

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Healy (No 2)* [2025]
QCAT 216

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
JOHN FRANCIS HEALY
(respondent)

APPLICATION NO: OCR269-23

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 11 June 2025

DELIVERED AT: Brisbane

HEARING DATE: Matter considered on written submissions without oral
hearing, pursuant to orders made on 7 May 2025

JUDGE: Justice Davis

Assisted by:
Mr Richard Barnes, Practitioner Panel Member
Ms Patrice McKay, Lay Panel Member

ORDERS: **1. The respondent is publicly reprimanded.**

**2. The respondent is to pay the costs of the
Commissioner of the proceedings on the standard
basis, to be assessed as if the matter were a
proceeding in the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS –
COMPLAINTS AND DISCIPLINE – PROFESSIONAL
MISCONDUCT AND UNSATISFACTORY
PROFESSIONAL CONDUCT – GENERALLY – where
unsatisfactory professional conduct of the practitioner was
found – where the Commissioner sought a public reprimand
– where the practitioner conceded that he should be
reprimanded – where the practitioner submitted that the
reprimand should be a private reprimand – where the
Commissioner sought the imposition of a monetary penalty
of between \$3,000 and \$5,000 – where the practitioner
submitted a monetary penalty of \$2,000 should be imposed
– whether the practitioner ought to be reprimanded –
whether the reprimand ought to be a public reprimand –
whether a monetary penalty ought to be imposed – what any
monetary penalty ought to be

Legal Profession Act 2007 (Qld), s 456, s 462

Attorney-General v Bax [1999] 2 Qd R 9, followed
Legal Profession Complaints Committee v Detata [2012] WASCA 214, followed

Legal Services Commissioner v Healy [2025] QCAT 171, related

Legal Services Commissioner v Madden (No 2) [2009] 1 Qd R 149; [2008] QCA 301, followed

Legal Services Commissioner v SYG [2023] QCAT 401, cited

Legal Services Commissioner v XBV [2018] QCAT 332, cited

Rich v Australian Securities and Investments Commission (2004) 220 CLR 129; [2004] HCA 42, cited

APPEARANCES & REPRESENTATION: Determined on the written submissions pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

Applicant: Written submissions by RK Micairan were lodged by the Legal Services Commission

Respondent: The respondent himself lodged written submissions

- [1] This is the sanction and costs determination pursuant to orders made on 7 May 2025, which included a finding that the respondent was guilty of unsatisfactory professional conduct.

Background

- [2] John Francis Healy is a solicitor in private practice.
- [3] Mr Healy was charged with two regulatory charges: the first was that he breached a written undertaking; and the second was that he failed to act with competence and diligence with regard to his conduct in purportedly carrying out the terms of a binding financial agreement made between de facto spouse under the provisions of the *Family Law Act 1975* (Cth).
- [4] On 7 May 2025, judgment was delivered in which both charges were found proved. The following orders were made on that day:
- “1. Charge 1 is proved and unsatisfactory professional conduct is established.
 2. Charge 2 is proved and unsatisfactory professional conduct is established.
 3. The LSC shall file and serve any material and written submissions on sanction and costs by 4.00 pm on 14 May 2025.

4. The respondent shall file and serve any material and submissions in reply by 4.00 pm on 21 May 2025.
5. Each party shall have leave to file and serve a notice requesting to make further oral submissions by 4.00 pm on 28 May 2025.
6. In the event that no notice pursuant to order 5 is given by 4.00 pm on 28 May 2025, the issue of sanction and costs will be determined on any written submissions received without further oral hearing.
7. Costs reserved.”¹

[5] Pursuant to orders 3 and 4, the parties provided written submissions.

[6] Neither party submitted that separate penalties ought to be imposed in relation to charges 1 and 2. The position taken by the parties was no doubt in deference to the findings in the principal judgment, that charge 2 was just a different categorisation of the same conduct alleged in charge 1.²

[7] Otherwise, the respective submissions were:

(a) the Commissioner submitted that the following orders are appropriate:

- (i) a public reprimand pursuant to s 456(2)(e) of the *Legal Profession Act 2007* (the Act);
- (ii) a monetary penalty in the range of between \$3,000 to \$5,000, pursuant to s 456(4)(a) of the Act; and
- (iii) Mr Healy pay the Commissioner’s costs of and incidental to the discipline application, pursuant to s 462(1) of the Act.

(b) Mr Healy submitted that the following orders are appropriate:

- (i) a private reprimand pursuant to s 456(2)(e) of the Act;
- (ii) a monetary penalty of \$2,000; and
- (iii) that he pay the costs of the Commissioner fixed at \$2,500.

[8] On 28 May 2025, and within the time limited by order 5 made on 7 May 2025, my Associate received an email from the Commissioner in these terms:

“Dear Associate

I refer to the matter of Legal Services Commissioner v Healy (OCR269-23) and to the **attached** directions made 23 April 2025.

Pursuant to direction 5, the Applicant requests to make further oral submissions.

¹ *Legal Services Commissioner v Healy* [2015] QCAT 171.

² *Legal Services Commissioner v Healy* [2025] QCAT 171 at [81]; Submissions of the applicant at paragraph 4.

I have copied Mr Healy into this email.”³

[9] On 1 June 2025, Mr Healy sent to my Associate an email exchange which had occurred between him and the Commissioner.

[10] The first of those emails was sent on 27 May 2025⁴ to Mr Healy by the Commissioner:

“I refer to the parties’ exchange of submissions on sanction and costs in *Legal Services Commissioner v Healy* (OCR269-23) and to the **attached** directions timetable.

On the question of costs, Counsel for the applicant has asked me to send you a copy of the decision in *Legal Services Commissioner v McQuaid* [2019] QCA 136 (copy **attached**).

Could you please advise whether, in light of the decision in *McQuaid*, you intend to press your submission for costs to be fixed in the sum of \$2,500?

If you are content to proceed on your current submissions, I can indicate that my instructions are to give notice pursuant to direction 5 with the applicant’s request to make further oral submissions.”

[11] To that email Mr Healy responded on 1 June 2025:⁵

“I do not wish to press my submission for fixed costs, but accept costs will be assessed.”

[12] In response to Mr Healy’s email to my Associate, and at my direction, my Associate on 3 June 2025, emailed the parties in these terms:

“Dear Parties,

In light of the below correspondence, his Honour has asked if the LSC wish to maintain their notice to make oral submissions.

If so, his Honour notes that he has read the written submissions of the parties, and has requested that the LSC provide, in a broad way, a list of the matters it wishes to make oral submissions on.” (emphasis added)

[13] It seems from the email chain that the only subject matter the Commissioner wished to address in oral submissions was costs, although the Commissioner has not extended me the courtesy of a reply to my Associate’s email of 3 June 2025, in order to clarify that position. I have decided to proceed and determine the matter without hearing oral argument.

³ Ms Burgess is employed by the Legal Services Commission.

⁴ The day before Ms Burgess’ email to My Associate.

⁵ After both Ms Burgess’ email to Ms Healy and Ms Burgess’ email to my Associate.

General observations relevant to penalty

- [14] The disciplinary jurisdiction under the *Legal Profession Act* is, as in other legislation,⁶ primarily concerned with the protection of the public who access the services of the profession or occupation being regulated, here, lawyers.⁷ Part of the function is to impose sanctions in order to deter the particular practitioner from similar conduct and/or to deter other practitioners.⁸
- [15] In the present proceedings, it is important to emphasise to the profession the importance of strict compliance with undertakings. It is worth repeating the observations of Martin CJ in *Legal Profession Complaints Committee v Detata*⁹ to which I referred in the principal judgment:

“48 The importance of legal practitioners performing their undertakings cannot be overstated. The practice of giving, and relying upon, undertakings given by legal practitioners is widespread and serves an important public purpose. The circumstances in which undertakings are given and relied upon are many and varied. In some cases an undertaking will be proffered and received as a substitute for strict or timely performance of an obligation, perhaps arising under a contract or under a statutory provision. In other cases, the undertaking might be given in order to provide a form of security to the person to whom it is proffered - for example, an undertaking that an executed document will be held in escrow until certain conditions are met, or that legal proceedings will not be instituted if certain conditions are met, or that funds or other property will be retained by the practitioner until certain conditions are met. In all of these circumstances, the usual effect of the proffer and acceptance of the undertaking will be to obviate the need to commence or to continue legal proceedings. This serves the public interest by preserving the limited resources of the parties and the courts.

49 Undertakings will often be proffered and received in the course of legal proceedings - for example, in relation to interlocutory procedures. The provision of undertakings in those circumstances serves the public interest by reducing or averting interlocutory disputes.

50 Undertakings by legal practitioners are a common feature of commercial and property transactions in which legal practitioners are engaged. In some cases, a party might complete a transaction before all relevant conditions are satisfied in reliance upon an undertaking by a practitioner to the effect that he or she will cause a particular condition to be satisfied. In this context, the proffer and acceptance of undertakings by legal

⁶ *Rich v Australian Securities and Investments Commission* (2004) 220 CLR 129.

⁷ *Legal Services Commissioner v Madden (No 2)* [2009] 1 Qd R 149 at [122].

⁸ *Attorney-General v Bax* [1999] 2 Qd R 9 at 22.

⁹ [2012] WASCA 214 at [48] - [54]; appearing in *Legal Services Commissioner v Healy* [2025] QCAT 171 at [76].

practitioners improves the efficiency and expedition of commercial and property transactions and thereby serves to lubricate the wheels of commerce, trade and finance.

- 51 Undertakings can only serve these purposes and thereby further the public interest if they are accepted and relied upon. In some circumstances, a practitioner may proffer an undertaking in terms which makes it clear that the undertaking is only that of the client and not the practitioner. In such a case, the obligation of performance will fall upon the client, not the practitioner. However, this is not such a case. In this case, the undertaking was expressly and unequivocally given in terms which bound both Mr Detata's client, Mr Detata and the firm by which he was employed.
- 52 The proffer of an undertaking binding upon a legal practitioner and his or her firm can be expected to enhance the reliability of the undertaking, and thereby the prospect that it will be accepted and relied upon by the party to whom it is proffered. In this way, the proffer of an undertaking binding upon a legal practitioner enhances the achievement of the various purposes to which I have referred, and thereby enhances the public interest. It is therefore vital that legal practitioners perform their undertakings, regardless of whether the undertaking was proffered in error or oversight, irrespective of any change in circumstances, no matter how radical, and irrespective of any hardship to the legal practitioner concerned .
- 53 Further, it is vital for the maintenance of public confidence in the integrity of the legal profession and its practitioners, and for the maintenance of the confidence which practitioners have in dealing with each other, that performance of their undertakings be enforced
- 54 For these reasons, the obligation of a legal practitioner to perform his or her undertaking is a solemn obligation of the utmost importance. Failure to perform that obligation will generally be regarded as professional misconduct, and depending on the circumstances, will often be regarded as serious professional misconduct.”(citations omitted)

[16] Mr Healy defended both charges but demonstrated a misunderstanding of his obligations under the undertaking that he had given. As observed in the principal judgment, the Commissioner did not allege in the charge or particulars that Mr Healy breached the undertaking deliberately, in the sense that he breached the undertaking knowing that his conduct breached the terms of the undertaking.¹⁰

[17] The Commissioner, through counsel, cross-examined Mr Healy, but did not put to him that he knew that his actions were in breach of the undertaking.¹¹

¹⁰ *Legal Services Commissioner v Healy* [2025] QCAT 171 at [28].

¹¹ *Legal Services Commissioner v Healy* [2025] QCAT 171 at [33].

- [18] While, during the hearing, Mr Healy showed little insight into the fact that his conduct did breach the undertaking, I note that he is a sole practitioner who represented himself at the hearing. I am unaware whether Mr Healy sought advice before the hearing. It is always difficult to maintain objectivity when one is representing oneself. I am sure that Mr Healy as an experienced practitioner with an otherwise unblemished professional record, has reflected upon the decision which has been delivered and will no doubt be vigilant in compliance with undertakings in the future. It seems to me the questions of personal deterrence do not arise here.
- [19] There are a number of mitigating circumstances.
- [20] Firstly, Mr Healy is a senior practitioner of 41 years' standing as a solicitor, who has never before been the subject of professional discipline.
- [21] The complaint which led to the disciplinary proceedings was not made either by Mr Healy's client nor by the other party to the binding financial agreement. The complaint was made by the solicitor for the other party to the binding financial agreement. By making that observation, I do not intend to level criticism at that other practitioner. As I have emphasised both in the primary judgment and in these reasons, the adherence to undertakings is critical to legal practice and it was reasonable for the solicitor to report the breach.
- [22] However, the fact that neither of the parties to the transaction made a complaint leads me to infer that no damage was done to either of them as a result of the breach of the undertaking, and neither party felt disadvantaged.
- [23] As explained in the principal judgment, what Mr Healy did was to breach the undertaking in order to complete a transaction between the parties. The transaction was completed according to its terms. There is no suggestion that Mr Healy benefitted in any way from the breach.
- [24] I am satisfied that the breach of the undertaking was as a result of a genuine misunderstanding by Mr Healy of his obligations.
- [25] As already observed, the Commissioner seeks a public reprimand. Mr Healy, while accepting that he ought to be reprimanded, submits that the reprimand should be a private reprimand.
- [26] Section 456 of the *Legal Profession Act* provides that upon a finding of unsatisfactory professional conduct or professional misconduct, "the Tribunal may make any order as it thinks fit, including any one or more of the orders stated in this section".¹² Section 456(2) then prescribes various orders which can be made, including that prescribed in s 456(2)(e):
- “(e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;”
- [27] In order for the reprimand to be private, “special circumstances” must be present.
- [28] Section 456(4)(a) provides for the imposition of monetary penalties up to \$100,000.

¹² Section 456(1).

Consideration

- [29] The parties agree that a reprimand ought to be made. In *Legal Services Commissioner v SYG*,¹³ Williams J considered various cases where the question of the circumstances in which a private reprimand should be imposed was discussed. It is unnecessary to descend to such an analysis here.
- [30] Mr Healy does not specifically identify the “special circumstances”. In his submissions he mentions his long-standing, unblemished record as a solicitor, and submits that “no public reprimand is required or necessary”.
- [31] I can identify no special circumstances here which would warrant the making of a private reprimand. In fact, the circumstances point strongly to the making of a public reprimand. The conduct concerns the breach of an undertaking. As the reliability of undertakings and adherence to them is critical to legal practice, the breach by its nature justifies public rebuke.¹⁴
- [32] I disagree with the parties that a monetary penalty is appropriate.
- [33] As observed in the primary decision, the Commissioner, in counsel’s final submissions, asserted that a finding was open that Mr Healy had breached the undertaking in circumstances where he knew that his conduct breached the terms of the undertaking. That submission was made notwithstanding that the allegation of deliberateness had been neither charged nor litigated. For the reasons explained, that was an inappropriate submission. Mr Healy’s conduct was as a result of a misunderstanding by him of his obligations under the undertaking.
- [34] Given Mr Healy’s long-standing in the profession and unblemished record, the fact that he will suffer a public reprimand, and that he consents to an order paying the Commissioner’s costs, a further monetary penalty is not appropriate.

Orders

- [35] I make the following orders:
1. The respondent is publicly reprimanded.
 2. The respondent is to pay the costs of the Commissioner of the proceedings on the standard basis, to be assessed as if the matter were a proceeding in the Supreme Court of Queensland.

¹³ [2023] QCAT 401.

¹⁴ See *Legal Services Commissioner v XBV* [2018] QCAT 332 at [47].