

**IN THE MATTER OF John Wells (A LICENSED CONVEYANCER) AND
IN THE MATTER OF Rachael Mitchell (A LICENSED CONVEYANCER) AND
IN THE MATTER OF Roberts Rose Partnership Limited (A RECOGNISED BODY)
AND
IN THE MATTER OF SECTION 25 OF THE ADMINISTRATION OF JUSTICE ACT 1985
BETWEEN**

The Council for Licensed Conveyancers (Applicant)

And

**(1) John Wells
(2) Rachael Mitchell
(3) Roberts Rose Partnership Limited (Respondents)**

**DECISION OF THE ADJUDICATION PANEL AS TO
FACTS AND MISCONDUCT RE
JOHN WELLS**

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 allegations against the Respondents on 2 November 2021. It was agreed by all parties that the hearing could be heard fairly and properly via remote means.
2. The Council for Licensed Conveyancers (CLC) was represented by Michael Standing, Counsel. Mr Wells was present and represented by Kevin Rogers, Solicitor.
3. The panel confirmed that, prior to the hearing, it had read all the documents provided to it by the parties.
4. At a previous case management hearing, it had been determined for practical reasons that the Facts and Misconduct stages as against Mr Wells would be heard separately to those as against Ms Mitchell, but consecutively and by the same panel, who would then go on to consider any sanction and costs as against both Respondents together. Therefore, Ms Mitchell was not present or represented (by agreement) at the hearing on 2 November 2021.

Preliminary issues

5. The CLC have indicated they intend to ask for an Order that Mr Wells repay the expenses incurred by the CLC in arranging storage of closed files following their intervention into Roberts Rose Partnership Limited. Mr Wells intends to contest that application.
6. The panel were unclear on what basis the CLC make their application, and whether they submit those expenses as part of the costs of the proceedings or whether they amount to a claim for compensation. If it is the latter, the panel was unclear on what power they have to make a Compensation Order.
7. The panel heard brief submissions from both parties but concluded that this was an issue which was not relevant to this stage in the proceedings but would be relevant when the panel went on to consider matters at the next stages of proceedings, namely the Sanction and Costs stages.
8. It was agreed that skeleton arguments would be submitted prior to those stages (which are listed to be heard in January 2022), and the matter would be dealt with as a preliminary issue at that hearing.

Allegations

Allegation 1

The CLC allege that Mr Wells failed to comply with paragraph 30 of the CLC's Recognised Body Code in that he failed promptly to report to the CLC when the Practice was in financial distress or was at significant risk of becoming financially distressed: the CLC was first notified by an insolvency practitioner on 3 March 2020 that it was in financial distress, 8 days before the Practice was closed on 11 March 2020.

Allegation denied

Allegation 2

The CLC allege that Mr Wells failed to comply with paragraph 30 of the CLC's Recognised Body Code in that he failed promptly to report to the CLC when the Practice was in financial distress or was at significant risk of becoming financially distressed: the CLC was first notified by an insolvency practitioner on 3 March 2020 that it was in financial distress, 8 days before the Practice was closed on 11 March 2020.

Allegation admitted

Allegation 3

The CLC alleges that Mr Wells failed to comply with paragraph 9.1.7 of the CLC's Accounts Code in that there was a failure to account to the client as soon as possible after completion of any transaction or after the retainer had been terminated, resulting in the transfer of £839.19 to the CLC so it could make payment to the relevant parties.

Allegation admitted

Allegation 4

The CLC Alleges that Mr Wells failed to comply with paragraph 16.2 of the CLC's Accounts Code in that the Accountant's Report for the Practice's accounting year ending 30 September 2019 was not delivered to the CLC within 6 months of 30 September 2019 (by 31 March 2020)

Allegation admitted.

Case Summary

The CLC's case was summarised as follows:

Roberts Rose Partnership Limited ("The Practice") is/was a Recognised Body. From September 2014, it was a limited company trading under company number 09225977 until a Creditors Voluntary Liquidation, the winding up of which commenced on 31 March 2020.

John Wells was the sole owner of the business (100% shareholder) at the relevant times and was also appointed as a director. He was also the Head of Legal Practice (HOLP) and Head of Financial Administration (HOFA). He had held a CLC licences since 1 June 2001. His CLC licence lapsed at the end of October 2020.

Rachael Mitchell was appointed as a director at the practice purportedly to satisfy lender panel requirement for admission to panels. She has held a CLC licence since August 2006. She and John Wells were both managers of the practice.

John Wells and Rachael Mitchell first became aware of a downturn in business in or around October of 2019. In November 2019, the directors consulted their accountant who noted introductions were down on previous years and advised them to "keep an eye on things" but he was "not overly concerned".

Following that consultation, John Wells looked at the possibility of the business being sold in November 2019. However, in January 2020 preliminary negotiations for the

sale of the business broke down. At that point an exploratory meeting was held with the insolvency practitioners to see what the process was if that route was to be pursued.

The directors were unable to pay the office rent in January 2020 or February 2020.

In or around the middle of February 2020 the directors became aware that they may be unable to meet all of their financial commitments in March 2020. They then arranged a further meeting with the insolvency practitioner to take advice, which led to them entering into a Creditors Voluntary Liquidation, as part of which the insolvency practitioner notified the CLC on 3 March 2020, 8 days before the practice was closed on 11 March 2020.

On 2 July 2020, the CLC resolved to intervene into the Practice in light of breaches of the Code of Conduct and the occurrence of the insolvency events. Although by that time, active files had been passed to a firm of solicitors, there were 15000 files which had been abandoned at the firm's premises and the CLC had no option but to intervene to retrieve these and review the accounts. Also, a review of client ledgers suggested a failure to account to clients for various sums for 11 clients totalling £839.19.

Evidence and Submissions

9. There was no oral evidence given, but the panel read a witness statement from Kevin Morgan, a Regulatory Supervision Manager at the CLC, dated 25 October 2021, and a bundle of agreed documents.
10. Mr Standing outlined how the CLC put its case both as to facts and as to misconduct, namely that, if found proved, the allegations amounted to serious breaches of CLC Codes, poor management, and clear failures where no real reason for them had been given. Mr Standing also asked the panel to consider drawing an inference from Mr Wells not giving oral evidence or submitting himself to cross-examination.
11. Mr Rogers, on behalf of Mr Wells, then responded. He told the panel that Mr Wells would not be giving evidence, for reasons of health and the impact the proceedings had had on him, but that he would remain present throughout the hearing. He reminded the panel that there was no obligation on Mr Wells to give oral evidence.
12. Mr Rogers then set out Mr Wells' defence to Allegation 1, namely that the point at which he became aware that Roberts Rose Partnership Limited was in financial distress was when he and Ms Mitchell met with a previously instructed Insolvency Practitioner at the end of February 2020 or early March 2020, who advised them that the business was no longer viable, and they should enter into a Creditors Voluntary Liquidation. Mr Wells says that the Insolvency Practitioner told him he would inform the CLC of this action, and that Mr Wells relied on that information to be his satisfaction of the requirement of him under paragraph 30 of the CLC's Recognised Body Code.
13. Mr Rogers accepted on Mr Wells' behalf that Mr Wells fell under the definition of 'you' in the Recognised Body Code as he was a Manager of the firm, and agreed with Mr

Standing that the panel should apply the ordinary meanings of the terms 'financial distress' and 'significant risk'.

14. He disputed however that there was evidence, other than a lack of payment of office rent in January and February 2020 and the appointment with the Insolvency Practitioner at the end of February/early March 2020, that the firm was in financial distress.
15. After that point, Mr Rogers pointed to the frequent contact between Mr Wells and the CLC to try and resolve outstanding issues, and objects to any suggestion that he was not open with his regulator.
16. Mr Rogers submitted that had Mr Wells reported to the CLC in January 2020, the outcome would have been no different to that of notifying in March 2020 as the CLC did not intervene until July 2020.
17. In summary, Mr Wells submitted that the CLC had not met the burden of proof in relation to Allegation 1.
18. So far as the remaining allegations were concerned, he indicated that the facts as set out by the CLC were admitted, but he reminded the panel of their discretion when considering whether they amounted to misconduct. He challenged the allegation of lack of planning for storage of closed files and referred to Mr Wells having paid his 'subs' to the CLC which provided for this outcome. He also submitted that Mr Wells had continued to liaise with the CLC and the landlord of the firm's office, to try and achieve a solution to the storage of the closed files, but he simply did not have the resources to make those arrangements himself.
19. So far as the allegation of failing to account for sums on 11 client ledgers (allegation 3), Mr Rogers invited the panel to consider that some of the sums were 'de minimis', and that in all cases attempts were made to return the monies to clients. He also reminded the panel that where the sum fell below £50, it was permissible for a practice to use those funds to make a charitable donation, provided the CLC agreed. He suggested that the 11 client ledgers were a 'snapshot' and should not be seen as indicative of a wider picture of financial mismanagement.
20. On allegation 4, Mr Rogers submitted that Mr Wells was at the material time focussed on discussions around the closing of the business and would have dealt with the accounts if he had continued to trade. He disputed on Mr Wells behalf that this was evidence of poor management of the practice and reminded the panel that the practice's financial position had turned very quickly, leaving Mr Wells with a considerable burden of concern and consequent administration.
21. In summary, so far as misconduct is concerned, Mr Rogers invited the panel to consider that it was not possible to plan for every eventuality, that this was a one shareholder business with one other director which just failed, and that there could not be misconduct every time a practice closed. He also submitted that Mr Rogers had complied with his obligations as a Director under the Companies Act, and that this should be taken into consideration by the panel.

PANEL'S FINDINGS OF FACT AND MISCONDUCT

22. Despite submissions having been made together on both facts and misconduct, the panel took care not to conflate the two in their deliberations, and considered facts proved first, only then going on to consider whether those facts proved amounted to misconduct.

Facts:

23. The panel took into consideration all the evidence before it and bore in mind that it is the CLC that must prove the allegations, that there is no requirement on Mr Wells to 'disprove' anything, and that the standard of proof to be applied is the balance of probabilities.
24. Mr Wells chose not to give oral evidence. That is his right. The panel was invited to draw an inference from his not submitting himself to cross examination. Whilst there were questions which the panel would have wished to ask had he given evidence, which may have assisted it, it has not drawn any inference against Mr Wells for not giving evidence and has based its findings on the facts before it (which were largely agreed) and the fair and reasonable conclusions it could draw from them.

Allegation 1

25. The panel acknowledged that it had not seen evidence of the actual state of the practice's finances during the relevant period, as the Accounts Report had not been submitted (Allegation 4, which was admitted). However, it noted the agreed chronology of events between October 2019 and March 2020, which included the practice noticing a downturn, the failed attempt to sell the practice, the consultation of an Insolvency Practitioner, and the failure to pay the January office rent, all of which occurred before the end of January 2020. It concluded that it was fair and reasonable to draw an inference from those agreed events that by the end of January 2020 at the latest, Mr Wells would have known that there was at least a significant risk of financial distress. It is likely that at some point during January 2020 he would also have known he could not meet his financial commitments (particularly paying the office rent) in February 2020 as well.
26. It also noted that Mr Wells accepted that he had a responsibility to notify the CLC either of actual financial distress or a significant risk of financial distress, and to do so within 2 days, being the CLC's definition of 'promptly'.
27. The panel was satisfied that, applying the definitions in the CLC's Recognised Body Code relating to a Manager and the Specific Requirements set out in paragraph 30 of that Code, Mr Wells had a personal responsibility to report to the CLC when the practice was at significant risk of becoming financially distressed, i.e., in January 2020. There is no provision in the Code for him to delegate that responsibility.
28. The panel did not accept that by relying on the Insolvency Practitioner to notify the CLC, he had met that responsibility. It did not find reference to the Companies Act to be helpful in its decision making, as this panel is concerned with an individual's responsibility to their regulator.

29. The panel therefore found Allegation 1 **proved**.
30. Allegations 2, 3 and 4 were admitted as to their facts, and the panel was satisfied that the CLC had met the burden of proof, therefore **those allegations were all found proved**.

Misconduct:

31. The panel then went on to consider whether the facts proved amounted to misconduct and reminded itself that misconduct is conduct which falls below the standard expected and is serious.
32. It looked separately at the conduct found proved, and together in considering an overall standard.
33. So far as Allegation 1 was concerned, the panel found this conduct serious because Mr Wells' failure to report to the CLC impacted on the CLC's ability to regulate and to protect consumers. The panel was concerned that Mr Wells appeared to pay little regard to his professional obligation to his regulator, and was focussing on the practicalities, which whilst they may have been more demanding at the time, were not more important than compliance with the Codes and proper engagement with the CLC.
34. So far as Allegation 2 was concerned, the abandonment of files in an office where the rent was not being paid, and without any plan for how the data in those files could be secured or how clients could access their files if they wished to, was serious and had the potential to damage the reputation of the profession as well as risk to clients. The panel was concerned that there was no business retention plan or policy, and despite clear guidance from the CLC on 4 March 2021 that arrangements would have to be made for the closed files and those arrangements communicated to the clients, the panel saw no evidence of that happening. The panel considered this evidence of not serving the client's best interests at this time, and misconduct that was serious.
35. In considering whether Allegation 3 as proved amounted to misconduct, the panel bore in mind that some of the amounts of money were small and that there were some attempts to return the monies to clients (although not in every case, based on the agreed bundle). It also bore in mind the reality of practice; but took the conduct to be an indication that the rigorous financial processes required to properly manage client monies were lacking during this period. Any mismanagement of client funds is undoubtedly serious. Whilst this conduct amounted to misconduct the panel concluded this particular behaviour did not aggravate the overall seriousness.
36. The conduct found proved at Allegation 4 caused the panel concern. It noted that Mr Wells had throughout the proceedings offered more than one reason for why the accounts were not submitted. In a note of a telephone conversation with Mr Morgan in March 2020, he said he did not have enough money to pay the accountants to prepare the Report and so would not be submitting one. In August 2020, in response to the service of the Allegations, he said by the deadline for submission he did not have access to the accounts and so could not submit a report. Through Mr Rogers at the hearing, he repeated that he did not have access to the accounts, but that he was also focussed on the practicalities of the winding up of the practice and would have submitted a report if he had continued trading.

37. The panel noted that, whilst the deadline for submission was the end of March 2020, the year end was the end of September 2019, and it would have expected a properly managed practice to be arranging for the preparation of accounts far sooner than in February or March 2020. Whilst Mr Wells indicated he did not have sufficient funds to pay the accountant in March 2020, he also suggested that the firm was not in financial distress until January or February 2020, which would in turn suggest he had the funds to pay the accountant before that time.
38. The panel considers that the submission of the Accounts Report to the CLC is a fundamental tenet of consumer protection, as it enables the CLC to have oversight of the viability of the practice and identify possible risks to the consumer. A failure to arrange the preparation of the report prior to the deadline supports the idea that during the relevant period, Mr Wells was disregarding his regulatory obligations. It noted that the practice had been regulated by the CLC since 2014 and therefore Mr Wells would have been well versed in the requirements of him. The panel therefore found this conduct to be serious.
39. It follows therefore that when considering the conduct found proved as a whole, the panel was satisfied that it amounted to misconduct, for the reasons set out above and because there were breaches of Codes which are fundamental to proper management of a practice and consumer protection.

The hearing was then adjourned to reconvene after the determination of the Facts and Misconduct Stage relating to Rachael Mitchell.