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

[2021] NZLCRO 207

Ref: LCRO 143/2020

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| **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** | **TJ**<br>Applicant |
| **AND** | **YY**<br>Respondent |

## DECISION

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

### Introduction

[1] Mr TJ has applied for a review of a decision by the Central Standards Committee 3.

### Background

[2] Mr OW and Ms YY were in a de facto relationship for a number of years.

[3] Mr TJ had acted for Ms YY in the preparation of two relationship property agreements. The first of these, executed in 2010, provided that Mr OW would transfer a 50% interest in a residential property that he owned, to Ms YY. The second, executed in November 2014, provided that Mr OW would transfer his remaining interest in the home to Ms YY, this making her the outright owner of the property.

[4] Around the time that the residential property was transferred into Ms YY's name as sole owner, Mr OW executed a new will. That will provided that:

(a) a home jointly owned by Mr OW and his sister, would pass to Mr OW's sister; and

(b) the home that had been occupied by Mr OW and Ms YY would, in line with the arrangements that had previously been made, remain her separate property; and

(c) monies held in various bank accounts were to be apportioned equally amongst Ms YY and Mr OW's four sisters.

[5] Mr OW passed away in December 2014.

[6] Mr CA, the lawyer who had been instructed by Mr OW to draft his final will, was appointed administrator of his estate.

[7] Probate was granted on 28 July 2015.

[8] Funds held in Mr OW's various bank accounts were unable to be dispersed in accordance with the instructions seemingly contemplated by him when providing instructions for his final will. All of the bank accounts were held in the joint names of Mr OW and Ms YY. By virtue of survivorship, these accounts remained Ms YY's sole property.

[9] Mr OW's sisters considered that they had an entitlement to an interest in monies held in their late brother's bank accounts. They were encouraged in this view by the fact that Mr OW had made provision in his will that the residue of his estate, which was comprised largely of funds held in various investment accounts, would be distributed equally amongst his four sisters and partner.

[10] Around 19 February 2015, Mr TJ met with Mr CA, for "without prejudice discussions", those discussions focused on exploring the possibility of reaching agreement between Ms YY and Mr OW's sisters, as to how the bank funds should be dispersed.

[11] On 20 February 2015, Mr CA forwarded a settlement proposal to Mr TJ.

[12] Mr CA's proposal was that Ms YY retain $300,000 of the investment funds, and the balance of $200,000 be distributed amongst Mr OW's four sisters.

[13] On 25 February 2015, Mr TJ forwarded an email to his personal assistant. The email was copied to an employee at Mr CA's firm. Amongst the issues addressed in that email, was Mr TJ's view of the settlement proposal that had been suggested by Mr CA. Mr TJ noted that he was "happy" for Ms YY, and that he considered Mr CA's proposal to constitute "a very good settlement".

[14] In October 2015, one of Mr OW's sisters commenced proceedings against Ms YY in the Family Court under the Property (Relationships) Act 1976. The application was struck out.

**The complaint and the Standards Committee decision**

[15] Ms YY, through her legal counsel, lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 23 May 2018. The substance of her complaint was that:

(a) Mr TJ's advice to Ms YY that the settlement proposed presented as a good outcome for her was incorrect; and

(b) that advice was disclosed (without Ms YY's consent) to Mr CA's office in circumstances where it was disadvantageous to Ms YY for that advice to be disclosed.

[16] Mr TJ provided a response to the complaint on 5 July 2018. He submitted that:

(a) Ms YY had not been forthcoming in disclosing to him that she was a joint owner of all the bank accounts; and

(b) in acting for Ms YY on the preparation of two relationship property agreements, it had never been disclosed to him that there was any other relationship property other than the property covered by the agreements; and

(c) he had concerns regarding Mr OW's capacity to provide instructions for his will, those concerns based on information that Ms YY had reported to him in which she had raised concern that Mr OW had mental health issues; and

(d) his ability to respond to the complaint must be considered in context of him being unable to retrieve his files, as those files had been forwarded to Ms YY's lawyer.

[17] In providing a brief response to Mr TJ, Ms YY's counsel reinforced that Ms YY's primary concern remained that Mr TJ had informed her that the proposed settlement was a "good outcome" for her. Ms YY rejected suggestion that Mr OW lacked capacity to manage his affairs, and noted that changes to the bank accounts were made in around 2010, with the consent and understanding of both Mr OW and Ms YY.

[18] Mr TJ provided a further response to the complaint on 11 March 2009. To the extent that this response added to his initial reply to Ms YY's complaint, Mr TJ noted that:

(a) he considered he had provided appropriate advice to Ms YY on all occasions; and

(b) he recognised that Ms YY had an absolute entitlement to the contents of the bank accounts on becoming aware that the accounts were held in Mr OW and Ms YY's joint names; and

(c) Ms YY had expressed concern to him on a number of occasions about Mr OW's mental state; and

(d) his concerns at possibility that Mr OW may not have lacked capacity materially influenced his view that the settlement achieved by Ms YY had been a very good one for her; and

(e) his advice to settle was premised on his view that settling the dispute would avoid the prospect of litigation that could potentially have dire consequences for Ms YY.

[19] The Standards Committee identified the issues for the focus of its investigation as being a consideration as to whether:

(a) Mr TJ had engaged in conduct that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer; and if so

(b) whether Mr TJ's conduct was sufficiently serious to be considered unsatisfactory under s 12(a) and/or 12(c) of the Lawyers and Conveyancers Act 2006 (the Act).

[20] The Standards Committee delivered its decision on 18 June 2020.

[21] The Committee determined that Mr TJ's conduct had been unsatisfactory.

[22] The Committee concluded that:

(a) Mr TJ's advice fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer; and

(b) Mr TJ should not have disclosed his advice to the estate's solicitor; and

(c) Mr TJ had a professional obligation to exercise his judgement solely for the benefit of Ms YY.

[23] Following on from its determination that Mr TJ's conduct had been unsatisfactory, the Committee made orders that Mr TJ;

(a) be censured pursuant to s 156(1)(b) of the Act; and

(b) refund to Ms YY the sum of $2,808.30 (inclusive of GST), being fees rendered by him to Ms YY; and

(c) pay to Ms YY the sum of $2,543.15, being fees incurred by Ms YY in respect of the Committee's inquiry; and

(d) pay a fine to the New Zealand Law Society in the sum of $3,000; and

(e) be required to undergo practical training or education in relation to estate administration.

[24] The Committee determined not to make a costs order against Mr TJ, this decision taken to reflect what the Committee described as the "unfortunate delays in this matter".

[25] At the conclusion of its decision, the Standards Committee indicated it would be giving consideration as to whether its decision should be published. The Committee invited submissions from the parties on the issue of publication.

**Application for review**

[26] Mr TJ, through his counsel, filed an application to review the Standards Committee decision on 8 July 2020.

[27] Mr TJ characterised his review application as a "partial review" (to address issues of penalty), and advanced "in opposition to name publication".

[28] Mr TJ did not seek to contest the unsatisfactory conduct finding, nor did he challenge orders that he be censured and refund fees charged to Ms YY.

[29] Mr TJ sought direction that the remaining orders be reversed.

[30] The submissions filed by Mr TJ on review in large part amplified the arguments he had advanced to the Standards Committee. His argument was overarched with the submission that proper consideration should be given to the fact that he had practised law since 1973 and had never, in the course of that lengthy career, been the subject of any adverse, or indeed any, disciplinary finding by the New Zealand Law Society. Mr TJ emphasised that he was acutely embarrassed that what he considered to have been a commendable career, had been blighted at such late stage by an adverse disciplinary finding.

[31] To the extent that Mr TJ's review submissions provided fuller explanation of the steps he had taken, I do not consider, in light of the narrow scope of the review, that I need to traverse those explanations. His argument essentially remains unchanged from that he had advanced to the Standards Committee. He is critical of his client for not having informed him that the ownership of Mr OW's bank accounts had been transferred into joint names. He reiterates that he had genuine anxiety that question could be raised as to whether Mr OW lacked capacity, and that the prospect of this potential issue arising, encouraged him to the view that reaching a settlement with Mr OW's sisters would be advantageous to Ms YY. In considering options for settlement, he was particularly mindful of the fact that steps that had previously been taken to transfer property owned by Mr OW to Ms YY were advantageous for her.

[32] Ms YY's counsel provided a brief response to Mr TJ's review application. It was submitted for Ms YY that:

(a) Mr TJ had not made inquiry of Ms YY in 2019 as to the status of the ownership of the relevant bank accounts, rather he had proceeded on the mistaken assumption that the bank accounts were in Mr OW's sole name; and

(b) there was no evidence to suggest that Ms YY had "duped" Mr TJ; and

(c) Mr TJ's negative attitudes towards his client had materially compromised his ability to provide her with advice that promoted her interests to the exclusion of third parties; and

(d) there was no evidence to support suggestion that Mr OW lacked capacity; and

(e) Ms YY was adamant that Mr TJ did not have her instructions, when Mr OW communicated his views to Mr CA on the settlement proposal; and

(f) Mr TJ would have sighted tax deduction certificates which should have alerted him that jointly held funds in excess of $150,000 had been invested.

**Review on the papers**

[33] 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.

[34] I record that 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. On the basis of the information available, I have concluded that the review can be adequately determined in the absence of the parties.

**Nature and scope of review**

[35] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:[1]

> … 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

[1] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41] (citations omitted).

> to exercise some particular caution before substituting his or her own judgment without good reason.

[36] More recently, the High Court has described a review by this Office in the following way:[2]

> 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.

[37] 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**

*The unsatisfactory conduct finding*

[38] The issues to be determined on this review are narrowly confined to the question as to whether some of the penalties imposed by the Committee were appropriate.

[39] Mr TJ having accepted the Committee's finding of unsatisfactory conduct, together with its decision to impose an order for censure and direction that he refund fees charged to Ms YY, I have no need to comprehensively scrutinise the question as to whether the finding of unsatisfactory conduct entered by the Committee was appropriate. But to the extent that it is inevitable that my views on the pivotal conduct finding have relevance to the orders that Mr TJ seeks to review (particularly one of those orders) it is appropriate that I make brief comment on the conduct finding which underpins the Committee's decision.

[40] I agree with the Committee that Mr TJ's conduct was unsatisfactory.

[41] Mr TJ's error, in my view, was focusing on concern that he may, in the course of acting for Ms YY in respect to the two relationship property agreements, have inadvertently provided opposing counsel with information that was incorrect. Mr TJ quite properly took his obligation to ensure accurate disclosure seriously, but when called on

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

to provide advice to Ms YY on the issue as to whether Mr OW's sisters had realistic prospect of challenging the brother's will, he lost sight of the fact that his primary obligation was to preserve, protect and promote the interests of his client.

[42] I think it unfortunate that Mr TJ characterised Ms YY's apparent failure to inform him that all of the bank accounts had been transferred into joint names, as being conduct which was self-serving. He goes further and characterises it as "duplicitous". Absent from this analysis, is any real understanding of what Mr CA's intentions or wishes were, concerning the investment funds.

[43] Transfer of the funds took place some years prior to Mr OW's death. The transfers could not have been implemented without his consent. In the absence of evidence to prove otherwise, it must be assumed that Mr OW understood the implications of his decision to transfer an interest in the investment funds to his partner.

[44] Indication in his will of an intention that the residue of his estate be distributed amongst Ms YY and his four sisters, would suggest that it was his understanding that there would be a residue of funds available for distribution, but the fact that there was not, does not provide solid foundation for argument that there had been something improper about Mr OW's decision to have the investment funds transferred into joint names, some years prior to executing his will.

[45] Ms YY's offence, in Mr TJ's eyes, was that she had failed to disclose to him that a significant component of the funds were jointly held. But Mr OW was independently advised throughout. It could be reasonably assumed that when he provided his lawyer with instructions on the relationship property matters, that he was asked by his lawyer to provide a full and accurate account of all the parties' assets and liabilities.

[46] A feature of the relationship property agreements is their brevity. They deal with specific "standalone" issues. Absent from both agreements are the clauses which commonly accompany such agreements, which require the parties to the agreement to confirm that all assets and liabilities have been disclosed.

[47] Mr TJ's argument that he took into account that Ms YY had been advantageously favoured by the overall settlement that had been reached between Mr OW and Ms YY, when considering the settlement offer that had been submitted by Mr CA, fails, in my view, to adequately consider the fundamental obligation Mr TJ had to protect his client's position.

[48] This was a de facto relationship of lengthy duration. Mr OW had no children. The decision by Mr OW to initially transfer a 50% interest in the home in which he and

Ms YY had resided for a number of years, did no more than reflect the reality that Ms YY would likely have acquired a significant interest in the home, consequential upon her and Mr OW having lived together for so many years in a de facto relationship.

[49] Mr OW's decision to transfer his interest in the family home to Ms YY in November 2014, just weeks prior to his death, cannot in my view, be properly characterised as Ms YY receiving the benefit of a financial windfall which she would not, in the normal course of events, have had reasonable expectation of receiving. Mr OW's motivation for transferring his interest in the home to Ms YY, absent any evidence as to his intentions, can only be explained after the event by reference to the steps that he took. In the absence of evidence to establish otherwise, it must be assumed that Mr OW's decision to transfer his interest in the home to Ms YY was a decision that reflected his wishes. It was not a decision, considering the circumstances of the parties' relationship and the limited extent to which Mr OW was encumbered by familial obligations, which presented in itself as unusual or inexplicable. He had lived with Ms YY for many years. He had no children.

[50] Ms YY says that Mr OW had been reluctant over many years to take steps to organise his will. But shortly before his death, Mr OW made arrangements to transfer his interest in the home to Ms YY and set about attending to having his will drafted.

[51] None of these arrangements provided proper foundation for Mr TJ to approach his obligations and duty to protect his client's interests from the perspective that Ms YY had received the benefit of an advantageous settlement. His starting point should have been that his client had received what she considered she was entitled to, and that his job was to robustly defend her position if challenged.

[52] Mr TJ makes much of the fact that Ms YY did not disclose all the back accounts. It is argued that Mr TJ had been "duped" by his client. With respect to Mr TJ, this misses the point. He would likely, when attending to the property matters, have made request of his client to disclose all assets. If it was the case that Ms YY failed to disclose the extent of the parties' assets or allowed Mr TJ to proceed on a misunderstanding of the basis on which the bank investments were held, that was not Mr TJ's problem. If Ms YY was to later suffer consequences for failing to disclose assets, or for providing inaccurate description of those assets, Mr TJ could not reasonably be criticised in circumstances where he had emphasised to his client the importance for her of providing accurate disclosure of all assets. But it is difficult to ascertain the extent to which Ms YY may or may not have been required to provide full account of her and Mr OW's assets particularly when considering the narrowly focused purpose of both relationship property agreements.

[53] The other issue of concern to Mr TJ was possibility that Mr OW may have lacked capacity when he had agreed, a short time before his death, to transfer his interest in the home to Ms YY.

[54] Mr TJ says that Mr OW's lawyer was "shocked" to discover that he had drafted a will for Mr OW on the basis of information that was "completely incorrect". Mr TJ says that Mr CA was informed by Mr OW, that Mr OW owned all the bank accounts.

[55] If Mr CA was misinformed by his client, that was an issue for Mr CA and his client. But neither Mr CA nor Mr TJ can fairly be criticised if their clients failed to provide them with accurate instructions.

[56] Ms YY confirms that she was added as a joint owner of the bank investments in 2010.

[57] I do not discount the possibility that neither Ms YY nor Mr OW fully informed their respective lawyers of the status of the investment accounts, nor can it be discounted that Mr OW when providing instructions for his will that directed that his sisters would benefit from a share in the bank accounts, did so without fully understanding the principle of survivorship.

[58] Mr TJ says that he was concerned at possibility that Mr OW's will was vulnerable to challenge on grounds that Mr OW lacked capacity when executing his will.

[59] Ms YY is dismissive of suggestion that Mr OW lacked capacity. She explains that the mental health issues referred to by Mr TJ, related to concerns that Mr OW may have suffered an obsessive-compulsive disorder, but possibility that he suffered this affliction, did not compromise his capacity to either make a will or enter into the property relationship agreements.

[60] Mr TJ says, and I accept his evidence on this point, that his client had in the period leading up to her partner's death, frequently expressed concerns to him about the state of Mr OW's mental health. Mr TJ says that Ms YY had given him a clear impression that Mr OW lacked mental capacity.

[61] Mr TJ had considerable experience working in the area of mental health. He considered that the information Ms YY had passed on to him, gave reasonable grounds for concern that there may be issues concerning the state of Mr OW's mental health.

[62] Those concerns could reasonably have made Mr TJ apprehensive of the possibility that Mr OW's capacity to execute his will could be raised by Mr OW's sisters.

[63] Whilst the Committee observed that the assets held jointly by Mr OW and Ms YY were not subject to the Relationship Property Agreement between Ms YY and Mr OW, and that Mr OW's sisters were not in a class that could make a claim under the Family Protection Act, the possibility of steps being taken to challenge the will could not be entirely discounted.

[64] However, Mr TJ erred when he gave indication to Mr CA, that he considered the terms of the settlement proposed were "good" for his client.

[65] They clearly were not.

[66] In circumstances where Ms YY was the legal owner of the assets potentially in dispute, she held all the cards. There appeared to be no evidence of substance (particularly relevant medical evidence) to support contention that Mr OW was mentally incapacitated to the point where he was unable to provide lucid instructions. The lawyer responsible for administering the estate had attended on Mr OW, taken instructions from him, and drafted the will. It can only be assumed, that Mr CA was confident that his client suffered no impediment which could have inhibited his client from providing instructions. Nor was there any degree of proximity between the time at which Mr OW had signed his will, and the time when the bank investments were transferred into joint names. The bank investments were transferred into Mr OW and Ms YY's names as joint owners in 2010. Mr OW's will was prepared four years later.

*The Committee's penalties*

[67] It is rare for a Review Officer to interfere with penalties imposed by a Standards Committee. A Review Officer will not engage in "tweaking" orders. In order for a Review Officer to interfere with a penalty imposed, the Officer must be satisfied that there are demonstrable issues with the penalty order that merit intervention.

[68] The primary purpose of a disciplinary penalty is not punishment. The predominant purpose, as set out in s 3 of the Act, is to protect not only the interests of consumers of legal services, but also to assist in maintaining public confidence in the provision of legal services, to act as a deterrent to other practitioners, and to reflect the public's and the profession's condemnation or disapproval of a practitioner's conduct. It is important to mark out the conduct as unacceptable and to deter other practitioners from failing to pay due regard to their professional obligations.

[69] The functions of a disciplinary penalty have been considered by the High Court in the leading decisions of *Daniels v Complaints Committee 2 of the Wellington District Law Society 2* and *Auckland Standards Committee 1 v Fendall*.[3]

[70] A penalty ought to be fair, reasonable and proportionate in the circumstances.[4]

[71] It has been noted that "there do not tend to be comparable cases in disciplinary proceedings because of the wide range of conduct that can be subject to such proceedings and because of the relevance of wider factors, making each case very fact-specific."[5]

[72] A comparison of cases is helpful, but reference to comparative penalties is of most assistance when the cases compared share a degree of commonality in their factual matrix, and where the conduct rule breached is identical.

*Order that Mr TJ pay Ms YY the sum of $2,543.15, being cost incurred by her in advancing her complaint.*

[73] I see no reasonable basis to interfere with the Committee's direction that Mr TJ reimburse Ms YY for costs incurred in advancing her complaint. Ms YY's complaint was upheld. She had engaged legal counsel to assist her with advancing the complaint. She would have been required to meet the costs incurred in instructing counsel.

*Order that Mr TJ pay a fine to the New Zealand Law Society in the sum of $3,000*

[74] Whether to impose a fine, and if so at what level, are all elements of the discretion exercised by Committees. There is no set formula by which to calculate the appropriate level of a fine. As such, this Office would have to have good reason to interfere with the exercise of that discretion. That said, the expectation of this Office is that it will form its own independent opinion as to the appropriateness of a penalty imposed by a Standards Committee.

[75] The maximum fine a Committee or this Office can order a practitioner to pay pursuant to s 156(1)(i) of the Act is $15,000. A fine at that level is reserved for the most serious of cases of unsatisfactory conduct.

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[3] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 (HC); *Auckland Standards Committee 1 v Fendall* [2012] NZHC 1825.
[4] *Daniels* at [28].
[5] *Deliu v National Standards Committee and the Auckland Standards Committee No 1* [2017] NZHC 2318 at [165].

[76] In a number of cases, the LCRO has noted that the starting point for assessing an appropriate level of fine, in circumstances where breach of a conduct rule has been established, is $1,000. A breach having been established, the approach then is to give consideration as to whether the unsatisfactory conduct finding requires the imposition of a fine at a higher level.

[77] The fine imposed by the Committee reflected, in my view, an appropriate response.

[78] Mr TJ's failure to adequately protect Ms YY's position fell short of the standard of competence a member of the public is entitled to expect of a reasonably competent lawyer. His recommendation that Ms YY accept the settlement offer proposed, if followed by her, would have had serious financial consequences for Ms YY.

*Requirement that Mr TJ undergo practical training or education in relation to estate administration*

[79] With every respect to the Committee, I do not consider that any fruitful purpose was served by its direction that Mr TJ undergo training in estate administration.

[80] The problems with Mr TJ's conduct that were identified by the Committee, were not problems that were directly related to issues of estate administration.

[81] Mr TJ's mistake was that he allowed his concerns that Ms YY may not have adequately disclosed all assets to divert his attention from his fundamental obligation to protect Ms YY's interests. This error was compounded by a genuinely held conviction on Mr TJ's part, that Ms YY faced real threat that Mr OW's will could be challenged on grounds that Mr OW had lacked requisite capacity to execute a will. The consequence of this, was that Mr TJ failed to recognise the strength of his client's position. Nor did he give sufficient consideration to the significant legal obstacles that Mr OW's sisters would encounter in attempting to establish a legal pathway to lay claim to assets which were owned by Ms YY.

[82] Mr TJ says that when he became aware that all of the investment funds were held in joint names, he immediately appreciated that Ms YY was the sole legal owner of the fund, following the death of her partner. His concern then focused on what he perceived to be a significant risk that Mr OW's will could be challenged. I think it probable, that Mr TJ miscalculated the extent of the risk, but his view was shaped by his conviction that Ms YY had over a period of time, raised significant concerns concerning Mr OW's mental health.

[83] Mr TJ's failure was one of a lapse of judgement. That lapse of judgement has resulted in an adverse conduct finding which has caused him serious embarrassment.

[84] Mr TJ is approaching 40 years in practice. He is justifiably proud of the fact that he has never, in the course of that lengthy career, been the subject of any adverse conduct finding.

[85] I see little merit in Mr TJ being required to undergo practical training or education in estate administration. From the information I can glean from the file, it appears to be the case that Mr TJ specialises in litigation work, particularly Family Court work. He is a long-standing District Inspector of mental health.

[86] I would be confident that the unpleasant and unprecedented circumstances of being required to respond to a professional conduct complaint, has been a sobering and salutary experience for Mr TJ, and one which has given him pause for careful reflection on the issues engaged by the conduct complaint.

[87] I see little purpose in Mr TJ being required to attend training in estate administration and propose to reverse that order.

*Publication*

[88] On review, Mr TJ not only sought to challenge aspects of the Committee's orders detailed above, but also indicated that his review application was filed in "opposition to name publication".

[89] At the conclusion of its decision, the Committee indicated that it would be giving consideration to publishing Mr TJ's identity, and sought submissions from the parties on the publication issue.

[90] Whilst the Committee's decision was issued on 18 June 2020, regrettably for the purposes of this review, the Committee has not as yet had an opportunity to turn its attention to the publication issue. I understand from the Complaints Service, that the Standards Committee, on receiving notice that Mr TJ had filed an application to review its decision, decided to hold off on addressing the publication issue until the LCRO had completed its review.

[91] That has highlighted the rather problematic situation that can arise, in circumstances such as these, where the Committee's ability to complete its task has been delayed by the intervention of the review process.

[92] Ms YY filed her complaint in May 2018. Over 3 ½ years later, I am unable to bring finality to the parties.

[93] This review cannot be completed until the Committee has delivered its decision on publication.

[94] I am advised by the Complaints Service that the Standards Committee will not meet again until February 2022.

[95] It would have been preferable if the Committee had issued a single decision which had dealt with all matters, including the issue of publication.

[96] I have no doubt that the Standards Committee, in issuing its decision with indication that it would then give consideration to the question of publication, was anxious to ensure that the parties had a clear understanding of orders made, and the reasons for those orders, in order to assist them (particularly Mr TJ) in preparing submissions on publication.

[97] But the Committee's decision to issue its determination in two stages, has resulted in further delay.

[98] The decision issued by the Committee on 18 June 2020, presents in all respects, as a "final" decision. The decision is signed by the Committee's convenor and dated. The decision includes the standard information provided to parties of their rights to review the decision to the LCRO. The decision sets out the timeframes required for filing a review. Mr TJ understandably would have felt obligated to file his review application within the timeframe advised, but he does so in circumstances where he is uncertain as to whether the Standards Committee will make an order directing publication of his name. Hence his decision to seek to review not only the orders made by the Committee, but, in anticipation, to signal his opposition to name publication.

[99] In the event that the Committee subsequently issued a direction on publication that Mr TJ sought to review, the question arises as to how he would set about reviewing that decision. Would he be required to file a fresh application, or would the application previously filed provide a proper jurisdictional basis for a further review? Would he be required to file a further filing fee?

[100] I hasten to emphasise that I intend no criticism of the Standards Committee. It helpfully provided the parties with a decision recording its view on the conduct issues prior to turning its collective mind to the publication issue. But potential problems of further delay could be avoided if Standards Committees incorporated into their

substantive determination, any decision made on publication. The issuing of a single, final decision which covers off the substantive issues, together with any potential publication issues, is preferable. That approach is reflected in many notices of hearing issued by Committees, where the Committees not only invite the parties to provide submissions on the issues identified as being at the centre of the Committee's inquiry, but also invite the parties to provide submissions on the issue of possible publication.

[101] Mindful of the considerable delay that has occurred to date, and in a pragmatic attempt to ensure the most expeditious path to final outcome for both parties I propose to make directions that:

(a) Notice is to be provided to the Standards Committee of the outcome of this review, and request made of the Committee for it to promptly consider the publication issue; and

(b) in the event that the publication decision issued by the Standards Committee is opposed by either Mr TJ or Ms YY, either may seek to review that aspect of the Committee's decision, but without need to file a formal application for review; and

(c) if either party seek to challenge the publication decision, they may do so by filing correspondence with the LCRO which sets out the grounds of opposition to the Committee's publication decision; and

(d) if either party seeks to challenge the publication decision, neither will be required to pay the usual filing fee; and

(e) issues of costs on this review will be reserved pending receipt of indication as to whether the LCRO is required to address the issue of publication; and

(f) if neither party seeks to challenge the Committee's decision on publication, it will likely be the case that the LCRO will make no order for costs against Mr TJ on grounds that he has been partially successful in his review application, but costs will remain a live issue if the LCRO is required to address the issue of publication.

(g) The Complaints Service is to advise the LCRO when its publication decision is issued.

*Anonymised publication*

[102] 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**

**Orders**

(1) The order of the Standards Committee imposing a fine of $3,000 is confirmed (s 211(1)(a)).

(2) The order of the Standards Committee directing that Mr TJ is to pay to Ms YY costs incurred in the sum of $2,543.15 being costs incurred in advancing her complaint is confirmed, (s 211(1)(a)).

(3) Direction that Mr TJ is required pursuant to s 156(1)(m) of the Lawyers and Conveyancers Act 2006 to attend practical training or education in relation to estate administration is reversed (s 211(1)(a)).

(4) In all other respects the decision of the Standards Committee is confirmed.

(5) Costs on the review application are reserved, pending the outcome of the Committee's decision on publication.

**DATED** this 16TH day of December 2021

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**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:

Mr TJ as the Applicant
Ms YY as the Respondent
Ms PR QC as the Applicant's Representative
Ms FE as the Respondent's Representative
[Area] Standards Committee [X]
New Zealand Law Society