

IN THE MATTER OF:

SEAN GARNER

(Appellant)

AND

COUNCIL FOR LICENSED CONVEYANCERS

(Respondent)

PANEL DECISION

1. A three-member panel of the Adjudication Panel, comprising a Licensed Conveyancer member, a lay member, and a legally qualified chair, convened for the hearing of the appeal by Sean Garner against the decision by the Council for Licensed Conveyancers ("CLC") to refuse his application for an individual licence.
2. The CLC was represented by Mr Sleight of Counsel. Mr Garner was present and represented by Mr Goodwin.
3. The panel confirmed that, prior to the hearing, it had read all the documents with which it had been provided by the parties.

Preliminary issues

4. In his appeal grounds, Mr Garner raised the issue of whether he had a legitimate expectation that his licence applications would be considered on their merits, having regard to all relevant circumstances and in the proper exercise of discretion on the part of the Panel.
5. At the outset of the hearing, Mr Sleight and Mr Goodwin confirmed that it was agreed that this need not be dealt with as a discrete issue, and so by agreement the panel has not separately considered that part of Mr Garner's appeal.

Grounds of appeal

6. In a document dated 16 February 2023, Mr Garner's solicitor Mr Goodwin set out the grounds of appeal, which are as follows:
 - a. The Licensing Panel erred in law in asserting that "*the SRA's regulatory sanction is terminal*" which failed to recognise and apply the appropriate test.
 - b. The Licensing Panel erred in law in proceeding on the basis that they had no discretion.
 - c. The Licensing Panel erred in not giving any, or sufficient, consideration to the CILEx temporary suspension and subsequent reinstatement of Mr Garner's Practising Certificate
 - d. The Licensing Panel erred in not giving any or sufficient consideration to Mr Garner's rehabilitation in the period since the SDT decision dated 7 April 2009
 - e. The Licensing Panel erred in not giving any or sufficient consideration to the fact that there is nothing known to the detriment of Mr Garner since 7 April 2009 (which had been taken into consideration by CILEx in reaching its conclusions)
 - f. The Licensing Panel erred in law in failing to give adequate reasons for its refusal of the individual licence application.
 - g. The Licensing Panel erred in law in not giving any or sufficient consideration to the 'exceptional circumstances' relevant to the Appellant.

Background

By way of history, the Panel was provided with the following agreed chronology:

7. Mr Garner was admitted as a Solicitor in 2000 and was an equity partner from 1 January 2003.
8. On 7 April 2009 – Mr Garner appeared before the Solicitors Disciplinary Tribunal ("SDT") following reports of misconduct between July 2004 and August 2006. On that date, the SDT found that Mr Garner had:
 - a. Made false entries on cheque stubs and payment vouchers relating to six cheques between 5 July 2004 and 1 August 2006, totalling £5,328.96.

- b. Misappropriated professional charges due to Kelhams Solicitors, where on twenty separate matters he requested payments be made to him directly, amounting to a total of £1260.25.
 - c. Attempted to avoid payment of VAT on professional charges due to Kelhams Solicitors.
9. In its ruling, the SDT set out its finding that.

“” ... all three allegations proved to the highest standard of proof. The Tribunal also found that [the Appellant] had been dishonest in that he knew at the material times that what he was doing in relation to both the gifts and to fees was dishonest. The [Appellant] had deceived his partners and had taken steps involving false accounting to conceal his receipt of gifts from a client. While working within a partnership he had not only sought fees on his own account, payable to him personally, but had involved the firm’s clients in the avoidance of VAT.”

The SDT also explained that *“”... [it] regarded the dishonesty of the Respondent, committed as a partner in the course of his practice, as extremely serious. A strike off was necessary both to maintain the reputation and integrity of the profession and also to assure the protection of the public ...”*

10. 6 May 2010 – based on the same factual matters, and following a misconduct hearing before CILEx, Mr Garner was excluded from membership of CILEx for 18 months.
11. 13 March 2015 – following application, Mr Garner was reinstated as a CILEx Conveyancing practitioner.
12. 10 June 2015 – Mr Garner was appointed as a CILEx Approved Manager and CILEx Compliance Manager for Practice Management and Accounts with Garner Law.
13. On 23 October 2022 Mr Garner submitted applications for an Individual Licence, and to be approved as a Registered Manager. On 30 October 2022, Mr Garner applied for a Recognised Body Licence.
14. Recognised Body applications are decided by the Licensing Panel, comprised of at least two members of the CLC’s Senior Management Team. It is not known in this case who comprised the panel that considered Mr Garner’s applications.
15. Individual licence applications are not normally considered by the Licensing Panel, but Mr Garner’s individual application was considered by the same panel as was the procedure when joint individual and Recognised Body applications were submitted together.
16. On 20 January 2023, Mr Garner was notified that both applications had been rejected. In relation to the individual licence, the notice stated the following:

“The licensing panel determined that you did not meet the fit and proper person test to be granted a CLC Licence (Conveyancing) and become a CLC Lawyer. When making its decision the panel took into account:-

b. the SGT findings 07 April 2007, and the decision of the Tribunal as to penalty and costs:-

22. Having considered the submissions and the evidence as to [the Appellant’s means, the Tribunal was satisfied that the appropriate penalty was for [the Appellant] to be struck off the Roll of Solicitors. The Tribunal regarded the dishonesty of the Respondent, committed as partner in the course of his practice, as extremely serious. A strike off was necessary both to maintain the reputation and integrity of the profession and also to assure the protection of the public.

b. The SRA’s regulatory sanction is terminal.”

At that time, Mr Garner was not provided with any further information about how the Licensing Panel reached its decision on his applications.

17. 16 February 2023 – Mr Garner lodged his appeal.

The Panel’s approach.

18. The parties agreed that the Panel must consider whether the Appellant Mr Garner meets the “fit and proper person test” such as to be able to be granted an individual licence as a licensed conveyancer. If Mr Garner meets that test, the Panel should then go on to consider his application for a Recognised Body licence for Garner Law.

19. It was agreed between the parties and with the Panel that the “fit and proper person test” amounted to findings on whether.

- a. By granting the application, there is a risk to the public and/or
- b. By granting the application, there is a risk that there may be damage to the reputation of the profession.

20. If the Panel decides that Mr Garner does not meet the appropriate test, then neither the individual licence for Mr Garner nor the Recognised Body licence for Garner Law should be granted.

21. If the Panel decides that Mr Garner does meet the appropriate test and directs the CLC to grant him an individual licence, the CLC submitted that there were additional and separate considerations in relation to whether to grant the Recognised Body licence, and its grant should not automatically flow.
22. It was agreed between the parties that the Panel would hear submissions and decide upon the individual licence first, and then invite further submissions on the Recognised Body licence in the event that Mr Garner's appeal was successful on his application for the individual licence.
23. So far as the individual licence is concerned, the Panel took the following approach:
 - i. It noted that it was agreed between the parties that Mr Garner met the minimum requirements for academic attainment and occupational experience, and so no finding was required in relation to that part of the test.
 - ii. As Mr Garner must also satisfy the test that he is a fit and proper person to practice as a licence conveyancer (s15(1)(c) Administration of Justice Act 1985, the Panel must determine whether, by granting the application, there is a risk to the public, or a risk that there may be damage to the reputation of the profession.

Law

24. The Panel's powers in relation to the appeal derive from s29 Administration of Justice Act 1985.
25. S29(1)(a) provides for the right of appeal where the CLC has refused an application for a licence.
26. S29(2)(a) empowers the Panel, in the circumstances of a successful appeal, to direct the CLC to issue the Appellant with a conditional or unconditional licence, with any conditions being specified by the Panel.
27. S29(2)(c) empowers the Panel to make an order for the payment of costs by either party if it thinks it appropriate and just to do so.
28. Case law: The Panel bore in mind the guidance of Sir Thomas Bingham MR in the case of *Bolton v Law Society* [1994] 1 WLR 512 on the fundamental purpose behind

sanctions in professional regulatory proceedings (in that case imposed by the SDT). It noted that it has been long agreed that this guidance is relevant to other professions.

29. That guidance includes the following:

“In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence The second purpose is the fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission, If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending reinvestment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires.”

30. The panel’s attention was also drawn to the cases of *Jidefo v Law Society (no 06 of 2006)* and *Evans v SRA (no 01 of 2007)* and *Begum v SRA (no 11 of 2007)* (unreported)– heard together in the Court of Appeal (Civil Division) on 31 July 2007; *Masrur v Law Society [2009] EWCA Civ 944* and *Mulla v SRA [2010] EWHC 3077 (Admin)*. The panel took into consideration the guidance set out in those cases when reaching its decision.

Other material before the Panel

31. The Panel also read and took into consideration the CILEx Certificate of Good Standing dated 9 February 2023, and the numerous personal and professional references provided in support of Mr Garner and his application, noting that the referees were individuals of good standing themselves.

32. However, the Panel were particularly concerned to understand whether those referees had been made aware, or knew already, the circumstances leading to Mr Garner being struck off the Roll of Solicitors in 2009. Mr Garner gave evidence to the

Panel that he had not specifically mentioned the circumstances to them when requesting the references, that he thought some would have remembered as they were clients at the relevant time, but the Panel observed that he had not discussed this, checked or clarified with any of the referees. Therefore, in those circumstances the Panel was not satisfied that the references had been written in full knowledge of the circumstances or the purpose for which the Panel was being invited to rely upon them.

33. Having reached that conclusion, the Panel was unable to place significant weight on the references in support of Mr Garner.

34. The Panel was not provided with clear information about what CILEx take into consideration when granting a Certificate of Good Standing, but it was agreed between the parties that there had been no regulatory inspection of Mr Garner's professional work or of Garner Law by CILEx for some time. There had however been an inspection in 2016, and Mr Garner had submitted annual reviews to CILEx which had raised no issues, and the Panel accepted the Certificate of Good Standing as being evidence that so far as CILEx were concerned, they had no concerns about Mr Garner's professional conduct.

The Panel's decision

35. The Panel took into consideration the history of Mr Garner's misconduct, and the fact that there was no evidence of further misconduct since 2006. It also noted that Mr Garner had been readmitted to CILEx since his striking off as a Solicitor, and CILEx appeared not to be concerned about his professional activities as they had granted him a Certificate of Good Standing on 9 February 2023, which had been placed before the Panel.

36. The Panel considered whether this amounted to total rehabilitation, such that there was now no risk of harm to the public were Mr Garner to be granted a CLC Licence. It was satisfied that there was no evidence before it of further dishonesty or any other form of misconduct during the 14 years that had passed since the SDT findings. However, the Panel had some concerns in the evidence Mr Garner gave during the hearing in that he continued to minimise his actions in 2004 to 2006, continued to

feel that the decision of the SDT had been harsh, and that he lacked insight into his fundamental dishonesty during that period. Whilst he clearly understood the seriousness of the SDT's findings, the Panel concluded that he was concerned with the seriousness of the implications for him, rather than for clients and potential clients. Nonetheless, there was no evidence that the lack of insight had led to repeated behaviour.

37. The Panel also took into consideration Mr Garner's own personal circumstances, and the fact that he had made full and frank disclosure of his disciplinary history in his application to the CLC, which was to his credit.
38. On the other hand, the Panel found that Mr Garner's dishonesty in 2004 to 2006 was so serious, and there was ongoing evidence of limited insight which supported the suggestion that his dishonesty and misconduct was not fully remediated so that the Panel could be satisfied that there was no risk whatsoever to the public.
39. However, the Panel did not find that the level of risk was such that it could conclude that he failed to meet the "fit and proper person" test on that limb alone.
40. The Panel then went on to consider the second limb of the test, namely whether by granting Mr Garner a licence, there was a risk that there may be damage to the reputation of the profession.
41. The Panel carefully considered the guidance set out in the case law placed before it but noted that Mr Garner's dishonesty and misconduct was notably serious, particularly as he had been a Solicitor and partner in a firm at the time. Whilst he had been admitted to the Roll as a Solicitor in 2002, he had been practising as a Licensed Conveyancer for some years before that.
42. Mr Garner's dishonest acts were conducted in the course of his practice as a solicitor and partner with an enhanced position of trust and involved the misuse of client money.
43. The Panel were reminded of the comments of Lord Bingham MR, in *Bolton*, which are worth repeating here as they encapsulate the Panel's conclusion on the risk of damage to the reputation if a licence is granted in this case:
. " To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission, If a member of the public sells his house, very often his

largest asset, and entrusts the proceeds to his solicitor, pending reinvestment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

44. Mr Goodwin submitted on behalf of Mr Garner that his case was exceptional, including in his conduct and rehabilitation since 2006. The Panel did not find that this was exceptional in the context of the seriousness of his original misconduct and the impact on the reputation of the profession of such misconduct.
45. The Panel concluded that there would be a clear risk of damage to the reputation of the profession if a Licence was granted to Mr Garner in light and full knowledge of his prior serious financial dishonesty with client money, exacerbated by his lack of insight into the seriousness of those matters.
46. Therefore, the Panel decided, having taken in all matters it had read and submissions and evidence it had heard, that Mr Garner had failed to meet the "fit and proper persons" test in that:
 - a. It could not be satisfied there was no risk of repetition, because of Mr Garner's limited insight into the seriousness of his behaviour.
 - b. Despite the lack of repetition since 2006 and the progress Mr Garner has made since then, it was satisfied there was a risk of damage to the reputation of the profession if a licence was granted, based on the seriousness of Mr Garner's previous dishonesty and the particular need for the public to be able to place full trust in Licensed Conveyancers conducting important, significant and potentially life-changing transactions for them.
47. The Panel therefore rejected Mr Garner's appeal for the granting of an Individual Licence.
48. Having reached that decision, it was agreed that (as Mr Garner is the sole practitioner within Garner Law) the Panel was not required to go on to consider the Recognised Body Licence appeal as Mr Garner could not meet the requirements without an Individual Licence.

Costs

49. Costs schedules were provided to the Panel.
50. The Panel has the power to make an order for the payment of costs by either party to the other, under s29(2)(c) Administration of Justice Act 1985.
51. The CLC sought an order that Mr Garner pay their costs in the sum of £19,005.60. Mr Garner did not seek an order that the CLC pay his costs.
52. The Panel heard submissions from both advocates on the issue of costs, both as to an award in principle and as to quantum.
53. The Panel bore in mind that it had no evidence before it (and none available albeit Mr Sleight was instructed that the process had been duly followed) of the process through which the Licensing Panel went to reach its decision. It bore in mind the content of the Practice Licence Application Determination Overview report by Ms Richardson of the CLC, dated 17 January 2023, and the lack of evidence of application of the two-stage test which has been agreed by the parties is required before a decision as to whether an applicant has met the “fit and proper person” test can be made. There was no evidence within the notice of decision received by Mr Garner on 20 January 2023 that the correct legal test had been applied, and there was insufficient reasoning for Mr Garner to understand why he had not met the “fit and proper person” test.
54. The Panel understands that any application for costs by the CLC is made to ensure that the wider profession does not effectively have to meet the cost of the regulation of others who may have fallen foul of the professional regime. However, this is an appeal against a decision made by the Licensing Panel of the CLC rather than a hearing of misconduct allegations, and so the Panel considers that a different approach can be considered.
55. In this case, had the correct test been demonstrably applied, and a proper reasoned decision issued setting out why Mr Garner did not meet the test for the granting of the licence, then this appeal may not have been made.
56. In those circumstances, the Panel considers that the most fair and just order to make so far as costs is concerned, is to make no order for costs. That is the Panel’s order.

Panel:

Decision date: 11 May 2023

Victoria Goodfellow, Chair

Catherine Fewings, Licensed Conveyancer member

Helen Riley, Lay member