

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Cavanagh* [2025] QCAT 290

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)

v

MITCHELL CAVANAGH
(respondent)

APPLICATION NO: OCR 219-24

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 19 August 2025

HEARING DATE: 28 July 2025 (on the papers)

HEARD AT: Brisbane

DECISION OF: Justice Williams

Assisted by:

Ms Petrina Macpherson, practitioner panel member

Mr Keith Revell, lay panel member

- ORDERS:
- 1. The Respondent's conduct identified in respect of Charge 1 in the discipline application is proved and is found to constitute professional misconduct.**
 - 2. The Respondent is publicly reprimanded.**
 - 3. The Respondent pay a pecuniary penalty in the sum of \$2,500.**
 - 4. The Respondent pay the LSC's costs of and incidental to the disciplinary application, to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the Respondent was a principal at a law practice – where the Respondent failed to honour an undertaking given to the Legal Services Commissioner (LSC) – where the giving of the undertaking was a key factor in the LSC's decision to dismiss a complaint made against the

Respondent – where the characterisation of the conduct and the appropriate sanction were agreed between the parties – whether the charge was proved – whether the conduct was properly categorised as professional misconduct

Australian Solicitors Conduct Rules 2012, r 6.1

Legal Profession Act 2007 (Qld) s 418, s 419, s 420, s 452, s 456, s 462

Adamson v Queensland Law Society Incorporated (1990) 1 Qd R 498, cited

Council of the Law Society of New South Wales v Fisher [2021] NSWCATOD 73, cited

Legal Services Commissioner v Bradshaw [2009] QCA 126, cited

Legal Services Commissioner v Bui [2018] QCAT 424, cited

Legal Services Commissioner v Challen [2019] QCAT 273, cited

Legal Services Commissioner v Cruise [2019] QCAT 182, cited

Legal Services Commissioner v Laylee [2016] QCAT 237, cited

Legal Services Commissioner v Li [2024] QCAT 444, cited

Legal Services Commissioner v Richards [2024] QCAT 355, considered

Legal Services Commissioner v Wrightway Legal [2015] QCAT 174, cited

APPEARANCES & REPRESENTATION:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

Applicant:

F L Wood, instructed by the Legal Services Commissioner

Respondent:

Self-represented

REASONS FOR DECISION

- [1] This is a discipline application by the Legal Services Commissioner (**LSC**) under s 452 of the *Legal Profession Act 2007* (Qld) (**LP Act**) for disciplinary orders pursuant to s 456 of the LP Act. The discipline application raises a single charge against the Respondent, Mitchell Cavanagh (**Respondent**) of failing to honour an undertaking he gave to the LSC.
- [2] The LSC and the Respondent have agreed the relevant facts in respect of the discipline application and the matter proceeded on the basis of a statement of agreed facts dated 3 March 2025 (**SOAF**). Further, the LSC and the Respondent agreed the characterisation of the conduct, the appropriate sanction, and costs.
- [3] In these circumstances, the Respondent did not file any submissions in addition to the submissions filed on behalf of the LSC.

- [4] The LSC's submission on sanction, which is agreed to by the Respondent, is that the conduct should be characterised as professional misconduct and the Tribunal should order that the Respondent be publicly reprimanded and that the Respondent pay a penalty of \$2,500.00.
- [5] Further, the LSC and the Respondent agreed that the disciplinary application should be dealt with on the papers and consequently there was no hearing.
- [6] Whilst the parties have agreed a position, the Tribunal needs to be satisfied that it is appropriate to exercise the Tribunal's powers and to make the orders sought.
- [7] There are three issues to be determined by the Tribunal:
 - (a) Is the charge proved and is the Respondent's conduct in the charge properly characterised as professional misconduct?
 - (b) What are the appropriate orders pursuant to s 456 of the LP Act?
 - (c) What is the appropriate costs order?
- [8] Before dealing with these issues in turn, it is appropriate to consider the relevant statutory provisions.

Statutory provisions relevant to characterisation of unsatisfactory professional conduct or professional misconduct

- [9] In determining the discipline application:
 - (a) Pursuant to s 656C(1) of the LP Act, the Tribunal must be satisfied of the allegations against the Respondent on the balance of probabilities.
 - (b) Pursuant to s 656C(2) of the LP Act, satisfaction as to whether proof has been established depends upon the gravity of the allegations in question and the consequences for the Respondent.
- [10] Sections 418, 419 and 420 of the LP Act state as follows:

“418 Meaning of *unsatisfactory professional conduct*

Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

419 Meaning of *professional misconduct*

- (1) ***Professional misconduct*** includes—
 - (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and
 - (b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

- (2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

420 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

- (1) The following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

- (a) conduct consisting of a contravention of a relevant law, whether the conduct happened before or after the commencement of this section;

Note—

Under the *Acts Interpretation Act 1954*, section 7, and the *Statutory Instruments Act 1992*, section 7, a contravention in relation to this Act would include a contravention of a regulation or legal profession rules and a contravention in relation to a previous Act would include a contravention of a legal profession rule under the *Legal Profession Act 2004*.

- (b) charging of excessive legal costs in connection with the practice of law;
- (c) conduct for which there is a conviction for—
- (i) a serious offence; or
 - (ii) a tax offence; or
 - (iii) an offence involving dishonesty;
- (d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;
- (e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;
- (f) conduct of an Australian legal practitioner in failing to comply with an order of a disciplinary body made under this Act or an order of a corresponding disciplinary body made under a corresponding law, including a failure to pay wholly or partly a fine imposed under this Act or a corresponding law;
- (g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.
- (2) Also, conduct that happened before the commencement of this subsection that, at the time it happened, consisted of a contravention of a relevant law or a corresponding law is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (3) This section does not limit section 418 or 419.”

[11] In determining whether the relevant conduct amounts to unsatisfactory professional conduct or professional misconduct, the following authorities considering these general principles are of some assistance.

[12] In *Legal Services Commissioner v Laylee* [2016] QCAT 237, the Tribunal stated the test required to establish unsatisfactory professional conduct as follows:

“The test required to determine whether conduct is unsatisfactory professional conduct is such that the relevant ‘falling short’ does not embrace all cases of error but must be sufficiently substantial. There must be an appreciable departure from the standard for the conduct to be unsatisfactory professional conduct. An isolated instance, not involving unethical conduct, and more in the nature of conduct which might give rise to an assertion of negligence, is less likely to amount to unsatisfactory professional conduct. Serious, or repeated instances, are more likely to amount to unsatisfactory professional conduct or professional misconduct.”¹

[13] In *Legal Services Commissioner v Bradshaw* [2009] QCA 126, McMurdo P considered what must be demonstrated by the applicant to establish whether conduct falls within the statutory definition of unsatisfactory professional conduct and stated as follows:

“In establishing whether conduct is unsatisfactory professional conduct, the commissioner is not required to prove what a member of the public expects of a reasonably competent Australian legal practitioner. This is not something easily capable of direct proof. But in any case, s 418 refers to what ‘a member of the public is entitled to expect of a reasonably competent Australian legal practitioner’. This is a standard to be determined by the tribunal after considering all the relevant circumstances pertaining in each case.”²

[14] The test for professional misconduct was described by Thomas J in *Adamson v Queensland Law Society Incorporated* (1990) 1 Qd R 498 as follows:

“The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.”³

[15] It is also relevant that, pursuant to s 420(1)(a) of the LP Act, conduct consisting of a contravention of a relevant law,⁴ which includes the *Australian Solicitor Conduct Rules 2012 (the ASCR)*,⁵ is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

[16] Rule 6.1 of the ASCR states as follows:

“Undertakings

6.1 A solicitor who has given an undertaking in the course of legal practice must honour that undertaking and ensure the timely and

¹ Thomas J at [43].

² At [54].

³ At 507.

⁴ The term “relevant law” is defined in Schedule 2 of the LP Act to mean “this Act” and see also s 1 of the LP Act.

⁵ Section 420(1)(a) of the LP Act includes a note that a contravention in relation to the LP Act includes a contravention of a regulation or legal profession rules.

effective performance of the undertaking, unless released by the recipient or by a court of competent jurisdiction.”

[17] Accordingly, non-compliance with an undertaking contravening Rule 6.1 of the ASCR is capable of constituting unsatisfactory professional conduct or professional misconduct.

[18] Having established the test to apply, the relevant factual circumstances can be considered.

Is the Respondent’s conduct proved and properly characterised as professional misconduct?

[19] The single charge in the discipline application is as follows:

“Between 27 October 2023 and 19 March 2024, the Respondent failed to honour the terms of an undertaking given to the Applicant on 27 October 2022.”

[20] The discipline application sets out the particulars relied upon by the LSC in respect of the charge. The facts set out in the particulars are reflected in the facts set out in the SOAF. The Tribunal accepts and proceeds on the basis of the admissions contained in the SOAF.

[21] The relevant facts include:

- (a) Between 27 October 2023 and 19 March 2024, the Respondent failed to honour the terms of an undertaking given to the LSC on 27 October 2022.
- (b) The Respondent was:
 - (i) an Australian lawyer within the meaning of s 5(1) of the LP Act;
 - (ii) a local legal practitioner pursuant to s 6(2) of the LP Act;
 - (iii) admitted to the roll of solicitors in Queensland on 2 February 1999; and
 - (iv) the holder of an unrestricted principal practicing certificate and was subject to the ASCR.
- (c) The Respondent was a principal at the law practice Cavanagh Gillies Lawyers between 30 October 2018 and 3 June 2022 and then an employed solicitor at Legal Aid Queensland from on or about February 2022.
- (d) On or about 27 October 2021, the Legal Services Commission (**Commission**) commenced an investigation in respect of the Respondent following receipt of a complaint. The complaint arose out of the Respondent representing a client in *Domestic and Family Violence Protection Act 2012* (Qld) proceedings (the **Complaint**).
- (e) By letter dated 13 May 2022, the LSC provided the Respondent with an opportunity to make submissions for the purposes of the LSC’s decision to either dismiss the investigation or to commence disciplinary proceedings under the LP Act.
- (f) By letter dated 30 May 2022, the Respondent provided a submission to the LSC in respect of the issues the subject of the complaint and offered to provide an undertaking.

- (g) By letter dated 19 October 2022, the LSC advised the Respondent that the LSC was prepared to accept an undertaking from the Respondent.
 - (h) On 27 October 2022, the Respondent provided a personal undertaking to the LSC on the following terms:
 - (i) That within 12 months of the date of the undertaking he would complete the QLS Ethics Referral Course.
 - (ii) He would provide the LSC with documentary evidence of the completion of the Queensland Law Society (QLS) Ethics Referral Course within seven days of completion.
 - (iii) Within 12 months of the date of the undertaking, he would complete the Safe and Equal Family Violence Foundation online course.
 - (iv) He would provide the LSC with documentary evidence of the completion of the Safe and Equal Family Violence Foundation online course within seven days of completion.
 - (i) Further, the Respondent expressly stated that in giving the undertaking he:
 - (i) “[understood his] obligations pursuant to Rule 6 of the [ASCR]”.
 - (ii) “Unless [he was] released from [the] undertaking in writing by the [LSC], [he understood] that a failure to keep [the] undertaking may amount to professional misconduct”.
 - (j) On 9 December 2022, the LSC dismissed the Complaint pursuant to s 448(1)(b) of the LP Act based on public interest considerations, including the giving of the undertaking. It was understood that the giving of the undertaking was a key factor in the LSC’s consideration of the public interest issues.
 - (k) In all the circumstances, the undertaking required the completion of the courses by no later than 27 October 2023.
 - (l) The Respondent failed to complete conditions (i) to (iv) of the undertaking within the relevant time frames.
 - (m) On 5 December 2023, the Commission wrote to the Respondent in respect of the conditions in the undertaking. The letter referred to an earlier email of 30 October 2023 requesting evidence of completion, to which no response had been received.
 - (n) Further, the letter noted that the QLS had advised the Commission that the Respondent was enrolled in the March 2024 Ethics Course.
 - (o) The letter also sought confirmation of whether the Safe and Equal Family Violence Foundation online course had been completed.
 - (p) On 20 December 2023, the Respondent provided the LSC with a record of his completion of the Safe and Equally Family Violence Foundation online course.
 - (q) On 18 March 2024 the Respondent completed the QLS Ethics Referral Course.
- [22] Relevantly to the current discipline application the Respondent:
- (a) admits the charge; and

- (b) acknowledges that non-compliance with an undertaking involves a substantial failure to keep a reasonable standard of competence and diligence.
- [23] On the basis of the respondent's admissions in the SOAF and the evidence, the Tribunal is satisfied that the relevant facts constituting the charge have been established on the balance of probabilities, taking into account the gravity of the allegation in question and the consequences for the Respondent.
- [24] The particular circumstances relevant to whether the breach of the undertaking constitutes professional misconduct, include:
- (a) The undertaking was relied upon by the LSC in dismissing the Complaint and not commencing disciplinary proceedings.
 - (b) The Respondent's breach is serious as it involved non-compliance with an undertaking given to a regulator.
 - (c) The terms of the undertaking were unequivocal and could not be misinterpreted.
 - (d) The Respondent concedes that he has no valid excuse for his non-compliance.
 - (e) The Respondent's conduct is in breach of Rule 6.1 of the ASCR which was expressly referred to by the Respondent in the undertaking.
 - (f) In the undertaking, the Respondent acknowledged that any non-compliance may amount to professional misconduct.
 - (g) The undertaking was given in the course of legal practice and informed the LSC's decision to dismiss a complaint made in relation to the Respondent's conduct.
 - (h) The Respondent accepts that his conduct amounts to professional misconduct.
- [25] Consistent with the authorities, non-compliance with an undertaking given to the LSC is serious and may amount to professional misconduct.
- [26] Thomas J in *Legal Services Commissioner v Wrightway Legal* relevantly stated:
- “The ability to rely upon a legal practitioner's undertaking is of utmost importance. It is central to dealings with legal practitioners. Because of its importance, non-compliance with the clear terms of an undertaking involves a substantial failure to reach or maintain a reasonable standard of competence and diligence and so amounts to professional misconduct as that term is described in s 419 of the [LP Act].”⁶
- [27] Similarly, Daubney J in *Legal Services Commissioner v Bui* recognised the seriousness of a breach of an undertaking and observed as follows:
- “... a failure to abide by an undertaking strikes at the heart of a solicitor's call to practice. A solicitor's word is his or her bond and a person in legal practice who fails to live up to their word commits a grave infraction of the minimum standards of probity which the community can expect of members of the legal profession.”⁷

⁶ [2015] QCAT 174, at [26].

⁷ [2018] QCAT 424, at [16].

[28] In respect of undertakings given to a professional organisation, the comments of the Tribunal in *Council of the Law Society of New South Wales v Fisher* are informative:

“Where an undertaking is given to the Law Society, the non-compliance is particularly serious. We agree with the proposition put by the Law Society that non-compliance with an undertaking to a professional organisation is a more serious matter than non-compliance with an undertaking to a fellow practitioner...”⁸

[29] In *Legal Services Commissioner v Li*, a wider analysis of the authorities was undertaken by this Tribunal.⁹ These authorities are supportive of the proposition that a breach of an undertaking by a solicitor given to a professional association or regulator is properly characterised as professional misconduct.

[30] In all of the circumstances:

- (a) The Respondent’s conduct is properly characterised as a “substantial” failure to reach or maintain a reasonable standard of competence and diligence.
- (b) The Tribunal is satisfied that the Respondent’s conduct fell short of, or substantially departed from, the accepted standard of competence and diligence expected of a lawyer. This is particularly so as the undertaking was provided to the LSC in response to a complaint and consequently is a serious breach of an undertaking.

[31] Accordingly, the Tribunal is satisfied that the proper characterisation of the Respondent’s conduct is that it constitutes professional misconduct.

What are the appropriate orders pursuant to section 456 of the LP Act

[32] Having made the finding of professional misconduct, the discretion in s 456 of the LP Act arises.

[33] Section 456 of the LP Act states:

“456 Decisions of tribunal about an Australian legal practitioner

- (1) If, after the tribunal has completed a hearing of a discipline application in relation to a complaint or an investigation matter against an Australian legal practitioner, the tribunal is satisfied that the practitioner has engaged in unsatisfactory professional conduct or professional misconduct, the tribunal may make any order as it thinks fit, including any 1 or more of the orders stated in this section.
- (2) The tribunal may, under this subsection, make 1 or more of the following in a way it considers appropriate—
 - (a) an order recommending that the name of the Australian legal practitioner be removed from the local roll;
 - (b) an order that the practitioner’s local practising certificate be suspended for a stated period or cancelled;
 - (c) an order that a local practising certificate not be granted to the practitioner before the end of a stated period;

⁸ [2021] NSWCATOD 73, at [65].

⁹ [2024] QCAT 444, see [51] to [61].

- (d) an order that—
 - (i) imposes stated conditions on the practitioner’s practising certificate granted or to be issued under this Act; and
 - (ii) imposes the conditions for a stated period; and
 - (iii) specifies the time, if any, after which the practitioner may apply to the tribunal for the conditions to be amended or removed;
 - (e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;
 - (f) an order that no law practice in this jurisdiction may, for a period stated in the order of not more than 5 years—
 - (i) employ or continue to employ the practitioner in a law practice in this jurisdiction; or
 - (ii) employ or continue to employ the practitioner in this jurisdiction unless the conditions of employment are subject to conditions stated in the order.
- (3) The tribunal may, under this subsection, make 1 or more of the following—
- (a) an order recommending that the name of the Australian legal practitioner be removed under a corresponding law from an interstate roll;
 - (b) an order recommending that the practitioner’s interstate practising certificate be suspended for a stated period or cancelled under a corresponding law;
 - (c) an order recommending that an interstate practising certificate not be, under a corresponding law, granted to the practitioner until the end of a stated period;
 - (d) an order recommending—
 - (i) that stated conditions be imposed on the practitioner’s interstate practising certificate; and
 - (ii) that the conditions be imposed for a stated period; and
 - (iii) a stated time, if any, after which the practitioner may apply to the tribunal for the conditions to be amended or removed.
- (4) The tribunal may, under this subsection, make 1 or more of the following—
- (a) an order that the Australian legal practitioner pay a penalty of a stated amount, not more than \$100,000;
 - (b) a compensation order;
 - (c) an order that the practitioner undertake and complete a stated course of further legal education;
 - (d) an order that, for a stated period, the practitioner engage in legal practice under supervision as stated in the order;

- (e) an order that the practitioner do or refrain from doing something in connection with the practitioner engaging in legal practice;
 - (f) an order that the practitioner stop accepting instructions as a public notary in relation to notarial services;
 - (g) an order that engaging in legal practice by the practitioner is to be managed for a stated period in a stated way or subject to stated conditions;
 - (h) an order that engaging in legal practice by the practitioner is to be subject to periodic inspection by a person nominated by the relevant regulatory authority for a stated period;
 - (i) an order that the practitioner seek advice from a stated person in relation to the practitioner's management of engaging in legal practice;
 - (j) an order that the practitioner must not apply for a local practising certificate for a stated period.
- (5) To remove any doubt, it is declared that the tribunal may make any number of orders mentioned in any or all of subsections (2), (3) and (4).
 - (6) Also, the tribunal may make ancillary orders, including an order for payment by the Australian legal practitioner of expenses associated with orders under subsection (4), as assessed in or under the order or as agreed.
 - (7) The tribunal may find a person has engaged in unsatisfactory professional conduct even though the discipline application alleged professional misconduct."

[34] The discretion to make any order the Tribunal thinks fit is a wide discretion and is exercised primarily in the protection of the public.¹⁰ Principles of personal and general deterrence are also relevant.¹¹

[35] An order publicly reprimanding the practitioner may be imposed pursuant to s 456(2)(e) of the LP Act. The Respondent concedes that a public reprimand is an appropriate order.

[36] The impact of a public reprimand has been recognised previously by the Tribunal. In *Legal Services Commissioner v Cruise*, the Tribunal¹² referred to the observations made in *Council of the New South Wales Bar Association v Lott* as follows:

"A reprimand is a serious matter. It marks the disgrace of a member of an honourable profession inherent in the misconduct."¹³

[37] Further, the Tribunal in *Legal Services Commissioner v Challen* recognised the seriousness of a public reprimand as follows:

¹⁰ *Legal Services Commissioner v Madden* [2009] 1 Qd R 149, 186 [122].

¹¹ *Attorney-General v Bax* [1999] 2 Qd R 9, 22.

¹² Constituted by Daubney J (President), Mr Michael Meadows and Dr Margaret Steinberg AM.

¹³ [2019] QCAT 182, at [116], citing *Council of the New South Wales Bar Association v Lott* [2018] NSWCATOD 99, at [35].

“[39] First, there will be an order that the respondent be publicly reprimanded. The respondent conceded that this was an appropriate order in this case. The impact of such an order being made cannot be understated, particularly when it is made against a practitioner of significant seniority and an otherwise unblemished professional record. As this Tribunal has previously said:

The making of a public reprimand is a serious step by the Tribunal and not one which should be taken or regarded lightly. The public reprimand is and will continue to be a permanent public blemish on the respondent’s professional record. It is and will continue to stand as a permanent reminder to the respondent, to the profession and to the public at large that there are adverse personal consequences when one engages in professional misconduct of this kind.”¹⁴

- [38] The LSC seeks a public reprimand and the Respondent agrees to an order for a public reprimand.
- [39] In the current case, an order that the Respondent be publicly reprimanded is appropriate.
- [40] Section 456(4)(a) of the LP Act provides that the Tribunal may make “an order that the Australian legal practitioner pay a penalty of a stated amount, not more than \$100,000”. The payment of a pecuniary penalty is directed at general deterrence rather than punishment.
- [41] The LSC contends that the Tribunal should order that the respondent pay a penalty in the amount of \$2,500. In submitting that this is the appropriate amount, the LSC relies on the comparative authority of *Legal Services Commissioner v Richards* where a pecuniary penalty of \$3,000 was ordered.¹⁵
- [42] In *Legal Services Commissioner v Richards*, an undertaking was given to the LSC to enter a therapeutic relationship with a registered psychologist, attend a minimum of three sessions, and confirm to the LSC when this was completed. The undertaking, like the current case, was given in the context of an investigation into three complaints and the LSC discontinued the three investigations in reliance on the undertaking. The respondent did not comply with the undertaking. Further, the respondent agreed that the conduct constituted professional misconduct and also agreed with the sanction, including the payment of the pecuniary penalty.
- [43] The proposed penalty takes into account the mitigating and aggravating features, including:
- (a) The aggravating features:
 - (i) The Respondent gave an undertaking to the LSC in response to a complaint against him about his conduct in the course of legal practice.
 - (ii) The courses were for the Respondent’s own benefit as well as for the protection of the public.
 - (iii) At the relevant time the Respondent was a principal of a law firm.

¹⁴ [2019] QCAT 273, citing *Legal Services Commissioner v Brown* [2018] QCAT 263 at [42].

¹⁵ [2024] QCAT 355.

(b) The mitigating features:

- (i) The Respondent admitted the facts underpinning the charge.
- (ii) The Respondent cooperated and, at the earliest opportunity, accepted that his conduct constituted professional misconduct. Further, he accepted that he should be publicly reprimanded, and he should pay a pecuniary penalty.
- (iii) The Respondent acknowledges that his failure to comply with the undertaking involved a substantial failure from the standard of competence and diligence expected of a legal practitioner.
- (iv) The Respondent has a significant level of insight into the seriousness of his conduct and appreciates the importance of honouring an undertaking and the consequences of failing to do so. The Respondent is also remorseful.
- (v) The non-compliance occurred at a difficult time in the Respondent's life, though it is accepted that it is not an excuse for the conduct.
- (vi) The Respondent has not previously breached an undertaking in his 25 year career.
- (vii) The Respondent has now completed the QLS Ethics Course and the Equal Family Violence Foundation Course and did so before the LSC commenced the present investigation.

[44] Consistent with the authorities, it is submitted that:

- (a) A pecuniary penalty would mark the Tribunal's disapproval of the conduct.¹⁶
- (b) The element of deterrence is an assurance to the public that serious lapses of legal practitioners will not be passed over lightly and will be appropriately dealt with.¹⁷
- (c) The pecuniary penalty must convey to the legal profession and to the community in general that this type of conduct is inappropriate.¹⁸

[45] The imposition of a pecuniary penalty in an appropriate amount will deter the Respondent and other practitioners from engaging in similar conduct.

[46] In all of the circumstances, the Tribunal is satisfied that it is appropriate to order that the Respondent pay a pecuniary penalty of \$2,500.

Costs

[47] Section 462(1) of the LP Act governs the issue of costs.

[48] No exceptional circumstances are identified that would justify any departure from an order and in accordance with s 462(1) of the LP Act. The Respondent accepts that this is the appropriate order.

¹⁶ *Law Society of New South Wales v Walsh* [1997] NSWCA 185, at [40] (Beazley JA); *Law Society of New South Wales v Shad* [2002] NSWADT 236, at [70].

¹⁷ *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408, 471.

¹⁸ *Russo v Legal Services Commissioner* [2016] NSWCA 306, at [82]; *Council of the Law Society of New South Wales v Hunter* [2021] NSWCATOD 22, at [69].

- [49] Accordingly, the Tribunal is satisfied that it is appropriate to order that the Respondent pay the LSC's costs of and incidental to the disciplinary application to be assessed.
- [50] For the purpose of s 462(5)(b) of the LP Act, it is appropriate that costs be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.

Orders

- [51] For the reasons stated above, the Tribunal orders that:
1. The Respondent's conduct identified in respect of Charge 1 in the discipline application is proved and is found to constitute professional misconduct.
 2. The Respondent is publicly reprimanded.
 3. The Respondent pay a pecuniary penalty in the sum of \$2,500.
 4. The Respondent pay the LSC's costs of and incidental to the disciplinary application, to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.