LCRO 74/2013

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of City Standards Committee
BETWEEN	**LP** Applicant
AND	**MT** Respondent

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

Introduction

[1] Ms LP has applied for a review of the determination by City Standards Committee to take no further action in respect of her complaint about Mr MT. Her complaint was that Mr MT had failed to alert her to the fact that an agreement which she had entered into to purchase a property in Christchurch did not include a requirement for the mortgagee/vendor to assign its interest in a claim which had been lodged by the mortgagor with the Earthquake Commission (EQC).

Background

[2] In 2011 Ms LP consulted Mr MT about a number of matters including her intention to separate from her husband, the sale of the relationship home and the purchase of a new home.

[3] Mr MT advised her generally with regard to the: [1]

> need for a separation agreement, a new will, ... trusts, ... the importance of EQC documentation/information and assignment, and the need to sever the joint tenancy of the family home until matters were resolved.

[1] Letter MT to NZLS (23 October 2012) at [5].

[4] In October 2011 Ms LP consulted Mr MT specifically with regard to the proposed purchase of a property. She was dealing with an estate agent and endeavouring to negotiate with the vendor of the property in respect of which a Property Law Act Notice had been served.

[5] Mr MT assisted her with the preparation of an offer on the standard ADLS Inc/REINZ form and included a further term of sale (amongst others) which provided for the vendor to assign to Ms LP all rights in a claim lodged with the EQC.

[6] That offer did not proceed and on Saturday 29 October 2011 the property was passed in at an auction by the mortgagee.

[7] Negotiations took place between the mortgagee and Ms LP through the agent and an agreement was signed on 2 November. It was sent to Mr MT by the mortgagee's solicitor.

[8] The Agreement which had been signed was substantially different from the Agreement which had previously been prepared by Mr MT. Numerous clauses in the standard form Agreement had been deleted and three pages of further terms had been inserted.

[9] Crucially, the Agreement did not include the provision which had been in the first offer providing for the assignment of the EQC claim. The Agreement provided for settlement two days later (on 4 November 2011) and Mr MT passed the file to Ms NQ[2] in his office to attend to the conveyancing.

[10] The EQC claim was one of the issues in Ms LP's mind, as on 3 November the agent provided her with the EQC claim number. In an email on the same day to Mr MT, Ms LP advised that she had "asked the insurer to confirm that EQC will be happy to deal with me as the new owner".

[11] The solicitors acting for the mortgagee initially indicated to Ms NQ that their client would assign their rights to the EQC claim and Ms NQ prepared a Deed of Assignment of the EQC claim and sent this to the mortgagee's solicitor on 3 November. This document recorded the mortgagee as the vendor of the property and also recited: "The Vendor has registered a claim with EQC for damage…" to the property occasioned by the earthquake.

[2] Ms NQ describes herself as a "Legal Assistant".

[12] Although the Deed was not signed, settlement proceeded on 4 November. In a letter reporting to Ms LP following settlement Ms NQ advised: "I shall also be in touch once we have received the EQC assignment signed by the vendor".[3]

[13] That letter may not have correctly reflected the situation as the mortgagee's solicitor had advised in an email to Ms NQ at 11.06 am on 4 November:

> Please note that we are waiting on instructions as to whether our client will assign their interest in the EQC claim to your client. We will let you know once we have instructions.

[14] The matter was followed up with the mortgagee's solicitor on 7 November after a telephone call from Ms LP, and again by Ms NQ on 24 November.

[15] On 24 November the mortgagee's solicitor replied: "Our client was not obliged to assign the EQC claim to your client. Therefore they have declined your client's request to have the EQC claim assigned."[4]

[16] A file note by Ms NQ indicates that she discussed this with Mr MT on 28 November. Mr MT agreed that the mortgagee's solicitor was correct and that Ms LP should take a pragmatic approach and contact EQC to advise them that she was the new owner (and presumably that therefore she was entitled to the benefit of the claim). In an email to Ms LP on 29 November Ms NQ advised:

> I have chased your vendor's lawyers regarding the EQC assignment, but unfortunately they are now refusing to assign the claim. While they did say they would, they were under no contractual obligation to do so and you did not alter your position in any [way] on the basis of their promise, (you would have settled the purchase in any event). This means that I do not think that you have any way to make them grant the assignment.
>
> EQC still have obligations to the Vendor, but given the Vendor as mortgagee is obliged to recoup as much money as possible on the sale, they may try to obtain a payout from EQC in lieu of getting the work done on the property. It is, however, by no means certain that EQC will agree to a payout. For re-insurance reasons, my understanding is that EQC is keen to get remedial work done on properties.
>
> Probably the best approach is a pragmatic one - you should write to EQC telling them that you are the new owner, (send them a copy of the certificate of title) and asking that they deal with you in the future.
>
> Let me know if I can help you any further.

[17] This email reflected the file note made following the discussion with Mr MT.

---

[3] Letter NQ to LP (4 November 2011) at [5].
[4] Email Firm X to NQ (24 November 2011).

[18] Nothing further happened on the file until 22 February 2012 when Ms LP rang Ms NQ. Following that conversation Ms NQ made an extensive file note and set out below are various extracts from that file note.

> LP upset as EQC not prepared to deal with her. Said that purchased property on basis that EQC claims assigned. Agent told her EQC claims would be assigned, talked of sticker attached to the document she signed saying claims would be assigned.
>
> NQ: contract had no clause whereby Vendor agreed to assign EQC claim. Vendor said they would, but at last minute changed mind. You never told Firm R that you thought EQC claim was to be assigned.
>
> …
>
> LP instructed that property went to auction and didn't sell. She thought that her original offer was then accepted, (with EQC assignment clause). She signed on basis that contained assignment.
>
> …
>
> NQ: explained that EQC and insurers under obligations to whoever took out the insurance policy ie. The bank/ [Name of bank] – bank were the vendors/owners of the property as original owner defaulted on mortgage. Bank had taken out the insurance policy and made the June claim. Rights pursuant to policy belonged to the previous owner ie. The bank. They would have duties to get in as much money as possible from the mortgagee sale – they would presumably seek to get EQC payout rather than have the work done. EQC had to settle claim with them, not LP as she had no interest in the claim as it had not been assigned to her.
>
> …
>
> NQ advised that unlikely to have remedy against Vendor but possible remedy on basis misrepresentation. May have claim against agent.

[19] On 8 August 2012 Ms LP sent the following email to Mr MT:

> Please can you forward me information about your complaints procedure. I shall be seeking an opinion from the Law Society about the way conveyancing was handled by Firm R on the purchase of my property.
>
> My stress over whether EQC will repair my property has been further compounded by being left hanging by your office in recent weeks, awaiting a copy of the original sales agreement which bears the 'deed of assignment' sticker (which EQC have requested to see, in order to carry out the works). I need this document as proof to proceed on repairs, so would appreciate it if it is treated with some urgency.

[20] Ms LP lodged her complaint on 13 August 2012.

Ms LP's complaints

[21] The essence of Ms LP's complaints is best captured by quoting from her email of 10 August to Mr CR, a Legal Standards Officer at the City Branch of the New Zealand Law Society:

> … I was assured by the solicitor MT that buying a mortgagee property was a straight forward process.
>
> Please find attached the two contracts…The second and final purchase contract bears no relation to the first contract…

> I was not made aware by the agent nor MT that the two contracts differed. This only came to light two months after I had moved into the new property. My contact with Firm R was minimal. I was a cash buyer, in need of a quick turnaround in order that I could leave my marriage. I got access to the property on 4th November and did not speak to Firm R until January, when they informed me that my new home was not covered to (sic) by a 'deed of assignment'. Up until that point, I had been asking Firm R whether they had given EQC my information yet.
>
> When I realised what the terminology meant – that I was not covered for EQC repair, I said to the solicitor (NQ) 'Oh but the agent stuck an 'EQC sticker' on the first contract on the last page', she replied 'why didn't you tell me!'...
>
> I do not believe that anyone in Firm R ever looked at both contracts– if they had done so they would have instantly been aware of the separate conditions of the sale and I would hope, have warned me that I was not covered for EQC repairs in the final contract, BEFORE I moved in. (I had already purchased insurance, which was later deemed void due to the lack of deed).
>
> I was not informed of any problems (other than the property being a cross lease) at any time during the lead up to settlement. Considering this was a mortgagee property with very specific conditions (rewiring required before insurance cover would commence), plus all the fall out from earthquakes, insurance matters etc, I believe Firm R were negligent incompetent (sic) in providing due diligence over the legal aspects of my purchase and offering me sound advice.
>
> …
>
> For your information, I have recently received a positive response from EQC after spending many months in talks with them about my situation. They could see that I acted in good faith and have been extremely understanding.

The Standards Committee determination

[22] Having considered all of the material the Standards Committee decided to take no further action in respect of Ms LP's complaints.

[23] In coming to this decision the Committee made the following comments:[5]

> MT has reported that until receipt of the signed Agreement of 2 November for purchase from the mortgagee his firm had no opportunity to review, comment on or advise in respect of that Agreement.
>
> …
>
> The Committee notes that claims by the registered owner of the property to the EQC Commission may not necessarily be assignable by the mortgagee and that as reported by the Complaint (sic) she was ultimately able to secure the cooperation of the Earthquake Commission which in the circumstances was prepared to honour the claim made by the original proprietor and enable her to take the benefit of that outstanding EQC claim.
>
> The Agreement to Purchase from the mortgagee was unconditional and required settlement within a very short time frame following the signing of the Agreement. It appears that it took some time for LP to appreciate that she had no contractual right to receive an Assignment of the EQC claim. She was advised that she could not refuse to settle and ultimately did complete settlement with the mortgagee.
>
> In responding to Mr MT's correspondence with the Committee the Complainant identifies the poor service being an oversight in failing to read the two contracts

[5] Standards Committee decision dated 26 February 2013 at [8]-[14].

> and act. Her ability to obtain repair of earthquake damage was put in jeopardy and she considered that MT should have taken the time to advise prior to her taking possession.
>
> On review of all the material the Standards Committee is satisfied that Mr MT has responded to the issue of the lack of an EQC clause in the contract but as it was otherwise unconditional and the mortgagee was not the registered owner of the property who had made the claim, despite efforts to do so, Mr MT could not insist upon or demand that the EQC claim be assigned as a condition of settlement with the mortgagee.
>
> The complaint in this case is appropriately made against the agent who has acted and failed to draw to the Complainant's attention the fact that the Agreement with the mortgagee did not provide for assignment of the EQC claim…

Review

[24] This review has been completed on the material to hand with the consent of both parties.

[25] Ms LP's complaint referred generally to "poor service", but specifically related to the advice (or lack of advice) given to her with regard to the provisions of the contract she had entered into for the purchase of the property.

[26] Her complaint was lodged against Firm R which is not an incorporated law firm. The Lawyers Complaints Service treated her complaint as being a complaint against Mr MT, but it could be argued the conduct complained of related to the conduct of Ms NQ. Mr MT was Ms NQ's supervising partner and it would seem that he was closely involved with this matter at all times.

[27] Mr MT has not raised this issue and I have therefore proceeded on the same basis as the Standards Committee.

[28] On 16 September 2014 I issued an interim decision and invited the parties to provide further submissions. Mr MT instructed Firm Y (Mr SJ) to act for him in this regard and submissions were received, accompanied by statements by Ms NQ and Mr HJ. Ms LP also provided further comment.

[29] New evidence is not generally accepted by this Office as clearly that is not information that was available to the Standards Committee. In this instance, I am advised that Ms NQ was on maternity leave when the complaint was made and in the interest of fairness, her statement must be taken into account. Mr HJ's statement is provided as an expert's opinion.

[30] I confirm that I have taken these statements into account in completing this decision. I have also taken into account the further letter from FIRM Y dated 17 October 2014.

Preliminary comments

[31] Some statements by Ms LP in her complaint are not supported by the facts.

[32] Firstly, Ms LP says that the fact the two contracts were different only came to light two months after she had moved into the property.

[33] Settlement took place on 4 November 2011. On 24 November the mortgagee's solicitor advised Ms NQ that her client would not sign the assignment and on 29 November Ms NQ wrote an email to Ms LP in which she advised her of this. She also advised that the mortgagee was "under no contractual obligation to do so".

[34] Ms LP could no longer have been under the impression that the mortgagee was obliged to assign the claim as had been provided for in her first offer.

[35] Secondly, Ms LP says her contact with Firm R was minimal. Again, this is not supported by the evidence.

[36] In his response to the complaint Mr MT states:[6]

> Up until 2nd November (the day the unconditional contract arrived) we received six letters from her, wrote to her four times, had two telephone conversations and attendances in excess of 30 minutes on multiple occasions. After 2 November and before 30 November, we had four letters from her, wrote to her five times and spoke on the telephone three times. Notwithstanding this she maintains she did not speak to us until January? This is clearly incorrect. This work amounts to time costs on Ms LP alone in excess of $812.00.

[37] These statements by Mr MT are supported from my review of the file and Ms LP's claim is not correct.

[38] However, these matters are incidental to Ms LP's main complaint.

Advice from Firm R

[39] The Agreement sent to Mr MT by the mortgagee's solicitor was sent by email on 2 November. It was unconditional and provided for settlement two days later. Although this was a very short period of time Ms LP had funds in hand to complete the purchase. No mortgage was required and the work required to complete the transaction within this time frame was manageable.

[40] Mr MT gave the contract to Ms NQ to process the conveyancing aspects of the Agreement and complete settlement.

---

[6] Letter MT to NZLS (23 October 2012) at 3.

[41] The Agreement differed significantly from the first offer. All vendor warranties had been deleted and other clauses by which the vendor assumed obligations to the purchaser had been deleted. Also deleted were the further terms inserted by Mr MT in the first offer providing for the assignment of the EQC claim and the insurance condition.

[42] The Agreement was an entirely different proposition from that which formed the basis of Ms LP's first offer.

[43] Ms LP's first offer was for $175,000 and that was the price accepted by the mortgagee in the Agreement which was finally signed. However, the benefits and protections of the first offer were not included in the offer as accepted and consequently the value to Ms LP was substantially reduced.

[44] If, as suggested by Ms NQ in her email to Ms LP dated 29 November, it was possible for the mortgagee to receive a payout under the claim from EQC and not be obliged to pass this on to Ms LP, this would have meant that she would have been required to meet the costs of those repairs herself. I do not know what those costs were, but whatever the amount it would have been a cost to Ms LP.

[45] The Property Transactions and E-Dealing Guidelines (July 2012) issued by the Property Law Section of the NZLS set out the recommended practice for solicitors acting in residential transactions. I am aware that these Guidelines were issued after the date of this transaction but the Guidelines that were in existence at the time differed little in the respects that I refer to. In addition, the 2012 Guidelines merely reflect what was considered to be best practice and again, in the matters I refer to subsequently, did not differ.

[46] The Guidelines set out what lawyers acting for both vendors and purchasers should do. Fundamental to a lawyer's duty when receiving an Agreement for Sale and Purchase is to report to the client what the terms of the agreement are. This is reflected in paragraph 3.27 of the 2012 Guidelines, where it is stated that a solicitor must ensure that the client fully understands the basic details of the transaction.

[47] Mr SJ submits that my reference to the 2012 Guidelines is "incorrect because they did not apply to this transaction which occurred in 2011".[7] He seems to have overlooked that I acknowledged this in [45] above.

[7] Firm Y submissions (14 October 2014) at [3.1].

[48] He further submits that I have placed too much weight on the Guidelines. I have placed weight on the Guidelines only to the extent that they reflect best practice (refer [45]) and do not elevate the relevance of the Guidelines any further than that.

[49] I do not accept however, Mr HJ's assertion that the "2009 Guidelines did not provide for a transaction of the nature Mr MT was dealing with, namely the receipt of an unconditional mortgagee auction agreement requiring settlement two days later".[8] The Guideline requires nothing more than is required by rule 7 of the Conduct and Client Care Rules[9] which provides:

> A lawyer must promptly disclose to a client all information that the lawyer has or acquires that is relevant to the matter in respect of which the lawyer is engaged by the client.

[50] I acknowledge that there was limited time between receiving the Agreement and settlement. However, Mr MT was in email contact with Ms LP and it would not have taken long for an email to be sent to her summarising the terms of the contract. This was particularly important considering the significant deletions to the standard form and any report to her would have also highlighted the fact that the clauses relating to EQC claims and insurance cover had been omitted.

[51] Mr MT says he spoke to Ms LP on 10 October 2011 about the nature of a purchase from a mortgagee and the content of this discussion is recorded in a file note. The file note records that he:[10]

> discussed the fact of the auction process (due 28th October), the mechanics as to an unconditional nature, the need to issue a cheque for the deposit there and then, the fact it would be bought 'warts and all', that mortgagees have lengthy special conditions to protect themselves and that problems can be associated with owners continuing to occupy, issues re EQC assignment and getting insurance.

[52] I am not sure that such a generalised discussion would have been sufficient to properly acquaint Ms LP with the detail of an agreement to buy at a mortgagee sale and the difference between a standard Agreement for sale and purchase and one that would be presented at a mortgagee auction.

[53] Subsequent to this conversation, Mr MT prepared a pre-auction offer for Ms LP on the standard real estate agreement form and included further terms providing for the assignment of the EQC claim and a condition to ensure Ms LP could arrange insurance. This was signed by Ms LP and delivered to the agent.

---

[8] Statement of HJ (13 October 2014) at [10.1.2].
[9] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[10] Letter MT to NZLS (23 October 2012).

[54] In her statement Ms NQ says that she understood "Mr MT had previously advised Ms LP in relation to purchasing from a mortgagee and that such purchases were done warts and all and without the usual vendor warranties".[11]

Again, such a generalised description was insufficient to consider that Ms LP had been properly advised.

[55] She then goes on to state that she had a meeting with Ms LP on 3 November, the day after the Agreement was signed, and the day before settlement. She describes the matters discussed at that meeting which covered all of the mechanics of settlement. She says that she advised Ms LP that the Agreement was unconditional and that it did not contain a clause that required the vendor to assign the EQC claim to her.

[56] The statement provided by Ms NQ to me was not available to the Standards Committee. Ms LP does not refer to any meeting with Ms NQ in her complaint and correspondence with the Standards Committee. However, I accept the meeting must have taken place to enable the signatures required from Ms LP to be obtained, and generally to make arrangements for settlement.

[57] I also accept that Ms NQ would have advised Ms LP of the transactional details of the contract such as the price, the settlement date, the identity of the vendor and the other details referred to in her statement. However, there is no indication that there was discussion between Ms NQ and Ms LP as to the differences between the initial offer prepared by Mr MT and the Agreement ultimately signed by the mortgagee. Indeed, Mr MT does not seem to think there was any obligation to do so. He says:[12]

> We acted on the unconditional contract that was to be settled two days later, a contract negotiated with the same agent, and we should not have to write to Ms LP pointing out the differences between the two contracts after the event and following receipt of an unconditional contract.

[58] Ms LP confirms that when she says:[13]

> I was not made aware of the disparity (nor implications) between the two contracts which I felt had been barely looked at on my behalf. At no point during the conveyancing period was I made aware that the terms of the purchase had changed and what they meant.

[59] Mr MT and the Standards Committee have adopted the view that as the Agreement was unconditional there was nothing Mr MT or Ms LP could have done and she was obliged to settle. That is not the issue and may not necessarily be the case. If

[11] Statement NQ (14 October 2014).
[12] Above n 10.
[13] Email LP to LCRO (30 September 2014).

for example Ms LP could have established that she had been misled by the agent and was proceeding on the basis that (at least) the EQC clause was in the Agreement, then there may have been grounds to resist demands for settlement which may have led to renegotiated terms.

[60] The Standards Committee has also proceeded on the basis that the EQC claim had been lodged by the mortgagor and "may not necessarily be assignable by the mortgagee".[14] The Committee later noted "… the mortgagee was not the registered owner of the property who had made the claim …"[15]

[61] In her file note of 22 February 2012 Ms NQ recorded:

> NQ: explained that EQC and insurers under obligations to whoever took out the insurance policy i.e. the bank/ [Name of bank] – bank were the vendor/owners of the property as original owner had defaulted on mortgage. Bank had taken out insurance policy and made the June claim.

[62] The information recorded in this file note means that the Committee was incorrect in proceeding on the basis that the insurance had been taken out by the mortgagor. It seems that the bank had not only taken out the insurance policy to remedy the neglect of the mortgagor, but had also lodged the claim with EQC. The bank was therefore in a position to either assign the claim or receive the proceeds of a claim.

[63] Mr SJ takes issue with my suggestion that Ms NQ could have provided an email to Ms LP to record the terms of the contract and that the information provided orally at the meeting met any obligations that existed. I do not suggest that this is a mandatory requirement to provide a written summary of the terms of the contract, but it clearly would have been useful to have a written record of advice to Ms LP – this is no different than is the case that arises frequently in the course of providing legal advice.

[64] The underlying general issue is that there was no overall advice provided to Ms LP pointing out to her that the Agreement she had entered into was a vastly different agreement from that which she had presented when she made her pre-auction offer. The omission not only of the EQC assignment clause, but also the deletion of all the usual warranties provided by a vendor meant that the value of the property being received by Ms LP was less than the value of the property which she would have received under her pre-auction offer. This was particularly so if there was a possibility that she would not receive the benefit of the EQC claim.

[65] Mr SJ and Mr MT point to all the differences between the two contracts and the fact that Ms LP was required to sign another document, to reinforce their statements

[14] Above n 6 at [10].
[15] At [13].

that she could not have been unaware that she had entered into a different bargain. However, that is not sufficient to displace the fundamental obligation on a lawyer to advise a client of the terms of an agreement that the client has entered into. That is what a client engages a lawyer to do.

[66] In the present instance, the nature of the Agreement that Ms LP had entered into was so different from what she had previously offered that, contrary to Mr MT's assertion that he should not have been required to point out the differences between the two, he had a greater duty to do so. In particular, the lack of an EQC assignment clause would have been sufficiently unusual in contracts being entered into in Christchurch, that not only was there a requirement to advise Ms LP of this, but it was all the more important to ensure that she comprehended the implications of the omission of the clause. Mr MT was also aware of the events in Ms LP's personal life which would have meant that it was likely that she was not completely focussed on details that she expected others to be addressing.

[67] Ms LP clearly did not understand. She says that she would not have entered into the Agreement if she had been required to remediate the damage herself and still pay the same amount for the property as she had previously offered with an EQC assignment. This was a possibility about which she was unaware.

[68] Mr SJ submits that Mr MT and Ms NQ were not:[16]

> alive to the possibility of misrepresentation because Ms LP did not tell them at the time that she believed that the contract she had signed included an EQC clause, or otherwise provided for an assignment of the EQC claim. A lawyer can only act upon the instructions of a client and on the basis of information provided to them.

[69] In this regard, I refer to the comments of Tipping J in *Gilbert v Shanahan:*[17]

> [While] [s]olicitors' duties are governed by the scope of their retainer … it would be unreasonable and artificial to define that scope by reference only to the client's express instructions. Matters which fairly and reasonably arise in the course of carrying out those instructions must be regarded as coming within the scope of the retainer.

[70] Ms LP says that the implications of the terms of the Agreement she had entered into were not explained to her – she did not understand that a deed of "assignment" and an EQC "sticker" were one and the same thing and she put her "faith in Firm R to be across my sales and purchase contracts".[18]

[71] It is not necessary to determine that there would have been a positive outcome for Ms LP. The only question to determine is whether Mr MT's conduct is conduct

[16] Above n 7, at [34].
[17] *Gilbert v Shanahan* [1998] 3 NZLR 528 at 537.
[18] Email LP to LCRO (15 October 2014).

which falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.[19]

[72] It is my view that Mr MT had an obligation to advise Ms LP of the terms of the Agreement and that she did not have the benefit of the standard terms of agreement or the clauses relating to the EQC claim and insurance. How that is achieved is up to the individual lawyer, but a report in writing provides an indisputable summary of the advice and leaves nothing to chance.

[73] Lawyers are engaged by clients for their expertise and advice. Even if a client has already committed to a contract, a discussion with the client and explanation of the terms of the contract will reveal whether the client is aware of what she has entered into and whether or not there are circumstances surrounding the signing of the contract which could provide a remedy for the client if there is a need.

[74] For the reasons set out above I have come to a different view from that of the Standards Committee and consider that Mr MT's conduct constitutes unsatisfactory conduct by reason of s 12(a) of the Lawyers and Conveyancers Act 2006.

Consequences

[75] I now invite submissions from both Mr MT and Ms LP by no later than 5 November 2014 as to what penalties should follow from the finding of unsatisfactory conduct.

[76] In this regard, Ms LP may need to take advice as to what penalties may be imposed by this Office. I understand that EQC did accept that she was entitled to the benefit of the claim and in any event it cannot be said with any certainty that she would have been able to renegotiate the terms of the contract with the mortgagee. Consequently, any penalty orders cannot be based on that assumption.

[77] Following receipt of submissions there will be a separate penalty decision issued.

DATED this 22nd day of October 2014

O W J Vaughan
Legal Complaints Review Officer

[19] Lawyers and Conveyancers Act 2006, s 12(a).

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

Ms LP as the Applicant
Mr MT as the Respondent
Mr SJ as the Respondent's Representative
The City Standards Committee
The New Zealand Law Society