

CONCERNING

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

AND

CONCERNING

a determination of [City] Standards Committee

BETWEEN

SG

Applicant

AND

[City] STANDARDS COMMITTEE

Respondent

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

Introduction

[1] Following an own motion investigation pursuant to s 130(c) of the Lawyers and Conveyancers Act 2006 the [City] Standards Committee issued a determination on 17 May 2013 (the findings determination) that Mr SG's conduct in relation to various trust account irregularities constituted unsatisfactory conduct. Having made that finding, the Committee then sought submissions from Mr SG as to penalty and publication.

[2] Having received Mr SG's submissions the Committee then issued (on 9 July 2013) its decision as to penalty and publication. Mr SG has applied for a review of that determination.

[3] In a decision dated 4 September 2014 I declined jurisdiction to include in this review the findings of the Standards Committee in its findings determination. This decision therefore addresses the determination as to penalty and publication only. However, it is pertinent to make some observations on the background to the matters addressed in the findings decision.

The Financial Transactions Reporting Act 1996 (FTRA)

[4] The FTRA imposes an obligation on financial institutions which includes law practices, to report all suspicious transactions to the Police Financial Intelligence Unit. It also requires financial institutions to verify the identity of a client where cash deposits in excess of \$10,000 are made.

[5] One of Mr SG's clients had made several deposits in cash of sums in excess of \$10,000, but Mr SG did not report any of these deposits to the Police. He did not do so because he was aware of the identity of his client and he did not consider the deposits to be suspicious. However, the bank with which he held his trust account did report the deposits to the Police who then made contact with the Law Society Inspectorate to advise them of this.

[6] Mr MT, a Law Society Inspector, then undertook an inspection of Mr SG's firm:¹

...this being partly a scheduled routine one but also because [he] had received information from the Police Financial Transactions Department about some large cash deposits into that Trust bank account.

Mr MT advised the Complaints Service that:²

...the person who had contacted [him] [from the Police] was happy for [him] to look at the transactions and then decide what to do next, which included keeping them [the Police] informed of the situation.

Regulation 33(2)(e) of the Trust Account Regulations³ authorises the inspectorate to disclose information required by the Police.

[7] There does not seem to me to be any particular problem with that process, although Mr SG has alleged that the "[City] Standards Committee should not have allowed the inspectorate to be put in the position of being the agent of the Financial Transactions Authority".⁴

[8] However, I consider the Standards Committee has gone beyond its role when it considered and determined "whether the cash transactions identified by Mr MT constituted 'suspicious transactions' under the FTRA [and] if so, [whether] Mr SG acted in breach of s 15 of the FTRA in failing to report".⁵

¹ Letter MT to [City] Standards Committee (21 May 2012).

² Above n 1.

³ Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

⁴ Application for review (20 August 2013).

⁵ Standards Committee determination (17 May 2013) at [12]-[14].

[9] In *Mr A E, concerning an application for review of a prosecutorial decision* I made the following observations:⁶

... it is not the role of the disciplinary process, whether it be the Standards Committee, the LCRO or the Tribunal, to determine whether or not the FTRA has been breached. The FTRA creates offences for which penalties are imposed. Any alleged breach is to be reported to the New Zealand Police who will prosecute a lawyer before the Court if they consider that a breach has occurred.

It is not the role of a Standards Committee to prosecute a lawyer in a different forum for an alleged breach of the FTRA, and to seek alternative penalties for breach.

I acknowledge that it is the role of the lawyer to uphold the rule of law but any breach of the law should first be determined in the proper forum for making that decision. If the Court decides that there has been a breach of the FTRA, then clearly the matter can be referred back to the Standards Committee for reconsideration.

[10] These comments apply equally to the present circumstances. However, for the purposes of this review none of the penalties imposed relate to an adverse finding based on a breach of the FTRA and no further comment is necessary.

Review

[11] This review has been conducted 'on the papers' in accordance with s 206(2) of the Lawyers and Conveyancers Act 2006 with the consent of both parties.

[12] The substance of this review is reduced to a consideration of whether or not the penalties imposed by the Standards Committee are appropriate. The Standards Committee fined Mr SG \$1,000 and ordered him to make his practice available for inspection by Mr MT at three monthly intervals for the next ensuing 12 month period. It also ordered Mr SG to pay the sum of \$750 to the New Zealand Law Society by way of costs.

The fine

[13] The Standards Committee found that Mr SG had breached regs 11, 12(7), 14 and 17 of the Trust Account Regulations and ss 114 and 337 of the Lawyers and Conveyancers Act. It did not make any adverse finding based on a breach of the FTRA.

[14] Mr JR made the following submissions on behalf of Mr SG:⁷

⁶ *Mr A E concerning an application for review of a prosecutorial decision* LCRO 93/2013 and 338/2013 at [33]–[35].

⁷ Letter JR to Lawyers Complaints Service (4 June 2013) at [2] and [3].

- The Committee should bear in mind that [it] is considering punishing Mr SG because of a claim of misconduct that was unjustified”. (In this regard Mr JR is referring to the fact that the matter was referred to the Committee in the first place because of a suggested breach of the FTRA).
- No penalty should be imposed and there should be no publication of Mr SG’s name for three reasons:
 - (a) the minor nature of the breaches;
 - (b) Mr SG had incurred considerable time and expense in meeting an unfounded allegation that he had acted in breach of s 15 of the Financial Transactions Reporting Act; and
 - (c) Mr MT had acknowledged that he would not have referred the matter to the Committee “but for the substantive allegation”.

[15] With regard to submission (c) above, Mr JR refers to a follow-up report by Mr MT to the Complaints Service in which he states:⁸

If the original inspection had not included the FTRA issues I would have just followed up the responses in my original report by a further review as just undertaken. I do not consider overall there are any major issues and so I would not have reported anything to the Committee. I would also make a note to undertake a further review within 12 months and trust by then Mr SG had implemented the improvements discussed.

[16] The Committee did not however accept the breaches were minor. It considered it significant that “Mr SG did not have systems in place to enable him to properly reconcile his trust account and meet all reporting requirements”.⁹

[17] Mr JR submitted the Committee had made findings in respect of specific issues but no finding in respect of Mr SG’s general trust account systems. He submitted therefore that penalties based on this statement were ill founded.

[18] I do not agree with that submission and refer to the following extracts from the findings determination by way of examples of the failings in Mr SG’s trust accounting systems noted by the Committee:

- “It is of concern that Mr SG is only now aware of what relevant documents are to be reviewed before signing the monthly certificates”.¹⁰

⁸ Letter MT to Complaints Service (13 February 2013).

⁹ Standards Committee determination (9 July 2013) at [14].

¹⁰ Above n 5 at [15].

- “It is especially of concern to the Committee that Mr SG maintained no ledger cards for those clients who had funds held on deposit”.¹¹
- “Mr MT reported that no hard copies of fees invoices were printed out and kept on the file”.¹²
- “Mr MT observed that as no central hard copy was maintained for invoices or statements he could not easily review if annual reporting statements had been sent to a client”.¹³
- “...again the Committee’s concern is that there was no clear system for Mr SG to identify the dormant balances and for him to ensure that they were dealt with or reported on”.¹⁴

[19] The purposes of the Lawyers and Conveyancers Act include the maintenance of public confidence in the provision of legal services and the protection of consumers of legal services.¹⁵ Lawyers hold client funds in their trust accounts for a variety of reasons. Protection of those funds is fundamental to maintaining trust and confidence in the legal profession. The Trust Account Regulations impose practices and procedures on lawyers to achieve that end. They also include obligations to ensure that the New Zealand Law Society inspectorate is able to properly monitor compliance with those Regulations.

[20] Mr JR has noted the comment by Mr MT that his report was only made available to the Standards Committee because of the issues relating to the FTRA. Mr MT has noted that he would not otherwise have referred his report to the Committee and would just have followed up with further reviews. He did not consider overall there were any major issues with which to be concerned.

[21] A similar view of breaches of nominee company regulations was expressed by the inspectorate in another determination which came before me on review.¹⁶ In that complaint the inspector considered that although there had been a number of irregularities and breaches of the nominee company rules, they were excusable and in most cases had been rectified by subsequent events or been of little overall consequence. On review of the Standards Committee determination to take no further action I made the following comment:¹⁷

I do not question [the inspector’s] expertise. What I do question is whether this is the right approach to breaches of the Nominee Company Rules, whether major or minor and whether causative of loss or otherwise.

¹¹ At [16].

¹² At [19].

¹³ At [22].

¹⁴ At [26].

¹⁵ Lawyers and Conveyancers Act 2006, s 3.

¹⁶ *AP v ZG LCRO 278/2012*.

¹⁷ Above n 16 at [63].

[22] The trust account inspector's role is to monitor and ensure compliance with the various regulations with which they are charged to oversee. However, it is the role of the Standards Committees, this Office and the Tribunal to establish policy as to whether or not breaches of the various rules and regulations constitute unsatisfactory conduct.

[23] I have noted above that the protection of the public is one of the main purposes of the Lawyers and Conveyancers Act, and this necessarily includes protection of client funds. If the profession indulges in excusing non-compliance with the rules and regulations this can only serve to undermine the protections established by the Act. It also does little to reinforce the positive conduct of the majority of lawyers who take care to know and understand and comply with the rules and regulations.

[24] Whilst therefore there will be circumstances when non-compliance with the rules and regulations may not result in an adverse finding, the overall approach must be to enforce strict compliance. Any discretion can be exercised in relation to penalties imposed.

[25] The Standards Committee imposed a fine of \$1,000. In *Workington v Sheffield*¹⁸ the LCRO considered a fine of \$1,000 to be the starting point where a fine is considered appropriate for breaches of applicable rules.

[26] The Standards Committee made findings of unsatisfactory conduct in respect of breaches of four Trust Account Regulations and two sections of the Act. It expressed concern at the fundamental nature of the breaches and overall, despite Mr JR's submission to the contrary, at the inadequate systems employed by Mr SG.

[27] Such findings require the imposition of a fine and the Committee has imposed what the LCRO in *Workington v Sheffield* considered to be the minimum fine applicable. I may have been inclined to impose a greater penalty but do not intend to interfere with the Committee's decision in this regard.

[28] I therefore confirm the quantum of the fine imposed by the Committee.

Publication

[29] The Committee ordered publication of both the findings and penalty determinations to Mr MT.

[30] The Standards Committee has not censured Mr SG or obtained the approval of the NZLS Board to publication as required by reg 30(1) of the Standards Committees

¹⁸ *Workington v Sheffield* LCRO 55/2009.

Regulations. However, it is logical that Mr MT be advised as to the outcome of this matter and the publications must necessarily include publication of Mr SG's name.

[31] To rectify this,¹⁹ I direct pursuant to s 206(4) of the Lawyers and Conveyancers Act that publication of the two determinations be made to Mr MT.

[32] Mr SG has submitted that "practitioners should be made aware these issues can be grounds for a finding of unsatisfactory conduct".²⁰ I discern that Mr SG's motive for this submission may be his view that lawyers would be surprised to read they could be the subject of a finding of unsatisfactory conduct for the breaches which have resulted in this finding against him.

[33] I agree with Mr SG's submissions that the facts of this determination should be published but for the reason of emphasising the importance of compliance with the Trust Account Regulations. I therefore direct publication of the facts of this matter as contained in both determinations with all identifying details removed.

Practice inspection

[34] The Committee also ordered Mr SG to make his practice available for inspection by Mr MT at three monthly intervals for a period of 12 months. This was an order directed at ensuring that Mr SG brings his trust account practices into line with the requirements of the Regulations and as such is particularly appropriate to the circumstances of this matter.

[35] Whether or not the order was made the inspector had sufficient authority under the Trust Account Regulations to make such inspections as he considered necessary but this order by the Standards Committee has served to underline the importance placed by the Committee on compliance with the Regulations. There is no reason to disturb that order.²¹

Costs

[36] The Standards Committee made a finding adverse to Mr SG and ordered him to pay the sum of \$750 to the New Zealand Law Society by way of costs. An order for payment of costs will usually follow an adverse finding and the amount ordered by the Standards Committee is in the mid-range of costs orders made by Committees. That order is confirmed.

¹⁹ Regulation 30(1) of the Standards Committees Regulations does not apply to publication orders made by this Office.

²⁰ Above n 4.

²¹ I note the 12 month period will now have expired.

[37] Where a determination of a Standards Committee is confirmed on review an order for the costs of this review will also usually be made against a lawyer. Pursuant to the Costs Orders Guidelines issued by this Office and s 210(1) of the Lawyers and Conveyancers Act, Mr SG is ordered to pay the sum of \$900 to the New Zealand Law Society by no later than 7 April 2015 towards the costs of this review.

Decision

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

DATED this 6th day of March 2015

O W J Vaughan
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 SG as the Applicant
Mr JR as the Applicant's counsel
The [City] Standards Committee
The New Zealand Law Society