

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2020] NZLCDT 29

LCDT 027/19

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**WELLINGTON STANDARDS  
COMMITTEE 2**

Applicant

**AND**

**KIRSTEN GAYE HARPER**

Practitioner

**CHAIR**

Judge DF Clarkson

**MEMBERS**

Mr F Pereira MNZM

Ms G Phipps

Ms M Scholtens QC

Dr D Tulloch

**DATE OF HEARING** 24 August 2020

**HELD AT** Palmerston North District Court

(all parties except Chairperson who presided via Audio Visual Link)

**DATE OF DECISION** 11 September 2020

**COUNSEL**

Mr G Burston for the Standards Committee

Mr M R Sherwood-King for the Practitioner

## **DECISION OF TRIBUNAL ON PENALTY**

### ***Introduction***

[1] This decision reviews the purposes of penalty in a professional disciplinary setting. In particular, we consider the purposes of suspension of a practitioner, since that is the primary penalty sought by the Standards Committee, who has brought this prosecution.

[2] Specifically, we consider whether any penalty short of suspension will properly meet the purposes of penalty orders and mark the Tribunal's assessment of the seriousness of the misconduct, which has been admitted by Ms Harper.

### ***Background***

[3] The conduct, which is now significantly historical, involved numerous (over 70) breaches of the rules surrounding the witnessing of documents, and subsequent certification.

[4] As a practitioner in a rural environment, Ms Harper made the error of putting client convenience before adherence to the rules. At times she posted documents to clients whom she already knew, inviting them to sign and return them to her, at which time she would witness their signatures.

[5] On a number of occasions, this involved Ms Harper then providing some false certifications that statutory declarations had been taken before her. On 20 occasions, it resulted in her providing misleading certifications to LINZ.<sup>1</sup>

[6] The most serious breach was Ms Harper's false statutory declaration that she had known a person for 12 months. This, however, was in the context that the individual's parents had been known to Ms Harper for a number of years as clients

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<sup>1</sup> Land Information New Zealand.

and therefore indirectly their daughter, with whom she had also had telephone dealings.

[7] Ms Harper accepts that a false declaration can have serious consequences and that her "... shortcomings in relation to the witnessing of documents ran the risk of calling into question the integrity of the land title system". We note that, having been advised of the misleading certifications, LINZ determined to take no further action against Ms Harper and did not remove her e-Dealing authority.

[8] In the partnership in which Ms Harper now practices as a principal, the arrangements for e-Dealing are much more stringent and are dealt with by only one partner in the firm, who is responsible for total oversight of this aspect of the practice.

[9] The conduct of concern continued for the entire period that Ms Harper was with the complainant firm, namely six-and-a-half years, from May 2010 to December 2016. It is significant that for the first three-and-a-half years of this period, Ms Harper was an employed solicitor, and therefore there would be an expectation of guidance about expected practice, supervision and monitoring of her practice.

[10] There was no attempt to conceal what was taking place, with many letters written by Ms Harper openly asking clients not to have their signatures witnessed, that she would do that once the documents were returned to her.

[11] During 2016, Ms Harper was approached by another firm to join them, with a view to taking over the busy practice of one of the partners who was nearing retirement. Ms Harper accepted the offer and resigned her partnership with the complainants. As a number of her clients followed her, this parting was not on the happiest of terms.

[12] Following her departure, Ms Harper's former partners discovered some witnessing discrepancies which they had apparently not noted in the six-and-a-half years that she was part of the firm. This led to them reporting the rule breaches, as they were legally obliged to do, to the Complaints Service of the New Zealand Law Society (NZLS).

[13] Expert evidence was called on behalf of Ms Harper by Mr J P Greenwood, an extremely experienced practitioner and current Chair of the Property Law Section Law Reform Committee. His evidence was addressed to factors in mitigation of the offending, but at this point it is convenient to refer to his comments concerning the internal oversights and controls within the complainant firm. It was Mr Greenwood's view that:

“... over the period of time that covers the complaints made, there was a demonstrable lack of checks and balances within the internal firm controls of [the complainant firm].”

[14] He then referred to “wilful blindness” on the part of legal secretaries who had prepared the letters instructing clients that the documents would be witnessed on their return. Mr Greenwood went on to say:

“I question then whether the firm adopted the necessary controls to ensure (irrespective of who was issuing instructions to the support staff) that proper steps were to be taken on every file. Controls ordinarily would include letter opening by other partners and quality control checks by another Landonline user with signing privileges as and when instruments are signed into Landonline. It should have been easy to pick up documents coming back not witnessed on return of the documents. In this regard, I suggest [Ms Harper] is not entirely to blame as a lack of necessary internal controls in place has likely inadvertently aided her omissions.”

[15] Ms Harper herself and two other very senior local practitioners, Mr Howie and Mr Austin, all deposed to the more stringent arrangements for checks on, and oversight of, practice and file management, in their respective practices.

[16] However, it is also likely that the partners of [the complainant firm] were unaware of the breaches for reasons including because no client ever complained.

[17] It is common ground that the conduct in question has not caused any loss or disadvantage to either clients or third parties. Nor was there any personal gain or advantage to Ms Harper.

[18] Ms Harper did not go as far as to accept that there was a “normalisation” of the sending out of documents to well-known clients to be returned for witnessing later. Rather, she said that in each instance she assessed the risks of her actions to

be low to negligible. When it was put to her that the rules themselves had already carried out that risk assessment, she readily accepted that she ought not to have substituted her own judgment for the clear provisions of the rules.

[19] However, Ms Harper points to the fact that what appears to have been a very thorough scouring of her files (such that the complaints were made in four tranches over a period of almost two years), that the 40 files turned up since 2010 as demonstrating the defective practices, can be viewed in the context of some 1,500 to 1,600 files for which she had been responsible over the relevant period.

[20] Unfortunately, the complaints process has been particularly protracted in this case. As noted above, the complaints arrived to the Standards Committee in four tranches of large files which required a good deal of work to put to the practitioner, analyse her response and assess which matters were proper to pursue, have determined by the Standards Committee and then be put in the cogent and organised form required for presentation as particulars in support of a charge once the matter had been referred to the Tribunal.

[21] In summary, the timeline is: the first complaints were received in mid-April 2017, the last of the four complaints was received on 21 August 2018, a day after the Standards Committee hearing, delaying a determination to allow Ms Harper a further response which she provided by the end of October. The Standards Committee's notice of determination was issued on 1 February 2019 and the charge laid on 21 November 2019. This hearing took place in August 2020.

[22] We are satisfied that at no stage did Ms Harper cause significant delays, and in the main promptly responded to each of the tranches of complaints, in some detail. The hearing process has been further delayed because of the Covid-19 pandemic, with the result that the practitioner has had to wait almost three-and-a-half years for the matter to be determined.

### ***Penalty in a Disciplinary Context***

[23] The purposes of penalty have been discussed by the High Court in the leading decisions of *Daniels v Complaints Committee 2 of the Wellington District Law Society*<sup>2</sup> and *Auckland Standards Committee 1 v Fendall*.<sup>3</sup>

[24] In a later *Auckland Standards Committee 1 of the New Zealand Law Society v Fendall*<sup>4</sup> case the Tribunal summarised the purposes of penalty by reference to eight factors. That was a case involving strike off, and we adapt those factors to the more relevant ones for this case as follows:

- (a) The primary purpose is not punishment, although orders inevitably will have some such effect; the predominant purpose, as set out in s 3 of the LCA<sup>5</sup> is to protect not only the interests of consumers of legal services, but also public confidence in the provision of legal services;
- (b) To maintain professional standards. Not only is this an important purpose (and end) of itself, it also connects with the purpose of maintaining public confidence in the profession. Many cases have referred to reputation as the most valuable asset of the legal profession;
- (c) To impose sanctions on a practitioner for breach of his or her duties. Again, this factor is grounded in the public interest in maintenance of confidence in lawyers' professional standards. A number of decisions have referred to the need for the public to be able to observe a strong and proportionate response by the profession's disciplinary bodies;
- (d) To provide scope for rehabilitation in appropriate cases;

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<sup>2</sup> *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

<sup>3</sup> *Auckland Standards Committee 1 v Fendall* [2012] NZHC 1825, (2012) 21 PRNZ 279.

<sup>4</sup> *Auckland Standards Committee 1 of the New Zealand Law Society v Fendall* [2018] NZLCDT 32.

<sup>5</sup> Lawyers and Conveyancers Act 2006.

#### **3 Purposes**

- (1) The purposes of this Act are–
  - (a) to maintain public confidence in the provision of legal services and conveyancing services;
  - (b) to protect the consumers of legal services and conveyancing services;
  - (c) to recognise the status of the legal profession and to establish a new profession of conveyancing practitioner.

- (e) To carefully consider alternatives to striking off a practitioner, and to adopt the “least restrictive alternative” approach to the imposition of penalty;
- (f) To provide deterrence. This is perhaps more accurately considered as a subcategory of factor (c), the maintenance of professional standards, however the issue of whether suspension is required for the purposes of deterrence, assumed considerable importance in this matter so we set it out separately. Deterrence can be either Specific, directed towards the practitioner, or General and directed to the whole profession, or both.

### ***Suspension***

[25] The purposes of suspension are summarised in this way in the *Fendall* decision:<sup>6</sup>

“Suspension as a penalty is clearly punitive, but its purpose is more than simply punishment. The primary purpose of suspension is to advance the public interest. The public interest includes the interests of the community and the profession by recognising that proper professional standards must be upheld and by ensuring that there is deterrence, both specific for the practitioner and in general, for all practitioners. Suspension operates to ensure that only those who are fit to practice are given that privilege. Members of the public who entrust their personal affairs to legal practitioners are entitled to know that a professional disciplinary body will not treat lightly, serious breaches of expected standards by a member of the legal profession. While suspension is a grave step it is a penalty that can be appropriate whether the misconduct, although serious, does not show that the practitioner is irretrievably unfit to practice.”

### ***The Process of determining penalty***

[26] The process of applying these fundamental purposes, on a case by case basis involves the following: First, the Tribunal must assess the seriousness of the particular conduct, since there is a continuum along which various types of misconduct can fall.

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<sup>6</sup> See above n 3 at [42].

[27] Secondly, aggravating features relating to either the offending itself or the practitioner are taken account of.

[28] Thirdly, mitigating features, again in relation to the offending itself and in relation to the practitioner are taken account of. In this case expert evidence was called to amplify the evidence and submissions for the practitioner, by drawing attention to particular features. In addition, a number of testimonials were provided in support of the practitioner.

[29] Finally, the Tribunal is obliged to consider penalties imposed in cases which involve similar conduct. Then stepping back the Tribunal must view the penalties imposed in the round in terms of whether the purposes of penalty are achieved overall in this specific case by the penalties imposed.

### ***Seriousness of the Offending***

[30] The rules concerning witnessing of documents are required to prevent fraud occurring through the wrongful use of a document. The Land Transfer System also supports a certification process so that e-Dealing can safely be engaged in a way which also minimises the risk of fraud or improper dealing. The A&I form<sup>7</sup> includes a certification by the lawyer that "I have witnessed the client(s) sign this form". The witness is also relied on to confirm that they have known the client for more than 12 months and confirm the mental capacity of the signatory.

[31] The expert evidence of Mr Greenwood refers to the importance of the above safeguards but goes on to say:

"Anecdotal evidence suggests that it is not unknown, where rural practices operate, and where clients are in isolation that a convenient approach is taken to witnessing signatures, by signing on return. This is not entirely surprising, even though wrong."

[32] Clearly, Ms Harper cannot excuse her conduct on the basis that she has known others to do the same. Indeed, she does not purport to do so. In her May affidavit she states:

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<sup>7</sup> Authority & Instruction form.



“I now fully accept that my conduct will also meet the threshold of misconduct in that my actions constituted a wilful or reckless contravention of the Lawyers and Conveyancers Act 2006 practice rules, guidelines, and the provisions of the Oaths and Declarations Act 1957.

The cumulative effect of my actions did more than simply fall short of the standards of competence and diligence that a member of the public is entitled to expect from members of the legal profession. My actions will undoubtedly be considered to be unacceptable when viewed through the eyes of competent property practitioners. Further, I accept that my shortcomings in relation to the witnessing of documents ran the risk of calling into question the integrity of the land title system.”

[33] To further illustrate Ms Harper’s understanding of the seriousness of the misconduct we also quote from her second affidavit in March 2020:

“I wish to make clear to the Tribunal the appreciation and understanding I have of the need to ensure the highest professional standards in all matters in which lawyers are involved. I understand the importance of correct procedures, including witnessing requirements in relation to documents, particularly given the use to which those documents are then put (e.g. the transfer of land). More generally, looking back at my actions, I can see that I did not take an appropriately wide view of the implications of what I was asking the clients to do. I fully appreciate that the integrity of our profession requires strict adherence to correct procedures being followed, and the accuracy of what we have said has occurred actually having occurred in the manner in which it ought to. In this context, I accept there can be no room for poor practice and short cuts, no matter what the perceived rationale.”

[34] The conduct was not a one-off occurrence and took place on multiple occasions. However, we do take account in assessing the seriousness of the conduct of the fact that for over half of the period in question, there appears to have been a systemic failure to pick up that documents were being witnessed improperly.

[35] While we do not consider that this conduct is at the high end of the spectrum, particularly since there was no attempt by the practitioner to conceal what she was doing or to deliberately flout rules in an arrogant or uncaring sense, we do consider that the false statutory declaration takes this to the level of moderately serious misconduct.

***Aggravating Features***

[36] The number of breaches (over 70), and the lengthy period of time over which they occurred (six-and-a-half years), are aggravating features of the misconduct.

[37] We do bear in mind that while the number of instances is high, involving as it did some 40 clients, we accept that most of these clients were well known to the practitioner. It is also fair that the numbers be considered in the context of an overall number of files managed over the time of 1,500 to 1,600 and thus the breaches occurred in but a small proportion of those files.

[38] The complainant firm properly reported the conduct and followed this with a lengthy and thorough review of her files and practice. We are unaware of any other instance where this many files have been reviewed so carefully to ensure no further discrepancies. This thoroughness of the firm can give a high degree of comfort about the overall practice of the practitioner.

[39] There are no aggravating features in relation to the practitioner herself.

***Mitigating Features***

[40] For reasons which are apparent not only from the practitioner's statements already quoted above, but from the evidence placed before the Tribunal in mitigation including her answers and the direct way she answered, we are confident that this is not a practitioner who poses any risk to the public and, it has to be said there are an extraordinary number of mitigating features in this case. These are as follows:

1. There is no evidence of prejudice or harm to clients or third parties, such as mortgagees. In many instances the clients were well known to the practitioner so there was no issue of identification.
2. The offending now is significantly historical. The most recent is almost four years ago and the oldest more than 10 years. Ms Harper has corrected her conduct and her current practice has stringent checks and balances to prevent any reoccurrence. Ms Harper indicated that she was prepared to

undertake any form of supervision or monitoring required and indeed subsequent to the hearing her firm has provided an undertaking along the lines of random monitoring which will provide additional safeguards.

It is conceded by Mr Burston on behalf of the Standards Committee that personal deterrence for Ms Harper has already been achieved and that there is unlikely to be any repetition.

3. The expert opinion of Mr Greenwood correctly identifies missed opportunities to address the conduct at least during the first three-and-a-half years, when she was only an employed solicitor. Other staff members were aware of her actions, because Ms Harper openly referred to the witnessing arrangements in her letters to clients.
4. At no time did Ms Harper act in a deceitful or misleading way in respect of the conduct under examination.
5. Ms Harper comes to this hearing with no previous disciplinary findings against her. She receives credit for her 18 years of otherwise exemplary practice. Furthermore, it is now four years since the offending and no further concerns have arisen in relation to Ms Harper, noting the practices she has worked in had knowledge of the complaints.
6. Ms Harper acknowledged the facts at an early stage, engaged counsel and cooperated with the process. Although she initially admitted unsatisfactory conduct and denied misconduct, on receiving further advice she promptly advised the Tribunal of her acknowledgement of misconduct and the matter was able to be resolved without a defended hearing. This, together with her statements to the Tribunal, shows significant insight.
7. The misconduct was not motivated by personal gain or advantage and nor was any received.

8. LINZ was aware of Ms Harper's rule breaches and did not suspend her from e-Dealing.
9. Ms Harper has expressed remorse and demonstrated regulatory compliance in her current practice. We quote from her March affidavit:

"The sense of remorse I have for the choices I made at the time I took the actions that I did which led to these charges is very real to me. I am entirely cognisant of the potential risk of my actions and also the absolute need to maintain the highest standards within the legal profession. Clearly I did not maintain those standards at the times I made the choices I did and for that I am deeply sorry."

The Tribunal is well used to hearing practitioners pay lip service to remorse or "say the right thing". We consider that Ms Harper is genuine in her remorse, and her level of regret for her actions is reinforced by some of the testimonials provided by her. Experienced and respected colleagues have attested to the effect on Ms Harper of the disciplinary action as well as the anguish and stress on her of the prolonged process.

10. Ms Harper has suffered significant and ongoing reputational damage as a result of the complaints and subsequent charge against her.

Ms Harper has been a prominent practitioner in a small legal community. In her affidavit she describes herself as having been:

"... the subject of much discussion within the local legal profession as to my actions. This discussion has quickly filtered through to clients. ... On many occasions now I have heard that I am a dishonest person who has done something that will result in me being struck off the Roll, and that the whole matter will be reported in the local newspaper."

Ms Harper is not only a practitioner but also a mother of three children living in a small community and is deeply concerned about the effect on her family of the rumours, many of which have been overblown and inaccurate. Two very senior practitioners, Mr Howie and Mr Austin, who have provided testimonials, have referred to the damage and distress to Ms Harper that have already been caused by the "chatter" around these proceedings and

what is referred to as “inordinate delay”. Mr Howie expressed the view that Ms Harper had been penalised already. Expert witness Mr Greenwood makes similar comments about the burden that this had created for Ms Harper and that it had caused her “sustained grief and hurt”.

11. In considering further consequences to Ms Harper, we note that she felt forced to resign from two very important community boards on which she had served for some time and wished to continue serving. She resigned in order to minimise any reputational damage to those organisations, from their association with her.
12. In addition to resignation from these community organisations, it is also apparent from the evidence that the ongoing and serial complaints process which meant that there was such delay in examining these matters and therefore the inability of the practitioner to address the reputational matters openly until this process was heard, affected Ms Harper’s position in the firm to which she had moved. In the end Ms Harper and that firm parted ways and thus she has paid a significant price in not being able to pursue her planned career path, although we note that she is now very highly thought of within her current firm.
13. The delay is submitted to be a further mitigating feature of itself. No criticism is made of counsel for the Standards Committee, who clearly received a huge number of complaints which had come in on a piecemeal and perhaps a less than organised fashion. Mr Burston described a “large forensic exercise” to unravel those which properly supported the charge brought, taking into account the practitioner’s responses and then being able to organise the material to affidavit form.

However, the end result has been a process of almost three-and-a-half years which, given the stresses and anguish caused by disciplinary proceedings and acknowledged by the deponents and the practitioner herself, we do consider it relevant in considering a “price already paid” element of penalty.

14. Testimonials – there were many references provided, including by affidavit as to Ms Harper’s integrity, competence, diligence, expertise and client focus. While the Tribunal often finds these testimonials to be of limited use we do note that in this case, those putting forward testimonials were fully apprised of the nature and breadth of the charge. Furthermore, we note they were not only from senior and respected members of the profession but also a range of people within the community and clients of the practitioner.

The testimonials do Ms Harper considerable credit. She is clearly a practitioner of considerable talents.

### ***Relevant Similar Cases***

[41] Both counsel reviewed a number of decisions where the Tribunal had considered broadly similar cases. None covered offending which had continued for as long or involved so many clients. However, some had involved conduct where risks were taken which had resulted in disastrous consequences for the clients and therefore distinguishable from the present matter. Some involved blatant forgeries, which we view as much more serious than the present matter.

[42] We note that in the *Deliu v The National Standards Committee and the Auckland Standards Committee No. 1 of The New Zealand Law Society*<sup>8</sup> matter the High Court upheld the Tribunal’s approach in giving considerable credit to a practitioner whose offending was regarded as significantly historical (although less historical than the present matter).

[43] In the end every matter has to be considered on a case by case basis and in the present climate there are even greater reasons for considering context, both of the offending and the present context of the practitioner’s practice in times of such stress and economic fragility.

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<sup>8</sup> *Deliu v The National Standards Committee and the Auckland Standards Committee No. 1 of The New Zealand Law Society* [2017] NZHC 2318 (25 September 2017).

### ***How to Achieve the Purposes of Penalty in This Case***

[44] Protection of the public – it is conceded by the prosecutor in this matter that “all indicators suggest repetition is unlikely”. We have already stated that we do not consider that Ms Harper, whom many colleagues and clients have endorsed as a practitioner of integrity and competence, poses any risk to the public.

[45] The two factors of maintenance of professional standards and thereby protection of the public confidence in the profession are clearly the most significant, as is conceded by Mr Burston on behalf of the Standards Committee.

[46] A significant component of this assessment is the assessment of the value of deterrence in this case. It is conceded that there is no requirement in this case for personal deterrence and we accept that assessment. Ms Harper stated to us that she would never wish to go through this process again and it is apparent that her lack of judgment in respect of these rule breaches has been well and truly brought home to her. She is in a work environment with significant checks and balances that support ongoing reflection and quality improvement.

[47] The primary concern for the Tribunal is the issue of general deterrence and the public perception of a sufficient disciplinary response.

[48] In this regard we are assisted again, by the evidence of Mr Greenwood. He observes that:

“Today we live in an environment where witnessing does not require physical presence. Remote witnessing has become permissible where a client is unable to attend in person: see NZLS Property Law Section Guidelines 6.44 concerning signing Authority and Instruction Forms via videoconferencing by Skype, Facetime, WhatsApp, Google Hangouts, Zoom or Faceme.”

[49] Later Mr Greenwood refers to:

“The recently announced LINZ Interim Guidelines 2020 allowing electronic signing of documents remotely (albeit to aid the impact of the COVID-19 lockdown), does not alter the requirement for the witness to sight the signing by the client.”

[50] Because of these changes it is Mr Greenwood's opinion, which we accept, that:

"The move to digital signatures allowing remote witnessing, should help to remove altogether temptations to adopt sloppy practices where the convenience factor for clients is real."

[51] In other words, the need for deterrence from this conduct is not as significant as it might have been some years ago, and there is unlikely to be widespread problematic behaviour in this regard given the ability for such remote participation in signing of documents as outlined above.

[52] We now turn to consider rehabilitation. We consider this has thoroughly occurred. Ms Harper's own statements to which we attribute considerable weight for the reasons outlined above,<sup>9</sup> demonstrate that Ms Harper has readily adjusted her practice. We consider that this was always a "practice flaw" not a "character flaw".

### ***Suspension***

[53] So we now turn to consider whether this is a case where the misconduct is so serious that the countervailing factors to suspension, having regard to many of the purposes of suspension having already been achieved, are outweighed.

[54] We have evidence from Mr Howie, Mr Austin, from Ms Harper and from Mr McNeil, Chartered Accountants and one of the writers of the testimonials, that if Ms Harper were to be suspended that this will impose a significant penalty on innocent third parties.

[55] Firstly, there are Ms Harper's clients. It is clear that she is a practitioner with long established relationships and a considerable degree of trust reposed in her by clients. As such, it is not easy for others to step into her shoes, particularly roles of supervision of other staff and branch management responsibilities.

[56] Secondly, Ms Harper's family, and in particular her children, would also be penalised by suspension. This is because Ms Harper is the family's principal income

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<sup>9</sup> See paras [32] and [33] above.



earner and the loss of income would be a significant burden to the family. This must also be considered in the context of Ms Harper having to face orders as to costs in these proceedings which will be of a significant magnitude.

[57] Thirdly, the practice in which Ms Harper is now a principal, and in charge of two of the branch offices, would also be considerably inconvenienced and financially disadvantaged. This is deposed to by Mr Austin and no challenge was made to his evidence.

[58] Fourthly, we note the importance of Ms Harper's contribution to the local community, which we would not wish to undermine, especially in the midst of a global crisis.

### ***Impact of Covid-19***

[59] Unsurprisingly, this is not a factor which we have previously had to consider in Tribunal deliberations. However, the Tribunal's attention is drawn to the particular stress that is currently being suffered by some of Ms Harper's clients. Mr McNeil refers to how difficult it will be for clients, in a somewhat precarious position because of the global pandemic, to be deprived of their lawyer's assistance at such a delicate time.

### ***Decision***

[60] We consider that in the end there are significant adverse consequences likely to be suffered by innocent third parties as set out should Ms Harper be suspended. We do not consider there are countervailing adverse circumstances likely should she not be suspended. And we do not consider that the credibility of the disciplinary process or the expected professional standards of practitioners are undermined by the absence of a suspension order in the penalties to be imposed, because of the considerable number of mitigating features in this case and the challenging times for all New Zealanders during the pandemic which impact on access to many resources including legal services.

**Costs**

[61] Having regard to all of the above factors, and the delay in bringing the matter to this point, including the serial nature of the complaint process itself, and that a face to face hearing was necessary because of the complainants' views, increasing the overall costs, we consider a discount of 20 per cent ought to be applied to the costs sought by the Standards Committee of \$21,833.93. However, the practitioner will need to bear the reimbursement of the full Tribunal costs.

**Orders**

1. A censure is imposed as per Schedule 1 of this decision.
2. Both Ms Harper and one of the principals of her firm are to enter into an undertaking in terms of the draft provided to the Tribunal as to random file supervision.
3. There will be a costs order in favour of the Standards Committee in the sum of \$17,467.14.
4. The Tribunal costs are certified at \$6,312.00, under s 257. These are to be paid by the New Zealand Law Society.
5. The practitioner is to reimburse the New Zealand Law Society for the full s 257 costs.

**DATED** at AUCKLAND this 11<sup>th</sup> day of September 2020

Judge DF Clarkson  
Chairperson

### Censure

Ms Harper, as you are now painfully aware, you have fallen below the standards required of you by your profession, in the manner in which you witnessed documents for your clients on multiple occasions between 2010 and 2016 and then dealt with the documents as a person entrusted with the carriage of important transactions.

The disciplinary process has taken place some years after your misconduct and we are satisfied that you have corrected your practice in this regard.

This Censure remains on your permanent disciplinary record as a reminder of the need to uphold the high professional standards which you openly acknowledge.

You are formally censured.