

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA461/2019
[2021] NZCA 47**

BETWEEN A LAWYER
 Appellant

AND NEW ZEALAND LAW SOCIETY
 First Respondent

 WELLINGTON STANDARDS
 COMMITTEE NO 2
 Second Respondent

Hearing: 3 December 2020

Court: French, Whata and Mander JJ

Counsel: F E Geiringer, J K Mahuta-Coyle, D Ranchhod and A B
 Papageorgiou for Appellant
 P N Collins for First and Second Respondents

Judgment: 8 March 2021 at 9 am

JUDGMENT OF THE COURT

- A The appeal is dismissed.**
- B The appellant must pay the respondents one set of costs calculated on the basis of a standard appeal, band A together with usual disbursements.**
-

REASONS OF THE COURT

(Given by French J)

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Introduction

[1] The appellant is a law practitioner. In 2015 she was the subject of three complaints made to the New Zealand Law Society. The complaints were referred to the second respondent the Wellington Standards Committee No 2. The Committee purported to exercise its statutory powers under the Lawyers and Conveyancers Act 2006 (the Act) to inquire into the complaints and appoint an investigator. To date, the investigator has only been able to issue an interim report in respect of the first complaint.

[2] The appellant issued proceedings in the High Court seeking judicial review of the Committee's decisions and the conduct of the investigation. Thomas J held that as a matter of law a Standards Committee's decision to inquire, appoint an investigator and set the terms of the investigation was amenable to review despite such a decision

being made at a very preliminary stage of the disciplinary process.¹ However, there was a high bar and in the circumstances of this case review was not warranted. The application for judicial review was accordingly dismissed.

[3] Dissatisfied with that outcome, the appellant now appeals to this Court.

Three preliminary matters

[4] The first is that pending the outcome of this appeal, the appellant sought a stay in the High Court to prevent the Committee taking any further steps in the complaints process. The application for a stay was made on the grounds that unless the complaints process was stayed, the appellant's appeal rights would be rendered nugatory. The application was also made on the ground that in breach of confidentiality obligations one of the complainants was publicising steps being taken in the complaints process to the appellant's detriment.

[5] Dobson J held that in order to preserve the appellant's appeal rights, it was not necessary to stay all further steps.² However, he was satisfied that the risk of inappropriate disclosures by a complainant was sufficiently unacceptable to make a stay justifiable unless adequate safeguards were put in place.³ He therefore directed that the respondents could only provide the complainants with a copy of the investigator's reports after receiving an unqualified written undertaking from the complainants they will not divulge the contents to any other person. The Judge also directed that the respondents could continue with processes preparatory to but not including any hearing of the complaints.⁴

[6] The second preliminary matter is that in the High Court, both judges anonymised their respective judgments because of the confidentiality provisions under the Act relating to the work of Standards Committees.⁵ In neither case was a formal order made.

¹ *A Lawyer v New Zealand Law Society* [2019] NZHC 1961 [High Court judgment].

² *A Lawyer v New Zealand Law Society* [2020] NZHC 2173 [High Court stay judgment].

³ At [15].

⁴ At [16]–[17].

⁵ We address the relevant provisions in more detail below at [110].

[7] In this Court, the appellant's counsel Mr Geiringer, asked us to follow suit and anonymise the judgment. The respondents did not oppose our granting that request.

[8] Our survey of past judgments in the High Court regarding the work of Standards Committees suggests that anonymisation is not a universal practice. The general practice in this Court appears to be that anonymisation has been adopted where there are already suppression orders in place, or as yet undetermined suppression orders, or where the practitioner against whom the complaint was made has not been censured or reprimanded. The latter follows from a decision of this Court which held that Standards Committees could only publish the identity of a practitioner in their decisions if the practitioner was the subject of a censure order.⁶

[9] In this case, none of the complaints have been determined and we therefore consider it appropriate to anonymise.

[10] The third preliminary matter we record is that the second respondent, the Committee, has not taken an active part in the appeal.

Legislative regime

[11] Before turning to the factual background of this case, it is necessary to briefly explain the relevant features of the legislative scheme including the functions of Standards Committees.

[12] As noted by this Court in *Orlov v New Zealand Law Society*, the Act has a greater focus on consumer protection than its predecessor.⁷ The first two stated purposes of the Act are to maintain public confidence in the provision of legal services and to protect the consumers of legal services.⁸

⁶ *New Zealand Law Society v B* [2013] NZCA 156, [2013] NZAR 970 at [51].

⁷ *Orlov v New Zealand Law Society* [2013] NZCA 230, [2013] 3 NZLR 562 at [10]. The predecessor is the Law Practitioners Act 1982.

⁸ Lawyers and Conveyancers Act 2006 [the Act], s 3(1)(a) and (b).

[13] One of the expressed means by which the Act seeks to achieve those two purposes is by providing for a more responsive regulatory regime in relation to lawyers.⁹

[14] Under the Act, lawyers are required at all times to act in accordance with the Rules of conduct and client care for lawyers (the Rules). These Rules are contained in a schedule to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. They outline the ethical obligations lawyers owe to clients and include obligations relating to professional dealings generally.

[15] As noted in the preface to the schedule, the Rules are based on the fundamental obligations of lawyers set out in s 4 of the Act, namely:

- (a) The obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand.
- (b) The obligation to be independent in providing regulated services to their clients.
- (c) The obligation to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients.
- (d) The obligation to protect, subject to their overriding duties as an officer of the High Court and to their duties under any enactment, the interests of their clients.

[16] As also noted in the preface, the Rules are not an exhaustive statement of the conduct expected of lawyers. They set the minimum standards that lawyers must observe and are a reference point for discipline. A charge of unsatisfactory conduct may however be brought despite the charge not being based on a breach of any specific rule or on a breach of any other rule or regulation made under the Act.

⁹ Section 3(2)(b). See also *Orlov v New Zealand Law Society*, above n 7, at [10].

[17] Two of the rules that feature in this case are r 10.2 and r 11.2. Rule 10.2 prohibits a lawyer acting in a matter from communicating directly with a person whom the lawyer knows is represented by another lawyer in the same matter, unless certain specified circumstances apply. Rule 11.2 states that a lawyer must not directly contact a prospective client in a way that is intrusive, offensive or inappropriate.

[18] Complaints and disciplinary matters concerning legal practitioners are dealt with under pt 7 of the Act. Part 7 is designed to enable complaints to be addressed and disciplinary charges to be heard and determined expeditiously. To achieve those aims, the Law Society is empowered to make procedural rules to give effect to the complaints and disciplinary framework.

[19] That framework requires the Law Society to establish one or more Lawyers Standards Committees and to make rules governing the operation of those Standards Committees.¹⁰ Such rules must include amongst other things the procedures to be followed in relation to complaints and the manner in which a Standards Committee is to exercise its powers and functions.

[20] Each Standards Committee consists of at least three persons one of whom must be a lay person.¹¹ The functions of Standards Committees are set out in s 130 which provides as follows:

130 Functions of Standards Committees

The functions of each Standards Committee are (subject to any limitations imposed on the committee by or under this Act or the rules that govern the operation of the committee)—

- (a) to inquire into and investigate complaints made under section 132:
- (b) to promote, in appropriate cases, the resolution of complaints by negotiation, conciliation, or mediation:
- (c) to investigate of its own motion any act, omission, allegation, practice, or other matter that appears to indicate that there may have been misconduct or unsatisfactory conduct on the part of a practitioner or any other person who belongs to any of the classes of persons described in section 121:

¹⁰ Sections 126 and 131.

¹¹ Section 129.

- (d) to intervene, in the circumstances prescribed by this Act, in the affairs of practitioners or former practitioners or incorporated firms:
- (e) to make final determinations in relation to complaints:
- (f) to lay, and prosecute, charges before the Disciplinary Tribunal.

[21] A Standards Committee may receive complaints from any person via a complaints service (known as the Lawyers Complaints Service) which the Act requires the Law Society to establish.¹² Section 137 which is headed “Action on receipt of complaint” states that having received the complaint, the Standards Committee may do one of three things:

- (a) inquire into it; or
- (b) direct the parties to explore the possibility of resolution by negotiation, conciliation or mediation; or
- (c) decide to take no action on the complaint.

[22] Section 138 lists the circumstances in which a Standards Committee may in the exercise of its discretion decide to take no action. Those listed circumstances include a frivolous or vexatious complaint, a complaint not made in good faith and a trivial complaint.

[23] Section 137(2) requires a Standards Committee to notify the complainant and the practitioner as soon as practicable which of the three courses of action it intends to take.

[24] As mentioned, in this case, the Committee purported to exercise its power under s 137(1)(a) and inquire into the complaints. The appellant however says the only correct response was to decide to take no action under s 137(1)(c).

[25] If the decision is to inquire into the complaint, a Standards Committee must do so as soon as practicable.¹³ Under s 141, the Standards Committee may require

¹² Section 121.

¹³ Section 140.

the person complained against to appear before it and it may also request specified information from that person.

[26] The procedure of Standards Committees must be consistent with natural justice but otherwise Standards Committees may regulate their procedures as they think fit.¹⁴

[27] For the purpose of inquiring into a complaint, the Standards Committee may exercise its power to appoint an investigator and require that person to inquire into the complaint and furnish a report.¹⁵ Section 146, which is headed “Investigations by investigators”, states in subs (2):

...

- (2) The investigator may, in inquiring into, and reporting on, the complaint or matter and any such related matters,—
 - (a) examine (among other things) any accounts (including trust accounts) kept—
 - (i) by a practitioner or former practitioner; or
 - (ii) by a person who, or body that, is or was, in relation to a practitioner, a related person or entity; or
 - (iii) by an incorporated firm or former incorporated firm; and
 - (b) state (among other things), in his or her report, the investigator’s opinion on the question whether there are reasonable grounds to suspect that a breach of any of the provisions of this Act or the practice rules has been committed—
 - (i) by a practitioner or former practitioner; or
 - (ii) by a person who, or body that, is, or was, in relation to a practitioner, a related person or entity; or
 - (iii) by an incorporated firm or former incorporated firm; or
 - (iv) by a person who is not a practitioner but who is an employee or former employee of a practitioner or an incorporated firm.

¹⁴ Section 142.

¹⁵ Sections 144 and 146.

[28] The powers of investigators and Standards Committees when conducting an inquiry or investigation are more fully detailed in s 147(2) in the following terms:

...

- (2) For the purposes of any inquiry or investigation being conducted under this Act, a Standards Committee or an investigator—
 - (a) may, at any time, require a source of information to do any of the following:
 - (i) produce for inspection by the Standards Committee or investigator all books, documents, papers, accounts, or records which are in the possession or under the control of the source of information and which are reasonably necessary for the purposes of the inquiry or investigation:
 - (ii) allow copies of, or extracts from, any such books, documents, papers, accounts, or records to be made:
 - (iii) furnish, in a form approved by, or acceptable to, the Standards Committee or investigator, any information or particulars that may be required by the Standards Committee or investigator, and any copies of, or extracts from, any such books, documents, papers, accounts, or records:

...

[29] As part of its inquiry into the complaint, a Standards Committee may also conduct a hearing under s 152(1) which is to be on the papers unless directed otherwise. Section 153 governs the procedure to be followed in respect of a hearing on the papers, while s 151 governs the evidence that a Standards Committee may consider.

[30] After inquiring into the complaint and conducting a hearing, a Standards Committee must make one of three determinations: (a) that the complaint or matter or any issue involved in the complaint or matter be considered by the New Zealand Law Society Disciplinary Tribunal (the Disciplinary Tribunal); (b) that there has been unsatisfactory conduct on the part of the practitioner; or (c) that it will take no further action with regards to the complaint.¹⁶

¹⁶ Section 152(2).

[31] Unsatisfactory conduct is defined in relation to lawyers under s 12 in the following terms:

...

- (a) conduct of the lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services and is conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer; or
- (b) conduct of the lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services and is conduct that would be regarded by lawyers of good standing as being unacceptable, including—
 - (i) conduct unbecoming a lawyer or an incorporated law firm; or
 - (ii) unprofessional conduct; or
- (c) conduct consisting of a contravention of this Act, or of any regulations or practice rules made under this Act that apply to the lawyer or incorporated law firm, or of any other Act relating to the provision of regulated services (not being a contravention that amounts to misconduct under section 7); or
- (d) conduct consisting of a failure on the part of the lawyer, or, in the case of an incorporated law firm, on the part of a lawyer who is actively involved in the provision by the incorporated law firm of regulated services, to comply with a condition or restriction to which a practising certificate held by the lawyer, or the lawyer so actively involved, is subject (not being a failure that amounts to misconduct under section 7).

[32] Unlike the Disciplinary Tribunal, Standards Committees do not have jurisdiction to make findings of misconduct. Misconduct by definition involves more serious conduct than unsatisfactory conduct. The Disciplinary Tribunal also has a wider range of sanctions available to it than does a Standards Committee including the power of suspension and striking off.

[33] Under s 253 there is a right of appeal to the High Court against any decision of the Disciplinary Tribunal. The appeal is by way of re-hearing. There is a further right of appeal on a question of law to this Court against any decision of the High Court made under s 253.¹⁷

¹⁷ Section 254.

[34] In addition, under pt 7 the decision of a Standards Committee may be reviewed at the request of either party by an independent entity called the Legal Complaints Review Officer (the LCRO). Such reviews are to be conducted with as little formality and technicality and as much expedition as is consistent with the requirements of the Act, proper consideration of the review and the rules of natural justice.¹⁸

[35] On review, the LCRO is empowered to direct the relevant Standards Committee to reconsider the complaint or decision.¹⁹ Alternatively, the LCRO may confirm, modify or reverse the Standards Committee decision and may exercise any power that the Standards Committee should have exercised.²⁰

Factual background of this case

[36] The first complaint was a complaint made by another law practitioner (Complainant S) alleging that the appellant had been poaching her clients. The complaint was made in June 2015. The essence of the complaint was that some of Complainant S's clients had received communications from a trust entity about the litigation in which the complainant was acting for them. The trust entity was involved in the same litigation and was represented by the appellant.

[37] A copy of the complaint was forwarded to the appellant. In a detailed response, she said she had not directly contacted any of Complainant S's clients and that it was part of the trust's responsibilities to engage with all members and keep them informed about the particular litigation.

[38] The second complaint was made on 4 September 2015 by a lay person (Complainant R) purportedly on behalf of a statutory body. The appellant has acted for the body and she and her spouse have a close association with it. Complainant R made various allegations against the appellant including allegations of acting in breach of instructions or without instructions, conflicts of interest, allegations relating to fee charging practices and unfair or disrespectful treatment of others.

¹⁸ Section 200.

¹⁹ Section 209.

²⁰ Section 211.

[39] The third complaint was also made by Complainant R but this time in his capacity as the chairperson of a constituent member of the same body. He alleged the appellant had acted in circumstances of conflicting interests.

[40] In response to both complaints, the appellant disputed Complainant R's standing and authority to make the complaints. She also contended the complaints had been made in bad faith being motivated by an underlying and longstanding political dispute between competing factions within the body.

[41] What happened next is best summarised in tabular form:

Decision by the Committee	The appellant's response
November 2015: decided to inquire into the first complaint and sought copies from the appellant of all files relating to work done by her for the trust entity.	Referred matter to LCRO for review claiming request for documents was too broad and decision to inquire irrational in light of her response to complaint.
March 2016: appointed investigator to inquire into first complaint. Investigator given terms of reference.	Referred the decision to appoint an investigator to LCRO for review on various grounds.
March 2016: appointed investigator to investigate the second and third complaints.	Referred decision to appoint investigator to LCRO for review on various grounds. Declined to withdraw her first application for review after being invited to do so by the LCRO.
	Requested that the two reviews regarding the first complaint be consolidated.
Investigator instructed to defer from taking any substantive steps to investigate Complainant R's complaints until the LCRO issued its determination.	

[42] Between April and May 2016, issues arose regarding Complainant R allegedly making disclosures to others about the investigation in breach of confidentiality. In July 2016, the appellant provided further material to the LCRO in the form of detailed written submissions with attachments conclusively answering (as she sees it) all the complaints.

[43] For reasons the Judge found to be disputed,²¹ the appellant's applications to the LCRO were stayed.

[44] The investigator made various requests through August 2016 to November 2016 to meet with the appellant.

[45] On 23 November 2016, the appellant's counsel wrote to the Law Society to the effect that unless and until various concerns with the process including Complainant R's alleged breaches of confidentiality were addressed to her satisfaction, it was not possible for the appellant to participate in any meeting with the investigator. The other concerns were issues relating to the risk of cross-contamination between complaints, failure to give an assurance to withhold information provided by the appellant from Complainant R, the non-disclosure of materials obtained by the investigator and the Law Society's refusal to assign the complaints to another Standards Committee due to concerns of bias.

[46] We pause here to interpolate that we address the validity of these concerns later in the judgment with the exception of the allegation of bias. The appellant alleged bias due to a past history of conflict between her and the Committee in 2011 over other unrelated complaints. Some of the members of the Committee involved in those complaints were still on the Committee. The allegation of bias was pursued in subsequent correspondence in April 2018 but is not part of the current proceeding.

[47] Returning to the narrative, on 1 March 2017, the investigator issued an interim report on the investigation to date in relation to the first complaint.

²¹ High Court judgment, above n 1, at [29].

[48] The report was critical of the appellant. It suggested she may have breached rr 10.2 and 11.2 of the Rules (communication with another lawyer's client and inappropriate solicitation) in respect of the client named in the initial complaint and two others, may also have breached r 10.1 (obligation to treat other lawyers with respect and courtesy) and may have breached r 10.2 in respect of another named person. In the view of the investigator, the information he had received justified further investigation in relation to all these matters.

[49] The investigator also reported there was a possibility the appellant had breached r 10.2 in respect of another person although the investigator considered there was currently insufficient evidence of that.

[50] The report provided a detailed summary of the interviews conducted. It also detailed the further steps that would be required in the investigation before a final report could be provided, as well as identifying a legal issue.²² The further steps identified included obtaining a response from the appellant to the information received.

[51] It concluded with the statement that given the preliminary nature of the information received, the investigator was only able to report on preliminary findings and potential breaches that warrant further investigation and response (if possible) from the appellant.

[52] The Committee forwarded a copy of the interim report to the appellant.

[53] Also in March 2017, the Committee asked the LCRO to reactivate the reviews because the appellant was continuing to refuse to meet with the investigator.

[54] On 18 December 2017, the LCRO issued a decision saying the applications for review were premature because the Committee had not completed its investigation.

²² The legal issue was what constitutes knowledge for the purpose of determining whether a lawyer knows that a prospective client is represented by another practitioner.

[55] In subsequent correspondence in April 2018, the appellant advised that because the LCRO's decision failed to resolve any of the substantive issues she had raised in November 2016 regarding the complaints process, she would either continue to refuse to engage in the process or issue judicial review proceedings unless her concerns were resolved to her satisfaction.

[56] The Lawyers Complaints Service maintained its position. It declined to transfer the complaints to another Standards Committee, declined to appoint another investigator and also declined to give an assurance to withhold information from Complainant R.

[57] It stated that in its view, the interests of the complainants and the appellant were best addressed by enabling the investigation to be completed and for the Committee to resolve the complaints on an informed basis with the appellant's reasonable participation. If the appellant continued to refuse to participate, that would leave the Committee with the option of proceeding with what would then be a one-sided investigation. The Complaints Service also reminded the appellant of her ethical obligation to co-operate and warned that another option available to the Committee would be to commence an own motion investigation into her conduct in refusing to co-operate with the investigation making that an independent head of conduct-related inquiry.

[58] In early December 2018 the investigator asked the appellant to produce certain documents and also requested a meeting with her. In addition, he detailed the issues he wished to traverse at the meeting.

[59] The meeting never took place. On 18 December 2018, the appellant issued these proceedings.

[60] The statement of claim runs to some 14 pages. It challenges the decisions to inquire into the complaints, the decision to appoint an investigator, the terms of the investigator's appointment, the preparation of his interim report and its contents, the investigator's direction to the appellant on 5 December 2018 to produce documents and the nature and conduct of his investigation.

[61] The statement of claim then goes on to plead under the headings of “mandatory relevant/irrelevant considerations”, “illegality”, and “breach of right to natural justice” that these decisions and exercise of statutory powers were vitiated by reviewable errors of law. The remedies sought include declarations of unlawful conduct and orders restraining the disciplinary process from continuing any further as well as restraining the provision of information to Complainant R in the absence of suitable steps to ensure confidentiality.

The High Court decision

[62] Rejecting a submission made on behalf of the respondents, the Judge held that although the decisions at issue were made at a very preliminary stage of the process, they were as a matter of law amenable to review.²³ In coming to that conclusion, the Judge relied on the decisions of *Zhao v New Zealand Law Society*, *Singh v Chief Executive Ministry of Business, Innovation and Employment* and *Marlborough Aquaculture Ltd v Chief Executive, Ministry of Fisheries*.²⁴

[63] However, the Judge also endorsed the proposition from the authorities that where processes leading to a final decision are not completed, review remains discretionary and will be exceptional.²⁵ That meant the key issue for determination was whether in the circumstances of this case there was a sufficient basis for the Court to invoke its review jurisdiction.²⁶

[64] To determine that issue, the Judge followed the approach mandated by this Court in *Singh* and considered four factors, namely:²⁷

- (a) the nature of the statutory power being exercised;
- (b) the stage that has been reached in the relevant statutory process;

²³ High Court judgment, above n 1, at [99].

²⁴ *Zhao v New Zealand Law Society* [2012] NZHC 2169, [2012] NZAR 894; *Singh v Chief Executive Ministry of Business, Innovation and Employment* [2014] NZCA 220, [2014] 3 NZLR 23; and *Marlborough Aquaculture Ltd v Chief Executive, Ministry of Fisheries* [2003] NZAR 362 (HC).

²⁵ High Court judgment, above n 1, at [95] and [97].

²⁶ At [100].

²⁷ See *Singh v Chief Executive Ministry of Business, Innovation and Employment*, above n 24, at [38].

- (c) the extent the statutory power exercised is likely to be influential in the ultimate outcome; and
- (d) further opportunities in the statutory process to correct any errors.

[65] Addressing those four considerations, the Judge noted as regards the first consideration that the actions taken by the Committee were in the context of a statutory regime designed to protect consumers.²⁸

[66] As regards the second consideration, the actions were taken at a preliminary investigative stage and, in the Judge's view, for the Committee to have dismissed the complaints without making any inquiry only because of the lawyer's response would have been a failure to receive and responsibly deal with them consistently with the Act's statutory purpose. In her assessment, none of the complaints was so obviously lacking in credibility as to amount to a vexatious complaint justifying dismissal without inquiry.²⁹ She was also satisfied that the complaints included allegations which if substantiated would raise issues of professional responsibility within the jurisdiction of the Committee.³⁰

[67] The Judge acknowledged that one or more of the complaints may eventually prove misconceived and unmeritorious but that could only be determined following an inquiry for which resolution under s 137(1) of the Act was necessary and for which the appointment of an investigator under s 144 was appropriate.³¹

[68] Turning to the third consideration, the Judge stated that the appointment of an investigator and setting the terms of the investigation were not determinative nor prejudicial to the lawyer and did not imply or express any findings adverse to her.³² The Judge also held that having regard to the investigator's broad statutory powers, the scope of the instructions given in this case did not widen the net so significantly as to extend beyond those powers.³³ The Judge considered that the lawyer had already

²⁸ High Court judgment, above n 1, at [101].

²⁹ At [103].

³⁰ At [104].

³¹ At [105].

³² At [109].

³³ At [110].

had considerable opportunities to have input into the process and influence the ultimate decision and those opportunities remained open.³⁴

[69] Finally, and as to the fourth consideration, even in the event of an adverse decision, there were further opportunities in the statutory process to correct any apparent error.³⁵

[70] The Judge concluded applying the *Singh* considerations that this was not an exceptional case warranting review.³⁶ She observed that the appellant had already pursued the statutory review procedures and failed. The Judge concluded that it was in the interests of the complainants, the lawyer and the public that the complaints be investigated and decisions made in an informed manner with minimal further delay.³⁷

[71] The appeal against the Judge's decision was filed on 10 September 2019. It is now over five years since the complaints were first made.

Scope of the appeal

[72] There has been no cross-appeal against the Judge's finding that although the decisions impugned were made at a preliminary stage of the process, they were as a matter of law amenable to review. We therefore proceed on the basis that they are, as Mr Geiringer put it, inherently justiciable.

[73] It was also common ground that the Judge had correctly articulated the relevant legal principles at play, including correctly identifying the relevant factors to be taken into account under *Singh*.

[74] What the appellant takes issue with is the Judge's application of those legal principles to the circumstances of this case.

[75] The essence of the appeal is that in order to determine whether it was appropriate to grant relief, it was necessary for the Judge to address whether

³⁴ At [111]–[115].

³⁵ At [116].

³⁶ At [117].

³⁷ At [118].

the decision makers had erred in each of the ways alleged and to make specific findings. But she failed to do that and having failed to appreciate the nature of the alleged errors reached the wrong conclusions.

[76] According to the appellant, had the Judge addressed each alleged error, she could not have concluded that the complaints are unable to be determined with certainty in the appellant's favour without an investigation, given for example that some of the complaints were about actions expressly permitted under the Rules and given that some were outside the jurisdiction of the Law Society. Likewise, had the Judge addressed the nature of the errors, she could not have properly concluded that the errors would not impact on the Committee's final determination. Nor could the Judge have concluded the errors were capable of being cured by the appellant continuing to participate in the process.

[77] In short, contrary to the view taken by the Judge, this in the appellant's submission is a case which has already gone seriously off the rails. Despite the process being at a preliminary stage, the appellant's rights have already been adversely affected by significant procedural errors and she is at risk of suffering further significant harm if the process is permitted to continue. Relief should have been granted.

[78] We now turn to address the alleged errors relied on by the appellant to support these central contentions.

Analysis — the alleged errors

Denial of opportunity to respond to additional allegations

[79] A key concern raised by the appellant is that the Committee made its decision to investigate after the complainants raised new matters but without giving her the opportunity to respond to the new material. Complainant S for example, after submitting her complaint and receiving a copy of the appellant's response, subsequently provided the Committee — and later still the investigator — with additional details including other alleged incidents of client poaching. The appellant

also complains that the Committee has not even specified exactly what provision of the Rules she is supposed to have breached.

[80] There is no doubt that the Committee must observe the rules of natural justice. This is expressly recognised in the Act in s 142.³⁸

[81] There is also no doubt that it is a fundamental tenet of natural justice that a person against whom a complaint is made is entitled to know what the complaint is and what the issues are that they are being called upon to answer as well as being given an opportunity to respond.³⁹ That too is explicitly recognised in the Act. Section 141(a) for example requires a Standards Committee to send particulars of the complaint to the person complained against and invite that person to make a written explanation.

[82] However, on the facts of this case the appellant was given an opportunity to respond when the complaints were first made and has been given copies of all the additional material since. Allegations about being entitled to further opportunities to respond before the Committee exercised its power to inquire and appoint an investigator are in our view misconceived.

[83] The Committee was provided with a large volume of material, some of it highly contested and complex and some of it provided by a lay person — as of course will often be the case. We consider it entirely reasonable and proper for the Committee to take the position that its ability to articulate the issues in terms of specific rules or principles of professional responsibility in this case must await the completion of the investigative processes. That includes the investigator's report and any feedback from the parties.

[84] That approach makes for a far more orderly and workable process as opposed to a potentially endless round robin going back and forth between the complainants and the appellant adding to the already large volume of material and creating further layers of complexity, some of it potentially irrelevant. And most importantly of all, as

³⁸ See above at [26].

³⁹ *Furnell v Whangarei High School Board* [1973] 2 NZLR 705 (PC) at 723–724 and 728.

our review of the legislative scheme demonstrates, there remains ample opportunity for the appellant to be heard on all matters well before any determination is made.

[85] It is also no answer, in our view, for the appellant to say that if only she had been given the opportunity to provide additional material in response to the additional material supplied by the complainants before the decision to inquire was made, she could have conclusively answered everything and the only reasonable decision would then have been for the Committee to take no further action.

[86] While that may be the appellant's perception, it is not in our assessment necessarily the case. We agree with the Judge that on the available material the Committee could in fact have been criticised for failing in its statutory duty had it dismissed the complaints without making any inquiry solely on the basis of the appellant's responses.

[87] The appellant's argument against appointing an investigator also overlooks that the investigation will serve the very useful purpose of sifting through and triaging the voluminous material in terms of relevance which can only be of benefit to the appellant.

[88] And finally we note that the appellant's submission appears to be based on the premise that only breaches of the Rules can be the subject of a disciplinary charge. However as already mentioned, the preface to the Rules makes clear that is incorrect.

The excessive and unlawful scope of the investigations

[89] In the appellant's submission, the scope of the investigation was ill-defined and it kept shifting. The statement of claim pleads that the failure to clearly define the nature of the matters being investigated was a breach of natural justice.

[90] The investigator's brief from the Committee in relation to the first complaint was as follows:

- a. meet and/or consult with the parties to the complaint and any other persons you consider necessary to progress your investigation;

- b. to prepare report(s) to the Committee on the complaint or any other matters related to or arising from the complaint or your investigation;
- c. to inspect and review any files or materials you consider to be relevant to your inquiry in the exercise of the powers granted to you under section 147 of the LCA;
- d. to inquire into the actions of [the appellant] in relation to the complaint and any other matters related to or arising from the complaint, including but not limited to:
 - i. the directions given to [the trust entity's] liaison officers regarding contacting claimants in the ... Inquiry ...;
 - ii. [the appellant's] role, if any, in instructing [the] liaison officers to contact claimants in the ... Inquiry, particularly clients of [Complainant S];
 - iii. the circumstances surrounding Ms [T] and Mr [W] contacting [Complainant S's] clients and any role [the appellant] may have had in that;
 - iv. the allegations made in the complaint that [the appellant] has essentially orchestrated and/or engaged in inappropriate contact with [Complainant S's] clients, either directly or through her staff; and
 - v. any other matters you consider to be relevant to the Standards Committee's consideration of the complaints.

[91] The appellant contends that para (d)iv is ambiguous, too open-ended and vague, making it difficult for her to respond and making it likely the investigation will become a quest for any further complaints that might be able to be investigated, rather than examining whether a specific breach of the rules has occurred. Indeed, she contends the investigator's interim report shows this has already happened.

[92] She further submits that in any event all the issues raised relate to alleged acts that are expressly permitted by r 10.2.4 of the Rules. And that being the case, the only reasonable decision available to the Committee under s 137 was to take no action.

[93] As mentioned, r 10.2 of the Rules states that a lawyer acting in a matter must not communicate directly with a person whom the lawyer knows is represented in that matter by another lawyer except as authorised by the rule. The rule then goes on to list in a series of sub-rules certain situations where communication with another lawyer's clients is permitted.

[94] One of those situations is r 10.2.4 which states that a lawyer may recommend to their client that the client make direct contact with another party.

[95] As we understand it, the argument is that at its highest all the appellant may have done is to recommend to her client (the trust entity) to approach the client(s) of Complainant S and therefore r 10.2.4 applies. It is also argued that the general prohibition is on direct communication and the appellant herself never directly communicated with any of Complainant S's clients.

[96] However, in our view that is far too simplistic and literal an interpretation of r 10.2 including 10.2.4. It cannot have been intended that a lawyer would be able to circumvent the general prohibition on communications with another practitioner's client for the purpose of poaching that client by the simple expedient of using a third entity. Rule 10.2.4 cannot sensibly be interpreted as sanctioning that. Whether in fact that is what has happened here is of course still to be investigated and determined but it is in our view a matter that should be investigated.

[97] Another error pleaded in the statement of claim is that in deciding to appoint an investigator, the Committee failed to take account of the express written consent given by Complainant S and her clients to the challenged communications. This point was not pursued in submissions at the appeal. On the basis of the information before us, the issue of consent and what was being consented to appears to be contestable. It is therefore appropriately the subject of further investigation by the Committee.

[98] As for the terms of reference being overly broad, in our view, that criticism overlooks the breadth of the mandate conferred on the Committee by s 146(1). That provision authorises the Committee to require an investigator once appointed to "inquire into the complaint or matter and *any matters relating to, or arising from, the complaint*" (emphasis added) and "to furnish ... a report on the complaint or matter *and any such related matters*" (emphasis added).

[99] We agree with the submission made by Mr Collins on behalf of the Law Society that it is important the breadth of the mandate not be read down. As he submitted, it exists for a good reason, to ensure the proper investigation of complaints

often in circumstances where the genuine issues of professional responsibility are not easily identified from the complaint itself. We would add that this may often be the case because complaints will commonly be made by lay people. A thorough investigation of complex complaints where the investigator is authorised to consider all the potential issues arising from the complaint is in the interests of all parties and is in accordance with the statutory purpose of consumer protection.

[100] It follows we agree with the Judge that the breadth of the investigation brief was unobjectionable given that this was an early information gathering exercise.

[101] We also note that to argue as the appellant does that it is in itself unfair for the Committee to investigate and come up with new facts also overlooks that this is the very nature of an investigation.

[102] Turning then to the scope of the investigation into the second and third complaints. It was delineated by the Committee in the following terms:

- (a) Complainant R's standing to complain on behalf of the statutory body and/or the constituent member of the same body;
- (b) the appellant's status within the statutory body and whether or not such status conflicted with her role as its lawyer;
- (c) the appellant's relationship with her spouse and his roles within the statutory body and a separate trust entity to that referred to at [36];
- (d) the appellant's relationship with the secretary of the statutory body;
- (e) the appellant's other roles including her role within a separate constituent member of the statutory body to that mentioned at [39];
- (f) the appellant's role with the appointor and the circumstances surrounding the appointment of her spouse as trustee for the trust entity referred to at [102(c)];

- (g) the appellant's conduct in establishing new constituent members of the statutory body;
- (h) the appellant's role as legal counsel in relation to a claim before a Tribunal;
- (i) the circumstances surrounding the dismissal of an alternative law firm instructed to act in relation to a Bill in 2014;
- (j) the circumstances surrounding the appellant's representation of the statutory body in relation to a second claim before the same Tribunal;
- (k) the appellant's conduct in relation to an urgent hearing convened in relation to a third claim before the same Tribunal;
- (l) whether or not the appellant failed to keep the statutory body informed about work being undertaken and provided adequate fee information and advice;
- (m) the allegation that the appellant had proceeded to act on matters for the statutory body without instructions;
- (n) the events of a meeting of the statutory body and the passage of resolutions regarding the means by which the statutory body gave instructions to its lawyers and further resolving that the appellant continued to represent it as its lawyer;
- (o) the allegation that the appellant harassed and bullied members of the statutory body to support her; and
- (p) any other matters the investigator considered relevant to the complaints.

[103] The appellant contends that the majority of the items — in particular items (c), (d), (e), (g), (i), (n) and (o) — are clearly matters that do not relate to her professional work and are therefore outside the jurisdiction of the respondents. She further submits that continued investigation of these matters is perverse given the “authoritative” information the Committee has already received including a letter approved by the full membership of the statutory body.

[104] We accept that the Judge wrongly noted that unsatisfactory conduct was not confined to the conduct of a lawyer in providing regulated services.⁴⁰ The definition of unsatisfactory conduct under s 12 makes it clear that it is so confined. However, we do not accept that the matters identified as requiring investigation include conduct that without the investigation can be conclusively stated to have no connection to the appellant’s professional work.

Unlawfully determining it had the power to inquire into the actions of the trust

[105] The statement of claim pleads under the heading “illegality” that in resolving to exercise its discretion to inquire into the first complaint, the Committee acted ultra vires by determining that it had the power to inquire into the actions of the trust’s representatives and employees. The pleading goes on to state that such persons are not regulated by the Act and their conduct is not controlled by the rules.

[106] However, this assertion is untenable in relation to a complaint which involves an allegation that although the communication with the client may have been issued by a trust employee, it was instigated and/or orchestrated by the appellant.

Errors concerning Complainant R and disclosure of material

[107] As mentioned, the appellant contends that Complainant R is misusing the professional disciplinary process in order to damage her as a political rival and that this and his lack of standing were mandatory relevant factors that the respondent failed to take into account when making its decision to inquire.

⁴⁰ High Court judgment, above n 1, at [59].

[108] The appellant also contends Complainant R has breached confidentiality and that the Committee has failed to take any steps in response. This alleged failure is not pleaded as a reviewable error in itself but permeates a number of the errors that are pleaded. It is relied upon as evidence of Complainant R's political motives and bad faith as well as evidence of the damage done to the appellant by the process. Confidentiality issues are also relevant to the appellant's contention that because of Complainant R's propensity for breaching confidentiality, it was a breach of natural justice in the conduct of the investigation for the Committee/investigator to refuse to allow her to provide documentation on the basis it would be withheld from Complainant R.

[109] In her affidavit evidence, the appellant says that on 18 April 2016 Complainant R divulged on public radio the details of his complaint and details regarding progress as to the appointment of an investigator. She also claims that at some unknown time prior to 17 May 2018, he must have provided a television reporter with copies of the Committee's decision in relation to his complaints. There is no evidence the information was ever used by the reporter other than to approach the appellant. The appellant further contends that in August 2016, Complainant R filed an affidavit in the Tribunal which disclosed "gratuitous detail[s]" about his complaint. According to information given to the appellant by others, Complainant R has also been heard at public meetings to say there is no smoke without fire.

[110] Under the Act, Standards Committees must consider an investigator's report in private and not disclose it to anyone other than the person to whom the report relates, that person's legal representative and the complainant (save for the exceptions set out in s 148(2), and thereby s 150, of the Act).⁴¹ Standards Committees must also hold their hearings in private.⁴² Under s 142 of the Act and reg 31 of the Lawyers and Conveyancers Act (Lawyers Complaints Service and Standards Committees) Regulations 2008, the decisions of Standards Committees must remain confidential unless the Standard Committee orders publication. But even then, as already

⁴¹ Sections 148 and 149.

⁴² *New Zealand Law Society v B*, above n 6, at [45].

mentioned, it must not publish the name of the lawyer complained against unless the decision is to censure or reprimand that person.⁴³

[111] The position of the respondents is that in light of these provisions they regard information about the investigation of complaints as being confidential and expect complainants and practitioners alike to observe those confidences. The Lawyers Complaints Services did therefore write to Complainant R on 19 May 2016 in light of the concerns raised by the appellant. The letter drew Complainant R's attention to reg 31, something the Lawyers Complaints Service had already done on a previous occasion in March 2016.

[112] However, while concerned about confidentiality, the Law Society also correctly in our view takes the position that ultimately they have no statutory power to restrain a complainant from speaking about their complaint and that the possibility of a complainant doing so is not a legitimate reason for the lawyer to refuse to co-operate in the investigative process.

[113] The Law Society further points out that while a complainant's standing and motives are highly relevant, it is also the case that a complaint inspired by a collateral motive or mixed motives may nevertheless disclose genuine professional issues.

[114] We consider those are reasonable and proper positions to take. It was not in our view an error for the Committee to consider standing and motive were matters along with the merits of the complaint to be addressed after the initial decision to inquire. Indeed, as noted by Thomas J, the fact that political and professional rivalry could be seen as a motive for the complaints makes the validity of them more difficult to establish and underscores the need for an inquiry.⁴⁴

[115] As regards the refusal to allow the appellant to provide the Committee with documents on the basis they would be withheld from Complainant R, the first respondent says the rules of natural justice apply to him as they do to the appellant.

⁴³ At [51].

⁴⁴ High Court judgment, above n 1, at [104].

[116] The Committee does however have the power under s 149(2) of the Act to refuse to give a complainant a copy of an investigator's report or withhold some of the information in it if there is "good reason" to do so. In our view, if, as claimed, Complainant R has persistently breached confidentiality, that would qualify as a good reason to withhold any report from him or to provide it on condition he sign an unqualified undertaking. The latter was of course the approach taken by Dobson J.⁴⁵

[117] The Committee could also require an undertaking of confidentiality from Complainant R before forwarding him any documentation provided by the appellant.

[118] In fairness to Complainant R, we would observe that on the evidence before us, the extent to which he has breached confidentiality is unclear. The statement of claim asserts that he has "repeatedly" breached confidentiality. There is however no direct evidence that he has breached confidentiality since the second letter from the Lawyers Complaints Service in May 2016. The affidavit filed in the Tribunal in August 2016 mentioned the internal conflict in the statutory body but made only very limited reference to the fact of a complaint.

[119] Finally we note the statement of claim pleads that in making its decision to inquire, the Committee erred by failing to take into account a mandatory relevant factor that Complainant R had other adequate remedies available to him within the internal procedures of the statutory body and that those remedies would in the circumstances have been reasonable to exercise. We know of no authority that would support such a proposition and none was cited. There is nothing to preclude a complainant from making a complaint against a legal practitioner under the Act because of the existence of an alternative means of redress.

Appointment of one investigator to investigate all three complaints

[120] The statement of claim pleads that the appointment of the same investigator to investigate all three complaints breached the appellant's rights to natural justice because of cross-contamination.

⁴⁵ See above at [5].

[121] This pleading has its genesis in an incident that occurred in August 2016. The investigator sent each of the two complainants a letter notifying them of his appointment. At the end of each letter there was a list of the people cc'd. By mistake, the letter to Complainant S inadvertently listed Complainant R as being cc'd. There is no evidence a copy of the letter itself was actually sent to Complainant R.

[122] The statement of claim describes the mistake as causing information to be shared between complainants in breach of confidentiality and also pleads as a particular of natural justice that the investigator failed to take steps to eliminate the possibility of further cross-contamination.

[123] The error was obviously regrettable. It meant that Complainant S knew of the existence of Complainant R but not why he was listed as being cc'd.

[124] In response to the concerns raised by the appellant, the investigator initially thought the mistake had only occurred in the letter sent to the appellant but subsequently accepted it was also in the letter sent to Complainant S. However, he advised in correspondence later in 2016 that he did not see any need for the matter to be re-assigned to another investigator. He stated the letter in question was the only generic letter he would be writing, and that he was dealing with matters separately and through bespoke correspondence. There was no need for any further generic letters to be despatched. He was now well down the path of his investigation and sought a meeting with the appellant. He had also earlier assured her that everything was double checked.

[125] The meeting did not happen. Instead, the appellant persisted with her challenge to the investigator. The Committee resolved that the investigator was able to continue as investigator but in February 2017 the appellant sought a review of that decision from the LCRO.

[126] To claim these events amounted to a breach of natural justice warranting judicial review is in our view a significant overreach. Nor in our view does the possibility of cross-contamination render it unfair or unreasonable to decline to appoint separate investigators. What was unreasonable was for the appellant to insist

on the appointment of another investigator as a condition precedent to continued participation in the process.

[127] The statement of claim goes on to say the dual appointment of the investigator has “in all of the circumstances” failed to ensure that the complaints were dealt with by the Committee independently and uninfluenced by one another and has given the impression that the complaints are not to be dealt with independently and uninfluenced by one another.

[128] In our assessment, this pleading is a bare assertion and on the basis of the material before us is without foundation.

Errors relating to the conduct of the investigation

[129] Once the LCRO had made its determination in December 2017, the Law Society sought to re-activate the process and advised the appellant that the Lawyers Complaints Service would now instruct the investigator to resume his investigation. In response by letter dated 16 April 2018, Mr Geiringer reiterated the appellant’s concerns about the process, resolution of those concerns being a condition precedent to the appellant engaging in the process. Failing resolution, judicial review proceedings would issue.

[130] Several of the matters raised in the letter are pleaded in the statement of claim as breaches of natural justice warranting judicial review. Some we have already addressed. Others relate to the conduct of the investigation.

[131] As regards the latter, first, it is contended that in breach of the rules of natural justice, the respondents refused to provide the appellant with the material the investigator had gathered in his investigation so that she could know what was being said against her before responding. In written submissions, Mr Geiringer stated that the Committee refused the appellant’s request saying the information was confidential.

[132] We have however examined the relevant letter which is dated 6 August 2018. What the Lawyer Complaints Service actually said was as follows:

The Standards Committee has no obligation to provide to [the appellant] copies of interview notes or other investigative material in the possession of [the investigator]. Ultimately, the Standards Committee does have an obligation to disclose any information on which it intends to rely at a hearing, if that is how it intends to proceed. It also has an obligation to disclose a report by an investigator, under s 149 of the Act, but that arises only once a report has been completed and submitted to the Committee. It is for the Standards Committee to determine whether, as a matter of natural justice, any material emerging during the investigation should be disclosed. If appropriate, the material will be disclosed once [the investigator's] substantive report is provided to you for comment.

[133] In our view, that response in the context of the statutory regime was appropriate and did not amount to error. We note too as already mentioned that the interim report which was provided to the appellant contained a summary of the information obtained by the investigator.

[134] The statement of claim also pleads it was a breach of natural justice for the investigator to fail to put the statements of the witnesses or the substance of them to the appellant for a response.

[135] However, this criticism has a rather hollow ring to it given that the appellant had made it quite clear she would not participate in the investigation and had declined to meet with the investigator.

[136] There is of course still opportunity for her to respond to the statements.

Errors relating to the contents of the investigator's interim report

[137] The appellant takes issue with several aspects of the interim report.

[138] The statement of claim asserts under the heading of "illegality" that the investigator has acted outside the terms of his appointment and therefore in excess of his statutory powers by: (a) interviewing irrelevant witnesses who had no knowledge or offered no evidence about the matters the investigator was appointed to

inquire into; and (b) by drawing preliminary findings about the appellant in relation to matters outside the terms of his appointment.

[139] The statement of claim goes on to assert that the effect of this conduct has been:

to prejudice the fairness of the inquiry into the first complaint against the [appellant] and the [Committee's] view of the [appellant] to such a degree that the [appellant] cannot now receive a fair hearing.

[140] The investigator's terms of reference authorised him to meet and/or consult with "any other persons" he considered necessary to progress his investigation. We reject as untenable the suggestion that because an investigator interviews a person he thinks may have relevant information but who turns out to have none that means the investigator has somehow acted unlawfully. What happened is part and parcel of the nature of an investigation.

[141] The statement of claim does not specify which of the investigator's preliminary findings relate to matters outside the terms of his appointment and we are unable to discern any. It is true the terms of reference did not specifically mention r 10.1 (obligation to treat other lawyers with respect and courtesy) but it did authorise him to inquire into any other matters he considered relevant to the Committee's consideration of the complaints. It was expressly not limited to those the Committee had specified. Just as interviewing witnesses who turn out not to have relevant information is inherent in the nature of an investigation so too in our view is the phenomenon of new matters coming to light. What is important is that the appellant gets an opportunity to respond to all matters which she undoubtedly will.

[142] Another criticism of the report is that it made preliminary findings critical of the appellant based solely on discussion with witnesses spoken to by the investigator and without obtaining signed and written statements from them. This is pleaded in the statement of claim as a breach of natural justice.

[143] However, the interim report itself discloses that signed statements have not been obtained. That is identified as a further step. The report does provide relevant details of what each of the people interviewed said to the investigator and the basis of

the preliminary findings. The failure to obtain signed statements before providing an interim report does not in our view amount to a breach of natural justice.

[144] Finally, the suggestion that the interim report has prejudiced the appellant's ability to receive a fair hearing is also unsustainable. On its face the interim report is preliminary and its key finding was simply that further investigation was warranted. Further, there is no reason to assume that the Committee will rubber stamp any report including the final reports once they are to hand.

Unlawfully directing the appellant to provide information

[145] The statement of claim says the investigator's direction served on the appellant on 5 December 2018 required her to produce documents and/or information outside the terms of his appointment. He therefore exceeded his statutory powers and acted unlawfully.

[146] The notice in question related to the complaints made by Complainant R.

[147] Neither the statement of claim nor the appellant's affidavit evidence provide any particulars of why the documents listed in the notice are outside the scope of the terms of appointment. Certainly, the investigator is seeking a large number of documents but on the face of them, they do appear to us to be relevant to the issues raised by the complaints.

[148] In light of that and the very wide statutory powers of an investigator to require production of documents under s 147 of the Act, we reject the claim of illegality.

Conclusion on alleged errors

[149] At the appellant's request, we have addressed the alleged errors in greater detail than Thomas J but the analysis leads to the same outcome.

[150] For all the reasons we have traversed above, we are not persuaded that there have been serious breaches of procedural propriety, flawed decisions to investigate nor an unfair investigation procedure as claimed by the appellant. Before a court would

be justified in intervening, there would need to be demonstrable error and, in our view, that is simply not the case here. And that is so whether the alleged errors are viewed individually or collectively.

[151] It follows it is not necessary for us to address the issue of whether the alleged procedural errors have already adversely affected the appellant's rights or whether the alleged errors are or are not capable of being cured at a later stage.

[152] We appreciate that involvement in a disciplinary process can be stressful and intrusive for a practitioner as well as time consuming and costly. But as Thomas J noted that is inherent in any disciplinary process. Further, some of the cost and time in this case could have been avoided had the appellant not adopted what can fairly be described as an excessively legalistic approach that is out of keeping with the purposes of the legislation.

Final comments

[153] We deplore the inordinate delay that has occurred in this case. The delay is contrary to the design and purpose of the legislative regime. As Mr Collins put it, it is a central value of the regime that there be an accessible complaints system and that complaints are investigated promptly.

[154] We therefore echo the sentiment expressed by the Judge that it is in the interests of the complainants, the appellant and the public that these complaints be investigated and decisions made in an informed manner with minimal further delay.

[155] For the avoidance of any doubt, we record that the effect of this judgment is that the orders made by Dobson J lapse.⁴⁶

Outcome

[156] The appeal is dismissed.

⁴⁶ See above at [5].

[157] There is no reason why costs should not follow the event. Accordingly we order that the appellant pay the respondents one set of costs for a standard appeal on a band A basis with usual disbursements.

Solicitors:

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