct, given the potential for harm to the reputation of the profession if it (or the individual Respondents) became known as a route to facilitate money laundering because of lack of proper safeguards and knowledge. There is also a significant public interest in reinforcing and maintaining high standards of care and attention to the legislation and regulations around AML so that risk to clients can be identified and reduced.

105. Aggravating factors – the panel identified the following aggravating factors being present in relation to both Respondents:

- Likelihood of repetition
- Lack of insight or learning
- Lack of remorse
- Lack of explanation for actions
- Serious breach of the CLC's regulatory arrangements
- Repeated failure or pattern of behaviour
- Increased likelihood of damage to reputation of the profession

106. Mitigating factors – the panel identified the following mitigating factors being present in relation to both Respondents:

- No previous findings of misconduct

- 107.** The panel noted that in making its findings, it had found breaches of the Code of Conduct across several Overriding Principles, and that the misconduct had persisted over a five-year period despite multiple attempts by the CLC to support and assist the Respondents into compliance.
- 108.** Bringing all those factors together, the panel went on to consider the available sanctions, starting with the least serious.
- 109.** No further action – given the seriousness of the misconduct found against each Respondent, the panel concluded that to take no further action would not meet its objectives in sanctioning and particularly would not uphold public confidence in either the profession or the disciplinary process.
- 110.** Reprimand – the panel noted that a reprimand might be appropriate where an act or omissions needed particular attention drawn to it, but the Respondent had demonstrated insight and remediated their misconduct. Given that there was no evidence here of insight, and the panel had serious concerns that the misconduct could be repeated, it concluded that a reprimand again would not meet its objectives.
- 111.** Fine – the panel noted that a fine would not normally be imposed on its own because it is punitive in nature. It was appropriate however in the case of the Practice because it was now closed and so options were necessarily limited, it was a sole practitioner practice, and its sole practitioner (Mr Day) would also face sanctions. The panel also noted that the imposition of a fine could reflect the level of misconduct but concluded that the imposition of a fine alone as against Mr Day would not appropriately meet the level of its concerns and its objectives in imposing a sanction.
- 112.** Conditions on licence - the panel was informed by Counsel for the CLC that the Practice had closed, and Mr Day no longer held a licence. Therefore, it would not be possible to impose conditions.
- 113.** Disqualification – the panel noted that a period of disqualification might be most appropriate where there had been serious misconduct, a lack of insight and there is evidence to suggest that the CLC Lawyer will be unwilling to remedy the failings identified.
- 114.** The panel had found that there was serious misconduct in this case, there was no insight or remorse, and despite being given multiple opportunities over the five-year period to remedy the failings, Mr Day and the Practice had consistently declined to do

so. As he had not attended the hearing, the panel had been unable to understand why Mr Day had taken that approach, and why he had repeatedly failed to uphold the proper standards required.

- 115.** The panel had concluded, from Mr Day's correspondence with the CLC which had been provided in the hearing bundle, that he (and the Practice therefore) did not consider that the AML regulations were sufficiently important to warrant the time and attention required to ensure that appropriate and robust protections and safeguards were in place.
- 116.** Money laundering is a key risk for the Conveyancing profession, and maintaining proper standards to ensure consumer protection is key to upholding the reputation of the profession. A deterrent effect is therefore an important part of a sanction in a case where misconduct of this nature is found.
- 117.** Having balanced all of the factors arising from the evidence before it, the panel has therefore concluded that the appropriate and least onerous sanction it can impose in this case is as follows:

Mr Day – disqualification for a period of 3 years, and a fine of £1000.

The Practice – a fine of £5000.

COSTS

- 118.** The panel noted that the CLC's costs of bringing these proceedings amounted to £2763.00.
- 119.** Given its findings against the Respondents, and considering the amount of costs to be proportionate, and in the light of the panel having no information from Mr Day to suggest that he could not pay costs in those sums, the panel concluded that it was appropriate to **order Mr Day and the Practice, jointly and severally, to pay costs to the CLC in the sum of £2763.00.**

VICTORIA GOODFELLOW – ADJUDICATION PANEL CHAIR

11 OCTOBER 2023

SCHEDULE 1

Allegations against the Practice as a Recognised Body

Michael Day Licensed Conveyancers (the Practice), whilst licensed as a Recognised Body by the CLC:

1. Allegation 1 – *found proved*

a. Failed to put appropriate management arrangements, systems and controls in place to comply with money laundering regulations.

b. The Practice did not:

i. have an appropriate AML Policy from at least on or about 14 February 2018 to on or about 10 February 2023; and/or

ii. provide and/or record regular training for employees from on or about 15 June 2018 until on or about ~~4 October 2022; and/or~~ 30 March 2023.

2. Allegation 2 - *found proved*

a. Did not complete and/or record matter-based risk assessments on the following matters:

i. MJD [Client A]; and/or

ii. MJD [Client B]; and/or

iii. MJD [Client C]; and/or

iv. MJD [Client D]; and/or

v. MJD [Client E]; and/or

vi. MJD [Client F]; and/or

vii. MJD [Client G]; and/or

viii. MJD [Client H];

3. Allegation 3 - *found proved*

a. Did not obtain and/or record the source of funds in the following matters:

i. MJD [Client G]; and/or

ii. MJD [Client H].

4. Allegation 4 - found proved

a. Did not obtain and/or record adequate client identification in the following matters:

- i. MJD [Client A]; and/or*
- ii. MJD [Client B]; and/or*
- iii. MJD [Client C]; and/or*
- iv. MJD [Client D].*

5. Allegation 5 - found proved

a. Failed to put in place and/or document a business continuity plan between on or about 12 April 2018 and on or about 4 October 2022.

6. Allegation 6 - found proved

a. Failed to comply and/or adequately comply in respect of the following CLC inspection actions and/or requests between on or about 13 April 2018 to on or about 10 February 2023:

- i. Action 6 of the Inspection Report dated 15 March 2018 (the 2018 Inspection Report); and/or*
- ii. Action 7 of the 2018 Inspection Report; and/or*
- iii. Action 11 of the 2018 Inspection Report; and/or*
- iv. Action 12 of the 2018 Inspection Report; and/or*
- v. An email dated 13 August 2020, as it related to the Practice's AML policy; and/or*

vi. Action 5 of the Inspection Report dated 5 December 2022 (the 2022 Inspection Report); and/or

vii. Action 9 of the 2022 Inspection Report; and/or

viii. Action 12 of the 2022 Inspection Report

Allegations against Michael Day as a Licensed Conveyancer

Whilst a Licenced Conveyancer, Sole Practitioner and Manager of Michael Day Licensed Conveyancers ('the Practice'):

1. Allegation 1 - found proved

a. You allowed the Practice to fail to put appropriate management arrangements, systems, and controls in place to comply with money laundering regulations.

b. The Practice did not:

i. have an appropriate AML Policy from at least on or about 14 February 2018 to on or about 10 February 2023; and/or

ii. provide and/or record regular training for employees from on or about 15 June 2018 until on or about ~~4 October 2022; and/or~~ 30 March 2023.

2. Allegation 2 - found proved

a. You did not complete and/or record matter-based risk assessments on the following matters:

i. MJD [Client A]; and/or

ii. MJD [Client B]; and/or

iii. MJD [Client C]; and/or

iv. MJD [Client D]; and/or

v. MJD [Client E]; and/or

vi. MJD [Client F]; and/or

vii. MJD [Client G]; and/or

viii. MJD [Client H];

3. Allegation 3 - found proved

a. You allowed the Practice to not obtain and/or record the source of funds in the following matters:

- i. MJD [Client G]; and/or*
- ii. MJD [Client H].*

4. Allegation 4 - found proved

a. You allowed the Practice to not obtain and/or record adequate client identification in the following matters:

- i. MJD [Client A]; and/or*
- ii. MJD [Client B]; and/or*
- iii. MJD [Client C]; and/or*
- iv. MJD [Client D].*

5. Allegation 5 - found proved

a. You allowed the Practice to fail to put in place and/or document a business continuity plan between on or about 12 April 2018 and on or about 4 October 2022.

6. Allegation 6 - found proved

a. You allowed the Practice to fail to comply and/or adequately comply in respect of the following CLC inspection actions and/or requests between on or about 13 April 2018 to on or about 10 February 2023:

- i. Action 6 of the Inspection Report dated 15 March 2018 (the 2018 Inspection Report); [Compliant AML policy produced by 13 April 2018] and/or*
- ii. Action 7 of the 2018 Inspection Report [document and evidence source of funds on all current cases prior to exchange and completion] - ; and/or*
- iii. Action 11 of the 2018 Inspection Report; and/or*
- iv. Action 12 of the 2018 Inspection Report [source of funds check and verification of source of funds]; and/or*

- v. An email dated 13 August 2020, as it related to the Practice's AML policy ;
and/or*
- vi. Action 5 of the Inspection Report dated 5 December 2022 (the 2022
Inspection Report; and/or*
- vii. Action 9 of the 2022 Inspection Report; and/or*
- viii. Action 12 of the 2022 Inspection Report.*