

Victorian Legal Services COMMISSIONER

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26 August 2024

Private and Confidential

Mr Reece Ferrara

By email to: Reece.Storme@protonmail.com

Dear Mr Ferrara

Your Complaint about Ms Mehernaz Bowler of Bowler and Co

Our ref: COM-2024-0150 – Mikhala Baluyot

Notice of Decision

I refer to your complaint about Ms Mehernaz Bowler ('the practitioner') received by the Victorian Legal Services Commissioner ('the Commissioner') on 17 January 2024.

This office is an independent statutory authority established by the *Legal Profession Uniform Law (Victoria)* ('the Uniform Law') to handle complaints about lawyers and law practices. When we receive a complaint we must make a preliminary assessment of it, that is, we must examine it to determine whether or not we have power to help and if so, what sort of assistance we may be able to provide. As a delegate of the Commissioner, my actions and decisions are made on behalf of the Commissioner and are limited to the powers given to me by the Uniform Law.

As I understand it, you have raised concerns about the practitioner who acted for you in a matter before the Heidelberg Magistrates' Court. Your complaint is summarised as follows:

1. That the practitioner did not speak with you and did not appear for you in your matter. Rather, she assigned a junior lawyer, Mr Hayden Brodie ('Mr Brodie') to appear as an agent acting for Bowler and Co;
2. That the practitioner provided misleading information by stating, in a phone call with you, that she never represented you; and
3. That the practitioner has not retained any relevant documents pertaining to your matter as your legal representative.

I have now completed my preliminary assessment, and this letter is a notice pursuant to section 318(1)(a) of the Uniform Law of my decision to close the complaint. In order to warrant an investigation, I must be satisfied that the conduct if proven, would amount to unsatisfactory professional conduct or professional misconduct. In this instance, I am not satisfied that the content of your complaint warrants further consideration.

The reasons for my decision are as follows:

- With respect to your first concern, it is my understanding that your matter was referred to the practitioner by Victoria Legal Aid on 28 April 2022. As you are aware, the practitioner advised that she intended to explain the process and your rights to you, but she was notified by the Prison Service Officer that you refused to speak with her and refused legal

advice at the time. Accordingly, she suggested that Mr Brodie appear on her behalf under the presumption that you may feel more comfortable speaking with another lawyer. Having considered the circumstances, I am satisfied with the practitioner's explanation as to why she personally did not appear for you before the court.

In addition to the above, you have provided our office with a transcript of the hearing in which Mr Brodie introduced himself to the court and confirmed that he was appearing as agent for the practitioner. As the court did not make any remarks or ask any clarifying questions to Mr Brodie in response to his introduction, it does not appear as though the court held any concerns about this arrangement. In any event, it is not uncommon for a principal lawyer to instruct one of their junior lawyers to act as an agent of the firm in a matter before the court. It is also not the role of our office to comment on whether Mr Brodie had the necessary expertise or experience to appear for you. As such, this concern does not warrant further consideration.

- With respect to your second concern, and as stated above, your matter was referred to the practitioner in April 2022. It is my understanding that during the period between May 2022 and January 2024, there was no correspondence or phone calls exchanged between you and the practitioner. I further understand that in January 2024, you began to call her office with requests to speak with her.

Given the significant lapse of time which had passed, and that you contacted the practitioner's office using various aliases, I agree with Ms Mikhala Baluyot ('Ms Baluyot') and am inclined to accept the practitioner's position that she was unable to accurately confirm your identity during phone calls, therefore could not confirm whether she formerly represented you. Once the practitioner was able to ascertain your identity, however, I understand that you and the practitioner conversed on several occasions about your legal matters. As such, I am not satisfied that you have been able to substantiate that the practitioner acted in a misleading manner and am not satisfied that the conduct described will meet the requisite thresholds for an investigation.

- With respect to your third concern, in response to your email to the practitioner's office on 9 January 2024, it is my understanding that you had several phone calls with the practitioner during which you both verbally went through what she could recall about your matter. Having listened to the recordings of these phone calls, I understand that you did not make any further requests for a physical copy of your file. In any event, the practitioner denies that she has not retained any relevant documentation pertaining to your legal matter and confirmed that your file remains in storage. As such, this concern does not warrant further consideration.

Accordingly, I have decided that your complaint requires no further consideration pursuant to section 277(1)(h) of the Uniform Law.

You do not need to respond to this letter however if you have any questions or concerns, please contact Ms Mikhala Baluyot on (03) 9679 8113 or at mbaluyot@lsbic.vic.gov.au.

What to do if you disagree with this decision

Decisions we make under the Uniform Law are generally final.

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If you disagree with this decision we have made about your complaint, you can ask us to consider conducting an Internal Review. Whether we conduct an Internal Review is entirely at our discretion.

If you ask for an Internal Review you will need to identify which part(s) of our decision you believe are wrong and why. Your request should be in writing and be made within 30 days of the date of this letter.

If we decide to conduct an Internal Review, it will be handled by a staff member not previously involved in your matter – they will consider if the decision was dealt with appropriately and based on reasonable grounds.

An Internal Review can confirm a decision, make a new decision or refer the matter back to the decision maker.

To ask for an Internal Review either:

- Email us at: internalreview@lsbc.vic.gov.au; or
- Call us on 03 9679 8001 or 1300 796 344 and ask to speak to a member of the Quality Assurance and Review Team; or
- Contact your file handler.

Further information about our Internal Review process is available on our [website](#). If you cannot access this information online, please let us know so we can provide it to you in another format.

Yours sincerely



Vesna Petrovski
Assistant Manager, Early Resolution & Complaints