

ORDER FOR PERMANENT SUPPRESSION OF PARAGRAPH [15] IN ANY PUBLISHED VERSION OF THIS DECISION. ORDER FOR PERMANENT SUPPRESSION OF NAMES OF CLIENTS AND WEALTH MANAGEMENT FIRM AS RECORDED IN PARAGRAPH [21] OF DECISION [2022] NZLCDT 34 (22 SEPTEMBER 2022). ORDERS ARE MADE PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2022] NZLCDT 49

LCDT 004/21, 015/21, 004/22

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 4**

Applicant

AND

NESHIA HOLDAWAY

Respondent

DEPUTY CHAIR

Dr J G Adams

MEMBERS OF TRIBUNAL

Mr S Hunter KC

Ms K King

Ms M Noble

Ms P Walker

HEARING 16 December 2022

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 22 December 2022

COUNSEL

Mr P Davey for the Standards Committee

Ms V Wethey and Ms M Fee for the Respondent Practitioner

DECISION OF THE TRIBUNAL RE INTERIM SUSPENSION

[1] An important purpose of the Tribunal's disciplinary duties is to protect the interests of the public and thereby maintain public confidence in the provision of legal services.¹ To achieve that purpose, among others, the Lawyers and Conveyancers Act 2005 (the Act) provides what it terms a "more responsive regulatory regime."² One such responsive tool is the power of interim suspension, to suspend a lawyer from practice "until the charge has been heard and disposed of."³

[2] This judgment gives reasons for our order of 16 December 2022, suspending Ms Holdaway from practice until further order. The interim order was made in the context where Ms Holdaway was granted an adjournment of the penalty hearing so she could file further evidence and assemble a cohesive case, and to enable the Standards Committee reasonable time to respond to her case.

[3] An order for interim suspension is not made lightly. The Tribunal can only do so in this case "if it is satisfied that it is necessary or desirable to do so having regard to the interests of the public."⁴ We are universally satisfied that the threshold is surpassed and that we would be disregarding our duty to the public interest if we failed to make this order at this time.

[4] We address the following issues:

- What public interests are engaged in this case?
- Is the interim order necessary or desirable?
- Why are we satisfied, given the prejudicial effect on Ms Holdaway?

¹ Section 3(1)(a) and (b) of the Act.

² Section 3(2)(b) of the Act.

³ Section 245(1) of the Act.

⁴ Section 245(2)(a) of the Act.

What public interests are engaged?

[5] Ms Holdaway is a barrister and solicitor in sole practice. She undertakes conveyancing work and operates a trust account. The day to day work of such a practice requires the practitioner to give effect to client instructions “competently and in a timely manner.”⁵

[6] We have already heard the case as to liability and found Ms Holdaway guilty of misconduct on three discrete sets of charges. The charges had a theme of her inadequate engagement with her governing body. Underlying those charges were client and lawyer complaints about her failures to inform clients, or give effect to client instructions, in a timely manner.

[7] An example is the “L” case described in para [16] of our liability decision.⁶ Client instructions to pay a substantial sum to a wealth management firm were not complied with for well over three months. Ms Holdaway’s excuses for tardiness did not convince us. Her view that anti-money laundering checks would take between six to eight weeks in this case (where the client had formerly had funds with the same wealth management firm) made no sense. Ms Holdaway’s fear that, in some way, her own privacy would be at risk because of her trustee status seemed unfounded. In the meantime, the client’s instructions were varied but Ms Holdaway, when she finally acted, followed the prior instruction, not the later instruction.

[8] Ms Holdaway’s actions in that case were tardy and capricious. Our concern is that they fall within a pattern of comparable conduct relating to several clients where complaints have been made. Without listing every item here, we refer to Mr Davey’s written submissions of 10 October 2022, including similar shortcomings. On the material available to us at this stage of Ms Holdaway’s case, our considered view is that her conduct as a sole conveyancing practitioner has been tardy and capricious on at least several significant occasions. We cannot see any credible basis for predicting that her conduct will improve in the foreseeable future. Accordingly, the public interests are firmly engaged. In short, if she is permitted to continue practising at the present time, we foresee similar problems arising for other clients.

⁵ Rule 3 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

⁶ *Auckland Standards Committee 4 v Holdaway* [2022] NZLCDT 34, 22 September 2022.

Is the interim order necessary or desirable?

[9] Among considerations under this head, we consider the likely duration of the order, likely reasons for her defaults, and our assessment of Ms Holdaway's abilities to achieve an acceptable standard of practice (timely communication and timely fidelity to client instructions) in the interim.

How long will the interim suspension endure?

[10] The charges have been adjourned, probably to early March 2023. Unless the interests of justice require yet another adjournment, the period of risk to her clients is more than two months. Ms Holdaway has been slow to provide material to assist us on penalty. Despite having had competent lawyers acting for her since late October, she did not manage to file any substantive material until the late afternoon before the penalty hearing on 16 December.

[11] Throughout the management of the charges, Ms Holdaway has repeatedly sought adjournments, offering reasons for her inability to perform to successive timetables. She instructed lawyers just on the expiration of her post-hearing timetable. The Minute of the Deputy Chair following a teleconference on 27 October contained this portion:

The revised timetable must be fair but firm. We continue to encourage Ms Holdaway to participate fully so the Tribunal can make an informed assessment. She holds herself out as fit to practise law as a sole practitioner. We expect her to manage her preparation in a reasonably practicable time-frame. The revised timetable provides ample time for her to achieve this.

She was required to file affidavit evidence and submissions by 25 November. She was more than a fortnight late, on the eve of the hearing.

[12] We appreciate having received indication from her counsel that an adjournment would be sought. That caused us to consider the situation. We were troubled about her ongoing ability to practise, given the issues underlying the charges and our assessment of her functioning.

[13] Given Ms Holdaway's almost chronic inability to meet timetables in this case, we assess that the duration of the interim suspension will be at least two full months but we cannot rule out the possibility that she might find reason to seek additional time.

We would like to bring this matter to resolution but the interests of justice well outweigh expedition, although not forever.

What are the likely reasons for Ms Holdaway's practice deficits?

[14] At the liability hearing, and through her affidavit material and exhibits filed electronically late on 15 December, she advances a case that she has been disabled by a variety of health problems. She presents an heroic picture of herself as a practitioner who has soldiered on at work, despite the severity and range of her symptoms.

[15] The following sentences of this paragraph of this decision are to be redacted to preserve Ms Holdaway's private information. [Redacted].

[16] Some of her troubling conditions appear to be more or less chronic. What is constant, is that she complains she is frequently disabled. We find that her disabilities prevent her from providing the kind of practice that members of the public are entitled to expect in a sole practitioner.

[17] Ms Holdaway does hope that her eyes may adjust⁷ during the Christmas vacation but we have no medical evidence to establish a clinical basis for her hope. Given the duration of severe disability, we are not prepared to risk the public interests on the basis of her hope. An independent assessment of her overall functioning would be required to persuade us, given the severity and long-standing of her disabilities, and the evidence of her failure to address client needs in a minimally satisfactory manner.

[18] Moreover, Ms Holdaway's disciplinary history⁸ demonstrates a pervasive pattern which adds troubling context. We are not persuaded that relief of her eye problems will produce changes in her professional behaviour of concern.

What is our assessment of Ms Holdaway's professional functioning?

[19] Ms Holdaway attended the liability hearing but we formed the view that she was somewhat dissociated from what was going on in the hearing. She was vague, seemingly puzzled. Put frankly, we were troubled about her cognitive performance.

⁷ [Redacted].

⁸ Annexed to Mr Davey's submissions of 10 October 2022.

None of us had experienced a similar demeanour in any other disciplinary case. In our deliberations, we wondered how she could practise professionally, given her demeanour during that hearing. This is not a concern about character but about her ability to carry out the ordinary tasks a sole practitioner needs to do.

Why are we satisfied, given the prejudicial effect on Ms Holdaway?

[20] At the hearing on 16 December, Mr Davey drew our attention to a notice issued by the Registrar of Companies on 17 November 2022 to remove three companies associated with Ms Holdaway. On the face of the public notice, Norwest City Law Limited (the company under whose name she practices), Norwest City Law Trustee Company Limited and Norwest City Law Trustee Company No. 1 Limited, are all to be removed from the Companies Register on 20 December 2022 for failure to respond to a statutory requirement. Ms Wethey took instructions and advised Ms Holdaway has taken steps about this. The fact of the notice is a concerning sign but this matter is not critical in our decision to make an interim suspension order. We base our decision on the other matters set out above.

[21] On the material available to us at this stage, we find that the public is at ongoing risk of Ms Holdaway's patchy professional performance in the immediate future. The risk is imminent and significant. Paying moneys where instructed, dealing with files as instructed, accounting to those who are entitled, and communicating to clients and colleagues, are all basic matters of importance. We see no realistic, substantial basis upon which we can expect her performance can, or will, improve within the likely term of the order.

[22] Ms Wethey referred us to two former decisions of the Disciplinary Tribunal, *Pomeroy*⁹ and *Shand*.¹⁰ Two members of the present panel sat on *Pomeroy*, and three members of the present panel sat on *Shand*. Formally, those two cases involved failure to engage properly with the regulator but otherwise neither of those cases is anything like the circumstances in the present case. The risk to the public that arises here distinguishes it from either of those cases.

⁹ *Auckland Standards Committee 1 v Pomeroy* [2020] NZLCDT 7.

¹⁰ *Auckland Standards Committee 4 v Shand* [2021] NZLCDT 9.

[23] Ms Holdaway has been understandably shaken by publicity in news media about the outcome of the liability hearing. She is properly concerned about the effect of publicity on her reputation. From Standards Committee submissions, she is aware that strike-off is being sought as their prime submission. We have managed the publicity aspects short-term by suppression orders.

[24] We have carefully weighed the gravity of the interim order on Ms Holdaway before determining that we were satisfied that it needed to be made to give proper effect to the legislative intent.

[25] This decision may not be published so long as the interim order of suspension cannot be published. In any case, we make a permanent order that paragraph [15] of this decision (save for its first sentence) shall be redacted in any published version of this decision.

DATED at AUCKLAND this 22nd day of December 2022

Dr JG Adams
Deputy Chairperson