

CITATION: *Legal Services Commissioner v Warren* [2017] QCAT 158

PARTIES: Legal Services Commissioner
(Applicant)
v
Alexia Margaret Warren
(Respondent)

APPLICATION NUMBER: OCR047-13

MATTER TYPE: Occupational regulation matters

HEARING DATE: 24 February 2015

HEARD AT: Brisbane

DECISION OF: **Justice David Thomas, President**
Assisted by:
Ms Julie Cameron (Legal panel member)
Dr Susan Dann (Lay panel member)
Dr Margaret Steinberg AM¹

DELIVERED ON: 26 May 2017

DELIVERED AT: Brisbane

ORDERS MADE: **1. The Respondent's name be removed from the local roll of practitioners.**

The Tribunal directs that:

2. The Legal Services Commissioner must file in the Tribunal four (4) copies and give to Alexia Margaret Warren one (1) copy of any submissions in relation to costs, by:

4:00pm on 7 June 2017.

3. Alexia Margaret Warren must file in the Tribunal four (4) copies and give to the Legal Services Commissioner one (1) copy of any submissions in relation to costs, by:

4:00pm on 19 June 2017.

¹ Amendment made on 21 November 2017 due to typographical error.

4. Unless either party makes a request for an oral hearing by 19 June 2017, the appropriate order with respect to costs will be determined by the Tribunal on the papers after 19 June 2017.

The Tribunal further directs that:

5. The complainants must file in the Tribunal four (4) copies and give to Alexia Margaret Warren one (1) copy of any further submissions in relation to the Notice of Intention to Make a Compensation Order, by:

4:00pm on 9 June 2017.

6. Alexia Margaret Warren must file in the Tribunal four (4) copies and give to the complainants one (1) copy of any submissions in relation to the Notice of Intention to Seek Compensation order, by:

4:00pm on 19 June 2017.

7. Unless either party requests an oral hearing by 19 June 2017, the Notice of Intention to Seek Compensation Order will be heard and determined on the papers after 19 June 2017.

CATCHWORDS:

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – NEGLIGENCE AND DELAY – where respondent acted for clients in relation to a sale of property and purchase of another – where respondent failed to communicate settlement statements, relevant documentation or a statement of account to her clients for a period of three years – where respondent has failed to release trust money held in trust account to clients – whether delay unsatisfactory professional conduct or professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND

UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where Legal Services Commissioner issued notice under s 443 LPA – where respondent failed to respond to that notice – where respondent failed to respond to inquiries of the Legal Services Commissioner generally in course of the matter – where respondent led untruthful evidence at hearing of the matter – whether professional misconduct – whether striking off an appropriate sanction

Legal Profession Act 2007 (Qld) ss 418, 419, 429, 443

Adamson v Queensland Law Society [1990] 1 Qd R 489

Attorney-General v Bax [1999] 1 Qd R 9

Barrister's Board v Darveniza [2000] QCA 253

Clyne v New South Wales Bar Association (1960) 104 CLR 186

Council of the Queensland Law Society Inc v Wakeling [2004] QCA 42

Council of the Queensland Law Society Incorporated v Whitman [2003] QCA 438

Harvey v Law Society of New South Wales (1975) 49 ALJR 362

Kennedy v The Council of the Incorporated Law Institute of New South Wales (1939) 13 ALJ 563

Legal Services Commissioner v Browne [2004] NSWADT 63

Legal Services Commissioner v Geoffrey Robert Mines [2010] Legal Practice Committee 002/10

Legal Services Commissioner v Rider Bell [2013] QCAT 176

Legal Services Commissioner v Smith [2014] QCAT 518

Legal Services Commissioner v Thomas [2009] LPT 13

New South Wales Bar Association v Evatt (1986) 117 CLR 177

Peter John Watts v Legal Services Commissioner [2016] QCA 224

Queensland Law Society Incorporated v Carberry [2000] QCA 450

Veghelyi v Council of the Law Society of NSW 12662 of 1999, Unreported, NSWSC, 6/9/89

APPEARANCES:

APPLICANT: M Nicolson instructed by the Legal Services Commissioner

RESPONDENT: AM Warren appearing on her own behalf

REASONS FOR DECISION**Details of Charges**

[1] The Legal Services Commissioner brought a discipline application against Ms Warren on 12 February 2013. That application has since been amended,² and asserts the following two charges:

- 1) Ms Warren failed to respond to a written notice issued on 28 May 2012 by the Legal Services Commissioner pursuant to section 443(3) of the *Legal Profession Act 2007* (Qld) ('LPA').
- 2) Ms Warren failed to act competently and diligently in respect of a conveyance of her client's properties.

Background

[2] There was a great deal of factual controversy around both charges.

[3] For that reason, it is necessary to consider the evidence in detail. The factual findings of the Tribunal are outlined in this section.

[4] The following witnesses were cross-examined:

- a) Mr Clyde Fredrick Rowland;
- b) Mrs Megan Anne Rowland;
- c) Mr Michael Leo Roessler, Legal Services Commission;
- d) Ms Kathryn Patricia Keogh, Legal Services Commission;
- e) Ms Darielle Glenda Campbell, Legal Services Commission;
- f) Ms Alexia Margaret Warren.

[5] Ms Warren acted for Mr and Mrs Rowland in relation to the sale of one property and the purchase of another and that for most of the dealings concerning the sale and purchase of the properties, Mr Rowland dealt with Ms Warren.³ Ms Warren took instructions from Mr Rowland.

² Amended Disciplinary Application, filed 7 January 2015.

³ Affidavit of Clyde Fredrick Rowland, sworn 12 February 2015, paragraph 4; Affidavit of Megan Anne Rowland, sworn 12 February 2015, paragraph 4.

- [6] Under cross-examination, Mrs Rowland said that her husband “always handled our business matters from the time we’d been married, and I just let him do it because he’s more capable of handling these things than I am...so Clyde goes through them from top to bottom”.⁴
- [7] It is common ground that Mr Rowland sought information from Ms Warren after settlement. In cross-examination he was asked, “what were you after at that time?”
- [8] He responded, “I wanted finality. We engaged you to do the conveyancing and you never did it”.⁵ He continued, “we never received anything from you with a summary saying it’s all final now, this is what’s been spent, this is what hasn’t been spent, this is how much money you should get back. You just cut us off”.⁶
- [9] It is common ground, that as between Ms Warren and Mr Rowland, it was agreed that Ms Warren would send information to Mr Rowland via email, to his son’s email address. It was also common ground that an email was sent by Ms Warren on 3 April 2012. However, it was not possible to open the attachments.
- [10] The files which were contained with that email related only to the conveyance of one of the properties, the Burpengary property.
- [11] Under cross-examination, Mr Rowland said “Ms Warren, you sent me, I believe, an email through my son’s computer, and I got in touch with you. I said, look, I cannot open this, and you said that you would send me a hard copy by express post and I would get it the very next day, and I never got it, ever”.⁷
- [12] Ms Warren contended that the information was forwarded by “normal post”⁸ to Mr Rowland shortly after he said that he was not able to open the attachment to the email.
- [13] Ms Warren agreed that there was no file note on her file to indicate that anything had been posted to Mr Rowland. She said the letter was “printed out and it went out to him as it was”.⁹
- [14] Mr Rowland said that he did not ever receive a summary or statement of accounting from Ms Warren.¹⁰ He said that, in over 3 years, Ms Warren had not finalised the business that she was hired to do.¹¹

⁴ T2-61, ll 6-10.

⁵ T2-22, ll 20-21.

⁶ T2-22, ll 30-34.

⁷ T2-24, ll 40-22.

⁸ T3-29, ll 4-6, 28-30.

⁹ T3-30, ll 23-25.

¹⁰ T2-28, ll 12-15; T2-29, ll 15-18.

¹¹ T2-30, ll 36, 37; T2-47, L 4; T2-49, ll 13 -19; T2-52, ll 22-24 & 33; T2-53, ll 25-26.

- [15] For reasons outlined in this section, the Tribunal finds that Ms Warren did not send the letter by post, as she has suggested.
- [16] Ms Warren forwarded an email on 3 April 2012 to the Rowlands at their son's email address. It was Exhibit MN8.¹²
- [17] The email mentioned finalisation of papers and that Ms Warren would be in contact. The email followed Mr Rowland having attempted to call Ms Warren seeking a report.
- [18] Ms Warren gave evidence that she forwarded a letter to Mr and Mrs Rowland dated 5 April 2012 which contained a trust cheque for \$537.65.¹³
- [19] In cross-examination, Mr Nicolson noted that the file copy of the letter dated 5 April 2012 had no signature block and no initials. The response was:
- “it may or may not have. The reason being is drafts were worked on. The original letter was printed off, signed and sent out. Insofar as a letter, that would be put onto the file. I'm not sure if it was done the same day. I don't often print out two copies. I might keep a copy – just on the computer in the meantime and then sometimes – or it will find a way to the file – where it will get put on the file at some point. It's not uncommon not to have a signature on that sort of letter because it's just a copy of the letter that was sent out”.¹⁴
- [20] In relation to a communication from Ms Warren dated 5 April 2012, Mr Rowland's evidence was that he did not ever receive that communication.¹⁵
- [21] There is no evidence on Ms Warren's file to suggest that the correspondence was in fact sent.¹⁶
- [22] The Tribunal finds that there was no communication dated 5 April 2012 sent by Ms Warren to the complainant.
- [23] Mrs Rowland also gave evidence that Ms Warren had not contacted her since the complaint was made with the Legal Services Commission.¹⁷
- [24] Mr Rowland said that he did not hear from Ms Warren after March 2012. He stated,¹⁸ “I don't think I heard from you after March 2012 Ms Warren.” He said to Ms Warren in cross-examination that if she had done her job properly and provided the final settlement calculations for the purchase

¹² T3-51, ll 4-6.

¹³ T3-48, ll 16-22.

¹⁴ T3-50, ll 40-47.

¹⁵ T2-57, ll 16, 17.

¹⁶ Respondent's conveyancing file purchase – A1, A2 & MN7.

¹⁷ Affidavit of Megan Anne Rowland, sworn 12 February 2015, paragraph 6.

¹⁸ T2-52, L 20.

and sale of properties, then he would not have made the complaint. He summarises, “if I had received this we wouldn’t be here”.¹⁹

- [25] Mr Rowland also denied receiving any cheque from Ms Warren.²⁰ The Tribunal finds that the Rowland’s have never received a cheque as no cheque was sent by Ms Warren.
- [26] Mr Rowland contacted the Legal Services Commission after he did not receive the promised information from Ms Warren.
- [27] Mrs Rowland said that the complaint with the Legal Services Commissioner was made on behalf of both Mr and Mrs Rowland.²¹ The Tribunal finds that to be the case.
- [28] Ms Keogh from the Legal Service Commission provided an affidavit and was cross-examined by Ms Warren. Ms Keogh was an impressive witness, who clearly had a good recollection of the events.
- [29] Ms Keogh forwarded an email to Ms Warren on 4 April 2012.
- [30] In the email, Ms Keogh said that she had been contacted by Mr Rowland who said that “he has not yet received settlement statements and other documentation relating to the sale of one property and the purchase of another”. Ms Keogh records that Mr Rowland had been attempting to make contact with Ms Warren during the week in relation to the matter and asked that Ms Warren advise, by 11 April 2012, if she had sent the documentation, or when it would be sent.
- [31] Ms Keogh endeavoured, unsuccessfully, to call Ms Warren.
- [32] On 11 April 2012, Ms Warren replied to the email, referring to the telephone message left by Ms Keogh and concluding “I am away until next week and will respond upon return”.
- [33] Ms Warren sent the email on 11 April 2012, but it had the wrong email address for Ms Keogh. Ms Warren forwarded that message with an email of 12 April 2012, which was the email received by Ms Keogh.
- [34] Ms Warren swears that she spoke with Ms Keogh following her email on 11 April 2012.²² Ms Keogh denies this.²³ Ms Warren has no record of this discussion.
- [35] Under cross-examination, Ms Keogh said, “I don’t recall having spoken with you before, but I do deal with an awful lot of complaints, with an awful

¹⁹ T2-53, L 10.

²⁰ T2-54. ll 38-39 & T2-55, ll 20-23.

²¹ Affidavit of Megan Anne Rowland, sworn 12 February 2015, paragraph 5; T2-60, ll 27 & 28; T2-61, L 11.

²² Affidavit of Alexia Margaret Warren, sworn 23 February 2015, paragraph 16.

²³ Affidavit of Kathryn Patricia Keogh, sworn 23 February 2015, paragraph 6; T2-113, ll 10, 11.

lot of legal practitioners, but certainly in relation to this matter, I don't recall having spoken with you about this matter and...I do keep file notes of all conversations with practitioners and complainants, and there is no file note on my file of any phone conversation with you".²⁴

- [36] Ms Warren also put to Ms Keogh that Ms Keogh had, in the discussion, referred to a much more extensive complaint than that which was set out in the email, namely that the complaint had been that, "I did nothing, gave no documents, gave no monies and gave no accounting". In evidence, Ms Keogh rejected this, saying that she was aware of, "only the terms that are in my email to you, in particular the email of 17th, when I still hadn't had a response from you expressing those concerns again and asking for that response".²⁵
- [37] Ms Keogh also exhibited a copy of her file note of a discussion with the complainant on 20 April 2012, when she reported that Ms Warren had not responded. This corroborates Ms Keogh's recollection regarding a conversation on 11 April 2012 in that such a discussion with the complainant is inconsistent with Ms Keogh having spoken with Ms Warren.
- [38] It might also be expected that, had Ms Warren had a conversation with Ms Keogh on 11 April 2012, after transmitting the first email with the incorrect address, it is likely she would have mentioned the conversation in the second email, which forwarded the 11 April email, which was sent on 12 April 2012.
- [39] The Tribunal prefers Ms Keogh's recollection which is supported by the contemporaneous events and emails. The Tribunal finds that no telephone discussion took place on 11 April 2012.
- [40] Ms Keogh forwarded a further email on 17 April 2012, in which reference was made to the email of 12 April (promising a response upon Ms Warren's return) and asking if Ms Warren could respond to the matters raised in the complaint this week, and expressing a desire to be able to advise the complainant about his conveyancing paperwork and also the funds he believes were held in trust with Ms Warren. A response was requested by 20 April 2012 at the latest.
- [41] Again, this email is consistent with Ms Keogh's recollection that no discussion took place with Ms Warren.
- [42] In cross-examination, it was put to Ms Warren that "it would be very easy to convey to Ms Keogh at this point in time [referring to the period around 4 April] that you had provided the material to the Rowlands?" The response was "no, because I wanted to check the information".²⁶

²⁴ T2-113, ll 16-21.

²⁵ T2-113, ll 44-46; T2-114, ll 1-2.

²⁶ T3-33, ll 23, 24.

[43] As to why she did not mention the information, Ms Warren said, “about when material was going because there were several discussions around – with Mr Rowland, that I was working on the material, and that I was in the process of finalising it which had happened. I couldn’t specifically recall, at that time, in the following week, and I’m out doing something else. So as a matter of prudence, I wanted to check”.²⁷

[44] Mr Nicolson asked:

“and I suggest around this time period in early April that you were actually – you were sending Mr Rowland – the Rowlands emails about finishing paperwork? ----- yes.

And your case is that on 5 April 2012 you sent to the respondent, the purchase – the letter to do with the settlement and the purchase? ---- I had been working on those documents and, yes.

So as of 11th or 12th of April 2012 I suggest the events of the Rowland’s would have been fresh in your mind? ---- No, because I had something else going on in the course of that week.”²⁸

[45] This seems to the Tribunal to be a very implausible explanation.

[46] It is inconsistent with Ms Warren’s position (that she forwarded the relevant information by post, following her discussion with Mr Rowland) that she did not simply refer to this fact in response to Ms Keogh’s emails.

[47] The Tribunal regards it as significant that, in none of the early email exchanges with Ms Keogh and Mr Roessler, does Ms Warren say that the information had already been provided to Mr Rowland. Had the information been provided, as is asserted by Ms Warren, the simple answer to the Commissioner’s enquiry would have been to indicate just that. The fact that Ms Warren did not do this suggests that she did not, in fact, send the information to Mr Rowland as she asserts.

[48] The Tribunal does not believe Ms Warren’s account.

[49] Ms Warren says that, in response to Ms Keogh’s email dated 17 April 2012 by letter attention: Ms Keogh, at the Legal Services Commissioner dated 18 April, Ms Warren noted her advices and concerns of getting copies of documents to Mr and Mrs Rowland after mail, email and documents hand delivered to them were said not to be received. To this extent, Ms Warren said she noted, in the communication, an earlier opportunity for Mr Rowland to call at her office at a mutually convenient time to do so and whether they wished to do this.²⁹

²⁷ T3-33, ll 26-30.

²⁸ T3-33, ll 32-45.

²⁹ Affidavit of Alexia Margaret Warren, sworn 23 February 2015, paragraph 17.

- [50] Ms Keogh denied ever having received an email from Ms Warren dated 18 April 2012.³⁰ She was cross-examined about this issue.
- [51] Specifically, Ms Warren asked whether a letter had been received. Ms Keogh's response was "the Commission didn't receive a letter, from what I understand, and certainly no letter was ever passed on to me, so, therefore, I never saw a letter from you".³¹
- [52] Ms Warren has never produced a copy of that letter. In cross-examination, she said she did not produce the letter because she did not believe it was an issue until the hearing.³² She said, "I didn't attach it because I didn't believe it was a concern".³³
- [53] When asked about the whereabouts of the document she said, "it would be amongst my papers, that's all I can say".³⁴
- [54] Ms Warren said that the letter would not be in her client file but she would have papers with documents with the Legal Services Commission. She said that the papers were not with her at the hearing.³⁵
- [55] Ms Warren's explanation lacks any credibility. Communications between the parties have been an issue throughout these proceedings. Ms Warren's suggestion that she did not have her papers relating to the complaint at the hearing is not credible. The Tribunal concludes that Ms Warren's assertions are untrue.
- [56] The Tribunal finds that no letter was sent by Ms Warren to Ms Keogh on 18 May 2012.
- [57] Mr Rowland then lodged a complaint with the Legal Services Commissioner.
- [58] Mr Rowland said that, in his view, he made the complaint to the Legal Services Commission on behalf of his wife and himself.³⁶
- [59] Mrs Rowland also said that the complaint with the Legal Services Commissioner was made on behalf of both Mr and Mrs Rowland.³⁷
- [60] As to the basis of the complaint made to the Legal Services Commission, Mrs Rowland said it was "because my husband had been trying to get information and the particulars from the property settlements..."³⁸

³⁰ Affidavit of Kathryn Patricia Keogh, sworn 23 February 2015, paragraph 9.

³¹ T2-114, ll 11-14.

³² T3-35, ll 6-9.

³³ T3-35, ll 16,17.

³⁴ T3-35, ll 19, 20.

³⁵ T3-35, ll 30-32.

³⁶ T2-16, ll 10-40.

³⁷ Affidavit of Megan Anne Rowland, sworn 12 February 2015, paragraph 5; T2-60, ll 27, 28; T2-61, L 11.

- [61] The Tribunal finds that the complaint was made with the full knowledge and consent of Mrs Rowland by Mr Rowland on behalf of Mr and Mrs Rowland.
- [62] Mr Roessler forwarded an email to Ms Warren on 27 April 2012, enclosing a copy of the complaint and asking Ms Warren to respond to the matters raised by Mr Rowland no later than 4 May 2012.
- [63] Mr Roessler indicated that the Commissioner would be prepared to deal with the matter as a consumer issue (and not a conduct issue) but that if no satisfactory response was received by the date specified, the Commissioner “may need to reconsider how this matter is dealt with”.
- [64] Mr Roessler attempted to telephone Ms Warren on 10 May and 11 May, leaving messages for her.³⁹
- [65] Ms Warren responded by email on 11 May 2012, acknowledging the messages left and indicating that she was involved in a large matter and would be in further contact “on Monday”.
- [66] Ms Warren also indicated she was unwell “in the past couple of weeks and on a medical certificate off work”.
- [67] She continued, “a quick review does not indicate any email from you that you mention”, asking Mr Roessler to check the time of the email and indicating that “if you respond to this email, I would expect it to be delivered ok.”
- Ms Warren also says “secondly, I have received no response from Mr Rowland as per my invitation in my letter to Ms Keogh”.
- [68] Again, Ms Warren makes no mention, as it would have been easy to do, that she had already provided the information to her clients.
- [69] By return email on 11 May 2012, Mr Roessler forwarded the email dated 27 April 2012 to Ms Warren and told Ms Warren that the Commissioner had not received any other email from Ms Warren apart from the email sent to Ms Keogh on 12 April 2012. Mr Roessler noted that, in Ms Warren’s email of 12 April, Ms Warren did not provide any explanation and indicated that she would be in further contact, although no further contact had been recorded.
- [70] Mr Roessler requested that if any other emails had been forwarded, they should be re-sent. He concluded that he expected to hear from Ms Warren on Monday (which would have been 14 May 2012).⁴⁰

³⁸ T2-60, II 31-33.

³⁹ Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraphs 13 & 14; Affidavit of Alexia Margaret Warren, sworn 23 February 2015, paragraph 18.

⁴⁰ Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 16.

- [71] Ms Warren responded on 15 May 2012 referring to her having received bad news of a personal nature, that she had been away until “this morning” and saying that she would be busy that day finalising substantial documents for an appeal matter and “will send a further note tomorrow”.⁴¹
- [72] Ms Warren then forwarded a further email dated 18 May 2012 at 8:38 am.⁴²
- [73] She indicated that her work had continued into Wednesday and she was also away due to illness.
- [74] She said “as per earlier advices, Mr Rowland can attend at my office base to collect copies at cost and on prior arrangements but I have not heard further in this regard”.
- [75] Ms Warren refers to it being extremely concerning that Mr Rowland “has made sweeping, onerous or otherwise intentionally untrue comments”. The email continues that Ms Warren considers it “curious that Mr Rowland claims to have not received documents sent to him and not returned, emailed to him and which he has discussed and hand delivered to him”, and that “in light of this, his claim for having received nothing cannot be taken seriously”. The email offers: “should Mr Rowland want another copy of the documents, he may at his cost, collect further copies. I also note the trust cheque has not been presented. I will arrange cancellation of cheque issued and deduct the costs from the balance”.
- [76] This was the first time Ms Warren refers to having sent documents to Mr Rowland.
- [77] Ms Warren refers to Mr Rowland “yelling at me” and that Ms Warren was not prepared to speak with him further “and he could attend to speak with me in person”. This was not put to Mr Rowland in cross-examination and is contrary to his assertions.
- [78] Later that day (18 May 2012), the Commission sent by email, facsimile and post, a letter to Ms Warren requesting that, pursuant to section 443 *Legal Profession Act 2007 (Qld)* (LPA) Ms Warren provide a full written explanation and the client file for the complainant’s matter by 25 May 2012.⁴³
- [79] The covering email communication was tendered at the hearing and marked Exhibit A7. This was an email from a client service officer to the respondent attaching the correspondence dated 18 May 2012.
- [80] The facsimile copy was successfully transmitted. The transmission report was Exhibit MLR21 to the affidavit of Michael Leo Roessler, sworn 6 January 2015.

⁴¹ Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 17.

⁴² Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 18.

⁴³ Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 19.

- [81] Ms Warren denies having received the letter dated 18 May 2012. Ms Warren says she has no record of that letter and first saw the complaint in January 2015.⁴⁴
- [82] In all the circumstances, the verifiable evidence indicates that the communication dated 18 May 2012 was successfully sent and the Tribunal finds that the communication was forwarded to Ms Warren and received by her. The Tribunal does not believe the evidence which was given by Ms Warren in this respect.
- [83] The section 443 notice required a response by 25 May 2012.
- [84] Ms Warren forwarded a further email to Mr Roessler on 23 May 2012 at 8:40 am.⁴⁵
- [85] The email noted “please note that I shall be unavailable for personal reasons until Monday 28 May 2012. I shall be in further contact at that time”.
- [86] Mr Roessler said that he thought the email was “just a continuation of the numerous requests for extension that we have received from you over the years for a number of matters for all sorts of reasons”.⁴⁶
- [87] The Tribunal concludes that this email refers to the email and notice dated 18 May 2012. The aim of the email was to infer that a response would not be received by 25 May 2012 (as required) and, in that context, Ms Warren would be in further contact on 28 May 2012.
- [88] Ms Warren suggested that the email was intended to refer to her email of 18 May 2012, so as to vary the times upon which she would be available to see Mr Rowland.
- [89] The Tribunal does not accept this evidence from Ms Warren, especially when the email concludes by indicating that further contact will be made after 28 May 2012.
- [90] Because of the contents of the email, the Tribunal does not believe the evidence of Ms Warren as to this issue. Ms Warren was untruthful in her evidence before the Tribunal.
- [91] On 28 May 2012, a further letter was forwarded, by post, facsimile and email, to Ms Warren, which enclosed the 18 May 2012 letter and noted that Ms Warren had failed to comply with the direction given in the letter to provide full explanation of the matters subject to investigation.⁴⁷

⁴⁴ Affidavit of Alexia Margaret Warren, sworn 23 February 2015, paragraph 26.

⁴⁵ Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 20; Affidavit of Alexia Margaret Warren, sworn 23 February 2015, paragraph 24.

⁴⁶ T2-100, ll 7-10.

⁴⁷ Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 21.

- [92] The facsimile transmission was unsuccessful.⁴⁸
- [93] Exhibit A8 is the email from Sarah Walker from the Legal Services Commission, which emailed the letter to the respondent.
- [94] Formal notice was given under section 443(3) LPA, requiring compliance by 11 June 2012.
- [95] Ms Warren denied receiving this letter.
- [96] In all the circumstances, the verifiable evidence indicates that the communication was successfully sent and the Tribunal finds that the communication dated 28 May 2012 was forwarded to Ms Warren and received by her. The Tribunal does not believe the evidence which was given by Ms Warren in this respect.
- [97] The Tribunal finds that Ms Warren did not provide a full written explanation of the complaint being investigated and did not forward the complete file for the complainant's matter as required by the notice.
- [98] In the circumstances, the Tribunal finds that the respondent failed to respond to the written notice by the Legal Services Commissioner.
- [99] Ms Warren says that as she had not received a response to her email regarding possible time for an appointment to collect the material, by letter dated 30 May 2012, she "followed up my earlier emails about possible arrangements for copies and the replacement cheques to finalise the matter and that I was awaiting response".⁴⁹
- [100] Mr Roessler stated that he did not receive the letter.
- [101] As to the letter dated 30 May 2012, Mr Roessler's evidence was "I have never seen that letter before".⁵⁰ He said "the Commission has no record of receiving this".⁵¹
- [102] Under cross-examination, Mr Roessler gave evidence that "all correspondence, when received at the Commission, is logged and attributed to a particular file in which it relates". He said "the hard copy correspondence is, after logging, given to the particular officer involved who places the correspondence on the investigation file". He continued, "there is no record of the document being received by the Commissioner and being logged as received".⁵² Mr Roessler gave evidence that he had looked at the log numerous times to check.⁵³

⁴⁸ Exhibit MLR 22, Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 6.

⁴⁹ Affidavit of Alexia Margaret Warren, sworn 23 February 2015, paragraph 30.

⁵⁰ T2-105, ll 24, 25.

⁵¹ T2-105, ll 39, 40.

⁵² T2-105, ll 45-57; T2-106, ll 1-4.

⁵³ T2-106, ll 6-10.

[103] In relation to receipt of the letter dated 30 May 2012, in re-examination, Mr Roessler said, when asked about the facsimile from Ms Warren, received on 19 June 2012 (mistakenly dated 19 May 2012):

“I recall seeing her reference to the 30th May 2012 and I would have – and I recall checking the file because I had no recollection of that letter, and I would have checked the electronic log in the case management system to see if that had been perhaps received but not made it to me. And I was satisfied after making those enquiries that the Commission had no record of receiving that letter. I had not received that letter. I then wrote to Ms Warren on 19th June saying I have no record of receiving that letter”.⁵⁴

[104] Mr Roessler indicated that the first time he saw the letter of 30 May 2012 was whilst giving evidence.⁵⁵

[105] Ms Warren was asked about the fact that she posted the letter of 30 May rather than emailed it. She said “I hadn’t been getting a response to my emails. I didn’t get a response at all so I sent the letter by post”.⁵⁶ This response lacks credibility.

[106] The Tribunal does not believe the evidence of Ms Warren and finds that no letter was sent on 30 May 2012.

[107] A comparison was drawn, in cross-examination, with the communication of 19 June (which referred to the letter of 30 May) which had been sent by facsimile not post. When asked why one was sent by post and the other by facsimile, Ms Warren responded “because then, at that stage, I still haven’t had a response, for almost some three weeks down the track, so I faxed”.⁵⁷ Ms Warren was again untruthful in the evidence she gave before the Tribunal.

[108] Before the letter of 30 May, no communication to the Commissioner had been sent by post.⁵⁸ Ms Warren said “so I sent a letter by post, I didn’t think there was an issue about sending mail by post. Its normal procedure. I didn’t get a response almost three weeks down the track so I sent the fax”.⁵⁹

[109] On 13 June 2012, a letter was sent to Ms Warren by post, facsimile and email.⁶⁰

[110] The facsimile transmission was successful as is indicated by Exhibit MLR23 to the Affidavit of Michael Leo Roessler, sworn 6 January 2015.

⁵⁴ T2-109, ll 18-25.

⁵⁵ T2-109, ll 30-32.

⁵⁶ T3-39, ll 29, 30.

⁵⁷ T3-40, ll 1-3.

⁵⁸ T3-40, ll 15, 16.

⁵⁹ T3-40, ll 21-24.

⁶⁰ Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 22.

[111] This letter enclosed copies of the Commissioner's letters dated 18 May and 28 May. The letter also noted that the letters attached requested a satisfactory response to the complaint of Mr Rowland and that Ms Warren produce the client file to the Commissioner. The letter notes that the letter of 28 May was unable to be sent successfully by facsimile as the facsimile service line was continually busy.

[112] The letter refers to the requirement to comply by no later than 11 June 2012 and notes that Ms Warren had not complied, nor had she provided an explanation as to why she had been unable to comply. The letter sets out the provisions of sections 443(3) and 443(4) LPA, noting that in the absence of compliance, Ms Warren was deemed to have committed professional misconduct.

[113] The letter concluded by indicating to Ms Warren that prior to the Commissioner considering whether disciplinary proceedings should be commenced, the Commissioner was prepared to allow a final opportunity in which to provide the information requested. The letter concluded that this should be provided by no later than 20 June 2012.⁶¹

[114] Ms Warren says that she did not receive the letter dated 13 June from Mr Roessler.

[115] In all the circumstances, the verifiable evidence indicates that the communication was successfully sent and the Tribunal finds that the communication dated 13 June 2012 was forwarded to Ms Warren and received by her. The Tribunal does not believe the evidence which was given by Ms Warren in this respect.

[116] A facsimile from Ms Warren apparently dated 19 May 2012, was sent from Ms Warren on 18 June 2012 after business hours and so received at the Legal Services Commission on 19 June 2012.

[117] The letter started, "further to my letter dated 30 May 2012, I have not yet received any further advices".

[118] The letter continued, noting that Ms Warren was awaiting advices as to "whether a replacement cheque is required and mutually convenient arrangements for the collection of copies as no response was provided regarding previous times suggested". Ms Warren concluded by observing that in the event that she did not hear "it shall be taken that a replacement is not required."

[119] In response to the facsimile received on 19 June, Mr Roessler forwarded an email to Ms Warren on the same day.⁶² In the email, he noted that the Commission had no record of receiving any letter from Ms Warren dated

⁶¹ Letter from the Legal Services Commission to Ms Warren, dated 13 June 2012, Exhibit MLR14 to affidavit of Michael Leo Roessler, sworn 6 January 2015.

⁶² Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 24.

30 May 2012, noting that the last communication received from Ms Warren was the email of 23 May 2012.

[120] Ms Warren said that she did not receive the email from Mr Roessler dated 19 June 2012.⁶³

[121] The Tribunal does not believe the evidence of Ms Warren and finds that the communication was received by her.

[122] On 21 June 2012, Mr Roessler sent to Ms Warren via email and facsimile, a copy of the email that was sent on 19 June 2012.⁶⁴

[123] Again, Ms Warren denies having received that communication.⁶⁵

[124] Mr Roessler exhibited to his affidavit a “communication result report” which indicates that the facsimile was successfully forwarded to 30090507, which was the fax number for Ms Warren.⁶⁶

[125] In all the circumstances, the verifiable evidence indicates that the communication was successfully sent and the Tribunal finds that the communication dated 24 June 2012 was forwarded to Ms Warren and received by her. The Tribunal does not believe the evidence which was given by Ms Warren in this respect.

[126] As to reasons why communication with Ms Warren by post, email and facsimile was, at times, unsuccessful, Ms Warren attributed this to various causes including:

- a) (as to facsimiles) server resetting things unbeknown to her;⁶⁷
- b) (as to post) an issue with the local contractor in Morayfield who misunderstood something;⁶⁸
- c) (as to post) an issue around the Burpengary delivery centre;⁶⁹
- d) (as to post) a service contractor who was having some concerns which Australia Post looked into;⁷⁰
- e) (as to facsimiles) the use of 0 from the transmission (which was explained by Mr Roessler as being necessary to access an external line from the Commission’s switch board);
- f) (as to facsimiles) the use of the local number without “07”;

⁶³ T3-40, ll 32-33.

⁶⁴ Affidavit of Michael Leo Roessler, sworn 6 January 2015, paragraph 25.

⁶⁵ T3-41, L 30.

⁶⁶ Affidavit of Michael Leo Roessler, sworn 6 January 2015, Exhibit MLR17.

⁶⁷ T3-42, ll 20, 21.

⁶⁸ T3-42, ll 41, 42.

⁶⁹ T3-42, L 4.

⁷⁰ T3-42, ll 7, 8.

g) (as to emails) because of the settings of the service provider, Crazy Domains.⁷¹

[127] Other than the vague, broad and non-specific statements which Ms Warren made about these excuses Ms Warren led no evidence to verify these issues.

[128] The Tribunal does not believe the evidence given by Ms Warren in relation to the forwarding and receipt of communications. Ms Warren was a highly unimpressive and untruthful witness. She was evasive and argumentative and frequently avoided answering questions. Her cross-examination of witnesses was unfair and positional.

[129] The Tribunal concludes that Ms Warren was an unreliable witness and that much of the evidence she gave in relation to the communications was fabricated. As has been highlighted in these reasons, on many occasions, factors which are able to corroborate events, do not favour the versions given by Ms Warren. The Tribunal concludes that Ms Warren was very selective about what communications she received (or admitted she received) and did not receive, especially from the Legal Services Commission. The Tribunal concludes that Ms Warren was dishonest in her approach to evidence before the Tribunal. Where there is a conflict of evidence between Ms Warren and Mr and Mrs Rowland, Ms Keogh and Mr Roessler, in each instance, the Tribunal has preferred the evidence of the other person.

[130] In summary, the Tribunal finds that:

- Ms Warren did not forward documents to Mr and Mrs Rowland following the facsimile dated 3 April 2012 which was sent to the email address of the son of Mr and Mrs Rowland;
- Ms Warren did not have any telephone conversation with Ms Keogh on 11 April 2012;
- Ms Warren did not send a letter to the Legal Services Commissioner dated 30 May 2012;
- Ms Warren received the letter dated 18 May 2012;
- Ms Warren received the letter dated 28 May 2012;
- Ms Warren received the letter dated 13 June 2012;
- Ms Warren received the letter of 19 June 2012;
- Ms Warren received the letter of 21 June 2012.

⁷¹ T3-97, ll 39-41.

[131]The Rowlands have not received any funds or a final statement of accounting from Ms Warren.

Submissions by Ms Warren

[132]Ms Warren raised a number of preliminary matters. Those preliminary matters were:

- 1) Mr Rowland was not her client, as her client was Mr and Mrs Rowland jointly.⁷² Mr Rowland did not own the Burpengary property, as it was registered in the names of both Mr and Mrs Rowland.⁷³ Thus, the complaint made and signed by Mr Rowland alone did not constitute a valid complaint.
- 2) The case of *Legal Services Commissioner v Geoffrey Robert Mines*⁷⁴ provides authority that instruction from both named vendor clients is required in order to conduct a conveyance. In the present matter, *Mines* shows that the Tribunal should not consider the complaint, as it is from one individual of a joint client.
- 3) The Complaint Form 22 was incomplete, as Parts C and D of the form were missing. The Complaint Form is therefore invalid.⁷⁵
- 4) No copy of the complete complaint form or discipline application has been validly served on Ms Warren.⁷⁶
- 5) The complaint should be treated as a consumer dispute rather than a disciplinary matter.⁷⁷ Mr Roessler, of the Legal Services Commission, advised Ms Warren and Mr Rowland of this in an email dated 27 April 2012.⁷⁸
- 6) The Tribunal has no jurisdiction to hear the disciplinary application because the complaint instigating the application should have been heard as a consumer dispute, not a disciplinary application.⁷⁹
- 7) Upon issuing of the statutory notice under section 433 LPA, the Legal Services Commissioner received an adequate response from Ms Warren by either or both of:
 - i. the email sent to Mr Roessler on 18 May 2012, and
 - ii. the letter sent to Mr Roessler on 30 May 2012.

Joint client – invalid complaint

[133]Ms Warren asserts that she entered into a joint retainer with Mr & Mrs Rowland, which would require both of them to be named as the

⁷² Submissions of Ms Warren, 16 November 2015 at [5]-[12(d)].

⁷³ Ibid at [3]; [12(c)(i)].

⁷⁴ [2010] Legal Practice Committee 002/10.

⁷⁵ Submissions of Ms Warren, 16 November 2015 at [81] – [84].

⁷⁶ Ibid at [81].

⁷⁷ Ibid at [131] – [182].

⁷⁸ Affidavit of Michael Leo Roessler, 6 January 2015, Exhibit MLR4: Email to Ms Warren by Michael Roessler dated 27 April 2012 at 2:08pm.

⁷⁹ Submissions of Ms Warren, 16 November 2015 at [76].

complainants in order for the Form 22 Complaint to be made validly.⁸⁰ Ms Warren filed evidence of letters and tax invoices she sent to the Rowlands in the course of the retainer which addressed the clients jointly as “Mr and Mrs CF Rowland”.⁸¹

[134] Ms Warren also submits that the case of *Mines*⁸² is relevant on the issue of whether the Rowlands are joint complainants in the matter. In that case, the Legal Practice Committee found a legal practitioner guilty of serious neglect in the conveyance of a property. The charge arose when the practitioner released trust funds to one client without instructions from both named vendor clients on the contract. The property sale had been the matrimonial home of the vendors who, by that stage, were estranged.

[135] Ms Warren argues that *Mines* provides authority that both Mr and Mrs Rowland were required to be named as complainants, because they owned the property jointly and were both Ms Warren’s clients.

[136] The case of *Mines* is not relevant in the current circumstances. The case of *Mines* turned on the fact that with the knowledge of the position between the clients and without seeking authority, the lawyer should not have accounted to one client without instructions from the other.

[137] Mr Rowland said that he speaks for his wife on this matter.⁸³ Mrs Rowland swore an affidavit reinforcing this.⁸⁴ Cross-examination of Mr & Mrs Rowland by Ms Warren revealed that Ms Warren communicated predominantly with Mr Rowland in the course of the retainer.⁸⁵ The Tribunal finds this to be the case.

[138] As to the complaint, both Mr Rowland and Mrs Rowland were Ms Warren’s clients. As Ms Warren’s client, Mr Rowland had the right to lodge a complaint about Ms Warren.

[139] Section 429 LPA provides that “an entity may make a complaint...including, for example, an entity that...is or was a client of the law practice.”

[140] The definition of “client”⁸⁶ includes “a person to whom or for whom legal services are provided”.

[141] Mr Rowland was clearly a person to whom legal services were provided and so was a client who could make a complaint.

⁸⁰ Ms Warren’s Response and/or Counter – Application (QCAT form 36) dated 09 December 2014 at [5]-[12(d)].

⁸¹ Exhibit A3, Rowland Client File, 23 February 2015.

⁸² Submissions of Ms Warren, 16 November 2015 at [315]; *Legal Services Commissioner v Geoffrey Robert Mines* [2010] Legal Practice Committee 002/10.

⁸³ Affidavit of CF Rowland, 12 February 2015 at [4].

⁸⁴ Affidavit of MA Rowland, 12 February 2015 at [4].

⁸⁵ T2-62, ll 1-10.

⁸⁶ LPA, Schedule 2.

- [142] If it were the case that when a lawyer is acting for two people, each must complain, this would limit the right of one party to make a complaint about the lawyer where the other party chooses not to participate. Given the broad definitions contained in section 429 and Schedule 2, this is not the outcome intended by the *Legal Profession Act 2007*.
- [143] In any event, Mrs Rowland gave evidence that she was aware of the complaint and that Mr Rowland had made the complaint on her behalf. The Tribunal has found that the complaint was made with the full knowledge and consent of Mrs Rowland.
- [144] Ms Warren has raised the argument in her defence that she was excused from responding appropriately to the request from Mr Rowland on the basis that he alone was not her client.
- [145] In the context of the standards required of her to act with competence and diligence in completing the conveyance, this is an unmeritorious argument.
- [146] As is obvious from the evidence given by Ms Warren at the hearing,⁸⁷ at the time Mr Rowland was in contact with her, she said nothing to him about being unable to provide the report and cheque (as she should have done) due to confidentiality issues or additional authority being required from Mrs Rowland. To the contrary, she agreed to provide the information then failed, repeatedly, to do so.
- [147] Moreover, the evidence from Ms Warren was to the effect that she was not aware that the complaint had been made by Mr Rowland at the time of her early communications with Ms Keogh and Mr Roessler.
- [148] It is clear from Ms Warren's evidence that her conduct was not the result of a concern about the identity of the person making the request as to the documents.
- [149] In any event, even in the absence of a demand from her client, Ms Warren's duty was to finalise the transaction on behalf of her clients. Given that this was never done by Ms Warren, she failed to act with a level of competence and diligence which a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.
- [150] In terms of the requirements of section 491 LPA, both Mr and Mrs Rowland have given evidence, and the Tribunal has so found that Mr Rowland made the complaint with the full knowledge and consent of Mrs Rowland on behalf of both himself and his wife.
- [151] Moreover, the majority of the dealings between Ms Warren and Mr and Mrs Rowland were with Mr Rowland, again by arrangement as between Ms Warren and the Rowlands.

⁸⁷ T3-76, 15-30; T3-79, ll 20-26.

[152] Section 419 would not have prevented Ms Warren from complying with the requirements of the section 443 Notice.

Incomplete Form

[153] Ms Warren submits that the Complaint Form 22 was incomplete as Part C and Part D of the form were missing.⁸⁸ Ms Warren asserts that full completion of the Form 22 is a “mandatory requirement” in order for a disciplinary application to be made in the “approved form” under section 115 LPA.⁸⁹

[154] Section 429 provides:

- (3) *The complaint must—*
 - (a) *identify the complainant; and*
 - (b) *if possible, identify the person about whom the complaint is made; and*
 - (c) *describe the alleged conduct the subject of the complaint.*
- (4) *The approved form for a complaint may only be approved by the commissioner.*
- (5) *The commissioner may accept a complaint made in writing other than in the approved form.*

[155] Section 429(3) provides the requirements for a complaint. The section does not require full completion of the Form 22 where those other details are adequately provided. The Commissioner has the power to accept a complaint made in any form by operation of sections 429(4) and (5). The Complaint Form completed by Mr Rowland was accepted by the Legal Services Commissioner.

Service

[156] There have been many issues around the difficulty faced by the Legal Services Commissioner in successfully serving Ms Warren. By way of example, the following affidavits were filed to demonstrate the efforts made by the Legal Services Commission to serve Ms Warren:

- (a) Melanie Anne Sharrow, on behalf of the Legal Services Commissioner, deposes in her affidavit of 22 May 2013 that she attended Ms Warren’s practice address of suite 300, 6/193 Morayfield Rd Morayfield, and found it to be a Computer Shop.
- (b) Megan Anne Mills, on behalf of the Legal Services Commissioner, deposes in her affidavit of 16 May 2013 that she attended the residential address of Ms Warren on seven occasions within a four-week period and also left messages on both Ms Warren’s home and mobile phone numbers.

⁸⁸ Submissions of Ms Warren, 16 November 2015 at [81] – [84];
⁸⁹ Ibid at [81].

- (c) Charmaine Teresa Keir, IDS Group Process Serving Manager, on behalf of the Legal Services Commissioner, deposes in her affidavit of 16 May 2013 that she conducted searches of the Australian Electoral Roll, property listings and Telstra White Pages to identify Ms Warren's residential address.
- (d) David John Franklin, Deputy Secretary of the Queensland Law Society, deposes in his affidavit of 28 June 2013 as to the contact details of Ms Warren held by the Queensland Law Society, which included her residential address, telephone number, fax number and email address.

[157] On 4 July 2013, the Commissioner was successful in an application to the Tribunal to dispense with personal service.⁹⁰ This direction was unsuccessfully appealed to the Queensland Court of Appeal by Ms Warren.⁹¹

[158] On 27 August 2013, Ms Warren informed the Tribunal that she had received a copy of the discipline application from the Commissioner.

[159] Despite this, Ms Warren argues that she has not been duly served in accordance with the applicable rules. Ms Warren refers to the comments of the Acting Commissioner that appear in the *LSC Annual Report 2013-2014* in support of this.⁹² In that report, the Acting Commissioner states, with reference to Ms Warren's Court of Appeal matter, that:

“The Commissioner commenced a discipline application and subsequently sought an order for substituted service”.

[160] Ms Warren submits this statement indicates that substituted service on her had not been effected as at 27 August 2013.⁹³

[161] The Tribunal rejects Ms Warren's submission. Service has been validly effected on Ms Warren, given:

- a) The direction from the Tribunal to dispense with personal service and substitute service by email on 4 July 2013;
- b) The affidavits of attempted service filed by the Commission, as outlined above, in their entirety support an order for service by email;
- c) The Queensland Court of Appeal dismissed the application by Ms Warren on the matter of service;⁹⁴ and
- d) The fact that Ms Warren has been defending this discipline matter and has full knowledge of the complaint and action taken by the Commission.

⁹⁰ QCAT Act, s 40.

⁹¹ *Warren v Legal Services Commissioner* [2014] QCA 150.

⁹² Legal Services Commission, *Annual Report 2013-14*, pg 22.

⁹³ Submissions of Ms Warren, 16 November 2015, at pg 3, footnote 1.

⁹⁴ *Warren v Legal Services Commissioner* [2014] QCA 150 at [16].

Consumer Dispute

[162] In the early stages, it appears that the complaint was being treated by the Commissioner as a consumer dispute.⁹⁵ This is understandable, as at this time, Ms Warren could have acted reasonably and satisfied the complaint by providing the requested information and a cheque for the remaining trust account balance of \$537.65 to the Rowlands.

[163] Mr Roessler was assigned to investigate the complaint.⁹⁶ Mr Roessler told Ms Warren and Mr Rowland of the Commissioner's intention to proceed with the matter as a consumer dispute by email on 27 April 2012.⁹⁷ However, that email also made it clear to Ms Warren that *'if no satisfactory response is received by that date the Commission may need to reconsider how this matter is dealt with'*.⁹⁸

[164] Ms Warren submits that the complaint should be treated as a consumer dispute rather than a conduct matter.⁹⁹ The distinction is relevant to how the complaint is handled within the Commission and the outcomes available to the Tribunal (which are outlined below on the subject of the Tribunal's jurisdiction). Ms Warren applied considerable analysis to the use of the words "consumer issue", "consumer dispute", and "conduct matter". The Tribunal does not see this as relevant to its consideration.

[165] The Commissioner submits that Ms Warren was afforded ample opportunity to resolve the issue with Mr Rowland and provide a satisfactory response to the complaint.¹⁰⁰ The Commissioner's attempts to obtain a satisfactory response from Ms Warren are well documented.¹⁰¹ The Commissioner made the decision to conduct a formal investigation into Ms Warren's conduct, pursuant to section 437 LPA, as a result of not having received a satisfactory response from Ms Warren.

[166] Ms Warren was notified of the decision of the Commissioner to investigate her conduct by letter on 18 May 2012. It is clear from the words of that letter that the complaint was to be treated as a disciplinary matter. The letter read *'that I have received a complaint about your **conduct** from Clyde Rowland'* [emphasis added].¹⁰² The Commissioner's disciplinary application, filed on 11 February 2013, also makes it clear that Ms Warren's conduct was being investigated for the purposes of a disciplinary matter.¹⁰³

⁹⁵ Submissions of Ms Warren, 16 November 2015 at [131] – [182].

⁹⁶ Ibid at [132 (ii)].

⁹⁷ Ibid at [132(iv)]; Affidavit of Michael Leo Roessler, 6 January 2015, Exhibit MLR4.

⁹⁸ Affidavit of Michael Leo Roessler, 6 January 2015, Exhibit MLR4.

⁹⁹ Submissions of Ms Warren, 16 November 2015 at [131] – [182].

¹⁰⁰ Applicant's Submissions, 11 December 2015 at [14].

¹⁰¹ Affidavit of Michael Leo Roessler, 6 January 2015, Exhibit MLR 5-10.

¹⁰² Letter 18 May 2012 from Mr R Brittan, Legal Services Commission, Director of Investigations to Ms Warren.

¹⁰³ Application for Referral – Disciplinary Proceedings Part C, dated 11 February 2013.

[167] It is clear that, while in the early inquiries into this matter the Commissioner attempted to treat the dispute as a consumer dispute, the evolution of the investigation, largely driven by the approach taken by Ms Warren, led it to be formalised before the Tribunal as a matter of Ms Warren's conduct. Ms Warren's argument that the current matter should be treated as a consumer dispute is groundless. The Commissioner has the power to conduct a formal investigation into Ms Warren's conduct and proceed with the disciplinary application against her.

Characterisation of the conduct

[168] Section 418 LPA provides that unsatisfactory professional conduct includes conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

[169] Professional misconduct includes unsatisfactory professional conduct if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence.¹⁰⁴

[170] In relation to professional misconduct, Justice James Thomas in the case of *Adamson v Queensland Law Society* said:¹⁰⁵

“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”.

Charge 1: Breach of section 443(3) LPA

[171] The charge is that the respondent failed to respond to a written notice issued on 28 May 2012 by the Legal Services Commissioner, pursuant to section 443(3) LPA.

[172] The Tribunal has found that the notices dated 18 May 2012 and 28 May 2012 and also the follow up letters dated 13 June & 26 June were forwarded to Ms Warren and were received by her.

[173] Ms Warren seeks to rely upon an email she sent to Mr Roessler of the Legal Services Commission, also on 18 May 2012, as an adequate response to Mr Brittan's letter. In Ms Warren's email, she states that Mr Rowland would be able to pick up his client files “at 4pm on one of the following blocks: 3:00pm – 5:00 pm Thursday 24 May 2012, or Friday 25 May 2012; 2:00pm – 4:00pm Wednesday 30 May 2012 or Thursday May 31 2012.”¹⁰⁶

[174] When questioned about this email by Ms Warren in cross-examination, Mr Roessler stated that, “in my view, [the email was] completely

¹⁰⁴ LPA, s 419.

¹⁰⁵ [1990] 1 Qd R 489 at 507.

¹⁰⁶ Email 4 April 2012 at 11:52AM from Kathryn Keogh at the Commission to Ms Warren.

disingenuous, in that you were not providing information that we requested".¹⁰⁷ In the circumstances, the Tribunal concludes that this view was reasonable.

[175] The Tribunal considers that this email from Ms Warren did not constitute an adequate response to her letter. The email was also sent prior to receipt of the letter and so is not a response. The email does not respond to the requirements of the notice, namely to provide an explanation in relation to the complaint and also to provide the original copy of the entire file together with the trust ledger.

[176] On 28 May 2012, the Commissioner again wrote to Ms Warren. This letter was titled: "NOTICE PURSUANT TO S. 443 OF THE *LEGAL PROFESSION ACT 2007*". The letter was signed on behalf of the Commissioner.¹⁰⁸ It enclosed the letter of 18 May 2012, and advised:

"Accordingly, I hereby give you written notice pursuant to section 443(3) of the Legal Profession Act 2007 that you may be dealt with for professional misconduct if your failure to comply with that direction continues for a further 14 days – that is to say beyond 11 June 2012".¹⁰⁹

[177] The Tribunal has found that this letter was received by Ms Warren.

[178] Ms Warren purports to have also sent a letter to Mr Roessler on 30 May 2012, in response to the Commissioner's letter of 28 May 2012.¹¹⁰ The Tribunal has found that no such letter was forwarded by Ms Warren.

[179] On that basis, Ms Warren failed to respond to the written notice issued, pursuant to section 443(3) LPA.

[180] The respondent's conduct in failing to respond to the Legal Services Commissioner is aggravated by the implausible and untruthful denials of receipt of communications. The myriad of delays, defaults and unsubstantiated excuses offered to the Legal Services Commissioner (and indeed to the Tribunal and the Court of Appeal) are more suggestive of deliberate avoidance and obfuscation, rather than mere inefficiency. It is completely implausible that so many of these communications were unsuccessful due to technical failures.

[181] The Tribunal finally received the client files from Ms Warren on 23 February 2015. They were not made available to the Commissioner at any time previously.

[182] Cooperation with the regulatory authority is an important aspect of the maintenance of an effective disciplinary regime within the legal profession.

¹⁰⁷ T2-79, L 20.

¹⁰⁸ Letter 28 May 2012 from Legal Services Commission to Ms Warren; reference MLR: 71009752.

¹⁰⁹ Ibid.

¹¹⁰ Affidavit of Alexia Margaret Warren, sworn on 23 February 2015, paragraph 30; Exhibit AMW2-5.

It is also an important aspect of the maintenance of standards within the legal profession and this is recognised in section 443(3) LPA.

[183] In *Legal Services Commissioner v Browne*,¹¹¹ the Tribunal made the following remarks in relation to the cooperation with investigations undertaken by the regulator:

“The Tribunal again sends a very clear message to the profession that practitioners must comply with correspondence sent to them by the Commissioner or the Law Society in a timely fashion.”

[184] In *Veghelyi v Council of the Law Society of NSW*,¹¹² Justice Smart stated at page 16:

“it is important that solicitors respond promptly to the society when it asks for a reply in response to complaints that have been made. It will be an unusual and complex case where the delay of more than 14 days is acceptable and often, the replies should be delivered within a shorter period such as 7/10 days. Replies to the Law Society in respect to complaints warrant a high priority.”

[185] The Tribunal agrees with those authorities.

[186] The failure to comply with a notice issued under section 443(3) LPA is deemed professional misconduct.¹¹³

Charge 2: Failure to act competently and diligently

[187] Charge 2 alleges that Ms Warren failed to act competently and diligently in the conveyance of the Rowland’s properties at Mountain Creek and Burpengary. The settlement of those properties occurred on 13 December 2011.¹¹⁴ The Legal Services Commissioner alleges that, since settlement occurred:¹¹⁵

- a) Ms Warren has failed to provide the Rowlands with the full details of the settlements and settlement calculations in respect of the properties; and
- b) Ms Warren has failed to account to the Rowlands for the funds she holds in her trust account on account of settlement funds, legal costs and outlays.

[188] The Commissioner submits that Ms Warren’s continued neglect and delay in failing to provide her client with the files, or render a statement of accounting to the Rowlands in respect of the conveyance, is evidence of a

¹¹¹ [2004] NSWADT 63 at [13].

¹¹² 12662 of 1999, Unreported, NSWSC, 6/9/89.

¹¹³ Section 443(4)(a) LPA.

¹¹⁴ Complaint Form 22 by Mr Rowland, 26 April 2012.

¹¹⁵ Applicant’s Submissions, 7 January 2015, paragraph 15.

failure to maintain the standard of competence and diligence that a member of the public is reasonably entitled to expect of a legal practitioner.¹¹⁶

[189] The Tribunal has found that Ms Warren did not provide her clients with full details of settlements and settlement calculations with respect to the properties.

[190] The Tribunal has also found that the amount of \$537.65 was never paid to Mr and Mrs Rowland. Ms Warren has failed to account to her clients for funds she held in her trust account on account of settlement funds, legal costs and outlays.

[191] Ms Warren was asked why she did not deliver the documents to the Legal Services Commissioner. She replied that she was not asked and had no authority to do so.¹¹⁷

[192] Based upon the findings of the Tribunal, it is clear that Ms Warren failed to properly account to her clients with respect to the conveyance of the client's properties.

[193] The failure is compounded by the fact that compliance would have been a very simple matter. At any number of times since the transactions were completed, and during the investigations by the Legal Services Commissioner, Ms Warren could have provided the necessary settlement statements and drawn a trust cheque in favour of her clients.

[194] Once Ms Warren realised that her clients had not received the information Ms Warren should have taken steps to send the information to her clients as she agreed to do. Ms Warren's suggestion that the clients call upon her was not adequate in the circumstances.¹¹⁸

[195] There is no reasonable explanation why Ms Warren did not report to the clients and account for the balance funds. As at the date of the hearing, the clients had not received either the settlement statements or the cheque.

[196] Failure to attend to a client's affairs in a timely and professional way can amount to either unsatisfactory professional conduct or professional misconduct.

[197] If neglect on the part of a practitioner forms part of a pattern of failure, it is likely that the conduct will constitute professional misconduct, rather than the lesser charge of unsatisfactory professional conduct.¹¹⁹ The Commissioner submits that there is clear evidence that Ms Warren's

¹¹⁶ Applicant's Submissions, 20 March 2015 at [148].

¹¹⁷ T3-59, ll 12-14.

¹¹⁸ As to circumstances, see Notice of Intention to Seek Compensation, dated 27 November 2013, and in the evidence of Mr Roessler at T2-81, ll 5-18.

¹¹⁹ *Legal Services Commissioner v Smith* [2014] QCAT 518 at [22].

conduct in the conveyance of the properties did not meet the standard required of a diligent solicitor.¹²⁰

[198] Ms Warren's conduct was "indicative of a failure either to understand or to practice the precepts of honesty or fair dealing" in relation to her clients.¹²¹

[199] The Commissioner submits that the circumstances of the case show serious and persistent failures to maintain the standard expected of a solicitor, and so this would support a finding of professional misconduct against Ms Warren.¹²²

[200] It is clear from the evidence and the findings of the Tribunal that Ms Warren's conduct falls short of the standard of competence and diligence that the Australian public would reasonably expect of a legal practitioner.

[201] An isolated instance, where the error is remedied, would usually only attract a finding of unsatisfactory professional conduct.

[202] As mentioned earlier, Ms Warren's failure is compounded by the way in which she continued to refuse to cooperate, where the solution should have been so simple to achieve. In those circumstances, Ms Warren has, in a substantial way, failed to reach the standard expected of her and so her conduct amounts to professional misconduct.

Sanction

[203] The primary purpose of disciplinary applications heard by the Tribunal is the protection of the public from practitioners not fit to be held out as officers of the court.¹²³ Conduct likely to warrant a finding that a practitioner is no longer fit to practice includes such conduct that brings the standards of the profession into disrepute.¹²⁴

[204] Ms Warren's conduct overall was indicative of a failure either to understand or to practice the precepts of honesty or fair dealing in relation to the practitioner's clients.¹²⁵

[205] In *Kennedy's* case, it was concluded that such conduct "be tokened unfit to be held out by the Court as a member of a profession in whom confidence should be placed".¹²⁶

¹²⁰ Applicant's submissions, dated 11 December 2015 at [33].

¹²¹ *Kennedy v The Council of the Incorporated Law Institute of New South Wales* (1939) 13 ALJ 563.

¹²² Applicant's submissions, dated 20 March 2012 at [185].

¹²³ *Queensland Law Society Incorporated v Carberry* [2000] QCA 450 at [38].

¹²⁴ *Attorney-General v Bax* [1999] 1 Qd R 9.

¹²⁵ *Kennedy v The Council of the Incorporated Law Institute of New South Wales* (1939) 13 ALJ 563.

¹²⁶ *Ibid.*

[206] In addition to the charges brought against Ms Warren, the Legal Services Commissioner raises the question of the way in which Ms Warren has conducted her case.

[207] Ms Warren has filed voluminous, irrelevant and often unmeritorious arguments throughout the proceedings. This is further support for a conclusion that she is not a fit and proper person to continue to practice law.

[208] Ms Warren has repeatedly maintained that the charges are misconceived, even in the face of compelling contrary evidence.¹²⁷ As is obvious from these reasons, Ms Warren has repeatedly maintained that the charges are misconceived, in circumstances where her arguments were entirely without merit.

[209] In *Council of the Queensland Law Society Incorporated v Whitman*,¹²⁸ the Court of Appeal determined it to be relevant to consider the practitioner's lack of cooperation in the proceedings and the manner in which the charges were defended in assessing the practitioner's fitness to practice.¹²⁹

[210] de Jersey CJ noted:

“but this lack of cooperation etc. attended the charges which were preferred and the way they were defended before the tribunal and because it characterised matters directly before the tribunal, the tribunal was right to have regard to that aspect, for it bore on the respondent's lack of proper appreciation of the public interest which should have informed his professionalism. This having emerged, the tribunal would have been unrealistically blinked to have ignored it.”

[211] Those considerations were found to be relevant in *Attorney-General v Bax*,¹³⁰ and *Queensland Law Society Incorporated v Carberry*.¹³¹

[212] In *Legal Services Commissioner v Thomas*,¹³² the practitioner's defence of the charges was regarded as relevant to the capacity to act professionally, and to judgment and insight into the practitioner's own conduct.¹³³

[213] The approach taken by Ms Warren demonstrates Ms Warren's disregard for the public interest which should inform her professionalism, shows a

¹²⁷ See for example: Application filed 4 May 2015; the Respondent's Further Submissions of 24 February 2015; Submissions of the Respondent dated 8 October 2015.

¹²⁸ [2003] QCA 438.

¹²⁹ Ibid at [36].

¹³⁰ [1999] 1 Qd R 9 at [22].

¹³¹ [2000] QCA 450 at [7], [34].

¹³² [2009] LPT 13.

¹³³ Ibid at [61].

lack of judgment and insight into her own conduct, and warrants a finding that she is not fit and proper to practice law.

Honesty

[214] The Tribunal has found that Ms Warren was not truthful in evidence before the Tribunal in relation to the communications, both with her clients and with the Legal Services Commissioner.

[215] Honesty in dealings is a fundamental tenant of what is required of legal practitioners. Dishonesty is unacceptable, especially in the legal profession and, of itself, demonstrates a lack of fitness to practice as a legal practitioner.

[216] In *Council of the Queensland Law Society Inc v Wakeling*,¹³⁴ the Queensland Court of Appeal removed a practitioner's name from the roll in circumstances where the practitioner had deliberately misled the Supreme Court. In doing so, the court said that, to ensure the protection of the public, it could not "... confidently present the respondent as someone on whom the client and the court may rely for undoubted honesty [and] independent judgment".¹³⁵

Approach to the Proceedings/ Cooperation with the Commissioner

[217] The Commissioner has referred to Ms Warren's consistently late filing of material and numerous applications for extension of time in proceedings before the Court of Appeal and before the Tribunal.

[218] Even from the outset, it is manifest that Ms Warren did not comply with either formal or informal requests of the Commissioner to supply a timely answer to the Rowland's complaint.

[219] The delays, evasions, unacceptable claims of non-receipt of communications and the failure to comply with the Commissioner's notice place this case at the high end of the scale for professional misconduct.

[220] In *Legal Services Commissioner v Thomas*,¹³⁶ serious delay coupled with false or misleading evidence led to the removal of the practitioner's name from the roll.

[221] In *Council of the Queensland Law Society Incorporated v Whitman*,¹³⁷ it was an "overarching consideration" that the practitioner was "generally uncooperative with the [law society] and apparently took an unduly combative approach before the tribunal".¹³⁸

¹³⁴ [2004] QCA 42.

¹³⁵ *Ibid* at [27].

¹³⁶ [2009] LPT 13.

¹³⁷ [2003] QCA 438.

¹³⁸ [2003] QCA 438 at [36].

[222] In *Whitman*, it was not necessary for the practitioner's unrepentant attitude to be the subject of a separate charge because "it characterised the matters directly before the tribunal...for it bore on the respondent's lack of proper appreciation of the public interest...the tribunal would have been unrealistically blinkered to ignore it".¹³⁹

Removing the name from the local roll

[223] The power of the Tribunal to strike off or suspend a practitioner is not exercised as a punishment of the practitioner, but rather for the protection of the public from ethically unsuitable practitioners.¹⁴⁰ Striking off is reserved for cases of sufficient seriousness where the character and conduct of the practitioner is seen to be inconsistent with the privileges of further practice.¹⁴¹

[224] Recently Gotterson JA observed that an order removing a practitioner's name from the roll should only be made when the probability is that the practitioner is permanently unfit for practice.¹⁴² In *Watts*,¹⁴³ whilst the practitioner's conduct amounted to professional misconduct, the medical evidence suggested that the risk of the conduct being repeated was very low. In those circumstances, Gotterson JA was not prepared to conclude that the practitioner was permanently unfit for practice. In that context, Gotterson JA observed "I am fortified in this approach by his subsequent conduct in admitting his guilt, repaying monies when it was appropriate to do so, and withdrawing from legal practice since 2010. All these matters are relevant for consideration".¹⁴⁴

[225] Ms Warren has shown no remorse and has not accepted any aspect of the disciplinary proceedings that have been brought against her. She demonstrates a lack of insight into her own misconduct and a complete absence of remorse.¹⁴⁵

[226] Ms Warren's conduct indicates that she is not a fit and proper person to continue practicing as a legal practitioner.

[227] In those circumstances, the Tribunal recommends that Ms Warren's name be removed from the local roll of practitioners.

¹³⁹ Ibid.

¹⁴⁰ *Harvey v Law Society of New South Wales* (1975) 49 ALJR 362 at 354; *New South Wales Bar Association v Evatt* (1986) 117 CLR 177; *Adamson v Queensland Law Society Inc* [1990] 1 Qd R 498 at 504.

¹⁴¹ *Barrister's Board v Darveniza* [2000] QCA 253 at [38]; *Clyne v New South Wales Bar Association* (1960) 104 CLR 186, 202.

¹⁴² *Peter John Watts v Legal Services Commissioner* [2016] QCA 224 at [46].

¹⁴³ [2016] QCA 224.

¹⁴⁴ Ibid at [48].

¹⁴⁵ *Legal Services Commissioner v Thomas* [2009] LPT 13.

Costs

[228] Upon a finding that a practitioner has engaged in prescribed conduct, the Tribunal must make an order requiring the person to pay costs unless the Tribunal is satisfied that exceptional circumstances exist.

[229] The parties will be given the opportunity to make submissions about costs. For that purpose, the Tribunal directs that:

- a) The Legal Services Commissioner must file in the Tribunal four (4) copies and give to Alexia Margaret Warren one (1) copy of any submissions in relation to costs, by:

4:00pm on 7 June 2017.

- b) Alexia Margaret Warren must file in the Tribunal four (4) copies and give to the Legal Services Commissioner one (1) copy of any submissions in relation to costs, by:

4:00pm on 19 June 2017.

- c) Unless either party makes a request for an oral hearing by 19 June 2017, the appropriate order with respect to costs will be determined by the Tribunal on the papers after 19 June 2017.

Compensation claim

[230] A notice of intention to seek compensation order has been filed.

[231] The form indicates that the supporting documentation supplied is a letter.

[232] The letter reads:

“from the aggravation that Ms Warren has put myself and my wife through, I seek \$1,000 compensation which is less than half the amount that she charged for her professional services. All in all, most times when I talked to Ms Warren on the phone, I was reduced to feeling subservient and even hesitant to phone her and she usually spoke down to me instead of to me.

I would also ask Ms Warren to return to me any monies owing to us and a detailed account of expenditure.”

[233] Pursuant to section 464 LPA, compensation orders include the following:

- (a) an order that a law practice can not recover or must repay the whole or a stated part of the amount that the law practice charged a complainant for stated legal services;
- (d) an order that a law practice pay to a complainant an amount by way of compensation for pecuniary loss suffered because of conduct that has been found to be –

- (i) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner involved in the relevant practice; or
- (ii) misconduct of a law practice employee in relation to the relevant practice.

[234] When dealing with compensation orders of the type mentioned in section 464(d), section 465 LPA requires that such an order shall not be made unless the Tribunal making the order is satisfied –

- (a) if there is a complainant in relation to the discipline application, that the complainant has suffered pecuniary loss because of the conduct concerned; and
- (b) that it is in the interests of justice that an order of that type be made.

[235] The right to compensation order depends upon the findings of the Tribunal. The Notice of Intention to Seek Compensation Order was filed before the hearing.

[236] The complainant and the respondent should be given the opportunity to make any further submissions that they wish to make in relation to the application for compensation order.

[237] On that basis, the Tribunal further directs that:

- a) The complainants must file in the Tribunal four (4) copies and give to Alexia Margaret Warren one (1) copy of any submissions they wish to make in relation to the Notice of Intention to Make a Compensation Order, by:

4:00pm on 9 June 2017.

- b) Alexia Margaret Warren must file in the Tribunal four (4) copies and give to the complainants one (1) copy of any submissions she wishes to make in relation to the Notice of Intention to Seek Compensation order, by:

4:00pm on 19 June 2017.

- c) Unless either party requests an oral hearing by 19 June 2017, the Notice of Intention to Seek Compensation Order will be heard and determined on the papers after 19 June 2017.