

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

QZ

Applicant

AND

FZB

Respondent

DECISION

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

Introduction

[1] Mr QZ, a lawyer, and at the relevant time the principal of his own firm, KWU (the firm), has applied for a review of a decision by the [Area] Standards Committee [X] (the Committee) which determined that he had (a) inappropriately invoiced a former client, a trust, for his fees, and (b) delayed handing over the trust's documents to FZB (FZB), the trust's new lawyers, following receipt of an authority to uplift.

[2] The Committee made a finding of unsatisfactory conduct against Mr QZ.

[3] Since March 2004, Mr QZ had acted for Mr and Mrs TV and their trust. Mr and Mrs TV each had adult children from previous marriages.¹ The children were the primary beneficiaries of the trust. The main asset of the trust was a residential property (the residence), occupied by Mr and Mrs TV as their home, which was subject to a bank mortgage.²

¹ Mrs TV's children are XF, RP and AR. Mr TV's children are VI and CH.

² Deed of Trust (15 March 2004).

[4] The trust deed conferred the power of appointment of trustees on Mr and Mrs TV, and on their death, on their “administrators or executors or trustees”, or the “administrators or executors or trustees” of “the surviv[or]” of them.³ On 19 December 2016, Mr and Mrs TV appointed Mrs TV’s daughter RP as a trustee in place of Mr QZ’s previous firm’s trustee company.

[5] Mrs TV died on 21 January 2017. Under her will she appointed RP as one of her two executors and trustees, and forgave any debt owed to her by the trust.

[6] Mr QZ acted on the application for probate which was granted on 23 March 2017.⁴ He continued to attend to the trust’s matters largely related to preparing for the sale of the residence, including documenting the transfer of title in the residence to Mr TV and RP as continuing trustee, and new trustee respectively.⁵

[7] Mr TV’s son VI had introduced Mr TV to FZB. On 20 March 2017, Mr AL, a partner with FZB, emailed Mr QZ that he expected to receive instructions to act for the trust, and in “due course” provide Mr QZ with “an appropriate authority”.⁶

[8] Mr QZ says for health reasons he was absent from his office during the latter part of March, early April 2017. During that time he referred RP to another lawyer, Mr VT.⁷

[9] RP retired as a trustee on 30 March 2017. On 11 April, Mr TV appointed VI, and FZB’s trustee company as trustees in Mr TV’s place.⁸ The following day, Mr QZ informed (by email) Mr AL he had advised RP (and her co-executor and trustee) to lodge a caveat against the residence’s title “to protect” the estate’s position.

[10] A week later, on 18 April, Mr AL provided (by email) Mr QZ with a copy of the deed appointing VI and FZB’s trustee company as trustees, accompanied by an authority to uplift the trust’s documents signed by them.

[11] On 26 April 2017 Mr QZ issued an invoice to RP, in her capacity as a trustee, for his attendances on the trust while RP was a trustee.⁹ He sent (by letter) the invoice

³ Clause 14.

⁴ Mrs TV’s will directed that the residue of her estate be distributed according to her memorandum of wishes.

⁵ Including application to the Inland Revenue Department (IRD) for an IRD number for the trust, preparation of documents to transfer the residence to Mr TV and RP as surviving trustee, and new trustee respectively, and receiving a listing authority from the real estate agent appointed to market the sale of the residence.

⁶ Mr AL initially, and later Mr GN, partner, and Ms TL, senior solicitor with FZB.

⁷ Mr VT was a director of HCT Legal.

⁸ Deed of Retirement of Trustee and Appointment of New Trustees, 11 April 2017.

⁹ Mr QZ’s 26 April 2017 invoice: \$1,160.00 plus GST and disbursements (total \$1,412.20).

and Mr VT's 19 April 2017 invoice to Mr AL that day stating that upon payment he would forward the trust's documents to FZB.¹⁰

[12] On 10 May 2017 Ms TL of FZB asked (by letter) Mr QZ for the urgent release of the trust's documents.

[13] Mr QZ and RP attended a meeting at FZB's offices with Ms TL, Mr GN, and VI on 26 May 2017. The discussion points included the sale of the residence and the application of the sale proceeds, two of the subjects referred to in the communications between Mr QZ and FZB leading up to the meeting. Mr QZ says his 26 April invoice was not discussed.

[14] On 7 June 2017, Mr QZ issued another invoice to RP, as a trustee, which he sent (by email) to Ms TL on 19 June for payment by the trust.¹¹

[15] The trust paid Mr QZ's 26 April invoice on 7 June. A month later, on 7 July 2017, Mr QZ forwarded the trust's documents to FZB.

Complaint

[16] Mr GN, on behalf of FZB, lodged a complaint with the Lawyers Complaints Service on 5 July 2017. He alleged that Mr QZ (a) having received an authority to uplift from Mr AL, had retained the trust's documents, (b) provided FZB with an undertaking that was "false and misleading", and (c) acted for Mrs TV's estate against the trust, his former client, for whom FZB now acted.¹²

[17] Mr GN sought orders (a) requiring Mr QZ to hand over the trust's documents, (b) preventing Mr QZ from acting for Mrs TV's estate or RP against the trust, and (c) requiring Mr QZ to pay FZB's costs in dealing with Mr QZ concerning the matters complained about.

(1) Authority to uplift

[18] Mr GN said Mr QZ's response to receipt on 18 April 2017 from Mr AL of the deed of appointment of trustees, and the authority to uplift, was that he would issue an invoice for his "attendances to date in relation to trust matters", and when "cleared" would provide the documents requested.¹³

¹⁰ Mr VT's 19 April 2017 invoice: \$750 plus GST (total \$963.13).

¹¹ Mr QZ's 7 June 2017 invoice: \$2,360 plus GST (total, \$2,792.20).

¹² FZB, letter to Lawyers Complaints Service (5 July 2017).

¹³ Mr QZ, email to Mr AL (18 April 2017).

(2) Fees

26 April invoice

[19] Mr GN alleged Mr QZ required payment of his 26 April 2017 invoice, and Mr VT's 19 April 2017 invoice before releasing the documents to FZB.¹⁴ He said in response to Mr AL' request for a breakdown of his fee, Mr QZ stated that his attendances "accumulated" before RP resigned as a trustee on 30 March 2017.¹⁵

7 June invoice

[20] Referring to Mr QZ's 7 June 2017 invoice to RP , which Mr QZ stated was for his advice to her "as an historic trustee" of the trust, Mr GN said it was "simply untrue" Mr QZ had advised RP "in relation to her liability as a trustee".¹⁶ He said Mr QZ told (by letter) FZB on 4 May 2017 that he "act[ed] for [RP]".

[21] Mr GN explained that because Mr QZ was acting for RP , not the trust, [Mr QZ] was not entitled to withhold the trust's documents until payment of the 7 June invoice.

[22] He said for the "3 months" when RP was a trustee, the trust was inactive, and there had been no "correspondence" with Mr QZ about "any liability [RP] might have as a trustee". He said although the issues discussed at the 26 May 2017 meeting at FZB's offices attended by Mr QZ and RP included RP's interest as a beneficiary of the trust, her term as a trustee was not discussed.¹⁷

(3) Undertaking

[23] Mr GN claimed that Mr QZ's 15 May 2017 undertaking to Mr AL that "all fees incurred by [Mr QZ] and [Mr VT] relate solely to the administration of the [t]rust" was "false and misleading". This was particularly so in respect of Mr VT's invoice because [Mr VT] had advised RP in her personal capacity.¹⁸

¹⁴ HCT Law's 19 April 2017 invoice: \$750 plus GST (total \$963.13).

¹⁵ Mr AL, email to Mr QZ (29 April 2017); Mr QZ, letter to Mr AL (4 May 2017).

¹⁶ Mr QZ, letter to Ms TL (19 June 2017).

¹⁷ As noted in the introduction, the issues discussed included the appointment of a third trustee to represent Mrs TV's children, sale of the residence, and the application of the sale proceeds.

¹⁸ HCT Legal, emails to FZB (24 March 2017 and 9 June 2017).

[24] Taking into account that Mr QZ had “separately invoiced” RP for his advice to her in her “personal capacity”, Mr GN said in the “interest of compromise” the trust agreed to pay Mr QZ’s 26 April invoice so long as [Mr QZ’s] time records showed, or Mr QZ “personal[ly] undert[ook]” his attendances “relate[d] to the trust during the period when [RP] was a trustee”.

(4) Conflict

Caveat

[25] Mr GN claimed there was “no basis to support” the estate’s caveat against the title to the residence. He said by preparing and lodging a caveat for RP (and her co-executor and trustee) against the title to the residence, Mr QZ had without the trust’s consent, acted against the trust, a former client.

[26] He explained that in the absence of documentation of Mrs TV’s provision of her Kiwisaver funds to the trust as a loan, that money was a gift.¹⁹ Even if a loan, he said Mrs TV’s will expressly forgave any debt owing to Mrs TV by the trust thereby removing that as a ground for the caveat.

Lien, acting against the trust

[27] Concerning the lien claimed by Mr QZ over the trust’s documents, Mr GN alleged Mrs TV’s estate would be disadvantaged until the trust’s documents, which Mr QZ said at the time contained “the historic wishes” of Mr and Mrs TV, were handed over to FZB.²⁰ He also said Mr QZ could use the information in those documents, if material, against the trust for the benefit of Mrs TV’s estate.

(5) Mrs TV’s estate

[28] Mr GN claimed Mr QZ did not need to apply for probate of Mrs TV’s will, and by doing so had incurred unnecessary legal costs for Mrs TV’s estate.

Response

[29] I refer to Mr QZ’s response to FZB’s complaint in my later analysis.²¹

¹⁹ Applied to reduce the trust’s loan from the bank.

²⁰ Reference to Mr QZ’s letter to Ms TL (15 May 2017).

²¹ Mr QZ, letter to the Lawyers Complaints Service (10 August 2017).

Standards Committee decision

[30] The Committee delivered its decision on 5 April 2018, and determined, pursuant to s 152(2)(b) of the Lawyers and Conveyancers Act 2006 (the Act), that Mr QZ's conduct by:²²

- (a) Invoicing the trust, fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer which constituted unsatisfactory conduct under s 12(a) of the Act.
- (b) Claiming a lien over the trust's documents without justification, and not handing over the trust's documents to FZB "without undue delay" following receipt of the authority to uplift, Mr QZ contravened r 4.4.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) which constituted unsatisfactory conduct under section 12(c), and under s 12(a) of the Act.

[31] The Committee ordered Mr QZ to pay a fine of \$3,000, pay costs of \$1,500, and undergo practical training or education "relating to the topics of trusts and/or estates".

(1) Fees – invoices: 26 April 2017, 7 June 2017

[32] The Committee decided that following RP's retirement as a trustee on 30 March 2017, her instructions to Mr QZ, and his advice to her were personal to her.

[33] For that reason, it was "[in]appropriate" for Mr QZ to invoice the trust. Although Mr QZ's legal work for RP included the indemnity she sought from VI and FZB's trustee company, "that was an entirely separate issue" which "did not entitle Mr QZ to invoice the trustees".

(2) Authority to uplift, lien

[34] In the Committee's view, the time taken by Mr QZ to comply with FZB's request to uplift the trust's documents constituted "undue delay".

[35] The Committee found that because Mr QZ was not entitled to issue his invoices to the trust, and therefore not entitled to a lien, by "early July 2017" when he handed over

²² Section 12(c) - "conduct consisting of a contravention of [the] Act, or of any regulations or practice rules made under [the] Act that apply to the lawyer or incorporated law firm, or of any other Act relating to the provision of regulated services (not being a contravention that amounts to misconduct under section 7)".

the documents, “almost three months” had elapsed since he received FZB’s authority to uplift on 18 April 2017.

[36] Moreover, because “none of the three invoices were properly chargeable” to the trust, the Committee decided Mr QZ “did not have the right to claim a lien” over the trust’s documents held by him.²³

(3) Undertaking

[37] In the Committee’s view, Mr QZ was mistaken in his “understanding” that he could invoice the trust. However, his “undertaking” that his fees “relate[d] solely to the administration of the [t]rust” was not an undertaking within the meaning of r 10.3, and therefore not a “false undertaking” as claimed by FZB.

(4) Conflicts

[38] The Committee noted that Mr QZ “had, at least for a time” acted for Mr TV (as a settlor and as a trustee), the trust, and then for Mrs TV’s estate.

[39] In deciding that Mr QZ had not contravened r 8.7.1 when he lodged the caveat against the title to the residence owned by the trust, the Committee stated that (a) no evidence had been produced of “information held by Mr QZ that was confidential” to the trustees which Mr QZ could have disclosed to RP , and (b) RP “had previously been entitled and/or privy to” the trust’s information when she was a trustee.²⁴

(5) Caveat - competence, proper purpose

[40] Although expressing its concern that Mr QZ viewed the caveat as a “holding mechanism” until the trustees provided RP with an indemnity, the Committee concluded that because the interest claimed in the caveat “evidence[d]...a proper purpose”, Mr QZ had not contravened r 2.3.²⁵

Application for review

[41] Mr QZ filed an application for review on 21 May 2018. He seeks a “correction” of the Committee’s findings. He asks that his absence from his office towards the end of March, and early April 2017 for health reasons be taken into account.

²³ Mr QZ’s invoices (26 April 2017 and 7 June 2017; HCT Legal’s (Mr VT’s) invoice (19 April 2017).

²⁴ r 8.7.1 – prohibits, as provided in this rule, a lawyer acting against a former client where the lawyer holds information confidential to the client.

²⁵ r 2.3 – “A lawyer must use legal processes only for proper purposes”.

[42] He repeats his statement to the Lawyers Complaints Service that FZB did not provide RP with a letter of engagement when she was still a trustee. He requests “clarification” of the date FZB commenced acting for the trust. He refers to FZB’s delays in providing a “standard” deed of indemnity for RP as a retiring trustee. He questions FZB’s “role” with the trust “up to and including” the 26 May 2017 meeting at FZB’s offices to “address matters in conflict”.

(1) Fees

Invoice 26 April 2017

[43] Mr QZ says he was retained to act for the trust “up to and including” 26 April 2017.

[44] In support of that position he refers to (a) emails exchanged with FZB on 20, 27 February 2017, and 20 March 2017, (b) the bank’s 3 May 2017 email to him concerning his instructions to obtain a release of the bank mortgage registered against the residence title, and (c) the narration on the invoice that he provided “advice” to the trust before RP retired as a trustee.²⁶

[45] He says having received payment of this invoice he told FZB he would hold that money in his trust account “pending resolution” of FZB’s claim that he was not entitled to charge the trust.²⁷

7 June 2017

[46] He says his 7 June invoice includes his attendance at the 26 May 2017 meeting concerning “transition of the trusteeship”; “administration” of the trust; “reconciliation of unresolved issues” among “the original trustees, the retiring trustees, and the continuing trustees”; the sale of the trust’s property; and obtaining an indemnity for RP as retiring trustee.²⁸

[47] He says his costs would have been less had the indemnity for RP been provided by FZB “in a timely fashion”, that is, earlier than 7 July 2017.

²⁶ As noted earlier, “progressing the transition of trusteeship”; proposed sale of the trust’s property; obtaining an IRD number for the trust; and at FZB’s request transfer of the trust’s property to VI and FZB’s trustee company. Also, Mr QZ says, payment of outgoings “associated with the sale” of the trust’s property.

²⁷ Mr QZ, letter to Ms TL (7 June 2017).

²⁸ Mr QZ refers to his 15, and 29 May 2017 letters to Ms TL at FZB, before, and after the 26 May 2017 meeting respectively.

[48] He says his position that by 7 June FZB did not have authority to act for the trust is supported by Mr VT's 19 April 2017 invoice addressed to RP as a trustee.

[49] He says during May, June 2017, he "was still being approached" for "information and clarification with reference to the history and administration" of the trust. He refers to his 4 May 2017 letter to Mr AL in which he "reiterated [his] concern" at "the position adopted" by FZB in "purporting to act" for the trust.

[50] He says he "legitimately believed" he was entitled to invoice the trust for his "ongoing attendances and correspondence" with FZB, his "advice" to Mr VT, and consulting a barrister about trust issues "prior to and at the time" RP retired as a trustee.

(2) Lien

[51] Mr QZ acknowledges, in effect, that if he was entitled to charge his 26 April and 7 June 2017 invoices to the trust, then FZB's position he was not entitled to claim a lien "become[s] redundant".

Response

[52] In his response for FZB, Mr GN submits it is "unarguable" that Mr QZ's "attendances" on RP "are inappropriate to be invoiced" to the trust. He says Mr QZ contends [Mr QZ] can act for RP, and yet invoice the trust "simply because [Mr QZ] and [RP] want to".²⁹

(1) Fees

[53] Mr GN says if the Committee's finding that it was inappropriate for Mr QZ to issue his 26 April invoice to the trust is confirmed, then Mr QZ should refund that money to the trust.³⁰

(2) Acting for the trust

[54] Mr GN says FZB sent a letter of engagement to the trust on 21 March 2017. He says there "was no scope for confusion or ambiguity" about the fact that FZB had been instructed from January 2017 by VI, for whom FZB "[did] not" and "had never" acted (a) to prepare powers of attorney for Mr TV, and (b) to change the trustees to VI, and FZB's trustee company.³¹

²⁹ Mr GN, letter to LCRO (12 June 2018).

³⁰ See previous paragraph [32] and the complaint at [6.9].

³¹ Referring to Mr GN's email to the Lawyers Complaints Service (2 November 2017).

[55] In support of his position that Mr VT did not act for RP as a trustee, he refers to emails from Mr VT that [Mr VT] (a) acted for RP and her brother XF, and (b) “never had instructions to act for [RP] as trustee”.³² He also refers to Mr QZ’s 4 May 2017 letter acknowledging to Mr AL that “[he] act[s] for [RP]”.³³

Caveat

[56] Mr GN points to the inconsistency in Mr QZ having lodged the caveat on behalf of Mrs TV’s estate, yet having told the Lawyers Complaints Service he “was advising” RP “in her capacity as a trustee” of the trust.³⁴

[57] He says there was no mention of an indemnity for RP in the correspondence between Mr QZ and FZB during May 2017 which concerned “the issues in existence between the parties”.³⁵ He says Mr QZ did not, when he lodged the caveat, say that RP’s entitlement to an indemnity was a caveatable interest but did so later in July 2017.³⁶

Mr QZ’s “undertaking”

[58] In Mr GN’s submission, Mr QZ’s “undertaking” that his, and Mr VT’s invoices concerned the trust was “blatantly self-serving and a clear attempt to obtain payment of [Mr QZ’s] fees”, and “was false”.

Hearing

[59] The review progressed by way of an applicant only hearing in Auckland on 28 November 2019 attended by Mr QZ. Mr GN of FZB was invited to attend but did not exercise his right to do so.

Nature and scope of review

[60] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:³⁷

... 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.

³² Mr VT, emails to Mr AL (24 March 2017) and Ms TL (9 June 2017).

³³ Mr QZ, letter to Mr AL (4 May 2017) at [1].

³⁴ FZB, letters to the Lawyers Complaints Service (5 July 2017) (the original complaint) at [9] and (1 February 2018) at [4].

³⁵ The letters: Mr QZ to Mr AL (4 May 2017); Ms TL to Mr QZ (10 May 2017) and Mr QZ to Ms TL (15 May 2017).

³⁶ Mr QZ, letter to Ms TL (5 July 2017).

³⁷ *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.

[61] More recently, the High Court has described a review by this Office in the following way:³⁸

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.

[62] 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 consider all of the available material afresh, including the Committee’s decision, and provide an independent opinion based on those materials.

Issues

[63] The issues I have identified for consideration on this review are:

- (a) Did Mr QZ act for the trust? If so, when?
- (b) Was Mr QZ entitled to charge the trust for his attendances described in his 26 April, and 7 June 2017 invoices?
- (c) Having received the trust’s authority to uplift on 18 April 2017, was Mr QZ entitled to claim a lien over the trust’s documents he held for payment of those invoices?
- (d) If not, when was he required to hand over the trust’s documents to FZB? Did he contravene any professional rules by retaining the documents until 7 July 2017?

³⁸ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

Analysis

(1) Mr QZ's 26 April, and 7 June 2017 invoices – issues (a), (b)

[64] A key question on this review is whether Mr QZ acted for the trust at the time he says he provided legal services for the trust, and which he charged to the trust in his 26 April, and 7 June 2017 invoices.

(a) 26 April 2017 invoice

(i) Parties' positions

[65] To recap, Mr QZ says his 26 April 2017 invoice, issued to RP as a trustee, concerned his attendances on RP in her capacity as a trustee before she retired from that role on 30 March 2017. He says this includes his legal work in respect of preparing for the sale of the residence, Mr TV's accommodation, and Mr TV's intention to appoint VI and FZB's trustee company as trustees in place of Mr TV.

[66] Mr GN says from January 2017 VI instructed FZB, first, to prepare powers of attorney for Mr TV, and then to change the trustees to VI, and FZB's trustee company. He says he regards Mr QZ's attendances as personal to RP as a trustee, and not having been provided to the trust.

(ii) Discussion

[67] As noted earlier, the trust deed conferred the power of appointment of trustees on Mr and Mrs TV, and on their death on their "administrators or executors or trustees", or the "administrators or executors or trustees" of "the surviv[or]" of them.

[68] On 19 December 2016 Mr and Mrs TV appointed RP as a trustee in place of Mr QZ's previous firm's trustee company. Following Mrs TV's death a month later on 21 January 2017, RP and Mr TV were the remaining trustees.

[69] During February 2017, RP signed the Authority and Instruction (A&I) prepared by Mr QZ to transfer the residence to Mr TV as surviving trustee, and her as a new trustee. She asked Mr QZ to follow-up with VI for Mr TV's signature.

[70] On 20 February 2017 Mr AL informed (by email) Mr QZ he had received enquiry from VI on behalf of Mr TV, who had received the A&I prepared by Mr QZ, about the retirement of Mr QZ's former trustee company as a trustee, Mr TV's wish to retire as a trustee and appoint VI in his place, and powers of attorney from Mr TV. Mr AL requested

copies of the trust's documents. Ahead of the sale of the residence, he asked Mr QZ to prepare a deed to appoint RP and VI as trustees in place of Mr QZ's former firm's trustee company, and Mr TV.

[71] On 16 March 2017, RP sought (by telephone) Mr QZ's advice about Mr TV's wish to remain in the residence until ready to move to a retirement home, and his refusal to sign a sale and purchase agreement presented for the sale of the residence.

[72] Four days later, on 20 March 2017 Mr AL again asked (by email) Mr QZ for copies of the trust's documents. Mr AL said Mr TV was not aware RP was a trustee. He informed Mr QZ that the deed appointing RP and VI as trustees requested by him on 20 February was no longer required. He said he expected to receive the trust's authority for FZB to act for the trust.³⁹

[73] During Mr QZ's absence from his office towards the end of March, early April 2017, Mr VT represented RP. In his 24 March response (letter) to Mr AL, Mr VT said he was "unsure" who was acting for the trust, queried whether Mr TV could appoint who he "wished" as a trustee, and suggested a "practical solution".

[74] On 27 March, Mr AL replied (email) that he was not aware of RP's appointment by Mr TV. He disagreed with Mr VT's interpretation of the power of appointment. He suggested a meeting at FZB's offices to discuss these and other trust issues including the sale of the residence, and application of the sale proceeds. As noted, RP retired as a trustee on 30 March.

[75] Although Mr QZ says he did not, at that time, maintain time records, he says his 26 April invoice concerned his legal work for the trust. This appears to be supported by details of the work Mr QZ says he did in February 2017 referred to above, and the written communications he exchanged with RP and Mr AL during February and March 2017.

[76] From my analysis of these communications, the details produced by Mr QZ of his February 2017 legal work for the trust, and having heard from Mr QZ, I consider it is more likely than not that Mr QZ's legal work described in his 26 April 2016 invoice during the period ending on 30 March when RP was a trustee, concerned the trust. It follows that it was reasonable for him to charge the trust for that work.

[77] In arriving at that position, I have taken into account that, as discussed below, Mr QZ's retainer had not, at that time, been terminated by the trust. I have also given some weight to the trust, albeit "in the interest of compromise", having paid this invoice.

³⁹ Mr AL, emails to Mr QZ (20 February 2017 and 20 March 2017); Mr VT, emails to Mr AL (24 March 2017).

This suggests some acknowledgement, at least, by the new trustees that Mr QZ's attendances concerned trust matters and therefore were chargeable to the trust.

(b) 7 June 2017 invoice

(i) Parties' positions

[78] Mr QZ says although RP resigned as a trustee on 30 March 2017, VI and FZB's trustee company did not provide RP with an indemnity "until months" after FZB had been notified of RP's retirement. Therefore he says both he, and during his absence from his office, Mr VT, were "required to provide ongoing legal advice" to RP. He said his 7 June invoice also includes two hours preparation for, and his attendance at the 26 May meeting at FZB's offices in Whangarei.

[79] FZB's position is that Mr QZ was acting for RP yet he sought to invoice the trust for whom he no longer acted.

(ii) Discussion

[80] Upon Mrs TV's death on 21 January 2017, and RP's retirement as a trustee on 30 March 2017, Mr TV was the remaining trustee in whom it appears the power of appointment of trustees remained.

[81] As I have noted, during Mr QZ's absence from his office in late March, early April 2017, Mr VT, who represented RP, expressed his view to Mr AL that on Mrs TV's death, her power of appointment passed to RP and her co-executor and trustee of Mrs TV's estate. For that reason, as I have noted, Mr VT stated Mr TV could not "appoint who he wishes".⁴⁰

[82] Mr QZ added his support to that interpretation which he said had been applied in a similar trust.⁴¹ At the hearing he said he maintained that view even though he had obtained a barrister's advice that he would be "on shaky grounds" if he relied on that interpretation in support of his argument that VI's and FZB's trustee company's appointment was invalid.

[83] Mr AL' position is that the power of appointment would have passed to the respective administrators of Mr and Mrs TV only if both had died. He says on Mrs TV's death, the power of appointment remained with Mr TV as survivor.⁴²

⁴⁰ Mr VT, email to Mr AL (24 March 2017).

⁴¹ Mr QZ, email to Mr AL (17 April 2017).

⁴² Mr AL, email to Mr VT (27 March 2017).

[84] On 18 April 2016, a week after the appointment by Mr TV on 11 April 2017 of VI and FZB's trustee company as trustees, Mr AL forwarded a copy of the deed of retirement and appointment to Mr QZ. This was accompanied by an authority to uplift the trust's documents signed by VI, and FZB's trustee company.

[85] On 10 May 2017 Ms TL informed (letter) Mr QZ that if RP disputed the appointment of VI, and FZB's trustee company as trustees, she "should provide a conclusive expert opinion or seek a resolution" from the High Court. Ms TL requested the "urgent" release of the trust's documents to FZB.

[86] Mr QZ did not address either matter in his 15 May response (letter) in which he offered his firm's trustee company as a trustee at no cost. He informed Ms TL he had instructed a barrister to oppose the new trustees' application to lapse the caveat lodged against the residence title by RP and her co-executor and trustee of Mrs TV's estate.

[87] On 17 May, Ms TL and Mr QZ exchanged email communications to arrange a meeting. In response to Mr QZ's question whether the residence had been listed for sale, on 19 May Ms TL requested a copy of "the pre-contract disclosure from the Body Corporate" obtained by RP when the property was first listed for sale.

[88] At the hearing, Mr QZ stated he thought the trust would pay him for his work. He said he left the 26 May meeting thinking all issues discussed had been resolved. He said although they had not discussed payment of his fees, he still thought it would be appropriate to bill the trust, and the trust would pay him.

[89] The narration on Mr QZ's 7 June invoice refers to the indemnity requested for RP "prior to [RP's] resignation", "reporting letter/opinion to client", "attendances and correspondence" with a barrister, and the 26 May meeting. Mr QZ's accompanying 19 June letter to Ms TL explained that the invoice "specifically relates to the provision of legal advice to RP in her capacity as an historic trustee". He stated he had separately billed RP for his advice that "[did] not directly relate" to RP's role in that capacity.

[90] Mr QZ considers it was "legitimate" for him to issue the invoice. He says the trust paid his 26 April invoice thereby "establish[ing] protocol". He said he had provided, at FZB's request, the information requested about the trust. He said he had worked with FZB to "clarify" trust administration issues including the sale of the residence, and Mr TV's accommodation.

[91] He says he saw his role, on behalf of the primary beneficiaries, to assist the trustees to carry out Mrs TV's memorandum of wishes. He says the purpose of the 26 May meeting was to "resolve" issues that had arisen concerning the administration of

the trust. In hindsight, he says his approach would be the same again, but he would clarify his position concerning his costs.

[92] Also at the hearing, Mr QZ said he first obtained the barrister's advice on the appointment of trustees issue in the latter part of March 2017 before RP's retirement on 30 March 2017. He says he obtained further advice from the barrister on that issue after VI and FZB's trustee company had been appointed trustees. However, by then his retainer would have been, or was about to be terminated.

[93] The indemnity issue does not appear to have been raised by Mr QZ until 19 June when he asked Ms TL to "amend" the 11 April deed of appointment "to include" an indemnity in favour of RP. Concerning the period between RP's retirement on 30 March, and receipt of the authority to uplift on 18 April 2017, I note that the written communications exchanged by Mr QZ and Mr AL largely concerned RP's (and her co-executor and trustee's) proposed caveat, and the appointment of trustees issue.

[94] In the absence of a successful challenge having been made to the Court by any of the primary beneficiaries, including RP, to the appointment of VI and FZB's trustee company as trustees, it is my view that upon receipt by Mr QZ on 18 April of notice of that appointment, and the trustees' authority to uplift, his retainer by the trust was terminated.⁴³

[95] In summary, having (a) been advised by FZB that Mr TV had appointed new trustees, and (b) received the trustees' authority to uplift, Mr QZ still thought he had a continuing role to play on behalf of those of the primary beneficiaries who were Mrs TV's children, and that the trust would pay for his attendances. That position taken by Mr QZ may explain what appears as his reluctance to accept that the new trustees no longer required him to advise the trust.

[96] In my view, having had his role as the trust's lawyer brought to an end by the trustees on 18 April 2017, and having, in effect, invoiced the trust on 26 April for his attendances while RP was a trustee, it was not open to Mr QZ to charge the trust for the further "ongoing legal advice" he claims he carried out on behalf of, or for the benefit of the trust, including his legal work he says he did not charge for in his 26 April invoice.

[97] This includes his March 2017 attendances obtaining advice from the barrister which it is reasonable to expect he would have included in his 26 April 2017 invoice, or at the latest, raise this with FZB having received FZB's 10 May 2017 follow-up (by letter) request for the urgent release of the trust's documents.⁴⁴

⁴³ Trustee Act 1956, s 67.

⁴⁴ See r 4.4.2 below.

[98] The conclusion I have reached is that because from 18 April 2017 Mr QZ no longer acted for the trust, and having charged the trust with his 26 April 2017 invoice, his conduct in requiring payment by the trust of his 7 June 2017 invoice for his work, which although trust related had not been carried out by Mr QZ on the trust's instructions, was unacceptable and thereby constitutes unsatisfactory conduct under s 12(b) of the Act.

(2) *Authority to uplift – issue (c), (d)*

(a) *Parties' positions*

[99] Mr GN alleges that having received the authority to uplift, Mr QZ claimed a lien over the trust's documents, and required payment of his 26 April invoice before he would produce them to FZB. He says the trust paid that invoice, but Mr QZ issued his 7 June 2017 invoice, and retained the trust's documents until 7 July 2017.

[100] Mr QZ says if he was entitled to charge the trust, as he did in those invoices, then FZB's position that he could not claim that lien falls away.

(b) *Discussion*

[101] The question on this aspect of FZB's complaint is whether Mr QZ, having received the authority to uplift on 18 April, was entitled to retain the trust's documents until 7 July 2017, a period of just over two and a half months.

[102] I have already concluded that Mr QZ was entitled to seek payment from the trust of his 26 April invoice to the trust, but not his 7 June invoice. The trust paid Mr QZ's 26 April invoice on 7 June 2017. This leaves the question whether Mr QZ was entitled to continue to retain the trust's documents for another month until 7 July 2017.

(i) *Changing lawyers*

[103] When a client changes lawyers, the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) provide that:

4.4.1 Subject to any statutory provisions to the contrary, ... a client has the right either in person or through the new lawyer to uplift all documents, records, funds, or property held on the client's behalf. The former lawyer must *act upon* any written request *to uplift* documents *without undue delay* subject only to any lien that the former lawyer may claim.

4.4.2 If the matter is *urgent*, the former lawyer who holds a lien over documents must make the documents available to the client's new lawyer on receipt of an undertaking from the new lawyer that the former lawyer's fee will be paid in priority to the fee of the new lawyer.

4.4.3 ...

4.4.4 Subject to the former lawyer's legal right to a lien, the interests of the client must be foremost in facilitating the transfer of the client's documents and records. [emphasis added]

(ii) Was Mr QZ entitled to retain the trust's documents?

[104] The context or background to FZB's complaint is that by December 2016, Mr QZ had acted for Mr and Mrs TV, and the trust for a number of years. Following Mrs TV's death a month later, both Mr TV, as the appointor of trustees, having been introduced to FZB by his son VI, set about changing lawyers from Mr QZ to FZB.

[105] Mr TV's instructions to FZB were to prepare powers of attorney for him, and then to appoint VI and FZB's trustee company as trustees of the trust in Mr TV's place.

[106] RP retired as a trustee on 30 March 2017. On 11 April Mr TV appointed VI and FZB's trustee company as trustees. Following his return to his office on or about 12 April, during the next week Mr QZ and Mr AL exchanged views concerning RP's intention to lodge a caveat against the residence title, and the appointment by Mr TV of VI and FZB's trustee company as trustees.

[107] On 18 April, Mr AL forwarded to Mr QZ a copy of the deed of appointment, and an authority to uplift. In his response that day, Mr QZ told Mr AL he would be invoicing the trust for his attendances while RP was a trustee.

[108] Although the validity of the appointment of VI and FZB's trustee company was a major issue discussed by Mr QZ and Mr AL over the next month, as I have noted, no steps appear to have been taken by any of the primary beneficiaries, in particular, RP, XF or AR to apply to the Court for directions on that issue.

[109] It follows that having received the authority to uplift, from 18 April 2017, unless Mr QZ was entitled to claim a lien over the trust's documents for his unpaid fees, he was required to hand over the trust's documents to FZB "without undue delay".

Lien

[110] In this context, a lien, known as a retaining (or possessory) lien, "extends to all costs owed by the client; it is not restricted, like a particular lien, to the costs owing in respect of the items that the client wishes the solicitor to deliver up".⁴⁵

[111] The possessory quality of the lien concerns the lawyer "having actual physical possession of the items retained pursuant to [the lien] ... [which] must, by definition be

⁴⁵ GE Dal Pont *Lawyers' Professional Responsibility* (6th ed, Thomson Reuters, Sydney, 2017) at [16.20].

the property of the client”.⁴⁶ Importantly a retaining lien “is a protective, passive right – a right to refuse to transfer an item of property to which the claimant would otherwise be entitled”.⁴⁷

[112] From a professional standards perspective, a lawyer who seeks “improperly to maintain a lien over a client’s property can generate a disciplinary sanction”.⁴⁸

[113] On 26 April, Mr QZ issued his first invoice which he sent (letter/email) that day to Mr AL together with Mr VT’s 19 April invoice. He informed Mr AL that upon payment he would send the trust’s documents to FZB.

[114] As I have noted, from that day until 7 June when the trust paid Mr QZ’s 26 April invoice, Mr QZ and FZB exchanged a number of communications about trust issues.

[115] Given that context, as I have noted, it is reasonable to conclude that payment by the trust of Mr QZ’s 26 April invoice provides a measure of support for Mr QZ’s position that he was entitled to claim a lien over the trust’s documents for the period ending 7 June.

[116] In his 7 June 2017 letter to Ms TL, Mr QZ refers to his fees for his attendances “associated with protecting and promoting RP’s position as a trustee”, including his attendances at the 26 May meeting, being “legitimately recoverable” by RP from the trust.⁴⁹ However, because I have found it was not open to Mr QZ to charge those fees to the trust, it follows that his 7 June 2017 invoice was not capable of supporting Mr QZ’s claim to a lien over the trust’s documents.

Undue delay

[117] Mr QZ told (letter) Mr AL on 26 April 2017 that upon payment of his 26 April invoice by the trust, Mr QZ would hand over the trust’s documents to FZB. Instead, following payment by the trust on 7 June 2017, Mr QZ issued his 7 June invoice, which he forwarded to FZB on 19 June, and held on to the trust’s documents until 7 July.

[118] Although “undue delay” in r 4.4.1 is not defined in the Rules, the High Court has stated that the phrase “carries its ordinary meaning of inappropriate or unjustifiable. ‘Unjustifiable’, in turn, means inexcusable or unacceptable”.⁵⁰ Also, that “what is ‘undue’ is dependent on context”.⁵¹

⁴⁶ At [16.20].

⁴⁷ At [16.20].

⁴⁸ At [16.20].

⁴⁹ Clause 16 (Retirement of Trustee).

⁵⁰ *Wilson v Legal Complaints Review Officer* [2016] NZHC 2288 at [41].

⁵¹ At [42], referring to *R v B* [1996] 1 NZLR 385 (CA) at 387.

[119] The Court referred to previous decisions which stated that the Rules were to be “applied as specifically as possible”, noting that “they are also to be applied as sensibly and fairly as possible.”⁵² It followed that the phrase “act upon” “must sensibly be read as attending to the request to uplift ...” and the word “uplift” clearly incorporated, within reason, the word “deliver”.⁵³

[120] The Court observed that “a nine-month delay will ... almost invariably be undue. One month will often be undue, sometimes even less”.⁵⁴ Whether there was undue delay in a particular case “has to be looked at in context and in a way that is not unduly technical, literal or absolute”.⁵⁵ Also, “there is a difference between unsatisfactory conduct [the result of an undue delay], and excusable slippage”.⁵⁶

[121] On or about 6 June, RP, as a beneficiary of the trust, sought Mr VT’s advice. That day Mr QZ forwarded (letter) the trust’s documents to Mr VT who returned them on 9 June (email) noting they had been “delivered” by Mr QZ to [Mr VT] “in error”.

[122] The following day, 7 June, the trust paid Mr QZ’s 26 April invoice. In acknowledging (letter/email) receipt that day Mr QZ informed Ms TL, as I have noted, that his costs “protecting and promoting RP’s position as a trustee” which he would be invoicing to RP, were recoverable from the trust.

[123] Approximately two weeks later, on 19 June, Mr QZ explained (letter/email) to Ms TL that because RP had decided to retain him in respect of both Mrs TV’s estate, and [RP’s] term as a trustee, Mr VT had returned the trust’s documents to him.

[124] Mr QZ repeated his doubts that the trust had validly appointed FZB as the trust’s lawyers. He rejected the notion that by acting for Mrs TV’s estate against the trust he had a conflict of interest. He asked to see FZB’s letter of engagement to the trust. He requested an indemnity in favour of RP from VI and FZB’s trustee company as new trustees. He also provided his 7 June 2017 invoice addressed to RP as a trustee.

[125] Three weeks later, on 5 July, in providing a detailed overview of his interactions with FZB, he informed (email) Ms TL that had FZB “adopted a more practical and common sense approach” there would not have been the “counter-productive and unnecessary” correspondence described by FZB. On 7 July 2017 Mr QZ forwarded the trust’s documents to Ms TL.

⁵² At [43], referring to *Q v Legal Complaints Review Officer* [2012] NZHC 3082 at [59].

⁵³ At [44].

⁵⁴ At [47].

⁵⁵ At [48].

⁵⁶ At [49].

[126] As I have already concluded, in the absence of a challenge to the appointment of VI and FZB's trustee company as trustees, the receipt by Mr QZ of the trust's authority to uplift on 18 April triggered the application of r 4.4.1.

[127] Three weeks later on 10 May 2017 Ms TL informed Mr QZ that the release of the trust's documents to FZB was urgent. That would have triggered the application of r 4.4.3, referred to above, by requiring Mr QZ to make the trust's documents available to FZB subject to FZB's undertaking to pay any fees due to Mr QZ in priority to FZB's fees chargeable to the trust.

[128] Apart from the requirements of r 4.4.3, which do not appear to have been applied, it is my view that upon payment by the trust on 7 June of his 26 April invoice, Mr QZ's claim to a lien over the trust's documents expired as did any right he may have had to retain the trust's documents any longer. All the more so because as I have concluded, he was not entitled to charge the trust for his attendances described in his 7 June invoice.

[129] A lawyer has "no proprietary interest in the client". Clients have "a right to terminate a retainer at any time subject only to compliance with any agreed terms in the retainer as to grounds and notice for termination, which are reasonable in the circumstances of the particular case".⁵⁷

[130] It is commonplace in legal practice for clients to change lawyers. The professional rules are designed to ensure the smooth handover of a client's affairs from one lawyer to another. As noted above, r 4.4.4 provides that subject to the former lawyer's legal right to a lien, the client's interests "must be foremost" in the handover of the client's documents to the new lawyer.

[131] From the lawyer's perspective, termination of the retainer by a client "does not affect any entitlement of the lawyer to be reimbursed", in broad terms, for the lawyer's fees for legal services prior to termination.

[132] Other than his claim to charge the trust (a) for his March 2017 attendances obtaining the barrister's advice, which if so intended he could have included in his 26 April invoice, and (b) his advice to RP after 30 March 2017 on the indemnity issue, Mr QZ has not provided any other excuse for retaining the trust's documents after 7 June 2017.

[133] In my view, the delay of a month between 7 June and 7 July in handing over the trust's documents to FZB does not in the circumstances fall into the category of

⁵⁷ Rules 4.3 and 4.4.

“excusable slippage”. The conclusion I have reached from my analysis of the interactions between Mr QZ and FZB is that in contravention of r 4.4.1, Mr QZ’s retention of the trust’s documents for that month constituted “undue delay”.

Decision

[134] For the above reasons, pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006:

- (a) The decision of the Committee that it was inappropriate for Mr QZ to charge the trust for his legal services to which his 26 April 2017 and 7 June 2017 invoices relate, which the Committee found constituted unsatisfactory conduct under s 12(a) of the Act is:
 - (i) Reversed as to the finding it was inappropriate for Mr QZ to charge his 26 April 2017 invoice to the trust which constituted unsatisfactory conduct under s 12(a) of the Act.
 - (ii) Confirmed as to the finding it was inappropriate for Mr QZ to charge his 7 June 2017 invoice to the trust, but modified by the finding that Mr QZ’s conduct in doing so was unacceptable, which constitutes unsatisfactory conduct under s 12(b) of the Act.
- (b) The decision of the Committee that in contravention of rule 4.4.1 Mr QZ had without justification claimed a lien over the trust’s documents from 18 April 2017 until 7 July 2017, and had not acted upon the authority to uplift without undue delay which constituted unsatisfactory conduct under ss 12(a) and 12(c) of the Act is:
 - (i) Reversed; and
 - (ii) Substituted by the finding that Mr QZ’s delay of one month from 7 June 2017, the date the trust paid his 26 April 2017 invoice, to 7 July 2017, the date he handed over the trust’s documents to FZB, was undue delay for the purposes of and in contravention of r 4.4.1 which constitutes unsatisfactory conduct under s 12(c) of the Act.

[135] For completeness, pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the decision of the Committee is otherwise confirmed.

Orders

[136] In giving consideration as to whether it is appropriate to order a penalty, I refer to the guidance provided by the Disciplinary Tribunal which has stated that the “predominant purposes [of orders] are to advance the public interest (which include ‘protection of the public’), to maintain professional standards, to impose sanctions on a practitioner for breach of his/her duties and to provide scope for rehabilitation in appropriate cases...”⁵⁸

[137] The starting points for penalty are the seriousness of the conduct and culpability of the lawyer concerned. Mitigating and aggravating features, as applicable, are also taken into account. Acknowledgement by the lawyer of error, and acceptance of responsibility are matters to be considered in mitigation.

(a) Fine

[138] A fine is one of the orders a Standards Committee, or this Office on review, can make. The maximum fine available is \$15,000.⁵⁹ This Office has stated that in cases where unsatisfactory conduct is found as a result of a breach of applicable rules (whether the Rules, regulations or the Act) and a fine is appropriate, a fine of \$1,000 would be a proper starting place in the absence of other factors.⁶⁰

[139] The Committee did not state its reasons for setting the fine at \$3,000.

[140] Having received the Committee’s decision, Mr QZ consulted a barrister, Mr St John, who in his 21 May 2018 letter to the Lawyers Complaints Service submitted that Mr QZ’s conduct did not constitute unsatisfactory conduct, and therefore a fine was inappropriate.⁶¹

[141] However, having confirmed the Committee’s finding of unsatisfactory conduct against Mr QZ albeit modified, I am not persuaded to interfere with the fine of \$3,000 ordered by the Committee.

[142] In reaching that decision I take note of the fact that Standards Committees are made up of practising lawyers, familiar with all aspects of the practice of law, as well as lawyers’ duties and obligations, and the time pressures and constraints under which

⁵⁸ *Daniels v Standards Committee (2) of the Canterbury-Westland Branch of the New Zealand Law Society* [2013] NZHC 349, [2013] NZAR 416. See also s 3 of the Act outlining the consumer protection purposes.

⁵⁹ Section 156(1)(i).

⁶⁰ *Workington v Sheffield* LCRO 55/2009 (26 August 2009) at [68].

⁶¹ Mr QZ produced Mr St John’s 21 May 2018 letter to the Lawyers Complaints Service at the hearing.

lawyers often find themselves. Standards Committees must also include a lay member. This format allows for a range of views, both legal and non-legal, to be considered.

(b) Cancellation of fees

[143] Another of the orders available to a Standards Committee, and to this Office on review is to cancel the lawyer's fees for any work done by the lawyer to which the complaint relates.⁶² Because I have found it was unacceptable conduct for Mr QZ to require payment by the trust of his 7 June 2017 invoice, I order that he cancel that invoice insofar as he claims it relates to, and he seeks payment from the trust.

(c) Practical education or training

[144] The Committee, "concerned about the standard of competence and diligence shown by Mr QZ's conduct in this matter" as "indicated by Mr QZ's disciplinary history", ordered Mr QZ to "undergo practical training or education".

[145] In Mr St John's submission, having reviewed Mr QZ's disciplinary history "spanning twenty-eight years", the "majority of complaints are minor in nature" with most having been dismissed. Mr St John submits that further practical training for Mr QZ is not necessary, but in any event, Mr QZ had attended seminars on 10, and 16 May 2018 concerning trusts, the Property (Relationships) Act 1976, and related issues.⁶³

[146] I observe that these were two of the three seminars the Committee ordered Mr QZ to attend which provided Mr QZ with ten and a half hours of continuing professional development education. For that reason, I do not consider it is necessary to confirm the Committee's order that Mr QZ attend a further course or courses in addition to those it could be expected he would participate in to comply with his continuing professional development obligations.

(d) Orders

[147] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is:

- (a) Confirmed as to the Committee's order that Mr QZ pay to the New Zealand Law Society the sum of \$3,000 by way of a fine to be paid by Mr QZ within 30 days of the date of this decision (s 156(1)(i)).

⁶² Section 156(1)(f).

⁶³ Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education—Continuing Professional Development) Rules 2013.

- (b) Confirmed as to the Committee's order that Mr QZ pay to the New Zealand Law Society the sum of \$1,500 by way of costs to be paid by Mr QZ within 30 days of the date of this decision (s 156(1)(n)).
- (c) Reversed as to the Committee's order that Mr QZ undergo practical training or education (s 156(1)(m)).

[148] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 Mr QZ is ordered to cancel his invoice dated 7 June 2017 for \$2,792.20 (fee component, \$2,360 plus GST and disbursements) issued to "YZ" insofar as Mr QZ seeks payment of that invoice from the trust (s 156(1)(f)).

Costs

[149] Where an adverse finding is made, costs will be awarded in accordance with the Costs Orders Guidelines of this Office. It follows that, pursuant to s 210(1) of the Act, Mr QZ is ordered to pay costs in the sum of \$1,200 to the New Zealand Law Society within 30 days of the date of this decision. Pursuant to s 215 of the Act, I confirm that the order for costs made by me may be enforced in the civil jurisdiction of the District Court.

Anonymised publication

[150] Pursuant to s 206(4) of the Act, I direct that this decision be published so as to be accessible to the wider profession in a form anonymising the parties and absent of anything as might lead to their identification.

DATED this 20TH day of December 2019

B A Galloway
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 QZ, as the Applicant
FZB (Mr GN), as the Respondent
[Area] Standards Committee [X]
New Zealand Law Society