

CONCERNING

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

AND

CONCERNING

a determination of the National Standards Committee

BETWEEN

UK

Applicant

AND

WM

Respondent

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

DECISION

Introduction

[1] Mr [UK] has applied for a review of a decision by the National Standards Committee dated 12 April 2013 in which the Committee decided further action on Mr [UK]'s complaints about Mr [WM]'s conduct was unnecessary and inappropriate and that his complaint was vexatious.

Background

[2] Mr [WM] is [XX] of [XX] and is also a lawyer as defined by the Act.¹ It is part of the [REDACTED] of [XX] to defend the [REDACTED] and [REDACTED] against criticism outside [REDACTED] processes.

[3] The complaint and review application arise from public debate about the relative merits of [REDACTED] versus [REDACTED]. Comments by [YB] [REDACTED] were published in a media article,² followed shortly after by an article that said:³

¹ Lawyers and Conveyancers Act 2006, s 6.

[WM] [REDACTED] this afternoon against [REDACTED] lawyer [YB], calling on him to [REDACTED]

Mr [WM], himself a lawyer, says Dr [YB]

A clearly outraged Mr [WM] told [ABC] [REDACTED]

Mr [WM] says he is on record as supporting some form of [REDACTED]

But he says Dr [YB]'s comments [REDACTED]

"For one of our country's [REDACTED]

[REDACTED] he says.

The [REDACTED] Dr [YB] is that [REDACTED]

Complaint

[4] Several months after the articles were published, Mr [UK] laid a complaint to the New Zealand Law Society (NZLS) alleging Mr [WM] had "failed to fulfil his ethical obligation" and report Dr [YB] to the Lawyers Complaints Service pursuant to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the rules) 2.8 or 2.9, and had instead made public comments which "hurt the reputation of the justice system".⁴

[5] Mr [UK] referred to the High Court decision in *Orlov v New Zealand Law Society*⁵ saying the Court had said that a lawyer making scandalous and false allegations about a Judge could lead to disciplinary sanctions for a lawyer. Mr [UK] says the principle to be gleaned from *Orlov*, and other cases on which he relies, is that "saying naughty words about Judges gets lawyers prosecuted in the Lawyers and Conveyancers Disciplinary Tribunal".⁶ Mr [UK] elevates his principle to a rule of general application and says that, based on *Orlov*, Mr [WM] had a "positive obligation to privately report Dr [YB] instead of publicly attacking him".

² [REDACTED] [ABC] (New Zealand, Day Month Year).

³ [REDACTED] [WM] says [REDACTED] [YB] [REDACTED] (New Zealand, Day Month Year).

⁴ Email [UK] to NZLS (11 February 2013).

⁵ *Orlov v New Zealand Law Society (No 8)* [2012] NZHC 2154, [2013] 1 NZLR 390 at [152].

⁶ Above, n 4.

[6] Mr [UK] submitted that this omission engages potential breaches by Mr [WM] of rules 2, 2.8 and 10 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the rules).

[7] In a subsequent email Mr [UK] expanded on his complaint about Mr [WM]'s conduct as follows:⁷

This case goes to the issue of both Mr [WM] attacking Dr [YB] publicly and failing instead to report any misconduct to the appropriate authorities to deal with. It is with due respect unseemly for an [XX] to publicly lambast a colleague when the correct approach (indeed the mandatory one) is to make a confidential reporting to the Law Society.

[8] Mr [WM] responded to the Complaints Service on 19 February 2013 indicating he considered the complaint lacked merit and he did not wish to comment on it.

[9] Mr [UK] was critical of Mr [WM] and his response in a number of respects, but clarified that the heart of his complaint was that Mr [WM] had disrespected Mr [YB], and had failed to report apparent misconduct to the Law Society.⁸

Standards Committee processes

[10] The Committee considered Mr [UK]'s complaint and the other materials provided by the parties, and conducted a hearing on the papers. In its decision dated 12 April 2013 the Committee decided the complaint was vexatious and that further action on it was unnecessary or inappropriate.

Issues identified by the Committee

[11] The Standards Committee summarised the complaint as first an allegation that Mr [WM] had contravened the mandatory reporting requirement in rule 2.8, and second an expression of concern about his response to the complaint.⁹

[12] The issues identified by the Committee for it to consider were:¹⁰

- (a) What is the purpose of rule 2.8?
- (b) What was the context of Dr [YB]'s remarks?

⁷ Email [UK] to NZLS (20 February 2013).

⁸ Email [UK] to NZLS (27 February 2013).

⁹ Standards Committee decision at [4] - [7].

¹⁰ At [10].

Purpose of rule 2.8

[13] The Committee characterised Mr [UK]'s complaint as being that rule 2.8 "placed a positive duty on lawyers to report public comments of a lawyer to the New Zealand Law Society by way of a confidential report". It did not consider that a confidential report could be made about matters that were in the public domain, so rule 2.8 had no application. The Committee also noted that before a confidential rule 2.8 report could be made, the lawyer complaining must have reasonable grounds to conclude that another lawyer has been guilty of misconduct.

The context of Mr [YB]'s remarks

[14] Mr [UK] questioned whether it was appropriate for Mr [WM] to criticise Mr [YB] in public in the way that he did. In addressing that concern, the Committee said:¹¹

... Mr [WM] was making his comments as [XX]. By [REDACTED] one of the roles of the [XX] is to respond to public criticism made of the [REDACTED] (the [REDACTED] being prevented from responding). Consequently the NSC was of the view that Mr [WM]'s intervention was in accord with his [REDACTED] and was both to be expected and appropriate.

Other

[15] In the Committee's view, the other issues Mr [UK] had raised relating to potential infringements of rules 2 and 10 ("bickering in the media" and the use of "intemperate language" respectively)¹² did not warrant disciplinary action and/or constitute breaches of the rules.¹³

Conclusion

[16] The Committee considered further action on the complaint was unnecessary or inappropriate pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act) saying:¹⁴

While Mr [WM]'s comments were robust they did not suggest that there were reasonable grounds to suspect Dr [YB] was guilty of misconduct.

Mr [WM]'s intervention was in accord with his [REDACTED] [XX], and was both to be expected and appropriate.

¹¹ At [19].

¹² Email [UK] to NZLS (11 February 2013).

¹³ At [20].

¹⁴ At [21] (iv) and (vi).

[17] The Committee also resolved pursuant to s 138(1)(c) of the Act, to take no further action on all aspects of the complaint, because it had formed the opinion from the circumstances of the complaints that it was vexatious because of:¹⁵

its misconception and lack of merit, as well as the circumstances which led to the [XX] making his comments ... and that there had been ... a misuse of the complaints process.

Review

[18] Mr [UK] applied for a review of the decision on 24 May 2013 on grounds summarised as follows:¹⁶

- (1) The Committee erred in law in deciding that rule 2.8 only applies to matters not in the public domain.
- (2) The Committee treated Mr [WM] disproportionately by failing to take into account relevant authorities where conduct similar to Mr [YB]'s has resulted in charges being laid before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.
- (3) The Committee was wrong to decline to consider a decision of the Legal Complaints Review Officer (LCRO).
- (4) The Committee did not turn its mind to the purpose(s) being served by Mr [WM] publicly criticising Mr [YB] rather than reporting him privately to New Zealand Law Society to "ensure his conduct is appropriately dealt with" through the regulatory process.
- (5) The Committee erred in fact by describing the "public communications" as "██████████" about the "██████████" when in fact "they were clearly attacks on Dr [YB] ... who is entitled to due respect from colleagues".
- (6) The Committee gave no coherent reasons for finding Mr [UK]'s complaint vexatious or describing it as a misuse of the complaints process.

[19] Mr [UK] did not challenge the Committee's decision to take no further action regarding the manner and content of Mr [WM]'s response to the complaint.

¹⁵ At [22].

¹⁶ Application for Review and letter [UK] to LCRO (24 May 2013).

[20] Other than to indicate that he agrees to the review being conducted on the papers, Mr [WM] has not substantively responded to the grounds advanced by Mr [UK] in his review

Review Hearing

[21] Mr [UK] attended an applicant-only review hearing in Auckland on 3 November 2015. Mr [WM] was not required to attend, and the review hearing proceeded in his absence.

Nature and Scope of Review

[22] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:¹⁷

... 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.

[23] More recently, the High Court has described a review by this Office in the following way:¹⁸

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.

[24] 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:

¹⁷ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].

¹⁸ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

- (a) Consider all of the available material afresh, including the Committee's decision; and
- (b) Provide an independent opinion based on those materials.

Analysis of Review Grounds

First Review Ground

[25] The first ground of review is that the Committee erred in law in deciding that rule 2.8 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 applied only to non-public activities of a lawyer. He may or may not be correct. The functions of this Office do not extend to determining questions of law, so I have no jurisdiction to determine this point on review. I observe, however, that while the Committee's interpretation has some attraction, rule 2.8 is not constrained in that way on its face.

Second Review Ground

[26] The second review ground implies disproportionate treatment by the Committee as between [REDACTED] and other [REDACTED]. There is no coherent evidence of disproportionality, no recognisable basis for that assertion and no good reason to explore that ground further on review.

Third Review Ground

[27] Mr [UK] says the Committee failed to consider authorities. The authorities Mr [UK] relies on do not support his submission that there is a "naughty words" principle. However, I have taken this concern into account as a procedural concern, and have considered the authorities on which Mr [UK] relies.

Fourth Review Ground

[28] The fourth review ground expresses concern over the purposes being served by Mr [WM] making public comment rather than reporting Mr [YB] privately to NZLS. Mr [UK] has provided no evidence or logical explanation to account for how he generates the conclusion that going public precludes going private. There is no reason to support the implication that some nefarious purpose lurks behind Mr [WM]'s comments. There is no good reason to engage further with this review ground.

Fifth Review Ground

[29] The fifth review ground is that the Committee erred in fact by describing "public communications" as "debates about the judicial system" when in fact, Mr [UK] says "they were clearly attacks on Dr [YB] ... who is entitled to due respect from colleagues".

[30] At the time, Mr [YB] was a lawyer. As such Mr [UK] is entirely correct in saying his professional standing entitled him to due respect from his colleagues. However, Mr [YB] has expressed no concern about Mr [WM]'s comments. There is no reason to believe he considers himself to have been attacked, or disrespected, by Mr [WM]. Mr [WM]'s comments were robustly made, and, it seems, robustly received by Mr [YB].

[31] The proposition that the reports were not part of a [REDACTED] is not supported by logic or evidence. There is no good reason to engage further with this review ground.

Sixth Review Ground

[32] The sixth review ground is that the Committee gave no coherent reason for finding Mr [UK]'s complaint vexatious or describing it as a misuse of the complaints process. This review ground is addressed in the discussion that follows.

Review issues

[33] I have considered all of the material available on review including Mr [UK]'s evidence and submissions at the review hearing.

[34] The balance of Mr [UK]'s review grounds are disposed of in considering the two review issues. The first relates to allegations that Mr [WM] contravened various rules. The second relates to the finding that Mr [UK]'s complaint was vexatious. The Committee's decision is confirmed in relation to both issues.

Discussion

Rules 2, 2.8, 2.9 and 10

[35] Mr [UK] says that the heart of his complaint is that Mr [WM] publicly disrespected a senior lawyer, thereby contravening rules 2 and 10, and failed to report apparent misconduct to the Law Society pursuant to rules 2.8 and 2.9. Contravention of practice rules falls within the definitions of misconduct and unsatisfactory conduct by a lawyer under the Act.

[XX]

[36] Mr [WM]'s comments arise from the exercise of his [REDACTED] the [REDACTED] in his role as [XX]. Defence of the [REDACTED] in such circumstances [REDACTED] falls to the [XX], on the basis that [REDACTED] is better maintained by [REDACTED]. This is primarily because [REDACTED]. Nonetheless, Mr [WM] is a lawyer and his conduct is therefore regulated where the Act and the rules made under it apply.

Misconduct or Unsatisfactory conduct – ss 7 and 12

[37] The primary question that arises from complaint being made is whether Mr [WM]'s conduct falls within the definitions of misconduct or unsatisfactory conduct contained in ss 7 and 12 of the Act. As s 5 of the Interpretation Act 1999 says, if there is uncertainty, the matters that may be considered in ascertaining the meaning of the Act include the indications provided in the enactment. The meaning of the definitions in the Act must be ascertained from the Act's text and in the light of its purpose.

[38] The Act provides for complaints about lawyers' conduct to be determined within the framework of the Act. The analysis to be undertaken in determining whether conduct may be misconduct or unsatisfactory conduct as Mr [UK] alleges involves a series of interrogations under ss 7 and 12, which relevantly say:

- 7 In this Act, **misconduct**, in relation to a lawyer ... –
- (a) means conduct of the lawyer ... that occurs at a time when he ... is providing regulated services ...-

...

¹⁹ *Laws of New Zealand*, [REDACTED]

(b) includes-

...

(ii) conduct of the lawyer ... which is unconnected with the provision of regulated services by the lawyer ... but which would justify a finding that the lawyer ... is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer.

...

12. In this Act, **unsatisfactory conduct**, in relation to a lawyer ..., means –

(a) conduct of the lawyer ... that occurs at a time when he ... is providing regulated services ...

(b) conduct of the lawyer ... that occurs at a time when he ... is providing regulated services ...

(c) conduct consisting of a contravention of this Act, or of any ... practice rules made under this Act that apply to the lawyer ... or of any other Act relating to the provision of regulated services (not being a contravention that amounts to misconduct under section 7)

...

[39] In the present circumstances, the first question is whether Mr [WM] was providing regulated services as defined by the Act at the time of the conduct.

[40] If the answer to the first question is yes, ss 7(1)(a), (b)(i), 12(a) and (b) may apply. With the exception of s 7(1)(b)(ii), the balance of s 7 is not relevant to the present exercise.

[41] If the answer to the first question is no, ss 7(1)(b)(ii) and 12(c) may apply.

Was Mr [WM] providing “regulated services”?

[42] Ascertaining whether Mr [WM] was providing regulated services involves consideration of a series of definitions in the Act, relevantly, whether the services were legal services, which in turn are defined as meaning “services that a person provides by carrying out legal work for any other person”.

[43] On a commonsense basis, Mr [WM] was not carrying out legal work for any other person. He was carrying out his functions as [XX]. However, as the Act also defines legal work, that interim conclusion can be checked against the definition of legal work:

legal work includes—

(a) the reserved areas of work:

(b) advice in relation to any legal or equitable rights or obligations:

- (c) the preparation or review of any document that—
 - (i) creates, or provides evidence of, legal or equitable rights or obligations; or
 - (ii) creates, varies, transfers, extinguishes, mortgages, or charges any legal or equitable title in any property:
- (d) mediation, conciliation, or arbitration services:
- (e) any work that is incidental to any of the work described in paragraphs (a) to (d)

[44] As none of the elements of the definition of legal work apply to Mr [WM]'s comments in [REDACTED] of the [REDACTED] as [XX], I conclude Mr [WM] was not providing regulated services as defined under the Act.

[45] As the answer to the first question is no, the operation of ss 7(1)(a), (1)(b)(i), 12(a) and (b) is excluded. The next step is to consider whether ss 7(1)(b)(ii) or 12(c) may apply.

Section 7(1)(b)(ii)

[46] Section 7(1)(b)(ii) contains two disjunctive criteria. One, the conduct in question is unconnected with the provision of regulated services by the lawyer. Two, the conduct would justify a finding that the lawyer is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer. The first criterion incorporates into the regulatory regime conduct by lawyers outside their professional lives, so that there is no gap between professional and personal conduct.²⁰ However, to fall within the regulatory regime of s 7(1)(b)(ii), both criteria must be capable of being met.

[47] The second criterion involves consideration of whether the conduct would justify a finding that the lawyer is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer. The use of the word “would”, rather than, for example, could or may, signals a high level of certainty is called for when carrying out the second part of the assessment in relation to conduct unconnected with the provision of regulated services by the lawyer.

[48] With respect to personal misconduct under s 7(1)(b)(ii), the High Court said in *Orlov* it:²¹

... involves moral obloquy. It is conduct unconnected to being a lawyer which nevertheless by its nature, despite being unrelated to the practitioner's job, is so

²⁰ *Orlov v The New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987, [2015] 2 NZLR 606.

²¹ At [106].

inconsistent with the standards required of membership of the profession that it requires a conclusion that the practitioner is no longer a fit and proper person to practice law.

[49] There is no evidence that supports conclusion that Mr [WM]'s conduct could justify a finding that he is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer. The conduct does not begin to approach the level of certainty required for a finding that his conduct would fall within the definition in s 7. There is no basis on which Mr [WM]'s conduct would, or could, engage the second criterion. Consequently, the operation of s 7(1)(b)(ii) can be excluded without engaging in debate over the first criterion. That leaves only s 12(c).

Section 12(c)

[50] Having excluded the operation of all but s 12(c), the only remaining question is whether Mr [WM]'s conduct falls within the provisions of that subsection of the Act.

[51] At various times, Mr [UK] has alleged that Mr [WM]'s conduct breaches rules 2, 2.8, 2.9 and 10, which are practice rules made under the Act.

[52] As mentioned above, decisions about whether professional standards have been breached must be guided by the purposes of the Act which are focussed on consumer protection, public confidence and recognising the status of lawyers.

Rule 2

[53] Rule 2 says:

2. A lawyer is obliged to uphold the rule of law and to facilitate the administration of justice.

[54] There is no basis on which to conclude that Mr [WM]'s comments are inconsistent with any of the three purposes of the Act, or that they represent a failure to uphold the rule of law or are inconsistent with the facilitation of the administration of justice. Further action on that aspect of the complaint is not necessary or appropriate.

Rule 2.8 and 2.9

[55] Rule 2.8 and 2.9 say:

- 2.8 Subject to the obligation on a lawyer to protect privileged communications, a lawyer who has reasonable grounds to suspect that another lawyer has been guilty of misconduct must make a confidential report to the Law Society at the earliest opportunity.

- 2.9 Subject to the obligation on a lawyer to protect privileged communications, a lawyer who has reasonable grounds to suspect that another lawyer has been guilty of unsatisfactory conduct may make a confidential report to the Law Society ...

[56] Rule 2.8 does not say it is confined in any particular way. The Committee may have wrongly constrained rule 2.8 to matters not in the public domain. Mr [UK] may be correct in identifying that as an error of law. However, that point is not relevant to the outcome of this aspect of the review, which is determined on a different basis.

[57] Looking at the matter afresh on review, logically, the mere fact that public comment has been made does not preclude a confidential report also having been made. Mr [UK] confirmed in evidence at the review hearing that he has no evidence to support the allegations that Mr [WM] contravened rule 2.8 or rule 2.9. There is no evidence that supports a finding that Mr [WM] breached rule 2.8 or 2.9. No contravention is proven, and there is no good reason why further action should be taken.

Rule 10

[58] Rule 10 says:

10. A lawyer must promote and maintain proper standards of professionalism in the lawyer's dealings.

[59] The Committee is comprised of a lay person and lawyers, and therefore well placed to form a balanced collective view on whether standards of professionalism in a lawyer's dealings are proper or not. The Committee did not consider Mr [WM]'s conduct fell below proper standard. The Committee's view is a factor in an independent review by this Office, and it is appropriate for me to exercise "some particular caution" before substituting my own judgment for that of the Committee without good reason,²² but I am to form my own independent view.

[60] Mr [UK] has provided no good reason to adopt a different view.

[61] I am unable to identify any reason to adopt a different view. Given his role as [XX], there is no particularly persuasive logical basis on which to conclude that Mr [WM]'s conduct was inconsistent with the promotion or maintenance of proper standards of professionalism in his dealings with Mr [YB]. Mr [YB] is unconcerned. The Committee is unconcerned. I too, am unconcerned.

[62] I am unable to conclude that rule 10 has been contravened.

²² Above n 17.

Summary

█ Taking into account the purposes of the Act, and having independently considered the information available on review, I have been unable to identify any good reason to substitute my own judgement for the Committee's. I do not consider Mr [WM]'s conduct fell below a proper professional standard in all the circumstances. Mr [WM] can suggest Mr [YB] █, and express a view on Mr [YB]'s conduct in terms as he did. He is the [XX]. █

[64] There is no reason to conclude Mr [WM] should have made any more of his concerns than he did by laying a complaint about Mr [YB]'s conduct to his professional body. Those are matters for Mr [WM]'s professional judgement. There is no substance to the suggestion that Mr [WM] had some nefarious purpose in publicly criticising Mr [YB], rather than making a confidential report. Whether Mr [WM]'s comments are perceived as a criticism or an attack are matters of degree, involving a level of subjectivity. Mr [YB] did not consider himself to be under attack. The Committee did not see them as an attack. Nor do I.

[65] In the circumstances, the decision that further action is not necessary or appropriate pursuant to s 138(2) is confirmed.

Can the complaint be characterised as vexatious?

[66] The second issue on review is whether the complaint can be characterised as vexatious, in the context of s 138(1)(c) of the Act, which is a reason for exercising the discretion to take no further action.

[67] Previous decisions from this Office have referred to the "key ingredient for a matter to be considered vexatious" being "that it has no realistic prospect of success".²³ It has been observed that "a vexatious complaint may be made by a person who mistakenly thinks that it has a good prospect of being upheld and it may be brought for a proper, if misplaced, motive".²⁴

[68] Mr [UK]'s complaint evolved, but began with an allegation that Mr [WM] had breached his mandatory reporting obligation under rule 2.8 and suggested the possibility that he may have also breached rules 2 and or 10.²⁵

²³ *JK v OC LCRO 254/2013* at [104].

²⁴ *XX v UW LCRO 185/2014* at [18].

²⁵ Above, n 4 and n 7.

[69] As Mr [UK] acknowledged at the review hearing, he had no evidence at all to support his primary contention that Mr [WM] had contravened rule 2.8. Mr [UK] argued that there were two mutually exclusive choices: either make a private complaint or make public comment. There is no reliable logic to that position.

[REDACTED] The other allegations were also not well supported. From discussion with him at the review hearing it appears that Mr [UK]'s concerns seem to stem in part from [REDACTED] arguments and his view that the role of [XX] [REDACTED]

[71] Mr [UK] also expressed the view that [REDACTED] did not require an attack on Mr [YB]'s honour and integrity, and that Mr [WM] taking the approach he did contravened rule 10.

[72] I am confident there is more than one approach an [XX] could have taken. I do not consider it is part of my role to provide the [XX] with an opinion or guidance on carrying out his role.

[73] The absence of evidence, apparent misconceptions about what the role of the [XX] involves, and logical shortfalls are key ingredients in identifying this complaint as vexatious.

[74] With respect to the possible breach of rule 2, Mr [UK] refers to lawyers bickering publicly in the media, which he says dovetails from his point about rule 2.8, and says that is why there is a confidential reporting process. Mr [UK] observes that a lay person would not be aware of the rule 2.8 confidentiality provisions, and only sees the public face of the profession portrayed in the media. He said that by analogy other professionals do not bicker in the media, [REDACTED]

[REDACTED] Mr [UK] said he knew of no other profession.

[75] That analogy was not accepted as accurate, and Mr [UK] was advised that it lacked evidential support.

[76] Having considered all of the information provided in the course of the review process, the complaint is vexatious because it had no realistic prospect of success. It was misconceived, and, particularly with reference to the primary complaint about a failure to make a confidential report, completely lacked evidential grounds.

[77] The decision to take no action on Mr [UK]'s complaint pursuant to s 138(1)(c) is therefore also confirmed.

Orders

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the Standards Committee decision is confirmed.

DATED this 2nd day of September 2016

D Thresher
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 [UK] as the Applicant
Mr [WM] as the Respondent
The National Standards Committee
The New Zealand Law Society