

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2014] NZREADT 58

READT 052/12

IN THE MATTER OF an appeal under s.111 of the Real Estate Agents Act 2008

BETWEEN **H and T X**

Appellants

AND **THE REAL ESTATE AGENTS
AUTHORITY (CAC 20004)**

First respondent

AND **COLLEEN (VICKI) NELSON**

Second respondent

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr G Denley - Member
Ms C Sandelin - Member

HEARD at X City on 3 June 2014

DATE OF THIS DECISION 1 August 2014

REPRESENTATION

The appellant licensees on their own behalf
Ms J Pridgeon, counsel for the Authority
The complainant by her husband

DECISION OF THE TRIBUNAL

Introduction

[1] H and T X ("the licensees") appeal against the 11 May 2012 determination of Complaints Assessment Committee 20004 finding them guilty of unsatisfactory conduct following a complaint by Colleen (Vicki) Nelson (the complainant) a prospective purchaser of a home. Following the unsatisfactory conduct finding, the Committee made penalty orders against the licensees and ordered publication of its decision.

[2] The licensees successfully applied to us for interim name suppression pending the outcome of the appeal.

Factual Background

[3] The licensees were the listing agents for a property at A Street, Y Suburb (the property). The complainant saw the property for sale on a website, www.realestate.co.nz, and contacted the licensees to arrange a viewing on 21 May 2011. The complainant agreed to purchase the property on 26 May 2011.

[4] There were negotiations over the contract terms and the dates for satisfaction of various conditions. After some reluctance, the complainant accepted the agreement for sale and purchase as tendered by the licensees on the vendor's behalf.

[5] Prior to settlement, the complainant made numerous inquiries with the relevant City Council and discovered that:

- [a] The property did not have a code compliance certificate;
- [b] The property had resource consent for only three bedrooms, when it had been advertised as having "*five other rooms*" in the local 'Property Weekly' and a range of different numbers of rooms on the internet; and
- [c] There had been a landslip on the property and, before occupying it, the vendors had been required to submit a landscaping plan and, within 10 years, to plant shrubs to prevent slipping. This had not been done.

[6] On 10 June 2011 the complainant cancelled the purchase contract through her solicitor.

[7] On 17 June 2011, the complainant contacted Mrs X to advise that she would still be interested in purchasing the property if the problems outlined above were rectified. The complainant also asked Mrs X to let her know if there were any other prospective buyers interested in the property.

[8] On 29 June 2011, Mrs X advised the complainant that another party was interested and confirmed she would advise the complainant if an offer was made. A factor for the complainant was that she and her husband needed to sell two properties to fund any purchase of the said property.

[9] The complainant was then told that an offer from this other party had been accepted on 2 July 2011.

[10] The complainant made a number of complaints against the licensees to the Real Estate Agents Authority.

The Committee's Decision of 11 May 2012

[11] The Committee dismissed a number of the complaints against the licensees but made unsatisfactory conduct findings in relation to the following three matters and the licensees appeal those.

The Licensees did not advise the Complainant that there was no Code of Compliance Certificate

[12] The Committee considered that the evidence established Mrs X knew that there was no code compliance for the property before the complainant entered into the sale and purchase agreement and that the licensees were relying on the vendor's word that these issues had been or would be resolved.

[13] The Committee held that licensees cannot rely on vendor statements and it is for licensees to confirm the accuracy of such statements i.e. in this case, whether the code compliance issues had been resolved; and, in this instance, the statement the vendor made (that there was code compliance) was inaccurate, Mrs X did not check it, and was therefore guilty of unsatisfactory conduct.

The Committee's Finding that the Licensees Failed to Disclose the Correct Number of Bedrooms

[14] There was no dispute that the resource consent for the property authorised three bedrooms only but that there were, in fact, five rooms being used as bedrooms.

[15] Advertising for the property prepared by the licensees varied in the number of bedrooms stated.

[16] The Committee found that, before the complainant entered into the sale and purchase agreement, the licensees knew that there were issues around the number of rooms for which resource consent had been granted; but that the licensees took no steps to advise the complainant of the issue and the licensees' advertising was prepared in such a way so as to conceal the real situation.

[17] Accordingly, the Committee found both Mr and Mrs X guilty of unsatisfactory conduct in that respect.

The Committee's Finding that Information on the Hillside Slip on the Property was Misleading so that the Complainant was Misinformed

[18] In answer to a query from the complainant about the effect of a landslip on the property, the licensees first advised the complainant that a geotechnical report had been prepared for the vendors and would be available. However, Mrs X later informed the complainant that there was a geotechnical report in existence but it had not been prepared for the vendors. Also, that report was completed prior to the construction of the house so that the Committee felt it would have been of limited use to the complainant.

[19] Again, the Committee found this was a situation where Mrs X took the vendor's word and failed to investigate further before providing assurances to the complainant about the nature of the slips on the property. Accordingly, it found that Mrs X engaged in unsatisfactory conduct in that respect also.

[20] The Committee censured each licensee; fined each licensee \$750; required them to take particular further education; and ordered them jointly to pay \$1,164 to the complainant.

Basic Statute Law

[21] The Real Estate Agents Act 2008 is consumer protection legislation. Section 3 of the act provides:

"3 Purpose of Act

- (1) *The purpose of this Act is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work."*

[22] Key to achieving this purpose are the rules of professional conduct made under the Act. When this conduct took place in 2011, a number of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 in force imposed duties on licensees in respect of disclosure when marketing property for sale. The extent of those duties have been discussed and clarified in a number of our decisions, which counsel for the Authority analysed, but we do not need to cover those cases for present purposes.

[23] Rule 6.4 states:

"A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or fairness be provided to a customer or client."

[24] Rule 6.5 provides:

"A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Further, where it appears likely, on the basis of the licensee's knowledge and experience of the real estate market, that land may be subject to hidden or underlying defects, the licensee must either –

- (a) *obtain confirmation from the client that the land in question is not subject to defect; or*
- (b) *ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses."*

The Stance of the Authority on the Substantive Issues

[25] Ms Pridgeon noted that the Committee's unsatisfactory conduct findings relate to only three of the complaints made and addressed those in turn.

No Code Compliance Certificate

[26] Mrs X agreed that, after the property was listed, she found out that there was no code compliance certificate issued for the property. She had not been told this previously. She says that when she found this out, she passed the information on to the vendors and motivated them to complete the outstanding matters in order to obtain such a certificate. Mrs X says that she left all this in the hands of her vendors who subsequently told her that the code compliance had been cleared.

[27] The complainant says that after she had made an offer on the property, she visited the local Council to obtain information on the property and learnt the property had no code compliance certificate. She spoke to Mrs X about this. The complainant says that, despite all the negotiations over the property, this was the first she had been told anything by the licensees about the property not having a code compliance certificate.

[28] Mrs X says that she had no reason to doubt what her vendors had told her and that, if she had known that there was no certificate, she would have stated this to the complainant at the outset. The licensees acknowledge that they did not tell any prospective purchasers about any issues with the code compliance certificate until the complainant raised the issue. They thought that the vendors had sorted it out.

[29] The Authority submits that the appeal against this aspect of the Committee's decision should be dismissed because the licensee's conduct is clearly covered by Rules 6.4 and 6.5 and Mrs X has withheld information that should, by law and fairness, have been provided to all prospective purchasers including the complainant; and she failed to disclose know defects to the complainants.

[30] It is acknowledged that Mrs X relies on the fact that the vendors told her that the code compliance issue had been sorted. However we have previously recognised that a licensee should not place sole reliance and credence on advice or assurances from a vendor even if given in good faith. Not only did Mrs X rely on the vendor's assurances alone without conducting her own checks, but she failed to tell the complainant that this was an issue which was being sorted by the vendors.

[31] Ms Pridgeon submits that this is clearly unsatisfactory conduct as the Act places positive obligations on licensees to be open, honest, accountable, and to ensure that nobody is misled or deceived at the time a property is being sold; so that the CAC finding against Mrs X should be upheld with regard to the lack of a code compliance certificate at material times.

The Number of Bedrooms

[32] There is no dispute that resource consent exists for only three of the bedrooms in the property.

[33] Mr X stated that the licensees knew the property had resource consent for only three bedrooms. They agreed with the vendors that they would not publish the number of bedrooms in the advertising so that they could force readers to *"read the script for that information or to call us instead when we could then explain"*, as Mr X put it.

[34] One advertisement for the property referred to there being *"five other rooms"* and made no mention of bedrooms at all. Mr X acknowledges that on the website realestate.co.nz, he inserted that the property had five bedrooms. Mr X states that this was purely an accidental error on his part and, when he later discovered his error, he reduced the number of bedrooms to *"0"*. Mr X says that he then changed the number of bedrooms to *"1"*. He says that he did not deliberately mislead the public.

[35] By mid June 2011, advertising for the bedroom had changed to "3+" in printed advertising, which the Committee thought was the correct approach in respect of the advertising. When the complainant attended the open home, there were four rooms presented as bedrooms while the fifth room was presented as a study. The licensees do not deny this. The complainant says that only after making an offer on the property did she find out that there was resource consent for only three of the bedrooms and had she known this sooner, she would not have made an offer on the property.

[36] Mrs X denies what the complainant says. Her evidence is that she informed the complainant of the fact of only three bedrooms having consent at the complainant's first viewing. She says that she told everyone about this fact when they asked.

[37] It is submitted for the Authority that this aspect of the appeal should be dismissed because the property should always have been advertised as having only three bedrooms and advertising it in any other way was clearly misleading. It is put that the advertising was prepared in such a way that it could be considered to be an attempt to hide the resource consent issue by omission. There were multiple advertisements, each referring to a different number of bedrooms. It is submitted that each of the advertisements were misleading and that the advertisements should have been clear and upfront from the outset.

[38] Ms Pridgeon submits that, on any account, the licensees clearly engaged in unsatisfactory conduct so that this aspect of the appeal should be dismissed.

The Hillside Slips

[39] When the complainant and her husband visited the property as prospective purchasers, they noticed what appeared to be recent slips reasonably close to the house. They say that both licensees advised them that these were not a problem and there was nothing to worry about.

[40] The complainant says that Mrs X subsequently reassured her that the owners had obtained a "geotech" report which had been done on the slips and that this would be provided to the complainant. However, after the complainant made an offer on the property, Mrs X advised her that she was mistaken and that the owners had not in fact obtained a "geotech" report.

[41] The complainants say that such a report had been completed but only years earlier, and it did not refer to the issues they had. It seems that such a report was provided to a previous owner and developer and we refer to that below. The licensees also say that the only statement Mrs X made was that there was a geotechnical report and that the vendors were attempting to find their copy to provide it to her (Mrs X). The licensee Mrs X says that the vendors had told her the wrong information. The Xs included in their documentation before the Committee an acknowledgement from the vendors that this was the case. The licensees deny that any assurances were made with respect to the report and say that they passed on information from professionals in respect of the slip and advised the complainants to get their own engineers to review it.

[42] On this issue also, there is a conflict of evidence between the parties as to what, if any, representations or assurances were made regarding the slips on the property.

[43] Ms Pridgeon submits that if we accept that assurances were made by the licensees, despite them knowing that there were issues with the slips, then an unsatisfactory conduct finding on this aspect of the appeal must be upheld.

Specific Evidence to Us

[44] There were a number of witnesses for the appellants and for the complainant and there were many conflicts of evidence which was over detailed with hostile nuances. Much of the evidence was of peripheral relevance. Each party regarded the other party as lying and there was strong animosity between the parties and in relation to some of the witnesses. There are allegations by the licensees of interference with their witnesses. All in all, we have been so swamped with written and oral information that we prefer to come to our views having digested the evidence overall. Although the above background facts are adequate for our purposes, we cover below some of the fairly extensive evidence.

A Summary of the Stance of the Appellants

[45] Mrs X asserts that she has never been deceptive over the marketing of the property in any way.

The Code of Compliance Certificate Issue

[46] Mrs X asserts that, prior to the complainant entering into a contract to purchase the property, Mrs X truly believed the property had a valid Code Compliance Certificate so that she never discussed that matter with the complainant. Mrs X said that when the complainant called her on 27 May 2011 and informed her that there was no such certificate she, the licensee, was both shocked and angry and immediately called the vendors for an explanation. In turn the vendors seemed shocked and embarrassed that they had previously told Mrs X that the certificate had been signed off. It transpired that the vendors seem to have thought that the Code Compliance Certificate had fairly recently been issued but the paperwork for that had not been quite completed.

[47] On Wednesday 18 May 2011 Mrs X had called the vendors to check if the relevantly minor work needed for the certificate to be issued had been completed. She was advised that all that work had been done and the local Council were to sight the work and sign it off on Friday 20 May 2011. Mrs X then telephoned the building inspector of the Council and confirmed those arrangements. She also called at the property herself and ascertained that the items needing to be completed had been dealt with. On the evening of Friday 20 May 2011 she telephoned the vendor to check that the Council had signed the issue off and was told that had taken place. Accordingly, she did not raise the issue of a Code Compliance Certificate with the complainant prior to 27 May 2011 because she genuinely believed it had been issued.

[48] Of course, the evidence from Mr X, covered this Code Compliance Certificate issue. He put it that Mrs X sniffed out from her experience that there could be a potential problem about this, checked with the local Council, and found the vendors

had forgotten to make sure the certificate had been issued. Apparently, the builder of the house was a relative. Mr X said that Mrs X enlisted the help of the local building inspectors as to what needed to be remedied to complete the certificate and advised the vendors she could not market the property until that was done. There needed to be a certificate from the local power company, a dishwasher drain needed to be modified, and a vent installed in a bathroom of the property. On the evening of Friday 20 May 2011, Mrs X was advised by one of the vendors that the certificate had been signed off and she accepted that. With hindsight, she realises she should have double-checked herself with the local Council. She did not raise the matter with any prospective purchaser from then, because she thought there was no longer an issue needing to be disclosed and there were protective conditions in the complainant's offer to purchase.

The Correct Number of Bedrooms

[49] Mrs X stated that the vendors did not disclose anything to her about only a three bedroom resource consent at the time of listing or afterwards but, somehow, that she herself discovered after examining the Title to the property that there was no resource consent for all the bedrooms and she immediately told all who needed to know that, including the complainant. She seemed to be saying that she told any person who showed genuine interest in the property about the resource consent problem. She cannot understand why the complainant maintains that she did not tell her about that.

[50] Mr X had prepared draft advertisements for the property based on there being five bedrooms but Mrs X checked out the position and found that the resource consent only covered three bedrooms. Accordingly, she told the vendors that the property could not be advertised as having five bedrooms and immediately had the advertising changed. She says that she explained this situation to any prospective purchaser including, in particular, the complainant and she cannot understand why the complainant now maintains that she, Mrs X, did not tell the complainant about the resource consent situation regarding bedrooms.

[51] It seems that the licensees were reluctant to advertise the property as having only three bedrooms because they felt this would not convey the size and potential of the home for the first contact from a prospective buyer, but they knew they could not advertise the property as being four or five bedrooms. They seem to have trouble rectifying their advertising and, eventually, the number of bedrooms was shown as "three +" and for a time the property had been shown as having zero bedrooms.

The Landslip

[52] The licensees put it that the slip in question is a simple surface slip and can be remedied by planting work.

[53] Evidence from Mrs X is that she told the complainant that the vendor had said she had a copy of a Geo-Tech report on the property which the vendor was trying to find but Mrs X took it upon herself to obtain a copy from the local Council. It then seemed that the vendors had not actually obtained such a report but a previous owner-developer had commissioned one some years previously (i.e. in 2005). Accordingly, Mrs X provided the complainant with the names of three experts who could advise about the slip and one of them was the author of the 2005 Geo-Tech report. Mrs X says that the opinion of two of the experts was that the slip was not a

serious issue and that a reading of the Geo-Tech report seems to reach that conclusion also. However the complainant maintains that there was no advice to her from these experts.

[54] Mrs X also gave evidence that she advised the complainant to seek advice from her own engineer if the complainant was worried about the slip. This is not denied by the complainant.

[55] Mrs X asserts that at no time did she state or infer that the vendors had commissioned a Geo-Tech report or that it was relevant to the slip. The vendors had told her that there was a copy of a Geo-Tech report that covered the property and Mrs X could make it available to the purchasers. As it happened the vendors could not find that document because they were packing to leave the property so that Mrs X sourced a copy from the City Council. Inter alia, she said that one of the engineering experts she spoke to about the matter told her that the slip on the property was just a surface slip that could do with being planted. He gave her permission to pass out that view and his contact details. She said the other engineering consultant told her essentially the same thing. However, Mrs X totally refutes the claims that she made any assurances about the slip or what was contained in the Geo-Tech report.

[56] Mr X put it that the Geo-Tech report was mentioned only as a reference source to obtain expert views on the slip and was mentioned by the licensees to the complainant alongside their recommendation that the complainant seek opinion from her own engineer if the slip was a problem for her. Mr X stated it was never inferred that the vendors had obtained the report for themselves, but only that such a report existed. The licensees say that they gave no assurances about the content of the report or that it was recent, only that they understood it to exist. Mr X says that, in fact, the report does address the slope on which the slip had occurred but the licensees gave no personal assurances whatsoever about the slip. Mr X also asserts that both the engineering experts had said that the slip was not a problem but merely needed plants placed into it as it only was a surface slip.

Evidence for the Complainant

[57] Detailed evidence was given by the complainant, and a number of supporting witnesses, covering the above facts and the complainant's concerns. These were broadly that Mrs X had not disclosed that the property had no Code of Compliance certificate; that she made false statements about the Geo-Technical report as having been prepared for the vendors; that the licensees did not disclose the correct number of bedrooms in terms of the resource consent for the property; that they deliberately advertised the property in a misleading manner; and that, knowing the transaction was likely to fail, they committed both vendors and purchasers to a contract which, in the case of the purchaser, involved a short term financial outlay.

[58] The complainant's evidence was extensive. She also seeks that we find the licensees guilty of misconduct which is a more serious level of offending than unsatisfactory conduct. The complainant also seemed to be seeking further financial reimbursement.

Our Views

[59] There were quite detailed submissions by the appellant licensees, and from counsel for the Authority in response, over the issue whether the procedures of the Committee complied with natural justice. We have no reason to believe that there has been any non-compliance but, in any case, this case has been fully reheard before us de novo so that, if there has been any aspect of a breach of natural justice, (and we do not think there has been), that has been overcome.

[60] As indicated above, there has been an extensive mixture of submissions and evidence. We agree with the Committee's unravelling of the issues and its findings. Having said that, we think that the conduct of each licensee has only been slightly inadequate with regard to the obtaining of the Code Compliance Certificate as covered above. They admit that they should not have relied on the vendors' assurances as explained above.

[61] With regard to the advertising of the number of bedrooms in the property, there were some hiccups on the part of Mr X in particular as mentioned above and that was somewhat unsatisfactory but, on the balance of probabilities, we are not satisfied that there has been any deliberate misleading conduct by either licensee with regard to references to the number of bedrooms in the property.

[62] We feel that the licensees, between them, were a little lax in conveying to the complainant that the slip was not a problem but, from our reading of the 21 March 2005 Geo-Tech report obtained by the developer, it seems to refer to the relevant slip and, at least, infer that a number of slips and erosion scars on the property are shallow and merely need planting in their slopes to give stability. There is reference to the need to pipe overflow water from roof tanks. Overall, the report seems to state that in 2005 there was a low risk of any instability.

[63] However, when we stand back and absorb all the material put before us, we find that overall there has been unsatisfactory conduct by both licensees to a fairly low degree. We wonder whether, at material times, the licensees were over-busy as they seem to be in demand in their locality as experienced real estate agents. We note that the complainant and her husband seem experienced and sensible people to us and cannot be novices with regard to purchasing property. Indeed, Mrs Nelson was an impressive advocate in her cause.

[64] We observe that with regard to the Code of Compliance Certificate issues Mrs X took it upon herself to try and sort the issues out and thought that she had, but those obligations also rested with the vendors.

Penalty

[65] We do not think it is appropriate to award any compensation to the complainant against the licensees but, in any case, we are prevented from doing that by the effect of *Quin v The Real Estate Agents Authority* [2012] NZHC 3557 which we have encapsulated in recent decisions as follows, being an extract *Tong v REAA and Others* [2014] NZREADT 3:

"[18] In any case, the amount sought by the appellants is compensation for straight market loss. This kind of monetary award was discussed in the

decision of Quin v The Real Estate Agents Authority [2012] NZHC 3557 where the High Court (per Brewer J) held that committees (or the Tribunal on appeal) cannot order licensees to pay complainants money as compensation for errors or omission (compensatory damages) under s 93(1)(f) of the Act. Licensees can only be ordered to do something or take actions to rectify or "put right" an error or omission s 93(1)(f)(i). If the licensee can no longer "put right" the error or omission, that licensee can be ordered to do something towards providing relief (in whole or part) from the consequences of the error or omission, s 93(1)(f)(ii). Any expenses incurred by the licensee as a result of doing what he/she is ordered to do must be borne by the licensee. Even where reimbursement may be ordered, this must flow out of the complainant having done something to put right the error or omission. An order under s 93(1)(f) cannot be made in respect of a straight monetary loss for a loss in market value. ..."

[66] It seems arguable whether the reimbursement of expenses (\$1,164) ordered by the Committee is barred by *Quin*. In any case, we invite submissions on penalty from the parties within the next 15 working days. Our current view is that the Committee's penalty orders stand except that there be no censure.

Name Suppression?

[67] On 15 November 2013, the licensees filed an application for interim non-publication of the Committee's liability and penalty decisions against them. On 7 February 2014, we declined to grant interim name suppression; refer our decision in *X v The Real Estate Agents Authority (CAC 20004)* [2004] NZREADT 9. However, after the licensees furnished medical evidence, we granted interim name suppression on 17 April 2014; refer *X v The Real Estate Agents Authority (CAC 20004)* [2014] NZREADT 30.

[68] On 13 May 2014, the Authority filed a memorandum noting that, should the licensees seek permanent name suppression, a fresh application and supporting evidence would be required; and the licensees have since filed such an application. By further memo of 19 June 2014 Ms Pridgeon, inter alia, seeks that if we contemplate name suppression, which the Authority opposes, we should first direct that the appellants disclose an existing medical report to the other parties.

[69] It is submitted for the Authority that the appeal should be dismissed and that the interim name suppression should end.

[70] The licensees have applied that, whatever the outcome of their appeal, the respective decisions of the Committee and us on appeal be not published. The general reasons given for that application are that the complainant is herself a licensee as well as an unsuccessful purchaser and, allegedly, has a longstanding grudge against Mrs X. Other general grounds are along the lines that the complaints have no merit (in the views of the licensees) and that irrelevant considerations have been taken into account. There are many references to the entitlement of the licensees to natural justice and to allegedly false statements made on behalf of the complainant.

[71] The licensees also rely on the same confidential medical grounds which they put to us previously and which we covered in *X v REAA and Nelson* [2014] NZREADT 30 where we allowed interim non publication of the Committee's

decisions. That was subsequent to our decision on much the same issues between the same parties issued as [2014] NZREADT 9 where, in the absence of medical evidence, we dismissed the appellant's application for interim non-publication of the decisions of the Committee.

[72] We realise that these proceedings seem to have obsessed the two licensees, upset them massively, and caused them, as they put it, drastic stress. We can accept that they may be experiencing quite some commercial embarrassment as very busy and well regarded real estate agents. We are conscious that amid the submissions we have received from the licensees since the hearing, Mr X has stated as follows on the issue of Mrs X's health, namely:

"Regarding the state of H's health, I have to say that The Doctor who wrote to you about this is highly trained and extremely experienced in the medical field, whereas, with all due respect, the panel is not. It was therefore with surprise and concern that I heard Your Honour make a judgement in Court, to which the panel agreed, about H purely on how she appeared that day, and how you thought you had been overly generous in allowing the interim name suppression. That day in Court cost H a lot. She was resolved not to seem weak in front of those malicious individuals who wish her harm, and so she built herself up and steeled herself for the hearing. H is on medication at the maximum dose and she is very fragile. Her outlook changes from day to day and I fail to see how the panel can take any kind of reliable insight to her health based on a few hours in a Court room. Surely the panel would not wish her drugged up further in order for her to cope with the effects or publicity? The risks are clearly explained by the Doctor in the report.

I recommend and request that if the Panel wishes to make a different decision to the one they made about H's state of mind and body that was based on a medical report from a qualified and experienced medical doctor, that they request a further report from qualified persons to inform them rather than go on their own gut feeling alone.

I hope Your Honour forgives me for being blunt in this and I wish to point out that it is my wife's health that I am concerned with, not my own ..."

[73] We have given much thought to whether we should have the medical evidence updated. However, we do not think that there is any convincing need for a non-publication or suppression order in this case, particularly, having observed the intelligent and confident way Mrs X handled matters at the hearing before us. Also, in particular, we take into account that we are merely finding unsatisfactory conduct at quite a low level.

Outcome

[74] The application for non-publication is dismissed. The unsatisfactory conduct findings of the Committee are confirmed. There are to be submissions on penalty as directed above.

[75] Pursuant to s.113 of the Act, we record that any person affected by this decision may appeal against it to the High Court by virtue of s.116 of the Act.

Judge P F Barber
Chairperson

Mr G Denley
Member

Ms C Sandelin
Member