

**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)**

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**DECISION OF THE ADJUDICATION PANEL AS TO  
FACTS AND MISCONDUCT RE  
RACHAEL MITCHELL**

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1. A three-member panel of the Adjudication Panel, comprising a licensed conveyancer-member, a lay member, and a legally qualified chair, convened remotely for the hearing of the allegations against the Respondent on 27 January 2022. 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. Ms Mitchell was present and represented by Mr Millband, 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 Ms Mitchell would be heard separately to those as against Mr Wells, but consecutively and by the same panel, who would then go on to consider any sanction and costs as against both Respondents together. Therefore, Mr Wells was not present or represented (by agreement) at the hearing on 27 January 2022.

**General points**

5. We were invited by Mr Millband to differentiate between Mr Wells and Ms Mitchell because Mr Wells was the owner of Roberts Rose Partnership. We note that he was the legal owner of the firm, and that Ms Mitchell was a non-shareholding director. However, we do not consider that to have generally diminished Ms Mitchell's own duties and responsibilities as a Director and Manager of the firm, with a Manager's licence.

6. As a member of the legal profession, entering into a legal arrangement to become a Director of the firm, we would expect her to understand the implications for her, and if not, then to take appropriate advice so that she gained that understanding.
7. To obtain a Manager's licence, she would have had to make an application, in which she would certify that she understood her duties and responsibilities as a manager.
8. Whilst we note that Mr Wells was the HOLP and HOFA, as the only other Manager of the firm, in his absence she would have been expected to carry out those aspects of his role until alternative arrangements were made.
9. As a Manager, she had access to the firm's accounts, to staff information and to other information, meetings, and arrangements that other members of staff did not.

## **Allegations**

### **ALLEGATION 1 (FOUND PROVED; MISCONDUCT)**

*1.1. The CLC allege that Ms Mitchell failed to comply with paragraph 30 of the CLC's Recognised Body Code in that she 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.*

*1.2. The CLC will refer to the responsibility placed on individuals and managers in a Recognised Body to ensure that the Recognised Body must not act or fail to act, nor permit anyone else to act or fail to act in such a way as to amount to a breach of this Recognised Body Code.*

*1.3. The CLC will say that given the obligations to manage the closure of a practice in an orderly way the circumstances were such that a dialogue ought to have begun with the CLC earlier in the year. It will say that it is reasonable to infer from the chronology of events, that by the end of January 2020 at the latest, the directors would have known that there was at least a significant risk of financial distress.*

*1.4. The CLC Glossary <https://www.clc-uk.org/handbook/glossary/#P> defines "promptly" as "within 2 working days".*

*1.5. The CLC will say that prompt notification would have enabled the closure of the practice in a managed way that would have better protected clients.*

### **ALLEGATION 2 (FOUND PROVED; NOT MISCONDUCT)**

*2.1 The CLC alleges that. Ms Mitchell failed to comply with paragraph 9 of the CLC's Transaction Files Code in that, the contents of files relating to all sale matters were not retained by the Practice for a minimum of six years, and those relating to purchase and other conveyancing matters for a minimum of fifteen years.*

*2.2 The CLC will again refer to the responsibility placed on individuals and managers in a Recognised Body to ensure that the Recognised Body must not act or fail to act, nor*

*permit anyone else to act or fail to act in such a way as to amount to a breach of the CLC Codes. The preamble to the Transaction Files Code defines "you" as referring to individuals and bodies regulated by the CLC; all individuals and bodies regulated by the CLC must comply with this Code.*

*2.3 The CLC will say that owners of CLC practices have a regulatory obligation to ensure that, following closure, client documentation and client data is stored securely and in accordance with paragraph 9 of the Transaction Files Code.*

### **ALLEGATION 3 (FOUND PROVED; MISCONDUCT)**

*3.1 The CLC alleges that Ms Mitchell 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.*

*3.2 CLC will emphasise that the Recognised Body and the individual Licensed Conveyancers and managers should take steps to return the balances to clients once the transaction has completed. A number of the balances remained for significant periods after the transaction had concluded which should be considered a breach of the Accounts Code. CLC will say that the funds should have been distributed before closure. The practice should have been actively contacting these individuals to return the balances.*

### **ALLEGATION 4 (FOUND PROVED; MISCONDUCT)**

*4.1 The CLC Alleges that Ms Mitchell 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*

## **PANEL'S FINDINGS OF FACT AND MISCONDUCT**

10. 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:**

11. 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 Ms Mitchell to 'disprove' anything, and that the standard of proof to be applied is the balance of probabilities.

### **Allegation 1**

12. In our findings against Mr Wells, we had concluded that it was clear there was a significant risk of financial distress from at least the end of January 2020.

13. In this case we had the benefit of evidence from Ms Mitchell, and additional documentary evidence, which has led us to conclude that we are satisfied that in fact there was a significant risk of financial distress earlier than that, most likely in November 2019 but certainly in December 2019.
14. We have not had the benefit of a set of accounts to enable us to set any definitive date.
15. However, we have reached our decision based on factors including:
  1. The meeting with the accountants in November 2019, where they told Mr Wells and Ms Mitchell that the firm was unlikely to survive unless there were major changes
  2. Redundancies were discussed
  3. Ms Mitchell was looking for another job, and indeed obtained one by December 2019, in the knowledge that she was only one of two LCs in the firm and her leaving would have a significant impact on the firm and its income
  4. By March 2020 there was insufficient money in the firm's account to pay their bills, despite not having paid rent for two months, which strongly suggests that the firm was in significant financial difficulty in the preceding months
  5. Indeed there was no money to pay the accountants to come in and undertake the audit which was scheduled for January each year on Ms Mitchell's evidence (and therefore it is reasonable to assume it would have been arranged earlier, i.e. November or December)
  6. Ms Mitchell had access to the accounts during this period, to the monthly reconciliations, and had directed the Cashier in relation to the accounts
  7. A meeting had been arranged with Mr Lowe in December 2019 which, although the panel accepts his role was multifactorial, included discussions around insolvency
  8. On Ms Mitchell's account she was deprived of detailed information by Mr Wells, but this (in the panel's view) should have made her keener to understand the financial status of the firm
16. The panel has concluded from her evidence and the submissions made that Ms Mitchell did not consider the risk of financial distress, but rather only considered she had a duty to report when the state of financial distress had been reached. The risk of financial distress must be considered in order to assess whether that risk is significant.
17. Paragraph 30 is clear in the duty it imposes on Recognised Bodies (of which Roberts Rose was one) and their stakeholders (of which Ms Mitchell was one) to report promptly a significant risk of financial distress.

18. Ms Mitchell says she became aware of the financial distress of the firm on 1 March 2020, and that she and Mr Wells, with Mr Lowe, notified the CLC on 3 March 2020, which the panel accepts.
19. The panel finds that in fact there was a significant risk of financial distress much earlier, in November or at the latest December 2019.
20. The panel is satisfied, for the reasons set out above, that Ms Mitchell was aware of that risk and that she had a duty to report it.
21. It is evident that the period between December 2019(at the latest) and 3 March 2020 is more than 2 days, and notification was therefore not prompt.
22. The panel therefore finds this allegation proved.
23. One of the key purposes of regulation, and the requirements placed on regulated bodies and individuals, is to assess risk in order to ensure consumer protection. Without prompt notification of the significant risk of financial distress, the regulator cannot do that, particularly where the regulated body is entrusted with client money. The panel was not satisfied that there was any reasonable explanation as to why notification was not made until such time as liquidation of the firm was inevitable.
24. Given the potential impact of this conduct on consumer protection and on reputational harm, the panel is satisfied that this conduct amounts to misconduct.

## Allegation 2

25. The panel noted the wording of the allegation at para 2.3, which referred to the responsibility of the 'owner'. It also noted the reference in Mr Morgan's emails of 4 March 2020 and 27 April 2020 to Mr Wells' responsibility as owner of the practice to arrange storage of the closed files.
26. The panel noted the evidence of Ms Mitchell arranging, with other members of staff, to close down the office and get the live files ready for transfer to Wilson Browne who had agreed to take them over, and the Notice of Closure dated 11 March 2020 and signed by Mr Wells which indicates that Wilson Browne would also take the closed files. Ms Mitchell, following closure of the practice, handed all keys to Mr Wells and had no further means of access to the building where the files were held, without making request from Mr Wells or the landlord.
27. However, Ms Mitchell became aware (page 54 of the bundle, her email of 1 July 2020 to Kevin Rogers) that by 18 March 2020, Wilson Browne had withdrawn their agreement to hold the closed files, and on 23 March 2020 Mr Wells informed the CLC that he had no means of storing the files himself. Ms Mitchell corresponded with Mr Morgan, RSM, on 24 March 2020, indicating that she was aware that Mr

Morgan was liaising with Mr Wells and the landlord about the files, and the panel has concluded that she effectively considered she had no further responsibility herself for the safe retention of the files.

28. The panel noted that by this time Ms Mitchell was working in her new role with another firm.
29. However, the terms of paragraph 9 of the Transaction Files Code are clear. 'You' (defined as all individuals and bodies regulated by the CLC) must 'retain the contents of files relating to all matters for a minimum of six years'.
30. The panel does not find Ms Mitchell's evidence that she considered that arrangements had been made for the appropriate storage of the files to be compelling.
31. It finds that Ms Mitchell had a duty to comply with paragraph 9 of the code, as a regulated individual and a stakeholder in a regulated body, and she did not comply with that duty.
32. However, given the unfortunate references to 'owner's responsibility' by the CLC in their communication, the direct communication between Mr Morgan and Mr Wells (not including Ms Mitchell) after the liquidation of the firm, and the efforts she made prior to the closure on 11 March 2020 and the subsequent offer in July 2020 (albeit in return for indemnity against suspension of her licence and liability for cost of storage), that her conduct was not so serious as to amount to misconduct.
33. Therefore the allegation is found proved, but misconduct is not proved.

### Allegation 3

34. Ms Mitchell admitted this allegation as to facts, and therefore the allegation is found proved.
35. The panel noted that during her time as a director and manager at the firm, Ms Mitchell regularly saw reconciliations and client ledger reports, and as a Licenced Conveyancer and Manager she should have been acutely aware of the expectation that any balance on client accounts must be cleared or if the file is live and ongoing, there should be a note in the ledger to explain why the balance can remain. There is nothing in the evidence we have received to indicate this was done.
36. As a manager, Ms Mitchell had a responsibility to ensure that the codes were complied with.
37. Ms Mitchell told the panel she gave directions to the cashier from time to time, and the panel is satisfied that she was in a position to direct enquiries as to ways in which the funds could have been returned to the client (noting that some of the

clients were commercial companies, who would have been easier to contact than individuals).

38. Ms Mitchell indicated in her evidence that she believed she had done everything she could to resolve the outstanding balances. The panel does not agree.
39. The panel bore in mind that some of the amounts of money left on client account balances were small, and that there had been some attempts to return some of the amounts. It also bore in mind the reality of practice; however it took the conduct to be an indication that the rigorous financial processes required to properly manage client monies were lacking during this period.
40. Similarly, to the conclusion reached by the panel in Mr Well's case as to the seriousness of this conduct, the panel has concluded that any mismanagement of client funds is undoubtedly serious, and therefore amounts to misconduct, but in the absence of dishonesty, and with the above considerations, this particular behaviour did not aggravate the overall seriousness of the conduct.

#### Allegation 4

41. Ms Mitchell admitted this allegation as to facts, and therefore the panel found the allegation proved.
42. The panel found the evidence around the reasons for the firm's accountants not preparing the reports to be somewhat unclear. Ms Mitchell suggested that the majority of the accountants fees had been paid in advance, but the panel was not clear how much remained owing at the time the accountants were expected to complete the audit of the firm, which Ms Mitchell said regularly took place in January of each year.
43. Between January and 31 March 2020, when the accounts should have been submitted, the firm had the benefit of two months' rent in hand, not having paid the January and February rent, which would have provided additional funds to pay the accountants.
44. Ms Mitchell knew that the accountants had not come in at the end of January 2020, as would have been expected, and told the panel that Mr Wells told her they were not going to do the audit.
45. Ms Mitchell would have known, in the panel's assessment, that without the audit the accountants would not be able to submit the Accountants Report as required under the Accounts code.
46. Ms Mitchell would have known, in the panel's assessment, that this was an absolute requirement of paragraph 16.2 of the Accounts Code, which relates to all individuals and bodies regulated by the CLC.

47. Between the end of January 2020 and 3<sup>rd</sup> March 2020, Ms Mitchell had opportunity to enquire with the accountants as to why they were not preparing the accounts, and to instruct them to do so, but she did not.
48. The panel considers that this also should have been an indicator to Ms Mitchell, if it was the case that the accountants were not preparing the report because they had not been paid (as per the Notice of Closure of 11 March 2020) that there was a significant risk of financial distress (Allegation 1).
49. The panel noted that Ms Mitchell suggested she trusted Mr Wells to deal with these matters, that she was not the owner, and he was in overall control of the firm. However, by 2020 Ms Mitchell had been a director and manager of the firm for six years, and therefore her duties and obligations should have been extremely well known and clear to her.
50. As in its findings against Mr Wells, 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 risk to the consumer. It is noted that by January 2020, Ms Mitchell had accepted a job in another firm, and the panel concludes that she was content to leave the responsibility of the accounts to Mr Wells, which ignored her own personal responsibility and obligations. The panel finds that this conduct was serious and amounts to misconduct.

VICTORIA GOODFELLOW  
HELEN RILEY  
JOHN JONES

Adjudication Panel Chair  
Lay panel member  
Licensed Conveyancer Panel member