

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

[2023] NZLCRO 061

Ref: LCRO 131/2022

CONCERNING

an application for review pursuant
to section 193 of the Lawyers and
Conveyancers Act 2006

AND

CONCERNING

a decision of the [Area] Standards
Committee

BETWEEN

GN, YL and EK

Applicants

AND

FQ

Respondent

DECISION

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

Introduction

[1] Ms GN, Ms YL and Dr EK have applied for a review of a decision by the [Area] Standards Committee to take no further action in respect of their complaint concerning the conduct of the respondent, Mr FQ.

Background

[2] The applicants GN, YL and Dr EK, are the daughters of Mrs OF (Mrs OF).

[3] In 2015, their sibling, Dr CK, held enduring powers of attorney (welfare and property) for their mother.

[4] In October 2015, Dr CK made arrangements to transfer Mrs OF from her home in [City A], to a rest home in [City B].

[5] Ms GN, Ms YL and Dr EK, made urgent application to the Family Court in [City A] to have their sister removed as their mother's attorney.

[6] The application was transferred to the [City C] Family Court.

[7] Mr FQ was appointed by the Family Court as counsel for Mrs OF and occupied that position from 2 December 2015 until July 2017.

[8] The complainants were represented in the proceedings, as was Dr CK. Their brother, Mr WV, also played a part in the proceedings. He was initially self-represented but as matters progressed, instructed counsel.

[9] In July 2017, Mrs OF returned to [City A].

[10] Ms GN, Ms YL and Dr EK were dissatisfied with the representation that Mr FQ had provided to their mother. Complaint was made to the Family Court that Mr FQ had not acted in their mother's best interests.

[11] The complaint was not upheld.

[12] Application was made to the Subject Person Review Panel in July 2018, to have Mr FQ removed from the panel of lawyers eligible to be appointed as counsel to represent subject persons.

[13] The Review Panel concluded that there were no grounds established to warrant Mr FQ's removal.

The complaint and the Standards Committee decision

[14] Ms GN, Ms YL and Dr EK lodged a complaint with the Complaints Service on 13 December 2021.

[15] The complaint was comprehensive.

[16] The substance of their complaint was that Mr FQ had:

- (a) been unduly influenced by two family members namely WV and Dr CK; and
- (b) provided the Court with misleading information; and
- (c) undermined the Court's process; and
- (d) provided his opinion on the merits of evidence and various issues; and

- (e) failed to treat others with courtesy and respect; and
- (f) caused excessive delay in progressing the application which had resulted in unnecessary costs to the complainants; and
- (g) failed, as was his duty, to promote conciliation; and
- (h) in the course of the proceedings, used legal process to cause unnecessary embarrassment distress and inconvenience to the reputations, interests and occupations of parties engaged in the proceedings; and
- (i) made errors in memoranda filed with the Court; and
- (j) demonstrated bias and had produced authority to the Court which was not required; and
- (k) in a memorandum to the Court had attacked the honesty integrity and reputation of the complainants; and
- (l) made statements which had provided basis for professional conduct complaints to be made in respect to two of the complainants' professional bodies; and
- (m) failed to promote the interests of his client; and
- (n) minimal contact with his client; and
- (o) preferred the instructions of some family members over others; and
- (p) failed to adopt a "best interests" approach; and
- (q) misled the Court in memoranda which contained factually incorrect material; and
- (r) misled the Court as to his client's capabilities; and
- (s) failed to follow Court directions; and
- (t) made decisions that were for the Judge to make; and
- (u) failed to carry out the Judge's directions; and
- (v) muddled the issues that were before the Court; and

- (w) failed to report back to the Court on matters within the timeframes required; and
- (x) manipulated the issues to be addressed in the various judicial conferences; and
- (y) failed to draft orders when directed to do so; and
- (z) provided incorrect information on the state of his client's capacity; and
- (aa) been obstructive; and
- (bb) failed to provide reports in a timely manner; and
- (cc) filed memoranda with the Court that contained information that contradicted advice he had been provided; and
- (dd) failed to respond to emails; and
- (ee) delayed the proceedings with consequential additional cost for the complainants; and
- (ff) twenty months after the application was filed, finally conceded that the application did not engage issues of capacity, but rather the question as to who would have authority to make decisions concerning his client's welfare; and
- (gg) failed to promote conciliation when he was required to do so; and
- (hh) spent twenty months attacking the complainants; and
- (ii) spent twenty months advocating for Dr CK, when his role was to protect Mrs OF's interests; and
- (jj) failed to instruct appropriate people to conduct necessary medical examinations.

[17] By way of outcome, the complainants sought:

- (a) a determination that there had been unsatisfactory conduct on the part of Mr FQ; and
- (b) an order censuring and reprimanding Mr FQ; and
- (c) an order that Mr FQ provide an apology; and

- (d) compensation of legal costs in the sum of \$73,777.78; and
- (e) an order that Mr FQ undergo education particularly with reference to conciliation, protocol representing the subject person, capacity issues and acting for an elderly client.

[18] The extensive complaint was supported by statements from Dr EK, Ms YL and Ms GN, and accompanied by an extensive chronology which traversed in detail, concerns about Mr FQ's management of his role as counsel for their mother.

[19] Mr FQ provided response to the complaint on 15 February 2022.

[20] He attached to that response:

- (a) his submission to the Court responding to the complaint dated 20 July 2017; and
- (b) a minute of Judge A issued on 1 August 2017; and
- (c) a submission to Court engaging the complaint dated 19 May 2018; and
- (d) a minute of Judge A dated 17 July 2017; and
- (e) the Practice Note providing guidance for counsel undertaking the role of counsel for a subject person; and
- (f) memorandum of JE (supporting Mr FQ) prepared for a pre-trial conference; and
- (g) correspondence to parties attempting to resolve the [City A] rest home admission; and
- (h) a memorandum of counsel and draft orders prepared for the judicial conference of 6 May 2016; and
- (i) a minute and order of Judge A dated 26 May 2016.

[21] Mr FQ indicated that it was not his intention to respond to every element of complaint.

[22] He considered the complaints made, to be effectively the same as those that had been advanced by the complainants against him in 2017.

[23] It was his view that the appropriate forum for considering the complaints raised was the Family Court.

[24] Mr FQ attached to his submission, memoranda of counsel, and minutes and orders of the Court relating to the proceedings. It was his view that those documents gave clear indication that he was open to all of the issues that were being raised by the parties, whilst endeavouring at all times, to keep the subject person to the forefront of his considerations.

[25] He noted that the complainants were not his clients, and that he owed minimal duties or obligations to them.

[26] To the extent that he was required to treat others including self-represented persons, with integrity and respect, he believed he had met that obligation.

[27] He noted, that whilst the Practice Note required counsel for a subject person to consult with family members and to advocate for the subject person, for most of the duration of the proceedings, the complainants were being advised and supported by their own counsel. He observed that on occasions, as demonstrated in the documents he had attached, it was he who had proactively explored options with Ms GN and proceeded to obtain orders that provided for a sharing of decision-making within the family.

[28] Mr FQ concluded his response with indication that he was reluctant to become involved in responding to a 104-page complaint. It was his view that the complaints traversed ground that had been comprehensively addressed initially by the presiding Judge, and subsequently by the Subject Person Review Panel.

[29] The Complainants provided response to Mr FQ's reply on 10 March 2022.

[30] It was submitted for the complainants that:

- (a) the complaint made to the Court was different from the complaint made to the Complaints Service; and
- (b) advice given to their lawyer who had assisted with preparing the complaint for the Court was misleading; and
- (c) the procedure for investigating the Court complaint, excluded the complainants from examining Mr FQ's response to the complaint, this resulting in a lack of transparency; and
- (d) evidence supporting the Court complaint had not been considered; and

- (e) the Judge investigating the complaint may not have been provided with the evidence; and
- (f) the Panel's conclusion had also likely been reached in circumstances where not all of the relevant evidence had been provided to the Panel; and
- (g) the process for dealing with the Court complaint lacked transparency; and
- (h) Mr FQ had failed to respond to all of the allegations made; and
- (i) It is likely the case that neither Judge A nor the investigating Panel were in receipt of all the relevant information when their inquiries were completed.

[31] The Standards Committee delivered its decision on 29 June 2022.

[32] The Committee determined, pursuant to s 138(1)(f) and 138(2) of the Lawyers and Conveyancers Act 2006 (the Act) that no further action on the complaint was necessary or appropriate.

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

- (a) it considered the central issue was a dispute between siblings as to what their mother's best interests were; and
- (b) as Dr CK had enduring power of attorney (EPOA) on all aspects of Mrs OF's life, Mr FQ would have been required to consult with her on all matters; and
- (c) there was no evidence to suggest that Dr CK had not been operating the EPOA's in Mrs OF's best interests (although the complainants held a different view); and
- (d) Mr FQ could not be held responsible for Dr CK's refusal to consent to a resolution agreed at a Judicial Settlement Conference on 12 April 2016; and
- (e) it appeared to be the complainants' position, that Mr FQ should, unreservedly, accept the positions advanced by them; and
- (f) there was no evidence to support conclusion that Mr FQ had been responsible for significant delay in advancing the proceedings; and

- (g) if the complainants were concerned that the Court and the Panel had not been adequately informed when considering the complaint raised against Mr FQ, then the appropriate step would be to return the matter to the Family Court; and
- (h) from the material available, it appeared to the Committee, that the complainants interpreted everything that Mr FQ did as being adverse to both their and their mother's best interests, despite there being no evidence to support that construction; and
- (i) Mr FQ's obligations were to his client and to the Court; and
- (j) the Court had no issue with how Mr FQ had carried out his obligations; and
- (k) Mr FQ's limited obligation to the complainants, was to be respectful and courteous in his dealings with them and despite accusation from the complainants that Mr FQ had been discourteous, the Committee saw nothing in the evidence to support that conclusion; and
- (l) the Committee concluded that the framing of the complaint as one engaging allegation of discourtesy, was "a device to relitigate what the Family Court had already decided on or related to contended issues which should be decided by the Family Court".

[34] Ms GN, Ms YL and Dr EK filed an application for review on 9 August 2022.

[35] They submit that:

- (a) the Standards Committee had confused the nature of their complaint; and
- (b) the Committee had failed to investigate issue as to whether Mr FQ's conduct had been unsatisfactory; and
- (c) the Committee had abdicated their responsibility to investigate the complaints, by reliance on argument that issues had been addressed by the Family Court; and
- (d) the Standards Committee had based most of its decision on information supplied by Mr FQ which was factually incorrect; and
- (e) this information had not been disclosed to the applicants; and

- (f) Mr FQ's response to the complaint was characterised by a tendency to make general comments which were unsupported by evidence; and
- (g) the Committee had misdescribed the complaints as being a "dispute between siblings", when the substance of the complaint was concern regarding Mr FQ's conduct during the case "particularly in regard to his interactions with us and the flow on effects that had in the proceedings"; and
- (h) the complaint to the Family Court was with reference to whether or not Mr FQ was acting in their mother's best interests, but it was the applicants' understanding that neither the Court, nor the Subject Person Review Panel, could make decisions on Mr FQ's conduct in respect to other parties; and
- (i) the Committee's decision would appear to suggest that the rules of conduct and client care, do not apply to practitioners fulfilling the role of counsel appointed by courts, and
- (j) the Committee had failed to complete investigation into the question as to whether Mr FQ's conduct amounted to unsatisfactory conduct; and
- (k) the Committee's decision contained a number of factual errors; and
- (l) the Committee erred in concluding that there was no evidence to suggest that Dr CK was not operating the EPOA in Mrs OF's best interests; and
- (m) the Standards Committee had incorrectly described the central issue of the current complaint as engaging a dispute between siblings, when the focus of the complaint was the manner in which Mr FQ had engaged with the applicants; and
- (n) Mr FQ had provided one of the complainants with a Health and Disability Commissioner (HDC) decision in circumstances which had potential to compromise the complainant; and
- (o) whilst Mr FQ could not be held accountable for a party changing their mind subsequent to an agreement being reached, he was nevertheless appropriately accountable for the subsequent "compromises" which had effect of favouring one of the parties; and

- (p) Mr FQ had continued to allow one of the parties to the proceedings to “call the shots”; and
- (q) He had favoured the interests of one of the parties when the EPOA had been suspended.

[36] The applicants summarised the core of their complaint as being concern that FQ’s interactions with them during the course of the proceedings had been unsatisfactory. It was their view that the Standards Committee had failed to adequately address this issue.

[37] It was the applicants’ contention, that Mr FQ had failed to adequately respond to the complaints made. They considered that “based on the number of inaccuracies in the SC decision, it is obvious that the SC received information from Mr FQ that we have not seen resulting in (a) an investigation that lacked transparency and natural justice; and (b) a decision that was not based on facts or evidence”.¹

[38] They considered that the Standards Committee decision had “denigrated” their experiences”. They expressed particular concern at the Committee’s finding that “Mr FQ did have knowledge that the complainants may not be objective and may have had some self-interest”.

[39] By way of outcome, the applicants sought:

- (a) a determination that there had been unsatisfactory conduct on the part of Mr FQ; and
- (b) an order censuring and reprimanding Mr FQ with reference to his conduct; and
- (c) an apology; and
- (d) compensation in the sum of \$73,777.78, being legal costs incurred over the period of 20 months that Mr FQ had filled the role of court-appointed counsel; and
- (e) an order that Mr FQ undergo education particularly with reference to conciliation, protocol when representing the subject person, capacity issues and acting for an elderly client.

[40] Mr FQ was invited to comment on the review application.

¹ Review application, step 6 (9 August 2022) at [24].

[41] He responded to the application on 9 September 2022. He submitted that:

- (a) he did not consider that the Standards Committee had been confused regarding the nature of the complaints; and
- (b) concerns about his competency and ability had been referred to a panel of senior specialist family lawyers chaired by a QC, and that panel concluded that it could not identify any concerns regarding his competency and handling of the case; and
- (c) an appeal of that decision was made to the Family Court Judge who had primary responsibility for managing the case, and that Judge was also satisfied that he had acted appropriately in his role as lawyer for the subject person; and
- (d) 5 years after the events complained of, he is again being called on to provide explanation for his conduct, in circumstances where, for a substantial period of time, the complainants were represented by legal counsel; and
- (e) suggestion that the Standards Committee may have received information from him that was not provided to the complainants was incorrect; and
- (f) he was not provided opportunity to respond to the submissions filed by the complainants; and
- (g) as best he could understand the complaints made, it was allegation that he had failed to support the applicants, or failed to pay sufficient regard to their concerns; and
- (h) whilst there is no impediment to a lawyer's conduct in the role of court appointed lawyer for a subject person being the subject of disciplinary inquiry, it is nevertheless understandable and appropriate, that a Standards Committee would give weight to the findings of a review panel and opinions of a Family Court Judge when both had been tasked to investigate complaint that lawyer for a subject person had failed to adequately represent the subject person; and
- (i) his capacity to engage in matters relating to distribution of furniture and effects was limited; and

- (j) he considered that he had worked constructively with all parties to achieve an appropriate outcome; and
- (k) he had at all times acted impartially and in a manner that he considered was in the best interests of the subject person; and
- (l) there was nothing inappropriate or untoward in handing a document to a party in a court waiting room; and
- (m) he had not been unduly influenced by one of the parties; and
- (n) he had, at all times, continued to communicate with the parties and their legal counsel; and
- (o) an examination of his files would confirm the extensive communications there had been with the applicants' [City A]-based legal counsel; and
- (p) it is probable that the applicants had access to extensive legal advice throughout the process, this reinforced by their evidence that they had occurred approximately \$73,000 legal costs; and
- (q) at no time had he behaved discourteously to the applicants; and
- (r) the Family Court undertakes regular reviews of lawyers who are appointed to represent subject persons and no concerns had ever been raised about his competency, to the contrary, he had received positive feedback from judges he had appeared before in the Family Court; and
- (s) called on to respond to these complaints almost 7 years after the proceedings had commenced in December 2015, he has endeavoured to address the complaints raised as comprehensively as possible.

Review on the papers

[42] 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.

[43] Mr FQ opposed the matter being set down for a formal hearing. He was concerned that the extent of the information filed by the applicants would give indication that the matter would become unnecessarily prolonged if it was to proceed to a both party hearing.

[44] Ms GN, for the applicants, submitted that an in-person hearing would provide opportunity for both the applicants and Mr FQ to provide clarity on matters where the information was inconsistent.

[45] Alternatively, she suggested that matter may be suitable for an applicant only hearing.

[46] After considering the submissions, I concluded that the review was suitable for determination on the papers and the parties were advised accordingly.

[47] 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.

Nature and scope of review

[48] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:²

... 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 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.

[49] More recently, the High Court has described a review by this Office in the following way:³

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.

² *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

³ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

[50] 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

[51] I have given careful consideration to the extensive submissions filed by the applicants both at the Standards Committee stage of the investigation and on review.

[52] Having done so, it is my conclusion that the applicants have fallen short of establishing (as the obligation falls on them to do) that Mr FQ's conduct was unsatisfactory.

[53] It is clear from the substantive information filed by the applicants, that they had expectation that a Standards Committee (and now a Review Officer), would be equipped and able to meticulously scrutinise a significant number of the steps taken in the course of the litigation involving their mother, and having done so, be then positioned to make a fair and reasoned assessment as to whether Mr FQ's conduct had been unsatisfactory.

[54] The level of scrutiny sought by the applicants falls, in my view, well outside the scope or parameters of what a Standards Committee or Review Officer is able to effectively undertake in the course of investigating or reviewing a disciplinary complaint of this nature.

[55] This applicant's concerns must be considered by reference to an examination of Mr FQ's role.

[56] Mr FQ was not the applicant's lawyer. He was the Court appointed counsel for the subject person.

[57] His role was under the supervision of the Court.

[58] The extent to which he owed duties to the applicants was limited, essentially being confined to an obligation to ensure that he engaged courteously with the applicants. I see no evidence (nor did the Standards Committee) to support contention that Mr FQ had behaved discourteously to the applicants.

[59] It is clear that the disagreement over who should have control of Mrs OF's affairs caused considerable dissension in the family.

[60] The Judge who had initially presided over the matter, noted that the parties to the dispute had "very strongly held views" and observed that it was not uncommon for such proceedings to contribute to a breakdown in the relationship between the parties involved.⁴

[61] Complaint is made that Mr FQ had failed to promote the interests of his client. Against this, Mr FQ submits that he had acted at all times in the best interests of the party he was appointed to represent.

[62] The applicants' submissions are replete with examples of instances where circumstances are described that are said to provide evidence to support complaint that Mr FQ failed to act appropriately. But on closer examination, a number of these reduce to indication of disagreement with suggestions made, or steps taken, by Mr FQ.

[63] The Achilles heel of the complainants' review application, is the extent to which issues of disagreement with steps taken by Mr FQ in the course of the proceedings, are elevated to matters that are said to merit or require a disciplinary response.

[64] Underpinning these arguments, is suggestion that Mr FQ favoured the positions taken by the family members who were in conflict with the applicants.

[65] Allegation that Mr FQ had favoured the positions adopted by family members who opposed the applicants' position out of a desire to support positions taken by various family members, is not established on the evidence, and it is difficult to see how a Review Officer could in the absence of compelling evidence that Mr FQ had made decisions that were demonstrably and starkly adverse to Mrs OF's interests, confidently venture into the domain of the Court and speculate as to whether recommendations made, or steps taken by Mr FQ, were indicative of a demonstrable failure on his part to adequately fulfil his role as counsel for Mrs OF.

[66] The issues before the Court were focused on determining which of the family members was best positioned to manage Mrs OF's affairs.

[67] It was Mr FQ's role to take a position that he considered was in the best interest of his client. If that position did not accord with the stance taken by some of the family members, then so be it.

⁴ Memorandum Judge A (1 August 2017).

[68] The applicants, in providing comprehensive explanation as to their view of events, suggest that Mr FQ made some egregious errors in fulfilling his obligations as lawyer for the subject person and that those errors should be met with a robust disciplinary response.

[69] What were these errors?

[70] Examined carefully, they reduce in significant part to criticism that Mr FQ took steps, made recommendations, and suggested various approaches which the applicants disagreed with.

[71] This criticism is amplified by complaint that Mr FQ had taken notice of and paid attention to the instructions of one particular family member, whilst ignoring the wishes of the others.

[72] Complaint is made that Mr FQ had made his opinions known to the Court.

[73] That was his job. If those opinions did not sit comfortably with the preferred positions of the applicants, that could not remotely provide basis for a conduct complaint.

[74] But there is, despite the comprehensive nature of the submissions filed, no evidence advanced by the applicants that could, in my view, provide a solid evidential foundation to support allegation that Mr FQ's suggestions and recommendations to the Court were so improper as to merit or require a disciplinary response.

[75] And it is relevant to note, that the applicants were legally represented in the proceedings. It would be expected, that argument that suggestions or recommendations made by Mr FQ were manifestly adverse to Mrs OF's interests, would have been robustly challenged by the applicant's counsel. That is the nature of litigation.

[76] Complaints against Mr FQ become more specific when the thrust of the allegations focused on argument that Mr FQ had made a number of procedural errors.

[77] It is submitted that Mr FQ had:

- (a) caused excessive delay; and
- (b) used legal process to cause embarrassment, distress and inconvenience to the applicants; and
- (c) made errors in memoranda filed with the Court; and
- (d) misled the Court; and

- (e) undermined the Court processes; and
- (f) failed to follow Court directions; and
- (g) manipulated issues that were to be addressed in judicial conferences; and
- (h) made decisions that fell within the domain of the Judge; and
- (i) failed to draft orders when directed to do so; and
- (j) failed to carry out the Judge's directions.

[78] These are serious allegations and matters that which would, if established, merit a disciplinary response.

[79] In suggesting that Mr FQ had misled the Court, argument is being advanced that Mr FQ had breached one of the lawyers most fundamental obligations, being their duty as an officer of the court, to uphold the law and facilitate the administration of justice.

[80] But it is approaching the trite to emphasise, that complaints of the nature described in [77] above are best addressed by the presiding Judge.

[81] It presents as approaching the inconceivable that a Judge would permit counsel to seemingly persistently engage in conduct of the nature described above without intervening.

[82] It fell to the presiding Judge to provide oversight of Mr FQ's role. It was the Judge who was best positioned to provide informed and independent assessment of Mr FQ's conduct. The Judge who had stewardship of the file and intimate knowledge of the proceedings, was better placed than a Standards Committee or Review Officer to determine as to whether Mr FQ had, in the course of undertaking his duties as counsel for the subject person over a lengthy period, performed those duties, as argued for by the applicants, with such egregious disregard for his professional obligations.

[83] Complaint was made to the Judge, and to the Subject Person Review Panel.⁵

[84] On 26 June 2017, complaint was made to the Family Court concerning Mr FQ's conduct.

[85] In responding to that complaint on 20 July 2017, Mr FQ submitted that:

⁵ The Standards Committee decision at [7] notes that the complainants had made two complaints to the Family Court.

- (a) it was his view that the complaints were motivated by concern that he had been unwilling to agree with all of the submissions advanced by the applicants and their counsel; and
- (b) he had, at all times, had the well-being of Mrs OF at the forefront of his mind when advancing submissions in the proceedings.

[86] Judge A issued a memorandum on 1 August 2017.

[87] In that memorandum, he noted that:

- (a) the proceedings were complex; and
- (b) he concluded that all involved, *particularly counsel*, had acted in a way to progress matters and resolve proceedings in an efficient and conciliatory manner; and
- (c) he did not consider that Mr FQ had “acted in any way that was intentionally disruptive or that his representation was incompetent in any way”.

[88] Request was then made by the complainants, for Mr FQ’s conduct to be referred to the counsel for the Subject Person Review Panel.

[89] That Panel convened on 20 April 2018. Further information was requested from Mr FQ. The Panel reconvened on 22 June 2018.

[90] Judge A’s memorandum of 6 July 2018 reported the outcome of the Panel’s investigation. The Panel concluded that complainants had failed to establish any professional misconduct on Mr FQ’s behalf or demonstrated any failure by him to carry out his duties responsibly. The Panel considered that there were no grounds established for removing Mr FQ from the counsel for the subject person list.

[91] It is difficult to see how complaint could be established that Mr FQ had acted improperly in the face of the conclusions reached by the Family Court Judge and the specialist Panel or how it could present as tenable for either a Standards Committee or Review Officer to attempt to revisit those findings.

[92] Some years after the termination of Mr FQ’s appointment as counsel for the subject person, I am being invited to examine Mr FQ’s conduct, on the basis of the applicants’ account of what had transpired in the course of the proceedings.

[93] It is clear from the submissions filed by the applicants, that they anticipated that a Review officer may express reluctance at prospect of examining complaints that have been previously considered by a Family Court Judge, and a specialist Review Panel.

[94] The applicants attempt to overcome this obstacle, by argument that the scope of the various inquiries that have been undertaken (the Court /the Panel) were narrower than a professional disciplinary inquiry.

[95] They submit that the Standards Committee failed in its duty to consider Mr FQ's conduct within the framework of a disciplinary, regulatory inquiry.

[96] At paragraph 3 of their submissions of 9 August 2022, they say this:

It appears to us that what SC is contending is that the rules of Conduct and Client Care do not apply to counsel appointed by the court and instead the only obligations of counsel appointed by the court are those set by the court. This is inconsistent with paragraph 5 of the Family Court PPPRA selection which states "it is not intended by this Practice Note to limit the jurisdiction of the court to do whatever it considers to be appropriate in the circumstances or otherwise limit the right of the Law Society or other statutory authority to consider any complaint about counsel for the subject person".

[97] And at paragraph 4, they say this:

One of the grounds for removal of counsel for the subject person refers to "professional misconduct" – paragraph 4 of the Family Court PPRA selection. The panel concluded we failed to establish any professional misconduct. Our complaint to the NZLS relates to "unsatisfactory conduct" i.e. section 12 Lawyers and Conveyancers Act 2006 not misconduct. It appears that the SC enquiry did not include an investigation with reference to "unsatisfactory conduct".

[98] I agree with the applicants that the obligation on a Standards Committee to investigate complaints made against a lawyer, is not extinguished by virtue of the fact that concerns raised about the lawyer have been previously considered by a Judge or specialist Panel.

[99] The approach to addressing complaints about a lawyer's conduct in circumstances where the lawyer has been appointed by the court, is on occasions, traversed in circumstances where a lawyer has been appointed as lawyer for the child.

[100] A number of cases have come before the LCRO where complaint has been made about a lawyer's conduct in the course of the lawyer acting as lawyer for child.

[101] Those cases, to the extent that they involve a consideration at first step as to the appropriate process for proceeding a conduct investigation, are closely analogous to the situation here where complaint is made against counsel for a subject person.

[102] It is standard practice for complaints against lawyer for the child to be first addressed to the Family Court.

[103] A Family Court practice note explains the process for managing complaints against lawyer for the child.

[104] It is the judge who presided over the proceedings who is initially tasked with responsibility for considering the complaint.

[105] But inquiry by the judge, does not prevent a party who is disgruntled with lawyer for the child's performance, to file a complaint with the Lawyers Complaints Service.

[106] In the decision of *DFT v the New Zealand Law Society*⁶ the High Court considered the process involved in considering complaints about lawyer for the child. That decision relevantly provides:

[13] Without unreasonably limiting the exercise of their power and duties, Standards Committees acting under s 138(1)(f) of the LCA commonly take the view that complaints about lawyers for children that concern the conduct of the lawyer in proceedings before the Family Court should first be dealt with by a Family Court judge in accordance with practice Note. The NZLS acknowledges that the Family Court's procedures as described in the practice note do not purport to limit or deprive the NZLS of its statutory role and jurisdiction to consider a complaint about a lawyer for children. The Family Court procedure, however, is established specifically to ensure that complaints about the conduct of a court appointed lawyer and highly sensitive and contentious matters before the Family Court that involve the interests and protection of children are dealt with by the specialist Family Court judges in the first instance.

[14] In the event that evidence of serious professional responsibility by a lawyer for a child is provided to a Family Court Judge considering a complaint under the practice note, the matter could be referred to a Standards Committee and the full range of professional disciplinary action and sanctions could follow. As para 14.7 of the Practice Note states, the judge addressing the complaint in terms of the practice note may, at his or her discretion, refer the complaint to the Law Society.

[107] Whilst the applicants are correct in their view that the fact that a Judge and specialist Panel has addressed their complaints does not impede them from further pursuing their concerns in the jurisdiction specifically tasked with obligation to investigate complaints made against lawyers, it was understandable that the Standards Committee would place weight on the findings of the Judge and the specialist Panel.

[108] This was not an abdication by the Committee of its obligation to investigate the complaints made, or indication that the Committee had subverted its responsibility to make proper investigation into the question as to whether Mr FQ had breached any of his professional obligations.

⁶ [2021] NZHC 2080.

[109] I do not consider there is force in the applicants' submission that the concerns addressed by the Judge and specialist Panel, had a different scope or focus, to the concerns that were put before the Standards Committee.

[110] It is my view that the complaints put before the Standards Committee, whilst likely presented in more comprehensive and detailed manner, reduced to their essence, encapsulated precisely the issues of complaint that were put before the Family Court Judge and the specialist Panel.

[111] It is pertinent to refer back to the complaints referenced at [77] above.

[112] In the absence of evidence to support those complaints (and there is in my view none which can be relied on at this distance), it is difficult to see how the Standards Committee could ignore the Judge's finding that he could not conclude that Mr FQ's representation had been "incompetent in any way". This accompanied by indication from the Judge that he considered that counsel engaged in the proceedings had "acted in a way to progress matters and resolve proceedings in an efficient and conciliatory manner". It presents as inexplicable that a judge would make comments of this nature, if Mr FQ had represented Mrs OF in the egregious manner it is suggested he had.

[113] These expressions of confidence in Mr FQ from the person best placed to observe his professional conduct, cannot be diminished by argument that neither the Court nor the Review Panel were equipped to make decisions on Mr FQ's conduct with reference to "other parties or with reference to 'unsatisfactory conduct' generally".⁷

[114] Whilst it was not the role of the Judge to scrutinise the conduct in the manner that an examination of the conduct would proceed in the disciplinary jurisdiction, the Judge's conclusion that there was no indication to support conclusion that Mr FQ had failed to act competently, provided powerful argument in support of Mr FQ's position.

[115] Nor am I persuaded that there is force in argument that the Panel that completed investigation into Mr FQ's conduct were fettered in their inquiry by requirement that an adverse finding could be only made if the conduct examined reached the threshold of constituting misconduct.

[116] This was a Panel charged with specific responsibility to consider whether a lawyer was suitable to be on the Subject Person Review Panel.

[117] This was a Panel that was provided with, in broad terms, the specific complaints that the applicants now seek to litigate in the disciplinary jurisdiction.

⁷ Review application at [2].

[118] This was a Panel, that would have been acutely attentive to the question as to whether Mr FQ presented as a person who had the necessary attributes and skill to continue in the sensitive role of representing parties who were not equipped to represent themselves.

[119] It presents as inconceivable that complaints of the nature made, if considered established by the Panel, could pass without comment simply on the basis of conclusion that the concerns did not reach the threshold of amounting to misconduct.

[120] Implicit in the applicants' argument, is suggestion that whilst the Panel had not concluded that the matters complained about reached the threshold of misconduct, the Panel may have (or perhaps would have), if it had measured the complaints by reference to the unsatisfactory threshold, concluded that the conduct met that standard.

[121] There is no evidence to suggest that the Panel had any concerns with Mr FQ's conduct.

[122] If the Panel had been persuaded that Mr FQ had misled the Court, that he had made numerous blunders, that he had been unduly influenced by one of the parties to the detriment of the subject person, that he had been insensitive to the needs of, and indifferent to, promoting arrangements that would have benefitted Mrs OF, it would have said so.

[123] Indication that the Panel had found no substance in the complaints made against Mr FQ, is evidenced in Judge A's minute of 6 July 2018 in which he reported the outcome of the Panel's investigation. He notes that the Panel had, in determining that no grounds existed for removing Mr FQ from the counsel for subject person list, concluded that the complainants had failed to demonstrate any failure on Mr FQ's part to carry out his duties responsibly and competently.

[124] On the facts of this particular case, I consider that the Judge's oversight of the proceedings and examination of the matters of concern to the applicants, and the scrutiny by the independent Panel, together constituted a reliable and informed investigation of the complainants' concerns, and an examination more immediately direct and approximate to the events than is capable of being achieved by a Review Officer several years after Mr FQ's involvement in the proceedings had come to an end.

[125] It is clear from the extensive submissions filed by the applicants, that their engagement in the proceedings extracted a considerable personal and financial toll on them.

[126] And there is little doubt as to their collective conviction that responsibility for the emotional toll that they clearly suffered, rests firmly at Mr FQ's door.

[127] But with respect to the applicants, consistently absent from the articulation of their grievances, is recognition that the proceedings were robustly contested, that they were represented by counsel, and that the family members were, as observed by the Judge, intensely conflicted.

[128] Two of the applicants consider that they suffered considerable professional consequence as a result of Mr FQ's actions.

[129] These applicants allege that Mr FQ's actions had compromised their professional reputations (lawyer and doctor) as a consequence of them being tarred with professional conduct complaints. It was argued that these complaints had significantly affected their careers.

[130] The complaints, in both instances, were made by a family member.

[131] The unpleasant consequences that can be suffered by persons put into the position of having to respond to a professional conduct complaint are well understood, but less so is argument that Mr FQ should be held responsible for a family member making a decision to advance complaints.

[132] Litigation is, for many who reluctantly become drawn into it, a brutal and damaging experience.

[133] But having, as I am required to do, independently and robustly examined the material advanced on review, I am not satisfied that the applicants' comprehensive scrutiny of the events through the prism of the views of those family members who were opposed to stances adopted by Mr FQ, provide an evidential foundation to support complaint that Mr FQ had breached the limited duties he owed to the applicants.

[134] I am in agreement with the Committee's decision to take no further action.

Publication

[135] 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 confirmed.

DATED this 30TH day of June 2022

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:

Mrs GN, Mrs YL and Dr EK as the Applicants
Mr FQ as the Respondent
Mr RS as a Related Party
[Area] Standards Committee
New Zealand Law Society