

IN THE MATTER OF:
THE LEGAL PRACTITIONERS ACT 1981

Action No. 3 of 2020

And

IN THE MATTER OF:
ANNA KATARZYNA JONES

REASONS FOR DECISION

1. In this action Anna Katarzyna Jones (“the **Practitioner**”) is charged with professional misconduct pursuant to section 82(2) of the *Legal Practitioners Act 1981* (SA) (“the **Act**”). The Charge, dated 20 March 2020, contains four counts of failing to comply within the time stipulated with Notices issued by the Legal Profession Conduct Commissioner (“the **Commissioner**”) under Schedule 4, Part 2, Clause 4(1) of the Act (“the **Notices**”). The Notices, which relate to four separate complaints against the Practitioner, were issued in the period between July 2017 and October 2018.
2. The Practitioner filed a Response to the Charge, which was subsequently amended twice. The Further Amended Response, being that before the Tribunal on the final hearing, was dated 4 September 2020. From the outset of these proceedings the Practitioner has made full admissions of the relevant facts, namely her failure to comply with the Notices.
3. The primary issue in dispute was whether the conduct the subject of counts 3 and 4 (in which the responses to the Notices were 1 and 7 days late respectively, much lesser delays than in counts 1 and 2) amounted to “professional misconduct” as defined in section 69 of the Act or the less serious “unsatisfactory conduct” as defined in section 68 of the Act. There was a subsidiary dispute about the timing at which the Practitioner became aware of certain correspondence from the Commissioner which was initially sent to a barrister who was at the time assisting the Practitioner.

4. The Commissioner and the Practitioner agreed, and the Tribunal accepts, that it is appropriate to treat the failure to comply with all four Notices as a single course of conduct. The Commissioner conceded (correctly in our view) that the conduct the subject of counts 3 and 4, were each to be considered in isolation, would amount to unsatisfactory conduct. The Practitioner accepted that when viewed together as a single course of conduct, the Tribunal should find that the Practitioner engaged in professional misconduct. This was a sensible resolution of the question of liability and it is regrettable that it was not reached earlier in the proceedings.
5. Owing to the agreement referred to above, on 19 May 2021 the parties, who were each represented by Counsel, came before the Tribunal to make submissions on the appropriate penalty. The reasons which follow address that question. However before leaving the question of liability, the Tribunal records that it has not overlooked its own inquisitorial role. Merely because the Commissioner and a practitioner reach an agreement as to the appropriate manner in which a charge should be resolved, the Tribunal must itself be satisfied that the proposed findings are appropriate. It is for this reason that even where submissions are confined to the question of what relief should be granted, evidence must be led which enables the Tribunal to be satisfied that the conduct alleged by the charge occurred, in addition to any evidence the practitioner may rely upon in mitigation of penalty.
6. In this case the Tribunal is satisfied, on the basis of the evidence referred to below, and finds that the Practitioner engaged in a single course of professional misconduct.

Evidence

7. The Tribunal had before it the following evidence:
 - a. Book of Documents (Exhibit P1) containing two medical reports, the Notices, materials from Supreme Court Action SCCIV-18-1385 and three written character references;
 - b. Statement of Agreed Facts dated 12 May 2021 (Exhibit C2);
 - c. Correspondence dated 7 May 2018 and 22 November 2018 from the Practitioner to the Commissioner's office (Exhibit P3).
8. We set out the Statement of Agreed Facts in full:

Count 1

1. *On 20 July 2017, the Commissioner served upon the Practitioner a Notice issued pursuant to Schedule 4, Part 2, Clause 4(1) of the Legal Practitioners Act, 1981 (as amended), (“**the Act**”) in respect of the Spencer Complaint (“**the Spencer Notice**”).*
2. *The Spencer Notice required the Practitioner to comply with it by 8 August 2017.*
3. *The Practitioner failed to comply with the Spencer Notice by 8 August 2017.*
4. *The Practitioner provided a partial response to the Spencer Notice on 22 November 2018 and then provided a response in compliance with the Spencer Notice on 27 November 2018.*
5. *Prior to the issue of the Spencer Notice the Commissioner had requested from the Practitioner information with respect to the Spencer Complaint on five occasions being letters dated 28 March 2017, 2 May 2017, 23 May 2017, 27 June 2017 and 4 July 2017.*
6. *The Practitioner admits that her conduct in respect of Count 1 constitutes professional misconduct as defined in section 68 of the Act.*

Count 2

7. *On 20 July 2017, the Commissioner served upon the Practitioner a Notice issued pursuant to Schedule 4, Part 2, Clause 4(1) of the Act in respect of the Lenger Complaint (“**the Lenger Notice**”).*
8. *The Lenger Notice required the Practitioner to comply with it by 8 August 2017.*
9. *The Practitioner failed to comply with the Lenger Notice by 8 August 2017.*
10. *On 22 November 2018 the Practitioner provided a response to the Lenger Notice.*
11. *Prior to the issue of the Lenger Notice the Commissioner had requested the Practitioner to provide information and respond to the Lenger Complaint on seven occasions being letters dated 28 February 2017, 27 March 2017, 4 May 2017, 24 May 2017, 13 June 2017, 26 June 2017 and 6 July 2017.*
12. *The Practitioner admits that her conduct in respect of Count 2 constitutes professional misconduct as defined in section 68 of the Act.*

Count 3

13. *On 19 April 2018, the Commissioner served upon the Practitioner a Notice issued pursuant to Schedule 4, Part 2, Clause 4(1) of the Act in respect of the Martin Complaint (“**the Martin Notice**”).*
14. *The Martin Notice required the Practitioner to comply with it by 7 May 2018.*
15. *The Practitioner failed to comply with the Martin Notice by 7 May 2018.*
16. *On 8 May 2018 the Practitioner provided a response to the Martin Notice.*
17. *Prior to the issue of the Martin Notice the Commissioner had requested the Practitioner to provide information in respect to the Martin Complaint on three occasions being letters dated 4 January 2018, 1 February 2018 and 5 March 2018.*
18. *The Practitioner admits that her conduct in respect to the Martin Notice constitutes unsatisfactory professional conduct as defined in section 68 of the Act.*

Count 4

19. *On 30 October 2018, the Commissioner served upon the Practitioner a Notice issued pursuant to Schedule 4, Part 2, Clause 4(1) of the Act in respect to the Craddock Complaint (“**the Craddock Notice**”).*
20. *The Craddock Notice required the Practitioner to comply with it by 20 November 2018.*
21. *The Practitioner failed to comply with the Craddock Notice by 20 November 2018.*
22. *On 27 November 2018, the Practitioner provided a response to the Craddock Notice.*
23. *Prior to the issue of the Craddock Notice the Commissioner had requested the Practitioner to provide information and respond to the Craddock Complaint on four occasions being letters dated 23 April 2018, 17 May 2018, 20 June 2018 and 10 July 2018.*
24. *The Practitioner admits that her conduct in respect of the Craddock Notice constitutes unsatisfactory professional conduct as defined by section 68 of the Act.*

Suspension Proceedings

25. *By application dated 19 November 2018, the Commissioner applied to the Supreme Court pursuant to Clause 5(7) of Schedule 4 of the Act for the suspension of the practising certificate of the Practitioner by reason of her failure to comply with the Spencer, Lenger and Martin Notices (“the Suspension Proceedings”).*
26. *By 30 November 2018, the Practitioner complied with the Notices and the Suspension proceedings were dismissed by consent and the Practitioner was ordered to pay the Commissioner’s costs.*

9. In relation to the Commissioner’s costs of the Suspension Proceedings, Counsel for the Practitioner advised us (on instructions from the Practitioner who was present at the hearing) that she had entered into an agreement with the Commissioner to pay those costs (in the total amount of \$19,500) in monthly instalments, and had recently made the final payment such that the costs had been paid in full.

The Practitioner's personal circumstances

10. The Practitioner was admitted to practice in South Australia on 9 February 2009. The Practitioner was at all relevant times the holder of a South Australian practising certificate and she continues to practise. At present, she is a principal in her own firm located in Goolwa, a small town about 100km from Adelaide which is close to the larger regional centre of Victor Harbor. In addition to the Practitioner, the firm is busy and employs a junior solicitor and has a senior practitioner, Ms Michelina Guarna, engaged as a consultant three days per week.
11. The Practitioner married at a young age and after obtaining a Bachelor of Arts worked as a manager, and spent a period of time living in Far North Queensland. Upon returning to South Australia, aged in her thirties, she studied law whilst raising two small children. After graduation, the Practitioner worked for approximately three years in a firm in the southern suburbs of Adelaide. She then obtained employment at a different firm where she remained until 16 November 2016. The Practitioner’s departure from that firm was acrimonious. She commenced working as a sole practitioner in Goolwa.
12. The conduct which the Practitioner has admitted, and which is the subject of the Charge, occurred during the period that she was in sole practice. The Tribunal accepts that

during that time the Practitioner lacked a professional support network and found it difficult to disclose to others her problems, including the complaints to the Commissioner and her mental health conditions, specifically anxiety and depression. The Practitioner also had, and continues to have, limited family support as a result of her husband's injuries following a serious road accident and her relationship with one of her parents is strained.

13. Like so many legal practitioners who come before the Tribunal, when faced with a combination of demands - current clients, family stressors and mental health challenges, the Practitioner's attitude to the complaints and subsequent Notices was to "put her head in the sand". Apart from some limited and informal assistance via the Law Society of South Australia's complaints companion support service and barrister Mr Ben Krupka, the Practitioner failed to confront the Commissioner's investigation of the complaints until she was faced with the Suspension Proceedings in the Supreme Court and engaged her current Counsel.
14. It goes without saying that she should not have allowed the matter to get that far. In ignoring the complaints and correspondence from the Commissioner (in some cases for an extended period), the Practitioner made grave errors of judgment and demonstrated serious disregard for her professional responsibility to assist the Commissioner in his investigations.
15. In more recent times the Practitioner has built up a professional support network by the involvement of the junior practitioner and Ms Guarna in her firm and also through disclosure of her difficulties to several members of the independent Bar.
16. The Practitioner has learned, once she overcame her initial embarrassment in sharing her personal and professional problems, that these senior members of the profession were of course ready and willing to offer guidance and support.
17. Three of those barristers provided character references which are before the Tribunal (as part of Exhibit P1) being Mr Paul Heyward-Smith QC, Mr Angus Redford, and Mr David Rigall. Each spoke positively of the Practitioner, her interactions with clients and her abilities in circumstances where they had observed her legal work closely in the course of matters in which they were briefed.

Medical evidence

18. The Practitioner has a diagnosis of an affective disorder with mixed depressive and anxious components for which she takes anti-depressant medication daily. The Practitioner is compliant and accepts that she will need to take this medication long-term. Central and recurrent themes associated with the Practitioner's illness are feelings of self-doubt and low self-esteem, with occasional physical symptoms (muscular spasms) likely in connection with periods of high anxiety.
19. The Practitioner has regularly consulted with Dr Jill Maxwell, who is a General Practitioner with specialist mental health expertise, engaged by the Law Society of South Australia as part of the 'Law Care' program. Dr Maxwell has particular experience in treating and counselling lawyers. Dr Maxwell first saw the Practitioner on 13 November 2017 and has continued to consult with her regularly since then.
20. The Practitioner's health care is overseen by Dr Philip Davidson of the Goolwa Medical Centre who has been her General Practitioner since August 2006. The practitioner has a current Mental Health Care Plan ("MHCP").
21. Both Dr Davidson and Dr Maxwell provided written reports dated 16 July 2020 and 23 July 2020 respectively which were before the Tribunal (as part of Exhibit P1). Each expressed the opinion that the Practitioner is, despite her mental health condition, able to effectively practise law and manage her firm.
22. Although the Commissioner pointed to some inconsistencies in the evidence about the time the Practitioner's symptoms first emerged, it is not a matter the Tribunal needs to resolve in circumstances where it is clear from Dr Davidson's report that the Practitioner was suffering from a mental health condition from at least February 2014 when a MHCP was prepared and a referral to a psychologist provided. Dr Davidson's report also notes an exacerbation of the Practitioner's condition in May-June 2017. On the basis of this evidence, the Tribunal is satisfied that the Practitioner's mental health condition was present at the time the conduct the subject of the Charge took place.

Objects of disciplinary penalties

23. The primary consideration of the Tribunal in considering whether a penalty should be imposed, and if so, of what kind, is protection of the public. A penalty should be fixed at a level that achieves both specific deterrence, that is a sufficient consequence for the individual practitioner involved that they are discouraged from repeating their misconduct (or unsatisfactory conduct) in the future, and general deterrence. In simple terms, the latter means that the penalty arrived at should 'send a message' to the legal profession more broadly that the misconduct in question will not be tolerated.

Submissions as to penalty

24. Both parties submitted that it is appropriate for the Tribunal to reprimand the practitioner.

25. The parties also agreed that by the Tribunal exercising the power in section 82(6)(iii)(A) of the Act, it would be appropriate to impose a condition on the Practitioner's practising certificate that she enter into, and abide by, a mentoring agreement. There was not agreement between the parties as to the identity of the mentor, nor as to the duration of the agreement.

26. The Commissioner sought the imposition of a fine under section 82(6)(ii)(A), whereas the Practitioner submitted that personal deterrence has already been achieved owing to the requirement that the Practitioner pay the Commissioner's costs of the Suspension Proceedings. Counsel for the Practitioner sought that no fine be imposed or alternatively, that the amount of the fine be set at a nominal amount.

Determination

27. The Tribunal will record a reprimand pursuant to section 82(6)(a)(i) of the Act.

28. The Tribunal declines to impose any fine in the circumstances of this case. Despite the seriousness of a failure to comply with a statutory notice issued by the Commissioner we have had regard to the personal circumstances of the Practitioner (including her mental health), her early admission of the facts, remorse and co-operation in these proceedings, and importantly the fact that as a result of costs order made in the Suspension Proceedings the Practitioner has already suffered significant financial consequences flowing from her conduct.

29. We do not consider that any further personal deterrence is required. The Tribunal accepts the submission made on the Practitioner's behalf that she has learned some very valuable lessons from the disciplinary process and is highly unlikely to repeat the type of conduct the subject of the Charge. Accordingly, to impose a fine in this case may well stray into the territory of penalising the Practitioner rather than deterring future professional misconduct for the protection of the public.
30. As to general deterrence, the Tribunal reiterates the seriousness of this type of professional misconduct. In other cases, and in particular where the practitioner has not cooperated or participated in proceedings before the Tribunal, it should be expected that significant fines will be imposed. We were referred to the Tribunal's decision in the matter of *Hill* (LPDT Action 12 of 2011) in which a fine of \$7,500 was imposed for failure to comply with two statutory notices (which would be contained in a single notice under the current Act). The maximum fine is \$50,000. Were it not for the circumstances referred to above, and in particular the costs in the Suspension Proceedings, the Tribunal may have imposed a fine in the order of \$25,000.00.
31. As to the identity of the mentor for the purposes of the mentoring agreement, the Practitioner proffered two alternatives. The first is Ms Guarna, a solicitor with many years' experience, including in running her own firm. As detailed above Ms Guarna is currently consulting to the Practitioner's firm and is in regular face-to-face contact with her several times per week as well as being available by telephone at all times. Ms Guarna also lives in relatively close proximity to the Practitioner, which is important given Ms Guarna's role as a consultant will not necessarily continue for the duration of the mentoring agreement.
32. Ms Guarna was not considered by the Commissioner to be a suitable mentor due to the financial relationship whereby Ms Guarna is paid by the Practitioner's firm. It was suggested that owing to financial dependence upon the Practitioner, Ms Guarna might not (or might not be seen to) be sufficiently independent.
33. In the alternative the Practitioner proposed Mr Rigall, who is an experienced barrister, located in Adelaide. The Commissioner agreed that he would be an appropriate mentor.

34. In the present case we consider that Ms Guarna is an appropriate person to serve in the important role of mentor. It is crucial that the Practitioner has the benefit of regular contact with her mentor, preferably in person, and this will be easier to achieve with a mentor who lives and works in the same regional area. The Tribunal also accepts the Practitioner's submission that in circumstances where the Practitioner is responsible for running her own legal practice, it is desirable that she have access to advice from an experienced solicitor in preference to a barrister. A barrister does not necessarily face the same client-management, administrative, financial, employee-management and trust accounting issues which a solicitor in private practice must grapple with.
35. Whilst the financial connection to the Practitioner's firm is a relevant consideration, Ms Guarna's level of experience (being far greater than the Practitioner's), stage of career (nearing retirement), financial relationship (independent contractor/consultant) coupled with her good standing in the profession satisfy the Tribunal that there is no risk she would be compromised in the role of mentor by reason of the consultancy.
36. In selecting Ms Guarna as mentor the Tribunal means no disrespect to Mr Rigall who we have no doubt would also have made himself available regularly to the Practitioner and supported her both personally and professionally. However, the practicalities of Mr Rigall's busy practice in Adelaide would necessarily mean that he would be unlikely to visit her in her office and meet face-to-face with the Practitioner as often as Ms Guarna.
37. We also take into account that Ms Guarna has already been performing the role of mentor on an informal basis since approximately July 2020. The Tribunal considers that this has likely been an important support (and protective factor guarding against future misconduct) which should continue uninterrupted. The Tribunal determines that a period of two years from the date of our decision is the appropriate length of the mentoring agreement. As the condition is imposed by consent, we are able to impose conditions which operate for more than 12 months.

Costs

38. Counsel for the Commissioner sought an order for costs during the hearing. After reserving its decision, the Tribunal invited the parties to make short written submissions on the question of the costs of these proceedings.

39. On 2 June 2021 the parties advised that they had reached an agreement on the question of costs. The agreement is that the Practitioner will pay the Commissioner's costs fixed in the sum \$7,000, with \$3,500 payable by 30 June 2021 and \$3,500 by 31 July 2021.

The Tribunal Orders:

1. The Tribunal reprimands the Practitioner.
2. The Practitioner is to enter into a Mentoring Agreement in terms of Annexure A to these reasons within 7 days.
3. The following conditions be imposed on the Practitioner's practising certificate:
 1. *That for a period of two years commencing on [date of publication of these reasons] the practitioner do authorise the Legal Profession Conduct Commissioner ("the Commissioner") to:*
 - (a) *Publish to the practitioner's mentor copies of any complaints received by the Commissioner about the conduct of the practitioner; and*
 - (b) *Provide to the practitioner's mentor copies of any correspondence from the Commissioner sent to the practitioner.*
 2. *That the practitioner must comply with the terms of the Mentoring Agreement entered into in accordance with the Legal Practitioners Disciplinary Tribunal's orders of [date].*
4. The Practitioner is to pay the Commissioner's costs fixed in fixed in the sum \$7,000, with \$3,500 payable by 30 June 2021 and \$3,500 by 31 July 2021.

DATED the 15th day of June 2021.

K E CLARK SC

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F CAMATTA

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Mentoring Agreement

Anna Katarzyna Jones

and

.....

Mentoring Agreement

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Details

Date

Parties

Name	Anna Katarzyna Jones
Short form name	Practitioner
Notice details	34 Cadell Street, Goolwa SA 5214 Email address: anna@southerncoastlegal.com.au

Name	Michelina Guarna
Short form name	Mentor
Notice details	[insert]

Background

- A The Practitioner is a legal practitioner to whom the Act applies.
- B The Mentor is an admitted legal practitioner with more than 15 years post admission experience.
- C On 20 March 2020 the Commissioner laid a charge against the Practitioner pursuant to s82(2), alleging that the Practitioner had engaged in professional misconduct.
- D On [redacted] the Tribunal found that charge proven.
- E On [redacted] the Tribunal made an order pursuant to section 82(6)(a)(iii)(A) of the Act imposing a condition on the Practitioner's practising certificate that the Practitioner enter into and comply with the terms of this Mentoring Agreement for the entirety of the Term.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this agreement:

Act means *Legal Practitioners Act 1981*

Mentor means Michelina Guarna *(insert address of the Mentor)* or, if a new Mentor is appointed under clause 4, that appointee.

Practice Activities means those parts of the Practitioner's legal practice described in the Schedule to this agreement and any other parts of the Practitioner's legal practice which the Practitioner and the Mentor agree in writing are to be treated as Practice Activities.

Term means the period of 24 months commencing on *[insert the day of the delivery of the Tribunal's reasons]*.

Any term used that is defined in the Act has the same meaning in this Agreement as it has in the Act.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) all references to clauses are to clauses in this Agreement, and all references to a schedule refer to a schedule to this Agreement;
- (e) a reference to the Act is a reference to the Act as amended, replaced or supplemented from time to time;
- (f) references to sections are references to sections of the Act; and
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

2. The Practitioner's Obligations

- (a) During the Term, the Practitioner must:
 - (i) engage with the Mentor in respect of the Practice Activities as and when the Mentor reasonably requires;
 - (ii) provide the Mentor with information and documents and allow the Mentor access to the premises, books and records of the Practitioner and the Practitioner's practice as the Mentor reasonably requires; and

- (iii) provide the Mentor with any complaints received by the Commissioner about the conduct of the Practitioner.
- (b) If the Practitioner and the Mentor are unable to agree on whether a requirement made by the Mentor under clause 2(a)(ii) is reasonable, either of them may apply to the Commissioner for a ruling on the question in issue and the Commissioner's ruling will bind them.
- (c) Meetings between the Practitioner and the Mentor:
 - (i) will be at least monthly, except where the Paractitioner or the Mentor is unable due to illness or leave, in which case the partries will meet as soon as practicable after the expiration of the month;
 - (ii) will be face to face if possible, but may be by way of online videoconference if required;
 - (iii) will be informal;
 - (iv) are anticipated to take up to an hour.

3. Reporting

- (a) The Mentor will respond to any requests for information from the Commissioner regarding the operation of the mentoring agreement including whether the proposed meetings between the Mentor and the Practitioner have occurred in accordance with this agreement.
- (b) In any event, at 3 monthly intervals, the Mentor will provide a report by letter to the Commissioner regarding the operation of this Agreement, with the first such report to be provided 3 months after this Agreement is entered into.
- (c) The obligations placed upon the Mentor pursuant to this clause do not oblige the Mentor to disclose any matter which, in the Mentor's sole judgment and discretion, he or she considers confidential or privileged, unless relevantly authorised by the Practitioner, or her client.
- (d) Save as is necessary to protect the confidentiality of the Practitioner and her family, and to preserve client confidentiality and privilege, by agreeing to undertake the role of mentor the Mentor undertakes no formal legal duty, role, obligation or liability in respect of the Practitioner, or her practice, clients or family.

4. Substitution of New Mentor

The Practitioner will notify the Commissioner within 7 days of the Practitioner becoming aware that the Mentor is unable or unwilling to continue with this Agreement and of any proposed replacement who will need to be approved by the Commissioner.

5. Miscellaneous

5.1 Notices

Any notice required to be given under this agreement must be in writing.

5.2 Service

- (a) Any notice required to be served under this agreement may be served on the recipient;
 - (i) by delivery to their place of business;
 - (ii) by posting it to their place of business; or
 - (iii) by emailing it to their email address.
- (b) A notice served by post will be taken to have been served on the business day following its posting.
- (c) A notice served by email will be taken to have been served on the day on which it is sent.

5.3 Amendment

This agreement can only be amended in writing signed by the parties. Any such amendment must first be approved by the Commissioner.

Schedule

Description of the Practice Activities

- The Practitioner's conduct in and operation of her legal practice.
- Any issues or problems which the Practitioner perceives are affecting her practice, including without limitation:
 - Client relationship issues, including client complaints about the Practitioner (whether they are made to the Practitioner's firm or to the Commissioner);
 - Relationships with other members of the Practitioner's firm and the legal profession generally;
 - Investigations by the Commissioner into the Practitioner's conduct;
 - Matters of law or legal practice.

Signing page

EXECUTED as an agreement.

Dated

Anna Katarzyna Jones

Practitioner

Michelina Guarna

Mentor