THE NAMES OF THE COMPLAINANT AND HER SISTER, THE FAMILY NAME OF THE CLIENT, MR PARK'S FORMER EMPLOYER AND FIRM NAME, MR PARK'S FELLOW EMPLOYEE WHO ATTENDED THE 22 JUNE MEETING, AND THE NAME OF THE LAWYER WHO PROVIDED AN OPINION OF THE WILL FOR MR PARK'S FIRM SHALL NOT BE PUBLISHED. THESE ORDERS MADE PURSUANT TO S 240 LAWYERS AND CONVEYANCERS ACT 2006.

NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2023] NZLCDT 51

LCDT 006/23

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **AUCKLAND STANDARDS COMMITTEE 3**
Applicant

AND **JOSEPH BOAZ PARK**
Respondent

DEPUTY CHAIR
Dr J Adams

MEMBERS OF TRIBUNAL
Ms N Coates
Ms M Noble
Ms M Scholtens KC
Dr D Tulloch

HEARING 9 - 11 October 2023

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 20 November 2023

COUNSEL
Ms E Mok for the Standards Committee
Ms A Paul for the Respondent Practitioner

DECISION OF TRIBUNAL ON LIABILITY

Alleged incompetence and rudeness

[1] Mr Park got into difficulties when he attempted work beyond his accustomed scope. The will he crafted for an elderly client purported on one view to give all her property to Mr Park, an outcome quite different from what he or his client intended. When his client died, a few weeks after having signed the will, Mr Park's inexperience in estate administration soon surfaced.

[2] The complainant, a major beneficiary of the will, is the older of Mr Park's client's two daughters. For many years, she and her husband have worked as Christian missionaries in an undisclosed country in circumstances where she is not readily contactable. Her mother's body had already been cremated before she got the unexpected, unwelcome news. Although she had not seen her mother for more than a year[1] (and their last long-distance contact occurred a couple of months before her mother died[2]), she believed she knew her mother intimately. She had difficulty accepting some of the things she learned about her mother's affairs, for example, that her mother had borrowed money on a reverse mortgage, and that her mother had made a will with a lawyer who was unknown to the complainant.

[3] The complainant's younger sister is also a beneficiary of the will. She usually resides with her husband in the United States but had been with their mother in New Zealand for periods amounting to about 11 months spread across her mother's final 20 months.[3] The younger sister knew about the reverse mortgage and had accompanied her mother on appointments to Mr Park, but she departed New Zealand before the complainant was released from Managed Isolation and Quarantine (MIQ). Apart from short informative communication a few days after their mother died, the

[1] NoE at 25, line 8. She last saw her mother in January 2019, 15 months before her mother's death on 23 April 2020.
[2] NoE at 3, line 21. Last contact end February 2020, about two months before her mother died.
[3] Bundle at 394, letter younger sister to Mr Park 26 July 2020.

long-estranged[4] sisters had no contact for months.[5] The complainant discounted her younger sister's information and had no means of checking the validity of her own concerns and projections.[6] Her younger sister was supportive of Mr Park throughout, something the complainant tried to undermine when she telephoned her younger sister in August 2020.[7]

[4] The complainant was suspicious of Mr Park from the outset and her conversations with friends who were senior lawyers fuelled her concerns. Mr Park's first email to her on 27 April 2020[8] was courteous and considerate but the complainant's response expressed her shock and rapidly moved to a confrontational, inquisitorial mode.[9] Thus, the relationship between the complainant and Mr Park got off to a bad start and soon got worse. Although they never met and had only one telephone conversation, she said in oral evidence that Mr Park was "nasty and cruel"[10] and "rude"[11] to her.

[5] Mr Park faces two charges.[12] The first charge alleges he was incompetent in attending to a mortgage, drafting a will, and administering an estate. The second charge alleges he treated a beneficiary, and perhaps colleagues, with disrespect.

[6] The issues we must decide are:

- Is his conduct as an executor subject to professional discipline?
- What professional deficiencies, if any, did Mr Park's conduct exhibit?

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[4] Bundle at 177. Note that younger sister attempted fruitlessly to contact complainant through intermediary to advise her of mother's physical deterioration, without response.
[5] NoE at 2, lines 23–24. Younger sister vacated the mother's home on 10 May 2020, returned to USA, and the complainant had no contact with her until August 2020. (See Bundle at 393) The complainant stated, in first email to Mr Park, that she had gained some information from her sister, (See Bundle at 497).
[6] E.g., The complainant held to a view that her mother had been in a coma for days before her death whereas her younger sister repeatedly confirmed that she was only in the hospice for 2 days before her death, and was alert and responsive until close to the end; and that she had taken her final shower, unaided, The younger sister was present at these events. The complainant, who was out of New Zealand throughout, advanced an uncorroborated projection that her mother's funds were being depleted while she was in a coma.
[7] Bundle at 393, younger sister email to Mr Park.
[8] Bundle at 495 (English translation from Korean).
[9] Bundle at 496.
[10] NoE at 10, lines 25–27.
[11] NoE at 10, line 27.
[12] With alternatives to accommodate our findings on gravity.

- If those deficiencies require professional discipline, at what level (misconduct, s 241(c) incompetence, or unprofessional conduct) should liability be fixed?

- Which rules does Charge 2 engage?

- Did his conduct regarding the complainant or colleagues fall to a level where professional discipline should be engaged?

- If so, at what level should liability be fixed?

Is his conduct as an executor subject to professional discipline?

[7] Ms Paul argues that the Standards Committee (and, by extension, the Tribunal) cannot discipline conduct of a lawyer executor because that is the exclusive preserve of the High Court. Ms Paul further contends that Mr Park's conduct as executor cannot be subject to professional discipline because that conduct does not involve regulated services. This issue affects both charges where they touch on Mr Park's work as executor.

[8] Our disciplinary jurisdiction is prescribed by the Lawyers and Conveyancers Act 2006. Nothing in that Act limits our disciplinary jurisdiction in the ways Ms Paul contends. First, Mr Park never obtained a grant of probate and therefore was never placed in a position of accountability to the High Court. Second, our jurisdiction does not compete with any probate or administration jurisdiction of the High Court which addresses quite different concerns. We reject Ms Paul's submission that any of the matters we are considering falls under the exclusive preserve of the High Court.

[9] As to Ms Paul's further contention, professional discipline of lawyers is not limited to the realm of regulated services. Section 7(1)(b)(ii) extends areas of potential discipline to areas unconnected to the provision of regulated services, albeit with a different threshold.

[10] But, in this case, Mr Park's conduct as executor was so inextricably connected to his solicitor work that it must be susceptible to professional discipline. Put another way, his executor work was not so unconnected to the provision of regulated services

as to be beyond disciplinary reach save for s 7(1)(b)(ii). This is consonant with the High Court decision in *Burcher*[13]. In *Burcher,* the court had to determine whether trustee activities of a suspended solicitor fell outside the realm of "legal work." Differences in context between *Burcher* and the present case are immaterial because the critical point is whether the work was outside the realm where professional discipline could intrude. In *Burcher,* Whata J ruled[14]:

> To my mind, in light of the clear purposes of the Act and the fundamental obligations of lawyers, s 7 should be construed broadly to include practicing lawyers who are undertaking "legal work" as trustees. To hold otherwise would enable practicing lawyers to avoid sanction for incompetence by simply invoking the status of trustee, even though such lawyers regularly charge for their time. Furthermore, it would be perverse to exclude a solicitor trustee from s 7 sanction because he or she was suspended at the time. The entire purpose of the suspension is to ensure that person does not perform such legal work because they are deemed unfit to practice while under that suspension.

[11] In *Burcher,* Whata J considered the several circumstances of interest in that case, and ruled whether they fell foul of the line he drew. We agree with that reasoning but, even if we did not, the decision is binding on us. In the present case, it would be artificial to try to distinguish executor work from solicitor work.

[12] All of Mr Park's work as executor necessarily occurred before any grant of probate was achieved because Mr Park renounced before obtaining a grant of probate. His communications with beneficiaries and others, and his arrangements regarding security of estate property, all fall, in our view, within an area so linked to the provision of regulated services that he cannot avoid the scrutiny of professional discipline for them. It does not matter whether he had power to charge for his work; the nature of the work, for the reasons expressed in *Burcher,* must be subject to professional discipline in order to achieve the purposes of the Act.

[13] The Standards Committee's primary position was always that Mr Park's work as executor is so inextricably linked to conduct involving regulated services that it can be disciplined within the provisions related to regulated services. We agree, and do not need to address the pleaded alternative under s 7(1)(b)(ii).

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[13] *Burcher v Auckland Standards Committee 5* [2020] NZHC 43.
[14] See above n 13, at [57].

What professional deficiencies, if any, did Mr Park's conduct exhibit?

Complainant's shock and suspicion

[14] Mr Park was an employed solicitor with ten years' experience in conveyancing but negligible experience in wills or estate work when he acted for his elderly client to register a reverse mortgage on her home and to draft her will. After her death, as sole executor, he took steps towards obtaining probate. He liaised with the two residuary beneficiaries, adult daughters of the deceased.

[15] Neither Mr Park nor his employer firm had any involvement with, or knowledge of, the 79-year-old client before January 2020. Like Mr Park, she was born in Korea and Korean was their first language. An intelligent, educated woman, formerly a schoolteacher, she had come to New Zealand with her daughters some thirty years earlier.[15] She never divorced her husband so was still formally married when she died. She and Mr Park attended different Christian churches in New Zealand. It is a reasonable inference that she approached him after becoming aware of him through some Korean network. They conducted their conversations in Korean language, but the formal documents were completed in English. The client did not tell Mr Park she had terminal cancer.

[16] Mr Park met the client on three occasions, all within two months in 2020. On 23 January, she discussed a reverse mortgage she had arranged with Heartland Bank, and they had a preliminary discussion about her will instructions. On 4 March, she signed an engagement letter; they completed the documentation for the reverse mortgage; Mr Park drafted her will and she signed it. On 13 March, they had another in-person meeting.[16]

[17] The younger daughter, aged 47 at her mother's death on 23 April 2020, accompanied her mother to visit Mr Park although she was not present in the room when he took will instructions.

[18] The complainant is two years older than her sister. For personal security reasons, she observes secrecy about her country of location and, although Mr Park

[15] Bundle at 500. Complainant's email 29 April 2020 says the mother and daughters immigrated to New Zealand thirty years earlier [which would be about 1990].
[16] The evidence does not disclose what happened on that occasion.

was keen to contact her immediately on her mother's death, her younger sister was unable to provide a means of doing so.

[19] The questions and tone in the complainant's first email[17] disclose that she was suspicious about Mr Park. Her disbelief and suspicion gave rise to fears he might have taken improper financial advantage of her mother. Eventually, she projected numerous allegations or suggestions about Mr Park that proved to be untrue.[18]

[20] The relationship between Mr Park and the complainant became strained. Through lawyer friends in New Zealand, the complainant was referred to lawyers who could act for her. More or less successively, she instructed Mr Tae Wok Kwon (a barrister), Mr Julian Long (a barrister) and Ms Kristine King (solicitor).

[21] The complainant had only one telephone conversation with Mr Park. She declined to meet him. She refused to provide him with identifying documents like those her sister had provided.[19] The complainant's position became entrenched.

[22] Ms King arranged a meeting of professionals. It took place on 22 June 2020 at the offices of Mr Park's employer. The complainant was represented by Ms King and Mr Nelson (a junior to Mr Long). Mr Park attended together with his employer and a formally untrained legal executive and process server for [Mr Park's employer firm].

[23] Following the airing of concerns at the meeting about money, documentation and administration issues, ongoing negotiations eventually led to a resolution. Mr Park resisted giving up his role as executor until late in those negotiations. He applied again for probate after the 22 June meeting[20] but the application was again rejected by the Court. Mr Park renounced his interests under the will on 20 November 2020.[21]

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[17] Bundle at 496–497 email 27 April 2020 complainant to Mr Park.
[18] Mr Park carefully lists 14 of these on page 22 of his submissions to the Standards Committee: Bundle at 390. A random example is her false allegation that Mr Park or his employer got commission on the reverse mortgage whereas all the remuneration they received was their fee for the legal work done. Another example is her assertion that there was a sinister relationship between her mother's church and Mr Park's church – Mr Park obtained documentation from both churches to refute this wild accusation.
[19] This topic is revisited under Charge 2.
[20] Bundle at 42.
[21] Bundle at 271.

Standards Committee allegations

[24] Against this background, the Standards Committee alleged professional incompetence by Mr Park. The allegations concerned his conduct concerning the mortgage, the will and estate administration. They centred on the following particulars (which we cluster):

1. *Structural and drafting errors*: drafted a will in breach of Rule 5.10[22] because it gave the practitioner the beneficial gift of the estate; drafted a will that failed to give effect to the client's instructions; drafted a will that misnamed the testatrix, and contained other spelling errors, and structural errors; and drafted an inadequate charging clause.

2. *Inattention to codicils***:** failed to give adequate advice and take action to ensure "wish" documents had testamentary effect.

3. *Failed to observe good practice*: failed to obtain medical advice about client's capacity; failed to check who formerly acted for her; failed to take adequate file notes (regarding mortgage and will); failed to give adequate advice about the mortgage; failed to provide the client with a Korean translation of the documents.

4. *Failed in sound administration practice*: failed to advertise for prior wills; failed to pay the funeral account (incurring a penalty); acted inappropriately by requiring the beneficiaries to sign an occupation license and pay rent if they entered the estate property.

[25] *As to structural and drafting errors*, we find that the client decided to appoint Mr Park as her sole executor with substitution (if necessary) of his employer. In broad terms,[23] she wanted her residuary estate to be divided equally between her two daughters. Mr Park attempted to achieve this by using a precedent he had retained from a former employer. Regrettably, the precedent did not fit his client's circumstances. The precedent he used was suitable where a testatrix wishes to appoint a spouse or partner as sole executor and give that spouse or partner the entire

[22] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[23] Subject to her "wish document(s)" which we address under item 4 in our list of particular allegations under Charge 1 listed above in [24]. See paragraphs [38]–[43] below.

estate; but if the spouse or partner does not survive for long, to substitute other beneficiaries and to list powers the trustee might need in that event.

[26] Clauses 2 and 3, and the first line of Clause 4 of the will, state:

> **2. I APPOINT** my solicitor **JOSEPH BOAZ PARK** of Auckland, Solicitor and failing her for any reason **[MR PARK'S PRINCIPAL]** of Auckland, Solicitor and failing him for any reason a person appointed by the President for the time being of the New Zealand Law Society to be the executor and trustee (hereinafter "trustee") of this my Will.
>
> **3. I GIVE DEVISE AND BEQUEATH** the whole of my estate both real and personal of whatsoever kind and nature and wheresoever situate including all property (if any) over which I may have some power of appointment unto my said solicitor.
>
> **4. IF** my said solicitor shall not survive me or die within 30 days after my death then:

[27] Ordinary construction of a will in this form, particularly for those familiar with the template, recognises the disjunct between clauses 3 and 4. It is usually an "either/or" situation. Either clauses 2 and 3 operate or clause 4 and following operate. Only if Mr Park fails to survive the testatrix by 30 days does clause 4 (and following) operate. We are faced with differing opinions about how the will should be construed. We shall deal with that shortly, after having first noted all its alleged defects: these include use of wrong pronoun, misrepresentation of will-maker's name, and that the charging clause 5(g) is ineffective.

[28] By failing to adjust genders from his precedent, Mr Park was denoted by the female-gendered pronoun "her" in clause 2. Most of the panel members notice that third party gendered pronouns often prove difficult for Asian speakers because English grammar operates differently in this respect from many Asian languages. As we understand it, Korean (Mr Park's first language) does not generally use third party pronouns. We accept that, to practise as a lawyer in New Zealand, he should be proficient in English, but this error is of small moment, introduces no serious doubt, and could easily be corrected with slight embarrassment at probate stage.

[29] The will-maker's first name is stated in the will as "Moonja." The Standards Committee urges that her name is correctly written as two words: "Moon Ja." Mr Park disagrees. He wrote the will to conform with the title to her property and her driving licence, both of which he had seen. The testatrix signed her will with her first name as

one word, “Moonja.” She signed other documents on this file in a similar way. She and the complainant jointly took out an insurance policy that used the “Moonja” version of her name.[24] We are not persuaded that Mr Park erred about the name. It would have created difficulties for later conveyancing if her name on the will differed from her name on the house title.

[30] On the Standard Committee’s construction of the will, the charging clause 5(g) only came into operation if Mr Park died within 30 days of his client’s death. This is more an additional effect of the alleged structural defect than an additional defect. It may be that the clause fell short of enabling charges for ordinary administration. If so, it adds weight to the already demonstrated proposition that Mr Park was out of his depth. If the charging clause was deficient, that would have no adverse impact on the client.

[31] On its version of the construction of the will, the Standards Committee submits that Mr Park has fallen foul of Rule 5.10 which, in these circumstances, forbids a lawyer from drafting a will under which the lawyer “may take a benefit.”

[32] Rule 5 addresses the need for a lawyer to be independent of the client. Mr Park did not wittingly cross that line. Even if the will is read in the manner submitted by the Standards Committee, Mr Park’s error is merely one of form, not substance. We find that Mr Park’s behaviour throughout, including his behaviour in contacting and dealing with the daughters, demonstrates that he always regarded the will as valid in appointing him as executor but that the latter clauses operated to require him to pass the beneficial interests to the daughters. He never thought the will gave him a beneficial interest. His actions demonstrate his fidelity to what his client intended, namely that he would be executor and the children were the beneficiaries. His conduct was substantially true to the spirit of independence required by Rule 5. We disagree that Rule 5.10 has been breached by Mr Park on these facts.

[33] The apposite rule, Rule 3, provides:

[24] Bundle at 528.

Competence and client service

> 3 In providing regulated services to a client, a lawyer must always act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.

We shall consider all the allegations against the standard of "competence" required by Rule 3.

[34] How defective was the will? The complainant's lawyer, Ms King, regarded the will as defective on its face. Following the 22 June 2020 meeting, Mr Park obtained a differing opinion from another experienced lawyer. The opinion itself was not introduced into evidence, we have only Mr Park's extracts.[25] That opinion read clause 3 as giving the property to Mr Park only in his capacity as solicitor. The characterisation of Mr Park as "solicitor" in that clause is a contra-indicator to the reading contended by Ms King and the Standards Committee. Clause 2 of the will links "solicitor" with "executor and trustee", which suggests that the disposition to Mr Park was, as he contended, only in that representative capacity. Despite the obvious awkwardness of the apparent disjunct between clauses 3 and 4, there are grounds for competing readings.

[35] The construction question was only ever academic in this case. Whatever structural infelicity was embedded in the words, no-one contended for a different outcome (except that the complainant wanted to dislodge Mr Park as executor). We find there was no risk that Mr Park would claim a beneficial interest. After Mr Park (and his employer) renounced, the will was probated with amendments that incorporated dispositions the client recorded in three ancillary handwritten documents she gave Mr Park (referred to as the "wish documents"[26]). Probate incorporating these agreed features was achieved by independent lawyers by submissions on the papers.

[36] We find that Mr Park's renunciation of his benefit under the will was merely symbolic in the sense that he never believed nor claimed that the will gave him anything except the position of executor which he tried his best to fulfil. Despite his shortcomings in drafting and his inexperience in administration, we find his conduct demonstrated fidelity to the trust his elderly client reposed in him. His fumbles were

[25] See Bundle at 145, and Bundle at 409–410.
[26] We address the wish documents in paragraphs [38]–[43] below.

the product of inexperience, lack of supervision, inflexibility, and ongoing pressure from the complainant.

[37] On Mr Park's construction of the will, the words that begin clause 4 would have to be ignored. During the hearing, Mr Park was still reluctant to accept criticism of the structure of the will. We find that the alleged shortcomings of the will were disproportionately emphasised by the complainant. The emphasis was disproportionate because no-one opposed the disposition position of the beneficiaries: Mr Park never contended for a different beneficial outcome. Leaving aside the issue of Mr Park's competence as executor, we find the will was not fit for probate in its original form. It was the product of incompetent drafting. It was poorly drafted because, absent external explanation, it seemed equivocal.

[38] *As to inattention to codicils*, the client gave Mr Park three additional handwritten documents, all in Korean language, that indicated her desires for testamentary effect beyond the scope of what her will provided. The first of these, she gave him on 4 March, the day the will was drafted, typed and signed. An English translation of the first part of the document[27] states:

> Money after selling a house
>
> 1. Legal fee
> 2. Real estate agent's commission (+ other advertisement fee on sales)
> 3. Funeral expense (The funeral insurance which I joined shall be paid to my eldest daughter, [name].)
> 4. Storage cost of packages for moving (6 months' storage cost) - my eldest daughter, [name].
> 5. Principal and interest on $200,000 which I, [name], borrowed.
>
> The money left after deducting the above expenses shall be split in half and inherited to my ([name's]) two daughters ([names]).

[39] Mr Park made no consequent adjustment to the will. He simply filed the "wish" document away. Items 1, 2 and 5 would appear to have been catered for already (although it seems that the clause permitting her solicitor to charge may have been inoperative). Item 3 should have been the subject of enquiry and clarification.

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[27] Bundle at 185; Korean original: Bundle at 187.

[40] It later transpired that the client and the complainant had earlier taken out an insurance policy called "AA Life Funeral Cover." The sum assured became payable upon the client's death. Although the policy was recorded as being in the joint names of the client and the complainant, the insurer paid out to the complainant, presumably because she acquired all interests by survivorship. Thus, the proceeds of that policy were paid to the complainant and no additional testamentary provision (by amending the will or making a codicil) was required. Oddly, there was no requirement in the policy that the proceeds be applied to a funeral. We find the inference, drawn by Mr Park and the funeral director, that the proceeds would be applied to the funeral expenses, is understandable although it later transpired that the complainant was free to use the funds as she pleased.

[41] The provision of six month's storage cost for the complainant was not provided for in the will. The complainant and the complainant's husband had lived with the client on occasion, both in Wellington and in Auckland, although we are uncertain for what durations. Their chattels were at the client's home.

[42] Mr Park was under the misapprehension that an executor has power to make discretionary payments to fulfil testatrix wishes even if there is no provision in the will specifically authorising him to do so.[28] We find that he intended to follow out the wishes of the deceased and was mistaken as to the need to incorporate them in a codicil.

[43] The other two handwritten wish documents came to Mr Park on 21 April, the same day the client entered hospice care, and only two days before her death. The documents indicated her wishes that $40,000 be given to the complainant for missionary work and that $30,000 be given to the client's church. She provided Mr Park with two envelopes to put the money in. This should have alerted him to the need to contact her to sign a codicil. He may not have achieved that in the time that proved to be available, but he mistakenly thought he would have the authority as executor to pay these sums in the course of administration without any formal codicil.[29] We find he failed to appreciate, at the time, that he would exceed his powers if he attempted to give effect to this wish without a codicil. His employer later suggested to Ms King that the documents be treated as codicils,[30] something the younger sister

[28] NoE at 85, lines 11–21.
[29] See, for example, NoE at 87, lines 1–10.
[30] Bundle at 170, email 13 August 2020, at [11.1].

agreed to.[31] When an independent lawyer took over, probate was granted by consent[32] in a form that gave effect to the wish documents.

[44] *As to the clustered allegations of poor practice*, it is impossible for us to be prescriptive about these matters in this disciplinary context. Apart from inference from the allegations, Mr Park has not been warned, and we have not been informed, what constitutes minimum performance in these respects. The Standards Committee offers no evidence to establish minimum benchmarks on these topics.

[45] We accept that, when an elderly client first presents, it would be "best practice" to make enquiries of the kinds suggested. On the other hand, as Mr Park points out, there is a presumption of capacity.[33] His observations led him to believe she was of sound mind. She was ambulatory, active and acted intelligently. Before meeting Mr Park, she had independently arranged the Heartland mortgage. The "wish" documents themselves indicate mental acuity. A post-death opinion from her general medical practitioner said she "had full mental capacity and [was] making a competent decision until the last visit on 15 April 2020. There was no evidence of lack of mental capacity."[34]

[46] Although they communicated in Korean, his client had lived in New Zealand for thirty years and there is no evidential basis upon which we can find she was incompetent in understanding English. On 4 March, the client signed an "acknowledgement of legal advice"[35] required by Heartland Bank. It recorded her understanding that the transaction incurred liability for fees and interest; and that her decision will affect her estate and people who might have claims on her estate in the event of her death.

[47] It would have been helpful for us (and Mr Park) if he had kept additional file notes detailing the discussions. However, there is no legal requirement on him to do so, and we would be exceeding our task, and be unfair to Mr Park, were we now to invent prescriptive standards.

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[31] Bundle at 171–172 email 13 August 2020, at [12.1].
[32] On 4 April 2022.
[33] And his employer observed that Mr Park's conduct satisfied NZLS Property Law Section Guidelines in this respect: Bundle at 168, at [4.3].
[34] Bundle at 62. Certificate from GP. It seems she was known to her GP as "Moon Ja [Family Name]" and her death certificate (Bundle at 60) uses that form of her name.
[35] Bundle at 55.

[48] On the balance of probabilities, we do not find that Mr Park fell below accepted standards when he omitted to obtain a medical opinion of capacity at the outset, and when he failed to check who formerly acted for her. Nevertheless, it would have been best practice to do so. We find no evidence, on balance, that his client needed a Korean translation of documents.

[49] There is no evidence that Mr Park failed to give her adequate advice about the mortgage. Conveyancing is an area of practice in which he is proficient. However, on that aspect, and regarding the will, we would have been assisted by some indications of topics covered in discussion. Mr Park exhibited a form,[36] signed by him, which records many of the items in issue. It was put to him by Ms Mok that this document, which had not been noted by the Standards Committee, may have been created later. He denied that. We refer to our later comments[37] about Mr Park's reliability and credibility. Although it is surprising that he never referred to it in his lengthy, detailed responses to the Standards Committee, on the balance of probabilities, we do not find this document is other than what it purports to be, a contemporaneous record of matters discussed.

[50] The Standards Committee's proposition that the file notes in this case were inadequate would require us to impose a standard of practice that we doubt accords with general legal practice throughout New Zealand. In this disciplinary context, we may be interested to encourage best practice, but we can only discipline for failures to achieve minimum standards.

[51] *As to administration matters*, we accept it is normal practice to advertise for other wills before applying for probate. That would have been prudent, despite her recent signing of the will only weeks before her death. More significant as demonstration of Mr Park's lack of expertise was his lack of practical knowledge that the bank would release funds to him, as executor, to pay the funeral account and thereby avoid incurring a penalty.

[52] Mr Park took the view that, as executor, he must be diligent to preserve the estate. To secure the house property, he required each daughter, in turn, to sign an occupation licence and pay rent to him (to be accounted to the estate in due course).

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[36] Document dated 4 March 2020, exhibit to Park affidavit 7 June 2023.
[37] See paragraphs [56]–[60] of this decision.

The younger daughter was already living in the home when her mother died. She signed Mr Park's documentation. The complainant was on the scene later because of her late receipt of information and because of MIQ detention. She was outraged by Mr Park's requirement. The property may have had the characteristic of home for her; in any case, chattels belonging to her, and her husband, were in the property, something her mother had acknowledged in her first "wish document."

[53] Although Mr Park had legal authority to impose conditions on the complainant's occupation of the home, we are troubled by the strictness and vehemence by which he expressed his authority. As executor, he had an obligation to consider how the testatrix would have wanted her beneficiaries to be accommodated. In our view, his lack of flexibility demonstrated, yet again, his unfamiliarity with ordinary practical family arrangements in early stages of bereavement.

[54] In conclusion, our findings about the allegations for Charge 1 are as follows. We find Mr Park's drafting of the will was incompetent because it produced a document that was flawed and ambiguous. His response to the first "wish" document demonstrated his lack of understanding of the executor's scope and the need for testamentary documents to give effect to ancillary wishes. Although his professional conduct fell short of best practice, we do not find any shortcoming (or combination of shortcomings) that would warrant disciplinary action. His handling of administration demonstrated lacks, of familiarity and understanding. In summary, when we consider our duty to consumers of legal services, it is his conduct in drafting the will, failing to recognise the need for codicils, and lack of practical familiarity with estate administration, that concerns us.

If those deficiencies require professional discipline, at what level (misconduct, s 241(c) incompetence, or unprofessional conduct) should liability be fixed?

[55] Mr Park was poorly supervised in this matter. His employer seemed similarly to have been at some loss about administration, for example, he seemed unaware that an executor could obtain funds from a bank to pay the funeral director before grant of probate. It appeared to Ms King that Mr Park's employer had never seen the will before the 22 June meeting.[38]

[38] [Mr Park's principal] was said to have believed it was a straightforward matter. Mr Park's affidavit 19 August 2023, at [27]; NoE at 71, lines 20–32.

[56] Ms King and Mr Nelson who represented the complainant at the 22 June professionals meeting commented on their experience of Mr Park's demeanour. Two matters require our attention as we consider whether Mr Park is reliable and credible. First, during the meeting, he was asked whether he had material to establish that his late client had capacity. He indicated he did have material but what he retrieved were the death certificate and an insurance policy. Second, when asked if he had applied for probate, he indicated he had not done so but when he produced the original will, it bore an exhibit note that showed an application had been made. Mr Park acknowledged he had applied but the application was rejected and returned to him by the Court.

[57] We have contemplated these matters carefully, considering the affidavit and oral evidence of those witnesses who were at the 22 June meeting, and our impressions of those witnesses at our hearing. Mr Park, of course, was present for three days of our hearing. Ms King and Mr Nelson are impressive witnesses and have provided valuable insights from their perspectives. While we note their reservations about Mr Park's professionalism and conduct during the meeting, our findings are based on the broader context that is available to us from a wider range of material and the opportunity to consider Mr Park's conduct in the light of our observations of witnesses, particularly the complainant and Mr Park. Ms King and Mr Nelson attended the meeting as advocates for the complainant. Mr Park was placed in the unenviable position of being interrogated about his probity regarding his client's mortgage funds, and his aspirations to inherit her property, things that seemed bizarre to him. Whereas Ms King and Mr Nelson found it bizarre that Mr Park laughed when it was pointed out that, on their construction, the will made him sole beneficiary, we regard that as quite natural for him. It was not something he had contemplated. We prefer his evidence (and the context he explained) to the impressions gained by the complainant's lawyers because it fits better with our understanding of the circumstances.

[58] We have read a great deal of material written by Mr Park. He writes competently enough but he is more comfortable in Korean. He gave evidence at the hearing with a Korean interpreter. He is in his sixties. He has spent much more time speaking and writing Korean than English. Missing the point about material to corroborate capacity is likely to have involved a degree of misunderstanding, something "lost in translation." He was undoubtedly under intense emotional pressure at that meeting where he was faced with two formidable inquisitors, and we do not underestimate the anxiety he

would have experienced. In our view, he fudged the issue about application for probate. In oral evidence, he described it as a "grey area," no doubt because the application had been returned and a fresh application would be required. We think he was fleetingly less than completely candid but our general impression of his conduct throughout this matter is one of close fidelity to his client's instructions. In broad terms, we assess him as honourable and reliable.

[59] The Standards Committee should have been impressed by his prompt, thorough engagement with their process throughout. We are impressed. Time and again, he was sent multi-page complaint materials generated by the complainant and, every time, he responded promptly, carefully, diligently. At times, he was frustrated, as we are, by the repetitive materials he was obliged to answer. Despite the corroborative evidence that indicated many allegations against him were quite unhinged, the Standards Committee exercised no effective control to shape the case against him.

[60] We assess Mr Park to be an honest, diligent practitioner who was out of his depth in this matter. We do not find this to be a case where a practitioner wilfully blinded himself to wrongdoing. We find no wrongdoing under Charge 1 except for a degree of incompetence in wills and estate administration work. We do not find a breach of Rule 5.10, but we do find breaches of standards of competence under Rule 3.

[61] We do not find this to be a case that satisfies the criteria in s 241(c) because the negligence or incompetence has not extended to such a degree or so frequent as to reflect on his fitness to practise. His failures have not been such that they bring the profession into disrepute. His fitness to practise is brought into question only in relation to his work outside his usual realm (conveyancing). In the circumstances of this case, we regard s 241(c) as an uncalled-for harshness of finding.

[62] Mr Park approached his work industriously, but his energies were misdirected by reason of his lack of experience and understanding. As we noted above,[39] we find shortcomings in drafting the will, failure to recognise the need for codicils, and lack of familiarity with estate administration. In those limited respects, we find Charge 1

[39] At [54] of this decision.

proved at the level of unsatisfactory conduct under s 12(a) being 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.

Which rules does Charge 2 engage?

[63] Charge 2 may have been intended to raise concern about Mr Park's interactions with colleagues (Ms King and Mr Nelson) but we understood the main thrust of the Standard Committee's case under this charge addressed the tone of Mr Park's interactions with the complainant. The complainant was a beneficiary of the estate which was Mr Park's client. As executor, he represented the estate in twin capacities: executor and lawyer. The complainant was a third party.

[64] As laid, Charge 2 is expressly linked to Rule 10 and fails to refer expressly to Rule 12. Ms Mok submits that the ambit of Rule 10 sufficiently covers the Standard Committee's concerns under Charge 2. Ms Paul submits Rule 12 applies to interactions with the complainant who is a "third party." Which is correct? What should we do? We start by examining the rules and their contexts.

[65] Although the Rules were changed in 2021, the Rules applicable in this case are those in their form in 2020. The Chapter heading of Rule 10 is "Professional dealings." The head rule of Rule 10 is broadly stated: "A lawyer must promote and maintain proper standards of professionalism in the lawyer's dealings." Most of the sub-rules (10.1 to 10.8) specifically refer to "other lawyers" or "another lawyer's client." We understand Rule 10 is mostly concerned to ensure lawyers treat one another with respect, do not encroach on professional boundaries (by communicating with another lawyer's client, honour undertakings (to other lawyers) and the like. Rules 10 and 10.8 (the latter prohibiting taking a video or sound recording without prior warning), are capable of application within a wider context but overall the cluster of rules under Rule 10 tends to suggest they are primarily aimed at interactions between, or affecting, professional comity and boundaries between lawyers.

[66] Rule 12 is headed "Third parties." The head rule states: "A lawyer must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect, and courtesy."

[67] When the Standards Committee originally considered the complaint, it asked itself these questions[40] (among others):

- Did Mr Park promote and maintain proper standards of professionalism in his dealings? Rule 10.

- Did Mr Park conduct his dealings with [the complainant] with integrity, respect, and courtesy? Rule 12.

With respect, we agree with the Standards Committee approach, pinning the questions to apposite rules. Rule 10 is most apt for dealings between lawyers; Rule 12 is most apt for lawyers' dealings with third parties. This is an issue we encountered in *O'Boyle*[41] where the practitioner acted harmfully towards non-clients. Ms Paul cites a Legal Complaints Review Officer decision to similar effect.[42]

[68] Despite the failure to plead Rule 12, we are satisfied that the real issue was apparent to Mr Park in the materials and in the conduct of the case. The conduct put in question has been clearly signalled and we see no unfair prejudice to him by proceeding, although we wish to pin our decision to the most apposite rules. Accordingly, we consider the matter on the basis that Rules 10 and 12 are in play.

[69] On that basis, we review the evidence to consider whether Mr Park's conduct in dealings, with Ms King and Mr Nelson as fellow practitioners, and with the complainant as beneficiary of the estate for which he was executor, offended Rules 10 or 12 to the point that he should be subject to professional discipline. In our view, the most significant allegations were those that Mr Park's conduct towards the complainant were unprofessional. We shall deal with them first and come to those between legal professionals subsequently.

Did his conduct regarding the complainant or colleagues fall to a level where professional discipline should be engaged?

[70] While it may be ironic that the complainant, who described Mr Park to the Standards Committee as a person "from pen pusher (low rank) government employee

[40] Bundle at 365.
[41] *Auckland Standards Committee v O'Boyle* [2021] NZLCDT 15 at [91]–[92].
[42] *CK v SE* [2021] NZLCRO 195 at [9]–[10].

background [in Korea]"[43], and on several occasions suggested he had dementia,[44] we do not shrink from assessing the context and tone of his conduct towards her. We cluster our comments around these allegations:

- Ask mother in heaven;
- Continuing correspondence in Korean ("foreigner husband");
- Funeral expenses;
- Request for documentation;
- Occupation of estate property;
- Tone of communications.

We shall then consider Mr Park's interactions with colleagues.

Ask mother in heaven

[71] Despite his invitation, the complainant failed to meet Mr Park face to face. Their communication was principally in writing. They only had one telephone conversation which occurred while she was in MIQ lockdown. During the conversation, the complainant repeatedly asked Mr Park for information about things she had already raised by email. He was unable to assist her about why her mother had selected him as her solicitor. He was unable to assist her about what her mother wanted to do with funds from the reverse mortgage. We draw an inference that her demands were pressured, and he was at a loss as to how to respond helpfully. Eventually, he told her that he did not know the answers, and these were matters she would simply have to ask her mother when she met her in heaven.

[72] Ms King asked Mr Park about this at the 22 June meeting, and he frankly admitted it. Ms King was shocked by his admission of what seemed to her to be a

[43] Bundle at 449.
[44] E.g. Bundle at 450; 470; 437. In her email [Bundle at 437], the complainant picked up a typographical error in Mr Park's 24 page submission to the Standards Committee [Bundle 369–392]. He had inadvertently typed 2021 instead of the obviously intended 2020. The complainant says "I was speechless and fascinated to spot another fatal typo…Is he suffering from dementia…?

heartless comment to her grieving client. Ms King did not ask for any contextual explanation.

[73] At first blush, we too were surprised, but we now have greater context in which to assess this conduct. We accept that Mr Park had been warned by the complainant's mother that her older daughter could be difficult. His first approaches to her were in writing, and they are commendably expressed. For example: "I send my condolences to you again and I remind you to stay safe and healthy until we meet."[45] The complainant's first reply expressed her shock and asked a number of questions. It later appeared that she thought Mr Park as executor should have gone to her mother's home to find her contact. She said "My contact number is stuck on deceased's fridge…".[46] Whether that was so or not, Mr Park was reliant on her sister for information about how to contact her. We infer (with the advantage of reading the complainant's later correspondence with Mr Park and with the Standards Committee) that the telephone conversation became pressured from the complainant's end.

[74] Although Mr Park may well have been irritated by the complainant's unwillingness to let go of questions he could not answer, we accept that his comment is not as harsh as it may seem. He knew that, like him and his former client, the complainant was a devout Christian. He assumed she, as he would in like circumstances, confidently expected to meet her mother again in heaven. In that frame, his comment has less stringency. It was a way of letting the complainant know that the only source she could look to for answers to these questions (because he could not) was beyond the grave.

[75] While we would not recommend Mr Park's comment as a wise example, we do not find it was cruelly intended, nor that it was necessarily inappropriate in the context where the complainant was badgering Mr Park about matters that he had no way of satisfying her. We do not find it falls to a level that requires professional discipline.

Continuing correspondence in Korean ("foreigner husband")

[76] The complainant was brought up in Korea, she is fluent and literate in Korean. We infer that she came to New Zealand as a teenager. She now identifies as a New

[45] Bundle at 496.
[46] Bundle at 496.

Zealander. We do not know her husband's ethnicity, but he is not of Korean descent. Mr Park, who immigrated from Korea as an adult, identifies as Korean New Zealander. As earlier noted, he had conversed in Korean with his elderly client. When he wrote to the complainant, he wrote in Korean. She asked him to write in English. In her first email she explained that her husband did not speak Korean.[47]

[77] Despite her express request, Mr Park continued to communicate with her by writing in Korean. He advised her: "In New Zealand, inheritance belongs to the individual and it is not shared property even for married couples. Thus, legally, anyone else who are not immediately concerned are excluded from having access to it. Also, while I have an obligations to the beneficiaries, I do not have any obligation to explain this to any third parties…."[48]

[78] In a later email,[49] he advised (and we comment that this English text is a translation from Korean):

> "I write in Korean to avoid misunderstanding among native Koreans. A third party, maybe your foreigner husband keeps interrupting in the middle, but if is not you [name] directly communicating with me via email, I cannot continue this communication. It is illegal to discuss about distribution of estate with third parties. If one discloses about their estate, anyone would be at risk."

One day earlier, in relation to another issue, he said "In particular, we are proud Koreans who value blood relationships."[50] We infer that Mr Park preferred to project Korean as a common platform of cultural reference for both he and the complainant, something she resisted.

[79] We do not find the expression "foreigner husband" to be as offensive in Korean as it seems, in English. We accept that this may be a manner in which New Zealanders of Korean descent might commonly distinguish the cultural or ethnic descent of partners. It does, of course, characterise the partner as "other."

[80] The tensions around this issue have many facets. The complainant could communicate comfortably in either language, but she preferred the communication to be in English, partly because she identified culturally as a New Zealander (and using

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[47] Bundle at 497.
[48] Bundle at 499, 28 April 2020.
[49] Bundle at 506, 26 May 2020.
[50] Bundle at 506, 25 May 2020.

English was an aspect of her identity important to her), and partly to enable her to share the communication with her husband and friends (presumably including her New Zealand lawyer friends). We infer that Korean was more comfortable for Mr Park who gave evidence in his first language at the hearing, however he did not ever say that it suited him for that reason. His many pages of submissions to the Standards Committee, written in English, indicate no inadequacy.

[81] Mr Park misunderstood the legal position. Although he was required to observe confidentiality, the complainant could speak to whoever she chose. It was her information. If she chose to tell her husband or anyone else, she was at liberty to do so. Mr Park conflated the position and misrepresented it. Although he volunteered advice about relationship property aspects, the complainant was not his client and he had no right to influence her against sharing her beneficiary information as she chose. If she chose to involve her husband or anyone else in composing her correspondence, that was entirely her business.

[82] In all these circumstances, we take the view that Mr Park failed to accord the complainant respect and courtesy by refusing to communicate with her in English. His conduct was inflexible and based on a misconception of his duties, and a misfire about her cultural identity. It was not his place to require her to perform a Korean role when she chose to perform in language terms as an English-speaking New Zealander.

[83] Let us be clear: we are not promoting Kiwi or English-language modes above Korean modes. We are simply saying that Mr Park should have accepted the complainant's own articulation of her cultural identity and, as a solicitor operating in New Zealand, acted accordingly.

Funeral expenses

[84] Mr Park had no estate funds. He thought he could not access estate bank accounts until he obtained probate. Mr Park knew there was an insurance policy in the joint names of the deceased and the complainant. It was called "Life Funeral Cover." The funeral director wanted payment. There was a penalty if payment was not made by due date.

[85] Mr Park thought the insurance policy would pay the funeral director. He was wrong but we find his mistaken expectation was a reasonable proposition. The complainant refused to sign documents enabling Mr Park to claim the funds and pay the funeral expenses. Because of his inexperience, he did not know he, as executor, could withdraw funds from the deceased's bank account to pay the funeral expenses before grant of probate.

[86] Frustrated by the complainant's inactivity, and desirous to avoid a penalty for the estate, Mr Park suggested she should borrow money, if need be, to pay the funeral expenses.

[87] We find this misfire was a direct product of Mr Park's inexperience and his understandable misunderstanding about the insurance policy. His failure to know how he could obtain money from the estate's bank was a product of his incompetence, a factor under Charge 1. We do not find this awkwardness involved disrespect or discourtesy.

Request for documentation

[88] Mr Park anticipated he would obtain probate, sell the home and distribute funds to the beneficiaries. He needed to satisfy Anti-Money Laundering requirements and be satisfied that the two beneficiaries were the persons named in the will. He obtained from the younger sister, her passport, bank account details, and a Korean document that established the deceased was her mother. The complainant refused to provide any of them.

[89] Ms King gave evidence that she would have asked for the passport and bank account details closer to the time of payout. We do not criticise Mr Park for asking for appropriate documents early. As her sister already had, the complainant might depart overseas again at any time, and he needed to be in a position to pay out.

[90] What caused the impasse? We find that, by the time this issue arose, the complainant was determined to frustrate Mr Park in his tasks as executor. In oral evidence she said: "obviously since nineties, I haven't really had much contact with Korean communities in New Zealand but he sounded very, just a typical Korean person

in his age…"[51] We infer it is likely she resented him as a stereotype she wanted to distance herself from.

[91] Her excuse for not providing any documentation was that, in her view, the Korean document was not required. As we understand it, it not only describes parentage, but also details other genealogical matters which she may have preferred to keep secret. Perhaps because of the sensitivity and vulnerability of her work situation which, as we understand it, involves assumed identities, she was more than ordinarily sensitive about her genealogical materials.

[92] Mr Park was fulfilling important duties by requesting the passport and bank account details. We are inclined to think it was over-reach to require the complainant to corroborate her relationship with her mother. There seems no basis to question the relationship. Her mother had named her in the will, her sister acknowledged the relationship, there were no other contenders. But he needed the other documents (or something similar) to fulfil his obligations.

[93] By the time this issue surfaced, the relationship between the complainant and Mr Park was poor. She refused to give any documents. He held firm, demonstrating inflexibility when he wrote to her saying:

> "I don't know who you are [name]. I know your occupation is a missionary. Your mother said that you are a missionary and I would like to see identification documents to confirm your identity. We consult with many individuals who engage in religious work, given that [my employer] is a lawyer and a pastor. Everyone we have consulted has been nice.
>
> "The (AML/FTF) applies given that you [name] is receiving money as inheritance. In particular, you reside overseas at a location that is not great. How could I trust and treat you as a beneficiary who will receive the estate without receiving any identification documents from the bank or identification documents? I cannot acknowledge you as a beneficiary when you have not come and I have not seen you. I am the executor appointed by the deceased so I am simply progressing this in accordance with the law."[52]

[94] The impasse discloses the complainant's truculence and Mr Park's inflexibility. Mr Park thought he needed the additional document to link the complainant to her mother. That was pedantic, arguably unnecessary but, given the heightened suspicion and antagonism of the complainant, we cannot see that this was ever going to be

[51] NoE at 3, lines 30–32.
[52] Bundle at 507–508, 26 May 2020.

resolved by discussion. Mr Park's email was expressed harshly but he was faced with a beneficiary who showed no co-operation. If she had yielded the passport and bank account, perhaps the air might have cleared, but probably not. Mr Park needed guidance from an experienced lawyer and plainly he was not getting it. In the vexed context, we do not find that Mr Park's part in this impasse falls to a level that should require professional discipline.

Occupation of estate property

[95] The complainant proposed to reside at the estate property when she left MIQ. As noted earlier, we infer that the complainant has been based overseas for many years but some chattels belonging to her, and her husband, were at the estate property.

[96] Her younger sister, who had had a continuing presence there for more than a year, had remained for about three weeks after her mother died and then returned home to USA. Mr Park, mindful of his duty to preserve estate property and to observe equality between the beneficiaries, required the younger sister to complete a tenancy agreement. When the time came, he required the complainant to do the same. She refused.

[97] Mr Park told the complainant she could stay rent free for the same period as her younger sister but she would then be required to pay rent albeit at a discount from full market rental. He said[53]:

> I am sorry, but if you illegally move into the property, I am planning to address that by using governmental authority…
>
> ..
>
> If you illegally reside at the address without the rent agreement it will be dealt with criminally as burglary or restraining order: restriction order etc. I don't think you understand this very well so I am being direct. There are many similar instances involved in executing a will and relating to estate.

[98] Mr Park referenced instructions from Heartland Bank who sought confirmation that the property was vacant. That request from the bank post-dated Mr Park's stipulations to the complainant. In our view, this factor is irrelevant to our consideration

[53] Bundle at 507–508, 26 May 2020.

of Mr Park's dealings with the complainant about the conditions under which she might occupy the property.

[99] We find that Mr Park had lawful authority to control the property.[54] It was his prerogative to require formal documentation if he saw fit. By the time he sent the email (above) the complainant had proved to be oppositional and truculent. In those circumstances, we do not read his communication as rude or discourteous. He took pains to signal that he was firm in his stance, that he was prepared to engage criminal or civil process if she flouted his lawful requirement. Had the context been compliant, many executors would have negotiated this issue without the requirement of formal written agreement but we do not find that Mr Park's conduct about this matter should attract professional discipline.

Tone of communications

[100] For the sake of comprehensiveness, we note that, in his long email of 26 May,[55] Mr Park warned the complainant against asking Heartland Bank for estate account balances, advising:

> The bank will become suspicious if an unrelated third party calls the bank and asks for current balance of a deceased's account and the bank won't confirm it. You may be treated as a "scammer" for breaching the law relating to the protection of personal/private information. It is only the executor who can legally get that information.

We find that this advice was designed to assist the complainant, not to antagonise her. That it may have reinforced her anxiety is not something for which Mr Park can be held responsible.

[101] We have carefully and dispassionately reviewed the written correspondence. Mr Park wrote sensitive emails to the complainant, acknowledging her loss, and providing her with informative details about, for example, the church service. As communication developed, it became apparent that the complainant was suspicious of him, and soon, oppositional, for example refusing to provide even those identity documents she conceded were appropriate. His stance demonstrated inflexibility, but

[54] For example, albeit in quite different circumstances, see *Banks v Bennett* [2023] NZHC 2864 where the rights of an executrix and trustee to control the property as against the interests of her beneficiary brother are applied.
[55] Bundle at 506.

we find nothing to attract professional discipline beyond what we have already found in this decision. He was alerted by things his client had told him about her daughter, by the complainant's refusal to meet him or to co-operate. Mr Park's client interview note recorded her view that if either daughter was involved "in the will as Executor, they will be seriously in conflict. The first daughter, [name] has a strong character, not easily reconciled, not friendly with anybody."[56]

[102] Throughout, Mr Park's conduct reflected his fidelity to carry out his late client's wishes. His emails were informative. We have commented on errors due to his inexperience in the area, but the tone of his correspondence was generally dispassionate. We do not detect deliberate rudeness or discourtesy on his part. He was frustrated at times, faced with the complainant's critical stance and her unwillingness to accept explanations. Her stance was not helped by her failure to check facts with her sister. An early example was the complainant's adamant view that Mr Park erred by arranging cremation without family consultation when, in her view, her mother would never have wished it. Apart from the evidence that her mother specifically told Mr Park she wanted cremation,[57] cremation was arranged in consultation with the younger sister. That the complainant was unable to be contacted in time was no fault of Mr Park. The decision to cremate was not a high-handed imposition by an insensitive executor. Skewed complaints like this fuelled the complainant's antagonistic attitude to Mr Park.

Interactions with legal colleagues

[103] We turn to interactions between Mr Park and professional colleagues, namely Ms King and Mr Nelson. In her affidavit, Ms King listed four specific concerns[58] she had about Mr Park's professionalism and behaviour at the 22 June meeting. Mr Nelson added concerns that Mr Park "yelled" during the meeting and was dishonest about a medical certificate and about applying for probate.[59] We shall address each item against the criterion in Rule 10 that "a lawyer must treat other lawyers with respect and courtesy," and the criterion in Rule 12 that "a lawyer must, when acting in a professional capacity, conduct dealings with others,…with integrity, respect, and courtesy." We deal with the seven items in the following order: ask mother in heaven; laughter; yelling;

[56] Exhibit "A" to Mr Park's affidavit of 7 June 2023.
[57] Exhibit "A" to Mr Park's affidavit of 7 June 2023.
[58] Bundle at 542–543.
[59] NoE at 67, lines 15–25.

complainant's mental health; alleged absconding from MIQ; medical certificate; applying for probate.

[104] Mr Park freely admitted having told the complainant she would have to ask her mother when she saw her in heaven (because he did not know the answers to her questions). This was candid. As earlier noted, we understand the context in a way that did not emerge at the 22 June meeting. On this matter, we find no disrespect to the complainant that requires professional discipline. Nor do we find any breach of rules in respect of his professional dealings.

[105] Ms King found it odd that Mr Park laughed when it was pointed out at the 22 June meeting that the will could be construed as giving the entire property to him. Mr Park's evidence was that he left the meeting room to fetch the original will document. His employer looked at the will and said, ironically, "We become rich" and Mr Park laughed.[60] We find this is the likely context of his laughter. For him, the thought of his being a beneficiary was laughable.

[106] Mr Nelson described Mr Park raising his voice, even "yelling." We find that Mr Park was under pressure in the meeting because fellow practitioners were questioning his probity. The propositions that he had created a will so he could benefit or that he had had benefit from the reverse mortgage were awful from his standpoint. We do not find that a practitioner in such circumstances who raises his or her voice, even to the point of yelling, is automatically breaching Rule 10. There is no suggestion his conduct was at high volume throughout the entire meeting. In this case, we find Mr Park had reason to be agitated and we do not criticise him for expressing his agitation. In passing, although we do not want to encourage yelling, we fear the Standards Committee docket will fill up if instances of lawyer yelling are automatically a disciplinary issue.

[107] At the meeting, Mr Park commented that the complainant might have psychological difficulties arising from her parents' separation. He sourced this to what he heard from family members.[61] In cross-examination, it was put to him that this was irrelevant at the meeting. Although Ms King called for the meeting, Mr Park was at liberty to table matters he thought bore on the problem. We agree with him that it was

[60] NoE at 138, lines 9–24.
[61] NoE at 136, lines 1–7.

part of the "big picture." He was speaking with the complainant's own lawyers. It was not disrespectful to them or to their client to table matters that could bear on the impasse. In our view, it was the appropriate situation in which to air this material. It was a forum for plain speaking. We find he may not have used the terms "erratic" or "paranoid" but if he had, they would not have been inappropriate. We are not troubled by this aspect of Mr Park's conduct.

[108] It was put to Mr Park that he had erred in repeating these matters in his responses to the Standards Committee. In determining liability, we consider Mr Park's conduct in relation to the complainant beneficiary. It would be iniquitous to muzzle him in response, especially given the liberal scope the Standards Committee gave to the complainant. Further, we agree with Mr Park that it was proper to try to inform the Standards Committee about the context (the "big picture").

[109] Mr Park had previously told a fellow employee that the complainant had unlawfully absconded from MIQ for a short period. The fellow employee volunteered the allegation at the 22 June meeting. We do not find that Mr Park repeated the allegation on that occasion, but he repeated it to the Standards Committee in the course of responding. The allegation seems to have been mistaken. Were it not for the multiple false allegations made against Mr Park by the complainant, we would be inclined to direct him to apologise but that seems disproportionate. Based on proportionality, we do not regard Mr Park's having told his fellow employee this mistaken allegation, and thereby creating a situation where it could escape into the 22 June meeting, as something he should be disciplined for.

[110] Under Charge 1, we dealt with Mr Park's response to a request for a medical certificate to corroborate the client's capacity. We found the mix-up was probably the product of misunderstanding and the pressure of the occasion on Mr Park. We have nothing to add. The misunderstanding is not something that breaches Rule 10.

[111] As a postscript, we note that the complainant alleged to the Standards Committee and during oral evidence that Mr Park acted illegally, after the 22 June meeting, by obtaining a medical certificate from the medical practitioner about the deceased's mental capacity after the 22 June meeting. She had earlier purported to direct the general practitioner not to provide any certificate. She had no right to do so. As a beneficiary, she had no power to bind the general practitioner whereas Mr Park,

as executor, had the right to obtain a certificate. At the time he did so, he was still executor because he had not then renounced his position. The certificate[62] vindicated his view that the client had full capacity.

[112] Mr Nelson suggested that Mr Park was untruthful to his colleagues by indicating, at the 22 June meeting, that he had not applied for probate. We have an impression that Mr Park, under attack, may have fudged this point when it was raised. He referred to it as a "grey area." Perhaps he was embarrassed that his attempted application for probate was rejected. The complainant was in no risk because she had lodged a caveat. During the 22 June meeting, the fact that Mr Park had applied unsuccessfully was admitted. We do not find that he was on a determined course to mislead colleagues about a material issue that could have placed their client's interest in jeopardy. We are inclined to agree with Mr Park that it should be treated as a "grey area" of fleeting moment. We make no adverse finding against him on this point.

If so, at what level should liability be fixed?

[113] We have found Mr Park breached Rule 12 by refusing to communicate with the complainant in English as she requested. His conduct was disrespectful of the complainant's right to determine her own cultural alignment. In New Zealand, a request that communication occur in English seems reasonable. Mr Park's concern that another person was sharing writing emails for the complainant was not well founded. Having shared his concern with the complainant, it was her call as to what should be done.

[114] We find this conduct fits the charge at the level of unsatisfactory conduct under s 12(c) because it is conduct that contravenes practice rules, namely Rule 12 by falling short of treating the complainant with respect in relation to her preferred culture and language.

Conclusion

[115] The charges alleged a proliferation of wrong-doing. We have found only two discrete aspects worthy of disciplinary findings. That of incompetence (Charge 1) concerns wills and estate management. Mr Park's liability is ameliorated because he

[62] Bundle at 166.

was poorly guided and inadequately supervised. The other charge, lack of respect to the client's preferred cultural and linguistic preference, appears to have been a blind spot for Mr Park.

[116] Despite the multitude of allegations made against him, we find nothing to call into question Mr Park's character as a practitioner. His knowledge and experience were lacking in the areas we have noted. We are impressed by his fidelity to the instructions his client gave him. We find there was never any risk he would take improper advantage of the shortcomings revealed in his drafting. The need to protect the public, in this case, operates in limited zones.

[117] The extensive case against him has reduced to relatively little. In the course of its enquiries, not counting associated documents, Mr Park was faced with 59 pages of submissions by, or on behalf of, the complainant. They comprised 10 sets of allegations ranging from 1 page to 19 pages. He responded promptly. He filed 61 pages of responses, in 8 sets, ranging from 2 pages to 24 pages.[63] We have some concern that the Standards Committee may have become captured by the complainant. (We are not speaking here about Ms Mok's performance as counsel.) There seems to have been little effort to reduce the case to proportionate charges. The heightened level of animus by the complainant against Mr Park, and the wildness of some of her allegations, produced no modification of the weight brought against him. These factors may affect our approach to costs.

Directions

[118] The case shall be set down for penalty hearing for half a day. Tentatively, we direct that the Standards Committee file any evidence and submissions on penalty by 8 December 2023; that Ms Paul files any evidence and submissions in reply by 15 December 2023; and that penalty be set down for half a day in early February 2024 (which will allow time for the Standards Committee to answer, if need be, no later than seven days before the hearing). If this timetable is problematic, we invite responses from counsel.

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[63] The main tranches were: complainant:14pp [Bundle at 27–42]; 19pp [Bundle at 196–214]; 13 pp [Bundle at 440–452 with three supplementaries in April 2022. Mr Park: 11pp [Bundle at 29–140]; 4pp [Bundle at 218–221]; 6pp and 7pp in August 2021 [Bundle at 225–250 and 274–280]; 24pp [Bundle at 369–392]; and three supplementaries totalling 9pp in April 2022.

Non-publication

[119] We have considered non-publication orders under s 240 Lawyers and Conveyancers Act 2006. We order that the names of the complainant and her sister shall not be published. We also order that the family name of the client shall not be published, but we permit publication of the client's first name(s) because that is necessary to explain a part of this decision. Because Mr Park's former employer has had no notice, we order non-publication of his name and firm name. Similarly the name of Mr Park's fellow employee who attended the 22 June meeting, shall not be published. For similar reasons, we order that the name of the lawyer who provided an opinion of the will for Mr Park's firm shall not be published. This decision does not reflect adversely on Ms King or Mr Nelson and there is no reason to suppress their names.

DATED at AUCKLAND this 20th day of November 2023

Dr JG Adams
Deputy Chair