

**LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2021] NZLCRO 141

Ref: LCRO 42/2021

CONCERNING

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

AND

CONCERNING

a determination of the [Area] Standards Committee [X]

BETWEEN

JKL LIMITED

Applicant

AND

HC and GD

Respondent

DECISION

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

Introduction

[1] On behalf of JKL, Mr FB has applied to review a decision by the [Area] Standards Committee [X], dated 24 February 2021, in which the Committee decided to take no further action on JKL's complaints about its former lawyers, Messrs HC and GD.¹

[2] The Committee based its decision upon s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act). This allows a Committee to dismiss a complaint at an early stage, if it considers that further action on it is neither necessary nor appropriate.

¹ For ease of reference in this decision I will refer to Mr FB as the complainant and applicant, rather than to JKL.

Background

[3] Messrs HC and GD are partners in the law firm [Law Firm A].

[4] Mr FB was at the relevant time a director of JKL.

[5] From July 2019 another partner in Law Firm A, Mr MT, was carrying out legal work on behalf of JKL in relation to a commercial transaction known as Project [ABC].

[6] In December 2019 Mr MT also did legal work on behalf of JKL in a matter referred to as Project [XYZ].

[7] Mr HC assisted Mr MT with some of the legal work in relation to Project ABC.

[8] Mr FB became concerned about aspects of Mr HC's legal work, and sought a second opinion from another law firm.

[9] As a result of what he was told, Mr FB considered that Mr HC may have had a conflict of interests.

[10] Specifically, Mr FB had been told by a lawyer in the other law firm, that Mr HC had a close relationship with a third party on the other side of the Project ABC transaction. Mr FB became concerned that Mr HC may have disclosed confidential information about JKL to that third party.

[11] In May 2020 Mr FB terminated his retainer with Law Firm A. He then declined to pay invoices issued in relation to some of the legal work.

[12] Mr MT endeavoured to negotiate payment of the invoices with Mr FB.

[13] At Mr MT's request, Mr GD, as the Relationship Partner in Law Firm A, became involved in discussions with Mr FB about unpaid invoices.²

[14] On 2 September 2020 Law Firm A issued a notice of statutory demand against JKL, pursuant to s 289 of the Companies Act 1993 (the statutory demand). The amount sought in the statutory demand was \$309,753.75.³

² In his response to the complaint Mr GD described his role as Relationship Partner as being "to assist with the management of client relationship issues, including performance issues; client service issues; and non-payment of fees." It is common ground that Mr GD was not involved in the legal work associated with Projects [ABC] and [XYZ].

³ This amount included interest on the unpaid fees, the total of which was \$298,713.09 (inclusive of GST and disbursements).

Complaint

[15] Mr FB lodged his complaint with the New Zealand Law Society Complaints Service (the Complaints Service) during September 2020. He said:

- (a) Mr HC's advice during the retainer prompted Mr FB to obtain a second opinion from another law firm. A lawyer in that law firm informed Mr FB that Mr HC "had a close relationship with a party on the other side of the matter."
- (b) From the nature of the negotiations with the other side of the Project ABC transaction, Mr FB concluded that Mr HC disclosed confidential and privileged information to the other side.
- (c) Mr FB terminated the retainer with Law Firm A in or about May 2020.
- (d) Mr FB concluded that JKL had been invoiced for duplicated hours and unnecessary work. He also considered that the fees charged made no allowance for Mr HC's conflict of interest and confidentiality breaches, or for the fact that legal advice had to be sought elsewhere.
- (e) There were discussions with Mr GD and Mr MT about the unpaid fees. During a telephone discussion Mr GD "passively victimised [Mr] MT". Mr MT was shaken by this and disclosed personal family matters during the telephone call.
- (f) Mr GD was otherwise belligerent in his approach to the invoice disputes and that, together with his "completely disrespectful attitude" towards Mr MT, meant that the dispute was unable to be resolved.
- (g) Law Firm A has subsequently issued a statutory demand in circumstances where they knew the debt was disputed.

[16] Mr FB summarised his complaint as follows:

- (a) disclosure of privileged and/or confidential information (Mr HC);
- (b) excessive fees;

- (c) improperly serving a statutory demand;⁴
- (d) Mr GD's unbecoming treatment of his colleague Mr MT during the discussions about the disputed invoices.

Responses

[17] Messrs HC and GD responded to Mr FB's complaint in a jointly signed letter to the Complaints Service dated 19 October 2020.

[18] Mr MT, although not named as a respondent in the complaint, separately offered comments on Mr FB's complaint in his letter to the Complaints Service also dated 19 October 2020.

Messrs HC and GD

[19] The lawyers said the following:

Fees

- (a) Mr FB's complaint has "been contrived to avoid payment of a debt for [legal] services [that were] provided."
- (b) The Project ABC transaction was "complex and involving many meetings, discussions and negotiations."
- (c) The Project ABC transaction generated seven invoices of which only two have been paid.
- (d) The Project XYZ transaction generated one invoice, which remains unpaid.
- (e) Mr MT was the partner responsible for both commercial transactions. He unsuccessfully endeavoured to negotiate payment arrangements with Mr FB, and by June 2020 Mr GD became involved, at Mr MT's request, as the "partner who undertook the relationship management role with JKL."

⁴ The statutory demand was issued in Law Firm A's name, and signed by YF, described as a "solicitor of Law Firm A". Although not explicitly addressed by Messrs HC, GD and MT, I infer that either or both of Mr GD and Mr MT made the decision to issue the statutory demand. Mr HC's involvement in the two commercial transactions was limited to a relatively discrete area in Project ABC. Overall responsibility for the two commercial transactions rested with Mr MT. As explained, Mr GD became involved as the Relationship Partner in Law Firm A and led the discussions about payment of the outstanding fees.

- (f) At a meeting on 25 June 2020, it appeared that agreement was reached about the unpaid invoices.
- (g) In an email sent on 20 July 2020, Mr FB raised concern about Mr HC's conduct during some of the Project ABC negotiations; specifically that whilst negotiating with the [Bank A] he was pitching for business from that bank.
- (h) There was a further meeting between Messrs FB, MT and GD (Mr FB attending by telephone) on 27 July 2020. The meeting was "courteous, calm and professional at all times."
- (i) During the meeting Mr MT described the extent of the work that had been carried out by him and his team in relation to the commercial transactions, and that this level of service often came with personal sacrifice which was reflected in legal fees charged.
- (j) Mr GD offered to reverse Mr HC's time on the Project ABC matter (approximately \$10,000) as well as offering a further 10% discount across all invoiced time in return for a payment plan over four months. The discount offer was made with a denial of any ethical or professional breaches on Mr HC's part.
- (k) On 30 July 2020 JKL's in-house solicitor raised an issue concerning Mr MT's well-being, based on what had been said by him during the 27 July 2020 meeting. JKL said that it agreed in principle with the discount offer and payment plan, but required additional information about Mr MT because its board regarded this "as a mental health and well-being compliance matter."
- (l) Further emails from Mr FB gave clear indication that agreement had been reached about "both quantum of fees and a payment schedule", although confirmation was still being sought about Mr MT's health and well-being.
- (m) Concern about Mr MT was disingenuous and insincere. It was a technique "to avoid payment of ... invoices."

Mr HC

- (n) In relation to the specific complaint about Mr HC, little detail has been provided by Mr FB. However, "no privileged or confidential information was disclosed by Mr HC or any other [Law Firm A] person."

- (o) The conflict of interest issue raised by Mr FB directly with Messrs GD and MT, which was that Mr HC was negotiating with the [Bank A] whilst at the same time endeavouring to solicit its business, was denied.
- (p) Mr HC had no involvement in the Project XYZ matter.

Mr GD

- (q) The complaints about Mr GD's conduct concern the meeting on 27 July 2020, attended by Mr FB by telephone. Mr GD denied that he was uncooperative, demanding and belligerent, and further denied that he had "passively victimised" Mr MT or had otherwise displayed a disrespectful attitude towards, belittled and demeaned him.
- (r) Mr MT sought Mr GD's assistance because Mr GD was the Relationship Partner within Law Firm A. Mr GD was "professional and courteous at all times."

[20] Messrs HC and GD attached a schedule of the unpaid invoices to their response. It showed a balance owing of \$298,713.09, which included GST and disbursements and reflected the 10% discount that had been offered at the meeting on 27 July 2020.⁵

Mr MT

[21] Mr MT said that he had read Messrs HC and GD's responses to Mr FB's complaint, and that he agreed with what they had said.

General comments

[22] Mr MT noted that he had been the partner with the most involvement with JKL, and had signed off most of the invoices.

[23] He described the legal work involved in Projects ABC and XYZ as involving "specialists [within Law Firm A] in the real estate, environmental, finance, intellectual property, employment, litigation, tax and regulatory aspects of [Law Firm A's] practice." Advice and assistance was also provided in relation to financing.

⁵ The schedule also apparently reflects the \$10,000 worth of HC's time that Mr GD agreed would be written-off (see Mr GD's email to Mr FB (and others) sent on 31 July 2020).

[24] By late 2019, the vendor company in the Project ABC transaction appeared close to insolvency. Mr MT involved Mr HC in that transaction because of his “well established expertise in insolvency and receivership matters.”

[25] Eventually the vendor company was placed into receivership, and the transaction effectively cancelled. Negotiations then opened with the receivers to purchase that company from them. That process became stalled by about April 2020.

[26] Mr MT said that preliminary legal work in connection with the Project XYZ transaction was initially extensive, but the transaction did not proceed further.

[27] The legal work carried out on both commercial transactions was mostly done on an urgent basis, with a 24 to 48 hour turnaround. Mr MT described the work as “challenging, sophisticated and demanding”. He said that he was assisted by experienced and very competent colleagues.

[28] Mr MT said that “much of this work was undertaken by me and the team at significant personal sacrifice to ... evenings and weekends in the summer to meet the required time frames of the client.” He described the work as being “performed at a high degree of efficiency” and that legal fees were “principally based on hourly rates on a time and attendance basis [and also reflected] this level of service expectation.”

Fees

[29] In relation to the invoices, Mr MT said that they were initially approved by him as the partner generally handling the matters, but the amounts were also “reviewed and endorsed by members of [Law Firm A’s] fee assessing committee, applying the billing factors in the [Lawyers and Conveyancers Act (Conduct and Client Care) Rules 2008 (the Rules)]”.

[30] Mr MT said that the billing process “took into account the value, urgency, and complexity of the work undertaken”, and that there was no double-up in the invoices, nor any inefficiency in the way in which the work was carried out.

[31] Mr MT said that by March 2020 he spoke to Mr FB about outstanding fees and in the course of that, in an email, Mr FB indicated that payment would be made and he also expressed his gratitude for the work that had been done on Projects ABC and XYZ.

[32] With little progress on fees payments by May 2020, Mr MT involved Mr GD. Mr GD met with Mr FB during July 2020, and at that meeting Mr FB referred to concerns he had about Mr HC’s conduct in the Project ABC negotiations.

[33] Mr MT said that the fees were “appropriate for the work undertaken, represent fair value and were carefully considered [by himself] and [Law Firm A’s] fee assessors against the billing factors [in the Rules].”

27 July 2020 phone meeting

[34] Mr MT said the following about that:⁶

Other particular points I made included that much of the work had been over evenings and weekends, which was normally family time, which was intrusive and put pressure on me at home (as I was not able to assist with normal childcare for our infant daughter). This also placed a greater burden on my wife who was also a senior lawyer. I noted the similar efforts my colleagues had made and that we had provided some of them with additional compensation in recognition of this. ... I also stated that I did not consider [Mr] HC to have acted under a conflict of interest [and that he] was trying to do his very best....

[35] Mr MT said that he conveyed his views to Mr FB “in a measured manner”. His comments, and the way he conveyed them, “could not properly be interpreted as a ‘breakdown’ or a mental health issue.”

[36] Further, Mr MT said that although Mr GD was present, he (Mr MT) did “not consider that [Mr GD] bullied, victimised or otherwise treated me inappropriately in any way.” He said that “any determination of whether [he has] been bullied, victimised, harassed or otherwise treated inappropriately [was his] to make” and that he would raise that issue if he felt that this had occurred.

[37] Finally, Mr MT attached a series of emails exchanged with Mr FB in connection with the fees negotiations during 2020.

Comment by Mr FB

[38] In his letter to the Complaints Service dated 19 November 2020, Mr FB offered the following comments about the three lawyers’ responses to his complaint:

- (a) It is not correct to say that agreement had been reached about payment of the unpaid fees, because Mr GD had not addressed Mr FB’s concerns about Mr MT’s well-being.
- (b) JKL paid significant legal fees for the two commercial transactions.
- (c) The telephone meeting on 27 July 2020 was not “courteous, calm and professional.” Mr MT “was audibly shaken on the call and revealed personal matters/issues that were linked to [the two commercial

⁶ Letter from Mr MT to the Complaints Service (19 October 2020) at [33].

transactions]”. Mr FB was alarmed by those revelations and troubled that Mr GD effectively sat back and allowed Mr MT to “break down audibly and make personal revelations of a private nature” to a client.

- (d) The statutory demand was issued in circumstances where no agreement had been reached about the unpaid fees.
- (e) Concerns about Mr HC’s “behaviour ... and advice” prompted JKL to obtain a second legal opinion from another law firm. That law firm raised the issue of Mr HC’s conflict of interest.

Standards Committee decision

[39] The Committee identified the following issues to be determined:⁷

- (a) Whether Mr HC disclosed any confidential information which had a detrimental impact on the commercial transactions?
- (b) Whether Mr GD breached any of his professional obligations in his management of the JKL engagement?
- (c) Whether the fees charged were fair and reasonable?

*Mr HC*⁸

[40] The Committee noted that Mr FB had said he would be providing additional material to support his complaint that Mr HC had a conflict of interest, and disclosed confidential and privileged information to a third party.

[41] However, Mr FB did not provide that information.

[42] The Committee held that there was insufficient evidence to substantiate either of the allegations against Mr HC.

*Breach of professional obligations by Mr GD?*⁹

[43] The Committee noted that Mr GD’s involvement was limited to negotiating payment of the unpaid fees.

⁷ Standards Committee determination at [7].

⁸ At [8] and [9].

⁹ At [10]–[12].

[44] In that regard, the Committee said that Mr GD had promptly met with Mr FB, offered discounts, offered to remove Mr HC's time from the invoices and offered a payment plan. The Committee observed that Mr FB "had initially accepted these offers."¹⁰

[45] The Committee also noted that Mr GD had been responsive to Mr FB's concerns about Mr MT, and said that it was satisfied that Mr GD had been responsive and reasonable in his attempts to reach a solution.

[46] As to the complaint about Mr GD's conduct towards Mr MT, the Committee referred to Mr MT's responding to the complaint in which he denied that he had been belittled, humiliated, victimised, disrespected or demeaned by Mr GD.

[47] The Committee said that it accepted the evidence of Messrs GD and MT and that there was no basis for finding that Mr GD had acted inappropriately towards Mr MT.

*Fees*¹¹

[48] The Committee described JKL as "a sophisticated user of legal services." It said that it "noted that the question of the quantum of the fees appeared not to be the central concern of the complaint with most of the content focused on the conduct of Mr HC and Mr GD." Further, that "Mr FB appeared to accept the fees were acceptable in his email of 20 August 2020" (subject to issues about Mr MT's well-being).

[49] The Committee said that it "had regard to the reasonable fee factors" set out in r 9.1 of the Rules. It listed the following relevant factors:

- (a) The "extreme" complexity of the commercial transactions including the involvement of a number of different lawyers.
- (b) The volume of documents involved in due diligence exercises.
- (c) The length of the retainer ("about a year") including complex documentation amendments, funding changes and the receivership of the vendor company.
- (d) The work was carried out urgently and with a quick turnaround.
- (e) Invoices were regularly issued and none was queried on receipt.

¹⁰ At [11].

¹¹ At [13]–[15].

- (f) “The invoices were based on time and attendance and accordingly reflected the large amount of work being requested in a compressed time frame.” The invoicing was consistent with Law Firm A’s terms and rates. The Committee said that it was satisfied that “there was no basis for complaining about duplication of effort by [Law Firm A]” and that Mr HC’s time had been written off.
- (g) The matter was of importance to JKL and significant resources were applied to it by the lawyers.

[50] For those reasons, including Mr FB’s “stated acceptance ... of the outstanding invoices”, the Committee was satisfied that the fees were fair and reasonable and that “[Law Firm A] was within its rights to issue [the statutory demand]”.

Review Application

[51] Mr FB filed his application for review on 6 April 2021. He said:

- (a) The Committee’s investigation of the complaints was superficial and consisted of it accepting the lawyers’ versions of events.
- (b) The Committee was wrong to expect JKL to provide documentary evidence to support its complaints, when that material “would be internal to [Law Firm A].”

[52] Mr FB said that he wanted the following matters reviewed:

- (a) The serious conflict of interest which “resulted in a transaction loss”.
- (b) Bullying of Law Firm A personnel in front of a client.
- (c) Significant overcharging.
- (d) Improperly issuing the statutory demand.

Response by Messrs HC and GD

[53] In a letter to the Case Manager dated 22 April 2021, the lawyers submitted that Mr FB’s review application “does not specify with any particularity the errors which the ... Committee is alleged to have made.”

[54] The lawyers otherwise relied on their responses to Mr FB’s complaint, provided by them to the Complaints Service. They said that the Committee had followed proper

processes and that its decision to take no further action on all issues of complaint, was “plainly correct”.

Review on the papers

[55] This review has been undertaken on the papers pursuant to s 206(2) of the Lawyers and Conveyancers Act 2006 (the Act), which allows a Review Officer to conduct the review on the basis of all information available if the Review Officer considers that the review can be adequately determined in the absence of the parties.

[56] In anticipation of that process being followed, on 3 June 2021 the parties were given an opportunity to make submissions as to whether they wished Mr FB’s review application to proceed by way of a hearing in person, or a hearing on the papers.

[57] The parties were advised that a lack of any response would be regarded as consent to the hearing proceeding on the papers.

[58] In an email to the Case Manager dated 11 June 2021, both lawyers confirmed that they had no objection to the review application being dealt with on the papers.

[59] Mr FB did not respond to the Case Manager’s 3 June 2021 letter. Consistent with the indication given in that letter, I have taken this to mean that Mr FB has no objection to his review application being considered on the papers.

[60] On the basis of the information available, I concluded that the review may be adequately determined on the papers and in the absence of the parties. The Case Manager informed the parties of this in a letter dated 22 June 2021.

[61] I record that having carefully read the complaint and response, the Committee’s decision and the submissions filed in support of and in opposition to the application for review, there are no additional issues or questions in my mind that necessitate any further submission from either party.

Nature and scope of review

[62] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:¹²

... 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.

¹² *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.

[63] More recently, the High Court has described a review by this Office in the following way:¹³

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.

[64] 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.

Discussion:

Procedural issues

[65] Mr FB framed the complaint as being about Mr HC’s conduct and Mr GD’s conduct. He also complained that Law Firm A’s fees were excessive, and that there was no proper basis for issuing the statutory demand.¹⁴

[66] Further, Mr FB expressly said that he had no complaint about Mr MT’s conduct.

[67] In relation to fees, it appears to be the case that all of the invoices issued to JKL were signed by Mr MT.

¹³ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

¹⁴ As I have noted above, the statutory demand was issued under the signature of a solicitor employed by Law Firm A, who does not appear to have had any involvement in the legal work associated with the commercial transactions.

[68] Law Firm A is not an incorporated law firm against which a complaint may be made.¹⁵

[69] Thus, Mr FB's complaint may only proceed against individual lawyers in Law Firm A and their connection with JKL's legal work.

[70] Difficult administrative issues can arise for the Complaints Service when a complaint makes general reference to an unincorporated law firm.

[71] It is important, in those circumstances, for the Complaints Service to carefully identify the nature of the conduct issues engaged by the complaint, and any lawyer whose conduct might be captured by the complaint.

[72] It is not entirely clear from the Committee's file, or from its decision, that attention was given to those issues.

[73] For example, although Mr FB said that he had no complaint about Mr MT's conduct, because he was complaining about fees and because Mr MT had signed out the invoices, strictly Mr MT should have been identified as the respondent in the fees complaint.

[74] Instead, the Committee – wrongly – treated the fees complaint as one being made against Law Firm A. I say this because there are several references to the law firm in that part of the Committee's decision where fees are discussed.

[75] Nevertheless, I think the position is covered by the fact that Mr GD assumed responsibility for the issues concerning the legal fees. He led the negotiations and finalised the arrangements as to quantum and a payment plan.

[76] In those circumstances, he is the appropriate person to answer a complaint about the legal fees charged.

[77] In the same way, the Committee did not explicitly turn its mind to the statutory demand. Again, the starting point would have been to enquire who authorised it, and that lawyer would have been the appropriate person to answer this issue of complaint.

[78] Again I am satisfied that Mr GD is that lawyer, for the reasons I have outlined above in relation to his overall management of the legal fees issue in the latter part of 2020.

¹⁵ See s 120(2)(a)(i) & (ii) of the Act.

[79] I remind the Committee of the critical importance of correctly identifying the appropriate parties to a complaint, having regard to the conduct issues that have been raised in the complaint.

Issues

[80] I have identified the following conduct issues:

- (a) Did Mr HC have a conflict of interest in connection with his legal work in the Project ABC transaction, and did he disclose JKL's confidential and privileged information to a third party, without its consent?
- (b) Did Mr GD act unprofessionally or otherwise unethically towards Mr FB and separately toward Mr MT, during the 27 July 2020 telephone meeting?
- (c) Has the statutory demand been issued without a proper basis for doing so?
- (d) Were legal fees charged, fair and reasonable?

[81] I will discuss each in turn.

Mr HC

[82] Mr FB's complaint about Mr HC's conduct has, if I may so describe it, somewhat developed as matters progressed.

[83] His concerns about Mr HC's conduct were initially put to Messrs GD and MT as being that Mr HC was pitching for legal work from the [Bank A], whilst at the same time negotiating with the [Bank A] on the other side of the Project ABC transaction.

[84] Mr FB did not raise concern with Messrs GD and MT that Mr HC had, or may have, disclosed confidential information to the other side of the Project ABC transaction.

[85] Mr FB's complaint, lodged with the Complaints Service, expressed it rather differently, and said that "Mr HC ... had a close relationship with a party on the other side of the matter." His complaint raised the issue of Mr HC disclosing "privileged and/or confidential information to a third party."

[86] There is more than a nuanced difference between the allegations of pitching for legal work and having a close relationship with a party on the other side of a transaction.

[87] As well, he raised for the first time the concern about leakage of confidential information by Mr HC.

[88] In commenting on the lawyers' responses to his complaint, Mr FB said, of Mr HC's conduct, that "it was revealed by a partner of [another law firm] that they were aware of Mr HC's interactions with [the receivers of the vendor company] in the Project ABC transaction."

[89] As well, in emails to the Complaints Service in connection with this issue of complaint, Mr FB said that he would provide witness statements to support the complaint that Mr HC had a conflict of interest. He did not do so, and has not provided that material as part of his review application.

[90] Mr HC has denied the allegations that he had a conflict of interest during the Project ABC transaction, or that he disclosed any confidential or privileged information.

[91] At its highest, Mr FB's complaint about Mr HC's conduct is based upon hearsay (what he was told by another lawyer and another law firm). It is not unreasonable to suppose that what the other lawyer had been told, was also hearsay.

[92] Thus, Mr FB's complaint requires acceptance of at least hearsay, if not double hearsay.

[93] Despite the power of a Review Officer to take into account evidence which might otherwise be inadmissible in a conventional court,¹⁶ as plainly hearsay is,¹⁷ caution must of course be exercised when receiving otherwise conventionally inadmissible evidence.

[94] The reason for caution is that, in the case of hearsay evidence, it is presumptively unreliable. Hearsay evidence is not first-hand evidence; it is repeating what someone else has said about an event.

[95] This presumptive unreliability is apparent in the present matter.

[96] I have already observed that Mr FB's complaints about the issue have a degree of inconsistency about them (e.g. "pitching for work" vs "close relationship"). I am not suggesting that Mr FB has exaggerated the complaint; merely that he has been unable to articulate it consistently because of, I suspect, the differing hearsay accounts he has received.

¹⁶ Section 207 of the Act.

¹⁷ See generally s 17 of the Evidence Act 2006

[97] The two issues raised by Mr FB about Mr HC's conduct – conflict of interest and disclosure of confidential information – are serious conduct issues for a lawyer.

[98] The obligation to focus exclusively on a client's interests, without the distraction of other interests, is fundamental to the lawyer/client relationship.¹⁸ A client's legal work cannot be competently managed if the lawyer's thoughts are clouded by their own interests or the interests of others.

[99] A lawyer's obligation of client confidentiality is very probably the most universally understood and acknowledged ethical pillar.¹⁹ It exists for what are self-evidently very good reasons.

[100] A lawyer found to have breached client confidentiality and to have disclosed privileged information to a third party, can reasonably expect a firm disciplinary response. If that breach occurs in the context of a lawyer pursuing other interests at the expense of their client's interests, then the disciplinary consequences are likely to be severe.

[101] Serious allegations such as Mr FB has made about Mr HC, require reliable evidence:²⁰

Despite these exceptions, the rule that a flexible approach is taken to applying the civil standard of proof where there are grave allegations in civil proceedings remains generally applicable in England. There is accordingly a single civil standard, the balance of probabilities, which is applied flexibly according to the seriousness of matters to be proved and the consequences of proving them. We are satisfied that the rule is long established, sound in principle, and that in general it should continue to apply to civil proceedings in New Zealand.

[Citations omitted]

[102] Hearsay evidence is inherently unreliable, and in the present matter the inconsistencies in the conflict of interest allegations make the hearsay evidence on which that complaint is entirely founded, even more unreliable.

[103] The complaint that Mr HC disclosed confidential and privileged information is entirely speculative and appears to flow from no more than Mr FB's unsubstantiated belief that Mr HC had a conflict of interest.

[104] I agree with the Committee that there is no substance to either of those issues of complaint.

¹⁸ Rule 5 (and following) of the Rules.

¹⁹ Rule 8 of the Rules.

²⁰ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [112].

Mr GD

[105] This issue of complaint has two parts to it. First, Mr GD's conduct towards Mr FB during the fees negotiations on 27 July 2020, and secondly, his conduct towards Mr MT during that same meeting.

Conduct in relation to the fees negotiations

[106] As to the first of those two issues, Mr FB describes Mr GD as being uncooperative, intractable and belligerent.

[107] Messrs GD and MT say the opposite.

[108] In endeavouring to resolve that fundamental dispute between the two accounts of the meeting, it is helpful to look at the surrounding circumstances.

[109] Those surrounding circumstances almost exclusively comprise emails exchanged between the parties before and after 27 July 2020.

[110] It is not necessary for me to comprehensively summarise each of the emails exchanged between Mr GD and Mr FB. What is clear to me is that the tone of all of those emails is one of courtesy and professionalism by both parties.

[111] Perhaps most significantly is Mr FB's email to Mr GD sent on 29 July 2020, in which he opens by thanking "very much" Messrs GD and MT for the telephone meeting on 27 July 2020.

[112] There is no reference – even obliquely – to Mr GD's demeanour, Mr MT's distress or to any concerns about atmosphere, in Mr FB's email.

[113] Mr GD, in an email sent on 30 July 2022 to JKL's in-house solicitor, concludes by saying "warm regards".

[114] As well, I do not overlook the fact that Mr GD offered to reduce the unpaid fees balance by 10%, and a further \$10,000 comprising Mr HC's time in the Project ABC matter.

[115] This presents as inconsistent with belligerence and an unwillingness to discuss matters concerning unpaid legal fees.

[116] To take a further example, Mr FB's email to Mr GD dated 10 August 2020 begins with Mr FB saying "Hope this email finds you well?"

[117] Emails exchanged before the 27 July 2020 meeting, have a similar tone.

[118] Mr FB impresses as a forthright and articulate person well able to manage and understand (as described by Mr MT) “challenging, sophisticated and demanding” commercial work.

[119] This doubtless includes the thrust and parry normally associated with major and difficult commercial negotiations.

[120] There is no suggestion in any of Mr FB’s emails sent after 27 July 2020, that he had any reservations about Mr GD’s attitude towards settling the fees impasse.

[121] In short, I would have expected Mr FB to have recorded his concerns about Mr GD’s obduracy and belligerence during the 27 July 2020 meeting, in subsequent correspondence.

[122] That he did not do so, suggests to me that he has overstated those concerns in his complaint.

[123] I agree with the Committee’s conclusions about Mr GD’s conduct in this regard.

Conduct towards Mr MT

[124] The second part of Mr FB’s complaint about Mr GD’s conduct, concerns Mr MT.

[125] I acknowledge that in his correspondence with Mr GD after the 27 July 2020 telephone meeting, Mr FB raised issues about Mr MT’s well-being, on more than one occasion.

[126] Mr FB’s reason for doing so appeared to be that JKL had a policy of identifying what could loosely be described as health and safety issues affecting its service providers (including for example the well-being of those service providers), and examining its own conduct to determine whether it may have contributed to those issues.

[127] Whilst that objective may be laudable, it is only as effective as a service provider’s acknowledgement of an issue in the first place. Absent that acknowledgment, JKL’s concerns become speculative.

[128] On that account, there are again differing versions of what was said by Mr MT during the 27 July 2020 meeting. Or, more accurately, differing accounts about Mr MT’s demeanour when talking about the long hours put in dealing with the commercial transactions.

[129] It seems clear enough that Mr MT referred to evening and weekend work, significant intrusions into family life and a significant curtailment of social activities in order to attend to the necessary legal work; these affecting all who worked on the commercial transactions.

[130] It would be fair to say that the message conveyed by Mr MT during the 27 July 2020 meeting, was clear.

[131] I place little weight on the differences between Mr FB and Mr MT as to the words used by Mr MT.

[132] As indicated, the issue seems to be the way in which that message was conveyed.

[133] In his email to Mr GD on 29 July 2020, Mr FB described “[Mr MT’s] breakdown on the call” and that Mr MT “was clearly very upset on a call both in front of me as a client and you as senior partner.”

[134] For his part, in responding to the complaint Mr MT said that he spoke about those matters “in a measured manner” and although his “disappointment [about the unpaid fees] should have been evident [it] could [not] properly be interpreted as a ‘breakdown’ or a mental health issue.”

[135] Mr GD’s response to Mr FB’s 29 July 2020 email was that Mr MT had “appropriately identified that he (and others in [Law Firm A]) [had] made significant efforts to help at times that were required by you and your team members His point is that we provide a level of service, often at personal sacrifice, that is reflected in ... fee levels.”

[136] In an email sent by Mr GD to Mr FB on the following day, Mr GD said:

On behalf of the partnership of [Law Firm A], I can confirm that there is no issue with [Mr] MT. Indeed, for the record, matters seem to have been lost in translation a bit here. From [Mr MT’s] perspective, the matter is that he raised [on 27 July 2020] were illustrations of the high and committed level of service he provided to JKL through the transactions, at some personal sacrifice. He was not raising a mental health or well-being issue for which he sought any further action by JKL, other than payment of the invoices.”

[137] I do not understand Mr FB’s complaint to be that Law Firm A, through its partners, fails to provide appropriate support to staff (including partners) whose well-being is being compromised because of their work.

[138] The nub of Mr FB’s complaint is that Mr GD effectively stood by whilst Mr MT broke down during the 27 July 2020 telephone meeting, did nothing to offer support and allowed Mr MT to disclose personal and distressing information to a client.

[139] Mr FB describes Mr GD's conduct as passively victimising Mr MT.

[140] It is trite to observe that the central figure in this issue of complaint, is Mr MT. He is, I anticipate, sufficiently senior and experienced to be able to appreciate when a colleague – a business partner – is treating him with a lack of respect, or otherwise behaving in a bullying or intimidating way towards him.

[141] On that account, Mr MT is clear that Mr GD's conduct towards him at all times (not just during the 27 July 2020 meeting), was entirely collegial, supportive, respectful and professional. He says this, on the back of also saying that there were no well-being or other related issues affecting him in the first place.

[142] I accept Mr MT's description of his own state of mind at the relevant time, and I also accept his description of the way in which he conveyed what he has described as his disappointment about the unpaid fees, to Mr FB.

[143] Mr MT conveyed that disappointment in the context of explaining how assiduously he and his team had applied themselves to JKL's legal needs, particularly during 2019. He explained that the degree of attentiveness given to those needs, came with personal sacrifices to the lawyers involved.

[144] This may have come as a surprise to Mr FB. But his surprise cannot be elevated to a conduct issue in the face of credible evidence from both Messrs GD and MT, that there was no sub-text of passive victimisation during the 27 July 2020 telephone meeting, and that there had been, and were no, well-being or other health issues afflicting Mr MT.

[145] I agree with the Committee's conclusions about this issue of complaint.

The statutory demand

[146] Although raised as an issue of complaint, it was not explicitly considered by the Committee. It simply made a general conclusion, as part of its discussion about the fees, that the statutory demand had been properly issued.

[147] However, the issue is not entirely straightforward, and does require some analysis and discussion.

[148] The starting point is r 2.3 of the Rules, which I set out in full:

Proper purpose

2.3 A lawyer must use legal processes only for proper purposes. A lawyer must not use, or knowingly assist in using, the law or legal processes for

the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person's reputation, interests, or occupation.

[149] The rule is footnoted as follows (where relevant):

Examples of the breaches of the rule might include: issuing a statutory demand under the Companies Act 1993, knowing that (or failing to make inquiries whether) the debt is bona fide disputed...

[150] The Companies Act 1993 provides for the issue of a statutory demand, as follows:

289 Statutory demand

- (1) A statutory demand is a demand by a creditor in respect of a debt owing by a company made in accordance with this section.
- (2) A statutory demand must—
 - (a) be in respect of a debt that is due and is not less than the prescribed amount; and
 - (b) be in writing; and
 - (c) be served on the company; and
 - (d) require the company to pay the debt, or enter into a compromise under Part 14, or otherwise compound with the creditor, or give a charge over its property to secure payment of the debt, to the reasonable satisfaction of the creditor, within 15 working days of the date of service, or such longer period as the court may order.

[151] Failure to comply with the requirements of the statutory demand creates a presumption of insolvency. The process thus triggers a fast track towards a company being wound up by the High Court.

[152] The rationale behind the footnote to r 2.3 of the Rules is that the statutory demand process can be unforgiving in circumstances where a debt is genuinely disputed, but a company may not be able to meet time requirements in the statutory demand.

[153] The process is thus inappropriate in circumstances where there is a genuine (bona fide) dispute between the parties over a debt.

[154] It would come as no surprise to a lawyer that issuing a statutory demand in circumstances where a debt is bona fide disputed, would put them at odds with r 2.3 of the Rules. It is safe to say that a dominant purpose for issuing a statutory demand in those circumstances would be to cause unnecessary embarrassment, distress, or inconvenience to the reputation or interests of the company and its officers.

[155] The background to the statutory demand being issued, has been well traversed in Mr FB's complaint and the lawyers' responses to the complaint.

[156] In simple terms, from approximately 27 July 2020 on, there were negotiations between the parties as to the payment of outstanding fees.

[157] Mr GD maintains that agreement was reached both as to amount and a plan for repayment, and that JKL reneged on that arrangement.

[158] Mr FB says that the agreement was conditional upon JKL being satisfied about Mr MT's well-being.

[159] The terms of the agreement between Mr GD and JKL about payment of the outstanding fees, were set out in Mr GD's email to Mr FB, and to JKL's in-house solicitor on 31 July 2020.

[160] It provided for a total payment of \$298,602.59 by four equal monthly instalments, beginning in July 2020.

[161] JKL's response in an email to Mr GD also dated 31 July 2020, was that it would reconcile the amounts and confirm the position.

[162] Confirmation came in Mr FB's email to Mr GD dated 10 August 2020. It is important to look at what Mr FB said:

1. Our team has now reconciled the final invoices ... Confirming this is now fine.
2. We are yet to be satisfied with respect to the health/well-being compliance flag – please set out for us what steps are being taken by [Law Firm A] to manage issues of 'personal sacrifice' that clearly extend far beyond the limited work streams your firm undertook for us. We are keen to remediate this on our compliance register.
3. Thank you for removing [Mr] HC's time from the invoices and providing a further 10% discount – the conflict of interest point was of great concern internally and the gesture from [Law Firm A's] perspective has been well received.

[163] Significantly, Mr FB does not say that payment of the outstanding fees was conditional upon satisfaction around the well-being issues.

[164] Indeed, the notion of being "satisfied with respect to health/well-being [issues]" is open-ended and vague. It appears to have morphed from concern about Mr MT, to concerns about the way in which Law Firm A manages those issues generally.

[165] It also raises questions of individual privacy and commercial sensitivity.

[166] It seems to me that this is completely unrelated to unpaid legal fees across two pieces of legal work.

[167] Mr GD made it abundantly clear that there were no well-being issues on Mr MT's part. Short of Mr MT agreeing to disclose personal health information, which of course he cannot be compelled to do in these circumstances, it is difficult to see what more Mr GD could have done to "satisfy" JKL about the issue.

[168] As I understand what Mr FB has said about the well-being issues, some closure about those was necessary for JKL's internal protocols, reporting and recordkeeping. It was concerns about Mr MT's well-being which triggered an internal JKL process about whether it had contributed to that perceived issue.

[169] As I have said above, that is quite a separate issue from liability for legal fees. Unease about a service provider's well-being, as a defence to a contractual claim by that service provider for unpaid money, strikes me as being a novel concept.

[170] There is no doubt in my mind that in his email to Mr GD dated 10 August 2020, Mr FB accepted both the amount outstanding, and the payment plan.

[171] In my view, given the contents of Mr FB's 10 August 2020 email, Mr GD was entitled to take from those contents Mr FB's agreement, on behalf of JKL, to the quantum of outstanding fees and process for payment.

[172] In those circumstances Mr GD was further entitled to conclude that there was no bona fide dispute about the fees debt, and that it was a proper use of legal processes to issue the statutory demand once JKL had reneged on the agreement.

Fees

[173] This is a more difficult issue.

[174] Reconciling the amount of legal fees charged, paid and outstanding from the various sources, results in the following:

- (a) Mr FB provided the following invoices with this complaint:

Date	Number	Project	Gross amount
30 August 2019	623394	ABC	\$364,217.59
31 October 2019	625376	ABC	\$121,380.74

31 January 2020	627952	XYZ	\$196,968.47
31 January 2020	627953	ABC	\$ 74,264.22
27 March 2020	629488	ABC	\$ 19,610.38
30 April 2020	630759	ABC	\$ 17,373.05
			\$793,814.45

- (b) Attached to Messrs HC and GD's response to Mr FB's complaint, is a schedule setting out legal fees charged, disbursements added, GST as well as the agreed 10% deduction from each invoice.²¹
- (c) The schedule records that the August 2019 Project ABC invoice was paid in full, and that the sum of \$100,000 was paid towards the October 2019 Project ABC invoice, leaving a balance outstanding on that invoice of \$9,167.17.
- (d) Thus, according to the schedule, the balance owing across all invoices was the gross amount of \$298,713.09.
- (e) This differs slightly from the figure in Mr GD's email to Mr FB dated 29 July 2020, in which he describes the "total owing at agreed discount: \$298,602.59."²² I infer that this is the amount that I have found that Mr FB agreed to pay in his email to Mr GD dated 10 August 2020 (the outstanding fees amount).
- (f) The statutory demand seeks payment by JKL of the gross amount of \$309,753.75.
- (g) The difference between the outstanding fees amount and the amount claimed in the statutory demand, purports to be reflected by the contractual interest added by Law Firm A to the unpaid invoices, which totals \$11,170.65.

²¹ As earlier indicated, Mr GD informed Mr FB that the schedule also reflected the fact that Mr HC's time (\$10,000) had also been deducted. That appears to be the case because the 31 January 2020 Project ABC invoice, as initially issued, was in the gross amount of \$74,264.22, whereas in Messrs HC and GD's schedule, the gross amount for that invoice was recorded as being \$65,021.67. As well, I note that the invoice numbers set out in the schedule differ in most cases from the actual invoice numbers (for example, the 31 January 2020 Project ABC invoice is numbered 627953 yet on the schedule is numbered 632101). For the purposes of this decision, when referring to an invoice number I will refer to the number as it appears on the invoice.

²² A difference of \$110.50.

- (h) However, deducting the interest figure from the amount claimed in the statutory demand, produces a figure of \$298,583.10, which is in fact \$19.49 less than the outstanding fees amount. I regard this discrepancy as of no moment.

[175] I note that the statutory demand is dated 2 September 2020, and that Mr FB's complaint is dated 7 September 2020. He attached a copy of the statutory demand to his complaint.

[176] The complaint has resulted in the statutory demand procedure being stayed, because of the operation of s 161 of the Act.

[177] Challenge to a statutory demand is dealt with by s 290 of the Companies Act 1993, which relevantly provides the following:

- (4) The court may grant an application to set aside a statutory demand if it is satisfied that—
- (a) there is a substantial dispute whether or not the debt is owing or is due; or
 - (b) the company appears to have a counterclaim, set-off, or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off, or cross-demand is less than the prescribed amount; or
 - (c) the demand ought to be set aside on other grounds.

[178] As matters stand of course, the legal effect of the statutory demand has not been challenged by JKL invoking the above procedure.²³

[179] As a first point, I note that Mr FB provided the Complaints Service with copies of all of the invoices that were issued. However, this was at the request of the Complaints Service, after Mr FB had lodged his complaint.²⁴

[180] It can reasonably be expected that a complainant will identify their concerns in the substance of their complaint.

[181] Mr FB's complaint about fees is summarised by him as follows:

Failing to engage in meaningful dialogue and discussion of a disputed fee. That fee we consider to be unreasonable and excessive for the reasons detailed herein.

²³ Based upon Mr FB's complaint and review application, I anticipate that JKL's challenge to the statutory demand would be that the debt was disputed: specifically that Mr GD had not satisfied JKL as to the well-being issues. Although resolving that issue is quite properly not within the power of a Review Officer, I have expressed my reservations about the strength of such an argument.

²⁴ Email from the Complaints Service to Mr FB (18 September 2020).

[182] First, it is not entirely clear what Mr FB means by the expression the “disputed fee”. At first blush, that might appear to relate to the amount I have described above at [151](e) as the “outstanding fees amount” (\$298,602.59).

[183] However, analysis of Mr FB’s reference to “the reasons detailed herein” makes it clear that the “disputed fee” is in fact a single invoice.

[184] The “reasons detailed herein” referred to by Mr FB, are set out in his letter to the Complaints Service dated 7 September 2020, and appear to be:

- (a) “[W]e became aware of a subsisting conflict of interest by [Mr HC]”; and
- (b) “the invoice appeared to us to be excessive with duplicated hours, unnecessary work done”; and
- (c) “the firm not retaining our client/solicitor privilege and to the best of our knowledge believe this was the action of neither [Messrs MT or GD]”; and
- (d) “the amount claimed ... [is] excessive and made no allowance for the breach and the extra costs we incurred by reason of having to seek independent advice following our loss of confidence in [Law Firm A]”.

[185] The relevant invoice would appear to be invoice number 627953, dated 31 January 2020 and described as being for Project ABC. The gross amount of that invoice is recorded as being \$74,264.22. As referred to by me above, that also appears to be the invoice from which Mr GD deducted Mr HC’s time in the amount of \$10,000.

[186] As noted by me, the substance of Mr FB’s complaint, as initially framed by him and forwarded to the Complaints Service, was that a particular invoice, relating to work done by Mr HC, was excessive because of Mr HC’s alleged conflict of interest and disclosure of confidential and privileged information.

[187] The Complaints Service initially notified Messrs HC and GD of Mr FB’s complaint, in an email sent to the lawyers on 29 September 2020. The email did not summarise the conduct issues raised by Mr FB’s complaint.

[188] Further notification was made in a letter to the lawyers dated 5 October 2020; again the conduct issues were not identified or summarised.

[189] There was further correspondence between the Complaints Service and Mr FB, however that concerned requests for further information from Mr FB about the alleged conflict of interest by Mr HC, with Mr FB’s brief responses to those requests.

[190] Mr FB's comments about the lawyers' responses to his complaint, specifically in relation to the question of fees, was centred on the fact that an impasse had been reached because there were "several matters that require satisfaction from JKL's perspective before any further payment for fees can be made" and that "there could not be agreement until all matters were finalised and agreed."²⁵

[191] Clearly, the "impasse" is a reference to the well-being issues involving Mr MT.

[192] Mr FB's comments also refer to Mr HC's alleged conflict of interest.

[193] The Committee did not seek further comment from either the lawyers or Mr FB.

[194] In my view, when carefully analysed Mr FB's fees complaint is restricted to one invoice and concerns two matters: Mr HC's alleged conduct breaches, and a claim that there has been "unnecessary duplication".

[195] In other words, I do not read Mr FB's complaint as being one in which he challenges all of the fees charged across the Project ABC and XYZ transactions.

[196] The review application lodged by Mr FB, frames the fees complaint quite differently. He puts it this way:

We would like the LCRO to review all aspects of the complaint that we originally filed 3. Significant overcharging that was found upon the client's subsequent review of billings and work undertaken.

[197] Mr FB's complaint made no reference to any "subsequent review of billings and work undertaken."

[198] To that extent, Mr FB's review application appears to raise a fresh ground of complaint, relating to other invoices issued by Mr MT.

[199] Self-evidently, the process of review undertaken by a Review Officer is limited to considering matters that were before a Standards Committee. A review does not, and cannot, consider fresh issues of complaint.

[200] I emphasise that I am satisfied that Mr FB's complaint about legal fees charged, was limited to one invoice, and to specific aspects arising out of legal work behind that invoice.

²⁵ Letter from Mr FB to the Complaints Service (19 November 2020).

[201] Apart from analysing Mr FB's complaint itself, support for that conclusion can be found in the way in which Messrs FB and GD negotiated the question of unpaid fees, which included Mr FB emphasising his concerns about Mr HC's conduct.

[202] As part of that negotiation, Mr FB did not raise issues in relation to any of the other invoices. That would have been the proper time for him to have done so.

[203] I do not take into account the fact that Mr GD offered to discount all of the unpaid invoices by 10%. This was a gesture made in order to facilitate the parties reaching an agreement. There was no acknowledgment of any liability. Indeed, wrongdoing by Mr HC was specifically denied.

[204] I turn now to consider the way in which the Committee approached and dealt with the fees complaint.

[205] The Committee did not indicate which fees were being assessed, and what the total of those fees were. It conducted what can only be described as a cursory overview by reference to some of the reasonable fee factors set out in r 9.1 of the Rules.

[206] It would appear however that the Committee cast its eye over all of the work carried out across Projects ABC and XYZ, and referred to "the invoices".

[207] More positively, the Committee held that it "was satisfied that there was no basis for complaining about duplication of effort" and that Mr HC's time had been written off.

[208] If indeed this was the Committee purporting to assess legal fees where the total amount of the invoices was in excess of \$700,000, then it presents as superficial at best.

[209] Reasoning and decision-making in fees complaints should not be based upon a helicopter view of a retainer and the fees charged.

[210] If I had been satisfied that Mr FB's complaint about fees was for the full amount of the invoices issued, then I would unhesitatingly have referred the fees complaint back to the Committee with clear and unequivocal directions as to how that complaint ought to be dealt with, including the appointment of a costs assessor.²⁶

[211] However, because I have carried out a detailed analysis of Mr FB's complaint, and with exactly the same material that was before the Committee, and concluded that

²⁶ See for example the observations of Review Officer Maidment in *VM v XZ* [2020] NZLCRO 216 at [213] – [253]. The Review Officer was considering fees of a little under \$257,000. See also the New Zealand Law Society's *Practice Note Concerning the Functions and Operations of Lawyers Standards Committees* at Fee Complaints.

Mr FB's fees complaint was narrow, I consider that I am able to deal with the fees complaint as part of the review.

[212] As was the Committee, I am satisfied that Mr FB has not provided any evidence to substantiate his complaint that the invoice in question contained duplication of effort – i.e. that JKL was charged twice for the same piece of work.

[213] This conclusion is not based upon me accepting the lawyers' explanation that there was no duplication. The conclusion is based upon the lack of any evidence provided by Mr FB to substantiate his complaint. He carries that burden, and he did not discharge it.

[214] Mr HC's alleged conduct breaches, which Mr FB said had been a source of considerable concern to JKL, were addressed with that portion of the invoice representing Mr HC's time (\$10,000), being written off by Mr GD.

[215] Mr FB acknowledged this in his email to Mr GD dated 10 August 2020 when he said:

[T]hank you for removing [Mr] HC's time from the invoices and providing a further 10% discount – the conflict-of-interest point was of great concern internally and the gesture from [Law Firm A's] perspective has been well received.

[216] I attach no significance to the fact that Mr FB referred to "invoices". In fact, Mr HC's time was only removed from one invoice.

[217] Finally, as I have held above when dealing with Mr FB's complaint about the statutory demand, my assessment of the exchange of emails between him and Mr GD was that agreement had been reached as to both quantum and a payment plan.

[218] That agreement had been reached, because Mr GD addressed Mr FB's concerns, which were his allegations about Mr HC.

[219] The assessment of a lawyer's fee requires conclusion, amongst other things, that the fee "is fair and reasonable for the services provided, having regard to the interests of both client and lawyer."²⁷

[220] I regard Mr FB as being an intelligent and aware businessman, operating at a sophisticated commercial level and well familiar with instructing lawyers and paying for their services.

²⁷ Rule 9 of the Rules.

[221] That Mr FB paid the first invoice that was issued, which was by far the largest of the invoices issued, and reached agreement to pay the balance of the unpaid fees once his concerns had been addressed, satisfies me that the fees charged in the invoice in question, and as amended by Mr GD, were fair and reasonable.

Decision

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

Anonymised publication

[223] Pursuant to s 206(4) of the Act, this decision is to be made available to the public with the names and identifying details of the parties removed.

DATED this 30th day of August 2021

R Hesketh
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 FB on behalf of JKL Limited as the Applicant
Mr HC and Mr GD as the Respondents
Ms LG as a Related Person
[Area] Standards Committee [X]
New Zealand Law Society