



Enforcement Determination Notice

6 January 2023

Germaine Everton Spence

*Previously of Simply Conveyancing Property Lawyers Ltd (the **Licensed Body**)*

The Council for Licensed Conveyancers (**CLC**) issued **Germaine Everton Spence** (the **Respondent**) with a Warning Notice dated 5 September 2022 (the **Warning Notice**) setting out its intention and reasons for imposing a sanction. The Respondent, who is an unauthorised former employee of the Licensed Body, responded to the Warning Notice on 6 October 2022. The Respondent's response to the Warning Notice was to accept the CLC's findings in full.

Accordingly, this Enforcement Determination Notice is an agreed outcome between the CLC and the Respondent in relation to the breaches set out in the Warning Notice.

Determination details:

The Respondent agrees to the following outcomes in respect of breaches to the CLC's Code of Conduct as reported to the CLC by the Licensed Body:

- a) financial penalties totalling £3,300 pursuant to Paragraph 13.8 of the Licensing Alternative Business Structures - The Licensed Body (ABS) Licensing Framework (the **ABS Framework**); and
- b) disqualification from employment with any CLC Licensed Body for a period of 5 years, pursuant to Paragraph 13.11 of the ABS Framework (collectively, the **sanction**).

Summary of facts:

The CLC investigated the Respondent's conduct on matter HIR50454-1 which resulted in the following allegations against the Respondent (particularised at Annex 1):

1. Responding to enquiries without taking the client's instructions;
2. Providing an undertaking without taking the client's instructions;
3. Exchanging contracts without taking the client's instructions; and
4. Attempting to conceal his misconduct by forging signatures/documents, posting forged documents and bypassing/overriding the Licensed Body's case management system.

Allegation 1

It was found by the CLC and the Respondent has admitted to responding to enquiries without taking the client's instructions.

In doing so, the CLC considers that misconduct was occasioned by the Respondent in that he breached or failed to adhere to:

- i. Overriding Principle 1 (in that the conduct lacked integrity) and 2 and 3 of the Code of Conduct; and
- ii. Outcome 1.2 and 2.1 and 2.2 and 3.1 and 3.2 and 3.3 of the Code of Conduct; and
- iii. Principle 1(b) and 1(c) and 2(a) and 3(b) and 3(h) and 3(l) of the Code of Conduct.

Allegation 2

It was found by the CLC and the Respondent has admitted to providing an undertaking without taking the client's instructions.

In doing so, the CLC considers that misconduct was occasioned by the Respondent in that he breached or failed to adhere to:

- i. Overriding Principle 1 (in that the conduct lacked integrity) and 2 and 3 of the Code of Conduct; and
- ii. Outcome 2.1 and 2.2 and 3.1 and 3.2 and 3.3 of the Code of Conduct; and
- iii. Principle 1(b) and 1(c) and 2(a) and 3(b) and 3(h) and 3(l) of the Code of Conduct.

Allegation 3

It was found by the CLC and the Respondent has admitted to exchanging contracts without taking the client's instructions.

In doing so, the CLC considers that misconduct was occasioned by the Respondent in that he breached or failed to adhere to:

- i. Overriding Principle 2 and 3 of the Code of Conduct; and
- ii. Outcome 2.1 and 2.2 and 3.1 and 3.2 and 3.3 of the Code of Conduct; and
- iii. Principle 2(a) and 3(b) and 3(h) and 3(l) of the Code of Conduct.

Allegation 4

It was found by the CLC and the Respondent has admitted to attempting to conceal his misconduct by forging signatures/documents, posting forged documents and bypassing/overriding the Licensed Body's case management system.

In doing so, the CLC considers that misconduct was occasioned by the Respondent in that he breached or failed to adhere to:

- i. Overriding Principle 1 (in that the conduct was dishonest) and 2 and 3 of the Code of Conduct; and
- ii. Outcome 1.2 and 2.1 and 2.2 and 3.1 and 3.2 and 3.3 of the Code of Conduct; and
- iii. Principle 1(b) and 1(c) and 2(a) and 3(b) of the Code of Conduct.

Sanction rationale:

With reference to the CLC Financial Penalties Framework and Regulation and Enforcement Policy, the CLC considers that the imposition of the sanction is an appropriate and proportionate outcome in the public interest, for the following reasons:

1. The Respondent's misconduct is serious, in that it breached the client's and Licensed Body's trust and caused harm, albeit temporary, to the client which impacts the public interest and public confidence in CLC-regulated bodies.
2. Honesty is a fundamental tenet of the legal profession. The Respondent's misconduct includes dishonesty.

3. The sanction creates a credible deterrent to other individuals (including those who are unauthorised) from engaging in misconduct within CLC-regulated bodies;
4. The sanction promotes public confidence in CLC-regulated bodies that individuals (including those who are unauthorised) who engage in misconduct are appropriately sanctioned and held accountable;
5. The harm caused to the client and the Licensed Body, albeit minor and temporary, had the potential to be serious and lasting;
6. As far as can be ascertained by the Licensed Body, the Respondent's misconduct was isolated to matter HIR50454-1, however was premeditated and repeated over a period of time; and
7. The Respondent has shown some insight by admitting his misconduct to the CLC, as set out in the Warning Notice, thereby saving the regulated community the additional costs of enforcement.

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

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
1	<p>a. On 11 February and/or 17 February 2021 the Respondent responded to one or more enquiries raised the buyer's solicitors without taking or adequately taking the client's instructions on matter HIR50454-1.</p> <p>b. In doing so the Respondent:</p> <ul style="list-style-type: none"> i. breached Overriding Principle 1 (in that the conduct lacked integrity) and 2 and 3 of the Code of Conduct; and ii. failed to achieve Outcome 1.2 and 2.1 and 2.2 and 3.1 and 3.2 and 3.3 of the Code of Conduct; and iii. breached Principle 1(b) and 1(c) and 2(a) and 3(b) and 3(h) and 3(l) of the Code of Conduct. 	<p>The Respondent in his response, has admitted the allegation in full. This admission is considered by the CLC to be a mitigating factor. Accordingly, the CLC repeats and relies on its previous findings but amends the sanction proposed in the Warning Notice.</p> <p>The sanction imposed is a global financial penalty of £3,300* representing a collective penalty for numerous breaches to the Code of Conduct and based on Penalty Bracket 3 (High Conduct and Low Impact assessments).</p> <p>* The unadjusted financial penalty is set at the top of the range for Penalty Bracket 3 (£3,000), increased by 20% for aggravating factors (the Respondent's actions in relation to Allegation 4 were intended to conceal his misconduct) and decreased by 10% for a mitigating factor (the Respondent has admitted the allegations in full).</p>
2	<p>a. On 19 February 2021 the Respondent provided an undertaking to the buyer's solicitors on matter HIR50454-1 that, "We undertake to provide a signed statement of truth from our client confirming they are one and the same and to help with any Land Registry requisitions", without taking or adequately taking the client's instructions.</p> <p>b. In doing so the Respondent:</p>	<p><i>Included in the sanction outlined at allegation 1.</i></p>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
	<ul style="list-style-type: none"> i. breached Overriding Principle 1 (in that the conduct lacked integrity) and 2 and 3 of the Code of Conduct; and ii. failed to achieve Outcome 2.1 and 2.2 and 3.1 and 3.2 and 3.3 of the Code of Conduct; and iii. breached Principle 1(b) and 1(c) and 2(a) and 3(b) and 3(h) and 3(l) of the Code of Conduct. 	
3	<p>a. On 19 February 2021 the Respondent exchanged contracts on matter HIR50454-1 without the following:</p> <ul style="list-style-type: none"> i. the client's authority to effect exchange of contracts; and ii. his manager's approval to effect exchange of contracts; and iii. a contract for sale signed by the client; and iv. a Transfer (TR1) signed by the client; and v. a name declaration signed by the client; and vi. the original grant of probate of the deceased sole registered proprietor of the Property. <p>b. In doing so the Respondent:</p> <ul style="list-style-type: none"> i. breached Overriding Principle 2 and 3 of the Code of Conduct; and ii. failed to achieve Outcome 2.1 and 2.2 and 3.1 and 3.2 and 3.3 of the Code of Conduct; and iii. breached Principle 2(a) and 3(b) and 3(h) and 3(l) of the Code of Conduct. 	<i>Included in the sanction outlined at allegation 1.</i>
4	<p>a. At an unknown time and date, the Respondent took the following actions on matter HIR50454-1:</p> <ul style="list-style-type: none"> i. forged the client's signature on the contract for sale; and ii. forged the client's signature on the TR1; and 	<i>Included in the sanction outlined at allegation 1.</i>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
	<ul style="list-style-type: none"> iii. created a false witness of "Stuart Frances" of "6 Manor Close" when he witnessed the client's forged signature on the TR1; and iv. dated and forged the client's signature on a name declaration; and v. posted (or caused to be posted) the fraudulently signed contract for sale and TR1 to the Licensed Body's offices; and vi. hid the following documents in the Licensed Body's case management system: <ul style="list-style-type: none"> 1. the forged name declaration; and 2. the forged contract for sale and TR1; and 3. the memorandum of exchange received from the buyer's solicitors. <p>b. In doing so the Respondent:</p> <ul style="list-style-type: none"> i. breached Overriding Principle 1 (in that the conduct was dishonest) and 2 and 3 of the Code of Conduct; and ii. failed to achieve Outcome 1.2 and 2.1 and 2.2 and 3.1 and 3.2 and 3.3 of the Code of Conduct; and iii. breached Principle 1(b) and 1(c) and 2(a) and 3(b) of the Code of Conduct. 	