

CONCERNING

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

AND

CONCERNING

a determination of the Central Standards Committee [X]

BETWEEN

GH

Applicant

AND

KM

Respondent

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

DECISION

Introduction

[1] Mrs GH has applied for a review of the Standards Committee decision to take no further action in respect of Ms KM's conduct.

Background

[2] In early February 2016 Ms KM was instructed by Mr RK to act in matters involving his children with Mrs GH, and the division of their relationship property.

[3] Mrs GH notified Mr RK that she would return to England with their two children and her new husband. Mr RK did not agree. Mrs GH and the children left the country, Mr RK applied for orders under the Hague Convention to require their return.

[4] Prior to their departure Ms KM also wrote to Mrs GH notifying her of Mr RK's objections and seeking to negotiate rearrangement of the parties' relationship property division, which they had accomplished informally. Mrs GH complains that using the

finances as leverage in the negotiations over where the children would live, and Mr RK's contact with them if they were overseas, is equivalent to Ms KM "facilitating blackmail".

[5] On 27 July 2016 Mrs GH made a complaint to the New Zealand Law Society (NZLS) providing copies of correspondence and alleging misconduct by Ms KM.

[6] The Committee considered that Ms KM had not breached any of the duties she owed to Mrs GH, and decided to take no further action on the complaint pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act).

[7] Mrs GH objected to the decision and applied for a review.

Application for review

[8] Mrs GH seeks Ms KM's temporary suspension while the matters are investigated, that she be directed to apologise to Mrs GH and to compensate her for the legal fees she had to pay to secure day to day care of her children in England against Mr RK's wishes.

[9] The grounds for review are that:

1. The Standards Committee tested the complaint of Mrs GH against Ms KM as to whether Ms KM had breached a duty owed to Mrs GH. This was not requested by Mrs GH. As such the Standards Committee represented by Mr YH has not handled the complaint correctly.
2. The Standards Committee should have tested the complaint regarding alleged blackmail by Ms KM against s 7(1)(a)(i) of the Lawyers and Conveyancers Act 2006 ...

[10] The review application sets out Mrs GH's understanding of the provisions of the Act, and asks that this Office assess the alleged blackmail against s 7 of the Act.

[11] Mrs GH relies on a telephone conversation between Ms KM and her lawyer in support of the blackmail allegation.

[12] There is an acknowledgement that the blackmail issue may be a criminal offence calling for Police involvement.

Nature and Scope of Review

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

[14] 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.

[15] 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.

Review hearing

[16] The parties agreed to the review being dealt with on the papers pursuant to s 206(2) of the Act, which allows a Legal Complaints Review Officer (LCRO) to conduct a review on the basis of all the information available, if the LCRO considers that the review can be adequately determined in the absence of the parties. That is the case here.

¹ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].

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

Review issue

[17] The question on review is whether the complaint and supporting evidence raise a professional standards issue. Having reviewed all of the documents provided, no such issue is raised. What Mrs GH describes as blackmail is in fact a negotiating strategy commonly deployed by lawyers on behalf of clients in similar circumstances to Mrs GH and Mr RK.

[18] For the reasons discussed below the decision of the Standards Committee is confirmed.

Analysis

[19] As a lawyer, Ms KM's obligations are first to the Court, second to her client. Any obligations she may owe elsewhere, such as to third parties, follow behind those.

[20] For the purposes of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules), Mrs GH's complaint is a complaint by a third party. Rule 12 says:

A lawyer must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect and courtesy.

[21] Ms KM owed obligations to treat Mrs GH with integrity, respect and courtesy. Mrs GH's complaint is an attack on her integrity, by the serious allegation of blackmail, which is a criminal offence and beyond the jurisdiction of this Office.

[22] There is no evidence of Ms KM lacking integrity, respect or courtesy to Mrs GH. She was instructed by Mr RK, apparently to ensure his ability to have contact with his children was maintained, whether their best interest was better served by them living in England or New Zealand. Mr RK's position appears to have been that if the children were to be in the UK, practically he needed to have some means of getting to see them, or of them coming to see him. As the relocation was Mrs GH's choice, it is not difficult to understand why Mr RK should attempt to negotiate a contribution to his travelling costs, by way of a reduction in his child benefit payments if necessary, to assist him in maintaining contact with his children.

[23] Unfortunately for Mrs GH, agreeing to that meant that at least some of the financial burden previously taken up by Mr RK then fell on her, and her new husband. That outcome is a product of Mrs GH's choices: to leave New Zealand or to stay; to take the children with her, or to leave them with their father. The product of Mrs GH's

choices is not attributable to Ms KM. Nor is there any reason to conclude that in acting for Mr RK she acted in any way improperly.

[24] I have carefully read Ms KM's correspondence to Mrs GH, and can see nothing unusual or objectionable in it. The language is temperate, the discussions are carefully framed. Blackmail is a term that is easily bandied about, but bears no resemblance whatsoever to what Ms KM was engaged in doing for her client.

[25] There is no evidence of any contravention of rule 12. Nor is there evidence of any other conduct by Ms KM that warrants a disciplinary response.

[26] In the circumstances, the Committee's decision is confirmed pursuant to s 211(1)(a) of the Act.

DATED this 13th 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:

Mrs GH as the Applicant
Ms KM as the Respondent
Mr ZX as a related person as per s 213 of the Act
Central Standards Committee [X]
The New Zealand Law Society
Secretary for Justice