



## Enforcement Determination Notice

14 February 2024

### **Nelson McLean Limited (closed on 31 October 2023)**

*(Former) Practice Licence Number: 11280*

*Main office: Bell House, Bells Lane, Tenterden TN30 6ES*

**Nelson McLean Limited (NML)** was an Alternative Business Structure (**ABS**) which was authorised and regulated by the Council for Licensed Conveyancers (**CLC**) at all material times until its closure on 31 October 2023.

The CLC issued NML with a Warning Notice dated 25 September 2023 (the **Warning Notice**) setting out its intention and reasons for imposing a sanction. NML responded to the Warning Notice on 23 October 2023.

After careful consideration of that response (and the response to the separate warning notice directed to Mr Malcolm McLean), the CLC decided to impose the sanctions below for the reasons set out in the Warning Notice, and as outlined in this Enforcement Determination Notice. The CLC's decision, which includes extracts of NML and Mr McLean's responses to their respective warning notices, is attached at Annex 1.

#### ***Determination details:***

The CLC applies the following sanctions to NML, in respect of breaches of the CLC's Code of Conduct and Handbook (collectively, the **CLC Codes**):

- a) financial penalties totalling £8,775 pursuant to Paragraph 13.8 of the ABS Framework.

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

The CLC investigated a complaint received from Person RB relating to their abortive purchase of a property (the **Complaint**) from Client DN, a client of NML. Multiple breaches of the CLC Codes associated with the Complaint were found. In light of these breaches, the CLC conducted a monitoring inspection of NML practice on 15 May 2023 (the **Inspection**) which revealed further breaches.

Although numerous breaches of the CLC Codes were identified in connection with the Complaint, the CLC is persuaded that NML's misconduct predominately arose from management and supervision failures. However, in relation to anti-money laundering (**AML**), the CLC considers that NML's failures resulted from significant deficiencies with NML's AML programme and breaches of the CLC Codes.

The CLC considers that NML breached:

- Overriding Principles 1, 2 and 3 of the Code of Conduct;
- Outcomes 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 3.1, 3.2 and 3.3 of the Code of Conduct;

- Principles 1(b), 1(c), 1(e), 1(h), 1(l), 2(f), 2(g) and 2(i) of the Code of Conduct;
- Specific Requirements 1(m), 1(n) and 5(j) of the Code of Conduct;
- Outcome 5 of the Accounts Code (in force until 30 September 2020);
- Specific Requirements 9.1.2, 9.1.3, 9.1.4, 9.1.5, 9.1.6 and 12.2 of the Accounts Code (in force until 30 September 2020);
- Outcomes 1, 2, 3, 4 and 5 of the Anti-Money Laundering and Combatting Terrorist Financing Code (in force until April 2018) (the **former AML Code**);
- Specific Requirements 6, 7, 9(d), 9(e) and 12 of the former AML Code;
- Outcomes 1, 2, 3, 4 and 5 of the Anti-Money Laundering and Combatting Terrorist Financing Code (currently in force) (the **AML Code**);
- Specific Requirements 6, 7, 9(d), 9(e), 11(a), 11(c) and 12 of the AML Code.
- Outcomes 3, 4, 5, 7 and 8 of the Management and Supervision Arrangements Code; and
- Specific Requirement 11 of the Management and Supervision Arrangements Code.

***Sanction rationale:***

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

1. The CLC has assessed NML's misconduct as 'moderate', in that it failed to meet the supervision and management standards expected of bodies licensed by the CLC.
2. The impact of NML's misconduct on the reputation of the profession (and specifically in relation to AML and the public interest) has been assessed as having caused 'moderate harm' and/or 'is likely to cause moderate harm' but that this, and public confidence in CLC lawyers, may be repaired by the closure of NM (and the imposition of a financial penalty).
3. Mr Malcolm McLean (**Mr McLean**) was NML's Head of Legal Practice (**HOLP**), Head of Finance and Administration (**HOFA**) and Money Laundering Reporting Officer (**MLRO**). The CLC considers that he acted on a frolic of his own in relation to many of the findings against NML. He at times circumvented NML's usual procedures and acted in breach of the CLC's Codes. Accordingly, the sanction for the core misconduct is most appropriately targeted against Mr McLean (as the accountable individual for NML).
4. The outcome is proportionate and in the public interest. It creates a credible deterrent to other CLC bodies. The issuing of such a sanction thus mitigates the risk to the public, and the legal sector, arising from further breaches to the CLC Codes.

***Publication:***

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

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 interested parties).

## ANNEX 1

After carefully considering NML's responses to the proposed allegations and sanctions outlined in the Warning Notice, the CLC's decision and reasons for imposing the above sanction is outlined below:

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
1	<p>a) Between around December 2017 and around August 2018, you allowed Nelson McLean Limited (<b>NML</b>) to use the client account to receive and/or make payments which were unconnected to any underlying transaction.</p> <p>b) In doing so, you allowed NML to:</p> <ul style="list-style-type: none"> <li>i. breach Overriding Principle 1 and/or 2 of the Code of Conduct;</li> <li>ii. breach Principle 1(b) and/or 1(c) and/or 2(g) and/or 2(f) and/or 2(i) of the Code of Conduct;</li> <li>iii. fail to achieve Outcome 5 of the Accounts Code (in force until 30 September 2020);</li> <li>iv. breach Specific Requirement 9.1.2 and/or 9.1.3 and/or 12.2 of the Accounts Code (in force until 30 September 2020); and/or</li> <li>v. breach Specific Requirement 11 of the Management and Supervision Arrangements Code.</li> </ul>	<p>NML has submitted in its response that it <i>"admits this [the conduct outlined in the allegation] occurred, but in circumstances beyond a lot of its control, save for an acknowledgement, that whilst systems were in place, those systems did not ultimately detect the relevant conduct"</i>. NML emphasised the role of Mr McLean as director of NML and its HOLP, HOFA and MRLO, having <i>"deliberately evaded systems and processes"</i>. NML submitted that, upon becoming aware of the conduct, it introduced certain processes and controls to prevent Mr McLean from being able to <i>"run a file 'under the radar' without the knowledge of his co-director or his PA."</i></p> <p>The CLC acknowledges the notification by Mrs Anne Nelson of the steps taken by NML to remove Mr McLean as a signatory to the client account upon becoming aware of his misconduct. Accordingly, and although the CLC do not consider the allegation should be amended or withdrawn, the CLC is persuaded that the sanction should be targeted at the core misconduct relating to misuse of the client account, that is the conduct occasioned by Mr McLean, with a nominal financial penalty imposed against NML for its associated supervision and management failures.</p> <p>The CLC imposes a financial penalty of <b>£3,500</b> representing a global penalty for breaches to the CLC's Code of Conduct and Management and Supervision Arrangements Code and based on Penalty Bracket 3 (Medium Conduct and Medium Impact assessments).</p>
2	<p>a) Between around December 2017 and around August 2018, you allowed NML to use the client account to receive and/or make payments related to the provision of services which were not regulated by the Council for Licensed Conveyancers (<b>CLC</b>).</p>	<p>In its response, NML has accepted this allegation. The CLC therefore considers NML to have admitted this allegation.</p> <p>Accordingly, and although the CLC do not consider the allegation should be amended or withdrawn, the CLC is persuaded that the sanction should be targeted at the core misconduct relating to misuse of the client account, that is the conduct occasioned</p>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
	<p>b) In doing so, you allowed NML to:</p> <ul style="list-style-type: none"> <li>i. breach Overriding Principle 1 and/or 2 of the Code of Conduct;</li> <li>ii. fail to achieve Outcome 1.1 and/or 2.1 and/or 2.3 of the Code of Conduct;</li> <li>iii. breach Principle 1(b) and/or 1(c) and/or 2(f) and/or 2(g) and/or 2(i) of the Code of Conduct; and/or</li> <li>iv. breach Specific Requirement 1(n) of the Code of Conduct;</li> <li>v. fail to achieve Outcome 5 of the Accounts Code (in force until 30 September 2020);</li> <li>vi. breach Specific Requirement 9.1.3 of the Accounts Code (in force until 30 September 2020); and/or</li> <li>vii. breach Specific Requirement 11 of the Management and Supervision Arrangements Code.</li> </ul>	<p>by Mr McLean, with a nominal financial penalty imposed against NML for its associated supervision and management failures.</p> <p>The sanction imposed in respect of this finding (Finding 2) is included globally in the sanction outlined at Finding 1.</p>
3	<p>a) You allowed NML to act outside its scope of practice by providing services to Client DN which were not regulated by the CLC, in relation to the following persons on or around the following dates:</p> <ul style="list-style-type: none"> <li>i. Person ■■■, from 10 April 2018 to 15 September 2024;</li> <li>ii. Person ■■■, on 22 September 2016;</li> <li>iii. Person ■■■, from 16 September 2016 to 05 October 2016;</li> <li>iv. Person ■■■ from 18 August 2016 to 30 September 2016;</li> <li>v. Person ■■■ on 08 August 2018;</li> </ul>	<p>NML has responded to this allegation as it relates to Person ■■■, separately to the parts of the allegation which relate to other persons outlined from 3)a)ii-xvi. The CLC has considered the allegation in the same manner when making this determination.</p> <p>In response to the allegation as it relates to Person ■■■, NML requested that the CLC reconsider the allegation given that <i>"at the time payment was made its receipt would have been part of services to client DNs which were regulated by the CLC"</i>.</p> <p>The CLC agrees with this submission. Accordingly, the CLC amends the allegation to remove allegation 3(a)(i) and makes no finding in respect of it.</p> <p>In response to the balance of the allegation, NML submitted that it was <i>"hampered in replying fully as (a) the file Mr McLean maintained for Client ■■■ work is sparse, so the [Licensed Body (NML)] is dependent on Mr McLean's recollections of what</i></p>

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	<ul style="list-style-type: none"> <li>vi. Person [REDACTED] from 11 January 2018 to 12 January 2018;</li> <li>vii. Person [REDACTED] from 10 January 2018 to 08 February 2018;</li> <li>viii. Person [REDACTED] from 01 February 2018 to 13 July 2018;</li> <li>ix. Person [REDACTED] from 02 February 2018 to 20 March 2018;</li> <li>x. Person [REDACTED] from 26 January 2018 to 27 February 2018;</li> <li>xi. Person [REDACTED] from 12 March 2017 to 16 March 2017;</li> <li>xii. Person [REDACTED] from 16 September 2016 to 13 October 2016;</li> <li>xiii. Person [REDACTED] on 25 February 2017;</li> <li>xiv. Person [REDACTED] from 09 April 2018 to 19 April 2018;</li> <li>xv. Persons [REDACTED] and [REDACTED] from 23 February 2017 to 15 March 2017; and/or</li> <li>xvi. Person [REDACTED] from 09 March 2017 to 19 May 2020.</li> </ul> <p>b) In doing so, you allowed NML to:</p> <ul style="list-style-type: none"> <li>i. breach Overriding Principle 1 and/or 2 and/or 3 of the Code of Conduct;</li> <li>ii. fail to achieve Outcome 1.1 and/or 2.1 and/or 2.3 and/or 3.1 and/or 3.2 and/or 3.3 of the Code of Conduct;</li> <li>iii. breach Principle 1(b) and/or 1(c) and/or 2(f) and/or 2(g) and/or 2(i) of the Code of Conduct;</li> <li>iv. breach Specific Requirement 1(n) of the Code of Conduct; and/or</li> <li>v. breach Specific Requirement 11 of the Management and Supervision Arrangements Code.</li> </ul>	<p><i>happened and the limited information he has disclosed"</i> and that relevant staff are no longer available to assist with their recollections of what occurred at the time.</p> <p>Although the CLC accepts that there was limited information available on the file Mr McLean maintained for Client DN, the CLC considers that the information contained is sufficient to conclude that the work performed under NML's CLC practice licence included work for which it was not regulated by the CLC.</p> <p>Accordingly, and although the CLC do not consider the allegation should be amended or withdrawn (save for in respect of allegation 3(a)(i) as outlined above), the CLC is persuaded that the sanction should be targeted at the core misconduct relating to the performance of unregulated work being conduct occasioned by Mr McLean, with a nominal financial penalty imposed against NML for its associated supervision and management failures.</p> <p>The sanction imposed in respect of this finding (Finding 3) is included globally in the sanction outlined at Finding 1.</p>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
4	<p>a) The conduct as set out in Allegation 3 was misleading <del>and/or dishonest</del>, in that:</p> <ul style="list-style-type: none"> <li>i. you allowed NML to lead Client [REDACTED] to believe that the services provided to Client [REDACTED] were within NML's scope of practice and/or regulated by the CLC; and/or</li> <li>ii. you allowed NML to lead all or some of the Persons listed at Allegation 3(a)(ii) to 3(a)(xvi) (save for the Persons listed at Allegations 3(a)(ii), 3(a)(v) and/or 3(a)(ix)) to believe that the services provided to Client [REDACTED] were within NML's scope of practice and/or regulated by the CLC.</li> </ul> <p>b) In doing so, you allowed NML to:</p> <ul style="list-style-type: none"> <li>i. breach Overriding Principle 1 and/or 2 and/or 3 of the Code of Conduct;</li> <li>ii. fail to achieve Outcome 1.1 and/or 2.1 and/or 2.3 and/or 3.1 and/or 3.2 and/or 3.3 of the Code of Conduct;</li> <li>iii. breach Principle 1(b) and/or 1(c) and/or 1(e) and/or 1(l) and/or 2(f) and/or 2(g) of the Code of Conduct;</li> <li>iv. breach Specific Requirement 1(n) of the Code of Conduct; and/or</li> <li>v. breach Specific Requirement 11 of the Management and Supervision Arrangements Code.</li> </ul>	<p>NML has responded to this allegation by stating that "<i>only Mr McLean had any contact with client [REDACTED] or the persons listed in this allegation</i>". Its response also reiterated earlier comments that NML knew nothing of the misconduct and that Mr McLean actively concealed his misconduct, such that only he could have led Client [REDACTED] to believe any facts.</p> <p>The CLC accepts NML's submission and considers that NML as a licensed body could not have acted dishonestly, but that it did act misleadingly, albeit unintentionally.</p> <p>Accordingly, the CLC considers the allegation should be amended to remove reference to NML acting dishonestly, and in respect of allegation 4(a)(ii), to remove reference to allegation 3(a)(i) which has not pursued above. The CLC is persuaded that the sanction should be targeted at the core misconduct relating to misleading clients and other persons in relation to the scope of work NML was regulated to perform, being conduct occasioned by Mr McLean, with a nominal financial penalty imposed against NML for its associated supervision and management failures.</p> <p>The sanction imposed in respect of this finding (Finding 4) is included globally in the sanction outlined at Finding 1.</p>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
5	<p>a) You allowed the client side of the client ledger for Matter A to <del>go into</del> <u>remain</u> in debit balance on various dates between around 22 June 2018 and around 31 January 2019.</p> <p>b) In doing so, you allowed NML to:</p> <ul style="list-style-type: none"> <li>i. breach Overriding Principle 1 and/or 2 and/or 3 of the Code of Conduct;</li> <li>ii. fail to achieve Outcome 1.3 and/or 2.2 and/or 3.1 of the Code of Conduct;</li> <li>iii. breach Principle 1(h) of the Code of Conduct;</li> <li>iv. breach Specific Requirement 9.1.2 and/or 9.1.4 and/or 9.1.5 and/or 9.1.6 of the Accounts Code (in force until 30 September 2020); and/or</li> <li>v. breach Specific Requirement 11 of the Management and Supervision Arrangements Code.</li> </ul>	<p>NML <i>"acknowledges that systems needed to be put in place to ensure this situation could not arise again, and this was done...effectively taking from Mr McLean any ability to make payments"</i> without separate authorisation. NML also submitted that <i>"the conduct was positively hidden from the [Licensed Body (NML)] and that culpability arises from the failure to prevent the conduct"</i>.</p> <p>The CLC acknowledges the steps taken by NML to prevent breaches of the CLC Accounts Codes after becoming aware of the conduct. However, the CLC considers that not only were NML's payments processes flawed, their policies and procedures related to the preparation of reconciliations were also flawed. The result was that debit client account balances were allowed to occur and then remain unresolved by those who managed and oversaw management of NML's accounts function.</p> <p>A report dated 18 July 2019 was produced following a monitoring inspection of NML on 29 May 2019. In it, the CLC's inspector states:</p> <p><b>██████████</b> <i>completes the bank reconciliations...The Practice aims to clear ledger balances to zero as soon as possible after completion or registration. AN [Anne Nelson] liaises with ██████████ but retains overall responsibility."</i></p> <p>The CLC accepts that by virtue of his role as NML's HOFA, Mr McLean was ultimately accountable for compliance with the CLC Codes, including the Accounts Code. However, there is evidence that Mrs Nelson had responsibility for reviewing NML's reconciliations, a proper review of which would have included NML's matter listing/cashbook and the detection of debit balances on Matter A.</p> <p>Although the payments which resulted in the subject debit balances do not appear to have been made by anyone other than Mr McLean, there was a collective failure on the part of those responsible at NML (including RW and Mrs Nelson). They collectively allowed debit balances to occur and remain on the client side of Matter A's ledger without prompt detection or resolution. This was misconduct on their part. It is the CLC's contention that such failure to review reconciliations carried the real risk of causing losses to clients. The CLC acknowledges that there was no deliberate attempt by NML to conceal this misconduct.</p>



Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
		<p>Accordingly, the CLC considers the allegation should be amended as detailed within Finding 5 to most accurately reflect the misconduct occasioned by NML. A financial penalty of £1,250 is imposed for breaches to the CLC's Code of Conduct, Accounts Code and Management and Supervision Arrangements Code based on Penalty Bracket 2 (Medium Conduct and Low Impact assessments).</p>
6	<p>a) On Matter A, you allowed NML to fail to hold the following funds to order pending exchange of contracts regarding the purchase of Property A by Person [REDACTED] from Client [REDACTED]</p> <ul style="list-style-type: none"> <li>i. £67,000, received into the client account from Person [REDACTED] on or around 18 April 2018; and/or</li> <li>ii. £33,000 received into the client account from Person [REDACTED] on or around 20 April 2018.</li> </ul> <p>b) In doing so, you allowed NML to:</p> <ul style="list-style-type: none"> <li>iii. breach Overriding Principle 1 and/or 2 of the Code of Conduct;</li> <li>iv. breach Principle 1(a) and/or 1(b) and/or 1(c) and/or 1(l) and/or 2(g) of the Code of Conduct; and/or</li> <li>v. breach Specific Requirement 11 of the Management and Supervision Arrangements Code.</li> </ul>	<p>NML has indicated that without a full chronology, it <i>"cannot be absolutely sure about the transaction [Matter A]"</i> however, <i>"it is believed that the funds being held in escrow were only released when the escrow condition (exchange of contracts for the sale by client [REDACTED] to person [REDACTED] of the property...) were satisfied"</i>.</p> <p>Based on the Special Conditions attached to the draft Contract (page 90, Bundle B), NML's above outlined belief/understanding is reasonable, and is consistent with the approach adopted in residential conveyancing transactions for established properties.</p> <p>NML's response also indicates that it agrees with the CLC's conclusion that the funds received on 18 and 20 April 2018 as referred to in this allegation, represented the purchase deposit for Matter A (which is disputed by Mr McLean). These findings have been made based on Person [REDACTED] evidence, the evidence available (albeit limited) on the transaction file for Matter A, as well as the account ledger for Matter A obtained from NML. The account ledger shows the transaction narratives for the deposits made on 18 April 2018 of £67,000 and on 20 April 2018 of £33,000 describing the funds as <i>"Deposit Funds"</i> and <i>"Balance Deposit Funds"</i>, respectively.</p> <p>Notwithstanding that there is no evidence that the <i>"escrow condition (exchange of contracts...)"</i> was ever satisfied, the deposit funds were released from NML's client account to Client [REDACTED]. NML accepted that it failed to achieve outcomes and breached principles but submitted that (having been unaware of the misconduct) <i>"the conduct should be targeted to the persons involved in the transaction and the [Licensed Body's (NML)] culpability should be confined to the lack of effective supervision and controls in place"</i>. The CLC is persuaded that such an approach is appropriate in the circumstances.</p>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
		<p>Accordingly, and although the CLC do not consider the allegation should be amended or withdrawn, the CLC is persuaded that the sanction should be targeted at the core misconduct, that is the conduct occasioned by Mr McLean, with a nominal financial penalty imposed against NML for its associated supervision and management failures.</p> <p>On that basis, the sanction imposed in respect of this finding (Finding 6) is included globally in the sanction outlined at Finding 1.</p>
7	<p>a) You allowed NML to fail to obtain any, or any adequate, documentation verifying the source of funds <del>received into the client account</del> on the following matters:</p> <ul style="list-style-type: none"> <li>i. Matter A;</li> <li>ii. Matter B, regarding the purchase of Property B;</li> <li>iii. Matter C, regarding the purchase of Property C; and/or</li> <li>iv. Matter D, regarding the purchase of Property D.</li> </ul> <p>b) In doing so, you allowed NML to:</p> <ul style="list-style-type: none"> <li>i. breach Overriding Principle 1 and/or 2 of the Code of Conduct;</li> <li>ii. fail to achieve Outcomes 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or breached Specific Requirements 6 and/or 7 and/or 9(d) and/or 12 of the AML Code (in force until April 2018);</li> <li>iii. fail to achieve Outcomes 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or breached Specific Requirements 6 and/or 7 and/or 9(d) and/or 11(c)</li> </ul>	<p>NML has admitted allegation 7(a)(i) but asked the CLC to reconsider the facts in allegations 7(a)(ii), 7(a)(iii) and 7(a)(iv).</p> <p><b>Allegation 7(a)(i)</b></p> <p>NML has admitted the allegation.</p> <p><b>Allegation 7(a)(ii)</b></p> <p>NML stated that, "<i>the funds in question were not received into the [Licensed Body's (NML)] client account, being paid by the purchasing mother direct to her selling daughter</i>".</p> <p>Although it seems correct that most of the purchase funds were not received into the client account, the client account ledger at (page 278, Bundle D) confirms that purchase funds of £124,911 were received by NML toward the transaction.</p> <p>Although the CLC accepts that the proposed allegation stated "<i>funds received into the client account</i>" there is no provision in the CLC's codes or the Money Laundering Regulations 2017 (as amended) (the <b>Regulations</b>) for waiving the requirement to verify the source of funds in conveyancing transactions where the funds in question are not transferred through a legal practice's client account.</p>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
	<p>and/or 12 of the AML Code (currently in force); and/or</p> <p>iv. breach Specific Requirement 11 of the Management and Supervision Arrangements Code.</p>	<p>Additionally, whether funds were received into the client account or transferred from buyer to seller directly, is irrelevant for the purposes of the Regulations or Part 7 of the Proceeds of Crime Act 2002 (<b>POCA</b>). The CLC considers that in this high-risk matter, NML should have conducted enhanced due diligence to ensure criminal property was not being converted or transferred with the practice's assistance.</p> <p>This allegation has been amended to encapsulate the entirety of the misconduct. The misconduct included failing to obtain any, or any adequate, documentation verifying the source of funds which were <i>not</i> received into the client account, but which funded the transaction.</p> <p>Accordingly, based on the evidence contained on the matter file and reasoning above, the CLC considers that the practice failed in its duty to obtain any, or any adequate, documentation verifying the source of funds in this high-risk matter.</p> <p><b>Allegation 7(a)(iii)</b></p> <p>NML have stated that <i>"the funds in question were provided by the father of one of the clients using funds held by the father's property development company, which was an existing client of the [Licensed Body (NML)] and for which satisfactory ID and AML checks had been carried out."</i> The CLC understands "AML checks" to mean source of funds verification in the context of NML's response to this allegation.</p> <p>Following the inspection of 15 May 2023, in an email dated 8 June 2023 timed at 15:35 sent to the CLC's Inspector, Mr McLean stated on behalf of NML that, <i>"[Client] is the son of the director of [the Company] who are an established client. A check at Companies House shows that [the Company] have substantial assets"</i>.</p> <p>The CLC noted that the transaction file (pages 533-933, Bundle D) contained the Purchase Questionnaire completed by the clients. That questionnaire outlined that the purchase was intended to be funded by 1) a <i>"gift from parents"</i> and 2) <i>"Family Trust and ISA investments"</i>. It also contained:</p> <ul style="list-style-type: none"> <li>the Financial Accounts for the father's company (the <b>Company</b>) for the year end 31 August 2016, but not any more recent financial information for the Company.</li> </ul>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
		<ul style="list-style-type: none"> <li>• a Barclays online banking screenshot for the father's accounts, showing two accounts with significant funds, as well as a statement for the Family Trust which showed large transfers being received. However, details of how the funds held in the Barclays account and the family trust were accumulated were not obtained. There are no details to confirm the source of the funds used in the transaction.</li> </ul> <p>The Legal Sector Affinity Group (<b>LSAG</b>) Guidance at paragraph 6.2 confirms that, "There is no provision in the Regulations for waiving CDD requirements on the basis of longstanding or personal relationships. Taking this approach will not satisfy the requirement to undertake independent verification, though these factors may inform your risk-based approach." The CLC, as a member of LSAG, endorses and expects its members to follow the LSAG Guidance, which was approved by HM Treasury in July 2022 (prior to instructions being received in this matter).</p> <p>Additionally, the matter completed on 26 April 2023. On 30 May 2023 Mrs Nelson wrote to the client stating (page 704, Bundle D), "We had an anti-money laundering inspection on Monday 15 May 2023 by our regulator acting on behalf of HM Government. The inspector has flagged your purchase file and said that we have not done enough investigation as to where your share of the money from the trust fund came from. Would you please send us statements showing funds going in and out of the trust fund and demonstrate exactly where the money came from in the first place. In addition we need to do further AML checks on you personally. I will arrange for a link from Third Fort to be sent to you to achieve this."</p> <p>The appropriate time to conduct source of funds/wealth checks in this matter was prior to exchange of contracts. Mrs Nelson contacted the client following completion seeking to understand "exactly where the money came from in the first place". This indicates that the appropriate checks were not completed at the correct time but also a misunderstanding of the operation of the AML regime.</p> <p>Accordingly, based on the evidence contained on the matter file and reasoning above, the CLC considers that the practice failed in its duty to obtain any, or any adequate, documentation verifying the source of funds in this high-risk matter.</p> <p><b>Allegation 7(a)(iv)</b></p>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
		<p>NML stated that <i>"the funds in question were provided by the client company, a long established and successful local business well known to the [Licensed Body (NML)] and whose annual accounts clearly showed ample funds from which the transaction could be funded"</i>.</p> <p>Following the inspection of 15 May 2023, in an email dated 8 June 2023 timed at 15:35 to the CLC's Inspector, Mr McLean stated on behalf of NML that, <i>"[The Company] is an established client and again checks at Companies House showed that the company client held substantial assets but no evidence of source of funds was obtained for this cash purchase"</i>.</p> <p>The CLC again relies on the LSAG Guidance as summarised above. The CLC is not persuaded by the response from NML, not least because simply showing annual company accounts with ample funds does not demonstrate the source of the funds. No bank statements showing the company's source of funds were contained in the matter file (pages 994-1372, Bundle D).</p> <p>Accordingly, based on the evidence contained on the matter file and reasoning above, the CLC considers that the practice failed in its duty to obtain any, or any adequate, documentation verifying the source of funds in this high-risk matter.</p> <p><b>Summary</b></p> <p>The CLC considered NML's general submission that the sanction should be targeted at the core misconduct of Mr McLean (who was the person with ultimate responsibility as the only authorised person working at the practice). However the CLC considers that the responsibility for such serious deficiencies with NML's AML programme should not have rested with Mr McLean alone, particularly in relation to allegations 7(a)(ii), 7(a)(iii) and 7(a)(iv), which relate to files which were worked on by various staff members.</p> <p>The CLC do not consider the allegation should be withdrawn but that it should be amended from that which was originally proposed, as outlined within this finding. Accordingly, a financial penalty of <b>£4,025</b> is imposed for numerous breaches to the</p>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
		CLC's Code of Conduct, AML Code and Management and Supervision Arrangements Code, and based on Penalty Bracket 3 (High Conduct and Low Impact assessments (£3,500) and uplifted by 15% for systemic AML programme failures in relation to high-risk matters, as demonstrated by Findings 7 and 9.
8	<p>a) During the period NML acted for Client [REDACTED], you allowed NML to fail at any time prior to 15 December 2020 to:</p> <ul style="list-style-type: none"> <li>i. Obtain Client [REDACTED] identification documents; and/or</li> <li>ii. Verify Client [REDACTED] identification documents.</li> </ul> <p>b) In doing so, you allowed NML to:</p> <ul style="list-style-type: none"> <li>i. breach Overriding Principle 1 and/or 2 of the Code of Conduct;</li> <li>ii. fail to achieve Outcomes 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or breached Specific Requirements 6 and/or 7 and/or 9(d) and/or 12 of the AML Code (in force until April 2018);</li> <li>iii. fail to achieve Outcomes 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or breached Specific Requirements 6 and/or 7 and/or 9(d) and/or 11(a) and/or 12 of the AML Code currently in force; and/or</li> <li>iv. breach Specific Requirement 11 of the Management and Supervision Arrangements Code.</li> </ul>	<p>Whilst not responding specifically to allegation 8, NML has responded in relation to Matter A (which involves NML acting for Client [REDACTED] and is taken to relate to NML's response to allegation 8) that, <i>"the [Licensed Body's] overarching submission is that since it was unaware of the transactions [for Client [REDACTED]], its culpability arises from a failure to ensure Mr McLean was supervised and properly managed"</i>.</p> <p>The CLC is persuaded that such an approach is appropriate in the circumstances. Although, the CLC do not consider the allegation should be amended or withdrawn, it considers that the sanction should be targeted at the core misconduct relating to misuse of the client account, that is the conduct occasioned by Mr McLean, with a nominal financial penalty imposed against NML for its associated supervision and management failures.</p> <p>On that basis, the sanction imposed in respect of this finding (Finding 8) is included globally in the sanction outlined at Finding 7.</p>
9	<p>a) You allowed NML to fail to complete matter and/or client-based risk assessments on the following matters:</p>	<p>NML has not responded specifically to allegation 9. It has, however, responded in relation to Matter A (which involves NML acting for Client [REDACTED] and is taken to relate to NML's response to allegation 9) that, <i>"the [Licensed Body's] overarching submission</i></p>

Finding #	CLC's Findings	Respondent's Response and Sanction Imposed
	<ul style="list-style-type: none"> <li>i. Matter A;</li> <li>ii. Matter B;</li> <li>iii. Matter C;</li> <li>iv. Matter D; and/or</li> <li>v. Matter E, regarding the sale of Property E.</li> </ul> <p>b) In doing so, you allowed NML to:</p> <ul style="list-style-type: none"> <li>i. breach Overriding Principle 1 and/or 2 of the Code of Conduct;</li> <li>ii. fail to achieve Outcomes 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or breached Specific Requirements 6 and/or 7 and/or 9(e) of the AML Code (in force until April 2018);</li> <li>iii. fail to achieve Outcomes 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or breached Specific Requirements 6 and/or 7 and/or 9(e) of the AML Code currently in force; and/or</li> <li>iv. breach Specific Requirement 11 of the Management and Supervision Arrangements Code.</li> </ul>	<p><i>is that since it was unaware of the transactions [for Client █████ Matter A], its culpability arises from a failure to ensure Mr McLean was supervised and properly managed".</i></p> <p>The requirement to perform matter and/or client-based risk assessments in conveyancing matters has been in place since 26 June 2017 pursuant to regulation 28(12) of <i>The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017</i>.</p> <p>NML has made the general submission that the sanction should be targeted at the core misconduct of Mr McLean as the only authorised person working at the practice. The CLC, however, considers that the responsibility for such serious deficiencies with NML's AML programme should not have rested with Mr McLean alone, particularly in relation to allegations 9(a)(ii) to 9(a)(v). These allegations relate to files which were worked on by various staff members who should have had sufficient training and the requisite knowledge, skill and experience to ensure that matter and/or client-based risk assessments were conducted on all conveyancing files.</p> <p>Accordingly, on that basis, the sanction imposed in respect of this finding (Finding 9) is included globally in the sanction outlined at Finding 7.</p>