

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 2

BETWEEN

QX

Applicant

AND

ZW

Respondent

DECISION

The names and identifying details of the parties in this decision have been changed.

Introduction

[1] In a decision dated 20 May 2014, the [Area] Standards Committee decided to take no further action on Ms QX's complaint against Ms ZW. Ms ZW is a lawyer who had represented Ms QX in proceedings before the Family Court, and in connection with the implementation of orders from that Court.

[2] The Committee relied on s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act) when making that decision. That section allows a Standards Committee to, in effect, dismiss a complaint if the Committee considers that further action would be unnecessary or inappropriate.

[3] Ms QX has filed an application for review with this Office, challenging the Committee's decision, and has provided extensive material in support of her application.

Background

[4] Ms QX was married to Mr RF for 25 years. They separated in April 2006 with Ms QX retaining the care of two of the couple's four children, who were then still living at home.

[5] Ms QX has described her marriage to Mr RF as being deeply unhappy.

[6] Throughout the marriage Ms QX considers that she contributed significantly more than Mr RF, by caring for the children, correspondence teaching and running the home.¹

[7] After the couple separated Mr RF remained living in the family home, which was situated on rural land at [place], some 50km from [place] on the South Island's West Coast. The home is on a small lifestyle block of land.²

2006

[8] Proceedings were commenced in the Family Court in [place] in 2006 in connection with issues of care of and contact with the couple's children. Ms QX also applied for a protection order, although that application was discontinued in November of that year.³ A law firm in [place] acted for Ms QX in bringing matters before the Court. Mr RF was also legally represented.

[9] In about mid-2006 Ms QX moved to [place], near [place], and instructed SY ZW (the firm) to act for her. Ms ZW was the lawyer in the firm with responsibility for managing the file. Ms QX had earlier been granted legal aid for the case, and this grant was transferred to the firm.

[10] Very soon after being instructed in 2006, the firm filed relationship property proceedings in the Family Court on Ms QX's instructions, and those were served on Mr RF.

¹ Letter from Ms QX to the NZLS (15 September 2013) at 7.

² In this decision I will refer to the family home and lifestyle block collectively as "the family home".

³ In her letter responding to Ms QX's complaint, Ms ZW said at [2] that the reason for the protection order being discontinued was "the significant geographical distance between the parties". Mr RF's lawyers in a letter to SY ZW dated 1 February 2013 said that "the allegations of abuse in the relationship against [Mr RF] were unsubstantiated ... [The] presiding Judge found no such history of abuse in the relationship".

[11] Ms QX's and Mr RF's lawyers exchanged correspondence about aspects of the proceedings, including work that needed to be completed on the family home in order for a Code Compliance Certificate (CCC) to be issued. A draft separation and relationship property agreement was also circulated.

[12] The proceedings were adjourned so that a valuation of the family home could be obtained, and for Mr RF to complete the necessary work to obtain a CCC. Mr RF also raised the possibility of purchasing Ms QX's interest in the family home.

2007

[13] In the early part of 2007 Ms QX and Mr RF continued to discuss Mr RF's proposal to buy-out Ms QX, although by the middle of that year matters had not really progressed.

[14] The lawyers for Ms QX and Mr RF continued to exchange correspondence about the proceedings. Ms QX expressed her frustration to Ms ZW about Mr RF delaying progress towards resolving the relationship property issues.

[15] By October a judicial case management conference (JCMC) had taken place, at the conclusion of which the Judge adjourned the case until 2008 for a judicial settlement conference (JSC).

2008

[16] The JSC was held in the [place] Family Court on 16 April 2008, and the firm instructed a lawyer in [place] to appear on Ms QX's behalf.

[17] Following the JSC a Family Court Judge gave directions which included a number of consent orders.⁴ The Judge noted that "in the scheme of things the value of the property is not great and the parties as a result ... have worked towards resolution of the issues between them".

[18] Amongst the issues agreed to at the JSC was that the parties would obtain a valuation of the family home. CCC work required completion, and this was to be carried out by Mr RF. The issue of Mr RF effectively paying occupation rent to Ms QX was also discussed but not agreed at the JSC.

⁴ Directions of Judge LR, 16 April 2008.

[19] A valuation of \$255,000 exclusive of the value of stock, plant and chattels,⁵ was obtained and discussions ensued in the latter part of 2008 about marketing and sale of the family home. Initially the parties preferred the option of a private sale, but by the end of 2008 it was apparent that this would be difficult.

[20] The couple did not accept the valuation figure and agreed to list the family home at \$400,000. It did not sell.

[21] From Ms QX's perspective, responsibility for the lack of progress towards sale was Mr RF's. On behalf of Ms QX, on 18 November 2008 Ms ZW filed a memorandum with the Family Court seeking further directions about that and other related issues.

[22] A directions conference with the Family Court in December resulted in the Judge directing that ABC Ltd was to take over the marketing and sale of the family home if a sale had not been achieved by 1 January 2009, and at the listed price of \$255,000. Other, related, directions were also made. The Judge commented that "the sale process to be put in place for [the family home] has not been agreed to".⁶

2009

[23] By April 2009 the parties had made some progress towards agreeing a process for the sale of the family home, and the parties' lawyers filed a consent memorandum in the Family Court inviting a Judge to make a consent order directing the sale.

[24] The consent order included an allowance for Mr RF to continue living in the family home and paying outgoings pending sale. The order also recorded that the sale-price was to be agreed or, failing that, set by an independent valuer. Subject to some adjustments in favour of Ms QX, the consent order directed that the sale proceeds were to be divided equally.

[25] The Judge made various other orders in connection with chattels and vehicles, and the consent order was sealed by the Court on 14 April 2009.

[26] Leave was also granted for the parties to return to Court for further orders if, after three months, the family home had not been sold.

⁵ Memorandum Ms ZW to the Family Court dated 14 November 2008 at [4].

⁶ Directions of Judge GF, 4 December 2008.

[27] By the time she made her complaint in 2013 Ms QX had arrived at the conclusion that the consent order (which she refers to as an agreement) was “unjust” and says that she signed it in “distress and under duress” because the Judge insisted on draft consent orders being prepared in haste.⁷

[28] However, Ms ZW heard nothing further from Ms QX between April 2009 and early in 2011.

2011

[29] By April 2011, two years after the Court had made the consent orders, the family home had still not been sold. Ms QX “re-engaged” the firm. She was particularly concerned with what she considered to be Mr RF’s obstructive and difficult stance with regard to the Court-ordered sale of the family home. One of the sticking-points appeared to be agreement about the price the sale should fetch.

[30] The firm provided terms of engagement to Ms QX in its letter dated 7 April 2011. The services to be provided were described as:⁸

... [including] advice and representation regarding your relationship property matters with [Mr RF]. Initially you have instructed us to write to [Mr RF] and request that the family home be listed at the price of \$350,000 until Christmas.

[31] As 2011 progressed there were exchanges of correspondence between the firm and Mr RF’s lawyer, and subsequently as between the firm and Mr RF directly.⁹ Ms QX provided the firm with evidence of what she considered to be Mr RF’s lack of co-operation with the sale process, going so far to describe his behaviour as “perverting the [course] of justice”.¹⁰

[32] Mr RF wrote to the firm in June 2011, largely disputing that he was being uncooperative about price and indicating that Ms QX was “more than welcome to set the sale price at 380k ... don’t have a problem with that ... never did”. Mr RF also advised the firm that he had “a very bad case of multiple sclerosis”.

⁷ Letter from Ms QX to NZLS (15 September 2013) at 7.

⁸ The lawyers named in the terms of engagement as having responsibility for Ms QX’s file did not include Ms ZW.

⁹ Mr RF was by this time representing himself.

¹⁰ Letter from Ms QX to NZLS (15 September 2013) at 2.

[33] One issue causing delay concerned listing agents. Ms QX had approached a number of different agents who had expressed interest in marketing the property.¹¹ She had signed a listing agreement with one agency in [place], though by the end of July Mr RF had not counter-signed that agreement.¹²

[34] The firm wrote to Mr RF on 29 July 2011 seeking his cooperation and indicating that, failing this, the matter would be referred back to the Family Court with the likelihood that a sale at \$250,000 would result.

[35] Towards the end of 2011 Ms QX was reconsidering her views about price, and attempts were made to obtain a fresh valuation.

2012

[36] In March 2012 matters were suspended for several months as negotiations took place between family members with a view to buying-out Ms QX's interest in the family home. Those discussions did not result in a concluded agreement.

[37] A second valuation from different valuers in April recommended a market value for the family home of \$300,000.

[38] Ms QX expressed her frustrations about the delays to the firm and made it clear that she wanted the sale process to be actively pursued.

[39] As 2012 drew to a close, there were further attempts to get agreement about listing and price. By the end of that year, Ms QX and Mr RF had agreed to list the property for \$330,000.

2013

[40] Ms QX was becoming increasingly concerned that Mr RF was intending to abandon the family home. Ms QX says its location in the foothills of the [place] on the West Coast of the South Island meant that it was susceptible to damp and decay (and possibly burglary and damage) unless aired, maintained and occupied.

¹¹ The property remained listed with ABC Ltd, pursuant to the Judge's December 2008 direction.

¹² Eventually that agency declined to list and market the property, because of difficulties in dealing with Mr RF: letter DEF Ltd to SY ZW (25 October 2011).

[41] By this time Ms QX was in a very difficult financial position. She was receiving a WINZ benefit which had been reduced because of her financial interest in the family home. She was very anxious to secure a sale of the family home and be left with enough capital with which to re-house herself and her daughter.

[42] Ms QX says she spoke to another lawyer in January 2013 to obtain a second opinion about the delay and what could be done about it. She says she was told that matters could be brought to a head with a simple application to the Family Court. Nevertheless Ms QX did not engage that lawyer, although on 18 January 2013 she did complain to the firm about their service. That resulted in a meeting on 24 January, attended by Ms QX, Ms ZW and Ms ZW's business partner in the firm, Mr SY. Ms QX prepared and provided a list of her issues of concern.

[43] During the meeting there was a telephone discussion between Ms ZW and an agent at ABC Ltd about the sale price, with a recommendation from the agent that the family home should be listed at \$300,000. Ms QX was privy to that discussion.

[44] One of the issues discussed at the meeting was whether Ms QX should apply for an occupation order of the family home. By residing there it was thought that Ms QX would be able to expedite the sale process.

[45] A lawyer at the firm (not Ms ZW) wrote to Mr RF on 24 January, raising concerns over the listing price, and payment of outgoings. The letter indicated that Ms QX might apply for an occupation order.¹³

[46] ABC Ltd reported to the firm in late January 2013 about interest in the family home since its listing on 1 January 2009. Interest over that four-year period had been modest and largely by telephone or email. It was ABC Ltd's opinion that the initial listing price of \$400,000 was too high. A listing price of \$300,000 was described as "helpful to gain more interest from prospective buyers".

[47] Lawyers on behalf of Mr RF replied to the firm's letter on 1 February. The essence of the response was to deny that Mr RF was being obstructive, and to put forward the argument that difficulties with sale were because the family home was "a lifestyle block in the back of beyond".

¹³ Ms ZW's name does not appear on any of the correspondence sent by the firm during 2013.

[48] Ms QX, however, was adamant that Mr RF had been consistently obstructive about sale. Advice from two other real estate agencies that had been approached about listing the family home on earlier occasions appeared to provide support for Ms QX's view.¹⁴

[49] In March Ms QX's and Mr RF's son AT, and his partner, expressed interest in buying-out Ms QX's share in the family home. There was also a suggestion made by Mr RF's lawyers that he was exploring whether he could purchase Ms QX's interest in the family home.

[50] On 23 April Ms QX sent an email to the firm and made it clear that urgent action was required to force a sale of the family home. She described herself as being at her "wits end" and says her mental health was "not good". Although she had earlier indicated she could, in a further email that day Ms QX advised the firm that she would not now be able to take up occupation of the family home.

[51] By the end of April 2013, four years after the consent order had been made directing sale, the position seemed to be:

- Interest in the family home since the JSC in April 2008 had been modest, even with the Court-ordered intervention of ABC Ltd from 1 January 2009.
- Ms QX and Mr RF reaching agreement about price had been difficult.
- Ms QX had diminishing confidence in both ABC Ltd and the firm.
- Mr RF had been uncooperative with two alternative real estate agencies.
- Attempts by family members to purchase one of the parties' interest in the family home had been unsuccessful.
- Mr RF continued to live in the family home and Ms QX was concerned about his level of care and maintenance of it.
- Ms QX was not in a position to occupy the family home.

¹⁴ Email DEF Ltd to SY ZW (8 February 2013) and email GHI Ltd to SY ZW (2 May 2013).

[52] In early May the firm wrote to Mr RF's lawyer setting out something of the history of delays, and indicating that unless the sale arrangements could be significantly advanced "Ms QX will seek further Orders from the Family Court".¹⁵

[53] During May the discussions with AT and his partner intensified. AT was legally represented, and the three firms of lawyers (Ms QX's, Mr RF's and AT's) exchanged correspondence about a prospective purchase.

[54] Apart from those discussions, in early July ABC Ltd reported that interest in the family home had diminished, but explained that this was consistent with other listings on their books. By the end of July ABC Ltd reported that there was definite interest in the family home from a prospective purchaser, but Mr RF and Ms QX informed the agency that their son AT and his partner were endeavouring to raise finance to purchase Ms QX's interest.

[55] By early August it appears that Mr RF was not allowing prospective purchasers introduced by ABC Ltd, to be shown through the family home. His reasoning was that an agreement with AT was in place.

[56] By then matters with AT and his partner had progressed to the point where a draft deed of family arrangement had been circulated recording the details of their proposed purchase, although the question of financing was still uncertain.

[57] ABC Ltd expressed considerable frustration with the process, evidenced by an email to the firm on 8 August in which the agent said "I am finding this situation very frustrating. [Mr RF] tells me one thing and [Ms QX] tells me nothing". The agent referred to Ms QX "never [answering] her phone". He also indicated that there was ongoing interest in the family home from prospective purchasers. The firm drew this to Ms QX's attention in a letter dated 9 August and pointed out the risk of "losing several possible purchasers while waiting for Jonathan to obtain finance".

[58] On 21 August Ms QX wrote to the firm asking about occupation rent, payment of her legal costs by Mr RF and noting that she considered she was "due recompense in a few matters before closure". The firm provided an extensive response in a letter to Ms QX dated 20 September. In particular the firm advised Ms QX that an application for occupation rent in her favour would be unsuccessful as Mr RF had paid all outgoings on the family home since April 2009, and Ms QX had paid none.

¹⁵ Letter SY ZW (VU) to JKL Law (3 May 2013).

[59] From the firm's perspective, that is where matters came to an end. The firm did not hear further from anyone.

[60] Following this lengthy history Ms QX lodged her complaint with New Zealand Law Society (NZLS) on 20 September 2013.

Complaint and response

Complaint

[61] In addition to the usual complaint form Ms QX provided very detailed background to and explanation of her complaint about the level of service she received from the firm. She also attached several pieces of relevant correspondence.

[62] Ms QX summarised her complaints in the following way:¹⁶

My lawyers have ... over the last 7 years, more than once failed to –
Do what I asked.
Say what I told them to.
Keep me informed.
Push for action.

[63] In referring to a pamphlet explaining the complaints procedure, produced by NZLS, Ms QX said that

[Her lawyers have] therefore ...
Involved me in unreasonable delay and costs.
Not done what they said they would do.
Given me incomplete information.
Failed, often, to reply to phone calls and letters.
Not kept me informed about the work they were doing for me.

[64] Ms QX said that she is "up to \$86,000 out of pocket".¹⁷ She lists a number of outcomes she was seeking from the complaints process, which included an acknowledgment that her complaint was "just", an apology, costs, answers to questions and advice about "options as to what can be done".¹⁸

¹⁶ Letter Ms QX to NZLS (15 September 2013) at 4.

¹⁷ Letter from Ms QX to NZLS (15 September 2013) at 6. The total sum of \$86,000 is particularised by Ms QX.

¹⁸ At 8.

[65] Ms QX also considers she has endured continuing abuse from her ex-husband since she left him, which includes “the very obvious one of obstruction of the settlement process”.¹⁹

[66] Ms QX provided further extensive submissions in a letter to NZLS dated 28 September 2013, attaching further pieces of correspondence.

[67] Amongst her concerns was advice she had received from the firm that a claim by her for occupation rent from Mr RF would not succeed, in contrast to earlier advice that a valuation would take occupation rent into account.

[68] Ms QX noted that “Mr RF has been obstructive all the way, since 2006, and I have often felt that [the firm] has condoned his behaviour”. She also repeated her view that the April 2009 orders made by the Family Court were not made by consent.

[69] Ms QX also asserted that all of her costs throughout should be met by Mr RF “because he has done nothing to facilitate settlement of the relationship property issue and has been obstructive instead”. She said that she has repeatedly made this point to the firm but apart from threatening Mr RF with costs applications, nothing further has been done.

[70] She concluded by saying that she does “not wish to discuss anything with [the firm] ever again”.

[71] In a letter to NZLS received by it on 2 October 2013, Ms QX said

I am not complaining only about one person. [Ms ZW] was my original lawyer (2006 – 2009) and from 2011 I was seen by three different young lawyers ... these young people were advised by either [Ms ZW] or [Mr SY], I do not believe that they are responsible for all of my complaint.

Both [Ms ZW] and [Mr SY] have been involved, and if one person is to be named, I would prefer that it be [Ms ZW].

Response by Ms ZW

[72] NZLS forwarded Ms QX’s complaint to Ms ZW on 11 October. Distilling the issues of complaint from the extensive material that Ms QX had provided with her complaint, NZLS identified those issues as follows:

¹⁹ At 8.

- (a) Gave poor service and failed to provide [effective] representation.
- (b) Mismanaged Ms QX's case.
- (c) Ignored Ms QX's instructions.
- (d) Failed to address the issues of complaint Ms QX raised at the 24 January 2013 meeting.
- (e) Failed to apply to the Family Court for an eviction.
- (f) Failed to arrange a court hearing.
- (g) Failed to keep Ms QX informed.
- (h) Failed to push for action.
- (i) Obstructed progress and ignored Judge's orders.
- (j) Had a conflict of interest by not protecting the interests of the Legal Services Agency.
- (k) Involved Ms QX in unreasonable delays and costs.
- (l) Ms ZW did not do what she said she would do.
- (m) Gave Ms QX incomplete information.
- (n) Failed to reply to phone calls and letters.

[73] In a 116 paragraph letter dated 24 October 2013, Ms ZW responded to the complaint. She attached close to 90 documents. The letter begins with the submission that "[the firm] dispute the allegations made by Ms QX".

[74] Ms ZW's letter is largely a timeline of events and supporting documents, such as emails, letters, file-notes, Court documents and correspondence and documents exchanged between the parties' lawyers. In endeavouring to capture the overall theme of Ms ZW's submissions, I summarise her response as follows:

- (a) The firm's involvement began in mid-2006 when Ms QX moved from the South Island to [place].
- (b) Proceedings under the Property (Relationships) Act 1976 were commenced not long after the firm was instructed to act.
- (c) Those proceedings led to a JSC in April 2008 at the conclusion of which consent orders were made – most notably dealing with the sale of the family home.
- (d) Mr RF and Ms QX preferred to sell privately through an agent and listed the family home at \$400,000.
- (e) By the end of 2008 no sale had been achieved and so at a directions conference in the Family Court directions were made that ABC Ltd take over the marketing and sale from 1 January 2009.
- (f) Further consent orders were made in April 2009, including giving leave to the parties to re-apply to the Court for further orders within three months if a sale had not been achieved.
- (g) The firm heard no further from Ms QX until re-engaged by her in April 2011.
- (h) The firm thereafter engaged with both Mr RF's lawyer and Mr RF directly to try and obtain agreement about a listing price and galvanise Mr RF into pro-actively facilitating a sale.
- (i) The range of listing prices after the firm was re-engaged was from \$380,000 to \$300,000.
- (j) In 2012 family members tried to organise purchasing Ms QX's interest in the family home.
- (k) By the end of 2012 there was still uncertainty about listing price.
- (l) In early 2013 Ms QX complained directly to the firm about the lack of any progress. This resulted in agreement that the listing price should be \$300,000 and that ABC Ltd would provide regular reports about interest.

- (m) There was a further attempt by family (AT and his partner) to purchase Ms QX's interest.
- (n) Interest in the property through ABC Ltd had improved considerably by the end of July 2013.
- (o) AT and his partner were actively trying to raise finance to purchase Ms QX's interest in the family home. Ms QX was very supportive of this.
- (p) The firm was actively pressing for details about AT's purchase.
- (q) The firm was concerned that both Mr RF and Ms QX were ignoring the possibility of sales through ABC Ltd and wrote to each about that.
- (r) The firm's core submission may be summarised as being that it acted diligently, competently, efficiently and in Ms QX's interests throughout.

Further comments from Ms QX

[75] Ms ZW's response to her complaint was provided to Ms QX, and in a letter to NZLS dated 6 October 2013 Ms QX provided further comment.

[76] She says:

- (a) The lawyer who appeared on her behalf at the April 2009 hearing, at the conclusion of which the second set of consent orders were made, did not advocate adequately on her behalf.
- (b) Mr RF was continuously obstructive and dishonest.
- (c) The firm only took steps when prompted to do so.
- (d) She received conflicting advice from the firm about occupation rent.
- (e) By 2013 the firm had enough information on which to base the matter being put back before the Family Court.
- (f) The firm's responses to her were slow in arriving.

- (g) The firm did not provide her with copies of correspondence when it was sent.

Further response by Ms ZW

[77] Under cover of the firm's letter to NZLS dated 5 December 2013, Ms ZW provides further response.

[78] It was submitted by Ms ZW that factors contributing to the lack of any sale of the family home included: the fact that Mr RF and Ms QX initially tried to do so privately, the property's isolation, disagreement about price, reluctance to reduce the price, inability to get other real estate agencies involved and attempts by family members to purchase Ms QX's interest.

[79] Specifically Ms ZW denies each of the other complaints made by Ms QX about mismanagement, ignoring instructions, failing to address complaints, failing to apply to the Family Court for orders, failing to keep Ms QX involved and informed, being obstructive, escalating costs and failing to be responsive.

Further comment by Ms QX

[80] NZLS gave Ms QX an opportunity to make additional comments following receipt of Ms ZW's 5 December letter. This she did in a six-page letter dated 17 December 2013.

[81] Ms QX disagrees with all that had been said by Ms ZW. She emphasises that Mr RF was continuously abusive, difficult, uncooperative and obstructive and that the firm could and should have done more to counter that and to forcefully advocate on her behalf.

Standards Committee hearing and decision

[82] The Committee conducted a hearing on the papers and for the reasons set out in its decision dated 20 May 2014, it determined that action on the complaint was neither necessary nor appropriate.²⁰

²⁰ Lawyers and Conveyancers Act 2006, s 138(2).

[83] The Committee treated the complaint as one against Ms ZW.

[84] In its decision, the Committee described Ms QX's complaints as "extensive".²¹ It listed the twelve of the fourteen issues of complaint that had been set out in NZLS's letter to Ms ZW dated 11 October 2013.

[85] The Committee dealt separately with seven of those twelve issues it listed. The balance was considered under the heading "other complaints".

[86] The Committee noted that it was considering the complaints and Ms ZW's conduct against the standard of unsatisfactory conduct set out in s 12 of the Act.²²

[87] After considering the individual issues of complaint that it had identified, as well as those it described as "other complaints", the Committee came to the overall conclusion that there was insufficient evidence of conduct that might be unsatisfactory in relation to any of the matters raised. It noted the following:

- (a) Lack of success in dealing with a matter does not necessarily raise a professional conduct issue meeting the definition of unsatisfactory conduct.²³
- (b) Delays are part and parcel of litigation.²⁴
- (c) Some of Ms QX's expectations were unrealistic.²⁵
- (d) Ms QX decided against moving into the family home, hence the need to apply for an occupation order became unnecessary.²⁶
- (e) Changing circumstances dictated steps available and steps taken.²⁷
- (f) Counsel has a duty not to bring meritless applications before the Court.²⁸

²¹ Standards Committee decision at [2].

²² At [5].

²³ At [6].

²⁴ At [8].

²⁵ At [8].

²⁶ At [15] – [18].

²⁷ At [18].

²⁸ At [21].

- (g) Ms ZW's timeline indicates that she had regular contact with Ms QX.²⁹
- (h) Ms ZW had a duty to the Legal Services Agency to ensure that its interests were protected and this did not create any conflict in her duties to Ms QX.³⁰

[88] The Committee noted that it had spent "significant time considering the extensive material provided" and it concluded that "it was satisfied with the overall conduct of Ms ZW".³¹

[89] As indicated above, having inquired into the complaint, the Committee determined to take no further action with regard to it.

Application for review

[90] On 16 June 2014 Ms QX filed an application to this Office to review the Committee's determination.

[91] Attached to Ms QX's application was a detailed critique of the Committee's determination, together with a timeline of her dealings with the firm between 2006 and mid-2009.

[92] Further material was provided to this Office by Ms QX in a letter dated 2 July 2014. This comprises almost eight pages of written submissions and attachments.

Review grounds

[93] Ms QX's review grounds, set out in her submissions in June and July 2014, may be summarised as follows:

- (a) The Committee's decision contained errors, was unfair and was incomplete because it did not address all of her complaints.
- (b) The mistakes include:

²⁹ At [22].

³⁰ At [24] – [26].

³¹ At [28].

- Mr RF has only been making interest payments on the mortgage of the family home.
- (c) She has struggled since 2006 to bring the division of her relationship property to a conclusion.
- (d) In April 2008 a Court directed that the family home was to be sold and the proceeds divided equally; this with the agreement of both Ms QX and Mr RF.
- (e) Mr RF has done everything he can to stall, prevent or otherwise interfere with the sale of the family home since proceedings were issued in 2006.³²
- (f) Ms ZW has been ineffective in dealing with Mr RF and by this has contributed to the delays.
- (g) Those delays have had a significant impact on every aspect of Ms QX's life.
- (h) Ms QX expected that Ms ZW would be able to overcome Mr RF's obduracy and use the law and the Family Court to force Mr RF to give her what she was entitled to – which was what he agreed to give her in April 2008.
- (i) Ms ZW has ignored instructions and given conflicting advice.
- (j) Ms ZW should have pressed the Court for “further, more detailed orders to prevent Mr RF from obstructing a sale and taking an active role in selling through more agents”. Between 2011 and 2013 the firm “refused to organise a Court hearing”.³³
- (k) Ms ZW “closed” Ms QX's case in the Family Court without informing her.
- (l) Legal aid was withdrawn because of the firm's inaction.

³² In her letter to this Office dated 10 March 2015 Ms QX advises that the family home had still not been sold, but that she had engaged new lawyers and the matter had returned to Court.

³³ See attachment to Application for Review, “Comments on Law Society Decision” at 13 & 5(b).

[94] Ms QX does not challenge the Committee's approach to the complaint as being one against Ms ZW rather than the firm or any of the other lawyers who dealt with her matter.

Ms ZW's response

[95] In her letter to this Office dated 1 July 2014 Ms ZW indicated that she relies upon the submissions she had previously made and the documents provided by her to NZLS in response to the complaint.

Review on the papers

[96] Ms QX and Ms ZW have both consented to this review being conducted on the papers pursuant to s 206 of the Act. Section 206 allows a Legal Complaints Review Officer (LCRO) to conduct the review on the basis of all the information available if the LCRO considers the review can be adequately determined in the absence of the parties, as I do in this case.

Role of the LCRO on Review

[97] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:³⁴

... 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.

[98] More recently, the High Court has described a review by this Office in the following way:³⁵

³⁴ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].

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.

[99] Given those directions, the approach on this review will be to:

- Consider all of the available material afresh, including the Committee's decision; and
- Provide an independent opinion based on those materials.

Analysis and Review

The firm's retainer prior to 1 August 2008

[100] The Act came into effect on 1 August 2008. The Act sets up a complaints mechanism to deal with complaints about lawyer conduct after that date. The Committee did not separately address the issue of Ms ZW's conduct before that date.

[101] However as significant events occurred after Ms ZW was retained in mid-2006 but before 1 August 2008, it is necessary to consider whether any conduct issues arise that must be considered under the prior legislation.

Legal tests

[102] Prior to 1 August 2008, lawyer conduct was regulated by the Law Practitioners Act 1982 (LPA).

[103] Complaints made after 1 August 2008 but which concern conduct prior to that date are dealt with in accordance with s 351 of the Act. That section imports the conduct standards which existed in the LPA.

[104] Therefore to the extent that Ms QX has raised complaint about Ms ZW's representation before 1 August 2008, that conduct must be measured against the then-prevailing LPA standards.

³⁵ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475, at [2].

[105] Those standards are found in ss 106 and 112 of the Act. The threshold for disciplinary intervention under that Act is relatively high and may include findings of misconduct or conduct unbecoming.

[106] Misconduct was generally considered to be conduct:³⁶

... of sufficient gravity to be termed 'reprehensible' (or 'inexcusable', 'disgraceful' or 'deplorable' or 'dishonourable') or if the default can be said to arise from negligence such negligence must be either reprehensible or be of such a degree or so frequent as to reflect on his fitness to practise.

[107] Conduct unbecoming could relate to conduct both in the capacity as a lawyer, and also as a private citizen. The test is whether the conduct is acceptable according to the standards of "competent, ethical, and responsible practitioners".³⁷

[108] For negligence to amount to a professional breach the standard found in ss 106 and 112 of the Act must be breached. That standard is that:

... the negligence or incompetence has been of such a degree or so frequent as to reflect on [the lawyer's] fitness to practise as a barrister or solicitor or as to tend to bring the profession into disrepute.

Discussion

[109] Ms QX's complaint does not raise any significant issues over Ms ZW's representation or advice between mid-2006 and 1 August 2008. In the timeline of events for that period provided by Ms QX, she records her frustration with delays as 2008 progressed although the target of that was largely Mr RF.

[110] A reasonable inference to be drawn from Ms QX's timeline for this period is that Ms ZW was doing her best to move matters along, but that Mr RF was proving to be difficult and unresponsive. Often there is little a lawyer can do in these circumstances as justice will frequently dictate that every opportunity is given to parties in litigation to be fully represented, advised, prepared and heard. Judges are very reluctant to deprive a litigant of those opportunities.

[111] Some 20 months had elapsed between the proceedings being filed in mid-2006 and the JSC in April 2008. Although this is longer than is ideal, I can find nothing

³⁶ *Atkinson v Auckland District Law Society* NZLPDT, 15 August 1990; *Complaints Committee No 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105 (HC).

³⁷ *B v Medical Council* [2005] 3 NZLR 810 (HC) at 811.

in the material provided by any of the parties to suggest that manifestly poor legal representation contributed to this.

[112] The outcome of the April 2008 JSC also reflected an understanding by the parties that there would be a period of time before the family home could be marketed for sale, as there was a requirement for Mr RF to first complete outstanding CCC work.

[113] Ms QX does however express disappointment with her representation at the JSC, not by Ms ZW, but a lawyer in [place] engaged by Ms ZW.

[114] The consent orders made at the conclusion of the JSC in April 2008 appear to have been consistent with the principles of the Property (Relationships) Act in that there was an acknowledgement of equal sharing, and some minor adjustments made to achieve that. However, I do not understand Ms QX to have ever applied or attempted to set aside the April 2008 consent orders. She says they represent her legal entitlements. The bigger problem has been Mr RF's resistance to giving effect to their terms, and then the parties' price expectations.

[115] After the JSC, the emphasis was on ensuring that Mr RF completed the CCC work, in preparation for what were to be attempts to sell the family home privately. Ms ZW's involvement was directed towards this during the middle of 2008, but she became more proactively involved towards the end of 2008 (after 1 August), when there was a further JCMC in December.

[116] There is no evidence that supports a finding that Ms ZW's advice to and representation of Ms QX prior to 1 August 2008 fell below the then-prevailing standards of misconduct or conduct unbecoming.

Conduct since 1 August 2008: General observations

[117] In her letter received by NZLS on 2 October 2013, Ms QX indicated a "preference" for her complaint to be treated as one against Ms ZW. I note that after Ms QX re-engaged the firm in April 2011, Ms ZW's name appears as signatory on virtually none of the correspondence from the firm (although she is copied into some emails). As Ms QX said in her letter to NZLS, other junior lawyers in that firm had conduct of the file. Ms QX also refers to Ms ZW's business partner, Mr SY, as having had some involvement in her file.

[118] Ms QX does not include any of those lawyers in her application for review. It is clear that Ms ZW had acted directly for Ms QX between 2006 and 2009. As she is a principal in the firm, I infer that she continued to be involved in Ms QX's file by supervising the junior lawyers from re-engagement in April 2011 until Ms QX ended the retainer in late 2013. Ms ZW does not distance herself from responsibility for the matter in any of her responses to the complaint, nor has she raised it as an issue to be considered as part of this review. Therefore it is appropriate to consider all of the events, including during 2013, through the lens of Ms ZW's conduct in managing, supervising and having ultimate responsibility within the firm for conduct of the file.

[119] Throughout her complaint to NZLS and her review to this Office, Ms QX has emphasised her unhappy marriage to Mr RF, and his actions since they separated in 2006.

[120] I note the following from the material before me:

- (a) During the course of negotiations with Ms ZW it was said by Mr RF directly and also by his lawyers on his behalf that he denies any domestic violence at any time against Ms QX.
- (b) There does not seem to have been any argument mounted on Ms QX's behalf for a greater than 50 per cent share of the relationship property. At the end of the JSC in April 2008, the presiding Judge proceeded on the basis that both parties accepted that there should be equal division of relationship property. The Judge's directions following that JSC do not indicate that it was ever suggested otherwise. Those directions were recorded by the Judge as having been made by consent.

[121] It is not the function of this Office to consider or rule upon, issues that fall within the jurisdiction of the Family Court.

[122] For a number of reasons, resolution of Ms QX and Mr RF's property issues has been delayed. By the time Ms QX lodged her review in June 2014, matters still had not been finalised. It is not part of the role of this Office to question Ms QX's description of the effects that this delay has had on her unless Ms ZW has failed to fulfil her professional obligations to Ms QX.

[123] The key issue on review is whether the delays, or any part of them, can be attributed to anything Ms ZW did, or did not do but should have.

[124] I have carefully read all of the material available on review including that provided by both parties to NZLS, and to this Office on review. Because of the level of detail that Ms QX has gone into, it is not possible to capture every aspect of her concerns. The role of this Office is to carefully consider Ms ZW's conduct and make an independent assessment of whether any act or omission by her raises conduct issues that warrant a disciplinary response.

Discussion

[125] The Committee approached Ms QX's complaint by asking itself whether any of the issues of complaint met the threshold for unsatisfactory conduct. As part of its decision the Committee set out the definition of unsatisfactory conduct.³⁸

[126] Unsatisfactory conduct includes a contravention of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the rules). The Committee did not identify which of those rules might be engaged by Ms QX's complaint.

[127] In my view, Ms QX's complaint potentially triggers consideration of the following rules:

- | | | |
|-----|-------------|--|
| (a) | Rule 1.4(c) | Negligence or incompetence of such a degree as to reflect on the lawyer's fitness to practise. |
| (b) | Rule 3 | Acting in a timely manner. |
| (c) | Rule 3.2 | Responding to inquiries in a timely manner. |
| (d) | Rule 3.3 | Informing a client of material and unexpected delays. |
| (e) | Rule 7 | Promptly disclosing all relevant information to a client. |
| (f) | Rule 7.1 | Keeping a client informed about progress on the retainer. |

³⁸ Above n 21, at [5].

- (g) Rule 7.2 Promptly answering requests for information or other inquiries by a client.
- (h) Rule 13.3 Obtaining and following a client's instructions on significant discussions in respect of the conduct of litigation (subject to the overriding duty to the court).

[128] A consistent theme of Ms QX's complaint is that from the moment the couple separated, Mr RF did everything that he possibly could to prevent a sale of the family home and/or any equal division of their relationship property.

[129] Ms QX's view is that any competent and diligent lawyer acting in the best interests of their client should easily be able to overcome such an opponent, by bringing matters to the attention of a Judge for directions and orders.

[130] Ms QX's views about this are perfectly reasonable. There are legal mechanisms available to hold an unwilling litigant to account.

[131] Ms QX complains that because Ms ZW did not, or would not, avail herself of those mechanisms, her advice and representation warrant a disciplinary response.

[132] Ms QX's complaints about matters such as failing to bring particular applications, not following instructions, not providing correspondence and being slow to respond are all sub-sets of her core complaint, which is that by her inaction Ms ZW has allowed a belligerent opponent to get the better of her, to the considerable detriment of Ms QX. Or, to put it another way, Ms QX's criticism is that Ms ZW was unable or unwilling to force Mr RF to act.

1 August 2008 – mid-2009

[133] I have already dealt with Ms ZW's conduct prior to 1 August 2008. Between that date and mid-2009, my view is that Ms ZW's advice and representation were adequate and competent.

[134] By the end of 2008 Ms ZW had brought the issue of sale back to the Family Court, and this resulted in that Court making more directive orders – again, by consent – in April 2009. Those orders were directed towards achieving a sale of the family home and the division of those proceeds, as had been agreed in April 2008.

[135] Ms QX expresses strong disagreement that either of the 2008 or 2009 orders was truly made by consent, in that she was poorly represented or otherwise pressured into agreeing to certain things.

[136] This Office cannot go behind the orders of the Family Court and re-litigate them. This Office must accept that the orders are what they purport to be: orders made with the agreement of both Ms QX and Mr RF.

[137] If Ms QX considered that the orders were unfair or not made with her full consent, then there have been opportunities since they were made for her to have taken formal legal steps to correct them. There is no evidence that she has done so, and good reason to believe she has not.

[138] By the time Ms ZW considered that matters had run their course so far as she was concerned, in approximately the middle of 2009, there is no persuasive evidence that she had neither done nor omitted to do anything that warrants a disciplinary response.

Re-engagement in April 2011

[139] It is common ground that Ms QX re-engaged the firm in April 2011. In passing I observe that she could have instructed another lawyer if she harboured concerns that Ms ZW had not previously represented her competently. The fact that she did not suggests that she had no particular concern about Ms ZW's representation at that stage.

[140] The retainer began with Ms QX expressing anxiety about the family home not having been sold so the proceeds could be divided, two years after the second set of consent orders directing this occur.

[141] The retainer ended approximately two and a half years later, in September 2013, with Ms QX being little closer to achieving a sale or the division of sale proceeds.

[142] On any view of it, a delay of that length with little to show for it, raises concern.

[143] This was not a relationship property case involving significant assets and argument about ownership, nor were there issues raised by family trusts or other similar issues which can bedevil relationship property disputes.

[144] In 2008 the parties had agreed who owned what, and how the common property was to be dealt with and divided. The only remaining issue since 2008 has been implementation of that agreement as recorded in the consent orders made in 2008 and 2009.

[145] Again, it is Ms QX's view that delay can be laid at Mr RF's feet; then at Ms ZW's for not overcoming it through the Courts.

[146] However there were a number of factors at play with this matter, the combination of which when analysed, give context to the delays. The correspondence that has been provided reveals a position that is not as simple as Ms QX portrays. The correspondence includes Ms QX's to Ms ZW and the firm, correspondence to and from the firm and Mr RF, Mr RF's lawyer, AT's lawyers and ABC Ltd (and other real estate agencies).

2011 – early 2013

[147] The correspondence provided by Ms ZW in her response to the complaint reveals that during 2011 and 2012 the significant issue was getting Ms QX and Mr RF to agree on a listing price for the family home. At that time, ABC Ltd was the Court-ordered real estate agency marketing the property.

[148] Without agreement as to price, progress with any sale was going to be difficult. The correspondence reveals that the firm was regularly trying to move matters along during this time.

[149] However a legitimate question arises as to whether the firm could have pressed Mr RF more forcefully to agree to a listing price, perhaps by referring the matter to a Judge. Ms QX's letter to the firm dated 27 November 2012 instructs "please proceed with the Court hearing".³⁹

[150] Following Ms QX's instructions, on 24 January 2013 the firm wrote to Mr RF directly with such a threat. Mr RF engaged lawyers to act for him, and the lawyers' response to the firm's letter was that any "unilateral action ... would be resisted by way of court application".⁴⁰

³⁹ Attachment AA to Ms ZW'S response to the complaint dated 24 October 2013.

⁴⁰ Letter JKL Law to SY ZW (1 February 2013) (Attachment CC to Ms ZW'S response to the complaint dated 24 October 2013).

[151] Mr RF's lawyers also assert that the lack of sale could not be attributed to him. They note that the property is "very isolated and in the current climate has been very difficult to sell".

[152] Whether the firm ought to have pressed on with Court action is not clear-cut. Litigation is not an exact science, and a lawyer's strategy is informed by many different factors, including cost. There is often no right or no wrong answer, and a disciplinary response to litigation decisions is only likely to arise in cases where a lack of competence is plain.

[153] Mr RF's lawyers had made it plain that any action through the Court would be defended. They firmly denied any responsibility by Mr RF for the failure to sell the family home.

[154] At about this time also, AT and his partner became involved in purchase discussions.

[155] In the circumstances the evidence does not support a finding that the firm's strategies throughout this time were manifestly unreasonable or otherwise raise issues of competence. Securing agreement between Ms QX and Mr RF about price was at the forefront of much of the dialogue in 2011 and 2012, and 2013 was largely pre-occupied with AT's and his partner's efforts to raise purchase finance, apparently without opposition from Ms QX.

Family attempts to purchase Ms QX's interest in the family home

[156] Quite apart from the attempts to get Ms QX's and Mr RF's agreement about price, there were other factors at play which are relevant to the issue of delay and whether Ms ZW is professionally culpable for that delay.

[157] From 2006 to late-2013 the following attempts were made by family members (including Mr RF) to purchase Ms QX's interest in the family home:

- (a) 2006: October (Mr RF).
- (b) 2012: March – September (the three RF sons).
- (c) 2013: March (Mr RF).

(d) 2013: March – October (AT and his partner).

[158] The most significant of these attempts was by AT and his partner in 2013. Correspondence provided by Ms ZW in response to the complaint reveals that those discussions began in early March 2013, and negotiations continued throughout 2013.⁴¹

[159] In July 2013 there was also an expression of interest in purchasing the family home from a purchaser who had been introduced by ABC Ltd. The agent said that this purchaser was in position and waiting to submit a written offer.

[160] When ABC Ltd advised the firm about the prospective purchaser, the firm reminded Ms QX about the importance of keeping options open and the risk of losing that purchaser if they were ignored. This was sensible advice.

[161] However, the family preferred to concentrate on AT's attempts, and it would appear that the ABC Ltd's purchaser fell through.

[162] As a reflection of how serious the family discussions had become, towards the end of 2013 at least two draft deeds of family arrangement had been circulated proposing that AT and his partner would purchase Ms QX's interest: this after several months of negotiation.

[163] On each occasion when there were discussions about a family arrangement, wider marketing of the family home was largely ignored as it was both Ms QX's and Mr RF's preference for the home to remain in the family.

[164] In retrospect Ms QX considers that Mr RF's attempts to buy her out were insincere and part of his pattern of trying to delay her ever receiving any share of the sale proceeds. However, at the time, Ms QX was willing to entertain the possibility and to allow time for that to occur, and that is an essential part of the context in which Ms ZW's conduct must be considered.

[165] The obvious consequence of these family discussions and corresponding lack of attention to wider marketing was delay in selling. Frustrating though those delays have ultimately become for Ms QX, they are nevertheless factors to consider when looking objectively at the overall complaint that inexcusable delay was caused or contributed to by Ms ZW.

⁴¹ Attachments KK1 and following to Ms ZW'S response to the complaint dated 24 October 2013.

[166] ABC Ltd's involvement since 1 January 2009, ordered by the Family Court, is also worthy of comment. Ms QX has in her written material been very critical of ABC Ltd, accusing it also of being unmotivated.

[167] However ABC Ltd's position, outlined in its early July 2013 email to the firm, is that a combination of factors contributed to the lack of any sale over the four and a half years of its involvement. Those factors included:

- (a) Difficulties with reaching agreement about price.
- (b) Conflicting instructions from Ms QX and Mr RF.
- (c) Difficulties in dealing with Mr RF.
- (d) Inability to contact Ms QX at times.
- (e) The property's isolation, significantly narrowing the potential market.

[168] Although Ms QX is critical of ABC Ltd, taken at face value I have no reason to disregard what its agent said. Those factors also contributed to the delay complained about by Ms QX, and most were beyond Ms ZW's control.

[169] To the extent that family discussions about purchasing Ms QX's interest in the family home contributed to an overall delay in finalising the Court ordered sale and distribution of proceeds, the evidence does not support the conclusion that Ms ZW can be held professionally responsible.

Failure to apply to the Family Court for various orders

[170] Ms QX complains that Ms ZW refused or failed to bring the issue of Mr RF's stalling back to the Family Court, so that orders with some force behind them could be made.

a) Eviction/occupation

[171] There was discussion about Court intervention when Ms QX complained directly to the firm in early 2013, and the parties had a meeting to discuss the complaint and a way forward. This included the possibility of applying to the Family Court for an

order effectively evicting Mr RF and giving Ms QX the right to occupy the family home. Nothing was done after this.

[172] Although discussions between AT's lawyers, the firm and Mr RF's lawyers continued during 2013, in April Ms QX indicated that because of comments made by Mr RF, AT was reconsidering his position. Ms QX pressed the firm to bring the matter back to Court.

[173] In response the firm noted that Ms QX was no longer in a position to move into the family home, and that seems to have influenced the prospects of Ms QX succeeding with an application to evict Mr RF. The firm also noted the difficulties of engaging a further real estate agency; the most suitable refused to deal directly with Mr RF.⁴²

[174] However, by the end of April AT's and his partner's interest in buying-out Ms QX's share of the family home was revived, and continued until the firm's retainer was terminated in about October. This was the parties' focus, and no professional disciplinary issues involving Ms ZW can be said to arise.

b) Occupation rent

[175] Ms QX complains that the firm has never made an application for occupation rent to be paid by Mr RF.

[176] There had been discussion about occupation rent between 2006 and 2008, however that issue was resolved by the parties agreeing in April 2009 that Mr RF would thereafter pay all outgoings pending sale.

[177] The firm's advice to Ms QX in September 2013 was that an application for occupation rent in her favour would not succeed, as Mr RF had paid all outgoings in accordance with the April 2009 consent orders, and Ms QX had paid none.⁴³

[178] Ms QX's belief is that Mr RF has not paid all of the outgoings. If she were to press that claim, it could not be resolved by this Office.

⁴² Letter SY ZW to Ms QX (24 April 2013) (Attachment QQ to the firm's response to the complaint dated 24 October 2013).

⁴³ Letter SY ZW to Ms QX (20 September 2013) (Attachment WWW to the firm's response to the complaint dated 24 October 2013).

[179] To be satisfied that the failure to apply for occupation rent is a disciplinary issue, there would have to be evidence to show that such an application was viable and that a competent lawyer following their client's instructions would have made it.

[180] There is a conflict between what the firm has said about occupation rent, and Ms QX's views. That conflict cannot be resolved by this Office. Ms ZW is not obviously wrong, and may well be right. Either way no conduct issues arise in relation to Ms QX's concerns over occupation rent.

Other

[181] Ms QX also complained that Ms ZW was tardy in contacting her, failed to give her copies of relevant correspondence and failed to keep her informed about what was happening on the file.

[182] This is a retainer that spanned from mid-2006 to mid-2009, and again from April 2011 to September 2013. In such a case some delays by a lawyer in responding to queries or reporting to their client are almost inevitable. A lawyer may from time to time be late in sending correspondence to their client. Isolated instances over a lengthy retainer are excusable, although of course not ideal. There will usually be a reason for those lapses, unconnected with any broader conduct issues. A disciplinary response would not normally be called for in the circumstances revealed on review.

[183] Conduct issues may arise if these lapses form part of a pattern of behaviour, or if there is a significant individual lapse.

[184] All of the material that both parties provided to NZLS, and the additional material provided by Ms QX in support of this review have been carefully considered in the course of this review.

[185] From time to time, in her correspondence with either Ms ZW or the firm, Ms QX remonstrates with them about particular things that they have or have not done – for example, not copying her into correspondence, or taking over two weeks to substantively reply to queries.

[186] However, the evidence does not disclose that throughout the retainer there is a pattern of failures by Ms ZW or her staff to respond and act efficiently, update and report or otherwise generally manage this litigation. I have carefully considered the definition of unsatisfactory conduct and the rules identified above as being engaged by

the complaint, and I conclude that there is no evidence of conduct by Ms ZW that warrants disciplinary intervention.

[187] Although legally straight-forward, particularly after the second set of consent orders were made in April 2009, this was nevertheless a difficult file.

[188] Ms ZW was then out of the picture until April 2011. Interest by purchasers in the family home had been modest almost from day one, and this problem was inherited by Ms ZW in 2011. Price was an ongoing sticking point between Ms QX and Mr RF. Mr RF denied that he was being obstructive. Most of 2013 was spent trying to organise a sale of Ms QX's interest to AT and his partner.

[189] The issue of delay had many layers to it. I have been unable to identify any good reason to form a view that differs from that of the Committee. There is no evidence of any unsatisfactory conduct by Ms ZW that calls for a disciplinary response.

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the decision of the Standards Committee is confirmed.

DATED this 21st day of October 2016

Dorothy Thresher
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:

Ms QX as the Applicant
Ms ZW as the Respondent
Mr SY as a related person as per s 213
[Area] Standards Committee 2
The New Zealand Law Society
Secretary for Justice