NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2014] NZLCDT 20

LCDT 013/11

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **HAWKE'S BAY STANDARDS COMMITTEE**

Applicant

AND **GERALD GEORGE McKAY**

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr C Lucas

Mr P Shaw

Mr W Smith

Mr I Williams

HEARING at Auckland

DATE OF HEARING 11 and 12 March 2014

COUNSEL

Mr P Collins for Standards Committee

Mr D Wilson for the Respondent

DECISION OF NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

Introduction

[1] Mr McKay faces one charge of professional misconduct laid by the Hawke's Bay Standards Committee, which was amended at the commencement of the hearing to read:

> Hawke's Bay Standards Committee charges Gerald George McKay, of Napier, with misconduct, under s.112(1)(a) of the Law Practitioners' Act 1982 (LPA), in circumstances where he acted for a vendor client in the sale of her residential property and;
>
> (a) He accepted that client's instructions, and continued to act for her throughout the transaction, when he knew there was a conflict of interest between that client and certain of his other clients, including the purchaser, without the prior informed consent of his vendor client and contrary to Rule 1.04 of the Rules of Professional Conduct for Barristers and Solicitors, as applied at the time; and
>
> (b) In the same transaction, he failed to disclose to his vendor client all information available to him, which related to that clients affairs in the matter in which he was acting, contrary to Rule 1.09.

Background to the charge

[2] The vendor client, Ms H, owned a residential property in Hastings which she had purchased in June 1988. In August of 2007 Ms H returned from a three-month long visit to Australia. She was unemployed and was in some financial difficulty. Her partner had some time before her return made contact with a Mr Foote whose business was that of a mortgage broker and financial adviser. Some time in September Ms H also consulted Mr Foote. Mr Foote has since died.

[3] Ms H and her partner had consulted Mr Foote to assist them in a refinancing arrangement which would include provision for the repayment of mortgage arrears which were approximately $2,000 and provide some further funds for other creditors and for the building on of a garage, further fencing and some renovations to the property.

[4] It seems that Mr Foote may well have been recommended to the couple by Mr Ellis for whom Ms H's partner had worked from time to time. Mr Ellis was to feature in the scheme that was proposed.

[5] Mr Foote introduced Ms H to Mr McKay, the practitioner, on 17 December 2007 and Mr McKay accepted instructions to act for her to undertake the necessary legal work to affect the sale of her residential property to a company called JCR Developments Limited (JCR). This company was effectively the vehicle of Mr Ellis who was its director. Mr McKay had also represented Mr Ellis in previous matters, although he was not Mr Ellis' primary solicitor. Relevantly, however, he had acted for Mr Ellis in the entering by consent of a judgment debt against Mr Ellis for $1.4 million. This occurred on 19 July 2007 and was followed up by a default notice by the creditor in November of 2007, thus shortly before the practitioner being introduced to Ms H.

[6] It should also be noted that prior to meeting with Mr McKay, Mr Foote had obtained from Ms H two signed authorities to act as her agent in financial matters. These authorities were later relied upon by the practitioner to argue that Ms H had given informed consent to his acting for multiple parties in the transaction.

[7] Indeed the practitioner produced a document dated 17 December 2007 headed "Informed Consent" signed by Mr Foote as Ms H's agent. This was a document never seen by Ms H, according to her, until she engaged the services of another lawyer to assist her in finding out how her home had subsequently been able to be sold. It is surprising, to say the least, that this document would be signed by Mr Foote when Ms H was available on 17 December to sign it herself.

[8] The practitioner's evidence was that he went into some detail to explain the conflict and even went so far as to say that he had "covered the point" (of the $1.4 million judgment against Mr Ellis) and that she was not concerned, indeed was quite positive about it.

[9] It is apparent that the advisor, Mr Foote, also had an established relationship with the practitioner.

[10] The agreement for sale and purchase (which the practitioner denies preparing) provided the following arrangement: a sale to JCR was to take place with settlement

on 18 January 2008; the price was fixed at $172,500. No deposit was payable and there were no financial terms or conditions recorded. There was a special Clause 15 which provided that the vendor was to remain in possession of the property, as a tenant, for a rental to be agreed. Clause 16 provided a right to the vendor and her partner, Mr B, to buy back the property in two years time or the first right of refusal should the purchaser wish to sell it any time during those two years. This agreement was signed by Ms H.

[11] In the meantime Ms H and her partner were attempting to establish a savings record through Mr Foote's agency in order that they may be able to refinance the purchase back of the property. They had begun paying into an account controlled by Mr Foote, $400 per week for this purpose when they had first consulted with him in September and Ms H's evidence is that $9,000 was paid to Mr Foote in all. This sum has never been traced or recovered by Ms H or her partner.

[12] Two days before the settlement date, unbeknownst to Ms H, Mr Foote signed a Variation of Agreement for Sale on behalf of Ms H which required the purchaser to only pay on settlement the amounts required to settle two mortgages on the property (totalling $47,900) and some further outstanding creditors, including rates arrears, within six months. The variation also provided that the purchase back arrangement in favour of the vendor could be settled during the remainder of the year (2008) at a price equivalent to the total outlaid by the purchaser. Settlement did not occur on 18 January. On 3 April Mr Ellis (a director of JCR) gave a personal undertaking to Mr Foote on behalf of Ms H that "*during the balance of this year as soon as she is able to finance the purchase back from me of the property … I will transfer it to her upon repayment to me of the funds I have outlaid to pay her mortgages and satisfy her creditors together with any costs and expenses incurred*."

[13] Ms H says that over this entire period following the meeting, she had no further contact from Mr McKay and received no letters, invoices or report from him of any kind.

[14] On 16 April 2008 the two mortgages registered against Ms H's title were repaid from the trust account of Mr McKay's firm and the property was transferred to JCR. The total amount repaid was the above figure of $47,900.43. This placed the trust account in debit temporarily.

[15] On 22 April 2008 the sum of $50,000 was paid by JCR to Mr McKay's firm, funded by an advance from Central Mortgage Trust Limited, Mr McKay's mortgage company. No further amounts were paid to Ms H's creditors.

[16] Mortgages over the property were granted by JCR in favour of Central Mortgage Trust registered on 14 May 2008 and the ANZ National Bank registered on 23 May 2008. JCR defaulted on its obligations and the Bank sold the property in exercise of its power of sale at a mortgagee sale in February 2009.

[17] As a result of these transactions Ms H had sold her home for $47,900. She received no further credit or funds from the sale of the property.

[18] To complete the picture it needs to be recorded that prior to his executing the variation of agreement, Mr Foote had also been appointed a director of JCR. Thus it can be seen that Mr McKay acted for the vendor, purchaser, the agent (who subsequently had a conflict of interest himself) and the subsequent mortgagee.

Applicable Rules

[19] Rule 1.04 reads as follows:

> "A practitioner shall not act for more than one party in the same transaction or matter without the prior informed consent of both or all parties."

Rule 1.07 provides:

> 1. In the event of a conflict or likely conflict of interest among clients, a practitioner shall forthwith take the following steps:
>
>   (i) Advise all clients involved of the areas of conflict or potential conflict;
>
>   (ii) Advise the clients involved that they should take independent advice, and arrange such advice if required;
>
>   (iii) Decline to act further for any party in the matter where so acting would or would be likely to disadvantage any of the clients involved.
>
> 2. Once the situation of the type described in paragraph 1.07(1)(iii) arises it is not acceptable for practitioners in the same firm to continue to act for more than one client in a transaction, even though a notional barrier known as a Chinese Wall may be or may have been constructed. Such a device does not overcome a conflict situation.

Rule 1.09 provides:

> "In most circumstances, a practitioner is bound to disclose to the client all information received by the practitioner which relates to the clients affairs. There are certain exceptions, which include cases where one of the reasons set out in ss. 27 to 29 of the Privacy Act 1993 provides good reason to refuse a request from the client for access.

Submissions for the Standards Committee

[20] Mr Collins submitted on behalf of the Standards Committee that this was an example of a lawyer failing in his most basic duty to protect his client. He referred to Ms H as "unsophisticated and vulnerable" that is in respect of the loss of her home. Mr Collins described the consequences of the lawyer's failure as "absolute and devastating".

[21] The complete contradiction in the evidence between that given by Ms H and the practitioner was highlighted by Mr Collins, as was the inconsistency of the practitioner's approach. On the one hand the practitioner says there was no conflict. On the other hand he alleges he went into considerable detail at the first meeting about the conflict and informed consent matters. There is the further issue about whether the "reporting letter" which was never received by the client had ever been sent. She only acquired this letter later when another lawyer sought details on her behalf.

[22] Mr Collins invited the Tribunal to consider the nature of the authorities provided to Mr Foote, her purported agent. The two authorities respectively read as follows:

> "3 September 2007
>
> To Whom It May Concern
>
> Would you please note that I have appointed Mr Keith Foote, Director, Avenue Capital Limited to assist me with certain financial matters.
>
> You are authorised to provide him with any information he requests in respect of my accounts or financial dealings I have had with you or to enter into any negotiations with him in respect of my accounts with you. In providing any information as set out above I hereby agree to indemnify you in terms of the Privacy Act 1993 and amendments.
>
> Yours faithfully
>
> RH"

[23] The second authority is handwritten by Ms H and dated 24 September 2007:

> "To Whom This May Concern
>
> I RPH appoint Mr Keith Foote of Avenue Capital Hastings to take care of my financial matters.
>
> Yours sincerely
>
> RPH"

[24] It is submitted that these authorities would not suffice to provide the agent with the capacity to consent to a practitioner's representing multiple parties. Furthermore the practitioner was obliged to ensure that his client was personally informed of all material matters, which she claims that she was not.

[25] As well as referring to the multiple parties represented by the practitioner and, in addition that he had a lawyer/client relationship with Mr Foote, Mr Collins pointed to the variation of the agreement. This was a document about which Ms H had no knowledge whatsoever, and the practitioner did not obtain her instructions by direct contact with her. Nor was Ms H informed that by then her purported agent, Mr Foote, had been appointed a director of the purchasing company.

[26] Mr Collins submits by this stage, at the very latest, the practitioner's conflict was "incurable" and that Ms H ought to have been sent for independent legal advice. It is a Standards Committee submission that the practitioner "*facilitated the sale at a substantial undervalue on the purported authority of (Mr Foote) whom he knew to be a director of JCR (the purchaser) at the time*."

[27] Mr Collins reminded the Tribunal that Ms H's consistent evidence was that the meeting was only about 10 minutes long during which Mr Foote did most of the talking and Mr McKay said very little. The evidence of the complainant Ms H is that she was not given an explanation about the conflicting duties of the practitioner nor the financial circumstances of the purchasing company, its director Mr Ellis or the connection with Mr Foote. Mr Collins provided a schedule which set out the chronology of events which evidenced the solicitor/client relationship between the practitioner and JCR, Mr Ellis and Mr Foote.

[28] Mr Collins submitted that this level of breach of a fiduciary duty certainly reached the level of professional misconduct pleaded in this case. We were referred

to two relevant citations relating to the particular duty owed; the first in *Zaicos v Law Institute of Victoria*[1] where the Learned Judge held:

> "It does not follow that a breach of fiduciary duty must necessarily amount to professional misconduct, but it is correct to say that in most cases a breach of the prime duty a solicitor owes to his client will also be an act of professional misconduct. It is the position of trust and faith, a repose of confidence in a professional person, which is abused, which of its very nature must raise in the professional mind notions of affront and offence, leading inevitably to the conclusion that such affronts and offences are disgraceful conduct of a professional kind amounting to misconduct."

[29] The second relevant quotation is from the decision of *Bristol and West Building Society v Mothew:*[2]

> "The principal is entitled to the single minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his benefit or the benefit of a third person without the informed consent of his principal."

[30] Mr Collins further submitted that these conflicting interests between the multiple clients were "actual, not just potential or theoretical". We were further referred to the well known decision in *Farrington v Rowe McBride and Partners*[3] where it was said:

> "A solicitor's loyalty to his client must be undivided. He cannot properly discharge his duties to one whose interests are in opposition to those of another client. If there is conflict in his responsibilities to one or both he must ensure that he fully discloses the material facts to both clients and obtains their informed consent to his so acting."

[31] The notion of informed consent was expanded upon in Mr Collins submissions by further reference including to the decision of *Taylor v Schofield Peterson.*[4] To establish informed consent Mr Collins submitted that the lawyer must:

"(a) Recognise a conflict of interest, or a real possibility of one;

(b) Explain to the client what the conflict is;

(c) Further explain to the client the ramifications of that conflict (for instance, it may be that the lawyer could not give advice which ordinarily the lawyer would give);

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[1] Unreported Supreme Court of Victoria, Nathan J, 1995.
[2] [1998] Ch 1 at 18.
[3] [1985] 1 NZLR 83 at 90.
[4] [1993] 3 NZLR.

(d) Ensure that the client has a proper appreciation of the conflict and its implications; and

(e) Obtain the informed consent."

[32] Rule 1.07 imposes a further obligation and that is to advise the client to take independent advice in the event of a conflict or likely conflict. As Mr Collins points out this certainly did not occur.

[33] Finally in referring to Rule 1.09 Mr Collins referred to the dictum in *Spector v Ageda:*[5]

> "A solicitor must put at his clients disposal not only his skill but also his knowledge, so far as it is relevant; and if he is unwilling to reveal his knowledge to his client, he should not act for him. What he cannot do is act for the client and at the same time withhold from him any relevant knowledge that he has."

[34] Mr Collins pointed out that in representing Ms H he did not advise her that the sole director of the purchasing company JCR was facing bankruptcy a factor which he must have been aware having received the creditor's demand. The actual creditors petition to liquidate JCR was published on 17 January 2008.

[35] The precise nature of the conflict is set out by Mr Collins in his opening submissions as follows:

> "… The interest of H and JCR were plainly conflicting: H wished to complete the agreement and maximise her financial return from it, and be secure against the loss of her home pending the exercise of her buy back entitlement. In contrast, JCR embarked on a course which enabled it to claim title to the home for a gross undervalue, in circumstances plainly contrary to H's interests.
>
> The respondent (practitioner) lacked any independence in his representation of H. He facilitated the disastrous arrangement at the direction of H's purported agent who, by the time of the relevant events, was also a director of JCR. All of this was known to the respondent. No security was provided for H for the performance of the buyback agreement or for protection against the very event which subsequently happened, with the loss of the property through a mortgagee sale. The respondent's conduct in relation to H, including the use of the completed A and I form to complete the sale at an undervalue, was an abuse of his status as a lawyer and was reprehensible."

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[5] [1971] 3 All ER 417, 430.

[36] Mr Collins submits that this conduct must be seen as at very least indifference to the respondent's professional privileges and therefore justifying a finding of misconduct.

The practitioner's evidence

[37] Mr McKay gave evidence and was cross-examined by Mr Collins and Mr Ellis also gave evidence concerning his understanding of the transaction and the consequences. We have to say that we did not find either the practitioner or his supporting witness to be particularly persuasive. On the one hand Mr McKay repeated that he saw no conflict because this was a plan to rescue Ms H from her financial problems and he saw all of the parties working in that direction. On the other hand he says he went into considerable detail to provide informed consent to his acting including referring specifically to the $1.4 million judgment debt which had been entered against Mr Ellis. His evidence was that this information did not concern Ms H in the slightest and that she was very grateful for Mr Ellis' help.

[38] Ms H was recalled to give further evidence because the allegation of specific reference to the $1.4 million debt had not earlier been raised in the evidence. Ms H denied that this figure had ever been referred to and indeed said that she did not know what a 'judgment debt' was in any event.

[39] We find the suggestion that she was told about it and was not concerned is simply not credible. First of all her evidence suggests she would not have understood the implications and secondly, to suggest she was happy about the arrangement having understood Mr Ellis' precarious position makes no sense whatsoever.

[40] We should note at this point that we found Ms H to be a forthright and credible witness. She is unsophisticated and has a relatively low level of education but we have no reason to doubt her recollection of these very important events in her life. Where her evidence differs from the practitioner we prefer that of Ms H.

[41] Furthermore in giving his evidence about Ms H's gratitude the practitioner did not seem to appreciate that that very gratitude ought to be seen as problematic in terms of protecting Ms H, if he was acting as an independent lawyer.

[42] Mr McKay indicated that the agreement for sale and purchase had already been prepared and signed when he met with her, yet there is no reference to it in his asserted file note of the meeting and indeed, his own counsel submitted that there was no evidence that the agreement was even brought to the meeting. That would not seem to make sense, but we are unable to reach a final view as to who prepared the agreement and when it was actually signed. Indeed the practitioner alleges he received it on 16 January 2008 which was to have been the settlement date so that assertion again seems somewhat surprising.

[43] Later the practitioner claimed that he had tried to contact Ms H about the proposed variation but that she did not return his call. Ms H vehemently denies this and says that she was contactable by cell phone at all times. Again we prefer her evidence on this matter.

[44] The practitioner did not even make inquiries at the time the mortgage default notice was provided to him, as to whether Ms H had sufficient funds to clear this debt. He says he did not know about the savings arrangement with Mr Foote which again is somewhat surprising if he had made full and proper inquiries on behalf of his client, Ms H.

[45] When cross-examined about the incurable conflict that must have existed by the time Mr Foote signed the variation, given his prior appointment as a director of the purchasing company, Mr McKay made light of the appointment as a director. He simply said Mr Ellis required someone to stand in for him during times when he was absent and that Mr Foote was merely performing this role. That was a very concerning lack of insight on the practitioner's part.

[46] Again somewhat surprisingly Mr McKay asserted that it had never been intended that Ms H receive the balance of the settlement funds, namely the difference between the original $172,500 purchase price and the $47,900 debt repayment on her behalf. He gave no reason why Ms H would not wish to receive the full proceeds of the sale.

[47] There is no record of Ms H conceding this absolutely central issue. For a person of limited means to casually forego a payment in excess of $124,000, the

proceeds of her only asset and one which she had owned for almost 20 years defies belief.

[48] Finally on the issue of Mr McKay's alleged reporting and correspondence with Ms H, we refer to the letter produced by consent which was personally delivered by Ms H to Mr McKay with a list of questions including:

> "Where is our copy of the contract we signed, where is the money that we banked? Why did we not receive any money in exchange for our home? Why were our phone calls not returned? Why weren't we notified that the house had been sold?"

These were legitimate questions and there was no adequate answer at the time nor adequate explanation provided at the hearing.

[49] Had Mr McKay reported as he alleges there would not have been need for such questions. Once again we prefer the evidence of Ms H that she had no further communication with the practitioner except for a phone call made by her to him later in 2008 relating to the seizure of her car, in which he promised to get back to her but did not.

Submissions for the Respondent

[50] In submissions for the practitioner Mr Wilson described the practitioner's attendances as "limited". The practitioner maintained his denial that he had prepared the contract despite it being on the prescribed Law Society form.

[51] It was submitted that a handwritten file note produced by the practitioner recorded the matters covered at the meeting of 17 December and that these included the various roles of the parties. We make two comments as to that submission. Firstly the file note is undated and (as are all of the file notes) appears to be conveniently self-serving. Furthermore Ms H did not recall seeing the practitioner take notes in the very brief meeting attended by her. However even if the file note were to be taken at face value that does not address the risks to Ms H in any manner whatsoever.

[52] The further "limited attendances" referred to by counsel for the respondent were the negotiations with the mortgagee to attempt to defer a threatened mortgagee sale

and the attendances in April when the variation to the agreement occurred, following which the Transfer, mortgage finance arrangements and security documents to JCR and repayment of Ms H's mortgage occurred. There was also we note, the registration of the ANZ mortgage from JCR which ultimately led to the property being sold after default on its terms.

[53] Mr Wilson submitted that the practitioner's behaviour did not constitute misconduct because he carried out the attendances requested of him on 17 December 2007. It was submitted that "*he was presented with an unusual position primarily related to the avoidance of a mortgagee sale*".

[54] We comment on that submission, that the unusual aspect was that he was acting for three related parties at least. Furthermore, the default in the mortgage was in the region of $2,000 which, given the $400 a week payments that the parties were making to Mr Foote for their "savings record", could have been cleared quite promptly. There was no adequate explanation from the practitioner that addressed his default in not exploring other solutions for his client.

[55] It is submitted on behalf of the practitioner that he was "*not asked to advise on, or in any way participate in, financial aspects of any transactions between Foote, Ellis and H*".

[56] That submission overlooks the duties imposed upon a solicitor acting in these circumstances entirely.

[57] Although the practitioner conceded that he "did subsequently facilitate the mortgage of $50,000", he nevertheless submitted that he was not asked to take any steps relating to refinancing activity by Mr Ellis, in a general sense.

[58] Mr Ellis gave evidence in support of Mr McKay at the hearing. It became apparent from his description of his own financial position and low equity in properties at the time that the acquisition of this property enabled him to provide much needed security to raise further capital.

[59] While acknowledging that Ms H was at the meeting on 17 December, Mr Wilson emphasised that the file note which was said to be attributed to that meeting referred

to the conflict issue being covered. Even if we accepted that the note was genuine, and we have considerable doubts as to this, there is only a passing reference to conflict and "approval to act for the group". This in no way meets the obligations required by Rules 1.04 and 1.09.

[60] Despite Ms H's presence at the meeting Mr Wilson submits that the informed consent being signed by Mr Foote, allegedly on that date, is "*wholly consistent with the position recorded in the file note*". Mr Wilson goes on to submit that "*it was reasonable for him in the circumstances to take instructions from Mr Foote on behalf of Ms H.*" There is no evidence that in fact the practitioner had seen the authorities to Mr Foote or recognised their inadequacy. In any event his obligation was to the client to inform her directly and not through a third party particularly when that third party himself might have been and indeed turned out to be, a person from whom Ms H needed to be protected.

[61] It was submitted on behalf of Mr McKay that the loss caused to Ms H was not a result of Mr McKay's failure to take all proper steps in relation to the conflict of interest. This submission reflected both Mr McKay and Mr Ellis' evidence where they were blaming of Ms H's own role in the matter. This is particularly disappointing on the part of the practitioner, who so comprehensively let her down. Assertions were made about Ms H's financial management and circumstances, which were entirely untrue.

[62] It was submitted that one of the factors leading to the disastrous outcome for Ms H was that she and her partner did not keep up their payments to Mr Foote after May 2008. That completely ignores the evidence of Ms H that these payments were stopped upon independent legal advice when it was discovered that her creditors were not being paid and that Mr Foote had disappeared and cleared out his office after having been confronted by Ms H.

[63] The Tribunal finds it reprehensible on the practitioner's part that he not only attempts to blame Ms H for her predicament in having lost her major life asset as well as the $9,000 paid to Mr Foote, but also denies having had any responsibility to protect her from Mr Foote who was well known to the practitioner.

[64] The final submission on the part of the practitioner was that this was a course of conduct which is criticised with hindsight and that different lawyers can approach problems in a different manner.

[65] We reject that submission, given that the outcome for this client was quite predictable given Mr Ellis' known circumstances and the different bargaining strengths and knowledge bases of the respective clients who were bargaining in this transaction.

[66] What can be said is that if Ms H had been sent for independent legal advice as she ought to have been, particularly by the time of the variation, then a different outcome would have resulted for her, without a doubt.

Decision

[67] We have commented on various submissions in the course of this decision and have made credibility findings in respect of the three witnesses who appeared before us. Having considered all of the evidence and the submissions of counsel we find the charge of misconduct proved.

[68] We find that the practitioner has breached each of the Rules pleaded in the amended charge to the extent that his conduct amounts to an abuse of his position as a lawyer and a serious breach of his fiduciary duties to Ms H. Ms H was entitled to the practitioner's "single minded loyalty". It is abundantly clear that she did not receive this from him and as a consequence has lost an asset as she, as a single parent had acquired over many years. She was not protected in a situation where she was clearly preyed upon and exploited by a so called financial adviser and a (now bankrupt) businessman, possibly in a deliberately predatory manner.

[69] There is in fact no need for the Tribunal to determine whether this was a deliberate entrapment and fraud against the complainant Ms H, because in any event even if the matter had started out innocently, the practitioner let her down abysmally. We have no doubt this reaches the serious level of misconduct pleaded by the Standards Committee.

Penalty hearing

[70] The Standards Committee are to file submissions on penalty within 21 days of the release of this decision. The practitioner will have a further 21 days to reply. The matter is to be allocated a penalty hearing as soon as possible after that date. The case officer is to allocate that date forthwith.

DATED at AUCKLAND this 1st day of May 2014

Judge D F Clarkson
Chair