

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

[2020] NZLCRO 141

LCRO 203/2017

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

HI

Applicant

AND

JK

Respondent

DECISION

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

Introduction

[1] Mr HI has applied for a review of a decision by the [City] Standards Committee [X] to take no further action in respect of his complaint concerning the conduct of the respondent, Mr JK.

Background

[2] Mr HI was charged with two counts of careless driving causing injury.

[3] On his first appearance in Court, he made an application for legal aid. At his second appearance, he was advised that his application for legal aid had been declined.

[4] He says that he subsequently spoke to a person at the [Area] District Court and was advised that it would be appropriate for him to engage a lawyer. He was provided with contact details for Mr JK and duly arranged to meet with Mr JK. Mr JK was unable to keep that appointment. An arrangement was made that he meet Mr JK at court on the morning of 29 March 2016.

[5] Mr JK made request of Mr HI to bring \$1,500 to court, this to cover initial fees.

[6] Mr JK says that he terminated the retainer. Mr HI disputes this. He contends that Mr JK failed to turn up at court when his application to avoid being disqualified from driving was to be heard.

The complaint and the Standards Committee decision

[7] Mr HI lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 1 November 2016.

[8] That complaint was set out in the form of a summary in which Mr HI explained the background to his various court appearances.

[9] The substance of his complaint was that:

- (a) He was concerned that an individual from the court appeared to be touting for work for Mr JK.
- (b) Mr JK had failed to respond to phone calls and emails.
- (c) Mr JK had failed to provide him with an invoice for funds paid.
- (d) He had not been competently represented by Mr JK.
- (e) Mr JK had encouraged him to lie to the court.

[10] Mr JK provided response to the complaint on 16 February 2017.

[11] He submitted that:

- (a) Mr HI was in a highly agitated state when he met with him at the [Area] District Court on 29 March 2017.
- (b) He had explained to Mr HI that an application could be made to the court pleading special reasons, in an attempt to avoid Mr HI being disqualified from driving.

- (c) He had carefully explained the likely costs involved in proceeding such an application (\$3,000–\$4,000).
- (d) He had discussed with Mr HI the information that would be required to support a potential application, and the need to obtain a report from Mr HI's doctor or psychologist.
- (e) Mr HI paid him \$1,500 in cash on 29 March 2017 and he had emailed his client care information and invoice to Mr HI on that same day.
- (f) Between 29 March 2017 and 5 May 2017, he had contact with Mr HI on a number of occasions. He also had contact with Mr HI's doctor, his sister, and a counselling service.
- (g) He had been unable to comply with court-directed timetabling as the information he had asked Mr HI to obtain had not been provided.
- (h) On 5 May 2017 he met with Mr HI at court. Mr HI was abusive towards him. Security guards were summoned. He assisted the security officers in taking Mr HI to see a forensic nurse.
- (i) Following the 5 May 2017 court appearance, he had further telephone discussions with Mr HI. In the course of those discussions, Mr HI became abusive. He advised Mr HI that he could no longer continue to act for him. He provided Mr HI with names of lawyers he could contact, and also spoke with Mr HI's sister.
- (j) At no time had he advised Mr HI to give false evidence to the court.

[12] Invited to provide response to Mr JK, Mr HI submitted that Mr JK had provided an inaccurate account of events, fabricated his response, and failed to answer the questions raised by his complaint.

[13] The Standards Committee identified the issues to be addressed as:

- (a) Whether Mr JK's representation of Mr HI was inadequate.
- (b) Whether Mr JK failed to respond to enquiries in a timely manner.
- (c) Whether Mr JK advised Mr HI to provide false evidence to the court.
- (d) Whether Mr JK terminated the retainer without good cause and failed to provide Mr HI with reasonable assistance to find new representation.

- (e) Whether Mr JK failed to provide an invoice or a receipt for the payment made by Mr HI.
- (f) Whether Mr JK accepted a cash payment for fees upfront.

[14] The Standards Committee delivered its decision on 14 September 2017.

[15] The Committee determined, pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act) that no further action on the complaint was necessary or appropriate.

[16] In reaching that decision the Committee concluded that:

- (a) There was insufficient evidence to substantiate Mr HI's claim that Mr JK had provided inadequate representation.
- (b) There was no evidence to establish that any delay on Mr JK's part in attending a court hearing had caused Mr HI to suffer any prejudice in the proceedings.
- (c) Mr JK had responded to Mr HI's enquiries in a reasonably timely matter.
- (d) There was no persuasive evidence to support suggestion that Mr JK had advised Mr HI to provide misleading evidence to the court.
- (e) It was unable, on the face of the conflicting accounts provided by the parties, to determine whether Mr JK had breached his professional responsibilities by terminating the retainer without good cause.
- (f) It was satisfied that Mr JK had provided Mr HI with an invoice for services provided.
- (g) Whilst there had been a technical breach by Mr JK in receiving fees prior to an invoice being issued, that breach did not merit a disciplinary response.

Application for review

[17] Mr HI filed an application for review on 19 October 2017.

[18] His application reiterates the concerns which were the subject of his complaints.

[19] He submits that:

- (a) He would like clarification as to whether any member of the [Area] District Court staff were working for Mr JK.
- (b) He was not contacted by Mr JK between 29 March 2016 and 5 May 2016.
- (c) Mr JK had arrived late for the court hearing scheduled to proceed on 5 May 2016 and had treated him with indifference when he did arrive.
- (d) Mr JK had not advised him that he was no longer prepared to represent him, until the morning of 14 July 2016, when he was present at the court for sentencing.

[20] Mr JK was invited to comment on Mr HI's review application.

[21] He advised that he had nothing further to add, other than to emphasise that he had never paid any secret commissions to a member of the court staff.

Hearing

[22] The matter was heard on Wednesday, 28 August 2019. Both parties were present.

[23] There has been some considerable delay in having this decision available to the parties. I apologise to the parties for that delay.

[24] At the conclusion of the review hearing, I made request of Mr JK to provide his file.

[25] Mr JK forwarded copies of loose-leaf file notes which included a copy of an invoice forwarded to Mr HI on 29 March 2016.

[26] Request was made of Mr JK to provide his complete file.

[27] That file, contained in a manila folder, was organised in somewhat random fashion.

[28] A number of Mr JK's file notes were recorded on the covers of his manila file.

[29] Notes of his initial meeting with Mr HI also appear to have been recorded on a copy of the Police summary of facts.

[30] As mentioned earlier, when request was first made of Mr JK to provide his file, he copied various file notes and forwarded those to the LCRO.

[31] Mr HI correctly observed that some of the file notes provided by Mr JK appeared to have been incorrectly dated. Mr JK represented Mr HI in 2016. Two of the file notes provided by Mr JK were dated 2019.

[32] Mr HI was concerned that Mr JK had fabricated the file notes produced.

[33] Not all the file notes provided by Mr JK were incorrectly dated.

[34] Having carefully examined Mr JK's file, and the sequence of file notes recorded on the covers of his file, I am satisfied that the notes were prepared by Mr JK and that his incorrect dating of two of the file notes when preparing a copy to forward to the LCRO was a simple transcribing error.

[35] I accept that Mr JK may have considered that it was easier to transcribe the notes from the cover of his file, rather than to attempt to copy the covers in their entirety.

[36] Subsequent to the hearing, Mr HI filed further submissions.

[37] I did not consider that the additional material provided by Mr HI significantly added to the information that Mr HI had provided at the hearing, except to reinforce the strength of his conviction that he had been poorly served by Mr JK.

Nature and scope of review

[38] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:¹

... 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.

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.

¹ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

[39] More recently, the High Court has described a review by this Office in the following way:²

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.

[40] 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

[41] The issues to be considered on review are:

- (a) Did Mr JK have an arrangement with a member of the court staff to recommend his services?
- (b) Did Mr JK fail to provide Mr HI with competent representation?
- (c) Did Mr JK encourage Mr HI to provide false evidence to the court?
- (d) Did Mr JK breach any of his professional obligations by failing to appropriately manage funds received from Mr HI?
- (e) Did Mr JK terminate the retainer without good cause?

Issue 1 – Did Mr JK have an arrangement with a member of the court staff to recommend his services?

[42] Mr HI says that he was phoned a number of times by a person who identified herself as a member of the [Area] District Court staff.

[43] He says that this individual, who identified herself as "[A]", was recommending that he instruct Mr JK to represent him. I will refer to this individual in this decision as

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

[A]. Mr HI says that [A's] enthusiastic efforts to persuade him to instruct Mr JK, extended to calling him on a long weekend.

[44] It is Mr HI's belief that Mr JK had fostered a contact in the court, in order to secure business. He suggests that it is likely that [A] was being paid by Mr JK.

[45] Mr JK emphatically rejects suggestion that he was paying any person at the court to recommend his services.

[46] This is a serious allegation. It is an allegation that, if established, would have serious implications not only for Mr JK, but also for the member of the court staff.

[47] It would be quite improper for a District Court staff member to be promoting the services of a particular barrister.

[48] It is clear from Mr HI's initial complaint that the first contact he had with the individual referred to as [A] was a phone call in which he was asked whether he had had an opportunity to read the victim impact statement. He does not suggest that any issue as to his legal representation was raised in this first call, but explains that the "same person" came back to him in another call, at which time she identified herself as ["A"] and advised him that he would be well advised to engage a barrister, rather than to rely on a duty solicitor.

[49] This, says Mr HI, was followed by a further call on 24 March 2016, during which the caller from the court provided him with Mr JK's contact details. Mr HI says that he contacted Mr JK that day.

[50] Mr HI says that he then received a call from [A] on Good Friday (this would have been Friday 25th of March 2016). Mr HI does not explain what the purpose of this call was but he says that he was told that he would need to procure funds from a money machine, before meeting with Mr JK on the following Tuesday. This suggests that the purpose of the call of 25 March 2016 was to remind him that he would need to have funds available for Mr JK when he met with him at court.

[51] I think it probable that Mr HI was contacted by the court and inquiry was made of him as to whether he had read the victim impact report. The specific nature of the inquiry was such that it would present as unlikely that Mr HI would have misunderstood what was being asked of him.

[52] I accept that it was also possible that a member of the court staff had recommended to Mr HI that he secure the services of a lawyer.

[53] However, it is my understanding that court staff will not, for reasons which are obvious, take the further step and recommend an individual lawyer to a party seeking advice on legal representation. The court must maintain its independence and cannot be seen to be promoting the interests of any particular lawyer.

[54] That said, I am mindful that court staff are very focused on serving members of the public and I do not discount the possibility that on occasions a staff member may, in an effort to assist, provide a member of the public with a lawyer's contact details. But the circumstances that Mr HI describes, being what he perceived to be a vigorous promoting of Mr JK, would present as quite unacceptable.

[55] Mr JK emphatically rejects suggestion that he had a contact at the court who was promoting his services.

[56] It is Mr HI who carries the burden of proof. He must persuade me that it is more probable than not, that Mr JK has a contact in the court who had been directing work his way.

[57] Mr HI has fallen well short of meeting that legal threshold. His account of the phone calls he says he received, does not remotely establish firm evidence of the arrangement that he believes may have been in place.

Issue 2 – Did Mr JK fail to provide Mr HI with competent representation?

[58] To the extent that Mr HI makes complaint that Mr JK failed to competently represent him, his concerns are focused primarily on argument that Mr JK failed to keep him informed. He also expresses concern that Mr JK had encouraged him to pursue a defence which required him to present misleading evidence to the court, but that matter is considered as a separate issue.

[59] In the course of providing regulated services to their client, a lawyer must act competently, and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.³

[60] A lawyer's conduct may be deemed to be unsatisfactory if, in the course of providing regulated services to their client, their conduct falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.⁴

³ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 [the Rules], r 3.

⁴ Lawyers and Conveyancers Act 2006, s 12(a).

[61] The duty to act competently has been described as “the most fundamental of a lawyer’s duties” in the absence of which “a lawyer’s work might be more hindrance than help”.⁵

[62] The standard of competence is an objective one. The question is whether the lawyer under scrutiny applied the care or skill that any reasonable lawyer in the same position would have done.⁶

[63] Mr HI’s criticism of Mr JK is that he failed to keep him informed. He was also concerned that Mr JK was, on one occasion, late in attending court.

[64] Having carefully considered the information before me, I arrive at similar conclusion to the Standards Committee. There may have been occasions when Mr JK’s communication with Mr HI could have been better, but I am not persuaded that any of the alleged failings of communication identified by Mr HI were of sufficient gravity to merit consideration of a disciplinary response.

[65] Whilst not addressed by the Committee as a separate conduct inquiry, Mr HI’s complaint that Mr JK failed to provide him with competent representation, also traversed concerns that Mr JK had turned up late for a court hearing, which had resulted in Mr HI becoming extremely anxious and overwrought.

[66] Mr HI complains that when Mr JK did eventually arrive at court, he was clearly running late and as a consequence, dealt with both Mr HI and Mr HI’s appearance, in a hasty manner. Mr HI complains that Mr JK was brusque and abrupt.

[67] Mr HI’s complaint about competency overlaps to a degree with complaint that Mr JK had behaved discourteously towards him.

[68] I am unable to establish that Mr JK was late in attending court on the 5th of May, but it is clear that the degree of distress that Mr HI endured on that day was so severe as to present serious risk to his health. An ambulance had to be called. Mr HI was taken to hospital.

[69] Against this background, Mr JK maintains that Mr HI became extremely abusive towards him, to the extent that Mr JK was compelled to advise Mr HI that he could no longer continue to act for him, if the abuse continued.

⁵ Duncan Webb, Kathryn Dalziel and Kerry Cook *Ethics, Professional Responsibility and the Lawyer* (3rd ed, LexisNexis, Wellington 2016) at [11.1].

⁶ At [11.3].

[70] I accept that Mr HI's initial anxiety may have been prompted by concern that Mr JK was late in arriving at court, but the extremity of Mr HI's response, best evidenced by the need to call an ambulance to transport him to hospital, indicates that Mr HI's difficulties were the manifestation of more wide ranging issues than could reasonably be solely ascribed to anxiety arising from a lawyer arriving late to court.

[71] I am not persuaded that Mr JK failed to provide Mr HI with competent representation.

Issue 3 – Did Mr JK encourage Mr HI to provide false evidence to the court?

[72] Mr HI was understandably concerned that he may lose his licence. His livelihood depended on him being able to drive a vehicle.

[73] It is clear that on taking instructions, Mr JK was alerted to the fact that Mr HI's critical concern was the prospect of facing disqualification.

[74] Mr JK, correctly in my view, alerted Mr HI to the option of making an application to the court in which a case would be made out that there were special reasons relating to the accident. If such an application presents to the court as compelling, the court may give consideration to not imposing a period of disqualification.

[75] Applications which advance a case for special reasons must be supported by relevant evidence.

[76] Mr JK made inquiry of Mr HI as to whether he was suffering from stress at the time of the accident. That enquiry was the genesis for Mr HI's serious complaint that was to follow, being allegation that Mr JK had encouraged him to lie to the court.

[77] Mr HI argues that Mr JK had encouraged him to put an argument to the court that he was under stress at the time of the accident, when that was not the case. Construction, or as Mr HI considers it to have been, fabrication, of the "under stress" argument commenced initially with suggestion that Mr HI had been distressed by a fallout with a family member, but expanded into a wider consideration of mental health issues. Mr HI considered that he was being manipulated into advancing an argument that was not based on fact. Bluntly put, he makes accusation that Mr JK was encouraging him to lie to the court.

[78] Mr JK says that he had formed a view after talking with Mr HI, that there were grounds to support a special circumstances application. He says that he discussed the application carefully with Mr HI and made it clear what evidence would be required to support the application.

[79] Allegation that a lawyer has encouraged a client to lie to the court is a serious matter. As an officer of the court, a lawyer has a fundamental duty to uphold the law and to facilitate the administration of justice. The overriding duty of a lawyer is as an officer of the court.⁷

[80] If accusation that a lawyer has encouraged a client to lie to the court is to be established, there must be strong and persuasive evidence advanced.

[81] I am not persuaded that Mr JK encouraged Mr HI to fabricate a defence. I am satisfied that the strategy proposed by Mr JK was both sensible and realistic, and a strategy that Mr JK was correct to identify when Mr HI explained both the circumstances of the accident, and aspects of his personal circumstances to Mr JK. Mr HI provided Mr JK with contact details for his sister and Doctor. It is also clear from email exchanges between Mr HI and Mr JK, that Mr HI was attentive to following up with Mr JK to ascertain as to whether Mr JK had obtained information from his counsellor.

[82] This presents at odds with suggestion from Mr HI that he was being encouraged by Mr JK to lie about his circumstances.

[83] I think it likely the case, that as events progressed, Mr HI became anxious that the argument being advanced to support a special circumstances case was becoming too expansive, and potentially engaging a broader consideration of mental health issues which he considered were irrelevant and, if put to the court, possibly damaging to him.

[84] But there is no evidence to support suggestion that Mr JK was advancing a defence that encouraged Mr HI to mislead the court. It must also be emphasised that if Mr HI considered that his position was being overstated or misrepresented in any way, it was for him to alert Mr JK to his concerns. I see no indication in the relatively brief retainer, of Mr HI raising objection to the proposal that a special circumstances argument be put to the court on the basis that he was suffering considerable stress at the time of the accident.

Issue 4 – Did Mr JK breach any of his professional obligations by failing to appropriately manage funds received from Mr HI?

[85] Mr HI's first contact with Mr JK was by phone around the 24th of March 2016, at which time arrangements were made to meet later that afternoon.

⁷ Rule 2.1 of the Rules.

[86] Mr JK confirmed at the hearing that he had arranged to meet with Mr HI at his office on 24 March 2016 but had to cancel the meeting because of competing commitments.

[87] The first opportunity Mr JK had to attend on Mr HI was when he met with Mr HI at the court on the morning of 29 March 2017.

[88] Mr JK explains in his correspondence to the Complaints Service of 16 February 2017, that it was at this meeting on 29 March 2017, that he discussed with Mr HI the possibility of making a special reasons application, to endeavour to avoid what presented as the inevitable prospect of Mr HI being disqualified from driving. He says that Mr HI paid him \$1,500 in cash at that meeting and that he forwarded an invoice and client care information to Mr HI later in the day.

[89] Mr HI articulated his complaint in respect to the fee issue, as complaint that he had been required by Mr JK to pay “cash up front with no receipt or invoice”.

[90] In addressing this aspect of Mr HI’s complaint, the Committee refined its inquiry to a consideration of whether Mr JK had:

- (a) Failed to provide an invoice or a receipt for the payment made by Mr HI.
- (b) Accepted a cash payment for fees upfront.

[91] In framing the issues in that fashion, the Committee, correctly in my view, extended its inquiry beyond a simple examination as to whether a barrister could accept payment in cash, and whether an invoice should have been issued, to a broader consideration of the question as to whether Mr JK was entitled to require Mr HI to make an “upfront” payment.

[92] The first question is, was it permissible for Mr JK to ask for Mr HI to make a payment towards his fees, before commencing work or providing an invoice for work that had been completed?

[93] That inquiry necessarily commences with an examination of the relevant legislation, trust account regulations and conduct rules.

[94] Section 110 of the Act provides as follows:

110 Obligation to pay money received into trust account at bank

- (1) A practitioner who, in the course of his or her practice, receives money for, or on behalf of, any person—

- (a) must ensure that the money is paid promptly into a bank in New Zealand to a general or separate trust account of—
 - (i) the practitioner; or
 - (ii) a person who, or body that, is, in relation to the practitioner, a related person or entity; and
 - (b) must hold the money, or ensure that the money is held, exclusively for that person, to be paid to that person or as that person directs.
- (2) An incorporated firm that, in the course of its practice, receives money for, or on behalf of, any person—
- (a) must ensure that the money is paid promptly into a bank in New Zealand to a general or separate trust account of the firm; and
 - (b) must hold the money, or ensure that the money is held, exclusively for that person, to be paid to that person or as that person directs.
- (3) For the purposes of this section, a practitioner or an incorporated firm is deemed to have received money belonging to another person if—
- (a) that person, or a bank or other agency acting for, or on behalf of, that person, deposits funds by means of a telegraphic or electronic transfer of funds into the bank account of—
 - (i) the practitioner or incorporated firm; or
 - (ii) a person who, or body that, is, in relation to the practitioner, a related person or entity; or
 - (b) the practitioner or incorporated firm takes control of money belonging to that person.
- (4) A person commits an offence against this Act and is liable on conviction to a fine not exceeding \$25,000 who knowingly acts in contravention of subsection (1) or subsection (2).

[95] Regulations 9 and 10 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 provide as follows:

9 Restriction on debiting trust accounts with fees

- (1) No trust account may be debited with any fees of a practice (except commission properly chargeable on the collection of money and disbursements) unless—
 - (a) a dated invoice has been issued in respect of those fees, and a copy of the invoice is available for inspection by the inspectorate; or
 - (b) an authority in writing in that behalf, signed and dated by the client, specifying the sum to be so applied and the particular purpose to which it is to be applied has been obtained and is available for inspection by the inspectorate.
- (2) If fees are debited under subclause (1)(a), an invoice must be delivered or posted to the person who has a legal or beneficial interest in the trust account to be debited before or immediately after the fees are debited.

- (3) For the purposes of subclause (2), a practitioner or partner in the practice is not to be treated as having a legal or beneficial interest in the trust account to be debited, solely because the practitioner or partner issues the invoice in respect of that trust account.

10 Fees and disbursements paid in advance of invoice

All money paid to a practice in respect of professional services for which an invoice has not been issued, whether described as a retainer or otherwise, must be retained in a trust account until it is—

- (a) disbursed on the client's behalf; or
- (b) applied in payment of fees in accordance with regulation 9.

[96] Rule 14.10 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 provides as follows:

14.10 Where a barrister sole accepts direct instructions under rules 14.5.2(d) to (i), all money in advance of such work must be paid into a trust account of a fund holder who must be either:

- (a) a practice; or
- (b) a person or entity approved for that purpose by the Law Society.

The moneys must be held and dealt with in accordance with terms to be prescribed by the Law Society.

Schedule rule 14.10: replaced, on 1 July 2015, by rule 4(2) of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Amendment Rules 2015 (LI 2015/187).

[97] It has been described as the “accepted view”⁸ that the practice of prospective fee charging was impermissible because it had the effect of circumventing the protection trust accounts are intended to provide.

[98] In *Skagen v Wellington Standards Committee*,⁹ the Court distinguished between those situations where a lawyer has received fees in advance and an invoice has not been rendered, and those circumstances where a lawyer's client has been advised that the lawyer will be charging a fixed fee, and an invoice is issued for that fee, immediately payable, for the provision of services to be provided in the future.

[99] The Standards Committee concluded that Mr JK had committed a technical breach in that he had received funds before issuing an invoice. The Committee was satisfied that the breach was minor in the circumstances and did not merit a disciplinary response.

⁸ Paul Collins “Payment of fees in advance into a lawyer's practice or personal account” (2016) 900 LawTalk 39.

⁹ *Skagen v Wellington Standards Committee* [2016] NZHC 1772.

[100] In taking that approach, the Committee (adopting the approach in *Skagen*) noted that in order for a barrister to receive payment for work not yet undertaken, the payment in question should relate to a fixed fee, and an invoice should have been issued. The Committee concluded that Mr JK's fees were to be fixed, and acknowledged that at the time of payment, Mr JK had not issued an invoice.

[101] At the hearing, Mr JK was emphatic that he had informed Mr HI prior to meeting with him at court that he charged a fixed fee for a first attendance at court.

[102] Mr JK explained that this fee was to include work in:

- (a) meeting with Mr HI; and
- (b) taking instructions; and
- (c) perusal of the prosecution file; and
- (d) entering a plea; and
- (e) perusal of the summary of facts.

[103] Mr JK explained that it was his normal practice to charge a fixed fee for attendances of the nature described. Mr JK rejected suggestion that his request of Mr HI to bring \$1,500 to the court was, in essence, a request of Mr HI to pay fees "upfront".

[104] Mr HI did not dispute that Mr JK had made request of him to bring funds to the court, and quite understandably Mr HI's complaint did not focus on the issue as to whether Mr JK had breached various trust account regulations or those sections of the Act which reinforce the requirement for lawyers to pay funds received on account of fees into a trust account. Mr HI's concern was that Mr JK had failed to provide him with an invoice or receipt.

[105] The information forwarded to the LCRO following the hearing included a copy of an email forwarded by Mr JK to Mr HI at 2.16pm on the afternoon of 29 March 2016.

[106] The email says, "Dear [H], thank you for meeting me today. Please find attached my client care terms and an invoice".

[107] The email records two attachments, one under the heading "Client care...ur doc", the other, described as "Bill general doc".

[108] The invoice, clearly despatched shortly after Mr JK attended on Mr HI at court, records a fee charged inclusive of GST of \$1,500. The invoice is stamped with a note confirming that the invoice had been paid.

[109] The notation to the account records the work completed as “instructions from you, telephone discussions, meeting with you, review of police file, legal advice and attending court”.

[110] Mr HI is adamant that he never received an invoice or a receipt from Mr JK. I accept his evidence that he did not receive a copy of the invoice sent. It is unclear why the documents did not reach Mr HI.

[111] I am unable to reach any conclusion based on the evidence available, as to why Mr HI did not receive the emails sent.

[112] But I have before me, as did the Committee, a copy of the email despatched by Mr JK on the afternoon of the 29th of March 2016. I have the additional benefit (which the Committee did not have) of having been provided with a copy of Mr JK’s invoice.

[113] I am satisfied that Mr JK did send an invoice to Mr HI, and that the invoice sent effectively served as a receipt in that the invoice recorded the payment made by Mr HI.

[114] A file note prepared by Mr JK on the day he first attended court, confirms:

- (a) Receipt of payment in the sum of \$1,500.
- (b) An estimate of costs of \$3,000 to \$4,000 for advancing a special reasons (s 81) argument.

[115] Attention then returns to an examination of the question as to whether any conduct issues arise as a consequence of Mr JK making request of Mr HI to bring cash to court.

[116] Mr HI complains that a barrister should never accept cash from a client.

[117] I agree with the Committee that there is no general prohibition on barristers receiving payment in cash, and that the pertinent question to address was the issue as to whether Mr JK was entitled to receive payment, by whatever method, for services not yet provided.

[118] Mr JK argues that his obligation to ensure that monies received prior to work being completed was paid into a trust account, is addressed by the *Skagen* decision where the Court acknowledged the usual position with advance fee payments, that such

payments were trust funds and were to be held in a solicitor's trust account pending a fee invoice, but concluded that in circumstances where a lawyer made it clear to their client that a fixed fee was being charged and that part of the fee was payable in advance, the requirement that fees be held in a trust account did not apply.

[119] Mr JK argues that was precisely the position here. He contends that he advised Mr HI, in advance, that his fee for attendance at court would be \$1,500. He says that this was the fee he customarily charged for work similar to what he was undertaking for Mr HI

[120] Whilst Mr HI accepts that he was asked to bring money to the court, he was unable to recall any specific details of the transaction, other than that request was made of him to be in a position to pay money to Mr JK when he met with him.

[121] The Committee noted that it had been unable, when examining a number of the issues, to draw firm conclusions as to which of the diverging recollections of Mr JK and Mr HI likely provided most accurate account of what had occurred, in the absence of evidence which would assist in clarifying a particular point.

[122] A feature of this review hearing has been the extent to which the recollections of the parties diverge on most issues.

[123] It is a serious matter for a Standards Committee or Review Officer to make a conduct finding against a lawyer.

[124] A complainant — whatever the jurisdiction — is obliged to support their claim with evidence to the required standard; in this case, the balance of probabilities.

[125] Mr HI carries the burden of establishing, on the balance of probabilities, that the allegations he makes concerning Mr JK's conduct are established.

[126] An applicant who is disappointed with a Committee's decision must, on review, establish that it is more probable than not that despite what the Committee found, there is evidence of a professional or ethical lapse by the lawyer who was the subject of the complaint.

[127] I have concerns regarding the manner in which Mr JK received funds from Mr HI, but those concerns are not focused on the matters which appeared to be most critical to Mr HI, being his discomfort that he had not been provided with an invoice or receipt and his discomfort with having been required to make a payment in cash. Rather, the broader issue is whether it was appropriate for Mr JK to receive funds in a manner which could be seen to have circumvented the trust accounting requirements.

[128] Mr JK argues that he was entitled to receive fees from Mr HI without requirement to pay those fees into a trust account, because he had advised Mr HI that he would be charging a fixed fee for the services to be provided.

[129] If that was the case, it would be expected of Mr JK that he had explained the arrangement clearly to Mr HI.

[130] I think it probable that it was Mr JK's intention when he first spoke with Mr HI that he would meet with Mr HI prior to the court hearing but circumstances arose that necessitated Mr JK cancelling the meeting that had been arranged.

[131] The ability to reschedule a meeting would have been complicated by the fact that the 2016 Easter break commenced on Friday 25th of March 2016. Mr JK's office would likely have been closed on both the Friday and following Monday.

[132] This meant that the first opportunity Mr JK had to meet with Mr HI, was when the matter was called in court on the 29th of March 2016.

[133] In the information forwarded to the LCRO after the conclusion of the review hearing, Mr JK included an undated file note which it can be reasonably concluded from its contents was a record of the telephone conversation that he had with Mr HI when he first took instructions. That file note presents as conventional in the manner in which it records the "basic" information that a criminal barrister would be expected to record when first speaking with a client.

[134] The file note records Mr HI's personal details, identifies the charge Mr HI faces together with the date he is next scheduled to appear in court, and records the importance to Mr HI of him retaining his drivers licence.

[135] The file note records that Mr JK had advised a fee of \$1,500 to attend sentencing, review pleas, and to assess the possibility of advancing a defence to the charge.

[136] Whilst Mr HI has expressed a degree of scepticism as to whether the file notes produced by Mr JK were genuine, I have no evidence before me to suggest that the file notes made by Mr JK are not as they appear to be, an accurate summary of his recording of instructions. The file notes are uncontroversial and provide record, in conventional form, of matters a barrister would customarily address with his or her client when first taking instructions.

[137] Mr HI's concerns as to the legitimacy of the file notes appear to have been exacerbated by Mr JK's response to my request to provide his file.

[138] Rather than simply forward in its entirety what was a relatively small file, Mr JK photocopied selected file notes and despatched these to the LCRO.

[139] On request being made of Mr JK to provide his complete file, an examination of that file when received, confirmed, as noted, that Mr JK had apparently incorrectly recorded on copies made the date of some of the file notes provided.

[140] The manner in which Mr JK recorded his file notes, being that a number appear to have been drafted on the cover of his file, presents as somewhat haphazard.

[141] I am satisfied however that Mr HI was advised that Mr JK's fee for attending at court would be \$1,500.

[142] The Standards Committee noted that Mr JK had not provided Mr HI with an invoice for what he describes was a fixed fee, until after he had appeared for Mr HI at court on 29 March 2016.

[143] This placed Mr HI at risk of breaching r 14.10 which requires that a barrister who accepts direct instructions, pay funds received in advance into a trust account of a fund holder.

[144] Whilst the Committee concluded that Mr JK's failure to issue an invoice prior to the work being completed (being that it was his argument that a fixed fee had been agreed at commencement) constituted a technical breach, the Committee considered the breach to have been minor and not meriting of a disciplinary response.

[145] Having carefully considered the explanation provided by Mr JK, I find myself in agreement with the Committee that whilst a conduct breach may have occurred, the breach was not of sufficient severity to warrant a disciplinary response.

[146] I have the benefit of being provided with further information that was not available to the Committee.

[147] I am satisfied that the experience of having to address complaint that the manner in which he received payment for fees rendered was unsatisfactory, has prompted Mr JK to reflect on his billing practices.

[148] Mr JK says that he recognises the difficulties in accepting cash payments from clients, and no longer does so. He has changed his approach to billing clients and has encouraged junior barristers who operate from his chambers to do the same.

Did Mr JK terminate the retainer without good cause?

[149] Mr HI complains that Mr JK terminated the retainer without giving him notice of his intention to do so.

[150] Mr HI says that he was present at court on the 14th of July 2016 with expectation that Mr JK would be turning up to represent him, when he received a telephone call from Mr JK. He says that Mr JK advised him that he was no longer prepared to act for him and suggested that he seek assistance from a duty solicitor. Mr HI says he had a friend attending court with him who is able to confirm his account of events.

[151] Mr JK rejects suggestion that he advised Mr HI on the morning of the hearing that he was no longer prepared to represent him. He says that he had advised Mr HI well before the 14th of July 2016 that he was terminating the retainer. Mr JK says that Mr HI had been extremely abusive to him on more than one occasion, and he had made it clear that he was not prepared to continue to act in the face of what he considered to be was an extreme level of provocation.

[152] At the hearing, there was agreement that a telephone conversation had taken place on the morning of 14 July 2016, but disagreement as to who had initiated the call.

[153] Mr HI was adamant that he had been phoned by Mr JK, and that the purpose of the call was to inform him that Mr JK would not be attending court.

[154] It was Mr JK's recollection that Mr HI had initiated the call, but he accepted that it was possible that he had phoned Mr HI.

[155] The Committee noted that these conflicting accounts presented very much as a "he said, he said" situation, and determined that it was unable to conclude that there was persuasive evidence that Mr JK had terminated the retainer without good cause on the day of the hearing.

[156] The question as to who initiated the phone call is not determinative of the issue as to whether Mr JK informed Mr HI of his intention to terminate the retainer. But, it is a reasonable question to ask of Mr JK as to why he would have thought it necessary to phone Mr HI at court on the morning of 14 July 2016, if he had made it clear to Mr HI well in advance of that date, that he would not be continuing to represent him, and was satisfied that he had met his obligation to assist Mr HI in securing the services of another lawyer.

[157] Mr JK says that if he had phoned Mr HI, he would have done so to check that Mr HI was okay. He says that he was particularly mindful that Mr HI became very apprehensive when required to attend court.

[158] When considering the question as to whether Mr JK terminated the retainer without good cause, little assistance can be gleaned from focusing on the issue as to which of the parties initiated the call on the morning of 14 July.

[159] The critical issue to consider is whether Mr JK gave Mr HI adequate notice of his intention to terminate the retainer.

[160] If Mr JK considered that he could no longer continue to represent Mr HI because Mr HI's attitude towards him had become so abusive that it was no longer practical or feasible for him to continue to represent Mr HI, he was entitled to bring the retainer to an end, but obliged to do so in a way which ensured that Mr HI had adequate time and opportunity to find another lawyer.

[161] It would, for reasons that are obvious, be unacceptable for a lawyer to inform their client at the court door that they were no longer prepared to represent them.

[162] Mr JK says that he had a discussion with Mr HI between 5 May (the day when Mr HI became unwell at court) and 14 July (the day Mr HI was to appear again in court) and in the course of that discussion had advised him that he could no longer represent him.

[163] Mr JK says, that on being advised that he was not prepared to continue to represent him, Mr HI informed him that he would engage a lawyer with whom he'd had dealings with over a number of years.

[164] Mr JK says that after speaking with Mr HI he was satisfied that Mr HI would secure alternate representation for the impending hearing.

[165] Mr JK was questioned as to whether it would be his normal practice, when terminating a retainer in circumstances such as these, to confirm those instructions in correspondence to his client.

[166] Mr JK could not recall writing to Mr HI in those terms, and there was no evidence of him having done so on the file provided.

[167] Mr JK noted however that it would be his usual practice to make a file note recording the circumstances in which a retainer had been terminated.

[168] On 3 June 2016, Mr JK recorded in a file note, matters discussed with Mr HI in a telephone discussion that had taken place that day.¹⁰ Mr JK notes that:

“Discussed him failing to provide medical information. And failing to meet me. He became abusive again. Screamed and swore at me. I explained I would not continue to act for him, that no one should have to put up with this abuse. And that I would not. He said he’d get his ‘usual solicitor’”.

[169] A file note made by Mr JK on 14 July 2016 records Mr JK’s account of the conversation with Mr HI that took place whilst Mr HI was waiting for his matter to be called.¹¹ Mr JK records the following:

“I explained I could not act for him because of his abusive behaviour/& was not coming to court today & this had been discussed with him. He became distressed & would not talk further. Passed phone to sister. Discussed with friend that I would not act for him because of his behaviour. She agreed. Discussed seeing a duty solicitor and how to adjourn to get his solicitor”.

[170] On the evidence of the file notes, it would appear to be the case that Mr JK had discussed with Mr HI as early as 3 June 2016 the possibility that he was not prepared to act for him, and that it was his understanding from that point on, that Mr HI was intending to instruct a lawyer whom Mr HI regarded as his “usual” lawyer, to take over the case.

[171] However, that construction of events is not supported by the evidence of a series of email exchanges that took place following the discussion of 3 June 2016.

[172] On 10 June 2016, Mr HI wrote to Mr JK making enquiry as to whether Mr JK had had an opportunity to speak to a counsellor who had indicated a willingness to provide a statement to assist Mr HI with his special reasons application.

[173] Mr JK responded promptly to advise Mr HI that he would need to inform the counsellor that Mr JK would be in touch, this to ensure that the counsellor was aware that he was authorised to speak to Mr JK.

[174] On 2 July 2016, Mr HI made further enquiry (by email) of Mr JK as to whether he had managed to make contact with the counsellor. Mr HI refers in this email to having sent two previous emails to Mr JK asking for an update.

¹⁰ The file note is prefaced with the code TTC. Whilst not clarified with Mr JK at the hearing, I assume this code is intended to describe a call initiated by him: “telephone to client”.

¹¹ This file note is coded Tf client, which I assume is to record that the call is received from a client.

[175] On 6 July 2016, Mr HI wrote further to Mr JK, again seeking clarification as to whether he had managed to acquire information from the counsellor.

[176] Mr JK responded to Mr HI and informed him that he had been unable, at that juncture, to obtain the information from the counsellor that he was seeking.

[177] On 11 July 2016, Mr HI sought clarification from Mr JK as to the precise nature of the evidence that Mr JK was hoping to obtain from the counsellor.

[178] Mr JK responded on 11 July 2016 with advice to Mr HI that he had expectation that the counsellor's report would confirm that Mr HI had been labouring under significant stress.

[179] Despite the apparent difficulties in securing what seems to have been a brief and seemingly straightforward report from Mr HI's counsellor, a report eventually surfaced.

[180] Included in the documents on the Standards Committee file, was a report from the counsellor dated 12 July 2016.

[181] I assume this report was forwarded to Mr JK's office.

[182] Included amongst the documents on Mr JK's file were two medical reports from Mr HI's doctor, the first dated 29 March 2016, the second 12 July 2016. These reports, clearly obtained with purpose to bolster the strategy being advanced by Mr JK, provided evidence to the court of Mr HI's medical history, and recorded that he was struggling with depression and stress.

[183] It is against the backdrop of Mr JK continuing to engage with Mr HI right up until the time that Mr HI was to reappear in court on 14 July 2016, that Mr JK's argument that he had terminated the retainer must be assessed.

[184] I accept Mr JK's evidence that Mr HI became extremely agitated at court on 5 May 2016, and that the level of animosity Mr HI expressed to Mr JK on that day was of such intensity, that it prompted Mr JK to give consideration as to whether it was feasible for him to continue to represent Mr HI.

[185] I also consider that Mr JK's file note of 3 June 2016, provides further evidence of the difficulty that Mr JK was having in managing Mr HI.

[186] But whilst Mr JK's file note of 3 June 2016 would appear to indicate that Mr JK had advised Mr HI on that day that he was terminating the retainer ("explained I would

not continue to act for him”), it is clear from what followed, that despite this, Mr JK continued to represent Mr HI.

[187] There is no evidence that Mr JK had, between 3 June and 14 July, made it clear to Mr HI that he would not be appearing for him in court on 14 July 2016.

[188] The email exchanges between Mr JK and Mr HI of 10 June, 2 July, 6 July and 11 July, give clearest indication that Mr JK was continuing to marshal evidence to support the special reasons argument he was proposing to run. Absent from any of these communications is any hint of suggestion that Mr JK was no longer Mr HI’s counsel.

[189] On 11 July 2016, Mr JK was advising Mr HI of the perspective the counsellor could usefully emphasise when preparing his report so as to best assist Mr HI’s argument.

[190] It presents as untenable for Mr JK to argue that he had made it clear to Mr HI that he would no longer be representing him, when two days out from the court hearing, Mr JK was providing advice as to the evidence that was required to support the argument he was intending to advance in court.

[191] I am not persuaded that Mr JK at any point in the retainer, made it clear to Mr HI that he was no longer prepared to represent him.

[192] I think it probable that Mr JK in the course of what was clearly a heated conversation with Mr HI on 3 June, expressed frustration with what he perceived to be a belligerent and unhelpful attitude on Mr HI’s part, and that he informed Mr HI that he was contemplating terminating the retainer. I think it also probable that this indication was likely met with response from Mr HI that he would set to and instruct his own lawyer.

[193] But an expression of possibility of termination falls well short of what would be required in these circumstances, being a clear and unequivocal indication from a lawyer to their client of an intention to terminate a retainer.

[194] It is a serious matter for a lawyer to terminate a retainer, and a decision that must be made with a consideration of a lawyer’s obligation to complete the regulated services required by their client under the retainer,¹² and with awareness that a lawyer must, unless there is agreement between lawyer and client to terminate, have good cause to terminate,¹³ and provide reasonable notice to the client specifying the grounds for termination.

¹² Rule 4.2 of the Rules.

¹³ Rule 4.2(c).

[195] A lawyer who terminates a retainer must give reasonable assistance to the client to find another lawyer.¹⁴

[196] But whatever signals may have been given on 3 June 2016 to possibility of the retainer ending, it is clear that the retainer was not terminated on that date.

[197] At 9.32 pm on the evening of Monday 11 July 2016, Mr JK was advising Mr HI of what he required Mr HI's counsellor to provide in his report.

[198] Mr HI was to appear in court three days later.

[199] A medical report crafted to support the special reasons argument was provided to Mr JK's office just prior to the hearing.

[200] Mr JK had not terminated his retainer with Mr HI.

[201] In the face of the communications between Mr JK and Mr HI prior to the hearing, and the subject matter of those communications, it is difficult to understand as to why Mr JK considered that he was not required to attend at court on the 14th of July.

[202] At best, Mr JK may argue that he had been proceeding from a genuinely held belief that the retainer had been terminated, and that his communications with Mr HI were simply intended to provide assistance.

[203] But argument that Mr JK had terminated the retainer on 3 June 2016, is entirely contradicted by the evidence of Mr JK's email of 10 June 2016, in which he advises Mr HI of his intention to call Mr HI's counsellor.

[204] The email exchanges between 10 June 2016 and 11 July 2016 give the clearest of indications that Mr HI understood that Mr JK was continuing to act for him.

[205] It presents as inexplicable that Mr JK apparently took the view on the morning of 14 July 2016, that he had no obligation to attend at court to represent his client.

[206] Nor is there evidence of Mr JK having taken any steps to assist Mr HI to secure the services of another lawyer, and to the extent that this issue is addressed by Mr JK, he argues that Mr HI had informed him that he would instruct a lawyer who had previously represented him.

¹⁴ Rule 4.2.4.

[207] It would also have been required of Mr JK, if it was his understanding that he had terminated the retainer, to have sought leave from the court to be excused of his obligation to continue to represent Mr HI.

[208] Mr JK considered that this obligation had been met by him having been told by Mr HI of his intention to engage another lawyer, or alternatively, by him advising Mr HI on the morning of the hearing that he could seek assistance from a duty solicitor.

[209] But it would have been obvious to Mr JK that at no stage, despite the earlier unpleasant exchange at court and seemingly acrimonious telephone discussion of 3 June 2016, did Mr HI give any indication other than that Mr HI believed that Mr JK would be continuing to represent him.

[210] It is a serious matter for a lawyer to fail to turn up to represent their client at a court hearing.

[211] The potential for this to cause distress to a client is so obvious as to not require amplification.

[212] The potential for distress in this particular case was obvious, particularly when considering Mr HI's circumstances.

[213] Mr HI suffered from anxiety attacks. I intend no disrespect to him, but it is clear that Mr HI was not an easy client to manage.

[214] But it was Mr JK's responsibility to look after his client.

[215] Leaving Mr HI without representation on the morning of his court hearing, was the worst possible outcome for Mr HI.

[216] Mr HI was ill equipped to handle uncertainty.

[217] His earlier fretful presentation at court, his seemingly on occasions confrontational manner, and his obvious anxiety to understand what was happening with the gathering of information to support his defence, all pointed to a need to ensure that Mr HI was kept informed.

[218] I am satisfied that Mr JK did not advise Mr HI that he was terminating the retainer.

[219] His failure to attend at court on the 14th of July 2016 to represent Mr HI constituted unsatisfactory conduct, being that it was:

- (a) conduct that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer;¹⁵ and
- (b) conduct that would be regarded by lawyers of good standing as being unacceptable, being that it was unprofessional.¹⁶

[220] Having reached conclusion that Mr JK did not inform Mr HI that he was terminating the retainer, I consider that Mr JK breached r 4.2 of the Rules in failing to complete the regulated services required under the retainer.

[221] That breach being established, I consider the breach merits a finding of unsatisfactory conduct under s 12(a), (b) and (c) of the Lawyers and Conveyancers Act 2006.

Penalty

[222] Having concluded that Mr JK's conduct was unsatisfactory, attention then turns to the question as to whether imposition of any further penalty is required, in addition to the entering of an unsatisfactory conduct finding.

[223] I consider that Mr JK's failure to appear in court presents as a serious breach of the duty Mr JK owed to his client.

[224] In failing to discharge his responsibility to represent Mr HI on the special reasons application, Mr JK effectively rendered much of the work that had been done for Mr HI of little use to him.

[225] A penalty imposed must present as a proportionate response, which adequately meets the needs of the Act.

[226] I consider an order that Mr JK cancel his fee and refund monies received presents as an appropriate penalty.

Costs

[227] Where a finding of unsatisfactory conduct is made or upheld against a practitioner on review it is usual that a costs order will be imposed. I see no reason to depart from that principle in this case.

¹⁵ Section 12(a) of the Act.

¹⁶ Section 12(b)(ii) of the Act.

[228] Taking into account the Costs Orders Guidelines of this Office, the practitioner is ordered to contribute the sum of \$1,200 to the costs of the review, that sum to be paid to the New Zealand Law Society within 30 days of the date of this decision.

[229] The order for costs is made pursuant to s 210(1) of the Lawyers and Conveyancers Act 2006.

Enforcement of orders for payment of money

[230] Pursuant to s 215 of the Lawyers and Conveyancers Act 2006 I confirm that the order for costs may be enforced in the civil jurisdiction of the District Court.

Publication

[231] 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 bereft of anything as might lead to their identification.

Decision

- (a) Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the decision of the Auckland Standards Committee 1 to take no action on the complaint that Mr JK terminated the retainer without good cause and failed to provide Mr HI with reasonable assistance to find new representation is reversed, and substituted with a determination that there has been unsatisfactory conduct on the part of Mr JK pursuant to s 12(a), (b), and (c) of the Lawyers and Conveyancers Act 2006.
- (b) Mr JK is to cancel his fee rendered on 29 March 2016 in the sum of \$1,500 (GST inclusive) and refund that sum to Mr HI (pursuant to ss 156(1)(f) and (g) of the Lawyers and Conveyancers Act 2006).
- (c) Mr JK is to pay \$1,200 in respect of costs incurred in conducting this review pursuant to s 210 of the Lawyers and Conveyancers Act 2006. Those costs are to be paid to the New Zealand Law Society within 30 days of the date of this decision.
- (d) In all other respects the decision of the Standards Committee is confirmed.

DATED this 6TH day of August 2020

R Maidment
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 HI as the Applicant
Mr JK as the Respondent
[CITY] Standards Committee [X]
New Zealand Law Society
Secretary for Justice