NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2019] NZLCDT 2

LCDT 006/18

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**NATIONAL STANDARDS COMMITTEE** Applicant
AND	**GRANT DONALD SHAND** Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS

Mr S Hunter

Mr W Smith

Ms S Stuart

Mr I Williams

DATE OF HEARING 15 and 16 November 2018

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 25 January 2019

COUNSEL

Mr M Hodge and Mr J Simpson for the applicant

Mr P Napier and Ms N Pye for the respondent

DECISION OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING CHARGES

[1] The applicant has charged Mr Shand with two charges under the Lawyers and Conveyancers Act 2006 (Act):

(a) Charge One: negligence or incompetence under s 241(c), with unsatisfactory conduct under ss 12(b) and/or 12(c) in the alternative.

(b) Charge Two: misconduct within the meaning of s 7(1)(a)(ii), and with unsatisfactory conduct under ss 12(b) and/or 12(c) in the alternative.

[2] Mr Shand has denied the charges.

[3] The charges and particulars are annexed as Appendix 1.

[4] The charges are summarised in the opening submissions of the applicant as being focussed on Mr Shand's conduct of civil proceedings brought on behalf of his client, Ricky Bligh, in the High Court. Those proceedings concerned an insurance claim against the Earthquake Commission (EQC) and IAG New Zealand Limited (IAG) in which Mr Bligh claimed $936,000 for the rebuild/repair of his home in Christchurch which he said was damaged in the 2010 Christchurch earthquake.

[5] Charge One alleges five issues against Mr Shand. They are:

(a) that he failed to provide Mr Bligh with information in writing before filing the statement of claim;

(b) the he failed to provide Mr Bligh with adequate written information on the implications of having a litigation funder involved and payment of fees;

(c) that he failed to inform Mr Bligh in a timely manner about developments in settlement negotiations;

(d) that he failed to confirm at the outset of the proceedings whether Mr Bligh or the litigation funder was liable to pay court-ordered adverse costs, and to advise him accordingly; and

(e) that he advised Mr Bligh of the low prospects of success only at a late stage in the proceedings.

[6] Charge Two relates to Mr Shand's conduct after terminating his retainer with Mr Bligh. The allegations against him are:

(a) that he failed to provide Mr Bligh's client file to Mr Bligh's new lawyers without undue delay; and

(b) that he breached his duty of confidentiality by making comments to the media about Mr Bligh in relation to the High Court proceedings.

Preliminary matter

[7] The applicant relies on the evidence contained in the affidavit by Matthew Fogarty which includes four affidavits from Mr Bligh who was not available for cross-examination. There are affidavits by two other deponents which are included in the affidavit of Mr Fogarty. Mr Fogarty is an employee of the New Zealand Law Society who has given his affidavit for the purpose of putting relevant documents before the Tribunal.

[8] Mr Hodge for the applicant formally asked for the six affidavits to be admitted. Mr Napier for Mr Shand did not object to the affidavits of Mr Bligh being adduced. He accepted that the Tribunal can accept hearsay evidence. He submitted that Mr Bligh's evidence should be treated with caution because it was hearsay and because he has been found to have given dishonest evidence in the past. Recently he was found by Nation J not to be a credible witness in the High Court proceedings relating to his claim against EQC and IAG.

[9] We exercised our discretion to admit the affidavits under s 239 of the Act for the reason that to do so would assist in establishing a complete view of the charges.

Factual Background

[10] Mr Bligh owned a home in Waddington Road, Christchurch which he claimed was damaged in the Christchurch earthquake of 2010. His claim for earthquake damage was denied by EQC and by his insurer IAG in March 2011.

[11] Mr Bligh then in July 2012 first engaged with Earthquake Services, an advocacy service, which, in due course, referred him to Claims Resolution Services Limited (CRS). CRS is a litigation funder.

[12] There was a meeting in November 2012 with CRS at which Mr Bligh was told that Mr Shand would be the solicitor taking his case. On 28 November 2012 Mr Bligh entered into a service agreement with CRS to act for him in respect of any damage or loss relating to his property. A copy of the agreement is annexed as Appendix 2. Clause 7 of that agreement provided that:

> **Claims Resolution Service Ltd** takes on the prosecution of the claim on a No Win No Pay basis for 10% of the **Final Settlement** plus all Costs including, legal, quantity surveyor, independent reports and assessment costs. Costs are limited to a maximum of $10,000. Any costs above this amount are borne by **Claims Resolution Service Ltd.**

[13] Mr Shand became involved in July 2013 when CRS requested that he act for Mr Bligh in court proceedings. He reviewed and edited a draft statement of claim prepared by CRS employees. Proceedings were filed in the High Court on 23 July 2013 and Mr Bligh was invoiced for the $1,355.95 filing fee on the same date.

[14] Mr Shand then, on 14 August 2013, sent Mr Bligh an email attaching a copy of the statement of claim and case management conference notice. He also attached a letter of engagement and standard information for clients. That document is attached as Appendix 3.

[15] From then until the end of October 2016 Mr Bligh's claim continued through the litigation process. *Inter alia, s*tatements of defence were filed; discovery took place; engineering and costing reports were provided; evidence assembled; judicial

telephone conferences occurred followed by directions; briefs of evidence were filed and reply evidence was supplied.

[16] The applicant has emphasised two significant events. The first is that Mr Bligh's briefs of evidence were served on 12 April 2016 which at that time were six weeks overdue. Second, there was a judicial settlement conference on 12 September 2016 which did not produce a result. Those events are elaborated on in our discussion of the relevant issues.

[17] Following the failure of the judicial settlement conference, Jeremy Morriss, who was then the junior lawyer at Mr Shand's firm responsible for Mr Bligh's claim, carried out a review of the file. He concluded that it would be very hard to prove that the damage to Mr Bligh's property was most likely caused by the earthquake.

[18] Mr Shand was not himself available to conduct the trial. On 30 September 2016, Andrew Ferguson, a senior lawyer in the employ of Mr Shand, took over responsibility for the file. He was to work with Mr Morriss and to lead Mr Bligh's case at trial. Mr Ferguson undertook a fresh review of the proceedings. He concluded that it would be very difficult to prove earthquake damage and that the issue of damage would be a significant risk if the matter was to proceed to trial. He had a lengthy conversation with Mr Bligh on 7 October 2016 and discussed with him the problems which he had considered.

[19] Between that date and 31 October 2016, attempts were made to obtain a negotiated settlement of the claim. These were unsuccessful as Mr Bligh refused to lower his settlement expectations.

[20] During that time doubt arose – at least among the lawyers at Mr Shand's firm – as to whether Mr Bligh or CRS would be liable to pay court imposed costs in favour of EQC and IAG if Mr Bligh's claim failed in court. Mr Ferguson, with Mr Shand's approval, advised Mr Bligh there was a risk he would be liable for an adverse costs award if his claim failed in court.

[21] Mr Bligh's strongly held view throughout was that CRS would be liable for adverse costs. On 25 October 2016 CRS accepted internally that it would be liable for such costs under the "No Win No Pay" provision of the funding agreement. This acceptance does not appear to have been communicated at that time to Mr Bligh but was consistent with his view. In other words, despite the ambiguity in their written agreement, both Mr Bligh and CRS held a clear view that CRS would be required to pay an adverse costs award. It was then that the prospect of cancellation of the funding agreement was raised by CRS.

[22] There was intense activity between 27 October 2016 and 31 October 2016 resulting in an increased settlement offer which Mr Bligh declined, preferring to take the matter to court.

[23] CRS terminated its funding agreement with Mr Bligh on the morning of 31 October 2016 which was the morning of the trial. Mr Bligh was not otherwise able to meet the costs of the trial. Mr Ferguson sought and was granted leave to withdraw from the proceedings. Later that day, Mr Bligh came to court by which time judgment had been entered in favour of EQC and IAG.

[24] Subsequently on 16 May 2017, Mr Bligh was successful in having that judgment set aside and was granted reinstatement of the proceedings by Associate Judge Matthews. That decision was the subject of media comment critical of Mr Shand. Mr Shand responded by sending an email to the journalist in which he stated that Mr Bligh had waived privilege by putting into evidence advice that he was given. Mr Shand included in his response that Mr Bligh had refused to perform his obligations under the funding agreement with CRS and that he had refused to follow the advice that he had been given about the lack of merit of his claim.

[25] Mr Bligh instructed GCA Lawyers immediately following Mr Ferguson's withdrawal from the case. Mr Shand responded to an authority to uplift Mr Bligh's client file by immediately arranging for GCA Lawyers to collect the file which included court documents, witness statements and attachments. It was not until 31 August 2017 that the supply of all documents including email records was completed by Mr Shand.

[26] Mr Bligh's substantive claim which was heard from 19 February 2018 to 6 March 2018 was dismissed on 16 August 2018 by Nation J. The Judge observed that he had difficulty with Mr Bligh's credibility.

Consideration of the charges

Charge One

Issue 1 – Failing to provide Mr Bligh with information in writing prior to filing the statement of claim

[27] It is not disputed that Mr Shand's letter of engagement, information for clients document, and standard terms of engagement which were sent to Mr Bligh on 14 August 2013 address all the matters set out in rr 3.4 and 3.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, (the Rules). The Committee's position is that the information regarding fees was not sufficient. It says further that the information that Mr Shand provided came three weeks after he had commenced proceedings on Mr Bligh's behalf, by which time he had:

(a) provided preliminary advice in November 2012;

(b) edited and finalised Mr Bligh's statement of claim;

(c) filed the statement of claim in the High Court and had invoiced him for the filing fee; and

(d) entered himself as counsel on the record (before formally advising Mr Bligh who would be responsible for his file).

[28] The result of Mr Shand's actions was that he had taken steps to lock Mr Bligh into civil litigation where he was obliged to continue with the proceedings, to settle or face an adverse costs award if he was unsuccessful or discontinued (there being no clarity at that stage about whether he or CRS would be liable to pay such costs). This created a significant change in Mr Bligh's position.

[29] The Committee submitted that Mr Shand's conduct breached:

(a) r 3.4 of the Rules, by not providing written client information before commencing proceedings or being formally engaged to act for Mr Bligh; and

(b) r 3.5 of the Rules, by not providing written client information before undertaking significant work on a retainer. The filing of a statement of claim and commencement of proceedings amounts to "significant work".

[30] Mr Napier, for Mr Shand, submitted that there had been no breach of the Rules. He relied on the judgment of Gendall J in *McGuire v Manawatu Standards Committee*[1]. There Mr McGuire did not provide a letter of engagement to his client until a meeting occurred three weeks after being retained. Gendall J queried at para [62] of his judgment that "what seems at first glance to be the mandatory nature of r 3.4(a) would appear to be significantly softened by what is only a "recommendation" explanation for advance notification prior to "commencing work"." Mr Napier also referred to *ZN v CH (*LCRO 168.2014). The LCRO expressed the view that it was likely that the practitioner had failed to fulfil his obligation to provide a letter of engagement and had thus committed a breach of r 3.4. It was not considered appropriate that a disciplinary sanction should follow.

[31] Gendall J did not finally determine whether "in advance" as expressed in r 3.4 of the Rules was mandatory. He dealt with the matter before him as being a purely technical breach and imposed no sanction.

[32] Mr Napier's submission is that this issue under Charge One should be dismissed because:

(a) Mr Bligh already knew what he would be charged by virtue of his agreement with CRS;

[1] *McGuire v Manawatu Standards Committee* [2016] NZHC 1052 [19 May 2016].

(b) Mr Bligh had discussed the statement of claim at an earlier date with an employee of CRS and with Jeremy Morriss; and

(c) no mischief had occurred as a result of the later delivery of the letter of engagement.

[33] We find that there has been a breach of r 3.5 of the Rules in that the filing of the statement of claim was "significant work". It signalled the commencement of litigation that could be described as "high end" in that it related to claims about earthquake damage and sought repair/rebuild costs of $936,000.

[34] We find that the breach does not invite a disciplinary sanction. Our reasons for that finding are that Mr Bligh had received oral advice as to fees, his contract with CRS was in place, he had been through the statement of claim and had paid the filing fee and there was a delay of only three weeks. One of the important functions of the letter of engagement is that clients know the work that will be carried out and the basis on which they will be charged; both these matters had been addressed with Mr Bligh and there is no suggestion he did not understand them.

Issue 2 – Failing to provide Mr Bligh with adequate written information on the implications of having a litigation funder involved and payment of fees

[35] It is the Committee's position that the implications of the funding agreement required Mr Shand to explain to Mr Bligh a number or specific matters arising out of the fact that Mr Bligh's claim was funded by a litigation funder on a no win no fee basis and which his letter of engagement did not address. Mr Hodge's submission was that key information was lacking including:

(a) advice regarding the basis upon which the fees of Mr Shand's firm would be charged including:

i. whether fees would be limited in any way;

ii. whether it was conditional on success or not; and

iii. whether there were circumstances in which Mr Bligh may become liable for Mr Shand's fees such as CRS withdrawing from the litigation.

(b) the steps to be taken in the event of CRS withdrawing its funding;

(c) how costs would be paid, including Court costs, witness and experts' fees, security for costs and any adverse cost orders made by the Court;

(d) the circumstances, if any, in which Mr Bligh would be obliged to accept a settlement offer made by EQC and/or IAG or discontinue his claim; and

(e) the circumstances in which Mr Shand and his firm could withdraw as counsel for Mr Bligh.

[36] Mr Hodge emphasised that the involvement of a litigation funder, and the terms of the arrangement between Mr Bligh and the funder, unavoidably introduced particular complexity to the standard solicitor-client relationship which should have been addressed by Mr Shand as part of compliance with r 3.4. This was particularly so where it was CRS who had engaged Mr Shand to act and commence litigation, not Mr Bligh. It was not enough to simply rely on the funding agreement which did not address any of the implications mentioned above in para [35] and which were specific to the client service which Mr Shand was to provide. The terms of the funding agreement were general in nature only.

[37] Mr Hodge further submitted that the specifics which he raised would not necessarily be clear to a lay client and thus would be sufficiently unclear to comply with r 1.6 which requires information to be provided to a lay client in a manner that is clear and not misleading.

[38] Mr Hodge further submitted that the letter of engagement and the funding agreement, individually or when read together, did not address explicitly:

(a) who would pay the legal fees if the claim was unsuccessful;

(b) the consequences that would follow from a withdrawal of litigation funding;

(c) who would be required to pay Mr Shand's fees if CRS withdrew its funding; and

(d) how Mr Shand's fees would be calculated, whether his fees were limited in any way or whether payment of the fees was conditional.

[39] The submission was that the importance of providing the information was highlighted in this case where CRS cancelled the funding agreement, leaving Mr Bligh with no information about the cost of retaining Mr Shand to continue to act had he wished to do so.

[40] Mr Napier submitted on behalf of Mr Shand that the Committee's assertion that the letter of engagement should address the important aspects arising out of the fact that the claim was funded by a litigation funder and on a no win no fee basis was misconceived. His primary submission was that the issues raised by the Committee were not aspects of client service that Mr Shand was required under r 3.4 to address, but were issues that arose from the contractual arrangement that Mr Bligh had entered into with CRS. Mr Bligh had already entered into the funding agreement with CRS at the time of Mr Shand's retainer. That was in November 2012. Mr Shand was not retained by Mr Bligh until July 2013.

[41] Mr Napier further submitted that Mr Shand was not retained, or asked, to give advice on the contract that Mr Bligh had with CRS.

[42] Mr Napier strongly relied on the decision of Gendall J. in *McGuire v Manawatu Standards Committee* [2016] NZHC 1052 where he said:

> [64] Clearly the policy behind the requirements for letters of engagement specified in r 3.4 is to fully inform clients of important matters including fee levels, and fee payment arrangements, indemnity insurance and fidelity fund arrangements, and complaints mechanisms.

[43] He also referred to *ZN v CH* (LCRO 168/2014):

> [15] The objective that compliance with Rule 3.4 sets out to achieve is compellingly clear. Lawyers are required to inform their clients, "in advance", how much they will be charging for the services.

[44] Mr Napier's concluding submission was that this particular of Charge One should be dismissed.

Discussion

[45] This particular of Charge One directs attention to the time of commencement of the professional association between Mr Shand and Mr Bligh which was formally recorded by Mr Shand's letter of engagement dated 14 August 2013. There were two other distinct agreements concluded on earlier dates. The first was the funding agreement between Mr Bligh and CRS dated 28 November 2012. The second was the agreement between Mr Shand and CRS whereby the latter undertook to pay legal fees for Mr Bligh. The three agreements interrelate because the arrangements recorded a potential impact on the retainer.

[46] The primary factual issue between Mr Bligh and the defendants to his litigation was whether the loss asserted was caused by the Christchurch earthquake or was it a pre-existing problem. It was the conflicting evidential contest about this issue – in particular the emergence of new information (discussed below) – that led CRS to terminate the funding agreement with Mr Bligh on the eve of trial.

[47] This issue had been clarified early in the dispute prior to Mr Shand being retained. Litigation was issued after direct discussions between Mr Bligh and the defendants had proved unsuccessful. Mr Bligh was aware that the defendants relied on evidence from independent experts which contradicted his observations and experience, corroborated by a family member. He had also taken independent advice but that advice was challenged as not being "expert" in nature.

[48] This contest in the evidence was known to CRS from the outset of its funding agreement. As preparation for trial continued, there was no indication from CRS that it was wavering from its funding commitment to Mr Bligh even though Mr Bligh's chances of success appear to have deteriorated in the views of both his legal advisers and the funder.

[49] Then, immediately before trial new evidence came to light which served to challenge Mr Bligh's credibility. At the same time, the corroboration relied on from a family member fell away. An expert retained by Mr Bligh also expressed doubt about causation of damage. It followed that the chances of losing the litigation became more extreme with the result that the risk of an adverse costs award became prominent.

[50] The catalyst to Mr Bligh's dilemma was that CRS urged him to accept a settlement offer which he considered to be unfair because the sum offered would not in his view meet the costs of remedying his property. It was then that the question arose as to who should be responsible for paying an adverse costs award made against Mr Bligh should he lose. Mr Bligh was adamant that he would not be responsible as "No Win No Pay" in the funding agreement meant what it said. That was paramount in his mind.

[51] A reading of the funding agreement shows that it was deficient in that it did not expressly deal with this question of adverse costs award. The question faded because Mr Bligh and CRS (at least internally) both considered CRS would be liable.

[52] What occurred after that was that CRS became concerned about its exposure to such an award reasoning that it would not be liable if it terminated the funding agreement. This reasoning was considered in the circumstances of Mr Bligh's refusal to accept the settlement offer put to him and when the commencement of the trial was imminent. CRS terminated the agreement on the day of trial without prior discussion and without Mr Shand and his employed lawyers having apprised Mr Bligh of the possibility or risk of termination of the funding agreement.

[53] We find that it is important that the right of CRS to terminate was squarely described on the face of what was a summary form of funding agreement.

[54] Mr Bligh was not available for cross-examination because of ill-health. We did receive a clear picture of his acuity. He was relatively aged and in ill-health at the time of retaining Mr Shand. He had by that time signed the funding agreement with CRS which we consider plainly indicated to a layperson that CRS had a discretion to terminate. We had no evidence to conclude that Mr Bligh did not understand the

import of the agreement despite the state of his physical health. That he had sufficient acuity at the time he agreed was borne-out by the impression he made on Messrs Morriss and Ferguson at the time of preparations for trial and later. They were firm that Mr Bligh understood the advice given then, when, for example, he robustly rejected advice about settlement of the proceedings.

[55] The question, then, is how reasonable was it at the early stage of litigation to anticipate the possibility of termination?

[56] We conclude that the possibility was quite remote. We find that the possibility of termination was never expressly raised by CRS before it announced its decision. It was not discussed with Mr Shand. The evidence we heard from Mr Shand and for CRS was that litigation funders had not before then used the power to terminate in the hundreds or thousands of such agreements arising out of the Christchurch earthquakes.

[57] The Committee's focus on this particular of Charge One has been on the date of the engagement. We are required then to focus on the contents of the retainer letter. The Committee's concern is that the missing advice it contended for should have been written. We find that the approach advocated is too constrained. If there was an identified risk that required advice to the client, then a duty arose which could be addressed orally or in writing, the latter being the preferable course.

[58] We observe that Mr Shand had no prior experience of funders terminating. There was no apparent ground that Mr Bligh would refuse to accept advice from CRS to whom he had bound himself to a consultation arrangement and which he understood. At an early stage, his case seemed fairly arguable, there being a shared confidence that his personal observations about damage would be independently corroborated.

[59] That confidence changed on the eve of trial with photographic evidence emerging supporting pre-existence of damage. There was other evidence challenging Mr Bligh's credibility (including a Court finding against him). His corroborative family support failed to materialise together with doubt expressed by his expert. All of these

concerns had to be considered in the face of the opposing evidence of the defence expert witnesses. Even at that stage CRS had not given Mr Bligh or his legal advisers any indication that it would terminate the funding agreement.

[60] We find that Mr Shand could not reasonably have anticipated those events happening at the time he completed the letter of engagement with Mr Bligh approximately three years earlier in August 2013. It was not reasonable that he put in place an alternative funding arrangement, whereby Mr Bligh would seamlessly be able to continue the litigation with representation on terms that he had made other arrangements for fees out of some personal resources. This led to the unfortunate situation where Mr Bligh's lawyer had to apply to the Court for leave to be removed from the role of litigation lawyer for Mr Bligh.

[61] We address some of the arguments formally put for Mr Shand. It was submitted that his duty to consider, identify issues and advise was necessarily constrained because:

(a) The funding arrangement between Mr Bligh and CRS had been concluded months prior to Mr Bligh being introduced to Mr Shand. The statement of claim had been drawn and reviewed by Mr Bligh in advance of being received by Mr Shand and its subsequent filing.

(b) Mr Bligh did not expressly seek advice on the funding arrangement.

[62] As to the first point, Mr Shand had a duty to consider and advise if there was any evident risk arising from the CRS funding arrangement. For example, given the right to terminate, what was the reasonable prospect that this might be exercised in the circumstances in the context which eventuated on the eve of trial? We answer that as being a very remote prospect. The second issue is also not a sufficient response. Had the issue been identified, then the risk should have been evaluated and advised upon.

[63] The information/evidence which led to the termination decision by CRS came to light at the last moment when Mr Bligh was fully and adequately advised by

Mr Ferguson, a senior experienced lawyer. Though he was employed by Mr Shand, there was no assertion that Mr Shand failed in any supervisory role. For completeness, we find there was no evidence of any failure on the part of either of the two employed lawyers who took responsibility for the litigation in the last months prior to the date of trial.

[64] We accept as a general matter that the involvement of a litigation funder may require a lawyer to advise his or her client on risks arising from the funding agreement. This is part of the ordinary duty to advise on matters incidental to the retainer. It may also be preferable for lawyers to spell out the basis on which fees will be charged and will need to be paid by the client if third party funding is withdrawn.

[65] In this particular case, Mr Bligh had – prior to engaging Mr Shand – entered into a funding agreement which contained a right of termination. The agreement provided for CRS to meet the costs of the litigation on a "No Win No Fee" basis; it did not expressly address the payment of an adverse costs award but CRS and Mr Bligh were both of the same understanding that CRS would pay.

[66] CRS terminated the funding agreement when Mr Bligh insisted on proceeding to trial in the face of evidence that his claim was very likely to fail (as indeed it later did). We are not ultimately satisfied that Mr Shand was in breach of his obligations as a lawyer for failing to advise Mr Bligh at the outset on what fees he would be charged and what his liabilities might be if his agreement with CRS came to an end.

Issue 3 – Failing to inform Mr Bligh in a timely manner about developments in settlement negotiations

[67] This aspect of Charge One is a criticism of the conduct of Mr Ferguson shortly prior to the date of trial. The allegation is that Mr Bligh was not provided important information about settlement negotiations on 18 and 20 October 2016. The immediate answer, against a disciplinary proposition against Mr Shand, is that Mr Ferguson was a responsible and experienced lawyer who gave evidence before us. We were impressed by his version of events. We are satisfied that there was a sufficient supervisory programme in place between Mr Ferguson and Mr Shand and that it was

exercised. Any ethical responsibility would reside with Mr Ferguson. The charge does not assert a failure of Mr Shand's responsibility as such.

[68] Notwithstanding, we find that sufficiently significant delay was not established when communicating to Mr Bligh the defence position as received.

[69] The first particular under this issue relates to a conversation on 18 October 2016 between the lawyer for EQC and Mr Ferguson regarding progress with the continuing negotiations. The experts had been unable to agree on quantum and the two lawyers discussed, in Mr Ferguson's words, "a negotiated resolution that was based less on a specific scope/quantum and more on a negotiated resolution that suited the parties." The Committee says this discussion was not relayed to Mr Bligh.

[70] The answer is that on 21 October 2016 Mr Morriss spoke by telephone to Mr Bligh about the strength of his evidence as to proving earthquake damage and the likelihood that EQC's expert would be preferred. Mr Morriss reported his conversation to both Mr Ferguson and Mr Shand.[2] Mr Bligh knew that any settlement was likely to be based on a dollar figure rather than an agreed scope of work.

[71] The second particular under this issue is that on 20 October 2016 Mr Ferguson attended a pre-trial conference at which time the defendants made a settlement offer. It was not reported directly to Mr Bligh but communicated to him via Mr Dwyer of CRS. Mr Ferguson said that his reason for engaging Mr Dwyer to do so was that he considered that Mr Bligh was refusing to listen to him and that a fresh approach was needed. Mr Ferguson asked Mr Dwyer on 20 October 2016 to speak to Mr Bligh, "advise him of the offer, the recommendation and get his instructions"[3].

[72] Mr Dwyer was an experienced commercial lawyer before joining CRS. His advice to Mr Bligh was communicated by email on 28 October 2016. In it he confirmed Mr Ferguson's advice to settle as being good advice. He warned Mr Bligh of the right that CRS had to terminate the funding agreement and of the consequences that would

[2] Affidavit of J Morriss at para [20].
[3] Affidavit of Andrew Ferguson at para [34].

likely follow termination and in the event that Mr Bligh did not succeed in Court with his claim[4].

[73] We consider that the advice given to Mr Bligh was sufficient and clear. It was given during an intense period of pre-trial negotiations where three separate offers of settlement had been made by the defendants all of which had been robustly rejected by Mr Bligh against advice.

[74] In context, we see no reason for advice to be provided in writing. Some was given by email over that intense period of exchanges prior to the date set for trial. We are not satisfied that any material aspect which was not recorded was of a type/nature that necessarily required recording. The clear picture we obtained from Mr Morriss and Mr Ferguson was that Mr Bligh, despite his age and failing health, was sufficiently astute to have a close appreciation and understanding of the advice as it was given. The factual issues central to their discussion were straightforward, easily understood by a layperson. We find that Mr Bligh did not misunderstand his position nor the view being pressed against his personal assessment of trial risk.

[75] Having recorded that we were impressed by Mr Ferguson's version of events, we also say that we were likewise impressed with Mr Morriss' account of the matters for which he was responsible. Mr Hodge has responsibly acknowledged that this particular fails if we accept what Mr Morriss and Mr Ferguson have had to say. We formally record that we do so.

Issue 4 – Failing to confirm at the outset of the proceedings whether Mr Bligh or CRS was liable to pay an adverse costs order and to advise Mr Bligh accordingly

[76] This issue is not specifically addressed in the litigation funding agreement with CRS. That agreement refers generally to the agreement being "No Win No Pay" and CRS covering "all Costs including, legal, quantity surveyor, independent reports and assessment costs" over $10,000.

[4] Affidavit of Andrew Ferguson at para [55].

[77] The matter was not raised until October 2016 when Mr Ferguson, some nine days prior to the date set for the trial, queried who was liable to pay court-ordered costs. In the event CRS accepted that it was liable to pay those costs.

[78] The issue of Mr Bligh's liability for costs arose only when CRS decided to terminate its funding agreement with Mr Bligh.

[79] The question then is whether Mr Shand should have addressed that possible liability with Mr Bligh at the commencement of his retainer. The Committee says that he should have done so for the reason that the information was necessary to properly advise Mr Bligh on the risks of proceeding to trial, the merits of exploring settlement, and the potential for the litigation funder to withdraw. Failure to do so breached the obligation in r 13 to act in the client's best interests.

[80] Mr Napier for Mr Shand submitted that it was not necessary to do so when considered against his and the funder's experience of not having previously had to face the question of termination of the agreement. Mr Bligh's risk of exposure to liability for court-ordered costs only became a reality when he refused to accept advice to accept the offer of settlement and on the advice of Mr Ferguson set out in his email of 27 October 2016 to which Mr Bligh responded by insisting that he had no such exposure.[5]

[81] We have earlier found in para [62] that the prospect of termination of the agreement was remote. It therefore follows that the risk of Mr Bligh becoming liable for court-ordered costs was likewise remote. When the issue did later arise, we find that Mr Bligh was fully and adequately advised of his risk which advice he robustly rejected.

Issue 5 – Advising of the low prospects of success at a late stage

[82] The primary issue of Mr Bligh's claim was whether the damage to his property resulted from the Christchurch earthquake. The position taken by EQC and IAG was

[5] BoD at pages 823 and 825.

that the damage to his property existed prior to the earthquakes. The Committee asserts that it was not until 12 September 2016 that Mr Bligh was advised that he would have difficulties establishing his claim and that he was not advised in writing of those difficulties until 27 October 2016.

[83] The submission is that failing to give Mr Bligh frank advice about the weaknesses in his claim at an early stage amounts to a failure to act in his best interests under r 13, a failure to promptly disclose relevant information under r 7, and a failure to act in a timely manner under r 3.

[84] The position in defence of that assertion is that Mr Bligh was continually and regularly made aware of the difficulties with his claim. Those difficulties evolved over time as pieces of evidence came into play.

[85] Corbin Child was the first lawyer to deal with Mr Bligh's claim. He was at the time employed by Earthquake Services and became involved in 2012. It was through him that the claim was referred onto CRS. Mr Child gave evidence that he was in regular contact with Mr Bligh and had made him aware that he had to prove the damage and what was needed to fix it.

[86] Mr Child subsequently became employed by Mr Shand from early 2014 until late 2015 during which time he had the primary day-to-day handling of the claim. His evidence was that he spoke to Mr Bligh regularly, probably at least once a week. Mr Bligh was very involved, aware of the issues and kept himself up to date with the progression of the case and took it on himself to know what the experts were saying. Mr Child went on to say that late in 2015 he had a discussion with Mr Bligh about the risks of his litigation following the allegation by EQC and IAG that most of the damage to his house was not related to the earthquake. He said that Mr Bligh was "gutted" by the prospect that the damage was pre-earthquake and planned to strengthen his idea that the damage was caused by the earthquake.

[87] Mr Morriss' evidence was that he had intermittent involvement with the file from February 2014 until early 2016 when he became responsible for the file. He said that there were many telephone conversations with Mr Bligh who maintained an intense

interest in the proceedings, receiving reports from experts and discussing them with him. Mr Bligh participated in the preparation of briefs and regularly asked whether or not he had a good case. Mr Morriss said that his advice was that he, Mr Bligh, would have to prove his case and that it would not be easy.

[88] Mr Morriss went on to say that Mr Bligh attended a judicial settlement conference with him on 12 September 2016 which was unsuccessful. He said that, during the conference and following it, he strongly reinforced to Mr Bligh that he had a "large risk that he would be unsuccessful at trial and that the potential consequences, that if that were the case, he would end up in a much worse position than he was currently being offered"[6].

[89] Mr Ferguson said in his evidence that he had continued to advise Mr Bligh of the risks in a discussion he and Mr Morriss had with him on 7 October 2016 and following.

[90] We find that known risk escalated as the case developed when:

(a) the inability arose to get an engineer to support the claim;

(b) Mr Bligh's son refused to give evidence in support; and

(c) information came to hand that would raise doubt about Mr Bligh's credibility.[7]

[91] We have found that both Mr Morriss and Mr Ferguson have been reliable in their accounts of the events. We also find that Mr Child has been reliable and credible in his account of the advice given to Mr Bligh.

[92] We are satisfied that Mr Bligh was made aware of the risks of his claim not succeeding at an early stage and that he continued to be advised of those risks throughout the progress of the proceedings.

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[6] Transcript, page 35, lines 12-14.
[7] Affidavit of Andrew Ferguson at paras [19] and [61].

[93] We have already found that there was an adequate supervisory role in place between Mr Shand and his experienced employed lawyers such that there has been no breach of his supervisory role nor has one been alleged.

[94] We accordingly find that this issue has not been proved.

Charge Two

Issue 1 – Failing to provide Mr Bligh's client file to GCA Lawyers

[95] Mr Bligh engaged GCA Lawyers as his new lawyers on 1 November 2016. A request was made to Mr Shand's firm on that date to uplift his documents. The allegation is that it was not until 6 July 2017 that the documents were supplied and that failure to do so created "undue delay" and was thus in breach of r 4.4.1.

[96] Mr Shand's response to that allegation is that all court documents were delivered on 1 November 2016. He acknowledges the delay until 6 July 2017 in completing delivery of all documents. His explanation is that the outstanding documents were all emails sent and received by lawyers at the firm on Mr Bligh's file. He said that matter required his firm to identify all emails for each current and former staff member on the Google gmail cloud service. It was then necessary to isolate those emails and print hard copies. All of this took considerable time and accounted for the delay.

[97] Mr Shand's position was that his failure did not prejudice Mr Bligh. He said that all essential documents were provided to his new lawyers promptly and were sufficient to allow Mr Bligh's claim to proceed. There was the additional fact that Mr Bligh himself held copies of all documents and of the relevant emails.

[98] We find that this issue has been proved to the extent that a delay of eight months between request for documents and delivery of them was undue. Mr Shand was required to address the technological difficulties he faced with more self-application than he has displayed.

[99] We have taken into account the matters that he has raised in explanation. We also find that there is no evidence that the documents on Mr Bligh's file which were not provided had a direct bearing on his rights and remedies relating to his claim against EQC and IAG.

[100] We therefore, for those reasons, find that Mr Shand's conduct was unsatisfactory in respect of this issue.

Issue 2 – Comments made to the media without permission

[101] The Committee alleges a breach of r 8 and 8.1 which require that a lawyer has a duty to hold all information concerning a client, a retainer, and a client's affairs in the course of that relationship in strict confidence.

[102] This allegation arises because of comments that Mr Shand made to the media in response to published remarks made by Mr Bligh about the conduct of his litigation by Mr Shand. The comments were critical of Mr Shand and were untrue. Mr Shand was approached by Fairfax. He responded with comments, inter alia, about Mr Bligh, failing to listen or accept advice, there being no credible evidence to support his claim and that Mr Bligh would not co-operate about settlement.

[103] Mr Shand admits making the comments to Fairfax which it published. He says that he was entitled to do so because Mr Bligh had waived privilege by referring to his dealings with Mr Shand in his affidavits filed in the High Court.

[104] The Committee's response to that assertion is that the doctrine of legal professional privilege is distinct from duties of confidence such as r 8 and 8.1 which have an independent basis. Those rules do not permit disclosure of confidential information obtained during a client relationship, to the public at large.

[105] We find that the rules are clear and accept the Committee's submission in that regard. It is not necessary to further address the issue of waiver of privilege under s 65(2) of the Evidence Act 2006 for the reason that we have found that Mr Shand's response was in breach of the rules relating to client confidentiality.

[106] We have sympathy for the position that Mr Shand found himself in. He had been maligned by the comments of Mr Bligh. It was understandable that he would want to respond. We find that he held the genuine view that he was entitled to do so, but that he did not consider the rules which make it a different situation.

[107] For those reasons, we find the issue on this charge proved to the level of unsatisfactory conduct.

Summary

[108] We have found that all issues under Charge One fail with the exception of Issue 1 which we have found to be unsatisfactory conduct but which does not invite a disciplinary response.

[109] We have found Charge Two proved to the level of unsatisfactory conduct.

[110] We invite the applicant to make submissions regarding penalty within 10 working days of receiving this decision. The respondent is to respond within seven working days thereafter.

[111] We will consider penalty on the papers, unless either or both of counsel require a hearing.

DATED at AUCKLAND this 25th day of January 2019

BJ Kendall
Chairperson

Appendix 1

Charges

The National Standard Committee (**Committee**) charges Grant Donald Shand (**Practitioner**) with:

Charge 1: Negligence or incompetence in his professional capacity of such a degree as to reflect on his fitness to practise or as to bring his profession into disrepute: s 241(c) of the Lawyers and Conveyancers Act 2006 (**Act**)

Particulars

Introduction

1 At all material times, the Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand and held a current practising certificate.

2 In 2013, the Practitioner was in sole practice. At least one staff solicitor joined the Practitioner's practice, Grant Shand Barristers & Solicitors (**GSB&S**) in April 2014. At all material times the Practitioner was the sole Principal of GSB&S.

Background

3 In late 2012, Derek Ricky Bligh approached Claims Resolution Services Limited (**CRS**) to assist with his insurance claim in respect of his home at 27-29 Waddington Road (**Property**).

4 On 28 November 2012, Mr Bligh entered into a service agreement with CRS to provide insurance advocacy and litigation funding (**Agreement**) (if required) in respect of Mr Bligh's claims with the Earthquake Commission (**EQC**) and his private insurer, IAG New Zealand Limited (**IAG**) (together the Defendants).

5 The Agreement provided that:

(a) CRS would take on the prosecution of the claim on a 'no win no pay' basis for 10 per cent of the final settlement plus all costs, including, "legal, quantity surveyor, independent reports and assessment costs";

(b) Costs (as described in paragraph 5(a) above) were limited to a maximum of $10,000. Any costs above that amount were to be borne by CRS; and

(c) If any offer had already been made by the insurer, costs and fees would not exceed the difference gained.

6 Having failed to achieve a settlement with either EQC or IAG, CRS advised Mr Bligh that his best option was to file civil proceedings.

7 In July 2013, CRS requested that the Practitioner act for Mr Bligh.

8 Shortly after that, CRS instructed the Practitioner to file proceedings. The Practitioner drafted a Statement of Claim and a Notice of Proceeding. Mr Bligh had no input into the Statement of Claim; rather the Practitioner used information gained, and developed, by CRS to prepare these documents.

9 On 23 July 2013, the Practitioner filed proceedings against the EQC and IAG in the High Court at Christchurch. Mr Bligh was shown a copy of the Statement of Claim before it was filed.

Terms of engagement

10 On 14 August 2013, the Practitioner sent Mr Bligh a letter of engagement. The letter recorded that:

(a) The Practitioner would run the claim through to resolution;

(b) The Practitioner's fees would be paid in accordance with Mr Bligh's Agreement with CRS once he was successful;

(c) Court proceedings had been filed on 23 July 2013;

(d) The Court proceedings were served on the EQC and IAG on 12 August 2013; and

(e) A case management conference had been set down for 29 October 2013.

11 The letter attached the Statement of Claim and standard form terms of engagement. The letter of engagement did not address any of the important aspects arising out of the fact that the claim was funded by a litigation funder, and on a no win no fee basis, including:

(a) The circumstances, if any, in which Mr Bligh would be obliged to accept a settlement offer made by EQC and/or IAG or discontinue his claim;

(b) The basis on which the Practitioner's fees would be charged, including whether:

(i) the Practitioner's fee was limited in any way;

(ii) whether it was conditional on success or not;

(iii) or whether there were circumstances in which Mr Bligh may become liable for the Practitioner's fees (for example, in the event of withdrawal by CRS).

(c) How costs would be paid, including Court costs, witness and experts fees, security for costs and any adverse cost orders made by the Court;

(d) The steps to be taken in the event CRS withdrew its funding; and

(e) The basis on which GSB&S could withdraw as counsel for Mr Bligh.

Proceedings

12 In 2014, Mr Morriss, a solicitor at GSB&S took over the day to day work on the file.

13 An amended Statement of Claim was filed in December 2014. The amended Statement of Claim was for repair only and the amount of money being claimed for repair was significantly reduced from what was set out for repair in the original Statement of Claim.

14 On or about 30 September 2016, Andrew Ferguson, a solicitor at GSB&S, took over the day to day work on the file. The claim was set down for a trial to begin on 31 October 2016 in the High Court in Christchurch.

15 Mr Ferguson reviewed the claim in early October 2016. Mr Ferguson, Mr Morriss and the Practitioner all considered that proving earthquake damage to the Property was going to be very difficult and that the issue of damage posed a significant risk for Mr Bligh if he were to proceed to trial.

16 Mr Ferguson re-commenced settlement negotiations with EQC and IAG for settlement of Mr Bligh's insurance claim for $150,000 or less.

17 Between 14 and 18 October 2016, reply briefs of evidence were filed and served on behalf of Mr Bligh. On 17 October 2016, Mr Upton of Chapman Tripp raised issues regarding Mr Bligh's evidence, including that conflicting briefs of evidence had been filed and that it was not clear which repair strategy Mr Bligh claimed was required to remediate the alleged earthquake damage to his Property. Mr Upton sought a response as to when GSB&S would file a further amended Statement of Claim to make the position and quantum clear.

18 GSB&S advised Mr Bligh and CRS to settle the proceeding.

19 Between 22 and 28 October 2016, Mr Ferguson and the Practitioner communicated with CRS and Mr Bligh disputing the question of who would be liable for costs if the claim was unsuccessful.

20 On the first morning of trial, 31 October 2016, the parties and Clark J attended the Property. After the site visit, Mr Bligh remained at the Property to let Mr Kearney, an expert engaged by GSB&S, into the Property to view it again.

21 At approximately 9:45am, on 31 October 2016, CRS advised Mr Ferguson that CRS had cancelled its contract with Mr Bligh. Mr Ferguson sought, and was granted, leave to withdraw. As Mr Bligh was not present in Court, Clark J entered judgment for the EQC and IAG under r 10.8 of the High Court Rules 2016.

22 When Mr Bligh arrived at the High Court later on 31 October 2016, he was advised that judgment had been granted in favour of the EQC and IAG.

23 The Practitioner's conduct constituted negligence or incompetence under s 241(c) in one or more of the following respects (separately or cumulatively):

Timing of written client information

24 The Practitioner sent Mr Bligh a letter of engagement and standard form terms of engagement on 14 August 2013 after he had filed proceedings on Mr Bligh's behalf on 23 July 2013.

Adequacy of written client information

25 As set out in paragraph 11 above, the letter of engagement sent to Mr Bligh did not address either adequately or at all important aspects of the retainer arising out of the funding agreement with CRS.

26 This meant that the conduct of the Practitioner, and of those working for the Practitioner, in the lead up to trial, and on the first day of trial, occurred without Mr Bligh having clarity about, and having agreed to, matters relating to:

(a) liability for costs;

(b) the amount of settlement (if any) which Mr Bligh was required to accept; and

(c) termination of the retainer based on decisions by CRS.

Failing to provide information about settlement negotiations

27 Mr Bligh was the Practitioner's client. The Practitioner had a duty to act in Mr Bligh's best interests and in accordance with his instructions. Contrary to these duties, the Practitioner did not ensure that important information about settlement negotiations, or information relevant to settlement, was provided to Mr Bligh. In particular:

(a) On 18 October 2016, Mr Ferguson phoned the EQC's lawyer, Mr Knight, and reported the detail of that conversation to Mr Dwyer. Mr Ferguson noted that he and Mr Knight had talked about the parties' experts not being able to agree on a quantum, so the goal was to get a negotiated resolution that was based less on a specific scope/quantum and more on a negotiated resolution that suited the parties. Mr Ferguson's conversations with Mr Knight and the conversation with Mr Dwyer were not conveyed to Mr Bligh until 27 October 2016.

(b) On 20 October 2016, Mr Ferguson attended a pre-trial conference on behalf of Mr Bligh. EQC and IAG made a joint settlement offer. Mr Ferguson reported on the offer to Mr Dwyer but not to Mr Bligh until 27 October 2016. Mr Ferguson stated that Mr Bligh had probably heard enough from them about this and asked Mr Dwyer to speak to Mr Bligh, advise him of the offer, their recommendation and to get his instructions.

Liability for costs

28 Less than two weeks out from trial, the parties were not in agreement about who would pay any Court awarded costs if Mr Bligh was not successful at trial, and Mr Bligh had not been properly advised by the Practitioner of the risk that he may have to pay costs. In particular:

(a) On 21 October 2016, Mr Ferguson emailed Mr Dwyer and Mr Staples and asked for confirmation on who would pay any Court awarded costs if Mr Bligh was ordered to pay them.

(b) Mr Staples replied at approximately 6:19pm that same day saying; "I'm not paying costs if you are running the claim. You have let me and the client down. Grant can pay".

(c) Mr Ferguson forwarded that email to the Practitioner at 10:22am on Sunday 23 October 2016. The Practitioner responded to Mr Ferguson at 10:27am on 23 October 2016 stating that Mr Bligh was primarily liable for costs "if he loses". This was forwarded to Mr Staples and Mr Dwyer, who stated that Mr Bligh would have to bear the costs if the claim against the EQC and IAG was unsuccessful.

(d) Mr Ferguson responded to Mr Staples' email, noting he was concerned that Mr Bligh know what his cost exposure was if EQC and/or IAG were successful. He also forwarded Mr Staples' email to the Practitioner with a note that stated; "Bryan now says Ricky is up for costs".

(e) On 27 October 2016, Mr Bligh and Mr Ferguson had a discussion about proving damage and about costs. Mr Bligh responded that costs liability was on CRS.

(f) Later on 27 October 2016, having obtained the Practitioner's approval, Mr Ferguson sent an email about costs to Mr Bligh. This was the first written correspondence to Mr Bligh setting out, in any detail, the cost implications if he was unsuccessful in his claim against the EQC and IAG.

(g) On 28 October 2016, the Practitioner asked Mr Ferguson whether Mr Bligh understood his cost exposure. Mr Ferguson emailed Mr Bligh and asked him to confirm that he had read the email about cost exposure if he was not successful. Mr Ferguson noted that it would be difficult to prove earthquake damage and that, if he could not, Mr Bligh would have to pay about $240,000 in costs to the Defendants.

(h) That same day, Mr Bligh responded to that email and stated "I Believe my contract with EQS is no win, no pay! Therefore no exposure! [sic]".

Advising of the low prospects of success at a late stage

(a) The Practitioner's conduct of the file (including his conduct in permitting Mr Morriss and Mr Ferguson to act as they did) meant that the Practitioner (and those working for him) had reviewed the file shortly before trial and considered that prospects of success were low, despite having had the conduct of the file for a number of years, and counsel for the Defendants having identified significant flaws with the claim.

29 The above conduct was negligent or incompetent in the practitioner's professional capacity and of such a degree as to reflect on his fitness or practice or as to bring the profession into disrepute, with reference to the Act and practice rules, including the following rules:

(a) Rule 1.6 –information provided must be clear and not misleading;

(b) Rule 3.4 – a lawyer must provide in writing to a client information on the principal aspects of client service;

(c) Rule 3.5 – a lawyer must provide particular information to a client, in writing, prior to undertaking significant work under a retainer;

(d) Rule 7 – a lawyer must promptly disclose to a client all information that the lawyer acquires that is relevant;

(e) Rule 7.1 – a lawyer must take reasonable steps to ensure that a client understands the nature of the retainer and must keep the client informed about progress on the retainer;

(f) Rule 13 – subject to a lawyer's overriding duty to the Court, a lawyer has a duty to act in the best interests of his or her client; and

(g) Rule 13.3 – subject to the lawyer's overriding duty to the Court, a lawyer must obtain and follow a client's instructions on significant decisions in respect of the conduct of litigation

of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Or, alternatively:

Unsatisfactory conduct within the meaning of s 12(b) and/or 12(c) of the Act.

30 The Committee repeats paragraphs 1 to 29 above.

31 If the Practitioner's conduct as described above is not so negligent or incompetent as to reflect on his fitness to practise or bring his profession into disrepute, it amounts to unsatisfactory conduct, in that it would be regarded by lawyers of good standing as being unacceptable, and/or amount to a contravention of any or all of the rules set out at paragraph 29 above (and its sub paragraph).

Charge two: Misconduct within the meaning of s 7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 (**Act**)

Particulars

32 Paragraphs 1 to 22 above are repeated and relied on.

Provision of client information

33 After receiving instructions, Mr Bligh's new solicitors (**GCA**) sent a written request dated 1 November 2016 to the Practitioner for delivery of Mr Bligh's files.

34 GCA sent the Practitioner a further request for Mr Bligh's files on 7 April 2017.

35 On 16 May 2017, Associate-Judge Matthews set aside the judgment entered against Mr Bligh on 2 November 2016.

36 On 24 May 2017, Mr Ferguson advised GCA that the files would be delivered. The Court documents were uploaded to Dropbox and provided to GCA on 6 July 2017.

37 On 25 August 2017, the Practitioner advised the Committee that the only outstanding issue regarding release of Mr Bligh's files was the emails sent and received by GSB&S on Mr Bligh's file. The Practitioner provided the emails on 31 August 2017.

Comments to media

38 On about 18 May 2017, GSB&S were approached by Fairfax Media for comment on Associate Judge Matthews judgment. The Practitioner and Mr Ferguson responded by email and made comments about the evidence in support of Mr Bligh's claim, and about the settlement negotiations and termination of the Agreement. This included comment by Mr Ferguson that his recommendation was to ask for another $20,000-$30,000, but if the response was negative, to accept the offer.

39 Mr Bligh had not expressly or impliedly authorised the disclosure of his confidential information.

40 The above conduct was a wilful or reckless breach of the Act or of any regulations or practice rules, including the following provisions of the Rules:

(a) Rule 4.4.1 – provision of client's documents upon changing lawyers.

(b) Rule 8 – duty to hold client information in confidence; and

(c) Rule 8.1 – duration of duty of confidence.

Or, alternatively:

Unsatisfactory conduct within the meaning of s 12(b) and/or 12(c) of the Act.

41 The Committee repeats paragraphs 1 to 22 and 33 to 40 above.

42 If the Practitioner's conduct as described above is not a wilful or reckless breach of the Rules, it amounts to unsatisfactory conduct, in that it would be regarded by lawyers of good standing as being unacceptable, and/or contravened the rules described above at paragraph 40.

Appendix 2

Claims Resolution Service Ltd

Service Agreement

Introduction

I/We Derek Ricky Bligh for the insured, engage;

Claims Resolution Service Ltd to act for us in respect of any damage or loss relating to our property;

Located at 27-29 Waddington Road, Waddington, Canterbury 7500

Insured by State

Evaluation

1) The claimant agrees to:
   a) Provide **Claims Resolution Service Ltd** with all relevant information and assistance;
   b) Pay **Claims Resolution Service Ltd** $750 for it to gather relevant information and evaluate claims and/or losses. If the Claimant has already had an independent assessment of the damage to their property then this fee may be waived.
   c) Engage **Claims Resolution Service Ltd** to manage all damage and loss claims relating to the property subject to the engagement terms below.

Engagement Terms

2) This agreement lasts until the damage and/or loss claims are settled or until the agreement is terminated.

3) **Claims Resolution Service Ltd** will:
   a) Act in the Claimant's best interests;
   b) Give ongoing advice about the merits of the claim and future claim resolution strategy;
   c) Give advice about claim settlement.

4) The **Claimant** will:
   a) Co-operate with **Claims Resolution Service Ltd** and its advisers;
   b) Give **Claims Resolution Service Ltd** and its advisers instructions that allow it to properly and fully act in the Claimant's best interests.

5) This service agreement is successful if, when the claim is resolved in favour of the Claimant, the Claimant is entitled to receive a greater settlement value than was the then current settlement offer on the date the Claimant first consulted **Claims Resolution Service Ltd** ("the original offer").

6) Upon filing of any proceeding related to claims resolution any court filing fees are payable by the Claimant directly to the relevant Court.

7) If the Claimant is successful in any respect that is related to this service agreement the Claimant agrees to pay **Claims Resolution Service Ltd** on the basis.

- **Claims Resolution Service Ltd** takes on the prosecution of the claim on a No Win No Pay basis for 10% of the **Final Settlement** plus all Costs including, legal, quantity surveyor, independent reports and assessment costs. Costs are limited to a maximum of $10,000. Any costs above this amount are borne by **Claims Resolution Service Ltd.** If any offer has already been made by the Insurer, costs and fees shall not exceed the difference gained.

8) Subject to paragraph 12 below, if prosecution of the claim is unsuccessful; **Claims Resolution Service Ltd** is not entitled to any fee or costs apart from amounts previously paid under paragraph 1b and/or 6 above.

9) **Claims Resolution Service Ltd** may deduct payment of its entitlement from any funds received on behalf of the claimant.

10) If the Claimant ends this agreement before **Claims Resolution Service Ltd** has completed prosecution of this agreement or fails to successfully prosecute the matter to the Claimant's advantage, the Claimant will pay **Claims Resolution Service Ltd** a $1,500 fee for its services plus all costs incurred. If the Claimant, independently or by any other means benefits from a settlement that in terms of paragraph 5, above, is successful, the Claimant agrees to pay **Claims Resolution Service Ltd** the fee and costs due in accord with paragraph 7, above.

11) **Claims Resolution Service Ltd** may terminate this agreement if:

a) The Claimant does not keep to its responsibilities, or;

b) The Claimant rejects **Claims Resolution Service Ltd** 's advice, or;

c) Previously undisclosed new information that affects the claim comes to light.

12) If **Claims Resolution Service Ltd** terminates this agreement for any of the reasons contained in paragraph 10 above, the Claimant will pay **Claims Resolution Service Ltd a** $1,500 fee, for its services plus costs incurred to the date of termination. If the Claimant, independently or by any other means benefits from a settlement that in terms of paragraph 5, above, is successful the Claimant agrees to pay **Claims Resolution Service Ltd** the fee and costs due in accord with the option chosen in paragraph 7, above.

Appendix 3

GRANT SHAND

Barrister & Solicitor
PO Box 13090, Armagh
Christchurch 8141
027 434 5489
grant@grantshand.co.nz

DR Bligh
CHRISTCHURCH

By email to: chairman@childhope.org.nz

Date: 14 August 2013

PROCEEDINGS AGAINST EQC & IAG

Engagement

1 I am engaged to act in relation to your claim against EQC & IAG New Zealand Ltd about your property at 27-29 Waddington Road. I will run the claim through to resolution. I am required to provide you with the **attached**:
(1) Information for clients;
(2) Terms of engagement.

Fees

2 My fees are paid in accordance with your agreement with CRS once you are successful. You have paid the Court filing fee.

Actions

3 I filed the Court proceedings on 23 July 2013. **Attached** is a copy of the statement of claim. All of the court documentation was served on EQC on 12 August 2013 and on IAG on 12 August 2013. They have 25 working days to file and serve a statement of defence. It is a paragraph by paragraph response to the statement of claim.

4 The Court has convened a case management conference for 29 October 2013 at 3.15pm (copy notice **attached**). The primary focus of the conference is identifying the issues and trying to resolve the dispute. You will be required to attend. So will EQC/IAG and their lawyers. Justice Wylie will run the conference. He is in charge of the Earthquake List.

5 Between now and the conference EQC/IAG are likely to perform investigations/assessments in relation to your claim. Please contact me if you have any queries.

Yours sincerely

Grant Shand

INFORMATION FOR CLIENTS

Set out below is the information required by the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ("Law Society").

1 **Fees**: The basis on which fees will be charged is set out in my letter of engagement. When payment of fees is to be made is set out in my Standard Terms of Engagement.

I may deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.

]

2 **Professional Indemnity Insurance**:

- I hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. I will provide you with particulars of the minimum standards upon request.

3 **Lawyers' Fidelity Fund**: The Law Society maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to $100,000. Except in certain circumstances specified in the Lawyers and Conveyancers Act 2006, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

4 **Complaints**:

I maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

If you have a complaint about my services or charges, you may refer your complaint to the person who has overall responsibility for your work.

If you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to me.[1]

I may be contacted as follows:

- by letter;
- by email at grant@grantshand.co.nz;
- by telephoning me at 027 434 5489.

The Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. To do so, phone **0800 261 801** and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

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[1] *This will need to be varied to suit the arrangements which the firm has in place. In the case of a lawyer in sole practice, an appropriate procedure might be for the complaint to be considered by a lawyer in another law firm.*

5 **Persons Responsible for the Work:**

The names and status of the person or persons who will have the general carriage of or overall responsibility for the services I provide for you are set out in my letter of engagement.

6 **Client Care and Service:**

The Law Society client care and service information is set out below.

Whatever legal services your lawyer is providing, he or she must:

- *Act competently, in a timely way, and in accordance with instructions received and arrangements made.*
- *Protect and promote your interests and act for you free from compromising influences or loyalties.*
- *Discuss with you your objectives and how they should best be achieved.*
- *Provide you with information about the work to be done, who will do it and the way the services will be provided.*
- *Charge you a fee that is fair and reasonable and let you know how and when you will be billed.*
- *Give you clear information and advice.*
- *Protect your privacy and ensure appropriate confidentiality.*
- *Treat you fairly, respectfully and without discrimination.*
- *Keep you informed about the work being done and advise you when it is completed.*
- *Let you know how to make a complaint and deal with any complaint promptly and fairly.*

The obligations lawyers owe to clients are described in the Rules of Conduct and Client Care for Lawyers. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.

If you have any questions, please visit **www.lawsociety.org.nz** or call **0800 261 801**.

7 **Limitations on extent of our Obligations or Liability**

Any limitations on the extent of my obligations to you or any limitation or exclusion of liability are set out in my letter of engagement.

STANDARD TERMS OF ENGAGEMENT

These Standard Terms of Engagement ("Terms") apply in respect of all work carried out by me for you, except to the extent that I otherwise agree with you in writing.

1 Services

1.1 The services I am to provide for you are outlined in my engagement letter.

2 Financial

2.1 **Fees**:

a The fees I will charge or the manner in which they will be arrived at, are set out in my engagement letter.

b If the engagement letter specifies a fixed fee, I will charge this for the agreed scope of my services. Work which falls outside that scope will be charged on an hourly rate basis. I will advise you as soon as reasonably practicable if it becomes necessary for me to provide services outside the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.

c Where my fees are calculated on an hourly basis, the hourly rates are set out in my engagement letter. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

2.2 **Disbursements and expenses**: In providing services I may incur disbursements or have to make payments to third parties on your behalf. These will be included in my invoice to you when the expense is incurred. I may require an advance payment for the disbursements or expenses which I will be incurring on your behalf.

2.3 **GST (if any)**: Is payable by you on my fees and charges.

2.4 **Invoices**: I will send interim invoices to you, usually monthly and on completion of the matter, or termination of my engagement. I may also send you an invoice when I incur a significant expense.

2.5 **Payment**: Invoices are payable within 21 days of the date of the invoice, unless alternative arrangements have been made with me. I may require interest to be paid on any amount which is more than 7 days overdue. Interest will be calculated at the rate of 5% above my firm's main trading bank's 90-day bank bill buy rate as at the close of business on the date payment became due.

2.6 **Security**: I may ask you to pre-pay amounts to me, or to provide security for my fees and expenses. You authorise me:

a to debit against amounts pre-paid by you; and

b to deduct from any funds held on your behalf in my trust account

any fees, expenses or disbursements for which I have provided an invoice.

2.7 **Third Parties:** Although you may expect to be reimbursed by a third party for my fees and expenses, and although my invoices may at your request or with your approval be directed to a third party, nevertheless you remain responsible for payment to me if the third party fails to pay us.

3 Confidentiality

3.1 I will hold in confidence all information concerning you or your affairs that I acquire during the course of acting for you. I will not disclose any of this information to any other person except:

a to the extent necessary or desirable to enable me to carry out your instructions; or

b to the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

3.2 Confidential information concerning you will as far as practicable be made available only to those within my firm who are providing legal services for you.

3.3 I will of course, not disclose to you confidential information which I have in relation to any other client.

4 Termination

4.1 You may terminate my retainer at any time.

4.2 I may terminate my retainer in any of the circumstances set out in the Law Society's Rules of Conduct and Client Care for Lawyers

4.3 If my retainer is terminated you must pay me all fees due up to the date of termination and all expenses incurred up to that date.

5 Retention of files and documents

5.1 You authorise me (without further reference to you) to destroy all files and documents for this matter (other than any documents that I hold in safe custody for you) 7 years after my engagement ends, or earlier if I have converted those files and documents to an electronic format.

6 Conflicts of Interest

6.1 I have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises I will advise you of this and follow the requirements and procedures set out in the Law Society's Rules of Conduct and Client Care for Lawyers.

7 Duty of Care

7.1 My duty of care is to you and not to any other person. Before any other person may rely on my advice, I must expressly agree to this.

8 Trust Account

8.1 I maintain a trust account for all funds which I receive from clients (except monies received for payment of our invoices). If I am holding significant funds on your behalf I will normally lodge those funds on interest bearing deposit with a bank. In that case I will charge an administration fee on the interest derived.

9 General

9.1 These Terms apply to any current engagement and also to any future engagement, whether or not I send you another copy of them.

9.2 I am entitled to change these Terms from time to time, in which case I will send you amended Terms.

9.3 My relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.