THE NAME OF THE COMPLAINANT AND ANY IDENTIFYING DETAILS ARE SUPPRESSED. AS WELL AS THOSE OF OTHER LAWYERS INVOLVED AND THE IDENTITY OF THE PERSON SAID TO HAVE ACCESSED THE COMPUTER AND THE PLACE WHERE THAT OCCURED. THESE ORDERS MADE PURSUANT TO S 240 LAWYERS AND CONVEYANCERS ACT 2006.

NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2024] NZLCDT 34

LCDT 012/24

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**WELLINGTON STANDARDS COMMITTEE 2** Applicant
AND	**CHRISTOPHER MEDLICOTT** Practitioner

CHAIR

Ms D Clarkson

MEMBERS OF TRIBUNAL

Mr I Hunt

Mr H Matthews

Ms M Noble

Ms I Taylor

HEARING 16 September 2024

HELD AT Christchurch District Court

DATE OF DECISION 23 October 2024

COUNSEL

Mr C White for the Standards Committee

Mr A Ross KC and Ms C Fu for the Respondent Practitioner

RESERVED REASONS OF THE TRIBUNAL FOR ORDERS MADE ON 16 SEPTEMBER 2024

Mea culpa

[1] A lawyer who accepts his or her professional failing as soon as it is pointed out and takes responsibility for making amends, is likely to find favour in that response from professional disciplinary bodies.

[2] Without minimising the seriousness of the errors made,[1] Mr Medlicott is one such practitioner.

[3] The factual background was agreed before the hearing, which was then restricted to penalty considerations. We made orders following submissions and reserved our reasons for the orders. This decision provides those reasons.

What comprised negligence?

[4] The complainant, Ms A, first contacted Mr Medlicott in 2015 seeking the discharge of a protection order which had been made against her in favour of her ex-husband. There were difficulties in legal aid funding and in the timing of the application, and it did not proceed.

[5] Then in late 2016, Ms A again sought assistance from the practitioner concerning a possible breach of privacy claim. From 2015, Ms A and Mr Medlicott had remained in contact and gradually developed a friendship as well as a professional relationship. In late 2016, not long after the privacy claim was raised, Mr Medlicott became concerned about his ability to act in a detached and professional manner and

[1] Which the lawyer accepted as negligence under s 241(c) and unsatisfactory conduct under s 12(b) and (c) of the Lawyers and Conveyancers Act 2006 (Act).

suggested that a barrister be engaged to act for Ms A. Mr D was instructed, and Mr Medlicott remained as instructing solicitor.

[6] Between January and April 2017, Ms A and Mr Medlicott were in an intimate personal relationship. From May 2017, the intimate relationship between them concluded[2], but Mr Medlicott remained solicitor on the record for the privacy claim and continued to advise Ms A in respect of her Will.

[7] In June 2017, Ms A threatened Mr Medlicott and others with a complaint to the Law Society because of perceived delays.

[8] Mr Ross took issue with the Committee's description of the relationship having deteriorated. Mr Medlicott later explained that Ms A could behave in an emotional and at times erratic manner and that he did not take such threats seriously but rather sought to remain as a support for her. He was concerned that other practitioners might not take on the role of instructing solicitor which was being undertaken on legal aid. Between May 2017 and March 2019, Mr Medlicott continued to work with Mr D, the barrister, and Ms A in respect of the privacy complaint.

[9] In September 2019, Mr Medlicott became aware that his computer had been accessed in a way that might have disclosed communications between himself and Ms A.

[10] He considered that Ms A was entitled to be informed of this and did inform her.

[11] Unsurprisingly, Ms A was upset by the breach of confidentiality and considered that she had a claim against Mr Medlicott.

[12] On 11 October 2019, a meeting was held between Ms A, Mr D and Mr Medlicott to discuss this issue and Ms A's representation in the future. In November 2019, another practitioner was to take over the role of instructing solicitor.

[13] Further, Ms A instructed another counsel to assist her with her claim against Mr Medlicott. Mr Medlicott advanced a proposal for settling the claim against him. The

[2] Although judging by the number of emails sent by Ms A there was still some intensity, at least on her part.

essence of this was that he would provide a section of land to Ms A, as well as a small studio to go on it. The land in question required subdivision and it was expected that that might take a few years.

[14] Ms A's counsel responded that he would draft a settlement deed reflecting the terms offered.

[15] Considering the matter settled, Mr Medlicott then unwisely took up the role of instructing solicitor again from late January 2020 until the privacy matter was resolved in April 2020. The settlement agreement between them was not in fact signed until July 2020. It included a sunset clause of 36 months after the date of execution.

[16] Given that the agreement between Ms A and Mr Medlicott required implementation, he has subsequently accepted that there was a conflict of interest between Ms A and himself. It was this admitted conflict which comprised the negligence later accepted by Mr Medlicott.

[17] Despite these difficulties, Ms A felt able to continue to approach Mr Medlicott for financial assistance and between February 2020 and October 2021, Mr Medlicott provided Ms A with $55,000 of financial assistance including paying her rent and many of her bills. In addition, he did not charge for any of his legal services over the five-year period in question.

What was unsatisfactory conduct?

[18] The admitted unsatisfactory conduct arose from Mr Medlicott's failure to keep his computer records sufficiently well protected from unauthorised users. This breached s 12(b), it being unacceptable conduct on the part of a lawyer providing regulated services.

[19] He accepts that this failure caused considerable distress to Ms A.

Penalty considerations

[20] We began by considering the level of seriousness of the admitted conduct.

[21] The Standards Committee submitted that Mr Medlicott's conduct could be characterised as gross negligence, or at the higher end of the scale, highlighting the duration of the conduct, the range of issues that arose during the relationship and the opportunities Mr Medlicott had to terminate his retainer with Ms A.

[22] However, we accept the submission of Mr Ross that the level of negligence was neither high level or gross negligence and that the conduct must be "…viewed in light of the context in which the errors were made".

[23] While the Tribunal is always concerned by cases where a conflict of interest is involved, we also accept the submission that the "…errors were caused in part by [Mr Medlicott's] sense of duty towards [Ms A], and a wish to make good any harm he may have caused her". While it is correct that the duration of the conduct and the opportunities that Mr Medlicott did have for terminating the retainer must be weighed on one hand, it is also clear that Ms A was deriving considerable benefit from the ongoing support received from Mr Medlicott. We also give him credit for instructing Mr D at a relatively early stage when the practitioner considered that his judgement might be less than detached.

[24] Ms A did not receive any lower quality of advice or representation and did not have to pay legal fees to Mr Medlicott and therefore suffered no financial loss[3].

[25] We would fix the level of seriousness of Mr Medlicott's negligence at the moderate to lower end of the scale.

[26] As to the unsatisfactory conduct, the breach of confidence was sloppy but unintentional. We consider that the responsibility for the breach, having regard to what we are satisfied were the circumstances in which it occurred, lay more with the other party.[4] We also take into account that it was Mr Medlicott himself who brought the breach of privacy to the attention of Ms A, which was commendable.

[3] In fact no complaint was made by Ms A about the quality of work carried out for her, but rather she complained about the length of time it was taking to implement the settlement agreement.
[4] That is the person who accessed the computer while Mr Medlicott was in transit to his work.

Aggravating features

[27] Turning to whether there are aggravating features in this matter, it was submitted by Mr White that the duration of the negligence and the number of opportunities to sever the relationship were aggravating factors.

[28] On the other hand, Mr Ross submitted that Mr Medlicott was "labouring under an erroneous belief that the necessary independence was achieved by instructing Mr D".

[29] Furthermore, the Standards Committee do accept that Mr Medlicott genuinely thought that if he did not act for Ms A, that probably no other lawyer would take her on.

[30] Mr White also conceded that there was no financial motivation in the conflict of interest.

[31] Given that we see the negligence as misguided and lacking clear awareness of his professional responsibilities, we do not consider the matters raised to be aggravating features.

[32] As pointed out by Mr Ross, the principal error was the "ill-judged brief relationship with a client and that all other errors led from that".

Mitigating features

[33] We assess Mr Medlicott as having a very high level of insight and remorse. He has gone beyond what might be expected to make amends: he has provided five to six years of free legal advice; he has provided a section with a small dwelling on it as settlement for the breach of privacy; and he has provided further financial support of $55,000 to the complainant.

[34] The steps Mr Medlicott did take to distance himself from his client by instructing a barrister ought also to give him some credit, despite the fact that they did not go far enough.

[35] His increased insight is demonstrated by his early acceptance of responsibility and full engagement with the disciplinary process.

[36] Not at any stage has Mr Medlicott attempted to shift responsibility or blame to the complainant but has fully accepted the responsibilities as his. This is commendable, particularly given the voluminous correspondence in which Ms A engaged, which was at times vitriolic towards Mr Medlicott and others.

[37] The practitioner's approach is further reinforced by his electing not to seek suppression of his name and fully informing his colleagues of the circumstances faced by him before asking for references from them.

[38] Those references can accurately be described as "glowing" and do him great credit. While the Tribunal does not always give great weight to personal references, these particular ones come from colleagues who are both senior in the profession and of long-standing knowledge of Mr Medlicott and his approach to his clients.

[39] Mr Medlicott practises in the very difficult area of family law and has done so without previous disciplinary infractions for some 37 years. For that, he also receives considerable credit.

[40] A further mitigating feature is that Mr Medlicott is now receiving regular supervision to address any personal matters which may have led to the errors of judgement under consideration.

Similar Cases

[41] In terms of similar cases, Mr White referred us to the *Bailey* decision.[5] Mr White conceded that that case was more serious than the present. We would regard *Bailey* as demonstrating a much more serious breach of the conflict rules. In that case, the practitioner acted against her former client in litigation. In the present matter Mr Medlicott has done nothing to endanger his client (although she should have been his <u>former</u> client).

[42] Ms Bailey was not suspended but a $15,000 fine was imposed.

[5] *Central Standards Committee 3 v Bailey* [2023] NZLCDT 53.

[43] Mr White further referred us to the *van Noort* matter.[6] In that matter, the practitioner had entered into a lease agreement with clients in order to embark on a wine growing enterprise. There were clearly financial motivations in that matter which are absent in the present matter. Despite that, a fine of $5,000 was imposed for Mr van Noort's negligence as well as a censure.

[44] On the basis of those cases, Mr While submitted that a fine of $10,000 would be appropriate in the present matter.

Penalty

[45] We declined to impose a fine, having regard to the very considerable financial amends already made to the complainant, voluntarily by the practitioner. This has been a very costly exercise for him. We certainly do not consider that there is any risk of reoffending and that a fine would not in any way send a stronger message or be required for personal or general deterrence.

[46] We accepted the submission of Mr Ross that we ought to make an order under s 156(1)(a) that the settlement deed of 28 July 2020 be declared to be part of the final determination of the complaint. This confirms that the financial responsibilities of the practitioner to Ms A are at an end once that Deed of Settlement has been implemented.

[47] We accepted that Mr Medlicott ought to make a considerable contribution towards the Standards Committee costs but we did not consider that 100 per cent would be appropriate. This is, firstly, because there was a large measure of agreement and early acceptance of responsibility, secondly, that the charges were reduced from those initially pleaded and thirdly, that one charge was withdrawn. The Committee's costs were $29,393 and we ordered that the practitioner contribute $15,000 towards that. We made the usual orders under s 257 and did consider that the practitioner ought to repay 100 per cent of the Tribunal costs.

[48] Finally, we imposed a censure in the terms attached to this decision as Appendix A.

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[6] *Auckland Standards Committee 5 v van Noort* [2017] NZLCDT 21.

Orders

[49] The orders previously set out in the decision of 16 September 2024 are:

1. Censure to be delivered in writing. See Appendix A. (pursuant s 156(1)(b) of the Act)

2. The Settlement Deed of 28th July 2020 is declared to be part of the final determination of the complaint. (pursuant s 156(1)(a) of the Act)

3. The practitioner is to pay a contribution to the costs of the Standards Committee in the sum of $15,000. (pursuant s 249 of the Act)

4. The s 257 costs of the Tribunal are to be paid by the New Zealand Law Society. These are now certified in the sum of $7,153. (pursuant s 257 of the Act)

5. The practitioner is to repay in full to the New Zealand Law Society, the s 257 costs. These are now certified in the sum of $7,153. (pursuant s 249 of the Act)

Suppression

[50] There was a suppression order made at the outset of the hearing in relation to the complainant's name and any identifying details as well as those of the other lawyers involved. At the conclusion of the hearing, we extended that order to [redacted], the person who accessed the computer and the place where this occurred. These orders are made pursuant to s 240 of the Act.

DATED at AUCKLAND this 23rd day of October 2024

DF Clarkson
Chairperson

Appendix A

CENSURE

Mr Medlicott, from the endorsements provided to the Tribunal from respected members of the profession, it is clear that for many years you have set and adhered to high standards for yourself.

That makes it disappointing that you allowed yourself to fall into error, even if you thought at the time you were being helpful to your client. Your close relationship with your client blinded you to the conflicts which arose. Although you took some steps to mitigate this by involving outside counsel, you did not distance yourself sufficiently, and thereby fell into the errors which brought you before your professional disciplinary body for the first time.

This censure will remind you that you need to be more mindful in future.