

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the City Standards Committee

BETWEEN

KR

Applicant

AND

HS

Respondent

DECISION

The names and identifying details of the parties in this decision have been changed

Introduction

[1] Ms KR has applied for a review of a decision by the City Standards Committee dated 28 May 2013 in which the Committee decided that further action on her complaint against Mr HS was unnecessary or inappropriate, pursuant to s 138(2) of the Lawyers and Conveyancers Act (the Act).

[2] On 22 December 2010 Ms KR instructed Mr HS to represent her in a Family Court proceeding relating to care of Ms KR's child. Ms KR says she had been declared bankrupt so, when she was named as respondent in the care proceeding, she was reliant on her legal fees being paid by Legal Aid (LA). She says that over the months that followed, Mr HS, and his firm more broadly, treated her with disrespect, did not support her interests and rights, misled her, caused her embarrassment, failed to obtain legal aid to fund her legal costs and then billed her \$2,820.34 privately for their work, which she has not paid.

[3] Ms KR says she would have been granted legal aid if Mr HS had been more diligent in ensuring her application was progressed. Ms KR says she advised Mr HS when she first met him that she was relying on legal aid to pay her legal fees because

she was a solo mother on a benefit, and was bankrupt. She said the Insolvency Office had told her that any legal fees she incurred during her bankruptcy would have to be paid by legal aid, presumably because she had no funds from which to pay for legal services. She says she would not have knowingly agreed to pay privately for Mr HS's services, and that she was not aware of having signed any agreement that would bind her to pay privately.

[4] Ms KR's view is that Mr HS and his firm did not meet her needs, and the firm's subsequent application to the Disputes Tribunal to recover its fees has been stressful, embarrassing and humiliating to her.

[5] Mr HS provided correspondence addressed to Ms KR during the time he acted for her which contains his repeated requests for her to provide further information in support of her legal aid application, and his advice to her that if she failed to provide the information her legal aid application would be refused. In mid-2011 Mr HS advised Ms KR that her application for legal aid had been refused, and sent her his invoice.

[6] Mr HS's timesheets and correspondence indicate that he prepared, served and filed defence documents for Ms KR, and corresponded with her from December 2010 to 22 February 2011. He and Ms KR met at his offices on 22 February 2011, after which progress of Ms KR's matter was interrupted by the major earthquake that occurred in Christchurch that day.

[7] Ms KR refers to some of the effects the earthquake had on her, including continuing disruption to her receiving mail, which could arrive late, or not at all. She also says she could not agree to attend mediation at a venue outside Christchurch, where the choice of venue was severely limited, because she could not afford to travel.

[8] When Mr HS became aware that legal aid had been refused, because Ms KR had not provided sufficient information, he declined to undertake further legal work until his fees were paid. When they were not, he applied to the Family Court for a declaration that he was no longer acting for Ms KR, which was granted.

[9] In due course Mr HS's firm commenced proceedings against Ms KR in the Disputes Tribunal to recover his fees. The Tribunal made orders requiring Ms KR to pay the amount claimed. Ms KR then applied for a rehearing before the Tribunal, which was granted, and laid a complaint to the New Zealand Law Society (NZLS) about Mr HS's service, conduct and, in passing, expressed concern about the amount of his fees.

Standards Committee

[10] The Standards Committee considered Ms KR's complaint and supporting information, and the other information provided by the parties. That information included Mr HS's letter of engagement addressed to Ms KR dated 23 December 2010, his requests for information from her in support of her application for legal aid, his enquiry of the Ministry of Justice as to whether legal aid had been granted, and his advice to Ms KR that aid had been refused and that he would require payment before undertaking further work for her. The Committee was also aware that Mr HS had then ceased acting on the basis of a Declaration from the Family Court, and had sought to recover his fees through the Disputes Tribunal before Ms KR had laid her complaint.

[11] The Committee focussed on the question of Ms KR's liability for Mr HS's fees, and the general complaints she had subsequently made about Mr HS's service and conduct. It considered there was insufficient evidence to support a finding that Mr HS's conduct had been unsatisfactory in respect of the matters she referred to, and decided that further action on the complaint was unnecessary or inappropriate pursuant to s 138(2) of the Act.

Review Application

[12] Ms KR was dissatisfied with that outcome, and applied for a review, repeating her disputes over liability for Mr HS's fees, her criticisms of him for not providing her with proper information about fees when she first instructed him, and the problems she had had with receiving correspondence after 22 February 2011. She expressed the view that when Mr HS refused to continue to act without being paid, he "was never looking after [her] interests or needs, but was looking to his own interests, and the interests of others"¹, although she did not say who. Ms KR says she felt let down by Mr HS, was generally critical of him, "the way he communicated with" her, which she said was "appalling and disrespectful"², and compared his performance unfavourably with that of other lawyers she had retained.

¹ Review Application 17 July 2013 at 1.

² Review Application at 6.

Review hearing

[13] This review was completed on the material to hand with the consent of the parties pursuant to s 206(2) of the Lawyers and Conveyancers Act 2006.

Role of the LCRO

[14] The role of the LCRO on review is to reach her own view of the evidence before her. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting her own judgement for that of the Standards Committee, without good reason.³

Scope of Review

[15] The LCRO has broad powers to conduct her own investigations, including the power to exercise for that purpose all the powers of a Standards Committee or an investigator, and seek and receive evidence. The statutory power of review is much broader than an appeal, and gives the LCRO discretion as to the approach to be taken on any particular review and the extent of the investigations necessary to conduct that review.

Review Issue

[16] In a professional disciplinary sense, Ms KR's complaint and review application fall into three general areas, service, conduct, and concern over the amount of Mr HS's fees.

Service

[17] Ms KR is generally critical of the quality of service Mr HS provided but has provided no evidence to support her assertions.

[18] The correspondence Mr HS has provided is entirely routine in a care proceeding, and gives no cause for concern about the quality of service he provided.

[19] There is no reason for me to reach a different view from that of the Standards Committee. That aspect of Ms KR's complaint will therefore receive no further attention on review.

³ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [40]-[41].
The High Court judgment refers to "judgment" in the context of [14].

Conduct

[20] The second aspect of Ms KR's review application relates to generalised criticisms of Mr HS's conduct including failures to follow her instructions and adverse comments relating to him having carried out work without her instructions.

[21] Although Ms KR says she did not receive key correspondence, including terms and conditions and information about her legal aid application, Mr HS's professional obligation was to provide information.⁴ Mr HS's file includes a letter of engagement dated 23 December 2010. There is no reason to believe that he would not have sent that correspondence prepared to Ms KR. Bearing in mind her comments about her receipt of mail being erratic, even before the earthquake. Ms KR's protestations that she did not receive Mr HS's early correspondence do not raise professional disciplinary issues for Mr HS.

[22] There is no reason for me to reach a different view from that of the Standards Committee. That aspect of Ms KR's complaint will therefore receive no further attention on review.

[23] Ms KR also claims compensation because she says Mr HS's firm's pursuit of its fees through the Disputes Tribunal has caused her stress, embarrassment and humiliation.

[24] There is no evidence of any inappropriate conduct in the context of the firm's pursuit of its fees. It is also relevant that recovery of its fees is not conduct by Mr HS or the firm in providing regulated services to Ms KR, which is a key component in the relevant definitions of "unsatisfactory conduct" in the Act.⁵ In the circumstances, there is no reason to consider that aspect of Ms KR's review application further.

Fees

[25] Although Ms KR has not made a specific complaint about the amount of Mr HS's fees, she expressed her general concern about the "thousands" of dollars of legal fees the firm was looking to her to pay.

[26] Mr HS's fees totalled \$2,820.34 including GST and disbursements.

⁴ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rr 3.4, 3.5, 3.6.

⁵ Lawyers and Conveyancers Act 2006, s 12(a) and (b).

[27] It is implicit in her complaint and review application that Ms KR considers her general concerns about the quality of conduct and service should have an impact on the amount that is being claimed from her. However, there was no reason for the Committee to construe her complaint as a complaint about the amount of her fees, or to deal with it according to the process that follows a Committee receiving a complaint about the amount of a lawyer's bill under s 132(2) of the Act.

[28] Properly construed, Ms KR's complaints are about value for money, and a challenge to her liability for Mr HS's fees. As set out above, I have disposed of the professional conduct aspects of Ms KR's review application on the basis that she has provided no satisfactory evidence to support her assertions that Mr HS's conduct or the quality of the service he provided were deficient; and that the information Mr HS has provided from his file supports a finding that there was no deficiency in his conduct or the services he provided.

[29] In circumstances where Mr HS's fees are the subject of an unresolved dispute in the Disputes Tribunal, I considered it prudent to review his timesheets against his correspondence and fees. This was to ascertain whether any professional conduct concerns arose from Ms KR's concerns over his fees that the Standards Committee may have overlooked.

[30] Rules 9 and 9.1 of the Lawyers: Conduct and Client Care Rules 2008 (Rules) require lawyers' fees to be fair and reasonable with reference to a range of factors listed in Rule 9.1. The correspondence and the timesheet records support the amounts Mr HS invoiced for his fees, which do not appear to be unfair or unreasonable for the services he provided to Ms KR, and are not obviously inconsistent with the considerations set out in Rules 9 and 9.1.

Review Issue

[31] Having considered the various aspects of Ms KR's complaint on review, the review issue overall is whether there is good reason to disturb the Committee's decision to take no further action from Ms KR's complaint. The answer to that question is no.

Outcome

[32] I have carefully considered the complaint and all of the information provided by the parties. I can find no reason to depart from the Committee's decision or its reasoning.

[33] In the circumstances the Committee's decision is confirmed.

Costs

[34] The LCRO has discretion to make costs orders pursuant to s 210 of the Act, and the LCRO's Costs Orders Guidelines.

[35] Ms KR was entitled to apply for a review and did so. There is no reason to order her to pay costs.

[36] No adverse finding has been made against Mr HS, and he has done nothing to add to the costs of this review. In the circumstances there is no reason to make any costs order against him.

[37] No costs orders are made on review.

Decision

Pursuant to s 211(1)(a) of the Act the decision of the Standards Committee is confirmed.

DATED this 7th day of November 2014

Dorothy Thresher
Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Ms KR as the Applicant
Mr HS as the Respondent
Ms XX as a Related Person under s 213
The City Standards Committee
The New Zealand Law Society
Secretary for Justice