LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2021] NZLCRO 60

Ref: LCRO 122/2020

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of [Area] Standards Committee [X]
BETWEEN	**G & P LN** Applicant
AND	**TODD WHITCOMBE and RC** Respondent

DECISION

The names and identifying details of the parties in this Decision have been anonymised except for Mr Whitcombe

Introduction

[1] Mr and Mrs LN have applied for a review of the determination of [Area] Standards Committee [X] in which the Committee determined that the conduct of both respondents constituted unsatisfactory conduct pursuant to s 12(c) of the Lawyers and Conveyancers Act 2006, and imposed penalties.

[2] Ms TK [(ABC)] acts for both Mr Whitcombe and Mr RC.

Background

[3] In August 2017, Mr and Mrs LN viewed a property at [Street], [Suburb] which was being sold by tender.

[4] Mr Whitcombe, a partner in the firm [NVJ], had previously acted for them.

[5] On 28 August 2017 Mr LN telephoned Mr Whitcombe and advised that he and his wife wished to tender for the property. Mr LN described the property to Mr Whitcombe, who realized that he had been instructed to act for the vendors of the property. Mr Whitcombe therefore arranged for Mr RC, who was an Associate in the firm, to act for Mr and Mrs LN.

[6] The LN's tender for the property was accepted on 8 September 2017. The resulting agreement was subject to the sale of their existing property by 3 November 2017. The settlement date was "1st December 2017 or by mutual agreement."

[7] The agreement also contained a clause, commonly known as an "escape, or 'cash out' clause", whereby, if the vendors accepted an unconditional offer for the sale of the property to another party, they could issue a notice to the LNs, advising that if they did not declare their contract unconditional within 10 working days, the vendors would be able to cancel the agreement. If the agreement was cancelled, the LNs were "entitled to a refund of the deposit and any other sums paid, and neither party shall have any rights against the other".[1]

[8] On 12 September Mr RC sent a letter to Mr & Mrs LN, part of which read:

> We record that we also act for the vendor in this matter. We enclose a form whereby you acknowledge that this has been disclosed to you and our proposals should any conflict arise in our acting for both parties. We request that you sign the form and return this to us by fax, email or post.

[9] The letter of consent read:

- We have asked you to act for us as our lawyer in relation to this transaction.
- You have informed us that the firm has also been asked to act for the other party in relation to this transaction.
- We confirm that at present there is no conflict of interest that prevents the firm from acting for both the other party and for us.
- You have explained to us that, if a conflict of interest arises, you will be unable to give us independent legal advice regarding the transaction and that you will refer both us and the other party to independent lawyers.
- We consent to the firm acting for both the other party and us on the transaction on the terms as set out in this letter.

[1] Agreement for Sale and Purchase (8 September 2017) at cl 28.

[10] On 14 September 2017 (six days after the agreement had been signed), Mr and Mrs LN signed the letter of consent and returned it to Mr RC.

[11] Three days prior to this, on 11 September, Mr Whitcombe had received instructions from [GBC] Bank to document, and arrange for, the LNs to refinance existing borrowing. This was to enable them to pay the deposit on the purchase. Mr Whitcombe proceeded to attend to this, and met with Mr and Mrs LN on 13 September to execute the documents.[2]

[12] The LNs had been unable to sell their property, and just prior to meeting with Mr Whitcombe to execute the loan documentation, he had served notice on Mr RC by way of fax, advising that the vendors had entered into an unconditional contract, and activated the escape clause. The notice specified that Mr and Mrs LN had until 5pm on 27 September 2017 to declare their agreement unconditional.[3]

[13] Mr and Mrs LN continued to experience difficulties selling their existing property but on several occasions in the intervening period, Mr and Mrs LN expressed an intention to waive the "sale" clause, as they were confident their property would sell in due course.

[14] On 26 September 2017 Mr LN instructed Mr RC declare the agreement unconditional.

[15] Mr RC made file notes of the various conversations. Selected extracts are reproduced below:

> 18 September 2017:
>
> You know it's a gamble. You going to sell it.
>
> Conf. You'll sell in time.
>
> You think will be better after the election.
>
> 26 September 2017:
>
> Waive sale clause.
>
> Go unconditional.
>
> Sale: not happening yet.
>
> Indp legal advice discussed.

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[2] This was the day that Mr Whitcombe had issued a notice to Mr & Mrs LN exercising the cash out clause. The notice was served by handing it to Mr RC. Refer to [12].

[3] The notice went on to say that "failing which our clients will be obligated to cancel the contract and proceed with the back-up contract." That did not happen, which may have led another lawyer to question the validity of notice.

[16] Mr RC prepared a letter in accordance with Mr and Mrs LN's instructions. In the covering letter with which Mr RC sent the letter for approval by the LNs, he said:

> As our firm also acts for the vendor, we suggest that you consider obtaining independent legal advice with respect to the risks and implications of confirming the agreement as unconditional without having obtained an unconditional sale of your existing property.

[17] Mr and Mrs LN approved the letter declaring the agreement unconditional, and Mr RC sent it by fax to Mr Whitcombe. As instructed by Mr and Mrs LN, Mr RC, requested the vendors to extend the settlement date to 15 December and reduce the amount of deposit payable from 10% of the purchase price to 5%.

[18] Mr and Mrs LN remained unable to sell their property and further negotiations to extend the settlement date and vary the terms of the agreement, ensued.

[19] In response to a request to extend the settlement date to 19 January 2018, Mr Whitcombe said:[4]

> We also advise that if our clients were to agree to any deferral of settlement, it would be on the basis that settlement remains as at 15 December, with our clients being entitled to serve a Settlement Notice on Monday, 18 December in the event that your clients default on settlement but with our clients holding off exercising their rights under the Settlement Notice until such time as Friday, 19 January 2017, [sic] so as to provide your clients with that further period of time in which to obtain a sale and achieve settlement, noting however that if your clients were not in a position to settle, our clients would be entitled to exercise their rights under the Settlement Notice on the basis that if your clients are not in a position to settle the purchase by 19 January 2018, that that would be a continuing default of the original settlement date of Friday, 15 December 2017.

[20] In that letter, Mr Whitcombe also advised, that if this proposal was accepted by Mr and Mrs LN, his clients would 'incur a number of out of pocket expenses", and that his clients would only "commit to a deferral of settlement if [Mr RC's] clients were agreeable to meeting [his clients'] out of pocket expenses."

[21] On 28 November, Mr RC sent a copy of this letter to Mr and Mrs LN with an email in which he included details of what would happen if they were unable to settle on 15 December. This included:

- The vendors proposed to serve a settlement notice on 18 December 2017.
- The vendors would hold off exercising their right under the settlement notice to cancel the agreement until 19 January 2018.

[4] Mr Whitcombe, letter to Mr RC (24 November 2017).

- Non-compliance with the settlement notice entitled the vendor to cancel the agreement and either sue for specific performance or cancel the agreement, retain the deposit, and sue for damages.

- The vendors could claim as damages, loss on any resale within a year of the original settlement date, interest on the unpaid portion of the purchase price, costs and expenses reasonably incurred [on] any resale or attempted resale, and all outgoings and maintenance expenses from the settlement date to the settlement of any resale.

[22] Mr RC noted that the consequences of not being able to comply with the settlement notice represented serious risk for, and expense to, Mr and Mrs LN, and suggested that they exhaust all other options[5] before agreeing to the vendors' proposal. Mr RC concluded his email with the following:

> We recommend that you consider independent legal advice with respect to the vendors' proposal. Please advise whether or not you wish to agree to the vendors' proposal or if you require clarification, please telephone me at our offices to discuss.

[23] The recommendation to take independent legal advice was repeated in most, if not all, of the correspondence from Mr RC to Mr and Mrs LN.

[24] Further negotiations continued.[6] On 14 December, Mr RC sent Mr and Mrs LN a draft of a fax addressed to Mr Whitcombe. The draft fax advised Mr Whitcombe that the LNs accepted the vendors' offer set out in Mr Whitcombe's fax of 24 November but "subject to the following requests":

1. to defer settlement to Friday 16 February 2018; and

2. the vendors agree to settle earlier if the purchasers advise that they are ready, willing and able to settle earlier.

[25] In the email to Mr and Mrs LN with which he sent the draft, Mr RC said:[7]

> We record our advice to you that the vendor's out-of-pocket expenses of deferring settlement are unknown but the vendor's lawyer has estimated mortgage, insurance and rates costs at approximately $4,500 to $5,000 if settlement was to take place on Friday, 19 January 2018. However, we note the actual costs may be higher. We note, in the event that you do not settle on Friday, 19 January 2018, that the vendor can call for interest for late settlement under the agreement rather than the costs of deferring settlement. Clause 1.6 of the agreement dated 8 September 2017 provides for interest for late settlement at 16% per annum.

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[5] Which included refinancing.
[6] All negotiations were conducted between Mr RC and Mr Whitcombe.
[7] Mr RC, email to Mr and Mrs LN (14 December 2017).

> We calculate daily interest to be $293.56 per day or $10,274.60 for up to 19 January 2018.

[26] Mr RC concluded his email:

> We recommend you obtain independent legal advice.

[27] Mr and Mrs LN approved the draft fax which was then sent to Mr Whitcombe on 14 December.

[28] Mr Whitcombe responded on the following day advising that his clients agreed to defer exercising their rights to serve a settlement notice until 5 February.[8]

[29] It is apparent that conversations took place between Mr Whitcombe and Mr RC, but no details have been recorded in Mr RC's file notes. By way of example, Mr Whitcombe commences an email to Mr RC on 19 December:

> We refer to the above and our discussion with you this morning.

[30] Ultimately, on 21 December, Mr Whitcombe served a settlement notice on Mr RC which provided, that if the LNs did not settle before 22 January 2018, the vendors reserved the right to cancel the agreement. The settlement notice was "delivered by hand".

[31] Mr RC sent a copy of the settlement notice to Mr and Mrs LN attached to an email which read:

> Please find attached the Vendors' response to your request to defer settlement enclosing a settlement notice.
>
> If you do not settle on or before Monday 22 January 2017 the Vendors may elect to cancel the agreement.
>
> While this is not the outcome you wished, the Vendors' lawyer has advised us that the Vendors may consider not cancelling the agreement if positive progress has been made towards achieving a sale and that the most favourable outcome for both parties is for you to achieve a sale but the Vendors also wish to reserve their right to cancel the agreement if another purchaser wishes to make an offer to purchase the property.

[32] On 12 January 2018, Mr Whitcombe advised Mr RC that his clients had "instructed their agent to actively commence marketing of the subject property as soon as possible". He also advised that "if the LNs obtained a conditional sale of their property prior to the Settlement Notice Enforcement Date of Monday 22 January 2018" his clients

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[8] There seems to be some divergence between what Mr RC was seeking, and Mr Whitcombe's responses. Mr RC refers to deferring settlement, while Mr Whitcombe refers to deferring service of the settlement notice. It is not clear if the LNs were advised of this, and/or understood the differences.

were agreeable to amending the agreement so that any agreement they entered into would not operate as cancellation of the agreement with the LNs.[9]

[33] Mr RC's email to Mr and Mrs LN forwarding Mr Whitcombe's email, concluded:

> We believe we are required to insist that you obtain independent legal advice with respect to this matter to represent your interests and please contact us to discuss referral to an independent solicitor.

[34] On 18 January, Mr RC received advice from another solicitor, Mr UJ, that he had instructions to act for Mr and Mrs LN and an authority to uplift files was enclosed.

[35] Ultimately, Mr and Mrs LN were unable to comply with the settlement notice and the vendors cancelled the agreement. Resolution of the subsequent claim by the vendors was settled by mediation. Precise details of the mediated outcome are not available, but the applicants have advised that they incurred a liability for nearly $200,000.

Mr and Mrs LN's complaints[10]

[36] Mr and Mrs LN say they were never properly advised about the seriousness of the situation should they default. They believed, at most, they would "lose their deposit ($35,000) and potentially have to pay some interest".

[37] They are "at a loss as to how [their] lawyer let [them] go ahead and sign a document knowing the seriousness of the consequences".

[38] They feel that, Mr Whitcombe acting for them to refinance borrowings, "gave [the] vendor an unfair advantage as [Mr Whitcombe] knew everything about [their] financial position throughout the whole situation".

[39] Whilst Mr RC recommended they seek alternative advice, he did not explain why this was essential.

[40] They say:

> Never once did [NVJ] explain that this was now a conflict of interest within the firm, and that they must cease acting for both [them] and the vendor….
>
> The settlement notice was literally passed by hand from one office to another within [NVJ].

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[9] The various proposals and agreements by Mr Whitcombe's clients are at odds with service of the 'escape clause' notice, and Mr Whitcombe's advice that his clients would be 'obligated' to cancel the agreement with the LNs if they did not settle on the original settlement date.
[10] Mr LN, email to Lawyers Complaints Service (6 May 2019).

> [Mr RC] did not give us the best advice from beginning to end. When there was correspondence from the vendors, he would contact us and ask what we wanted to do rather than advising us of the best course of action? Having never been in this situation before, we needed advice from him as to what was best for us. We feel we did not receive this.
>
> It became clear to us that as the situation escalated even further that [NVJ] were not acting in our best interest, therefore we sought new representation as of 19/01/2018.
>
> It then became very apparent that their behaviour in the whole process was completely unethical, and that potentially the situation we now find ourselves in could have been avoided altogether if they had acted honorably, ethically and professionally right from the beginning.
>
> We feel that we have been grossly misrepresented in this situation by [NVJ] and that they have made a serious breach of the Lawyers and Conveyancers Act 2008, which has culminated in very serious consequences for us. Not only do we find ourselves nearly $200,000 in debt, but our health has been significantly affected. G has lost his career as a [redacted] due to both physical and mental health issues caused by this situation.

[41] They expanded their complaints by way of comments on the responses from Mr Whitcombe and Mr RC.[11]

[42] They say:

- "[We] believe that both Mr Todd Whitcombe and Mr RC have grossly overlooked the ethical values of their professional responsibilities as a lawyer and an advisor in a matter P and I know very little about, this being the sole reason we chose to employ and trust them for their fiduciary duty with our lifetime investment."[12]

- "It wasn't until we left [NVJ] on 18th January 2018 and it was pointed out to us by several of other legal professionals that we discovered several conflicts of interest had taken place during our time with them. Nothing was ever mentioned to us about these breaches prior to leaving [NVJ]."[13]

- "After exploring this further, we realised that this was against the conduct of the Lawyers and Conveyancers Act 2008 and if RC and Todd Whitcombe had acted accordingly as per their obligations clearly outlined in the Lawyers and Conveyancers Act 2008, then we would not be in the same unfortunate situation of incredible financial struggle and hardship,

[11] Mr LN, letter to Lawyers Complaints Service (15 July 2019).
[12] At [1].
[13] At [2].

continued health issues and suffering we have endured over the past year and a half."[14]

- "[We] do not recall ever discussing the potential of a Conflict of Interest arising or how this would or could affect us. P and I have very little experience dealing with legal situations and even with my limited amount of contact with the legal sector within my time working for NZ [redacted], we are both very naïve to legal procedures and understand the importance of hiring a professional to oversee, explain and look after our best interests."[15]

- "RC did not once explain the implication of a Conflict of Interest to either of us or what this meant, during our entire time under his supervision."[16]

- "There was not enough emphasis put on this advice to have cause for concern as we believed that we were in capable hands at [NVJ] to be looked after."[11]

- They acknowledged that they signed the letter of consent allowing the two lawyers within the same firm to act for both vendor and purchaser, but refer specifically to the Conduct and Client Care Rules[17] relating to these circumstances.

- In his email to them 26 September 2017, Mr RC set out the potential consequences if they were unable to sell their property. This should have led Mr RC to refuse to act for them due to the serious implications of what they were about to do.

- "We were naïve in this situation and did not fully comprehend the seriousness of our actions, having never dealt with anything like this before. He should have insisted at that point we go elsewhere."[18]

- It was not until 16 January that Mr RC advised them that he could no longer act for them.

- "[Between] 28 August 2017 and 8 January 2018, there were several occasions where [Mr RC] should have declined to continue to act for us due

[14] At [3].
[15] At [5].
[16] At [6].
[17] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[18] Above n 11, at [16].

to Conflicts of Interest and risks of Conflicts of Interest but instead, he continued to represent us and not once explained the consequences or implications of these conflicts. Over this period our situation progressively became worse and worse, which could have been prevented if the right course of action had been taken sooner."[19]

- Mr and Mrs LN did not, at any stage, give informed consent to both lawyers to enable them to continue to act.

- In his response to the complaint, Mr RC advised that he was acting under the supervision of Mr NV. Mr and Mrs LN say:[20]

> With NV's depth of experience surely he would have been aware or looking out for any potential caveats or flaws in our case, due to being RC's supervisor and if so, why did he not attend to these immediately and act accordingly?

- "We believe that Todd has ignored the ethical values as clearly laid out in the Lawyers and Conveyancers Act 2008 in order to gain a pecuniary advantage, without any consideration to the future and foreseeable risks involved to us as a client, which turned out to have a catastrophic effect on our final outcome financially, to our careers and to our overall health."[21]

- "How can [Mr Whitcombe] knowingly provide his full fiduciary duty to us in finalising the remortgage of our current property with our bank, whilst still being involved with the vendors of the property we are looking to purchase?"[22] This enabled Mr Whitcombe to become aware of their financial position, which was 'tight'.

- Mr Whitcombe met with them on 13 September 2017 at 4:30pm to execute the loan document to enable them to refinance borrowings and less than one hour before that Mr Whitcombe had served the notice exercising the escape clause.

- Mr Whitcombe's knowledge of their financial position may have influenced his advice to the vendors in subsequent negotiations.

- "Having no prior knowledge [of] the legal procedure or protocol involved in this sort of situation and unknowing what the official process should be, we were solely relying on [Mr Whitcombe's] professional and ethical advice.

[19] At [20].
[20] At [27].
[21] At [29].
[22] At [30].

> This was not our 'consent' to him having residual knowledge. It was more an uneducated request as to the best possible cause of action to progress our position further. [Mr Whitcombe] should have known full well that him acting for us could potentially have residual issues and should have considered the foreseeable risk which would escalate to being much more than just an inconvenience to us, therefore, again, advising that he could NOT act for us."[23]

- Mr Whitcombe continued to act for the vendors after Mr and Mrs LN had instructed Mr UJ. Mr Whitcombe then instructed a barrister to commence proceedings against them.

Consequences

[43] Mr and Mrs LN say they have suffered significant ill health due to what happened. Mrs LN experienced anxiety and depression, and Mr LN was unable to continue his position with NZ [redacted] due to extreme stress and severe depression.

He says:

> We believe all of this would not have happened if the correct procedures had been adhered to and respected from the start by Mr Whitcombe and Mr RC instead of disregarding the very clear cut rules set out in the Lawyers and Conveyancers Act 2008 that are in place to prevent this sort of thing from happening.[24]

Mr RC's response

[44] Mr RC recounts the events that occurred, and the advice provided by him to Mr and Mrs LN. He refers to the fact that on a number of occasions he recommended that they take independent legal advice.

[45] Included here are extracts from Mr RC's summary.[25]

- When I commenced acting, I did not believe that there was more than a negligible risk that I might be unable to discharge my obligations to Mr and Mrs LN. Before entering into the agreement, they had made all enquiries they deemed necessary in relation to due diligence. The LNs had initially intended to make their offer unconditional. As a result of my advice, the LNs had made their offer subject to the sale of [street] and they had finance

[23] At [46].
[24] At [60].
[25] [NVJ], email to Lawyers Complaints Service (18 June 2019).

arranged on that basis. The contract did include a cash-out clause, but with a ten working day notice period rather than the more usual three or five working day notice period."[26]

- "When the cash-out notice was activated, my advice to not have the contract become unconditional had not changed from when Mr and Mrs LN were initially proposing to enter into the contract. I informed them accordingly; repeatedly and unequivocally. I considered I was still able to give effective advice to Mr and Mrs LN, because my advice was that they should not make the contract unconditional."[27]

- "After sending the confirmation notice, I discharged my obligations by assisting Mr and Mrs LN to attempt to resolve the circumstances they had elected to put themselves in; whether by way of sale of one or other property or bridging finance or an accommodation with the vendor. Throughout the process I was, at all times, being careful to remind them of and recommend to them the option of independent advice, in case there was any concern that my advice was tainted in any respect."[28]

- "Throughout the matter I repeatedly recommended that the LNs obtain independent legal advice. The LN's consistent instructions was that they did not require that, nor did they want it. After the settlement notice was served and enforcement of the same by the vendors became imminent, I resolved that I would not be able to discharge my obligations to the LNs further and insisted that they obtain independent advice."[29]

- "At the time of this transaction I had six years conveyancing experience. I consulted with my supervising partner, NV throughout the course of this matter, regarding potential options for Mr and Mrs LN and confirming the advice I was giving and the approach I was recommending."[30]

- "Accordingly I do not believe I have committed any breach in relation to them, nor that my actions have had any causative effect in relation to any losses that they have suffered."[31]

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[26] At [14].
[27] At [15].
[28] At [17].
[29] At [18].
[30] At [19].
[31] At [20].

Mr Whitcombe's response

- Mr Whitcombe also recounts the facts giving rise to this complaint and the circumstances whereby Mr RC came to be acting for Mr and Mrs LN.

- "I enquired of Mr and Mrs LN as to the property address, and he confirmed that it was indeed the property situated at [Street], [Suburb]. I immediately informed Mr and Mrs LN that I could not assist him with the purchase of the property, as I had already received instructions from the Vendors to act for them on the sale."[32]

- "I advised Mr and Mrs LN that we could assist with arranging alternative legal advice, either by way of another solicitor within the firm acting for Mr and Mrs LN, or alternatively a solicitor in another firm. Mr LN indicated to me that he had previously been pleased with the representation provided by our firm, and that he was happy to continue with NVJ."[33]

- With regard to the [GBC] refinancing he says:

  "On the afternoon of Monday 11 September 2017, some two weeks after the LNs had been referred to RC of our office, I then received e-mailed instructions from [GBC] New Zealand Limited ("[GBC]") to act on a refinance transaction for the LNs, swapping their existing mortgage from [TBC] to [GBC]."[34]

- "I reviewed the instructions on the evening of Monday 11 September, as I had not had an opportunity to do so during the day. On Tuesday 12 September 2017, I made arrangements to obtain search copies of the title to the LNs property and prepared a letter of engagement to be typed up for sending to the LNs to let them know that we had received instructions from [GBC] for their refinance."[35]

- "At approximately 10.30am on Wednesday 13 September 2017, I received a telephone message to contact Mrs LN, enquiring of me about the mortgage papers they needed to sign with [GBC]. She indicated that Mr LN and herself were keen to sign up the refinance and enquired as to when I could see them."[36]

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[32] At [22].
[33] At [23].
[34] At [25].
[35] At [26].
[36] At [27].

- "I emailed the letter of engagement to Mr and Mrs LN at 12.05pm that same day, indicating I had availability to see them at 4.30pm that day. Mr LN responded at 12.46pm, confirming the appointment."[37]

- "I saw the LNs at 4.30pm that afternoon, to review and sign the refinance documents with [GBC], with the refinance scheduled for settlement on Friday 15 September 2017."[38]

- "I can recall that following signing of the documents on the afternoon of Wednesday 13 September 2017, Mr LN indicated to me that he wanted to discuss the purchase with me. I reminded him that I was acting for the vendors and that he would need to discuss the purchase with RC. I would have arranged for RC to come into the room to see the LNs to discuss the purchase with them, after I had left, but recalled RC having already left the office that afternoon, due to being unwell."[39]

- "I note that the LNs suggest that my management of their refinance placed me in a position where I knew about their finances."[40]

- In response, the LNs specifically arranged for the mortgage instructions to be sent to me, even though they had already been in contact with RC some two weeks prior, and specifically contacted me to arrange signing of the mortgage instructions. As they were clearly keen to progress the refinance, and RC was unwell, I met with them."[41]

- "At the time the mortgage instructions were received, the LNs were still conditional purchasers, subject only to their sale. I made it quite clear to the LNs that they needed to liaise with RC regarding any and all aspects of their purchase."[42]

- "I do not believe that any residual knowledge I had of the LN's financial circumstances as a result of the refinancing in any way subsequently disadvantaged them. They had clearly consented to my having that residual knowledge when they deliberately rang me rather than RC to progress the refinancing."[43]

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[37] At [28].
[38] At [29].
[39] At [30].
[40] At [31].
[41] At [32].
[42] At [33].
[43] At [35].

- "I do not believe I have committed any breach of obligations owed to the LN's, nor that my actions have had any causative effect in relation to any losses that they have suffered."[44]

The Standards Committee determination

[46] The key issues identified by the Committee were:[45]

a. Whether Mr Whitcombe and/or Mr RC failed to act competently and in a timely manner consistent with the terms of the retainer and duty to take reasonable care (rr 3, 7, 7.1), …;

b. Whether Mr Whitcombe and/or Mr RC breached their professional obligations under rr 6.1 and 6.2, noting that rule 6.2 provides that rule 6.1 will apply with any necessary modifications whenever lawyers who are members of the same practice act for more than 1 party, …;

c. Whether Mr Whitcombe and/or Mr RC breached the duties of confidence they owed to the Complainants and/or used information that is confidential to the Complainants for the benefit of any other person (rr 8, 8.7, 8.7.1);

d. Whether in acting for the Complainants, Mr Whitcombe and/or Mr RC failed to administer the practice in a manner that ensures that the duties to the Court and existing, prospective and former clients are adhered to, and that the reputation of the legal profession is preserved (r 11).

Failing to act competently

[47] The Committee determined that "this issue centred around the advice the lawyers gave about the conflict of interest and the advice given in relation to confirming the agreement as unconditional without finance".[46]

[48] Addressing this issue, the Committee considered that "it was not standard practice for clients to receive or be offered independent legal advice before signing a consent to act form in conveyancing transactions where the law firm acted for both parties. Doing so would impose unreasonable burdens, costs and delays on conveyancing practitioners, particularly in small towns where acting for more than one party in a transaction is not uncommon".[47]

[49] On this basis, the Committee determined that "although it was clear that the Complainants had not received independent advice about the informed consent

[44] At [37].
[45] Standards Committee determination (1 May 2020) at [15].
[46] At [16].
[47] At [17]. The Committee's comment is not addressed in this review and it should not be inferred that it is accepted.

document, the Committee determined that this was not a breach of their professional obligations owed by Mr Whitcombe and Mr RC".[3]

[50] "The Committee considered that the key advice in relation to conflict of interest situations is that the client is made aware the lawyer or law firm is also acting for the other party and that if issues arose, they would be required to get independent legal advice. …"[48]

[51] The Committee determined that Mr Whitcombe and Mr RC had met their obligations by making Mr and Mrs LN aware that they would need to take independent advice if a conflict arose.

[52] Accordingly, the Committee determined that the lawyers had not breached r 3.

Acting for more than one client / informed consent.

[53] In considering this issue, the Committee addressed the meaning of the term "a more than negligible risk".

[54] This term is used in r 6.1 which provides:

> A lawyer must not act for more than 1 client on a matter in any circumstances where there is a more than negligible risk that the lawyer may be unable to discharge the obligations owed to 1 or more of the clients.

[55] The Committee referred to a decision of this Office[49] where the Review Officer said:[50]

> The threshold "a more than negligible risk" is very low. A negligible risk has been described in a decision of this Office as circumstances where there is "no meaningful risk that the obligations to the parties would not be able to be fulfilled". Conversely, "a more than negligible risk" is "a real risk of an actual conflict of interest".
> [Footnote: *Sandy v Kahn* LCRO 181/2009 (25 December 2009) at [27], [36]. In this context, the word "negligible", which is not defined in either the Act or the conduct rules means, "unworthy of notice or regard; so small or insignificant as to be ignorable": Oxford English Dictionary <www.oed.com>]

[56] "…The Committee confirmed that "a more than negligible risk" existed once there was a *real risk* of an actual conflict and/or a meaningful risk that the obligations to the parties would not be able to be met. For completeness the Committee confirmed that rule 6.1.2. deals with the obligations of lawyers when a conflict becomes apparent

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[48] At [18].
[49] *AC v BT* LCRO 143/2017 (19 February 2019).
[50] At [62].

and does not override the general duty in rule 6.1 not to act where there is a more than negligible risk of a conflict of interest."[51]

[57] Having formed that view, the Committee determined that when the vendor exercised the escape clause "that the lawyers involved would be unable to meet their obligations to both sides from that point".[52]

[58] The Committee determined that both Mr Whitcombe and Mr RC were in breach of r 6.1, and their conduct constituted unsatisfactory conduct pursuant to s 12(c) of the Act.

The refinancing transaction

[59] The Committee agreed with Mr and Mrs LN, that in completing the refinancing transaction for them, Mr Whitcombe accessed financial information that could have been relevant to the vendors. The Committee determined that Mr Whitcombe was in breach of rr 6, 7 and 8 of the Conduct and Client Care Rules and made a second finding of unsatisfactory conduct against Mr Whitcombe.[53]

Confidentiality

[60] The issue addressed by the Committee in this regard was:

> b. *Did Mr Whitcombe and/or Mr RC breach the duties of confidence they owed to the Complainants and/or use information that is confidential to the Complainants for the benefit of any other person?*

[61] It determined that Mr RC had <u>not</u> breached the duty of confidentiality he had towards Mr and Mrs LN.

[62] The Committee determined that Mr Whitcombe <u>had</u> breached his duty of confidentiality when instructing the barrister to act against Mr and Mrs LN subsequently.

[63] The information identified by the Committee that was imparted by Mr Whitcombe was:[54]

> (a) The names of the Complainants' real estate agents and their plans to sell privately;
>
> (b) The value of the Complainants' property, as determined by their valuation and what they were hoping to receive from the sale of their property;

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[51] Standards Committee determination at [24].
[52] At [25].
[53] At [29].
[54] At [31].

(c) Confirmation that the Complainants had equity in their property;

(d) The Complainants had two vehicles (including a motor home); and

(e) Mr LN was a [redacted] officer with [redacted] Superannuation fund available.

[64] This information could only have been obtained by Mr Whitcombe when acting for Mr and Mrs LN. The Committee determined that Mr Whitcombe had breached rr 8, 8.7 and 8.7.1. and made a third finding of unsatisfactory conduct against Mr Whitcombe.

Rule 11

[65] The issue identified in paragraph [46](d) was not addressed by the Committee. It is not addressed in this Review as it has no application to Mr and Mrs LN's complaint.

Orders

[66] The Committee first considered Mr and Mrs LN's submission that the Committee should order either or both of Mr Whitcombe and Mr RC to compensate them for losses, which they say resulted from the conduct of the lawyers. The Committee said:[55]

> …[it] was not satisfied that the lawyers' errors had caused the loss and difficulties experienced by [Mr and Mrs LN].

[67] The Committee also considered that the request for compensation was best dealt with in the civil courts where evidence could be tested by cross examination. It also observed that the overall focus of the complaints and disciplinary process was the maintenance of professional standards in the legal profession, as well as the protection of the public.

[68] The orders imposed by the Committee were:[56]

a. Mr Whitcombe pay to the New Zealand Law Society costs of $500.00 pursuant to s 156(1)(n);

b. Mr Whitcombe pay to the New Zealand Law Society a fine of $2,000.00 pursuant to s 156(1)(i);

c. Mr RC pay to the New Zealand Law Society costs of $500.00 pursuant to s 156(1)(n);

The Committee declined to make any orders of compensation.

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[55] At [34].
[56] At [37].

[69] With regard to the orders made against each lawyer, the following comments were made:[57]

> In relation to Mr RC, the Committee noted that he was working under the supervision of partners in the firm and that the firm's policy with respect to conflicts of interest focussed on whether an actual conflict existed rather than "a more than negligible risk" that they may be unable to discharge the obligations owed to 1 or more of their clients. The Committee considered that these mitigating factors should be taken into account in terms of penalty, limited to an order to pay costs of the investigation.
>
> With respect to Mr Whitcombe, the Committee considered the number of breaches over a range of issues was sufficiently serious to warrant a finding of unsatisfactory conduct. Additionally, the issues related to his representation of the Complainants in the refinance transaction and his disclosure of the Complainants' confidential information to the vendors barrister were clear errors which should have been avoided, not "*finely balanced problems*". This was accordingly reflected by the imposition of a fine, albeit on the lower end of the scale.

The application for review

[70] Mr and Mrs LN consider that they should be awarded compensation due to the "extended legal costs" incurred.

[71] They believe that a resolution with the vendors would have been achieved sooner if the respondents had acted appropriately. Their proposals to resolve the situation were declined by the vendors for whom Mr Whitcombe continued to act, at the same time as having knowledge of their financial situation.

[72] The applicants say that "as a result, [they] then had continued costs on extended representation with [NVJ], the costs on new representation, and the further costs of a mediator and barrister".[58]

[73] The applicants provided further comments in reply to Ms TK's response to the application on behalf of the respondents. They repeat their view that "had [the respondents] stopped acting for both parties immediately as they were supposed to, when it first became an obvious conflict of interest, [they] would have found new representation and the situation would have been resolved much quicker and a settlement could have been reached between [them] and the vendor".

[74] They consider that their proposals to settle matters with the vendor were "genuinely realistic" but were declined by the vendors, with advice from Mr Whitcombe.

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[57] At [35]–[36].
[58] Application for review, part 7.

Mr Whitcombe knew of their possible bankruptcy and loss of their property, but continued to act for the vendor, and instructed a barrister to act against them.

[75] They ask "for compensation towards the costs of extended lawyers, barrister and mediation fees as [they] believe that if [NVJ] had acted professionally and [in] accordance with the Rules as stated in the Lawyers and Conveyancers Act 2006, as supported by the Law Society's decision then these costs would have been significantly less".

The respondents' reply

[76] Ms TK submitted that the determination of the Committee to not award compensation was sound and that this Office had the same 'preoccupation',[59] which is to maintain professional standards.

[77] She submitted that the Committee's determination that Mr RC had clearly warned Mr and Mrs LN about the risks of proceeding to declare the agreement unconditional was sound, and that the LN's chose to proceed, notwithstanding these warnings.

[78] Ms TK also referred with approval to the comment by the Committee:[60]

> *…Mr RC's advice was no different to the advice that an independent lawyer would have provided*.

[79] She submits that:[61]

> It is therefore clear that the cause of Mr and Mrs LN's loss was not as a result of the conflict of interest between the practitioners, but their own decision to confirm the agreement unconditional without finance being secured.

[80] Finally, she advises that no invoice has been raised by [NVJ] in relation to the purchase of the property and that therefore there is "no question that the complainants have "*paid twice*" for the advice that they received".[62]

[81] Having made these observations and submissions, Ms TK submitted that the application should be dismissed pursuant to s 205 of the Lawyers and Conveyancers Act, as it disclosed no reasonable cause of action.

[82] She further submitted that the review should be completed on the papers, on the premise (which is not necessarily correct) that a hearing on the papers would be

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[59] Refer to the Standards Committee determination at [34].
[60] Ms TK, letter to LCRO (7 July 2020) at [7].
[61] At [8].
[62] At [10].

dealt with more expeditiously than a hearing in person, and that the professional reputation of the lawyers was affected in the meantime.

[83] Ms TK did not make any submission that the findings of unsatisfactory conduct be reversed.

Process

[84] By letter dated 2 September, the applicants were asked by myself to provide evidence of the extra legal costs they say they had incurred. On the same day, a letter was sent to Ms TK suggesting that "she may care to discuss with [her] clients whether they are prepared to resolve the applicants' request for a contribution towards their 'extra legal costs' by putting forward a proposal through this Office".

[85] That suggestion was made in accordance with the obligation imposed on this Office by s 192(b) of the Lawyers and Conveyancers Act 2006.[63]

[86] On 6 October, Ms TK emailed the applicants directly, requesting Mr and Mrs LN to provide the invoices for legal fees from Mr UJ, whom they had instructed. Ms TK "consider[ed] this will assist the LCRO in determining the extent, if any, of quantum, and will also assist [her] clients in determining whether or not an offer of contribution should be made in advance of any determination by the LCRO".[64] In her email, Ms TK also offered to correspond directly with Mr UJ to clarify any queries about the time records. Further emails were subsequently sent by Ms TK direct to Mr and Mrs LN.

[87] On 24 November, the parties were notified that this Review would be progressed by way of a hearing with both parties. This was to be conducted by way of audio-visual link (AVL).

[88] It became apparent, that negotiations to resolve the matter had continued directly between Ms TK and the applicants. On 26 November, the parties were advised by this Office that "any further proposals to resolve the matter [were] to be directed through this Office". On the same day, Ms TK responded:

> Whilst it is correct that the negotiations occurred directly between the parties, we consider there is a clear prejudice to the practitioners in the LCRO being privy to such correspondence.

[89] On 27 November, I indicated that direct contact could continue if Ms TK and/or her clients considered that would further the possibility of resolving the matter. I indicated

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[63] Section 192(b) provides that (one of) the functions of this Office is to promote, in appropriate cases, the resolution, by negotiation, conciliation, or mediation of — (i) complaints …
[64] Ms TK, email to LCRO and Mr and Mrs LN (8 October 2020).

however that the previous direction for proposals to resolve the matter be directed through this Office was to ensure the applicants were protected from any coercive communications, and advised Ms TK that she was relied upon to ensure that this did not occur.

[90] Mr and Mrs LN then advised that he and his wife were residing in [Town]. Ms TK also advised that the AVL facilities in the [Town] District Court were unsuitable for more than one party. Consequently, a hearing in person with all parties was scheduled for 15 April 2021 in [Town]. On 18 March 2021, Ms TK requested that her clients be excused from attending the hearing and they be represented at the hearing by herself.[65]

[91] One of the reasons for scheduling a hearing in person was to explore the possibility of resolving the matter by agreement between the parties, but as that now seemed no longer to be a possibility due to the fact that the respondents were, seemingly, reluctant to attend, the cost to this Office of a hearing in person in [Town] was not merited.

[92] On 31 March, I issued a Minute cancelling the hearing. In paragraph [8] of the Minute I advised the parties that I considered the review could be completed on the material to hand.

[93] Ms TK has consistently argued for the review to be completed in this manner. I sought comment from Mr and Mrs LN,[66] who advised this Office by telephone that they agreed to the review being completed on the papers.

[94] In preparing to draft this decision, it became apparent that it may be relevant to make comment about the role that Mr RC's supervising partner (Mr NV) played in this matter. On 15 April, I wrote to Mr NV, as required by s 214 of the Act, requesting him to advise if he wished to make any comments on the role that he played.

[95] Ms TK was advised by Mr NV about this letter and engaged in further correspondence with this Office.

[96] As at the date of this decision Mr NV has not provided any substantive response.

[97] On 20 April, Ms TK was advised that no further correspondence would be entered into and that any submission she wished to make prior to completion of this decision was required by the end of that week, 23 April. Ms TK was again reminded that any negotiations to resolve the matter were to be directed through this Office.

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[65] Ms TK, letter to LCRO (18 March 2021).
[66] Pursuant to s 206(2A) of the Lawyers and Conveyancers Act 2006.

[98] Ms TK's submissions were received on 23 April.

Scope of review

[99] In her responses to the application for review, in subsequent correspondence, and in her final submissions, Ms TK has maintained that the issue to be considered on review was narrow. She says:

> …the only issue outstanding is how much, if any, of the legal costs claimed by the complainants are attributable to the unsatisfactory conduct of the practitioners; specifically their failure to initially recognise the potential conflict in acting for both parties to the transaction.

[100] The nature and scope of a review have been discussed by the High Court in several judgments, in which it has said of the process of review under the Act:

> … the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.
>
> The Review Officer has broad powers to conduct his or her own investigations including the power to exercise for that purpose all the powers of a Standards Committee or an investigator and seek and receive evidence. These powers extend to "any review" …
>
> … the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review Officer to exercise some particular caution before substituting his or her own judgment without good reason. [67]
>
> A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO's own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee's determination.[68]

[101] Given those directions, the approach on this review, based on my own view of the fairness of the substance and process of the Committee's determination, has been to:

(a) Consider all of the available material afresh, including the Committee's decision; and

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[67] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].
[68] *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

(b) Reach an independent decision on all aspects of the Standards Committee's determination.

Review

Rule 6.1 – a more than negligible risk

[102] Rule 6.1 provides:

> A lawyer must not act for more than 1 client on a matter in any circumstances where there is a more than negligible risk that the lawyer may be unable to discharge the obligations owed to 1 or more of the clients.

[103] Rule 6.2 provides:

> Rule 6.1 applies with any necessary modifications whenever lawyers who are members of the same practice act for more than 1 party.

[104] Consequently, neither Mr Whitcombe or Mr RC could act, or continue to act, for their respective clients, if there was a more than negligible risk, such that they would be unable to discharge the obligations owed to their clients.

[105] In addressing this issue, the Committee referred to a decision of this Office, *AC v BT*.[69] In that decision, the Review Officer referred to the Oxford dictionary definition of the word 'negligible', as being 'unworthy of notice, or so small or insignificant as to be ignorable'.

[106] To form a view as to whether or not there was a risk that was unworthy of notice or so small or insignificant as to be ignorable, the transaction that Mr and Mrs LN had committed to, and the events which arose, must be examined in detail.

The agreement

(a) At the time Mr and Mrs LN made initial contact with Mr Whitcombe, Mr Whitcombe had already been instructed by the vendors. Mr Whitcombe says that Mr and Mrs LN were clearly excited about the property. Mr and Mrs LN's excitement would have influenced Mr and Mrs LN when tendering for the property. If the vendors were advised of Mr and Mrs LN's excitement, it would influence them in deciding whether to accept Mr and Mrs LN's tender.[70]

[69] LCRO 143/2017 (19 February 2019) at [62].
[70] It is noted that there was some negotiation on the price with the initial tenders by the LNs not being accepted.

Even at that early stage, Mr Whitcombe was compromised.

(b) It is apparent that the LN's discussed the proposed tender with Mr RC, as they originally intended to submit an unconditional offer. The condition making the offer subject to sale of their existing property, was included at Mr RC's suggestion. The offer was against the interests of the vendor, being a conditional offer as opposed to an unconditional offer.

(c) Consideration needed to be given to reinstating the title and boundary clauses.

(d) Mr and Mrs LN needed to be advised that considerable due diligence on the property should be undertaken, including inspections of the house on the property and also the zoning. There was a potential need for the clauses addressing these matters to be reinstated.[71]

(e) GST implications of the sale needed to be addressed.

[107] In each of the instances referred to above, there was a more than negligible risk that either, or both, lawyers would be unable to discharge their professional obligations to either, or both, their respective clients.

Informed consent

[108] Subject to the provisions of r 6.1, r 6.1.1. permits a lawyer (or lawyers in the same firm) to act for more than one client in respect of the same transaction, where the prior informed consent of both parties is obtained.

[109] The conduct that requires to be addressed in relation to this, is that of Mr RC.[72]

[110] The phrase 'informed consent' is defined in r 1.2 as being:

> …..consent given by the client after the matter in respect of which the consent is sought and the material risks of and alternatives to the proposed course of action have been explained to the client and the lawyer believes, on reasonable grounds, that the client understands the issues involved

[111] In *Taylor v Schofield Peterson*[73] the Court said to establish informed consent:

> … a solicitor must always: (1) recognise a conflict of interest, or a real possibility of one; (2) explain to the client what that conflict is; (3) further explain to the client the ramifications of that conflict (for instance, it may be that she could not give advice which ordinarily she would have given); (4) ensure that the client has a

[71] The clauses providing for these matters had been deleted.
[72] No complaint has been made about Mr Whitcombe's conduct in this context.
[73] [1999] 3 NZLR 434 (HC) at p440.

> proper appreciation of the conflict, and its implications; and (5) obtain the informed consent of that client.

[112] The letter from Mr RC dated 12 September, under cover of which the consent form was sent to Mr and Mrs LN, cannot be said to constitute an explanation of the material risks and the alternatives available to them.[74]

[113] Mr RC's recommendations throughout the transaction that his clients take independent advice, were not adequate. More was required, including a detailed explanation of why Mr and Mrs LN needed to take independent advice. Most clients, unfamiliar with the concept of conflict of interests, would not appreciate the need for them to dispense with one lawyer, and move to another lawyer, with likely additional costs involved. The concept, and the need for independent advice, needed to be explained in some detail.

[114] There was no discussion between Mr RC and his clients, as a result of which he could say that his clients understood the risks. The fact that Mr and Mrs LN signed the letter of consent, does not mean they provided **informed** consent.

[115] The case of *Taylor v Schofield Peterson* is, again, relevant. In that case, the lawyer was acting for both parties to a transaction. The lawyer prepared an agreement in which clause [9] read:

> The parties acknowledge that before signing this agreement they were advised to and given the opportunity to seek independent advice as to the terms of this agreement…

The signature clause read:

> Signed by the said…who acknowledges that prior to signing the agreement he was advised to seek independent advice as to the terms of the agreement.

[116] The Court said:

> It would be one thing to tell a client that he *could* seek advice, but quite another to say that he *should* seek advice. If a client refused or neglected to take that advice – after being told (affirmatively) that he should do so – then it may well be that difficult questions of waiver, or estoppel, would arise.[75]
>
> It is not enough for [the lawyer] to say that … the parties signed the clause they did. There was a conflict of interest; it was [the lawyer's] obligation to explain clearly what that conflict was; and it was not enough for [the lawyer] to say that [the client] could have taken independent legal advice. .[76]

[74] See [8] above.
[75] Page 444.
[76] Page 445.

[117] The letter of consent signed by Mr and Mrs LN, and the repeated recommendations by Mr RC that they take independent advice, does not meet these requirements.

Summary

[118] Mr Whitcombe should not have referred Mr and Mrs LN to Mr RC to act. Neither lawyer was in a position to accept instructions while the other lawyer acted for the other party to the transaction. Both Mr Whitcombe and Mr RC have breached r 6.1.

[119] Mr and Mrs LN did not provide informed consent to Mr Whitcombe and Mr RC acting for both vendor and purchaser of the property. This constitutes a breach of r 6.1.1.

Developments

[120] Notwithstanding the above decision that there was a more than negligible risk that neither Mr Whitcombe or Mr RC were able to discharge the obligations to their respective clients at the beginning, a second point in time when a more than negligible risk arose, was when it became apparent that the chances of Mr and Mrs LN selling their existing property was becoming more and more remote.

[121] There can be no doubt that the risk of a conflict arose, when subsequently, the escape clause was activated on 13 September 2017. Mr RC did not advise Mr and Mrs LN until 16 January 2018, that he "believed [he was] required to insist" that Mr and Mrs LN seek independent advice.[77]

[122] Mr Whitcombe continued to act for the vendors.

Refinancing

[123] Mr Whitcombe accepted instructions to act for Mr and Mrs LN to refinance existing borrowing. The refinancing was closely related to the purchase and Mr Whitcombe should have declined to act for Mr and Mrs LN. It was not in their interests for him to do so.

[124] Mr Whitcombe says he attended on Mr and Mrs LN to execute the documents as Mr RC was away from the office. That does not explain why he did not pass the instructions from the bank on to Mr RC when they were received. Mr Whitcombe's

[77] This was not a 'termination' of instructions.

conduct is more inexcusable in that the escape clause had been activated just prior to Mr and Mrs LN executing the loan documentation.

[125] By acting for Mr and Mrs LN to refinance their borrowing, Mr Whitcombe became aware of their financial circumstances, which, even if not revealed directly to his clients, would intentionally or otherwise, have affected Mr Whitcombe's advice to his clients.

[126] Mr Whitcombe is in breach of r 5 of the Conduct and Client Care Rules.[78]

The duty of confidentiality

[127] Mr Whitcombe provided the barrister instructed by him to act for the vendors, with information about Mr and Mrs LN and their financial circumstances. The detail of the information provided is set out in [31] of the Standards Committee determination.

[128] As determined by the Standards Committee, this information could only have been obtained by reason of the fact that NVJ was acting for them in the transactions under review, but also in the past.

[129] The duty of confidentiality continues indefinitely[79] and Mr Whitcombe's conduct in this regard, is particularly egregious. It goes against the basic tenets of a lawyer's duty to protect the interests of his or her client.

[130] This conduct constitutes unsatisfactory conduct pursuant to s 12(c) of the Lawyers and Conveyancers Act 2006.

Summary

[131] Mr Whitcombe has breached rr 5, 6.1 (in the alternative, r 6.1.1). rr 8 ,8.7 and 8.7.1 of the Conduct and Client Care Rules.

[132] This conduct warrants three separate findings of unsatisfactory conduct pursuant to s 12(c) of the Lawyers and Conveyancers Act 2006.

[133] Mr RC has breached r 6.1 (in the alternative r 6.1.1). Mr RC's conduct constitutes unsatisfactory conduct pursuant to s 12(c) of the Act.

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[78] Rule 5 provides: A lawyer must be independent and free from compromising influences or loyalties when providing services to his or her clients.
[79] Rule 8.1.

Compensation

[134] Mr and Mrs LN argue that they should be compensated for additional costs incurred by them as a result of the failure by Mr Whitcombe and Mr RC to recognise the conflicted positions they were in.

[135] Section 156(1)(d) of the Lawyers and Conveyancers Act 2006, provides that a Standards Committee[80] may make an order of compensation where a person has suffered loss by reason of an act or omission of a practitioner. The maximum compensation that may be ordered is $25,000.[81]

[136] Mr and Mrs LN say additional costs were incurred when they were obliged to instruct a new solicitor. They say they have suffered financially and personally. The personal stress, anxiety and depression has had unfortunate consequences for them both.

Sandy v Khan

[137] In her synopsis of submissions for LCRO,[82] Ms TK says:[83]

> The respondents' position is summarised as this: assuming (as the Committee does) that any lawyer would have given the applicants the same advice as Mr RC did, not to proceed with the purchase of the property absent adequate finance, the perceived conflict of interest issue is irrelevant. The applicants would have continued with the purchase, and in doing so incurred a liability to the vendors unable to meet the terms of the ASP, regardless of whom they instructed.

[138] One of the earliest decisions by this Office (*Sandy v Khan*[84]) addressed the issue of compensation in some detail. The facts involved in that review were similar to the facts involved in this review, other than the fact that Mr Khan himself acted for both parties. That difference is addressed by r 6.2 of the Conduct and Client Care Rules.[85]

[139] In that review, the LCRO said:

> [6] …A lawyer who breaches his or her fiduciary duty may not speculate that the wronged client would have acted as he or she did and incurred the loss in any event (*Farrington v Rowe McBride & Partners* [1985] 1 NZLR 83; *Sims v Craig Bell & Bond* [1991] 3 NZLR 535). I observe that the same presumption against a fiduciary is made when quantifying a loss: ***Premium Real Estate Ltd v Stevens* [2009] 2 NZLR 384 (SC).**

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[80] Section 211(1)(b) of the Act provides that the LCRO has all of the powers of a Standards Committee.
[81] Regulation 32 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008.
[82] Dated 23 April 2021.
[83] At [18].
[84] LCRO 181/09 (9 December 2009) [orders decision].
[85] See [104] above.

[140] That comment is endorsed here, and provides the answer to Ms TK's submission.

Compensation for stress

[141] In *Sandy v Khan*, the LCRO said:

> [27] …This issue therefore is whether general damages represent compensation for loss or not. The Court of Appeal has recognised that such distress damages are compensatory in nature: *Paper Reclaim Ltd v Aotearoa International Ltd* [2006] 3 NZLR 188 (CA) at para 171. One commentator has noted "it is now more widely accepted that, where significant mental distress is caused by a breach of contract, the promisee has suffered real damage which is deserving of compensation" (D McLauchlan, "Mental Distress Damages for Breach of Commercial Contracts" (1997) 3 NZBLQ 130). Accordingly I conclude that jurisdiction exists to make an award of general damages to compensate for the loss of peace of mind and the consequent distress and anxiety.
>
> [28] I note that the ability to compensate for anguish and distress in the lawyer client relationship has been recognised in a number of cases, most recently *Heslop v Cousins* [2007] 3 NZLR 679 (where $50,000 was awarded to each client). Given the purposes of the Lawyers and Conveyancers Act (which in s 3(1)(b) includes the protection of consumers of legal services) it is appropriate to award compensation for anxiety and distress where it can be shown to have occurred. Such an order will be particularly appropriate where the client is not a sophisticated person and looks to the lawyer to relieve the stresses that might accompany legal matters. …

[142] The LCRO did not refer to any particular evidence provided by Ms Sandy. He was however "satisfied that the conduct of Mr Khan caused Ms Sandy anxiety and distress".[86]

[143] In the present instance, absent speculation as to what Mr and Mrs LN would have done (and what advice an independent solicitor would have given), I too, am satisfied that the situation Mr and Mrs LN found themselves, would, without doubt, have caused them considerable stress and anxiety for some time. Mr LN advises that he was unable to continue employment as a police officer.

[144] Quoting again from *Sandy v Khan,* the LCRO continues:

> [29] There is of course no punitive element to an award of damages for anxiety and distress. Such an award is entirely compensatory: *Air NZ Ltd v Johnston* [1992] 1 ERNZ 700; [1992] 1 NZLR 159 (CA). It is accepted that such orders should also be modest (though not grudging) in nature.

[145] After discussing awards made by the courts in the judgments referred to above,[87] the LCRO awarded Ms Sandy the sum of $2,500 by way of compensation. Although that decision was issued in 2009, there has been no adjustment of the

[86] At [28].
[87] See [142] above

maximum amount that can be awarded. In the circumstances, I consider that the same amount, namely $2,500, is the appropriate amount to award to Mr and Mrs LN by way of compensation for the stress and anxiety they have suffered by reason of the fact that they were obliged to instruct a new lawyer at a late stage in the dispute with the vendors, which would have necessitated re-living events to bring Mr UJ up to speed.

[146] The fact that Mr Whitcombe continued to act for the vendors, in breach of r 8 of the Conduct and Client Care Rules, and had acted for Mr and Mrs LN at the very time events were unfolding, would have added to a sense of betrayal for Mr and Mrs LN. That is reflected in the differing amounts each lawyer is ordered to pay.[88] The difference between the amounts also reflects the fact that Mr Whitcombe was a partner in the firm and referred Mr and Mrs LN to Mr RC to act for them in the transaction. As an employee, and being junior to Mr Whitcombe, it would have been difficult for Mr RC to decline to act.

Compensation for additional costs

[147] Mr and Mrs LN supplied Mr UJ's invoices at my request. Ms TK then sent an email to this Office, and directly to Mr and Mrs LN, requesting that Mr and Mrs LN supply copies of Mr UJ's time records from which the invoices were generated. Ms TK also advised that she was "happy to liaise with [FLL] if it is easier".

[148] Mr LN advised Ms TK that he would rather contact Mr UJ himself. Ms TK responded:

> Hi G
>
> Thank you for your emails and I will wait to hear from you.
>
> Please don't hesitate to get in touch if you (or [FLL]) have any queries about the time records.

[149] Mr and Mrs LN then provided Mr UJ's time records.

[150] The relevant invoice of Mr UJ, is invoice 14770, 29 March 2018, for $2,400 plus GST and disbursements, totalling $2,903.75. The narration to this invoice includes Mr UJ's initial attendances to uplift the file from [NVJ], extensive review of the file, and discussions and negotiations with the vendor's solicitor.[89] Somewhat confusingly, the narration to invoice 15335 includes matters relating to the purchase also, but the timesheets do not.

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[88] See [160] and [167].
[89] The vendor's solicitor presumably being Mr Whitcombe.

[151] In her submissions, Ms TK says that she "does not propose to review time records on a line by line basis" [90]. However, she submits that attendances on 18 and 19 January 2018 "could reasonably be inferred as duplication".

She further submits that "from 22 January onward, it would seem that time recorded was in the futile pursuit of the purchase, and indeed be likely to be trying to avert the inevitable litigation, and would reasonably have been incurred notwithstanding the conflict." [91]

[152] It is relevant here, to refer back to the words of the LCRO in *Sandy v Khan*,[92] that "a lawyer who breaches his or her fiduciary duty may not speculate that the wronged client would have acted as he or she did and incurred the loss in any event…."

[153] Ms TK's submissions amount to 'speculation' as to what Mr and Mrs LN would have done with independent advice at an early stage, or from the beginning of the transaction.

[154] Ms TK draws attention to the fact that no invoice has been rendered by [NVJ] for Mr RC's attendances on the purchase but it is difficult to accept that[NVJ] should be compensated for attendances on this transaction, by setting off presumptive fees against the fees incurred by Mr and Mrs LN.

[155] Taking all of the circumstances into account, Mr and Mrs LN are to be reimbursed for Mr UJ's invoice 14770 in the proportions indicated below.

Orders

Mr Whitcombe

Censure

[156] Mr Whitcombe's part in the events which unfolded calls for specific attention. He was a partner in the firm. He referred Mr and Mrs LN to Mr RC to act for them on the purchase. Mr Whitcombe was Mr RC's employer. Mr RC likely relied on Mr Whitcombe to have addressed any difficulties in him acting for Mr and Mrs LN.

[157] Mr Whitcombe also acted for Mr and Mrs LN to refinance borrowings at the same time as acting for the vendors of the property to activate the escape clause. He continued to act for the vendors against Mr and Mrs LN when litigation ensued.

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[90] (23 April 2021) at [24].
[91] At [26].
[92] At [140] above.

[158] Mr Whitcombe's conduct is particularly egregious.

[159] In the circumstances, it is appropriate that Mr Whitcombe be censured pursuant to s 156(1)(d) of the Lawyers and Conveyancers Act. Using the words of the New Zealand Lawyers and Conveyancers Tribunal, "a censure is more than mere words, it is a record that will always remain on your file and remind you and others"[93] that the manner in which you addressed your obligations to Mr and Mrs LN was not in accordance with your professional obligations.

Although the censure here is not delivered by the Tribunal, this comment is equally as relevant to the censure delivered here.

Compensation

[160] Pursuant to s 156(1)(d) of the Lawyers and Conveyancers Act, Mr Whitcombe is ordered to pay the sum of $2,000 to Mr and Mrs LN for stress and anxiety, and $2,400 in reimbursement of Mr UJ's fees.

Fine / costs

[161] The Standards Committee ordered Mr Whitcombe to pay a fine of $2,000 and costs of $500.

[162] Mr and Mrs LN did not include any comments on these orders in their application for review. Ms TK has not made any submissions on these orders either. Whilst this does not prevent me from addressing those aspects of the Standards Committee determination,[94] I confirm the determination of the Committee in this regard.

Mr RC

Compensation

[163] Mr RC has advised that he consulted at every stage during this transaction with his supervising partner, Mr NV. Mr and Mrs LN have not complained about Mr NV, but it is likely they were unaware of discussions between Mr NV and Mr RC.

[164] The fact that Mr RC consulted with Mr NV throughout this matter does not excuse his breaches of the rules and duties to Mr and Mrs LN.

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[93] *Otago Standards Committee v Copland* [2019] NZLCDT 29.
[94] See [100]–[101] above.

[165] At the time the events occurred, Mr RC had six years' experience. A candidate for admission to the Bar must evidence that he or she is familiar with his or her professional obligations which are established by the Conduct and Client Care Rules.

[166] Notwithstanding the comment in [165] above, Mr RC's breaches are, somewhat more "excusable" for the reasons noted above.

[167] Pursuant to s 156(1)(d) of the Lawyers and Conveyancers Act, Mr RC is ordered to pay Mr and Mrs LN the sum of $500 for stress and anxiety and $503.75 in reimbursement of Mr UJ's fees.

Fine / costs

[168] The orders made by the Committee in [37] of its decision are confirmed.

Costs on review

[169] This Review has consumed much more time and resources than necessary, due to the various communications and responses from the respondents, through counsel. These communications impeded the conduct of this Review. Although I refrain from referring to this conduct as obstructive,[95] it is, nevertheless, appropriate to order costs against the respondents. As noted by the Lawyers and Conveyancers Disciplinary Tribunal,[96] the legal profession should not be required to fund extensive costs,[97] in this case, of a review.

[170] Pursuant to s 210(1) of the Lawyers and Conveyancers Act, the respondents are each ordered to pay the sum of $600 to the New Zealand Law Society.

[171] Pursuant to s 215 of the Lawyers and Conveyancers Act, I confirm that the order for the payment of money made in this decision is enforceable in the civil jurisdiction of the District Court.

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Committee is confirmed, but modified to the extent identified in this decision.

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[95] As discussed for example in *Parlane v New Zealand Law Society (Waikato Bay of Plenty Standards Committee (No 2))* HC Hamilton CIV-2010-419-1209, 20 December 2010.
[96] *Canterbury–Westland Standards Committee No 1 v Whitcombe* [2019] NZLCDT 37 at [49].
[97] The Legal Complaints Review Office is funded by a levy against all lawyers – s 217 of the Lawyers and Conveyancers Act 2006.

Publication

[172] The parties are invited to make submissions as to publication of this decision, including the names of the practitioners. Any submissions are to be received by no later 3 weeks from the date of this decision.

Comment

It is disappointing that the parties (particularly the respondents) did not take the opportunity provided at an early stage in this review to resolve the question of compensation with Mr and Mrs LN. The respondents were clearly conflicted, and this called for a less adversarial approach than this review has taken.

This was a situation which called for an acknowledgment of the purposes of the Lawyers and Conveyancers Act 2006 as being "to maintain public confidence in the provision of legal services" and "to protect the consumers of legal services".[98]

Unfortunately, it has been necessary for this review to be completed as required.

DATED this 4th day of MAY 2021

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O Vaughan
Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr and Mrs LN as the Applicant
Messrs Whitcombe and RC as the Respondents
Ms TK as Representative for the Respondents
Mr NV as a Related Person
[Area] Standards Committee [X]
New Zealand Law Society

[98] Sections 3(1)(a) and (b).

LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2021] NZLCRO 95

Ref: LCRO 122/2020

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the [Area] Standards Committee [X]
BETWEEN	**G & P LN** Applicants
AND	**TODD WHITCOMBE and RC** Respondent

DECISION AS TO PUBLICATION

The names and identifying details of the parties in this Decision have been changed except for Mr Whitcombe

Introduction

[173] The substantive decision in this review was issued on 4 May 2021. In [156] of the decision, Mr Whitcombe was censured. The orders against Mr RC did not include a censure.

[174] The parties were invited to make submissions as to publication of the decision, including the names of the practitioners.

[175] Submissions have been received from Ms TK for the respondents. No submissions have been received from the applicants.

[176] Section 206(1) of the Lawyers and Conveyancers Act 2006 (the Act) provides that "every review conducted by the Legal Complaints Review Officer under this Act must be conducted in private."

[177] Section 206(4) of the Act provides:

> The Legal Complaints Review Officer may, subject to subsection (3) direct such publication of his or her decisions as he or she considers necessary or desirable in the public interest.

[178] In addition to the statutory direction, the other factors to be taken into account when considering whether to publish the name of a practitioner are set out in the Publication Guidelines issued by this Office. These are:

> a) the extent to which publication would provide protection to the public including consumers of legal and conveyancing services;
>
> b) the extent to which publication will enhance public confidence in the provision of legal and conveyancing services;
>
> c) the impact of publication on the interests and privacy of—
>
> i. the complainant;
>
> ii. the practitioner;
>
> iii. any other person;
>
> d) the seriousness of any professional breaches; and
>
> e) whether the practitioner has previously been found to have breached professional standards.

[179] In *S v Wellington District Law Society* (which concerned an appeal from a decision of the Disciplinary Tribunal not to suppress a name) it was noted that the question of publication:[99]

> requires consideration of the extent to which publication of the proceedings would provide some degree of protection to the public, the profession, or the court. It is the public interest in that sense that must be weighed against the interests of other persons, including the practitioner, when exercising the discretion whether or not to prohibit publication.

[180] It is important to recognise the difference between name suppression and publication. Reasons for publication, need to be stronger than where name suppression is applied for. However, protection of the public lies at the heart of each.

[181] Another judgment in which publication is addressed, is *Director of Proceedings v Nursing Council of New Zealand* where the High Court considered the basis upon

[99] *S v Wellington District Law Society* [2001] NZAR 465 (HC) at 469.

which presumptively private proceedings against a nurse should be open to the public.[100] It was observed in that case (at pp 383–384) that public accountability was an important consideration which must be taken into account. In that case, Baragwanath J identified that public education is also a factor to be considered.

[182] In *Dean v Wellington District Law Society*, the Court overturned an order suppressing the name of the practitioner.[101] That decision was made even though the offending was not at the highest end. Again, the compelling factor was the public interest in potential clients knowing of the disciplinary charge established against the practitioner.

[183] In *Gill v Wellington District Law Society*, the Court stated:[102]

> We consider that the public has a right to know which practitioners have infringed the standards in the profession.

[184] All of the above, provide guidance, and are considered, in coming to this decision.

The respondents' submissions

[185] Ms TK submits that there should be no publication of the names of either practitioner.

Mr RC

[186] For Mr RC, Ms TK advises, and submits:

- It has been acknowledged that Mr RC's breaches were somewhat more excusable because of his relatively low post-qualification experience and the fact that he was under the supervision of Mr NV. The risk to the public would seem to be low.

- Mr RC has "taken positive steps to educate himself in relation to potential conflicts of interest, including completing a Continuing Legal Education seminar entitled '*Property – conflicts of interest*' …"

- When Mr RC came to the realization that there was a risk of potential conflict, "he was quick to step away from this proceeding".

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[100] *Director of Proceedings v Nursing Council of New Zealand* [1999] 3 NZLR 360 (HC).
[101] *Dean v Wellington District Law Society* HC Wellington CIV-2006-485-2961, 26 July 2007.
[102] *Gill v Wellington District Law Society* HC Wellington AP120/93, 7 December 1993.

- "… the impact of publication upon Mr RC as a relatively junior practitioner, would be disproportionate."

- "Mr RC has commenced employment with a new practice … and no longer has any connection with [NVJ] … Publication of the identity of Mr RC … may damage the reputation of unrelated practitioners at his new firm."

- "… the lower level of his offending is reflected in the decision by the Standards Committee to impose no penalty other than costs."

- "… Mr RC has no previous finding of breach of professional standards against him."

Mr Whitcombe

[187] For Mr Whitcombe, Ms TK advises, and submits:

- There have been two findings of unsatisfactory conduct against Mr Whitcombe. "The previous offending was of a wholly different character to the present case …"

- An analogous decision of this Office "is a case concerning a single act which amounted to breaches of rules 5, 5.4 and (as in this case) 6". In that decision the lawyer was censured but the practitioner's identity was not published.

- Mr Whitcombe "acknowledges that his determination as to the timing of when the risk of potential conflict became '*more than negligible*' was incorrect, and that his judgment was wrong in that, when he did consider the risk to be more than negligible, he considered that Mr RC stepping aside was sufficient to address the risk of conflict".

- He ensured "that new counsel was instructed on behalf of his clients in relation to the litigation between the vendors and the complainants".

- "Mr Whitcombe has taken positive steps to educate himself in relation to potential conflicts of interests, including Continuing Legal Education seminars entitled '*Conflicts of Interest for Conveyancers*' and '*Ethics – conflict of interest for property lawyers*'. This means that [Mr Whitcombe] is more informed and sensitive to this difficult issue, having reflected on this matter, with a corresponding benefit to his clientele and therefore the public generally."

- Mr Whitcombe's personal affairs were difficult and complex at the time. "The impact of publication of this decision upon Mr Whitcombe would be particularly harsh."

- Mr Whitcombe has joined a new firm and publication of his identity "may damage the reputation of unrelated practitioners at his new firm".

- "The single instance of poor judgement in the present case suggests a more punitive approach would be disproportionate."

- The breaches do not involve client funds.

Other matters

[188] Ms TK advises that [NVJ] is a small firm and publication of the name of either respondent's identify "may have an adverse effect upon the firm, partners, and employees, given the two respondents' close relationship with the firm …".

Conclusion

[189] Ms TK concludes her submissions:

> … the impact of publication upon either of the practitioners involved, and indeed to the members of their former and new practices, outweighs any benefit in publication.
>
> The risk of any further offending is minimal, and the respondents have wholly accepted the substantive decisions of both the Standards Committee and LCRO and the other penalties imposed.

Mr Whitcombe

[190] Mr Whitcombe is now a partner in a new firm which has offices in [City 1] and [City 2]. The firm also provides services throughout New Zealand.

[191] At the time the events which are the subject of this complaint occurred, Mr Whitcombe had been admitted to the Bar for some 20 years. The law surrounding conflicts of interest has been discussed in numerous judgments of the courts dating back many years. It is difficult to accept that a lawyer can be unaware of the general principles relating to conflicts of interest.

[192] In addition, the professional rules relating to conflicts of interests are not new. The Rules of Professional Conduct in force prior to 2008 included the following commentary:[103]

> It is difficult to guard against conflicts of interest through clients being represented by different practitioners in the same firm. There is a danger that information may be imparted by one client to a practitioner in the firm to which the firm should not have access, having regard to the interest of another client who is represented by a different practitioner in that firm. Firms should establish systems to prevent such events occurring.

[193] There was no information barrier between Mr Whitcombe and Mr RC. Indeed, it is apparent that discussions took place between them and documents were delivered personally.

[194] There could be no clearer instance of a conflict of interests, where two lawyers in the same firm act respectively for the vendor and purchaser of a property. Mr Whitcombe set a poor example for Mr RC.

[195] I address now each of the submissions against publication raised on behalf of Mr Whitcombe:

(a) There have been two previous findings of unsatisfactory conduct against Mr Whitcombe, in 2009 and 2014. These arose out of different sets of circumstances. That submission has some, but limited, weight. If anything, the previous adverse findings should have heightened the need for Mr Whitcombe to be aware of his professional obligations.

(b) It is acknowledged that when a censure is imposed by way of penalty, it does not necessarily mean that publication will follow. Nevertheless, a censure is imposed where matters of serious concern have arisen, and the issue of publication needs to be carefully addressed.

(c) Mr Whitcombe recognised that he could not act for both vendor and purchaser himself, but nevertheless referred Mr and Mrs LN to Mr RC. It is difficult to accept that Mr Whitcombe was unaware that a conflict arose notwithstanding another lawyer in the firm acted for Mr and Mrs LN.

(d) Attending a CLE seminar is a positive step, but, having lapsed in this instance, it may be that Mr Whitcombe needs to ensure that he is aware of all his professional obligations.

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[103] *Rules of Professional Conduct for Barristers and Solicitors* (7th ed, New Zealand Law Society, 2008) at r 1.04, commentary (3).

(e) The submission that Mr Whitcombe instructed new counsel on behalf of the vendors when litigation arose between the respective parties, does not mean that Mr Whitcombe was taking steps to remove himself because he recognised there was a conflict of interest. Mr Whitcombe remained as instructing solicitor and, as noted in [127]–[129] of the findings decision, compounded the consequences of the conflict by imparting information about Mr and Mrs LN to the barrister.

(f) Mr Whitcombe's personal situation at the time must be balanced against the interests of the public in the future.

(g) Mr Whitcombe's conduct cannot be categorised as a "single instance of poor judgement". The poor judgement (if it can be described as that) arose at the beginning of the transaction, and there were many occasions when Mr Whitcombe should have terminated his instructions, or directed Mr RC to do so. However, it was Mr RC who took the step to terminate instructions without any advice or direction from Mr Whitcombe or other partners in the firm.

(h) To suggest that publication would be "punitive" focuses solely on the impact on Mr Whitcombe. Very few of Ms TK's submissions focus on the underlying principle relating to publication, that being the interests of the public.

(i) There are many instances where publication has been ordered by a Standards Committee, or this Office, for breaches of professional obligations other than those involving client funds.

Public interest v personal interest

[196] A potential effect of publication on others is the impact that publication would have for Mr Whitcombe's current and previous firms. The names of the firms and other persons involved will be anonymised to minimise the impact of the publication order made in this decision.

[197] Members of the public need to be aware that Mr Whitcombe allowed this situation to develop. Armed with that knowledge, future clients will be able to recognise a similar situation and have the ability to raise the matter promptly.

[198] The term "members of the public" includes present or future employees, and publication will enable those persons to guard against being placed into the same position as Mr RC.

[199] Mr Whitcombe's name will be published.

Mr RC

[200] Mr RC's part in this matter was "somewhat more excusable".[104]

[201] Mr RC will certainly be aware of the need to be on high alert against being in the same situation in the future. He has also taken positive steps to educate himself.

[202] In this way, members of the public will be protected.

[203] Mr RC's name will not be published.

Decision

[204] Pursuant to s 206(4) of the Lawyers and Conveyancers Act 2006, the name of Mr Whitcombe will be published. The names of all other persons and firms are to be anonymised.

DATED this 22nd day of June 2021

O Vaughan
Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr and Mrs LN as the Applicants
Messrs Whitcombe and RC as the Respondents
Ms TK as Representative for the Respondents
Mr NV as a Related Person
[Area] Standards Committee [X]
New Zealand Law Society

[104] Findings decision at [166].