

# **Independent Review of Russell McVeagh**

March–June 2018

Dame Margaret Bazley, ONZ DNZM

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*He aha te mea nui o te ao?*

*What is the most important thing in the world?*

*He tāngata, he tāngata,  
he tāngata.*

*It is the people, it is the people,  
it is the people.*

# Acknowledgements

This report on recent incidents and events related to the law firm Russell McVeagh is the result of an intensive process of review, with contributions from over 250 people. It reflects the level of commitment to telling the story of what happened and didn't happen and the dreams and disappointments of the people who have worked for the firm in recent years.

I particularly acknowledge and thank those who initially came forward with information about their experiences, which in turn led to this review. I am very aware of the impact that their experiences has had on them. Their courage in coming forward has led the way for changes in the culture and workplace of Russell McVeagh and the wider legal profession so that future generations of young people entering the profession will be safe.

I acknowledge and thank the Russell McVeagh partners and staff, past and present, and others who made time to meet with me during the review. Without their willingness to share their stories, insights, and experiences, I would not have been able to form such a complete picture of the incidents, their handling, and the culture of Russell McVeagh as it exists today.

I would also like to acknowledge the contribution made by the counsel who acted for the five summer clerks in such a skilful and sensitive way. They also ensured that my short timeframes were met.

I acknowledge the assistance and support provided to me by counsel Simon Mount QC and Julia Spelman, senior executive Jill Atkinson, and administrator Di White. They worked hard to assist me with carrying out the review and ensuring that it was completed in the required timeframe.



**Dame Margaret Bazley, ONZ DNZM**

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# Overview

In February 2018, the law firm Russell McVeagh asked me to review claims that five summer clerks were sexually harassed over a three-week period in the summer of 2015-16 by a partner and solicitor from one team in the firm's Wellington office. I was also asked to review any other incidents brought to my attention, the firm's framework of policies, standards and systems, and its culture. I acknowledge Russell McVeagh for commissioning an independent, external review and for agreeing to release it publicly.

Over the last four months I have heard from more than 250 people. Most told me that Russell McVeagh is a great place to work, that they had a fantastic experience there, they enjoyed working with top quality lawyers and had excellent training while working on complex and leading edge legal issues. I was heartened to meet with so many motivated and talented lawyers during the review. I also spoke to many dedicated and hardworking support staff.

Where possible I have described the details of what I have been told. I had hoped to be able to describe the details of all of the 2015-16 incidents, but this has not been possible. In some instances I received requests for privacy and I have sought to strike a balance between privacy and the benefits of accurately describing the allegations. In particular, I have reflected the wishes of the women concerned in the way the allegations have been described. Ultimately, it has not proved necessary for me to reach factual findings about the incidents themselves, but I have concluded that the firm handled the incidents poorly. The failures have had serious consequences for the people involved.

This review has been complex and has required careful consideration and balancing of a wide range of perspectives. The overarching impressions I have formed over the course of the review are:

**First**, I found that in the past Russell McVeagh had a 'work hard, play hard' culture that involved excessive drinking and in some instances crude, drunken, and sexually inappropriate behaviour. Junior lawyers and other young staff were encouraged to drink to excess. After the incidents the firm moved decisively to address these issues and began to change the culture. Two and a half years later, during my review, I was not told of any recent instances of sexual harassment, sexual assault, or alcohol fuelled misbehaviour.

**Second**, in reviewing the firm’s response to the incidents I found failings in the firm’s governance, structure, management, policies, standards, and systems, as well as the lack of a code of conduct. These failings contributed to the poor management of the incidents of 2015-16. I found that there was no-one in charge in the Wellington office, the team within which the incidents occurred was out of control, and what was happening in that team was not noticed by the partners or brought to the attention of the Board.

**Third**, as part of my broader review of the firm’s culture I was surprised to hear of pockets of bullying, poor work management practices resulting in excessive work hours for junior lawyers, and fear among lawyers and partners about the potential consequences of speaking out. A recent survey of all lawyers by the New Zealand Law Society revealed that bullying and harassment are problems across the entire legal profession. This does not minimise the reality of what has occurred at Russell McVeagh, but means the firm is not alone in needing to confront these issues. To its credit, the firm has not shied away from the problems, and has moved to act immediately to address them.

**Fourth**, although nearly 30 percent of partners are women and progress has been made with gender equality, many talented women lawyers still leave the firm rather than progressing to partnership. This is disappointing and a big loss for the firm. Progress has also been made in the LGBTTI and diversity areas, but ongoing work is required to address sexism and unconscious bias. I consider any form of discrimination against women to be a serious issue because it inhibits the change that is needed to achieve the complete elimination of sexual harassment and sexual assault.

**Fifth**, cultural change of the magnitude contemplated by this review takes persistent and consistent effort to embed. Building on the work the firm has already begun, it is imperative that the Board, Chief Executive, and every partner are committed to the proposed transformation of the firm’s culture and that they have a 10-year plan to implement, monitor, and audit the change.

The young people who were involved in these disgraceful incidents at the start of their working lives, and who have had the courage to speak out, have been a catalyst for change for Russell McVeagh and the wider legal profession. It is my hope that the changes proposed will ensure that future generations of junior lawyers will be safe and able to realise their full potential.

The firm has accepted the recommendations set out in this report, and with the leadership of the current Board, I am confident it is well-placed to tackle the challenges ahead.

# Recommendations

Recommendation numbers from the body of the report appear in square brackets.

## Incidents of the 2015–16 Summer

- That the firm acknowledges its handling of the incidents was poor and issues a full apology for its actions and inaction to those involved, including staff. [2]
- That the firm acknowledges its mistake in leaving the handling of these complex and highly sensitive incidents to the HR Director, who lacked the appropriate expertise. [3]
- That the firm reviews the capacity and capability of the HR team to deal with sensitive sexual complaints and recognise when an independent investigation may be required. [6]
- That the firm enlists external expertise to develop a stand-alone sexual harassment and sexual assault policy. [4]
- That the firm, and the profession more generally, does whatever is necessary to ensure there is a strong regulatory regime in place to deal with those who act in sexually inappropriate ways. [8]
- That tight control be maintained over the availability of alcohol. [19]

## Bullying

- That the Board Chair makes it clear to all partners and staff that the firm has zero tolerance of bullying and that there is no place in the firm for perpetrators of it. At the same time, the Board Chair needs to assure junior staff that they are safe from such behaviour. [9]
- That the firm develops a stand-alone anti-bullying policy. [10]
- That the firm puts in place a confidential mechanism for reports of bullying. This process needs to have multiple options and pathways for reporting, including internal and external contact points. [11]
- That the firm acts swiftly in relation to any reports of bullying by giving the partner (or other staff member) the opportunity to change and be closely managed; however, if change isn't made and maintained, disciplinary action should be taken. [12]

## Management Practices

- That a pre-requisite for promotion to partner or senior lawyer includes an improved assessment of demonstrable management capability. [21]
- That a training programme for partners and senior lawyers be expanded to include a far greater emphasis on management skills, particularly the management of people. This training should be compulsory. [22, 45]
- That consideration be given to whether the firm has sufficient senior lawyers who, along with the partners, have the time to explicitly focus on people management, supervision, and training for junior lawyers. [24]
- That partners should model family-friendly practices and leave the office at a reasonable hour each evening, and ensure that their staff do the same, remaining late only in exceptional circumstances. [25]
- That a fair system of days in lieu or payment for overtime be developed, applied consistently, and not left to the discretion of partners. [23]

## Policies

- That the firm engages an independent expert to advise on the adequacy of existing policies, standards and systems; to identify any gaps; and to address these through the development or revision of new policies, standards and systems. In particular:
  - sexual harassment and sexual assault (stand-alone policy)
  - anti-bullying (stand-alone policy)
  - alcohol use
  - host responsibility
  - expected behaviours at social functions
  - the provision of employment references
  - reallocation of a partner's files upon their departure, including the nature of any ongoing relationship
  - media protocols
  - intimate and familial relationships between staff
  - managing poor performance, and
  - code of conduct.

This should be done in consultation with staff. [1, 4, 7, 10, 13, 16, 17, 18]

- That the firm reviews its list of approved counsellors to ensure the providers are both independent and perceived to be independent. [5]

- That exit interviews be conducted by an independent consultant, communicated to, and acted upon by the Board with regular monitoring and reporting. [20]

## Board and Partners

- That an update of the recent independent review of the governance of the firm be conducted to advise on:
  - (a) The tenure of the Board Chair and Board members.
  - (b) The role of the Board Chair and the establishment of a separate National Managing Partner role with specific responsibility for organisational transformation and culture.
  - (c) The appropriate form of leadership of the Wellington office with consideration given to establishing a managing partner role for the Wellington office, reporting to the National Managing Partner.
  - (d) The role and value of having a Chair of the Partnership.
  - (e) The appointment of an independent Board member with specialist people leadership and culture change experience.
  - (f) The adequacy of Board reports with respect to staff management and welfare. [31]
- That the Succession and Admissions Committee introduces a far more rigorous system of appraising leadership and management skills of potential partners. This committee should contract an external person experienced in such assessments for this purpose. [28]
- That, as part of the updated independent governance review (see [31]), consideration be given to the Board's committees. In particular:
  - (a) The appropriate role and operation of the Ethics Committee.
  - (b) The appointment of joint male and female chairs for the Succession and Admissions Committee.
  - (c) The appointment of an external specialist to support the Succession and Admissions Committee and to advise on obtaining extensive, impartial assessments of staff being put forward for promotion to partnership and other senior roles.
  - (d) Establishing two new committees: the People and Transformation Committee, and national Practice Group Chairs.
  - (e) Ensuring the People and Transformation Committee has specific oversight for the transformation of the firm's culture, building on the work being done on changing the business model and the structure of the firm from being hierarchical to open and collaborative.

- (f) The appointment of external specialists to support the People and Transformation Committee, including people skilled at facilitating a collaborative way of working.
- (g) Ensuring the Practice Group Chairs look strategically at the future of legal practice at Russell McVeagh. [32]
- That an inclusive, firm-wide process be run to agree the attributes and behaviours of Russell McVeagh partners and that these reflect the firm's expectations of its partners with regard to people management. [26]
- That the agreed attributes and behaviours of partners are an integral part of the 360 degree appraisal system for partners. [27]
- That, as part of the preparation for the step to partnership, prospective partners be required to complete a comprehensive training module in staff management and people leadership, with an emphasis on the 'softer skills' of being a leader. [29, 45]
- That the process for promotion to senior solicitor and senior associate levels also includes an assessment of management, including people management skills and attitudes. [30]

## Management

- That the Chief Executive's position description and responsibilities be reviewed. [33]
- That the structure, function, and efficacy of the management team, particularly the HR function, be examined at the same time as the Chief Executive's role is being reviewed. [36]
- That the Chief Executive's accountabilities for staff management and the Board Chair's accountability for partners' performance management are clearly aligned. [34]
- That clear boundaries and respect for the roles of governance and management are maintained. [35]
- That, as part of the proposed review of the firm's management structure, an external expert be brought in to review and redesign the HR function to get clarity of its role, function, and reporting lines. In particular, this should consider:
  - (a) Appointing a manager with dedicated responsibility for recruiting and administering the firm's scholarships/summer clerk/graduate programmes.
  - (b) Recruiting an expert HR practitioner to focus on the provision of core HR services.
  - (c) Creating a new senior manager role with responsibility for supporting the proposed People and Transformation Committee of

the Board with the transformation of the culture. This manager should be a well-respected expert in cultural transformation. [37]

- That a part-time HR manager be appointed in the Wellington office. This position could be combined with the position of manager of the Wellington office. [38]

## Women and the Voice of Junior Lawyers

- That senior and junior women sit down together to explore what can be changed so that women can maintain their career progression within the firm to reach partnership as they raise a family, such as part-time work or job sharing. [43]
- That meaningful, safe opportunities and mechanisms for ensuring junior lawyers have a voice are explored and implemented, and that this is led by the junior lawyers themselves. [44]
- That the firm implements mandatory unconscious bias training for staff at all levels. [15]

## Culture and Transformation

- That the Board and partners commit to leading a programme of transformational change to Russell McVeagh's culture. [39]
- That collaboration becomes the way of working where staff across functional groups and seniority levels have the opportunity to hear one another's perspectives and learn the value of 'giving a bit to gain a bit'. [41]
- That the proposed People and Transformation Committee of the Board be mandated to drive the transformation of the firm's culture. [42]
- That a programme of training to embed the new culture be developed, with attendance at these training sessions factored into every staff member's work hours and allowance made in billing targets; training should be compulsory for all, partners included. [46]

## Monitoring and Auditing

- That the firm develops a 10-year plan to ensure the changes to culture are implemented, monitored, audited, and reported upon to the Board and staff to ensure they become embedded. [40]
- That the firm continues its efforts to achieve gender equality and to demonstrate progress by reporting back to the Law Society in line with the requirements of the society's Gender Equality Charter. [14]

## Law Society and Universities

- That Russell McVeagh and other law firms partner to support the New Zealand Law Society to provide leadership and advocacy for all law practitioners at this time. [47]
- That the universities advocate for and model excellence in standards of behaviour for the legal profession. [48]

# Introduction and Context

During the summer of 2015–16, five women who were employed as summer clerks in the Wellington office of Russell McVeagh alleged a number of incidents of sexual harassment and inappropriate sexual conduct.

The alleged incidents are said to have taken place at three different events: the firm-wide Christmas party in December 2015, a smaller team Christmas party in December 2015, and following a team event in January 2016. The two men alleged to be involved left Russell McVeagh shortly afterwards. The summer clerks returned to university in February 2016. Issues arising from the incidents and the firm's poor handling of them resurfaced a number of times in the following two and a half years. The Law Society and the universities became involved. While the media became aware of the allegations some time earlier, the Newsroom website published details for the first time on 14 February 2018.<sup>1</sup>

## Independent Review Commissioned

On 7 March 2018, Russell McVeagh announced that Dame Margaret Bazley (ONZ DNZM) would conduct an independent, external review.

## Terms of Reference

The following terms of reference were agreed for the independent, external review:

- To review both the sexual harassment claims related to the period December 2015 to January 2016 and the firm's response to those claims.
- To consider any other sexual harassment claims or any other improper conduct that may be brought to the attention of the external reviewer, and the firm's response to those claims.

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1. "The summer interns and the law firm", 14 February 2018, updated 21 February 2018: <https://www.newsroom.co.nz/2018/02/14/88663/the-summer-interns-and-the-law-firm#> [accessed 5 June 2018].

- To consider the firm’s standards, systems, and policies relating to the management of staff, the firm’s implementation of those policies, and whether they adequately safeguard staff from sexual harassment.
- To assess the culture of the firm.
- To give advice and make recommendations in relation to the above.

## Processes of the Review Team

The review took place over a four-month period between March and June 2018.

I was assisted in the review by Jill Atkinson, an experienced senior executive, and Julia Spelman, a Wellington barrister. Simon Mount QC was legal advisor for the review. Di White was the administrator for the review team.

The review was open to current and former Russell McVeagh staff at all levels and any other interested parties who wished to participate.

The privacy of participants and complainants was of the utmost importance to the review team and the following steps were undertaken to maintain privacy:

- An independent contact email (ereview@rmcveexternal.com) and an independent free phone number were established. The email and phone mailboxes were accessible only by the review team.
- Interviews took place at separate premises offsite in Wellington and Auckland unless the interviewee requested an interview at a Russell McVeagh office.
- An independent administrator assisted with scheduling.
- Interviews were not audio recorded.
- The review team made handwritten notes during the interviews; these notes are private and confidential.
- An agreement was reached with Russell McVeagh that the confidentiality of the interviewees was paramount and that the firm would have no visibility of who was interviewed or of any material provided to the review team.

## Review of Documents

During the review, I had full access to the files relating to the incidents along with ancillary documentation that informed the firm’s handling of the incidents. I also examined all relevant documentation relating to the firm’s policies, systems, and standards in place at the time of the incidents, how these have changed over the past two and a half years, and any new policies, systems, and standards that have been introduced.

I also read a significant number of exit interviews to assess whether the feedback provided by staff leaving the firm was acted upon.

## Written Submissions

I received 45 written contributions which included written submissions and informal emails. Twenty-seven of the people who provided written submissions were also interviewed. Eighteen provided written feedback only.

## Interviews

Significant numbers of individuals participated in the review. In total, 198 interviews were conducted. Most of the interviews were with individuals but I also saw a number of groups of people. In total 237 people were interviewed.

Seventy interviews took place in Wellington and 128 interviews took place in Auckland. This included 13 phone and Skype interviews with those who were unable to meet me in person. This also included interviews with the President of the New Zealand Law Society, the Wellington Women Lawyers Association, the Vice-Chancellors of all the New Zealand universities, and the Deans of each of the law faculties.

## Reporting

It was agreed that this report would be made publicly available and that there would only be one version of the report. Furthermore, it was agreed that the report would not name interviewees or anyone who was involved in any of the allegations.

# Russell McVeagh

Russell McVeagh is a full service corporate law firm with around 330 staff across offices in Auckland and Wellington. It is one of the oldest established law practices in New Zealand, celebrating its 150th anniversary in 2013. From its beginnings as a one-man practice, the firm has grown to a large national firm acting on behalf of some of the country's largest and most influential companies.

Russell McVeagh positions itself as New Zealand's premier law firm, with a publicly stated commitment to "operating on the cutting edge of legal practice". The firm prides itself on its reputation as "champions for their clients' strategic goals" and for being the 'go-to' firm for tackling complex and time sensitive problems.

The firm advises across nine key practice areas with lawyers who, I am told, are highly regarded in their fields and internationally recognised for their expertise.

## Composition of the Firm

The firm comprises approximately 330 staff. Of these, approximately 200 are legal staff and 130 are non-legal staff (management and support). The firm gave me the following figures to show the gender breakdown among legal staff at the firm:

Level	Number	Women	Men
Graduate	36	64%	36%
Solicitor	84	45%	55%
Senior Solicitor	21	66%	34%
Senior Associate	20	30%	70%
Special Counsel	8	63%	37%
Consultant	2	50%	50%
Partner	35	29%	71%

As seen above, women are well represented at the graduate, solicitor, and senior solicitor level, but this drops off at the senior associate and partner level.

With regard to the firm's non-legal staff 75 percent are women and 25 percent are men.

Junior lawyers make up over 50 percent of the firm. Many of them are young and Russell McVeagh is their first professional job.

The Wellington office used to be much larger but has reduced in staff numbers over time as business has moved from the capital to Auckland. The Wellington office now has around 80 staff, with the remainder in Auckland.

## Partnership Model

Russell McVeagh operates as a parity partnership. All partners work in the business day to day, they all have a share in the business, and they all have a say on the way the business is run. Profit-sharing operates on a model where partners progress to full partnership over a number of years. Full partners have an equal share in the profits, and those at lower levels have a proportionate share in the profits.

The partnership is governed and managed in accordance with a constitution. There is an elected Board comprising a Chair (elected directly by the partners), four other partners, and the Chief Executive. The Chief Executive sits on the Board *ex officio* but does not have a vote (although I understand it is extremely rare for the Board to take a vote). The partners also elect a Chair of the Partnership.

The Board is responsible for ensuring the efficient management of the partnership, initiating and reviewing strategy and policy, making recommendations to the partnership, and implementing partnership policies and decisions.

The Chief Executive is responsible to the Board for the day-to-day management of the business of the firm including the development of strategy and financial performance. The Chief Executive participates in all Board deliberations including those relating to strategic and management issues.

The Board appoints a Chair and a Deputy Chair for each national practice group, and a Chair for each local practice group. It also appoints an Ethics Committee and a Succession and Admissions Committee.

## Recruitment

### Scholarships

Russell McVeagh focuses much of its recruitment on its scholarship and summer clerk initiatives, and it was the first law firm in New Zealand to establish a

dedicated scholarship programme. The firm selects top school leavers as well as those excelling at university and provides them with a scholarship while they complete their law studies. The scholarship consists of financial assistance, a signing bonus as a graduate, work experience opportunities, a mentor, and the opportunity to summer clerk at Russell McVeagh in the penultimate year of study.

One person told me the scholarship programme was “a retention incentive to stop talent going elsewhere”. I was told by many people that they enjoyed their time as a scholarship recipient, particularly the lavish dinners and catch-up functions provided by the firm where they were able to socialise with other students. Until two and a half years ago, alcohol featured heavily at scholarship dinners.

### Summer Clerk Programme

The firm describes its summer clerk programme as:

A gateway to a graduate role with Russell McVeagh. Summer clerks are given extensive induction training but also technical and soft-skills training. Clerks are appraised twice over the summer period and these appraisals are designed to ascertain whether the clerks are enjoying the work and the team, and to give staff and partners an opportunity to provide feedback to their clerks on their progress.

At the time of the incidents, a key part of the recruitment process was elaborate, expensive functions at which alcohol was readily available. Current staff who had been summer clerks told me that they felt encouraged to drink a lot at these events; however, many said that because they were students on a budget at the time they very much enjoyed these functions.

People told me of mixed experiences with summer clerking. Some enjoyed the opportunity to see behind the scenes of a law firm and to gain some legal experience. Others felt there was little work for them to do and that they were there as a distraction or to provide entertainment to the lawyers, particularly by performing a skit at the firm’s Christmas party. I was told the summer clerking experience had a big focus on socialising, including a great deal of time preparing for the firm’s Christmas skit. Most people told me that they enjoyed the opportunity to learn more about the firm and were aware that the summer clerking experience was different to being a graduate lawyer.

I understand that after the incidents of the 2015–16 summer there has been a change in the way recruitment events operate. There is now a focus on lunches and other activities that are not centred on alcohol.

### Core Business Recruitment

I was also told that for core business recruitment at solicitor, senior solicitor, and senior associate levels, partners generally control the process, with administrative support from the Human Resources department (“HR”). This means that any firm-

wide strategy around diversity may be undermined by individual partners' hiring preferences, including unconscious bias.

### Returning Lawyers

Many junior lawyers who start at Russell McVeagh as graduates work there for between two and four years before going on their overseas experience, often to big law firms in London and New York. Many told me that even if their long-term ambition was to work in areas of law not offered by Russell McVeagh, the grounding they received at the firm was world leading and formed the basis of a career that would take them anywhere in the world.

Of the senior lawyers and partners I spoke to, many had followed this pathway. This means that they were able to tell me of their experiences as a summer clerk and graduate lawyer and their impressions on returning to the firm some years later. This has greatly assisted me in forming an impression of the positive changes that have taken place over time.

# Term of Reference One

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**To review both the sexual harassment claims related to the period December 2015 to January 2016 and the firm’s response to those claims.**

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During the summer of 2015–16, Russell McVeagh employed 11 summer clerks in the Wellington office, five of whom were women. More than two years later, in February and March 2018, there were allegations in the media about events said to have occurred relating to Russell McVeagh staff in Wellington during the summer of 2015–16. The allegations have been reported as ranging from sexual harassment and sexually inappropriate behaviour through to more serious allegations.

## What I Was Told

I was told many different accounts about the alleged events. I have not sought to reach any conclusive findings about the events themselves. I have conducted a review not a formal legal process. People who spoke to me were not on oath and I did not seek to cross-examine participants on the detail of their accounts. I have not been able to speak to all the relevant people. In particular, I did not interview the two men concerned although I did have a telephone conversation with the solicitor and both provided written feedback.

The allegations have always been strongly denied. Those who are the subject of allegations are not facing any police charges and as far as I am aware no formal

complaints have been made to the police. Ultimately, my role is not that of a fact-finder and I cannot make findings about what did or did not happen.

Despite this, I set out below what I was told in general terms to make clear the nature of the allegations and to provide context for the comments that follow. I have respected the wishes of the women concerned in the way these allegations have been described.

## Incident One<sup>2</sup>

The firm held a Christmas party in Wellington on Friday 18 December 2015. Four of the five women summer clerks told me about the party. While alcohol was readily available at the party, the summer clerks told me they had not been drinking much prior to the incidents as they were nervous about performing a skit in front of all the firm's staff members. Their allegations centre on the actions of a male partner, who was described as being intoxicated that evening.

The four told me:

- One was at the bar when the partner approached her, put his hand around her waist and led her away from the bar. He encouraged her to 'skull' her drink, and tried to kiss her on the cheek.
- One was on the dance floor when the partner touched her bottom and waist multiple times, and then grabbed under her breast from behind. The partner later approached her at the bar and told her to finish her drink.
- One was dancing when the partner danced closely, touched her bottom, and kissed her.
- One was dancing when the partner pulled her aside, grabbed her breast, and tried to kiss her. At the end of the night, the clerk was waiting for a taxi outside when the partner said something about spilled wine on her top before touching her breasts, waist, and hips. The partner then tried to get into her taxi before another of the clerks shut the car door on him.

The four summer clerks told me that at the time they felt intimidated, confused, and uncomfortable. They told me they were distressed this had happened at a work function where they thought they should have been safe. They also told me they knew what had happened was wrong but were initially unsure about whether to report it as no-one around them had reacted at the time. They worried people would think the partner was "just being friendly" or had "just had too many drinks".

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2. In this report I refer to Incidents One, Two, and Three. However, Incident One involves the allegations of four women in relation to the same partner on the same evening. For readability purposes, I refer to these four allegations as "Incident One". I make it clear that this does not minimise or diminish the experiences of each of the four women.

It is important to note that, at the time, the summer clerks were not aware of what had happened to each other.

### Incident Two

I was told that, at a smaller team Christmas party on 21 December 2015, there was an incident of inappropriate sexual conduct by the same male partner of the firm, at the partner's house. The partner had hosted a group of the firm's solicitors and summer clerks at his home that evening. The partner provided drinks and a barbecue. The partner continued to supply alcohol late into the evening. The incident of inappropriate sexual conduct by the male partner was reported to have occurred in this latter part of the evening.

### Incident Three

On 13 January 2016 (a Wednesday), the firm returned to work from the Christmas break. At about 4pm that day, the same male partner and some of the team's solicitors and summer clerks went for drinks at a local café and bar. Afterwards, a group of the team, including the male partner, went for dinner at a nearby restaurant. They had dinner and continued to drink. They then went on to another bar and continued to drink. The male partner purchased drinks for the group throughout the evening. It was later in the evening that there was a reported incident of inappropriate sexual conduct by one of the male solicitors.

## What the Firm Knew before the Incidents

Before detailing how the firm responded to the three incidents, I have considered whether the firm missed any warning signs leading up to them, and concluded there were such signs.

Alcohol played a significant part in the life of the firm over the years. This began as early as the scholarship dinners involving school leavers, and continued in a largely unconstrained way through summer clerk, team, and firm-wide events. There was little apparent appreciation of the importance of host responsibility, or the risks arising for staff and the firm itself, despite plenty of objective signs of those risks.

In saying this, I do not suggest that any of the summer clerks enabled or contributed to the incidents because of alcohol consumption, or that inappropriate sexual conduct can ever be justified by the consumption of alcohol.

It became apparent from my interviews that there was, and still is, a lack of leadership in the Wellington office. When asked "Who do you think is in charge of the Wellington office?" responses ranged from the Board, the Wellington Board member, the most influential partner in Wellington, to the Chief Executive or HR.

There was no single person in the Wellington office who had an overarching role and to whom staff could go for help or who made it their business to oversee how the teams were functioning. There was no manager based in Wellington watching out for partners who were showing signs of needing help or when behaviours were putting other staff at risk.

While the firm had begun work to change its culture, with a focus on gender diversity, to bring it into line with what is reasonably expected of a 21st century professional services firm, at the time of the 2015–16 incidents, many of these issues were still in existence.

The team of the partner and solicitor involved in the three incidents had a particularly strong ‘work hard, play hard’ culture with regular excessive drinking as a team, while networking with clients, and as a form of stress relief following extremely long hours on big projects. Staff, particularly women, had been leaving the team citing reasons for concern in their exit interviews including drinking and cultural issues. The heavy drinking, long hours, and deteriorating behaviour progressed during 2015. I was told that there had been occasions where staff had arrived at work to find the partner appeared hung over or still intoxicated from the night before.

There were no policies to deal with alcohol or host responsibility, and I was told that the threshold for unacceptable behaviour at social events was high. While the Chief Executive and the Board were aware of some of the drinking issues with that partner, they did not adequately address or monitor the team or the partner, despite the obvious power imbalance issues that compounded the risks.

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## Findings

- While I make no formal findings about the detail of the incidents, I have described in broad terms the allegations as described to me.
- At the time of the incidents, one team in the Wellington office had cultural issues that were impacting staff, including excessive drinking.
- The firm missed opportunities to deal with issues that had been raised in exit interviews.
- The Board and the Chief Executive were aware of some of the drinking issues but these were not adequately addressed or monitored.
- There was no-one in charge in Wellington who had oversight of how all of the teams were functioning and the culture of the office.

- At the time of the 2015–16 incidents, there were no policies regarding alcohol, host responsibility, or expected behaviours at social functions.
- Inappropriate sexual conduct can never be justified by the consumption of alcohol.

## Recommendations

1. That the firm engages an independent expert to advise on the development of policies, standards, and systems regarding:
  - (a) alcohol use
  - (b) host responsibility, and
  - (c) expected behaviours at social functions.

## The Firm's Response

In 2015, the firm had a policy called "Harassment in the Workplace", which in theory would have guided the firm's response to any allegations of sexual harassment. The policy was two pages long and provided a definition of sexual harassment, an outline of a complaints procedure, and a list of contact people. The firm did not follow the policy in relation to either Incident One or Incident Two.

### Incident One

On 21 December 2015, one of the women summer clerks who was involved in Incident One told the firm's Wellington HR manager in general terms about one of the alleged incidents involving another of the clerks at the firm-wide Christmas party on 18 December 2015. The Wellington HR manager asked for further details. The clerk was unwilling to provide the name of the partner or the name of the clerk concerned. At this stage, the other summer clerks were reluctant to speak to HR or to provide names and details of the incidents. As a result, the HR manager was not aware of any other incidents.

At that point, the HR manager did not have sufficient information to undertake an investigation into the alleged incident. The HR manager informed the Chief Executive. There was no formal or informal follow-up with the clerk who had informed HR, either at the time or after the Christmas break.

In early February 2016, once the clerks had told each other about their experiences with the same partner, they realised the extent of what had happened at the

Christmas party. They told me they were still extremely hesitant about reporting it and only did so because they thought the firm would not be able to ignore them as a group.

The clerks decided to tell a trusted junior lawyer about each of their experiences at the Christmas party. They met with the junior lawyer and told her what had happened. With her support, the five women summer clerks met with the HR Director on 3 and 4 February 2016. The four clerks who were involved in Incident One explained in general terms what had happened. The clerks told me that, while the HR Director was supportive of them and apologetic, they felt they did not get a chance to explain the detail of what happened to each of them because everyone in the meeting (including the HR Director) was very emotional. Some of the clerks told me that the HR Director did most of the talking. The clerks told me they were informed that action was being taken but not what the nature of the action was. They found it very difficult to carry on working when they were unsure who had what information.

As addressed below, by this time there was a process underway to negotiate the exit of the partner concerned, but he was still in the office in the days following the clerks' meetings with the HR Director and the clerks told me of their anxiety from seeing him in the office. This was conveyed to the HR Director, and the partner subsequently worked out of the office while his departure was negotiated.

The junior lawyer who had been supporting the clerks was asked to convey to the clerks that the partner involved in Incidents One and Two was leaving. Some of the clerks said that, when the partner left, they felt believed, relieved, and empowered that action had been taken. On reflection, however, they told me that they thought there should have been a full investigation into the allegations they had made. One clerk told me that she thought the firm could not have been acting on her specific experience because she had not had the opportunity to explain to anyone from the firm what had happened to her that night. The failure to undertake an investigation meant that the firm did not establish what happened and to whom. It has only been during the process of this review that the firm learnt for the first time the details of each woman's experience.

It has only been very recently that the summer clerks involved in Incident One have learned that the partner left the firm for a number of reasons that were largely unrelated to their experiences. As set out below, Incidents Two and Three were the trigger for that process, rather than Incident One.

## **Incident Two**

On 22 December 2015, a staff member reported Incident Two to the Wellington HR Manager. The HR Director and the Chief Executive were informed. The Wellington HR Manager met with the summer clerk concerned who did not make a complaint.

When the Chief Executive was told, he assumed (accurately) that the partner involved in Incident Two was also the person accused of Incident One at the firm-wide Christmas party (who had not at that time been named). On 22 December 2015, the Chief Executive asked a Wellington-based partner to speak to the partner in question about his behaviour at the firm-wide Christmas party and about the previous evening at his house. The partner initially said nothing had happened between him and the clerk the previous evening, but some weeks later he admitted to the Board that this initial statement was not true. He also denied or had no recollection of Incident One.

No formal investigation followed. The firm then went on holiday for Christmas.

### Incident Three

On 13 January 2016 (a Wednesday), the firm returned to work from the Christmas break. The following day the HR Director was informed of Incident Three by more than one person, including the partner of the firm who was responsible for the solicitor involved. On the Friday of that week, the HR Director flew to Wellington and spoke to several staff. The affected staff were told there would be an investigation starting on Monday.

The solicitor was neither suspended nor stood down during the investigation. He remained working in the office for a few days and then worked out of Wellington on a matter. He then agreed to work from home and then took leave.

The HR Director and a woman partner from the Auckland office conducted an internal investigation, with legal advice taken within the firm, by interviewing the affected staff members and other members of the relevant team. The facts were contested; the solicitor denied wrongdoing and the HR Director and partner were not able to reach a conclusion about what had happened. The police had been called on the night in question, but no police complaint was made.

No disciplinary action was taken against the solicitor, as he agreed his employment was no longer sustainable. The solicitor remained on leave for a short period before resigning and joining another firm.

### The Departure of the Partner

Information about the alleged incidents emerged progressively. The Board learned about Incidents Two and Three on 22 January 2016. The Board then moved decisively to reach agreement with the partner concerned for him to leave the firm. That decision was particularly in response to Incident Two, the broader cultural issues in the partner's team highlighted in the investigation into Incident Three, and to a lesser extent the information about Incident One, such as it was known at the time.

## Support for Staff during the Process

The firm has a policy where all employees are entitled to three sessions per year of free counselling, which they can access confidentially. Staff, including summer clerks, are told about this at induction and there are posters with the details of the selected counsellors around the office and on the back of the toilet doors.

During the internal investigation conducted by the HR Director and the Auckland partner into Incident Three, some support was provided to the solicitor by arranging an appointment for him with a counsellor. The summer clerk involved in this incident had already arranged her own specialist counselling through an external agency prior to the firm's investigation.

The four summer clerks involved in Incident One told me that following their meeting with the HR Director in February 2016, they were not offered any counselling and as a result they were heavily reliant on each other and on the junior lawyer in the office for emotional support.

Within the firm, the five women summer clerks told me they did not feel supported in the office. Partners either did not mention what had happened to them or made inappropriate and insensitive comments. The summer clerks received support primarily from the junior lawyer but also from a small number of other women in the office.

The four summer clerks involved in Incident One told me they were upset and angry that no-one ever asked them about the details of what happened to each of them, about why they never received an apology from the firm, and about why they were not offered counselling services or legal representation at the time.

The poor handling of the incidents had serious consequences for the summer clerks including loss of confidence and lack of faith in the legal profession. This was described as particularly devastating given the clerks were all top law students with promising futures. The junior lawyer supporting the clerks was also significantly affected as she spent a great deal of time providing emotional support to the clerks but was still expected to bill her usual hours of work. She told us that she was told that she was thought of as a "troublemaker" and she felt her career suffered as a result.

## Communication about the Incidents and Privacy

At the time of the incidents and when the two men left the firm, there was very little communication internally to other staff. While some people acknowledged the privacy interests of the women and the men involved, many thought the firm should have communicated with them at least in general terms about what had happened. Many people told me they found out that something had happened through friends working at other firms rather than from the firm itself, although

most of those in the Wellington office were aware of the obvious distress of some members of staff and felt bewildered about what was going on. One person told me: "It was like a bomb had gone off in the office but no-one talked about it."

Many people told me about two emails sent to staff announcing the departures of the two men in question. The solicitor in question sent an email to the staff he worked with announcing his own departure in very positive terms. People told me they were stunned that the firm had chosen to send out a positive (described by some as a "glowing") farewell email about the partner. In the absence of any other communication from the firm, this was a cause of concern for many people. Staff expected, at the very least, there would be a communication confirming that the men involved had left due to behaviour that did not align with the firm's culture.

It appears that Russell McVeagh sought to limit the number of people who knew about what had happened, initially at the specific request of some of the affected people. A number of partners and the HR Director told me there was a strong request for privacy from one of the clerks, which made communication difficult. It would, however, have been possible for the firm to respond appropriately while still maintaining the privacy interests of the affected people.

Some partners told staff that the fact that the partner and solicitor were leaving the firm "sent the clearest possible message". This was not the case.

### **Natural Justice**

A small number of people I spoke to queried why the firm did not act more summarily to discipline and publicly condemn the men involved. However, the firm could not have acted without following a fair process and observing the rules of natural justice.

## **Assessment of the Firm's Response to the Incidents**

In my view, the incidents were managed poorly. No one person was in charge and responsible for leading the response to the incidents. There were no HR staff based in Wellington in January 2016. This is because the Wellington HR manager went on parental leave within a few days of Incident One in December 2015 and the Chief Executive made a decision not to replace this role. Instead, HR was managed from Auckland with staff travelling to Wellington several days a week.

The handling of the incidents was largely left to the HR Director, who told me that she unsuccessfully requested the Chief Executive to come to Wellington to assist. While the HR Director provided pastoral care, this was insufficient given the number and seriousness of the allegations. No formal disciplinary process was

followed. The firm’s HR Director lacked the appropriate expertise to deal with the incidents and a number of critical steps in the process were missed.

Once the firm had sufficient information about the incidents, the “Harassment in the Workplace” policy should have been followed but was not. In any event, the policy was inadequate. Allegations of this nature should have triggered an independent, external investigation. It was unwise for the firm to attempt an internal investigation into Incident Three given it did not possess the necessary expertise and was not sufficiently independent.

I have formed a view that the summer clerks should have been offered specialised counselling and independent legal representation once the firm had sufficient information about the incidents. The HR Director repeatedly told the women “we will do whatever you want; tell us what you need” but the women could not realistically have been expected to know what they needed and were relying on a professional process to safeguard them. It is essential that those wishing to complain of sexual harassment are properly supported. In many cases that will not require a lawyer, but in this particular case involving summer clerks complaining about those in positions of seniority at a law firm, independent legal representation would have greatly assisted to advocate for the interests of the complainants.

These failures have had serious consequences for the summer clerks involved and those who supported them at the time. They have also undermined staff trust in the firm and have done considerable damage to the firm’s reputation.

The Chief Executive had little involvement in the investigation of Incident Three. Legal advice on the process was provided internally. The Board was not briefed until 22 January 2016, by which time the investigation had been undertaken.

Some decisions were made by the Board, while others appear to have been made by the small group of partners who were involved in responding to what had happened.

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## Findings

- The incidents were managed poorly, with serious consequences for the people involved.
- Failings in the management of the incidents of 2015–16 were not those of the HR Director alone but of the Chief Executive, the Board, and ultimately the partnership, all of whom should shoulder some of the responsibility.
- The firm missed a number of key steps that were critical to the process.

- It would have been possible for the firm to respond to the incidents appropriately while still maintaining the privacy interests of the affected people.
  - The firm’s “Harassment in the Workplace” policy was not followed in relation to Incidents One and Two. In any event, the policy itself was inadequate.
  - Due to the failure to investigate Incidents One and Two, the firm did not establish what happened and to whom. The firm did not understand the gravity of the situation. As a result, the firm underestimated the ongoing impact on the summer clerks and on the junior lawyer and others who provided emotional support to all five of the women summer clerks.
  - The firm took care with the privacy of the women involved. It did not publicly condemn the men involved, in part to protect privacy interests, and because there had not been a disciplinary process leading to factual findings. Any disciplinary process would have needed to follow the rules of natural justice.
  - HR lacked the appropriate level of expertise to deal with the incidents.
  - There were a number of failings in the management of the incidents:
    - There was no consideration of an independent, external investigation.
    - In this instance the summer clerks would have benefitted from independent legal representation.
    - The firm did not offer the summer clerks specialist counselling, but did arrange a counsellor for the male solicitor involved in Incident Three.
    - The firm did not suspend the solicitor or the partner while the incidents were being considered to ensure there was no risk of contact between the two men and the summer clerks, and such contact did occur.
    - The firm’s internal communications during the time and following the incidents were poor.
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## Recommendations

2. That the firm acknowledges its handling of the incidents was poor and issues a full apology for its actions and inaction to those involved, including staff.
3. That the firm acknowledges its mistake in leaving the handling of these complex and highly sensitive incidents to the HR Director, who lacked the appropriate expertise.
4. That the firm enlists external expertise to develop a stand-alone sexual harassment and sexual assault policy.
5. That the firm reviews its list of approved counsellors to ensure the providers are both independent and perceived to be independent.
6. That the firm reviews the capacity and capability of the HR team to deal with sensitive sexual complaints and recognise when an independent investigation may be required.

## Issues Arising Following the Incidents

A number of people have questioned three aspects of the post-incident response, namely whether Russell McVeagh should have:

- provided an employment reference for the solicitor involved in Incident Three
- made a report concerning the alleged behaviour of the partner and the solicitor to the Law Society, and
- continued to work with the partner on legacy files, and should have better communicated the position regarding such files.

### Provision of an Employment Reference for the Solicitor

After the internal investigation into Incident Three, the solicitor concerned applied for a job with another law firm, something he had been planning in any event. He asked Russell McVeagh for a reference. A Russell McVeagh partner provided a verbal reference for the solicitor, and disclosed the alleged incident in broad terms to the new firm, with the consent of the solicitor.

I have not seen anything to indicate that Russell McVeagh actively arranged the new job, or did more than provide a reference for the solicitor. However, questions have been raised about whether the verbal reference was sufficiently candid, and

whether Russell McVeagh followed an appropriate process in providing the reference.

It has not been possible for me to make findings about what precisely was said in the verbal reference and whether it accurately conveyed the nature of the alleged incident. I have not been able to speak directly to all the relevant parties, and at the time of writing this report the provision of the reference is the subject of a Law Society complaint. It would not be appropriate for me to attempt factual findings while the matter is before the Law Society. The new firm was given an opportunity to comment on the factual account above and told me it had no view.

What is clear to me is that Russell McVeagh’s employment reference policy did not assist in managing the difficult issues that arise when an employee leaves in circumstances such as this. Nor was the firm’s Ethics Committee involved.

I have reached the view that the firm’s employment reference policy should be reviewed. The area can give rise to difficult legal and ethical issues, and can have very important consequences for the individuals involved, for future employers, and for those who may work with the individual in the future. In some cases, such as this one, the involvement of the firm’s Ethics Committee may be appropriate.

I understand there is no legal requirement for an employer to give a reference to an employee who is leaving unless there is an agreement that a reference will be provided. However, if a reference is provided it must be accurate and must be limited to information provided for that purpose, i.e. to help the prospective employer assess the employee’s fitness for their new role.

In the past, it was common for an employer to give a certificate of service which confirmed the person’s employment, title, and length of service. I have been told that these days it is more common for a verbal reference to be supplied. I have also been told that when an employee is leaving ‘under a cloud’ that best practice is not to give a reference.

In light of the difficult issues that can arise, it would certainly have been desirable for Russell McVeagh’s policy to have been reviewed following the incident.

## **Reporting to the Law Society**

Another issue of concern which has been raised with me by a number of people is whether Russell McVeagh should have reported these incidents to the Law Society.

The Lawyers and Conveyancers Act 2006 governs professional misconduct and unsatisfactory conduct by lawyers. I understand the provisions largely address the conduct of a lawyer in the course of providing legal services, but the Act states that a lawyer’s conduct out of that context can be misconduct if it “would justify a finding that the lawyer ... is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer” (section 7(1)(b)(ii)).

The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 impose a mandatory reporting obligation when a lawyer has reasonable grounds to suspect such misconduct (at clause 2.8):

Subject to the obligation on a lawyer to protect privileged communications, a lawyer who has reasonable grounds to suspect that another lawyer has been guilty of misconduct must make a confidential report to the Law Society at the earliest opportunity.

The Law Society told me that, prior to 2016, there had never been a misconduct report based on sexual harassment or sexual assault in the context of an employment relationship. That suggests the profession as a whole did not see sexual harassment in the context of an employment relationship as a professional standards issue that would potentially trigger the mandatory reporting duty.

Certainly, in this case, Russell McVeagh's Board did not consider the incidents, which involved staff as opposed to clients, to be a professional standards issue, and did not report the incidents to the Law Society at the time, although Russell McVeagh did subsequently meet with the Law Society.

I am aware that Dame Silvia Cartwright has been appointed to lead a working group of the Law Society to look at the processes for reporting and taking action on harassment and inappropriate behaviour in legal workplaces. The working group will look at:

- Whether the regulatory framework, practices, and processes enable adequate reporting of harassment or inappropriate workplace behaviour within the legal profession.
- Whether the regulatory framework, practices, and processes provide adequate support for those affected by harassment or inappropriate workplace behaviour.
- The adequacy of the regulatory framework, practices, and processes to enable effective action to be taken where such conduct is alleged.

I understand this will include a consideration of whether the rules around mandatory reporting of misconduct and discretionary reporting of unsatisfactory conduct should be amended.

I am also aware there is a complaint before the Law Society about Russell McVeagh's not making a report to the Law Society. As there are already processes under way on this point, I will not comment further on this issue, other than to say that the firm, and the profession more generally, should do whatever is necessary to ensure there is a strong regulatory regime in place to deal with those who act in sexually inappropriate ways.

## Continued Contact with the Partner regarding Legacy Files

A number of people told me they were concerned that Russell McVeagh continued to work with the partner (by then the *former* partner) on legacy files, i.e. files that are still open after the lawyer(s) working on them have left the firm.

Two concerns were raised:

- Was it appropriate for the firm to continue working with the former partner at all, particularly if it involved women staff having to work with him?
- Did the firm accurately represent the situation to those directly involved and when commenting more widely, including in the media?

Before addressing these two questions, I set out my understanding of the factual position.

### **The firm's continued work with the former partner**

The departure of any partner gives rise to a number of questions about what will happen to the partner's files. In some cases, the files will remain entirely with the firm; in some other cases the files will travel with the partner to his or her new practice; in others there may be a hybrid situation – for example if the partner becomes a barrister and can continue to work with the firm on the files.

Russell McVeagh does not have a formal policy or process for managing the reallocation of a partner's files upon his or her departure. In the absence of a policy or process, it was left to the remaining partners in the practice group to work with the departing partner to reallocate the files, with some broad initial oversight by the Chief Executive. There was no decision to cut off contact with the former partner, and staff were not given any direction as to whether they could continue working with the former partner.

Ultimately, the majority of files were retained by the firm. A small number of high value files were retained by the departing partner with new instructing solicitors. The firm retained its role as instructing solicitor with the departing partner continuing his work in relation to two files. For one of those files, this meant ongoing work up to November 2017. In addition, in September 2016, the firm agreed to work with the former partner on an existing but dormant file at his request. At that time there was no specific consideration given to whether the firm should still be working with the former partner, either from a staff welfare perspective or otherwise.

The files involving the former partner were worked on primarily by a woman partner and a male lawyer. Junior women lawyers completed research tasks but had no direct contact with the former partner. Two women lawyers from the firm continued to work remotely with the former partner on a professional publication.

I was told of at least one occasion where the former partner had a meeting at Russell McVeagh's offices. When this was brought to the attention of the Chief Executive, the former partner was told not to come back to the firm and to have all future meetings off-site. At this stage, it ought to have been clear to those working with the former partner, as well as to the Chief Executive, that the firm had an ongoing professional relationship with him.

The firm ceased working with the former partner from February 2018.

### **Was it appropriate for the firm to keep working with the former partner?**

In my view, it was a lack of judgement for the firm to continue working with the former partner. There are several reasons for this. First, the firm was operating with an information gap when deciding whether to continue a professional relationship with the former partner because of its earlier failure to carry out a full independent investigation into the allegations. Second, the firm did not consider the broader staff well-being implications of such contact, both in terms of the former partner's physical presence in the office and in terms of the message it sent to staff about the firm's interpretation of the incidents. Third, the firm did not consider the reputational risk involved in such contact.

To be clear, I do not go so far as to suggest it would never be appropriate for the firm to have any professional contact with the former partner, or that declining to work with him should have been imposed as some sort of sanction. But in the circumstances that existed in 2016 and 2017, I consider the firm should not have continued to work with the former partner. Most significantly, it was the lack of appropriate processes that led to this error.

### **Did the firm accurately represent the position concerning legacy files?**

As is set out in more detail below, the firm made several statements to others about its continued work with the former partner:

- In approximately April 2016, the firm's HR Director gave some of the summer clerks the impression that the firm had ceased all work with the former partner.
- In late 2016/early 2017, the HR Director and partners of the firm who attended the relevant meetings left the Deans of New Zealand's six law schools with the same impression. The Chief Executive also attended two of the meetings.
- In a Radio New Zealand interview in early 2018, the firm acknowledged it had continued to work with the former partner on legacy matters, but said this was because of a professional obligation. It also said that there were steps in place to ensure no women staff worked on those matters; that no

meetings were held on site; and that the firm had not accepted any further instructions after the former partner had left.

I am satisfied the individuals who made these various statements believed they were accurate at the time, but as will be clear from the narrative above, the statements were not correct. The statements were a symptom of the lack of a clear, coordinated, and widely understood position within the firm on this subject. This is another example of the absence of clear policies and processes as well as a lack of leadership within the firm. This resulted in issues being managed in an ad hoc way. As noted earlier, there were multiple people involved in dealing with the incidents but no-one in charge. The Chief Executive and the HR Director did not coordinate with the relevant partners to ensure the firm's statements were correct. The partner who made the comments to Radio New Zealand was deeply embarrassed when she realised she had provided incorrect information publicly.

One of the points Russell McVeagh made in the Radio New Zealand interview was that the rules of professional conduct required the firm to continue to instruct the former partner. The question is currently before the Law Society and I make no comment on it.

## **2016–18 Developments**

### **Ongoing Contact**

Once the men left the firm and the summer clerks returned to university, the firm carried on with business as usual. During the next two and a half years, the issues remained live and escalated over time. The five summer clerks were not asked to sign non-disclosure agreements although the details of the incidents were largely kept confidential due to the request for privacy from some of the summer clerks. This did not prevent the issues resurfacing a number of times over the next two years.

There was a great deal of talk and speculation about what had happened and many people heard different versions of the events. As the initial response by the firm was so rushed, it missed several key steps in the process which resulted in matters not being finally resolved. This has meant there has been a great deal of ongoing confusion, anger, and frustration for the summer clerks.

All five clerks had a great deal of contact from the HR team at the time and over the course of the next two and a half years in the form of texts, emails, and coffee catch-ups. They told me they were initially grateful for the contact from the HR Director as they were glad that someone from the firm was following up with them and they appreciated the support at the time. However, some of the clerks told me that at that point they did not know what support they needed or how to ask for it and they resented feeling as though they were being placed "in the driver's seat"

without appreciating the specialised level of support they needed. At least one clerk did ask for counselling in early 2016.

The summer clerks involved in Incident One were not provided with contact details for counsellors until November 2016. One clerk told me she attended three free sessions, and had been told that was all she was entitled to. As a student she was not able to afford to continue to pay herself. At one session, the counsellor gave her advice about not drinking too much. The clerk told the counsellor she had not been drunk at the time of the incident.

I was very surprised to hear that at least two of the clerks were offered counselling sessions with someone who was previously a member of the firm's HR team (not the counsellor mentioned in the previous paragraph). Given the longstanding professional relationship and personal friendship between the former HR employee and the partner concerned, I was very concerned that the HR Director had made such a referral. Even if the person receiving counselling is happy with such a referral, there is a risk of an apparent or actual conflict of interest and a level of proximity that should generally be avoided when seeking this kind of professional assistance.

Throughout 2016, there were several meetings between the summer clerks and representatives from HR. The summer clerks were frustrated and angry about what they perceived as a lack of consequences for the men. The clerks told me that when they raised issues with HR, they felt shut down. During a meeting arranged by the HR Director at a local café, two of the clerks were told to "shush" when raising issues. The HR Director told me she was simply seeking discretion in a public place. At another meeting arranged by one of the HR team, one of the clerks expressed concerns about a lack of accountability and risk to others and she was warned about the risk of defamation.

In early 2017, statements from some of the summer clerks were read out at a Russell McVeagh partnership meeting where I am told the partners were very upset. The clerks told me they wrote the statements because they felt the firm continued to underestimate the impact of the incidents. The clerks did not receive any substantive response to their statements. In particular, there was no apology from the firm or offer of support.

My assessment is that the level of ongoing contact with the summer clerks, even after some of them had confirmed they would not be returning to the firm, did not assist the situation. What the summer clerks needed was specialist counselling and independent representation. I have no doubt the HR Director began with good intentions and some of the contact was initiated and/or reciprocated in kind by the summer clerks. But in my view the nature and tone of the contact lacked professional distance. As time went on, some of the summer clerks told me that they felt that the level and nature of the contact from the HR Director was a form

of control. I was told that the HR Director projected her own emotional stress on to the summer clerks, which they found very difficult to deal with. Some of the clerks told me they felt pressured to “put on a brave face” to appear that they were okay because they were being told by the HR Director about how much of a negative impact the issues (and subsequent media attention) were having on her and on the firm.

Russell McVeagh’s HR Director and its partners believed they had handled the process well and that the clerks were appreciative that the men in question had left the firm.

## The Universities

In late 2016, Victoria University of Wellington became aware of the allegations in general terms and took a number of steps including informing the Vice-Chancellors and the Deans of the law faculties at each relevant New Zealand university and speaking to the Police. The universities held a number of meetings with Russell McVeagh. Many of these steps were taken without directly consulting the affected summer clerks.

Russell McVeagh held meetings with the universities and other external groups during 2016. It was during some of these meetings, with the Deans of law and separately in meetings with the summer clerks, that the firm gave the impression that it had stopped working with the partner once he had left the firm. I was told this is what the HR Director believed at the time, although it was incorrect.

The universities wanted to know what had happened and sought assurances that matters had been appropriately dealt with. They were concerned for the affected summer clerks as well as future cohorts. The firm appropriately maintained the privacy of the affected summer clerks in line with their specific requests for privacy and confidentiality.

In November 2016, the four summer clerks involved in Incident One were offered access to the firm’s counselling services as several were having a very difficult time coping with exams while these issues were resurfacing with the firm and within their universities.

Issues of sexual harassment, sexual assault, and culture change are ones the entire legal profession (including the law schools) must grapple with. Against that background, I was very concerned to learn that, over the last two and a half years, there have been some students attempting to coerce other students and young lawyers to give up their employment at Russell McVeagh.

## The Role of the Law Society

Representatives of Russell McVeagh also met with the Law Society in late 2016 and early 2017. The Law Society did not describe these meetings as confidential reports. The Law Society was already aware of the allegations, having met with one of the summer clerks in September 2016.

Russell McVeagh's meetings with the Law Society involved discussion of the incidents and the programmes and initiatives that were being worked on for the next cohort of summer clerks, including setting up an independent contact person and a transition to work programme. The 2017 meetings also involved parties other than the Law Society including representatives from the Victoria University of Wellington Law School.

## 2018 Media Story

When the news broke about the incidents of the 2015–16 summer, Russell McVeagh made a number of public statements. Many people have raised issues about a Radio New Zealand interview on 15 February 2018 where a senior partner of Russell McVeagh made the following comments:

- The firm "conducted a thorough investigation as soon as [it] became aware of these allegations and responded very quickly to these allegations". This was not correct in relation to all the incidents.
- The firm "supported the young women and continued to be in contact with them". This was partially correct but the support the clerks needed (specialist, independent counselling) was not provided.
- The firm said it did not assist or facilitate the men moving into roles elsewhere in the legal profession. The firm said it was "very open and transparent" when asked for a reference. As noted above, I have not sought to make findings on this point.
- The firm said that it had "a professional obligation to continue to be involved" with legacy matters, and it had taken steps to ensure "there are no female staff on those matters", that "no meetings are held on our premises", and after the person concerned had left the firm that it "had not accepted any instructions". As noted above, the factual statements regarding ongoing work with the partner were not correct.

The issue of reporting to the Law Society was not covered in the interview.

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## Findings

- A Russell McVeagh partner provided a verbal reference to the firm who hired the solicitor involved in Incident Three and disclosed the

alleged incident in broad terms. I have not seen anything to indicate that Russell McVeagh actively arranged the new job or did anything more than provide a reference for the solicitor.

- The firm did continue to work with the former partner on two legacy files as well as agreeing to work with the former partner on a previously dormant file. This was a lack of judgement, which resulted in part from:
    - the original failure to have a proper independent investigation into the allegations, which meant the firm was operating from an information gap, and
    - a failure to take into account all relevant factors including staff well-being and reputational risk.
  - During meetings with the summer clerks and subsequently with the universities, representatives of the firm gave the impression that the firm did not have ongoing contact with the partner. There was a failure to check information with the relevant partners before making comments to external groups and to the media.
  - Some of the comments made by Russell McVeagh in the media were incorrect, although not deliberately so.
  - The summer clerks were not asked to sign non-disclosure agreements.
  - The Ethics Committee of the Board was not involved in considering the issues of the provision of the employment reference, the legacy work, or whether to make a report to the Law Society.
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## Recommendations

7. That the firm engages an independent expert to advise on the development or revision of policies on:
  - (a) the provision of employment references
  - (b) the reallocation of a partner's files upon their departure, including the nature of any ongoing relationship, and
  - (c) media protocols.
8. That the firm, and the profession more generally, does whatever is necessary to ensure there is a strong regulatory regime in place to deal with those who act in sexually inappropriate ways.

# Term of Reference Two

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**To consider any other sexual harassment claims or any other improper conduct that may be brought to the attention of the external reviewer, and the firm's response to those claims.**

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Sexual harassment and bullying are issues for the legal profession as a whole. A recent survey of the legal profession indicated that 31 percent of women and 5 percent of men have experienced sexual harassment during their working life and over 50 percent of lawyers reported experiencing bullying at some point.<sup>3</sup> The Law Society's President has publicly described "a serious and systemic cultural problem in our profession".<sup>4</sup>

Despite this, no Russell McVeagh staff members I spoke to described recent instances of sexual harassment or sexual assault. The majority of staff members enjoy working at the firm and had very positive things to say about their experience. However, I was told of a number of incidents which caused me concern.

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3. "Workplace Environment Survey" prepared for the New Zealand Law Society, 28 May 2018: [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0009/122679/Report-28-May-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0009/122679/Report-28-May-2018.pdf) [accessed 13 June 2018] at p 6.

4. Beck, K. "Embracing the Power of Real Disruption: Letter from Kathryn Beck to All New Zealand Lawyers", 30 May 2018: <http://www.lawsociety.org.nz/news-and-communications/latest-news/embracing-the-power-of-real-disruption> [accessed 3 July 2018].

## Other Incidents of Sexual Harassment and Sexual Assault

I was told of a number of other incidents of inappropriate conduct and sexual harassment. Some were historic and others less so. They ranged from inappropriate comments, inappropriately close relationships between partners and staff, sexual harassment, indecent exposure, and sexual assault such as spanking the bottom of a junior woman in front of others, grabbing the bottom of a junior woman, placing a hand on the thigh of a junior woman, and grabbing the groin of a junior man. I was also told of an historic relationship between an employee and a summer clerk involving a number of serious allegations after the summer clerk had left the firm. As with Term of Reference One, I have not conducted an investigation into any of these allegations, and have not made factual findings.

I was particularly concerned to hear of a number of incidents of grossly obscene behaviour relating to a particular partner, always in the context of heavy drinking. This is a different partner to the one I have referred to in Term of Reference One. This person has since left the firm.

Some of the incidents concerning this particular partner I was told about took place in front of others at social functions. Generally, I was told that people either laughed or did not say anything when it happened due to the seniority of the person. I was told about the same incidents by a number of different people and it was clear to me that some behaviours (and, therefore, whom to avoid) were well known among junior staff. One junior asked me “How can we trust management when one of the senior partners was the biggest problem for so long?”

At the firm, people are often made partners at a young age, often in their 30s, so there is not necessarily a big age gap between the partner and the more junior or subordinate staff. However, the power imbalance is significant. I was told of a past social occasion where a male partner made an advance to a junior woman. While the junior woman was able to rebuff the advance, she felt very uncomfortable. Others have told me that such advances cause them to feel devalued as a lawyer and nervous that turning down someone in a position of power will mean they may miss out on work opportunities in the future due to a strained or awkward relationship.

I was heartened that the vast majority of people I spoke to strongly condemned sexual harassment and sexual assault of any kind. A very small number of senior women told me that all women experience some degree of unwanted sexual attention at some point and that it is the same at many workplaces. Junior women lawyers told me that hearing some senior women minimising the 2015–16 incidents made them question those women’s judgement.

Over the years some incidents of drunkenness and inappropriate sexual behaviour have been tolerated and not dealt with at Russell McVeagh. Such a history is not, I was told by staff with experience at other big firms, peculiar to Russell McVeagh and in fact was (and in some instances still is) common in some other law firms, accounting firms, big corporate firms, and universities, as well as New Zealand at large. An increasing number of public sector organisations, such as the Defence Force and the New Zealand Police, and other organisations such as rugby clubs have begun to deal with similar behaviours.

I met with several LGBTTI people. Some had experienced inappropriate comments and felt there was a level of casual homophobia but were able to challenge this sort of behaviour. I was also told of a partner confronting another partner following a derogatory comment that was made in the presence of a gay junior lawyer. One person told me they were able to come out during their first year at the firm because they felt so comfortable and supported at work.

A number of people told me that the ‘problem’ partners, with respect to sexual harassment, have now left the firm. I was not told about any recent incidents of sexual harassment or sexual assault.

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## Findings

- The vast majority of people I spoke to strongly condemned sexual harassment and sexual assault of any kind.
- Historically there have been some incidents of drunkenness and inappropriate sexual conduct which have been tolerated and not dealt with properly.
- I was not told of any recent incidents of sexual harassment or sexual assault.
- Partners and staff who have previously exhibited inappropriate sexual behaviour have now left the firm.
- The firm and staff are united in their desire to create an environment that is free from sexual harassment.

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## Recommendations

Recommendations 1, 4, 5, 6 and 8 from Term of Reference One apply here.

## Other Incidents of Improper Conduct

I received reports of what I consider to be improper conduct in the form of:

- bullying
- sexism/unconscious bias against women, and
- inappropriate consensual relationships.

I have interpreted improper conduct broadly and will report on the issues I have been told about despite the fact they are not all focused on sexual harassment or sexual assault.

In some cases there is a link between the conditions which create a culture where sexual harassment and assault can occur and occurrences of general bad behaviour. At Russell McVeagh these conditions include the firm's gender imbalance at partnership level, and the enormous power imbalance between partners (the majority of whom are men) and junior staff, which means that junior staff feel unable to speak up and raise concerns. In this way, the stories I was told shared common characteristics with incidents of sexual harassment and assault – that is, senior people behaving badly and junior staff feeling they have no safe avenues to deal with the issues and fearing that, if they do speak up, their future progression at the firm may be compromised.

### Bullying

WorkSafe New Zealand defines workplace bullying as follows:<sup>5</sup>

**Workplace bullying is: repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.**

- > **Repeated** behaviour is persistent (occurs more than once) and can involve a range of actions over time.
- > **Unreasonable** behaviour means actions that a reasonable person in the same circumstances would see as unreasonable. It includes victimising, humiliating, intimidating or threatening a person.
- > Bullying may also include harassment, discrimination or violence (see Section 6 of these guidelines for how these are dealt with).

**Note:** The bullying definition is adapted from Safe Work Australia's definition.

**Workplace bullying is not:**

- > one-off or occasional instances of forgetfulness, rudeness or tactlessness
- > setting high performance standards
- > constructive feedback and legitimate advice or peer review
- > a manager requiring reasonable verbal or written work instructions to be carried out
- > warning or disciplining workers in line with the business or undertaking's code of conduct
- > a single incident of unreasonable behaviour
- > reasonable management actions delivered in a reasonable way
- > differences in opinion or personality clashes that do not escalate into bullying, harassment or violence.

5. WorkSafe New Zealand "Good Practice Guidelines: Preventing and Responding to Bullying at Work", March 2017 (image used with the permission of WorkSafe New Zealand).

Most staff told me that they were never bullied and were able to call out those who spoke or behaved inappropriately. I discovered that the experiences of junior lawyers within the firm are very team-dependant. I was surprised to learn that junior lawyers who may be seated only 10 metres apart could have such different experiences of the firm.

A number of people told me how they had experienced or witnessed bullying by female and male partners and senior lawyers. In several instances I was told of the bullying and intimidation of junior lawyers that has been observed by staff in neighbouring teams. My inquiries strongly suggest a small number of partners and senior lawyers indulged in bullying behaviour.

A staff member who had been treated inappropriately stated that “the partner doesn’t like me and [he/she] has the people that [he/she] likes who are treated well”. I was told of atrocious behaviour by the small group of offending partners: yelling, swearing, rudeness, and sarcasm at the person; belittling and disempowering behaviours. I was told this bullying was sometimes covert, and other times occurred across the room in front of other staff and in client meetings. One staff member told me that if the partner didn’t like you then you either had to leave, or stay and be miserable. I was very concerned to hear from support staff who told me some lawyers ignored them, spoke to them rudely, excluded them from team events, and generally treated them as inferior. Numerous support staff and some junior lawyers told me of examples where partners and other staff did not extend common courtesies to them such as a morning greeting or include them in team activities. Some support staff told me that they felt like “a nothing” or a “non-person” and found work a distressing experience. This behaviour is totally unacceptable.

I was given examples of partners losing their temper and yelling at junior lawyers. In some cases, the partner then stopped speaking to the junior or giving them any work. One junior lawyer told me that “bad behaviour does not seem to affect career progression”. The end result of persistent bad behaviour by partners is some junior lawyers who are very unhappy, who dread coming to work, who lose their confidence, and who feel belittled and disempowered.

There was some difference of opinion over what behaviour constituted bullying and what behaviour was simply part of operating in a high performance, high stress environment. One person told me that when partners are stressed out, they “forget the niceties, forget they are dealing with humans, and are abrupt and rude”. Some juniors and support staff seemed to think this was part of the job and developed resilience to this behaviour. Many juniors displayed remarkable empathy for the pressure partners are under.

Lawyers are not unique in working under stress and pressure. I have formed a view there is a lack of collective understanding among both partners and staff of what

sort of behaviour is best practice, what is ill advised but perhaps acceptable on a bad day, and what is unacceptable regardless of the day or the level or nature of the stress. In my view, it is never acceptable, no matter how much stress a person may be under, to yell at or bully staff.

Staff told me they were afraid to make a move to stop this behaviour from happening for fear of repercussions. Most were adamant they would not tell HR about bullying and that they did not want to go to their partner. I note that while the firm currently has an anti-bullying and harassment policy with a list of contact people, some staff told me they would never go to one of the specified contact people. One person told me "I'd never go to someone inside the firm. It would need to be someone completely independent and external." Some told me that they would go to their partner; and some spoke with affection of how their partner protected them and looked after them. Those who didn't have such a partner had nowhere to go – they chose instead to leave.

The firm does not have a policy for dealing with poor performance. I was left wondering whether some instances of bullying relate to the lack of systems and processes to manage poor performers. In the absence of appropriate tools, partners 'freeze a person out' of the firm by starving them of work or bullying them until they leave.

I note again that this was not the experience of the majority of staff members. I am confident that this appalling behaviour is limited to particular pockets within the firm. By no means do all partners and seniors behave in this manner, but I heard of a sufficient number who remain in the firm who do. This is not acceptable, and decisive steps must be taken to change this.

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## Findings

- Most staff told me that they were never bullied.
- There are a small number of pockets within the firm where partners and senior lawyers are bullying juniors.
- The firm's culture has enabled bullying behavior to continue, in some cases for years.
- Regardless of the stress of deadlines or particular projects, it is not acceptable for senior people in positions of power to bully or belittle junior lawyers or support staff.
- Those who indulge in bullying behaviour put the safety of staff and the firm's reputation at risk.
- Staff who are experiencing bullying are afraid to speak out for fear it will jeopardise their future career.

- The firm has no policy for how to manage poor performance.

## Recommendations

9. That the Board Chair makes it clear to all partners and staff that the firm has zero tolerance of bullying and that there is no place in the firm for perpetrators of it. At the same time, the Board Chair needs to assure junior staff that they are safe from such behaviour.
10. That the firm develops a stand-alone anti-bullying policy.
11. That the firm puts in place a confidential mechanism for reports of bullying. This process needs to have multiple options and pathways for reporting, including internal and external contact points.
12. That the firm acts swiftly in relation to any reports of bullying by giving the partner (or other staff member) the opportunity to change and be closely managed; however, if change isn't made and maintained, disciplinary action should be taken.
13. That the firm develops a policy on managing poor performance.

## Sexism/Unconscious Bias against Women

Most women I spoke to told me that in recent years they had not experienced discrimination or disadvantage being a woman and had never experienced overt sexism. Some told me that they have received extraordinary support as a woman, including mentoring, encouragement, and flexibility. Several women partners have taken periods of parental leave and have been promoted while on leave. I was told by those who have had children that they are very well supported. Such steps are commended.

I received a limited number of recent reports of sexist comments by senior male partners that were widely discussed among junior staff. This included a partner who expressed concern about not recruiting enough male summer clerks as he would not take female summer clerks to client meetings. Regardless of whether this is to protect the women from clients who may treat them inappropriately, as opposed to being purely sexist behaviour, these sorts of remarks cause significant damage and should be stamped out.

Several women told me of being subjected to unconscious bias in terms of the work that they were required to do because it was perceived that they were better organised to undertake it. While some junior women accepted this role in their first year of work, they were discouraged when the following year they were asked to continue with administrative tasks while a male graduate, who was not so well organised, was given legal tasks.

Others told me that some teams are male-oriented and that some male partners revert to traditionally 'blokey' small talk. The firm has run some unconscious bias training and it is important that partners and anyone who allocates work completes those courses so that a bias-free work environment is achieved.

Some told me about "male culture" and "lad culture" within some parts of the firm. I was told that there has been a change in the last 18 months to two years in that it is no longer acceptable to make inappropriate comments or jokes about women and that this behaviour is challenged. I was told of one example where an inappropriate comment was made and witnessed by people who immediately told one of the contact people on the firm's anti-harassment list. That person went to HR and a partner and the relevant person was given a strong verbal warning. Staff were very impressed with how quickly and firmly the matter was dealt with and that gave them some faith that the culture is changing.

While I have concluded there is not a widespread culture of sexual harassment at the firm, there are still issues of sexism and unconscious bias against women. Historically, the firm was founded by and dominated by men, both as lawyers and clients. It has changed significantly but still has some way to go. I consider any form of discrimination against women to be a serious issue because it inhibits the change that is needed to achieve the complete elimination of sexual harassment and sexual assault. Gender equality is a crucial ingredient. I note Russell McVeagh has already signed up to the Law Society's Gender Equality Charter (see Appendix One) and I will cover that point in Term of Reference Four: Culture.

Finally I note that Russell McVeagh played a significant role in the development of the New Zealand Law Society and Bar Association's Gender Equitable Engagement and Instruction Policy, which was launched in December 2017.

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## Findings

- Many women senior lawyers have experienced very positive support and encouragement in terms of their progress at the firm.
- The support, encouragement, and flexibility that senior women receive is not always extended to women junior lawyers at the firm.

- The firm has a history of male dominance in positions of power, which reflects traditional law firm structures and indeed the law profession as a whole.
- While the firm has made efforts to achieve gender equality, some vestiges of sexism still exist.
- The existence of unconscious bias is a major risk factor for a firm that exists within a context of a very significant hierarchy and stark power imbalance between partners (majority men) and juniors (majority women).

## Recommendations

14. That the firm continues its efforts to achieve gender equality and to demonstrate progress by reporting back to the Law Society in line with the requirements of the society's Gender Equality Charter.
15. That the firm implements mandatory unconscious bias training for partners and staff at all levels.

## Inappropriate Consensual Relationships

Although there are no rules or policies prohibiting people at the firm from being in relationships with each other, I was told that there are unspoken, clearly understood boundaries such as between a partner and a staff member or where there is a direct reporting relationship. I was told of two longstanding relationships in those categories, which were known about but not dealt with over many years.

In these relationships, many staff told me the junior member of the relationship had assumed the power of the senior person to the detriment of other staff. These concerns were also reflected in multiple exit interviews. I was not able to ascertain why such issues were not dealt with by the Chief Executive or the Board when they appear to have been widely known.

Even when people willingly (and happily) enter into a consensual relationship, these relationships can still be inappropriate due to the impact on others in the team. There is a risk of conflict and difficulties in the workplace which can have a wider impact.

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## Findings

- Relationships between employees where one individual has influence or control over the other's conditions of employment are inappropriate.
  - The firm has no policy on intimate or familial relationships in the workplace and how these are to be dealt with.
  - The continued existence of two inappropriate relationships has had a significant negative impact on the surrounding teams over a number of years.
  - The lack of action by the Chief Executive and the Board in the face of widespread knowledge of ongoing inappropriate relationships has severely damaged trust and confidence in the leadership of the firm.
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## Recommendations

16. That the firm develops, in consultation with staff, a policy that makes it clear that intimate or familial relationships between people who are in a direct reporting or supervisory role are inappropriate.

# Term of Reference Three

## – Part One

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**To consider the firm’s standards, systems, and policies relating to the management of staff, the firm’s implementation of those policies, and whether they adequately safeguard staff from sexual harassment.**

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A policy puts in writing the rules, expectations, and planned actions to prevent or reduce the impact of particular behaviours. Russell McVeagh has a legal obligation and responsibility to prevent harassment and to respond to complaints in their workplace. These obligations are set out in statute, including the Human Rights Act 1993, the Employment Relations Act 2000, and the Health and Safety at Work Act 2015.

### **Relevant Russell McVeagh Policies, Standards, and Systems**

My assessment of the relevant Russell McVeagh policies, standards, and systems is that there are a number of gaps – some are missing and some are inadequate – as well as a lack of consultation with staff in their development.

#### **Harassment Policy**

At the time of the incidents of the 2015–16 summer, the firm’s “Harassment in the Workplace” policy was in place. The purpose of the two-page policy was “to

provide an effective avenue for staff to make complaints concerning instances of harassment and where appropriate action will be taken". This policy:

- Stated that harassment in the workplace is unacceptable and that substantiated complaints would result in disciplinary action.
- Contained a list of contacts for the people who comprised the firm's Harassment Concerns Committee.
- Stated that a formal complaint of harassment must immediately be made to the HR Director as Chair of the Harassment Concerns Committee.
- Defined harassment as being in many forms: sexual, religious, racial, and bullying.
- Provided a detailed definition of sexual harassment.
- Outlined the firm's complaints procedure.

In April 2016 the firm's HR team updated the policy, reducing it to one page and renaming it the "Anti bullying and harassment policy". The key changes included:

- An opening statement that "Russell McVeagh is committed to providing a work environment which enables staff to speak up about any issues of concern, including bullying and/or harassment of any kind."
- The replacement of the Harassment Concerns Committee with a broader list of people within the firm, trained to deal with harassment matters.
- The removal of clause 4.2, which explained that "sexual harassment involves behaviour which is related to the workplace, although incidents which occur outside office hours and have a work connection may still constitute sexual harassment".

The Board and HR Director agreed that the policies would be emailed to staff, and partners would be asked to follow up in team meetings.

My assessment is that the "Anti bullying and harassment policy" is inadequate. The stages in the complaint process are not adequately outlined (a process diagram would be helpful). The policy is silent on the possibility of an independent investigation, independent legal representation, and access to an appropriate expert counselling service.

It also does not explain that complainants who make complaints of sexual harassment in good faith, and people who support them or speak up for them, have legal protection against victimisation or unjustified disadvantage in employment, which includes dismissal, denial of benefits including pay rises, or promotion.

When benchmarked against the New Zealand Law Society’s resource “Template Sexual Harassment Prevention Policy – Legal Profession Prevention and Response to Sexual Harassment Policy Guideline”, which is based on the State Services Commission template, adapted for the legal profession by lawyer Steph Dyhrberg, it falls considerably short.<sup>6</sup>

Given the context of the allegations in which the Russell McVeagh policy was updated, the omissions in the firm’s new policy calls in to question whether the firm had recognised and learned from the inadequacies in its response.

In my view, Russell McVeagh would be better served by two separate policies – one on sexual harassment and one on anti-bullying – rather than the current combined policy. This would place the necessary focus on each issue, and ensure the procedures are tailored to the specific circumstances that arise.

## Alcohol Policy

At the time of the incidents, Russell McVeagh had no policy on alcohol. This remains the case at the date of this review, although work has commenced to draft a policy.

The lack of a policy on alcohol is surprising given the extent to which excessive and frequent alcohol use have featured adversely in the firm’s history.

I note the steps the firm has taken over the past two and a half years to moderate the availability of alcohol, and despite the lack of a formal policy, it is generally well understood among staff that excessive drinking is no longer tolerated. I was told there is no longer pressure to drink alcohol.

Previously, Friday night drinks (known as Friday 5s) had open-ended free alcohol (including spirits), no supervision, and no set end time (regularly going late into the night). Friday 5s are now limited to 5pm–7pm and plenty of food is provided. Recruitment and other firm events (such as scholarship recipient and summer clerk events) are now focused on activities rather than the “boozy dinners” of the past.

During the interviews, staff repeatedly told me of the enjoyment of getting together for a drink at the end of the week. They found it an invaluable opportunity to meet up with their peers and get to know people. Junior lawyers in particular value the opportunity to connect with other lawyers (this seems particularly important given the team-focused nature of the firm) and they really appreciate the good food that is provided.

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6. “Template Sexual Harassment Prevention Policy – Legal Profession Prevention and Response to Sexual Harassment Policy Guideline”:  
[https://www.lawsociety.org.nz/\\_\\_data/assets/word\\_doc/0005/120677/Template-sexual-harassment-policy-guideline.doc](https://www.lawsociety.org.nz/__data/assets/word_doc/0005/120677/Template-sexual-harassment-policy-guideline.doc) [accessed 13 June 2018].

## Managing Poor Performance

Russell McVeagh has a comprehensive performance appraisal framework, but there is no formal system or policy for managing poor performers. The approach taken is described by the HR Director as “unique to every situation depending on the gravity of the issue and conducted in accordance with the law and in consultation with the Russell McVeagh employment partner”.

Some partners appear to work successfully with HR to resolve performance issues while others are frustrated at HR’s inaction in dealing with this issue. A clear, equitable approach to managing poor performance is essential.

## Exit Interview Procedures

Exit interviews are conducted before staff members leave the firm. A member of HR conducts an interview with the staff member, making notes of the conversation. I was told that every few months a summary of key themes from the exit interviews is provided to the Board by the Chief Executive. The Board does not receive the full exit interviews, which makes it imperative that the summaries fairly reflect the themes and concerns raised.

Based on what I have seen from exit interview transcripts held by HR, exit interview information will prove very insightful for the people receiving and reviewing them.

My assessment is that exit interviews are a missed opportunity for the Board, and in fact all the partners, to be briefed on all the issues arising from departing staff and the necessary actions required to address these issues. Exit interviews provide a rich source of information on an individual’s experience of the firm. They help management understand what is working well and if there are any issues. It is often the one time staff have the courage to speak out honestly about issues and take the opportunity to alert the firm to problems. Exiting staff put a lot of faith in their feedback being passed on to those who have the power to act upon it, yet it seems the value of this information is not being realised. It is also essential that exit interviews are conducted in a way that is safe for those who are leaving the firm.

It is essential that the full extent of the information provided in the interviews is captured and safely reported. An independent consultant should conduct the exit interviews and report to the Board. The report should state the numbers leaving the firm, the areas of the firm from which the exits are occurring (i.e. which partners and practice groups), anonymised feedback (including selected direct quotations), as well as aggregated data related to gender, ethnicity, age, length of service, reason(s) for leaving, and other key metrics.

There should also be a regular report on the implementation of actions required to address the issues arising from the exit interviews.

## Policy Gaps

Russell McVeagh also has no current policies, standards or systems to deal with the following matters, and as noted in earlier sections should consider whether such policies should be developed:

- host responsibility at social events
- behaviour at social events
- reallocation of a partner's files upon their departure, including the nature of any ongoing relationship
- intimate and familial relationships between staff, and
- managing poor performance.

Russell McVeagh has an undated employment references policy, which I am told was developed pre-2014. I note that the policy was not updated following the incidents of the 2015-16 summer despite the difficult circumstances at that time. This should be updated.

Russell McVeagh also has a media relations policy. This would also benefit from updating.

Policies in and of their own right are not sufficient, and if these are not supported by standards and systems on how they are to be applied, application can be variable. Policies need to be widely and regularly communicated so that staff know what is expected of them, and that failure to meet the expected standard will have consequences.

## Code of Conduct

Russell McVeagh lacks a code of conduct. Workplace environments with open, transparent, and positive codes of conduct enable employees to thrive. While detailed policies, procedures, and performance standards provide specific expectations, a code of conduct explains 'the way we work around here' and provides the foundation for what is expected of staff. It sets the standards of acceptable and unacceptable conduct for everyone who works at the firm.

## Russell McVeagh Initiatives

The firm must be commended for a number of initiatives, some of which were under way before the incidents. I mention a few below; the full set is included in a document provided by Russell McVeagh which is set out in full in Appendix Two.

## Rainbow Tick

In 2016, Russell McVeagh received Rainbow Tick certification following a rigorous assessment process. To retain the Rainbow Tick, the firm must undergo re-evaluation and participate in an annual compliance and monitoring cycle (see [www.rainbowtick.co.nz](http://www.rainbowtick.co.nz)). I spoke to a number of staff members who identified as LGBTTI who were pleased about the efforts made by the firm on this front.

Staff told me that, at the time the work on the Rainbow Tick diversity initiative began, they were not aware of the 2015–16 incidents in Wellington. However, they commented that regardless of why the work began, it was positive that it did and they believed the changes and commitment of the firm were genuine and would continue.

## Partners Leadership Programme and Coaching

This comprehensive programme was rolled out for all partners and had a significant impact on the leadership skills and capability of many of those who took part. Full attendance was expected but I am told not all partners participated fully, one not at all. This issue of partners' attendance at training being seen as optional is discussed in more detail later in Term of Reference Four.

## Counselling

The availability of counselling sessions is now widely advertised in multiple places throughout the firm's premises.

## Transition to Work Programme

Following engagement with the Law Society and the universities with law faculties, Russell McVeagh initiated and worked on the creation of a transition to work programme for law students and summer clerks which comprises a number of different seminars and training activities.

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## Findings

- The firm lacks or has inadequate policies, standards, and systems in a number of relevant areas.
- The 2016 anti-bullying and harassment policy is inadequate when benchmarked against relevant comparators. It was not developed in consultation with staff, as is best practice.
- The combination of anti-bullying and harassment in one policy does not place the necessary focus on each issue.

- The firm did not have an alcohol policy at the time of the incidents, and still does not. However, excessive drinking is no longer tolerated within the firm.
  - The firm has introduced a number of positive new initiatives (set out in full in Appendix Two).
  - The firm has made good progress in a number of other areas such as the inclusion and support of LGBTTI people.
  - Exit interviews are not being valued, meaningfully communicated to the Board, and systematically acted upon.
  - The firm does not have a code of conduct.
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## Recommendations

- 17.** That the firm engages an independent expert to advise on the development or revision of policies, standards and systems and to address the identified gaps:
- host responsibility at social events
  - behaviour at social events
  - alcohol
  - provision of employment references
  - reallocation of a partner's files upon their departure, including the nature of any ongoing relationship
  - intimate and familial relationships between staff
  - managing poor performance
  - code of conduct
- This should be done in consultation with staff.
- 18.** That the anti-bullying and harassment policy be rewritten in consultation with staff to develop two stand-alone policies: a sexual harassment and sexual assault policy, and an anti-bullying policy.
- 19.** That tight control be maintained over the availability of alcohol.
- 20.** That exit interviews be conducted by an independent consultant, communicated to, and acted upon by the Board with regular monitoring and reporting.

# Term of Reference Three – Part Two

It became clear during the review that staff have vastly different experiences of working at Russell McVeagh. Many thrive in an environment with world class lawyers and mentors working on complex and highly significant legal matters. I received many positive comments about the firm’s excellent legal training and support. Yet, some people feel undervalued and disillusioned. During the review, poor management was brought to my attention by a sufficient number of people to warrant further detailed consideration.

The firm’s positioning of itself as a premier law firm “operating at the cutting edge of legal practice” comes at a significant cost to some of those who work for the firm. Partners are promoted for their technical expertise and earning potential, not for their management skills. They are not trained to be people managers and some staff suffer as a result. Staff on the other hand are expected to put in long hours to deliver excellent work to tight timelines, yet in some cases they are poorly managed and looked after. When taken alongside the fear of speaking out and the bullying issues identified earlier in the report, this is a matter of concern to me.

I have concluded that the key contributing factors are:

- poor work management practices resulting from a lack of management skills at senior levels

- a business model which creates confusion around the roles and accountabilities of partners, the Board, the Board Chair and the Chief Executive, and
- an HR function which is conflicted and lacks capability.

## Poor Work Management Practices

The nature of much legal work and the often unpredictable nature of legal practice mean that it can be impossible to predict or control the timing of urgent legal needs. This can lead to lawyers working very long hours, which is sometimes unavoidable and necessary.

However, this underlying reality can be exacerbated by poor management, which becomes an issue when:

- staff work long hours unnecessarily
- staff work long hours for an extended period, and
- long hours are not recognised and staff feel unappreciated.

This can result in some junior staff struggling to cope and generally having an unhappy time. During the review, many junior lawyers commented on these issues.

At Russell McVeagh, as at all law firms, work is primarily allocated by partners and senior lawyers. Sometimes juniors are allocated work by several people who regard it as the junior lawyers' problem if they have been overworked. Junior lawyers were told that they should say no to more work if they did not have the capacity to do it, but they worried it would look like they couldn't cope with the pace and this would risk their future at the firm. A junior lawyer told me that, "saying each person is responsible for their own workload does not work with a group of high achievers with high expectations and no-one monitoring them. As a junior it is hard to know when you have too much work or how long a task is supposed to take you."

Work is also not spread evenly among teams within the same practice areas leaving some with little work and others in neighbouring teams very busy. Some practice groups have a lot of juniors and are light on senior lawyers. While this can provide opportunities for juniors to rapidly grow their skills, there is a risk that the small number of senior lawyers have insufficient time for people management.

I was told of some instances where, towards the end of the day, a partner who has been too busy or doesn't have the skills to manage their workflow will clear his or her in-tray as late as 6pm and give junior staff work needed for the next morning. This in turn necessitates the staff who have waited at their desks all day to work through the night or weekend to complete this allocated assignment, at times with very little recognition or appreciation of the hours worked.

I was given examples of a small number of junior lawyers being required to work until midnight and, in some instances, as late as 4am most days, as well as weekends, over prolonged periods. Junior lawyers told me of being at their desk within an hour of waking and in bed again within an hour of leaving their desk. They told me that they had no control of their lives; never seeing family and friends, of being constantly tired, becoming exhausted and ill, and even suffering mental health issues.

Russell McVeagh has introduced various initiatives to mitigate what can in some cases be a 14-hour or longer working day. Meals are provided and there is a new policy for 'catch-up' days. There is also a scheme where staff are given a 'Prezzy' gift card for exceptional performance. Both schemes are given at the partner's discretion. Some staff felt their extra hours worked were appreciated, but many told me the systems were not working because the partner either did not know or did not pay attention to the hours worked by staff. As the schemes are discretionary, there are issues with staff having to initiate a conversation to ask for a catch-up day and several instances where staff have asked and been refused. There does not appear to be a link between the actual number of hours worked and an entitlement to a day in lieu.

The other issue staff told me about was that in busy teams, even if they were given a catch-up day, the team was so busy they felt there was never time to take it. While the firm has made attempts to deal with these issues, junior lawyers told me they had not been successful to-date. As one person told me: "You can't run a seminar on work/life balance and then email your team at 2am." Another person told me: "[A partner] buying the odd cake for morning tea is nice but doesn't really cut it when we've been working crazy hours for weeks."

I have formed a view that, as the current discretionary system is not fair and doesn't work in all cases, a formal system of compensation for overtime is urgently needed. This should not have a major financial impact on the firm as a fair percentage of the partners are managing staff in an enlightened way. Such a change will provide a positive incentive to manage staff well and also act as an auditing system. Poor managers will feel the financial impact and quickly come into line. This could be part of an overall review of remuneration for junior lawyers.

Some might be resistant to these changes citing them as unworkable and that "this is the way things have always been". It should be noted that many other professions have gone through similar changes quite successfully and it is time for the legal profession to do the same.

I was encouraged to hear that several partners now actively manage work allocation and working hours to ensure long hours are not routinely worked by lawyers. Some check with staff remaining in the early evening, monitor why they are still at work, confirm the priority or urgency of the work, and manage work

allocation and support. Some partners also model family-friendly work practices where they go home to their families in the evenings and encourage their staff to do the same. This is really well received by staff and is having a big impact on the culture of 'presenteeism' where junior staff feel uncomfortable about leaving the office before the partner or senior lawyers have left, even when they have no pressing work to do.

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## Findings

- Great lawyers do not necessarily make good managers. In some instances, staff suffer from partners' and senior lawyers' lack of time and people management skills, with significant negative consequences for some.
  - The promotion system does not include an adequate pre-requisite assessment of a senior lawyer's or partner's capability to manage staff and workflows.
  - Junior lawyers are regularly working long hours with discretionary recognition in the form of 'catch-up' days or 'Prezzy' cards.
  - There is no formal system of compensation for overtime.
  - While junior-heavy practice groups can provide opportunities for juniors to rapidly grow their skills, there is a risk that the small number of senior lawyers have insufficient time for people management.
  - Partners who go home to their families at a reasonable time at the end of most days, and encourage their staff to do the same, are providing excellent role modelling.
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## Recommendations

21. That a pre-requisite for promotion to partner or senior lawyer includes an improved assessment of demonstrable management capability.
22. That compulsory management training be undertaken by senior lawyers and partners.
23. That a fair system of days in lieu or payment for overtime be developed, applied consistently, and not left to the discretion of partners.
24. That consideration be given to whether the firm has sufficient senior lawyers who, along with the partners, have the time to explicitly focus on people management, supervision, and training for junior lawyers.
25. That partners should model family-friendly practices and leave the office at a reasonable hour each evening, and ensure that their staff do the same, remaining late only in exceptional circumstances.

## The Business Model

Russell McVeagh is a parity partnership where each partner is effectively a business owner in charge of his or her own practice. The nature of the Russell McVeagh partnership model has been described in both positive and negative terms. Some partners told me about a “fear of getting shot” if financial performance falls short and I understand that those who are not performing are quickly exited. However, others told me that the parity model provides for equality and drives excellence. Either way, partners are under significant pressure to bring in fees to meet their financial targets. The key driver is the generation of profits, with the management of staff very much secondary to that.

Modern business practice includes the nurturing of the workforce – the firm’s greatest asset – as well as financial success. The firm’s governance, business model, management structure, and accountabilities need to be reviewed and redesigned to reflect best business practice.

Russell McVeagh had already begun work to review its current business model to consider whether it reflects the cutting edge, best practice system being used in New Zealand and internationally; they are to be commended for this work. However, it is important that this work is progressed so that management and the

well-being of its greatest asset, its staff, as well as financial performance, are both front and centre in all decisions made. Russell McVeagh put this work on hold while the review was underway, but I urge them to pick it up again.

Such changes will carry a financial cost, but to do nothing is not an option. Ultimately the firm will reap the rewards of having a happy, high functioning, and well workforce across the firm.

Staff are unclear who is in charge of the firm – partners, the Board, the Board Chair, or the Chief Executive. This is particularly the case in the Wellington office. The Board nominally sits across the top of the firm but, at the end of the day, each partner runs their own business and no-one is clear who, if anyone, calls the partners to account.

I will address the following parts of the business model in turn:

- partners
- Board and Board Chair
- committees of the Board
- Chief Executive, and
- HR.

## Partners

Lawyers are in the business of providing independent advice and are used to operating autonomously in the delivery of legal services. However, for the firm and the partnership to function effectively, they need to be bound by a system of collective responsibility in administering and managing the firm.

Furthermore, the Russell McVeagh Partnership Constitution states: “All partners shall have the right to participate in the business and affairs of the partnership and the duty to contribute to its management and direction.” Clearly partners are expected to have an eye out for the functioning of whole firm, not just their slice of it.

Unfortunately, it is my observation that a good number of partners operate in silos with low awareness of or interest in what is happening outside of their practice. I was amazed to hear of some partners exhibiting appalling behaviour within their teams and other partners saying they had no idea it was happening – yet staff seemed to know. Things going unnoticed have potentially serious consequences not only for individual staff members but for the reputation and survival of the firm. Partners enjoy a large share of profits; with that comes responsibility and accountability for what happens at the firm.

There are also instances where the unacceptable behaviour of partners was well known and visible, yet the firm was slow to tackle these individuals, often because of their status and earning capacity. Again, this has had a significant negative impact on staff and resulted in many good staff exiting the firm.

Expectations of partners' behaviour is set out in a document called "Partner Attributes". I was surprised that only one partner mentioned it, so it would seem these attributes are not widely owned by the partnership. They have also not been updated since February 2003.

Partners are promoted first and foremost for their technical capability, industry recognition, and ability to bring in work. The traditional criteria for partnership are outstanding ability as a lawyer, personal integrity, compatibility, and strong commitment to the partnership. Through the succession and admissions process (which manages promotions within the firm), the skills of leadership, pastoral care, and management appear not to receive the same weighting as those stated above. The lack of these competencies negatively impacts staff well-being and ultimately the firm's culture. While the firm employs a 360 degree feedback process, it is not adequately reflecting the experiences of staff.

Given partners have a position of responsibility over others, it is considered fundamental that priority be given to developing existing partners' management skills, particularly people management alongside the other duties of providing legal services and maintaining and building client relationships.

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## Findings

- The "Partner Attributes" document that sets the benchmark for the expected behaviours of partners has little status and is outdated.
  - Many partners are focused inwardly on their own practice areas and are failing to contribute to the overall management of the firm.
  - There is a swift and ruthless response when partners are not performing financially. This is not mirrored in other areas such as the mismanagement of staff.
  - The succession and admissions process is failing to adequately assess potential partners' leadership and management skills and attitudes. The assessment of partners is weighted too heavily in favour of financial objectives.
  - The 360 degree feedback process assessing the performance of partners is not capturing the negative issues staff are experiencing.
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## Recommendations

26. That an inclusive, firm-wide process be run to agree the attributes and behaviours of Russell McVeagh partners and that these reflect the firm's expectations of its partners with regard to people management.
27. That the agreed attributes and behaviours of partners are an integral part of the 360 degree appraisal system for partners.
28. That the Succession and Admissions Committee introduces a far more rigorous system of appraising leadership and management skills of potential partners. This committee should contract an external person experienced in such assessments for this purpose.
29. That, as part of the preparation for the step to partnership, prospective partners be required to complete a comprehensive training module in staff management and people leadership.
30. That the process for promotion to senior solicitor and senior associate levels also includes an assessment of management, including people management skills and attitudes.

## Board and Board Chair

The current Russell McVeagh Partnership Constitution provides for a new Board to be elected every year, and the Chair to be elected every one to two years. This makes it difficult to form a fully cohesive Board that is able to provide strong strategic leadership of the firm and bring about the culture change that this review has identified as being necessary. The need for culture change is discussed more fully in Term of Reference Four.

The short tenure term of the Board and Board Chair also makes building a cohesive and trusted partnership with the Chief Executive difficult. It puts the Chief Executive in a position of significant power as this role provides continuity. The Chief Executive is the only one with a full understanding of all aspects of the firm. At a time of such major change, it would make good sense to extend the tenure of the Board Chair to at least three but preferably five years with staggered terms for Board members to ensure continuity and to allow consolidation of the changes.

A significant programme of transformation is required, much of which is in the hands of the partners and is for the Board, not the Chief Executive, to lead. I

question whether the Board Chair has sufficient capacity to attend to the issues that need addressing within the firm at this time. I suggest that the role of the Board Chair be examined to see if a separate role of National Managing Partner should be created for a period of time. The National Managing Partner would have specific responsibility for leading organisational transformation and for ensuring partner participation. This role would report to the Board Chair. This would suit someone with strong people management skills who is at the point in their career where they were able to devote a significant portion of their time to providing strong, visible, people-centred leadership.

The role of the Chair of the Partnership (not to be confused with the Board Chair) seems very limited. It is not clear how it aligns with the Board Chair and who has responsibility for the management of the partners' behaviour. These roles should be clarified to ensure that it is clear the Board Chair has ultimate responsibility for managing the behaviour of partners. Consideration should be given to whether the role of the Chair of the Partnership be disestablished in preference for a National Managing Partner.

The lack of clear leadership in the Wellington office contributed to the poor handling of the incidents described in this review, and needs to be addressed. Staff need to see visible leadership that role models the way of working this review contemplates and that integrates and aligns with the Auckland office. The concept of establishing a managing partner of the Wellington office reporting to the National Managing Partner should be explored. At the same time, consideration should be given to creating a part-time HR manager role which could be combined with a new position of manager of the Wellington office, reporting to the Chief Executive.

It is important that, while preserving the independence of the partners, the Board is as strong as possible. I believe the Board would benefit significantly from appointing an independent Board member who is not a lawyer or an accountant but someone with specialist people leadership and culture change experience.

The reports the Board receives should keep them fully apprised of people management matters and should include a comprehensive range of metrics on staffing, staff management, and culture.

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## Findings

- It is not clear who is responsible for managing partners' behaviour.
- The Board Chair will not have sufficient capacity to lead the significant programme of transformation that this review is recommending.

- The relationship between the Chief Executive and the Board Chair is not strong enough and is hindered by the short tenure of the Board Chair.
- Leadership in the Wellington office is lacking.
- The position and value of the Chair of the Partnership is unclear.
- The Board lacks from not having an external Board member who has experience outside the fields of law and accounting
- The Board does not receive adequate reports on staffing, staff management, and culture.

## Recommendations

- 31.** That an update of the recent independent review of the governance of the firm be conducted to advise on:
- (a) The tenure of the Board Chair and Board members.
  - (b) The role of the Board Chair and the establishment of a separate National Managing Partner role with specific responsibility for organisational transformation and culture.
  - (c) The appropriate form of leadership of the Wellington office with consideration given to establishing a managing partner role for the Wellington office, reporting to the National Managing Partner.
  - (d) The role and value of having a Chair of the Partnership.
  - (e) The appointment of an independent Board member with specialist people leadership and culture change experience.
  - (f) The adequacy of Board reports with respect to staff management and welfare.

## Committees of the Board

### Existing Committees

The Board currently has two committees: Ethics, and Succession and Admissions.

The Ethics Committee responsibilities can broadly be broken into two categories: assessment of conflicts of interest including claims against the partnership; and the review of any matter that has serious implications for the reputation and standing of the partnership. Its current focus seems predominantly on the former. For

example, I find it peculiar that the Ethics Committee played no role in the incidents described in Term of Reference One of this review or the issues arising from their handling.

The Succession and Admissions is a powerful committee. It holds the future progression of staff through to partnership status in its hands and it has the ability to significantly influence the firm's culture through its recruitment recommendations. Great care must be taken when selecting who chairs it and it would benefit significantly from having joint male and female chairs. The chairs must be above reproach and be committed to conducting more detailed assessment on potential partner candidates – with a strong focus on people management skills and culture.

The committee should be supported on an ongoing basis by an external specialist organisation. It should also seek advice on how best to conduct impartial assessments of potential candidates.

### **New Committees**

It has become clear in the course of conducting this review that the culture of the firm has to change. This will be detailed in Term of Reference Four. The Board needs better oversight of the people management practices of the firm and a means of playing a significant leadership role in bringing about transformation of the firm's culture. As part of the independent governance review, consideration should be given to establishing two additional committees: People and Transformation, and National Practice Chairs.

#### **People and Transformation Committee**

The People and Transformation Committee has the potential to be game-changing for the firm. Its role would be to oversee the transformation of the firm's culture from being hierarchical and siloed to being open and collaborative. Its purpose would be to redesign the workplace to create a collaborative culture that changes the way staff and the firm operate. This will be a huge change for the firm but if this change is achieved, Russell McVeagh would be setting new trends for other law firms to follow. The committee should be made up of partners who have strong people management skills and who are prepared to lead the much-needed culture change.

To enable the People and Transformation Committee to drive the transformation of Russell McVeagh's culture, it must ensure it has the best available information about staff welfare and misconduct issues. The committee would need to review and take ownership for outcomes related to exit interview information provided by staff who have recently left, via the independent consultant I have proposed be engaged to conduct the exit interviews. It must also ensure that the progress of the transformation of the firm's culture is benchmarked and accurately measured, with

regular reporting to the Board and all partners, with updates cascading through to all staff. Change must be visible at all levels of the firm.

This committee should find meaningful opportunities for junior lawyers to have a voice. Junior lawyers make up more than half the staff yet there are few mechanisms to understand and connect with them. It is essential that Russell McVeagh values and engages this cohort.

Change of this kind will need considerable effort over a long period (10 years is the norm for culture change of this magnitude). Russell McVeagh would be wise to enlist the assistance of a consultant to support the culture change process and this committee.

### **Practice Group Chairs Committee**

The focus of Russell McVeagh's Practice Group Chairs, both local and national, is on managing and growing the practice of law, ensuring standards of excellence are maintained, and responding to future trends. I understand they report to the Board individually on a rolling basis over the year, and meet together from time to time to discuss marketing opportunities. There is also an innovation committee, which I understand is focused on technology.

While these groups carry out important functions, there is currently no national committee with the responsibility to look strategically at the future of legal practice at Russell McVeagh, and to consider new ways of working and opportunities to develop smarter and better uses of technology and human resources.

In my view the firm should consider creating a new national committee of the nine Chairs of the Practice Groups, incorporating the functions of the innovation committee. This would, in my view, greatly strengthen the firm's ability to face the challenges of the future.

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## **Findings**

- The role of the Ethics Committee does not appear to be well understood.
- The Succession and Admissions Committee wields considerable power and has the ability to influence the firm's practice and culture through its recommendations.
- As with the assessment of partners, the assessment of potential candidates for promotion does not adequately test people management capability.
- The 360 degree surveys intended to elicit feedback from staff on candidates for promotion are not working.

- There is no committee of the Board that has a focus on people management or culture at the firm.
  - Junior lawyers make up over 50 percent of the firm yet there are only ad hoc, partner-dependent mechanisms for their voices to be heard.
  - There is currently no national committee with the responsibility to look strategically at the future of legal practice at Russell McVeagh.
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## Recommendations

- 32.** That as part of the updated independent governance review, consideration be given to the Board's committees. In particular:
- (a) The appropriate role and operation of the Ethics Committee.
  - (b) The appointment of joint male and female chairs for the Succession and Admissions Committee
  - (c) The appointment of an external specialist to support the Succession and Admissions Committee and to advise on obtaining extensive, impartial assessments of staff being put forward for promotion to partnership and other senior roles.
  - (d) Establishing two new committees: the People and Transformation Committee, and national Practice Group Chairs.
  - (e) Ensuring the People and Transformation Committee has specific oversight for transformation of the firm's culture, building on the work being done on changing the business model and the structure of the firm from being hierarchical to open and collaborative.
  - (f) The appointment of external specialists to support the People and Transformation Committee, including people skilled at facilitating a collaborative way of working.
  - (g) Ensuring the Practice Group Chairs look strategically at the future of legal practice at Russell McVeagh.

## Chief Executive

The role of Chief Executive at Russell McVeagh appears to have become blurred over the many years the incumbent has held the role. It is clear that the Chief Executive has a strong hand in the financial and business side of the firm, but less

clear in terms of the degree to which he is across the management of staff and the behaviour of partners.

The Chief Executive told me that while he is accountable for the management of the firm, his role with respect to the partners is one of influence and is largely reliant on his mana. Others I spoke to for this review told me that the Chief Executive, who has been in the role for 20 years, has considerable power and influence.

The planned retirement of the Chief Executive in December 2018 provides an opportunity to review the role and set out the clear accountabilities of the position in order to give the Chief Executive a strong role in overseeing the ability and readiness of partners to discharge the firm's employment responsibilities for staff. It would make sense to consider specifying a time limit on the tenure of this role.

It should be clear and unequivocal that the Chief Executive is the employer of staff and is in charge of ensuring that the appropriate policies, standards, and systems are in place to ensure their well-being. The Chief Executive will need to be a skilled manager of people, capable of providing the inspirational leadership to achieve transformational change.

At the time the Chief Executive's role is reviewed, it would make sense to review the structure and efficacy of the management team, particularly the HR function. I will make further comments about the HR function in the following section.

Some partners have queried the Chief Executive's membership of the Board. I consider it essential that the Chief Executive is a member of the Board so that every aspect of the firm is well managed and aligned.

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## Findings

- The position description and responsibilities of the Chief Executive are unclear and need review.
  - The Chief Executive's role is too heavily weighted towards financial and business management with insufficient emphasis on people management.
  - The structure and efficacy of the management team, particularly the HR function needs review.
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## Recommendations

33. That the Chief Executive's position description and responsibilities be reviewed.
34. That the Chief Executive's accountabilities for staff management and the Board Chair's accountability for partners' performance management are clearly aligned.
35. That clear boundaries and respect for the roles of governance and management are maintained.
36. That the structure, function, and efficacy of the management team, particularly the HR function, be examined at the same time as the Chief Executive's role is being reviewed.

## The Role and Function of Human Resources

HR seems to have three key functions, although there is widespread lack of understanding of its role within the firm:

- Recruitment, a significant proportion of which involves scholarship recipients, summer clerks, and graduate lawyers.
- Learning and development.
- The delivery of core HR services required in any organisation of this size (including developing and implementing policies, standards, and systems, employment relations advice, preparation of employment agreements, skills and knowledge of change management, performance appraisals and performance management, advice on remuneration, and oversight of culture and the workforce).

HR is responsible to the Chief Executive but is seen by the staff to work to the partners. A common theme was that "HR works for the partners not the staff". HR has developed a practice of communicating directly to the Board and other partners rather than through the Chief Executive. This compromises the integrity of the governance and management interface and must cease.

The majority of the people whom I saw liked HR but did not trust it with anything confidential. Staff are thus presented with a dilemma of whom to go to if they have an issue where they need to share information that could negatively impact their promotion prospects.

Russell McVeagh's scholarships and summer clerk programmes and general recruitment are done well, but they take up a disproportionate amount of HR's time, especially given the large numbers of junior staff being hired. This overshadows the provision of good quality, core HR services.

Under Term of Reference One, I examined the performance of the HR Director in relation to the management of the incidents. As stated, the HR team was undergoing a period of change around that time, change that did not serve them well and left the Wellington office exposed from an HR perspective. Earlier in the report, I found that the firm lacks or has inadequate policies, standards, and systems in a number of relevant areas. I concluded that the firm did not have the right level of HR expertise available to it.

The proposed review of the firm's management structure should include bringing in an external expert to review and redesign the HR function to get clarity with regard to its role, function, and reporting lines. It is hoped that this will go some way to resolving conflict in the way it functions and restoring trust in HR among Russell McVeagh's staff.

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## Findings

- HR provides excellent pastoral care but does not provide a sophisticated and professional HR service.
  - The HR function has been disproportionately weighted towards recruitment.
  - HR has not adequately fulfilled its responsibility for ensuring policies, systems, and standards are in place to provide partners with tools for day-to-day management of staff.
  - Many staff like but do not trust HR and would not approach them with an issue.
  - HR has developed a practice of communicating directly with the Board and partners rather than through the Chief Executive. This must cease.
  - The Wellington office should have an HR manager who reports directly to the Chief Executive.
  - HR lacks sufficient capability and capacity to support the kind of cultural transformation anticipated by this review.
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## Recommendations

- 37.** That as part of the proposed review of the firm’s management structure, an external expert be brought in to review and redesign the HR function to get clarity of its role, function, and reporting lines. In particular, this should consider:
- (a) Appointing a manager with dedicated responsibility for recruiting and administering the firm’s scholarships/summer clerk/graduate programmes.
  - (b) Recruiting an expert HR practitioner to focus on the provision of core HR services.
  - (c) Creating a new senior manager role with responsibility for supporting the proposed People and Transformation Committee of the Board with the transformation of the culture. This manager should be a well-respected expert in cultural transformation.
- 38.** That a part-time HR manager be appointed in the Wellington office. This position could be combined with the position of manager of the Wellington office.

# Term of Reference Four – Culture

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**To assess the culture of the firm.**

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I had contact with over 250 people as part of this review. The majority had positive things to say about working at Russell McVeagh. Young people in particular told me how much they enjoyed working in an environment with stimulating work and talented colleagues who became good friends. Many people commented on how much the culture had improved over recent times. However, I saw a sufficient number of people whose descriptions of their work experiences were awful to be able to assess that much work is needed to transform the culture into one in which all staff can thrive.

## **Past Culture**

My sense is that the current generation of partners inherited a firm with significant elements of an old fashioned, 'blokey' culture where the availability of alcohol was unlimited and provided an opportunity for some to habitually drink to excess. This was at times accompanied by appalling behaviour of a crude, drunken, and sexual nature. I heard accounts of grossly obscene behaviour including sexual harassment, unwanted sexual advances, and sexual assault. I was told that 20 years ago, some partners took some male summer clerks to a local strip club.

The central role of alcohol in the firm's life began as early as recruitment of school leaver scholars and continued in a largely unconstrained way at firm-wide events. A number of women told me they believed that they were expected to participate in social functions where large amounts of alcohol were present and were fearful about being labelled as not suitable for the lifestyle of the firm if they did not. Many felt pressure to drink to fit in, and some young women developed strategies to look out for each other.

The hierarchical structure of the firm created a significant power imbalance between junior staff and partners. Few women were in senior roles. The firm's ruthless pursuit of excellence with very high standards created an intense and competitive work environment. Russell McVeagh was widely known for its 'work hard, play hard' culture. Meeting financial targets was a strong determinant of success and progression. Intelligent, capable young people were largely left to sink or swim, working exceptionally long hours.

The culture had begun to change at the time of the incidents of the 2015–16 summer, partly in response to changes in societal norms. However, many elements of the past culture remained. Drunkenness and inappropriate sexual behaviour were still tolerated and some teams continued to 'work hard, play hard'. Although many staff were aware of poor behaviour, some even before they joined the firm, partners told me they were unaware. Certainly no one person had visibility over, or responsibility for seeing, what was going on in other teams and addressing it.

## Current Culture

I had contact with over 250 people as part of this review. The majority had positive things to say about working at Russell McVeagh and commented that the positive change in culture has been marked in the last few years. This is encouraging.

Alcohol use has been significantly curtailed. The firm has made it clear that sexual harassment, unwanted sexual advances, and sexual assault of employees are completely unacceptable and have no place in the firm's culture. The firm has had an increased focus on improving work/life balance. They are to be commended for their focus on diversity initiatives, particularly on women and LGBTTI people. I note however that people of Māori, Pasifika, and other ethnicities represent a very small minority of staff at Russell McVeagh.

Russell McVeagh achieved Rainbow Tick accreditation and signed up to the Law Society's Gender Equality Charter (see Appendix One) which aims to improve the retention and advancement of women in the legal profession. Many of the charter commitments are relevant to diversity more broadly. Russell McVeagh also played a significant role in the development of the New Zealand Law Society and Bar Association's Gender Equitable Engagement and Instruction Policy, which was launched in December 2017.

I was encouraged to hear of partners making a much greater effort to be engaged with staff. Many people spoke positively about the focus on excellence and high quality work and of the firm's efforts to provide benefits to staff. In particular, many junior lawyers told me that they enjoyed working with so many talented young people as well as learning from very skilled senior lawyers. Some people spoke of a culture of generosity where the firm provided exceptional support at times of serious illness, which was greatly appreciated.

These changes are positive and are to be commended. They are, however, not enough. I saw a sufficient number of people whose descriptions of their work experiences were awful, to assess that a great deal more work on the firm's culture is required.

There is still some evidence of sexism. Poor management and work allocation practices continue to result in some staff working excessively long hours. I was most disheartened to interview numerous people – both lawyers and support staff – who were frightened and felt powerless in the face of atrocious behaviour by a small group of offending partners and seniors whose belittling and disempowering behaviours constitute bullying. This behaviour is able to continue because it is often invisible or goes unnoticed by those in a position to do something about it. It also continues because the majority fear that, if they report the problem to HR, confidentiality will not be maintained and they will suffer consequences as a result. From interviews with staff I do not believe that the purported 'speak out' culture exists.

Contributing to the lack of a 'speak out' culture is an underlying culture of fear. There is fear among junior lawyers that partners, who ultimately make the decisions about career progression, will learn something about them that might jeopardise their chances of promotion. Partners also exhibit a culture of fear – fear of not meeting their financial targets and being exited from the partnership as a result.

I have concluded that, while the firm has addressed excessive alcohol use and made it clear that sexual harassment is unacceptable, issues of bullying, sexism, unconscious bias, and poor management practices are all having a negative impact on the culture. I conclude that a great deal of work remains to transform the culture of the firm and I urge the Board to take immediate steps to begin this process.

## **Transformation of the Culture**

It is in Russell McVeagh's interests to invest in building a superb culture. Not only because it is the right thing to do for the many talented people who work for the

firm, but because companies with positive, healthy cultures are more likely to get the best from every employee and perform better overall.

The firm's culture needs transformation from being hierarchical and siloed to being open and collaborative; to being a culture where bullying and fear have no place; and to being a workplace where women are valued, diversity is genuinely embraced, and the power imbalance is redressed. This transformed culture needs to provide young lawyers with a meaningful voice and the ability to speak up without fear of repercussion. The challenge in achieving this should not be underestimated given the degree to which attitudes have become embedded.

The partners and the Board must clearly articulate the behaviours they expect of staff, and having done so, must live up to these behaviours themselves.

These stated expectations need to be supported by clear, readily available, and widely understood policies, systems, and processes. Implementation of policies needs careful monitoring and regular reporting to the whole organisation. A new committee of the Board is proposed in Term of Reference Three – Part Two called the People and Transformation Committee. This Committee should be mandated to drive the transformation of the firm's culture.

## **Leadership and Management**

Transformation of a culture requires strong leadership committed to driving change over a sustained period. It also relies on leaders having excellent management skills, particularly in people management.

The partnership, the Board, and the Chief Executive are integral to leading the change and must ensure the availability of sufficient resources with the right capability.

Central to the transformation of the culture are the voices and perspectives of women and young people.

## **Place of Women and Diversity**

Russell McVeagh is proud of the fact that just under 30 percent of its partners are women because it is a leader when compared with other big firms. It also claims to be a meritocracy, where people progress into senior roles on merit. I find a disconnect between these claims. Given the exceptional calibre of women lawyers at the firm, promotion on merit should see significantly more women in senior roles than is currently the case.

I met many talented, bright women lawyers during the interviews. The fact that so many of them leave the firm rather than progressing to partnership is both disappointing and a big loss for the firm.

While work has begun to address issues of sexism and unconscious bias against women, there is still some way to go. I consider any form of discrimination against women to be a serious issue because it inhibits the change in culture that is needed to achieve the complete elimination of sexual harassment and sexual assault. Gender equality is a crucial ingredient.

Many people told me that the reason for the insufficient numbers of women in senior roles is a structural problem that exists across the legal profession. Some women junior lawyers perceived the firm's business model as not being workable if you want to have children. Others, who reported to partners (both men and women) who were balancing family life and making it work, saw great role models of how it can be done. An opportunity exists for senior and junior women to sit down together to explore what can be changed so that women can maintain their career progression within the firm as they raise a family. Flexible work arrangements such as job sharing should be considered.

Women bring different insights and talents to the leadership table. In a 2009 McKinsey & Company report called *Women Matter 3*, the authors refer to the correlation between a company's performance and the proportion of women serving on its Board.<sup>7</sup> They identify some of the reasons for this "performance effect" as stemming from the leadership behaviours that women tend to adopt more frequently than their male counterparts.

Russell McVeagh has some inspirational women partners. I am encouraged by the most recent Board elections where a majority of women were elected to the Board. It is so important, particularly at this juncture, because women have a significant leadership role to play in transforming the culture of the firm. I caution however that this review found that not all of the women in leadership roles at Russell McVeagh demonstrate behaviour that creates a positive culture. Care must be taken to promote more women who are great role models.

While women are key to bringing change to the culture, the role of men is not to be underestimated. I met many men, particularly young men, who were appalled by the awful behaviour of some of their male colleagues and who spoke out strongly against such behaviour.

A culture where people from diverse backgrounds, ethnicities, and sexual orientation are welcome and fully able to contribute to the life of the firm is one Russell McVeagh should actively pursue.

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7. McKinsey & Company, 2009: "Women Matter 3: Women leaders, a competitive edge in and after the crisis", [https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Organization/Our%20Insights/Women%20matter/Women\\_matter\\_dec2009\\_english.ashx](https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Organization/Our%20Insights/Women%20matter/Women_matter_dec2009_english.ashx) [accessed 21 June 2018].

## Voice of Young People

As discussed earlier in my report, young people make up over half of the staff of Russell McVeagh. Many are of a generation where they have been encouraged to have their say, and it is important that the firm puts bridges in place to ensure that their way of relating is accommodated. This was certainly not the case at the time of the incidents and it is timely to make an investment in creating a future where young people are empowered to speak up.

## Collaboration

I have concluded that a collaborative way of working is integral to transforming Russell McVeagh's culture. Collaboration will harness the collective wisdom of the full spectrum of employees, diminish the significant power imbalance, and provide a mechanism for staff to reach out for support without fear of repercussion.

The more staff work together across functional groups where everyone – partners, senior staff, junior lawyers, and support staff – can sit down together, the more opportunity there is to hear a variety of perspectives and learn the art of 'giving a bit to gain a bit'. This way of working develops trusting relationships and enables staff to benchmark what is normal behaviour. Great role models will be more widely visible and accessible, influencing others to a better way of working. Those who mistreat staff will be pulled into line.

Collaboration must extend to all aspects of life at the firm, giving multiple opportunities for staff, especially the large number of junior lawyers, to have a voice. Even though Russell McVeagh has collaboration as one of its three core values, creating a truly collaborative culture will be a challenge. The practice of law is essentially individualistic and self-reliant and readily lends itself to siloed ways of working. The firm has a great deal of work to do to embed this value in its culture, but if collaboration becomes an integral part of its way of working, it will fundamentally change the Russell McVeagh workplace.

Some partners have embraced the learnings from the leadership course they have recently undertaken and are exploring ways of working with junior staff. One such initiative I was told of and which I think is a concept worth developing is where the junior lawyers in a practice group have a monthly coffee meeting to pool their work-related issues. One of the group is then nominated on a rotating basis to feed these back to a meeting of their partners once a month. The partners undertake to address these issues and report back on actions taken at the next meeting of the group.

Another great initiative set up by the women junior lawyers in the firm is "The Breakfast Club", where these junior lawyers meet to identify and generate new

ideas, and also to find solutions or escalation pathways for issues they are experiencing. I was shown some of what they have come up with and it is excellent.

These examples are small but important beginnings and much more needs to be done to support and develop them further. The firm should also look externally to other organisations for examples where this is being done well.

It is not sufficient to tell people they need to embrace a collaborative way of working. They need to be shown how to do this. Committing to bringing in professional facilitators experienced at helping groups work in a collaborative way would be a worthwhile investment.

## Training

Central to embedding culture change is training. I have seen the schedule of training offered to staff at each level and I am told that the technical training offered at Russell McVeagh is truly excellent. I commend the firm for this. However, it is training in management, particularly people management, and on the ‘softer skills’ of being a leader that needs further attention.

A carefully designed training programme should be developed that ensures every staff member is aware of the changes being made to the culture. Attendance at these training sessions should be factored into every staff member’s work hours and allowance made in billing targets; training should be compulsory for all, partners included.

It is my experience that those who need the training often elect not to attend. This is also the case at Russell McVeagh. Juniors should not be the only level of the firm required to attend training courses like Alcohol and Me, Unconscious Bias, and Rainbow Tick, among others. Non-attendance by senior staff sends the message that those higher up in the firm use alcohol responsibly and know all about diversity. This is not so. It should be compulsory for partners to attend training sessions that relate to culture along with staff from all levels of the firm. Once training has occurred, partners must model the behaviour and the attitudinal change required.

## Monitoring and Auditing

A culture change of the magnitude envisaged by this review takes a long time to take effect. In my experience such change takes about 10 years, while everyone adopts the new culture and makes the personal and collective attitude and behaviour changes. There is a risk that over such a long time completing the change ceases to be a priority. People who are passionate about driving the change leave and are not replaced by people with the same passion to keep up the momentum.

Efforts to change the culture need to be monitored, measured, and reported to the Board and staff. If this is not done, old behaviours will creep back in and the firm will be at risk of further incidents in the future.

Some form of annual auditing of progress is needed. Russell McVeagh is well on the way to making the Rainbow Tick changes, and a feature of this certification is the annual auditing and measuring of change. This is an external, unbiased review of progress. The Law Society's Gender Equality Charter also requires a report to the Law Society on progress every two years. A similar mechanism could be used to audit the broader culture changes being made by the firm.

### **Culture Change in the Wider Legal Profession**

The Law Society has itself been the subject of criticism for failing to act on the issues of sexual harassment and bullying revealed in the recent survey discussed above. It is moving quickly to equip itself to provide the leadership and advocacy for the profession to rectify the problems that have been identified and to change the culture. It would be preferable for one organisation such as the Law Society to set a standard that is consistent for all law practitioners.

Russell McVeagh has begun to address their problems and is well placed to partner with the other law firms to support the New Zealand Law Society as it endeavours to provide leadership and advocacy for all law practitioners at this time.

I suggest that Russell McVeagh approaches the New Zealand Law Society to see if some arrangement can be made to build on the initiatives undertaken with the Law Society and law schools. This would be of value to all New Zealand's large law firms and the relevant universities. The universities also have a role to advocate for and model excellence in standards of behaviour for the legal profession. New Zealand university faculties of law are in a powerful position to educate the next generation of lawyers and ensure that graduates are imbued with a passion for the highest standards of behaviour.

At Russell McVeagh change is under way but persistent and consistent attention to culture is critical to truly cement the new culture. It is imperative that the Chief Executive, Board, and every partner are committed to the proposed transformation of the firm's culture and that they have a shared 10-year plan to complete the change.

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## Findings

- Russell McVeagh has begun to change its culture. This was under way before the incidents but has accelerated since. I found that:
    - sexual harassment and sexual assault of employees is not part of the firm’s current culture
    - alcohol use has been significantly curtailed
    - effort has been put into diversity initiatives, and
    - there is a culture of generosity towards its staff.
  - There are still several things that are hindering the development of a healthy culture:
    - poor people management and work allocation practices
    - remnants of a ‘blokey’ culture
    - significant power imbalance between junior lawyers and partners and between lawyers and support staff, created by the firm’s hierarchical structure
    - the lack of a ‘speak-out’ culture,
    - an underlying culture of fear among some staff and partners where staff fear their partners will hear things about them that will limit their advancement, and partners fear the implications of not meeting their financial targets
    - an insufficient number of women in senior leadership roles, with a view held by some that being a partner is not compatible with raising a family
    - young lawyers not having a meaningful voice and fearing repercussions if they speak up, and
    - a lack of management training, particularly people and ‘soft skills’ management.
  - Collaboration is the key to changing the culture.
  - Training programmes should be developed that ensure every staff member is aware of the changes being made to the culture. Attendance at these training sessions should be factored in to every staff member’s work hours and allowance made in billing targets. Attendance should be compulsory for all, partners included.
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## Recommendations

39. That the Board and partners commit to leading a programme of transformational change to Russell McVeagh's culture.
40. That the firm develops a 10-year plan to ensure the changes to culture are implemented, monitored, audited, and reported upon to the Board and staff to ensure they become embedded.
41. That collaboration becomes the way of working where staff across functional groups and seniority levels have the opportunity to hear one another's perspectives and learn the value of 'giving a bit to gain a bit'.
42. That the proposed People and Transformation Committee of the Board be mandated to drive the transformation of the firm's culture.
43. That senior and junior women sit down together to explore what can be changed so that women can maintain their career progression within the firm to reach partnership as they raise a family, such as part-time work or job sharing.
44. That meaningful, safe opportunities and mechanisms for ensuring junior lawyers have a voice are explored and implemented, and that this is led by the junior lawyers themselves.
45. That the training programme for partners and senior lawyers be expanded to include a far greater emphasis on people management and on the 'softer skills' of being a leader. This training should be compulsory.
46. That a programme of training to embed the new culture be developed, with attendance at these training sessions factored into every staff member's work hours and allowance made in billing targets; training should be compulsory for all, partners included.
47. That Russell McVeagh and other law firms support the New Zealand Law Society to provide leadership and advocacy for all law practitioners at this time.
48. That the universities advocate for and model excellence in standards of behaviour for the legal profession.

# Appendices

## Appendix One – New Zealand Law Society Gender Equality Charter



GENDER EQUALITY  
CHARTER  
NEW ZEALAND LAW SOCIETY

# GENDER EQUALITY CHARTER

## Fostering positive change in the legal profession

The legal profession is committed to the principles of diversity and inclusion and to recognising the bicultural foundations of Aotearoa New Zealand. We will take action to improve the culture of the legal profession to attract and retain the best talent, better understand and meet client needs, and reflect the multicultural society we serve. Working to improve diversity and inclusion is not only the right thing to do, it is critical to the success and sustainability of the legal profession.

The primary purpose of this charter is to improve the retention and advancement of women in the legal profession. However, many charter commitments are relevant to diversity more broadly. A review of the charter will be commenced within two years with a view to incorporating other aspects of diversity.

### Signatories to this charter will:

#### 1. Lead from the top

- > assign responsibility for meeting charter commitments to a named senior level individual

#### 2. Make a plan and take action

- > implement unconscious bias training for all lawyers and key staff and take action to address identified bias
- > conduct annual gender pay audits and take action to close any gender pay gap
- > encourage and support flexible working to assist all lawyers to balance professional and personal responsibilities
- > regularly review areas of their practice with a gender equality and inclusion lens e.g. recruitment, retention and promotion practices

- > adopt equitable briefing and instruction practices
- > actively work to increase gender equality and inclusion in senior legal roles

### 3. Measure progress

- > collect and share with the New Zealand Law Society examples of practical approaches to gender equality and inclusion that make a real difference
- > report on progress against charter commitments every two years to the New Zealand Law Society.

#### Notes

Charter signatories have two years to meet commitments.

Key staff: staff within an organisation who are responsible for the recruitment, retention and promotion of lawyers.

Senior legal roles: equity partners and directors in law firms, general counsel or chief legal advisers in the in-house profession.

## Appendix Two – Actions Taken by Russell McVeagh Over the Last Few Years



### Actions taken over the last few years

**This document details some of the initiatives Russell McVeagh has put in place over the last few years.**

1. Updated 'Diversity and Equal Opportunities Policy' and 'Anti bullying and Harassment Policy' with revamped anti bullying and harassment contact people who are selected from across all roles in the firm. (April 2016)
2. New diversity and inclusion working group as a way of giving staff a voice including a regular newsletter and an annual report. (First meeting June 2016 and first newsletter October 2016)
3. Both regular practice group sessions and regular firm-wide updates covering anti bullying and harassment, speaking out and diversity initiatives and policies. (Various 2016)
4. Launch of unconscious bias programme for recruitment and HR team, senior managers and partnership. (First module on March 2016 and then July 2016)
5. A partner leadership programme for the entire partnership. (Commenced March 2016)
6. Launch of 'Inspirational Speakers Programme', as a way of encouraging diversity of thought. (March 2016 and ongoing)
7. Rainbow Tick accreditation plus Rainbow training for staff and new joiners, hosting our first external facing Rainbow event and plus hosting a Rainbow Tick Breakfast. (Accredited in June 2016 and re-accredited in March 2018)
8. Alliance Partnership with Diversity Works. (March 2016 and ongoing)
9. Becoming a supporting partner of Global Women and became a Champion for Change partner. (May 2015 and ongoing) Committed to the Diversity

- Reporting Framework which requires us to provide our gender and cultural stats and be held accountable for them. (March 2017)
10. Hosting, sponsoring, supporting and initiating a number of events which support women ie including hosting a Diversity Group Meeting for Diversity Works, Global Women events, Women on Boards event and sponsorship, continuing to host and sponsor Corporate Mothers' events, Supper Clubs for female clients, Breakfast club for junior females (in-house initiative), providing speakers for female focused conferences such as NZLS Women in the Law etc. (Various and ongoing)
  11. Supporters of 'Gender Equitable Engagement and Instruction Policy'. (Dec 2017)
  12. Large law firm "transition to work" initiative for summer clerks commencing 2018. An independent person appointed for summer clerks to contact over the summer. (Programme set up in 2017 and due to launch in 2018)
  13. Free and confidential staff counselling for staff and all on our university programme. (Ongoing)
  14. Better advertising of the support services currently available. (Ongoing)
  15. Focus on responsible drinking – through activity based events for recruitment and emphasis on host responsibility plus Alcohol & Me programme run for the summer clerks. (Ongoing)

### Further actions in relation to the firm's culture

16. Amendment of the partnership constitution to include the option of a part-time partner and also giving parental leave.
17. Myers Briggs and Gallup profiling open to all staff across the firm as way of supporting and understanding our differences, and encouraging diversity of thought. (2015 and ongoing)
18. A mentoring framework. (June 2015 and ongoing)
19. Increased training for our juniors on strategies for success. (May 2015 first pilot programme in Auckland office)
20. Cross team 'mentoring'. (Ongoing)
21. Tuputoa initiative: a Māori and Pasifika corporate pathways programme, to introduce a Māori and Pasifika specific internship opportunity. (June 2016 and ongoing)

22. Specific workshops for Māori and Pasifika law student associations at the universities. (March 2016)
23. Increased cultural and other celebrations internally ie Matariki, Diwali, Blue September, Pink Ribbon, Suffrage Day, Hanukkah, International Women's day etc. (2016 and ongoing)
24. Range of cultural awareness seminars for our staff, run through Arapai with Sir Pita Sharples. (July 2016 and ongoing) Topics have included:
  - a. Māori and Pakeha Relations.
  - b. Māori Business Engagement.
  - c. Pronunciation workshops as part of Te Wiki o te Reo Māori (Māori Language Week).
25. Plus also 'Working with China' workshop and active staff engagement as part of Chinese Language Week. (Feb 2016 and ongoing)
26. Te Reo lessons for staff. Launched in WGN to begin with a view to rolling them out in AKL. (March 2017)
27. Signed up to Working Mothers Connect. (June 2017)
28. UN WEPS signatory. (October 2017)

### Further actions in relation to staff well-being

29. Increased opportunities for flexible working (ongoing and requiring a real cultural shift with the firm). Launch of new flexible working technology in late 2016 along with a smartphone allowance.
30. New wellness and physical activity subsidy. (June 2017)
31. New training and support for those returning from maternity leave. (April 2015)
32. Annual 'RU Okay' week with a focus on mental and physical well-being including a range of speakers and other firm sponsored events. (Ongoing)
33. 'Catch up time'. (May 2015)
34. Refit of the wellness/parents room. (October 2017)
35. New parental leave policy with up to 18 weeks paid leave for all staff. (October 2016)
36. Sponsoring Mike King and Harold Hillman sessions at the universities. (2016 and 2017 respectively)

### Further actions in relation to the Corporate Social Responsibility

37. Gender pay equity reporting. (Ongoing)
38. Increased staff-led sustainability initiatives including Sustainability Week etc. (2016 and ongoing)
39. Increased efforts in the pro bono and community space, in particular in the Rainbow area ie Rainbow Youth, Sustainable Coastlines and Voicing Pride are new pro bono clients. (2017)
40. Staff 'charity days'. (June 2015 and ongoing)
41. Corporate Social Responsibility Report – as a way of benchmarking ourselves and sharing our story with our clients and external stakeholders. (April 2017)