

**LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2021] NZLCRO 165

Ref: LCRO 208/2020
LCRO 214/2020

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the [Area] Standards Committee – Part Two

BETWEEN

JA

Applicant

AND

RR

Respondent

AND BETWEEN

RR

Applicant

AND

JA

Respondent

DECISION

The names and identifying details of the parties in this decision have been changed.

Introduction

[1] Messrs JA and RR have both applied for a review of a decision by the [Area] Standards Committee which, following completion of an investigation into complaints made by Mr JA, entered a finding of unsatisfactory conduct against Mr RR.

[2] The Committee's decision was delivered in two parts. The first addressed the conduct issues and recorded the Committee's finding that there had been unsatisfactory conduct on the part of Mr RR, and its reasons for reaching that view. The second addressed the orders the Committee considered appropriate to make consequential on its unsatisfactory conduct finding.

[3] It is appropriate that both reviews be addressed in this single decision.

Background

[4] The background to the complaints is comprehensively set out in the Committee's decision of 14 July 2020.

[5] I see no necessity to replicate that comprehensive background here, except to note that:

- (a) Mr JA and his wife were beneficiaries of the [PGA] Family trust; and
- (b) Mr JA's mother¹ and her other children B, W, and X (deceased) together with their spouses and Mrs SA's grandchildren were the remaining beneficiaries; and
- (c) another trust (the [XRA]Trust) was involved in the dispute that had prompted Mr JA to advance his conduct complaints against Mr RR; and
- (d) Mr RR became a trustee of the [XRA] Trust when Mr XA died in 2015; and
- (e) there were two residential properties that were material to the complaint, being a residential property located at [Town], and a residential property located at [Address] [City].

[6] Mr JA's mother occupied the home at [Town]. She wished to move to a property in town.

[7] The [Town] home was owned in determined shares by the [PGA] Family Trust, Mr JA, Mr JA's wife Q, and the [XRA] Trust.

[8] Disagreements emerged amongst the JA family members as to the arrangements that would be made to facilitate Mrs JA snr's shift from her home in [Town], to the home at [Address].

¹ I will reference Mr JA's mother in this decision as Mrs JA snr.

The complaint and the Standards Committee decision

[9] Mr JA lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 30 May 2019. The substance of his complaint was that Mr RR:

- (a) had been conflicted in acting for the various parties involved in the process of facilitating arrangements for Mrs JA snr to move to the [address] property; and
- (b) had failed to respond to inquiries; and
- (c) had on occasions been discourteous; and
- (d) had caused unnecessary delay; and
- (e) had incurred costs that were unnecessary; and
- (f) had endeavoured to impede opportunity for a conduct complaint to be advanced.

[10] Counsel for Mr RR (Mr MO) responded to Mr JA 's complaint on 15 April 2020.

[11] It was submitted for Mr RR that:

- (a) the interests of the JA family were initially aligned when plans were made to purchase the [Address] property; and
- (b) Mr RR's original instructions had been to act for Mr JA (as a discrete transaction), on the purchase of the [address] property; and
- (c) Mr RR had been aware of the potential for conflict and had at various times attempted to withdraw from acting, but request was made of him to continue to be involved when matters presented as being close to resolution; and
- (d) had continued to be involved in the transaction as he held a genuine conviction that he would be able to assist the parties; and
- (e) had not requested that any settlement concluded be conditional upon agreement that no professional conduct complaints be advanced.

[12] Mr RR acknowledged that there were parts of the process that he could have managed “differently and with more care”.²

[13] The Standards Committee identified the focus of its investigation as being a consideration as to whether:

- (a) Mr RR had breached Rule 3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the conduct rules) by not acting competently and in a timely manner in relation to the conveyance of the [address] property, particularly regarding registration of title to the property in JA snr’s name and alleged delays in the subsequent transfer of title to the property to Mr JA ; and whether
- (b) Mr RR had breached Rule 5 (which required Mr RR to be independent and free from compromising influences or loyalties when providing services to his clients) and/or Rule 6 which requires that when acting for a client a lawyer must, within the bounds of the law and the rules, protect and promote the interests of the client to the exclusion of the interests of third parties; and whether
- (c) Mr RR breached Rule 10 by forwarding emails to counsel which indicated that he would execute various documentation on the basis of agreement that no professional conduct complaints would be advanced against himself or his firm; and whether
- (d) Mr RR had breached Rule 10.2 by communicating with Mr JA or Mrs JA, when both were represented by another lawyer.

[14] The Standards Committee delivered its decision (part one) on 14 July 2020.

[15] The Committee determined that:

- (a) Mr RR had breached Rule 3 of the conduct rules by failing to act in a timely manner; and
- (b) had breached Rule 5 and Rule 6 of the conduct rules (conflict of interest); and
- (c) had breached Rule 10 of the conduct rules (failing to maintain proper standards of professionalism); and

² Mr MO’s submissions to the Lawyers Complaints Service (15 April 2020) at [73].

- (d) had breached Rule 10.2 of the conduct rules (communicating with Mr JA whilst Mr JA was represented by another practitioner).

[16] Consequential upon its finding that these breaches had been established, the Committee determined, pursuant to section 152(2)(b)(iii) of the Act, that there had been unsatisfactory conduct on the part of Mr RR.

[17] After issuing its decision, the Committee adjourned the hearing to allow opportunity for Mr RR and Mr JA to make submissions on penalty. Both were alerted to section 156 of the Act, which details the powers available to a Committee to make orders consequential upon a finding that a lawyer's conduct has been unsatisfactory.

[18] Mr JA's submissions on penalty broadly traversed two issues. Firstly, he sought compensation for the legal costs incurred as a consequence of what he considered to be Mr RR's failure to act competently. He sought compensation for loss he said he had incurred as a consequence of the [Town]/[address] transactions not being resolved as expeditiously as they should have been.³ Secondly, Mr JA sought directions that Mr RR be prohibited from, as he described it, "any further involvement in my family's affairs".⁴

[19] Mr JA made request that the Committee's decision be published, with details identifying Mr RR.

[20] Mr RR considered that issues of penalty would be adequately addressed "by the finding of unsatisfactory conduct; a censure; and then only if necessary, a fine in order of perhaps \$2500." It was submitted that "this would reflect the seriousness of the issues but also Mr RR's prior good history and the more unusual nature of the transaction because of the various family interests involved".⁵

[21] The Committee delivered its penalty decision on 19 October 2020.

[22] The Committee ordered that Mr RR:

- (a) be censured; and
- (b) provide a written apology to Mr JA; and
- (c) pay \$2,000 in relation to additional legal fees incurred by Mr JA; and

³ Mr JA sought directions that Mr RR make additional financial compensation (reimbursement of his legal costs and costs charged to Mrs JA snr of the Mrs JA snr Trust).

⁴ Mr JA's submission to the Lawyers Complaints Service (25 July 2020) at p [4].

⁵ Mr MO's submissions to the Lawyers Complaints Service (28 July 2020) at p [12].

- (d) reduce the fee of \$250 plus GST charged to Mr JA and refund said amount; and
- (e) pay a fine in the sum of \$2,000 to the New Zealand Law Society; and
- (f) pay costs in the sum of \$500 to the New Zealand Law Society; and
- (g) that there be no publication of Mr RR's name.

Applications for review

[23] Mr JA filed an application for review on 10 November 2020.

[24] Mr RR filed his application to review the Committee's decision on 25 November 2020.

Mr JA's Review Application

[25] Mr JA considered that the Committee had neglected to address various outcomes which he had sought in advancing his complaint against Mr RR.

[26] It was his view that the Committee's decision failed to shield him from "Mr RR further involving himself in my family's business in a harmful manner".⁶

[27] Mr JA considered that the Committee should have imposed orders which carried more consequence for Mr RR. He sought compensation in terms as he had requested in his initial complaint, and directions to be made that would both prohibit Mr RR from continuing to act for or provide advice to Mrs JA snr, and require Mr RR to resign as a trustee of the [XRA] Trust.

[28] Mr JA made request for the Committee's decision to be published with Mr RR identified.

Mr RR's Review Application

[29] Mr RR's review application noted that his application was intended, in a relatively limited way, to provide response to the review application filed by Mr JA.

[30] It was submitted for Mr RR that:

⁶ Mr JA's submission to the LCRO (9 October 2020).

- (a) There was no direct connection between Mr RR's conduct and the loss of rental income; and
- (b) the dispute between the JA family members was not caused by Mr RR; and
- (c) Mr JA was always going to be required to meet some conveyancing and legal costs given the issues involved; and
- (d) the penalties imposed by the Committee were overly severe, and
- (e) a finding of unsatisfactory conduct accompanied by a censure would present as a proportionate response.

Review on the papers

[31] This review has been undertaken on the papers pursuant to s 206(2) of the Act, which allows a Legal Complaints Review Officer (LCRO) to conduct the review on the basis of all information available if the LCRO considers that the review can be adequately determined in the absence of the parties.

[32] I record that having carefully read the complaint, the response to the complaint, the Committee's decision and the submissions filed in support of and in opposition to the application for review, there are no additional issues or questions in my mind that necessitate any further submission from either party. On the basis of the information available I have concluded that the review can be adequately determined in the absence of the parties.

Nature and scope of review

[33] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:⁷

... the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.

The Review Officer has broad powers to conduct his or her own investigations including the power to exercise for that purpose all the powers of a Standards

⁷ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41] (citations omitted).

Committee or an investigator and seek and receive evidence. These powers extend to “any review” ...

... the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review Officer to exercise some particular caution before substituting his or her own judgment without good reason.

[34] More recently, the High Court has described a review by this Office in the following way:⁸

A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO’s own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee’s determination.

[35] Given those directions, the approach on this review, based on my own view of the fairness of the substance and process of the Committee’s determination, has been to:

- (a) Consider all of the available material afresh, including the Committee’s decision; and
- (b) Provide an independent opinion based on those materials.

Discussion

[36] The issues to be addressed on Review are:

- (a) does a Standards Committee or a Review Officer have jurisdiction to make orders which would have effect of prohibiting Mr RR from having any further professional involvement with Mrs JA snr, or trusts associated with members of the JA family; and
- (b) should the Committee have awarded additional compensation to Mr JA; and
- (c) were the penalties imposed by the Committee excessive; and

⁸ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

(d) should the Committee have directed publication of Mr RR's name?

Does a Standards Committee or a Review Officer have jurisdiction to make orders which would have the effect of prohibiting Mr RR from having any further professional involvement with Mrs JA snr, or trusts associated with members of the JA family?

[37] Mr JA considers that Mr RR was directly responsible for generating conflict amongst family members which made settlement of what he considered to be fairly straightforward transactions difficult.

[38] He believes that both his mother and his surviving brother, were manipulated by Mr RR, and incapable of understanding the advice they were receiving from him. Mr JA submits that his "vulnerable, uneducated mother and my surviving brother have been completely hood-winked by Mr FT and Mr RR and only do what they say without any comprehension".⁹

[39] The overarching criticism that Mr JA makes of the Committee, is that it failed to take steps that would have ensured that Mr RR would be unable to represent members of the JA family in the future. Mr JA expressed dismay that the Committee had failed to "insure that my family are no longer open to further harmful exposure to Mr RR purporting to act as a lawyer". He considered that the decision had failed to "protect me from Mr RR further involving himself in my family's business in a harmful manner".¹⁰

[40] When advancing his initial complaint, Mr JA submitted that it would be appropriate in the event that his complaints were established, that Mr RR be suspended from practice.

[41] Neither a Standards Committee nor a Review Officer has jurisdiction to suspend a lawyer from practice. That is a remedy that may be exercised by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.

[42] Mr JA confronts similar jurisdictional obstacles when he seeks, on review, for orders to be made that would prohibit Mr RR from representing Mrs JA snr in the future, or in having any professional involvement with trusts in which members of the JA family were involved.

[43] A Review Officer has no jurisdiction to make orders in the nature of those requested by Mr JA.

⁹ JA submission to LCRO 9 October 2020. Mr MO was a trustee of the JA snr Family Trust.

¹⁰ JA submission to LCRO 9 October 2020.

[44] A Review Officer may, in the course of conducting a review, exercise any of the powers that could have been exercised by the Standards Committee in the proceedings in which the decision was made or the powers were exercised or could have been exercised.¹¹

[45] Section 156 of the Act records the orders that may be made by a Standards Committee.

[46] Absent is any indication of orders in the nature of those which Mr JA seeks to have imposed on Mr RR.

[47] Direction that a lawyer be restricted from acting for a particular client or clients would impose intolerable restriction on a lawyer's capacity to conduct their practice and, importantly, present as an oppressive (and unenforceable) impediment to the autonomous rights of an individual or legal entity to engage the lawyer of their choice.

[48] Whilst Mr JA argues that it is necessary to impose restrictions on Mr RR's ability to practice on grounds that he considers protective measures are required to ensure the interests of family members (particularly of his elderly mother) are protected, it is not the case that all of the family members or parties involved with the trusts were critical of Mr RR's attempts to resolve the family dispute.

[49] One of the family members considered that Mr RR had "acted professionally" and had "gone above his duties".¹²

[50] A fellow trustee of Mr RR's considered that Mr RR was "trying his very best to get the whole situation sorted out as quickly and as fairly as possible", and that Mr RR had throughout, had Mrs JA snr's best interests at heart.¹³

[51] If Mrs JA snr was dissatisfied with Mr RR (although there is no indication of that on the file before me), or unwilling to instruct Mr RR on further matters, that was, and remains, her prerogative.

[52] Mr JA says that it is his understanding that Mr RR is continuing to provide advice to his elderly mother, and he suggests that the advice provided is "inappropriate". He expresses concern that in continuing to act as an adviser to the [XRA] Trust and the JA snr Trust, Mr RR is acting to the detriment of Mr JA and Mr JA's family.

¹¹ Lawyers and Conveyancers Act 2006, s 211(1)(b).

¹² Correspondence from JA to RR & Associates (undated).

¹³ Correspondence from MO to RR & Associates (9 July 2019).

[53] These allegations extend well beyond the scope of what can properly be addressed on review.

[54] The issue as to what advice Mr RR may or may not have provided to parties subsequent to Mr JA advancing his conduct complaint, are matters confidential to Mr RR and his clients.

[55] In requesting that orders be made which would impose continuing prohibition on Mr RR representing those members of the JA family that Mr JA would prefer Mr RR to have no further involvement with, Mr JA is seeking not only to restrict Mr RR's capacity to practice, but the ability of his family members to instruct their lawyer of choice.

[56] A Review Officer has no jurisdiction to direct orders in the nature of those sought by Mr JA.

Should the Committee have awarded additional compensation to Mr JA?

[57] Mr RR seeks compensation for legal costs incurred, together with compensation for rental income lost as a consequence, he contends, of Mr RR's failure to manage the issues relating to and arising from the family dispute competently, and his role in what Mr JA perceives to be the causing of disharmony amongst family members to the extent that this compromised the parties' ability to reach agreement.

[58] Pivotal to this argument are the assumptions that Mr RR was directly responsible for the family's failure to reach agreement, and that but for Mr RR's involvement, settlement would have been more expeditiously achieved.

[59] Neither of these assumptions is established on the evidence.

[60] Whilst Mr RR can be, and has been, criticised for his failure to recognise the potential for him to be manifestly conflicted in endeavouring to act for a number of parties, this failing does not in itself establish argument that Mr RR was responsible for creating or nurturing dissent amongst the family which compromised the parties' ability to reach agreement.

[61] It was Mr JA's view that some of the recipients of the advice being provided by Mr RR were vulnerable and adversely influenced by Mr RR.

[62] Mr JA's conviction that Mr RR was responsible for fostering dissent amongst family members appears to have proceeded initially from concern with advice that Mr RR had offered concerning a proposal advanced by Mr JA, where he had suggested that a settlement proposal then under consideration should properly take into account the cost

that would accrue to Mr JA if he was required to transfer funds from the UK to NZ, at a time when the transfer would result in considerable financial loss to him, as a consequence of the unfavourable exchange rate.

[63] Mr JA considered that his position had been undermined by Mr RR, and that his failure to act promptly, together with an inclination to keep Mr JA out of the loop, were significant in impeding the parties' ability to reach agreement.

[64] Mr JA disagreed with the advice that Mr RR had offered, and he was entitled to, but it is not established that responsibility for the continuing inability of the parties to reach agreement fairly rested at Mr RR's door.

[65] It is clear from the documentation on the Standards Committee file that some of the family members (and interested parties) were resolutely opposed to the approach being adopted by Mr and Mrs JA. They considered that they were being subjected to undue pressure.

[66] As is not uncommonly the case when families are unable to agree on issues affecting the ongoing welfare and living arrangements for an elderly parent, there were in this case strong differences of opinion as to how those living arrangements should be formalised. The problems were made more difficult by the overlay of endeavouring to reconcile differing interests in the ownership of a long-owned family property, when the ownership interests in the property were diverse.

[67] In arguing that Mr RR was responsible for fermenting ongoing problems in the family, Mr JA discounts the possibility that other family members were genuine (and independent) in their opposition to the proposals being floated by Mr JA. His argument not only overstates the force and impact of the advice that Mr RR was providing but proceeds from assumption (unsupported by evidence) that family members who were expressing opposition to Mr JA's plans, were not exercising autonomy in their decision making, but rather were acting on instructions from, or being improperly influenced by, Mr RR.

[68] There is correspondence on the Standards Committee file which reflects in my view a capacity of JA family members to articulate their independent views.

[69] Mr RR's decisions to step back and then to re-engage reflected a degree of unfortunate indecisiveness, but I am not persuaded that his continued involvement was responsible for fostering disharmony amongst the family members or that his involvement was responsible for delay in achieving resolution. There is evidence in the correspondence provided by Mr RR at various stages in the proceedings, which supports

argument advanced for Mr RR that his continuing engagement with the file was motivated by a genuine desire to try and assist the parties reach a settlement that was acceptable to all.

[70] The area where delay on Mr RR's part was found to have had consequence for Mr JA (delay in transfer of the title) has been acknowledged by the Standards Committee and recognised in the Committee's penalty decision with orders that Mr RR reimburse Mr JA for additional legal fees incurred.

Were the penalties imposed by the Committee excessive?

[71] It is submitted for Mr RR that the penalties imposed by the Standards Committee were too severe, this submission advanced from the position that Mr RR does not seek to challenge the Committee's unsatisfactory conduct finding, and an acceptance on his part that his actions amounted to unsatisfactory conduct.

[72] Mr RR submits that the conduct could appropriately be marked by the unsatisfactory conduct finding alone, with possible imposition of a censure.

[73] Mr RR seeks a reversal of the Committee's decision to impose a fine of \$2,000 and directions that he make contribution to Mr JA's legal costs, that he reduce the fee charged to Mr JA, and that he provide a written apology to Mr JA.

[74] Mr JA considers that the penalties imposed by the Committee were lenient. He seeks additional compensation.

[75] As noted, following the Committee issuing its substantive decision, the parties were invited to make submissions on penalty.

[76] The Committee's decision on penalty was then informed by the penalty submissions provided by the parties.

[77] The function of a penalty in a professional context was recognised in *Wislang v Medical Council of New Zealand* as being to punish a practitioner, to act as a deterrent to other practitioners, and to reflect the public's and the profession's condemnation or disapproval of a practitioner's conduct.¹⁴ It is important to mark out the conduct as unacceptable and to deter other practitioners from failing to pay due regard to their professional obligations.

¹⁴ *Wislang v Medical Council of New Zealand* [2002] NZCA 39.

[78] A penalty ought to be fair, reasonable and proportionate in the circumstances.¹⁵

Fine

[79] Whether to impose a penalty, and if so whether that penalty is a fine, and if so at what level, are all elements of the discretion exercised by Committees. There is no formula by which to calculate the appropriate level of a fine. As such, this Office would have to have good reason to interfere with the exercise of that discretion. It has been noted in a number of LCRO decisions that a Review Officer will not “tinker” with a Committee’s penalty decision. That said, the expectation of this Office is that it will form its own independent opinion as to the appropriateness of the penalties imposed by a Standards Committee. But if an LCRO elects to interfere with penalty, there must be sound reasons to justify the intervention.

[80] Section 156(1)(i) of the Act provides for a fine of up to \$15,000 when unsatisfactory conduct is found. A fine at that level is reserved for the most serious of cases of unsatisfactory conduct. For a fine of that magnitude to be imposed it is clear that some serious wrongdoing must have occurred. In allowing for a possible fine up to that amount, the legislature has indicated that breaches of professional standards are to be taken seriously and instances of unsatisfactory conduct should not pass unmarked.

[81] In an earlier LCRO decision,¹⁶ the LCRO noted at [68] that a fine of \$1,000 is a proper starting place where unsatisfactory conduct has been found as a result of a breach of applicable rules (whether the Conduct and Client Care Rules, Regulations, or the Act).

[82] I see no foundation for argument (as advanced by Mr RR) that the conduct breaches identified by the Committee are adequately addressed by the unsatisfactory conduct finding itself, with that finding to be possibly accompanied by a censure.

[83] Four conduct breaches were established. The most significant of these was the Committee’s finding that Mr RR had been conflicted.

[84] The fine imposed by the Committee was modest.

[85] Having given careful attention to the material on the file, it is my view that Mr RR’s failure to identify the significant areas in which he was manifestly conflicted presented as a significant conduct breach for an experienced practitioner. The potential for conflict was so manifest and demonstrable that it is difficult to find explanation for

¹⁵ *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 at [28].

¹⁶ *Workington v Sheffield* LCRO 55/2009.

Mr RR's decision to continue representing various parties in circumstances where the need for those parties to be independently advised was so obvious.

[86] Mr RR himself recognised (on a number of occasions) that he was conflicted but regrettably this was not accompanied by him taking decisive steps to withdraw. Rather, he appears to have found himself mired in indecision which had the consequence of him exacerbating the situation by indicating on more than one occasion of his intention to withdraw, only then to come back into the fray.

[87] This was unfortunate, but I accept Mr RR's submission (and it is supported by the evidence on the file), that Mr RR had a genuine and earnest wish to assist the parties, and a sincere view that he could, by continuing to be involved, do so.

[88] I see no evidence that Mr RR was motivated by personal interest.

[89] Mr JA was endeavouring to implement arrangements which would ensure that his elderly mother's wish to move into new accommodation was achieved. He was prepared to make a significant financial contribution to achieve that goal. He wished to keep the ownership of the [Town] property in the family by purchasing the property, but his objective was to ensure that a home that had considerable historical family significance for the JA family members was retained for the benefit of the broader family. His aspirations for the property were not singularly focused on his own interests, but reflective of his appreciation of how important the [Town] property had been for the JA family.

[90] Mr JA is convinced that Mr RR was working against his interests, and promoting dissent amongst the family members with the consequence that Mr JA was unable to achieve resolution of matters that Mr JA considered should have been capable of prompt resolution.

[91] I do not consider that Mr JA's assessment provides a realistic or accurate account of what transpired. With respect to Mr JA, his criticism of Mr RR is unduly harsh. Mr JA's view, that Mr RR was working against him and frustrating attempts to settle, is unsupported by evidence and indifferent to and ignoring of the fact that family members were entitled to, and did, have different views to Mr JA as to how property issues could be fairly settled

[92] Mr RR's mistake was a failure to recognise that he was manifestly conflicted, and an inability to decisively take steps to remedy that when he himself recognised that he was hopelessly conflicted.

[93] But an appropriate penalty for the most significant of the conduct breaches (conflict) is not appropriately overarched with the argument that Mr RR was promoting the interests of some members of the family over the interests of others.

[94] I have considered a number of LCRO cases where fines have been imposed. The overview of cases is helpful, but reference to comparative penalties is of most assistance when the cases compared share a degree of commonality in their factual matrix, and where the conduct rule breached is identical.

[95] It has been noted that there do not tend to be comparable cases in disciplinary proceedings because of the wide range of conduct that can be subject to such proceedings and because of the relevance of wider factors, making each case very fact-specific.¹⁷

[96] I have noted that I considered the fine imposed by the Committee was modest, but I see no demonstrable reasons such as would persuade me that I should interfere with the fine imposed.

[97] I do not accept the submission made for Mr RR that a fine is not required. That submission presents at odds with the argument made for Mr RR when invited to provide submissions on penalty, where it was argued for Mr RR that a fine of \$2,500 would adequately reflect the unsatisfactory conduct finding.

Compensation

[98] Section 156(1)(d) provides:¹⁸

[W]here it appears to the Standards Committee that any person has suffered loss by reason of any act or omission of a practitioner ... [it may] order the practitioner ... to pay to that person such sum by way of compensation as is specified in the order, being a sum not exceeding [\$25,000].

[99] There must be a clear “causative link” between the conduct of the lawyer concerned and the loss claimed.

[100] For reasons earlier explained, I do not consider that Mr JA has established that losses he argues he has incurred (particularly in relation to the claim for loss of rental) were attributable to conduct on the part of Mr RR.

¹⁷ *Deliu v National Standards Committee and the Auckland Standards Committee No 1 of the New Zealand Law Society* [2017] NZHC 2318 at [165].

¹⁸ Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 (Complaints Service and Standards Committee Regulations), reg 32 — maximum amount of compensation.

Censure

[101] The order made directing that Mr RR be censured was appropriate.

Publication

[102] Section 142(2) of the Act provides that a Committee may direct such publication of its decisions as it considers necessary or desirable in the public interest.

[103] Rule 30(2) of the Complaints Service and Standards Committee Regulations states that where the Committee has made a censure order the Committee must, when considering publication of the identity of a person, take into account the public interest and, if appropriate, the impact of publication on the interests and privacy of:

- (a) the complainant; and
- (b) clients of the censured person; and
- (c) relatives of the censured person; and
- (d) partners, employers, and associates of the censured person; and
- (e) the censured person.

[104] The statutory presumption is that Standards Committee decisions remain confidential to the parties unless a Standards Committee directs publication as it considers necessary or desirable in the public interest.¹⁹ As the Court of Appeal noted in *New Zealand Law Society v B* [2013] NZCA 156 at [47] (footnotes omitted):

The different legislative approach on the issue of publication between the Disciplinary Tribunal and Standards Committees and the LCRO [Legal Complaints Review Officer] no doubt reflects the policy decision that it is the Disciplinary Committee [sic] that deals with the more serious matters, which in the public interest should be dealt with openly, whereas the lesser matters dealt with by Standards Committees and the LCRO may or may not justify publication after having been dealt with privately...

[105] Disciplinary Tribunal decisions are, in the absence of any order to the contrary, publicly available. This is indicative of the importance of more serious disciplinary matters being in the public domain, and is consistent with two of the purposes of the Act - to maintain public confidence in the provision of legal services, and to protect the consumers of legal services.²⁰

¹⁹ Lawyers and Conveyancers Act 2006, s 142(2).

²⁰ Lawyers and Conveyancers Act 2006, s 3(1).

[106] The LCRO publication guidelines identify factors that will be taken into account when considering whether it is in the public interest to publish a decision with identifying details including;

- (a) the extent to which publication will provide protection to the public including consumers of legal and conveyancing services; and
- (b) the extent to which publication will enhance public confidence in the provision of legal and conveyancing services; and
- (c) the impact of publication and the interests and privacy of:
 - (i) the complainant;
 - (ii) the practitioner;
 - (iii) any other person.
- (d) the seriousness of any professional breaches: and
- (e) whether the practitioner has previously been found to have breached professional standards.

[107] The High Court in *J v NZ Psychologist Board*,²¹ in overturning the disciplinary body's determination that a practitioner's name be published, considered the question as to whether the public interest would be served by identifying the practitioner, or whether the public interest could be adequately met by publication of a précis of the details of the case without specific reference to the practitioner. The court concluded that what was required for the public was for it to be informed as to the facts of the matter and the standards expected of the practitioner. However, it concluded that if the practitioner's name was to be published, the damage to the practitioner would be out of proportion to the culpable conduct.

[108] Considering the penalties imposed by the Committee, and the circumstances which led to the imposition of those penalties, I do not consider that it is necessary that Mr RR's name be published. Such a direction would in my view present as disproportionate.

²¹ HC Wellington AP 34/01, 11 July 2001.

[109] I consider that the interests of the public are properly served by publication of the case in a format which adequately, as the Committee's decision does, informs the public of the facts of the case and the standards expected of a practitioner.

Orders for refund of fees

[110] I see no basis to interfere with orders that Mr RR refund fees in the sums as directed by the Committee.

Costs

[111] No order is made against either party in regard to the costs of this review.

Anonymised publication

[112] Pursuant to s 206(4) of the Act, I direct that this decision be published so as to be accessible to the wider profession in a form anonymising the parties and bereft of anything as might lead to their identification.

Conclusion

[113] I see no grounds which could persuade me to depart from the Committee's decision.

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

DATED this 8th day of October 2021

R Maidment
Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr JA as the Applicant / Respondent
Mr RR as the Respondent / Applicant
Mr MO as Representative for Mr RR
Mr GV as a Related Person
[Area] Standards Committee
New Zealand Law Society