

**BEFORE THE ADJUDICATION PANEL IN THE MATTER OF AN APPEAL UNDER S83  
AND S96 OF THE LEGAL SERVICES ACT 2007**

**IN THE MATTER OF:**

**MALCOLM WILLIAM McLEAN**

**(Appellant)**

**AND**

**COUNCIL FOR LICENSED CONVEYANCERS**

**(Respondent)**

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**PANEL DECISION**

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1. A three-member panel of the Adjudication Panel, comprising a lawyer-member, a lay member, and a legally qualified chair, convened remotely for the hearing of the appeal by the Appellant against an Enforcement Determination Notice (“the Notice”) dated 14 February 2024 issued against him. It was agreed by all parties that the hearing could be heard fairly and properly via remote means.
2. The Respondent was represented by Christopher Sykes (Counsel). The Appellant was present but not legally represented.
3. The hearing was held in public, the appropriate notices having been published.
4. The panel confirmed that, prior to the hearing, it had read all the documents with which it had been provided by the parties (entitled Bundles A to E and a Hearing Bundle Index).

## Preliminary issues

5. Before proceeding to hear the appeal, the panel chair asked whether there were any preliminary matters.
6. On behalf of the Respondent, Mr Sykes formally sought to offer no evidence in relation to allegation A11(a)(iv) in the Notice. This meant that A11(c) fell away only insofar as A11(a)(iv) was concerned. On that basis, the Appeal was successful in relation to those allegations.

## Legal framework

7. The Enforcement Decision Notice is provided for under section 95(1) Legal Services Act 2007.
8. This appeal was brought under part 15.1 of the CLC's Licensing Alternative Business Structures – The Licensed Body (ABS) Licensing Framework (also known as 'the ABS Framework') and section 96(1) Legal Services Act 2007.
9. The grounds for appeal which can be relied upon under that provision are:
  - a. That the imposition of the penalty is unreasonable in all the circumstances of the case
  - b. That the amount of the penalty is unreasonable
  - c. That it is unreasonable of the licensing authority to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.
10. The Adjudication Panel is empowered under part 15.2 of the ABS Framework to hear an appeal against the determination and determine when it is appropriate to impose sanctions.
11. In accordance with section 96(3), the Adjudication Panel can, if it considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds:
  - a. Quash the penalty
  - b. Substitute a penalty of such lesser amount as it considers appropriate, or
  - c. In the case of an appeal in relation to 9(c) above (section 96(2(c))), substitute for any time imposed by the Respondent a different time or times.
12. The Adjudication Panel Procedure Rules 2013 as amended apply to these proceedings.

## **Background**

13. The Appellant is a solicitor who is regulated by the Respondent by virtue of the roles he held within the practice of Nelson McLean Limited (NML).
14. NML was an Alternative Business Structure (ABS) regulated by the Respondent from around 15 September 2014 until its closure on 31 October 2023. NML was authorised to perform the reserved activity of conveyancing, and in the 2014/2015 licensing year only, to perform probate. NML had permissions (which did not always include all of the following in any one year) to perform the non-reserved activities of will-writing, drafting lasting powers of attorney, estate administration and the provision of Court of Protection services.
15. At the material times relating to this appeal, he was the Head of Legal Practice, Head of Finance and Administration, Money Laundering Reporting Officer, a Manager and Director of the former practice of NML, which was an Alternative Business Structure authorised and regulated by the Council for Licensed Conveyancers at all material times until its closure on 31 October 2023.
16. In October 2021 a complaint was made to the Respondent relating to an aborted purchase of a property of which the Appellant had conduct. The complaint related to a payment of £100,000 to NML, which the complainant asserted was a deposit, and which was not returned in full when the transaction aborted. The Respondent began its investigation in February 2022.
17. Whilst the investigation was ongoing, an inspection of the NML practice was undertaken by a Panel Inspector on behalf of the Respondent, on 3 April 2023. That inspection revealed other concerns around non-compliance with the CLC Codes.
18. The Respondent concluded its inspection in September 2023, and on 25 September 2023 sent a Warning Notice to the Appellant and to NML. Both parties responded to the notices, and those responses were considered by the Respondent. However, the Respondent remained concerned about the practice and the Appellant's conduct, and on 14 February 2024 Enforcement Determination Notices were sent to the Appellant and to NML.
19. NML did not formally respond to its notice, so it took effect.
20. The Appellant appealed the notice, confirming that he challenged that the decision to impose the Notice was unreasonable in all the circumstances, and that the quantum of the financial penalty and the sanction of disqualification were unreasonable. That appeal was considered by the Adjudication Panel at the hearing.

## **Evidence**

21. The panel took oral evidence from the Appellant and read witness statements from the Appellant and Amy Hayes, Deputy Director of Regulatory Standards at the CLC.
22. Submissions were made by Mr Sykes on behalf of the Respondent, and by Mr McLean himself.
23. Mr McLean confirmed that of the twelve allegations which were included in the Notice, six were admitted and six were denied. The Adjudication Panel therefore was required to consider evidence in relation to those six denied allegations, so that it could then decide whether, considering the facts of the six admitted allegations, the Respondent's decision to impose the penalties included in the Notice was reasonable.

## **DECISION**

### **Allegation 4**

24. This allegation related to whether the Appellant misled clients to believe that the services he had provided to them were within NML's scope of practice and/or were regulated by the Respondent.
25. The Appellant agreed that he had provided advice, entered into correspondence and drafted letters and documents for Client [REDACTED] which fell outside the scope of NML's practice, and which were therefore unregulated by the Respondent. He disputed however that in doing so his conduct was misleading and/or dishonest.
26. The Adjudication Panel noted that there was clear evidence of the Appellant purporting to be a solicitor acting on behalf of Client [REDACTED] in litigation relating to debt recovery and money arrangements, and that this fell outside of the scope of both NML's practice and his own CLC-regulated practice. The Appellant accepted in oral evidence at the hearing that he should have made it clear that he was not doing so under the CLC's regulation. The Adjudication Panel was satisfied that his failure to do so, when corresponding on NML headed notepaper and/or from the NML office, amounted to misleading.
27. However, applying the test set out in *Ivey v Genting Casinos* [2017] UKSC 67, the Adjudication Panel was not satisfied that the Appellant's actual state of knowledge or belief of the facts was dishonest. It reached that conclusion based on the Appellant's oral evidence of how the arrangement between him and Client [REDACTED] came about, over a long period of years during which Client [REDACTED] had instructed the Appellant in relation to his property transactions, and the Appellant's belief that he was "doing a favour" for Client [REDACTED] at a time when he was experiencing financial difficulties. It noted that

the reasonableness of his belief was relevant to whether he held the belief, but that there was no additional requirement that his belief must be reasonable. The Adjudication Panel concluded that the Appellant had allowed his judgement to be significantly clouded by the length and nature of their relationship, and accepted his evidence that, at the relevant times, he genuinely believed he was helping Client [REDACTED] rather than attempting to mislead him or others. The Adjudication Panel also considered that his use of the word 'solicitor' in the correspondence did not amount to an intention to mislead, given that the Appellant is entitled to use that name as a qualified solicitor registered with the Solicitors Regulation Authority.

28. As it had not found that the test for dishonesty was met as to the Appellant's (subjective) actual state of mind as to knowledge or belief, it did not go on to apply the objective test and could not conclude that his actions were dishonest, therefore. They were however seriously ill judged and misleading.

#### Allegation 6

29. This allegation related to the Appellant's conduct in receiving funds into Client [REDACTED] client account at NML, in the sum of £100,000 in relation to the sale of a property, which was the cause for the original complaint in October 2021.
30. The Adjudication Panel saw clear evidence that £100,000 was paid into the NML client account, on Client [REDACTED] ledger recorded as deposit monies, in two amounts (£67,000 on or around 18 April 2018 and £33,000 on or around 20 April 2018).
31. The Appellant agreed he was instructed by Client [REDACTED] to receive those funds in relation to the proposed purchase. It was the Appellant's account that those funds were an 'incentive' or 'inducement' payment, in order that Client [REDACTED] would agree to sell the property to Person [REDACTED], the proposed purchaser. The Adjudication Panel noted that at the time of the proposed purchase, Person [REDACTED] was renting the property from Client [REDACTED], that it was not on the open market for sale, and that the agreed purchase price was £840,000. The £100,000 was not referred to in the sale contract drafted by the Appellant and would have effectively taken the purchase price to £940,000 but for the purposes of records, taxes and duties it would only show as selling for £840,000.
32. The purchase fell through, and Person [REDACTED] requested the return of his £100,000. The Appellant, in oral evidence, confirmed that he agreed the money should be returned to Person [REDACTED] as the purpose for which it had been paid (i.e. to ensure that the property was sold to him) had not come to pass. However, by that time, on Client [REDACTED] instructions, those funds had been paid out of the client account, either to Client [REDACTED] or at his direction to third parties. This meant that the £100,000 could not be paid

to Person [REDACTED] from the Client [REDACTED] client ledger. When Client [REDACTED] failed to return the money himself, Person [REDACTED] contacted the Appellant asking for its return. The Appellant paid Person [REDACTED] £6,000 from his own funds. Person [REDACTED] made his complaint to the CLC when no more money was forthcoming.

33. The Adjudication Panel heard from the Appellant that it was his view that the £100,000 was not a deposit on the property, but an incentive or inducement to sell. The Adjudication Panel found this not to be credible, nor did it see the material difference between the payment as a deposit or incentive, effectively securing the purchase of the property, particularly as the Appellant agreed that when the sale fell through, the money should be returned to Person [REDACTED]. This conclusion was strengthened by the Appellant agreeing that if it had been an inducement or incentive and not part of the property purchase, it should have been paid directly to Client [REDACTED] and not into NML's client account. It also noted that when Person [REDACTED] paid the funds into NML's account, they were labelled in the ledger as "deposit funds" and "balance of deposit funds", and that in correspondence they were referred to as deposit money. There was no record of any instruction from Client [REDACTED] to the Appellant that the money was not to be treated as a deposit.
34. The Adjudication Panel noted that the funds had not been held to order pending exchange, as alleged, and in light of its conclusion that the payment was effectively a deposit on the purchase of the property, that it should have been so held. It therefore concluded that the Appellant had acted as alleged in Allegation 6.

#### Allegation 8

35. This allegation related to whether the Appellant failed to verify Client [REDACTED] identification documents which he was required to do under the CLC's Anti Money Laundering Code.
36. The Appellant agreed that he had not seen Client [REDACTED] identification documentation for some time, but that he was an individual who had been well known to him for a number of years, he had acted for him on numerous occasions, and that his documentation had previously been verified.
37. The Adjudication Panel concluded that this allegation was proved, based on the Appellant's own evidence and the lack of any documentary proof before it of verification of documents relating to Client [REDACTED] at any time. The requirements of the Anti-Money Laundering Code are clear and compliance with them is essential in a CLC regulated practice. The Adjudication Panel concluded that the Appellant was at least complacent in that regard.

### Allegation 9

38. This allegation related to whether the Appellant conducted matter and/or client-based risk assessments on five separate matters. The Appellant admitted he had not done so insofar as one of the matters was concerned, but in relation to the other four he maintained that he had done so. He himself personally undertook what he considered to be a risk assessment in relation to one client's transaction, by regularly meeting with the client and checking on their wellbeing and that they were not being unduly influenced, as he considered them to be vulnerable. The remaining four matters were risk assessed, in his evidence, by an employee at NML.
39. The Adjudication Panel was not satisfied that the risk assessment the Appellant personally undertook in relation to one of the clients amounted to a sufficient risk assessment of client or matter, and that it focussed only on one area of potential concern, ignoring all others. Whilst it noted that the Appellant relied on colleagues to undertake the other risk assessments, as he was the Head of Legal Practice and Head of Finance and Administration, and the Money Laundering Reporting Officer, he was required to ensure those assessments were undertaken and if not conducting them himself, to check that they were properly completed. He did not do so, on his own evidence.

### Allegation 10

40. This allegation related to the Appellant certifying a copy of Client ██████ passport and mortgage statement without having sight of the original versions. The Appellant's evidence was that he had seen Client ██████ passport approximately two years previously and accepted he had not seen the original mortgage statement.
41. The Adjudication Panel found that having seen a document such as a passport two years earlier, and not reviewing it before certifying a copy of it to be a true copy of the original, was misleading and lacked integrity. The authority to certify copies of documents is a responsibility bestowed only on certain professionals, in the understanding and trust that they will act with integrity, and that they can be relied upon to do so truthfully and with care. By certifying the copies of documents which could have changed or been altered, the Appellant undermined that trust in the profession.

### Allegation 12

42. This allegation related to ten of the previous allegations, including those set out above which were disputed by the Appellant and have been found to have been

proved, and alleged that the Appellant's conduct as set out in those allegations lacked integrity.

43. The Adjudication Panel bore in mind the relevant definition of integrity in professional regulation, as set out in *Wingate v SRA* [2018] EWCA Civ 366, namely

*"In professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards".*

44. Having reached the conclusions set out above in relation to allegations 4, 6, 8, 9, and 10, the Adjudication Panel was in no doubt that the Appellant's actions lacked integrity. His conduct fell far below the standards which society expects from Licensed Conveyancers, and which the profession expects of Licensed Conveyancers, there were multiple breaches of codes and he had misled several clients and individuals as to whether they had the protection of him being regulated in the work he undertook.

### Conclusion

45. The Adjudication Panel concluded that the extent, range and nature of the Appellant's failings were sufficiently serious that it was reasonable for the Respondent to impose the Enforcement Determination Notice of 14 February 2024, and that the imposition of a financial penalty and disqualification were appropriate sanctions.
46. It was noted that the financial penalty imposed was one of £18,400, being £13,000 in relation to misconduct relating to misleading clients and individuals, lacking integrity and mismanagement of the client account in relation to the £100,000 paid by Person [REDACTED] and £5,400 relating to breaches of the Anti-Money Laundering Code. These amounts were determined by the Respondent applying the CLC Financial Penalties Framework, which the Adjudication Panel therefore considered to determine whether the penalties and sanction imposed were reasonable.
47. Dealing first with the sanction of disqualification, whilst neither the Appellant nor Mr Sykes on behalf of the Respondent specifically addressed the Adjudication Panel on this point, the Adjudication Panel bore in mind that it had decided that the Respondent was reasonable to impose a Notice founded on misleading clients and the public, misconduct relating to client monies, lacking integrity and a number of



breaches of codes including the Anti Money Laundering Code. Given the seriousness of those matters and the extent to which this fell below the standards expected of Licensed Conveyancers, the Adjudication Panel was satisfied that the decision to impose disqualification on the Appellant was reasonable.

48. Turning to the financial penalties imposed, and firstly the amount of £13,000 (being the maximum fine of £10,000 and a maximum of 30% uplift to reflect aggravating factors, the Adjudication Panel noted from the CLC Financial Penalties Framework that the appropriate range for high level misconduct which had high impact on the profession and/or public was between £6,000 and £10,000. Whilst the Respondent indicated that there were additional aggravating factors, those were not set out for the Adjudication Panel, and it was unable to identify aggravating factors which were not already included in the elevation of the fine to the top of the highest bracket, namely £10,000. It considered in those circumstances it was not reasonable to additionally increase by the maximum 30%, or indeed at all, for aggravating factors which were not clearly identified, and which had not already been included. Therefore, the Adjudication Panel concluded the fine of £13,000 for these matters was unreasonable, and a fine of £10,000 would instead be reasonable.
49. So far as the level of fine imposed in relation to the breaches of anti-money laundering Codes, the Adjudication Panel considered this not to be unreasonable.
50. Therefore, the Adjudication Panel upheld the imposition of the Notice, but reduced the financial penalty from £18,400 to £15,400.

### Costs

51. The CLC submitted an application for costs, in the sum of £10,725.50
52. The panel considered the Respondent's schedule of costs, and the Appellant's statement of financial means.
53. The panel concluded that it was appropriate to make an award for costs, having upheld the Notice in principle. It however reduced the costs award in the following respects:
- a. The costs claimed for drafting the Warning Notice and bundle preparation – 25 hours at £40 per hour (total £1000.00). These costs are disallowed because they do not relate to the appeal, the Warning Notice was part of the substantive decision which was being appealed, and had the Appellant not appealed against the Notice there is no indication that those costs would have been sought to be recovered. A decision to allow those costs now therefore would be punitive rather than reasonable.

- b. For the same reason, the costs claimed for considering the response to the Warning Notice, being half an hour at £40 per hour (totalling £20.00), and the cost of drafting the Enforcement Determination Notice (18 hours at £42 per hour totalling £756.00) are disallowed.
- c. The cost set out as 'liaising with the Adjudication Panel' for three hours at £42.00 per hour (totalling £126.00) is disallowed. Clarification was sought of to what this related, as the Adjudication Panel had not liaised with the Respondent. Explanation was given that this related to the cost of setting up and supporting the hearing itself, and associated administration. The Adjudication Panel was not satisfied that this was an appropriate cost to award nor was it clear on how the three hours were spent.
- d. So far as the external costs were concerned, bearing in mind its conclusions about the unreasonableness of awarding costs relating to the original Warning Notice and Enforcement Determination Notice, it would equally be unreasonable to award those costs externally. The total sum claimed of £4,242.50 being 28.35 hours at £150 per hour covering:

‘Settling Warning Notice and bundle index, case discussion, emails and planning with CLC, settling Enforcement Determination Notice and review of witness statements’

In light of the conclusions of the Adjudication Panel about the costs of drafting the Warning Notice and Enforcement Determination Notice, it also reduces the external costs for the same type of work (here ‘settling’ rather than drafting) but as the work is not itemised, it is reasonable and proportionate to adopt a summary approach and reduce the costs by a quarter, to £3189.38 (£3,827.25 including VAT). The external costs claimed since 20/7/2024 are awarded in full.

- e. Therefore, the costs awarded are as follows:

CLC costs - £1470.50

External costs - £6077.26

**Total costs - £7547.76**

54. On behalf of the Respondent, Mr Sykes submitted that a previous decision by this Panel (relating to the aborted appeal of Convey Law against an Enforcement Determination Notice) allowed for the costs of preparation of the Warning Notice and Enforcement Determination Notice, and to not do so in this case would be inconsistent. The Adjudication Panel has carefully reviewed its decision in the Convey Law case and concludes that it was different in two material ways. Firstly,

the appeal was withdrawn by the Appellants at short notice and the Panel concluded there was some unreasonable behaviour on the part of the Appellants. Secondly, the costs in question claimed in that case were not the **drafting** of the Notices but **reviewing** the Notices by an instructed legal representative. The Panel is therefore satisfied that its decision in this case is not inconsistent.

Victoria Goodfellow

Andrew Hudson

John Jones

Legally Qualified Chair

Lay panel member

Licensed Conveyancer panel member