NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2016] NZLCDT 37
LCDT 019/16

UNDER the Lawyers and Conveyancers Act 2006

BETWEEN **WELLINGTON STANDARDS COMMITTEE 2**
Applicant

AND **CHRISTOPHER TWIGLEY**
Respondent

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Mr J Bishop
Mr W Chapman
Mr M Gough
Mr A Marshall

HEARING at Wellington Tribunals

DATE OF HEARING 2 and 3 November 2016

DATE OF DECISION 19 December 2016

COUNSEL
Mr D La Hood and Mr I Auld for the Standards Committee
Mr C Twigley, Respondent in Person by Audio Visual Link (Canberra)

DECISION OF TRIBUNAL ON DISPUTED FACTS AND PENALTY

Introduction

[1] Mr Twigley has admitted six charges of misconduct, these charges are attached as Appendix I to this decision.

[2] The charges relate to Mr Twigley's conduct while a practitioner in Gisborne and Tauranga, and in addition relate to the manner in which he wound down his practice in late 2014 and early 2015. After leaving practice he moved to live in Australia and was later bankrupted in New Zealand.

Process

[3] While admitting that his conduct amounted to a "reckless" breach of various practice rules and regulations made under the Act,[1] Mr Twigley denied a number of the factual bases for the charges. The disputed facts were important because they underpinned the assertion by the Standards Committee that Mr Twigley had, at times, acted dishonestly, or without regard to his clients' interests.

[4] The disputes had considerable bearing on the level of seriousness of the conduct, or potentially introduced aggravating features, to be weighed by the Tribunal. Thus, a disputed facts hearing was conducted, followed by the penalty phase of the process.

[5] Mr Twigley was unable, for financial reasons, to travel to New Zealand for the hearing. So his attendance was by Video Conference Link from the Canberra Magistrates Court, and took place over two days. Mr Twigley was able to cross-examine witnesses for the Standards Committee whom he had challenged, and was able to be cross-examined himself by counsel for the Standards Committee.

[1] Lawyers and Conveyancers Act 2006.

Background

[6] The facts are complicated, involving five separate situations of client interactions and attendances. The sixth charge relates to the unsatisfactory state in which Mr Twigley's files and computer records were left, and clients notified of his closure.

[7] The overall picture is of a man desperately fighting to save his practice and his career and in doing so taking a number of shortcuts and steps that were focused more on his financial viability than on the clients' interests or needs.

[8] The practitioner borrowed from clients without their first obtaining independent advice and debited fees from clients, which we or the Standards Committee, in separate hearings, have found to be unjustified.

The ES Estate (Charge 1)

[9] This estate was administered by Mr Twigley in 2013 and 2014.

[10] Mr Twigley described that Mr S, who was the executor of the estate, could at times be difficult to represent because his instructions fluctuated. In addition, he sought to challenge (legally) a person who had been appointed as the attorney for the widow of the deceased in this estate. Mr Twigley acted in respect of that dispute as well as in relation to the administration of the estate, but the latter was held up by the former dispute.

[11] Invoices totalling $7,975.35 were rendered in respect of the estate administration file between September 2013 and July 2014 which appeared to be the last time any active steps were taken.

[12] On 31 December 2014 the practitioner debited $3,500 from the funds held in the ES Estate. No invoice was rendered for this amount, however the practitioner says that on or about this date (New Year's Eve) he instructed his accountant administrator to generate an invoice. That had not taken place by 7 January when the invoice was subsequently generated. However it did not appear to have been sent to Mr S. Mr Twigley argued that the late generation of the invoice was an administrative oversight within his office.

[13] However the Standards Committee reviewed the fee charged for the January invoice and determined that a fair and reasonable fee for the work was $602. That finding is accepted by the practitioner. Mr Twigley's own timesheets show the last entry for attendances as 16 July 2014.

[14] Mr Twigley considered his terms of engagement entitled him to debit fees for ongoing work without specific authority from the client and denies that he misappropriated the money. He admitted that it constituted a reckless contravention of the Act to debit the fees in the manner that he did.

[15] It was notable that there was no covering letter to support the despatch of the invoice or statement around 7 January. Mr Twigley accepts that at the time these funds were debited he was in a desperate financial state.

[16] Mr S, while not as coherent and clear a witness as Mr HP (referred to later in this decision), was firm that no attendances on his or the estate's behalf had occurred following the invoice in July, at the time Mr Twigley terminated the retainer. Thus, his evidence corroborated that of Mr Hughes (expert witness for the Standards Committee) that neither the file nor timesheets supported the belated invoice of 7 January for $3,500.

Re Mr HP (Charge 2)

[17] Mr Twigley had acted for Mr HP for many years and it is evident from the evidence of both Mr HP and Mr Twigley there was, up until the events leading to this charge (Charge 2), a relationship of mutual trust and confidence.

[18] Indeed, the relationship was such that Mr Twigley felt able to approach Mr HP for a personal loan, knowing that he would have funds from his late mother's estate, because Mr Twigley had been instructed in a claim, which had been settled with the estate.

[19] In mid-October 2014 Mr HP agreed to loan Mr Twigley $4,000. Mr Twigley did not advise Mr HP of his right to obtain independent legal advice nor of the potential conflict of interest which arose in his representation of Mr HP as a result of the loan. It is also alleged that Mr Twigley ought to have known at that time that there was a

reasonable prospect he would be unable to repay the loan given his financial circumstances.

[20] The loan was recorded in an email sent to Mr Twigley by Mr HP's partner on 17 October, confirming that interest was to be paid at the rate available on Mr Twigley's interest bearing term deposit account, otherwise it was not formally recorded in writing by Mr Twigley.

[21] On 11 November Mr Twigley made a further request of Mr HP, by email, seeking a further loan of $50,000 for 18 months with an interest rate of 7% per annum. Mr HP said that he did not have the money available because it was tied up in investments. Apparently Mr Twigley told him he was prepared to reimburse him any lost interest for breaking a deposit because he was desperate.

[22] At this point the evidence of Mr Twigley and Mr HP diverged. Mr HP said he felt a great deal of pressure from Mr Twigley and that he was concerned to have the first loan of $4,000 repaid before he considered any further loan, particularly since the first loan had not even been documented by Mr Twigley, despite Mr HP's (agreed) request for such documentation.

[23] On 20 November 2014 Mr Twigley sent an email enclosing a deed of acknowledgment of debt to Mr HP's partner saying Mr HP had agreed to lend him the money. Mr HP denies that he ever agreed to loan a further $50,000 and did not sign the deed.

[24] On 9 December 2014 a little over $30,000 was paid from Mr HP's mother's estate into Mr Twigley's trust account.

[25] Towards the end of 2014 Mr HP called to see Mr Twigley at his home, during which meeting Mr Twigley again broached the subject of a further loan. Mr HP reiterated he wished the first loan to be documented and repaid before he considered further funds and it would need to await the payment of the funds from his mother's estate. At this point Mr Twigley told him those funds had already arrived and Mr HP says that Mr Twigley told him that he had already used $7,000 of the funds to pay staff. Mr HP's evidence is that the money was taken without his approval.

[26] Nor had he agreed for funds to be retained in the trust account. There had never been the need for funds to be held on account because of their long relationship and his history of prompt payment. As explained by Mr HP, and agreed by Mr Twigley, in the past he had always paid fees accounts to Mr Twigley promptly on receiving an invoice.

[27] However Mr Twigley contends that he transferred the $10,000 on 10 December 2014 on account of costs. On 24 December Mr Twigley repaid to Mr HP $3,000 of the $4,000 loan. Coincidentally when added to the $7,000 used to pay his staff (which he acknowledged) this totals the $10,000 which he said was “on account of costs”.

[28] On 13 January 2015 Mr Twigley sent a further email to Mr HP with a new deed of acknowledgement of debt showing a loan of $11,000 as at 5 December 2014. Mr HP took it that this was meant to include the outstanding $1,000 from the initial loan and the $10,000 that had been taken in December.

[29] Once again Mr HP did not sign the deed and as a result of the requests for loans and breakdown of their relationship of trust, Mr HP stopped answering Mr Twigley’s phone calls. In the meantime Mr Twigley said he refused to deal with Mr HP’s partner.

[30] Mr Twigley had been asked to set up a trust in relation to some of Mr HP’s assets but in early March 2015, given the breakdown in the relationship and lack of progress, Mr HP asked that such attendance cease. It had been six months since the initial instructions for the trust and Mr HP decided not to go through with it. He was also suspicious about the $10,000. In late April Mr HP made a formal complaint to the Law Society about Mr Twigley’s actions.

[31] There is clearly a problem for Mr Twigley in the contradiction posed by his assertion that $10,000 was taken “on account of costs” and then his subsequent action of providing a deed of acknowledgement of debt which included that $10,000. Mr Twigley was unable, in his evidence, to explain this contradiction.

[32] In March 2015 Mr Twigley was in the process of winding up his practice. On 18 March 2015 he issued an invoice to Mr HP for $10,040 made up of two sets of attendances, $4,182.50 in relation to the HP Trust which was no longer required by Mr HP and $5,857.50 in respect of further work (purportedly done in relation to the dispute between Mr HP and his late mother’s estate).

[33] Mr Twigley's timesheets did not justify the latter invoice, since no work was performed by him subsequent to the previous invoice. And in relation to the formation of the trust, the Standards Committee suggests that no value was received because these instructions had been withdrawn and the trust was of no benefit to Mr HP, even though work had been performed on the documentation to set it up.

[34] Mr Twigley has not repaid the outstanding $1,000 from the original loan nor any part of the $10,040 represented by the two invoices subsequently rendered by him. In evidence Mr Twigley accepted that he was not in a position to render the 18 March invoices in December, but still had debited the funds which he would subsequently contend represented payment of those invoices.

[35] While Mr Twigley contended he had his client's authority to deduct the $10,000 he had no file note of such and accepted that that was a departure from his usual practice. He said that after some years of careful file noting, he was by this stage at a desperate phase and "fire fighting". He accepted that would mean "unfortunate inferences" could be drawn.

[36] Mr HP totally denied giving any such authority and the taking of the $10,000 of course fitted with a desperate need for funds on the practitioner's part at the time.

[37] We found Mr HP to be consistent and clear in his evidence. He repeated, a number of times, that he had not wanted to leave funds on account of costs, never having done so in the past and always having paid invoices promptly, and he most certainly did not authorise the payment of $7,000 of his funds to pay Mr Twigley's staff's wages. No such authority was obtained in writing or referred to in email correspondence in January 2015. Rather, when Mr Twigley sent the deed of acknowledgment of debt for $11,000, the covering email referred to the $10,000 as a loan and incorporated the balance owing of $1,000 of the earlier ($4,000) loan.

[38] That the subsequent invoices totalled a little over $10,000 was too coincidental to be plausible, and tended to corroborate the Standards Committee version of events, which included Mr Nigel Hughes' expert evidence in reply to Mr Twigley's evidence that neither the file nor time records could justify such charges.

[39] While we could accept that some value was provided to Mr HP by the draft trust documents, the instructions were belatedly carried out and completed after Mr HP said he no longer wanted the trust formed. At best Mr Twigley ought to have allowed for that by only charging a nominal or reduced sum, but that would not have achieved the end of "absorbing" the $10,000 "on account" which had already been taken.

[40] It will be clear that we have preferred the evidence of Mr HP to that of Mr Twigley, which was inconsistent and did not fit at all with contemporaneous documentation.

Re Mr Y (Charge 3)

[41] The practitioner acted for Mr Y and his family trust, the S Trust, of which Mr Y is a trustee.

[42] In January 2014 the practitioner sought from Mr Y and the S Trust a personal loan of $150,000, to which Mr Y agreed. Mr Twigley did not advise Mr Y that the personal loan would create a potential conflict of interest between himself and Mr Y. Nor did Mr Twigley advise Mr Y that he could or should obtain independent legal advice regarding the provision of a personal loan to his solicitor.

[43] The money was paid to the practitioner in four instalments between 18 January and 13 February 2014. Mr Twigley drafted a deed of acknowledgement of debt recording the terms of the loan agreement, and containing a variety of securities, personal and solicitor's undertaking, and assignments of interest in equities and assets, which he and Mr Y executed on 13 February 2014 and were subsequently registered.

[44] Mr Twigley did not inform Mr Y that there were existing security interests in favour of other parties in respect of three of the securities that formed part of the loan agreement.

[45] Mr Twigley admitted misconduct in respect of this charge, however asserted that Mr Y was an experienced businessman who was commercially aware and shrewd and from the outset had advice from his own accountant. Mr Twigley denied that he knew there was a reasonable prospect he would have difficulty in repaying the loan and

further denied that he provided deceptive information in relation to the value of the securities.

[46] Mr Y was unavailable to provide sworn evidence in support of his complaint and for that reason beyond the agreed facts above, the Standards Committee did not seek to prove the disputed facts in this matter.

[47] The loan has not been repaid, and Mr Twigley contended that Mr Y subsequently repossessed items from Mr Twigley which had been left in storage.

The LH Estate and Ms B (Charge 4)

[48] On 18 September 2012 the practitioner was instructed by Ms B to apply for the grant of letters of administration in the estate of LH, her son who had died intestate and whose survivors, his de facto partner and father, had agreed to her being appointed as administrator. The matter took a lengthy period to resolve, largely because of errors in documentation prepared by Mr Twigley's staff members. At the time Mr Twigley left practice in early 2015 the attendances had still not been completed.

[49] Mr Twigley rendered an invoice on 12 November 2014 for $1,570.20. On approximately 24 December 2014 Mr Twigley deducted $3,000 from the funds held on behalf of Ms B.[2] No authority or invoice was rendered to Ms B in respect of work to the estate in relation to this latter $3,000 invoice. The invoice itself was dated 31 December 2014 but was not issued until the practitioner wound up his practice on 18 March 2015.

[50] It was the expert evidence of Mr Hughes that he could find "no work that justified" the $3,000 invoice.

[51] In his affidavit in reply, relating to the B matter, firstly Mr Twigley blamed his client for not communicating with his office from late 2013, meaning apparently that she did not receive sufficient attention as a result. But further, he suggested that the 12 November 2014 invoice was substantially less than should have been charged at the time, having been prepared by his legal executive, and the later invoice was to revisit the attendances which had not been charged. He indicated that he considered a further $5,000 was justified but discounted it to the $3,000 given the errors and delays which

[2] Funds of $10,000 had been received from an insurance policy approximately two years earlier.

had occurred. He apologises to Ms B and indicates a willingness to repay any overcharge which is found. He contended that his letter of engagement gave him authority to deduct fees from funds held on account and that the failure to render the invoice before the funds were debited on 24 December was once again an administrative error within his office for which he apologised.

[52] Mr Twigley's conduct in this instance repeated a pattern of deducting funds from clients who had unused trust account balances, on a pretext of unbilled attendances, which when examined, could simply not be justified.

Re Mr W (Charge 5)

[53] In or about September 2014 Mr Twigley acted for Mr W in the sale of Mr W's property, issuing a trust account statement on 20 September 2014 that retained $500 to settle a council water rates bill. The purchase of the property was settled on 26 November. On 28 November 2014 Mr Twigley rendered a bill of $1,080 for his fee in the sale of Mr W's property and deducted the same from trust account funds held on behalf of Mr W, leaving the retained amount to pay the water bill.

[54] On 31 December 2014 Mr Twigley transferred the $500 (plus interest of $0.36) by debit, from Mr W's trust account to his office account. Mr Twigley did not render an invoice to Mr W or obtain Mr W's authority to debit these funds.

[55] Subsequently, Mr Twigley became aware that the water rates bill had not been paid as a result of a New Zealand Law Society trust account inspection, together with the receipt of the water rates bill from the council, whereupon he refunded the $500.36 to the trust account, paid the water rates of $425.48 and refunded the balance to his client, Mr W.

[56] In respect to this charge the practitioner admitted to misconduct pursuant to s 241(a) and s 7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 but denied that he had intended to misappropriate the funds, but that he thought it was fees which had not been taken.

Windup of Practice (Charge 6)

[57] In early 2015 due to financial difficulties Mr Twigley decided to close his practice and notified the New Zealand Law Society ("NZLS") on 29 January 2015. As a response the NZLS examined Mr Twigley's trust records which disclosed that the trust account was overdrawn between 23 and 29 January 2015. It further showed that on 5 February 2015 seven payments were made from the trust account for staff wages, drawings and other expenses of the practitioner and his practice, totalling $9,640.13. The practice was closed on or about 7 February 2015 but the practitioner did not advise all of his clients about this closure or assist them to obtain alternative representation. The Standards Committee on 12 February 2015 appointed Mr Strang to investigate the windup of the practice and he reported a number of concerns in his reports of February, March and April 2015.

[58] In early March Mr Twigley transferred a number of his active files and a computer he thought was holding information and trust records to another firm in Gisborne, but there was a mix up. The server that actually held the trust account records was seized by a person with a registered security interest over it and sold to another lawyer. When the error was identified the first firm did receive the correct server. The funds held in the practitioner's trust accounts were transferred to the first firm but without informing all of the clients whose funds were contained in this transfer.

[59] Unfortunately there was also a problem with the storage of files which would appear to be partly because Mr Twigley was let down in his arrangements but was complicated by the fact that in March 2015 he moved to Australia to live. The landlord of Mr Twigley's former offices had arranged for new tenants and in August 2015 the Gisborne Branch of the NZLS was informed and it was necessary for the branch manager to make arrangements to move the effects and archived client files as well as the practitioner's own files from those premises.

[60] Finally, after some correspondence in January 2016 Mr Twigley arranged for archived files to be uplifted and stored at a relative's premises.

[61] Thus, Mr Twigley has admitted that on ceasing practice he failed to take adequate steps to either reconcile his trust account or properly secure all client

information and records in contravention of the Trust Account Regulations and the Rules of Conduct and Client Care.

Decision on Aggravating Features

[62] At the conclusion of the disputed facts hearing the Tribunal formed the view that we preferred the evidence tendered on behalf of the Standards Committee to that of Mr Twigley for reasons that have been articulated in the description of the background facts above. In summary, we found that he misappropriated client funds from Mr HP in the sum of $10,000 (although we would allow a $2,000 deduction from this sum in relation to attendances carried out on the formation of the trust). But we found that $10,000 was deducted without authority from client funds and that a further $1,000 relating to a loan from a client which formed a conflict of interest, also remained unpaid.

[63] In relation to the Estate of ES, as with the HP matter there were client funds available, and an unjustified invoice, rendered after the taking of funds, clearly provided Mr Twigley with much needed funds when desperate. We consider he was not entitled to charge the $3,000 debited without authority.

[64] Also temporarily, in relation to Mr W, funds were used by the practitioner without authority, although these were reimbursed when this error was pointed out to him.

[65] We similarly found that an unjustified deduction of $3,000 from the Estate of LH (Ms B) was not cured by a subsequent invoice rendered by the practitioner and thus also can be regarded as having been improperly taken.

[66] We indicated these findings to counsel, following which penalty submissions were made and were answered by Mr Twigley.

Submissions for the Standards Committee

[67] It was submitted by Mr La Hood on behalf of the Standards Committee that, having found that Mr Twigley had misappropriated client funds, we were faced with misconduct at the high end of the spectrum and this should inevitably lead to an order striking Mr Twigley from the roll.

[68] Mr La Hood also submitted that it was clear that Mr Twigley had taken advantage of "*the relationship of trust and confidence with (Mr HP) in order to attempt to rescue his own dire personal financial situation, which was ultimately at the expense of (Mr HP). This was a serious breach of Mr Twigley's duties of fidelity and independence and his duty to protect his client's interests*."

[69] We accept that submission and note that Mr Twigley's understanding of the concept of conflict of interest is flawed and requires him to reflect further on his actions. The fact that one's client possesses business experience or acumen does not remove responsibility for following the (necessarily) stringent rules about borrowing or other contractual arrangements with clients.

[70] Generously, but we consider accurately, Mr La Hood submitted that it was not the Standards Committee position that Mr Twigley was normally dishonest in the manner which had been demonstrated. He had conducted himself well earlier in his career. It was accepted that he was fighting for his professional life and, having worked hard to build up a practice, was so desperate that he lost judgment and objectivity in the manner in which he conducted himself.

[71] Mr Twigley was clearly under great pressure at this time, which we accept affected his health. He disclosed in evidence that he was taking anti-depressants at the relevant time. To his credit Mr Twigley never sought to excuse his conduct on this basis but we do accept that his health issues could have had some impact on his ability to think clearly and on his lack of judgment.

[72] Counsel pointed to the fact there were now six admitted charges of misconduct representing a range of very serious failures to clients. Mr La Hood submitted that while Mr Twigley had properly admitted the charges, his attempts to minimise his conduct and frame his actions in a more favourable light was of concern.

[73] As a further aggravating factor Mr Twigley has a number of previous disciplinary findings. There were five findings of unsatisfactory conduct between March 2011 and March 2016. One of the findings was for grossly excessive fees, which was a serious matter particularly having regard to the nature of the present charges.

[74] Citing *Bolton*[3], Mr La Hood submitted that:

> "The solicitor's trust account has long been regarded as sacrosanct and dealing with its funds for personal use is considered to be at the highest level of professional misconduct and culpability."

[75] Mr La Hood submitted that strike-off would normally be the clear response to dishonesty involving the misuse of funds held on behalf of clients.

[76] As a result, the impact on Mr Twigley's clients is also submitted to be an important feature in penalty assessment. Mr Twigley's former clients have also suffered financial losses and Mr Twigley is now bankrupt so is unlikely to be able to make proper recompense at any time.

Submissions for the Practitioner

[77] In his submissions to the Tribunal Mr Twigley properly pointed out the factors to be considered by the Tribunal, namely:

> "(a) The seriousness of the conduct.
> (b) Aggravating features.
> (c) Mitigating features.
> (d) Relevant penalty decisions.
> (e) The practitioner's disciplinary history.
> (f) The need for specific or general deterrence.
> (g) The need for protection of the public.
> (h) The overall fitness of the practitioner."

[78] Mr Twigley pointed to the fact that he had at a relatively early stage, admitted charges of misconduct on the basis of wilful or reckless contravention of the Act and Regulations. He accepted that the level of seriousness would turn the Tribunal's findings on the disputed facts and that should we accept the Standards Committee view that clients funds had been misappropriated and that he had failed to protect his clients' interests that such would be "obviously aggravating factors".

[79] In mitigation he referred to his admissions, and that although he had at times attributed blame to his staff, he said that he has always accepted that he was ultimately

[3] *Bolton v Law Society* [1994] 2 All ER 486, 490.

responsible. He pointed to the five previous findings being viewed against a 20-year period of practice.

[80] He fully participated in the hearing and it is accepted that his approach to the disciplinary process was cooperative and that he conducted himself with dignity.

[81] Mr Twigley reminded us of the *Daniels*[4] decision where the least restrictive outcome which is commensurate with a proportionate response to serious offending needs to be engaged. He referred us to previous decisions of the Tribunal, however we find that only *Hackshaw*[5] and *Andersen*[6] are relevant.

[82] Mr Twigley responsibly accepted that there needed to be deterrence in penalty. He submitted that specific deterrence was not necessary in this instance, but other than a reference to his first 15 years of practice which occurred without adverse findings against him he did not cite specific grounds for that submission.

[83] We note that Mr Twigley filed references from a number of other practitioners and former employees. These would certainly support the view that, before encountering such severe financial difficulties as he did in his last few years of practice, he had been a diligent and responsible practitioner. A number of the references described the allegations against him as out of character.

[84] In terms of overall fitness Mr Twigley submits that he has admitted to his conduct, accepted "complete responsibility for the circumstances in which my practice ended …" and he expressed genuine remorse and sorrow for the difficulties caused by him. He wishes to continue to practice law and sought that a penalty short of strike-off be imposed.

Assessment of Overall Fitness

[85] Sections 242 and 244 require that in making an order that a practitioner be struck off the roll of barristers and solicitors, all of a five-member disciplinary panel must vote in favour of the order. In order to reach the opinion that an order should be made the

[4] *Daniels v Complaints Committee No. 2 Wellington District Law Society* [2011] 3 NZLR 850.
[5] *Auckland Standards Committee 1 v Hackshaw* [2016] NZLCDT 18.
[6] *Auckland Standards Committee 2 v Andersen* [2012] NZLCDT 17.

members must consider that the lawyer is, *"… by reason of his or her conduct, not a fit and proper person to be a practitioner."*

[86] We record that we are unanimous in our view that no penalty short of strike-off would be a proportionate response to the very serious offending of this practitioner, as found by us. We have had regard to the fact that the use of client funds to continue a practice which was in desperate financial straits occurred on at least three occasions.

[87] We are also seriously concerned about a practitioner borrowing funds from clients particularly in the significant sum borrowed from Mr Y, and in the lesser sum from Mr HP. The lack of insight to the huge dangers to the client by such conduct, without the provision of independent legal advice is of serious concern and requires careful reflection by the practitioner.

[88] The consequences for these clients have been very significant.

[89] The integrity of the trust account and the duty of fidelity to the client have been breached on a number of occasions by this practitioner, during the dying days of his practice. No response other than removal from the ability to practice for an indefinite period could be regarded as responsible. The Tribunal's responsibility to take account of the purposes of the Act, in the maintenance of public confidence in the provision of legal services and protection of consumers of legal services leaves us with no other alternative.

[90] We wish to state however that we were impressed by the practitioner's conduct during the hearing and leading up to the hearing, in terms of his cooperation with the process and dignified manner in which he conducted himself.

[91] Given his prior conduct as a lawyer up until 2011 we consider that he may well be capable of rehabilitation and redemption in due course.

Compensation

[92] We are asked to make compensation orders in respect of certain of the clients who are complainants. Mr Twigley is currently employed in Australia on a minimal hourly wage and is currently a bankrupt. While bankruptcy itself is not a reason for

failing to make orders for costs and other consequential orders against a practitioner, we consider that any chance of recovery is so remote at this point as to make such orders virtually unenforceable.

Summary of Orders

1. Pursuant to s 242 the practitioner's name is to be struck from the roll of barristers and solicitors.

2. Costs of the Standards Committee are sought in the sum of $38,381. This includes the costs of witnesses travelling to Wellington which was the most cost-effective venue for the hearing as a whole.

   Given the practitioner's circumstances we propose to award costs in the sum of $15,000.

3. Section 257 costs are certified in the sum of $5,566 and are ordered against the New Zealand Law Society.

4. The practitioner is also to reimburse the New Zealand Law Society for the s 257 costs, in the sum of $5,566.

5. There is a non-publication order in relation to the names of the complainants, pursuant to s 240(1)(c).

DATED at AUCKLAND this 19th day of December 2016

Judge D F Clarkson
Chair

Appendix 1

CHARGES

Charge 1: The Estate of ES

1 That the practitioner, whilst acting for the estate of ES, committed a disciplinary offence under s 241 of the Lawyers and Conveyancers Act 2006 ("the Act"), as particularised below, which constituted:

(a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:

(i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or

(ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act: s 7(1)(a)(ii) of the Act;

or in the alternative

(b) Unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct pursuant to section 241(b) of the Act;

or in the alternative

(c) Negligence or incompetence in his professional capacity, and the negligence or incompetence has been of such a degree as to reflect on his fitness to practise or as to bring his profession into disrepute pursuant to s 241(c) of the Act.

The particulars of the charge are that (fact and matters relied upon):

1.1 At all material times the practitioner held a practising certificate as a barrister and solicitor issued under the Act.

1.2 At all material times, the practitioner operated a law practise under the name of Eastland Legal, with offices in Gisborne and Mt Maunganui.

1.3 At all material times prior to ceasing practice and closing the trust account, the practitioner was the trust account supervisor for Eastland Legal within the meaning of reg 16(1)(b) of the Trust Account Regulations. As such, he was responsible for the administration of the trust accounting of the practice.

1.4 At all material times the practitioner acted as solicitor for the estate of ES.

1.5 The practitioner first accepted instructions from the sole executor of Mr S's estate, Mr S, on 10 July 2013, which included to complete the administration of the estate ("Estate Administration File"). By that stage, probate had already been obtained by Mr S.

1.6 The practitioner provided Mr S with a letter of engagement, including the information required by the Lawyers and Conveyancers (Rules of Conduct and Client Care) Rules 2008 ("Rules of Conduct and Client Care").

1.7 In respect of the Estate Administration File, the practitioner rendered $7,975.35 in fees in the following invoices:

1.7.1. Invoice 961 on 20 September 2013 for $2,401.00;

1.7.2. Invoice 1133 on 31 December 2013 for $582.60;

1.7.3. Invoice 1610 on 23 July 2014 for $1,491.75; and

1.7.4. Invoice 1960 on 7 January 2015 for $3,500.

1.8 On 31 December 2015, the practitioner debited $3,500 for funds held on behalf of Mr S's estate.

1.8.1. No invoice was rendered for this amount prior to it being debited and no specific authority was sought or obtained from Mr S.

1.8.2. An invoice was subsequently generated for this amount on 7 January 2015 (invoice 1960), but it was not sent to Mr S.

1.9 The Standards Committee has reviewed the fees charged by the practitioner and determined that a fair and reasonable fee for the work charged for in invoice 1960 was $602. It made a finding of unsatisfactory conduct and imposed a penalty in respect of the fee which was not fair and reasonable.

Therefore the practitioner committed the disciplinary charge referred to above, as follows:

1.10 The practitioner debited funds held on trust for the estate of ES without rendering an invoice or obtaining the authority of the executor, specifically $3,500 debited on 31 December 2014, in contravention of any or all of s 110 of the Act and regs 7, 9, 10 and 12 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 ("Trust Account Regulations").

Charge 2: HP

2. That the practitioner, whilst acting for HP, committed a disciplinary offence under s241 of the Act, as particularised below, which constituted:

(a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:

(i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or

(ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act: s 7(1)(a)(ii) of the Act; and/or

(iii) conduct that consisted of the charging of grossly excessive costs for legal work carried out by the practitioner: s 7(1)(a)(iv) of the Act;

or in the alternative

(b) Unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct pursuant to section 241(b) of the Act;

or in the alternative

(c) Negligence or incompetence in his professional capacity, and the negligence or incompetence has been of such a degree as to reflect on his fitness to practise or as to bring his profession into disrepute pursuant to s 241(c) of the Act.

The particulars of the charge are that (fact and matters relied upon):

2.1 Repeat paragraphs 1.1 to 1.3 above.

2.2 At all material times the practitioner acted as solicitor for HP.

2.3 In 2013 and 2014, the practitioner acted for HP in respect of successful proceedings in the Family Court against the estate of his late mother, Mrs T.

2.4 In those proceedings the Family Court ordered that all of HP's costs be reimbursed by the estate.

2.5 As a result, $30,037.00 was paid into the practitioner's trust account by the estate on 9 December 2014 to be held on trust for HP.

2.6 On 26 November 2014, the practitioner rendered an invoice for $900 plus GST ($1,045) for services to complete the court proceedings in the Family Court. The practitioner debited this amount from funds held on trust for HP on 9 December 2014.

2.7 Also on 9 December 2014, the practitioner debited $10,000 from the funds held on trust for HP and transferred this amount to the practitioner's office account.

2.8 On 10 December 2014, the practitioner issued HP with a trust account statement in which the $10,000 transfer was described as: "To Eastland Legal on account".

2.9 No invoice was rendered or specific authority obtained from HP prior to this transfer.

2.10 To the extent that this transfer can be considered a loan from HP to the practitioner or Eastland Legal, the practitioner:

2.10.1. Did not advise HP of his right to seek independent legal advice; and

2.10.2. Did not advise HP of the potential conflict of interest between the practitioner and HP that may have arisen from the loan.

2.11 In March 2015, the practitioner was in the process of winding up his practice.

2.12 On 18 March 2015, the practitioner issued an invoice to HP for $10,040 for services purportedly rendered as follows:

2.12.1. $4,182.50 in relation to the formation of the H P Trust; and

2.12.2. $5,857.50 in respect of further work purportedly done in relation to the dispute between HP and the estate of Mrs T.

2.13 The invoice of 26 November 2014 for $900 plus GST for services in respect of HP's dispute with Mrs T's estate should not have been issued to HP, as the Family Court had ordered that all fees for this matter should have been paid by the estate.

2.14 No work was performed by the practitioner in respect of the establishment of the H P Trust to justify the invoice for $4,182.50 issued on 18 March 2015.

2.15 No work was performed by the practitioner in respect of the dispute between HP and the estate of Mrs T to justify the invoice for $5,857.50 issued on 18 March 2015.

2.16 On or around 16 October 2014, the practitioner approached HP seeking a personal loan.

2.17 On or around 16 October 2014, HP agreed to loan the practitioner $4,000, with interest to be at the rate available on the practitioner's interest bearing term deposit account ("HP Loan Agreement").

2.18 The HP Loan Agreement was not recorded in writing, save for an email sent by HP's partner to the practitioner, on 17 October 2014, recording the agreed terms of the loan.

2.19 Prior to the Loan Agreement, the practitioner did not advise HP of his right to obtain independent legal advice concerning the HP Loan Agreement.

2.20 The practitioner did not advise HP of the potential conflict of interest between the practitioner and HP that may have arisen from the HP Loan Agreement.

2.21 At the time of entering the HP Loan Agreement, the practitioner knew that there was a reasonable prospect that, given his financial position, he would have difficulty repaying the funds and failed to advise HP of this.

2.22 On 11 November 2014, the practitioner sent HP an email requesting a further loan of $50,000 for an 18 month term with interest of 7% per annum.

2.23 The practitioner drafted a proposed Deed of Acknowledgment of debt setting out the terms of this proposed loan.

2.24 HP refused the practitioner's request for this further loan.

2.25 On or about 13 January 2015, the practitioner requested from HP a further loan of $11,000 for an 18 month term with interest of 7% per annum, to be secured against the practitioner's interest in a property in O.

2.26 The practitioner drafted and provided to HP a proposed deed of acknowledgment of debt setting out the terms of this proposed loan.

2.27 HP refused the practitioner's request for this further loan.

2.28 At no time did the practitioner advise HP of his right to seek independent legal advice in respect of the proposed additional loans.

2.29 At no time did the practitioner advise HP of the potential conflict of interest between the practitioner and HP that may have arisen from any additional loans.

Therefore the practitioner committed the disciplinary charge referred to above, as follows:

2.30 The practitioner debited funds held on trust for HP, specifically $1,045 debited on 9 December 2014, without obtaining his authority, in contravention of any or all of s 110 of the Act and regs 7,9,10 and 12 of the Trust Account Regulations.

and/or

2.31 The practitioner misappropriated $10,000 of funds held on trust for HP on 9 December 2014 by deducting this amount when there was no lawful or proper basis for taking the funds;

or in the alternative

2.32 If there was a lawful or proper basis for the deduction of $10,000 on 9 December 2014, the practitioner debited these funds without rendering an invoice and/or obtaining HP's authority, in

contravention of any or all of s 110 of the Act and regs 7, 9, 10 and 12 of the Trust Account Regulations;

or in the alternative

2.33 If the deduction of $10,000 on 9 December 2014 constituted a loan from HP to the practitioner, the practitioner breached his professional obligations to HP in relation to that loan, in contravention of:

i. Regulation 7 of the Trust Account Regulations; and/or

ii. Rules 5 and 6 of the Rules of conduct and Client Care;

and/or

2.34 The practitioner charged HP fees that were grossly excessive or alternatively fees in excess of what was fair and reasonable, specifically $4,182.50 for work purportedly done in relation to the formation of the H P Trust and $5,857.50 for work purportedly done in relation to a dispute between HP and T, invoiced on 18 March 2015, in contravention of rule 9 of the Rules of Conduct and Client Care.

Charge 3: Mr Y and the S Trust

3. That the practitioner, whilst acting for Mr Y, committed a disciplinary offence under s 241 of the Act, as particularised below, which constituted:

(a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:

(i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or

(ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act: s7(1)(a)(ii) of the Act; or in the alternative;

(b) Unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct pursuant to s 241(b) of the Act; or in the alternative

(c) Negligence or incompetence in his professional capacity, and the negligence or incompetence has been of such a degree as to reflect on his fitness to practise or as to bring his profession into disrepute pursuant to s 241(c) of the Act.

The particulars of the charge are that (fact and matters relied upon):

3.1 Repeat paragraphs 1.1 to 1.3 above.

3.2 At all material times the practitioner acted as solicitor for Mr Y.

3.3 Mr Y is a trustee of the S Trust.

3.4 Between 18 January 2014 and 13 February 2014, the practitioner requested Mr Y advance him a loan of $150,000 from funds held on trust for the S Trust. Mr Y agreed to the loan, on behalf of himself and the trustees of the S Trust ("Y Loan Agreement").

3.5 Between 18 January 2014 and 13 February 2014, Mr Y advanced the following loan amounts to the practitioner:

3.5.1. $5,000 on 18 January 2014;

3.5.2. $5,000 on 27 January 2014;

3.5.3. $5,000 on 28 January 2014; and

3.5.4. $135,000 on 13 February 2014.

3.6 The practitioner drafted a Deed of Acknowledgment of Debt recording the terms of the Y Loan Agreement, which he and Mr Y both executed on 13 February 2014.

3.7 As part of the Y Loan Agreement, the practitioner provided the following security for the loan:

3.7.1. A registered financing statement under the Personal Property Securities Act 1999 creating a legal interest in and charge over all of the chattels and equipment owned by the practitioner and situated at the office of Eastland Legal.

3.7.2. A registered financing statement under the Personal Property Securities Act 1999 creating a legal interest in and charge over the his Mercedes-Benz motor vehicle.

3.7.3. A binding personal and solicitors undertaking that $40,000.00 would be deposited to his Medical Assurance Society Credit line revolving credit facility in reduction of the current debit balance and would not be redrawn during the term of the loan.

3.7.4. Assignment of his interests in and entitlement as a beneficiary to the equity in the T Trust, which owned the property at 22 D Road, G, with a second mortgage in favour of Mr Y registered over that property.

3.7.5. Assignment of his interests in and entitlement as a beneficiary to the equity in the B Trust, which owned the residential property situated at 7 M Street, G, with a second mortgage in favour of Mr Y registered over that property.

3.7.6. Assignment of an interest in the proceeds of his Medical Assurance Life Insurance policy which had an insured value of $510,000 to a maximum of the Principal sum or lesser part thereof as may be owed.

("The Securities")

3.8 The practitioner subsequently took the steps required to register and affect the Securities on behalf of Mr Y.

3.9 Prior to the Y Loan Agreement, the practitioner did not advise Mr Y of his right to obtain independent legal advice concerning the Y Loan Agreement.

3.10 The practitioner did not advise HP of the potential conflict of interest between the practitioner and Mr Y that may have arisen from the Y Loan Agreement.

3.11 At the time of entering the Y Loan Agreement, the practitioner knew that there was a reasonable prospect that, given his financial position, he would have difficulty repaying the funds and failed to advise Mr Y of this.

3.12 The practitioner failed to advise Mr Y of relevant information and / or provided information that was likely to deceive or mislead Mr Y in relation to the value of the Securities, specifically:

3.12.1. The practitioner failed to advise Mr Y of a security interest held by the Medical Assurance Society over his Mercedes-Benz motor vehicle.

3.12.2. The practitioner failed to inform Mr Y of a security interest held by the ASB Bank over equity in the T Trust.

3.12.3. The practitioner failed to inform Mr Y of a security interest held by the ASB Bank over equity in the B Trust.

Therefore the practitioner committed the disciplinary charge referred to above, as follows:

3.13 The practitioner breached his professional obligations to Mr Y in relation to a loan of $150,000 advanced by Mr Y and the S Trust to the practitioner in instalments in January and February 2014, in contravention of:

(i) Regulation 7 of the Trust Account Regulations; and/or

(ii) Rules 5, 6, 7 and 11 of Rules of Conduct and Client Care Rules.

Charge 4: Ms B

4 That the practitioner, whilst acting for Ms B, committed a disciplinary offence under s 241 of the Act, as particularised below, which constituted:

(a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:

(i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or

(ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act: s 7(1)(a)(ii) of the Act;

or the alternative

(b) Unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct pursuant to section 241(b) of the Act;

or in the alternative

(c) Negligence or incompetence in his professional capacity, and the negligence or incompetence has been of such a degree as to reflect on his fitness to practise or as to bring his profession into disrepute pursuant to s 241(c) of the Act.

The particulars of the charge are that (fact and matters relied upon):

4.1 Repeat paragraphs 1 to 3 above.

4.2 At all material times the practitioner acted as solicitor for Ms B in respect of an application to be granted Letters of Administration in relation to the estate of her deceased son, LH.

4.3 The practitioner accepted instructions from Ms B on 18 September 2012. The practitioner provided Ms B with a letter of engagement, including the information required by the Rules of Conduct and Client Care for Lawyers.

4.4 On 24 December 2014, the practitioner debited $3,000 from funds held on trust for Ms B. No invoice was rendered or authority sought or obtained from Ms B prior to this transfer.

4.5 On 18 March 2015, the practitioner issued an invoice for $3,000 for services purportedly rendered to Ms B.

4.6 No work performed by the practitioner justified the invoice for $3,000 issued on 18 March 2015.

Therefore the practitioner committed the disciplinary charge referred to above, as follows:

4.7 The practitioner misappropriated $3,000 held on trust for Ms B, on or about 24 December 2014 when there was no lawful or proper basis for taking the funds;

or in the alternative

4.8 Debited funds held on trust for Ms B without rendering an invoice and/or obtaining her authority, specifically $3,000 debited on 24 December 2014, in contravention of any or all of s110 of the Act and regs 7, 9, 10 and/or 12 of the Trust Account Regulations;

and/or

4.9 Charged Ms B fees that were grossly excessive or alternatively fees in excess of what was fair and reasonable, specifically $3,000 invoiced on 18 March 2015, in contravention of rule 9 of the rules of Conduct and Client Care.

Charge 5: Mr W

5 That the practitioner, whilst acting for Mr W, committed a disciplinary offence under s 241 of the Act, as particularised below, which constituted:

(a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:

(i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or

(ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act (s 7(1)(a)(ii) of the Act);

or in the alternative

(b) Unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct pursuant to section 241(b) of the Act;

or in the alternative

(c) Negligence or incompetence in his professional capacity, and the negligence or incompetence has been of such a degree as to reflect on his fitness to practise or as to bring his profession into disrepute pursuant to s 241(c) of the Act.

The particulars of the charge are that (fact and matters relied upon):

5.1 Repeat paragraphs 1.1 to 1.3 above.

5.2 At all material times, the practitioner acted as solicitor for Mr W in relation to the sale of a property at 316B L Road, T.

5.3 On 20 September 2014, the practitioner issued a trust account statement to Mr W. This statement identified an amount of $500 as "Retained funds to settle water rates (awaiting bill) as per attached estimate".

5.4 On 31 December 2014, the practitioner debited $500.36 from funds held on trust for Mr W.

5.5 No invoice was issued to Mr W or authority sought or obtained from Mr W prior to this debit.

5.6 The practitioner did not use the funds debited from the money held on trust for Mr W to pay a water rates account.

Therefore practitioner committed the disciplinary charge referred to above, as follows:

5.7 The practitioner misappropriated $500.36 held on trust for Mr W, on or about 31 December 2014, by taking this amount when there was no lawful or proper basis for taking the funds;

or in the alternative

5.8 He debited funds held on trust for Mr W without rendering an invoice and/or obtaining his authority, specifically $500.36 debited on 31 December 2014, in contravention of any or all of s110 of the Act and regs 7, 9, 10 and 12 of the Trust Account Regulations.

Charge 6: Operation and winding-up of the practitioner's practice and the trust account

6 That the practitioner, in the operation of and winding down of his trust account, committed a disciplinary offence under s 241 of the Act, as particularised below, which constituted:

(a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:

(i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or

(ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act: s 7(1)(a)(ii) of the Act;

or in the alternative

(b) Unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct pursuant to section 241(b) of the Act;

or in the alternative

(c) Negligence or incompetence in his professional capacity, and the negligence or incompetence has been of such a degree as to reflect on his fitness to practise or as to bring his profession into disrepute pursuant to s 241(c) of the Act.

The particulars of the charge are that (facts and matters relied upon):

6.1 Repeat paragraph 1.1 to 1.3 above.

6.2 In January 2015, due to financial difficulties, the practitioner decided to close and sell his practice.

6.3 On 29 January 2015, the practitioner contacted the Law Society, informing it that he was planning to cease his practice.

6.4 The NZLS sought and examined the practitioner's trust account records in order to ensure that to ensure that all funds had been repaid to clients or dealt with according to their instructions and that the trust account had been closed with a nil balance.

6.5 The practitioner's trust account records disclose the following:

6.5.1 The trust account was overdrawn between 23 January and 29 January 2015.

6.5.2 On 5 February 2015, seven payments were made from the trust account for staff wages, drawings and other expenses of the practitioner and Eastland Legal, totalling $9,640.13.

6.6 On or about 7 February 2015, the practitioner closed his practice.

6.7 The practitioner did not advise his clients of the closure of his practise, or assist them to obtain alternative legal representation.

6.8 On 12 February 2015, the Standards Committee appointed Mr Philip Strang as an investigator under s 144 of the Act to inquire into the practice and trust account of the practitioner.

6.9 Mr Strang provided reports to the Standards Committee on 26 February, 27 March and 17 April 2015 raising a number of concerns relating to the operation of the practitioner's practice and trust account.

6.10 Mr Strang reported difficulty in reviewing the trust account records as they were not well kept or up to date.

6.11 In or around early March 2015, the practitioner transferred a number of active files and a computer holding client information and trust account records to [law firm].

6.12 In or around early March 2015, the practitioner transferred a server containing client information to Mr H, another lawyer practising in [town].

6.13 This server was meant to be transferred to [law firm], but was provided to Mr H in error.

6.14 On or around 13 March 2015, the funds held in the practitioner's trust account were transferred to the trust account of [law firm], except for $9,775 held on behalf of one client. The practitioner retained that amount as a commission on a real-estate transaction.

6.15 The practitioner's clients were not informed of this transfer in advance, nor given the opportunity to provide alternative instructions.

6.16 The practitioner failed to provide [law firm] with the files for all of the clients for whom he was holding funds on trust upon transferring the funds held for those clients.

6.17 In or around March 2015, the practitioner transferred the balance of the trust account to his own personal account and closed the trust account.

6.18 The practitioner failed to take appropriate steps to record and reconcile the trust account before ceasing practise and closing the trust account.

6.19 In or around March 2015, the practitioner travelled to Australia.

6.20 On 10 April 2015, Neil Mallon, Legal Standards Officer, wrote to the practitioner seeking confirmation of the steps he had taken to secure the files held by Eastland Legal and the firm's trust accounting records.

6.21 On 10 April 2015, the practitioner responded by email, informing Mr Mallon that he was in negotiations with [law firm] to take over his practice, and that he had transferred his active files to that firm.

6.22 The practitioner informed Mr Mallon that his archived files were stored in the strong room at his former offices at 57 Customhouse Street, Gisborne ("former offices").

6.23 The practitioner also noted that he had provided a number of files to Mr Strang for his investigation.

6.24 On 19 August 2015, the Gisborne branch of the NZLS was informed by the landlord of the practitioner's former offices that it had arranged for new tenants for the practitioner's former offices.

6.25 On 19 August 2015, Ms Zaria Weatherhead, Branch Manager of the Gisborne branch of the NZLS informed the practitioner that his former offices had been re-let and asked for information on the arrangements that the practitioner had made to remove his effects from the offices and securely store the archived client files that were stored in the strong room at the practitioner's former offices.

6.26 Between 20 and 24 August 2015, the Gisborne branch of the NZLS took steps to secure the practitioner's archived files at a storage facility, at its own cost (the total cost of which will be particularised at a later date).

6.27 On 20 August 2015, Mr Mallon wrote to the practitioner's attorneys, Ms W and Mr F, appointed under s 44 and schedule 1 of the Act, regarding steps required to fulfil their roles as attorneys in securing the practitioner's files.

6.28 On 24 August 2015, the practitioner wrote to Mr Mallon, asking for the opportunity to make arrangements to secure his former clients' files himself, without the involvement of his attorneys.

6.29 On 9 September 2015, Mr Mallon wrote to the practitioner, advising him that should he fail to take urgent measures to secure and manage his former clients' files, documents and information, and to properly reconcile and wind up the trust account of Eastland Legal, the Standards Committee might be required to intervene into his practice, pursuant to s 163 of the Act.

6.30 Mr Mallon also informed the practitioner of the Standards Committee's preliminary view that it was necessary for the practitioner to authorise his attorneys to take all necessary measures to secure and manage his former clients' files, documents and information, and to properly reconcile and wind up the trust account of Eastland Legal.

6.31 Mr Mallon sought the practitioner's comments on these issues.

6.32 On 11 September 2015, the practitioner responded in by way of a letter. He again sought the opportunity to make his own arrangements for securing his former clients' files.

6.33 On 6 October 2015, the practitioner, by email, wrote to the branch manager of the Gisborne branch of the NZLS, informing her that he had made arrangements for the secure storage of his former clients' files and that he intended to move them the following week.

6.34 On or about 18 January 2016, the practitioner arranged for his former clients' files to be uplifted and stored in the garage at his mother's property.

6.35 Throughout the time that the files of the practitioner's former clients were being stored by the Gisborne branch of the NZLS, the branch manager was required to facilitate access by the practitioner's former clients to their files on a number of occasions.

Therefore the practitioner committed the disciplinary charge referred to above, as follows:

6.36 The practitioner failed to maintain trust account records that clearly disclosed the position of funds held on behalf of other people and in a manner to enable them to be conveniently and properly audited and inspected, in contravention of regs 11 and/or 12 of the Trust Account Regulations;

and/or

6.37 Allowed the trust account to become overdrawn between 23 and 29 January 2015, in contravention of reg 6 of the Trust Account Regulations;

and/or

6.38 Used trust account funds for private transactions or transactions of the practice, specifically on 5 February 2015, in contravention of:

(i) Section 110 of the Act; and/or

(ii) Regulations 7, 8 and/or 12 of the Trust Account Regulations;

and/or

6.39 Failed to take appropriate steps to record and reconcile the trust account when ceasing practise in or around March 2015, in contravention of regs 11 and 15 of the Trust Account Regulations;

and/or

6.40 Failed, upon ceasing practice in or around March 2015, to take adequate steps to secure all client information and records, in contravention of rule 8 of the Rules of Conduct and Client Care;

and/or

6.41 Failed, upon ceasing practice in or around March 2015, to provide reasonable assistance to enable clients to find alternative legal representation.