

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

[2023] NZLCRO 093

Ref: LCRO 167/2022

CONCERNING

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

AND

CONCERNING

a determination of the [Area] Standards Committee [X]

BETWEEN

LY

Applicant

AND

SN, MB, TD and KV

Respondents

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

Introduction

[1] Mr LY has applied for a review of the determination of [Area] Standards Committee [X], in which it made a finding of unsatisfactory conduct against Ms TD and took no further action on the complaints against Mr SN, Ms MB and Ms KV.

Background

[2] In May 2021, Mr LY viewed a property at [Address], which was to be sold by auction. He made contact with [Law firm A] Limited ([Law firm A]) and asked for an estimate of the fees which the firm would charge to act on the purchase of the property, which he accepted.

[3] Subsequently, on 2 June, he emailed documents to the firm and asked that they be reviewed and for the firm to provide advice on any issues arising. The documents were:

Auction agreement
 A builder's inspection report
 The Title to the property
 The Land Information Memorandum
 The Council file

[4] The plan attached to the title showed that the exclusive use area¹ attached to B incorporated the driveway leading to the road.

[5] Following the advice from Ms TD, Mr LY compared the buildings shown on the plan to those on the ground. He noted that there was a detached garage on the property in front of B (A) which was not shown on the plan. He also observed that there was no driveway giving access to the garage other than the drive contained within the exclusive use area for B. He assumed that was with the permission of the current owners of B.

[6] Mr LY was successful in purchasing the property at the auction. He says that one of the main attributes of the property for them was the fact that the property had exclusive use of the driveway.

[7] After the auction (but before settlement), Mr LY visited Mr SN to discuss some specific aspects of the property which, he says, specifically included assessing the option of fencing off the driveway.

[8] It was at that time, by searching the variation of lease relating to A, that Mr SN ascertained that the variation of the leases had resulted in the driveway becoming a shared driveway.

[9] This was disconcerting news for Mr LY and he made his concerns known to Mr SN. Mr SN referred to the advice provided to Mr LY prior to the auction, in particular the advice to "check the plan attached to the title to ensure that the shape, size and location of the building(s) and other areas are correctly shown on the plan".

[10] Mr LY elected to have [Law firm A] complete the settlement, following which he lodged his complaint with the Lawyers Complaints Service.

Ms TD's advice

[11] Ms TD provided an extensive report to Mr LY on the documentation provided and attached the following documents to her email:

1. Important information regarding Cross Lease properties;

¹ The title to the property was a cross leasehold property.

2. Certificate of Title;
3. Title Plan;
4. Lease for Flat 1;
5. Title Plan for Flat 2 (information);
6. Lease for Flat 2 (information).

[12] It is important to note that Ms TD did not advise Mr LY that there was a variation of the lease for B registered against the title that they could not obtain, or that she had not obtained a copy of the variation for A which was also registered against the title.

[13] Ms TD then included some general information for purchasers of a cross leasehold property. That included the statement under the heading 'What do you own?':

The exclusive use of the land around your flat/house as shown on the deposited plan by a circled capital letter.

[14] It also advised that shared rights were marked 'Common Area' on the deposited plan.

[15] The plan attached to the title for B showed that the driveway was contained within the exclusive use area for that property and was not marked 'Common Area'.

Mr LY's complaints

[16] Mr LY's complaints are reflected in paragraph [10] of the complaint details supplied by him:

In my view, we had no reason to suspect that the flat's plan boundaries were not valid and so we didn't initially pursue the matter, making the reasonable assumption that the legally valid council-supplied flat's plan was accurate. We were reliant on SN and [Law firm A] to bring our attention to any pertinent information. The variations of lease were clearly listed on the title certificate, but [Law firm A] did not investigate them at all.

[17] He sought the following outcomes:²

1. SN and [Law firm A] to admit fault.
2. SN and [Law firm A] to provide compensation to us for failing to provide us with critically important information relating to our property purchase. The exclusive-use zone of the property was significantly smaller than we had expected and we consider that this caused us to over-value the property. Furthermore, it's likely that we would not have proceeded with the purchase if we had been supplied with the accurate information about the exclusive-use and common areas of the property.

² Complaint (5 November 2021).

Mr SN's response

[18] Mr SN refers to the advice provided to Mr LY prior to the auction, and in particular, the advice to check that 'the property matched the flat's plans attached to the title'.

[19] It was not until Mr LY emailed the firm on 14 June following the auction, that he advised them about the existence of the garage on A asking what the implications of that were.

[20] Mr SN says he was surprised when he met with Mr LY, who mentioned he would like to fence off the driveway, as Mr LY had not mentioned this before the auction. He says that if the firm had been alerted to that intention, it would have investigated further to ensure that it was in order to do that.

[21] Mr SN emphasised that:

If Mr LY had advised us that the driveway was being used as a shared driveway, and that there was a garage on the neighbouring property, and that this was an issue for him, we would have investigated the matter before the auction.

[22] He refers to the fact that Mr LY had noted that access to the garage was by way of the driveway but did not mention this to the firm.

[23] Mr SN disputes that Mr LY has suffered any loss. He says that all bidders at the auction were bidding on the same basis and that the market value of the property was set by their bid.

[24] Mr SN submitted that the Committee should take no further action on Mr LY's complaints.

The Standards Committee determination

[25] The Standards Committee processed Mr LY's complaints as being against Mr SN, Ms MB, Ms TD and Ms KV. It identified the following issues to be addressed:³

... References to rules are references to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 as they were prior to amendments that came into force on 1 July 2021.

- (a) Whether the firm acted competently and in a manner consistent with the terms of the retainer and the duty to take reasonable care when advising Mr LY prior to the auction (rule 3), in particular:

³ Standards Committee determination (30 August 2022) at [17].

- (i) Did the firm draw to the client's attention the fact that the variation of lease instrument was not able to be searched on Landonline resulting in a "nil search result"?
 - (ii) Did the firm give the client any advice about proceeding with the transaction without obtaining a copy of the variation of lease instrument or take any steps to obtain a copy of the variation of lease from LINZ?
 - (iii) Did TD bring the "nil search result" to the attention of MB? Did Ms MB take any steps to obtain a copy of the variation of lease prior to providing her advice to Mr LY?
- (b) Whether Mr SN's firm was administered in a manner that ensured that the duties to their client were adhered to, and that the reputation of the legal profession is preserved (rule 11); and
 - (c) Whether Mr SN ensured that the conduct of the practice and the conduct of the firm's legal executives was at all times competently supervised and managed (rule 11.3).

[26] The Committee noted:⁴

The crux of the complaint is that the firm was unable to locate a copy of the variation of lease. It provided Mr LY with the "nil search result." The advice provided prior to auction does not appear to indicate that the variation of lease could not be found. Mr LY complains that the variations of lease were on the title and the firm did not investigate them.

Competence

[27] The Committee noted that Ms TD was the person responsible for reporting to Mr LY. Whilst she had searched for the variation of lease for B, she did not bring the resulting 'nil' result to Mr LY's attention or consult with other members of the firm.

[28] As a result, Mr LY was not advised about the possible consequences of not being able to obtain a copy of the document.

[29] The Committee considered that Mr LY should have been made aware of this and should have been alerted to the fact that the driveway was common area.

[30] The Committee noted that as a legal executive, Ms TD's is held to the same standards as a lawyer and that her omission required a disciplinary response.

[31] The Committee did not consider that a disciplinary response was required against the other members of the firm, including Mr SN.

⁴ At [19].

[32] Following on from these comments, the Committee made a finding of unsatisfactory conduct against Ms TD and determined to take no further action against the other persons complained about.

[33] The Committee imposed a fine of \$500 on Ms TD.

Compensation

[34] The Committee did not consider that Mr LY's loss was sufficiently established, and was unable to determine conclusively 'whether Mr LY, in not advising the firm about the garage at the neighbouring property, bears some responsibility for the loss he now claims.'⁵

[35] It declined to make any order for compensation.

Administration of the firm

[36] Mr LY considered that the events which unfolded suggested:⁶

... serious deficiencies with the firm's working processes, insufficient attention to detail and lack of initiative displayed by its staff, and a lack of competent oversight by management. It is reasonable to expect that investigation of such critical instruments should be performed routinely, and the client should be advised about them."

[37] The Committee referred to a decision of this Office,⁷ in which the Review Officer observed that:⁸

... the degree of supervision will of course depend on the employee's experience, but by its very nature, the word "supervision" requires an active measure of oversight commensurate with the circumstances.

[38] The Committee took note of Ms TD's experience, which included 11 years as a legal executive in [Country A] and the fact that she had also qualified as a legal executive in New Zealand.

[39] It also observed that Mr SN could not have known that the document was not available to be searched unless Ms TD had advised him. The Committee concluded that the error "appears to be a one-off omission and the Committee has no evidence to suggest it is part of a wider problem".⁹

⁵ Above n [3] at 56.

⁶ At [40].

⁷ *AC v FV & HU* LCRO 318/2012.

⁸ At [45].

⁹ At [44].

[40] The Committee went on to observe that “the reality is that even the best practices, procedures and supervision may not have prevented this type of mistake.”

[41] The Committee determined to take no further action on the issues relating to administration of the firm.

Mr LY’s application for review

[42] Mr LY asks for:

1. A thorough review of the Standards Committee’s determination.
2. A determination of unsatisfactory conduct by SN as managing lawyer.
3. Appropriate compensation.

[43] Mr LY’s view is that “the mistake arose as a consequence of poor practices and procedures, ultimately deriving from poor management.

[44] He submits that the mistake was not a ‘one-off’ mistake. He says that there were two points in time when the firm had time to search for the variation and to advise him of the consequences, the two points in time being before and after the auction.

[45] He says that in both cases they failed to give him the necessary information.

[46] Mr LY considers “this was a systematic (sic) failure caused by a poorly designed workflow which failed to provide suitable steps to search for missing documents”. His view is that a person with Ms TD’s experience would not make the same mistake twice but that “it is much more likely that Ms TD’s standard workflow was not designed to provide for searches of documents missing from the LINZ database, and the mistakes she made were a consequence of that poor workflow design”.

[47] Mr LY also refers to the New Zealand Law Society Property Law Section Guidelines which, in the case of a cross lease, includes:

- (d) identify any problems created by the lease, particularly any provisions which amend the standard terms;
- (h) check with the purchaser that the exclusive and common use areas correspond with the physical layout and usage and verify this by checking the property yourself (eg. using Google satellite, Geomaps or a recent aerial photograph);

[48] He asserts that the lack of guidelines in place meant that Ms TD did not follow through on the fact that the variation was not able to be located.

[49] Mr LY submits that the acknowledged error by [Law firm A] was, in itself, an acknowledgement that the firm's workflows were not sufficient to ensure that such a mistake could occur.

Compensation

[50] Mr LY seeks to be compensated for the two aspects arising out of the events:

1. That he and his partner had paid more than the value of the property as they had bought on the basis that they had exclusive use of the driveway;
2. Diminished use of the driveway because of the fact that it was common property.

[51] Mr LY refers to the Auckland Council rating valuations for the property issued eight days before the auction which would have been assessed on the basis of the plan as shown. He calculates:

- v. The variation document effectively reduced B's exclusive area from 507 square metres to 389 square metres. B was then allocated a half-share of the driveway, being half of 118 square metres – equalling 59 square metres. Including half of the driveway, B's land area was therefore reduced from 507 square metres to 448 square metres (being 389 square metres of exclusive area, plus half of the driveway – 59 square metres).
- vi. The variation of lease document therefore reduced the area of B's land by 11.64%.
- vii. [Law firm A]'s error had the effect of misrepresenting the land area and consequently reducing the value of the land by 11.64% (using Auckland Council's rating valuation as a guideline) based on our perception of the land versus its actual size – from \$685,000 to \$605,300. This means we incurred an actual loss of approximately \$79,700.

[52] Mr LY disagrees with the observation by the Committee that the price paid by him and his partner set the value of the property as they had made their bid without knowledge of the effect of the variation of lease.

Outcome

[53] Mr LY asks that he receive some amount of compensation to help them recover their actual loss, and seeks the full amount that this Office can order.¹⁰

¹⁰ The full amount that can be ordered is \$25,000 as provided by Regulation 32 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008.

[Law firm A] processes and procedures

[54] Ms UW/Mr JP ([Law firm B]) dispute the statement by Mr LY that Ms TD had made the mistake on two separate occasions. They say:¹¹

- 6.2 After providing their initial pre auction advice, [Law firm A] were not instructed to, and did not, review the documents again until after the auction when Mr LY raised the issue of the neighbouring garage and use of driveway in his meeting with Mr SN. At that point the omission was identified and remedied (as best able) by Mr SN; and
- 6.3 The application says Ms TD's experience meant she could not have made the mistake twice, but the facts show that she did not. She did not review the LINZ searches again until instructed to do so with Mr SN during the meeting with Mr LY. At that time, the missing variation was picked up and inquiries were made with LINZ.

[55] They take issue with Mr LY's frequent accusations about the firm's management and workflow guidelines, when he has no knowledge of what these are.

[56] [Law firm B] say that [Law firm A] relies on its clients to advise them if the location of the buildings on the ground differ from those shown on the cross-lease plan and that this was a reasonable approach to take in the circumstances.

Compensation

[57] [Law firm B] say that there is no good reason for new information to be provided on review. They say that Mr LY did not advise [Law firm A] that sole ownership of the driveway was a significant motivator for their interest in the property. They also note that there were only two bidders at the auction and there is no evidence of "what the next lowest bid was to determine any difference in value of what he paid for the house, and what the next lowest bidder was prepared to pay".

[58] [Law firm B] referred to matters relating to causation to dispute the possibility of any order for compensation being entertained. They then refer to the Court of Appeal judgment in *Roberts v Jules Consultancy Limited (in liquidation)*.¹² In that case, the Court held that "the normal measure of loss in such a case (often termed a "no transaction" case) is the difference between the price paid and the value of the property received in return". [Law firm B] cite this in support of the Committee's decision,¹³ that "the

¹¹ Email [Law firm B] to LCRO (25 October 2022).

¹² *Roberts v Jules Consultancy Limited (in liquidation)* [2021] NZCA 303 at [72], citing James Edelman, Simon Colton and James Varuhas (eds) *McGregor on Damages* (20th ed, Sweet and Maxwell, London, 2017) at [34-051].

¹³ Standards Committee determination, above n 3, at [56].

successful purchaser at auction sets the market value of the property” – i.e. what Mr LY paid meaning he has suffered no loss.

[59] [Law firm B] dispute that Mr LY has suffered any loss. They submit further that the Standards Committee has not made any error in its process or decision.

Nature and scope of review

[60] The High Court has described a review by this Office in the following way:¹⁴

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.

[61] This review has been conducted in accordance with those comments.

Process

[62] The review proceeded by way of a hearing with both parties on 15 August 2023. Mr LY presented his reasons in support of his application for review. Mr JP attended with Mr SN for the respondent, representing all parties.

Review

The parties

[63] Mr LY made his complaint against ‘SN and company’. On receipt of the complaint, the professional standards administrator emailed Mr LY in the following terms:¹⁵

We note you have referred to your complaint as being made against Mr SN and [Law firm A]. The Lawyers and Conveyancers Act 2006 requires us to identify the particular lawyer or lawyers whose conduct you are complaining about. Can you please identify which particular lawyer in [Law firm A] you wish to complain about, in addition to Mr SN.

[64] In response to the Complaints Service, Mr LY advised that his complaints were about Mr SN, Ms MB, Ms TD and Ms KV, all of whom were involved with the transaction giving rise to Mr LY’s complaints.

¹⁴ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

¹⁵ Email Complaints Service to LY (5 November 2021).

[65] Although complaints can be made against an incorporated firm, the Committee processed the complaint against the persons named by Mr LY. Having given considerable thought whether to amend the Committee's determination to refer to a complaint against [Law firm A] Limited, I have treated the complaints in the same manner as the Committee. However, for simplicity, I have referred in some instances to the party complained about as [Law firm A], or 'the firm'.

Review

[66] The facts of the matter giving rise to Mr LY's complaints are straightforward:

- Mr LY asked [Law firm A] to review and advise on the documents presented for the property to be auctioned.
- The property was a cross leasehold property shown as Flat 1 on Deposited Plan [redacted].
- Ms TD requested up to date searches on 2 June 2021.
- The variation of lease [redacted] for B was not available to search.
- Ms TD did not request a search of lease [redacted] for A notwithstanding that the variation was registered against the title for B.
- On the following day, Ms TD prepared her report and sent this to Mr LY, copying in Ms MB and Ms KV. The report was sent by Ms TD 'on behalf of Ms MB, who was the team leader.
- The plan attached to the title showed that the driveway for B was within the exclusive use area for that property.
- Mr LY was successful at the auction.
- By searching the variation of lease for A, Mr SN subsequently ascertained that the exclusive use area for B had been altered so that the driveway became common area for both A and B.
- Ms TD's failure to report to Mr LY that she could not search the variation of lease for B, and failing to search the variation relating to A before the auction, has resulted in the fact that Mr LY does not have exclusive use of the driveway which is what he believed to be the case.

Outcomes

[67] The outcomes Mr LY seeks from this review:

1. A thorough review of the Standards Committee's determination;
2. A determination of unsatisfactory conduct by SN as managing lawyer; and
3. Appropriate compensation.

[68] At the review hearing Mr LY also indicated that he was looking for an apology from Mr SN.

[69] No orders can be made without there first being a finding of unsatisfactory conduct.

Unsatisfactory conduct

[70] Mr LY has argued that the failure to establish and follow workflow procedures was the cause of Ms TD's error. He says this was Mr SN's responsibility.

[71] Mr LY has referred to the guidelines issued by the New Zealand Law Society Property Law Section which recommend that the lawyer / legal executive / conveyancer personally check the property, "using Google satellite, Geomaps or a recent aerial photograph". He refers to this in support of his submission that the [Law firm A] workflow guidance was defective.

[72] There is no evidence of what the workflow guidance of the firm is, and it is important to note that the guidelines issued by the Property Law Section are recommendations only – they have not been elevated to the extent that an adverse disciplinary finding will follow if they are not complied with.

[73] It has also been recognised by the Court¹⁶ that the degree of supervision over staff that a lawyer must exercise varies according to the experience of the staff member.

[74] To avoid the oversight which arose in this instance would have required Ms TD to report to Ms MB or Mr SN with a copy of the title and the other documents which she had obtained copies of.

[75] Ms TD had eleven years of experience as a legal executive (or the equivalent terminology) in [Country A], and had qualified as a legal executive in New Zealand.

¹⁶ *A v Legal Complaints Review Officer* [2013] NZHC 1100.

[76] Obtaining the required searches of titles and registered documents is one of the fundamentals of conveyancing and it was appropriate for this work to be undertaken by Ms TD without the need for any double checking by another person in the firm. Ms TD did search for the variation of lease which affected the title. It was not available, and she did not take any further steps to verify what the missing document provided.

[77] Ms TD made some critical mistakes:

- (i) She did not in the first instance obtain a search of the variation of lease for A which could have differed from the variation of the lease in B;
- (ii) She did not immediately follow up with LINZ when the report was a 'nil' report; and
- (iii) She did not appreciate the significance of the notation on the title – 'affects fee simple' – after the variation of the leases.

[78] This was Ms TD's shortcoming – not the result of inadequate workflows or lack of supervision.

[79] The information relating to cross leases sent to Mr LY emphasised the need for a purchaser to make checks to ensure that the outline of the building on the deposited plan was accurate. These words read:

Please check the plan attached to the title to ensure that the shape, size and location of the building(s) and other areas are correctly shown on the plan. If the plan attached to the title does not correctly match the external dimensions of the building(s) then the title may be defective.

[80] During inspections of the property prior to the auction, Mr LY had noted the building at the rear of A which, he says, seemed to be more in the nature of a shed when he was able to see inside. He did not see any vehicles accessing the shed along the driveway, but he does acknowledge that he 'assumed' that any use of the drive was with the permission of the owner of the property he wanted to buy.

[81] Mr LY has not advised what discussions, if any, took place between him and the selling agent. If the agent had provided incorrect information, then recourse against the agent should be considered.

[82] It was not until after the auction that the issue of the driveway arose. There is no ability to raise any requisition as to title for a misunderstanding about exclusive use areas. Unless (and even if) the agent had misrepresented the position, there were no options to cancel the agreement at that stage. Mr LY was committed to the purchase.

[83] The finding of unsatisfactory conduct against Ms TD is confirmed.

[84] That leads to a consideration of what orders should be made.

Apology

[85] Mr SN readily apologised to Mr LY at the review hearing. His apology was sincere and of greater value than one that is ordered.

Compensation

[86] The facts in this review are remarkably similar to the decision on review referred to by Mr JP in his submissions to the Standards Committee, *DH v WU*.¹⁷ A copy of this decision will have been provided to Mr LY, but to assist, a copy is provided with this decision.

[87] Rather than repeat much of that decision, I specifically adopt the discussion as to the appropriate penalties to be imposed in this instance.

[88] In *DH v WU*, the offer by the lawyer to pay the legal costs which would otherwise be incurred in arranging for exclusive use areas to be established, could be equated to the offer of \$3,000 made by Mr SN for Mr LY to obtain advice as to what remedies were available to him.

[89] Mr LY declined that offer and maintains that [Law firm A] should be ordered to pay the maximum possible amount of compensation, namely \$25,000.

[90] It would have been apparent from the fact that, as I had made this suggestion as a potential outcome of the review, I did not contemplate that an award of the magnitude sought by Mr LY was appropriate.

[91] I remain of that view.

[92] The facts of *DH v WU* are almost on all fours with the facts arising in this review and I can see no reason that the outcome of this review should differ. The only difference between the two is that the applicant in that case had incurred the cost of taking separate advice as to his remedies. Mr LY has not advised that he has done the same and declined the opportunity to do so at the cost of [Law firm A].

¹⁷ LCRO 219/2010.

[93] That leads to the question as to whether Mr LY has suffered loss by bidding higher than the value of the property, and/or the diminution of the area of land in the exclusive use area attached to B.

[94] Mr LY submits that the loss is \$79,700, calculating this figure by reference to the rating valuation established by the Council.

[95] The initial question to consider, however, is whether any losses that have been occasioned were occasioned as a result of [Law firm A]'s conduct. That question was posed in *Sandy v Khan*,¹⁸ where the Review Officer said:

Ms Sandy must show that there is a rational causal connection between the losses claimed and the conduct of Mr Khan.

[96] There is a difficulty in this instance for Mr LY to establish a 'rational causal link' between the amounts claimed by him and the error made by [Law firm A].

[97] Mr LY would have to be able to show definitively that he would not have proceeded with the purchase if he had known the situation. There are many factors which putative purchasers take note of when considering whether or not to make an offer to purchase a property, and there may be other factors which outweigh the perceived disadvantage of a shared driveway.

[98] That leads to the question as to whether the price paid by Mr LY exceeded the value of the property.

[99] Mr LY has based his calculation of the losses by reference to the Council rating valuation. The Council valuation would need to be subjected to scrutiny, and independent valuation evidence produced and examined.

[100] That is not a process to be undertaken in the context of professional disciplinary proceedings. It can only be properly explored in civil proceedings in the courts.

Emotional harm

[101] There is no doubt that Mr LY would have suffered surprise and disappointment upon learning that the driveway was not within the exclusive use area of the property.

¹⁸ LCRO 181/2009.

[102] In *Hong v Auckland Standards Committee No 5*,¹⁹ when accepting that compensation for emotional harm fell within the definition of 'loss' as used in s156(1)(d) of the Lawyers and Conveyancers Act 2006, the Court said:-²⁰

Loss arising from emotional harm caused by breaches of duties by a legal practitioner in whom a client has trust and confidence on matters going to something as fundamental as a home for his or her family, and the financial arrangements which go with that, would easily come within the scope of this definition of loss.

[103] Mr Hong was a lawyer. His client was unable to borrow sufficient funds to complete the purchase of a property that he had contracted to buy and Mr Hong contributed towards the purchase price. Mr Hong transferred ownership of the property to himself and Ms D. By various means, Mr Hong became his client's landlord. When his client fell in to arrears with payment, Mr Hong endeavoured to evict his client.

[104] The Court confirmed²¹ that an award of \$8,000 was 'reasonable and appropriate in the circumstances'.

[105] The circumstances in which Mr Hong's client found himself as a result of Mr Hong's breaches of his professional duties, are substantially more serious than those experienced by Mr LY.

[106] I refer to this case primarily to assist in determining the quantum of compensation to order in this instance. In *Hong*, the Court recognised that determining the quantum of compensation to award, 'is a matter of personal judgment'.

[107] Balancing the need to recognise the impact of Ms TD's error on Mr LY, with all of the other factors present in this matter, and as noted above,²² I can see no reason to depart from the outcome of the review in *DH v WU*.

[108] I consider that an award of \$1,000 is the appropriate amount.

Decision

[109] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006:

- (a) The finding of unsatisfactory conduct against Ms TD is confirmed
- (b) The fine of \$500 is confirmed.

¹⁹ *Hong v Auckland Standards Committee No 5* [2020] NZHC 1599.

²⁰ At [205].

²¹ At [208].

²² At [105] of this decision.

- (c) Ms TD is ordered to pay the sum of \$1,000 to Mr LY by way of compensation.
- (d) In all other respects, specifically the determination to take no further action against Mr SN, Ms MB, and Ms KV, I confirm the determination of the Committee.

Publication

[110] In accordance with the usual practice of this Office, and pursuant to s206(4) of the Lawyers and Conveyancers Act 2006, this decision will be published in an anonymised format.

DATED this 08TH day of September 2023

O Vaughan
Legal Complaints Review Officer

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

Mr LY as the Applicant
Mr SN, Ms MB, Ms TD and Ms KV as the Respondents
Mr JP, on behalf of Mr SN
[Area] Standards Committee [X]
New Zealand Law Society