

Response to Cartwright Report

Recommendation

Clearer conduct standards – new rules that specifically require high personal and professional standards of lawyers (including outside work) and safeguards and support mechanisms in place for people who report and appropriate exceptions – new rule to prohibit victimisation. Extending reporting obligations to practices or lawyers who are responsible for a practice.

Status and Outcome

This recommendation has been implemented.

- The [Conduct and Client Care Rules](#) (Rules) were amended to clarify the standards of behaviour expected of lawyers and include new reporting requirements to ensure that there is an appropriate regulatory response.
- At the time the Rules were updated, the Law Society published overarching [Guidance on professional standards and reporting obligations](#) and [fact sheets](#) on the new obligations. [Webinars](#) were delivered for the profession and remain available to lawyers on the Law Society website.

Recommendation

Closer regulation of workplace obligations – the focus of the regulatory regime is on individual lawyer responsibility – new approach required to extend obligations to legal practices or the lawyers who are effectively responsible for practices.

Regulatory changes recommended: Imposition of minimum obligations on legal workplaces or lawyers who are responsible for workplaces, including: Anti-harassment, bullying and discrimination policies; Extended reporting requirements; Continuing professional development; Auditing and monitoring compliance; Preventing lawyers using non-disclosure agreements to contract out of the Rules and to conceal unacceptable behaviour.

Status and Outcome

This recommendation has been implemented subject to limited exceptions.

- The [Rules](#) were amended as above. The designated lawyer regime was introduced which requires all law practices to implement appropriate policies and report to the Law Society on those policies as well as to make mandatory reports in the case of

- bullying, discrimination, harassment, theft or violence within their practices.
- Since the introduction of the amended Rules, we have received 20 mandatory reports from designated lawyers.
- Since June 2022, all designated lawyers have been required to make an annual declaration of compliance with the Rules.
- The recommendation that lawyers should be prevented from using non-disclosure agreements to contract out of the Rules was not implemented. Guidance on how to handle this in terms of settlement agreements was contained in the published [Guidelines](#).
- As yet, no changes have been made to the content of lawyers' continuing professional development (CPD), although in 2021 the CPD regulations were amended to provide that the Law Society now has the ability to make aspects of CPD mandatory.

Recommendation

Reform of the procedures around confidentiality and suppression – in relation to unacceptable conduct complaints the restrictions are inflexible, and have contributed to concerns about the lack of transparency and accountability.

Status and Outcome

Implementation of this recommendation is ongoing.

- The Law Society has [consulted](#) with the profession on legislative reform, including seeking more flexibility in terms of transparency of the complaints process. Despite support from the profession and strong advocacy from the Law Society for an amendment to the confidentiality provisions in the Lawyers and Conveyancers Act 2006 (Act), the Minister of Justice has signalled that wholesale amendment of the Act is unlikely to be a priority in the first term of the current Government. Without legislative change, the Lawyers Complaints Service (LCS) and Standards Committees are bound by the confidentiality obligations in the Act.
- More recently, the Independent Review Panel recommended that lawyers who have been found guilty of unsatisfactory conduct should only be named publicly in extremely rare circumstances. This recommendation was accepted in principle by the Law Society. The Law Society plans to undertake work on a naming policy to ensure these decisions are made consistently.

Recommendation

Changes to the LCS and SC process – improvements to the complaints process for this type of conduct: increasing depth and diversity of those people responsible for assessing complaints; increasing support and assistance to people working in the process; providing more support for people going through the process; reducing the size of committees dealing with complaints of this type and targeting expertise; encouraging the use of independent investigators; and finding and considering alternative methods of resolution.

Status and Outcome

Many aspects of this recommendation are complete, and others are ongoing.

- Active steps are taken to improve diversity on Standards Committees. We advertise with Te Hunga Rōia Māori o Aotearoa, the Pacific Lawyers Association and Asian Lawyers Association to encourage their members to apply to join the Standards Committees. Past editions of LawTalk have included profiles of existing Standards Committee members to encourage applications from across the profession. However, achieving genuine diversity on Standards Committees has proven difficult.
- The Independent Review panel recommended a new provision in the Act requiring the regulator to take account of the principles of Te Tiriti. This recommendation was accepted in principle by Law Society; however, this would involve a significant amendment to the Act, and as noted above, substantive legislative reform of the Act is not a Government priority.
- In terms of support for those working in the complaints process, Standards Committee convenors receive a payment per meeting along with lay members. The LCS conducts regular training for its Standards Committee members and keeps this under regular review (Umbrella resilience training was conducted with LCS staff in June 2022).
- At this stage, the size of all Standards Committees is relatively consistent (to manage capacity) but the Law Society has flexibility around membership numbers.
- In terms of support for lawyers engaging in the complaints process:
 - a. Counselling services have been available for the profession since May 2019, through the Vitae Legal Community Counselling Service.
 - b. The Law Society Law Care phone line is available for lawyers to discuss sensitive matters with a Law Society staff member.
 - c. Lawyers can access the National Friends Panel Sensitive List. The Friends Panel has existed for many years, and the Law Society recruited more volunteers to join to assist with sensitive matters after 2018. We continue to keep the optimal way of operating and delivering this service under review.
 - d. The Law Society operates a mentoring programme to enable lawyers to connect with other lawyers and support each other professionally.
 - e. A Wellbeing Strategy has been completed for the profession and a detailed implementation plan is being developed.
- The Early Resolution Service was reviewed by an independent external reviewer in 2021 and all recommendations have been implemented. Given the Minister of Justice's indication that wholesale reform of the Act is unlikely to be a priority in the first term of the current Government, in July 2024, a further independent external review of the LCS commenced, which will focus on operational matters relating in particular to standard track complaints. The goal of the review is to improve the efficiency and effectiveness of standard track complaints processes. The Law Society expects this review to be complete by December 2024.
- An internal investigations team has been established.

- A specialist team was set up within the LCS to receive sensitive complaints, designated lawyer mandatory reports and confidential reports. A specialist Standards Committee was also established to deal with sensitive complaints. This is discussed further below.
- Mediation is sometimes used between complainant and respondent. In 2024, 5% of complaints were resolved via mediation. All Early Resolution Service Professional Standards Officers (PSOs) have been provided with mediation training.

Recommendation

Creation of a specialised process for dealing with complaints of unacceptable behaviour
Creation of a specialised complaints unit made up of non-lawyers and acting as a triage point for complaints of this type; and Specialist committee – specialist processes and training

Status and Outcome

This recommendation is complete.

- New front-end processes have been set up within the Law Society for confidential reports, law firm notifications, and bullying, harassment and discrimination complaints. This is resourced by a dedicated Senior PSO who liaises with complainants and/or affected parties in an initial phase. There is now a separate team within the LCS and a dedicated triage process for these matters (additional PSO resource will shortly be added to this team).
- In addition, a specialist national Standards Committee was created for complaints about sensitive matters. There is ongoing consideration of additional training and support for this Committee.

Recommendation

Changes to the procedures of the Disciplinary Tribunal – increasing diversity, greater case management and potential for alternative processes, clear protections for people during the evidential process, tailoring confidentiality and suppression provisions and reviewing the penalties and orders the LCDT may make.

Status and Outcome

This recommendation is for the Ministry of Justice to progress.

- Under the Act, the chairperson and deputy chairperson of the Tribunal are appointed by the Governor General on the recommendation of the Minister. Lawyer members of the Tribunal are appointed by the Board of the Law Society under delegation from the Law Society Council. Lay members are appointed by the Governor General on the recommendation of the Minister following consultation with the Law Society and the New Zealand Society of Conveyancers.

- The diversity of the Tribunal is actively considered by the Law Society when making recommendations (and, in the case of appointment of lawyer members, when those appointments are made by the Council). No wider review of either the appointment process for the Tribunal or procedures adopted has been undertaken by the Ministry.

Recommendation

Imposition of mandatory training – effective educational programmes for addressing culture problems in the legal professions – CPD – lawyers practising on their own account; and training LCS staff and members of Standards Committees.

Status and Outcome

Implementation of this recommendation is ongoing.

- As discussed above, no changes have been made to the content of lawyers' CPD requirements. Part of the Law Society's work programme includes considering and progressing the Independent Review Panel's recommendations on the CPD regime. This includes the recommendation that the Law Society exercises its existing powers to make aspects of CPD mandatory and the broader recommendation that the regulator conducts a wholesale review of the CPD regime to determine whether a different model (such as a competency framework) would be more effective. These recommendations were accepted in principle by the Law Society. The Law Society's work in this area is in its early stages.
- In terms of lawyers who intend to apply to practise on own account, a review of the Stepping Up course was undertaken in 2022, which included consultation over several months with key stakeholders. The course material was updated to reflect changes to legal practice, including the changes to the Rules around acceptable behaviour, as well as changes to highlight cultural competency.
- As noted above, free training has been made available in relation to the most recent changes to the Rules, including a webinar on how to develop a bullying and harassment policy.
- As noted above, training for LCS staff and Standards Committee members is actively and routinely considered. Standards Committee members receive regular training each year. Some LCS staff have received Umbrella resilience training in June 2022.

Recommendation

Implementation and monitoring – implementation and monitoring programme be established to achieve this objective.

Status and Outcome

Implementation of this recommendation is ongoing.

- Overall implementation of the Cartwright report recommendations has been captured in the work the Law Society is now doing in response to the Independent Review.
- In terms of monitoring, the Law Society reports annually on complaints data in its annual report. This now includes reporting on the numbers of complaints received alleging harassment, bullying, and discrimination. Since 2020, 453 complaints have been made about sexual harassment, harassment, discrimination and bullying. As noted, the LCS is limited in what it can say about the progress or outcome of individual complaints.
- A Workplace Environment Survey is carried out every five years; most recently in 2023. The results of the 2023 survey are available here: [NZLS | Legal Workplace Environment Survey shows progress, but challenges remain \(lawsociety.org.nz\)](https://www.lawsociety.org.nz/news/2023/07/nzls-legal-workplace-environment-survey-shows-progress-but-challenges-remain)