LCRO 286/2013

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of [Area] Standards Committee [X]
BETWEEN	**[NL]** Applicant
AND	**[UC]** Respondent

DECISION

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

Introduction

[1] Mr NL complained about the conduct of Mr UC on behalf of [Business X],[1] Mr [AB], [The XX Family Trust] (the Trust) and its trustees, [BX] and [KX] ([B and [K]).

[2] All parties signed the letter of complaint to the New Zealand Law Society Lawyers Complaints Service (Complaints Service) on 11 October 2012.

[3] The complaints related to:

(a) The purchase of a property in [Address B]

(b) A bill rendered to the Trust.

[1] Mr [NL] is a director of [Business X].

[4] The Committee determined pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 that further action on the complaints was neither necessary nor appropriate.

[5] Mr NL has applied for a review of the Committee's determination.

Background

[6] To provide background to the relationship between the parties it is simplest to include the relevant portions from Mr UC's letter in response to the complaint.[2]

Background

> 2. [BX] and the late [RX] are personal friends of my wife and I – [RX] (a Real Estate Agent) having sold our property to us in 1990. I began acting for [RX] and [BX] as their Solicitor shortly thereafter as they were already clients of the firm that I was then a partner of.
>
> 3. We have been close friends ever since. [RX] unfortunately died in 2004.
>
> 4. As part of an estate planning exercise I set up a family Trust for the [X's] in December 2002. The three initial Trustees were [RX], [BX] and myself.
>
> 5. Before he died [RX] had gone to great lengths to ensure that when he died [BX] would be well taken care of and the family Trust was an integral part of this. His concerns were to primarily look after his wife [RX] (and to provide her with an on-going income) and thereafter to provide an appropriate structure for [KX] ([KX]being an only child).
>
> 6. It was an expected part of the estate plan that my involvement would ensure that the arrangement was not only put in place but that it would continue to work as planned. Upon [RX]'s death [KX] was appointed as a replacement Trustee.
>
> 7. Over the intervening years [BX] and the Trust disposed of some of the properties (and at times losses have been made) and distributions/loans made with the end result that the capital value of the Trust holdings has been significantly depleted.

[7] The Trust owned a property in [Address A]. Mr UL says: [3]

> [KX] and Mr [NL] wanted more privacy and a place of their own and tensions developed as a result. Eventually both [KX] and [BX] approached me in my capacity as Trustee and advised me that the [Address1] property was to be "given" to [KX] so that she, [NL] and the children could live there together as their family home and that [KX/NL] would purchase another property somewhere nearby where [BX] could live with her own partner – Mr [AB].

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[2] Letter from UC to the Lawyers Complaints Service (27 November 2012).
[3] At [20].

[8] Mr UL did not agree and in August 2012 executed (on request by Mrs BX]) a Deed of Retirement as a trustee.

[9] On 30 August 2012 Mr UL rendered an account "for professional services in connection with Trust affairs generally since 2007 … including … our fee throughout based on time and attendance". The amount of the fee was $3,977 plus GST and disbursements, a total of $4,682.47.

[10] In May 2012 [KX] entered into an agreement to purchase a property in [Address 2] (the Agreement). The purchaser was recorded as "[KX] and/or nominee". The Agreement was received at Mr UL's office on 23 May 2012.

[11] Mr UL sent his Terms of Engagement to [KX] on 25 May together with an estimate of fees. He estimated $1,220 to $1,600 plus GST and disbursements for a "straight-forward transaction and the registration of one mortgage against the title". Hourly rates were included to be applied "where appropriate" together with a credit limit of $2,500 being "the maximum amount of work in progress that will be carried out … before some payment will be required".

[12] The Agreement was conditional on finance being arranged by 5 June. At the time the Agreement was entered into [KX] advised Mr UL that she was "busy trying to organise the finance".[4]

[13] On 1 June 2012 [KX] advised Mr UL's legal executive (Ms [QV]) by email that finance had been confirmed. Ms [QV] responded to [KX] that she needed to have confirmation of finance from the bank in writing and offered to contact the bank directly.

[14] [KX] was overseas at the time and responded:[5]

> Hi Mr [UL] and [bank officer],
>
> Can you please deal with each other in terms of organising the finance of the property. I am trying to locate the confirmation letter but have difficulty finding older emails on my iPad.
>
> My understanding is: to date the [Bank] have confirmed they will fund 80% immediately but are happy to discuss 100% with other property as a guarantee. This is [what] we would like to do but I'm assuming that it will be hard to organise until we return. I don't see this being an issue though as we are back prior to settlement.

[15] It would seem that Mr UL had a telephone conference with the bank officer and made a handwritten note:

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[4] Email from [KX] to UC (23 May 2012).
[5] Email from [KX] to UC, bank officer and [QV] (5 June 2012).

> Mr NL
>
> [KX]
>
> 2.59 PM TT: [BANK OFFICER]
>
> Given an indicative yes
>
> 80% lending but may go to 100%
>
> 19th June [KX] returns from o/seas
>
> 2/3 [KX]/NL 1/3 [AB]
>
> You don't know the structure as yet.[6]

[16] In the meantime, Ms [QV] had requested and received an extension of time to 7 June for the finance to be satisfied.

[17] On the same day (5 June), the bank officer sent an email to [KX] which was copied to Ms [QV] and Mr UL:

> Hi [XB], [QV] & [UL]
>
> I can confirm that Bank will fund 80 % of purchase price and happy to discuss 100 % with other property to make up the shortfall in deposit including guarantees.
>
> There are a number of ways we could do this and happy to discuss further.
>
> I have worked off the initial figures of PP $1,050,000 @ 80 % = Loan for $840,000. (This takes into account a deposit of 20%, normal guidelines.)
>
> Also on the basis that [KX]1/3, [NL] 1/3 and Mr [AB] 1/3 share in property.

[18] [KX] then confirmed to Ms [QV] that the finance condition could be confirmed as having been satisfied.[7]

[19] According to the Agreement, settlement was scheduled to take place on 25 June 2012 or five working days after issue of the Code Compliance Certificate and title, which ever is the later. In an email on 20 June 2012 Ms [QV] advised [KX]:

> Hi [KX]
>
> Welcome back. I hope you had a good trip.
>
> Just to let you know that the vendors are not yet in a position to settle, neither the title nor the code compliance certificate have issued. It appears they are still some weeks away. I have informed the bank that settlement is not imminent so you have time to sort things out. I will let you know as soon as I hear anything further.
>
> Regards
>
> [QV]

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[6] I interpret this as meaning the bank officer did not know at that stage who was to be nominated as the purchaser of the property.

[7] Email from [KX] to [QV] (6 June 2017).

Registered Legal Executive

[20] Clause 19 of the Agreement read:

> If the Title and Code Compliance Certificate for the herein described property have not been issued by 4.00pm on 25th August, 2012, then this Agreement shall immediately lapse without notice and shall be automatically void and of no further effect and the deposit and/or any other moneys paid by the purchaser shall be refunded promptly.

[21] In an email on 3 August, Mr UL's practice manager (MW) advised Mr UL:

> Just in case [BX] didn't mention it, it looks like the apartment purchase is going to fall over – I think the date is the 24/25th August. [KX] has read the Agreement and the deposit is fully refundable. They won't do anything else about it as she is away a month from about that date.

[22] The Code Compliance Certificate was issued on 21 August and Ms [QV] was advised by the vendor's lawyer on 23 August that title had issued. In terms of the Agreement, settlement was scheduled for 30 August.

[23] On 24 August Mr UL expressed this in an email to [KX] as "bad news" as it seemed that either [BX] or [KX] had been hoping the Agreement would not proceed (through operation of clause 19.0). He went on to say, "I will do search [of the title] a little later and check the title and send a copy through to you. So it seems like we had better get ready for 30 August."

[24] Ownership of the property was discussed between Mr UL and [KX] in an exchange of emails on Friday 24 August:

> Hi UL,
>
> Obviously the name on the property will need to change – is this something that you will organise or will the real estate agent do it?
>
> Thanks
> [KX]

> Yip – we do all that. You just need to let us know asap what the new deal is and the proportions of ownership if applicable (bearing in mind that we only have a few days now!!) Have you got all the funding in place?
>
> UL

> Yes funding is all good to go. We have been approved by [Bank]and the guy I deal with there … I will let you know on Monday regarding what names to put the property under. At this stage I think it will be Mr [AB] and [Business X] but will confirm that first thing Monday.

[25] On Monday 27 August [KX] advised Mr UL as follows:

> Hi UL
>
> Can you please put 1/3 into Mr [AB] and 2/3 into [Business X].
>
> Thanks
>
> [XB]

[26] The necessary pre-settlement documentation was attended to and on 28 August Mr UL emailed [XB]:

> [XB],
>
> Please find statements attached in terms of settlement. You will need to ensure that your bank deposits the funds on Thursday am as cleared funds and that they fax us confirmation of the deposit.
>
> I am now just awaiting your confirmation of [AB's] name and we can set up the e-dealing for registration purposes and then we need both [AB] and [NL] to sign their A&I forms and then we will be good to go.

[27] The statements included Mr UL's fees of $2,189 plus GST and disbursements. [KX] advised she had sent the statements to the bank.[8]

[28] On 30 August it became apparent that the bank required mortgage security over the [Address 2] and loan instructions were received by Mr UL on that day. They included a requirement for mortgage security over the [Address A] property together with guarantees from Mr NL, [BB Nominees Ltd], [KX] and [BX]. The guarantors needed to be independently advised.

[29] The documents were all signed and late on 31 August Mr UL sent his solicitor's certificate to the bank to uplift the settlement funds. In the meantime he had noted a restrictive covenant registered against the title to the property and raised the matter with the vendor's solicitors who pointed out they had previously provided a copy of the document to Mr UL.[9]

[30] Settlement was completed on the following Monday and interest for late settlement in the sum of $1,449.88 was incurred.

[31] Mr UL rendered a supplementary account for attendances relating to the bank securities. The fee was $4,750 plus GST and disbursements, a total of $5,703.28.

[32] At that stage [KX] advised Mr UL that she and her mother had asked Mr NL to "deal with the issue of the invoices",[10] being the invoice rendered to the Trust and the

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[8] Email from [KX] to UC (28 August 2012).
[9] Email from vendor's solicitor to UC (31 August 2012).
[10] Email from [KX] to UC (4 September 2012).

two invoices for the purchase. It seems that Mr UL deducted his fees for the purchase from excess funds but the fee rendered to the Trust remained unpaid.

[33] On 7 September the new solicitor for the Trust required Mr UL to sign the A&I form for the transfer of the [Address A] property and Mr UL advised him:[11]

> I have received your request to sign the A&I form for … [Address A] in my mail this morning. I will happily sign and return it to you just as soon as my outstanding bill of costs to the Trust has been paid in full.

[34] The bill was paid and Mr UL signed the A&I forms.

[35] Mr NL lodged his complaints in a letter dated 11 October received at the Lawyers Complaints Office on 5 November 2012.

The Parnell purchase

[36] Mr NL specifically noted in his complaint that the complaint with respect to the purchase of the Parnell property was about the fees rendered by Mr UL. He said:

> Our complaint is regarding the fees that have been charged by Mr UL Legal. The initial fee from Mr UL in relation to the purchase of the property but which did not include the set up of a mortgage as quoted in the Fee Estimate Schedule was $2,895.91 including GST (not in line with the estimated fee schedule of between $1,220.00 - $1,600.00). On Monday 3rd September we received a further invoice for $5,703.28. This brings the total bill for the purchase of this property to $8,599.19. This figure is appreciably higher than what was quoted in the estimated fees schedule.

[37] Although not stated explicitly in his initial complaint, Mr NL was critical of Mr UC for not liaising with the bank to ascertain what its security requirements were, or were going to be, so that preparations could be made to enable the guarantees and securities to be signed in time to ensure there was no delay in settlement. The delay in settlement incurred an additional cost of $1,449.88.

[38] Mr NL did subsequently accuse Mr UC of being "incompetent".[12]

The Trust fee

[39] The complaints by the Trust related to the fact that Mr UC rendered an account for work which dated back some five years and included attendances that Mr NL asserted should not form part of Mr UC's fees. He said:

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[11] Email from UC to Trust solicitor (10 September 2012).
[12] Letter from NL to Complaints Service (12 December 2012).

> … informal chats between Trustees who were friends for years do not masquerade as genuine authorised and chargeable fees, particularly when they reflect no project, no professional advice sought and no good faith basis.

[40] Mr NL expanded on the objection to the invoice when he said:[13]

> As [BX] and [UC] have been long term family friends [BX] has always felt that she has been able to ring and discuss matters with [UC]l (this is clearly evident from the [Address 3] time sheet). At no time since 2002 has [UC] ever indicated by way of direct communication or via invoicing to [BX] that these phone calls would be charged for and there is no letter of engagement relating to [The XX Family Trust]. Therefore she would have had no reason to suspect that she was being charged and was shocked to learn this upon receiving [UC's] last invoice.

[41] He also referred to a meeting at the [Address A] property where he questioned the time recorded of three hours.[14] He says:[15]

> … there is absolutely no way that [UC], [KX] and [BX] spent 2 hours discussing the Trust. [BX] had made muffins and from what I am told KX], [BX] and [UC] had morning tea and spoke more about [UC]'s issues with his son than they did about the Trust.

[42] He also referred to the fact that there had been no letter of engagement or fee estimate for the Trust and seemingly used this as the basis for his statement that the fees charged had "no cost agreement" and were not "authorised by the trustees".

The costs assessor's report

[43] The Standards Committee commissioned a report from a costs assessor who called for, and received, Mr UC's files. The assessor's report included the following comments.

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[13] At [8].
[14] Travel from Mr UC's office in [Town Y] and return accounted for one hour.
[15] At [8].

Purchase:[16]

> 2. The services were undertaken by the firm at the correct level of qualification within the firm. The services were provided by Mr UC as principal and [QV] as Legal Executive.
>
> 3. The time and attendance rates were appropriate. The hourly rates for the partner and Legal Executive are stated in the letter of engagement and were appropriate.
>
> 4. The time recorded on the file gives a reasonable fee and is an accurate record of the amount of time and attendances required to give effect to the instructions from the clients (ie the purchasers and the Bank).
>
> 5. Attendances were not required to correct errors.
>
> The complaint made to the Society infers an error by the law firm because mortgage instructions were not provided to Mr UC Legal by the clients' bank until 29 August 2012, the day before settlement of the transaction was contracted to take place
>
> …
>
> … There had been no reason for the law firm to follow up with the Bank directly as to whether mortgage instructions were to be provided to it by the Bank. The law firm had been advised the offer of finance was an unconditional one. The Bank would then have prepared any mortgage instructions it required and forwarded them to the law firm.
>
> …
>
> The sequence of events, and the circumstances in which the Bank instructed the law firm to prepare security documents, at the time when all of the preparation for the settlement of the transaction was believed by the law firm to have already been completed, put the law firm in a position of having to act for the Bank and prepare mortgage documentation within 24 hours of the date and final time for settlement.

[44] The assessor commented on each of the fee factors referred to in rule 9 of the Lawyers' Conduct and Client Care Rules (the rules)[17] and particularly the fact that significant urgency was required to uplift the mortgage advance to enable settlement to proceed.

[45] With regard to the estimate provided to [BX] in the Letter of Engagement, the assessor said:[18]

> - The estimate given did not and could not contemplate the circumstances that subsequently arose in that (a) it was not known at the time of the estimate that the purchasers would be a company and another individual who were not clients of the firm at the time of the estimate (b) it was not known at the time of the estimate that mortgage instructions would only be provided by the Bank the day before settlement, (c) it was not known

[16] Costs assessor second report (12 July 2013) at 2.
[17] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[18] Above n 16, at 5-6.

> that the mortgage instructions would include a requirement for guarantees be provided and that one of the guarantors would be a Trust (the [XYZ] Trust) and the other would be Mr NL personally, (d) that the guarantors were not previously clients of the law firm (e) that there was a need to ensure independent advice from the guarantors (f) there would be delays because of the timing of receipt of mortgage instructions which would then result in settlement having been postponed from Friday 31 August 2012 until Monday 3 September 2012.
>
> - The estimate did not and could not contemplate that the additional factors that arose immediately prior to settlement would require action by the law firm on an urgent basis.

[46] The assessor considered the two fees rendered by Mr UC to be fair and reasonable.

The Trust:[19]

> 2. The services were undertaken by the firm at the correct level of qualification within the firm. The services were provided by Mr UC as principal.
>
> 3. The time and attendance rates were appropriate. The hourly rate as stated in the time records provided for the principal of Mr UC Legal was appropriate.
>
> 4. The time recorded on the file gives a reasonable fee. Attendances were not required to correct errors. There were no discernible errors by Mr UC Legal in providing the legal services in the administration of the Trust between 2007 and 30 August 2012.
>
> 5. There is no element of double billing.

[47] The assessor then considered each of the rule 9 factors to be taken into account in assessing a reasonable fee, some of which were applicable to the attendances on Trust matters.

[48] The assessor concluded that the fee rendered was fair and reasonable.

[49] The report was provided to the parties on 15 July 2013 with a request for any comments to be received by no later than 5 pm 23 July. Neither party provided comments on the report.

The Standards Committee determination

[50] The Committee was "satisfied with the content and recommendations set out in the costs assessor's report".[20]

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[19] Costs assessor's first report (12 July 2013) at 1–2.
[20] Standards Committee determination (16 August 2013) at [39].

[51] Having come to that view, the Committee determined to take no further action in respect of the complaints about Mr UC's fees. The Committee did not specifically comment on the allegations of incompetence, but by accepting the assessor's report the Committee, by implication, determined that the allegations of incompetence were not accepted.

[52] The Committee determined that Mr UC was not required to provide terms of engagement and referred to rule 3.10 of the rules, which provides that the requirements of rules 3.4 and 3.5 (requirements to provide letter of engagement) do not apply to a retainer entered into prior to 1 August 2008.

[53] The Committee determined to take no further action in respect of the complaints.

Review

[54] Mr NL applied for a review of the Standards Committee investigation and determination.

[55] The review progressed by way of a hearing with both parties in Auckland on 27 July 2017 attended by Mr NL, [KX] and Mr UC.

[56] The hearing was conducted by Mr Vaughan acting as a delegate duly appointed by the Legal Complaints Review Officer (LCRO) pursuant to clause 6 of schedule 3 of the Lawyers and Conveyancers Act 2006. The LCRO has delegated Mr Vaughan to report to me and the final determination of this review as set out in this decision is made following a full consideration of all matters by me after receipt of Mr Vaughan's report and discussion.

[57] Prior to the hearing Mr UC was requested to provide his files and these have been included in the material considered during the course of this review.

Nature and scope of review

[58] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:[21]

> … the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.

[21] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].

> The Review Officer has broad powers to conduct his or 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. These powers extend to "any review" …
>
> … the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review Officer to exercise some particular caution before substituting his or her own judgment without good reason.

[59] More recently, the High Court has described a review by this Office in the following way:[22]

> A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO's own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee's determination.

[60] Given those directions, the approach on this review, based on my own view of the fairness of the substance and process of the Committee's determination, has been to:

(a) Consider all of the available material afresh, including the Committee's decision; and

(b) Provide an independent opinion based on those materials.

Analysis

The Trust fee

[61] There is some difficulty in accepting Mr NL's proposition that Mr UC should not have charged fees for attendances relating to the Trust. He argues that because no letter of engagement had been provided, [BX] was unaware that Mr UC would charge for attendances and that all of the time spent was provided as a friend. He says she sought his advice on that basis.

[62] Mr NL also asserted that some of the time recorded by Mr UC as Trust matters was time spent on social "chit chat". He refers specifically to a meeting held at the [Address A] property.

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[22] *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

[63] Mr UC advised that he only recorded time spent discussing Trust matters. The time records on which Mr UC's bill is based, record the matters dealt with on each occasion. Each entry appears to record a legitimate charge for Trust matters and none of the entries appear to record an unreasonable period of time.

[64] Mr NL's specific allegation concerning the meeting at [Address A] cannot be resolved. In any event, any adjustment to this specific entry would not result in a finding of unsatisfactory conduct with a reduction of the account, such as may have occurred with a costs revision under earlier legislation.

[65] Mr UC says he did not render an account for some time for these general attendances because he was aware the Trust had diminishing cash reserves, with Trust funds being used to support the beneficiaries. That was a concession to the Trust which should be acknowledged.

[66] Rule 9.6 of the rules provides:

> A lawyer must render a final account to the client or person charged within a reasonable time of concluding a matter or the retainer being otherwise terminated …

[67] There is no clear breach of this rule as there was no definitive start or finish to the retainer. Specific attendances for the Trust, such as the sale of properties, had been billed but Mr UC deferred rendering an account for general attendances over the years.

[68] The Committee recommended that Mr UC render interim accounts in such circumstances in the future and that recommendation is endorsed. However, the somewhat unique set of facts in this instance may not occur in the future and in any event it is in Mr UC's interests to do so.

[69] Mr UC's personal relationship with Mrs [BX] was apparently coming to an end, and in those circumstances it was reasonable for him to render an account for the work he had undertaken over the years.

[70] In summary, I do not consider that Mr UC was unable to render an account for attendances on Trust matters and the bill dated 30 August 2012 is fair and reasonable.

The Parnell property – estimate

[71] In the Letter of Engagement provided by Mr UC to [KX], he estimated costs on the basis of a straightforward transaction with one mortgage at $1,220 to $1,600 plus

GST and disbursements. He included the hourly rates for various staff members to be applied "where appropriate". These rates were to apply to matters which were not "straightforward".

[72] Mr UC's initial bill was for $2,189.00 plus GST and disbursements. Mr NL points out that this bill was rendered on the basis that no mortgage was required.

[73] The narration to the bill of costs includes the following:

> … extra attendances relating to issue of CCC and title; retention of funds on settlement and all incidental matters.

[74] Settlement had not proceeded on 25 June but became fixed with reference to the issue of the Code Compliance Certificate and title. It is apparent that [KX] did not want the purchase to proceed at one stage, and consequently the terms of the "sunset" clause 19 became significant. There are emails relating to the possible cancellation of the Agreement on file.

[75] There were also attendances relating to incomplete matters or poor workmanship, and the possible retention of funds.

[76] It is apparent that the purchase was not a straight forward transaction and Mr UC's time records support a fee in excess of $2,189 as at 28 August. There would have been more work carried out after that date to settle the transaction and complete registration, which presumably Mr UC would not have rendered an additional account for.

[77] A "best estimate" is not a quote, and I endorse the comments of the costs assessor with regard to the initial fee charged by Mr UC as at 28 August.

The Parnell property – other matters

[78] The first account rendered by Mr UC in respect of the purchase was rendered on 28 August 2012, at which time he was not aware of the future security requirements of the bank. From the beginning [KX] had indicated she was taking care of the financial requirements for the purchase and Mr UC acted in accordance with the bank's instructions.

[79] [KX] did not confirm who the purchasers of the property were to be, and in what shares, until 27 August. Mr UC had not previously acted for [Business X], Mr NL or Mr [AB] and it was not unreasonable for him to proceed on the basis that sufficient

securities already existed for the borrowing required by the purchasers to enable the purchase to take place.

[80] The email correspondence between Mr UC and [KX] reflects this expectation, particularly when Mr UC advised [KX] to forward his settlement statements to the bank to ensure funds were provided in time for the purchase to take place. This clearly shows that Mr UC was not expecting a requirement for any further securities.

[81] It was not until the bank's instructions were received on 30 August that it became clear further securities were required, including guarantees. It is necessary for any person executing a guarantee to be advised by a lawyer other than the lawyer acting for the borrower.

[82] Mr UC had to act with urgency to carry out the bank's instructions and it should not pass unremarked that Mr UC and his employees worked speedily and diligently so that they were in a position to settle late in the day on 31 August.

[83] Some slight delay was caused when Mr UC questioned the Deed of Covenant registered against the title to the property. By doing so, he preserved the possibility that the purchase could be avoided, which, it would seem, was what some of the parties were hoping for. It is understandable, that in the pressure of the day, he overlooked the fact that he had already been provided with a copy of the document.

[84] Notification of receipt of the bank funds was received by fax at 4.35 pm by which time, in terms of the Agreement, interest for that day was incurred. Settlement took place on the following Monday. Interest for the late settlement had been incurred and was unavoidable.

[85] Matters progressed as recorded above, and the fee of $4,750 plus GST and disbursements is accounted for by Mr UCs' time records. No uplift has been applied for the urgency required to complete the documentation required by the bank and uplift the funds. The fees charged in the second account were fair and reasonable.

[86] In conclusion, I reach the same views as the costs assessor and the Standards Committee, namely that Mr UC's conduct was competent and his fees fair and reasonable.

Summary

[87] Having concluded that Mr UC's conduct has been satisfactory and all bills rendered are fair and reasonable, I reach the same view as the Standards Committee.

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

DATED this 5th day of September 2017

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D 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:

Mr NL as the Applicant
Mr UC as the Respondent
[City]Standards Committee X
The New Zealand Law Society