

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

[2021] NZLCRO 52

Ref: LCRO 87/2020

CONCERNING

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

AND

CONCERNING

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

BETWEEN

JJ

Applicant

AND

SS

Respondent

DECISION

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

Introduction

[1] Mr JJ has applied for a review of the determination by [City] Standards Committee [X] in which the Committee made two findings of unsatisfactory conduct against him. It ordered Mr JJ to reduce his fees and to pay costs to the New Zealand Law Society.

Background

[2] On 5 June 2018, Mr SS entered into an agreement to purchase an apartment which was in the course of construction. Mr SS had engaged the services of a mortgage broker who recommended Mr JJ as a lawyer to act for Mr SS.

[3] Mr SS made contact with Mr JJ, who sent a letter of engagement to him on 5 June 2018. The letter of engagement included a section outlining the basis on which the firm's fee would be calculated. It read:

The Basis of Our Charges

[The terms of engagement summarised the basis of the firm's fees: that JJ's hourly rate is \$300 to \$350 per hour and that B and C's hourly rates ranged from \$100 to \$240. It also provided a basis for charging disbursements]

[4] The Agreement for Sale and Purchase was sent to Mr JJ. It was conditional upon solicitor's approval and finance being arranged by Mr SS.

[5] Mr SS met with Mr JJ on 14 June 2018. On the same day, Mr JJ sent Mr SS a letter which included an estimate of costs. Mr JJ's estimate of costs with regard to the purchase were:

1. Completion of all matters associated with formalisation of solicitor's approval and finance condition up to and including the date upon which those conditions are satisfied or, in the alternative, where the Agreement is cancelled – \$600.00 plus GST and disbursements
2. Settlement of the purchase transaction including drawdown of the proposed loan facility – \$1380.00 plus GST and disbursements

...

[6] The building was completed and proceeded to settlement on 24 May 2019. During the period of his instructions, Mr JJ rendered six invoices:¹

22 June 2018	–	\$760.00	–	no invoice number
25 September 2018	–	\$440.00	–	no invoice number
23 April 2019	–	\$400.00	–	invoice no. 017598
15 May 2019	–	\$750.00	–	invoice no. 017679
15 May 2019	–	\$300.00	–	invoice no. 017677
15 May 2019		\$1,860.00	–	invoice no. 017678
Total:		<u>\$4,510.00</u>		

¹ All figures are exclusive of GST and disbursements.

Mr SS's complaints

[7] Mr SS complained to the Lawyers Complaints Service on 23 June 2019. His complaint related to invoices 017679 and 017678 which exceeded what he was expecting.²

[8] He specifically noted that parts of the narration in the two invoices included identical wording.

[9] The outcome he sought was "to ensure invoices are fair and representative of the work performed. If not I would expect an appropriate refund".³

Mr JJ's response

[10] In his response, Mr JJ advised that he does not keep time records and that "the description of legal work invoiced is accurately recorded in the commentary contained within the invoices as presented".

Quantum

[11] With regard to the quantum of his fees, Mr JJ made the following comments:

- He had acted for two other clients who were purchasing apartments in the same block as Mr SS, "who had received identical invoices of each stage of the purchase process" and had "received no enquiries, concerns or adverse commentary in relation to the quantum of our fees from those clients".
- Attendances on Mr SS's file were "significantly greater than the attendances undertaken on the other two purchase transactions combined".
- For that reason alone, the invoices rendered to Mr SS were more than fair and reasonable.
- The Agreement for Sale and Purchase ... comprised no less than 69 pages.
- The title which issued for the apartment was "subject to no less than 12 memorials and encumbrances".

² Mr SS was expecting fees to be in accordance with the estimate provided by Mr JJ but acknowledged that there could be differences between indicative and final costs.

³ NZLS complaint form at part 6.

- Mr SS “struggled to understand and appreciate even the most simple and basic concepts, whether with reference to the subject matter of the Agreement for Sale and Purchase and/or the conveyancing aspects associated with completing settlement”.
- Mr SS required significantly more attendances from Mr JJ and his staff than was usual and more than the other two clients for whom Mr JJ was acting.
- Mr JJ had negotiated postponement of the liability to pay the body corporate levy in full on settlement.
- Mr JJ and his staff “experienced significant difficulties and delays in obtaining the information required from Mr SS to fulfil ... AML compliance obligations”.
- The firm was “required to engage with the developer’s solicitors to address issues that had arisen as a result of the pre-settlement inspection”.
- Extensions to the settlement and possession dates were negotiated.
- “... adequate commentary was provided to the client both within the invoice itself and covering letter ...”
- “... the invoices dated 15 May 2019 ... inadvertently includes duplication of commentary relating to drawdown of the loan facility”.
- Mr SS had acknowledged and accepted the “proposals for settlement and reconciliation of ... fees and client balance required to complete settlement”.

Compliance with fee agreement

[12] Mr JJ advised that he had “at all times complied with the terms of the fee agreement reached with Mr SS” and that Mr SS had accepted and agreed to settlement on the basis of Mr JJ’s letter of 24 May 2019.

Will

[13] In a final comment, Mr JJ advised that he had offered to prepare a will for Mr SS at no extra cost. In the letter of 24 May 2019, Mr JJ also advised that he would not render invoices for additional attendances required to comply with anti-money laundering

requirements (approximately \$400) and issues arising from the completion of settlement (approximately \$560).

The Standards Committee determination

[14] The Standards Committee identified two issues to be addressed:

1. Whether Mr JJ's fees were fair and reasonable; and
2. Whether Mr JJ had complied with the terms of any fee agreement reached with Mr SS and if not, whether he promoted and maintained proper standards of professionalism as required by Rule 10 of the Conduct and Client Care Rules.⁴

Reasonableness of fees

[15] The Standards Committee determined that it had appropriate jurisdiction to address Mr SS's complaints about fees on the grounds that there were special circumstances enabling it to do so.⁵

[16] The Committee commented that the lack of time records made it difficult to assess the time expended by Mr JJ and his staff in respect of this transaction. It considered that the transaction was "of average complexity, with limited additional attendances required".⁶

[17] "There was no explanation from Mr JJ as to why the estimate had been exceeded and nothing apparent from the file".⁷

[18] Mr JJ's assertion that "he had incurred a further \$400 of costs on AML compliance and \$560 of costs on issues arising out of completion of the settlement, but that he had not charged for these ... was difficult to corroborate in the absence of any time records, and there was nothing apparent from the file to indicate that additional attendances had been required".⁸

⁴ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care Rules) 2008.

⁵ Standards Committees are not able to consider complaints about fees for less than \$2,000 unless there are special circumstances. In paragraph [7] of its determination, the Committee discusses this issue and the comments made there are confirmed. There is no need to address this aspect further in this decision.

⁶ Standards Committee determination (3 April 2020) at [9].

⁷ At [10].

⁸ At [11].

[19] The Committee noted that Mr JJ had more than doubled his original estimate of costs without explanation. The Committee, which included lawyers who practised in the area, considered that Mr JJ's original indicative costs were more in line with the fees customarily charged in the market and locality for similar legal services.⁹

[20] The Committee considered that by charging total fees of \$4,510.00 in relation to the purchase of the apartment, Mr JJ had charged more than a fee that was fair and reasonable for the services provided, having regard to the interests of both client and lawyer and having regard also to the factors set out in Rule 9.1, and had therefore breached Rule 9 of the Conduct and Client Care Rules.

The fee agreement

[21] The Committee noted that "there was no evidence of Mr JJ informing Mr SS that the estimate would be exceeded".¹⁰ It also referred to the New Zealand Law Society Property Transactions and E-dealing Guidelines which recommended that lawyers give reasons for any increase above estimates and provide a revised estimate of the fees which will be incurred.

[22] The Committee determined that Mr JJ's failure to do so constituted a breach of Rule 10 of the Conduct and Client Care Rules, which requires a lawyer to maintain proper standards of professionalism.

Orders

[23] Having made two findings of unsatisfactory conduct against Mr JJ pursuant to s 12(c) of the Lawyers and Conveyancers Act 2006 for the Rule breaches, the Committee made the following orders:¹¹

- (a) Mr JJ shall reduce his total fees charged to Mr SS relating to the purchase and associated legal services to \$1,980 (plus GST, office services and disbursements) pursuant to section 156(1)(e) of the LCA;
- (b) For the purpose of giving effect to the order in paragraph (a), Mr JJ shall refund to Mr SS any fees paid in excess of \$1,980 (plus GST, office services and disbursements) pursuant to section 156(1)(g) of the LCA;
- (c) Mr JJ shall pay the sum of \$2,000 to NZLS in respect of the costs and expenses of the inquiry, investigation and hearing pursuant to section 156(1)(n) of the LCA.

⁹ At [13].

¹⁰ At [16].

¹¹ Above n 5, at [19].

Mr JJ's application for review

[24] Mr JJ took issue with the Committee's comment that the transaction "appeared to be of average complexity". He referred to the fact that "the certificate of title issued for the property was subject to no less than 12 separate memorials and encumbrances, all of which needed to be reviewed explained to the client and referred to in a separate and comprehensive reporting letter".

[25] Other matters referred to by Mr JJ were:

- Delays occasioned by various matters meaning that a period of 12 months elapsed between the opening of the file and settlement.
- Unusual issues arising in relation to funding and lender requirements.
- Issues arising from pre-settlement inspection.
- Mr SS's request to postpone payment of the body corporate levy.
- Mr SS's difficulty in understanding "each and every aspect of the transaction".
- The Committee provided no detail to support the comment that there were "limited additional attendances required".

[26] Mr JJ has commented on a number of other paragraphs in the Committee's determination with which he disagreed.

[27] He provided the following summary:

1. Determination is based on numerous errors of fact
2. The Determination includes numerous assessments that are either incorrect or not supported by any evidence
3. The Determination incorporates aspects of pre-determination
4. The Orders of the Committee are based upon determination as to legal services that were based on a fee estimate, with the same having been applied as if they were a fixed fee
5. The Committee have failed to apply protocols of natural justice in having regard to the interests of both the client and the lawyer in determining a fee that is fair and reasonable
6. The cornerstone of the Determination turns on the Committee's finding that the original fee estimate was increased without explanation and specifically fails to address the presentation of a fee proposal settlement by the writer to

the Complainant which was subsequently accepted and implemented prior to settlement

The review process

[28] The review proceeded by way of a hearing with both parties on 18 March 2021. During the course of the hearing, Mr JJ stated that if the Lawyers Complaints Service had invited the parties to mediate a settlement, he would have been prepared to voluntarily reduce his fees. He remained open to this suggestion and repeated (or enhanced) the offers that he would have been prepared to make.

[29] Mr JJ was requested to provide the detail of the offer he was prepared to make in writing following the hearing and I advised Mr SS that this would then be forwarded to him to enable him to have time to consider the offer and make a considered decision as to whether or not to accept it.

[30] I also advised Mr JJ that I had not made any decision at the time of the hearing as to the outcome of the review, and that the review decision would either confirm, modify or reverse the Committee's determination. It was made clear to Mr SS that this was a matter for him to take into consideration when responding to Mr JJ's settlement offer.

[31] Mr SS declined to accept Mr JJ's offer.¹² The outcome Mr SS advised he was seeking from the review was for the Committee's determination to be confirmed.

Review

The estimates

[32] At the heart of Mr SS's complaint, is that Mr JJ had estimated his fees would total \$1,980 plus GST and disbursements, whereas fees invoiced by Mr JJ were more than twice the estimated amount.

[33] The importance of providing an accurate estimate and advising a client promptly when it becomes clear that the estimate is going to be exceeded, was discussed at length in another decision of this Office, *BP v YF* LCRO 142/2010 (24 March 2011). I include here a large portion of that decision, which has equal relevance to this review.

[47] An earlier LCRO decision in which estimates are discussed is *Milnathort v Rhayader*, LCRO 140/09. In that decision the LCRO notes that an estimate must be provided with care. At paragraph [14] the LCRO observes when discussing the case of *K M Young Ltd v Cosgrove* [1963] NZLR 967, that "it was noted that the party giving the estimate is the expert in the services to be provided and may be expected to be relied upon by the lay person." At paragraph [15], the LCRO

¹² Mr SS, email to the LCRO (25 March 2021).

states: “A lawyer who gives an estimate must therefore do so with care. It is not appropriate for a lawyer to give an estimate to a client where the lawyer knows (or ought reasonably to know) that it is likely that the fee will be greater than the estimate in the client’s particular circumstances. An estimate should be the amount which work of the nature contemplated in the particular circumstances of the client is likely to cost.”

[48] Again, at paragraph [16] the LCRO states: “It is also relevant that a client will rely on an estimate in retaining a lawyer and it often will not be feasible to cease instructing a lawyer if the estimate increases. A client must be able to reasonably rely on an estimate provided.”

[49] This statement is reinforced by the statement made in the case of *Kirk v Vallant Hooker & Partners* [2000] 2 NZLR 156 para 49, where the Judge states: “Clients reasonably can expect that they can place faith in estimates.....”

[50] The requirement for a client to be able to rely upon estimates was also discussed in a decision of the Queen’s Bench (*Wong v Vizards* [1997] [2] Costs LR 46). A number of comments made in that decision are relevant.

[51] At page 49, Toulson J states:-

“In considering whether a reasonable amount for the work done should exceed what the fee-payer had been led to believe was a worst case assessment, regard should be had to any explanation for divergence. In this case, it has not been suggested that there was any unexpected development between November 1993 and the date of the trial. No satisfactory explanation has been given why the solicitors should be entitled to profit costs exceeding the amount put forward to Mr Wong as their worst case assessment, especially when the trial for which they had allowed ten days was completed in less than eight days.”

[52] The Judge goes on to say:

“The question is whether it is reasonable that Mr Wong should have to pay more than twice what he had been led to expect on a worst case basis, without any explanation as to why there should have been such a disparity. I do not think that it is.”

[53] He then notes that:

“Mr Wong has just cause for complaint if, after seeking a reliable estimate from his solicitors as to his potential costs exposure before deciding to take the matter to trial, he should then be required to pay a far greater amount without further warning or a proper explanation for the difference.”

[54] The Judge then refers to the ‘Law Society’s Guide to the Professional Conduct of Solicitors’, 7th Edition, at paragraph 13.07, which states that:

“When confirming clients’ instructions in writing the solicitor should:

...(iii) confirm oral estimates – the final amount payable should not vary substantially from the estimate unless clients have been informed of the changed circumstances in writing.”

[55] A statement to similar effect was provided in the New Zealand Law Society publication ‘Property Transactions: Practice Guidelines’ which contained

guidelines for costing prior to the Client Care Rules. At paragraph 7.2(b) the Guidelines provided that:

“It is generally inappropriate to charge a fee in excess of an estimate given to a client. You should advise your client in writing immediately if it becomes apparent that the original estimate is likely to be exceeded. Give reasons for the increase and revised estimate figures.”

[34] In his application for review, and at the review hearing, Mr JJ advised that attendances not contemplated when he provided the estimates, included those relating to Mr SS’s decision to use some of his Kiwisaver account as part of his cash contribution towards the purchase, and the need to carry out enhanced due diligence,¹³ which Mr JJ says only became apparent closer to the settlement date. Another issue which arose related to the vendor’s requirement to collect the annual body corporate levy at the time of settlement, which was unexpected by Mr SS.

Kiwisaver

[35] An initial discussion with a client entering into an agreement to purchase a property, must necessarily include a discussion as to how the purchase is going to be financed. At the review hearing, Mr SS advised that he had told Mr JJ at their initial meeting, that he intended to use part of his Kiwisaver funds to fund the purchase. There should not therefore have been extra charges for those attendances over those provided for in the estimate.

[36] However, if Mr JJ had not taken this into account when providing his estimates, he should have immediately advised Mr SS of this, and provided an updated estimate. Mr SS did not become aware of this until he received Mr JJ’s invoice prior to settlement.

Enhanced due diligence

[37] Lawyers are required to comply with anti-money laundering legislation. In this instance, the observation made by the LCRO in *Milnathort v Rhayader*¹⁴ regarding the decision *K M Young Ltd v Cosgrove*,¹⁵ that “the party giving the estimate is the expert in the services to be provided” becomes particularly relevant. Enhanced due diligence is necessary to investigate further where funds have originated from. This is a matter which should have been discussed by Mr JJ prior to providing his estimates. Again, it was incumbent on Mr JJ to have immediately advised Mr SS that he had not allowed for this extra work which he says became necessary to meet his obligations.

¹³ Required to comply with anti-money laundering legislation.

¹⁴ LCRO 140/09 (23 November 2009) at [14].

¹⁵ [1963] NZLR 967 (SC).

Body corporate levy

[38] The requirement to pay the full annual body corporate levy on settlement came as something of a surprise to Mr SS. At the review hearing, Mr JJ advised that this is usual practice when purchasing an apartment off the plans. If it is, then, again, Mr JJ should have advised Mr SS of this at their initial meeting. Mr JJ says he was required to undertake additional attendances to negotiate payment of the levy in instalments. However, I can only locate a reference to one telephone conversation with the vendor's solicitors and one email setting out the terms on which the Body Corporate would accept payment of the levy.

Pre-settlement inspection

[39] Mr SS notified Mr JJ of various matters that he found defective when completing his inspection of the apartment prior to settlement. These were mentioned briefly by Mr JJ in an email to the vendor's solicitor on the day prior to settlement. It is also a matter that is to be expected when purchasing a new dwelling, but will generally require minimal input from the solicitor acting for the purchaser.

Rule 9.4

[40] Rule 9.4 of the Conduct and Client Care Rules provides:

A lawyer must upon request provide an estimate of fees and inform the client promptly if it becomes apparent that the fee estimate is likely to be exceeded.

[41] Mr JJ did not, at any stage, alert Mr SS to the fact that he was carrying out work additional to that provided for in his estimate. It therefore came as a surprise to Mr SS that total fees invoiced were more than double the estimated fees, and that Mr JJ required these to be paid before settlement.¹⁶ His concerns were heightened when the narration in two of the invoices was duplicated.

[42] At [17] of its determination, the Committee determined that Mr JJ was in breach of r 10 of the Conduct and Client Care Rules. It said:

...by exceeding his estimate without explanation, Mr JJ had failed to promote and maintain proper standards of professionalism in his conduct and had breached Rule 10 of the RCCC.

[43] In my view, Mr JJ's failure in this regard, is better expressed as a breach of Rule 9.4, and the Committee's determination is modified accordingly.

¹⁶ Refer to [60]–[65] supra.

Quantum

[44] The Standards Committee determined that Mr JJ's fees were not fair and reasonable and he was therefore in breach of Rule 9 of the Conduct and Client Care Rules.

[45] Mr JJ submits that the Committee has not had regard to his interests (as provided for in Rule 9) and has focused simply on the interests of Mr SS. As already noted, the focus of this decision, is on the variation between the estimate provided by Mr JJ, and the total of the invoices rendered. Because of that, Mr SS's interests do take some priority, as the invoiced fees were more than double Mr JJ's estimates.

[46] The estimates provided by Mr JJ represented what he considered to be a fair and reasonable fee, when he was instructed by Mr SS. The process to follow therefore, is to ask Mr JJ what additional work was required that would justify an increase in these fees. Nothing he has provided supports any significant variation from his estimated costs.

[47] If Mr JJ considers that his interests have been ignored, then he needed to provide some detail together with such evidence as can be supplied, to support his contention that his fees were fair and reasonable, notwithstanding his estimates. The only means that this could be done, would be to supply time records, or at least some estimation of the additional time taken up by this transaction that he had not taken into account when estimating his fees.

[48] Mr JJ does not keep time records, and he has not provided any estimates of the time he would have expended addressing issues not allowed for in his estimates.

[49] Mr JJ considers the Committee's determination is wrong, and unfair. The onus is on him to produce material that supports his view. Nothing has been provided which supports his contention.

[50] Mr JJ protests at the Committee's description of the transaction as being of "average complexity" and in his response to the Committee¹⁷ notes (amongst other matters) that the Agreement for Sale and Purchase was 69 pages long. Mr JJ had received the Agreement¹⁸ prior to providing his estimates. He therefore had the necessary detail to hand to enable him to take account of the length of the Agreement in

¹⁷ Mr JJ, letter to Lawyers Complaints Service (7 August 2019).

¹⁸ Mr JJ received the Agreement on 5 June 2018 and provided his estimate of costs on 14 June 2018. In his application for review Mr JJ says that his estimate was provided prior to receipt of the finalised agreement. The only detail that needed to be amended was the correction of the price in words to match the amount in figures, and this correction was attended to when the solicitor's approval condition was satisfied.

his estimate. The other matters referred to above¹⁹ do not significantly (if at all) add to the complexity of the transaction.

[51] Mr JJ also refers to the fact that when the title issued, there were 12 memorials and encumbrances registered against the title. In his response to the complaint, he provides what he terms his reporting letter to Mr SS dated 3 April 2019. With that letter, Mr JJ provided copies of the documents to Mr SS, and said:

Please carefully peruse the Certificate of Title and encumbrances and contact the writer in the event you have any concerns or enquiries regarding same.

[52] The does not amount to what could be termed, a “comprehensive reporting letter”. It contains no detail of what the documents related to, and how they impacted on the apartment Mr SS was purchasing.

[53] Mr JJ has not provided any evidence that he reviewed the documents in any detail, and how long this took him.

[54] I also note, that none of the narrations in the invoices include reference to perusing the documents registered against the title, although Mr JJ insists that the narrations accurately describe the work undertaken.²⁰

[55] Mr JJ advises that he has rendered accounts for the same amounts as those rendered to Mr SS, to two other clients for whom he had acted, who purchased apartments in the same development. He advises these clients have not objected to the fees. He puts this forward as a reason to support his view that his fees are fair and reasonable, but the fact that a client does not complain about a fee, does not support that contention.

[56] I am left therefore, with a decision to make, with very little in the way of supporting detail as to whether Mr JJ’s fees were fair and reasonable.

[57] Members of the Committee include lawyers practising in conveyancing and at least one lay person. They will have considered countless complaints about fees, and their expertise and opinion is not to be discounted.

[58] I also have reference to the fact that when he provided his estimates, Mr JJ considered that the fees estimated by him were what he considered would be an appropriate fee for this transaction.

¹⁹ See paras [35]–[38].

²⁰ Mr JJ, letter to Lawyers Complaints Service (7 August 2019).

[59] In all the circumstances, I confirm the Committee's determination, that Mr JJ's fees were not fair and reasonable.

Rule 11.1 of the Conduct and Client Care Rules

[60] Rule 11.1 of the Conduct and Client Care Rules provides:

A lawyer must not engage in conduct that is misleading or deceptive or likely to mislead or deceive anyone on any aspect of the lawyer's practice.

[61] This rule applies to a lawyer's fee charging practices.²¹

[62] In his letter dated 24 May 2019 to Mr SS, Mr JJ said:

As you will note there is a balance from you **to complete settlement** of \$1,291.26. (emphasis added)

[63] Further in that email Mr JJ said:

Can you please confirm by return email, your acceptance of this proposal pursuant to which we will then **be in a position to proceed with the completion of settlement**. (emphasis added)

[64] The amount required by Mr JJ was the balance shown as being due in the statement of the same date. This statement included Mr JJ's fees. The balance due then was not a balance required to complete settlement only, but the balance to complete settlement and make payment in full of Mr JJ's fees. The balance due was not therefore required to complete settlement.

[65] At the review hearing, Mr SS's response to Mr JJ's assertion that he (Mr SS) had accepted the fees at the time, was that "he had no choice". I take this to mean Mr SS was under the impression that unless he paid the balance due in terms of the statement, that would necessarily mean he would be in default of the Agreement to purchase. That understanding was reinforced by Mr JJ when, following an inquiry from Mr SS as to what would happen if he did not pay the balance due, he was advised by Mr JJ that he would incur further costs.²²

[66] Mr JJ misled Mr SS in this regard. This constitutes a breach of Rule 11.1. However, I decline to make a further finding of unsatisfactory conduct against Mr JJ, as it involves a relatively small issue in the overall context of this review. It does, however, remove Mr JJ's defence to the complaint that Mr SS had accepted the fees when responding to Mr JJ's letter of 24 May.

²¹ See Matthew Palmer – Professional Responsibility in New Zealand chapter 11.92.

²² Mr SS, response to application for review (3 July 2020) at point J.

Decision

[67] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Standards Committee is modified as set out in [43] above, but otherwise confirmed. This includes the Orders and timeframes set out in [19] and [20] of the determination.

Costs

[68] Where an adverse finding is confirmed on review, it is usual for costs to be awarded against a practitioner.²³ However, the power to award costs is discretionary, and I am mindful of the fact that the Standards Committee has ordered Mr JJ to pay the sum of \$2,000 towards its costs. In an acknowledgment that Mr JJ's estimates were estimates only, and not quotes, it would be unduly harsh to make a further order for costs against Mr JJ.

[69] Accordingly, there will be no order against Mr JJ for payment of the costs of this review.

Publication

Pursuant to s 206(4) of the Lawyers and Conveyancers Act 2006, this decision will be published in an anonymised format, as it reinforces the need for lawyers to take particular care when providing a client with an estimate of costs, and to be alert to the requirements of Rule 9.4 to immediately advise a client if an estimate is likely to be exceeded and to provide reasons for this. Publication of this decision is also intended to remind practitioners of the recommendations contained in the Property Transactions and E-dealing Guidelines.

DATED this 15th day of April 2021

O Vaughan
Legal Complaints Review Officer

²³ Refer to the LCRO Costs Orders Guidelines at [3].

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

Mr JJ as the Applicant
Mr SS as the Respondent
[City] Standards Committee [X]
New Zealand Law Society