

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : FULL BENCH

CITATION : LEGAL PROFESSION COMPLAINTS
COMMITTEE -v- FITZPATRICK [2011] WASC 320

CORAM : MARTIN CJ
EM HEENAN J
JENKINS J

HEARD : 30 AUGUST 2011

DELIVERED : 1 DECEMBER 2011

FILE NO/S : LPD 1 of 2011

BETWEEN : LEGAL PROFESSION COMPLAINTS
COMMITTEE
Applicant

AND

CARMEL MARY FITZPATRICK
Respondent

Catchwords:

Legal practitioner - Disciplinary proceedings - Removal from Roll of Practitioners - Whether practitioner fit and proper person to remain a member of legal profession

Legislation:

Interpretation Act 1984 (WA), s 37

Legal Practice Act 2003 (WA)

Legal Profession Act 2008 (WA), s 438(2)(a), s 621(3)

Result:

Order that practitioner's name be removed from the roll of practitioners

Category: B

Representation:

Counsel:

Applicant : Ms P E Le Miere
Respondent : In person

Solicitors:

Applicant : Legal Profession Complaints Committee
Respondent : In person

Case(s) referred to in judgment(s):

A Solicitor v The Council of the Law Society of New South Wales [2004] HCA 1; (2004) 216 CLR 253
Barristers' Board v Darveniza [2000] QCA 253; (2000) 112 A Crim R 438
In re Davis (1947) 75 CLR 409
Legal Practitioners Complaints Committee v De Pardo [2007] WASC 266
Legal Practitioners Complaints Committee v Lashansky [2007] WASC 211
Legal Practitioners Complaints Committee v Palumbo [2005] WASCA 129
Legal Practitioners Complaints Committee v Thorpe [2008] WASC 9
Legal Profession Complaints Committee and Fitzpatrick [2011] WASAT 20
Legal Profession Complaints Committee v Brennan [2010] WASC 198
Legal Profession Complaints Committee v Masten [2011] WASC 71
Re Maraj (a legal practitioner) (1995) 15 WAR 12
Ziems v Prothonotary of the Supreme Court of New South Wales [1957] HCA 46; (1957) 97 CLR 279

JUDGMENT OF THE COURT:

Introduction

1 The Legal Profession Complaints Committee (the LPCC) moves the court for an order that Carmel Mary Fitzpatrick (the Practitioner) be struck off the Roll of Practitioners (the Roll).

2 The court has received a report from the State Administrative Tribunal (the Tribunal) pursuant to the *Legal Profession Act 2008* (WA) (the 2008 Act) s 438(2)(a): *Legal Profession Complaints Committee and Fitzpatrick* [2011] WASAT 20. Pursuant to the 2008 Act s 444(1), the report is to be taken as conclusive as to all facts and findings contained in it.

3 Upon receiving the motion and upon reading the report, the court may, without any further evidence, make a variety of orders including an order removing from the Roll the name of the Practitioner: the 2008 Act s 444(2).

The applicable legislation

4 The 2008 Act commenced operation on 1 March 2009. It repealed the *Legal Practice Act 2003* (WA) (the 2003 Act). The conduct of the Practitioner which is the subject of the report occurred prior to 1 March 2009. However, the proceedings against the Practitioner in the Tribunal were commenced under the 2008 Act as is permitted by the 2008 Act s 621(3).

5 The 2008 Act applies in relation to conduct of a practitioner whether the conduct occurred before or after 1 March 2009. Neither party suggests that the 2003 Act would be any different in its application to the conduct of the Practitioner than the relevant provisions of the 2008 Act. Accordingly, no question arises with respect to the accrual of rights under the 2003 Act, pursuant to the *Interpretation Act 1984* (WA) s 37.

6 Under the 2003 Act the equivalent committee to the LPCC was called the Legal Practitioners Complaints Committee. As nothing turns on the distinction between the two committees, in these reasons they will each be referred to as the LPCC.

Background

7 Regrettably, the reasons of the Tribunal provide little information about the Practitioner's professional and personal history. The following

background material has been gleaned from the reasons and the Practitioner's oral submissions to the court.

8 The Practitioner was a mature age student who obtained her law degree from a Western Australian University in 2001. Very soon after completing her restricted practice she set up her own practice. The main area of her practice was commercial law but she also developed a criminal law practice.

9 In August 2008, the Practitioner sought psychiatric help and was admitted to a private psychiatric clinic at which she stayed for several months. The Practitioner has advised the court that she was diagnosed with severe depression and anxiety.

10 At the same time the Practitioner ceased her practice of law.

11 In 2008, the LPCC commenced separate proceedings under the 2003 Act. In those proceedings, the Practitioner undertook not to practice from 9 December 2008 to 30 June 2009, without giving the LPCC notice of her intention to do so. No such notice was given and the Practitioner has not returned to practice. Neither has she been otherwise employed.

12 For a period of time after ceasing practice the Practitioner was in England, having travelled there due to her father's ill health. She subsequently returned to Australia.

13 The Practitioner remains under the care of a psychiatrist and continues to take some medication to control her depression and anxiety.

14 The Practitioner told the court that since being discharged from the private psychiatric clinic she has had a couple of other admissions for short periods of time. She says she has also undergone cognitive behaviour therapy and has learnt to meditate. She submitted that her psychiatrist and general medical practitioner believe that she now has a good insight into her problems.

15 The Practitioner did not participate in any way in the proceedings before the Tribunal in respect to this report. This was despite the fact that she was aware of the hearing in the Tribunal in February 2010 and by late 2009 she had returned to Australia.

16 The Practitioner appeared before the court on 29 July 2011 and sought an adjournment of the hearing of the motion. She then appeared

personally before the court on 30 August 2011 at the hearing of the motion.

The report

17 The Tribunal's report concerns six sets of proceedings brought by the LPCC against the Practitioner. The Tribunal found the Practitioner guilty of:

- (1) professional misconduct in connection with the practice of law in that:
 - (a) between 26 November 2007 and approximately 31 July 2008, the Practitioner neglected instructions from her clients, Mrs PM, Mr IM and Ms JM; and
 - (b) between 27 February 2008 and 31 July 2008, the Practitioner failed to respond to notices requiring her to provide information to the LPCC (VR 121/2009);
- (2) professional misconduct in connection with the practice of law between 16 October 2006 and 23 April 2008, and subsequent to 23 June 2008 by neglecting instructions from her client, Mr KM (VR 122/2009);
- (3) professional misconduct:
 - (a) in that, in connection with the practice of law between November 2007 and 9 January 2008, the Practitioner failed to adequately prepare for a trial of her client, Mr HT;
 - (b) in that, between December 2007 and approximately 31 July 2008, the Practitioner failed to serve upon her client, Mr HT, a bill of costs showing that trust monies had been applied by the Practitioner towards payment of her costs, despite requests to do so; and
 - (c) between 8 May 2008 and approximately 31 July 2008, the Practitioner failed to respond to notices from the LPCC to provide information (VR 123/2009);
- (4) professional misconduct in connection with the practice of law in that, between 30 August 2007 and 3 September 2008, the Practitioner neglected instructions from her client, Mr MM (VR 125/2009);

- (5) professional misconduct or unsatisfactory professional conduct in connection with the practice of law in that:
- (a) between 1 August 2007 and 1 May 2008, the Practitioner neglected the instructions of her client, Ms MT;
 - (b) on 1 May 2008, the Practitioner recklessly misled her client, Ms MT;
 - (c) between 5 May 2008 and 21 May 2008, the Practitioner failed to deliver to her client, Ms MT, the client's file when instructed to do so and in circumstances where urgent action was required to be taken in respect of the matter; and
 - (d) between 20 May 2008 and approximately 31 July 2008, the Practitioner failed to respond to notices from the LPCC to provide information (VR 126/2009);
- (6) professional misconduct in that the Practitioner misappropriated to her own use monies which belonged to her client, Mr DK (VR 173/2009).

Matter VR 121/2009

18 In respect to the complaint the subject of VR 121/2009, the facts found by the Tribunal were that the Practitioner accepted instructions to transfer title to a parcel of land into Mrs PM's name by survivorship and to then transfer title to the property to Mrs PM, Mr IM and Ms JM. Between May and July 2007, the Practitioner did certain things in pursuance of her instructions. From September 2007, Mr IM had difficulty communicating with the Practitioner, despite numerous efforts to do so. In late November 2007, Mr IM received an email from the Practitioner's office confirming that the Practitioner had received the stamped transfer. On 19 December 2007, Mr IM telephoned the Practitioner to inquire what was happening with his matter. The Practitioner advised him that the relevant documents were in the hands of a government department and that it may take some time to conclude.

19 On the same date the Practitioner told Mr IM that she would obtain scanned copies of the documents from the unnamed government department and would provide him with them the following Monday. That did not occur and all attempts to contact the Practitioner thereafter by telephone and by email were unsuccessful.

20 In mid-January 2008, Mr IM consulted another solicitor because of his concern over the delay. That solicitor reported that he was unsuccessful in his attempts to contact the Practitioner and recommended that Mr IM make a complaint to the LPCC. Mr IM was reluctant to do so at that time and continued to attempt to communicate with the Practitioner. On four occasions in early 2008 a representative of the LPCC left telephone messages for the Practitioner to contact Mr IM. The Practitioner did not respond to those messages.

21 In early February 2008, Mr IM contacted Landgate and ascertained that no application for a transfer of title had been lodged.

22 Mr IM immediately advised the Practitioner by email of this information and requested confirmation from her that the documents had been lodged. He did not receive a reply from the Practitioner. He then lodged a formal complaint with the LPCC.

23 On 27 February 2008, the LPCC wrote to the Practitioner requiring her to respond within 14 days. The Practitioner failed to do so.

24 On 30 March 2008, a form of notice and summons to produce documents was issued by the LPCC. Thereafter, numerous attempts were made by the LPCC's officers to obtain a response from the Practitioner to the complaint and subsequent proceedings on it. No response was ever received. The Tribunal found that the Practitioner's failure to respond to the complaint indicated that she had 'effectively abandoned her professional responsibilities'.

25 The Tribunal also found that the statement by the Practitioner on 19 December 2007 to the effect that the documents were in the hands of a government department was patently false and misleading. It concluded that the Practitioner was guilty of professional misconduct in that she knowingly misled Mr IM, and that her conduct occurring in connection with the practice of law involved a substantial failure to maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner. For reasons unknown, this finding was not included in the orders made by the Tribunal.

Matter VR 122/2009

26 The complaint in matter VR 122 of 2009 relates to the Practitioner's delay in distributing an estate. The Tribunal found that in June 2005, Mr KM, the executor of the will of Mrs MPW, instructed the Practitioner

to have the primary conduct of the administration of Mrs MPW's estate. By 10 January 2007, all of the funds in the estate account were capable of being distributed, apart from the payment to Mr KM of any executor's expenses. By letter dated 5 June 2007, Mr KM advised the Practitioner that he would not be seeking a reimbursement of executor's expenses. On 2 July 2007, the Practitioner arranged for Mr KM to attend at her office and to sign a cheque in the sum of \$50,000, drawn on the estate account, being a partial distribution payable to the residuary beneficiary of the estate. Mr KM signed the cheque on that date. However, it was not until 23 April 2008 that the Practitioner sent the cheque to the residuary beneficiary.

27 The Practitioner, despite requests from Mr KM to do so, failed to finalise the estate. In correspondence addressed to the LPCC dated 11 January 2008, the Practitioner endeavoured to explain the delay in distributing the estate as having been caused by Mr KM not having submitted a claim for his reasonable expenses. The Practitioner indicated she would act on the assertion made through the LPCC that Mr KM no longer wished to make a claim on the estate. The Practitioner's correspondence overlooked the fact that Mr KM had given instructions on 5 June 2007 that he would not be submitting an account for expenses.

28 By letter dated 9 January 2008, the Practitioner wrote to Mr KM requesting his written instructions to finalise the estate. The Tribunal found that if any further written instructions were required, they should have been requested at a much earlier date.

Matter VR 123/2009

29 The complaint in VR 123 of 2009 relates to the Practitioner's conduct in representing Mr HT. The Tribunal found that in October 2007, Mr HT retained the Practitioner to act for him at his trial on 10 January 2008 in respect of one charge of driving with a blood alcohol level in excess of 0.08% and one charge of dangerous driving causing bodily harm. Mr HT signed a written costs agreement in respect to the Practitioner's retainer. On or about 20 November 2007, Mr HT paid \$3,850 to the Practitioner, being the total of the costs which, under the terms of the written costs agreement, were required to be paid on account.

30 The first aspect of the complaint relates to the Practitioner's failure to:

- (a) take proper instructions from Mr HT regarding the accident;

- (b) to fully investigate prior to trial the circumstances of the accident by speaking to named witnesses, other than a Ms DK;
- (c) to arrange for any of the witnesses, apart from Ms DK, to give evidence at the trial; and
- (d) to respond to communications from Mr HT and Ms DK about the preparation for the trial.

31 In November and December 2007, the Practitioner spoke to Mr HT and his partner, Ms DK, about other people who were in Mr HT's car at the time of the accident and who were prepared to give evidence on his behalf. Despite a number of enquiries from Ms DK on behalf of Mr HT, the Practitioner failed to speak to any of the nominated witnesses or arrange for any of the witnesses, apart from Ms DK, to give evidence at the trial.

32 At the hearing on 10 January 2008, Mr HT contacted two of the other witnesses but only one was able to attend court that day to give evidence on his behalf. At the hearing, Mr HT was found guilty of the charge of dangerous driving. The charge of driving with a blood alcohol level in excess of 0.08% was withdrawn in December 2007.

33 The second part of the complaint relates to the failure of the Practitioner to serve a bill of costs on Mr HT.

34 On 30 January 2008 and 28 March 2008, Ms DK requested details of the Practitioner's costs. No response was received and the Practitioner has failed to issue a bill of costs to Mr HT showing the application of trust monies towards payment of her fees.

35 On 7 May 2008, the LPCC wrote to the Practitioner as a result of a complaint received from Mr HT. It requested that the Practitioner respond to the complaint and send an account to Mr HT. Further requests were sent on or before 31 July 2008. No response to Mr HT's complaint has been received from the Practitioner. Neither has the Practitioner provided a bill of costs to Mr HT.

Matter VR 125/2009

36 The complaint the subject of VR 125 of 2009 relates to the administration of an estate. The Tribunal found that in late August 2007, Mr MM, the executor of an estate, and Mrs AMM, the sole beneficiary of the same estate, met with the Practitioner. Mr MM instructed the Practitioner to apply for probate of the will and to transfer the property

which was an asset of the estate into Mrs AMM's name. The Practitioner was given the documentation to enable her to carry out her instructions.

37 Despite frequent enquiries, Mr MM heard nothing further from the Practitioner. On or about 17 August 2008, Mr MM lodged a complaint with the LPCC. On 3 September 2008, the Practitioner's file was given to Mr MM, at which time the Practitioner's retainer was effectively terminated.

38 The Tribunal concluded that the Practitioner had failed to apply for and obtain probate of the deceased's will, failed to effect a transfer of the property to Mrs AMM and failed to respond to communications from Mr MM.

Matter VR 126/2009

39 The proven complaint the subject of VR 126 of 2009 relates to instructions given to the Practitioner to act for Ms MT in a dispute over her share of a property which she owned with her former de-facto partner, Mr BE.

40 In September 2006, Mr BE commenced proceedings in the Family Court seeking an alteration of the interests of the parties in the property.

41 The pre-trial conference in the Family Court proceedings was listed for 29 January 2008. Ms MT was not advised of the listing and there was no attendance at the conference on behalf of Ms MT. The registrar unsuccessfully tried to make contact with the Practitioner by telephone and then adjourned the matter to a judge's list on 25 February 2008. A copy of the registrar's file note of the pre-trial conference was sent to the Practitioner.

42 On 25 February 2008, there was no appearance on behalf of Ms MT. The judge made orders extending the time for Ms MT to file her trial documents and, in the event of her failure to do so, leave was given to Mr BE to proceed on an undefended basis. A copy of the orders was sent to the Practitioner.

43 On 13 March 2008, the Family Court sent a copy letter to the Practitioner advising her that the proceedings had been re-listed to be heard on an undefended basis on 14 April 2008. On that date the proceedings were heard on an undefended basis and the judge reserved his decision.

44 Between late 2007 and April 2008, Ms MT had contacted the Practitioner's office on a number of occasions to try and arrange an appointment with her but her requests for an appointment were never met.

45 At a meeting on 1 May 2008, the Practitioner informed Ms MT that she had missed a court date but the omission would not affect her case. The Practitioner was unable to find the file during that meeting but she informed Ms MT that she was referring the file to another Practitioner and that she may have already sent the file to that person.

46 On 5 May 2008, Ms MT contacted the Practitioner's office and was told that her file had been found and that the Practitioner wanted her to make an appointment for later that day to discuss the case. Ms MT informed the receptionist that she only wished to pick up her file. The receptionist said she would get back to her. Ms MT heard nothing further from the Practitioner. Thankfully, through the efforts of Ms MT and new solicitors engaged by her, Ms MT was eventually successful in obtaining orders that the Family Court proceedings be heard on a defended basis.

47 On 16 May 2008, Ms MT lodged a complaint with the LPCC. A notice to produce documents pursuant to the 2003 Act was served on the Practitioner on 20 May 2008 requiring her to produce Ms MT's file to the LPCC that day. The Practitioner ultimately produced Ms MT's file to the LPCC on 21 May 2008.

48 On three separate occasions in May, June and July 2008, the LPCC requested the Practitioner to provide her response to Ms MT's complaint. No response was received to these letters. The Tribunal found that in failing to do so, the Practitioner's conduct involved a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

Matter VR 173/2009

49 The complaint the subject of VR 173 of 2009 relates to the Practitioner's misappropriation of costs awarded to the Practitioner's client, Mr DK.

50 In April 2008, Mr DK retained the Practitioner to represent him in respect of criminal charges in the Magistrates Court. At the hearing of the charges costs were awarded to Mr DK in the sum of \$3,200. A cheque in that sum was issued and made payable to the Practitioner's firm. On 16 June 2008, the cheque was banked into the general account of the firm.

51 On 20 February 2009, Mr DK's mother complained to the LPCC about the Practitioner's failure to account to Mr DK for the costs awarded to him.

52 The LPCC corresponded with the Practitioner's then solicitor. He was requested to advise the Practitioner to immediately account to Mr DK for the \$3,200, if it was the case that Mr DK had paid all her fees. The solicitor advised the LPCC that he was experiencing difficulties contacting the Practitioner and was trying to pass messages to her through her husband. Despite further requests for the Practitioner to account to Mr DK, she has not done so.

53 The Tribunal found the Practitioner guilty of professional misconduct in that she misappropriated to her own use monies which belonged to her client Mr DK.

54 For reasons unknown, the finding in VR 173/2009 was not included in the orders made by the Tribunal.

The Practitioner's submissions

55 The Practitioner represented herself in the proceedings before this court. She did not file written submissions or any response to the application.

56 On the first date that the motion was listed for hearing, the Practitioner requested an adjournment of the hearing. She said that she was not in a position to deal with the matter and that she was seeking legal representation. She also advised the court that she had an appointment with her treating psychiatrist the following day. She said that she was concerned about the effect on her health of being struck off the Roll.

57 On the adjourned date, the Practitioner did not have any legal representation and did not seek an adjournment to obtain it. The Practitioner made oral submissions, which provided the court with some background information. The submissions exposed to the court the limited capacity that the Practitioner has at present for ordered and rational thought.

58 It seemed that the Practitioner had made few, if any, notes in preparation for the hearing or, if she had made notes, she did not use them constructively. Her submissions were in the form of what is sometimes referred to as a 'stream of consciousness'. She touched on various matters

which were personal to her without explaining how those matters were relevant to the essential issue before the court.

59 The Practitioner told the court that whether or not her name was removed from the Roll she probably would not practice again as a lawyer. However, she said that she did not wish her name to be removed from the Roll because of the effect that it may have on other endeavours she may wish to pursue. The Practitioner told the court that she may wish to open an overseas orphanage. However, the Practitioner did not provide the court with any details or evidence to suggest that such a plan was likely to come to fruition.

60 The Practitioner acknowledged that at the time these complaints were made she was not managing either with her mental health issues or her practice. She submitted that she was now in a position where her mental health was stable and that she was capable of recognising the symptoms which indicated that she needed to seek help in that respect. The Practitioner has not adduced any evidence to support that submission.

61 The Practitioner requested that if the court's options were to either remove her from the Roll or to suspend her from practice that the court take the latter choice. She requested one last opportunity to continue her right of practice.

The applicable principles

62 The relevant principles in an application of this kind are well established. The jurisdiction of the court to remove a practitioner from the Roll is not exercised for the purpose of punishing the practitioner concerned, but for the protection of the public and the maintenance of the reputation and standards of the legal profession: *Re Maraj (a legal practitioner)* (1995) 15 WAR 12, 25 (Malcolm CJ, Kennedy and Franklyn JJ agreeing); *Ziems v Prothonotary of the Supreme Court of New South Wales* [1957] HCA 46; (1957) 97 CLR 279, 286 (Dixon CJ, McTiernan, Fullagar and Kitto JJ agreeing); *Legal Profession Complaints Committee v Brennan* [2010] WASC 198 [10] (Martin CJ, Murray and Hall JJ agreeing); *Legal Profession Complaints Committee v Masten* [2011] WASC 71 [16] (Martin CJ, Murray and EM Heenan JJ). Since the object is to protect the public and the reputation of the profession, the consequences for the practitioner may be either more or less severe than they would be if the only object of the proceedings was one of punishment: *Legal Practitioners Complaints Committee v Lashansky* [2007] WASC 211 [19].

63 The critical question to be addressed by the court is whether the practitioner has been shown not to be a fit and proper person to be a legal practitioner: *Ziems* (297 - 298); *A Solicitor v The Council of the Law Society of New South Wales* [2004] HCA 1; (2004) 216 CLR 253 [15]; *Legal Practitioners Complaints Committee v Thorpe* [2008] WASC 9 [43]. Fitness to practice law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges: *In re Davis* (1947) 75 CLR 409, 420 (Dixon J), *Thorpe* [43], and *Brennan* [11]. Fitness to practice is to be decided at the time of the hearing, not as at the time the relevant conduct was entered into: *A Solicitor v The Council of the Law Society of New South Wales* [21].

64 Striking off is an order reserved for very serious cases, where the character and conduct of the practitioner is seen to be 'inconsistent with the privileges of further practice': *Barristers' Board v Darveniza* [2000] QCA 253; (2000) 112 A Crim R 438 [38]. In that case, Thomas JA observed that 'the quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system which he or she practises': *Darveniza* [33]. It has also been observed elsewhere that honesty and integrity are essential characteristics required of legal practitioners, and the court has generally taken a very serious approach to cases in which a practitioner's conduct has involved dishonesty: see *Brennan* [15], *Legal Practitioners Complaints Committee v Palumbo* [2005] WASCA 129 [23]; *Legal Practitioners Complaints Committee v De Pardo* [2007] WASC 266 [14].

The application of these principles

65 The Tribunal found that in a repeated and sustained manner the Practitioner neglected her clients' matters during the period from October 2006 to September 2008. It noted that the Practitioner made no attempt to explain to the Tribunal her conduct and her neglect. It noted that whatever the cause of her acts and omissions, there was no reason to believe that the cause no longer existed. It found that the Practitioner, if allowed to continue to practice, represented a risk to the public.

66 VR 126/2009 is the most serious matter found against the Practitioner. It involved the Practitioner's repeated and unexplained failure to attend to her duty to her client to appear in the Family Court on her behalf. As the Tribunal found, but for the prompt action taken by Ms MT, the Family Court proceedings may have been determined on an undefended basis which was likely to have been prejudicial to Ms MT.

67 The Practitioner then attempted to conceal her neglect by misleading her client about the effect of her failure to attend court. Again, were it not for the prompt action of Ms MT, these additional attempts by the Practitioner to disguise the consequences of her failures may in turn have had a prejudicial effect on Ms MT's case.

68 The Practitioner's false statement to Mr IM (VR 121/2009) that documents had been lodged with a government department was made apparently in a similar attempt to conceal her neglect of his instructions.

69 Another complaint of considerable seriousness is that in VR 123/2009. It occurred in a situation where Mr HT was found guilty of a criminal offence after the Practitioner had failed to properly prepare Mr HT's case for trial. Her omissions included failing to speak to named witnesses and to arrange for them to be present at court to give evidence. It is not known whether the Practitioner's failures prejudiced Mr HT's chances of an acquittal but her conduct showed that she could not be trusted to represent her client in a competent and trustworthy manner.

70 Finally, VR 173/2009 is itself a serious matter in that it involved misappropriation of a client's money.

71 The combined effect of the complaints against the Practitioner is to completely undermine the confidence of clients, other practitioners and the courts in the Practitioner's ability to practice law in a competent and trustworthy manner.

72 The Practitioner submitted to the court that all of the complaints found against her arose against the background of her deteriorating mental health. The Practitioner submitted that she had always been a person of integrity but that her mental illness caused her to fail to live up to her own high standards. It is regrettable and significant that, if that is the case, the Practitioner's mental illness resulted in her not only neglecting her practice but also indulging in misleading and dishonest conduct in her practice of law.

73 The findings of the Tribunal, which relate to the Practitioner's failure to respond to requests and notices from the LPCC, reflect the fact that the Practitioner's health had deteriorated to such an extent that she was incapable of facing the consequences of her behaviour.

74 Given the seriousness of the Tribunal's findings, the protection of the public and the public interest in the maintenance of the reputation and standards of the legal profession compel the conclusion that the

Practitioner's name must be removed from the Roll unless it has been established that the mental health issues which apparently led to the Practitioner's behaviour no longer exist or there are conditions that can be placed on the Practitioner's right of practice which would protect the public and maintain the reputation and standards of the legal profession.

75 There is no evidence before the court that the Practitioner does not suffer from, or is not readily susceptible to, the same mental health issues that resulted in the complaints which have been found proven in the Tribunal. The Practitioner orally submitted to the court that she does not have any acute symptoms and that she has sufficient insight into her mental health problems so that she is able to take steps to avoid suffering acute symptoms. The Practitioner's oral submissions are insufficient to satisfy the court of these matters. This is particularly so given the Practitioner's demeanour and the substance of her submissions at the hearing of this matter.

76 The Practitioner did not propose any conditions which could be placed on her right of practice which would sufficiently protect the public and maintain the reputation and standards of the legal profession. The court, after considering all the circumstances, is not able to propose any such conditions.

77 The Practitioner's submission that she should not be struck off because it may prejudice any attempt by her to run an overseas orphanage is not a valid reason for this court to refrain from making the order that is necessary to protect the public and maintain the reputation and standards of the legal profession.

78 The protection of the public and the public interest in the maintenance of the reputation and standards of the legal profession cause the court to conclude that the Practitioner's name must be removed from the Roll.

79 The LPCC does not seek an order for its costs in respect of these proceedings, which should be regarded as part of the costs of regulating the profession. There will be no order as to costs.