

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

[2021] NZLCRO 067

Ref: LCRO 165/2019

**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**

**RG**

Applicant

**AND**

**TQ**

Respondent

**DECISION**

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

**Introduction**

[1] Mr RG has applied for a review of a decision by the [Area] Standards Committee [X], which, following completion of its inquiry into a complaint made by Ms TQ, made a finding that Mr RG's conduct had been unsatisfactory pursuant to s 12(a) of the Lawyers and Conveyancers Act 2006 (the Act).

[2] Mr RG has applied to review that determination.

**Background**

[3] Mr RG is a partner in the [City]-based law firm, ABC Law (ABC). Mr PC is also a partner in ABC.

[4] Mr RG is the firm's managing partner.

[5] Mr PC acted for Ms TQ and the [Q] family trust on the sale of a residential property.

[6] From 2008 until August 2018, Mr PC had been a trustee of the family trust. He had also represented Ms TQ, in her personal capacity, on the sale of a residential property situated at [address].

[7] Following the sale of the [XY] Street property, Ms TQ was dissatisfied with the manner in which Mr PC had arranged for the sale proceeds to be distributed. She was concerned that Mr PC had apportioned part of the sale proceeds towards settlement of a trust debt when, in her view, he had no authority to do so.

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

[8] Ms TQ lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 18 November 2018.

[9] Her complaint was addressed to:

- (a) PC of ABC lawyers; and
- (b) all the ABC partners for their failure to have a complaints procedure in place.

[10] From the file before me, it appears to be the case that the Complaints Service administratively managed the complaints by opening separate files for each of the ABC partners.

[11] On 18 December 2018, the Complaints Service wrote to Mr RG to advise that Ms TQ had filed a complaint. A copy of her complaint was attached. The Complaints Service correspondence indicated that the complaint against Mr RG was being managed under file number 18543.

[12] The complaint filed by Ms TQ dealt in significant part with the concerns she had regarding Mr PC's management of her file. Mr RG is not specifically identified in the complaint but to the extent that Mr RG is engaged, Ms TQ expressed concern that ABC did not have a complaints procedure in place and was critical that those colleagues of Mr PC's who were aware of her circumstances, had done little to assist her.

[13] On 24 January 2019, Mr RG wrote to the Complaints Service. In doing so, he referenced file number 18450. In that correspondence which attached a copy of his firm's terms of engagement, Mr RG:

- (a) advised that when it became clear that Ms TQ was unhappy about Mr PC's conduct, Mr PC had referred Ms TQ's concerns to him in his capacity as managing partner; and noted that
- (b) he had discussed Ms TQ's concerns with Mr PC before finalising a response to Ms TQ; and noted that
- (c) he considered that Ms TQ's complaint was dealt with fairly and promptly.

[14] Ms TQ was provided with a copy of Mr RG's reply and responded to it. To the extent that her response addressed issues of complaint relating solely to Mr RG, Ms TQ advised that she considered Mr RG's indication to her that she would need to obtain independent legal advice to be "deeply offensive and dismissive of my complaint to the Law Society".

[15] On 12 April 2019, Mr RG was advised in separate correspondence which identified complaint file 18543, that the Committee had resolved to inquire into Ms TQ's complaint. Attached to that correspondence was a notice of hearing, addressed solely to Mr RG, which identified the issues to be considered by the Committee as:

- (a) whether Mr RG breached r 3.8 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 by failing to ensure his practice had established and maintained appropriate procedures for handling of complaints by clients with a view to ensuring each complaint was dealt with promptly and fairly by the practice; and
- (b) whether Mr RG dealt with the complaints made by Ms TQ promptly and fairly and in accordance with the procedures that his practice was required to have in place under r 3.8; and
- (c) whether any of the alleged conduct met the definition of unsatisfactory conduct as defined in ss 12 (a) and (c) of the Act.

[16] Mr PC provided submissions in response to the notices of hearings issued on behalf of all the ABC partners. The submission filed was comprehensive and focused primarily on providing response to the complaints that had been levelled at Mr PC. To the extent that Mr PC's submission addressed complaint that the partners had failed to

establish and maintain appropriate procedures for handling of complaints, Mr PC submitted that:

- (a) the ABC standard terms of engagement detailed the firm's complaints process; and
- (b) Ms TQ had received a copy of the firm's standard terms of engagement in December 2017; and
- (c) the firm's three-pronged approach to addressing complaints when raised had been followed, and
- (d) Ms TQ had initially raised her concerns with him, and he had spent considerable time endeavouring to resolve matters; and

[17] When Ms TQ's concerns had been referred to Mr RG, Mr RG had considered Ms TQ's complaints and responded to Ms TQ.

[18] Ms TQ instructed counsel to assist her in advancing her complaint. Her lawyer filed submissions on 9 May 2019. Those submissions made no direct reference to Mr RG, nor did they address complaint that either Mr RG or his fellow partners had failed to provide Ms TQ with a forum in which her complaints could be appropriately addressed by the firm. The focus of the submissions was on argument that Ms TQ had suffered considerable financial loss as a consequence of errors made by Mr PC.

[19] The Committee delivered its decision on 19 September 2019.

[20] The Committee determined, pursuant to ss 152(2)(b)(i) and 12(a) of the Act that there had been unsatisfactory conduct by Mr RG

[21] In reaching that decision the Committee concluded that:

- (a) Mr RG had accepted the steps taken by Mr PC without conducting any independent investigation or inquiry into Ms TQ's complaint; and
- (b) the objective of r 3.8 was explicit, the rule required that a complaints procedure be in place *with a view* to ensuring that *each* complaint is dealt with promptly and fairly *by the practice* (emphasis by the Committee); and
- (c) it accepted by a fine margin that Mr RG's firm had an appropriate procedure in place for handling client complaints; and
- (d) Mr RG had not dealt fairly with Ms TQ's complaints; and

- (e) Mr RG's conduct fell short of the standard of competence and diligence that a member of the public was entitled to expect of a reasonably competent lawyer in all the circumstances.

### **Application for review**

[22] Mr RG filed an application for review on 1 November 2019. His application was supported by submissions filed by his counsel on that date, and an affidavit sworn by Mr RG on 17 September 2020.

[23] He submits that:

- (a) he was not properly put on notice that he was being separately investigated in relation to his review of Ms TQ's complaint and accordingly did not have an opportunity to adequately respond to the complaint; and
- (b) this constituted a breach of the rules of natural justice; and
- (c) the Committee had incorrectly assumed that Mr RG "simply accepted Mr PC's actions"; and
- (d) the Committee's finding of unsatisfactory conduct and decision to reprimand was unduly harsh in the circumstances.

[24] In his supporting affidavit, Mr RG explained that:

- (a) On receipt of Ms TQ's complaint he had not appreciated that the Law Society was considering separate complaints against the individual partners; and
- (b) In responding to the complaint on behalf of all of the partners he had focused on addressing concern raised that the firm did not have a process for dealing with complaints in place; and
- (c) he had overlooked that the notice of hearing he received made specific reference to the question as to whether he had dealt with the complaint made by Ms TQ promptly and fairly; and
- (d) this oversight was explained by the similarity of the notices that had been received by his fellow partners; and

- (e) on receipt of Ms TQ's correspondence of 8 August 2018 in which suggestion was made that his firm had misappropriated client funds, he concluded that it was imperative that Ms TQ engage fresh counsel; and
- (f) he anticipated that ABC would engage with Ms TQ's new solicitors to resolve her complaint and that is what happened; and
- (g) as a result of those negotiations, a confidential settlement was reached with Ms TQ; and
- (h) by the time Ms TQ's complaint was received he was well acquainted with the file and familiar with the issues; and
- (i) he considered the unsatisfactory conduct finding to be unduly harsh.

[25] Ms TQ was written to on three occasions with invitation to comment on Mr RG's review application. No response was received.

### **Review on the papers**

[26] This review has been undertaken on the papers pursuant to s 206(2) of 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.

[27] 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**

[28] 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>1</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

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<sup>1</sup> *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

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.

[29] More recently, the High Court has described a review by this Office in the following way:<sup>2</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.

[30] 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**

[31] The issues to be addressed on review are:

- (a) Was Mr RG’s response to the complaint compromised by confusion caused by the manner in which the Committee had progressed its inquiry into the complaints against the practitioners?
- (b) Did Mr RG’s firm have a procedure in place for addressing clients’ complaints as required by r 3.8?
- (c) Did Mr RG breach r 3.8?

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

*Was Mr RG's response to the complaint compromised by confusion caused by the manner in which the Committee had progressed its inquiry into the complaints against the practitioners?*

[32] It is submitted for Mr RG that he had, when responding to Ms TQ's complaint, proceeded on the understanding that the issue he was required to address, was confined to the question as to whether his firm had an appropriate complaints procedure in place.

[33] Mr RG says that he had failed to appreciate that the Committee was advancing its inquiries as a series of separate complaints against each of the individual partners in the firm.

[34] The notices of hearing received by the ABC partners (excluding Mr PC and Mr RG) were identical, and required the partners to address only one issue, namely whether the partners had breached r 3.8 by failing to ensure that the practice had an appropriate procedure in place for handling complaints.

[35] Mr RG accepts that he had overlooked that the notice of hearing he received had informed him that the Committee was considering the question as to whether Mr RG had managed the complaints made by Ms TQ promptly and fairly.

[36] The second issue identified, clearly engaged a more direct consideration of the steps specifically taken by Mr RG as opposed to request for a general explanation of the firm's mechanism for managing complaints.

[37] On recognising that his oversight had resulted in him failing to specifically address in his response to the Committee complaint that he had failed to give proper consideration to Ms TQ's concerns, Mr RG understandably was concerned that the Committee was not fully informed of his position.

[38] I accept Mr RG's explanation that he inadvertently overlooked that the notice of hearing he received referenced an issue that was additional to the matter identified in the notices of hearing received by his partners.

[39] The Committee cannot be criticised for failing to adequately inform Mr RG. The notice of hearing provided to Mr RG was issued under a separate file number, identified Mr RG personally and made no reference to his fellow partners. The notice of hearing clearly informed Mr RG that the question as to whether he had adequately dealt with Ms TQ's complaints, formed part of its investigation.

[40] However, I am satisfied, that Mr RG's failure to provide response to all of the issues identified by the Committee was the result of a genuine oversight on his part.

Mr RG's failure to fully present his position is readily cured on review. In advancing his review application, Mr RG has been provided with opportunity to address concern that he had neglected to adequately respond to Ms TQ's complaints.

*Did Mr RG's firm have a procedure in place for addressing clients' complaints as required by r 3.8?*

[41] Rule 3.8 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 provides that:

Each lawyer must ensure that the lawyer's practice establishes and maintains appropriate procedures for handling complaints by clients with a view to ensuring that each complaint is dealt with promptly and fairly by the practice. When a lawyer owns a sole practice, the complaints procedure may include the reference of complaints to an independent lawyer for consideration. This rule does not bind a lawyer whose status in a practice is solely that of an employee.

[42] The Committee concluded "by a fine margin" that Mr RG's firm had an appropriate procedure in place for handling client complaints.

[43] As noted, Ms TQ whilst provided opportunity to respond to Mr RG's review application, has elected not to do so.

[44] There is no evidence before me then on review which could persuade me to adopt a different view to the Committee. I accept, as did the Committee, that Mr RG's firm had appropriate procedures in place for handling client complaints.

[45] That procedure is clarified in the firm's standard terms of engagement which advises the firm's clients of a three-stage process that clients may initiate if they are dissatisfied with the service received from the firm.

[46] At first step, concerns are to be addressed directly with the lawyer who is undertaking the work. If step one fails to resolve the client's concerns, the client is advised to contact the firm's manager, or any of the firm's partners. If that step fails, the client is informed of their right to refer their concerns to the New Zealand Law Society's Complaints Service.

*Did Mr RG breach r 3.8?*

[47] In concluding that Mr RG had breached r 3.8, the Committee noted that Mr RG had "simply accepted Mr PC's actions without any independent investigation or enquiry into Ms TQ's complaint".

[48] In emphasising that compliance with r 3.8 does not simply require a lawyer's practice to have procedures for addressing complaints in place, the Committee noted that the rule required complaints to be dealt with both promptly and fairly.

[49] The Committee accepted that Mr RG had responded promptly when alerted by Mr PC to Ms TQ's concerns but considered that he had failed to conduct an inquiry. It was the Committee's view, that Mr RG had simply accepted Mr PC's account of events and had failed, as he was required to do, to implement a formal process to address the concerns Ms TQ had been raising.

[50] With respect to the Committee, I disagree with that conclusion.

[51] I do not consider that the Committee in concluding that Mr RG had failed to conduct an independent inquiry, paid sufficient regard to either the circumstances and events which had proceeded Mr RG becoming involved on 8 August 2018 or to the realities of the circumstances which Mr RG was required to respond to when Mr PC brought his troubles to Mr RG's door on 8 August 2018.

[52] When considering conduct complaints, context is crucial.

[53] When a lawyer's client becomes dissatisfied with their lawyer's performance, that dissatisfaction may not immediately manifest in the form of a formal complaint, or in an expression of discontent which reflects a client wishing to invoke a formal complaint process.

[54] Frequently it is the case that what the client wants, is for the lawyer to remedy the mistake that the client considers the lawyer to have made.

[55] That was the case here.

[56] Ms TQ was concerned that Mr PC had transferred funds without authority.

[57] She wanted Mr PC to remedy the situation.

[58] She wanted funds that she considered had been improperly used to settle a trust debt, to be returned to her.

[59] Her concerns were understandably, and properly, raised with the lawyer who had been managing her affairs – Mr PC.

[60] The first step in the firm's complaints process was followed. Concerns were directly addressed to the lawyer responsible for doing the work.

[61] What followed, was a lengthy and regrettably unsuccessful attempt by Mr PC to resolve the problem.

[62] As time progressed, Ms TQ's urgent attempts to finalise the purchase of a residential home were thwarted by her inability to access funds that she considered had been erroneously transferred to the family trust. The situation was clearly extremely stressful for her.

[63] Mr RG was first alerted to the problems that Mr PC was having in mid-July 2018. He says that Mr PC had informed him in passing that his (Mr PC's) discussions with Ms TQ were becoming difficult. Mr RG's involvement at this point was limited to discussing the issues underpinning the dispute between Ms TQ and her fellow trustee, with Mr PC.

[64] Mr RG says that Mr PC had further discussions with him towards the end of July 2018. He says that at this stage he formed the impression that Mr PC had confidence that the dispute between Ms TQ and her fellow trustee was capable of being resolved by agreement.

[65] Whilst Mr RG was aware that Ms TQ was dissatisfied with the service she had received from Mr PC, he had not formed a view that Ms TQ's dissatisfaction had evolved to the point where the firm should have addressed her concerns as a formal complaint. It was his understanding (and it was the case) that Mr PC was continuing to work with Ms TQ to try and address her concerns.

[66] It was reasonable for Mr RG to have had confidence in Mr PC's indication to him that an agreement could be reached that would achieve a positive outcome for Ms TQ. Mr PC was not a staff solicitor or associate in the firm. He was a fully-fledged partner.

[67] On or around 8 August 2018, Mr PC informed Mr RG that he'd had a difficult conversation with Ms TQ, and that Ms TQ had forwarded him an email in which she had made reference to ABC's "complaint person".

[68] It was at this point that Mr RG could fairly have been expected to realise that he, in his capacity as managing partner, was now dealing with concerns that had escalated and crystallised into a formal complaint.

[69] On 8 August 2018, Ms TQ wrote to Mr PC expressing serious concerns regarding what she perceived to have been a lamentable failure on Mr PC's part to have

resolved the issues which had resulted in her not receiving her full entitlement to her legitimate share of proceeds from sale of the [XY] Street property.

[70] Her correspondence reflected the considerable degree of anxiety she was experiencing as a consequence of what she now considered to have been a misappropriation of funds by ABC. In this correspondence she:

- (a) alleges that a ABC employee had settled a transaction using stolen funds;  
and
- (b) alleges that the employee had attempted to conceal the transaction.

[71] Mr PC provided Mr RG with Ms TQ's correspondence.

[72] On 9 August 2018, Mr RG wrote to Ms TQ to inform her that his firm could no longer continue to act for her. He noted that she had levelled serious allegations against the firm, including allegation of dishonesty. He informed Ms TQ that the firm would provide copies of relevant documents to her new lawyers.

[73] Mr RG says that in the face of allegation that ABC had misappropriated a client's funds, he considered it imperative that Ms TQ be informed that she would need to engage new lawyers.

[74] I agree with him.

[75] I do not consider that it was either reasonable or desirable for Mr RG to attempt to proceed further with Ms TQ in an attempt to resolve her concerns. He was familiar with the issues. He had been briefed by Mr PC. He was aware of the attempts that had been made by Mr PC to resolve the difficulties. It had become critical at this juncture, that Ms TQ be independently advised.

[76] It would be difficult to envisage how a genuine and good faith-based complaint inquiry could proceed. Ms TQ's position needed to be protected. It was imperative that she obtain independent advice.

[77] Mr RG says that he had expectation that when Ms TQ instructed new counsel that she would continue to engage with ABC to address her complaint and that is what he says in fact happened. He notes that Ms TQ's complaint was resolved and a confidential settlement was reached between Ms TQ and ABC.

[78] The Committee correctly observed that its task was to assess the conduct issues, irrespective of the fact that ABC had reached a settlement with Ms TQ.

[79] But this was not a situation where possibility of settlement was raised to divert attention from the conduct issues.

[80] Mr RG says, and I accept his evidence, that when he advised Ms TQ that it would be necessary for her to secure new lawyers, it was his expectation that the question as to whether his firm had provided competent representation to Ms TQ would need to be resolved.

[81] I do not consider that Mr RG's actions met the threshold of constituting conduct that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

[82] In reaching that view I give weight to the following.

[83] First, I consider that Mr PC carried the primary responsibility for ensuring that Ms TQ's concerns were addressed.

[84] Second, I am satisfied that it was reasonable for Mr RG to have concluded that it was inappropriate to endeavour to proceed further attempts at reaching a resolution, in circumstances where the need for Ms TQ to obtain independent advice was so manifest.

[85] Third, I do not consider that Mr RG's decision to advise Ms TQ that his firm could not continue to act was reflective of an attempt by him to avoid responsibility for addressing Ms TQ's concerns. Whilst he had not been earlier called on to specifically address Ms TQ's complaint, he was familiar with the file and aware of the ongoing efforts by Mr PC to resolve the problem.

[86] Fourth, I do not agree with the Committee that Mr RG's conduct reflected a failure on his part to conduct an independent investigation into Ms TQ's concerns. This was not a situation where Mr RG accepted Mr PC's version of events without demur, and in so doing, presented as indifferent to Ms TQ's concerns. Mr RG properly recognised that the situation was incapable of being resolved through the vehicle of his firm's internal complaints process.

[87] It has been observed that conduct rules must be interpreted and applied as sensibly and fairly as possible.<sup>3</sup>

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<sup>3</sup> *Wilson v Legal Complaints Review Officer* [2016] NZHC 2288 at [43].

[88] A sensible and fair approach to an assessment as to whether a practitioner's conduct constitutes a breach of a conduct rule, demands a careful consideration of the context in which the conduct arose.

[89] At the stage in proceedings where Mr RG could reasonably be said to have been called on, as the firm's managing partner, to provide oversight of his firm's complaints process, it had become both untenable and unrealistic to attempt to resolve the dispute through the firm's internal complaint process.

[90] I do not consider that Mr RG breached r 3.8.

[91] It follows, that the Committee's finding of unsatisfactory conduct, is reversed.

*Anonymised publication*

[92] 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**

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

**DATED** this 19<sup>TH</sup> day of May 2021

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

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

Mr RG as the Applicant  
Ms TQ as the Respondent  
Ms BM as the Representative for the Applicant  
Mr PC as a Related Person  
[Area] Standards Committee [X]  
New Zealand Law Society