

ADJUDICATION PANEL OF THE COUNCIL FOR LICENSED CONVEYANCERS

Application re: **Simon Alexander Brooks (a Licensed Conveyancer)**

Date of Adjudication Panel Hearing: **26 January 2017**

Panel:

Carolyn Tetlow (Chair)

Harsha Hildebrand (Member)

Richard Morris (Licensed Conveyancer Member)

ALLEGATION

1. On 26 July 2016, upon your confession, you were convicted in Guildford Magistrates Court of three counts of fraud contrary to sections 1 and 4 of the Fraud Act 2006, which renders you unfit to practise as a licensed conveyancer.

THE ROLE OF THE ADJUDICATION PANEL

2. The CLC has established an independent Adjudication Panel to carry out the functions of the former Discipline and Appeals Committee. The Panel is asked to determine the allegation pursuant to Section 26 of the Administration of Justice Act 1985.

3. Prior to the Hearing the Panel had received a bundle of documents from the CLC numbered 1-134 pages, and a bundle of documents from the Respondent, including written submissions on his behalf and a set of exhibits numbered 1-22 pages. At the Hearing on 26 January 2017 it also received a signed copy of the statement of Ms Dwomoh-Bonsu and, at a later point in the Hearing, a signed statement from the Respondent. It also had the benefit of hearing submissions from Mr Irwin, counsel for the Respondent and from Ms Horlick counsel for the CLC.

BACKGROUND

4. The background may be briefly summarized as follows. Mr Brooks has held a CLC license since 1 September 2005. He was employed as a Licensed Conveyancer by a firm of solicitors, Brooks and Partners ("the firm"), of which his father was the principal. The Respondent decided to set up in business on his own account and to that end gave notice to the firm. His last day in the office was 23 December 2014, although he was apparently on gardening leave until 31 January 2015. The Panel was shown documents from which it is clear that in December 2014 Mr Brooks decided that he would take advantage of his position to divert money to himself before fully leaving the firm.

5. We were shown an email from Mr Brooks to one client dated 1 December 2014 suggesting that the client's fee might be reduced from £1,000 to £500 provided payment was made to him in cash. Mr Brooks wrote: "How about we agree a much lower fee of say £500? But no vat so just that but you'd need to come in and pay it in cash, if you're happy with that idea?" The documents also show Mr Brooks altering internal records within the firm so as to show a reduction in fees for two other clients. Subsequently, in January 2015 Mr Brooks visited the clients and had them pay him £1,000 each in cash. His purported justification was to save them money, including VAT. He then kept the money instead of accounting to Brooks and

Partners, for whom he still held himself out as working. The total amount Mr Brooks took in cash from the three clients and diverted to himself was £2,500.

6. On 26 July 2016 Mr Brooks pleaded guilty at the Guildford Magistrates Court to three criminal offences under the Fraud Act 2006. The offences to which he pleaded guilty were offences of fraud by abuse of his position towards members of the public for whom he had rendered services as a Licensed Conveyancer. Mr Brooks was ordered by the Court to carry out unpaid work and to pay compensation to each of the victims of his fraudulent conduct as well as a sum in costs.

DECISION OF THE PANEL ON THE ALLEGATION

7. The Panel has adopted a three stage approach, considering firstly whether the fact of the convictions is proved, secondly whether the convictions rendered Mr Brooks unfit to practise as a Licensed Conveyancer, and thirdly what, if any, sanction should follow. At the outset Mr Brooks, through Mr Irwin, admitted the convictions and that they rendered him unfit to practise.

8. The Panel had sight of the Certificate of Conviction dated 8 August 2016. On the basis of that certificate and Mr Brooks' admission it found the fact of the three convictions for fraud by abuse of position proved.

9. The Panel next considered whether the offences render Mr Brooks unfit to practice as a Licensed Conveyancer. It did not consider whether Mr Brooks had breached specific parts of the Code of Conduct because that did not form part of the allegation before the Panel. The allegation relates solely to the convictions.

10. We can deal shortly with the question whether these offences of fraud render Mr Brooks unfit to practice. Subject to the question of sanction, Mr Irwin on behalf of Mr Brooks did not suggest otherwise. There is no doubt, as Mr Brooks' guilty plea before the Court demonstrates, that this was dishonest conduct, and that these offences of dishonesty were perpetrated towards clients. They were committed in the course of his work as a Licensed Conveyancer over a period of weeks. They were an abuse by Mr Brooks of his position of trust. His actions also impacted on the reputation of the firm and laid it open to investigation. The Panel noted the evidence that Mr Brooks asked the clients to lie to the firm about the cash transactions, thereby seeking to implicate them in his wrongdoing. The clients were innocent parties in this matter; they were inexperienced in conveyancing transactions and vulnerable to his deception. The Panel also noted that when the CLC first contacted Mr Brooks about these matters he denied that he had done anything wrong and maintained that the clients had been fully aware and in agreement with what he had done, and had in fact benefitted from it.

11. The Panel also noted that Mr Brooks seems to have set out on his dishonest conduct with premeditation. Before he left the firm he prepared file notes and draft completion statements reflecting the reduced fees that he planned to charge on the invoices issued to the clients, omitting the additional cash payments he then took from the clients. Although apparently his father confronted him in early January with what he had done in relation to one client, this did not stop Mr Brooks from continuing with his frauds in relation to two other clients. He expressed great remorse to his father for what he had done, and said it was a "one off" and that he would not do it again. He continued his fraudulent conduct with other clients nevertheless.

12. The Panel concluded that the offences render Mr Brooks unfit to practice.

DECISION OF THE PANEL ON SANCTION

13. The Panel next considered what sanction would be appropriate within the range specified in section 26(2) of the 1985 Act.

14. The Panel noted that, on a literal interpretation of section 26(1)(a) of the 1985 Act, it could be thought that that proof of a conviction leading to a finding that the respondent is 'unfit to practise' would inevitably lead to disqualification, because the respondent has been expressly found unfit to practise as a Licensed Conveyancer. However, it is quite apparent from the remainder of the section that a panel is obliged to consider a range of sanctions, even if it has decided that a Licensed Conveyancer's criminal offence renders him unfit to practice.

15. Ms Horlick for the CLC reminded the Panel that it should approach the range of sanctions open to it in ascending order of gravity. The Panel accepted this submission. Nevertheless, we must record that Mr Irwin realistically accepted that a lengthy period of disqualification was inevitable. His submission was that we should impose a lengthy but finite period of disqualification rather than permanent disqualification.

16. Ms Horlick submitted that these three offences represented three serious examples of dishonesty involving several clients over a period of weeks. She submitted that Mr Brooks had put his own needs above those of his clients, his employer and the profession. He had asked his clients to lie to cover up his dishonesty. He had not repaid the sums taken from the clients until ordered to do so by the Court. He had not referred himself to the CLC. His insight was very limited and very late, and his reflective statement said nothing about his victims, to whom he had not apologised. Ms Horlick submitted that Mr Brooks' reflective statements fell far short of demonstrating full insight.

17. Mr Irwin drew our attention to Mr Brooks' plea of guilty and the shame he had professed. He accepted that this was serious offending and stated that Mr Brooks did not seek to justify his conduct in any way. He submitted that Mr Brooks' conduct was not fraudulent from the outset and that, although not a single incident, the offences had been committed over a relatively brief period. He also drew our attention to several commendatory references which Mr Brooks had obtained and which he submitted demonstrated that the offences did not indicate that Mr Brooks' character was inherently flawed. According to a statement made by Mr Brooks produced in the course of the hearing (this point having been queried by the Panel), these references came from people who had been told of his criminal offences and the regulatory proceedings, and knew the purpose for which the references were required. They do not on their face give an indication that this is so, but we do not need to dwell on this. Either way, we do not consider that they really operate so as to convert the Panel's view of an appropriate sanction from a permanent to a finite disqualification or any other sanction.

18. The Panel took account of Mr Irwin's submissions and Mr Brooks' admissions at the Hearing. It balanced the need to protect the public and uphold proper standards with Mr Brooks' interests in being able to earn a living as a Licensed Conveyancer.

19. These were offences of premeditated dishonesty committed over a period of weeks towards clients in the course of Mr Brooks' work as a Licensed Conveyancer. Conduct of this sort seriously undermines the reputation of the profession. It damages the trust which clients are entitled to have in practitioners and which these clients clearly showed in Mr Brooks. Only an order of permanent disqualification is appropriate if public confidence in the profession is to be maintained and an appropriate level of public protection achieved. No lesser sanction would be sufficient to mark the gravity of this case and uphold the CLC's regulatory objectives.

20. Whilst this was our conclusion, we should also record that we noted that under section 27 of the 1985 Act Mr Brooks will, notwithstanding the permanent disqualification, be entitled after 10 months to apply to the CLC for a new licence. Whether or not such an application would be successful is not a matter for us. It would be entirely a matter for the committee hearing the application. But we do observe that in reality a permanent disqualification may not necessarily be permanent.

21. The Panel directs that Mr Brooks is permanently disqualified from holding a license.

DECISION OF THE PANEL ON COSTS

22. In conclusion, the Panel was invited to deal with the question of costs. Mr Irwin resisted an order on the basis of what Mr Brooks had already had to pay and that the amount claimed was not reasonable. Of course, £2,500 of that money represented funds that he should never have had in the first place. We were given some details of Mr Brooks' income and outgoings and we accept that the margin between them is not great. Nevertheless, we consider the Council's claimed costs of £4,480, as set out in a schedule previously sent to Mr Brooks, to be reasonable. Mr Brooks has brought these proceedings upon himself and should pay the costs, which would otherwise fall on the profession. However, we would not wish to place an impossible burden on Mr Brooks. We therefore direct that he should pay the CLC's costs of £4,480 at the rate of £400 per month or such lesser amount, if any, as the CLC may agree.

Signed:

Carolyn Tetlow

Chair

Dated: 26 January 2017

IN THE MATTER OF SIMON ALEXANDER BROOKS

(A LICENSED CONVEYANCER)

AND

IN THE MATTER OF THE ADMINISTRATION OF JUSTICE ACT 1985

Between

The Council for Licensed Conveyancers Applicant

and

Simon Alexander Brooks Respondent

DECISION NOTICE OF THE ADJUDICATION PANEL

AFTER

1. The Adjudication Panel had:

- a. Read the Applicant's bundle of documents, which included a Certificate of Conviction dated 11 August 2016, a Production Statement of Akua Dwomoh-Bonsu dated 25 January 2017 and Affidavits of Alison Jane Mouser made on 27 September 2015 and 2 October 2015
- b. Heard Counsel for the Applicant
- c. Read the Respondent's bundle of documents which included various character references, letters from the Respondent and from Tom Ingleton, and a Witness Statement dated 26 January 2017 from the Respondent, and
- d. Heard Counsel for the Respondent

2. Respondent had admitted the allegation
3. The Adjudication Panel DETERMINED that the allegation had been proved to its satisfaction.

THE ADJUDICATION PANEL ORDERED:-

1. In accordance with section 26(2)(b) of the Administration of Justice Act 1985 that the Respondent, Simon Brooks, is permanently disqualified starting on 26 January 2017 from holding a licence under Part 2 of the Act.
2. Pursuant to section 26(2A) of the Administration of Justice Act 1985 that the Respondent, Simon Alexander Brooks, do pay to the Council for Licensed Conveyancers the sum of £4,480.00 (in respect of which VAT is not payable), being the costs incurred by it in bringing against the Respondent the proceedings before the Committee, such sum to be paid at a rate of £400 per month (or such lesser amount, if any, as the Council for Licensed Conveyancers may agree), the first payment to be made on or before 1 March 2017, and then on or before the first day of each following month.

Dated January 2017

CAROLYN TETLOW – CHAIR

Members of the Panel:

Richard Morris (Licensed Conveyancer member)

Harsha Hildebrand (Lay member)

ADJUDICATION PANEL OF THE COUNCIL OF LICENSED CONVEYANCERS

10th June 2016

Mr Simon Brooks has temporarily and voluntarily surrendered his licence to practise as a licensed conveyancer.