

**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
SANCTION AND COST RE
THE RESPONDENTS**

1. Having found misconduct in relation to both Mr Wells and Ms Mitchell, the panel took submissions from the parties on the appropriate sanction to apply in this case.
2. The hearing took place on 28 January 2022, remotely over a video link with the consent of all parties. Mr Standing (counsel) represented the CLC. Mr Frith (Counsel) and Mr Rogers (solicitor) represented Mr Wells. Mr Millband (solicitor) represented Ms Mitchell.
3. The CLC, through Mr Standing, reminded the panel of the Sanctions Guidance (March 2018) and of the purpose of sanctions, set out for clarity below:

3.1 To uphold the CLC's regulatory objective of protecting the public and consumers of legal services;

3.2 To maintain and uphold public confidence in the reputation of the profession;

3.3. To declare and uphold proper standards of conduct; and

3.4. To promote public and professional confidence in the CLC's complaints and disciplinary processes.

3.5. To mark the seriousness (actual or potential) of the proven misconduct. It is well established that the purpose of imposing sanctions is not to punish the respondent, but to protect the public. This is consistent with and does not prevent the imposition of a sanction which may have a punitive effect on the respondent when it is necessary to meet its objectives at 3.1 to 3.2 above.

4. The panel bore in mind the need for proportionality in its decision making.
5. Mr Wells did not hold a licence at the time of the hearing, his licence having been suspended against which he did not appeal. His licence expired on 31 October 2020.

Roberts Rose Partnership was no longer in existence, nor an entity registered with the CLC.

6. The panel had the following sanctions therefore available against Mr Wells:
 - Taking no further action
 - A reprimand
 - A fine and/or
 - Disqualification
7. So far as Ms Mitchell was concerned, she had a licence at the time of the hearing, and therefore the full range of sanctions were open for the panel to consider in respect of her case.
8. Both Mr Wells and Ms Mitchell were working within the conveyancing profession, albeit to different degrees, at the time of the hearing.
9. Mr Standing submitted that this was a serious case, where there had been mishandling of client money and a risk of considerable detriment to the reputation of the profession in relation to allegation 2 concerning the storage of files.
10. Mr Standing submitted that Mr Wells was the more culpable of the two, because he had ultimately owned the business, he had taken profit from it, he was more experienced than Ms Mitchell and he had had no contingency plan for the business. Mr Standing drew the panel's attention to the high level of cost the CLC had had to incur to store the files as a result of Mr Wells' failure to make proper arrangements.
11. To reflect Mr Wells' higher level of culpability, Mr Standing submitted that the panel should consider imposing a period of disqualification on him, which would mark the seriousness of his misconduct, and his lack of insight and poor management of the firm.
12. So far as Ms Mitchell was concerned, Mr Standing acknowledged that her culpability was less, and noted the panel had not found misconduct so far as allegation 2 was concerned for her. Therefore, he invited the panel to impose a reprimand or conditions on Ms Mitchell, and to also consider imposing a fine.
13. Mr Frith, on behalf of Mr Wells, submitted that proportionality was at the heart of this case, and that the CLC's approach had been disproportionate.
14. He submitted that Mr Wells had not been able to practice since March 2020, so effectively had already been subject to a disqualification for almost two years. He asked the panel to consider imposing a two-year disqualification, effectively as 'time served'. The panel bore in mind that Mr Wells had decided not to appeal against the suspension of his licence in 2020 and had not applied for renewal of his licence at the end of October 2020, both of which were decisions he had made of his own

volition. The panel also has no power to impose a disqualification retrospectively, so rejected that submission.

15. Mr Frith also referred the panel to previous cases heard by the Adjudication Panel, where he submitted more serious misconduct had been found, with lesser sanctions imposed. Whilst the panel agrees that a consistent approach is desirable, the panel is not bound by earlier decisions (which Mr Frith and Mr Millband agreed) and must decide each case on its individual merits.
16. Mr Frith submitted that Mr Wells had sought to resolve the proceedings from as early as 17 July 2020, but the CLC had refused his offer of voluntarily not holding himself out as a CLC practitioner. It was Mr Frith's submission that the CLC had wasted panel time and costs by making the disproportionate decision to bring proceedings against Mr Wells, rather than accepting his proposal to resolve matters informally. The panel bore in mind the seriousness of his findings, and the role those disciplinary proceedings themselves can play in upholding standards and confidence in professional regulation and disagreed with that submission.
17. Mr Frith drew the panel's attention to a hiatus in the investigation and initiation of proceedings stage, which was not attributable to Mr Wells, but the internal changes within the CLC. The panel bore that hiatus in mind.
18. Specifically, so far as allegation 1 was concerned, Mr Frith submitted that Mr Wells had at the time concentrated on ensuring that clients' needs were catered for, and he then made arrangements with an Insolvency Practitioner, on who he relied to guide him through the process of closing the business. He submitted that as a consequence, no client experienced a financial loss.
19. Turning to allegation 2, Mr Frith submitted that the reason Mr Wells did not make appropriate arrangements for the files on the collapse of the business was because he had no money to pay for appropriate storage and was focused on doing his best for clients.
20. Mr Frith reminded the panel that there had been no finding of dishonesty. So far as personal mitigation was concerned, Mr Frith drew the panel's attention to Mr Wells' personal circumstances, his advancing age and the impact of these proceedings on him and his family. He asked effectively for credit for offering a voluntary sanction at the earliest opportunity.
21. Finally, Mr Frith submitted that it would be incorrect to consider the cost to the CLC of the storage of files as being an aggravating factor, as the CLC had indicated they will seek to recover those costs in full in separate action. The panel agreed with and accepted this submission.
22. On behalf of Ms Mitchell, Mr Millband reminded the panel that unlike Mr Wells, Ms Mitchell had given evidence to the panel. He submitted that the allegation which

caused the most actual or potential harm was allegation 2, where Ms Mitchell's conduct had not been found to amount to misconduct. He submitted there was no evidence of actual harm as a result of her actions, but he accepted that she had not managed her duties and responsibilities as she should have.

23. So far as those duties and responsibilities were concerned, Mr Millband submitted that Ms Mitchell was in an invidious position, as she had effectively been a manager 'in name only'. Furthermore, he asked the panel to bear in mind that she had felt herself to be a victim of circumstances, when considering the level of insight, she had shown in her evidence.
24. Mr Millband drew the panel's attention to the fact that the CLC had lifted the suspension on her licence as early as 8 July 2020, and she has remained licensed since then. Mr Millband submitted that there was no risk of repetition in future. The panel did not wholly accept that submission and was not satisfied there was no risk at all of future repetition.
25. So far as personal mitigation was concerned, Mr Millband relied on Ms Mitchell's own physical health concerns, and difficult personal circumstances during the time of the investigation and proceedings.
26. Mr Millband submitted that a reprimand would be the most appropriate and proportionate sanction to impose on Ms Mitchell. She is now employed by a new practice and is well-regarded. The panel saw testimonial evidence which confirmed this.
27. The panel had received statements of means from the Respondents, which it took into consideration when making its decision.

Re: Mr Wells

Harm:

28. The panel began its consideration of sanctions looking at the harm caused by Mr Wells' misconduct. It concluded that his conduct, whilst causing no direct harm, caused significant potential harm to the reputation of the profession as a whole and could significantly undermine confidence in both Licensed Conveyancers and the CLC itself. This was a case involving mismanagement of client money, although not significant amounts, and failing to properly manage the practice, putting client files at risk as well as hampering the CLC's ability to regulate and manage risk by not informing it of the problems within the practice until the practice was collapsing.
29. The failure to submit accounts was particularly concerning from the perspective of reputational harm, because the public's confidence in the profession is likely to be undermined where practices fail to submit accounts and deliver reports to their regulator, particularly where client money is being handled.

30. The panel accepted that Mr Wells did not gain financially from the mismanagement, however there were three significant areas of concern for the panel, namely the failure to properly secure client files, the failure to prepare accounts and submit a report to the CLC, and the failure to properly manage the closure of the practice. Therefore, the panel concluded that as there were several areas of concern, with multiple breaches of the Code of Conduct, the level of harm (or potential harm) caused by Mr Wells' misconduct was moderately high.

Insight

31. The panel could only find evidence of very limited insight in Mr Wells' case. He had not given evidence to the panel, so it was unable to directly ask him about his understanding of his actions. The panel noted the early offer to 'negotiate' with the CLC, which in essence misunderstood the purpose and process of regulation, and the importance of upholding confidence in the CLC as a regulator.

32. Mr Wells did not make full admissions to the panel. At the time of 'offering' a voluntary disqualification, he made no admissions to any of the allegations. The panel also noted that Mr Wells made no apology for his behaviour and there was no evidence of remorse on his part.

33. Mr Wells had run a practice for many years and should have known that what he was doing was likely to amount to serious misconduct. Despite this, up to the first day of the hearing of stage 1 of these proceedings, no admissions were made to this panel. Indeed, at the case management hearing, Mr Rogers indicated on his behalf that the allegations were disputed.

Aggravating factors

34. The panel found the following aggravating factors in this case:

- A failure to report to the CLC as required to do so – it is accepted that a report was made, with the Insolvency practitioner, but woefully late.
- Serious breaches of the CLC's regulatory arrangements
- Financial mismanagement, albeit not serious financial mismanagement (which therefore limited the degree to which it was an aggravating factor)
- Increased likelihood of damage to reputation of the profession because there were concerns across three areas of misconduct

Mitigating factors

- No previous findings of misconduct

35. The panel was not satisfied that repetition was unlikely, if Mr Wells were to find himself in a position of managing a firm again, because of the lack of insight evidenced.

36. The panel bore in mind Mr Wells' personal mitigation.

37. The panel then considered their available sanctions, starting with the least onerous and working up the sanctions ladder.

No further action

38. This was a very serious case of misconduct involving multiple areas of concern and in order to uphold the reputation of the profession, confidence in the CLC and provide the deterrent effect, taking no further action was not appropriate in this case.

Reprimand

39. Equally, a reprimand would fall far short of meeting the misconduct found in this case.

Fine

40. The panel decided that the imposition of a fine would be merely punitive, serve no other function, and would not meet the seriousness of the misconduct.

Disqualification

41. The panel noted from the Sanctions Guidance that disqualification might be most appropriate in cases where there had been serious misconduct, and where insight was lacking. The panel had found Mr Wells had only limited insight.

42. The panel noted that it was initially invited by Mr Frith on behalf of Mr Wells to impose a period of disqualification, albeit one that had been 'served' so would have no impact upon him as of now.

43. Clearly therefore, disqualification was an appropriate sanction, which would be proportionate with the seriousness of the findings of the panel.

44. The panel then considered the length of the disqualification to impose.

45. It noted that permanent disqualification is a last resort option, reserved for the most serious cases of misconduct. Whilst this case undoubtedly a serious case of misconduct, the panel was not satisfied that it was the most serious case.

46. Having made that judgement therefore, the panel concluded that the least serious sanction which could be applied in this case was one of **disqualification for a period of 12 months** from 28 January 2022 which properly reflects the serious nature of this case, and is intended to act as a deterrent, uphold confidence in the profession and in its regulatory process.

Re: Ms Mitchell

Harm:

1. The panel assessed that Ms Mitchell's misconduct had not caused directed harm to clients, but there had been potential harm caused by her failure to manage the

practice properly, and potential harm to the reputation of the profession, as well as the reputation of the CLC in its ability to regulate the profession. The panel's primary concern in Ms Mitchell's misconduct was that she knew from November 2019 that the practice was in, or likely shortly to be in, financial distress, and this information was withheld from the CLC, with no intention in February and March 2020 to submit accounts.

2. That harm was assessed to be at a low to moderate level, different from that of Mr Wells because the panel had not found misconduct on allegation 2 (the files).

Insight

3. The panel found only limited insight in Ms Mitchell's evidence at the hearing, and no real recognition that she had done anything wrong. However, the panel was satisfied she now recognised issues and areas of practice to avoid and had developed some understanding of the impact of her decisions on others.

4. Aggravating factors

- A failure to report to the CLC as required to do so – it is accepted that a report was made, with the Insolvency practitioner, but woefully late.
- The panel did **not** find serious financial mismanagement on Ms Mitchell's part because of the lesser amount and nature of the monies involved in her case.

5. Mitigating factors

- No previous findings of misconduct
- The panel was satisfied, having heard Ms Mitchell's evidence on how she now conducts herself within the new practice where she is employed and the testimonials received, that repetition of similar misconduct is unlikely.
- The short period over which the misconduct in her case occurred.
- Ms Mitchell had co-operated with the CLC once they began their investigation.

6. The panel bore in mind Ms Mitchell's personal mitigation.

7. The panel then considered their available sanctions, starting with the least onerous and working up the sanctions ladder.

No further action

8. In order to uphold the reputation of the profession, confidence in the CLC and provide the deterrent effect, taking no further action was not appropriate in this case.

Reprimand

9. Similarly, the panel was not satisfied that the imposition of a reprimand would adequately reflect the seriousness of the misconduct found or the need to uphold proper standards.

Fine

10. The panel decided that the imposition of a fine would be merely punitive in this case and would serve no other function.
11. The panel considered the imposition of conditions on Ms Mitchell's licence. It was satisfied that conditions would be an appropriate sanction which would adequately reflect Ms Mitchell's misconduct. The panel reached that conclusion because of :
 - the short period of the misconduct,
 - the lack of multiple aggravating factors (only one found),
 - the evidence of Ms Mitchell's developed understanding of future safe and compliant practice,
 - her co-operation with the CLC,
 - her continuing to practice with a licence and without any further concerns being noted,
 - and her positive testimonials

12. The condition the panel decided is necessary to impose is the following:

Ms Mitchell is not to be granted a licence to practice as a Manager unless she has satisfied the relevant test of being a 'fit and proper person' to hold such a licence

13. Having decided that the imposition of conditions was the most appropriate sanction, the panel did not go on to consider disqualification.
14. The CLC invited the panel to take no further action against Roberts Rose Partnership in light of it no longer being a licenced entity.

Costs

15. The CLC indicated at the end of its submissions on sanction that there was an application for costs, in the sum of £33,111.20 in respect of proceedings against the Respondents.
16. The panel heard submissions on behalf of Mr Wells and Ms Mitchell as to the proportionality and appropriateness of making an order for costs.
17. The panel bore in mind the statements of means filed by Mr Wells and Ms Mitchell.
18. The panel concluded it was satisfied that it was appropriate to make an order for contribution to costs in the sum of £10,000.00 against Mr Wells and £7,000.00 against Ms Mitchell.

VICTORIA GOODFELLOW
HELEN RILEY
JOHN JONES

Adjudication Panel Chair
Lay panel member
Licensed Conveyancer panel member