LCRO 369/2013

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	**WS** Applicant
AND	**AD** Respondent

DECISION

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

Introduction

[1] Mr WS has applied to review a decision by the [Area] Standards Committee [X] to take no further action in respect of his complaints about the conduct of Mr AD.

[2] The events to which Mr WS's complaint relates occurred in 2007, in 2008 to 2009, and in 2011.

[3] The significance of this is that Mr AD's conduct falls to be assessed under the provisions of both the Law Practitioners Act 1982 (LPA), which ceased to have effect on 31 July 2008, and the Lawyers and Conveyancers Act 2006 (the Act), which came into effect on 1 August 2008. Both Acts are underpinned by ethical and professional rules and, in each case, the rules and conduct standards are different.

[4] Up until December 2009, Mr AD was Mr WS's lawyer, and had been for some time. Mr AD (and others in his law firm) also acted for various entities associated with Mr WS.

[5] One of Mr WS's entities was the ND Trust (NDT). Mr WS was a trustee of that trust. In addition, BMW Ltd (BMW) was an independent trustee of NDT. BMW was ADL Solicitors, Mr AD's law firm. At the relevant time (late 2008), Mr AD was one of two directors of [BMW Ltd].

[6] As well as those relationships, NDT was also the commercial landlord of Mr AD's law firm and had been since late 2005.

[7] Mr WS made his complaints about Mr AD's conduct in March 2011.

[8] Although Mr WS raised several issues of complaint against Mr AD, at the hearing of his application for review, he indicated that his main concerns were what he described as two separate conflicts of interest on the part of Mr AD, as well as an allegation that Mr AD had altered a lease document and misled the Disputes Tribunal (the Disputes Tribunal issue).

[9] The conflicts of interest are said to have arisen in 2007, and between 2008 and 2009, and concerned two separate matters:

(a) A failure to pursue debt collection proceedings against one of NDT's commercial tenants Company T, which occupied premises on the same floor in the building from where Mr AD's law firm practised (the 2007 conflict).

(b) The purchase of a property (Unit M) (the 2008 conflict).

[10] The Disputes Tribunal issue concerned proceedings that NDT had brought in that Tribunal in 2010 against Mr AD and his law firm, to recover outgoings under the law firm's lease. The particular allegation is that Mr AD dishonestly altered a lease document, and misled a Disputes Tribunal Referee.

Background

Company T (the 2007 conflict)

[11] In 2005, NDT purchased a floor in a building in which Mr AD's law firm was also located. A real estate agent was involved in the sale and purchase.

[12] On the same floor as Mr AD's law firm, Company T also leased premises.

[13] Two family trusts, in which a partner in Mr AD's law firm was a trustee, owned the floor from which the law firm practised, as well as other floors in the building. There was a lease between that partner as trustee/landlord and the law firm as tenant, as well as a lease between that partner and Company T as tenant.

[14] A body corporate managed the building.

[15] Mr AD declined to act for NDT on the purchase of the floor, given the conflict of interest – namely that his business partner in the law firm was the trustee of the trusts that owned the floor in question. A lawyer in another law firm therefore acted for NDT.

[16] As a result of NDT purchasing the floor, it became the landlord of the firm and Company T.

[17] In 2007, Mr WS endeavoured to recover outgoings (principally rates) which he claimed were owed by Company T under its lease with NDT. Mr AD looked at Company T's lease and noted that the provision for payment of outgoings had not been crossed out, although no monetary amount had been inserted. From that quick perusal, Mr AD indicated to Mr WS that Company T was required to pay outgoings.

[18] Mr WS subsequently instructed Mr AD to take steps to recover unpaid outgoings from Company T.

[19] Mr AD arranged for another lawyer in his firm to review the relevant documents, and the conclusion reached was that Company T's lease appeared to be a gross lease; that is, it was not required to pay outgoings in addition to rent. Mr AD cautioned Mr WS that proceedings against Company T for unpaid outgoings might not be successful for that reason.

[20] However, because he was instructed to do so by Mr WS, on 27 September 2007, Mr AD made formal demand of Company T for outgoings under the lease. Company T's lawyer responded immediately to the demand by pointing out that the lease was a gross lease.

[21] In a letter to Mr WS dated 5 December 2007, Mr AD confirmed his opinion that Company T's lease was a gross lease and that there was "little prospect of success" in pursuing a claim for unpaid outgoings.

[22] Mr WS does not appear to have pursued the demand against Company T further.

Unit M: the 2008 conflict

[23] In December 2007, Mr WS entered into an agreement with DV Ltd (DVL) to purchase Unit M. At the time, DVL was owned by Ms B. The nominee purchaser was NDT. Unit M was subject to two mortgages. The first mortgagee was SAL. SAL held personal guarantees from Ms B and a Mr H for its mortgage.

[24] Mr WS paid various amounts directly to DVL by way of deposit.

[25] Settlement was to be in March 2008.

[26] Mr WS did not consult with Mr AD before signing the agreement. Mr AD learned about the agreement for the first time when DVL's lawyer sent a fax indicating its consent to extending the settlement date by two weeks.

[27] Settlement was further deferred, on more than one occasion, and each time Mr WS negotiated the deferral directly with DVL.

[28] On more than one occasion Mr AD pressed Mr WS for instructions about the purchase, expressing some concern about delays.

[29] In total, Mr WS had paid over $80,000 towards the purchase of Unit M. Some of that money had been paid to DVL directly, and some to DVL's lawyer.

[30] In October 2008, Mr WS spoke to Mr AD about an issue that had arisen with the proposed purchase. DVL had fallen into arrears with its mortgage payments to SAL, and a mortgagee sale had been advertised.

[31] Mr AD's advice was that if the mortgagee sale proceeded Mr WS would lose the sums he had paid by way of deposit. Mr WS was anxious to avoid that.

[32] In approximately mid-October 2008, Mr AD proposed an arrangement whereby an entity, not associated with Mr WS, might purchase the mortgage from SAL

and then adopt the sale from DVL to NDT, thereby allowing that sale to proceed. Mr AD cautioned that the transaction may not be arm's length.

[33] In its decision the Standards Committee carefully set out the steps suggested by Mr AD to accomplish this proposal.[1] Neither party has taken issue with the Committee's description, which I respectfully adopt.

[34] Those steps were:

(a) ZQ Ltd (ZQL) was incorporated. The director was Mr B, a long-time friend of Mr WS.

(b) ZQL, Mr B, Mr WS and BMW Trustees became bound by a deed of trust appointing ZQL as a bare trustee for NDT.

(c) ZQL purchased SAL's mortgage over Unit M, with funds provided by Mr WS to ZQL.

(d) ZQL adopted the agreement between DVL and NDT for NDT to purchase Unit M.

(e) Mr WS (on behalf of NDT) then nominated another of his entities, GBH Ltd, as the purchaser of Unit M. GBH Ltd was a company owned and controlled by Mr WS.

(f) GBH Ltd borrowed funds from the [F Bank] to purchase Unit M. Mr WS personally guaranteed that loan.

[35] The common thread in all steps was Mr WS's direct involvement either personally, through NDT or through GBH Ltd.

[36] Mr AD's counsel, Ms U told the Standards Committee that Mr AD:[2]

> … was cognisant of issues of conflict and advised Mr WS of the potential for conflict of interest and the fact that he could and should obtain independent advice as Mr AD was acting for ZQL on the transaction. Mr WS acknowledged this advice but instructed Mr AD to proceed.

[37] Mr WS signed a waiver of independent legal advice in relation to his position as a guarantor of the loan from [F Bank] to GBH Ltd.

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[1] Standards Committee decision at [8].
[2] Submissions from U to the Standards Committee (1 August 2013) at [20].

[38] After settlement of the purchase of Unit M on behalf of ZQL, Mr WS instructed Mr AD to issue summary judgment proceedings against Ms B and Mr H, the guarantors of SAL's loan to DVL. Mr AD advised against issuing the proceedings because of his view that the transaction may not have been arm's length.

[39] In late 2009, the relationship between Mr WS and Mr AD soured. In December of that year, Mr AD ceased to act for Mr WS and his various entities. The file comprising ZQL's proceedings against Ms B and Mr H was transferred to another lawyer. Those proceedings were subsequently withdrawn by Mr WS.[3]

Disputes Tribunal

[40] In February 2011 (some 14 months after Mr AD and his law firm had ceased to act for Mr WS and his entities), NDT brought a claim against Mr AD and his law firm in the Disputes Tribunal. The claim appears to have been for the payment of outgoings under the law firm's lease to NDT.

[41] A Disputes Tribunal Referee dismissed NDT's claim.

[42] NDT applied for a rehearing of the Tribunal's decision. In that application, Mr WS, on behalf of NDT, argued that Mr AD had fabricated or otherwise altered his law firm's lease. Mr AD had produced that lease at the Tribunal hearing as part of the defence to NDT's claim.

[43] In considering NDT's application for a rehearing, the Tribunal Referee rejected the argument that Mr AD had fabricated the lease document.

[44] NDT appealed the Tribunal's original decision dismissing its claim, and the District Court ordered the Tribunal to rehear the claim. This was on the basis that Mr WS had not been given sufficient time to consider documents that had been provided to him by Mr AD prior to the original hearing in the Tribunal, including his law firm's lease.

[45] Despite a rehearing having been ordered by the District Court, it appears that in January 2012, NDT withdrew its claim in the Disputes Tribunal against Mr AD and his law firm.

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[3] It appears that at about this time also, [BMW Ltd] was replaced by Mr YK as NDT's independent trustee.

[46] There has been ongoing litigation since then between the body corporate and NDT in relation to the payment of levies.

The complaint

[47] Mr WS lodged a complaint with the New Zealand Law Society Lawyers Complaints Service (Complaints Service) in a letter dated 15 March 2011.

[48] The matter was not considered by the Committee until September 2013, some two and a half years after Mr WS had lodged his complaint.

[49] During that time, Mr WS supplemented his initial complaint with several further pieces of correspondence to the Complaints Service. This correspondence expanded upon the initial complaint, added further complaints and expanded on those further complaints.

[50] By the time the Committee considered the matters that had been raised by Mr WS, the complaints file ran to two full Eastlight folders.

[51] Given that the issues on review have been narrowed by Mr WS, I will set out the substance of his complaints concerning Company T, Unit M and the Disputes Tribunal issue.

Company T (the 2007 conflict)

[52] Mr WS alleges that Mr AD cautioned him against pursuing Company T for arrears, and did so on the basis that if the claim had succeeded it would have meant that Mr AD's law firm would also be liable for outgoings under its lease.

Unit M (the 2008 conflict)

[53] Mr WS asserts that the purchase of Unit M was a deceitful creation of Mr AD.

[54] He claims that Mr AD failed to point out the risks associated with the purchase, and that he also failed to advise Mr WS and Mr B to obtain independent legal advice.

[55] Mr WS's attempts to recover the SAL mortgage funds from the guarantors failed.[4]

The Disputes Tribunal issue

[56] In his correspondence to the Complaints Service, Mr WS initially appeared to allege that Mr AD had either misrepresented the nature of Company T's lease to the real estate agent, or he had altered that particular lease.

[57] However, in an email to the Complaints Service dated 2 March 2013, Mr WS said that there "has been some big confusion". He said that it was not his position that Mr AD had "doctored" the Company T lease; rather, Mr AD had "doctored" his law firm's lease in the same building, to show that the firm's lease was a gross lease. Mr WS believed that in previous years the law firm had been paying 100% of the outgoings associated with its premises.

[58] Mr WS alleged that Mr AD lied to the Disputes Tribunal when he said that he had not altered his law firm's lease.

Responses by Mr AD

[59] Mr AD provided responses to most, but not all, of the material sent by Mr WS to the Complaints Service.

[60] In all of his responses Mr AD rejected the various allegations made by Mr WS.

Company T

[61] Mr AD's position was that he advised Mr WS against taking steps to recover outgoings against Company T because his view, once he had reviewed the relevant documents in detail, was that it held a gross lease under which outgoings were not payable.

[62] There was, he submitted, no conflict of interest.

Unit M

[4] At the hearing of his application for review, Mr WS submitted that his claim against the guarantors failed because the Judge held that the transaction to purchase Unit M was not an arm's length transaction. However, Mr WS did not produce a copy of that judgment at the hearing. He was asked to provide it after the hearing, but has not done so.

[63] In relation to Unit M, Mr AD's position was that the interests of all of the parties to that transaction were aligned, with Mr WS being the common denominator. Mr AD thought about whether there might be a conflict of interest, and concluded that there was not.

[64] On 19 December 2008, Mr AD took the step of obtaining a waiver of independent advice from Mr WS in relation to Mr WS personally guaranteeing GBH Ltd's loan from the [F Bank].

[65] Mr AD submitted that he advised Mr WS against pursuing the guarantors of SAL's lease, because of his view that the transaction to purchase Unit M was not, in all probability, an arm's length transaction.

The Disputes Tribunal issue

[66] Mr AD denied altering any documents connected with either Company T's or his own law firm's leases. He denied misleading the Disputes Tribunal about any matter connected with NDT's claim.

Standards Committee inquiry

[67] As part of its inquiry into Mr WS's complaints, on 5 September 2012, the Committee appointed an investigator. The investigator focussed on three issues as part of his investigation:[5]

(a) Company T.

(b) Unit M.

(c) Fees.

Company T (and Disputes Tribunal issue)

[68] The investigator said that there was no evidence of Mr AD having either misrepresented the nature of Company T's lease to the real estate agent, or that he altered the lease to show that it was a gross lease. He concluded that Mr WS's lawyer at the time would have completed due diligence at the time of the purchase and established that Company T had a gross lease.[6]

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[5] Investigator's report (22 February 2013).
[6] At 2.

[69] The investigator does not appear to have addressed the question of whether Mr AD had dishonestly altered his law firm's lease in the Disputes Tribunal proceedings.

Unit M

[70] The investigator described the Unit M scheme as "reasonably complex but not altogether unusual".[7]

[71] He concluded:[8]

> [Mr AD] failed to address the very real issue of legal conflict with him acting for all parties. He acted for [ZQL, NDT], GBH Ltd and the [F Bank]. He also acted for Mr WS the effective controller of those entities. There is no evidence that he advised any of those parties to take independent advice of that any of those parties were fully informed and agreed that he should act for them all. In my opinion it is in that area that Mr AD's actions fall woefully short of what was proper.

Fees

[72] The investigator noted that he had not "been specifically asked to comment on the level of the bills charged by Mr AD for [Unit M]" and that he has "not undertaken a formal cost assessment".[9]

[73] The investigator nevertheless said that "from [his] experience [he believes] that the various bills rendered by Mr AD to the various different entities involved in [Unit M] are, in total, within a range that [he] would consider to be fair and reasonable to both the practitioner and the clients for a transaction of this nature and complexity".[10]

Response to investigator's report

[74] Through his counsel, Mr J, Mr AD responded to the investigator's report, focussing in particular on the conclusion that Mr AD had failed to address the conflict of issue in relation to Unit M.

Company T

[75] Mr AD agreed with the investigator's conclusion to the effect that no conduct issues arose.

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[7] At 1.
[8] At 3.
[9] At 3.
[10] At 3.

Unit M

[76] Mr J submitted:[11]

(a) Mr AD "clearly spelt out the risks of the [Unit M] transaction and sought Mr WS's instructions as to whether he wished to continue with the transaction and was advised by Mr WS to do so".[12]

(b) Mr AD was "cognisant of issues of conflict and advised Mr WS of this and the fact that he could and should obtain independent advice. Mr WS acknowledged this advice but instructed Mr AD to proceed".[13]

(c) Mr AD obtained a waiver of independent legal advice from Mr WS in relation to the [F Bank] loan to GBH Ltd, and Mr WS's personal guarantee of that loan. Mr AD thus "obtained Mr WS's informed consent to continue acting in accordance with [the lawyers' conduct rules]."[14]

(d) Mr AD disagreed with the investigator's conclusion that he had acted inappropriately in the Unit M transaction, noting:[15]

(i) The investigator did not have the complete file for the Unit M transaction.

(ii) The investigator failed to identify any conflict of interest.

(iii) None of the parties to the Unit M transaction had conflicting interests; all wanted the purchase to be settled.

(iv) A potential conflict arose with Mr WS's personal guarantee of GBH Ltd's loan from [the [the Bank]], given that [the [the Bank]] had instructed Mr AD in that transaction, however, Mr AD had obtained a waiver of independent advice from Mr WS.

(v) Although Mr WS was not a director or shareholder in ZQL, the Deed of Trust revealed that Mr WS had complete control over it.

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[11] Letter from W to Complaints Service (24 May 2013).
[12] At [17].
[13] At [18].
[14] At [21].
[15] At [25].

Disputes Tribunal issue

[77] Mr J addressed that issue on Mr AD's behalf as follows:[16]

(a) In dealing with Mr WS's application for a rehearing, the Disputes Tribunal Referee had held that the copy of the lease produced by Mr AD at the hearing was a "true record" of that lease.

(b) On 24 January 2012 Mr WS withdrew his claim in the Tribunal against Mr AD and his law firm, despite having been granted a rehearing of the claim by the District Court.

(c) Mr AD neither altered the lease nor lied to the Disputes Tribunal.

Other

[78] Mr J also addressed other issues of complaint identified from the correspondence. He noted that Mr WS had "provided a significant amount of correspondence to the Law Society, much of which is incoherent and irrelevant".[17]

[79] In summary, in connection with the other issues identified, Mr W submitted that no professional conduct issues of any description were raised.

Notice of Hearing

[80] In its Notice of Hearing dated 18 July 2013, the Committee identified the following issues:

(a) The nature of the alleged conduct itself, including:

(i) The advice provided by Mr AD in relation to the purchase of Unit M.

(ii) Any conflict of interest Mr AD may have had in relation to the services he provided regarding the sale and purchase of Unit M.

[16] At [36]–[43].
[17] At [27].

Standards Committee decision

[81] The Standards Committee delivered its decision on 19 November 2013. It identified the following issues for consideration:[18]

(a) Was it necessary to convene an oral hearing to hear from Mr WS?

(b) Did Mr AD breach any of his professional obligations in relation to the advice and services he provided to Mr WS or the entities he controlled?

Oral hearing

[82] Mr WS had asked for an oral hearing, partly on the basis that he suffers from dyslexia and was concerned that the Committee may not fully appreciate what he had said in his written material.

[83] The Committee referred to the extensive material that Mr WS had lodged as part of his complaint. The Committee had also reviewed Mr WS's client files, provided by Mr AD. As well, the Committee had the benefit of the investigator's report.

[84] In taking those matters into account the Committee held:[19]

> [It] had sufficient information to enable it to reach a determination in relation to Mr WS's complaints and that both parties had had the necessary opportunity to make their submissions…

[85] The Committee did not consider that an oral hearing was necessary.

Breaches of professional obligations

[86] In its decision the Committee summarised the issues of complaint as being:[20]

(a) Mr AD provided inappropriate advice in relation to the purchase of Unit M.

(b) Mr AD provided incorrect and conflicting advice in relation to [Company T].

(c) Mr AD failed to respond to IRD requests for information regarding Mr WS.

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[18] Standards Committee decision at [17].
[19] At [22].
[20] At [13].

(d) Mr AD failed to advise Mr WS of the correct interest rate in relation to a mortgage.

(e) Mr AD misled the Disputes Tribunal.

(f) Mr AD charged excessively.

(g) Mr AD failed to act competently in various proceedings.

(h) Mr AD proceeded with enforcing a judgment when matters were still being defended.

(i) Mr AD refused to supply copies of timesheets, trust account statements and client files.

[87] The Committee determined, pursuant to s 138(2) of the Act that further action on the complaint was neither necessary nor appropriate.

[88] At the hearing of his application for review, Mr WS specifically abandoned (c), (f) and (h) above. As indicated, he said that his main concerns related to the 2007 and 2008 conflicts of interest on Mr AD's part, and the Disputes Tribunal issue – these being (a), (b) and (e) above.

Unit M

[89] The Committee agreed with the investigator's description of this transaction as complex, though neither unlawful nor unethical.[21]

[90] It disagreed with the investigator's view that Mr AD had failed to identify and address the conflicts of interest that arose by acting for all parties to the purchase (with the exception of DVL).

[91] The Committee's view was that "most of the entities were actually controlled by Mr WS and also had the same interests, generally, as he did".[22]

[92] The Committee noted that Mr AD had obtained a waiver of independent advice from Mr WS in connection with [the [the Bank]] advance to GBH Ltd, which Mr WS had personally guaranteed.

[21] At [30]–[31].
[22] At [33].

[93] Having regard to rule 6.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the rules), the Committee concluded that:

> [36] [Throughout] the conveyancing process for the purchase of Unit M, Mr AD was broadly acting for:
>
> (a) The [F Bank].
>
> (b) Mr WS personally (as a trustee for [NDT]).
>
> (c) Mr WS as director of BMW Trustees Ltd.[23]
>
> (d) Mr WS as director of GBH Ltd.
>
> [37] … Whilst [the [F Bank]] was a separate entity, it was noted that there was a personal guarantee in place in relation to its loan.
>
> [38] [The] interests of all of the parties involved were sufficiently aligned so as to confirm that there was a less than a negligible risk that Mr AD would not be able to discharge his duties to one or more of those parties.

Company T

[94] The Committee noted that in correspondence to Mr WS, Mr AD explained why proceedings against Company T would be unlikely to succeed. The Committee considered that these were "appropriate steps" and that Mr AD did not have a conflict of interest in relation to this issue.[24]

The Disputes Tribunal issue

[95] The Committee referred to the investigator's view that there was no evidence to support an allegation that Mr AD had altered the Company T lease, and that moreover Mr WS ought to have completed due diligence at the time he purchased the floor in the building, as that would have revealed the true nature of Company T's lease.[25]

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[23] As indicated earlier in this decision, [BMW Ltd] was an independent trustee of NDT, and Mr WS was a trustee of NDT. Neither party in their correspondence to the Committee has indicated that Mr WS was a director of BMW Trustees Ltd. Moreover, an historical search of the Companies Office records reveals that Mr WS has never been a director of BMW Trustees Ltd. However for reasons that will become apparent later in this decision, I regard this error by the Standards Committee as immaterial.

[24] At [46].

[25] At [45].

[96] The Committee also referred to the decision of the Disputes Tribunal in refusing Mr WS's application for a rehearing, in which the Referee commented that he accepted that Mr AD had not altered any documents.[26]

Other

[97] In relation to the other issues of complaint it identified, the Committee noted each party's position and concluded that there was insufficient evidence to conclude that Mr AD was guilty of any conduct lapses.

[98] At the conclusion of its decision, the Standards Committee said:

> The Standards Committee attempted to identify Mr WS's primary complaints in this decision and has considered the material that was provided before deciding upon those complaints. The Standards Committee concluded that it was satisfied with the overall conduct of Mr AD and that, having regard to all of the circumstances, no further action was necessary or appropriate.

Application for review

[99] Mr WS filed his application for review on 17 December 2013. Mr WS submits:

(a) The Committee disregarded the investigator's conclusions that Mr AD was conflicted in relation to Unit M.

(b) Mr AD has misled both the Courts and the Complaints Service.

(c) The Committee did not understand his complaints.

(d) He asked for an oral hearing, which the Committee ought to have allowed because of his dyslexia.

(e) He seeks costs for all of the damage caused by Mr AD.

Response

[100] Through counsel, Mr AD indicated that he relied upon all of the material provided to the Complaints Service.[27]

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[26] At [46].
[27] Letter from U to LCRO (4 February 2014).

Nature and scope of review

[101] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:[28]

> … 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 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.

[102] More recently, the High Court has described a review by this Office in the following way:[29]

> 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.

[103] 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.

Statutory delegation and hearing in person

[104] As the Officer with responsibility for deciding this application for review, I appointed Mr Robert Hesketh as my statutory delegate to assist me in that task.[30] As

[28] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].
[29] *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].
[30] Lawyers and Conveyancers Act 2006, sch 3, cl 6.

part of that delegation, on 19 May 2017, Mr Hesketh conducted a hearing at which Mr WS appeared together with his counsel Mr E, and Mr AD appeared with his counsel Ms U and Ms V.

[105] I record that all of the issues raised by Mr WS in his review application have been comprehensively traversed by both Mr Hesketh and myself, and that all arguments addressed by Mr WS at the review hearing have been given attentive consideration.

[106] At the beginning of the hearing before Mr Hesketh, Mr E indicated that he had only very recently been instructed by Mr WS and that he was present to assist Mr WS rather than to make submissions on his behalf. Mr WS therefore presented his own submissions with occasional input from Mr E.

[107] During the hearing, Mr WS indicated that he had a number of documents in relation to the purchase of Unit M. However, he did not have the documents with him at the hearing.

[108] Mr Hesketh set a timetable for Mr WS, through Mr E, to lodge the Unit M documents with this Office, and to serve a set on Mr AD's lawyers. That timetable was extended twice, with 30 June 2017 set as the final date for filing and serving any material.

[109] Mr Hesketh also allowed Mr AD's lawyers an opportunity to file written submissions addressing any matters arising out of the Unit M purchase, including issues arising out of any further documents filed and served by Mr WS in accordance with Mr Hesketh's directions.

[110] On behalf of Mr AD, Ms U filed submissions on 14 July, and served a copy on Mr E.

[111] On 28 July Mr E filed and served submissions on behalf of Mr WS. He informed this Office that he believed that he had done so by the deadline date of 30 June. The submissions filed and served on 28 July are dated 30 June.

[112] Mr E's submissions were referred to Ms U for comment. In responding Ms U noted the history of Mr WS's application for review and the hearing of that application, together with his failure to file submissions as he had been directed to do by 30 June. She referred to the stress that Mr AD has endured throughout the history of this matter which began with Mr WS's complaint in 2011.

[113] Ms U submitted that the submissions received on behalf of Mr WS on 28 July ought not to be taken into account by me.

[114] Mr W's submissions are extremely brief – less than three pages. His submissions on the 2008 conflict of interest (Unit M) amount to four short paragraphs. The point made is that because of the nature of the transaction, there must have been a conflict of interest that "breached the rules".[31]

[115] Mr E's submissions about Company T appear to be that Mr AD was aware that all leases for all tenants in the building his firm occupied were gross leases, yet Company T's renewal in 2004 made provision for the payment of outgoings. The submission is that Mr AD "made contradictory statements regarding the existence of the Deed of Lease and also the content therein".

[116] Attached to Mr E's submissions was a document that appears to be a copy of submissions made by Mr AD to the Disputes Tribunal.

[117] Having read Mr E's submissions, I do not regard them as advancing matters beyond what has already been covered by the Committee and the hearing before Mr Hesketh. In particular, and in relation to the Disputes Tribunal issue, Mr WS's complaint was that Mr AD had "doctored" his firm's lease for the purposes of the Tribunal's hearing, to show that it was a gross lease. I deal with that later in my decision.

[118] I observe that Mr WS provided a significant amount of material to the Complaints Service as part of his complaint. Mr AD has also provided responses where appropriate.

[119] Mr WS has also corresponded with this Office and repeated the concerns he expressed in his complaints and in his application for review.

[120] At the hearing, Mr WS made it clear that his three areas of concern were the 2007 and 2008 conflicts of interest and the Disputes Tribunal issue. He specifically abandoned the issues of failing to respond to IRD requests, excessive charging and proceeding to enforce a judgment when matters were still being defended.

[121] In putting it in this way, Mr WS has substantially narrowed the issues for consideration on review. Moreover, in his submissions Mr E confirms that Unit M,

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[31] Submissions from E to LCRO (30 June 2017) at [5]–[8].

Company T and the Disputes Tribunal issue are the "most substantive complaints of Mr WS".[32]

[122] As noted, Mr Hesketh has reported to me about the hearing and we have conferred about the application for review, and my decision.

[123] The events in question occurred between 2007 and 2009 and in early 2011. The complaint was not made until March 2011. As well, the issues to be determined have now been substantially narrowed. I am satisfied that it is appropriate to finalise the application for review on the basis of the material that has been filed by both parties to date, the bulk of which was before the Standards Committee. This includes Mr E's submissions dated 30 June, filed and served on 28 July. As I have indicated above, I do not consider that those submissions to add to matters.

Analysis

Oral hearing

[124] In his complaint, Mr WS asked the Committee to allow him to be heard in person. He referred to his difficulties with written communication due to dyslexia.

[125] The Committee declined that request and conducted its hearing on the papers in the conventional way.[33]

[126] In his application for review Mr WS renewed his request to be "interviewed and heard", referring again to his dyslexia.

[127] It is not necessary for me to decide whether the Committee was correct to disallow Mr WS's request to be heard in person. I simply note that the default position for Standards Committees is to conduct their hearings on the papers, and that it is an unusual step for a Committee to depart from this.

[128] If the Committee was in error in Mr WS's case, then that error has been corrected by the hearing in person before Mr Hesketh. Mr WS appeared, made his submissions and was supported by his lawyer. Opportunity was extended to Mr WS, through his lawyer, to provide additional material.

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[32] At [16].
[33] Lawyers and Conveyancers Act 2006, s 153.

[129] I am satisfied that Mr WS's concerns about being heard in person have been more than adequately addressed by the review processes of this Office.

Legislation

[130] As foreshadowed by me at [3] above, Mr AD's conduct in relation to the issues of complaint is to be assessed under both the LPA (and relevant rules) and the Act (and relevant rules). The bright-line date is 1 August 2008.

[131] In relation to the issues for me to determine, this means:

(a) Conduct relating to advice given about Company T's lease occurred before 1 August 2008 and is covered by the LPA.

(b) Conduct relating to Unit M occurred after 1 August 2008 and is covered by the Act.

(c) Conduct relating to the Disputes Tribunal occurred after 1 August 2008 and is covered by the Act.

Unit M (2008 conflict)

[132] This issue of complaint is the most important to Mr WS. Although it occurred after the Company T matter, because of its importance to Mr WS's claim I will deal with it first. It concerns events that occurred from October 2008.

[133] There is no doubt that the Unit M transaction was complicated and involved a number of different entities and discrete transactions.

[134] The fact that the transaction may have been found not to have been at arm's length is irrelevant to the question of whether Mr AD had a conflict of interest in acting for all parties (except the vendor) involved in the purchase. The question of whether there was a conflict of interest, is Mr WS's complaint.

Rule 6.1

[135] The position under rule 6.1 is that a lawyer cannot act for more than one party to a transaction "if there is a more than negligible risk that the lawyer may be unable to discharge the obligations owed to one or more of the clients".

[136] Amongst the "obligations" referred to in rule 6.1, are two of a lawyer's most fundamental to their client: disclosure and confidentiality.

[137] A lawyer "must promptly disclose to a client all information that the lawyer has or acquires that is relevant to [the retainer]".[34]

[138] Hand in glove with the obligation to disclose, is the requirement that a lawyer must "hold in strict confidence" all information received from a client in the course of their professional relationship.[35] There are very few exceptions to that rule, one of which is where a client authorises disclosure of their confidential information.

[139] It is the tension between disclosure and confidentiality that raises the spectre that there might be a conflict of interest if a lawyer acts for more than one client in a matter.

[140] There are two parts to rule 6.1: first, is a lawyer proposing to act for more than one client in a matter? Secondly, if so, is there a more than negligible risk that the lawyer will not be able to discharge their obligations to one or more of those clients?

[141] It is clear that Mr AD was proposing to act for more than one client in relation to Unit M. Those clients were:

(a) ZQL.

(b) NDT.

(c) GBH Ltd.

(d) Mr WS.

[142] The first limb of rule 6.1 is thus triggered.

[143] If there is, from the outset, a more than negligible risk that there will be a conflict in the obligations of disclosure and confidentiality owed to a client if the lawyer was to act for more than one client in a matter, then the lawyer cannot act for more than one of those clients. Informed consent (often described by lawyers as waiver and/or independent advice) will not overcome that prohibition.

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[34] Rule 7.
[35] Rule 8.

[144] If there is a negligible (or less) risk of a conflict in those obligations, then rule 6.1.1 applies. This provides that with the prior informed consent of all parties, a lawyer may act for more than one of those clients in the same matter.

[145] When contemplating acting for two (or more) clients in a matter, in determining whether there is a more than negligible risk that s/he may be unable to discharge their obligations to one or more of those clients, a lawyer must ask themselves whether they can disclose to Clients A and B everything they learn from Client C about the matter.[36] The tension potentially arises in the following way: rule 8 requires the lawyer to hold in strict confidence what Client C has told them, whereas rule 7 requires the lawyer to disclose relevant information to Clients A and B.

[146] It is most likely that if the interests of all clients do not align, then there is a more than negligible risk that the lawyer cannot discharge the obligations he owes to those clients. The lawyer cannot disclose, as required by rule 7, to Clients A and B what Client C has said because of the lawyer's obligation of strict confidence to Client C.

[147] However, if the interests of the clients are manifestly aligned – for example, if there are several entities in a transaction and there is a concurrence between those entities – then the tension referred to above is diminished. In such circumstances there is a greater probability that Clients A, B and C will all know exactly what the other also knows about the transaction.

[148] When the Unit M transaction is analysed in this way, it is clear that Mr WS is the common denominator, because:

(a) NDT entered into the agreement with DVL to purchase Unit M.

(b) ZQL was incorporated on Mr WS's instructions.

(c) ZQL was a bare trustee of NDT. On 22 October 2008, ZQL and Mr WS (as the trustee of NDT), together with [BMW Ltd] as NDT's independent trustee, entered into a deed of trust whereby ZQL undertook to hold the mortgage that SAL assigned to it, for NDT as the beneficial owner of the mortgage and to comply with all directions given by NDT.

[36] The same applies to information from Client A in respect of Clients B and C, and Client B in respect of Clients A and C.

(d) ZQL entered into a deed of assignment with SAL whereby SAL assigned its mortgage over Unit M, to ZQL. This deed was executed on 24 October 2008.

(e) Mr WS provided the funds for ZQL to purchase the mortgage from SAL.

(f) Mr WS, on behalf of NDT, nominated GBH Ltd as the purchaser of Unit M in place of NDT. Mr WS was the sole director and shareholder of GBH Ltd.

(g) The [F Bank] advanced funds to GBH Ltd.

(h) Mr WS personally guaranteed that advance.

[149] As Ms U noted in her submissions on behalf of Mr AD, "the effect of [the deed of trust between Mr WS, [BMW Ltd] and ZQL was that NDT (and through NDT, Mr WS) was in control of ZQL and would be the decision-making party in respect of any ZQL transactions".[37]

[150] BMW Ltd was a party to that deed of trust by virtue of being NDT's independent trustee. That deed of trust provided that liability was limited to the assets of NDT. At the relevant time, Mr AD was a director of BMW Trustees Ltd, and the sole shareholder. It must be presumed that Mr AD was authorised by BMW Ltd to execute the deed of trust.

[151] The Committee's reference to Mr WS being a director of [BMW Ltd] is incorrect. It may have been a typographical error as it would have made more sense for the Committee to have said that Mr AD was acting for himself as a director of BMW Trustees Ltd.

[152] The Committee also omitted to note that Mr AD acted for ZQL, which purchased the mortgage over Unit M from SAL.

[153] As a trustee of NDT, the beneficial owner of the SAL mortgage and the sole director and shareholder of GBH Ltd, Mr WS was thus directly involved with all entities associated with, and at all stages of, the purchase of Unit M.

[37] Submissions from U (14 July 2017) at [4.6].

[154] Because of this involvement, in my view, there was no information about any of those entities that could not be disclosed to Mr WS; in short, he would have known about it in any event.

[155] It follows from that analysis that there was a negligible (or less) risk of Mr AD being unable to discharge his obligations – in particular his obligations of disclosure and confidence – to any of the entities involved in the several steps of the transaction to purchase Unit M.

[156] For those reasons, I agree with the Committee's conclusions about Unit M; in particular, that the second limb of rule 6.1 was not engaged.

Rule 6.1.1

[157] As indicated above, if the first limb of rule 6.1 is triggered (acting for more than one client in a matter), but there is a negligible (or less) risk that a lawyer may not be able to discharge their obligations to one of more of the clients for whom they act, rule 6.1.1 then applies.

[158] The lawyer must obtain the informed consent of all parties before acting.

[F Bank] loan

[159] In relation to [F Bank]'s instructions to Mr AD to act in the advance to GBH Ltd, it might be said that there is the potential for a conflict of interest as between the interests of [F Bank], and those of Mr WS.

[160] It is clear that [the Bank] advance to GBH Ltd as the purchaser of Unit M, which loan was personally guaranteed by Mr WS, was a standard conveyancing transaction. It was a simple loan, secured and personally guaranteed.

[161] It is not clear whether Mr AD obtained [F bank's] informed consent to act for it and Mr WS. That is not an issue for me to determine. [F Bank] has not complained. In any event, it must be presumed that an institutional lender, which instructs a borrower's lawyer to act for that institutional lender, must be aware of the potential for a conflict of interest arising and otherwise is content to provide those instructions.

[162] As well, I note that it is common practice for a borrower's lawyer to also act for an institutional lender in a transaction. [38]

Mr WS's waiver

[163] On 19 December 2008 Mr WS signed a document which Ms U has described as "a waiver of independent advice".[39] The document related to Mr WS's position as the personal guarantor of the [F Bank's] advance to GBH Ltd.

[164] However, as noted above rule 6.1.1 requires informed consent to act. Informed consent is defined in the rules as follows:

> Informed consent means consent given by the client after the matter in respect of which the consent is sought and the material risks of and alternatives to the proposed course of action have been explained to the client and the lawyer believes, on reasonable grounds, that the client understands the issues involved.

[165] This differs from a waiver of independent advice. A simple waiver of independent advice when a lawyer proposes to act for more than one client in a matter, in which there is a negligible (or less) risk of a conflict of interest, does not comply with the requirements of rule 6.1.1.

[166] In the body of the document signed by Mr WS, the following is recorded:

> 3. I do not wish to obtain independent advice and I hereby declare that I fully understand and acknowledge the liabilities which will accrue to me personally as a result of the full force and effect of the guarantee to the [F Bank].

[167] Ms U describes this as Mr AD obtaining "Mr WS's informed consent to continue acting [in connection with F Bank's advance]".[40]

[168] I accept that submission. There is little doubt that Mr AD would have explained the implications of the [F Bank's] personal guarantee to Mr WS. It seems unlikely that Mr WS would be asked to sign a document without some explanation of its contents.

[169] Mr WS had been Mr AD's client for several years, and had conducted several transactions with Mr AD as his adviser, the majority of which appear to have involved the sale and purchase of properties. It would have been reasonable for Mr AD to have

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[38] *AH v ZP* LCRO 82/2011 (February 2014) at [75].
[39] Above n37, at [4.13](b).
[40] At [4.14].

concluded, on the basis of that history, that Mr WS would understand the issues involved in executing a personal guarantee to the [F Bank].

[170] I do not consider that any disciplinary issues arise in relation to Mr AD's advice and conduct in relation to the [F Bank] loan.

Conclusion

[171] Finally, in my view, a brief description of informed consent, such as Mr WS executed, might create difficulties for a lawyer arguing that they have fully complied with rule 6.1.1 if the matter becomes disputed. In my view, a prudent approach would be for a lawyer to set out a more detailed description of their advice, so as to establish that lawyer's belief, on reasonable grounds, that their client understood the issues involved.

[172] I also consider that strict compliance with rule 6.1.1 means that Mr AD ought to have obtained the prior informed consent of all of the parties to the Unit M transaction. I regard his failure to do so as technical rather than substantive, for the same reasons that have persuaded me that there was a negligible (or less) risk that Mr AD could not discharge his obligations to those clients under rule 6.1: specifically, that the common denominator across all parties was Mr WS. And, at least, Mr AD obtained a "waiver" from him in relation to [F Bank] advance that Mr WS was personally guaranteeing.

[173] For those reasons, a disciplinary response is not necessary in relation to Mr AD's failure to strictly comply with rule 6.1.1.

Company T

[174] As these events occurred in 2007, the applicable standards are the LPA and the Rules of Professional Conduct for Barristers and Solicitors.

Law Practitioners Act 1982

[175] The interplay between the LPA and the Act means that jurisdiction to consider the complaint under the Act arises in the following way: if the conduct complained about is "conduct in respect of which proceedings of a disciplinary nature could have

been commenced under the LPA"; or put another way, if "the case is of sufficient gravity to warrant the making of a charge (before the District Disciplinary Tribunal).[41]

[176] To cross the "sufficient gravity" threshold the conduct must involve at least one of the following: [42]

(a) Misconduct in a professional capacity.

(b) Conduct unbecoming to a barrister and solicitor.

(c) Negligence or incompetence of such a degree or so frequent as to reflect on fitness to practice or which tends to bring the profession into disrepute.

(d) Conviction of an offence punishable by imprisonment, which reflects upon fitness to practice or tends to bring the profession into disrepute.

Misconduct

[177] "Misconduct" was generally considered to be conduct[43]

> … of sufficient gravity to be termed 'reprehensible' (or 'inexcusable', 'disgraceful' or 'deplorable' or 'dishonourable') or if the default can be said to arise from negligence such negligence must be either reprehensible or be of such a degree or so frequent as to reflect on his fitness to practise.

Conduct unbecoming

[178] "Conduct unbecoming" could relate to conduct both in the capacity as a lawyer, and also as a private citizen. The test will be whether the conduct is acceptable according to the standards of competent, ethical, and responsible practitioners.[44]

Negligence/incompetence

[179] For negligence to amount to a professional breach, the standard found in ss 106 and 112 of the LPA must be breached. That standard is:

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[41] Lawyers and Conveyancers Act 2006, s 351; Law Practitioners Act 1982, s 101.
[42] Law Practitioners Act, s 106(3) and s 112(1).
[43] *Atkinson v Auckland District Law Society* NZLPDT, 15 August 1990; *Complaints Committee No 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105.
[44] *B v Medical Council* [2005] 3 NZLR 810.

> the negligence or incompetence has been of such a degree or so frequent as to reflect on his fitness to practise as a barrister or solicitor or as to tend to bring the profession into disrepute.

Sufficient gravity

[180] If the case crosses the "sufficient gravity" threshold on account of any one of the criteria in [176] above, a Standards Committee has jurisdiction to consider and determine the complaint, including making a finding of unsatisfactory conduct.[45]

[181] In considering the complaint about conduct occurring prior to 1 August 2008, the Committee must identify any breaches of the applicable rules or other applicable standards.

[182] If an unsatisfactory conduct finding is made, penalties are limited to those which could have been imposed under the LPA.[46] Those are provided for in s 106(4) of the LPA.

Discussion

[183] The events about which Mr WS complains occurred in the second half of 2007.

[184] Mr WS's complaint is that Mr AD ought not to have given advice about whether NDT could recover lease outgoings from Company T, because the outcome of that case would affect his law firms' position given that the two businesses were located on the same floor.

[185] In short, a successful claim against Company T for outgoings would expose Mr AD's law firm to a similar claim.

[186] Mr WS claimed that Mr AD advised him against pursuing Company T for that reason.

[187] The Committee found that Mr AD had given Mr WS appropriate advice about the Company T outgoings issue, and "did not have a conflict of interest".[47]

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[45] Lawyers and Conveyancers Act 2006, s 152(2)(b).
[46] Section 352.
[47] Standards Committee decision at [46].

[188] The Rules of Professional Conduct for Barristers and Solicitors applied to conduct arising under the LPA. In relation to this issue of complaint, rule 1.03 is relevant. That rule stated:

> A practitioner must not act or continue to act for any person where there is a conflict of interest between the practitioner on the one hand, and an existing or prospective client on the other hand.

[189] I do not regard the fact that both businesses operated from the same floor, and the landlord of both was NDT, as raising a conflict of interest on the part of Mr AD when advising about Company T's lease obligations.

[190] Each had separate leases with terms affecting their separate businesses. Ultimately, the liabilities of each would be determined by their own leases and not by the lease of the other.

[191] Mr AD's initial advice to Mr WS was that it appeared that Company T was responsible for outgoings. This changed when he looked more closely at the lease documentation including its history.

[192] Mr AD followed Mr WS's instructions to make demand of Company T, despite misgivings. This demand was met with swift and firm rebuttal by Company T's lawyer, on the basis that its lease was a gross lease.

[193] Mr WS did not take that issue further.

[194] It is unfortunate that Mr AD's initial advice, given after a quick perusal of the lease, was that there appeared to be grounds to recover outgoings from Company T. This was on the basis that the provision for payment of outgoings, although left blank, had not been crossed out.

[195] Mr AD explained that because of the nature of his relationship with Mr WS as his client, he would often be asked for quick advice with minimal information, and he would endeavour to answer those queries.

[196] Subsequent and more careful analysis revealed that the lease was a gross lease. Perhaps the more prudent approach would have been for Mr AD to avoid expressing any view until that analysis had been completed.

[197] However, it is clear that Mr WS instructed Mr AD to issue a demand, after the latter had expressed some misgivings.

[198] Applying the provisions of s 351 of the Act and s 101 of the LPA, I do not consider that this is conduct in respect of which proceedings of a disciplinary nature could have been commenced under the LPA, or is conduct of sufficient gravity to warrant the making of a charge before the District Disciplinary Tribunal.

The Disputes Tribunal issue

[199] I accept that Mr WS's concern was that Mr AD had altered his law firm's lease to give it the appearance of being a gross lease. It does seem that both the Complaints Service and the Committee approached this ground of complaint on the basis that Mr WS was alleging that Mr AD had altered the Company T lease.

[200] In its decision the Committee referred to "Mr WS's allegations that Mr AD had altered the [Company T] lease".[48] It later said that it "was not satisfied that Mr AD had misled the Disputes Tribunal".[49]

[201] The Committee relied upon the investigator who, in his report, said that "there is no evidence to support [allegations that Mr AD "somehow altered" the Company T lease]".[50]

[202] Because the Committee proceeded upon an error, it has not considered Mr WS's complaint that Mr AD had altered his law firm's lease and misled the Disputes Tribunal about that lease.

[203] I have therefore considered whether I should remit that part of Mr WS's complaint to the Committee, for it to consider and make a decision about that issue.

[204] However, given the age of this matter (complaint having been made in 2011), it is appropriate for me to consider and rule upon that issue of complaint. I am satisfied that there is adequate material which enables me to do so.

[205] For the avoidance of doubt, I record that Mr WS's complaint is that Mr AD dishonestly altered his law firm's lease to show it as a gross lease. In so doing, he misled the Disputes Tribunal.

[206] NDT's claim against Mr AD and his law firm for unpaid outgoings under their lease was heard in the Disputes Tribunal. Mr WS appeared before the Referee, as did Mr AD and one of his business partners.

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[48] Standards Committee decision at [45].
[49] At [46].
[50] Above n5, at 2.

[207] A transcript of that hearing was produced, presumably for Mr WS's appeal against the Referee's decision to the District Court. That transcript formed part of the Committee's file and is before me.

[208] The transcript reveals a lengthy hearing (48 pages of notes of evidence), during which the Referee took an active part. The issue of Mr AD's law firm's lease was, it would appear, thoroughly aired.

[209] At the conclusion of that hearing, the Referee indicated that he would be dismissing NDT's claim.

[210] NDT applied to the Disputes Tribunal for a rehearing of the Referee's decision. The "central issue" was that Mr AD had altered the lease document.[51]

[211] The Referee rejected that argument. On the issue of Mr AD's credibility in connection with how long the lease had been at his offices (which was another of Mr WS's concerns), the Referee said that he "[accepts Mr AD's] word".

[212] NDT then appealed the Disputes Tribunal's original decision to the District Court. The District Court returned the matter to the Disputes Tribunal and ordered a rehearing there. This was on the basis that the Referee ought to have allowed Mr WS more time to consider documents that had been given to him by Mr AD shortly before the hearing. To that extent, the order granting the rehearing was confined to a procedural error.

[213] As I have earlier noted, Mr WS eventually withdrew his claim in the Disputes Tribunal.

[214] Despite withdrawing his claim in the Disputes Tribunal, Mr WS has persisted in the complaints forum with his allegation of forgery against Mr AD. He does not appear to have made a complaint to the Police.

[215] In his submissions to the Complaints Service, Mr AD emphatically denied altering any documents, and equally emphatically denied misleading or lying to the Disputes Tribunal about any matter.

[216] An allegation of this nature is an extremely serious one to make. It engages the criminal law; specifically the Crimes Act 1961. A lawyer who is found to have

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[51] *WS v AD (application for rehearing)*, DT Auckland, CIV-2011-032-000062, 5 May 2011.

committed offences of this nature would be severely sanctioned by the complaints process.

[217] To uphold such an allegation in the complaints jurisdiction, Mr WS must establish that it is more probable than not that Mr AD dishonestly altered his law firm's lease. The evidence to support this would need to be more than merely his suspicions.

[218] Although I am required to consider the matter afresh, I cannot overlook that another decision-maker (the Referee), who had the benefit of the parties appearing before him about the very issue Mr WS has made complaint about, rejected the allegation that Mr AD had altered his law firm's lease.

[219] When I combine that with Mr AD's emphatic denial of having done so, together with the lack of any independent evidence to support the allegation, I am driven to the conclusion that this ground of complaint has no basis to it.

[220] Accepting, as I do, that Mr AD did not dishonestly alter his law firm's lease, it follows that he has not misled the Disputes Tribunal.

[221] I therefore dismiss this ground of complaint against Mr AD on the basis that further action is neither necessary nor appropriate.

Conclusion

[222] Standards Committees are made up of practising lawyers and lay members, whose appointments are made by the Board of the New Zealand Law Society. Lawyer members must have "skill, experience and judgement to deal with and make appropriate decisions in respect of complaints". A similar criterion applies to the appointment of lay members.[52] Lay members bring community expectations to the process.

[223] The combination of skilled and experienced lawyers and lay members will mean that a Standards Committee's hearing process will involve a robust exchange of ideas, the consequence of which will be a majority decision at least. It will mean that careful attention and thought has been given to a complaint.

[224] That is not to say that errors will not be made.

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[52] See the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008.

[225] A review by this Office involves a fresh consideration of the issues before a Standards Committee, as well as a consideration of the way in which the Committee decided those issues.

[226] I have read all of the material that was before the Standards Committee, as well as the Committee's lengthy decision (nine pages).

[227] I have identified errors made by the Committee (describing Mr WS as a director of BMW Trustees Ltd, and considering whether Mr AD had altered the Company T lease).

[228] The first of those errors was an important factual error but ultimately immaterial to the overall question of whether Mr AD had a conflict of interest with the Unit M transaction.

[229] The second of those errors is understandable. Mr WS's correspondence to the Complaints Service was extensive in number and content. The investigator's misapprehension about the altered lease was adopted by the Committee. The correct issue has since been dealt with by me.

[230] Despite those errors, I otherwise regard the Committee's decision as thorough. Significant effort went into crystallising Mr WS's complaints, and the Committee clearly considered both sides' positions, and formed its own view about whether conduct issues had been engaged.

[231] Having independently reviewed Mr WS's complaint, I am not persuaded that the Committee's overall conclusions about Mr AD' conduct were incorrect or otherwise unreasonable.

[232] 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 29TH day of August 2017

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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 WS as the Applicant
Mr E as the Representative for the Applicant
Mr AD as the Respondent
Ms U and Ms V as the Representatives for the Respondent
Mr LD as a related person
[Area] Standards Committee [X]
New Zealand Law Society