

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

[2023] NZLCRO 51

Ref: LCRO 208/2021

CONCERNING

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

AND

CONCERNING

a determination by [X] Standards Committee

BETWEEN

PK

Applicant

AND

GH

Respondent

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

Introduction

[1] Mr PK has applied for a review of the determination by [X] Standards Committee in which the Committee made a finding of unsatisfactory conduct by Mr PK and imposed orders.

Background

[2] On 21 May 2020, Mrs GH sent an email to Law Firm A (Firm) requesting an appointment to discuss various matters. A partner of the firm (Mr OA) had previously acted for Mrs GH but had retired.

[3] Mrs GH's email was referred to Mr PK and he met with her on 4 June. At that stage, Mrs GH had placed her existing property at House A on the market and was interested in purchasing a property in [redacted]. She advised Mr PK that it was

proposed that she and her son (K) and daughter-in-law (L) would together purchase a replacement property for her to live in. She advised Mr PK that other members of the family were unhappy about the proposal.

[4] Mr PK's immediate instructions from Mrs GH were to act for her on the sale of the House A property. He issued his letter of engagement on 15 June and says that he expected to receive instructions subsequently for the purchase of the property that Mrs GH was going to live in.

[5] Relevant parts of Mr PK's letter of engagement read:

Services to be Provided

We will deal with all matters relating to the sale of your property at House A.

Fees

The firm's fees are based on NZ Law Society guidelines and will take into account all relevant factors, including the time spent on the engagement by professional staff at charge out rates appropriate to their levels of skill, experience and responsibility.

...

This file will be charged on a time basis at my hourly rate (currently \$350.00 per hour) plus GST. ...

Master Terms of Business

All services are provided subject to the terms and limitations set out in our Master Terms of Business which are attached.

[6] The Master Terms of Business included:

Services

The services we will provide for you are as instructed by you from time to time. If we can assess the extent of the services you require when we receive your instructions then we may outline the scope of our services in an engagement letter. **No tax advice** will be provided. By instructing us to act for you, you are deemed to have accepted these Terms.

Fees

If we provide you an engagement letter then the fees we will charge, or the manner in which they will be arrived at, will be set out in our engagement letter.

Our professional fees are based on NZ Law Society guidelines and will take into account all relevant factors including: ...

[7] The factors to be taken into account as provided in r 9.1 of the Conduct and Client Care Rules¹ were then included in full.

¹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

[8] The Master Terms of Business continued:

A key consideration is usually the time spent by professional staff on the engagement at charge out rates appropriate to their levels of skill, experience and responsibility. Charge out rates change from time to time and are available on request. They currently range from \$100 to \$395 per hour.

[9] The agreement for the sale of the House A property was declared unconditional on 19 June and Mr PK says he “heard no more from Mrs GH regarding her sale or a proposed purchase until advised by email on 3 August from her agent that Mrs GH had *‘bought a property and is asking to bring the settlement forward to 21 August 2020.’*”²

[10] In a telephone call to a member of Mr PK’s staff (Ms DF), Mrs GH advised that Mr QS was acting for herself, K and L for the purchase of a property at House B. In an email to Mr PK on the same day, Mrs GH requested Mr PK to advise her about matters relating to insurance of the property that she was purchasing.

[11] Parts of that email read:

... No doubt [redacted] will let you know what the balance of the mortgage is to be paid, and the balance after your account is deducted should be deposited in my bank account.

One other problem has emerged. This town house is part of a ‘body corporate’ and both owners should have the same insurers because of this. I was directed by [redacted] to contact [redacted] Insurance, which I have done, only to learn that the owner of [redacted] had been insured by [redacted] but two years ago stopped his insurance payment to [redacted]. It was Mr WC at the time. He did not indicate that he was insuring with anyone else and [redacted] are now unsure how to proceed.

[redacted], the insurance broker I spoke to at [redacted] asked if you on my behalf should contact the present owner of and explain the terms of ‘body corporate’ insurance and enquire whether they are insured with any other insurance company? Are you able to do this on my behalf and hopefully we can sort things out?

[12] The other owner of the property in the unit title development (House B) was Mr WC. Mr WC also owned House C but that was not part of the Body Corporate.

[13] Mr WC had insured the two properties owned by him with [redacted] Insurance but had cancelled the policies and did not reinsure them. This resulted in the Body Corporate defaulting in its responsibility to insure the development, being House B.

[14] Coincidentally, Mr WC had instructed Mr PK to advise him about the matter and Mr PK wrote to Mr QS on 18 August. His letter began:

² PK letter to Legal Complaints Service (17 March 2021).

RE BODY CORPORATE [Redacted] – House B

We act for Mr WC who is the registered owner of the property at House B contained in [redacted]

[15] He suggested that he and Mr QS collaborate to resolve the insurance issue to ensure that Mr WC and Mrs GH met their obligations under the Unit Titles Act 2010. He canvassed the matters that he considered necessary to be addressed and included an agenda to be used for an annual general meeting of the Body Corporate.

[16] On 20 August, Mr PK received a draft Property Sharing Agreement (PSA) from Mr QS so that he could provide independent advice to Mrs GH. Mr QS also sent the forms that Mrs GH needed to sign to complete the purchase and transfer title to herself, K and L.

[17] The PSA was sent to Mr PK in a form that he could alter and he made changes to the document. He met with Mrs GH later that day and advised her of the changes he had made. He then gave the document to Mrs GH to take with her, advising that she could sign it later and have her daughter witness her signature.

[18] Mr PK rendered his account on 26 August. The invoice was expressed to be for “attendances in the above matter from 25 May 2020 to 26 August 2020”.³ The fee was \$2,384 plus GST and disbursements.

Mrs GH’s complaints

[19] Mrs GH’s complaints were lodged by her son, K, on her behalf.

Fees

[20] Mrs GH’s complaints were largely about the quantum of Mr PK’s fees. Prior to making the complaint, Mrs GH had received Mr PK’s time records. She took issue with the length of time recorded for various tasks and says that some of the entries are incorrect.⁴ She also asserted that Mr PK was not responsible for completing some of the work recorded.⁵

[21] Mrs GH also said that Mr PK did not have her authority to deduct fees from funds held in the firm’s trust account.

³ The invoice referred to the sale of House A.

⁴ For example – items 11 and 12 of the time records refer to several telephone calls. Mrs GH says there was only one telephone call.

⁵ For example, she says that L resolved issues about the agent’s commission and that Mr QS had attended to matters relating to the Body Corporate insurance.

Conflict of interests

[22] Mrs GH complains that Mr PK was conflicted in that he acted for Mr WC with regard to Body Corporate matters and should not have given her advice on the same matters.

Property Relationship Agreement

[23] Mrs GH complained that Mr PK had mistakenly thought that her daughter was L and had asked her to leave the room while he discussed the terms of the document with her.

[24] Mrs GH was also not happy with the amendments Mr PK made to the document and that he had given her the document to take away and sign in the presence of her daughter with whom she was living at the time.

[25] Mrs GH also considered that the time recorded for dealing with this matter was more than the time spent.

Mr PK's manner

[26] Mrs GH was upset at how Mr PK had treated her and felt that he had become unapproachable.

Terms of engagement

[27] Mrs GH says she did not recognise the sender of the email forwarding the terms of engagement. She says that she did not therefore see the terms of engagement.

Outcomes sought

[28] The outcomes sought by Mrs GH was to have the time recorded reduced to reflect what Mrs GH feels was the time taken. Implicit in this request is that Mr PK's fees should be reduced.

Mr PK's response⁶*Fees*

[29] Mr PK says that his fees were “directly related to the time recorded on the file” and that the fees were fair and reasonable. He considered he could have charged more if he had taken all of the fee factors into account.⁷ This included urgency with which he had dealt with matters.

[30] Mr PK confirms that he did not charge for any work after 21 August which had included resolving the issue of the agent's commission.

[31] Mr PK then addressed items 5, 11, 12 and 13 in his time records which Mrs GH had referred to in her complaints.

Deducting fees from funds held

[32] Mr PK pointed out that Mrs GH had acknowledged that she did receive the email sending the firm's terms of engagement. He advises that he had only deducted fees after having sent the invoice and had complied with the Trust Account Regulations.⁸

Conflict of interests

[33] Mr PK provided a detailed chronology of events when acting for Mrs GH. These included the details of his dealings with Mr WC.

[34] He said he had no instructions from Mr WC to act on his behalf in relation to Body Corporate matters and “at the most, Mr WC reluctantly acknowledged that he should pay his share of the Body Corporate insurance premium”.

Other matters

[35] Mr PK believes that Mrs GH was confused when she thought that Ms DF had said that the invoice would be \$3,500. He thinks that Mrs GH had confused this with the amount of the agent's commission which she was discussing with Ms DF at the same time.

⁶ Email PK to Lawyers Complaints Service (17 March 2021).

⁷ Rule 9.1.

⁸ Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

[36] Mr PK says that his email of 26 August was sent in response to an email which Mrs GH had sent to Ms DF earlier in the day in which she had said:

Please tell PK not to ring me but to send me his bill. I will seek independent advice elsewhere. If the bill is as high as I thought you said, I shall no longer be a client of Law Firm A. Thank you ...

[37] Mr PK says that in his email he:

...reasonably concluded in my message to her that if she was dissatisfied with the services she received from Law Firm A then she is entitled to take her business elsewhere. For our part, we see little merit in continuing to act for clients when they are unwilling to pay our reasonable charges.

[38] Mr PK does:

...not see how any reasonable person could take offence to those comments, especially having regard to the fact they were in direct response to her comments received earlier that day that she would no longer be a client of my firm if I rendered her an invoice and the quantum of fees charged were as previously indicated by me.

[39] Mr PK says that if Mrs GH was stressed then she was the creator of her own situation, and that he had dealt with matters promptly.

[40] He says that the fees charged by Law Firm A in previous transactions speak for themselves, and that the work done by him was significantly more than in those matters.

[41] In summary, Mr PK considered his fees to be fair and reasonable.

The Standards Committee determination

[42] The Committee summarised Mrs GH's complaints as being that Mr PK:⁹

- a. was discourteous;
- b. deducted his fee from funds held in trust without her consent;
- c. charged an excessive fee;
- d. charged for work outside the terms of engagement; and
- e. acted in a conflict of interest situation on the work outside the terms of engagement.

[43] It then recorded the issues to be addressed:¹⁰

- a. Mr PK's letter of engagement defined the scope of the brief and the fee factors to be taken into account, however, later work undertaken and

⁹ Standards Committee determination (29 November 2021) at [2].

¹⁰ At [4].

charged for was outside that specified brief and the account was charged on a time only basis;

- b. Mr PK stated he did not charge for anything past 21 August 2020 when the invoice rendered stated it was for work from 25 May to 26 August 2020;
- c. Mr PK did not inform the client about the increase in hourly rate from that stated in the letter of engagement; and
- d. Mr PK acted in a conflict of interest in that while acting for the complainant purchaser he wrote to her counsel on the purchase outside his brief (but which he charged her for) stating he acted for the vendor.

The letter of engagement

[44] The Committee observed that items 11, 12 and 13 on the time records provided by Mr PK were not part of the work identified in the terms of engagement to be carried out by Mr PK. Items 11 and 12 related to the Body Corporate issues whilst item 13 related to attendances connected to the PSA.

[45] The Committee noted that there was no dispute that Mr PK had been asked to do this work. Nevertheless, the Committee noted that Mr PK had not updated the terms of engagement as required by r 3.6 to include this work and commented that “had he done so there would have been clarity for Mrs GH.”¹¹

[46] Although the Committee did not clearly state that it determined Mr PK had breached r 3.6, it seems that it was its view.

[47] The Committee then addressed the fact that Mr PK’s fee had been calculated only on the basis of time recorded and that he had not taken note of the r 9.1 factors. It said:¹²

The Committee noted that as the hourly rate is only one of the numerous reasonable fee factors and has no more importance than any other, that this was not an appropriate way to calculate fees and that by not taking all reasonable fee factors into account Mr PK breached RCCC 9 and 9.1.

[48] The Committee continued:¹³

The Committee noted that breaches of the Rules do not automatically constitute unsatisfactory conduct. However, the rules around ensuring the client is always made aware of the lawyers terms are fundamental to the solicitor/client relationship being clearly understood to avoid the situation that occurred in this matter. Also, while Mr PK may have been confident he could have charged more than he did, the reasonable fee factors must be applied and seen to be applied. They are not discretionary.

¹¹ At [11].

¹² At [13]

¹³ At [14].

[49] Having addressed these issues, “the Committee determined that the breaches of the rules on this aspect of the complaint constituted unsatisfactory conduct”.¹⁴

The invoice

[50] The invoice provided by Mr PK stated that it was for professional services between 25 May to 26 August 2020. The sale of the House A property settled on 21 August. Mrs GH’s objection to including any work after this date was that it would have been outside the work specified in the terms of engagement. She says that there would not have been the need for any attendances relating to the sale after 21 August.

[51] The Committee noted that Mr PK advised that he had not charged for any time after that date and speculated as to the reasons why the date of 26 August may have been referred to in the invoice.

[52] Having considered the matter, the Committee “gave Mr PK the benefit of the doubt”¹⁵ and determined that there was insufficient evidence to support an adverse finding on this issue.

Increase in Mr PK’s charge out rate

[53] The terms of engagement provided by Mr PK included advice that his fee would be calculated on the basis of an hourly rate of \$350. Instead, his rate had changed to \$400 per hour and Mrs GH had not been advised of this increase.

[54] The Committee noted that this was an increase of over 14 per cent which amounted to a difference of \$235 plus GST.¹⁶

[55] The Committee noted that Mr PK had not addressed this issue in his response to the complaint and that Mrs GH was correct. The Committee determined that this amounted to a breach of r 3.6, and said:

The Committee noted that the breach of the rules only caused an unexpected increase in the account of \$235.00 plus GST on this occasion which was not a large sum. However, it was an increase of over 14% which is significant. Mr PK was obliged to inform his client of the increase. Again, had he done so Mrs GH would have had clarity regarding the amount she was to be charged and made decisions related to that if she wished. She was not afforded that option. She was instead simply presented with an account with that higher rate charged. In the circumstances the Committee determined that that breach of RCCC 3.6 constituted unsatisfactory conduct.

¹⁴ At [15].

¹⁵ At [19].

¹⁶ At [20].

The alleged conflict of interests

[56] The Committee noted that Mr PK had advised that he did not have instructions from Mr WC, whereas the letter sent to Mr QS on 18 August 2020 stated that he was acting for Mr WC in relation to Body Corporate issues. However, the Committee noted that the interests of Mrs GH and Mr WC were aligned and determined to take no further action on this complaint.

Summary

[57] The Committee determined:¹⁷

... that Mr PK had engaged in unsatisfactory conduct under s 152(2)(b)(i) of the Lawyers and Conveyancers Act 2006 (the Act) related to issues a. and c. [above at [36] of this decision].

However, the Committee also determined to take no further action under s 152(2)(c) of the Act on issues b. and d. The Committee determined Mr PK was to be given the benefit of the doubt on issue b. that there was no work charged after 21 August and therefore no breach of RCCC 3 or 9 in relation to that issue. The Committee also determined in relation to issue d that although it was not advisable for Mr PK to act for both parties to the extent he may have, it was unclear whether he had done so, there was no breach of RCCC 6.1 as the interests of the clients were aligned.

[58] Although the Committee did not expressly say so, the findings of unsatisfactory conduct were made by reason of the breaches of the Conduct and Client Care Rules, which constitutes unsatisfactory conduct as that term is defined in s 12(c) of the Lawyers and Conveyancers Act 2006.

Orders

[59] The Committee determined that Mr PK's conduct:¹⁸

... was at the low end of unsatisfactory and determined that Mr PK pay to the Law Society:

- a. a fine of \$1,500.00. Section 156(1)(i)
- b. costs of \$750. Section 156(1)(n)

Mr PK's application for review

[60] Mr PK advised that "the basis of [his] application for a review of the decision is that the Committee failed to correctly interpret and apply the Rules that the Committee determined that I had breached, namely rr 3.6 and 9.1 ...".

¹⁷ At [26]–[27].

¹⁸ At [28].

[61] He submits that the Committee did not take into account the Master Terms of Business referred to and included with his letter of engagement.¹⁹

[62] Mr PK says that he only became aware of Mrs GH's involvement with the purchase of House B when she sought his advice with regard to the insurance on 14 August.

[63] He advises that subsequently, on 20 August, Mrs GH had specifically requested his advice with regard to the terms of the PSA.

[64] Mr PK submits that these additional matters did not render the terms of engagement inaccurate in a material respect, as required by r 3.6, and that the Master Terms of Business were sufficient to include the additional work.

[65] Mr PK considers that he had not breached r 3.6 in this regard.

[66] Mr PK acknowledges that he did not inform Mrs GH about the increase in his hourly rate. However, he points out that his terms of engagement provided that the firm's charge out rates could vary from time to time.

[67] He submits that the Committee focused on the fact that his rate had risen by over 14 per cent but did not assess what a fair and reasonable fee would be. He maintains that his fee could have been more than the amount he charged if all fee factors were taken into account.

[68] In general terms, Mr PK asserts that he did take the fee factors into account when assessing his fee, coming to the conclusion that a fee based on his hourly rate and the time recorded was fair and reasonable in the circumstances.

[69] He disputes that he has breached r 9.1.

Conclusion

[70] Mr PK says:²⁰

In simple summary, there was no breach of Rule 3.6 because the Terms adequately covered for the request by Mrs GH for further legal services and for the increase in the hourly charge out rate. Despite the fact that the potential for an increase in the charge out rate is provided in the Terms, if it is held that this provision of the Terms is insufficient, the increase in the charge out rate did not result in the basis of charging of fees changing in a *material* respect, given the final fee charged for the services rendered.

¹⁹ Letter PK to LCRO (23 December 2021) at [4]–[6].

²⁰ At [24]–[26]. This is as per Mr PK's statement.

There was no breach of Rule 9.1 because I considered all the reasonable fee factors and applied several of them.

The Committee's determination of unsatisfactory conduct cannot be upheld.

Mrs GH's response

[71] Mrs GH advised that she "was happy to withdraw" from any involvement with this review.²¹

Nature and scope of review

[72] The High Court has described a review by this Office in the following way:²²

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

[73] This review has been conducted in accordance with those comments.

Process

[74] The review proceeded by way of an audio-visual hearing with Mr PK on 25 May 2023. Mrs GH did not attend.

Review

[75] At [2] of its determination, the Standards Committee identified Mrs GH's complaints to be that Mr PK:²³

- a. Was discourteous.
- b. Deducted his fee from funds held in trust without her consent.
- c. Charged an excessive fee.
- d. Charged for work outside the terms of engagement.
- e. Acted in a conflict of interest situation on the work outside the terms of engagement.

²¹ Email Mrs GH to LCRO (11 March 2022).

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

²³ Standards Committee determination, above n 9, at [2].

[76] At [4], the Committee identified the issues to be examined:

The Standards Committee considered all the material provided by the parties and focused on what it considered to be the key issues, namely whether in possible breaches of RCCC 3.4, 3.6, 6.1, 9 and 9.1:

- a. Mr PK's letter of engagement defined the scope of the brief and the fee factors to be taken into account, however, later work undertaken and charged for was outside that specified brief and the account was charged on a time only basis.
- b. Mr PK stated he did not charge for anything past 21 August 2020 when the invoice rendered stated it was for work from 25 May to 26 August 2020.
- c. Mr PK did not inform the client about the increase in hourly rate from that stated in the letter of engagement.
- d. Mr PK acted in a conflict of interest in that while acting for the complainant purchaser he wrote to her counsel on the purchase outside his brief (but which he charged her for) stating he acted for the vendor.

[77] However, the issues identified and focused on by the Committee in [4] of its determination do not correlate to the complaints identified in [2]. That has resulted in the complaints identified in [2] a, b and c not being addressed.

The finding of unsatisfactory conduct

[78] At [26] of its determination, the Committee determined that Mr PK had engaged in unsatisfactory conduct in respect of issues a and c in [4] of the determination.

[79] Paragraph [4]a relates to the complaint that Mr PK carried out work outside the specified brief and the fee charged was only on a time basis.

Fees

[80] Mr PK rendered an invoice for \$2,384 for all the work carried out by him for Mrs GH between 25 May 2020 and 26 August 2020. The work undertaken included:

- the sale of House A;
- advice relating to the PSA; and
- advice as to the requirements of the Unit Titles Act.

[81] Mr PK's invoice has clearly been calculated with reference to the time recorded. The time records provided by Mr PK to Mrs GH, and subsequently with dates included to this Office, do not enable the fee for each matter to be identified.

[82] There are many directives from the Courts that fees should not be calculated purely by reference to the time recorded. I refer, for example, to *Property and Reversionary Investment Corporation v Secretary of State for the Environment*, [1975] 2 All E R 436 at 441–442, where the Court said:

The object of the exercise is to arrive at a sum that is fair and reasonable, having regard to all the circumstances ... It is an exercise in assessment, an exercise in balanced judgment – not an arithmetical calculation.

[83] Also in *Chean v Luvit Foods International Limited and Kensington Swan* CIV 2006-404-1047 at [23], Priestley J said:

[23] It is very clear...that one potent circumstance is already apparent, and that is the obligation, which is clear from a number of authorities, for a practitioner who is using time and attendance records to construct a bill, to take a step back and look at the fee in the round ...

[84] There is nothing to show that Mr PK has taken a “step back” and looked at the fees for each block of work “in the round”.

[85] Mrs GH felt that the time recorded by Mr PK were at times higher than the time taken, resulting in the fee being higher than expected. The Standards Committee included this as a complaint that Mr PK charged an excessive fee.²⁴

[86] Although the Committee determined that Mr PK had breached rr 9 and 9.1 the Committee did not express a view as to what it considered to be a fair and reasonable fee for the work carried out by Mr PK. Consequently, the adverse finding rests on the Committee’s determination that Mr PK has breached r 9.1.

Rule 9 provides:

A lawyer must not charge a client more than a fee which is 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.

After taking all of the fee factors into account, it may be that a fee calculated on the basis of time alone is a fair and reasonable fee. It is unusual that a finding of unsatisfactory conduct would be based on a breach of r 9.1 only.

Summary/Conclusion

[87] For the reasons expressed above, the finding of unsatisfactory conduct for charging breaching rr 9 and 9.1 is reversed. The Committee is directed to form a view as to what a fair and reasonable fee for the work carried out by Mr PK would be and make a finding accordingly.

²⁴ At [2]c.

The terms of engagement

[88] Mr PK's letter of engagement identified services to be provided as matters relating to the sale of House A. The letter also includes the following statement:

Master Terms of Business

All services are provided subject to the terms and limitations set out in our Master Terms of Business which are attached.

[89] The Master Terms of Business attached included a section headed "Services" and says:

The services we will provide for you are as instructed by you from time to time. If we can assess the extent of the services you require when we receive your instructions then we may outline the scope of our services in an engagement letter.

[90] The Committee said:²⁵

... while Mr PK did not update, or explain why he did not update, his letter of engagement to cover that work, there was no dispute that he did do that work. The complainant stated in submissions to hearing that Mr PK should not have done it, however instructions were clearly given to do it.

Nevertheless, Mr PK neglected to update his letter of engagement to cover the extra work as RCCC 3.6 required. Had he done so there would have been clarity for Mrs GH.

[91] The Committee then discussed the fact that Mr PK had not advised Mrs GH that his hourly rate had increased to \$400.

[92] For these reasons, the Committee determined that Mr PK had breached r 3.6 of the Conduct and Client Care Rules, which provides:

If information provided by a lawyer in terms of rule 3.4 or 3.5 becomes inaccurate in a material respect, the lawyer must ensure that the information is updated with due expedition. Rules 3.4 and 3.5 are complied with where a lawyer has previously provided a client with the information required and the information remains accurate.

[93] Mrs GH had specifically requested advice from Mr PK about the PSA and insurance. The terms of engagement did not need to be updated to include this extra work as the Master Terms included reference to providing services "as instructed from time to time".

[94] The Committee identified that Mr PK's hourly rate had increased by 14 per cent over the hourly rate specified in the terms of engagement. It considered that this was a 'material aspect', as required by r 3.6.

²⁵ Standards Committee determination, above n 9, at [10]–[11].

[95] However, before any determination can be made that the failure to advise of the increase in the hourly rate warrants a finding of unsatisfactory conduct, the Committee needs to determine what it considers to be a fair and reasonable fee for the work undertaken. If that assessment is less than the amount invoiced, then the increase in the hourly rate assumes some importance.

[96] The Committee is directed to reconsider this issue in conjunction with its assessment of what would be a fair and reasonable fee for the work undertaken.

Conflict of interests

[97] The complaint that Mr PK was conflicted arises out of the circumstances relating to the insurance of the unit title development. Rule 6.1 of the Conduct and Client Care Rules provides:

A lawyer must not act for more than 1 client on a matter in any circumstances where there is a more than negligible risk that the lawyer may be unable to discharge the obligations owed to 1 or more of the clients.

[98] Mrs GH had asked Mr PK for assistance to resolve the issue that had arisen whereby the Body Corporate was not functioning in accordance with the requirements of the Unit Titles Act 2010 and specifically, that Mr WC had cancelled the insurance over House C.

[99] Mr PK advised Mrs GH about the requirements of the Unit Titles Act 2010 and communicated with Mr QS about this. His communication took the form of the letter referred to in [14] above and it seems that Mrs GH may have misinterpreted this as meaning that Mr PK was acting for the vendor of House B which she was purchasing. That was not correct.

[100] As noted, Mr PK had coincidentally been consulted by Mr WC about insurance obligations and Mr PK had provided him with the same advice that he was giving to Mrs GH. On that basis therefore, the interests of Mrs GH and Mr WC coincided, and it does not amount to a conflict of interests.

[101] In this regard, I concur with the determination of the Committee to take no further action.

Other complaints

[102] As noted above at [70] the Committee has not addressed Mrs GH's complaints that Mr PK was discourteous and had deducted fees held in trust without her consent.

[103] The Committee needs to address these complaints.

Summary/decision

1. The determination of the Committee to take no further action on the issues referred to in [4]a and c of its determination is reversed.
2. The determination of the Committee to take no further action on the issues referred to in [4]b and d is confirmed.
3. Pursuant to s 209 of the Lawyers and Conveyancers Act 2006, the Committee is directed to form a view as to what a fair and reasonable fee for the work carried out by Mr PK was and make a finding accordingly.
4. Pursuant to s 209 of the Act, the Committee is directed to determine whether Mr PK has been discourteous towards Mrs GH and make a finding accordingly.
5. Pursuant to s 209 of the Act, the Committee is directed to consider Mrs GH's complaint that Mr PK had deducted fees without her consent and determine accordingly.

Publication

[104] Pursuant to s 206(4) of the Lawyers and Conveyancers Act 2006, I direct that this decision be published in an anonymised format.

DATED this 13TH day of JUNE 2023

O Vaughan
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 PK as the Applicant
Mrs GH as the Respondent
 Standards Committee
New Zealand Law Society