



## Enforcement Determination Notice

24 March 2022

### James Patrick Keogh

*Non-Authorised Manager and Director of Stratega Law Ltd (Practice Licence Number: 11392)*

*Main office: 1 Villiers Court, 40 Upper Mulgrave Road, Cheam, London SM2 7AJ*

**James Patrick Keogh** (the **Respondent**) is a non-Authorised Manager and Director of Stratega Law Ltd (the **Licensed Body**) which is an Alternative Business Structure (**ABS**) authorised and regulated by the Council for Licensed Conveyancers (**CLC**).

The CLC issued the Respondent with a Warning Notice dated 28 January 2022 (the **Warning Notice**) setting out its intention and reasons for imposing a sanction.

The Respondent requested an extension to 14 March 2022 to provide his response. An extension was granted to 25 February 2022, followed by a further extension to 4 March 2022. The CLC provided a final opportunity for the Respondent to respond, until 12pm on 7 March 2022.

Having received no response to the Warning Notice, the CLC has decided to impose the sanctions below for the reasons set out in the Warning Notice and outlined at Annex 1 of this Enforcement Determination Notice.

#### **Determination details:**

The CLC applies the following sanctions on the Respondent, in respect of breaches of the CLC's Code of Conduct:

- a) financial penalties totalling £5,000 pursuant to Paragraph 13.8 of the ABS Framework; and
- b) disqualification from holding any post or role in any CLC Licensed or Recognised Body.

#### **Summary of Facts:**

The CLC have investigated several complaints received from former clients of the Licensed Body. These clients had raised complaints associated with schemes to avoid or mitigate the payment of stamp duty land tax (**SDLT**) on purchases where the Licensed Body was instructed in the conveyance. The CLC found multiple breaches to its codes associated with these complaints.

Specifically, the CLC has found that whilst a Director of the Licensed Body the Respondent acted in such a way as to breach and/or cause or substantially contribute to the Licensed Body breaching the CLC's Code of Conduct and/or Handbook in relation to:

1. enabling and/or facilitating the use of SDLT mitigation and/or avoidance schemes;
2. providing assurances to the CLC that the Licensed Body did not provide tax advice to clients in respect of the involvement of an Annuity in a purchase arrangement, in circumstances where such assurances were not true;
3. deviating from an assurance provided to the CLC that from 1 April 2019 the Licensed Body would not engage with clients who are taking advice from Cornerstone Tax, particularly where such advice involved the use of agreements involving an Annuity;

4. destruction of client files prior to the expiration of retention periods;
5. charging a client for electronic access to and/or an online copy of their file then later informing the client that their file had been destroyed when it had not been; and
6. failing to keep client money safe.

The CLC considers that the Respondent breached:

- Overriding Principles 1 and 2 and 3 and 5 of the Code of Conduct; and
- Outcomes 1.2 and 1.3 and 2.3 and 3.1 and 3.3 and 5.1 of the Code of Conduct;
- Principles 1(a) and 1(b) and 1(c) and 1(h) and 1(k) and 1(l) and 3(a) and 3(b) and 3(h) and 5(a) and 5(e) of the Code of Conduct; and
- Specific Requirements 6 and 9 of the Transaction Files Code.

***Sanction rationale:***

The CLCs considers that the imposition of financial penalties and to disqualify the Respondent is appropriate and proportionate following reference to the CLC Financial Penalties Framework and Regulation and Enforcement Policy for the following reasons:

1. The outcome is appropriate because the CLC has assessed the Respondent's misconduct as high in that it was dishonest, misleading, intentionally reckless or negligent, it was pervasive or systematic and/or the Respondent should reasonably have known the conduct was improper; and
2. The impact of the Respondent's conduct on clients and the reputation of the profession has been assessed as having caused significant harm and/or is highly likely to cause significant harm; and
3. The number of allegations against the Respondent (when viewed in conjunction with those outlined in the Enforcement Determination Notice dated 28 September 2021), together with evidence the CLC holds of his persistent dishonesty (committed with the intention of obscuring or having the CLC discontinue its investigations into breaches of its regulatory arrangements), as well as the Respondent's plain disregard for compliance with the CLC's standards, are all severely aggravating factors against the Respondent.
4. The outcome is both proportionate and in the public interest because it creates a credible deterrent to other individuals and the issuing of such a sanction signifies the risk to the public, and the legal sector, that arises when individuals breach the CLC's Codes.
5. The outcome is also proportionate on the basis that the cost to the profession of professional indemnity claims and/or complaints escalating to the Legal Ombudsman are significant.

***Publication:***

Any enforcement determination of the CLC under the ABS Framework should be published in order to ensure that transparency in regulatory and disciplinary processes is maintained, unless the CLC considers that the reasons for non-publication of the particular circumstances of an enforcement decision outweigh the public interest.

Accordingly, subject to any appeal, the CLC considers it is appropriate in the circumstances to publish this Enforcement Determination Notice (appropriately redacted in the interests of ensuring the privacy of clients).

## ANNEX 1

Whilst a Director of Stratega Law Ltd (**Stratega**), you acted in such a way as to breach and/or cause or substantially contribute to Stratega breaching the CLC's Code of Conduct and/or Handbook when:

Allegation	CLC's Findings	CLC's Reasons for Sanction
<b>Allegation 1</b>		
<b>1</b>	<p>a. You enabled and/or facilitated the use of stamp duty land tax (<b>SDLT</b>) mitigation and/or avoidance schemes.</p> <p>b. In doing so, your conduct:</p> <ul style="list-style-type: none"> <li>i. breached Overriding Principle 1 (in that your conduct lacked integrity) and/or 3 of the Code of Conduct; and/or</li> <li>ii. failed to achieve Outcome 1.2 and/or 3.1 of the Code of Conduct; and/or</li> <li>iii. breached Principle 1(c) and/or 1(l) and/or 3(a) of the Code of Conduct.</li> </ul>	<p>You and/or Stratega and/or one or more of its trading styles and/or its directors acted for conveyancing clients who entered into schemes (including those designed by Cornerstone Tax) to avoid or mitigate the payment of SDLT.</p> <p>Additionally, Stratega and/or one or more of its trading styles and/or its directors acted for Property Futures Ltd who were a second purchaser in SDLT sub-sale schemes and as such, were an enabler in the schemes.</p>
<b>Allegation 2</b>		
<b>2</b>	<p>a. In an email dated 1 May 2019 you advised the CLC that, "<i>I repeat, for the avoidance of doubt, that Stratega has not promoted or given any tax advice to clients in respect of the involvement of an Annuity in a purchase arrangement</i>".</p> <p>b. Stratega and/or one or more of its trading styles and/or its directors acted for clients who entered into sub-sale (annuity) schemes designed to avoid or mitigate SDLT.</p> <p>c. In doing so, your conduct:</p>	<p>Stratega and/or one or more of its trading styles and/or its directors acted for Property Futures Ltd who were a second purchaser in SDLT sub-sale (annuity) schemes.</p> <p>You would have, or should have known, at the time you emailed the CLC on 1 May 2019 that this statement was not true. Your dishonesty in this regard, causes the CLC to suspect that you were deliberately seeking to obscure or have the CLC discontinue its investigation, so that breaches to the CLC Code of Conduct would not be identified.</p> <p>The CLC suspects that you were dishonest and/or misleading because you knew that the SDLT scheme is professionally and ethically dubious, and you</p>

	<ul style="list-style-type: none"> <li>i. breached Overriding Principle 1 (in that your conduct was dishonest and/or lacked integrity) and/or 5 (in that your conduct was misleading) of the Code of Conduct; and/or</li> <li>ii. failed to achieve Outcome 5.1 of the Code of Conduct; and/or</li> <li>iii. breached Principle 1(b) and/or 1(c) and/or 5(a) and/or 5(e) of the Code of Conduct; and/or</li> <li>iv. is evidence that you are not a fit and proper person to hold a position as a manager of an ABS Licensed Body by the CLC.</li> </ul>	<p>sought to avoid the CLC understanding the true facts of your involvement. This is an especially aggravating feature of this allegation.</p>
<b>Allegation 3</b>		
<p><b>3</b></p>	<ul style="list-style-type: none"> <li>a. On 15 March 2018 the CLC emailed Stratega stating, <i>"...given the approach taken to 'enablers' in HMRC Guidance at [<a href="#">Identify who is classed as an enabler of tax avoidance - GOV.UK (www.gov.uk)</a>], it seems to me that Stratega should immediately cease involvement in any such Schemes"</i>.</li> <li>b. On 19 March 2018 the CLC emailed Stratega stating, <i>"Could you...advise that you have ceased to use this arrangement [the schemes]"</i>.</li> <li>c. On 6 March 2019 the CLC emailed Stratega noting that, <i>"The CLC shares your concerns about the risks associated with this type of work [SLDT mitigation], as well as the moral and ethical concerns. We would therefore strongly suggest that this is a line of business that is dropped with immediate effect"</i>.</li> <li>d. On 1 May 2019 you emailed the CLC stating that, <i>"...we have carried out a risk assessment in relation to the regulatory framework and taken the decision (ratified in a</i></li> </ul>	<p>Stratega continued to engage with and/or provide advice to a client who had entered into one or more SDLT mitigation and/or avoidance schemes including a sub-sale (annuity) scheme which involved Cornerstone.</p> <p>This was despite warnings provided by the CLC to cease such work and the assurance provided to the CLC by Stratega that it would not engage with clients in relation to such work from 1 April 2019.</p>

	<p><i>Board resolution), that as from 1 April 2019 Stratega will not accept any client referrals from Cornerstone. This means that this firm will not engage with clients who are taking tax advice from Cornerstone and, in particular, where such advice may involve the use of agreements involving an Annuity”.</i></p> <p>e. Between on or about 23 February 2021 and 4 May 2021 Stratega engaged with and/or provided advice to the client on matter 55397.005</p> <p>f. The client in matter 55397.005 had entered into one or more SDLT mitigation and/or avoidance schemes, including a sub-sale (annuity) scheme, which involved Cornerstone.</p> <p>g. In doing so, your conduct:</p> <ul style="list-style-type: none"> <li>i. breached Overriding Principle 1 (in that your conduct was dishonest and/or lacked integrity) and/or 5 (in that your conduct was misleading) of the Code of Conduct; and/or</li> <li>ii. failed to achieve Outcome 5.1 of the Code of Conduct; and/or</li> <li>iii. breached Principle 1(b) and/or 1(c) and/or 5(a) of the Code of Conduct; and/or</li> <li>iv. is evidence that you are not a fit and proper person to hold a position as a manager of an ABS Licensed by the CLC.</li> </ul>	
<b>Allegation 4</b>		
4	<p>a. You allowed Stratega to destroy one or more files on matter 55664.002 (otherwise referred to as matter 55664.005) prior to the expiration of retention periods.</p>	<p>The contents of files relating to all matters must be retained for a minimum of six years, except those relating to other conveyancing matters (other than sale files) which must be retained for a minimum of 15 years.</p>

	<p>b. Whilst a Director of Stratega, you acted in such a way as cause or substantially contribute to Stratega breaching the Council for Licensed Conveyancers' Code of Conduct, and in doing so, your conduct:</p> <ul style="list-style-type: none"> <li>i. breached Overriding Principle 1 (in that your conduct lacked integrity) and/or 2 and/or 3 of the Code of Conduct; and/or</li> <li>ii. failed to achieve Outcome 2.3 and/or 3.1 and/or 3.3 of the Code of Conduct; and/or</li> <li>iii. breached Principle 1(a) and/or 1(b) and/or 3(h) of the Code of Conduct; and/or</li> <li>iv. failed to adhere to Specific Requirement 9 of the Transaction Files Code.</li> </ul>	<p>Purchase matter 55664.002 (otherwise referred to as matter 55664.005) completed on or about 30 September 2011. In responding to the Warning Notice directed to you dated 21 May 2021 you stated that, "<i>in line with normal practice (after 7 years), the conveyancing file has been purged from the client database, Proclaim, so I am unable to access any documents from that file</i>". As matter 55664.002 related to a purchase, the conveyancing file should have been retained for a minimum of 15 years until at least 2026.</p> <p>The CLC has evidence that the clients on matter 55664.002 (otherwise referred to as matter 55664.005) entered into a SDLT mitigation scheme. The CLC understands that the SDLT mitigation file was run separately to the conveyancing file. There is evidence that you corresponded with the clients in relation to the SDLT mitigation scheme as recently as 12 November 2019 and as such, the SDLT mitigation file should have been retained for a minimum of 6 years until at least 12 November 2025.</p>
<b>Allegation 5</b>		
5	<ul style="list-style-type: none"> <li>a. On matter 57880.002 you allowed Stratega to charge a client £125 plus VAT for electronic access to and/or a (online) copy of their file.</li> <li>b. On the same matter on 18 June 2021 Stratega informed the client "<i>Your file has been destroyed already, we are only obliged to keep a file for 7 years</i>".</li> <li>c. On 18 January 2022 Stratega informed CLC "<i>The file is available and has been under the same login details since 20/08/2013</i>".</li> <li>d. In doing so, your conduct: <ul style="list-style-type: none"> <li>i. breached Overriding Principle 1 (in that your conduct lacked integrity) and/or 3 of the Code of Conduct; and/or</li> </ul> </li> </ul>	<p>Copies of client files must be provided to clients without charge.</p> <p>The client in matter 57880.002 was charged £125 plus VAT for electronic access to and/or a (online) copy of her file via Touchpoint. The client was not provided with her own copy of her file.</p> <p>The client was advised by Stratega on 18 June 2021 that her file had been destroyed when it had not been.</p>

	<ul style="list-style-type: none"> <li>ii. failed to achieve Outcome 1.2 and/or 3.1 of the Code of Conduct; and/or</li> <li>iii. breached Principle 1(b) and/or 1(c) and/or 1(l) and/or 3(b) and/or 3(h) of the Code of Conduct; and/or</li> <li>iv. failed to adhere to Specific Requirement 6 and/or 9 of the Transaction Files Code.</li> </ul>	
<b>Allegation 6</b>		
<p><b>6</b></p>	<ul style="list-style-type: none"> <li>a. On numerous occasions between 14 June 2016 and September 2019 you and/or Stratega and/or one or more of its trading styles indicated to the clients on matter 55665.002 (otherwise referred to as matter 55664.005) that Stratega held £8,970 in client account and/or in escrow on their behalf.</li> <li>b. On 13 July 2018 and 29 October 2018 you and/or Stratega and/or one or more of its trading styles indicated to the client on matter 55742.002 (otherwise referred to as matter 55497.002) that Stratega held £7,650 in client account and/or in escrow on their behalf.</li> <li>c. On or about 12 November 2019 a ledger was created for matter 55664.005 and the sum of £8,970 was paid: <ul style="list-style-type: none"> <li>i. from office account to client account (reference 55664.005); and</li> <li>ii. from client account to one or both of the clients by Faster Payment (reference 55664.005).</li> </ul> </li> <li>d. On or about 17 December 2021 a ledger was created for matter 55742.002 and the sum of £7,650 was paid: <ul style="list-style-type: none"> <li>i. from office account to client account (reference 55742.002); and</li> </ul> </li> </ul>	<p>You would have, or should have known, at the time you made the statements to the clients on matters 55664.002 (otherwise referred to as matter 55664.005) that they were untrue given that the sum of £8,970 was not held on client account during the period stated.</p> <p>You would have, or should have known, at the time you made the statements to the clients on matters 55742.002 (otherwise referred to as matter 55497.002).and that they were untrue given that the sum of £7,650 was not held on client account during the period stated.</p>

	<ul style="list-style-type: none"><li>ii. from client account to the client (reference 55742.002).</li><li>e. The funds referred to at (a) had not been held in client account since at least November 2017 in accordance with the assurances made to clients on matter 55664.002 (otherwise referred to as matter 55664.005) and 55742.002 (otherwise referred to as matter 55497.002).</li><li>f. The funds referred to at (b) had not been held in client account since at least July 2018 in accordance with the assurances made to the client on matter 55742.002 (otherwise referred to as matter 55497.002).</li><li>g. In doing so, your conduct:<ul style="list-style-type: none"><li>i. breached Overriding Principle 1 (in that your conduct was dishonest and/or lacked integrity and/or was misleading) and/or 3 of the Code of Conduct; and/or</li><li>ii. failed to achieve Outcome 1.3 and/or 3.1 of the Code of Conduct; and/or</li><li>iii. breached Principle 1(b) and/or 1(h) and/or 1(k) of the Code of Conduct; and/or</li><li>iv. is evidence that you are not a fit and proper person to hold a position as a manager of an ABS Licensed by the CLC.</li></ul></li></ul>	
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