

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

[2021] NZLCRO 195

Ref: LCRO 008/2021

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 [X]

BETWEEN

CK

Applicant

AND

SE

Respondent

DECISION

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

Introduction

[1] Mr CK, at the relevant time a trustee of his parents' trust, has applied for a review of a decision by the [City] Standards Committee [X] (the Committee) to take no further action in respect of his complaint concerning the conduct of Ms SE, a barrister who acted for Ms AF, one of Mr CK's two sisters, in a dispute with Mr CK.

[2] Ms AF, Mr CK and their sister were beneficiaries of the trust. The dispute concerned the proposed resettlement of the trust's assets into the beneficiaries' respective trusts. Ms AF first sought legal advice from Ms SE in October 2012.

[3] As set out in more detail in my later analysis, Ms SE received an email from, and spoke with the trust's lawyer on 14 and 19 March 2013 respectively. On 8 April 2013 Ms SE informed (by letter, email) the trust's lawyer of Ms AF's acceptance of the trustees' resettlement proposal.

[4] In that letter Ms SE explained because the three beneficiaries had to agree with the proposal, Ms AF's instructions were that the other two beneficiaries not be informed of her acceptance until they had "communicated" to the trustees "their response to the trustees['] resettlement proposal]". Ms SE further explained this meant Mr CK would receive her letter "after" he "confirmed his response" to the proposal.

[5] Eight months later, on 23 December 2013, following a further exchange of written communications with the trust's lawyer that month, Ms SE told the trust's lawyer, among other things, she would provide "a separate letter" setting out Ms AF's "special circumstances which made it impossible or impracticable for [Ms AF] to provide security" for a loan to her proposed by the trustees.

[6] Following settlement of the dispute, in his 28 July 2017 email to Ms SE in which he refers to Ms SE having acted for Ms AF "[s]ome years" earlier, Mr CK alleged (a) a breach of ethical standards by Ms SE in having asked the trust's lawyer, in her 8 April 2013 letter, to withhold that letter from him until he had "confirmed his response" to the trustees' resettlement proposal, and (b) Ms SE had not honoured her undertaking, contained in her 23 December 2013 letter to the trust's lawyer, to provide the "separate letter" referred to above.¹

[7] Mr CK sent a reminder (by email) to Ms SE on 1 November 2017. The following day Ms SE informed (by email) him that taking into account her professional duties owed to Ms AF she could not comment on the contents of Mr CK's 28 July email without Ms AF's authorisation.

Complaint

[8] Mr CK lodged a complaint with the Lawyers Complaints Service (LCS) on 3 September 2020.

(1) Request

[9] He sought a determination that Ms SE had breached professional ethics by "specifically ask[ing]" the trust's lawyer in her letter of 8 April 2013 not to provide Ms AF's "acceptance of a proposal" to [Mr CK] "until [the trust's lawyer] had received [Ms CK's] response to the proposal".

¹ No date on which the dispute was settled has been provided.

[10] In Mr CK's view, by making that request, Ms SE contravened r 10.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules).²

(2) Separate letter

[11] Mr CK claimed Ms SE, in her 23 December 2013 letter to the trust's lawyer, as well as acknowledging the trustees had offered Ms AF a loan, undertook to provide the "separate letter", referred to above, to the trust's lawyer.³

[12] Mr CK says by failing to provide that letter Ms SE breached her undertaking and thereby contravened r 10.3. He says Ms SE did not qualify her undertaking by stating it was provided on behalf of her client, Ms AF.⁴

(3) Response to communications

[13] Mr CK also claimed Ms SE (a) by not responding to his 28 July 2017 letter until 2 November 2017 contravened r 12, and (b) by not making her response to the trust's lawyer had contravened r 10.2.⁵

[14] He explained he remained "dissatisf[ied]" with Ms SE's response, and he lodged his complaint with the LCS three years later.

Response

[15] I refer to Ms SE's response in detail in my later analysis.⁶

[16] In essence, Ms SE said in accordance with her client's, Ms AF, instructions which were privileged, she sent her 8 April 2013 letter to the trust's lawyer. In doing so she said she did not consider she contravened the Rules.

² Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.1 - "[a] lawyer must treat other lawyers with respect and courtesy" - amended from 1 July 2021.

³ Letter, Mr CK to LCS, 14 October 2020.

⁴ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.3 - "A lawyer must honour all undertakings, ..."; and r 10.3.1 - "This rule applies ...". Both rules are set out in full in the later analysis.

⁵ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 12 - [conducting dealings with others, including self-represented persons, with integrity, respect and courtesy]; r 10.2 - "A lawyer [must not communicate with another lawyer's client] ...". Both rules are set out in full in the later analysis.

⁶ Letter, Ms SE to LCS, 30 September 2020.

Standards Committee decision

[17] The Committee delivered its decision on 24 November 2020 and determined, pursuant to s 137(2), and s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act), that no further action on the complaint was necessary or appropriate.

(1) Professional obligations, duties

[18] The Committee concluded (a) Ms SE's 8 April 2013 request of the trust's lawyer "may have been naive and ill thought out", but did not constitute "a breach of the Rules", and (b) there was "nothing in the correspondence suggest[ing]" Ms SE "was attempting to induce" the trust's lawyer to breach his professional obligations owed to his client, Mr CK.

[19] The Committee noted Ms SE, when acting for Ms AF "some years ago" to "bring about a resolution" of a family dispute, had a professional duty to protect and promote Ms AF's interests. For that reason, the Committee stated Ms SE's professional obligations concerning, and duties owed to Mr CK, who was not her client, "were limited".

[20] The Committee also stated that by "immediately forward[ing]" Ms SE's letter to Mr CK, the trust's lawyer had not contravened r 7.⁷

[21] Concerning Ms SE's response that her communications with Ms AF were protected by professional privilege, the Committee said it "had no information about what lay behind" Ms SE's request of the trust's lawyer.

(2) Undertaking

[22] In the Committee's view, Ms SE's statement in her 23 December 2013 letter to the trust's lawyer she would "write a letter" was not an undertaking, and therefore her failure to write the letter was not a contravention of rule 10.3.

Application for review

[23] Mr CK filed an application for review on January 2021 in which he says the Committee's "key conclusion" is wrong. He says he believes the Committee (a) failed to comment upon "key points" in his submissions, and (b) may have had "an unconscious bias" in respect of complaints about a lawyer that arise from a family dispute.

⁷ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 7 - "A lawyer must promptly disclose to a client all information that the lawyer has or acquires that is relevant to the matter in respect of which the lawyer is engaged by the client."

(1) Request

[24] Mr CK contends it was unethical of Ms SE to ask the trust's lawyer's "to do something" [the trust's lawyer] could not do without breaching the [trust's lawyer's] obligations to [Mr CK].

[25] For that reason, he says he disagrees with the Committee's statement that there was "[n]othing in the correspondence [that] suggested" that Ms SE "was attempting to induce" the trust's lawyer's to do so.

[26] He says he also disagrees with the Committee's comment that Ms SE, who he says had been in practice for 30 years at the time she made that request, "may have been naive" and her request "ill thought out".

[27] In his view, assuming Ms SE was "fully aware of the implications" of her request, then she would have known "exactly what she was doing" in which case by making the request she contravened r 10.1.

(2) Response to communications

[28] Mr CK says the Committee did not consider his claim that Ms SE, knowing he had been represented by the trust's lawyer, ought to have directed her response to his 28 July 2017 email to the trust's lawyer, not to him. He claims by not doing that Ms SE contravened r 10.2.

[29] He says because this aspect of his complaint concerned Ms SE's 8 April 2013 letter to the trust's lawyer, he "can't see how [Ms SE] can argue she didn't know" the trust's lawyer acted for him.

(3) Acting for Ms AF

[30] Mr CK says he similarly disagrees with the Committee that (a) if, in stating Ms SE was "attempting" to resolve the family dispute it followed Ms SE "was doing everything in her power to resolve the dispute efficiently and fairly", and (b) it was "excusable" if, in sending her 8 April 2013 letter to the trust's lawyer, Ms SE had as described by the Committee been "naïve" and the letter "ill thought out".

[31] To illustrate his position, Mr CK refers to his complaint in which he described Ms SE having "slow[ed] the dispute resolution process down" by being "disingenuous and deliberately obtuse". He repeats Ms SE "stall[ed] the proceedings" by making out she did not know "the difference between a loan and a distribution".

[32] He says he is frustrated the Committee assumed Ms SE was acting in Ms AF's "best interests" at "all times".

(4) Bias

[33] In support of his view that there may have been "unconscious bias" by the Committee, Mr CK refers to a section on Law Society's website about how lawyers ought to respond to complaints which characterises "family law matter[s]" as a possible source of trivial or vexatious complaints.

Response

[34] In her response, Ms SE says she relies on information she provided to the Committee in response to Mr CK's complaint.⁸

[35] Ms SE repeats (a) she acted for Ms AF, one of the beneficiaries of the trust in [Ms AF's] dispute with Mr CK, also a trustee represented in that capacity by the trust's lawyer, and (b) because her file is "subject to privilege" she is unable to "refer further" to it without Ms AF's consent.

Review on the papers

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

[37] I record that having carefully read the complaint, the response to the complaint, the Committee's decision and the submissions filed in support of and in opposition to the application for review, there are no additional issues or questions in my mind that necessitate any further submission from either party. On the basis of the information available I have concluded that the review can be adequately determined in the absence of the parties.

⁸ Letter, Ms SE to LCRO, 26 January 2021.

Nature and scope of review

[38] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:⁹

... 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.

[39] More recently, the High Court has described a review by this Office in the following way:¹⁰

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.

[40] 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 consider all of the available material afresh, including the Committee’s decision; and provide an independent opinion based on those materials.

Issues

[41] The issues I have identified for consideration on this review are:

- (a) Did Ms SE, by making her request of the trust’s lawyer in her 8 April 2013 letter, contravene any professional obligations or duties?

⁹ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39] - [41] (citations omitted).

¹⁰ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

- (b) Did Ms SE's 23 December 2013 letter to the trust's lawyer contain her undertaking to the trust's lawyer? If so, did Ms SE breach that undertaking?
- (c) In responding to Mr CK's 28 July 2017 email, did Ms SE contravene any professional obligations or duties?

Analysis

(1) Request – in response to resettlement proposal - issue (a)

(a) Parties' positions

[42] Mr CK claims by requesting the trust's lawyer not to disclose her 8 April 2013 letter to Mr CK until Mr CK had responded to the trustees' resettlement proposal, Ms SE breached her professional duties (a) in r 10.1 owed to the trust's lawyer, and (b) in r 12 owed to Mr CK.

[43] Ms SE says her client, Ms AF, instructed her to send that letter to the trust's lawyer, and she does not consider she contravened any professional obligations and duties.

(b) Context

[44] As noted in the introduction, Mr CK was a trustee and beneficiary of his parents' trust. His two sisters, including Ms AF, were also beneficiaries.

[45] A dispute arose between the trustees and Ms AF concerning resettlement of the trust's assets on the beneficiaries' respective trusts. In October 2012 Ms AF sought legal advice from Ms SE in negotiating a resettlement of Ms AF's share of the trust's assets.

[46] On 14 March 2013 the trust's lawyer explained (by letter) to Ms SE the trust's position concerning the future of the trust. Ms SE says during their subsequent telephone conversation on 19 March they talked about "clarify[ing] a number of matters concerning the [trustees'] proposal" to resolve the dispute.

[47] In her letter to the trust's lawyer on 8 April 2013, Ms SE stated Ms AF "confirms [Ms AF's] acceptance" of the trustees' proposal qualified "on the basis the balance of the trust [assets] to be resettled in equal shares [on] the three siblings excludes the additional distribution yet to be made to [Ms AF]".

[48] Ms SE explained Ms AF had “not received an amount equivalent to the loans advanced” to Mr CK and their sister, and that “additional distribution to [Ms AF] could now proceed”.

[49] Importantly for the purposes of this review, Ms SE further explained that because the “resettlement proposal requires an acceptance by all three siblings”, Ms AF “ask[ed] that her acceptance be communicated to” Mr CK, and their sister, “only after they have communicated their response to the trustees”. Ms SE explained “this would mean [Mr CK] would be provided with [her] letter only after he had confirmed his response to the proposal for resettlement”.

[50] On 28 July 2017, well after the dispute had been settled, Mr CK wrote (by email) to Ms SE (a) referring to Ms SE having acted for Ms AF “some years” earlier, and (b) claiming Ms SE had breached ethical standards by having asked, in her 8 April 2013 letter, the trust’s lawyer not to pass on Ms AF’s communication of acceptance of the trustees’ re-settlement proposal to Mr CK and their sister until “they ha[d] communicated their response to the trustees”.

(c) Duty owed to the trust's lawyer?

[51] Because Ms SE acted for Ms AF, one of the three beneficiaries of the trust, the first question concerning this aspect of Mr CK’s complaint is what professional duties Ms SE owed to Mr CK whom she did not represent.

(i) Professional standards, rules

[52] If a determination is made that a lawyer’s conduct warrants a disciplinary response a finding can be made of either (a) unsatisfactory conduct pursuant to s 12 of the Act; or (b) misconduct pursuant to s 7.¹¹

[53] The Rules, which concern the way in which lawyers must (a) conduct themselves, and (b) act for their clients, can be placed into three broad categories.¹²

¹¹ Lawyers and Conveyancers Act 2006, s 12 - unsatisfactory conduct: (a) “conduct that falls short of the standard of competence and diligence ... of a reasonably competent lawyer”; (b) “conduct that would be regarded by lawyers of good standing as being unacceptable including - (i) conduct unbecoming ...; or (ii) unprofessional conduct”; (c) “... a contravention of [the] Act, or of any regulations or practice rules made under [the] Act ... [when] ...provi[ding] regulated services ...”; (d) (a condition or restriction to a practising certificate). A misconduct finding can only be made by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.

¹² Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, Schedule, Notes about the rules - the Rules do not represent “an exhaustive statement of the conduct expected of lawyers”, but “set the minimum standards that lawyers must observe and are a reference point for discipline”.

[54] First, those duties which directly concern the provision of legal services by lawyers to their clients;¹³ secondly, duties which concern lawyers' dealings or interactions with other lawyers, and third parties; and thirdly, duties which concern the rule of law and administration of justice, and lawyers' overriding duties to the High Court.¹⁴

Non-clients

[55] There may be times when a lawyer owes a duty, other than a professional duty, to persons for whom the lawyer does not act (for example, a duty of care in negligence). Generally, however, a lawyer acting for a client would not owe a duty to a person such as Mr CK on the opposite side of the dispute with Ms AF.¹⁵

[56] For that reason, "the existence of a duty" owed to a non-client has been described as "exceptional".¹⁶ Where a lawyer acts for a party to a transaction, the different interests possessed by each party explains the Courts' reference to policy considerations why that lawyer does not owe a professional duty to the opposing party.¹⁷

Clients

[57] This position can be contrasted with the professional duties lawyers owe their clients included in the first category of the Rules.

[58] To illustrate, the duties owed by Ms SE when acting for Ms AF in [Ms AF's] dispute with Mr CK, would have included the duties to act competently (r 3); to treat Ms AF with respect and courtesy (r 3.1); to respond to her inquiries promptly (rr 3.2, 7.2); to provide Ms AF with information on the principal aspects of client service and client care at the commencement of the retainer (rr 3.4, 3.5);¹⁸ to be independent (r 5); to protect and promote Ms AF's interests to the exclusion of third parties' interests (r 6); to

¹³ Lawyers and Conveyancers Act 2006, s 4 - lawyers' fundamental obligations - (b) "be independent"; (c) "...act in accordance with all fiduciary duties and duties of care..."; (d) "...protect [clients'] interests...".

¹⁴ Lawyers and Conveyancers Act 2006, s 4(a) - "uphold the rule of law and ... facilitate the administration of justice in New Zealand".

¹⁵ Unless, for example, where a lawyer acting for a client on a transaction provides an undertaking, say, to pay rates, or water charges, or a certificate for e-dealing purposes in Landonline, or to a bank: Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rr 2.5, 2.6.

¹⁶ Duncan Webb, Kathryn Dalziel, Kerry Cook, *Ethics, Professional Responsibility and the Lawyer*, (3rd ed, LexisNexis, Wellington, 2016) at [5.4.3], referring to *Burmeister v O'Brien* [2010] NZLR 395, at [234].

¹⁷ Webb, Dalziel and Cook, above n 16 at [5.4.3].

¹⁸ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rr 3.4A, 3.5A apply to barristers sole.

disclose information, and consult with her (rr 7, 7.1); to hold Ms AF's information in confidence (r 8); and, to charge her fees that are fair and reasonable (rr 9, 9.1).

Broader duties

[59] As also noted, there are professional obligations and duties of a broader nature included in the second category of the Rules which concern lawyers' dealings or interactions with other lawyers, and third parties; and in the third category which concern the rule of law and administration of justice, and lawyers' overriding duties to the High Court.

(ii) Discussion

[60] To recap, the first limb of this aspect of Mr CK's complaint concerns Ms SE's request of the trust's lawyer in her 8 April 2013 letter to withhold (a) communication of Ms AF's acceptance of the trustees' resettlement proposal from Mr CK and their sister until they had provided their response to the proposal, and (b) the letter itself from Mr CK until he had "confirmed his response".

[61] Whether, by making that request, Ms SE contravened r 10.1 requires consideration of the context in which the request was made.

Mr CK

[62] Mr CK's position is that because a lawyer has a "fundamental duty to act with integrity, respect and courtesy at all times", the lawyer "sometimes" must decline to carry out a client's instructions if "unethical" to do so.

[63] He says upon receipt of Ms SE's letter, the trust's lawyer immediately telephoned him to explain the trust's lawyer's professional duty required the trust's lawyer to forward the letter to him so he "could read it for himself and be absolutely clear about its contents".¹⁹

[64] In his view, the "information" Ms SE requested the trust's lawyer "not to disclose" to him was "absolutely relevant to the matter in respect of which [the trust's lawyer] was engaged by him".

¹⁹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 7 - "A lawyer must promptly disclose to a client all information that the lawyer has or acquires that is relevant to the matter in respect of which the lawyer is engaged by the client."

[65] He contends the fact the trust's lawyer "did not fall into the trap" set by Ms SE's request not to disclose the letter to [Mr CK] does not make a "difference to Ms SE's culpability".

[66] He considers it "irrelevant" that Ms SE, in her response, relied on her discussions with Ms AF being protected by professional privilege. In his view the issue is "about what Ms SE chose to write" in the letter, and whether that was "in breach of her ethical obligations".

[67] Relatedly, Mr CK claims Ms SE contributed to the length of the dispute negotiations by describing, in her 8 April 2013 letter, the "loan" offered by the trustees as an "additional distribution yet to be made to [Ms AF]".²⁰

[68] In his view this was not "an honest mistake" and delayed negotiations until corrected by the trust's lawyer. He says this forms "part of [his] overall impression" that Ms SE "seems to feel free to say or do anything she wants if she thinks it is somehow favourable to her client ... regardless whether it is the truth and regardless of whether it is ethical".

[69] Finally, he says before he lodged his complaint, he made an anonymous enquiry (by telephone) to the LCS about "one lawyer [who] ask[ed] another lawyer to breach [the lawyer's] ethical obligations", and receiving a "no comment" response some months after raising this with the first lawyer. He says the LCS told him his enquiry raised a "very interesting philosophical question" that was "worthy of consideration" by the LCS.

Ms SE

[70] As noted above, Ms SE says acting on Ms AF's instructions she sent her 8 April 2013 letter to the trust's lawyer, and in doing so does not consider she contravened any professional obligations and duties.

[71] Ms SE describes her negotiations with the trust's lawyer, which resulted in new trust deeds being drafted by the trust's lawyer "for each of the three discretionary beneficiaries" as "reasonably protracted".

²⁰ Mr CK says he drew this to Ms SE's attention in his 28 July 2017 letter to her.

Professional dealings

[72] The duty of lawyers in r 10 to “promote and maintain proper standards of professionalism in [their] dealings” applies “whether or not a person is a client”.²¹

[73] The duty in r 10 is reflected in section 12(b) which defines unsatisfactory conduct as “conduct that would be regarded by lawyers of good standing as being unacceptable, including ... (ii) unprofessional conduct.”²²

[74] In that context, the observation has been made that the word “unprofessional” “add[s] little other than colour to the concept of unsatisfactory conduct as a whole and indicate simply that a failure of professional standards adhered to by lawyers of good standing will be unprofessional and therefore unsatisfactory conduct”.²³

[75] More particularly, as noted earlier, r 10.1 requires that a lawyer, when dealing with “other lawyers”, must “treat [them] with respect and courtesy”.²⁴

Consideration

[76] In carrying out Ms AF’s instructions, Ms SE, in her 8 April letter, informed the trust’s lawyer that Ms AF “confirms her acceptance” of the trustees’ proposal, but asked the trust’s lawyer not to (a) communicate that to Mr CK and their sister until they had responded, and (b) not provide the letter to Mr CK until he had responded.

[77] In other words, Ms SE placed a condition - Mr CK’s, and their sister’s response to the trustees’ proposal - to be satisfied before Ms AF would allow her acceptance to be communicated to them, and the letter to be provided to Mr CK.

[78] It is reasonable to expect a senior lawyer, such as Ms SE, would have known that any information received by a lawyer that is “relevant to the matter in respect of which the lawyer is engaged by the client” must be “promptly disclose[d]” to the client.²⁵

²¹ *JW v QE* LCRO 192/2011 (19 September 2012) at [18]; the application of r 10 is illustrated in *JD v RU* LCRO 55/2011 (22 March 2012) where a lawyer who was acting for an accused was found to have confronted the victim’s father, the complainant against the lawyer, in the foyer of a Court; see further Lawyers and Conveyancers Act (Conduct and Client Care) Rules 2008, r 10, amended from 1 July 2021.

²² By providing that the duty concerns ‘the lawyer’s dealings’, r 10 largely carries forward previous Rules of Professional Conduct, rule 6.01 which similarly provided that “a practitioner must promote and maintain proper standards of professionalism in relations with other practitioners”; *JD v RU* LCRO 55/2011 (22 March 2012) at [48].

²³ Webb, Dalziel and Cook, above n 16 at [4.3.2], 105.

²⁴ Lawyers and Conveyancers Act (Conduct and Client Care) Rules 2008, r 10.1 – “[a] lawyer must treat other lawyers with respect and courtesy” - amended from 1 July 2021.

²⁵ Lawyers and Conveyancers Act (Conduct and Client Care) Rules 2008, r 7.

[79] On that assumption, Ms SE would have had no expectation the trust's lawyer would not disclose the contents of her letter to Mr CK, and therefore would not have been surprised to learn that upon receipt of the letter the trust's lawyer, mindful of his duty of disclosure and not considering himself bound by Ms SE's request, would telephone Mr CK.

[80] Bearing in mind Ms AF's instructions that she did not want to be bound by the trustees' proposal until she knew of Mr CK's and their sister's response, I make the observation the preferable approach for Ms SE might have been to first inform the trust's lawyer that Ms AF's instructions would not permit Ms SE to communicate Ms AF's position on the trustees' resettlement proposal until Mr CK and their sister had responded.

[81] In that way Ms SE would have reduced or eliminated any possible perception the trust's lawyer may have been caught between his professional duty of disclosure to his client, Mr CK, on the one hand, and Ms SE's request of non-disclosure on the other.

[82] Nevertheless, taken in context I do not read into Ms SE's letter, as Mr CK suggests, a "trap" set by Ms SE for the trust's lawyer. Rather, the sense I gain from Ms SE's letter was the request, not precisely drafted, was not intended to have the trust's lawyer contravene his professional duties to his client, Mr CK.

[83] For completeness, Mr CK also took issue with Ms SE having used the word "distribution" in her letter instead of "loan" as proposed by the trustees. He says that was not "an honest mistake" by Ms SE and contributed to the delay in resolving the dispute. However, without further evidence, and at this distance it is difficult to gauge the importance or otherwise of that concern in the settlement negotiations, and for the purposes of this review, nothing turns on this point.

[84] The standard of proof to be applied in disciplinary hearings, is the civil standard of "the balance of probabilities, which is applied flexibly according to the seriousness of matters to be proved and the consequences of proving them".²⁶

[85] From the information produced I am not persuaded Mr CK has met this standard in his claim Ms SE failed in her professional duty of respect and courtesy owed to the trust's lawyer in making the request of the trust's lawyer, contained in her 8 April 2013 letter.

²⁶ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [112].

(d) Duty to Mr CK?

[86] Mr CK also claims by requesting the trust's lawyer to withhold her 8 April letter from him, Ms SE did not, as required by r 12, treat [Mr CK] "with integrity, respect and courtesy".²⁷

Discussion

[87] In his complaint Mr CK refers to information on the "For the Public" section of the Law Society's website which, he says, states lawyers "acting for other people must also treat you with integrity, respect and courtesy".

[88] This is an explanation of r 12, in chapter 12 of the Rules concerned with lawyers' dealings with third parties, which requires that "[a] lawyer must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect, and courtesy".

[89] The duty in r 12, which concerns a lawyer's "dealings with others" qualified by the lawyer "acting in a professional capacity", can be contrasted with those rules referred to earlier which concern lawyers' duties and obligations towards their clients and other lawyers.²⁸ In this context "integrity" most likely means "[s]oundness of moral principle; the character of uncorrupted virtue; uprightness; honesty; sincerity".²⁹

[90] As discussed, Mr CK was represented by the trust's lawyer whose professional duties owed to Mr CK included, as noted above, to promote and protect Mr CK's interests.

[91] Where Ms SE was dealing with the trust's lawyer, not Mr CK, in the dispute with Ms AF, it is my view that r 12 was not brought into play when Ms SE sent her 8 April letter to the trust's lawyer.

[92] Even if r 12 did apply, as I have already concluded, Ms SE's intention in that letter was to inform the trust's lawyer that Ms AF wanted Mr CK's, and their sister's, response to the trustees' resettlement proposal before communicating Ms AF's acceptance to them.

²⁷ Lawyers and Conveyancers Act (Conduct and Client Care) Rules 2008, r 12 - Mr CK refers to the "For the public" section on the Law Society's website.

²⁸ *JQ v QM* LCRO 97/2011 (28 August 2012) at [23] - r 12 "clearly contemplates the lawyer providing regulated services", and it is "doubtful" the rule could apply where the lawyer's behaviour was "connected to [the lawyer's] personal involvement as a party to litigation".

²⁹ *Shorter Oxford Dictionary* (5th ed, 2002, Oxford University Press, Oxford) – see also lawyers' duties of "respect and courtesy" owed to clients (r 3.1) and other lawyers (r 10.1).

(2) Undertaking - issue (b)

[93] Mr CK claims Ms SE's statement in her 23 December 2013 letter to the trust's lawyer, that she "will be" "set[ting] out" in a "separate letter" Ms AF's "special circumstances" for not providing security for the loan proposed by the trustees, constituted Ms SE's undertaking to the trust's lawyer which Ms SE did not honour.

[94] Ms SE has not responded to this allegation.

(a) Context

[95] The trust's lawyer informed (by email) Ms SE on 11 December 2013 he would let Ms SE have "the trust deeds and other documents associated with each final beneficiary in the New Year". Ms SE replied (by letter) on 12 December.

[96] In her response on 23 December 2013 to the trust's lawyer's 16 December letter/email, Ms SE referred (by letter/email) to the "time frame" set out in the trust's lawyer's 11 December email noting the trust's lawyer would, "in the New Year", provide "the trust deeds and other documents associated with each final beneficiary".³⁰

[97] Ms SE stated "consistent" with the trust's lawyer's "promise of further communications in due course", she would "follow up with [the trust's lawyer] for an update [on the trust's lawyer's] progress with the documents at the end of January 2014".³¹

[98] In conclusion, Ms SE stated (a) Ms AF, "underst[ood]" [Ms AF wa]s now invited to set out her special circumstances which make it impossible or impracticable for her to provide security" for the trustees' proposed loan to Ms AF, and (b) [Ms SE] "will be doing that in a separate letter".

[99] As noted earlier, after the dispute was resolved Mr CK, in his 28 July 2017 email to Ms SE, also claimed Ms SE had not honoured her undertaking to send that "separate letter" to the trust's lawyer.

[100] On 1 November 2017 Mr CK informed (by email) Ms SE he had "waited three months for a reply", and stated he "still want[ed] answers to his questions regarding the professional ethics" of Ms SE's 23 December 2013 (and 8 April 2013) letter.

³⁰ Ms SE says this is what the trust's lawyer stated in this email - not produced.

³¹ The 11 (trust's lawyer), 12 (Ms SE), 16 (trust's lawyer) December emails have not been produced.

[101] The following day, 2 November, Ms SE acknowledged receipt of Mr CK's two emails. Ms SE stated she had "no comment" to make adding "if a response was required" then she first needed to obtain Ms AF's "authorisation, taking into account [Ms SE's] professional obligations owed to [Ms AF].

(b) *Professional rules*

[102] The Rules provide:³²

Undertakings

10.3 A lawyer must honour all undertakings, whether written or oral, that he or she gives to any person in the course of practice.

10.3.1 This rule applies whether the undertaking is given by the lawyer personally or by any other member of the lawyer's practice. This rule applies unless the lawyer giving the undertaking makes it clear that the undertaking is given on behalf of a client and that the lawyer is not personally responsible for its performance.

[103] An undertaking need not be in a particular form, or contain the word "undertake". To be enforceable against the lawyer concerned an undertaking must: (a) contain a promise; (b) be "precise and unambiguous [language] in its terms", (c) be given by the lawyer personally in the lawyer's capacity as a lawyer, and (d) state, whether expressly or impliedly, a date on, or by when it will be fulfilled or honoured.³³

[104] To that end:

- (a) Care is required by a lawyer before providing an undertaking.³⁴
- (b) A lawyer proposing to rely on an undertaking is required to ensure that the undertaking is capable of performance by the lawyer giving it.³⁵
- (c) The subject matter of the undertaking must be within the control of the lawyer giving it.³⁶

³² Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.3 – from 1 July 2021, r 10.5.

³³ See Webb, Dalziel and Cook, above n 16 at [15.9.1]; GE Dal Pont, *Lawyers' Professional Responsibility* (6th ed Thomson Reuters, Sydney, 2017), at [22.05]; previous New Zealand Law Society Rules of Professional Conduct for Barristers and Solicitors (7th edition, 2004), r 6.07, commentary (4) - "An undertaking should be given expressly and not merely by implication" citing as an example "a vendor's practitioner's undertaking that rates will be paid on settlement should be express rather than implied from a settlement statement".

³⁴ *Auckland Standards Committee v Stirling* [2010] NZLCDT 4.

³⁵ Dal Pont, above n 33 at [22.70].

³⁶ See discussion by Professor GE Dal Pont, above n 33 at [22.65], page 734.

- (d) An undertaking will be construed according to its “substance and intention” and not in a “technical legal manner”.³⁷
- (e) Any “ambiguity” will generally be construed in favour of the recipient.³⁸
- (f) Strict adherence is required.

(c) Discussion

[105] Mr CK says he is not aware of Ms SE having sent, as Ms SE said she would in her 23 December 2013 letter to the trust’s lawyer, “a separate letter” to him “set[ting] out” Ms AF’s “special circumstances which make it impossible or impracticable for [Ms AF] to provide for security” for the loan offered by the trustees.³⁹

[106] In his view, by not providing that letter Ms SE breached her undertaking thereby contravening r 10.3. He says Ms SE did not qualify her undertaking by stating it was provided on behalf of her client, Ms AF, as provided in r 10.3.1.

[107] He says the trust’s lawyer followed up (by email) with Ms SE on 4 February 2014 noting [the trust’s lawyer] “d[id no]t appear to have received that letter yet”, and on 21 February 2014 sent another reminder.

Consideration

[108] The single issue concerning this aspect of Mr CK’s complaint is whether Ms SE’s statement in her 23 December 2013 letter to the trust’s lawyer to provide the “separate letter” constituted an undertaking.

[109] In considering that question, the context in which Ms SE made that statement, the alleged undertaking, must be viewed objectively.⁴⁰ In doing so “[t]he subjective views” of both the lawyer giving the undertaking, and the lawyer or party receiving the undertaking are “irrelevant.”⁴¹

[110] In that regard, the immediate background to Ms SE’s statement was preparation by the trust’s lawyer of a resettlement deed for each of the three beneficiaries, Mr CK, Ms AF, and their sister.

³⁷ *Auckland Standards Committee 3 of New Zealand Law Society v W* [2011] 3 NZLR 117 at [41].

³⁸ *Auckland Standards Committee 3 of New Zealand Law Society v W* [2011] 3 NZLR 117 at [42] and [60].

³⁹ Letter, Mr CK to LCS, 14 October 2020.

⁴⁰ *Auckland Standards Committee 3 of New Zealand Law Society v W* [2011] 3 NZLR 117 at [63].

⁴¹ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZAR 1071 at [45].

[111] In response to the trust's lawyer's statement on 11 December that he would produce those documents "in the New Year", Ms SE told the trust's lawyer in her 23 December letter she would ask for an update at the end of January 2014.

[112] On the related matter of the loan proposed by the trustees to Ms AF, Ms SE referred to the invitation, presumably from the trustees, to Ms AF to explain why Ms AF could not provide security for that loan. Ms SE said Ms AF's "special circumstances" on that matter "will" be "set out" in a "separate letter".

[113] Lawyers' undertakings have an important role in the practice of law, are held out by the legal profession "as having an elevated and special status", and are recognised by, and enforced by the Courts. For these reasons, "it is necessary for the profession to scrupulously honour them".⁴²

[114] Illustrations of just how undertakings fit in legal practice can be found in the practice areas of both conveyancing and litigation. In conveyancing matters, the Property Law Section Guidelines, expressed to be subject to the Rules, "reflect recommended practice for residential property transactions and for e-dealings", and recommend the form of the undertakings to be provided by the vendor's lawyer and the purchaser's lawyer respectively.⁴³

[115] For example, the vendor's lawyer's undertaking includes the obligation that "on receipt of confirmation of payment of the settlement funds" the vendor's lawyer will "immediately release the instruments (subject only to the qualification in paragraph (iv))", namely, "where circumstances beyond your control result in a delay".⁴⁴ Conversely, the purchaser's lawyer's undertaking includes payment of the balance of the purchase price.⁴⁵

[116] In litigation, examples of undertakings provided by one party's lawyer to the opposing party's lawyer include to pay money into court to settle a dispute, and to arrange service of documents.

⁴² Lawyers and Conveyancers Act 2006, s 268 - the Courts have an inherent jurisdiction in respect of the conduct of lawyers who are officers of the court. The third purpose of the LCA is "to recognise the status of the legal profession" (s 3(1)(c)); *Auckland Standards Committee 3 of New Zealand Law Society v W* [2011] 3 NZLR 117 at [67].

⁴³ New Zealand Law Society Property Transactions and E-dealings Practice Guidelines (July 2012), in force at that time.

⁴⁴ New Zealand Law Society Property Transactions and E-dealings Practice Guidelines (July 2012) at [6.6] - also, for the vendor's lawyer to undertake that rates/water rates have been or will be paid from the sale proceeds.

⁴⁵ New Zealand Law Society Property Transactions and E-dealings Practice Guidelines (July 2012) at [6.9].

[117] Compared with the practice examples I have referred to, Ms SE's letter (a) acknowledges, on behalf of Ms AF, the trustees' invitation or request of Ms AF to provide an explanation for not providing security for the loan proposed by the trustees, and (b) says she "will" provide that explanation in "a separate letter".

[118] Although Ms SE said she "will" "set out" Ms AF's "special circumstances" in a "separate letter", her statement omits an essential element required in an undertaking, namely, a date on, or by which that information would be provided.

[119] Mr CK says the trust's lawyer followed up with Ms SE on two occasions, but no evidence has been produced that settlement of the dispute hinged or depended on provision of that information by Ms AF.

[120] I make the observation that had provision of Ms AF's "special circumstances" been required by the trust's lawyer in his and Ms SE's endeavours to settle the dispute for their respective clients, it could reasonably have been expected the trust's lawyer would have made that a condition of settlement in respect of which Ms SE's undertaking was required.

[121] Given the importance of undertakings in dealings between lawyers and legal practice I have referred to, it could also have been expected that if the trust's lawyer, to whom Ms SE's statement was made, considered the statement was an undertaking then in the absence of receiving the "separate letter" he would, in the first instance, have taken any concerns to Ms SE directly. Again, no evidence has been produced that the trust's lawyer raised any such objection.

[122] Having followed the objective approach referred to above, I do not consider Ms SE's statement is capable of elevation to the status of an undertaking as illustrated in the dealings between lawyers referred to above.

(3) Response to communications – issue (c)

(a) Timing of response

[123] Mr CK also claims Ms SE contravened r 12 by not responding to his 28 July 2017 email until 2 November 2017, having reminded Ms SE the previous day.

[124] Ms SE has not responded to this allegation.

Discussion

[125] As noted above, r 12, which concerns a lawyer's dealings with third parties, requires the lawyer "must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect, and courtesy".

[126] This aspect of Mr CK's complaint is about the time taken by Ms SE to respond to his 28 July 2017 letter, in which he expressed his concerns, noted earlier, about her conduct when acting for Ms AF in the dispute.

[127] In its practice briefing for lawyers, "Running an Effective Internal Complaints Process", the Law Society acknowledges that "many complaints" are received by the LCS from non-clients. The Law Society's recommendation "[d]ealing with [complaints] well initially can save a lot of stress and angst in the long term" draws no distinction between complaints made by clients and non-clients alike.

[128] To that end the briefing lists among the initial responses a lawyer ought make upon receipt of a complaint, is to "[a]cknowledge the complaint at the earliest possible opportunity preferably within 2-3 days"; "clarify [the lawyer's] understanding of the complaint and the complainant's expectations"; and "set a realistic timetable" for providing "a full explanation of what is being done to address" the complaint.

[129] Courtesy dictates that upon receipt of Mr CK's letter Ms SE would have responded as soon as practicable if just to acknowledge receipt, and to say if she was not able to respond to Mr CK's detailed allegations without Ms AF's instructions, or consent.

[130] Although Ms SE does not appear to have responded until she received Mr CK's 1 November reminder, she did so the following day stating she had "no comment" to make, and could only respond "after obtaining [Ms AF's] authorisation", and "taking into account [Ms SE's] professional obligations owed to [Ms AF]".

[131] In deciding whether Ms SE's delay in responding constitutes a contravention of r 12, I am assisted with the approach taken in applying r 10.1 which, as noted earlier, requires that "[a] lawyer must treat other lawyers with respect and courtesy".

[132] In a decision where an adverse finding was made against the lawyer concerned, the lawyer had not replied to two letters from another lawyer, and responded "only after having been notified of a complaint against him. The total time before responding was

“around 4 months”. In finding that the lawyer had contravened the rule the Review Officer stated that:⁴⁶

... professional courtesy would reasonably envisage that a colleague would have, within a reasonable time, responded to a letter, even if only to acknowledge receipt and to explain any delay in addressing substantive matters. It is not necessary to define a reasonable time in order to reach a decision that the delay in this case was unreasonable.

[133] In another decision there had been occasions when the lawyer did not respond with the degree of diligence that might have been expected.⁴⁷ Although no adverse finding was made, the observation was made that “the delays by the (lawyer) in responding to matters’ must be ‘excessive, repetitive and unjustifiable ... to amount to a breach” of the rule.⁴⁸

[134] The High Court has stated that a finding of unsatisfactory conduct is a serious matter for a lawyer, and to that end the Rules, being “practice rules, not a legislative code”, are “to be applied as specifically as possible [and] also to be applied as sensibly and fairly as possible”.⁴⁹

[135] Whilst the time taken by Mrs SE to acknowledge Mr CK’s letter cannot be excused, on balance in deciding not to make an adverse finding against Ms SE I am also persuaded by the fact that upon receipt of his reminder Ms SE responded immediately.

[136] In these particular circumstances, adopting the approach taken by the High Court, I do not consider Ms SE’s delay in responding sooner reaches a threshold that deserves a disciplinary response.

(b) Not responding to the trust’s lawyer

[137] Mr CK also claims Ms SE, when responding on 2 November 2017 to him, instead of to the trust’s lawyer, contravened r 10.2.

[138] Mr CK says Ms SE “knew full well” he was represented by the trust’s lawyer. He says the LCS also told him, when he made his anonymous enquiry, that by not responding to the other lawyer, “the lawyer” may have contravened r 10.2.

⁴⁶ *R v D* LCRO 56/2009 (19 June 2009) at [18].

⁴⁷ *IO v SJ* LCRO 84/2010 (1 February 2012) at [44].

⁴⁸ *IO v SJ* LCRO 84/2010 (1 February 2012) at [47].

⁴⁹ *Wilson v Legal Complaints Review Officer* [2016] NZHC 2288 at [43].

Discussion

[139] This aspect of Mr CK’s complaint concerns whether, in reply to Mr CK’s 28 July 2017, by responding to Mr CK instead of to the trust’s lawyer, Ms SE contravened r 10.2.

[140] The qualified prohibition in r 10.2 prevents a lawyer “acting in a matter [from] communicat[ing] directly with a person whom the lawyer knows is represented by another lawyer in that matter except as authorised in this rule”.⁵⁰

[141] There are six exceptions to r 10.2: (a) where the matter is urgent and it is not possible to contact that person’s lawyer or an appropriate member of his or her practice⁵¹; (b) if the lawyer reasonably believes that that person is no longer represented by another lawyer;⁵² (c) a former client who is represented by a new lawyer for the purpose of confirming the client’s instructions and arranging for the orderly transfer of the client’s matters to the new lawyer⁵³; (d) a lawyer may recommend to a client that the client make direct contact with any other party⁵⁴; (e) where the person consents to the communication and the other lawyer has been given reasonable notice of the intended communication;⁵⁵ and (f) where that communication is a notice or proceeding or other document that must be given to that person in order to be effective.⁵⁶

[142] The intention of the duty in r 10.2 has been described being “to prevent a lawyer acting on one side of a matter from contacting the opposing client directly and thereby circumventing the lawyer advising that client (and the protections that go with that advice)”.⁵⁷

⁵⁰ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.2 – from 21 July 2021 r 10.4.

⁵¹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.2.1: “In communicating with the other lawyer’s client directly, the lawyer must act fairly towards the other lawyer’s client at all times and must promptly notify the other lawyer of the details of the communication”.

⁵² Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.2.2: “In that event, the other lawyer must be notified in advance of the lawyer’s intention to communicate directly with that person”.

⁵³ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.2.3.

⁵⁴ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.2.4.

⁵⁵ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.2.5: “In communicating with the other lawyer’s client directly, the lawyer must act fairly towards the other lawyer’s client”.

⁵⁶ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 10.2.6.

⁵⁷ *WC v AU* LCRO 218/2012 (6 June 2013) at [27]. See Dal Pont, above n 33 at [21.240] - the rule “extends to agents of the lawyer...Otherwise the prohibition would be one of form over substance”; *KW v WB* LCRO 118/2010 (20 April 2012) at [22].

[143] On the information produced, when Mr CK sent his 28 July 2017 letter to Ms SE it had been some time since Ms SE and the trust's lawyer had acted for Ms AF, and Mr CK respectively.

[144] For that reason, because at that time neither Ms SE nor the trust's lawyer were acting for their former clients, I do not consider that Ms SE contravened r 10.2 by responding to Mr CK.

(4) Other issues - bias

[145] As noted earlier, Mr CK says he "believes", from having read the section on the Law Society's website about how lawyers should respond to complaints about them, that the Committee may have "an unconscious bias" when considering complaints that arise from "family disputes".

[146] This is a potentially serious allegation to make about a Standards Committee, the members of which include lawyers current in their areas of practice, and at least one lay member.⁵⁸

[147] If substantiated the allegation might include consideration of whether the lawyer members of the Committee had complied with the fundamental obligations of lawyers "to uphold the rule of law and to facilitate the administration of justice in New Zealand", and each lawyer's "overriding duties as an officer of the High Court".⁵⁹

[148] The Court of Appeal has stated that "... there is now a generally accepted standard for disqualification on account of bias. A judge should not sit if a fair-minded and informed lay observer would have a reasonable apprehension that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide. ...".⁶⁰

[149] In their respective roles, decision-makers, particularly those who are legally trained, well understand the application of the rules of natural justice, in particular bias and predetermination. For an allegation of bias to succeed, in broad terms, the claimant must persuade the Court that the decision-maker knew or ought to have been aware that the decision-maker could not bring an impartial mind to the consideration of the matter.

⁵⁸ Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008, reg 13(1)(b).

⁵⁹ Lawyers and Conveyancers Act 2006, s 4 - fundamental obligations to (a) "uphold the rule of law and facilitate the administration of justice in New Zealand"; ... (d) "protect [clients'] interests" subject to "overriding duties as...officer[s] of the High Court".

⁶⁰ *Saxmere Company Limited v Wool Board Disestablishment Company Limited* [2009] NZSC 72, per McGrath J at [89].

[150] As I have also noted, Standards Committees' decisions are made by a majority of the votes of the members. Each member must reach his or her own conclusion from his or her consideration of the information provided by the parties to the complaint. In this regard, there is no suggestion in the Committee's decision that any member of the Committee dissented from the Committee's decision.

[151] In conclusion on this issue, I refer to a paragraph in a Review Officer's decision on another review in which the observation was made that:⁶¹

Mere disagreement [by a complainant] with a decision cannot, and should not, be parlayed into accusation that the decision makers have in some way conducted their enquiry with such degree of impropriety, that their conduct as decision-makers should be subject to the scrutiny of a disciplinary enquiry.

Decision

[152] For the above reasons, pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Committee to take no further action on Mr CK's complaint is confirmed.

Anonymised publication

[153] 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 absent of anything as might lead to their identification.

DATED this 23rd day of November 2021

B A Galloway
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 CK, as the Applicant
 Ms SE, as the Respondent
 [City] Standards Committee [X]
 New Zealand Law Society
 The Secretary for Justice

⁶¹ LCRO 110/2016 (30 June 2016) at [49].