

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

[2021] NZLCRO 162

Ref: LCRO 36/2020

**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**

**SW**

Applicant

**AND**

**LN**

Respondent

**DECISION**

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

**Introduction**

[1] Mr SW has applied to review a decision by the [Area] Standards Committee [X] (the Committee) dated 18 February 2020, in which the Committee decided to take no further action on his complaint about his former lawyer, Mr LN.

[2] The Committee based its decision upon s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act). This allows a Standards Committee to dismiss a complaint at an early stage if, based on the information it has, the Committee considers further action on that complaint is neither necessary nor appropriate.

**Background**

[3] Mr SW lives in [city], Australia and has done so for a number of years.

[4] The background to Mr SW's complaint about Mr LN's conduct centres on paternity proceedings that were brought against Mr SW in the Family Court in April 2003 (the paternity proceedings).

[5] The paternity proceedings were unable to be served on Mr SW. The Family Court made an order for substituted service on Mr SW's brother, and the documents were served on the brother during February 2004.

[6] In Mr SW's absence, the Family Court made an order declaring him to be the child's father, on 27 September 2004.

[7] It is not clear when the paternity proceedings were drawn to Mr SW's attention. However, once he became aware of the matter Mr SW denied, and has continued to deny, that he is the father of the child at the centre of the paternity proceedings.

[8] In about June 2016 Mr SW instructed Mr A, a lawyer, to act for him in connection with the paternity proceedings.

[9] That retainer was terminated in about July 2019 when differences arose between the two. By then, there had been no substantive progress towards setting aside the declaration of paternity.

[10] Mr SW then instructed Mr LN to act. That retainer ended some four months later, in or about November 2019.

[11] Mr SW emphatically asserts that the applicant in the paternity proceedings (the mother) was dishonest in the evidence she filed in support of the case, and that this amounts to perjury for which she should be held to account. It is this unshakeable belief that has driven Mr SW to vigorously challenge the paternity proceedings and the outcome.

[12] Mr SW's instructions as to how he wished to challenge the paternity proceedings, have not always accorded with the legal advice he has received about the best way to do that.

[13] Mr SW has been highly critical about the conduct Mr A and Mr LN. He believes that both lawyers have deliberately covered-up the mother's perjury, and that their representation of him has been poor.

[14] This decision deals with Mr SW's complaints about Mr LN's conduct.<sup>1</sup>

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<sup>1</sup> Mr SW's complaint about Mr A's conduct was dismissed by a Standards Committee. Mr SW applied to review that decision, and Review Officer Galloway dealt with that review application.

## Complaint

[15] Mr SW lodged his complaint against Mr LN with the New Zealand Law Society Lawyers Complaints Service (Complaints Service) in an email sent by him on 30 October 2019. He subsequently supplemented that initial email with a large amount of additional material.

[16] In essence, Mr SW complained that Mr LN had:

- (a) Acted criminally by concealing the mother's perjury.
- (b) Aided and abetted Mr SW's former lawyer (Mr A) to conceal Mr A's corruption and criminal misconduct and failed to report that conduct to the Police.
- (c) Failed to follow instructions.
- (d) Concealed the perjury of others involved in the paternity proceedings.
- (e) Undermined a criminal complaint made to the Police.
- (f) Suggested that Mr SW should instruct another lawyer, in terms amounting to blackmail.
- (g) Given bad advice.
- (h) Failed to lodge a complaint with the Police and dishonestly telling Mr SW that he had done so.
- (i) Failed to make an application for discovery and for further particulars in the paternity proceedings.
- (j) Inflated legal fees with unnecessary correspondence.
- (k) Failed to act in Mr SW's best interests and otherwise providing inadequate representation.
- (l) Preferred the interests of others, including Mr A, over Mr SW's interests.

[17] As indicated, Mr SW provided a substantial number of documents to support his complaint. These included exchanges of emails between himself and Mr LN (mostly during October 2019), documents relating to his complaint against Mr A, exchanges of correspondence between Mr SW and Australian Police and copies of the paternity proceedings.

### **Standards Committee processes**

[18] Mr SW's complaint was initially assessed as being suitable for the Complaints Service's Early Resolution Process (ERP).

[19] That procedure involves a Standards Committee conducting an initial assessment of a complaint and forming a preliminary view as to the outcome.

[20] If the Committee's preliminary view is that the complaint appears to lack substance, a Legal Standards Officer (LSO) will contact the respondent lawyer and inform them of the Committee's preliminary view, inviting a response from the lawyer.

[21] Any response is included in a file note (described as "Early Resolution Process – Call Log") prepared by the LSO and provided to the Committee, which then completes its inquiry into the complaint.

[22] On 17 February 2020 the LSO spoke to Mr LN by telephone and advised him about the complaint and the Committee's preliminary view that it may take no further action on Mr SW's complaint.<sup>2</sup>

[23] Mr LN told the LSO that he was "not surprised" that Mr SW had lodged a complaint because he "had indicated he would complain." He said that he was willing to provide the Committee with any information that it required.

[24] The LSO informed Mr LN that the Committee considered that it had sufficient information upon which to base its decision.

[25] The matter was then referred to the Committee for further consideration.

### **Standards Committee decision**

[26] The Committee identified the issue to be determined as being whether Mr LN had breached any of his professional obligations.<sup>3</sup>

[27] The Committee observed that Mr SW had made "serious allegations which require cogent evidence to support them."<sup>4</sup>

[28] In relation to the concern that Mr LN had concealed the mother's perjury, the Committee noted that Mr LN had in fact reported that to the Police.

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<sup>2</sup> Early Resolution Process Call Log (undated).

<sup>3</sup> Standards Committee decision (18 February 2020) at [5].

<sup>4</sup> At [6].

[29] Mr SW also complained that Mr LN had concealed Mr A's criminal and corrupt conduct. However, the Committee said that Mr SW had made a complaint about Mr A, which had been separately dealt with resulting in no further action being taken against that lawyer.

[30] Further, Mr SW had complained that Mr LN had suggested that he (Mr SW) should instruct another lawyer. The Committee observed that:<sup>5</sup>

[T]he referral of a dissatisfied client to another lawyer for advice accords with the need for there to be trust and confidence between lawyer and client and the obligation for a lawyer to refer a client for independent legal advice should a client raise a claim against him or her.

[31] As to the quality of Mr LN's representation, the Committee noted that it included members "experienced in family law and litigation" and that the advice that Mr LN gave Mr SW was "good advice and appropriate for Mr SW's circumstances."<sup>6</sup>

[32] In deciding to take no further action on Mr SW's complaint, the Committee held that there was "no evidence to sustain the allegations that Mr LN has engaged in criminal conduct or acted otherwise than in accordance with his professional obligations."<sup>7</sup>

### **Review Application**

[33] Mr SW filed his application for review on 21 February 2020. He said:

- (a) The Committee's decision is highly prejudicial, biased, absurd and amounts to a process of concealment rather than disclosure and acknowledgement of what he considers to be criminal misconduct and serious professional negligence.
- (b) Mr LN's advice to make a substantive application for discovery was flawed and would have allowed the mother to effectively get away with perjury.
- (c) The appropriate course was to make an application for further discovery together with "a cross claim for legal cost[s]".
- (d) Mr LN's strategy has been deliberate and designed to make it appear as though Mr A's conduct was appropriate.

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<sup>5</sup> At [8].

<sup>6</sup> At [11].

<sup>7</sup> At [13].

- (e) Mr SW has been able to obtain some medical records in connection with the mother and the child, which Mr LN had said may not exist.
- (f) The mother was able to procure the paternity declaration on a technicality.
- (g) The mother's evidence that Mr SW is only person who could be the child's father is untrue.
- (h) Mr LN does not appear to have lodged the complaint of perjury with the Police.

### **Response**

[34] Mr LN has not provided any substantive response to Mr SW's review application. However, in an email to the Case Manager dated 2 October, responding to a request for submissions about the format of the review hearing itself, Mr LN said "... my experience with Mr SW is such that I expect there are errors, allegations and assumptions that cannot be made out."

### **Review on the papers**

[35] This review has been undertaken on the papers pursuant to s 206(2) of the Lawyers and Conveyancers Act 2006 (the Act), which allows a Legal Complaints Review Officer to conduct the review on the basis of all information available if the Review Officer considers that the review can be adequately determined in the absence of the parties.

[36] In anticipation of that process being followed, on 7 September 2020 the parties were given an opportunity to make submissions as to whether they wished Mr SW's review application to proceed by way of a hearing in person, or a hearing on the papers.

[37] The parties were advised that in the absence of any response, it would be assumed that there is no objection to the matter being determined on the papers.<sup>8</sup>

[38] In an email to the Case Manager also dated 7 September 2020, Mr SW indicated his preference "for the matter to be heard and proceed to a hearing". I infer

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<sup>8</sup> The management and hearing of Mr SW's review application were originally assigned to Review Officer Galloway, who had dealt with Mr SW's review application concerning Mr A's conduct. However, Review Officer Galloway recused himself from further involvement in this review application and on 2 October 2020 it was reassigned to me for management and hearing.

this to mean that Mr SW asks for his review application to be dealt with in person rather than on the papers.<sup>9</sup>

[39] Subsequent emails from Mr SW to the Case Manager appear to confirm his wish for the matter to be dealt with in person.

[40] Mr LN has not provided any response to the Case Manager's letter dated 7 September 2020, despite indicating that he intended to do so.

[41] From the lack of a substantive response from Mr LN, and consistent with what the parties were advised in the Case Manager's letter dated 7 September 2020, I infer that Mr LN is content for Mr SW's review application to be dealt with on the papers.

[42] On the basis of the information available, which I have carefully considered, I have concluded that the review may be adequately determined on the papers and in the absence of the parties.

[43] I record that I have carefully read the complaint, the Committee's decision and the submissions filed in support of the application for review. There are no additional issues or questions in my mind that necessitate any further submission from either party.

### **Nature and scope of review**

[44] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:<sup>10</sup>

... 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

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<sup>9</sup> In that email Mr SW also made a request for the audio recording of the review hearing involving Mr A. I understand that Mr SW's request for a copy of the audio recording of that hearing has been dealt with. Nevertheless, I put all of Mr SW's comments about the earlier hearing in Mr A's case and Review Officer Galloway's management of that hearing, to one side. The current application relates only to Mr LN's alleged conduct, and matters raised in hearings to which Mr LN is not a party cannot form part of the record of this review application. This is because all review hearings are strictly confidential to the parties to that hearing (see s 206 of the Act).

<sup>10</sup> *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41] (citations omitted).

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.

[45] More recently, the High Court has described a review by this Office in the following way:<sup>11</sup>

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.

[46] 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**

[47] Mr SW's complaints about Mr LN's conduct are extensive and include extremely serious allegations of criminality, all of which are framed with strong language.

[48] Yet, it must be observed that Mr SW's retainer with Mr LN lasted no more than four months, if not less.

[49] It is clear that by October 2019, only a matter of some three to four months after Mr LN first began to act for Mr SW, the relationship between them had seriously broken down.

[50] In an email to Mr LN sent on 29 October 2019, Mr SW made the following comments about Mr LN's representation of him:

You have not done the complaint [about Mr A and others] properly and have misled me into believing that you have. As a result of which I have incurred unnecessary legal costs.

...

Are you trying to conceal the fact that you have not instructed [the Police] to charge mentioned person's or are you concealing criminal activities by the 3 mentioned???

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<sup>11</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].



...

As per my conversation with you, you stated that you will follow my instructions, yet you have not done so. Only to try and blackmail me into making a substantive application which had no timelines on it. You blackmailed me by seemingly suggesting that if I don't follow your instructions then I should obtain another lawyer, only because you want to litigate the matter by prolonged means and incur unnecessary legal costs.

Concealing what [Mr A and others] have done would also constitute ... a criminal offence, which is what you have tried to do by your actions with the Police complaint.

...

Your instructions to apply for a substantive application was bad advice and I'm giving you an opportunity to correct it.

...

[If my new instructions are not followed] then I will take that as you concealing acts of criminality within a judicial process and will take further action.

[51] Peppered throughout that email are comments by Mr SW that Mr A, others who work with Mr A and the mother had all committed perjury in connection with the paternity proceedings. Mr SW's conclusions were that Mr LN not only knew of this perjury, but has actively tried to conceal it and to thwart any criminal investigation into it.

[52] An email sent by Mr SW to Mr LN the following day is cast in similar terms, and begins with "I see this as you concealing what [Mr A] has done in terms of criminal misconduct." Further, "it is clearly evident by your actions that you are aiding and abetting [Mr A] in concealing his criminal misconduct matters." Towards the end of that email, Mr SW accuses Mr LN of lying about steps taken.

[53] It seems plain enough that Mr LN endeavoured to make a perjury complaint to the Police on Mr SW's behalf – his email to Mr SW dated 30 October 2019 confirms this. However, it also appears to be the case that the Police declined to accept the complaint, after speaking to in-house counsel, because the complaint "[did] not (yet) meet the statutory/legal test of perjury."<sup>12</sup>

[54] I do not accept Mr SW's claim that Mr LN has fabricated this. I regard that claim as an illustration of Mr SW refusing to accept advice he has been given by resorting to the allegation that the advice has been fabricated.

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<sup>12</sup> See Mr LN's email to Mr Jeet (15 October 2019).

[55] It bears observing that Mr SW has not produced any evidence to show that Mr A, or anybody else, has been interviewed about, let alone prosecuted for and convicted of perjury.

[56] The only conclusion to draw from this is that Mr SW has been unable to provide any evidence that any of those parties have perjured themselves.

[57] As an indication of that, in an email to Mr SW sent by Mr LN on 17 October 2019, Mr LN said:

There is not enough clear independent corroborative evidence for a perjury complaint. I have told you that previously and the Police have said so too. If you can establish in court that the order was wrongly made, then [the mother must have lied in her evidence]. That's the sort of evidence that is needed.

[58] Mr SW views Mr LN's observations as being evidence of Mr LN covering up the mother's perjury by failing to act decisively to uncover it.

[59] I would only further observe that it is not at all clear what else Mr LN could do in the face of the Police declining to accept a perjury complaint.

[60] Mr SW has an unshakeable belief that the paternity proceedings against him, in particular the allegation of perjury, were based upon a lie because he could not possibly have been the father of the child in question. Nothing will convince Mr SW otherwise.

[61] This unshakeable belief has coloured every interaction that Mr SW has had in connection with the paternity proceedings, including with Mr LN. It seems clear that if any advice is given to Mr SW which challenges his foundational beliefs about the mother's evidence, then he interprets this as (in this case) Mr LN not only acting against his interests, but actively facilitating the mother's perjury and deliberately concealing it from the authorities which ought to know about it.

[62] Mr SW's foundational belief also drives the instructions that he has given Mr LN. When a contrary view was expressed about the wisdom of those instructions, this too was interpreted by Mr SW as evidence of Mr LN abrogating his duty to promote and protect his interests and to, once again, facilitate the mother's interests.<sup>13</sup>

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<sup>13</sup> The following illustrates the broad reach of Mr SW's allegations of serious wrongdoing by others who have dealt with him. As part of the complaint material that Mr SW provided the Complaints Service in relation to his complaint about Mr LN's conduct, Mr SW included a copy of his review application concerning the complaint he had made against Mr A. In that review application, Mr SW said the following about the Convenor of the Standards Committee which had dealt with the complaint about Mr A's conduct: "[The Standards Committee's decision signed by the Convenor] is to an extent highly prejudicial, bias and possibly involved in a process of concealment of criminal act/s within the judicial process of the legal matter [in which Mr A acted for me]".

[63] Mr SW resorts to rancorous language expressed in exaggerative terms when describing Mr LN's conduct, including alleging criminality, conspiracy and corruption.

[64] The Committee was entirely correct to say that allegations such as those, which are amongst the most serious that can ever be made against a lawyer, require evidence of commensurate seriousness and strength to underpin them.

[65] The mere resort to strong language expressed frequently and with passion is not "evidence" of anything other than Mr SW's unshakeable beliefs.

[66] In my view, Mr SW will never overturn the paternity order by pursuing his allegations of perjury against the mother with the Police. It is tolerably plain that those allegations have failed to produce the answer that Mr SW so desperately seeks.

[67] Mr SW's proper remedy is, and always has been, to challenge the original paternity order. If he is able to mount that challenge at this relatively late stage, it would give him an opportunity to fully and fairly put his side of the story before a judge, and to challenge, as forcefully as the law will allow, the mother's evidence in support of her claim of that he is the father of her child.

[68] Tellingly, Mr LN gave Mr SW this exact advice. In his email to Mr SW dated 30 October 2019, Mr LN said:

You need independent evidence, and most particularly a decision overturning/setting aside the original [paternity] order.

[69] This was consistent with what Mr LN had told Mr SW almost 2 weeks earlier, that he needed "to establish in court that the order was wrongly made."

[70] As if that was not enough, when Mr LN went to the Police on 14 October to lodge Mr SW's perjury complaint, the Police also noted that the appropriate course was for Mr SW to put the matter back before the Family Court. The Police told Mr LN that "they would be able to pursue a perjury complaint following family court proceedings."<sup>14</sup>

[71] I am mindful that Mr SW's invariable response to comments of that nature made by Mr LN, is that Mr LN is part of the conspiracy with Mr A to conceal the mother's perjury.

[72] I reject that. There is no basis whatsoever for such an allegation and it is simply indicative of Mr SW's unwavering and unshakeable view that the mother's evidence in the paternity proceedings was dishonest.

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<sup>14</sup> See Mr LN's emails to Mr SW (14 & 15 October 2019).

[73] As I have observed above, any challenge to that view results in Mr SW widening the circle of conspiracy that he has drawn.

[74] As the Committee correctly observed, the lawyer/client relationship is based on absolute confidence and trust.<sup>15</sup>

[75] A client must have confidence that their lawyer will put the client's interests above the interests of others, carry out their instructions and give competent and sound legal and strategic advice. As well, a client must be able to trust that their lawyer will scrupulously comply with all professional and ethical obligations when acting for them.<sup>16</sup>

[76] When it becomes apparent to a lawyer that their client ceases to have confidence and trust, including to the extent that their client is alleging criminal conduct by the lawyer, I consider that the appropriate response for the lawyer is to terminate the retainer.

[77] Retainers may be terminated by a client at any time and for any, or even no, reason. That is the absolute and unqualified right of a client.

[78] A lawyer may terminate a retainer only in limited circumstances, and must have good cause to do so.<sup>17</sup>

[79] The list of examples of what might amount to "good cause" is open-ended. Nevertheless, the expression "good cause" indicates that there must be a solid foundation before a lawyer can tell their client that they will no longer represent them.

[80] In my view, comprehensive criticism of a lawyer's conduct by their client, including allegations of criminality, provides good cause for a lawyer to terminate the relationship. This is because, by the criticisms levelled and allegations made by the client, it is abundantly clear that the client has lost confidence and trust in the lawyer.

[81] It could not possibly be in the interests of a client to believe that they are being represented by someone who is engaging in criminal conduct against the client's interests.

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<sup>15</sup> See r 5.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules).

<sup>16</sup> The well-understood exception to this is that as an Officer of the Court, a lawyer must uphold the rule of law and facilitate the administration of justice, and conduct themselves with unqualified honesty before any court or tribunal. A lawyer cannot accept instructions from a client which would have the effect of compromising those fundamental obligations as an Officer of the Court. See generally s 4 of the Act and rr 2 and 13.1 of the Rules.

<sup>17</sup> See generally r 4.2 of the Rules.

[82] In my view Mr LN cannot be criticised for suggesting to Mr SW that their retainer should end, given the number of criticisms he faced, almost all of which carried with them allegations that he had engaged in criminal behaviour.

[83] Distilled to their essence, Mr SW's complaints about Mr LN's conduct focus on his belief that Mr LN failed to aggressively pursue a complaint of perjury against the mother, and failed to take what Mr SW considered to be the proper procedural steps to challenge the paternity order that was made by the Family Court in September 2004.

[84] Mr SW's strategy in that regard appeared to be grounded in his belief that a partial discovery order and a "cross-claim" for costs would flush the mother's perjury to the surface.

[85] From the correspondence that Mr SW has provided, Mr LN disagreed with that strategy. His advice was that a discovery application, however framed, would be of incidental effect and that Mr SW needed to file a substantive application to set aside the September 2004 paternity order.

[86] The rationale behind that approach was that the Family Court might ultimately get to hear the competing evidence around whether Mr SW could possibly have been the child's father, and in the process be in the best possible position to assess whether the mother may have perjured herself.

[87] Mr LN's strategy appears to me to be sound and conventional in a case of this nature.

[88] It is difficult to see how Mr SW's strategy of an application for discovery, together with a cross claim for costs, would have achieved the desired result of setting the paternity order aside. Mr SW's belief is that this would have caused the mother to panic, realising that her lies would be uncovered.

[89] This is, of course, entirely speculative and once again predicated on Mr SW's emphatic denial that he could possibly be the child's father. It also overlooks the fact that, so far as the Family Court is concerned, the matter is at an end and that as a first step a formal application would need to be made for a rehearing.

[90] If granted, a Family Court judge would then assume responsibility for case managing the matter towards a hearing and that would include determining the nature and extent of any discovery orders.

**Conclusion**

[91] I have carefully read all of the material that Mr SW provided to both the Standards Committee, and as part of his review application. I have assessed that material independently and formed my own views about his complaints about Mr LN's conduct.

[92] I have concluded that there is no substance to Mr SW's complaints about Mr LN's conduct. As I have endeavoured to demonstrate, in my view Mr SW's whole approach to the declaration of paternity that was made against him appears to be procedurally misconceived.

[93] I can find no reason to disagree with the Committee's approach and conclusions.

**Decision**

[94] Pursuant to s 211(1)(a) of the Act, the decision of the Committee is confirmed.

**Anonymised publication**

[95] Pursuant to s 206(4) of the Lawyers and Conveyancers Act 2006, I direct that this decision may be published but without any details that may directly or indirectly identify the parties, or any other person named in this decision.

**DATED** this 4<sup>th</sup> day of October 2021

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**R Hesketh**  
**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 SW as the Applicant  
Mr LN as a Respondent  
[Area] Standards Committee [X]  
New Zealand Law Society  
Secretary of Justice