

Guidelines for Parties to Review

Legal Complaints Review Officer

General Information

1. The Legal Complaints Review Officer (LCRO) is an independent statutory officer created by section 190 of the Lawyers and Conveyancers Act 2006 (the Act).
2. The Legal Complaints Review Officer is an office of review and can only review decisions by a Lawyers Standards Committee or a Conveyancers Standards Committee on complaints that are made.
3. The purposes of the complaints and discipline system under the Act includes processing and resolving complaints as expeditiously as circumstances permit and in appropriate cases by negotiation, conciliation or mediation. The role of the LCRO and its procedures need to be viewed in light of these purposes.
4. The LCRO must discharge the functions of the office with as little formality and technicality and with as much expedition as is consistent with the Act, a proper consideration of the review, and the requirements of natural justice.
5. The following information on the practice and procedure adopted by the LCRO is designed to provide guidance to members of the public, lawyers and conveyancers, and any other parties who may be involved in a review before the Office.

Scope of the LCRO functions

6. The primary function of the LCRO is to review decisions of Standards Committees whether in relation to substantive decisions or orders. While wide powers to obtain information, conduct inquiries, and investigate exist, it is expected that in most cases all relevant information will have been placed before the Standards Committee and be available to the LCRO.
7. The review function is intended to correct any error that may have been made by a Standards Committee. If you are applying for a review you should identify in your application the error or errors that you consider the Standards Committee to have made. The LCRO may examine how the Standards Committee dealt with the complaint, including matters not raised by, or identified in the review application. Issues of law, fact and credibility may be revisited.
8. The LCRO is not limited to a review only of whether the Committee conducted itself in accordance with proper procedure and adhered to the principles of natural justice. However, where the matter under review concerns the exercise of a discretion by a Standards Committee or the professional propriety of a particular course of action, the LCRO will be cautious to substitute his/her judgement for that of the Standards Committee without good reason.
9. The LCRO also has the additional functions and powers to:

- i. Resolve complaints: The LCRO may dismiss an application for review, make various remedial or compensatory orders either after conducting a hearing (in which a finding of unsatisfactory conduct is made) or on the basis of an agreed settlement.
- ii. Maintain professional discipline: Where unsatisfactory conduct is found (under section 12, section 13 or section 14), disciplinary orders may be made.
- iii. Lay charges: The LCRO may lay charges of misconduct or unsatisfactory conduct against a lawyer or conveyancer before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (or may direct a Standards Committee to lay charges before the Tribunal).

Applications for review

Who may apply

10. Only the individuals specified in section 194 to section 197 of the Act may apply for a review. This includes (but is not limited to):
 - i. a person who made a complaint that was considered by a Standards Committee;
 - ii. the person who was the subject of the complaint;
 - iii. the firm to which the person subject to the complaint belonged; and
 - iv. the professional body of the person who was subject to the complaint. If you are intending to seek a review and are not one of the persons listed above, ensure you fall within one of the other classes of applicants in sections 194 to 197.

How to apply

11. If you are applying for a review you must:
 - i. Complete and sign the prescribed application form (copy available at www.justice.govt.nz/tribunals/legal-complaints-review-officer/);
 - ii. Enclose the \$50 filing fee;
 - iii. Ensure that both of the above are received by the LCRO within 30 working days of the date of the decision to be reviewed
12. The address of the LCRO is stated on the application form. All of the above requirements must be strictly followed.
13. Include the following information with your application:
 - i. a copy of the Standards Committee decision which you seek to have reviewed;
 - ii. a clear statement of the reasons for seeking the review (i.e. why you consider the Standards Committee decision to be wrong or unfair);
 - iii. a statement of the remedy or remedies you are seeking;
 - iv. all relevant information (statements and/or documents) which you rely upon and which were not supplied to the Standards Committee.

14. Evidence should be provided in the form of a statement (or statements) with any accompanying documents.

Note: All information provided to the LCRO in respect of a review will be provided to other parties to that review.

Pre-hearing steps

Collection of information

15. The review will be conducted in an investigative manner and the LCRO or members of his/her office may seek further information or clarification of matters on their own initiative.
16. On receipt of an application for review the LCRO will obtain all relevant documentation from the Standards Committee.
17. No new complaints may be made at the review stage. In general, the LCRO will not consider new information which should have been placed before the Standards Committee. Any person who seeks to introduce information which was not made available to the Standards Committee will need to provide good reason as to why it was not available to the Standards Committee and show that it is relevant to the review. The LCRO will decide how extensive the inquiry needs to be.
18. The LCRO may receive any information/evidence he or she thinks fit (and is not bound by the rules of evidence) in accordance with section 207 of the Act. Information may be in the form of documents and/or statements or any other reliable form. All evidence will be disclosed to the parties unless good reason to withhold it exists.

Teleconference

19. Prior to a hearing being arranged there may be a telephone conference if the LCRO considers there are any preliminary matters to be addressed in relation to the review.
20. Such matters may include the following
 - to identify factual and/or legal issues central to the matter;
 - to ascertain whether the matter might properly be postponed for the parties to attempt to resolve the matter by negotiation, conciliation, or mediation;
 - to identify any further information that may be relevant to the review;
 - to set a timetable for further necessary steps (if any) to be taken by the parties prior to the hearing;
 - to fix the date for a review hearing.
21. After the conference the LCRO will make a record of any directions given and forward copies to the parties. If necessary, further conferences may be held.

Dispute Resolution

22. In appropriate cases the LCRO will explore the possibility of the parties resolving the issues (or any aspect of a complaint) by negotiation, conciliation or mediation in accordance with section 201 of the Act. The

LCRO may postpone the conduct of a review for a period of time. A postponement will usually be for a fixed period of time; however, the LCRO may recommence the conduct of the review at any time.

23. Where a matter is resolved by negotiation, conciliation or mediation the LCRO may record the terms of the settlement and may, with the parties consent, declare all or some of those terms to be all or part of a final determination of the issues (section 201(5) of the Act).
24. Where the decision under review concerns unsatisfactory conduct or misconduct, the LCRO may conduct the review notwithstanding the fact that the parties have resolved some or all issues between them. In determining whether to continue with a review the LCRO will take into account the public interest of continuing with the conduct of the review.

Withdrawal from review

25. An Applicant may seek to withdraw from an application for review. In such event, whether or not the review proceeds is at the discretion of the LCRO. In exercising that discretion the LCRO will take into account the public interest of continuing with the conduct of the review. If the LCRO decides to proceed with a review the Applicant who has withdrawn the application will not be included in the process further.

Hearings

General

26. A hearing will generally involve the personal attendance of the Applicant and the Respondent. It is not always necessary that parties need to personally attend and a hearing may be conducted 'on the papers,' or may involve a hearing attended by an Applicant only. (Refer paragraphs 39 to 44).
27. The LCRO may conduct the review as he or she sees fit, but at all times the principles of natural justice apply. Hearings conducted by the LCRO are not court hearings. They will be conducted with as little formality as is consistent with a proper consideration of the review.
28. All evidence should be made available to the LCRO prior to a hearing. This will usually comprise of information considered by the Standards Committee (the Standards Committee file will have been obtained by the LCRO) and any further explanations and submissions provided by the parties for the review.
29. Hearings before the LCRO, unless otherwise directed, are conducted in an investigative manner. The LCRO may put questions to the parties or witnesses.
30. A hearing will usually be conducted nearest to the District Court that is most convenient in all of the circumstances. Where the Applicant and Respondent are located in different towns or cities the preferences of the parties may be sought but the LCRO will finally determine the most convenient location.

Hearings in person with both parties:

31. The purpose of a hearing in person is to provide an opportunity to the parties to explain the information provided to the LCRO and make arguments supporting or opposing the application for review. It is not expected that evidence will be presented orally at the hearing. All relevant evidence is expected to have been put before the LCRO in documentary form prior to the hearing.

32. All hearings are conducted in private. Parties are entitled to be accompanied by a representative and/or support person. No person who is not an advocate, a witness or a support person will be admitted without the consent of the LCRO. Support persons are there in support only and do not have the right to speak.
33. A hearing in person will generally be conducted in the following way:
- opening introduction and explanation of the procedures by the LCRO;
 - the Applicant will have the opportunity to speak first in support of their application. Questions may be asked by the LCRO;
 - the Respondent replies to the matters raised by the Applicant. Questions may be asked by the LCRO;
 - the Applicant will have the opportunity to make any further response or submissions;
 - the Respondent will have the opportunity to make any final submissions.
34. The LCRO may reserve his or her decision and deliver a written decision with reasons as soon as practicable.
35. Where it is convenient to do so, a hearing may be arranged by way of a telephone conference or audio visual link. In such event all arrangements will be made via the LCRO office.

Hearings on the papers

36. A hearing on the papers means that the review is conducted on the basis of all of the written material and documents that are before the LCRO in relation to the original complaint and that gathered as part of the review application. This information will include the file of the Standards Committee and any additional information provided by the parties for the review.
37. If the LCRO considers that the review may properly be dealt with on the papers and without the necessity of a hearing in person, the parties will be given a reasonable opportunity to comment on whether the review should be dealt with in this manner.
38. If parties do agree to a hearing on the papers, the LCRO will commence the review on the papers and issue the decision in due course. If either of the parties does not agree to this process and requests to be heard in person, the LCRO will consider the reasons for this and make a decision on how the matter will proceed. The LCRO may, without the consent of the parties, direct that the application progress on the papers.

Applicant-only hearings

39. An Applicant-only hearing most often arises in the context of an Applicant having declined to the review being conducted on the papers (see above) and has asked to be heard personally. In that situation the LCRO will have already assessed, from all of the information that has been made available, that the Respondent has fully addressed and responded to all of the issues and that there appears to be no further information to be obtained that requires the Respondent's attendance.
40. However, an Applicant-only hearing does not prevent further enquiry being undertaken if the LCRO is of the view that information arising at the Applicant-only hearing discloses further matters that need to be addressed by the Respondent. Any subsequent enquiry may be done by way of a further hearing with both parties, but more often will involve the Respondent being required to provide information sought by the LCRO. All further information provided will be circulated to the parties.

41. Less commonly an Applicant-only hearing may be arranged where the information provided by the Applicant does not set out sufficiently the basis of the review application. This hearing allows the Applicant an opportunity to clarify the information and explain why the review is sought.
 42. In every case that an Applicant-only hearing is arranged, the Respondent will be invited, but not required, to attend.
 43. The fact that the LCRO may arrange an Applicant-only hearing is not indicative of any outcome of the review application.
 44. The same procedural rules apply to this hearing as apply to a hearing involving both parties.
-

Adjournments and Timetables

45. The LCRO is required to conduct the review as expeditiously as possible. In most cases where parties are required to take some action, a strict time limit will be imposed. In the event that this time limit cannot be complied with, an application for an extension of time should be sought and reasons provided.
 46. The granting of an adjournment of a fixed hearing is a matter involving the exercise of the LCRO's discretion. An adjournment will only be granted where strong grounds exist and on the production of supporting evidence where appropriate.
 47. As much notice as possible of a request for an adjournment must be given in writing to the LCRO, along with the earliest possible alternative fixture dates. Where a party seeking an adjournment has obtained the consent of the other party, this will be taken into account. However, even where consent has been given, an adjournment will not be granted without good reasons.
-

Orders that may be made by the LCRO

48. The LCRO is not constrained to making only those orders which the Applicant seek in their application and may make orders on his or her own initiative.
49. The LCRO may confirm, amend, or replace any of the orders made by a Standards Committee. Those orders are found in section 156 of the Act and include:
 - censuring a practitioner;
 - ordering an apology;
 - ordering compensation (up to \$25 000);
 - ordering a reduction, cancellation or refund of fees;
 - ordering a practitioner to rectify an error or to pay to have an error rectified;
 - imposing a fine (of up to \$15 000);
 - ordering that a practitioner's practice be made available for inspection;
 - ordering further education or training to be undertaken by a practitioner.
50. The LCRO may refer a matter back to a Standards Committee for further consideration either generally or in respect of any specified matter. Such an order is most likely to be made where there has been some

procedural flaw or omission in the process of the Standards Committee which can be rectified by a reconsideration of the matter.

51. The LCRO may also lay charges alleging that a lawyer or conveyancer is guilty of misconduct or unsatisfactory conduct before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal and may also apply to the Tribunal that the practitioner be suspended from practice pending the determination of such a charge.
52. Alternatively the LCRO may direct a Standards Committee to lay a charge before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal and may also apply to the Tribunal that the practitioner be suspended from practice pending the determination of such a charge.

Costs (also see separate Costs guideline)

53. The LCRO may revisit any costs orders made by a Standards Committee. In doing so he or she may order that the practitioner pay the costs of the inquiry to the professional body, and/or that the costs or expenses incurred by the complainant be met in respect of the conduct of the matter before the Standards Committee.
54. The LCRO also has a general power to make such further costs orders in respect of the conduct of the review. These may include orders that the professional body pay costs incurred by the review to a practitioner, or that the practitioner pay the costs incurred by the review to the professional body.
55. While there is also a power to award costs between complainant and practitioner in respect of the review, such power will be exercised sparingly. Where the application for review was reasonable (even though the decision of the Standards Committee may not have been changed) and the parties have acted appropriately, parties will generally be expected to bear their own costs incurred in being party to the review (see Costs Guidelines).

Privacy

56. All hearings will be conducted in private as is required by section 206(1) of the Act.
57. All information provided to the LCRO by anyone who is a party to the review will be copied to the other party or parties unless the LCRO considers there is good reason for it being withheld. The LCRO will not take into consideration any information that is not made available to the other party.

Publication (also see separate Publication guideline)

58. The decisions of the LCRO may be published if it is in the public interest. In general, decisions of the LCRO (or abstracts of them) with identifying details removed will be published. Parties who are of the view that publication of the decision of the LCRO (or parts of it) is or is not in the public interest should make their view known and provide supporting arguments for their view.
59. In general, the LCRO will not publish the names of lawyers or conveyancers who are found by the LCRO to be guilty of unsatisfactory conduct for the first time. However, where the LCRO considers that the practitioners conduct has shown a culpable disregard of the relevant rules or the obligations owed to a client or there has been a severe departure from acceptable standards the LCRO may make an order for

publication. In such cases, no publication of the name of an individual practitioner will occur unless that practitioner has first had an opportunity to make submissions on the matter of publication.

60. Notwithstanding clause 59, where the review application involves a Standards Committee decision to publish the practitioners name, the LCRO will take into account the Standards Committee reasons for the decision.

Rex Maidment

Legal Complaints Review Officer

May 21

Legal Complaints Review Officer

Email: LCRO@justice.govt.nz

Postal Address: CX 10072
Auckland
New Zealand

Address: Level 6, Auckland District Court
69 Albert Street (corner of Kingston and Albert Streets)
Auckland 1010

Phone: 0800 367 6838

Website: <https://www.justice.govt.nz/tribunals/lawyers-and-conveyancers/lcro/>