

LCRO 341/2013

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 X]

BETWEEN

QE

Applicant

AND

ML (nee BM)

Respondent

DECISION

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

Introduction

[1] Mr QE has applied for a review of the determination by [Area Standards Committee X] in which it found two instances of unsatisfactory conduct on the part of Mr QE and imposed penalties.

Background

[2] Mr QE acted for Ms ML and her husband (Mr BM) together with related entities for a number of years. Mr BM and Ms ML (then known as Mrs BM) separated in September 2007 and at that stage each of them retained separate solicitors.

[3] Ms ML and Mr BM's affairs were closely intertwined through a trust (the [HQ] Family Trust and two [xx] companies). Ms ML and Mr BM, together with Mr QE, were

the trustees of the trust. The [xx] companies' finances were supported by securities over trust properties and guarantees from Mr BM and Ms ML.

[4] Mr QE acted on a number of transactions which took place before and after Ms ML and Mr BM's separation. Ultimately, the [xx] companies' financial performance weakened and various financial transactions took place during the period which the conduct giving rise to Ms ML's complaints occurred. These included:

- Prior to separation Ms ML and Mr BM had entered into an agreement to purchase a property at [Property 1]. After separation, and before settlement, Ms ML expressed a desire not to continue with the purchase. The agreement was assigned to Mr BM who took title. Finance to complete the purchase was secured over the property but also over other trust assets.
- The sale of a property known as [Property 2] owned by the Trust and repayment (in part) of [Bank 1] loans secured over the property.
- Refinancing all borrowings (personal, trust and company) through the [BANK 2]. Ms ML was required to sign the documents as trustee.
- The potential sale by the mortgagee of a trucking depot at [Town].

The review process

[5] Mr QE lodged his application for review on 21 November 2013. By letter dated 24 July 2014 Mr QE's counsel and Ms ML were advised:

Dear Ms GH,

LCRO 341/2013 QE v ML

The LCRO has conducted a preliminary review of this file.

Given the volume of the material to be covered in this review, the LCRO has determined that he should first meet with Mr QE and/or yourself to traverse all the issues and material, including the 22 files considered by the Standards Committee. As you practice in Auckland, it is expected *that* is where the hearing will take place.

Ms ML and/or her counsel should attend that hearing, or alternatively, could be provided with an audio of the hearing.

They will then have a period of time to consider and provide comments/submissions in respect of the matters raised. These should in the first instance be in writing, but she/they will be extended the opportunity to present any oral submissions in support. Mr QE and/or yourself will be entitled to attend any further hearing.

If either party wishes to comment on these proposals, please do so by no later than 8 August 2014. Otherwise, the review will proceed on this basis and this Office will be in touch to schedule the first hearing.

[6] Ms GH indicated agreement with the proposed procedure by letter dated 4 August 2014 and requested the opportunity to respond to further submissions made by Ms ML to the Standards Committee which Mr QE had not had the opportunity to respond to. That has been provided in the course of this review.

[7] A hearing was not able to be scheduled until 6 September 2017 by which time it had become imperative that the review be completed in a more timely manner and Ms GH made representations that the hearing be more extensive than envisaged in 2014 so that the review could be completed.

[8] The hearing took place as scheduled on 6 September 2017 during which it became apparent that Ms ML should be afforded the opportunity to provide additional material to ensure she was able to address matters which arose during the course of the hearing.

[9] Ms ML provided that additional material by email on 28 September 2017, at which time the Legal Complaints Review Officer (LCRO) determined that there was sufficient information available to enable the review to be completed. The parties were accordingly advised that the LCRO declined to make any further investigation or inquiry as provided for in s 205 of the Lawyers and Conveyancers Act 2006 (the Act) and that the decision would issue in due course.

[10] A High Court judgment was issued on [Date] and the copy was provided to this Office by Ms YO¹. The regard afforded to the judgment is discussed in the next section of this decision.

The High Court judgment

[11] Ms ML issued proceedings out of the High Court against Mr QE and others, her claims arising out of the same set of facts which formed the basis of her complaint against Mr QE. She advised, by email dated 15 August 2014, that she would send the judgment to this Office as soon as it became available.

[12] The Review Officer responded by letter dated 22 August 2014:

The LCRO must also form his or her own view of the complaints and the court judgment will be used only to assist in that process. Ms GH may wish to make

¹ *ML v QEs* [2017] NZHC [XXXX].

submissions at the hearing as to the use of the judgment in connection with this review. Ms ML is requested not to forward the judgment prior to the hearing.

[13] The judgment had not issued at the time of the hearing but Mr QE's counsel (Ms YO) acknowledged that the issues at the heart of Ms ML's complaint were central to the litigation.

[14] The judgment of Edwards J was issued on [Date]² and Ms YO provided a copy to this Office. Given the comments made by each party it is clear that neither have concerns with reference being made to the judgment in conjunction with this review.

[15] Mr Vaughan's comments in his letter of 22 August 2014 were made with reference to the judgment of Brewer J in *Dorbu v the Lawyers and Conveyancers Disciplinary Tribunal* in which His Honour referred to a submission by the applicant in the following terms:³

In deciding whether or not the applicant had been guilty of the charge of conspiracy the Tribunal erroneously fettered itself and pre-empted its statutory power to find facts *de novo* to the extent that those facts were relevant to the charges.

[16] He noted that:⁴

the starting point for consideration of the submission, therefore, is s 50 of the Evidence Act 2006:

50 Civil judgment as evidence in civil or criminal proceedings

- (1) Evidence of a judgment or a finding of fact in a civil proceeding is not admissible in a criminal proceeding or another civil proceeding to prove the existence of a fact that was in issue in the proceeding in which the judgment was given.

[17] In the following paragraph, he said:

Put simply, if a court or tribunal has an independent obligation to determine whether alleged facts are proved or not, it cannot discharge that obligation by accepting without enquiry the findings of another court or tribunal as to the existence of those facts. To do that would be to abdicate its responsibility to determine the facts for itself.

[footnotes omitted]

² Above n 1.

³ *Dorbu v the Lawyers and Conveyancers Disciplinary Tribunal* HC Auckland CIV-2009-404-7381, 11 May 2011 at [17].

⁴ At [20].

[18] Those comments were noted with approval by the Court of Appeal in *Deliu v National Standards Committee of the New Zealand Law Society* where the Court said:⁵

It is of course well-established that the Tribunal is not entitled to determine that facts in issue are proved by accepting without inquiry the findings of another court or tribunal as to the existence of those facts.

[19] That discussion arose in the context of admissibility of judgments of the courts in disciplinary proceedings which was being opposed by the plaintiff.

[20] The Court referred to the submission of counsel for the Committee (Mr Morgan QC). It said:⁶

First, as Mr Morgan QC points out in his submissions for the Committee, the question whether judgments can be used as evidence in disciplinary hearings depends on the use the judgments are being put to in the particular case.

[21] The Court continued:⁷

But, as Mr Morgan confirmed, that is not the purpose for which the Committee seeks to adduce the judgments in evidence in this case. Here the Committee simply seeks to produce them under s 239(1) of the Act as evidence that may assist the Tribunal to deal effectively with the matters before it.

[22] In a footnote to that statement, the Court noted:

We note that the Tribunal must exercise its discretion to admit otherwise inadmissible evidence under s 239 of the Act in accordance with the interests of justice. The centrality of the evidence to the case and the effects of an inability to cross-examine may be material considerations in its assessment ...

[23] On review, this Office does not have the option of hearing evidence in chief and cross-examination of a number of parties who gave evidence in the litigation, e.g. Mr BM and Ms RP. Ms ML and Mr QE gave evidence and were subject to cross-examination in the litigation. Edwards J heard and made findings of fact and credibility. This is the best evidence available to this Office on review, and it seems that it is sensible and logical that the findings of the Court may be relied upon by this Office when completing the review. To do otherwise would be to ignore the best evidence and it would be incomprehensible if this Officer were to take a different view from the Court when it has not had the benefit of hearing from the witnesses or of the benefit of cross-examination before the Court.

⁵ *Deliu v National Standards Committee of the New Zealand Law Society* [2015] NZCA 399 at [34].

⁶ At [34].

⁷ At [34].

[24] It is apparent also that both parties agreed to the judgment of the High Court being considered in conjunction with this review.

[25] On the basis of the foregoing comments the judgment of Edwards J therefore forms part of the material considered in this review and some reliance is placed on the Court's findings of fact and credibility.

Ms ML's complaints

[26] Ms ML's complaints about Mr QE were made under the following headings:

1. conduct — conflict of interest;
2. treated unfairly as a client — pressured into signing documentation when in hospital;
3. treated unfairly as a client — conspiracy with ex-husband to defraud her; and
4. poor service — not doing what supposed to be done and failure to reply to correspondence.

1. Conflict of interest

[27] Ms ML separated from her husband on 22 September 2007 at that time she instructed Mr QA to act on all matters for herself personally. Mr BM retained separate advice also. At a meeting between Mr QA, Mr BM, and their respective clients it was agreed that Mr QE would continue to act for the [HQ] Family Trust.

[28] Correspondence from Mr QE in April 2008 to NZ Home Loans and the insurance company stated that Mr QE was acting for BM in respect of his personal house property.

[29] In March 2010 Ms ML sought advice from Mr QA about Mr QE acting for Mr BM personally to try and put a proposal together to prevent the sale of a trust property at [Town] by the mortgagee. Ms ZY⁸ says:

ML has never been consulted about Mr QE or QE's law firm acting for Mr BM personally and would never agree to it.

2. Pressured into signing documents in hospital

⁸ Ms ZY is Ms ML's sister and lodged the complaint on her behalf.

[30] The trust was in financial difficulties and it had been arranged that the trust's debts would be refinanced with [BANK 2]. Ms ML had to sign the loan documentation. Ms ZY says "the stress from QE's and threats from Mr BM were increasing and unbearable".

[31] On 17 April 2008 Ms ML experienced dizziness, head pains and blurred vision. She went to the doctor and was advised that she had suffered a minor stroke. While she was being driven to hospital by her parents Ms RP telephoned Ms ML and advised that the loan documentation had to be signed urgently.

[32] Ms ZY says that Ms RP arrived at the hospital some 10 minutes after Ms ML and "insisted ML go to another seating area to sign the papers".

[33] She says:

ML questioned again why she was signing a loan for Mr BM's personal house and was told it wasn't a problem, it was just paper work, and Mr BM would be liable for the payments and debt.

3. *Conspiracy with Mr BM to defraud Ms ML*

[34] Ms ZY alleged/complained that funds from the sale of the trust property referred to as the [Property 2] property were directed into the [xx] companies of which Mr BM was the sole director:

- (a) Subsequently, the companies went into liquidation.
- (b) Ms ML also complained that the [Property1] property (owned by Mr BM but funded by the trust) was sold. Mr QE acted on the sale. Ms ZY says:

Surplus funds were deposited to QE's trust account with access to Mr BM and Mr QE only, all without the full balance of the loan being repaid, resulting in the trust being liable for the outstanding debt.

- (c) Ms ML complained about Mr QE's fees in relation to the sale.
- (d) Ms ZY also says/alleged "as a result of Mr BM and Mr QE's negligence as trustees and the perpetration of trust funds [sic] it ensured that the monies of the trust and its equity forcing the mortgagee sale of the trust asset at which time QE and BM in a joint venture proceeded to attempt to purchase this asset at a substantially reduced value.

4. *Not doing what's supposed to be done and failing to reply to correspondence*

[35] Under this heading Ms ZY referred only to a failure to reply to correspondence. She complained that Mr QE did not reply to correspondence from Mr QA dated 1 February 2008 in which Mr QA communicated Ms ML's concerns relating to the trust.

[36] Ms ML also complained Mr QE did not respond to correspondence sent by her on 21 May 2008. She also complains that Mr QE did not address matters raised by Mr QA.

The Standards Committee determination

[37] After considering all of the materials supplied by the parties the Committee made the following determinations:

*Conflict of interest:*⁹

47. In the Committee's view, it was inappropriate for Mr QE to act for Mr BM personally as well as the Trust at a time when he had previously acted for Mr and Mrs BM, the Trust and various entities in which Mr BM and the complainant had an interest. In the Committee's view, this precluded him from being able to discharge his obligations to both the Trust and Mr BM, particularly in light of the relationship property issues involved ...
48. Notwithstanding being on notice as set out above, Mr QE continued to act as Mr BM's lawyer in the sale of the property despite the clear conflict of interest.
49. In the Committee's view, Mr QE was not in a position where he was able to discharge the obligations owed to both the Trust and Mr BM and this resulted in a breach of Rule 6.1 of the RCCC, which amounts to unsatisfactory conduct pursuant to s12(c) of the Act.

Pressured into signing documents

[38] The Committee noted that the documents were reviewed by Mr QA and Ms ML had agreed to sign them:¹⁰

55. Having due regard to the circumstances of the matter, the Committee does not consider that this high threshold has been met. It is clear that Ms ML's solicitors had received copies of the relevant documents and subsequent to that Ms ML had requested Ms RP to attend on her at the hospital to sign the documents. There is nothing in the material before

⁹ Standards Committee determination (9 October 2013) a [47]–[49].

¹⁰ At [55].

the Committee to show that there was any undue pressure placed on Ms ML to sign that documentation.

*Conspiracy to defraud:*¹¹

60. [Bank 1] Bank subsequently required the full settlement proceeds from the sale to repay the loans owing to it by [KC] Holdings Ltd, CV (NI) Ltd, Mr & Mrs BM, and the [HQ] Property Trust. All these loans were secured against the property. Mr QE states that both Mr BM and Ms ML were aware of that. A letter from [Bank 1] dated 18 December 2007 confirmed that the Bank required the full net settlement proceeds.

...

62. The Committee notes that Ms ML's solicitor at the time was fully aware of the fact that the settlement proceeds were used to settle [Bank 1] debt. As such, the Committee does not consider that there is any evidence to support the allegations of conspiracy to defraud Ms ML of any funds.

*Excessive fees:*¹²

66. The Committee notes that the fee rendered was in January 2008. Accordingly, there are a number of jurisdictional issues arising in relation to this issue of complaint.

...

69. Having due regard to the above jurisdictional issues, the Committee does not consider that there are any special circumstances that justify consideration of these costs and furthermore does not consider there is any evidence of gross or dishonest overcharging. Accordingly, the Committee does not consider that it has jurisdiction to consider this issue of complaint.

*Failing to reply to correspondence:*¹³

75. In the Committee's view, Mr QE's failure to respond to correspondence from Mr QA was in breach of both Rule 10 and 10.1 of the Rules of Conduct and Client Care. Accordingly, the Committee determines that in respect of Mr QE's failure to respond to correspondence after 1 August 2008, that there has been unsatisfactory conduct on his part as defined in s 12(c) of the Act.

*Failing to release files:*¹⁴

76. During the course of the investigation of the complaint, Ms ML's current solicitors also raised the issue of Mr QE failing to release files to Ms ML or allowing her access to her files. Furthermore, on the day prior to the hearing, [ABC's], on behalf of Ms ML, submitted further submissions on

¹¹ At [60] and [62].

¹² At [66] and [69].

¹³ At [75].

¹⁴ At [76].

the issue. However, the Committee does not consider that the content adds to or changes the information, material and the submissions held on which the Committee has made its determination. The issue of files is furthermore dealt with in the orders the Committee makes hereunder.

[39] Having made these determinations, the Committee made the following orders:

- (a) Mr QE pay a fine of \$3,000.
- (b) Mr QE pay costs of \$2,000.
- (c) Mr QE be ordered to rectify his omission in failing to release files by providing copies of designated files.

The application for review

[40] Mr QE (through his counsel Ms GH) sought a review of the adverse findings and orders by the Committee. The supporting reasons for the application included:

- 2. The Committee incorrectly concluded that Mr QE acted for Mr BM and the [HQ] Property Trust (**Trust**) on the sale of the property at (**[Property 1] property**) in June 2009, and that this was a breach of Rule 6.1 of the Rules of Conduct and Client Care 2008 (**Rules**) and unsatisfactory conduct under the Lawyers and Conveyancers Act 2006 (**Act**).
- 3. The Committee incorrectly concluded that Mr QE failed to respond to correspondence from Ms ML's lawyer ([QA of QA Law]) after 1 August 2008, and this was a breach of Rules 10 and 10.1 and unsatisfactory conduct under the Act.
- 4. The Committee incorrectly conclude that Mr QE denied Ms ML access to files, and that it was therefore appropriate to order Mr QE to provide copies of the files to Ms ML at his own expense.
- 5. Mr QE was not given notice of the particulars of the complaints against him in relation to the alleged conflict of interest and failure to respond to correspondence from Mr QA after 1 August 2008 before his submissions for the hearing on the papers was required. It was not apparent that the matters that led to the committee's conclusions referred to in paragraphs 1 and 2 above were in issue, having regard to:
 - a Ms ML's complaint dated 14 November 2011;
 - b Ms ML's response to Mr QE's response dated 31 January 2012;
 - c Notice of Hearing dated 20 June 2013, and
 - d The number of files involved (22 files) (the Determination incorrectly states there were 33 files involved).
- 6. Mr QE was not given any notice that access to files was an issue before the Committee. That was not part of Ms ML's complaint. Mr QE not given any opportunity to address this issue.

...

[41] As is usual this Office has received the Standards Committee file from the [Area] branch of the Lawyers Complaints Service. All of the content of the file have been numbered (by page) and an index provided. This Office wishes to record its expression of thanks in a formal matter to the Committee for providing the file in this manner as it has significantly facilitated the conduct of this review.

Review

Delegation

[42] The review progressed by way of a hearing in Auckland on 6 September 2017 attended by the applicant Mr QE, who was represented by Ms YO, and the respondent Ms ML, who was self represented.

[43] The hearing was conducted by Mr Vaughan acting as a delegate duly appointed by the LCRO pursuant to cl 6 of sch 3 of the Act. The LCRO has delegated Mr Vaughan to report to me and the final determination of this review as set out in this decision is made following a full consideration of all matters by me after receipt of Mr Vaughan's report and discussion.

Conflict of Interests

[44] The circumstances giving rise to the finding of unsatisfactory conduct for acting in a conflict of interest occurred both before and after 1 August 2008. This fact assumes some importance as the rules in force prior to 1 August 2008 with regard to conflict of interest differed significantly from r 6.1 of the Lawyers and Conveyancers Act (Conduct and Client Care Rules) 2008 (the Rules) now in force.

[45] Rule 1.04 of the Rules of Professional Conduct in force prior to 1 August 2008 provided¹⁵:

A practitioner shall not act for more than one party in the same transaction or matter without the prior informed consent of both or all parties.

[46] The commentary to the rule notes:

- (1) A conflict of interest does not exist between parties simply because the practitioner is acting for more than one of them.

¹⁵ Rules of Professional Conduct for Barristers and Solicitors (7th ed, New Zealand Law Society, Wellington, 2006)

[47] In his judgment Edwards J found there was no conflict of interest between Mr BM, Ms ML and the Trust in relation to the purchase of the [Town] property which included raising finance through the bank.

[48] Mr QE also acted for Mr BM in the purchase of the [Property1] in January 2008. Ms ML acknowledged she had consented to Mr QE continuing to act for Mr BM to purchase the property which she had also contracted to purchase but did not wish to proceed with.

[49] Mr QE also acted for Mr BM when the [Property1] was refinanced in April 2008. This was part of the overall refinancing of trust borrowings and included securities over the [Town] property. Again, there was no conflict of interest involved and in any event, no conduct in respect of which proceedings of a disciplinary nature could have been commenced against Mr QE. This is the “threshold” referred to by the Committee required in s 351(1) of the Act which addresses complaints made after 1 August 2008 in respect of matters occurring prior to that date.

[50] A matter in respect of which the Standards Committee found Mr QE was in breach of r 6.1 was the sale of the [Property 1] property in June 2009. Rule 6.1 provides:

[a] lawyer must not act for more than 1 client on a matter in any circumstances where there is a more than negligible risk that the lawyer may be unable to discharge the obligations owed to 1 or more of the clients.

[51] There is an absolute prohibition against a lawyer acting for more than one client on a matter in these circumstances. Where there is a less than negligible risk, a lawyer may act for more than one client in the same matter with the prior informed consent of all parties.¹⁶ The net proceeds from the sale of the property were applied in reduction of trust and indebtedness to the [BANK 2]. Mr BM and the Trust’s interest coincided and it is not possible to identify any “more than negligible risk” that Mr QE could not discharge his obligations to both parties. It was also in Ms ML’s interests for the sale to proceed as it reduced her exposure as guarantor to the bank.

[52] The Committee considered that Mr QE had a “clear conflict of interest” in acting for the Trust and Mr BM¹⁷. I do not agree. The only way in which Mr QE could be considered to be “acting” for the Trust in connection with this sale was that the sale proceeds were applied to reducing trust indebtedness. In these circumstances it is difficult to comprehend how it could be said that Mr QE was “acting” for the Trust when

¹⁶ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, at r 6.1.1.

¹⁷ Standards Committee determination at [48].

making the payment to the bank. The payment was required to obtain a discharge of the bank's mortgage over the property and it was the bank's requirement that all funds be paid to the bank. If anything, in the circumstances, Mr QE was acting for the bank.

[53] Mr QE's client was Mr BM the owner and vendor of the property.

[54] I do not agree that Mr QE was acting for more than one client, but even if that position is not accepted, there was no risk that Mr QE could be unable to discharge his duties to both Mr BM and the Trust. It is noted that Mr BM did not suggest Mr QE had a conflict of interests.

[55] Mr QE did not represent Ms ML's interest in any way when acting for the sale. Ms ML was separately advised by Mr QA. Consequently, Ms ML was not a "client" of Mr QE's for the purposes of r 6.1.

[56] Having considered all of the material relating to this issue I do not agree Mr QE was in breach of r 6.1 when acting on the sale of the [Property1]. The finding of unsatisfactory conduct in this regard is reversed.

Failing to reply to correspondence

[57] The notice of hearing was issued by the Standards Committee on 20 June 2013. Ms GH submits that Mr QE was not given notice of the particulars of the complaint that Mr QE had failed to reply to correspondence before he was required to provide his submissions for the Standards Committee hearing.

[58] In its determination the Standards Committee noted that this complaint related to correspondence sent to Mr QE both before and after 1 August 2008. The Committee did not consider disciplinary proceedings could have been issued in respect of the complaint about failing to respond to correspondence sent prior to 1 August 2008.

[59] The pre-1 August 2008 correspondence referred to by Ms ML in her complaint was:

- (a) letter from Mr QA to Mr QE 1 February 2008 expressing Ms ML's concerns about the Trust;
- (b) letter from Ms ML to Mr QE 21 May 2008 outlining her concerns about his conduct; and

(c) additional pre-1 August correspondence was referred to in Ms ML's submission for the Standards Committee hearing:

- 5.1 Ms ML submits that the following correspondence to Mr QE went unanswered between April 2008 and June 2009:
- 5.1.1 2 April 2008 – an email from Mr QA to Mr QE outlining concerns about [BANK 2] refinance and Ms ML's concerns;
 - 5.1.2 4 April 2008 – an email from Mr QA to Mr QE regarding a meeting with Mr BM, Ms ML, Mr QE and Mr QA. Concerns were raised about the proposed refinance and about the Trust monies being used to fund the companies;
 - 5.1.3 22 May 2008 – a letter from Ms ML was emailed to Mr QE outlining concerns over how the refinance was handled and the fact that Mr QE had given assurances that no funds would be distributed without the express consent of all Trustees. QE's acknowledged receipt but no response was received.
 - 5.1.4 1 July 2008 – email from Mr QA to Mr TA and Mr QE regarding Mr BM's request to borrow further funds from [BANK 2] for his companies, and raising concerns about money moving between the Trust and the companies without appropriate documentation.
 - 5.1.5 7 November 2008 – email from Mr QA stating that Ms ML had concerns that Trust assets were being misappropriated.
 - 5.1.6 12 November 2008 – email from Mr QA to Ms ML and Mr QE mentioning that Mr BM was drawing from the Trust to pay the [Property1] mortgage.
 - 5.1.7 5 December 2008 – email from Mr QA to Mr QE raising issues about money moving freely between the companies and the Trust and urging Mr QE to act as an independent Trustee.
 - 5.1.8 19 December 2008 – email from Mr QA to Mr QE raising concerns about the administration of the Trust and the Trust asset protection over the preceding 11 months.
 - 5.1.9 26 June 2009 – letter from Mr QA to Mr QE reiterating that it was Ms ML's belief that funds from the Trust had been misappropriated and used for Mr BM's personal mortgage over [Property1]. A settlement statement was requested as well as an undertaking that all sale proceeds would be paid to [BANK 2]. A brief response indicated that Mr QE had been instructed not to disclose the details of the settlement.

[60] Mr QE was not able to provide submissions on these allegations as he did not receive a copy of Ms ML's submissions prior to completing his own.

[61] I have not investigated these allegations and make no comment at all in this regard. Disciplinary proceedings could not have been commenced in respect of failing to respond to six items of correspondence and consequently the requirements of s 351(1) of the Act to enable a Committee to consider these complaints have not been met.

[62] The correspondence after 1 August 2008, on which the Standards Committee reached its view that Mr QE's conduct was unsatisfactory was identified by the Committee at [73] of its determination.

[63] Mr QE's counsel correctly points out that Mr QE was not aware of the allegations with regard to this correspondence when submissions were provided to the Standards Committee and consequently these allegations were not addressed in the submissions on his behalf.

[64] The Committee has breached the rules of natural justice in this regard in that Mr QE was not given the opportunity to respond to the allegations on which the Standards Committee had based its finding of unsatisfactory conduct. That has been cured on review and Ms GH has addressed each of the items of correspondence in her submissions on review.

[65] Each of the submissions made by her have been carefully considered and the supporting correspondence examined. In each case Ms GH's submissions are accepted. It is also noted that there was no follow-up correspondence from Mr QA to Mr QE requesting responses be provided.

[66] On the basis of this material a finding of unsatisfactory conduct cannot be sustained.

Other matters

[67] Having formed the view that the findings of unsatisfactory conduct are to be reversed, it is nevertheless incumbent on this Office to consider aspects of the complaint which the Committee did not uphold. The Committee's reasonings have been carefully considered and in each case the views of the Review Officer and myself coincide with those of the Standards Committee. The different requirements attaching to complaints in respect of pre-and post-1 August 2008 conduct have been discussed in this decision. In particular the complaint relating to Mr QE's fees relating to the sale of the [Property 2] property are correctly detailed.

Summary/Decision

[68] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the findings of unsatisfactory conduct by the Standards Committee against Mr QE are reversed. The penalties imposed by the Committee therefore fall away. It is noted that the order for Mr QE to provide copies of his files has been complied with during the course of the litigation¹⁸.

DATED this 31st day of October 2017

D Thresher
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 QE as the Applicant
Ms ML as the Respondent
[Area Standards Committee X]
The New Zealand Law Society

¹⁸ Standards Committee determination at [79](c).