

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

[2021] NZLCRO 170

Ref: LCRO 58/2021

**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**

**EW**

Applicant

**AND**

**YL**

Respondent

**DECISION**

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

**Introduction**

[1] Mrs EW has applied for a review of a decision by the [Area] Standards Committee [X].

**Background**

[2] Mrs EW owned a residential property situated in [City]

[3] She was considering transferring her interest in the home to her daughter, BW. The transfer would be implemented on the basis of an agreement that Mrs EW would retain a right to lifetime occupation at an agreed rental.

[4] In October 2017, Mrs EW sought advice from Mr YL.

[5] Mr YL drafted agreements for sale and purchase.

[6] A memorandum dictated by Mr YL to a member of his staff on 16 October 2017, records that Mr YL had also agreed to act for Mrs EW's daughter.

[7] Transfer of the property to BW proceeded on 3 November 2017.

[8] It subsequently came to light that Mrs EW's daughter had forged her mother's signature on the sale and purchase agreement.

[9] The relationship between Mrs EW and her daughter deteriorated. Mrs EW commenced legal action to have the home transferred back into her name.

### **The complaint and the Standards Committee decision**

[10] Mrs EW lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 18 August 2020. The substance of her complaint was that:

- (a) she was very unwell when providing instructions to Mr YL in 2017; and
- (b) Mr YL had acted for both parties on the transaction, a clear conflict of interest; and
- (c) she had not signed the sale and purchase agreement; and
- (d) she had not signed any of the documents that enabled the conveyancing transaction to proceed; and
- (e) she had been invoiced by Mr YL for his attendance at a meeting at her home which had been convened to discuss her daughter's conduct; and
- (f) Mr YL had failed to advise her of the steps that could be taken consequential on her discovering that her daughter had forged her signature; and
- (g) she has suffered considerable stress and anxiety and her health has been adversely affected; and
- (h) she had incurred considerable financial loss as a consequence of Mr YL failing in his duty of care.

[11] Mr YL provided response to the complaint on 28 August 2020.

[12] He submitted that:

- (a) Mrs EW had not advised him of her health problems at the meeting held in late October 2017; and
- (b) Mrs EW's daughter had not been present at the meeting; and
- (c) he had strongly advised Mrs EW against transferring the home to her daughter; and
- (d) in 2019 he had attended meetings with Mrs EW at her home, during which Mrs EW had expressed concern that arrangements with her daughter had run into difficulties; and
- (e) he had been contacted by Mrs EW's daughter who had informed him that she had signed the sale and purchase agreement in her mother's name; and
- (f) he was unable to comment on whether Mrs EW recalled signing the conveyancing documents, but she did sign them, and he had no reason to believe that Mrs EW was labouring under a disability when she did so; and
- (g) Mrs EW had signed the client authority.

[13] The Standards Committee issued the parties with a notice of hearing which identified the scope of its investigation as being a consideration as to whether Mr YL:

- (a) had a conflict of interest (rule 6 and/or rule 6.1);<sup>1</sup> and
- (b) had failed to provide Mrs EW with competent advice (rule 3); and
- (c) had, in accepting instructions from Mrs EW breached rules 10 and/or 11 of the rules.

[14] In responding to the notice of hearing and in providing response to Mrs EW's submissions, Mr YL submitted that:

- (a) he had acted for Mrs EW on a number of matters over many years and considered that he had always been on friendly terms with her; and

---

<sup>1</sup> Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules).

- (b) at the initial meeting in October 2017, Mrs EW had explained that she was having difficulty meeting her mortgage payments, and informed Mr YL that a proposal to transfer her home to her daughter was being considered as a means to alleviate financial pressure but at the same time ensure that she had a lifelong right to remain in the home at a moderate and fixed rental; and
- (c) he had cautioned Mrs EW that he considered the proposal had potential to cause problems in her family; and
- (d) Mrs EW was adamant that she wished to proceed; and
- (e) Mrs EW had requested that his firm also act for her daughter; and
- (f) at no stage did he meet with Mrs EW's daughter; and
- (g) he had no knowledge of Mrs EW suffering under a mental incapacity; and
- (h) he accepts with the benefit of hindsight that he should not have agreed to what Mrs EW had insisted on; and
- (i) he accepts that his firm should not have acted for Mrs EW's daughter; and
- (j) he accepts that he has some degree of responsibility in assisting Mrs EW to rectify the situation; and
- (k) it would have been appropriate for him to have made more extensive file notes; and
- (l) he had personally attended on Mrs EW for purposes of her executing client authority documents, and personally taken from her details of her required identification.

[15] In providing response to the Committee's notice of hearing, Mrs EW submitted that:

- (a) Mr YL had exaggerated the extent of his professional relationship with her; and
- (b) Mr YL had not cautioned her against selling her home to the extent maintained by him; and
- (c) Mr YL had failed to provide her with competent advice; and

- (d) Mr YL had spoken to her daughter by phone when she was present in Mr YL's office; and
- (e) she had not made request of Mr YL to represent her daughter; and
- (f) Mr YL had failed to protect her interests; and
- (g) she had received no documentation concerning the transaction; and
- (h) Mr YL had failed to execute a deed of forgiveness of debt; and
- (i) she had not signed the documents required to facilitate the transfer of the property; and
- (j) when raising her concerns with Mr YL, she considered that Mr YL was primarily focused on protecting his own interests, rather than promoting hers; and
- (k) whilst Mr YL had conceded that he had some responsibility in rectifying the situation, he has refused to assist when request was made of him to do so; and
- (l) Mr YL's actions had necessitated her becoming engaged in proceedings in the High Court.

[16] The Standards Committee delivered its decision on 18 March 2021.

[17] The Committee determined that there had been unsatisfactory conduct on the part of Mr YL consequent on its finding that Mr YL had breached Rules 3 and 6.1, and that Mr YL's conduct had fallen short of the standard of competence and diligence that Mrs EW was entitled to expect of a reasonably competent lawyer.

### **Application for review**

[18] Mrs EW filed an application for review on 30 April 2021.

[19] Her application is focused on a single issue. She seeks a review of the Committee's order that Mr YL pay compensation to her in the sum of \$1,170.00, being the fees rendered by Mr YL for costs incurred in the sale transaction and for additional attendances on Mrs EW.

[20] Mrs EW submits that:

- (a) she faces significant legal costs to rectify the situation that she contends arose as a consequence of Mr YL failing to protect her interests; and
- (b) she has suffered immeasurable stress as a consequence; and
- (c) she had lost her home.

[21] Mrs EW requests that she be awarded further compensation in the sum of \$25,000.

[22] Mr YL, in responding to Mrs EW's review application, submitted that:

- (a) His actions and omissions were not causative of the loss claimed; and
- (b) the Committee erred in its conclusion that Mr YL had failed to protect Mrs EW's interests by ensuring that she could continue to reside in the home, as evidenced by the clause inserted into the sale and purchase agreement which provided that in consideration of the purchase, Mrs EW's daughter had agreed that her mother would retain a lifelong right to occupy the property free from obligation to make payment to all outgoings, but with obligation to pay a monthly rental of \$400 or such other sum agreed.

### **Review on the papers**

[23] This review has been undertaken on the papers pursuant to s 206(2) of the Lawyers and Conveyancers Act 2006 (the Act), which allows a Legal Complaints Review Officer (LCRO) to conduct the review on the basis of all information available if the LCRO considers that the review can be adequately determined in the absence of the parties.

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

## Nature and scope of review

[25] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:<sup>2</sup>

... 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.

[26] More recently, the High Court has described a review by this Office in the following way:<sup>3</sup>

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.

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

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

## Discussion

[28] Mrs EW seeks further compensation from Mr YL, on grounds that she contends that she has suffered financial loss, as a consequence of Mr YL failing to adequately

<sup>2</sup> *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41] (citations omitted).

<sup>3</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

advise her of the risks associated with transferring her interest in her home to her daughter.

[29] Mrs EW says that she is taking steps to have the home transferred back into her ownership, and that in order to achieve this, she has had to commence proceedings in the High Court.

[30] Mrs EW does not quantify the costs she has incurred in advancing those proceedings, other than to advise that she is facing “huge legal bills”.

[31] She seeks compensation in the maximum sum awardable under s 156(1)(d) of the Act, being \$25,000.<sup>4</sup>

[32] In seeking compensation for legal costs incurred in attempts to have the home returned to her ownership, Mrs EW is arguing that if Mr YL had provided her with more comprehensive advice at commencement, and insisted, as he was required to do, that her daughter be independently advised, the transfer of the home to her daughter would not have taken place.

[33] Mr YL’s failure to more conscientiously record his advice to Ms BW, and his decision to act for both parties in circumstances where he acknowledges that he had reservations about the transaction, were serious breaches of the duties and obligations he owed to Mrs EW, but it cannot be established to the level of certainty that would provide necessary evidential foundation for a compensation claim, that Mrs EW would not have proceeded with the transaction if she had been more fully cautioned by Mr YL and her daughter independently represented.

[34] It is accepted by Mrs EW, that when she initially approached Mr YL, she was concerned about her ability to maintain the mortgage payments on her home. It is not contested that she spoke with Mr YL about transferring her interest in the home to her daughter.

[35] The sale and purchase agreement prepared, provided that the property would be transferred on the basis that the mortgage over the property was discharged, and a fresh mortgage executed. The brief file note made by Mr YL recording his initial meeting with Mrs EW noted that as a condition of the transfer of the property to her daughter, Mrs EW would have entitlement to a lifetime tenancy, at a rent of \$400 per month.

---

<sup>4</sup> Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008, reg 32.



[36] Mr YL instructed a member of his staff to draft a sale and purchase agreement. In a memorandum to his staff member dated 16 October 2017, Mr YL noted that the agreement was to record:

- (a) a sale price of \$190,000; and
- (b) that the purchaser was to pay \$85,000 on settlement, with the balance to be gifted unconditionally to Mrs EW's daughter; and
- (c) that Mrs EW be granted a lifelong tenancy at a rental of \$400 per month.

[37] When advancing her initial complaint, Mrs EW said that she was in very poor health after suffering the aftermath of a stroke when she visited Mr YL in 2017, but that the transaction had been completed despite her being unwell. Mrs EW attached to her complaint a letter from her doctor which she said confirmed that she lacked capacity at the time she provided instructions to Mr YL.

[38] In suggesting that she had medical evidence to support her view that she lacked the necessary capacity to make decisions at the time she provided instructions to Mr YL, Mrs EW was clearly suggesting that Mr YL should have been alerted to her situation, and reluctant to take instructions from her.

[39] The medical evidence provided by Mrs EW does not establish that she lacked capacity when she met with Mr YL in November 2017.

[40] The correspondence is prepared by a general practitioner. The correspondence is dated 5 February 2020. The doctor records that Mrs EW had been unwell physically and mentally over a period of time (July 2017 until December 2019) and that this had affected her ability to make decisions. It was noted that Mrs EW had recovered, and was physically and mentally now capable of making decisions.

[41] Mr YL says that there was nothing in Mrs EW's presentation to give indication or raise concern that she was not in a position to provide clear instructions.

[42] There is a strong legal presumption of legal competency, unless there is contrary evidence.

[43] That is not to suggest that lawyers entrusted with the responsibility to manage their client's affairs in a competent and professional manner, do not have an obligation to exercise a considerable degree of care if their client appears to have difficulty providing instructions or seems incapable of understanding the consequences of the legal processes in which they are engaged.

[44] The critical question is whether there were indications during Mr YL's attendance on Mrs EW, that could or should have alerted him to possibility that Mrs EW may not have had sufficient capacity to provide informed instructions.

[45] The evidence provided by Mrs EW (her doctor's correspondence of 5 February 2020) does no more than report a view that Mrs EW had been unwell for a period of time. The report is not supported by any indication of the doctor who provided the report having personally attended on Mrs EW during the time in which it is contended that her capacity to make decisions was compromised, nor does the doctor's correspondence give indication that the specialist examination required to determine capacity had been undertaken by a medical professional with competence and experience to do so. The doctor's correspondence is provided over three years after Mrs EW had attended at Mr YL's office and does not establish whether the doctor preparing the correspondence was speaking from first hand recollection of having personally attended on Mrs EW during the period she says she was unwell, or whether he was providing account of what he had been told by Mrs EW or relying on medical records.

[46] Accusation that a lawyer has accepted instructions in circumstances where the lawyer should have been alerted to the possibility that their client may lack capacity would raise a separate conduct issue, but there is no indication that the Standards Committee, in progressing its investigation into the complaints made by Mrs EW, had concluded that concerns that Mr YL may have taken instructions from Mrs EW in circumstances where there was possibility that she was impaired, should be addressed as part of the complaint investigation.

[47] The notice of hearing issued to the parties which identified the issues at the forefront of the Committee's investigation did not reference concerns that Mr YL had taken instructions from Mrs EW in circumstances where it may have been inappropriate for him to have done so. The Committee's decision makes no reference to the capacity issue.

[48] It is important to emphasise that it is not the role of a lawyer to make determinations as to whether a client lacks capacity. That task falls to medical professionals who possess the necessary qualifications and experience to enable them to undertake such assessments. But a lawyer must refrain from taking instructions from a client in situations where the lawyer has knowledge of circumstances (including their assessment of the client's presentation before them) that should properly alert the lawyer of the need to ensure that a professional assessment of their client's capacity to provide instructions is undertaken before proceeding further.

[49] There is insufficient evidence to challenge Mr YL's contention that there was nothing to alert him to concern that Mrs EW was labouring under a disability.

[50] Attention then turns to further arguments advanced by Mrs EW to support argument that the costs she will incur in attempts to have the home transferred back into her name are directly attributable to professional failings on the part of Mr YL.

[51] Mrs EW submits that she only met with Mr YL on one occasion. She says that not only did she not sign the sale and purchase agreement, but she had not signed any of the conveyancing documents required to effect the transfer including the required client authority and tax statement.

[52] Mr YL says that he personally attended on Mrs EW to attend to the execution of the necessary documentation and that when doing so, he acquired from her the required identification. He noted that copies of the client authority material had been provided to the Registrar-General of Land.

[53] Mr YL provided copies of an authority executed by Mrs EW. The authority recorded that Mr YL had witnessed the authority, which included a photocopy of Mrs EW's driver's licence.

[54] That evidence would support Mr YL's recollection that he had attended on Mrs EW to finalise the documentation.

[55] The next matter to consider is the consequences that could be said to have flowed from Mr YL's failure to insist that Mrs EW's daughter was independently advised.

[56] This was a serious omission on Mr YL's part.

[57] Mr YL says that he had concerns about Mrs EW's proposal, and that he had conveyed those concerns to her. He says that he recorded those concerns in a file note made at the time.

[58] Mr YL says he was perturbed at the possible future implications for Mrs EW of her agreeing to transfer a significant equity in the property to her daughter when that had obvious potential to create dissension amongst her other children.

[59] With those concerns to the forefront of his mind, it could have been expected of Mr YL that he fully discuss the issue with Mrs EW's daughter (he had elected to act for her as well) but there is no indication of Mr YL taking any steps to traverse the issue with Mrs EW's daughter.

[60] When responding to Mrs EW's suggestion that her daughter had been present at the initial meeting, Mr YL reported that he had never met with Mrs EW's daughter or spoken with her.<sup>5</sup>

[61] This reinforces Mr YL's failure to properly address issues that he should have immediately recognised required careful and cautious management. At minimum, Mr YL should have:

- (a) recorded his concerns about the transaction in a comprehensive (dated and typed) file note; and
- (b) set out his concerns in writing to Mrs EW; and
- (c) referred Mrs EW's daughter for independent advice; and
- (d) had Mrs EW confirm her instructions in a file note signed by Mrs EW; and
- (e) drafted a deed of forgiveness of debt and ensured that both parties were independently advised on the implications of the deed.

[62] These omissions were identified by the Standards Committee and reflected in its finding that Mr YL had breached Rule 6.1, and its conclusion that Mr YL had failed to act competently and with a lack of regard for the duty of care he owed to Mrs EW.

[63] But the issue for this review ( in that Mrs EW's application focuses on a claim for compensation for financial loss suffered as a consequence of the home being transferred to her daughter) is the question as to whether Mrs EW can establish that omissions and failures on the part of Mr YL were directly responsible for her decision to transfer her interest in the home to her daughter. Is it established that the transaction would not have proceeded, if Mr YL had been more conscientious in attending to his obligations and if Mrs EW's daughter had been independently advised?

[64] A compensatory order can made under s 156(1)(d) of the Act which provides:

where it appears to the Standards Committee that any person has suffered loss by reason of any act or omission of a practitioner or former practitioner or an incorporated firm or a former incorporated firm or an employee or former employee of a practitioner or an incorporated firm, order the practitioner or former practitioner or incorporated firm or former incorporated firm, or employee or former employee of a practitioner or an incorporated firm, to pay to that person such sum by way of compensation as is specified in the order, being a sum not exceeding, as the case may require, the amount that is from time to time prescribed for the purposes of this paragraph by rules made under this Act by the New Zealand Law Society or the New Zealand Society of Conveyancers.

---

<sup>5</sup> Mr YL's submissions to the New Zealand Law Society Lawyers Complaints Service (29 January 2021).

[65] The causative link between the conduct of the lawyer and the loss is expressed in terms of the loss being suffered “by reason of any act or omission” of the lawyer.

[66] The answer to the question posed above, is that it cannot be definitively concluded that Mrs EW would have withdrawn from the transaction if Mr YL had more comprehensively set out and explained his concerns, nor can there be certainty that the transaction would not have proceeded if Mrs EW’s daughter had been independently advised.

[67] When Mrs EW approached Mr YL with the proposal to transfer her interest in the home to her daughter, Mr YL says (and his evidence on this point is not challenged) that Mrs EW was under financial pressure to meet her mortgage commitments. She considered that transferring the property to her daughter would alleviate the financial pressure, whilst at the same time ensuring that she would retain a lifelong right to occupy the property.

[68] The Committee noted at paragraph 14 of its decision, that Mr YL had failed to protect Mrs EW’s interests by ensuring that she could continue to live in the home despite the sale to Ms BW.

[69] It may be that the Committee was referencing Mr YL’s failure to more adequately document the transaction, but the intention that Mrs EW retain a lifetime right of occupation was recorded in the sale and purchase agreement where it was noted that in further consideration of the purchase, the purchaser agreed to permit the vendor (Mrs EW) to reside permanently in the property free from the payment of all outgoings, at an agreed monthly rental.

[70] It would appear to be the case that Mrs EW had, post transfer of the property to her daughter, been occupying her former home on the basis of arrangements which reflected the conditions recorded in the 2017 sale and purchase agreement.

[71] Mrs EW’s obligation to sustain a mortgage had been extinguished. She was continuing to occupy the home as a tenant, with rental payments being made to her daughter.

[72] In February 2020 Mr YL was contacted by Mrs EW and asked by her to meet with him. It was at this point that Mr YL became aware that Mrs EW’s daughter had forged her mother’s signature on the sale and purchase agreement.

[73] Mr YL said he was told by Mrs EW that a disagreement had arisen between Mrs EW and her daughter as to the amount of rent that Mrs EW would continue to pay

to ensure her continued occupation of the home. Mr YL says that Mrs EW had advised him that her daughter had expressed a wish to increase the rent, and that she (Mrs EW) was reconsidering her decision to transfer her interest in the home.

[74] In her submissions to the Standards Committee of 8 February 2021, Mrs EW explained that she had advised Mr YL at the meeting which had taken place at her home in February 2020, that she had begun to have concerns regarding the future distribution of her estate, as it was her wish that all of her children would benefit equally.

[75] Mr YL explained that when he met with Mrs EW at her home in 2019, Mrs EW informed him that she had suffered a brain injury. It is unclear as to precisely when Mrs EW suffered that unfortunate affliction, but as noted, the question as to whether Mrs EW had capacity to fully understand the arrangements that she was entering into when she met with Mr YL to discuss the transfer of her home, was not directly addressed as an element of Mrs EW's complaint or considered by the Committee as such. It cannot be addressed on review.

[76] Mr YL's failure to ensure that the parties were independently advised, and his failure to provide competent representation to Mrs EW, was determined by the Standards Committee to have constituted unsatisfactory conduct.

[77] The Committee's order that Mr YL refund fees charged to Mrs EW was expressed as compensation for the fact that "the services provided by Mr YL in relation to the sale of the home and the meeting in February 2020 were of limited value to Mrs EW due to Mr YL's failure to identify the conflict of interest and his failure to protect Mrs EW's interest in the transaction".<sup>6</sup>

[78] In suggesting that compensation be awarded on the basis that the services provided were of "limited value" to Mrs EW, the Committee veers close to laying foundation for a compensation argument that could support Mrs EW's argument that she was entitled to be compensated for all costs incurred in restoring her to the position that she now seeks to be in, that is, to have ownership of the home returned to her.

[79] But in providing further explanation for its compensation order, the Committee noted that the order that Mr YL refund the amount of his invoices presented as compensation to Mrs EW "for the impact that the transaction has had on her".<sup>7</sup>

[80] In describing the purpose of its order in this fashion, the Committee was making it clear that it was not compensating Mrs EW for a quantifiable monetary loss where a

---

<sup>6</sup> Standards Committee decision (18 March 2021) at [ 21].

<sup>7</sup> Standards Committee decision (18 March 2021) at [21].

causal link between conduct and monetary loss identified by Mrs EW had been established. In observing that compensation had been awarded to reflect the impact the transaction “has had on her”, the Committee was indicating that it was compensating Mrs EW for the stress she had suffered.

[81] It is assumed that the consequences envisaged by the Committee for the failings described would have taken into consideration the unsettling and troubling consequences for Mrs EW on learning that the sale of her property had not been competently managed by Mr YL. The compensation order was acknowledgement that Mr YL’s failure to take basic steps to ensure that Mrs EW was fully informed as to the potential consequences of the transfer and the requirement for her daughter to be independently advised, had contributed to the family discord, and had caused significant problems for Mrs YL.

[82] Section 156(1)(d) of the Act provides for compensation to be paid to a complainant where a person has suffered loss by reason of any act or omission of a lawyer.

[83] Emotional stress has been recognised by this Office as a compensable form of loss.<sup>8</sup>

[84] The ability to compensate for anguish and distress in the lawyer/client relationship has been recognised in a number of cases<sup>9</sup> and given the purpose of the Act (which in section 3(1)(b) includes the protection of consumers of legal services) it is appropriate to award compensation for anxiety and distress where it can be shown.

[85] There is no punitive element to an award of damages for anxiety and distress. Such an award is entirely compensatory. Orders for compensation “should also be modest (though not grudging) in nature”.<sup>10</sup>

[86] The remedy sought by Mrs EW is to be compensated for legal costs she says she will incur in her attempting to have her former home transferred back into her name.

[87] For reasons explained above, Mrs EW cannot succeed in securing the compensation sought. She is not able to establish to the necessary standard of proof, that she would not have proceeded with her decision to transfer her home to her daughter

---

<sup>8</sup> See e.g. *Hartlepool v Basildon* LCRO 79/2009.

<sup>9</sup> See e.g. *Heslop v Cousins* [2007] 3 NZLR 679 (HC).

<sup>10</sup> *Sandy v Khan* LCRO 181/2009 (25 February 2010) [orders decision] at [29].

if she had received more comprehensive advice from Mr YL, and if her daughter had been independently advised.

[88] That said, I agree with the Committee's decision that it was appropriate to award Mrs EW a measure of compensation for the impact that the transaction had on her.

[89] Whilst there is no evidence to support conclusion that Mrs EW lacked the capacity to make decisions at the time she first provided instructions to Mr YL, I accept her evidence that she was in poor health for a considerable period of time. I also accept her evidence that the dispute with family members concerning the ownership of the home has been extremely stressful for her.

[90] Mr YL's failure to properly document his advice to Mrs EW, his failure to confirm in writing the reservations he had about the transaction, and his unfortunate failure to recognise that the circumstances demanded that Mrs EW's daughter be independently advised, would, in my view, have contributed to the level of uncertainty that Mrs EW confronted when she attempted to rewind the transaction, with inevitable consequence for her of exacerbating the levels of stress that she was experiencing.

[91] Insistence that Mrs EW's daughter be independently advised in circumstances where it was so compellingly apparent that Mr YL could not represent both mother and daughter, would have ensured that the potential for subsequent uncertainty and disagreement as to what had, or had not been agreed between mother and daughter, would have been, if not eliminated, at least significantly diminished.

[92] More attention to recording Mrs EW's instructions, particularly to the extent that those instructions had implications for her future estate planning, would have removed any potential for concern that Mrs EW lacked a fuller appreciation of the broader consequences for her other children of the decision to transfer the home to her daughter on terms that could be considered detrimental to the future interests of those children.

[93] I am satisfied that irrespective as to whether there had been a clearly understood intention on the part of Mrs EW when she first met with Mr YL to transfer her home to her daughter, Mr YL's failure to adequately document his advice and to insist that Mrs EW's daughter was independently represented, would have significant consequence in causing unnecessary stress for Mrs EW when she later attempted to revisit the steps taken in the transaction.



[94] I am not persuaded that compensation for that stress is adequately met by orders that in essence reimburse Mrs EW for her costs. Compensation in a sum that reimburses Mrs EW for work that was inadequately done, includes the costs paid by Mrs EW to cover her daughter's legal costs.

[95] Whilst as I have noted, it cannot be concluded that Mrs EW would not have proceeded with the sale, Mr YL's failure to manage Mrs EW's file competently would, in my view, have significantly contributed to the stress that Mrs EW suffered when she took steps to wind back the sale.

[96] An order that Mr YL pay compensation to Mrs EW in the sum of \$3,000 is appropriate.

[97] There will, accordingly, be a variation to the orders made by the Committee.

*Anonymised publication*

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

**Decision**

- (1) Pursuant to s 211(1)(a) and s 156(1)(d) of the Lawyers and Conveyancers Act 2006, the Standards Committee order that Mr YL is to pay compensation to Mrs EW in the sum of \$1,170 is reversed, and substituted with an order that Mr YL pay compensation to Mrs EW in the sum of \$3,000,
- (2) The compensation ordered in the sum of \$3,000 is to be paid to Mrs EW within 30 days of the date of this decision;
- (3) In all other respects the decision of the Standards Committee is confirmed.

(Lawyers and Conveyancers Act 2006, s 211(1)(a), s 156(1)(d))

**DATED** this 29<sup>TH</sup> day of October 2021

---

**R Maidment**  
**Legal Complaints Review Officer**

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

Mrs EW as the Applicant  
Mr YL as the Respondent  
Mr PT as a Related Person  
[Area] Standards Committee [X]  
New Zealand Law Society