

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

[2021] NZLCRO 154

Ref: LCRO 43/2020

CONCERNING

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

AND

CONCERNING

a determination of [Area]
Standards Committee [X]

BETWEEN

SL

Applicant

AND

DN

Respondent

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

Introduction

[1] Mr SL has applied for a review of the determination by [Area] Standards Committee [X] that he had breached rr 6.1, 6.1.2 and 6.1.3 of the Conduct and Client Care Rules.¹ The Committee made a finding of unsatisfactory conduct against Mr SL pursuant to s 12(c) of the Lawyers and Conveyancers Act 2006.

Background²

[2] Mr DN was the owner of the rear unit of a three-unit development. Title to the unit was held by way of cross lease.

¹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

² All references to Mr DN in this decision include Mr DN's wife and the DN Family Trust.

[3] In August 2021, Mr DN “sought and [was] granted the written consent of the other two property owners to extend”³ the unit.

[4] Mrs BJ was the owner of the middle unit. The “consent” that Mr DN refers to was provided by way of a handwritten document which Mr SL had prepared.

[5] The circumstances surrounding the preparation of that document are set out in paragraphs 16 ff.

[6] The document read:

Mr DN will have to prepare a new flats’ plan to be registered at Land Information New Zealand.

Mrs BJ will agree to the addition, and the preparation of a new flats’ plan + the obtaining of new certificates of title provided.

(i) All costs for the same are payable by Mr DN; and

(ii) Mr DN agrees to pay the reasonable legal costs of Mrs BJ in relation to the new flats’ plan + new certificates of title.

I, [DN], agree to the terms above.

[7] Mr DN agreed to those terms and signed the document on 25 August 2012. He then proceeded with the extension to his unit.

[8] In March 2016, the “documents relating to the amendment were forwarded to [law firm] ... for lodgement with LINZ”.

[9] In November 2017, Mr DN decided to sell the unit and was advised by the real estate agent that the title to the property had not been updated.

[10] At that time (November 2017), Mr CM was in the course of leaving the firm and handed the file to Ms KG, a legal executive in the firm. Ms KG then proceeded with the necessary work to obtain the new titles.

[11] When Mrs BJ was asked to sign the new plan, she “resiled from [the] former agreement and demanded compensation for her share of the common land occupied by the extension. The question of compensation was not recognised by either party at the time of the agreement (August 2012) and apparently not by Mr SL of [law firm]. either”.

³ All quotations in this section are from Mr DN’s supporting reasons for his complaint (28 November 2018).

[12] The sale of the unit was delayed by the fact that title was not available.

Mr DN's complaints

[13] Mr DN's complaints, insofar as they relate to Mr SL, are:⁴

- Mr. SL of [law firm].’s work with both ourselves and Mrs. BJ concurrently, when clearly a conflict of interest existed, and the delay in advising us of a conflict of interest.
- Mr. SL of [law firm].’s lack of urgency in responding to matters relating to the dispute, causing us unnecessary delays in getting the property on the market.

[14] Mr DN assesses the financial costs to him as being:

1. 16 weeks @ \$48,000 per annum	\$14,769
2. Difference in land value calculations	18,943
3. Lawn mowing and maintenance (Mrs. BJ's share)	478
4. Value of Rates paid 16 weeks at \$49.84 per week	797
Total	<u>\$34,987</u>

Mr SL's response⁵

[15] Mr SL acknowledges that the handwritten document produced by Mr DN was prepared by him. He describes the circumstances which led to him preparing this document for Mrs BJ.

[16] In August 2012, Mr SL was working in the office formerly occupied by Mr HU, whose practice [law firm] had taken over. Mr SL recalls Mrs BJ coming “into the office unannounced wanting [Mr SL] to urgently prepare something for her to take to Mr DN (her neighbour) that day to get the matter moving”.

[17] Mr SL had “no previous knowledge of the matter. Further, it was the first time [he] had met BJ”. He saw Mrs BJ “very briefly”.

[18] “In August 2012, [the] firm was not acting for Mr DN. [He] heard nothing more of the matter until November /December 2017”.

[19] With regard to Mr DN's complaint that Mr SL was conflicted, he says:⁶

⁴ Mr DN's supporting reasons for his complaint to the New Zealand Law Society Lawyers Complaints Service (28 November 2018).

⁵ All words in quotation marks in this section are from Mr SL's response to the complaint (24 March 2019).

⁶ At [7].

... I do not believe that I, or this firm, acted on the matter in circumstances when there was more than a negligible risk that we would be unable to discharge the obligations owed to Mr and Mrs DN, in breach of rule 6.1. I identified the conflict as soon as possible and advised Mr and Mrs DN to seek independent legal advice only a matter of 4 weeks, or so, after even knowing the conflict existed. I also have to make the point that the period leading up to Christmas in any law firm is, at best, chaotic. There are huge demands both within the firm to get matters attended to by the Christmas break, and also the extensive demands from clients to have work finished off by that time.

[20] Mr SL notes that he did not become aware of the fact that Mrs BJ was requiring payment of compensation until mid-December 2017.

[21] In addressing Mr DN's complaints about delays in responding, Mr SL refers to personal circumstances in his life occurring at the time which, he says, accounted for a large part of the delay.

The Standards Committee determination

[22] The Standards Committee identified the following issues to be addressed:⁷

- (a) Whether Mr SL acted for more than 1 client on a matter in circumstances where there was more than a negligible risk that he may be unable to discharge the obligations owed to 1 or more of the clients (rule 6.1 and 6.2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC));
- (b) Whether Mr SL should have identified sooner that he would no longer be able to discharge his obligations owed to all of the clients and advised the parties of the same;
- (c) Alternatively, whether Mr SL continued to act for BJ and may have breached rules 6.1.2 and 6.1.3 of the RCCC; and
- (d) Whether Mr SL responded to matters relating to the dispute between the parties in a timely manner[.]

Conflict of interest

[23] The Committee addressed the first three issues together, and said:

The Committee considered the documents that were prepared by Mr SL in 2012. In the Committee's opinion, those documents were grossly inadequate. In the Committee's view, it is not surprising that 5 years later when Mrs BJ was contacted to re-do the documentation that she sought to negotiate compensation and concessions in relation to lawn maintenance. Correspondence from Ms KG to Mr DN on 5 December 2017 confirms that the firm was aware that it acted for both Mr DN and Mrs BJ. Ms KG specifically refers to Mr SL acting for Mrs BJ and that he could contact her regarding the mortgage over her title.

In the Committee's view, the dispute between the clients arose in mid December 2017. It was at this stage that the conflict regarding the obligations owed to the

⁷ Standards Committee determination (30 January 2020) at [17].

clients was clear. That is because when Mrs BJ was contacted, she had changed her position and was now seeking compensation from Mr DN. Once Mrs BJ sought to renegotiate the terms of the agreement with Mr DN, the interests of the clients involved were no longer aligned. ... there is no evidence that the parties gave informed consent to the firm acting for both of them prior to the conflict being identified. ... Once the conflict was identified, *both* clients should have been informed of the conflict and the retainer terminated with *each* of them. Instead Mr SL appeared to terminate the firm's retainer with Mr DN and continued to act for Mrs BJ. Mr SL continued to act for Mrs BJ against Mr DN without obtaining his informed consent to do so. This is despite the rules clearly requiring him to obtain informed consent from Mr DN. In the Committee's view, this was unacceptable.⁸

...

[24] The Committee considered that Mr SL had breached rule 6.1 of the RCCC by acting for Mrs BJ once the dispute between Mrs BJ and Mr DN arose. It also determined that Mr SL had breached rules 6.1.2 and 6.1.3 of the Conduct and Client Care Rules by failing to immediately inform each of the clients of the conflict and continuing to act for Mrs BJ without obtaining informed consent from Mr DN.

[25] The Committee determined that these breaches of the rules constituted unsatisfactory conduct.

Delays

[26] The Standards Committee says that "Mr [DN] appears to be complaining about Mr SL's delay in responding to his new lawyer. Mr EP wrote to Mr SL on 1 February 2018 and Mr SL responded on 20 March 2018".⁹

[27] The Committee then referred to the events affecting Mr SL's personal life and said:¹⁰

... While Mr SL should have taken steps to ensure that someone else at the firm could respond to Mr DN's concerns while he was away, the Committee did not consider that his failure to do so could be said to amount to unsatisfactory conduct. ...

[28] The Committee determined to take no further action on this complaint.

Orders

[29] The Committee considered that Mr SL's lack of insight into his conduct and previous disciplinary history warranted an uplift in the fine, and imposed a fine of \$5,000.

⁸ At [25]–[26] & [29].

⁹ At [30].

¹⁰ At [32].

[30] The Committee also ordered Mr SL to pay the sum of \$1,500 by way of costs.

Mr SL's application for review

[31] Mr SL has applied for a review of the Committee's determination. He takes no issue with the findings of the Committee that he was in breach of the Conduct and Client Care Rules referred to, and focuses on three points:¹¹

- a. The handwritten document prepared by myself on 24 August 2012...; and
- b. The timelines involved in regards to the conflict arising, and who I acted for in 2012; and
- c. Finally, a specific comment made in the Decision (para 34) that my **"previous disciplinary history warranted an uplift in the fine"**.

[32] He addresses the first two matters together. In his view, "the Committee appears to have deliberated on the issue of the hand-written document written by me on 24 August 2012, and its causal nexus with the substance of the dispute that arose in late 2017".¹²

[33] He notes that Mrs BJ became a client of the firm in August 2012, and that at that time the firm was not acting for Mr DN.

[34] He objects to the Committee's description of the 2012 document as being "grossly inadequate" and submits that the quality of the document was only relevant if:

- a. The complainant was Mrs BJ, and she complained about the production of that document; or
- b. Mr DN complained that the document did not protect his interests as a client.

[35] He notes that Mrs BJ has not complained and that Mr DN could not complain as he was not a client of the firm at that time. He denies "that any sort of "reasonable contemplation" test can apply with regard to the future interests of a client which had not even come into contemplation in 2012".¹³

[36] Mr SL does not accept that the document was grossly inadequate and again refers to the circumstances in which the document was prepared.

¹¹ Mr SL's supporting reasons for his application for review of the Standards Committee determination (26 February 2020), Part 7, at [2.1].

¹² At [3.1].

¹³ At [3.4].

[37] He believes that Mrs BJ came into the office on a Friday afternoon which is a busy time for a conveyancing practice. Mrs BJ needed something done urgently and the document was prepared with minimal information and in haste.

[38] He submits that the Committee has:¹⁴

... erred in considering that hand-written document being an essential or main cause of the issues that developed later in 2017. I deny that completely. It was perfectly within the capabilities and responsibilities of the DN's to instruct a law firm at that time to better protect their interests, if that is what they wished, but they did not do so. In my submission, the Committee has erred by placing weight on that hand-written document; and by considering irrelevant evidence (the hand-written document) when determining the quantum of the fine levied.

Mr SL's previous disciplinary history

[39] Mr SL considers the reference to his previous disciplinary history "to be completely without foundation, and as a result if it has been a determining factor in the uplift in the fine, then again, the Committee has erred by taking into account something which, in fact, does not exist".¹⁵

[40] Mr SL advises that in 2012 a complaint was made against him by another practitioner and the practitioner's client. Mr SL says that complaint related to a breach of an undertaking.¹⁶

[41] Mr SL says the Committee found in his favour. In the determination, the Committee in fact, made findings of unsatisfactory conduct against him and these were confirmed on review.

[42] The only other complaint against Mr SL arose when he rendered a bill of costs for work that had been carried out some three to four years previously. That arose after a client had requested to uplift his file and on checking the file, Mr SL noted that no invoice had been rendered for some work that had been carried out on the file.

[43] He says the Committee ordered cancellation of the invoice.

[44] Mr SL submits that, having had just two complaints against him over a career of some 20 years, was insufficient to attract an "uplift" in the quantum of the fine imposed on the basis of his "previous disciplinary history".

¹⁴ At [3.6].

¹⁵ At [4.2].

¹⁶ The complaint also related to making payments out of funds held jointly for a husband and wife without approval by both parties.

Mr DN's response

[45] Mr DN comments on the number of statements by the Committee which he considers to be in error, and suggests corrections:¹⁷

6. The property was proposed for sale in late 2017. It was not sold until September of the following year.
8. There was no pressure imposed on Mrs. BJ when agreement was made for the building extension in 2012. The dealings were amicable.
10. I do not recall attending the firm's office on 24th January and in fact have never met Mr. SL.
13. Again, any implication of pressure on Mrs. BJ is completely untrue.
24. Mr. SL's letter to Ms. KG (declaring his conflict of interest) was dated 25th January, not the 16th.
30. It is DN complaining about SL, not SL complaining about himself.
31. Again, I have no recollection of attending Mr. SL's offices unannounced.
32. My original complaint to the Law Society very clearly states the causes of the delays and even makes an attempt to quantify the total delay.

Process

[46] This review has been completed on the basis of the material to hand which comprises the Standards Committee file and all material lodged in conjunction with this review.

Scope of review

[47] The High Court has described a review by this Office in the following way:¹⁸

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.

This review has been conducted in accordance with those comments.

¹⁷ The numbers in Mr DN's response (10 March 2020) refer to the paragraph numbers of the determination.

¹⁸ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

Review

Preliminary comments

[48] Mr DN complained about Mr CM and Mr SL. It is assumed that the complaint about Mr CM has been processed separately.

[49] In conducting this review, I am required to come to my own view of the substance and processes of the Committee's determination. I must therefore address Mr DN's complaints *de novo*, notwithstanding that Mr SL accepts the findings of the Committee.¹⁹

A negligible risk

[50] Rule 6.1 of the Conduct and Client Care Rules provides:

6.1 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.

6.1.1 Subject to the above, a lawyer may act for more than 1 party in respect of the same transaction or matter where the prior informed consent of all parties concerned is obtained.

6.1.2 Despite rule 6.1.1, if a lawyer is acting for more than 1 client in respect of a matter and it becomes apparent that the lawyer will no longer be able to discharge the obligations owed to all of the clients for whom the lawyer acts, the lawyer must immediately inform each of the clients of this fact and terminate the retainers with all of the clients.

6.1.3 Despite rule 6.1.2, a lawyer may continue to act for 1 client provided that the other clients concerned, after receiving independent advice, give informed consent to the lawyer continuing to act for the client and no duties to the consenting clients have been or will be breached.

[51] A negligible risk, has been described as a "real risk of an actual conflict of interest".²⁰

Was there a more than negligible risk?

[52] In August 2012, Mr SL was working out of the offices formerly occupied by Mr HU, whose practice [law firm] had taken over. Mrs BJ attended at the office without an appointment, wishing to speak to Mr HU. Although busy, Mr SL made time to see

¹⁹ Mr SL's supporting reasons for his application for review of the Standards Committee determination (26 February 2020), Part 7, at [5.1].

²⁰ *Sandy v Khan* LCRO 181/2009 at [36].

Mrs BJ. Mrs BJ required something to give to Mr DN urgently, to evidence her approval to Mr DN's plans.

[53] Mr SL completed the handwritten document and heard nothing further from Mrs BJ.

[54] Mr DN instructed Mr CM in 2016. Mr CM left the practice in mid/end 2017. He handed Mr DN's file to Ms KG who, Mr SL says, works closely with him. I infer from this that Mr SL means he was the person responsible for supervising Ms KG.

[55] Ms KG obtained searches of the titles to the units in the development. Mr SL noted that Mrs BJ owned one of the units and that her signature would therefore be required to obtain the new titles.

[56] On 5 December 2017, Ms KG advised Mr DN that Mr SL would contact Mrs BJ to arrange for her to sign the documents and to redocument the mortgage over her unit.

[57] Sometime between 5 and 18 December, Mr SL made contact with Mrs BJ who advised him that she would not sign the documents unless Mr DN paid her compensation for the encroachment of the addition on to the common area. Mrs BJ also advised that she would no longer contribute to the maintenance of the common area. Mrs BJ was being assisted by her daughter, who was a real estate agent.

[58] There was no need for any legal advice from Mr SL at that stage.

[59] Following the Christmas break both parties became entrenched in their positions. I consider it was at that time (and not 5 December 2017 as determined by the Committee) that a more than negligible risk arose which would prevent Mr SL from discharging his obligations to both Mr DN and Mrs BJ.

[60] In an email to Mr DN on 17 January 2018, Ms KG advised Mr DN that Mr SL had suggested "both parties could need separate representation if the matter cannot be resolved". Mr SL was not closely involved on the part of either party.

[61] Soon thereafter it became clear that the parties would not agree. At that time neither party had provided informed consent to enable Mr SL to continue acting for them both. The exception provided in r 6.1.1. did not apply.

[62] Rule 6.1.2 required Mr SL to terminate the retainer with both Mr DN and Mrs BJ. Instead, on 25 January 2018, Mr SL advised Mr DN that he would need to take independent advice and continued to act for Mrs BJ.

Rule 6.1.3

[63] Rule 6.1.3 provides:

Despite rule 6.1.2, a lawyer may continue to act for 1 client provided that the other clients concerned, after receiving independent advice, give informed consent to the lawyer continuing to act for the client and no duties to the consenting clients have been or will be breached.

[64] Following receipt of Mr SL's email, Mr DN instructed Mr EP to act for him. In a letter to Mr SL on 1 February 2018, Mr EP said:

As you appear to be continuing to act for Mrs BJ at the moment, I am writing to you in your capacity as the solicitor for Mrs BJ. You have properly acknowledged that now, you cannot act for Mr and Mrs DN and the DN Family Trust, and I will have Mr and Mrs DN provide you with an authority to uplift in respect of all deeds and files relating to this matter, and the family trust.

[65] Although Mr EP did not specifically advise that Mr DN consented to Mr SL continuing to act for Mrs BJ, it is reasonable to adopt the view that Mr DN was at that stage providing "informed consent" to Mr SL continuing to do so.

[66] In the circumstances, Mr SL was able to continue acting for Mrs BJ.

Summary

[67] The requirements of r 6.1.1 for the parties to obtain prior informed consent to Mr SL continuing to act for both Mr DN and Mrs BJ were not fulfilled. Rule 6.1.2 was breached when Mr SL continued acting for Mrs BJ, and advised Mr DN that he needed to have independent advice. Mr DN did not formally consent to Mr SL continuing to act for Mrs BJ to fulfil the requirements of r 6.1.3.

[68] The question to consider now, is whether these breaches should attract a finding of unsatisfactory conduct.

[69] In *Wilson v LCRO*²¹, Hinton J observed:

This Court has said on several occasions that the Rules are to be applied as specifically as possible.²²

[70] She goes on to say:

In my view they are also to be applied as sensibly and fairly as possible. These are practice rules, not a legislative code.²³

²¹ [2016] NZHC 2288.

²² At [43].

²³ At [43].

...

... the rules should not be enforced in an unduly technical manner. The conduct alleged should clearly offend. A finding of unsatisfactory conduct is a serious matter.²⁴

[71] I also have regard to a decision of the Lawyers and Conveyancers Disciplinary Tribunal²⁵, where the Tribunal found there to have been a breach of the rules, and said:²⁶

... the breach does not invite a disciplinary sanction.

This decision highlights the discretion to be exercised when considering whether or not an adverse finding should necessarily follow every breach of the rules.

[72] Mr SL had not acted for Mr DN personally. He had never met Mr DN. When it was clear that Mr DN and Mrs BJ were not going to resolve the matter between themselves, Mr SL required Mr DN to take independent advice. Mr EP acknowledged that Mr SL was acting for Mrs BJ.

[73] Whilst there may have been technical breaches of the rules, Mr SL did not actively advance the position of one party against the interests of the other. He advised that he would not attend the meeting which he suggested could take place in the firm's meeting room.

[74] Taking into account all of the facts and circumstances of this matter, I do not consider that Mr SL's conduct offended against the principles which rr 6.1.1, 6.1.2 and 6.1.3 are designed to protect and this is not a situation that requires a disciplinary finding to be made against Mr SL.

[75] Accordingly, the finding of unsatisfactory conduct against Mr SL is reversed.

Delay

[76] Mr DN's complaints about delays by Mr SL are that there was a lack of urgency on his part "in responding to matters relating to the dispute, causing us unnecessary delays in getting the property on the market".²⁷

²⁴ At [44].

²⁵ *National Standards Committee v Shand* [2019] NZLCDT 2.

²⁶ At [34].

²⁷ Mr DN's supporting reasons for his complaint to the New Zealand Law Society Lawyers Complaints Service (28 November 2018).

[77] Mr EP was acting for Mr DN at the time the delays Mr DN complains about occurred.

[78] Mr SL owed no duty to Mr DN and Mr EP has not himself complained about any delays on the part of Mr SL. In addition, Mr SL had personal reasons for the delay in responding to correspondence from Mr EP.

[79] The Standards Committee determination to take no further action on this aspect of Mr DN's complaint is confirmed.

The 2012 document

[80] Having reversed the determination of unsatisfactory conduct by the Committee, the subsequent orders fall away. However, one of the outcomes of this review sought by Mr SL is for the Committee's comments about the document he prepared in 2012 to be quashed.

[81] At [25] of its determination, the Committee said:

The Committee considered the documents that were prepared by Mr SL in 2012. In the Committee's opinion, those documents were grossly inadequate. In the Committee's view, it is not surprising that 5 years later when Mrs BJ was contacted to re-do the documentation that she sought to negotiate compensation and concessions in relation to lawn maintenance. ...

[82] The Committee refers to documents and documentation. Mr SL prepared only one document in August 2012 and that was the brief handwritten document subsequently signed by Mr DN.

[83] It is important to repeat the circumstances in which the document was prepared. Mrs BJ had called into the office without an appointment. She required something to be prepared urgently to be presented to Mr DN very shortly afterwards.

[84] There was limited time within which to advise Mrs BJ. Mr SL prepared a brief handwritten document which set out some basic information and terms on which Mrs BJ would agree to signing the documentation to create new titles. The brief provisions of the document were non-contentious and referred to the fact that Mr DN would be required to have a new flat plan prepared.

[85] At the time Mr SL was attending to Mrs BJ's request, he did not have time to obtain title searches and would not have been aware that the work Mr DN was intending to carry out encroached on to the common area. If he had turned his mind to the issue at all, it would have been reasonable for him to assume that any encroachment would have been on to the exclusive use area attached to the DN property.

[86] Mrs BJ did not appreciate the implications of this until she and her daughter saw the new plan in 2017, realising that the extension encroached on to the common area.

[87] In summary:

- Mr SL prepared the document at short notice without time to obtain title searches and explore with Mrs BJ what she knew about the proposed extension.
- Mr SL did not act for Mr DN and owed him no duty of care.
- Mrs BJ has not complained.

Natural justice

[88] There is an important principle involved in the Committee's finding that needs to be drawn to the attention of the parties, and to the Committee.

[89] Following receipt of Mr DN's complaint, the Legal Standards Officer wrote to the parties, identifying the issues in the complaint as being:²⁸

- Whether you acted for more than 1 client on a matter in circumstances where there was more than a negligible risk that you may be unable to discharge the obligations owed to 1 or more of the clients (rule 6.1 of the RCCC)
- Whether you should have identified the conflict sooner and advised the parties of the conflict
- Whether you responded to matters relating to the dispute between the parties in a timely manner

[90] On 24 September 2019, a Notice of Hearing was sent to the parties inviting the parties to make submissions by 8 October.

[91] The issues set out in the notice of hearing to be addressed are those set out in paragraph [17] of the Committee's determination.²⁹ They do not include any reference to the adequacy of the document.

[92] Unsurprisingly, Mr SL did not refer to the content of the document in replies and submissions to the Committee.

[93] The comment made by the Committee in paragraph [25] of its determination is critical of Mr SL's competence.

²⁸ Letter from the New Zealand Law Society Lawyers Complaints Service to Mr SL (5 February 2019).

²⁹ Refer [22] above.

[94] I consider the Committee has breached the principles of natural justice by not inviting submissions from Mr SL on the issue prior to making the somewhat damning comment in its determination.

[95] I therefore record that the reversal of the Standards Committee determination by this decision includes a specific reversal of the comments made in paragraph [25].

Penalty

[96] Mr SL also takes issue with the fact that the Committee referred to his “previous disciplinary history”³⁰ when determining the penalty to be imposed following its finding of unsatisfactory conduct. It considered that Mr SL’s history warranted an uplift in the level of the fine imposed.

[97] It is a well-established principle in all areas of the law that a person’s prior history of offending is a relevant factor to be taken into account when assessing penalties to be imposed.³¹

[98] Mr SL advises that over a period of 20 years in practice there have been two adverse findings against him. It is important to note here that the previous adverse findings did not arise out of conduct similar to the conduct in question here.

[99] This compares for example, with the case of a practitioner who had seven adverse findings against him over a period of six and a half years.³² In that case reference was properly had to the practitioner’s previous disciplinary history when assessing penalties to be imposed.

[100] Mr SL does not begin to approach that degree of offending.

[101] I do not need to make any decision as to the quantum of the fine imposed but it does seem to me that the Committee has applied the principle of a lawyer’s past disciplinary history somewhat harshly in this instance.

Decision

[102] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Committee is reversed. The orders made consequently fall away.

³⁰ Standards Committee determination (30 January 2020) at [33].

³¹ See for example, *Reedy v Police* [2015] NZHC 1069 at [18]–[19]. In the lawyers’ professional discipline context, see *Otago Standards Committee v Claver* [2019] NZLCDT 8 at [23].

³² *LCRO 233/2016* (3 April 2019).

Publication

[103] Pursuant to s 206(4) of the Lawyers and Conveyancers Act 2006, this decision will be published in an anonymised format.

DATED this 29TH day of SEPTEMBER 2021

O Vaughan
Legal Complaints Review Officer

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

Mr SL as the Applicant
Mr DN as the Respondent
Ms MT as a Related Person
Ms QY as a Related Person
[Area] Standards Committee [X]
New Zealand Law Society