LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2021] NZLCRO 150

Ref: LCRO 73/2020

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the [City] Standards Committee
BETWEEN	**A and B WT** Applicant
AND	**CV and DU** Respondent

DECISION

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

Introduction

[1] Mr and Mrs WT have applied for a review of a decision by the [City] Standards Committee to take no further action in respect of their complaints concerning the conduct of the respondents, Messrs CV and DU.

Background

[2] Mr and Mrs WT entered into an agreement to sell their apartment. The sale price was $2,220,000.

[3] The agreement for sale and purchase date was dated [Date] 2018. Settlement was to proceed on [Date] 2018.

[4] Mr and Mrs WT provided various documents to the real estate agent managing the sale, including a pre-contract disclosure statement (PCDS). They had noted on the PCDS form, "second half – external planned maintenance of the building $[amount]".

[5] Mr CV's firm (practising under the name and style of [Lawfirm 1] Ltd – ("LF1]") was instructed by Mr and Mrs WT to act on the sale.

[6] At the time the instructions were provided, an unconditional agreement for sale and purchase was in place. Mr and Mrs WT had not sought legal advice prior to entering into the agreement.

[7] On [Date] 2018, Mr CV forwarded Mr and Mrs WT a pre-settlement disclosure statement (PSDS). That document was silent on the maintenance issue identified in the PCDS.

[8] On settlement date, the purchaser's lawyer contacted Mr CV to advise that his client was refusing to pay the full settlement amount and was intending to withhold funds in a sum equivalent to the maintenance figure identified in the PCDS.

[9] Settlement proceeded on the basis of [LF1] providing an undertaking that the disputed sum of $[amount] would be retained in the [LF1] trust account pending resolution of the dispute.

[10] On 24 January 2019 Mr CV forwarded an invoice to Mr and Mrs WT for services rendered. He noted that the fee had been discounted in the sum of 30 per cent in recognition of the incorrect advice provided regarding certification of the PSDS. Mr CV noted that whilst he did not consider that the error had consequence for the transaction, he conceded that the advice given was "below the high standard to which we hold ourselves as legal professionals". Mr CV was hopeful that the discount provided would go some way towards rectifying the mistake made.

The complaint and the Standards Committee decision

[11] Mr and Mrs WT lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 12 September 2019. The substance of their complaint was that:

(a) Mr CV's communication with them during the period instructions were provided to date of settlement was poor; and

(b) Mr CV had mistakenly advised them that a PSDS was in order when the document omitted necessary certification from the Body Corporate; and

(c) Mr CV had failed to identify discrepancies between the PCDS and the PSDS; and

(d) Mr CV had only advised them of the steps taken to proceed settlement on the basis of funds being retained, after settlement had concluded; and

(e) they had seen no evidence of any agreement to retain funds being reached by the respective lawyers; and

(f) Mr CV had neglected to peruse relevant documentation; and

(g) Mr CV's failure to competently manage the transaction had caused them financial loss and considerable distress; and

(h) Mr CV's oversight had compromised their intention on sale, which was that the purchaser would assume responsibility for the maintenance obligation which fell due to the Body Corporate in [Date] 2019; and

(i) Mr CV should never have agreed to settle on the basis of an undertaking being provided; and

(j) Mr DU had failed to take adequate steps to address the problems which had occurred as a consequence of Mr CV's omissions; and

(k) [LF1]'s acknowledgement that it had made errors accompanied by concession to reducing its account did not adequately address the consequences of their mistakes.

[12] Mr DU and Mr CV provided response to the complaint filed on 7 November 2019. They submitted that:

(a) they had acted in accordance with their obligations under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules); and

(b) they had acted at all times in accordance with their client's best interests and instruction; and

(c) they had no involvement with the preparation of the sale and purchase agreement or representations and disclosures made to the purchaser in respect of the property; and

(d) correspondence received was responded to within a reasonable period of time, given the timeframe and attendances involved in completing settlement of the property; and

(e) it was conceded that incorrect advice was given to the clients on [date] 2019 concerning the certification requirements for PSDS under the Unit Titles Act 2010, however that error was recognised in the discounted fee and, in any event, had no material bearing on the client's position concerning body corporate levies payable; and

(f) contention that discrepancies between the PCDS and PSDS were not identified was incorrect; and

(g) the PCDS referenced a second half maintenance payment falling due, this consistent with their clients' instructions that the maintenance levy was due for payment on [date] 2019; and

(h) based on their clients' instructions, the PSDS direction that no levies were outstanding was correct; and

(i) inaccurate account had been provided of the events which occurred on the day of settlement; and

(j) explicit instructions had been provided to settle on the basis of an undertaking to retain funds pending resolution of the dispute; and

(k) suggestion that they had acted other than in accordance with their clients' instructions was vigorously rejected; and

(l) they retained a view that robust argument could be advanced to support contention that their clients were not required to pay the levy; and

(m) instructions had been provided to their clients to seek resolution in the Tenancy Tribunal; and

(n) despite that advice, the clients had elected to pursue proceedings in the Disputes Tribunal; and

(o) if it was established that Mr and Mrs WT were liable for the levy, that legal position had been established prior to their engagement and no advice or action on their part could change that position; and

(p) it was in the client's best interest to complete settlement rather than breach their obligations under the agreement; and

(q) reliance was placed on earlier correspondence which had responded to concerns raised by Mr and Mrs WT.

[13] Mr and Mrs WT provided a comprehensive response to the submission filed by Mr CV and Mr DU.

[14] In significant part, that submission traverses the thrust of the earlier arguments raised. Mr and Mrs WT reinforce in their reply that:

(a) they considered that Mr CV should have more carefully considered the documentation; and

(b) they considered that Mr CV's communication with them had been very poor; and

(c) they rejected Mr CV's account of the events that had occurred on settlement day, in particular, suggestion that they had been informed early in the day of the impending problems with settlement; and

(d) Mr CV should have identified the discrepancies between the PCDS and PSDS; and

(e) they challenge Mr CV's assertion as to the correctness of the PCDS; and

(f) they had not agreed to settle on the basis of an undertaking being provided; and

(g) they would have been content for settlement to have been delayed.

[15] The Standards Committee identified the focus of its investigation as an inquiry into whether the service provided by the practitioners to Mr and Mrs WT presented as professional and adequate.

[16] The Standards Committee delivered its decision on 7 April 2020.

[17] The Committee determined pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act) that no further action on the complaint was necessary or appropriate.

[18] The Committee concluded that:

(a) it was reasonable for [LF1] to have acted on Mr WT's instructions alone; and

(b) the deposit had been paid promptly to Mr and Mrs WT; and

(c) there was no evidence of undue delay in the management of the transaction; and

(d) [LF1] was not positioned to question and/or correct the intention of the warranty, bearing in mind that Mr and Mrs WT had completed the PCDS before seeking legal advice; and

(e) the Committee considered that the Tenancy Tribunal was the appropriate forum for resolving the dispute.

Application for review

[19] Mr and Mrs WT filed an application for review on 20 April 2020.

[20] They submit that:

(a) they considered that their complaint should have resulted in a disciplinary sanction being imposed on Mr CV; and

(b) Mr CV had failed to provide them with the menu of options available in the face of the purchaser's indication of refusal to settle; and

(c) the Committee's acceptance of the lawyer's position that the error made by the lawyers had no consequence for outcome was erroneous; and

(d) the error made significantly affected the transaction; and

(e) the Committee's conclusion that greater financial loss would have occurred if the settlement had been delayed was speculative and inaccurate; and

(f) the lawyers had been robustly instructed that settlement should not proceed unless payment was made for the full purchase price; and

(g) the discount on fees charged fell substantially short of providing adequate compensation for the loss that had been incurred; and

(h) it was regrettable that the Committee decision lacked any evidence of criticism of the practitioners, for the demonstrable errors that had been made.

[21] After Mr and Mrs WT filed their application for review, their claim against the purchasers for recovery of balance of the purchase price retained was heard in the Tenancy Tribunal.

[22] The Tribunal delivered its decision on [Date] 2020.

[23] The Tribunal concluded that the purchasers were not liable to pay to Mr and Mrs WT the sum of $[amount] that had been retained on settlement.

[24] Mr and Mrs WT provided a copy of the Tribunal decision to the LCRO and in accompanying correspondence, expressed the view that whilst they had not been successful, the adjudicator's decision supported their argument that failures with the PSDS had significantly contributed to their problems. They contended that the Tenancy adjudicator had advised them that they should pursue a claim against [LF1] for recovery of monies lost.

[25] [LF1] had a different view of the implications of the Tribunal decision. They considered that the decision supported their position in that it:

(a) confirmed that the WTs had failed to make proper pre-contractual disclosure; and

(b) established that the WT's liability in connection with the disputed sum was established before they approached with an unconditional sale and purchase agreement; and

(c) affirmed that had taken reasonable steps to settle the dispute; and

(d) affirmed that [LF1] had correctly advised that if the matter could not be settled by agreement, the dispute would need to be ventilated in the Tenancy Tribunal before funds could be released.

Review on the papers

[26] The Review Officer responsible for making initial directions on the file advised the parties that he considered that the review was suitable for hearing "on the papers".

[27] Indication was given to the parties of the Review Officer's position and the parties were invited to advise as to whether they agreed to an on the papers hearing.

[28] Mr CV and Mr DU confirmed their agreement to the review proceeding on that basis.

[29] Mr and Mrs WT indicated a preference for an applicant only hearing.

[30] The Review Officer supervising the file confirmed to the parties that a decision had been made that the review would proceed on the papers.

[31] On assuming responsibility for management of the review I concluded that the direction made that the review be proceeded on the papers was appropriate, but in the course of advancing the review identified an issue that I considered it would be appropriate to hear from the parties on. In particular, I considered it necessary that Mr CV be provided opportunity to directly address my concern that the Standards Committee had failed to adequately consider as to whether a lawyer's failure to provide appropriate advice on disclosure matters, required a disciplinary response.

[32] A telephone conference was convened for Wednesday 18 August 2021. The conference was attended by Mr CV and Mr and Mrs WT.

Nature and scope of review

[33] 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

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

> 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.

[34] 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.

[35] 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

[36] The critical issue to consider on review is the question as to whether Mr CV or Mr DU breached any professional obligations or duties owed to Mr and Mrs WT.

[37] Whilst Mr and Mrs WT raise a number of concerns regarding the service provided (poor communication, dispute as to the events that had transpired on settlement day, conflicting views as to whether an undertaking had been agreed, advice proffered by the lawyers post settlement), on careful examination of those issues I see no evidence that would establish or support finding that either Mr CV or Mr DU had breached obligations and duties owed to Mr and Mrs WT arising from those matters.

[38] The critical concern for Mr and Mrs WT was that they considered that a failure on Mr CV's part to adequately peruse the documentation, and the error made in failing to advise of the requirement of the Body Corporate to certify the PSDS, had resulted in them incurring loss on the sale.

---

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

[39] Focus on the question as to whether the actions of the lawyers (particularly Mr CV) had directly caused financial loss, diverted attention in my view from the critical issue (in the context of a disciplinary inquiry), as to whether the lawyers' failure to advise of the requirement of the Body Corporate to certify the PSD statement, constituted conduct requiring of a disciplinary response.

[40] Mr and Mrs WT are convinced that Mr CV's oversight was directly responsible for loss suffered. They argue that if Mr CV had attentively scrutinised all the documentation and ensured synchronicity between the PCDS and PSDS, the purchaser would have had no option but to pay the full purchase price on settlement.

[41] The lawyers, whilst properly conceding that an error was made, argue that the oversight had no tangible consequences for the transaction. They contend that any failures by the firm, were not, and could not be, causative of loss suffered, if loss was in fact suffered.

[42] In my view, the Committee whilst adequately addressing a number of the complaints raised, neglected to pay sufficient attention to the question as to whether Mr CV's failure to advise of the requirement for the PSDS to be certified by the Body Corporate constituted a breach of the obligations and duties owed to Mr and Mrs WT.

[43] There is minimal indication of the Committee turning its collective mind to the question as to whether Mr CV's conceded failure constituted conduct that was requiring or deserving of, a disciplinary response.

[44] Rather, the Committee's decision to take no further action on the issue of providing inaccurate advice, proceeds from its conclusion that [LF1] were not in a position to provide a remedy to Mr and Mrs WT other than to counsel them to pursue a claim in the Tenancy Tribunal.

[45] The Committee concluded that the lawyers' decision to discount their fee presented, in the circumstances, "as a fair way of handling the matter".

[46] Absent from this analysis is indication of the Committee giving necessary consideration to the potential disciplinary consequences (if any) which could arise as a consequence of a lawyer providing inaccurate advice to a vendor client as to the statutory requirement for a PSDS to be certified by the Body Corporate.

[47] The issue is not at first step whether the lawyers were liable for loss suffered, but rather whether the lawyer's error properly required a disciplinary response.

[48] Whilst both a Standards Committee and a Review Officer have jurisdiction to direct that a lawyer pay compensation, issues of contested liability of the nature raised by this dispute, are more appropriately addressed in a forum other than through the vehicle of a disciplinary complaint.

[49] And that is precisely what happened here.

[50] Question as to whether the lawyer's omissions had caused financial loss was directly considered by the Tenancy Tribunal.

[51] Mr and Mrs WT consider that the Tenancy Tribunal decision, whilst not in their favour, nevertheless lent support to their view that the lawyers were responsible for the loss they contend they had suffered.

[52] In my view, the decision reinforces the lawyers' position that any attempt to establish responsibility for loss, inevitably required an examination of what had or had not been agreed between the parties in their pre-contractual discussions, an assessment of the evidence of the parties, a consideration of the context in which the disclosure documents had been framed, and an understanding of the terms of agreement as recorded in the executed sale and purchase document.

[53] Mr and Mrs WT maintain that the purchaser was made fully aware during the period of initial negotiations that he would be required to assume responsibility for the maintenance levy that was to fall due for payment in [Month] 2019. They say (and this would have been a significant evidential plank in laying foundation for argument that the purchaser was aware of and accepted responsibility for the impending maintenance obligation), that the purchaser had been alerted to the maintenance obligation by members of the real estate team on a number of occasions.

[54] This important, and what would likely have been regarded by the adjudicator as critical independent evidence, did not regrettably from Mr and Mrs WT's perspective, come up to brief at the Tribunal hearing. The adjudicator concluded that she did not find the evidence of the agents to be persuasive.

[55] The adjudicator also considered it significant that the sale and purchase agreement contained no reference to the maintenance levy (it would have been prudent for it to have done so) and identified concern with lack of clarity in the PCDS. Responsibility for these issues fell squarely at the door of Mr and Mrs WT. They had elected to both negotiate the contract and execute it, without availing themselves of the benefit of legal advice.

[56] Mr and Mrs WT are steadfast in their view that Mr CV's error in advising them that the PSDS did not require certification from the Body Corporate was instrumental in reducing their settlement options, responsible for causing them loss on their sale, and significant in contributing to post-settlement costs they had incurred.

[57] It is unhelpful to speculate on what may or may not have resulted if settlement of a $2,220,000 sale did not proceed, but I think it probable that many experienced conveyancing lawyers would be reluctant to encourage a vendor who had entered into a binding contract for sale and purchase, to recommend taking steps which could potentially frustrate the sale proceeding on settlement date in circumstances where the sale and purchase agreement had neglected to record an apparent agreement as to which of the vendor/purchaser parties would be responsible for a relatively modest maintenance liability.[3]

[58] However, Mr CV's error in failing to advise Mr and Mrs WT of the statutory requirement for a Body Corporate to provide a certificate, was a significant oversight, and one which in my view, raised issue as to whether Mr CV had acted competently.

[59] In providing regulated services to a client, a lawyer must always act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.[4]

[60] The disclosure regime provided for under the Unit Titles Act 2010 has an important consumer protection focus.

[61] Information provided to the buyer in the PSDS is critically important for the purchaser.

[62] The PSDS *must* contain a certificate from the Body Corporate certifying the accuracy of the information contained in the disclosure document.[5]

[63] It is vital that the information in the statement is up-to-date and accurate.

[64] Serious issues for a vendor may arise if the disclosure statements provided are not accurate, including potentially providing grounds for the purchaser to delay settlement or cancel the agreement altogether.

---

[3] In describing the maintenance liability as "modest", I do not intend to diminish the importance of the sum to Mr and Mrs WT, but rather to emphasise that considered within the context of the sale price, lawyers would inevitably have considerable caution and concern about steps being taken that could potentially compromise settlement.
[4] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 3.
[5] Section 147(3)(b) of the Unit Titles Act 2010.

[65] The disclosure regime demanded under the Unit Titles Act, has been described as "significant, and almost inevitably will require that information is obtained from the Body Corporate".[6]

[66] It could be reasonably expected of an experienced conveyancing lawyer responsible for providing careful oversight of the sale of a unit title property, that the requirement for the PSDS to be certified by the Body Corporate be carefully explained to a vendor client. Critical to the sale of a unit title property, is the need to ensure that all existing or potential liabilities are disclosed.

[67] Accurate disclosure is particularly critical in circumstances where there are ongoing maintenance issues within a complex, and on occasions, relatively complex formulae for apportioning liability amongst unit owners for continuing maintenance obligations.

[68] In the course of the teleconference, Mr CV was given opportunity to directly address concern that his error in failing to inform Mr and Mrs WT of the need for the Body Corporate to certify the PSDS presented as a significant oversight.

[69] It was his view that:

(a) it was Mr and Mrs WT's responsibility to ensure that the information contained in the disclosure documents was accurate; and

(b) it was not his responsibility or obligation to provide oversight of the disclosure documents; and

(c) in any event, suggestion that error on his part was conduct that was requiring of a disciplinary response, was negated by the fact that Mr and Mrs WT had suffered no loss as a consequence of him failing to advise that the PSDS needed to be certified by the body corporate.

[70] I considered that Mr CV's view of the extent and scope of a conveyancing lawyer's obligations fell well short of what would be required of a competent and diligent practitioner. In endeavouring, as he did, to shift responsibility for overseeing the critical documentation to his clients, Mr CV displayed a casual indifference to his obligations, or a lack of understanding of a lawyer's obligations when advising a client on a unit title matter.

---

[6] Thomas Gibbons *Unit Titles Law and Practice* (LexisNexis, 2011) at [6.1.3].

[71] Argument that he was not required to advise Mr and Mrs WT on matters relating to the PSDS as he was entitled to have expectation that they were responsible for the document, was entirely ignoring of that fact that request was specifically made of him to confirm that the PSDS was in order. It is not disputed that Mr WT had, in a telephone conversation with Mr CV made request of Mr CV to confirm that the PSDS was in order. This was followed up by Mr WT with an email to Mr CV, in which Mr WT had made request of Mr CV to confirm that information in the PSDS was sufficient. Mr CV responded to confirm that all was in order.

[72] It wasn't. The statement had to be accompanied by a certificate from the Body Corporate. That is a matter of law, something which a lawyer holding themselves out as being competent in this area, could be expected to know and give appropriate advice about.

[73] The New Zealand Law Society Property Law section provides for practitioners, a set of guidelines to assist practitioners in identifying what is considered to be recommended practice for a practitioner engaged in managing sale and purchase transactions.

[74] Whilst it is not the intention that those guidelines provide lawyers with an exhaustive checklist, the guidelines provide helpful insight into the steps that experienced practitioners consider to be recommended practice, when managing conveyancing transactions.

[75] It is pertinent to note, particularly in the face of argument advanced by Mr CV that as his clients had responsibility for preparing the disclosure documents he had no obligation to provide advice on the documents, the approach recommended by the Property Law Section for practitioners in circumstances where their client presents them with a signed sale and purchase agreement. The guidelines recommend that "if this is the case, you should immediately do such things that should have been done before the agreement was signed as remains prudent to complete".[7]

[76] This reinforces the overarching obligation of a lawyer when acting for a vendor, to ensure that all the relevant documentation is examined.

[77] Further, the guidelines reinforce the requirement for a lawyer to ensure when the property being sold is a unit in a unit title development, that the vendor understands the disclosure regime:[8]

---

[7] New Zealand Law Society Property Law Section Guidelines at [3.3.1].
[8] As above.

> If the property is a unit in a unit title development, make sure the vendor understands the disclosure obligations placed on the vendor under the Unit Titles Act 2010.

[78] In my view, Mr CV's omission constituted a demonstrable failure on his part to act competently and breached his duty to take reasonable care. It was conduct that both breached r 3 and 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.[9]

[79] In reaching that view, I pay particular attention to the following:

(a) the requirement that a PSDS be certified by the body corporate is a critical element of the disclosure regime; and

(b) that it can properly be expected of lawyers managing the conveyance of unit title properties that they understand the requirement to have the Body Corporate certify the PSDS; and

(c) failure to comply with the disclosure requirements may have serious consequences for a vendor; and

(d) Mr CV was specifically asked on two occasions to provide advice on the PSDS. He gave incorrect advice on a matter that was fundamental.

[80] With respect to the Standards Committee, I do not consider that it adequately addressed the question as to whether Mr CV's error constituted unsatisfactory conduct.

[81] Mr CV's error did amount to unsatisfactory conduct in that it:

(a) constituted a breach of r 3;

(b) was 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.

[82] For completeness, I record that I do not consider that Mr DU's conduct was requiring of a disciplinary response. It was Mr CV who had primary responsibility for managing the transaction. Mr DU entered the fray after the problems had arisen. He took reasonable steps to try and resolve the issues.

---

[9] Section 12(a) of the Lawyers and Conveyancers Act 2006.

[83] As noted, the lawyers place emphasis on argument that they do not consider that any oversight or omission on the part of Mr CV carried any financial consequence for Mr and Mrs WT.

[84] Issues of liability have been addressed in the Tenancy Tribunal, but I do not consider that the consequences for Mr and Mrs WT are solely confined to an examination as to whether Mr CV's actions resulted in financial loss. A significant consequence of the error made, was that Mr CV's oversight has clearly encouraged Mr and Mrs WT to the view that responsibility for all their problems properly lie at Mr CV's door. Focus on the error made by Mr CV has perhaps understandably, diverted Mr and Mrs WT's attention from a broader and more realistic assessment as to the extent to which steps taken by them contributed to the difficulties. In particular, their failure to take legal advice prior to entering into the agreement for sale and purchase, and their oversight in failing to have properly recorded in the sale and purchase agreement the obligations (as they understood them to be) on the purchaser to meet the ongoing maintenance obligation, were critical errors.

[85] But difficulty with the disclosure regime (as noted by the Tenancy Tribunal adjudicator) proved problematic, and Mr and Mrs WT having concluded that Mr CV bore major responsibility for the problems, may have had difficulty reaching a broader perspective on the issues which contributed to those problems.

[86] Mr CV's error had consequence for them.

[87] Having concluded that Mr CV's failure to provide appropriate advice constituted unsatisfactory conduct, attention turns to the issue of penalty.

[88] The function of a penalty in a professional context was recognised in *Wislang v Medical Council of New Zealand* as being to punish a practitioner, 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.[10] 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.

[89] The most appropriate way to fulfil the functions of a penalty in these circumstances is by the imposition of a fine.

[90] Section 156(1)(i) of the Lawyers and Conveyancers Act 2006 provides for a fine of up to $15,000 when unsatisfactory conduct is found. For a fine of that magnitude

[10] *Wislang v Medical Council of New Zealand* [2002] NZCA 39.

to be imposed it is clear that some serious wrongdoing must have occurred. In allowing for a possible fine up to that amount, the legislature has indicated that breaches of professional standards are to be taken seriously and instances of unsatisfactory conduct should not pass unmarked.

[91] In an earlier LCRO decision *Workington v Sheffield* [2009] LCRO 55/2009, the LCRO noted at [68] that a fine of $1,000 is a proper starting place where unsatisfactory conduct has been found as a result of a breach of applicable Rules (whether the Conduct and Client Care Rules, Regulations, or the Act.).

[92] I consider a fine of $2,000 to be appropriate.

Costs

[93] Where a finding of unsatisfactory conduct is made or upheld against a practitioner on review it is usual that a costs order will be imposed. I see no reason to depart from that principle in this case.

[94] Taking into account the Costs Guidelines of this Office, Mr CV is ordered to contribute the sum of $900.00 to the costs of the review, that sum to be paid to the New Zealand Law Society within 30 days of the date of this decision.

[95] The order for costs is made pursuant to s 210(1) of the Lawyers and Conveyancers Act 2006.

Anonymised publication

[96] 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

(1) Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee to take no further action in regard to the conduct of Mr CV is reversed.

(2) Pursuant to s 211(1)(b) and s 152(2)(b)(i), a determination is made that there has been unsatisfactory conduct on the part of Mr CV under s 12(a) and (c) of the Lawyers and Conveyancers Act 2006.

(3) Pursuant to section 156 (1)(i) of the Lawyers and Conveyancers Act 2006, Mr CV is ordered to pay the sum of $2,000 to the New Zealand Law Society within one month of the date of this decision.

(4) Pursuant to s 210(1) of the Lawyers and Conveyancers Act 2006, Mr CV is to pay costs of $900.00 to the costs of the review, that sum to be paid to the New Zealand Law Society within 30 days of the date of this decision.

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

DATED this 29th day of September 2021

_____

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 and Mrs A and B WT as the Applicants
Messrs CV and DU as the Respondents
Ms FS as a Related Person
[City] Standards Committee
New Zealand Law Society