NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2021] NZLCDT 12
LCDT 015/20

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE 4** Applicant
AND	**JOHN PAUL TIMOTHY SCHLOOZ** Practitioner

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Ms K King
Ms A Kinzett
Mr B Stanaway
Ms S Stuart

DATE OF HEARING 18 March 2021

HELD AT Auckland District Court

DATE OF DECISION 14 April 2021

COUNSEL
Mr P Collins for the Auckland Standards Committee
Mr S Judd for the Practitioner

DECISION OF THE TRIBUNAL

Introduction

[1] This decision concerns the proper disciplinary response, when a lawyer (while providing regulated services) corresponds with another person in an offensive, abusive and threatening manner.

[2] Mr Schlooz has admitted two charges of misconduct arising out of his communications over an extended period with a litigant in person.

[3] The decision addresses the importance of the principles of general deterrence and denunciation, in a regulatory framework whose purposes are to protect the public and maintain the confidence of the public in the legal profession.

[4] The penalty process is not primarily a punitive one, but it is understood that certain conduct calls for clear condemnation by the Tribunal. This case provides an example of such conduct.

[5] In addition, the decision considers to what extent consistency can be achieved across a range of vastly different types of conduct and contexts in which that conduct has occurred.

Penalty Process

[6] The starting point of any penalty assessment must be the seriousness of the conduct under consideration.[1]

[7] From that point, the Tribunal then considers the presence of any aggravating or mitigating features, both in relation to the conduct itself or the practitioner.

[8] It is understood that in a disciplinary framework mitigating factors personal to the practitioner cannot outweigh considerations of public protection and therefore may

[1] *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] 3 NZLR 103.

not be given as much weight as they would, for example, in the context of sentencing in the criminal jurisdiction.[2]

[9] The Tribunal then considers previous penalties which have been imposed on cases involving similar conduct and surrounding circumstances, in order to achieve the level of consistency and predictability which is necessary to conform to the principles of natural justice.

Background

[10] The complainant, Ms Y, was the estranged wife of Mr Schlooz's close friend [redacted]. The practitioner had been friendly with the complainant before she had separated from his friend and indeed had acted for her on one occasion.

[11] The complainant was acting for herself in relation to a number of disputes that she had with her former husband relating to property division, including her attempt to set aside a contracting-out agreement. There was also a tenancy dispute relating to the complainant's occupancy of a property which was owned by her estranged husband's trust, of which Mr Schlooz was a trustee. Further, there was a business dispute relating to a contract of services between the complainant and her estranged husband.

[12] From this it can be seen that the complainant was particularly vulnerable in that all areas of her life (relationship, housing, and employment) were impacted by her separation from, and ongoing dispute with her former husband, Mr Schlooz's close friend and how closely involved Mr Schlooz was professionally and personally.

[13] Mr Schlooz was acting for his friend Mr Y in relation to all of these disputes, although he initially denied that he was providing legal services and attempted to argue that he was acting in his personal capacity.

[14] The disputes generated much correspondence between the complainant and the practitioner, but the subject of these charges are the email exchanges between 15

[2] *Bolton v Law Society* [1994] All ER 486 at 496.

May 2019 and 17 November 2019 in relation to Charge 1, and those from 1 February 2019 to 10 September 2019, in relation to Charge 3 (which deals with wrongful threats).

[15] Charges 1 and 3 are attached as Appendix I to this decision and include the precise emails complained about. It is not necessary to repeat all of these in the body of the decision, however it is also insufficiently illustrative of the concerns raised by this case to simply describe them in bland terms such as "abusive", "disrespectful", or "offensive". Therefore, we provide some of the worst examples as follows:

- "I'll put this simply in terms you can understand, FUCK OFF." (15 May 2019)
- "You really are a moron." (4 June 2019)
- "Fuck off [redacted]. You're a sad old drunk who needs help. Don't flatter yourself that [redacted] is interested in your life. He's so much happier now that he's dumped you. I feel sorry for the guys you're trying to trap into a horrid life with you." (14 July 2019)
- "… In the land of the witless you would be Queen. You are the reason god gave us a middle finger. We regard you with an indifference that borders on aversion. If we throw a stick, will you leave? People clap when they see you; they clap their hands over their eyes. (17 November 2019)

  We are jealous of the people who haven't met you, now fuck off. Leave [redacted] in peace. He's much happier now that he doesn't not (sic) have to put up with your drunken self." (17 November 2019)
- "Just fuck off you pathetic old bag …" (17 November 2019)

[16] Further, Mr Schlooz, at various times, threatened Ms Y with bankruptcy, and the payment of costs.

[17] The complainant found the exchanges so distressing that she applied to the District Court for an Harassment Order, in September 2019. Following a defended hearing on that application on 15 May 2020, Her Honour Judge Bouchier made an order in the complainant's favour. The complainant points out that the judgment strongly endorsed her grounds for making the application.

[18] Importantly, Her Honour went on to make strong comments of condemnation about Mr Schlooz. She said at paragraph [19]:[3]

[3] *K v Schlooz* [2020] NZDC 8576.

> "… I can only say that from when I first commenced working in the law, late in 1973 and throughout the 32 years I have (sic) on the District Court Bench, I have seen tens of thousands of family violence cases, gang violence cases, harassment applications, and any other type of violence with the associated language used in such incidents, and I say that I have never seen such an exhibition of gratuitous, focused and abhorrently rude and insolent language from one person to another in all those years, as I see in the correspondence of the respondent to the applicant. Plus, especially by a person who signs them self as a professional person, that is a barrister."

[19] There was a further message in the decision conveyed by Her Honour to Mr Schlooz:[4]

> "I would find it astonishing that a person who uses such language in correspondence with any person, could possibly fulfil the criterion required of a barrister, of being a "fit and proper person"."

[20] Remarkably Mr Schlooz did not seem to take to heart the professional implications of either the making of the order against him or indeed, the very clear denunciation of his conduct by an extremely senior District Court Judge.

[21] In his response to the Standards Committee he denied that he was acting in a professional capacity and suggested that he and the complainant were "… *private individuals engaged in a war of words as a consequence of the breakdown in her marriage*". He went on to make personal and derogatory comments about the complainant in his response to the Standards Committee.

[22] It was not until Mr Schlooz engaged counsel, Mr Judd, that he amended his formal response to the charges before the Tribunal and admitted the two charges of misconduct now under consideration.

[23] By way of further background, during the period when this correspondence occurred, the practitioner was forming a new personal relationship himself, and together with his new partner was looking for a home they could purchase. In due course they did purchase an expensive home in order to accommodate their respective families, with 100 per cent mortgage financing. These events, according to Mr Schlooz imposed considerable stress on him.

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[4] See note above, at para [20].

[24] In addition Mr Schlooz was a volunteer in a drug trial, which he said depleted his energy, gave him significant headaches and meant that he was unable to work at times for half a day. All of these matters he puts forward as explanatory of, although not excusing, his conduct and the correspondence with the complainant.

[25] The practitioner also acknowledged in his evidence to the Tribunal that he was personally involved in the dispute between the complainant and her estranged husband because of his close identification with his client, who he described as his "best friend", and now accepts that caused him to lose judgement. The practitioner says that the emails, all of which are acknowledged by him, are significantly out of character.

Seriousness

[26] Mr Collins, on behalf of the Standards Committee, submitted that "*in the category of behaviour involving harassment or bullying through written communications, this case must realistically be seen at the most serious end of the scale*." We accept that submission.

[27] Mr Collins further submitted that the public view was that the profession's response to bullying and harassment (including sexual harassment) was inadequate. Mr Collins urged us to view the conduct as within the overall public concern about "decency" of behaviour of lawyers in relation to both clients and colleagues.

[28] Mr Judd submitted that this was not a fair way to view this particular matter, which had no elements of the abuse of power dynamic which existed in cases of alleged sexual harassment of young women by senior members of the profession. We also accept that this case does not have those connotations, however we agree with Mr Collins that of its kind rarely does a case come along which demands such condemnation on its fact as this one. Under the more specific heading of abuse of the privileges of being a lawyer and bullying an opponent, particularly such as the complainant in this matter, this case is at the high end of the scale of seriousness.

Aggravating Features

1. The repeated and sustained nature of the abusive language and threats used.

2. The use of this language against an unrepresented party.

3. The level of misogyny present in the abusive comments.

4. Persisting with the conduct after the complainant made it clear the emails were unacceptable and should stop.

5. The lack of prompt apology and insight.

[29] While the first factor may be seen as a contributing factor to the seriousness of the conduct, we consider that the serious level is achieved simply by the use of the language itself. The repeated and sustained nature of the offending correspondence is relevant not just as an aggravating feature – and in this regard we note that even when asked to desist the practitioner persisted in his offensive correspondence with the complainant – but it also is relevant when considering some of the mitigating factors such as insight and "out of character behaviour".

Mitigating Factors

1. Acceptance of responsibility

[30] Through counsel Mr Schlooz "… *unreservedly accepts that it was totally unacceptable to use the abusive, insulting and threatening language that he used* …" He points out that he apologised to the complainant in his submissions to the Standards Committee in June 2020.

[31] We record that taking responsibility by pleading guilty to misconduct in respect of the two charges (the alternative charge thereby falling away), is certainly a relevant and mitigating factor. The earlier this occurs the more likely it is to be viewed as genuine and not self-serving.

[32] We recognise that Mr Schlooz changed his approach to take responsibility, as soon as he was advised by responsible counsel.

[33] That it took so long for Mr Schlooz to gain some insight into his conduct is of considerable concern to the Tribunal. As pointed out by Mr Collins, he ought to have been alarmed by the remarks of Her Honour Judge Bouchier at the very latest. Although he referred to that in his response to the Standards Committee, as having caused him to reflect, at the same time he used that opportunity to make derogatory (and irrelevant) comments about the complainant to the Standards Committee. It seems his reflections was not deep at that time.

[34] Mr Schlooz has recognised that he ought not to have been involved in the dispute between his close friend and the complainant and that the closeness of their relationship meant that he responded in a far too personal manner.

[35] This case is a glaring example of why practitioners ought not to act for those who are close to them and the errors that can be slipped into if they do so. Mr Schlooz was one of the witnesses when the complainant and her estranged husband were married. He had acted for both parties. He had no business being involved in the post-separation disputes between them.

2. Addressing cause of misconduct

[36] Mr Schlooz is taking steps to address his conduct by attending counselling sessions with a psychologist, Dr Farnsworth-Grood. This is a positive step although it does not sit entirely comfortably with his assertions that this particular conduct was entirely out of character, as attested to by his eight supporting deponents.

[37] The exploration of triggers for anger and other psychological issues is somewhat at odds also with the further mitigating factor we are asked to take into account, which is the effect of clinical drug trials being undertaken by Mr Schlooz over the period in question.

[38] Firstly, we note there is no specific medical evidence to connect Mr Schlooz's lack of control of his form of communication and professionalism and adherence to professional standards with the medication being trialled by him.

[39] Secondly, while it is commendable that Mr Schlooz is prepared to commit to such a trial, for personal reasons which he explained to us, one would have thought that any trial which reduced his capacity to work to the extent described by Mr Schlooz, a practitioner with a very large mortgage to support, might have caused him to reassess his priorities.

[40] In addition, if he truly believed there was a connection between the drug trial and his unprofessional conduct despite the lack of evidence for this (other than in relation to his tiredness and headaches), one would have thought a responsible professional would also reconsider the merits of being involved in such a trial if he genuinely considered it had led to this appalling conduct on his part.

[41] Having regard to all of those factors and the lack of medical evidence as to a direct connection between his conduct and the drug trial side effects, we are unable to give this factor any significant weight.

3. Previous Good Character

[42] Under this heading we consider the practitioner is entitled to credit for his clean disciplinary record and to a lesser extent, to the credit that he has earned with colleagues and clients for his professionalism and skills in providing legal services in the past.

[43] We note that the affidavits which are supportive and complimentary, and from deponents who have seen the charges admitted by Mr Schlooz, are also provided to support the submission that the actions under consideration are totally out of character for him.

[44] While we accept the affidavits are genuine and accurate as far as they go, they simply do not line up with the repeated and sustained nature of the misconduct before us. It seems highly unusual that if this conduct is truly out of character that it was out of character on 19 occasions over a period of 10 months, as suggested by the practitioner.

[45] Even having regard to the close nature of his relationship with the complainant's estranged husband, we are left wondering whether we have the full picture of the difficulties faced by the practitioner causing his conduct.

4. Financial Commitments of the Practitioner

[46] On behalf of Mr Schlooz, Mr Judd urged us to stop short of imposing a period of suspension upon him for a number of reasons including the financial effect upon him. Mr Schlooz indicated at the hearing that he earns approximately half of his income from his legal practice and half from his accounting or tax advice work. He has a very large mortgage for which he is largely responsible, although his partner is also self-employed and contributes.

[47] In addition, it was submitted that current clients would suffer during any period of suspension imposed upon the practitioner.

[48] There are two comments that can be made under this heading. First, Mr Schlooz's financial pressures are largely of his own making (100 per cent financing of an expensive home and working part-time because of tiredness from the voluntary drug trial). And secondly, unlike most lawyers who are suspended, this practitioner has another profession to call on, from which he can earn supplementary income if unable to practise law.

[49] While we take account of those factors, as pointed out in many disciplinary decisions the personal circumstances of the practitioner are not given undue weight in comparison with the purposes of the legislation which involves the upholding of professional standards, protection of the public, and maintenance of the public confidence in the profession.

[50] Whilst we accept and apply the principle of the least restrictive intervention as set out in *Daniels,*[5] members of the public are entitled to expect that the disciplinary bodies responsible for the maintenance of professional standards will respond firmly to instances of serious misconduct.

[5] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

Comparable Cases

[51] Both counsel provided the Tribunal with schedules of cases, Mr Collins setting out those involving abusive and insulting conduct, although submitting that he had not identified any authority which revealed such a "sustained pattern of openly abusive and profane emails" as this case.

[52] Mr Judd provided an analysis of cases where practitioners had been suspended by the Tribunal over the past two years.

[53] We accept without question that natural justice requires that like cases be treated in a like manner and that wherever possible predictability of outcome and consistency are values engaged by the Tribunal's process.

[54] Having said that, it is not possible to superimpose cases with entirely different contexts and varieties of misconduct upon each other to form some form of template for penalty imposition. The numerous factors arising both out of the background, the particular circumstances of complainants and practitioners, and different aggravating and mitigating features mean that we cannot accept that the submission made by Mr Judd that a suspension has been reserved for cases of dishonesty or multiple professional failures in dealing with clients.

[55] We have given careful analysis to the cases we have been referred to and the principles extracted and relied on by counsel. We consider we have struck the appropriate response having regard to the facts of this case and its comparison with others cited involving misconduct.

Purposes of Penalty

[56] The purposes of suspension are set out in the *Daniels* decision as follows:

> "[24] A suspension is clearly punitive, but its purpose is more than simply punishment. Its primary purpose is to advance the public interest. That includes that of the community and the profession, by recognising that proper professional standards must be upheld, and ensuring there is deterrence, both specific for the practitioner, and in general for all practitioners. It is to ensure that only those who are fit, in the wider sense, to practise 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 profession"

[57] The general purposes of penalty have been set out in numerous cases and will not be repeated here, but there are two primary purposes which we wish to highlight as important for this case. The first is that of general deterrence. While Mr Judd submitted that this was "… *not of particular relevance in the unusual circumstances of this case, which is essentially a personal dispute between Ms Y and Mr Schlooz*" we do not accept that proposition. We consider it is important for the profession as a whole to take note of the Tribunal's view of this practitioner's conduct and be deterred from treating any member of the public or colleague in a similar manner.

[58] The second is denunciation - rarely do cases come along which demand such condemnation on their facts as this one.

[59] The need for general deterrence has been referred to by the Tribunal in the past in the *Horsley* decision.[6] In that decision we stated at paragraph [28]:

> [28] There is, in this case, a specific aspect of penalty which bears on the special role of the Tribunal in upholding professional standards, the reputation of the profession, and in protecting the public. That is the aspect of "general deterrence". The objectives of specific and general deterrence are discussed in the decision of *Stirling v Legal Services Commissioner* [2013] VSCA 374, a decision of the Supreme Court of Victoria, which in turn referred to the decision of *Brott v Legal Services Commissioner* [2008] VCAT 2399.
>
> > 'The concept of general deterrence of others by the punishment of an offender is that an offence is followed by substantial adverse consequences will prevent others from committing the offence. Related to general deterrence is the proposition that in deciding the appropriate penalty the Tribunal may have regard to the effect which its order will have on the understanding, in the profession and amongst the public, of the standard of behaviour required of solicitors.'

Reflection

[60] One of the purposes of suspension which has also been referred to in the past is that it serves the purpose of providing time for the practitioner to reflect on his or her conduct. Given what we consider is a somewhat compromised or confused level of insight and certainly a delayed one, on the part of this practitioner, we consider that suspension will meet this purpose also.

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[6] *Canterbury Westland Standards Committee v Horsley* [2014] NZLCDT 47.

Discussion

[61] We consider that this case forms the high water mark for cases of misconduct involving language or speech rather than actions or inaction. We note that in *Orlov*[7] which involved offensive assertions and comments about a Judge, that a period of eight months suspension that had already been served by the practitioner, was seen as proper.

[62] We regard this matter as involving even more egregious comments, and comments directed to a litigant in person. Although Mr Collins urged a suspension order at the high end of the spectrum available (the maximum period would be 36 months), we do not consider that such a lengthy period is necessary to mark the misconduct of an otherwise apparently competent practitioner.

[63] We consider that a suspension period of six months would be a realistic starting point for this type of misconduct. We propose to discount that period somewhat, to four months, to take account of the fact that the charge was admitted by the practitioner and that he comes to the disciplinary process for the first time with no previous disciplinary history. In reaching the above periods we have taken into account the aggravating and mitigating features set out above.

[64] We propose to censure the practitioner and impose a period of suspension of four months commencing three days from the release of this decision to enable Mr Schlooz to make arrangements for current work to be taken over for this period.

Censure

[65] Mr Schlooz, your conduct towards Ms Y was utterly appalling. No member of the public or indeed any person dealing with you in a professional capacity ought to be subjected to the repeated abusive, offensive, belligerent, threatening and downright nasty and personal statements used by you.

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[7] *Orlov v The New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987 (21 August 2014).

[66] Your conduct did not occur in a one heat of the moment loss of control. You persisted in a campaign of emails which the complainant found distressing, frightening and harassing. For a practitioner to have an Harassment Order made against him for his conduct during the representation of a client strikes a new low in this sort of professional misconduct.

[67] Should you ever repeat this behaviour it is likely that you will no longer be found to be a fit and proper person to practise law.

Orders

1. Suspension – the practitioner is suspended for four months from the 17th day of April 2021.

2. Censure – a censure is imposed, and the terms set out above in para [65]-[67].

3. The practitioner is to pay the costs of the Standards Committee in the sum of $22,443.26.

4. The s 257 costs are certified at $3,027 and are to be paid by the New Zealand Law Society.

5. The practitioner is to reimburse the New Zealand Law Society the full s 257 costs as above.

DATED at AUCKLAND this 14th day of April 2021

Judge DF Clarkson
Chairperson

Appendix 1

Auckland Standards Committee 4 charges the practitioner with:

1. <u>Charge One</u>: Engaging in abusive, insulting and intimidating communications in breach of Rules 10 & 12 of the *Conduct and Client Care Rules*

Misconduct within the meaning of ss.7(1)(a)(i)&(ii) and 241(a) of the Lawyers and Conveyancers Act 2006 (the Act)

Particulars

1. During the period May – November 2019, in his capacity as a barrister on behalf of a person named Mr Y, he sent abusive, insulting and intimidating emails to Mr Y's estranged wife, Ms Y:

   (a) In an exchange of emails beginning on 15 May 2019:

      (i) Ms Y communicated with the practitioner about relationship property issues she had with Mr Y;

      (ii) The practitioner replied to Ms Y in an email on that date at 13:45 saying:

      > Blah, Blah, Blah. Regards John Schlooz Barrister;

      (iii) Ms Y inquired about the practitioner's complaints procedures, including an email on 3 June 2019 at 12:12pm saying *"You are now personally attacking my level of intelligence and bullying me saying I can't understand what I read"*; and

      (iv) The practitioner replied at 12:17:

      > I'll put this simply in terms you can understand, FUCK OFF.
      > Regards
      > *John Schlooz*
      > *Barrister;*

   (b) In an email on 4 June 2019, at 21:59, responding to an allegation that Mr Ys' accounting firm, [firm name] had wrongly terminated a contract Ms Y had with that company, the practitioner said:

      > You really are a moron.
      > [redacted] won't be responding & I shall ignore you until you file proceedings. You of course can (& probably will) continue banging your head against a wall.
      >
      > GET A LIFE.
      > Regards
      > *John Schlooz*
      > *Barrister;*

   (c) In an email on 10 June 2019 at 21:31 replying to an email Ms Y had sent to the practitioner at 21:24 disputing his interpretation of events surrounding the contractual dispute she had with [firm name]:

> The reality for me is that I can suggest anything to anyone I want. I can swear at anyone I want. I can call anyone I want any name I wanna call them. You don't seem to realise I'm playing with you and I'm enjoying it. You're such a fool.
> Regards
> *John Schlooz*
> *Barrister;*

(d) In the same context, in an email on 12 June 2019 at 21:26:

> Again you fail to understand plain English. I gave you 2 options & again, like the idiot you are, you cannot simply choose one. That's because you know you have no legal redress in this matter. I again urge you to seek legal advice.
> Regards
> *John Schlooz*
> *Barrister;*

(e) In the same context, in an email on 13 June 2019 at 08:03:

> Why would any right thinking person seek advice from someone who clearly despises them? You really need a reality check cause you've lost it.
> Regards
> *John Schlooz*
> *Barrister;*

(f) In the same context, in an email on 13 June 2019 at 12:45:

> You half-wit. The agreement cannot be varied because it is cancelled.
> Regards
> *John Schlooz*
> *Barrister;*

(g) In the same context, in an email on 13 June 2019 at 17:22:

> Tell it to a Judge because we're tired of your mad rantings.
> Regards
> *John Schlooz*
> *Barrister;*

(h) In response to an email from Ms Y to Mr Y asking for a household utensil to be made available to her, formerly used in their marriage home, in an email on 10 July 2019 at 10:59:

> Fuck off [redacted]; you really are an idiot.
> Haven't you heard the definition of insanity, 'Doing the same thing over and over again, but expecting different results." That seems to be you. It's interesting for me that your tirades seem to be late in the evening when obviously you're onto another bottle of red wine.
> It appears that you have difficulty reading and/or understanding [redacted] & my messages to you on your computer screen. To help you, I will print copies of the messages and post them to you at your work address so we know you have them. Maybe get someone to read them and explain them to you.
> Regards
> *John Schlooz*
> *Barrister;*

(i) Responding to an email Ms Y had sent to Mr Y concerning the settlement of their relationship property dispute, in an email on 12 July 2019 at 09:53:

> [Redacted],
> You really are a sad and pathetic old lady.
> As I communicated to you yesterday, **'you must have a lawyer because you don't have the brains to draft an agreement. Please have your lawyer send a draft of the agreement for [redacted] & my considerations.'** Your lawyer will know to express in the draft agreement all the matters for which you seek reimbursement and the evidence to support your claim.
> Stop this harassment and simply do what you've threatened for 8 months.
> I'll send a hard copy of this communication to you.
> Regards
> *John Schlooz*
> *Barrister;*

(j) After Ms Y had sent Mr Y a draft "Matrimonial Settlement Agreement" on 13 July 2019 at 11:16, the practitioner replied in an email the same day at 19:57:

> [Redacted],
> Again you've misrepresented that you have a lawyer because a lawyer would not have drafted such a ridiculous agreement; it comes nowhere close to being a valid and enforceable agreement. You are a compulsive liar.
> Once and for all FUCK OFF or get a lawyer to correspond with me. Clearly [redacted] wants no part of your crap. You must be suffering from a mental illness if you think [redacted] gonna give you $250k; how the hell did you come up with such a ridiculous figure? BTW that's a rhetorical question.
> File proceedings you moron or get on with your life.
> Regards
> *John Schlooz*
> *Barrister;*

(k) In the same context, in an email on 14 July 2019 at 14:12

> FUCK OFF [redacted]. You're a sad old drunk who needs help. Don't flatter yourself that [redacted] is interested in your life. He's so much happier now that he's dumped you. I feel sorry for the guys you're trying to trap into a horrid life with you.
> Regards
> *John Schlooz*
> *Barrister;*

(l) In the same context, in an email, on 14 July 2019 at 09:53:

> Fuck off [redacted]
> Regards
> *John Schlooz*
> *Barrister;*

(m) Shortly after a Disputes Tribunal hearing concerning Ms Ys' contractual dispute, when she took issue with Mr Y about the disclosure of her salary at the hearing, in an email on 10 September 2019 at 18:59:

> [Redacted], you fuckwit. I have not breached your privacy & the last 2 paragraphs of your below email communication are another indicator of what a moronic idiot you are.
> Furthermore, you erroneously state below that [redacted] publicly disclosed your so called private information. Where was the public? The disputes tribunal is a closed forum so how could the revelations be public?
> Get a life you sad, pathetic old bag.
> I am not in jeopardy at all & I put you on notice that if you take your ridiculous claim against me, I will pull out all the stops to get appropriate remedies against you. When I win what I believe to be a significant award of costs I will bankrupt you if you don't pay.
> Regards
> *John Schlooz*
> *Barrister;*

(n) In the same context, in an email on 13 September 2019 at 08:47:

> Fuck off you dip shit.
> Regards
> *John Schlooz*
> *Barrister;*

(o) In response to an email from Ms Y saying *"Please stop your abuse and obscene language towards me, which offends me"* on 17 September 2019 at 20:47:

> Fuck off [redacted], [redacted] won't be giving you '[redacted]' unless by court order.
> Regards
> *John Schlooz*
> *Barrister;*

(p) Following a hearing in the Tenancy Tribunal between Ms Y as former tenant and Mr Y and the practitioner as former (trustee) landlords, in an email on 17 November 2019 at 09:51:

> For fuck sake you moron,
> You don't have a restraining order against me & as we keep telling you (& the tribunal member told you the same) [redacted] can have anyone he wants represent him.
> [redacted] is entitled to live safely without an idiot like you intimidating/harassing him. I've advised him to call the cops if you go anywhere near the property you are trespassed from.
> Get a life (or a lawyer) you sad old lady.
> Regards
> *John Schlooz*
> *Barrister;*

(q) In an email on 17 November 2019 at 11:16:

> [Redacted],
> In the land of the witless you would be Queen. You are the reason god gave us a middle finger. We regard you with an indifference that borders on aversion. If we throw a stick, will you leave? People clap when they see you; they clap their hands over their eyes.

> We are jealous of the people who haven't met you, now fuck off. Leave [redacted] in peace, He's much happier now that he doesn't not have to put up with your drunken self.
> Regards
> *John Schlooz*
> *Barrister;*

(r) In the same context, in an email on 17 November 2019 at 14:39:

> I'm not surprised you're confused because you are an idiot.
> It's your responsibility to gather whatever evidence you need to make out the claim **YOU** initiated. We have no obligation to assist you unless we get an order requiring us to give you '**specified**' assistance. So, again 'Fuck off'.
> We're in an adversarial forum (the Tenancy Tribunal) and, as adversaries, we won't be giving you anything that we aren't ordered to. That's like the Indians asking the cowboys for rifles. Regrettably you probably won't get that analogy so maybe you could seek an explanation from someone smarter than you – a six year old could probably help.
> Obviously we've read the Order because we take your claim & allegations very seriously. Nowhere in the 14 November Order does it say that [redacted] must let you into his house more than a year after you left. Is there some invisible writing in the Order that you've read and we've overlooked? The order doesn't state that you gather your 'evidence from 707'; you again misrepresent what someone (in this case the Tribunal Member) has stated. It's your responsibility to gather your evidence but that won't be at [street].
> Your veiled threat is noted – your threat of 'jail stories' is unbecoming of a so-called christian.
> I repeat, **Leave [redacted] in peace. He's much happier now that he doesn't have to put up with you.**
> Regards
> *John Schlooz*
> *Barrister;*

(s) In the same context, in an email on 17 November 2019 at 20:48:

> Just fuck off you pathetic old bag. Neither of us has any interest in you; why would we when our lives are so much better than yours. We have people who love & care for us and your life must be sadly lacking in that regard.
> Your 'actual' threats are duly noted.
> Regards
> *John Schlooz*
> *Barrister;*

2. Those communications all breached Rules 10 & 12 of the *Conduct and Client Care Rules*.

3. The communications listed in Particulars 1(a) – (s) occurred at a time when the practitioner was providing regulated services:

   (a) The context in which the communications occurred involved legal matters in which the practitioner acted for Mr Y:

      (i) Concerning legal disputes between Ms Y and Mr Y, or between Ms Y and entities associated with Mr Y; and

(ii) In circumstances of a Relationship Property (pre-nuptial) Agreement between Mr Y and Ms Y which he certified as Mr Ys' solicitor on or about 30 November 2015, and which was the subject of one of the legal disputes in which the emails occurred;

(b) The emails all included the notation at the end of the message; John Schlooz Barrister;

(c) In an email to Ms Y on 14 May 2019 at 15:07 in the context of the relationship property dispute, the practitioner said:

> As stated below, [redacted] has instructed me in this matter & it's inappropriate for you to correspond with him in regard to your latest 'straw clutching' exercise.
>
> … I have advised [redacted], in no uncertain terms, not to give in to your latest demands unless you can prove the amount you want paid back & indeed if there is an obligation for [redacted] to pay you back.
>
> [then discusses "the law in relation to the Presumption of Advancement"]

(d) In an email to Ms Y on 26 May 2019 at 14:41 the practitioner told her:

> [redacted] will continue to share your communications with me regardless of your 'permission'. It's not your call.
>
> You on the other hand shouldn't be communicating with him. How many times do we need to tell you?
>
> If you continue, I'll talk to [redacted] about bringing harassment proceedings against you; we'll seek costs against you if we have to go to Court.

which was consistent with his status as Mr Ys' lawyer;

(e) In an email to Ms Y on 4 June 2019 at 18:45 he said that he was:

> That is fine. I'm authorised to accept service of your Dispute proceedings. As you will no doubt be aware, [redacted] will seek costs against you when your proceedings fail.
>
> Do not communicate with [redacted] any further in this regard;

(f) In emails on 12 and 13 June 2019 he engaged in argumentative exchanges with Ms Y about a contractual dispute with Mr Y, in his capacity as Mr Ys' lawyer (the emails in Particulars 1(d) – (g));

(g) In an email to Ms Y on 17 June 2019 at 07:58, in the context of her contractual dispute with Mr Y and [firm name], the practitioner said:

> Great, see you in Court. My postal address for service of your proceedings is PO Box [number], [street], Auckland [postcode]. Costs will be an issue.
>
> Regards
> *John Schlooz*
> *Barrister;*

(h) In an email to Ms Y on 8 July 2019 at 9:13 Mr Y said:

> Please send all correspondence to my lawyer John Schlooz, as I have requested you many times before.

2. <u>Charge Two</u>: In the alternative; misconduct within the meaning of s.7(1)(b)(ii) of the Act

If, notwithstanding the matters set out in Particulars 3(a) – (h) to Charge One, the Tribunal finds that the practitioner's communications with Ms Y were unconnected with the provision of regulated services, he is guilty of misconduct under s.7(1)(b)(ii) because the conduct described in Particulars 1(a) – (s) to Charge One justifies a finding that he is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer.

3. <u>Charge Three</u>: Wrongful threats

Misconduct within the meaning of s.7(1)(a)(i)&(ii) and 241(a) of the Act or, in the alternative;

Unsatisfactory conduct with the meaning of s.12(a),(b)&(c) and 241(b) of the Act

Particulars

1. The practitioner sent emails to Ms Y which included threats against her for an improper purpose including:

   (a) In an email on 1 February 2019 at 17:39 in an attempt to intimidate Ms Y out of her intended relationship property claim against Mr Y; he threatened to report the crime of blackmail in the following terms:

   > Regrettably, what you are committing is 'Blackmail' & that is a Crime. I will discuss your blackmail with the Police next week to ascertain whether they are minded to lay charges against you; obviously subject to [redacted] instructions because I haven't yet had the opportunity to discuss this with him. In my view, the evidence is clear in terms of your email correspondences and your admission below.

   (b) In the email on 26 May 2019 at 14:41 (described at Particular 3(d) to Charge One) he threatened to talk to Mr Y *"about bringing harassment proceedings against you; we'll seek costs against you if we have to go to Court"*;

   (c) In the email on 10 September 2019 at 18:59 (described at Particular 1(m) to Charge One) he threatened Ms Y for the purpose of intimidating her out of taking legitimate legal action under the Harassment Act 1997 by saying:

   > I am not in jeopardy at all & I put you on notice that if you take your ridiculous claim against me, I will pull out all stops to get appropriate remedies against you. When I win what I believe to be a significant award of costs I will bankrupt you if you don't pay.

2. Those were threats, expressly or by implication, to make accusations against Ms Y or to disclose something about her for an improper purpose contrary to Rule 2.7 of the *Conduct and Client Care Rules*. The improper purpose was to discourage her from advancing her legal disputes with Mr Y and her application for relief against the practitioner under the Harassment Act 1997.