LCRO 09/2013

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

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

DECISION

Introduction

[1] This is an application by BW for a review of a decision of the Manawatu Standards Committee dated 3 December 2012. The Committee made a finding of unsatisfactory conduct against, and ordered censure of, DJ, who had given BW independent advice in respect of an Agreement (the Agreement) purportedly made under s 21 of the Property Relationships Act 1976.

Complaints

[2] After the Standards Committee had considered and determined BW's complaints in respect of DJ's advice on the Agreement, BW was dissatisfied with the Standards Committee decision, saying that having found unsatisfactory conduct, censure was not a sufficient penalty. BW's current lawyer expressed concern at the potentially extensive adverse consequences to BW flowing from her execution of the Agreement on DJ's advice. Through her current lawyer, BW applied to this Office to review the penalty aspects of the decision.

Grounds for review

[3] The Complainant's grounds for seeking a review are that the committee:

a. Misdirected itself as to its jurisdiction under s 156(1)(d) of the Lawyers and Conveyancers Act 2006 (the Act), and/or failed to give adequate consideration to the coextensive nature of its jurisdiction.

b. Failed to address BW's submission that liability under s 156(1)(d) be determined, and quantification reserved; and/or failed to address itself to the submission that the issue of damages under s 156(1)(d) be reserved.

c. Failed to give adequate consideration to the issue of award of compensation (on account of consequent distress/harm) to BW having regard to the whole of the circumstances.

d. Failed to give adequate consideration to an award of costs under s 156(1)(o) having regard to the nature and complexity of the issues arising which necessitated BW procuring representation.

e. Took account of immaterial facts/immaterial considerations, and/or failed to give adequate weight to relevant facts/material considerations; and

f. It's decision was wrong in law because, having found that DJ's conduct was unsatisfactory, it declined to enquire fully into the issues of compensation and costs.

Review Issues

[4] The issues in this review are

a. Whether the Standards Committee's finding of unsatisfactory conduct was correct; and

b. If the answer to a. is yes, whether censure was an appropriate penalty.

Role of the LCRO on Review

[5] The role of the Legal Complaints Review Officer (LCRO) on review is to reach her own view on conduct issues on the evidence before her. Where, as here, the review is of an exercise of discretion, it is appropriate for the Review Officer to exercise particular caution before substituting her own judgement for that of the Standards Committee, without good reason.

Review On the papers

[6] I have undertaken this review on the papers pursuant to s 206 of the Lawyers and Conveyancers Act 2006 (the Act). The parties have consented to this process,

which allows an LCRO to conduct the review on the basis of all the information available, if the LCRO considers, as I do in this case, that the review can be adequately determined in the absence of the parties.

Background

[7] BW complained that DJ failed to properly advise her on the effects and implications of the Agreement before BW signed it. DJ says BW did not give her the information she needed to be able to give that advice properly. BW says that although she has signed the Agreement, resigned her directorship and surrendered her shareholding, she is still exposed under personal guarantees that relate to the companies' borrowing secured against the parties' home (the home), and if DJ had done her job properly she would not be in that position.

[8] Having considered all of the material before it, the Standards Committee decided DJ should have dealt with the guarantees, and that the Agreement, and her advice in relation to it, had been deficient. The Committee made a finding of unsatisfactory conduct against DJ and ordered that she be censured under s 156(1)(b). The Committee made no orders as to compensation and costs. As a result BW applied for this review.

Discussion

[9] Although BW does not challenge the Committee's finding of unsatisfactory conduct against DJ under s 152(2)(b) of the Act, the first issue on review is whether the Standards Committee's finding of unsatisfactory conduct was correct. The answer to that question requires a reasonably detailed consideration of the parties' interactions.

[10] DJ's letter of engagement to BW refers to their "recent discussions",[1] sets out the fees and provides terms of engagement, although it does not provide any detail as to the nature or scope of the retainer.

[11] DJ was acting for BW when the lawyer for BW's former partner, DM, initiated settlement negotiations in October 2011. In her letter, DM's lawyer listed property in which BW and DM had an interest, including reference to debts that were "linked by way of guarantee to the Bank's security over [the home]".[2] The parties had lived together at the home which was owned by one of two companies of which BW and DM were directors and shareholders.

[1] Letter from DJ to BW (18 October 2011).
[2] Letter from BY to DJ (17 October 2011) at [4].

[12] BW provided a detailed response to that letter on 21 October 2011, but made no reference to the guarantees. DJ says she and BW also specifically discussed the matters raised in the letter, but BW did not disclose the fact that she had given any personal guarantee for either company's liabilities. DJ says that at that stage she asked BW to provide evidence of all her liabilities.

[13] By 13 March 2012 DJ's analysis of the situation was that the property BW had instructed her to deal with comprised a lot of debt and not much money. If the house was sold it was unlikely to result in a payment to either party, and most of the asset value was represented by BW's superannuation which BW was keen to retain the benefit of.

[14] DJ says that she carefully scrutinised the information BW provided, including the company's accounts and the notes to the financial statements, wherein she would have expected to find reference to guarantees if there were any. The accounts did not disclose the existence of any guarantees.

[15] DJ also says that BW undertook work to resolve matters, including contacting the bank. These are matters that DJ would normally have undertaken herself. The reason DJ says that she accepted BW's instructions, and acted in this unusually limited way, is that BW, who was a [occupation], was a friend who was clearly in need of assistance. In essence, DJ says that her retainer was limited, and that she carried out her instructions, pro-bono, in accordance with the terms of her retainer. While she accepts she could have done better in some respects, she does not accept her conduct has caused loss to BW, who was already in a difficult position having previously given guarantees to the bank.

[16] It is clear from the email dated 21 March 2012 from the bank to BW that BW had been making enquiries about the companies' debt position. The bank said it was keen to recover arrears from DM, and there was no mention in that email of any personal guarantee from BW.

[17] BW signed the Agreement, the resignation as director of the company, and the share transfers the next day and DJ forwarded all of those documents to DM's lawyer under cover of a letter saying she trusted the documents "were satisfactory".[3]

[18] At 11.23am on 2 April BW copied DJ into an email she sent to the bank referring to the guarantee she had signed in 2007. At 1.42 and 1.45pm that same day a firm of accountants registered the share transfers and her resignation as director of the companies with the Companies Office. Although it is not clear from the materials how

[3] Letter from DJ to BY (22 March 2012).

those documents came into the hands of the accountants, I assume either BW or DM delivered them up.

[19] It appears that DM signed the Agreement, which is dated 3 April 2012, after registration of the share transfers and BW's resignation as a director on 2 April had been completed.

[20] On 4 April DJ advised BW that DM had signed the Agreement, and BW's email in reply again referred to the guarantee. A copy of the Agreement signed by DM arrived by email to DJ the following day.

[21] DJ says she was engaged on other matters, and emails referring to BW's personal guarantee came to her attention after DM had signed the Agreement dated 3 April. On 12 April DJ emailed DM's lawyer requesting confirmation that DM would arrange for BW to be released from her guarantees. On 18 April DJ confirmed to BW that she had received the original of the signed Agreement, and the firm would retain it for BW's records. DJ then emailed BW shortly after advising her that DM's lawyer wanted clarification regarding the guarantees, because DM was arranging for BW to be discharged from her guarantees.

[22] On 24 April BW provided DJ with an unsigned copy of her guarantee. On 30 April the bank advised BW that it would not release her from her guarantees unless DM could pay the arrears, and that any recovery would be against her and DM. On 8 May DJ advised BW that the bank had confirmed its position regarding recovery of arrears, and identified the difficulty created by the 'what if scenario' depending on what DM did next. DJ advised that DM's options were to pay the arrears, or sell the house and either cover any shortfall himself or find another guarantor to step into BW's shoes.

[23] No further correspondence between DJ and BW has been provided. The next documents by date are the Termination Notices dated 26 July that BW signed to determine her liability under the guarantee, which were served on the bank on advice from her present counsel.

[24] For BW, counsel refutes that there was any limitation on DJ's obligations under her retainer. Counsel says DJ was on notice of the existence of a guarantee in October 2011, which triggered her obligation to make adequate enquiry. Adequate enquiry, he says, included writing to the bank enquiring as to the existence of what guarantees, if any, BW had given. Further, counsel says DJ should not have advised BW to relinquish her directorship of the company, or her shareholding, until BW had been released from her guarantee, and BW cannot rely on an indemnity in the Agreement from DM to protect her financial position.

[25] DJ says that her instructions from BW at the time were to formalise the Agreement BW had negotiated with DM, and to extract BW from her liabilities to the company as quickly as possible. BW's correspondence at the time emphasised that the companies' growing liabilities were caused by DM making drawings on the companies to sustain him and his new partner in their relationship. BW was understandably reluctant to provide any form of financial support to that new relationship, hence her eagerness to conclude the Agreement, closing off all of the property interests she and DM had shared.

[26] The Standards Committee's view was that in the circumstances it should have occurred to DJ when advising BW that personal guarantees could have been in existence, and that enquiries would have disclosed the existence of those. The Committee found that it was unsatisfactory for DJ to have given the advice she did in respect of the company documentation and the effects and implications of the Agreement without having properly circumscribed BW's position. The Committee's view was that if DJ had done so, BW may have been released from her personal obligations to the company before she signed the Agreement, or presumably any of the associated company documentation.

[27] There are three issues relating to professional conduct that warrant particular comment:

a. The degree of DJ's enquiry into the parties' asset and liability position;

b. DJ's provision of signed documents to DM's lawyer; and

c. The termination Notices.

[28] All three issues are to be considered against the standard set out in s 12(a) of the Act, which defines unsatisfactory conduct as meaning:

> Conduct of the lawyer...that occurs at a time when...she...is providing regulated services and is conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

[29] The first issue is whether DJ made adequate enquiry into BW and DM's asset and liability positions. The letter from DM's lawyer referring to the existence of debts "linked by way of guarantee to the Bank's security over the home"[4] should have raised a red flag for DJ. DJ accepts that BW's instructions took her beyond her usual areas of

[4] Above n1.

expertise. Nonetheless, it was obvious at that point that it was necessary to obtain information from the bank, and either BW or DJ would have to be responsible for obtaining that information. DJ does not appear to have fully appreciated the professional risk that she took in relying on BW to obtain the information.

[30] If BW's enquiries turned out to be inadequate, DJ had implicitly accepted the risk that she may be unable to properly advise BW on the effects and implications of the Agreement, because she would be advising on the basis of incomplete information. Lawyers routinely refuse to accept instructions to give independent advice on relationship property agreements unless they are fully instructed to first ascertain the parties' asset and liability position. Some lawyers also require clients to sign an indemnity in the hope that will afford some protection against adverse claims made by clients with the benefit of hindsight. DJ, however, accepted instructions in a way that attracted professional risk for her as a lawyer, and personal risk to BW in relying on her advice. No doubt with hindsight, DJ is aware that she could have refused to accept BW's instructions on the basis she proposed, regardless of their friendship.

[31] BW, having come to appreciate her predicament, with the benefit of hindsight coupled with legal advice, pursued her complaint to the Standards Committee. BW's objective was to persuade the Committee to make orders that effectively relieved BW of her obligations by putting DJ in BW's shoes as guarantor. Noting the difficulties inherent in doing so, the Standards Committee did not make compensatory orders in the terms BW sought.

[32] The Committee considered it was not in a position to properly determine the apportionment of any liability that may accrue to DJ. Hypothetically, even if the bank had declined to release BW from her personal guarantees, she may have signed the Agreement and relinquished her control over, and interest in, the company. While matters such as this could be argued before a Court, they deserve comment here because the professional risk DJ took was unnecessary. She could easily have protected herself, and her client, by requesting information from the bank.

[33] DJ was working for a firm at the time. In addition to the usual legal research tools, she had access to her employer, and to other practitioners. She had time to make enquiry. Had she done so she may well have ascertained information that would have protected both her and BW from risk.

[34] DJ should have pursued enquiries about the significance of the guarantees, and about the guarantees themselves. Her failure to make adequate enquiries before advising BW on the Agreement of 2 April 2012 is conduct that occurred at a time when DJ was providing regulated services, and is conduct that falls short of the standard of

competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer. In the circumstances, DJ's conduct in this regard reaches the threshold for a finding of unsatisfactory conduct as defined by s 12(a) of the Act, and such a finding was properly made by the Standards Committee.

[35] I turn now to the second aspect of DJ's conduct that attracts comment, namely the provision of signed documents to DM's lawyer. DJ sent the originals of the Agreement, the resignations as director and share transfers that BW had signed to DM's lawyer under cover of her letter dated 22 March 2012. It is unusual for all those documents to have travelled together. In my view the more orderly course would have been for DJ to retain the company documents until the Agreement had been signed by both parties. DJ could then have attended to registration of the documents bringing BW's relationship with the companies to an end, rather than surrendering responsibility for those tasks to DM's lawyer.

[36] Providing the resignation and share transfer with the Agreement was, however, consistent with the instructions DJ says she had from BW to conclude the Agreement and extract BW from her relationship with the companies as quickly as possible. Surrendering those signed documents to DM's lawyer enabled that lawyer to give effect to settlement without further input from DJ.

[37] It may well be correct, as DJ says, that the resignation and transfer of shares provided BW with no leverage against DM. By the time BW made DJ aware of the existence of her personal guarantees, DJ was aware that the bank was resistant to releasing BW from those. DJ emailed BW again on 18 April 2012 saying that DM was arranging for the bank to release BW from her personal guarantees, and DM's lawyer wanted clarification about the guarantees. There followed further correspondence with the bank, but no release of BW from the guarantees, despite BW and DM's evident efforts to give effect to the settlement they had reached.

[38] Settlement of all matters under the Agreement would have been more orderly if DJ had retained the company documents until she had confirmation from DM's lawyer that he had signed the Agreement. In circumstances where BW's instructions were to accelerate settlement, however, I do not consider that DJ's conduct in forwarding all of the documents BW had signed to DM's lawyer before he had signed the Agreement reaches the threshold of s 12 of the Act.

[39] I move now to consider the final conduct issue. As DJ acknowledges, she was slow to realise the guarantees contained provision for the service of Termination Notices, and she did not arrange for BW to sign or serve Termination Notices. I take it that since DJ took no steps to prepare or serve Termination Notices, she did not read

into the detail of the unsigned guarantee that BW sent as an attachment to her email on 24 April. The questions then are what, if anything, DJ was instructed to do with the guarantee, and whether, in the absence of instructions, she should have done anything with the information she had received.

[40] BW emailed the unsigned guarantee to DJ with no instructions requiring DJ to do anything with respect to the guarantee. BW's covering email simply records that she had found the unsigned copy of one of her guarantees, her assumption that DM had the other guarantee, and confirmed that BW had sent another email to the bank requesting copies of her signed guarantees.

[41] At this stage, the Agreement having been signed by both parties, it appears that BW was trying to sort the guarantees out with the bank, with assistance from DM who appears to have been amenable to the bank releasing BW from the guarantees.

[42] After DM had signed the Agreement, the full significance of the extant guarantees became increasingly apparent to BW. BW copied DJ into some, or perhaps all, of her emails with the bank, and DJ continued to press DM's lawyer for confirmation and updates on DM's progress in arranging for BW's release from the guarantees. BW's email of 24 April 2012 attaching the unsigned guarantee is part of the course of correspondence that appears to have culminated with the bank's email to BW, copied to DJ, early in the morning of Monday 30 April. In that email the bank confirmed its position on the guarantees, namely that the bank would not release BW if DM could not pay the companies' debts, and any recovery would be against both of them as guarantors.

[43] That email from the bank was immediately preceded by an email BW had sent to the bank, also copied to DJ, after 5.00pm on Friday 27 April. In that email BW describes her current position, including reference to her distancing herself from DM and the companies, and says she is "unable to guarantee payment for both companies". Importantly she also says that she "will be seeking further legal advice".

[44] It appears from DJ's email to BW dated 8 May 2012 that BW sought further legal advice from DJ. DJ's emailed advice made no mention of the unsigned guarantee, and there is no suggestion that DJ took any steps to obtain signed copies of the guarantees from the bank before emailing her advice about the effects of the guarantees to BW.

[45] DJ's advice was that DM should pay the arrears, or sell up and either cover any shortfall himself or find another guarantor to replace BW. Whilst DJ's advice in respect of Ms S's options was pragmatic, it failed to identify the single most important step BW

could have taken under the guarantee to protect her from exposure to further borrowing under the guarantees, namely serving Termination Notices.

[46] As a consequence of DJ's apparent failure to advise BW that she could limit her further liability under the guarantees by serving Termination Notices, BW may have been exposed for longer than was necessary. It is also arguable, however, that the bank was on notice in early April of BW's intention to remove or limit her obligations under the guarantees, and that the bank could, and should, immediately have prevented the companies from increasing their indebtedness. However, while those are arguments that could be made in the civil jurisdiction of the Court, they cannot be determined on this review.

[47] What can be said in this review is that serving Termination Notices early would have reduced or limited BW's exposure. DJ had the opportunity to review the indemnity document and find out whether it contained any 'get out' clause before emailing her advice to BW on 8 May 2012. In all the circumstances, it was incumbent upon DJ to have taken that step, and her failure to do so falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer. In the circumstances, DJ's conduct in failing to review the guarantees before advising BW on 8 May 2012 can properly be characterised as unsatisfactory, pursuant to s 12(a) of the Act.

[48] It will be apparent from the foregoing discussion that my view is that DJ would have been wiser to refuse to act on the limited basis she had apparently agreed with BW. However, once she had agreed to act, DJ was exposed to the professional consequences of her acts and omissions.

[49] For the reasons set out above, I find DJ's conduct was unsatisfactory in two ways, namely that she:

a. Failed to make adequate enquiries with respect to the guarantees before advising BW on the Agreement on 2 April; and

b. Failed to review the guarantees before advising BW on 8 May.

[50] For completeness, I will address counsel's final submission that the Committee took into account irrelevant facts and considerations, or gave the wrong weight to relevant facts and material considerations. In particular, counsel's submission relates to the intentions of BW and DJ at the time the substance of the complaint arose. Counsel submits that the Committee:

a. Should not have taken into account DJ's submission that BW intentionally failed to disclose the existence of the guarantees; and

b. Should have given particular attention to the secrecy surrounding the existence of BW's file, which DJ says she did not disclose to her employer, at BW's request; a contention that BW denies.

[51] Both of those submissions would require the Committee to make findings on the parties' intentions. Although those submissions were before the Committee, the Committee made no reference to either BW's or DJ's intentions in its decision. The Committee was able to exercise its discretion without making findings on intention. I have considered both of those matters, and conclude that they make no difference to the outcome of this review that DJ's conduct was unsatisfactory in the ways set out above.

Overall Review

[52] In reviewing this file I have considered the original conduct complaint raised by BW and have not identified any other conduct issues that require consideration. I am satisfied that the Committee was correct to characterise DJ's conduct as unsatisfactory, albeit for different reasons in respect of the two findings discussed above. It is therefore not necessary for me to disturb the Committee's Decision on this review.

Penalties

[53] I now move to consider the consequences of that finding against DJ by way of orders. The Standards Committee was not persuaded to make determinations on liability, nor did it impose the costs order BW sought. Instead the Committee censured DJ under s 156(1)(b).

[54] On this review application BW asks that I make an award of compensation under s 156(1)(d), based on determinations on liability and quantum, or in the alternative, that I make a finding on DJ's liability to BW, and reserve the issue of quantum. BW also sought an award of costs under s 156(1)(o) of the Act, but has since abandoned that outcome so I will put that aside and address counsel's arguments on liability and quantum first.

Compensation

[55] Counsel argues that the Committee did not go far enough in its inquiries into liability or quantum. Those arguments are based on the premise that the Committee has a statutory power under the Act to determine liability in respect of contingent

liabilities. I refer, however, to the plain wording of s 156(1)(d) of the Act which relevantly provides:

> (1) If a Standards Committee makes a determination under section 152(2)(b), that Standards Committee may:
>
> (d) where it appears to the Standards Committee that any person **has suffered** loss by reason of any act or omission of a practitioner... order the practitioner...to pay to that person such sum by way of compensation as is specified in the order, being a sum not exceeding [$25,000]... (*emphasis added*).

[56] On its face, s 156(1)(d) makes no provision for an award of compensation for contingent losses. The essence of counsel's detailed submissions on behalf of BW is that the Committee did not go far enough in its consideration of liability or quantum of compensation once it had found DJ's conduct was unsatisfactory. However, I note that the Committee did address the issue of compensation in its decision, saying:[5]

> As far as the issue of compensation is concerned this is a difficult area as it is difficult to assess if DJ's advice resulted in any loss. The guarantees were in place before she was instructed and there was always the chance the bank would not have released BW from the liability. At this time it appears that no actual loss has been suffered. There are likely to be real problems in determining to what extent the advice given contributed to any loss.

[57] It is axiomatic that quantum falls to be determined only after liability has been determined. I also make the point that questions of liability and quantum properly fall to be determined after careful consideration of evidence and law. Finally, I note from the plain wording of s 156(2)(d) that it is evident that the Committee had no power to go any further than it did, because of the requirement for a person to have suffered loss before the Committee can consider awarding compensation under the Act.

[58] There is nothing in the Act that supports a Committee dividing up consideration of liability and quantum. Nor would the purpose of resolving complaints expeditiously under the disciplinary machinery of the Act be met by Committees deferring decisions on quantum indefinitely, on the off-chance that a contingent loss might crystallise. It follows that counsel's argument that the Committee's decision was wrong in law

[5] Standards Committee decision (3 December 2012) at [35f].

because the Committee did not "enquire fully into the issues of compensation and costs"[6] is unsustainable.

[59] In the circumstances, is it likewise not open to me to take matters of liability or quantum further on this review. That is not the function of this Office.

Compensation for Anxiety and Stress

[60] This Office has previously made very modest compensatory awards in limited circumstances where the Applicant has demonstrated a clear causal link between the anxiety and stress they have suffered, as a result of the acts or omissions of the practitioner. BW says she is anxious and distressed at the prospect of the bank calling up her personal guarantees. She places the blame for her situation squarely on DJ's failure to secure the release of the guarantees before BW signed the Agreement, and consequently seeks compensation for her anxiety and stress. It is therefore necessary to consider whether BW should properly be compensated for the anxiety or stress she describes.

[61] Unfortunately for BW, it is not possible to pinpoint a direct causal link between DJ's conduct, the anxiety and stress I do not doubt BW experienced as a consequence of her separation from DM, and entry into the Agreement. The question of causality is complicated by BW having already entered into the guarantees well before DJ became involved. In addition, it is not possible to abstract any contribution DJ may have made from the other stressors BW was experiencing arising from the separation itself, and the reasons for DM's increased drawings on the company.

[62] BW's instructions to DJ indicate there is a link between DM's drawings on the company's accounts and him subsidising his new partner. In those circumstances, I have no doubt that BW was anxious and stressed. Further, it is highly likely that her anxiety and stress would have been compounded by the prospect that she might end up subsidising DM's new partner if he could not meet his obligations, because in those circumstances repayment of the debt could well fall back on BW under the guarantees.

[63] Whilst it is possible that DJ's acts and omissions may have contributed to BW's anxiety and stress, I am in no position to assess the extent of the actual contribution, if any. In the circumstances it would be inappropriate for me to make the award of compensation for anxiety and stress arising from DJ's conduct as BW seeks.

Censure

[6] Application for review by BX on behalf of BW (3 January 2013) at part [7].

[64] I turn now to the censure imposed on DJ by the Standards Committee. The significance of a censure following an adverse conduct finding should not be understated. That censure will be an encumbrance on DJ's record throughout the rest of her professional career. DJ accepted that she lacked specific knowledge about small firm's banking arrangements which was a necessary adjunct to her advice to BW. As DJ has shown that she understands how her knowledge was lacking, leading to her providing incomplete advice, I am not willing to disturb the Committee's decision to impose a censure on DJ.

Other Orders

[65] I also note, and agree with, the submission by counsel for BW that legal education should not be undertaken at the expense of lawyers' clients. In the circumstances, I have also considered the provisions of s 156(1)(m) of the Act which enable me to order DJ to undergo practical training or education.

[66] The provision of advice on relationship property is a high risk, complex area of law, and I note that as a result of BW's complaint DJ was alerted to deficiencies in her knowledge, albeit too late to be of utility to BW. I am conscious that DJ's conduct occurred over 12 months ago, and that at the time of writing this decision, continuing legal education is shortly to become compulsory for lawyers. If she has not already done so, I urge DJ to consider undertaking practical training if she intends to continue practising in the area of relationship property. In all the circumstances, however, I will not make an order compelling DJ to undertake such training.

Costs

[67] The Guidelines issued by this Office outline the principles that guide awards of costs on review applications.[7] While counsel for BW initially sought orders that DJ should contribute to BW's costs on the complaint, I note from counsel's letter of 3 September 2013 that "[c]onsequent upon liaison between parties...BW no longer wishes to sustain her application for an award of costs pursuant to s156(1)(o)". There are no other grounds on which I might consider revisiting costs orders at the Standards Committee's level of inquiry.

[68] The Guidelines confirm that where the review application was reasonable, and the parties have acted appropriately, parties will generally be expected to bear the costs they incurred in being party to the review.

[7] LCRO Costs Orders Guidelines.

[69] BW's application for review did not challenge the finding of unsatisfactory conduct against DJ; only the penalties the Committee had imposed. As set out above, I agree with the Committee's finding that DJ's conduct was unsatisfactory, but I have not found it necessary either to disturb the Committee's decision to impose a censure, or to impose any other penalty. Accordingly, there is no reason for me to impose an order for costs against DJ.

[70] I turn now to consider whether it is appropriate for me to make any other order for costs. The Guidelines allow for orders to be made between the unsuccessful Applicant on review and the practitioner, although the power to make such orders is to be exercised sparingly. BW brought her review application on advice from counsel. There is no suggestion that BW has acted inappropriately, that she brought her application unreasonably, or that she has acted improperly in the course of her review. Although her application was unsuccessful, in the circumstances I do not consider it appropriate to make any order for costs against BW.

[71] I therefore make no orders for costs in respect of the Standards Committee's inquiry, or this review.

Orders

The finding of unsatisfactory conduct, and order for censure against DJ, are upheld.

I make no order for compensation or costs.

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 I confirm the decision of the Standards Committee.

DATED this 20th day of September 2013

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Dorothy Thresher
Legal Complaints Review Officer

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

BW as the Applicant
BX as counsel for the Applicant
DJ as the Respondent
DK as counsel for the Respondent
DL as a related person or entity
The Manawatu Standards Committee
The New Zealand Law Society