

LCRO 174/2014

**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

**BETWEEN**

**VS**

Applicant

**AND**

**DH**

Respondent

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

**DECISION**

**Introduction**

[1] Mrs VS has applied for a review of a decision by the [Area] Standards Committee to take no further action in respect of her complaint concerning the conduct of Mr DH who at the relevant time was in sole practice under the name of [Law Firm A].

[2] The context of this review concerns a family dispute over the ownership and occupation of land at [Town] previously owned by Mrs TS who, under her will, dated 20 November 2002, appointed her daughters Mrs L VS (Mrs L), and Mrs CN as executors and trustees, and left that land to them in equal shares.

[3] Mrs L predeceased Mrs TS. Mrs CN appears to have been reluctant to accept that Mrs L's adult children, namely, Mrs VS' husband, Mr K VS (Mr K), his brother Mr M VS (Mr M) and sister Mrs EL, were entitled to their mother's share of the land pursuant to the "gift over" provision contained in s 16(1) of the Wills Amendment Act 1955 which applied at that time.

[4] Mrs VS' complaint about Mr DH, who she says had acted for Mrs CN for some years, concerned his role in acting for Mrs CN as executor in the administration of Mrs TS' estate.

### **Background**

[5] Mrs L died in September 2004. Six months later, on 4 March 2005 Mr K enquired of Mr NG at [Law Firm A] whether Mrs L had made a will. He informed Mr NG that he understood that Mrs TS, who had lived with Mrs L, had made a will under which Mrs TS left her [Town] land to Mrs L and Mrs CN in equal shares.

[6] Mr NG advised Mr K, by letter dated 18 March 2005, that:

- (a) there "... is a reasonable chance you and your two siblings are effectively now beneficiaries under [Mrs TS'] will"; and
- (b) wills "... often include a clause which substitutes a beneficiary's children" if the beneficiary dies before the will maker, and that "section 16 of the Wills Amendment Act 1955 implies a children's substitution clause into all wills".

[7] A month later on 14 April 2005, having been made aware of Mr NG's advice, Mr DH informed Mr K by letter that he acted for Mrs TS. He requested that Mr K obtain independent advice.

[8] Mrs TS died in January 2006. Her will provided that Mrs L, and Mrs CN would each receive "a one-half share in ... [the [Town] land] subject to a life tenancy for Mrs L in respect of the house on the land".

[9] Later that year, Mr K, Mr M and Mrs EL obtained legal advice from Mr OD who confirmed, by letter dated 31 October 2006, Mr NG's view that s 16(1) of the Wills Amendment Act 1955 provided a statutory gift over of Mrs L's share in the [Town] land to Mr K, Mr M and Mrs EL.

[10] In April 2007 Mrs CN called a family meeting. She informed Mr K, Mr M and Mrs EL that Mr DH had advised her that she was entitled to all of the land which had been transferred to her. Mrs VS says that Mrs CN also stated that Mr DH had advised her that Mrs TS' wish was "that her grandchildren were not to inherit any of the land".

[11] Following that meeting, with the intention of obtaining their statutory entitlement to the land, Mr K, Mr M and Mrs EL instructed Mr OD to contact Mr DH. A year later Mr OD informed them, by letter dated 1 April 2008, that ownership of the

one-half share in the [Town] land, that would otherwise have been transferred to Mrs L, had been transferred to them in equal shares.

[12] Issues subsequently arose concerning the shared use of the land. Mr K, Mr M and Mrs EL issued proceedings against Mrs CN seeking to have the land partitioned.<sup>1</sup>

[13] Mrs VS' complaint arises out of Mr DH's role in acting for Mrs CN on the administration of Mrs TS' estate.

### **The complaint**

[14] Mrs VS lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 28 January 2014. Essentially, her complaint is that:

- (a) by effecting the transfer of ownership in the [Town] land to Mrs CN alone, Mr DH had "... been the catalyst for a prolonged exorbitantly costly and embittered battle between Mrs CN ... and [Mr K, Mr M and Mrs EL]";
- (b) Mr DH's advice to Mrs CN that she was "the only heir" under Mrs TS' will "has made Mrs CN ... implacable";
- (c) Mr DH's conduct in 2006 and 2007 had led to Mrs CN not accepting "that the land is ... under the 1955 Wills Amendment Act ...";
- (d) Mr DH, with his known experience in the preparation of and advice concerning wills, and estate administration would have known about s 16(1); and
- (e) Mrs CN "contested the partitioning of the land" necessitating a court action by Mr K, Mr M and Mrs EL even though Mrs L's share in the [Town] land had been transferred by Mrs CN to Mr K, Mr M and Mrs EL.

### **Mr DH's response**

[15] In response, Mr DH stated, by letter dated 10 April 2014 to the Law Society, that:

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<sup>1</sup> *EL v CN* [2013] NZHC 3190.

- (a) his professional duties were owed to his client, Mrs CN, as executor of Mrs TS' estate;
- (b) Mrs CN did not instruct him to provide "copies of the will to any other party nor was there any request from any other party which would have been sent on to [Mrs CN] for consideration and if necessary further instructions to [him]";
- (c) the title to the [Town] land was transmitted to Mrs CN, as executor. It was then for Mrs CN to decide how "to transfer further shares [of the [Town] land] in accordance with the terms of [Mrs TS'] will";
- (d) subsequently he received instructions "to transfer shares in the titles ..." to Mr K, Mr M and Mrs EL which he completed;
- (e) he did not have Mrs CN's instructions concerning "one further block of ... Maori land and [he] had no instructions from [Mrs CN] to deal with the Maori Land Court in respect to that land"; and
- (f) because the dispute between Mr K, Mr M and Mrs EL on the one hand and Mrs CN on the other was before the court at that time, he was "unable to comment on ... any other allegation in the complaint which may be construed as evidence relevant to [that] claim".

### **Standards Committee decision**

[16] The Standards Committee, which delivered its decision on 19 June 2014 determined, pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act), that no further action on the complaint was necessary or appropriate.

[17] In reaching that decision the Committee noted that because the conduct complained about occurred before 1 August 2008 the transitional provisions of the Act applied.<sup>2</sup> The Committee:

- (a) referred to Mr DH's letter of 14 April 2005 to Mr K which recommended that he "obtain independent advice";<sup>3</sup>
- (b) considered that Mr K, Mr M and Mrs EL "were not beneficiaries under [Mrs TS'] will". It followed that Mr DH "did not have any obligation to inform them of the contents of the will";<sup>4</sup>

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<sup>2</sup> Standards Committee determination, 19 June 2014 at [25].

<sup>3</sup> At [28].

- (c) stated that Mr DH “discharged any obligation when he advised the family to seek independent legal advice”;<sup>5</sup> and
- (d) noted that Mr DH transmitted title in the [Town] land to Mrs CN as executor. Having done so “[i]t was up to [Mrs CN] to transfer further shares [in the [Town] land] in accordance with the terms of the will”.<sup>6</sup>

[18] In conclusion, the Committee noted that Mr DH subsequently received Mrs CN’s instructions “to transfer shares in the titles ...” to Mr K, Mr M and Mrs EL, which he did.<sup>7</sup>

### **Application for review**

[19] Mrs VS filed an application for review on 31 July 2014. She is concerned that beneficiaries who find themselves in circumstances similar to those experienced by Mr K, Mr M and Mrs EL are not legally protected, and could be “excluded from their legal inheritance”.

[20] She considers that the way Mr DH administered Mrs TS’ estate led to the family dispute over occupancy of the [Town] land, which resulted in Mr K, Mr M and Mrs EL issuing proceedings against Mrs CN seeking a partition order. She says that Mrs CN “found it difficult to concede that her two nephews and niece are beneficiaries and therefore has been antagonistic to all proposals of land division put forward by [Mr K, Mr M and Mrs EL]”.

[21] In addition to the matters raised in her complaint she submits that:

- (a) legal advice obtained by her is that “it would be usual practice” for the lawyer concerned acting in the administration of an estate “to have asked the executor [Mrs CN] if [Mrs L] had surviving children ...”. She states that Mr DH did not do this;
- (b) in a small community such as [Town], Mr DH “might have remembered” having requested Mr K, “... approximately 15 months [prior] to [Mrs TS]’ will being administered”, that he obtain independent legal advice;

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<sup>4</sup> At [29].

<sup>5</sup> At [29].

<sup>6</sup> At [30].

<sup>7</sup> At [30].

- (c) Mr OD's request to Mr DH to have Mrs L's one half share in the [Town] land transferred to Mr K, Mr M and Mrs EL "... was initially denied by Mr DH"; and
- (d) it "took a further 12-14 months of protracted, costly and emotionally draining exchanges before ownership was transferred in 2008".

### **Mr DH's response**

[22] Mr DH was invited to comment on Mrs VS' review application. He states that he has nothing to add to his submissions made to the Standards Committee. He objects to Mrs VS' suggestion that his conduct was "unscrupulous".

### **Review**

[23] This review was progressed by way of an applicant only hearing in Auckland on 30 October 2017. Mr DH was invited to attend but declined to do so. He states that he agrees with the Committee's decision.

### **The role of the LCRO on review**

[24] The role of the Legal Complaints Review Officer (LCRO) on review is to reach his own view of the evidence before him. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting his own judgement for that of the Standards Committee, without good reason.

### **Nature and scope of review**

[25] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:<sup>8</sup>

... 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

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<sup>8</sup> *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

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.

[26] More recently, the High Court has described a review by this Office in the following way:<sup>9</sup>

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.

### **Issues**

[27] The following issues are relevant to this review:

- (a) Applicable professional standards — Mr DH's conduct, in respect of which Mrs VS' complaint and her review application relate, occurred before 1 August 2008.
- (b) Did Mr DH owe any professional duty to Mr K, Mr M and Mrs EL to inform them of their statutory entitlement to Mrs L's one half share in the [Town] land pursuant to the "gift over" provision in s 16(1) Wills Amendment Act 1955? Relatedly, did Mr DH owe a duty to advise Mrs CN of their entitlement?

### **Analysis**

#### *(a) Applicable professional standards*

[28] Mr DH's conduct, which is the subject of Mrs VS' complaint, and her application for review, occurred before 1 August 2008. In those circumstances, under s 351(1) of the Act, a Standards Committee may consider a complaint only if the conduct complained of could have led to disciplinary proceedings under the Law Practitioners Act 1982 (LPA).

[29] Section 352 provides that a Standards Committee may only impose penalties in respect of conduct which could have been imposed at the time the conduct occurred.

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<sup>9</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

[30] The categories of conduct in respect of which disciplinary consequences could arise were described in ss 106 and 112 of the LPA. They included “misconduct in [the lawyer’s] professional capacity” and “conduct unbecoming a barrister or a solicitor”.<sup>10</sup>

[31] In broad terms, whilst “the threshold for disciplinary intervention under the LPA was relatively high”,<sup>11</sup> misconduct is regarded as conduct which is “reprehensible, inexcusable, disgraceful, deplorable or dishonourable”.<sup>12</sup>

[32] Conduct unbecoming “is perhaps a slightly lower threshold”,<sup>13</sup> namely, whether the conduct meets the standards of “competent, ethical, and responsible practitioners”.<sup>14</sup>

[33] The threshold for disciplinary response under the Act, namely, ss 7 and 12, misconduct and unsatisfactory conduct respectively, “is somewhat lower” than existed under the LPA.<sup>15</sup> Where the conduct in question commenced when the LPA was in force, and continued after the Act commenced then both may be applicable. Depending on the rules applicable at the relevant time, and the seriousness of any contravention, a disciplinary response may be warranted under both.<sup>16</sup>

*(b) Did Mr DH owe any professional duty to Mr K, Mr M and Mrs EL to inform them of the “gift over” provision in s 16(1) Wills Amendment Act 1955? Relatedly, did Mr DH owe a duty to advise Mrs CN of their entitlement?*

*(i) Mrs TS’ will*

[34] Mrs TS’ will provided that:

I GIVE AND DEVISE unto each of my two daughters a one-half share in all of the two properties at [Town] ... provided that my daughter L VS shall have the right to reside in the house on the property for her life rent free ... and on her death the same right shall pass to my daughter CN ...

[35] Mrs VS stated at the hearing, 30 October 2017, that Mrs TS had made it known to the family that her will provided that Mrs L and Mrs CN would each receive a half share in the [Town] land. With that assurance Mr K had moved a house onto the land which he and his family occupied.

<sup>10</sup> Law Practitioners Act 1982, ss 106(3)(a)–(b), 112(a)–(b) (repealed)

<sup>11</sup> *Workington v Sheffield* LCRO 55/2009 (26 August 2009) at [47].

<sup>12</sup> *Complaints Committee No 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105 (HC) at [28].

<sup>13</sup> *Workington v Sheffield*, above n 11, at [47].

<sup>14</sup> *B v Medical Council* [2005] 3 NZLR 810 (HC) at 811.

<sup>15</sup> *Workington v Sheffield*, above n 11 at [48].

<sup>16</sup> At [49].



[36] At the time of Mrs TS' death in January 2006, s 16(1) of the Wills Amendment Act 1955 provided that:

Unless a contrary intention appears by the will, where any person is a child or other issue of the testator to whom (whether as a named or designated person or as a member of a class) any property is devised or bequeathed or appointed in terms that would enable that person to take the property for any estate not determinable at or before the death of that person if that person survived the testator, and that person dies in the lifetime of the testator (whether before or after the testator makes the will) leaving any child or children living at the time of the death of the testator, the devise or bequest or appointment shall take effect as if the will had contained a substitutional gift devising or bequeathing or appointing the property to such of the children of that person as are living at the time of the testator's death and if more than one in equal shares.

[37] In other words, in circumstances where a will maker made a disposition of property to his or her children in equal shares without providing for a gift over to the grandchildren, then s 16(1) applied "to avoid a lapse of gifts to a predeceased child of the will maker".<sup>17</sup>

*(ii) Executor's duties*

[38] The High Court has stated that an executor of a person's will is required:<sup>18</sup>

... to administer his or her property and carry out the provisions of the will. To this end the executor has certain specific statutory and common law duties and powers; namely to: ... make an inventory of assets; ... pay legacies; ... distribute residue to the persons entitled; ...

[39] The Court explained that this requirement derives from:<sup>19</sup>

... the special fiduciary relationship which exists between a trustee and a fiduciary to whom property is entrusted, and the beneficiaries entitled to that property. ... the requirement imposed in equity that the trustee will deal with those assets with the utmost probity ... not have or acquire any personal interest in those assets without the express and informed consent of the beneficiary ... a duty to act even-handedly between the beneficiaries ...

[40] Concerning the duty to be "even-handed" towards the beneficiaries, the New Zealand Court of Appeal has held that this also applies to persons whom the executor knew were going to make a claim against the estate.<sup>20</sup> Moreover, in circumstances where an executor is aware of a claim, then there is "a duty on the

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<sup>17</sup> Nicky Richardson *Nevill's Law of Trusts, Wills and Administration* (12th ed, LexisNexis, Wellington, 2016) at 429–430.

<sup>18</sup> *Re: Stewart* [2003] 1 NZLR 809 (HC) at [24].

<sup>19</sup> At [25].

<sup>20</sup> *Irvine v Public Trustee* [1989] 1 NZLR 67 (CA) at 70.

executor to act neutrally and provide information to the claimants when requested. It would be a breach of the executor's fiduciary obligations to thwart those claimants or mislead them".<sup>21</sup>

*(iii) Mr K obtains legal advice, October 2006*

[41] By letter dated 31 October 2006, Mr OD advised Mr K that the effect of s 16(1) of the Wills Amendment Act 1955 was that Mr K, Mr M and Mrs EL were entitled to the one-half share in the [Town] land which Mrs L would have received had she survived Mrs TS.

[42] At the hearing, 30 October 2017, Mrs VS said that Mr OD had commented at the time that it was "... unusual that [the family] had not heard from Mr DH" who was acting in the administration of Mrs TS' estate.

*(iv) Mrs CN calls family meeting, April 2007*

[43] In April 2007 Mrs CN called a family meeting. Mrs VS says that at the meeting Mrs CN stated that she was the sole owner of the [Town] land, and that Mr DH had told [Mrs CN] that Mrs TS had said to [Mrs CN] that Mrs L's children were not to inherit the land. When shown the legal advice obtained by Mr K, Mrs VS says that Mrs CN became "angry and abusive" which resulted in Mr K, Mr M and Mrs EL withdrawing from the meeting.

*(v) Subsequent events - Mr DH's professional obligations to Mrs CN*

[44] With limited exceptions, a lawyer risks a complaint from a client with a prospect of a disciplinary response if the lawyer does not carry out the client's instructions. A lawyer must disclose to his or her client information that is relevant to the retainer, take reasonable steps to ensure that the client understands the nature of the retainer, keep the client informed about progress, and consult the client about steps to be taken to implement the client's instructions.<sup>22</sup>

[45] If a prospective client's instructions to the lawyer "could require the lawyer to breach any professional obligation" then the lawyer may decline the instructions.<sup>23</sup> If, during the carrying out of the work on a retainer, the client's "instructions ... require the

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<sup>21</sup> Andrew Butler *Equity and Trusts in New Zealand* (2nd ed, Thomson Reuters, 2009) at 1221.

<sup>22</sup> Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rr 7, 7.1.

<sup>23</sup> Rule 4.1.

lawyer to breach any professional obligations” then the lawyer may terminate the retainer.<sup>24</sup>

[46] It follows from this that a lawyer is required to follow a client’s instructions on a client’s matter. It has been observed that a lawyer:<sup>25</sup>

...must not act in contravention of a client’s instructions. It may be appropriate for the lawyer to counsel against a particular course of action when it is considered not to be in the client’s best interests. But when clients are firm in their instructions, the lawyer may not substitute the lawyer’s own judgment for that of the client.

[47] In a helpful article published by the Law Society, intended to assist lawyers who practice in the area of estate administration, the author explained that “[o]ften beneficiaries do not realise that the estate solicitor can only accept instructions from the executor or administrator, and can only report on instructions”.<sup>26</sup> However, that is not to say that a lawyer acting in the administration of an estate can take part in a scheme designed by the executors to do other than carry out the will maker’s wishes as they have sworn to do.<sup>27</sup>

[48] In recommending that lawyers “should ensure that executors are keeping the beneficiaries informed”, the author acknowledges that this “... can, of course, be difficult in situations where the beneficiaries do not get along with the executor or administrator, and working around this is an especially challenging part of handling estates.”<sup>28</sup>

[49] Following the April 2007 family meeting, Mr K, Mr M and Mrs EL instructed Mr OD to further their endeavours to obtain their statutory entitlement to the land. Mrs VS says that Mr OD approached Mr DH who did not respond to Mr OD’s telephone calls or emails, and did not provide any explanation or comment on the position taken by Mrs CN.

[50] Almost a year later, 1 April 2008, Mrs CN transferred Mrs [L’s] share of the [Town] land to Mr K, Mr M and Mrs EL.

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<sup>24</sup> Rule 4.2.1(a).

<sup>25</sup> Duncan Webb, Kathryn Dalziel and Kerry Cook *Ethics, Professional Responsibility and the Lawyer* (3rd ed, LexisNexis, Wellington, 2016) at 291.

<sup>26</sup> Lisette Scott “Complaints against lawyers over estate administration”, (2017) LawTalk 905 at 38.

<sup>27</sup> *Auckland Standards Committee 2 v Sorensen* [2011] NZLCDT 10 at [36] and [40].

<sup>28</sup> Lisette Scott, above n 26, at 40.

## Discussion

[51] Mrs VS stated at the hearing that apart from Mrs CN informing the family that she needed “to see the lawyer”, there was no communication with Mrs CN about the administration of Mrs TS’ estate. However, in saying this she acknowledges that because Mrs CN was a family elder, Mr K, and Mr M, Mrs EL were reluctant to question her which made it difficult for them to take the initiative to obtain their statutory entitlement to the land.

[52] Mrs VS also says that while Mrs TS and Mrs L were alive, the family had agreed who would occupy the [Town] land and how. However, because Mrs CN later took the position that Mr K, Mr M and Mrs EL were not beneficiaries under Mrs TS’ will, despite the “gift over” provision in s 16(1) of the Wills Amendment Act 1955, approaches to Mrs CN to resolve differences concerning the occupation of the land were unsuccessful. This ultimately led to Mr K, Mr M and Mrs EL issuing proceedings to have the land partitioned. I observe from those proceedings that by acknowledging that Mr K, Mr M and Mrs EL were entitled to Mrs L’s half share in the land pursuant to s 16(1) of the Wills Amendment Act 1955, Mrs CN adopted a position different from that previously taken by her.<sup>29</sup>

[53] Whilst Mrs VS acknowledges Mrs CN’s reluctance to accept the statutory entitlement of Mr K, Mr M and Mrs EL, she considers that in some measure Mr DH was responsible for the position taken by Mrs CN. In summary, Mrs VS believes “had the matter been handled differently” by Mr DH the proceedings to have the land partitioned, which is now complete, could have been avoided.

[54] For his part, Mr DH says that Mrs CN, to whom his professional duties were owed, did not instruct him to provide copies of the will “to any other party”. He claims that he did not receive a request from “any other party” which he would have passed on to Mrs CN for instructions. He says that he transmitted title in the land to Mrs CN, as executor. Thereafter, “[i]t was up to her ... to transfer further shares in accordance with the terms of the will”. “Sometime” later he “received instructions to transfer shares in the titles to [Mr K, Mr M and Mrs EL] and [he] completed that registration”.<sup>30</sup>

[55] As noted earlier, the role of a lawyer acting in the administration of a deceased estate is to assist the executor to carry out the executor’s duties. Mr DH acted for Mrs CN, as executor, in the administration of Mrs TS’ estate. As such, his professional

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<sup>29</sup> CN (statement of defence and amended counter-claim) CIV 2013-404-514, September 2013 at [4].

<sup>30</sup> Standards Committee determination, above n 2, at [30].

duties were owed to his client, Mrs CN, and not to Mr K, Mr M, and Mrs EL, the statutory beneficiaries.

[56] Mrs VS says that Mr DH acknowledges in his letter to the Law Society that he did not ask Mrs CN whether Mrs L was survived by any children. In response to the request from the Lawyers Complaints Service that he provide “a written explanation in respect of the alleged failure to advise potential beneficiaries of the content of the will...”, Mr DH states that “... there was never any instruction to distribute copies of the Will to any other party nor ... any request from any other party ...”. This does not, however, amount to an acknowledgement that he did not put that question to Mrs CN.

[57] In March/April 2005, Mr DH had been made aware of Mr K’s enquiry to Mr NG, a member of Mr DH’s firm, concerning the statutory “gift over” mechanism in s 16(1) of the Wills Amendment Act 1955. This is evidenced in Mr DH’s March 2005 letter to Mr K when Mr DH recommended that Mr K obtain independent advice.

[58] With that in mind, in my view it is more probable than not that following Mrs TS’ death Mr DH would have advised Mrs CN about s 16(1) and its application to the one-half share in the [Town] land that would otherwise have been received by Mrs L and which would now pass to her children (Mrs TS’ grandchildren), Mr K, Mr M and Mrs EL, “in equal shares”.

[59] The view I take on this matter from the information provided to this Office is that whatever advice Mr DH did or did not provide to Mrs CN, her approach at times was inconsistent. This is evidenced first, by Mrs VS’ account of Mrs CN’s statement at the April 2007 family meeting that she regarded herself as the sole owner of the land, and her disquiet having been shown the legal advice obtained by Mr K; and secondly, the opposite position taken in her September 2013 statement of defence and amended counterclaim that “The plaintiffs inherited through the operation of the statutory gift over under s 16(1) of the Wills Amendment Act 1955 and not directly from [Mrs TS]”.

[60] Despite the family difficulties encountered following Mrs TS’ death in January 2006, it appears that by March/April 2008 Mrs CN had accepted that Mr K, Mr M and Mrs EL were entitled to Mrs L’s share in the land which was transferred to them by April 2008. During this period Mrs VS says that Mrs CN changed lawyers. However, in his response to the Lawyers Complaints Service, Mr DH states that he “... received instructions to transfer shares in the titles to [Mr K, Mr M and Mrs EL] and [he] completed that registration”.

[61] Whilst the tensions during this period would have been distressing for the family, at any time during that period Mrs CN could have instructed Mr DH to attend to

the transfers. I observe that Mr OD has not complained about Mr DH's conduct in their interactions.

**Conclusion**

[62] As I have noted, Mr DH's professional duties were owed to his executor client, Mrs CN. Overall, none of the information provided to this Office evidences that Mr DH did not discharge those duties.

**Decision**

[63] For the above reasons pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

**DATED** this 20th day of November 2017

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**B A Galloway**  
**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:

Mrs VS as the Applicant  
Mr DH as the Respondent  
Mr C, Ms S and Mr B as related persons  
[Area] Standards Committee  
The New Zealand Law Society