LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2023] NZLCRO 096

Ref: LCRO 57/2021

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a decision of the [Area] Standards Committee [X]
BETWEEN	**FC** Applicant
AND	**HS, FM and QP** Respondents

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

Introduction

[1] Ms FC has applied for review of a decision dated 23 March 2021 by the [Area] Standards Committee [X] under s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act) to take no further action in respect of her complaint about the professional conduct of Ms HS, Ms FM and Mr QP (the respondents).

Background

[2] Ms FC was married to Mr OL. They separated in mid-2016.

[3] Ms FC instructed [Law firm A] ([Law firm A]), an incorporated law firm, to advise and assist her with various resulting legal processes.

[4] Ms HS was a director of [Law firm A]. Ms FM and Mr QP were employed solicitors at the firm.

[5] There were three legal work streams undertaken by [Law firm A] for Ms FC. They were:

(a) dissolution of marriage proceedings, which were apparently defended;

(b) domestic violence proceedings, involving initially Ms FC's defence of an application brough by Mr OL and then a counter-application brought or intended to be brought by Ms FC;

(c) relationship property proceedings.

[6] [Law firm A]'s services were provided between October 2016 and October 2018, by which time the first two work streams had concluded but relationship property matters had yet to be resolved.

[7] Over that period, [Law firm A] rendered eight invoices to Ms FC for fees and disbursements comprising:

(a) two invoices in the total sum of $11,659.88 relating to the dissolution of marriage;

(b) two invoices in the total sum of $7,732.47 relating to the domestic violence matters; and

(c) four invoices in the total sum of $30,009.29 relating to the relationship property matters.

[8] The total invoiced sum was $49,401.64. This included $10,000 towards the fees of Ms FC's chosen barrister, Mr IR.

[9] Of the total amount invoiced, the last two invoices in the sum of $14,210.85 were rendered on 18 October 2018 when Ms FC terminated [Law firm A]'s retainer. She engaged another law firm at that point.

[10] Ms FC had paid $28,529.99 towards [Law firm A]'s invoices. She did not pay the balance of $20,871.65.

[11] Correspondence ensued regarding the non-payment of [Law firm A]'s invoices. No further payment was made.

[12] On 16 March 2020, [Law firm A] filed summary judgment proceedings in the District Court for recovery of the amount outstanding. A hearing date for the summary judgment application was scheduled for June 2020.

[13] I infer that there must have been service delays resulting from Covid-19 restrictions. Ms FC was apparently served on 27 July 2020 and her statement of defence and notice of opposition to summary judgment are dated 31 August 2020.

[14] On 23 October 2020, Ms FC filed her complaint with the New Zealand Law Society's Lawyers Complaints Service (NZLS). I infer that the defended summary judgment application had not yet been heard.

[15] Under s 161(1) of the Act, a lawyer is precluded from proceeding with debt recovery action against a client once a complaint is made about the fees charged by the lawyer to that client.

The complaint and response

[16] Ms FC expressed her complaint to be "primarily regarding fees charged to me by [Law firm A] … but it also relates to the conduct of lawyers who worked at [Law firm A]".[1] Ms FC "structured [the complaint] under four grounds" being:

1. The invoices are not due yet;
2. Denial of interpreter of choice and related overcharging;
3. Unreasonable rates; and
4. Unnecessary work.

[17] The first structural ground of Ms FC's primary fees complaint was that "the invoices are not due yet". She asserted that there was an arrangement with [Law firm A] for deferred payment of the amount owing above $10,000 for [Law firm A]'s fees until the relationship property proceeding was concluded.

[18] This arrangement, referred to by Ms FC as the "deferred fees agreement", apparently excluded the further $10,000 paid into [Law firm A]'s trust account towards the fees of Mr IR.

[19] In its affidavit evidence in the District Court debt recovery action and in response to the complaint, [Law firm A] acknowledged that there was such an arrangement but argued that it was premised on [Law firm A]'s ongoing representation of Ms FC in the relationship property proceedings and that the arrangement ceased to apply when Ms FC changed lawyers.

[1] Ms FC's letter of 23 October 2020 at [2].

[20] Ms FC said that if this was [Law firm A]'s understanding of the arrangement for deferred payment, that understanding was never communicated to her.

[21] Regulation 29(a) of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 (the regulations) provides that a standards committee must not deal with a complaint relating to a bill of costs rendered by a lawyer if the bill of costs was rendered more than two years prior to the date of the complaint.

[22] This prohibition applies "unless the Standards Committee to which the complaint is referred determines that there are special circumstances that would justify otherwise".

[23] Ms FC acknowledged that her complaint was made more than two years after the relevant invoices were rendered. She cited two "exceptional circumstances" in her submission that justified the Committee dealing with her fees complaint. These were:[2]

> 1. The invoices are not due yet (as explained in the first ground of my complaint, below). So, I did not turn my mind to the substance of this complaint until [Law firm A] sued me in the District Court. This prompted me to reflect on my experience with [Law firm A], consider the invoices and make this complaint.
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> 2. My psychological condition also explains the delayed complaint. I have been involved in many proceedings in the last six years, as explained below. This has been extremely stressful and, together with previous trauma in my relationship with my ex-husband, took a great toll on my life and wellbeing. On a confidential basis, I note I was diagnosed with PTSD in 2018 (evidence available on request). My experience with [Law firm A] brings back these memories, so I have tried not to deal with this until I absolutely had to.

[24] In addition to the three legal proceedings in which she had been assisted by [Law firm A], Ms FC made reference to three other legal proceedings in which she had been engaged with Mr OL from 2018 and 2019 onwards. She described them as the Defamation Proceeding,[3] the Missing Money Proceeding,[4] and the ASK Proceeding,[5] and briefly outlined their nature.

[25] Ms FC then recorded that:[6]

> Mr OL and I have recently agreed the basis of a holistic settlement of the Relationship Property Proceeding, the Defamation Proceeding and the Missing Money Proceeding. We are in the process of finalising a written settlement agreement and I am hopeful that all these proceedings will be discontinued this year.

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[2] Ms FC's letter of 23 October 2020 at [3c].
[3] CIV-2018-404-1689.
[4] CIV-2018-404-2023.
[5] CIV-2019-404-1564.
[6] Ms FC's letter of 23 October 2020 at [7].

[26] Ms FC's second structural ground was described as "denial of interpreter and related overcharging". The background to this was that Ms FC is a native [language] speaker and her English is poor. She required an interpreter to assist her to communicate with her lawyers regarding her various legal proceedings. She recorded that she had prepared her complaint with the assistance of legal advisers and her interpreter, EV, who I understand to be no relation to Ms FC.

[27] She complained (paraphrased) that:

(a) the firm denied her the use of Ms EV as her interpreter of choice;

(b) the use of Ms FM for translations was charged at her lawyer's hourly rate, which was more than an interpreter would have charged, thus resulting in over-charging;

(c) the use of Mr QP as legal adviser and Ms FM at the same time to translate for him resulted in double-charging when, according to Ms FC, Mr QP could speak perfect [language].

[28] The third structural ground of the complaint was that Ms FM's hourly rate was too high for her level of experience and that total charges of $11,659.88 for the dissolution proceeding were too high given the nature of the matter.

[29] The last ground was that Ms FC had identified from the firm's time records provided to her that 13 different individuals at [Law firm A] had been involved in the provision of [Law firm A]'s services for her, she had never met most of them, did not know who they were and was not told they would be working on her file, with the consequence that costs incurred on a time-spent basis had been unnecessary.

[30] She also said that [Law firm A] translated documents for her that she did not need to be translated and had not asked them to translate.

The Standards Committee decision

[31] The Committee considered that the complaint was "ultimately a fee complaint" and that, although there was an element of alleged failure to follow Ms FC's instructions, "Ms FC's main concern that she was charged by [Law firm A] for tasks that she did not instruct [Law firm A] to do".

[32] The Committee then noted that, under reg 29, it was precluded from considering the fees complaint unless special circumstances justified otherwise.

[33] The Committee cited two relevant judicial comments about the meaning of "special circumstances" from the Court of Appeal decision in *Cortez Investments Ltd v Olphert & Collins*,[7] namely:

(a) by Woodhouse P, that "*special circumstances would be met where aspects of the facts seems to indicate a problem which had relatively unusual features while reasonably deserving at the same time relief of the kind provided by the provision*"; and

(b) by McMullin J that: "*all that can be said is that to be special circumstances must be abnormal, uncommon, or out of the ordinary*".

[34] The Committee did not consider that the two matters raised by Ms FC constituted "special circumstances" in terms of reg 29.

[35] As to the relevance of the deferred payment arrangement, it stated that:[8]

> Ms FC had received the invoices on or around the dates they were rendered by [Law firm A] and from then onwards was aware of the work [Law firm A] had completed in relation to that invoice and [Law firm A]'s fees for that work. It was open to Ms FC to make a complaint about the fees from the date she received each invoice. The Committee considered that the existence of a deferred payment agreement did not hinder Ms FC's ability to make any such complaint and consequently this did not amount to special circumstances.

[36] As to Ms FC's claimed psychological condition, the Committee considered that such a condition "was a circumstance capable of amounting to special circumstances" but that it was not persuaded that the suggested condition did in fact prevent Ms FC from lodging a fee complaint within the statutory timeframe.

[37] It noted that, in general terms but citing various examples, Ms FC appeared to have been capable of engaging in other legal processes and that she had been actively involved in the matters relating to the legal services [Law firm A] had provided, had new counsel acting for her and could have requested her lawyer's assistance if it was required.

[38] In summary, the Committee determined that the fees complaint was out of time and there were no special circumstances justifying it being dealt with.

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[7] [1984] 2 NZLR 434 at and 441.
[8] At [18]

Application for review

[39] In her application for review, Ms FC argues firstly that the Committee was wrong not to regard the two matters she had raised in her complaint as "special circumstances" for the purposes of reg 29. Secondly, she argues that her complaint was not "just a fee complaint" and that the Committee had ignored her other complaints about the conduct of the [Law firm A] lawyers, specifically:

(a) suing her on invoices that were not yet due for payment;

(b) denying her her interpreter of choice;

(c) misleading her about their language ability; and

(d) acting beyond her instructions.

[40] The respondents rely on their response to the original complaint and on the Committee's decision.

Review on the papers

[41] My colleague, Mr Maidment, undertook a preliminary procedural appraisal of the review file in August 2021. He formed a provisional view that a hearing on the papers would be appropriate and asked the parties to comment on or raise objection to that proposed process.

[42] The respondents agreed to a hearing on the papers. The applicant, through counsel, objected. Counsel, Mr YE, submitted that:[9]

> [The] Committee seems to have ignored all aspects of my client's complaint. The opportunity to now deal with the complaint in a way that involves my client and the lawyers concerned *in person* should be embraced and promoted by a client-centred disciplinary and review process.

[43] Counsel further advised that Ms FC would bring her own translator to a hearing and enquired whether a Legal Complaints Review Officer (LCRO) with a [language] background or understanding of [nationality] cultural norms and expectations might be assigned to conduct the review.

[44] By Minute dated 1 November 2022, my colleague responded to counsel's submission at considerable length explaining the inquisitorial process, the background

[9] YE letter of 19 August 2021.

to the current statutory construct and the considerations taken into account in determining the most appropriate hearing procedure.

[45] His essential conclusions[10] were that there was sufficient information on the file to determine the matter and that Ms FC had had ample opportunity to present her case and would not be remotely prejudiced by a direction that the matter proceed on the papers.

[46] Mr Maidment then provided counsel the opportunity to file any final submission for Ms FC that he might wish to file. I observe that no further submission was filed.

[47] Coming to the matter afresh nine months later, I concur with my colleague's observations. Ms FC's complaints have been very clearly articulated, twice, in writing and with the benefit of the assistance of experienced counsel and her chosen translator. This process overcomes any perceived disability arising from Ms FC's lack of facility in the English language.

[48] My task is to bring a fresh view to bear on the application of professional conduct requirements to the circumstances, not to facilitate discussion between the parties about possibly differing cultural norms. If the parties perceive potential benefit in engaging in such a discussion, it is open to them to do so.

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

Nature and scope of review

[50] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:[11]

> … 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.
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> 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" …

[10] At [33]–[36] of the Minute (1 November 2022).

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

> … 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.

[51] More recently, the High Court has described a review by this Office in the following way:[12]

> 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.

[52] 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.

The Issues

[53] The issues I have identified for consideration in this review are as follows:

(a) Who is the fees complaint against?

(b) Does reg 29(a) apply to Ms FC's fees complaint?

(c) If so, do either of the matters raised by Ms FC constitute "special circumstances" in terms of reg 29?

(d) Is Ms FC's complaint more than just a fees complaint?

(e) If so, in relation to each matter raised:

(i) which provisions of the rules are potentially engaged?

(ii) who is the complaint against?

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

(iii) has that person breached his or her professional obligations to Ms FC?

(f) If so, does that breach warrant a disciplinary response?

(g) If so, what should that response be?

[54] For clarity, I should add that no complaint has been made against any of the [Law firm A] lawyers as to the quality and timeliness of their advice and service, their diligence or the results achieved. This is not case of a service complaint being dressed up as a fees complaint.

Discussion

(a) Who is the fees complaint against?

[55] The first point is that the invoices were rendered by [Law firm A], an incorporated firm. Ms FC quite properly made her complaint against the firm.[13] Ms FC has been impeded by the NZLS' reluctance to accept for processing complaints made against incorporated law firms.

[56] It seems that the director of [Law firm A] responsible for setting the firm's fees charged to Ms FC was Ms HS. Consequently, the fees complaint is against her specifically.

[57] Ms FM and Mr QP were employed solicitors at [Law firm A]. As such, they have no responsibility for the setting of the firm's fees. Consequently, to the extent to which the complaint is a fees complaint, it does not lie against them.

(b) Does reg 29(a) apply to Ms FC's fees complaint?

[58] Regulation 29(a) is clearly applicable. On a first in-first off basis, the relevant unpaid invoices are a part of invoice #[redacted] dated 31 March 2017 and all of invoices #[redacted] dated 7 November 2017, #[redacted] dated 18 October 2018 and #[redacted] dated 18 October 2018.

[59] There is no suggestion that the latter two invoices were not rendered on their date, which was the date Ms FC changed lawyers.

[13] Ms FC's letter of 23 October 2020 at [1]–[2].

[60] Ms FC's complaint is dated 23 October 2020 and I presume it was filed on that date. Consequently, it was out of time. This is a black-and-white issue. The date an invoice is due for payment is not relevant for the purposes of reg 29.

(c) If so, do either of the matters raised by Ms FC constitute "special circumstances" in terms of reg 29?

[61] In her original complaint, Ms FC put a slightly different slant on the issue. She said that because the invoices were "not due yet", she did not turn her mind to the substance of a complaint until [Law firm A] sued her. She says she was served with the proceedings on 27 July 2020.

[62] Ms FC does not claim ignorance of the two-year time limit and could not reasonably do so. District Court proceedings against her for recovery of the unpaid invoices had been served three months before the time limit expired. She was represented in those proceedings by experienced counsel. A statement of defence and notice of opposition in the summary judgment claim had been filed in August 2020.

[63] Ms FC was clearly aware of the availability of the lawyers complaints process. As the Committee noted, she had threatened to make a complaint over a year earlier, in September 2019, in the context of what she perceived to be an unsatisfactory response from [Law firm A] to a request for file information.

[64] In those circumstances, Ms FC either knew or ought to have known that the NZLS complaints process was available to her either to challenge the value of the work done for her or as a procedural gambit to defer addressing the substantive issue in Court.

[65] The respondents characterised the complaint as a delaying tactic. Regardless of whether or not that was so, the communication evidences that Ms FC was well aware of her rights as a consumer of legal services.

[66] The making of a complaint to the NZLS is not difficult. There is a reasonably straightforward form to fill out and the Lawyers Complaints Service personnel are available to assist complainants to do so. Ms FC was represented.

[67] With reference to both formulations cited by the Committee, I agree that, on this ground, there were no "relatively unusual features" and nothing "abnormal, uncommon or out of the ordinary" in the circumstances at the time. If anything, the fact that District Court proceedings had been served three months beforehand and defended two months beforehand count the other way.

[68] Secondly, Ms FC refers to her "psychological condition". It is for Ms FC to adduce evidence supporting an argument for the application of the "special circumstances" proviso to reg 29. There was no medical evidence before the Committee supporting the claim that Ms FC was suffering under any psychological disability.

[69] This is not to doubt that Ms FC was suffering from very considerable stress. She seems to have had six different sets of legal proceedings on the go with Mr OL at once, or at least at various times between mid-2016 and late-2020. The District Court proceedings issued by [Law firm A] against her were a seventh litigation problem to deal with.

[70] It is a reasonable inference from her own complaint particulars that Ms FC was dealing with all of these issues appropriately with the assistance of competent advisers.

[71] There is nothing in the materials to persuade me that the Committee was wrong to conclude that Ms FC was not psychologically incapable of making a complaint to the NZLS or that, if she herself felt under any such disability, she could not have instructed her lawyer to do so on her behalf.

[72] Again, in terms of the cited tests, there is no evidence before me of any "relatively unusual features" warranting relief from the due application of reg 29(a) and no evidence of any "abnormal, uncommon, or out of the ordinary" circumstances.

[73] I find that reg 29(a) of the regulations applies, that there are no "special circumstances" for the purposes of that rule and therefore that I have no jurisdiction to consider Ms FC's fees complaint.

(d) Is Ms FC's complaint more than just a fees complaint?

[74] Although she expressed her complaint to be "primarily a fee complaint" Ms FC also considered that [Law firm A] and its lawyers had acted improperly in:[14]

i. Suing me in respect of invoices that are not due yet;

ii. Denying me my interpreter of choice and overcharging on related matters;

iii. Charging unreasonable rates; and

iv. Completing unnecessary work.

[75] I agree with Ms FC that three elements of her complaint stand independently of her fees complaint, being item 1 above, the first half of item 2 and item 4.

[14] Ms FC's letter of 23 October 2020 at [2]

[76] As noted at paragraph [39] above, Ms FC raised an additional element at the review application stage of "misleading her about their language ability". This was not a matter raised in those terms in her complaint. I therefore cannot deal with it on review, except to the extent that it is another way of expressing "completing unnecessary work".

(e) If so, in relation to each matter:

(i) which provisions of the rules are potentially engaged?

(ii) who is the complaint against?

(iii) has that person breached his or her professional obligations to Ms FC?

[77] The first of element of alleged improper conduct is the act of [Law firm A] in suing Ms FC when, she claims, the invoices were "not due yet". The technical problem here, and it is not of Ms FC's making, is that the complaint lies properly against [Law firm A]. It is the incorporated firm that is suing her.

[78] Because of the NZLS administrative decision not to process the complaint against [Law firm A], I am obliged to treat it as a complaint against Ms HS. This is not necessarily inappropriate; as a director of the incorporated firm with file responsibility, Ms HS can be assumed to have authorised the issuing of the proceedings. It is nevertheless less than satisfactory.

[79] So far as Ms FM and Mr QP are concerned, the same considerations apply as applied to the fees complaint. The issuing of proceedings cannot have been their decision and they can have no professional responsibility for it. I dismiss that aspect of the complaint against them accordingly.

[80] In terms of the Rules,[15] Ms FC's complaint about the act of issuing the proceedings against her at the time they were issued can only be an allegation of breach of either or both of:

(a) Rule 2.3 – using a legal process for an improper purpose;

(b) Rule 12 - failing to conduct dealings with Ms FC with integrity.

[81] A breach of either of those rules can also constitute a breach of the generic r 10, which requires a lawyer to "maintain professional standards".

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

[82] Regardless of how such a complaint is notionally expressed for the purposes of the Rules, the fundamental problem for Ms FC is that her argument is dependent on establishing that the invoices were not due for payment. That issue is a legal one. It relates to an arrangement concluded by telephone about which the parties have differing understandings.

[83] The proper place for determination of any such legal issue is in the Court and the parties are engaged in a Court proceeding partly for that exact purpose. For the purposes of the complaints process, this Office can make no factual finding about the matter in the absence of evidence as to the legal terms of the arrangement that was reached.

[84] The legal issue may well be redundant by now. As at October 2020, Ms FC advised that she and Mr OL were "in the process of finalising a written settlement agreement" relating to the three interrelated legal proceedings, including the relationship property proceeding,[16] and that she was hopeful that the relationship property proceeding would "be discontinued soon".

[85] Unless things have gone very awry since then, the only impediment to the due resolution of that legal issue through the proper channel, the Court, is that the proceeding is apparently stayed pending delivery of this decision.

[86] In that regard, I note in passing that s 161(1) of the Act does not preclude parties from determining by Court action issues of liability for the payment of fees while there is an unresolved fees complaint before the NZLS.[17] It only prevents actual recovery.

[87] In any event, the matter is before the Court. If it still needs to be resolved, the Court can resolve it. For the purposes of the Rules, the issuing of Court proceedings in part to resolve a legal issue over liability cannot be regarded as the use of a legal process for an improper purpose; quite the contrary.

[88] Nor can it be suggested to constitute a lack of integrity on the part of Ms HS as a director of [Law firm A] or a failure to maintain professional standards.

[89] The second aspect of alleged conduct independent of the fees complaint was "denying me my interpreter of choice".

[90] In terms of the Rules, this is properly described as an alleged breach of r 12 of the Rules, which provides as follows:

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[16] Ms FC's letter (23 October 2020) at [7].
[17] *Simpson v Gilmour* HC Auckland CIV-2008-404-008674, 29 October 2009.

> 12 A lawyer must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect and courtesy.

[91] Ms FC's precise allegations in this respect are as follows:[18]

> When dealing with [Law firm A], I told them that I wanted to use EV as an interpreter. [Law firm A] said that I could not use her because she was too expensive. They denied me my interpreter of choice.
>
> [Law firm A] then used one of its lawyers as an interpreter and for translations, charging for this at lawyer's rates of $200-$300 plus GST. This rate is much higher than what an interpreter would have charged. …

[92] In terms of r 12 of the Rules, the allegations could be regarded as either disrespect of the client's choices or discourtesy towards Ms FC. For the purposes of this complaint, I consider that it does not matter which interpretation is applied.

[93] This aspect of the complaint appears to be principally against Ms FM and there is a fundamental dispute of fact about the matter. [Law firm A] says[19] that the allegation that Ms FC was told she "could not use EV because she was too expensive" is not true. [Law firm A] related the course of events as follows:[20]

> 10. On 20 March 2017, Ms FC instructed a barrister, Mr IR, to act for her in her matters. [Law firm A] was acting as Ms FC's instructing solicitor.
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> 11. On 17 August 2017, Mr IR wrote a letter to [Law firm A] proposing that if Ms FC wanted Mr IR to continue acting for her, she would have to engage a professional translator, someone like EV because Mr IR found it difficult to communicate with Ms FC. **[redacted]**[21] is a copy of the letter.
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> 12. On 18 August 2017, the letter was forwarded to Ms FC for her instructions.
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> 13. Between 24 August 2017 and 25 August 2017, Ms FC and FM discussed about engaging a professional interpreter via [redacted]. [redacted] is a copy of the correspondence. Ms FC said she will engage a translator if Mr IR needed one and she asked who EV was. FM provided Ms FC with EV's details and asked Ms FC whether she wanted a copy of EV's CV.
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> 14. On 1 September 2017, Ms FC called FM and confirmed she will engage EV as her professional translator. [redacted] is a copy of the file note of FM's phone conversation with Ms FC. Following Ms FC's instructions, EV continued to be engaged as Ms FC's interpreter and translator until Ms FC's retainer with [Law firm A] terminated.

[94] I have read exhibits [redacted] to [redacted]. They support the respondents' recollection of events. Exhibit [redacted] in particular evidences that:

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[18] Ms FC's letter of 23 October 2020 at [17 a, b]
[19] [Law firm B] letter to NZLS (16 November 2022) at [9].
[20] [Law firm B] letter to NZLS (16 November 2022) at [10]-[14].
[21] Exhibits [redacted] to [redacted] are exhibits to the [Law firm B] letter to NZLS of 16 November 2022.

(a) Ms FC preferred to use Ms FM as translator;

(b) It was Mr IR who suggested that EV be used as translator;

(c) Ms FM told Ms FC that she did not know why Mr IR did not want to communicate through Ms FM;

(d) Ms FC agreed to Mr IR' request for the use of EV as translator, instead of Ms FM, possibly with some reluctance.

[95] Exhibit [redacted], a file note taken by Ms FM on 1 September 2017, records that a reason for Mr IR's preference for the use of EV was that "as FC will need a professional translator at the hearing, he believes it would be good for her to engage EV now so that she has a good background to the case before the hearing". This was undoubtedly a pertinent and sensible precaution on Mr IR' part.

[96] Exhibits [redacted] to [redacted] are then a number of examples of express requests from Ms FC to Ms FM for Ms FM to translate various emails. The email thread also evidences that Ms FM was concerned about the cost to Ms FC of her translating correspondence for Ms FC. Exhibit [redacted] includes the comment from Ms FM to Ms FC:

> Hello Ms FC, can your daughter translate it? If we translate it the legal fees will increase so if your daughter can do it, it would be better.

[97] After various exchanges, Ms FC ultimately replied:

> My daughter found half a page hard to translate so please translate that.

[98] On another occasion (exhibit [redacted]), Ms FM states:

> Lawyer IR has sent a reply. Do your need the questions translated?

[99] Ms FC replies:

> Its ok, I will translate it with my daughter and son and if it is hard I will ask you.

[100] None of this material supports Ms FC's assertions about being denied her interpreter of choice. Ms FC has neither adduced any evidence of her own of [Law firm A] being reluctant to permit her to use her own interpreter nor responded to the evidence adduced by the respondents supporting the general proposition that they translated what they were asked to translate when they were asked to translate it.

[101] I find that Ms FC's complaint in this ground is not made out.

[102] The last aspect that is capable of standing independently of the fees complaint is the allegation of "unnecessary work". There are three elements to this aspect of the complaint. The first relates to the number of people involved in working on Ms FC's files. The second is specifically the involvement of both Mr QP and Ms FM in meetings. The third is the assertion that documents were translated that did not need to be translated.

[103] The first element is necessarily a complaint against Ms HS as the [Law firm A] director with overall file responsibility. In terms of the Rules, "over-lawyering" a file would normally sound as a breach of r 9. For the reasons stated above, it is not open to me to consider the matter on that basis.

[104] Delegation of work to employees not appropriately qualified or experienced to undertake it could constitute a breach of the competence and reasonable care elements of r 3 or a breach of the requirement in r 11.1(b) of the Rules to ensure that the conduct of all persons employed by a law practice is at all times competently supervised and managed.

[105] There was certainly a very large number of [Law firm A] employees involved on Ms FC's various files. This might indicate a piecemeal approach to completing the necessary work. Alternatively, it might indicate appropriate delegation to the lowest appropriate level to ensure costs were minimised.

[106] Of itself, the use of many people does not establish that any of the work they did was unnecessary or that any of them did not have the necessary competence or experience to do whatever they did to progress the files.

[107] Aside from the translation work, Ms FC has not identified any aspect of the legal services provided to her that she considered superfluous, unnecessary or undertaken incompetently or otherwise inappropriately.

[108] She does assert that the fees for the dissolution work were too high and that the dissolution was "a simple matter". Mr QP for [Law firm A] disputes that assertion and says that "… this is simply not true. This was a complex, contested case requiring significant pleadings, communications and evidence gathering".

[109] There is no other information about that proceeding available to me and therefore no evidence to suggest that the work done was unnecessary. In any event, Ms FC's complaint was not about the work done but about the cost of it.

[110] Ms FC then says that she should not have needed to meet with both Mr QP and Ms FM at the same time because Ms FM was merely translating and Mr QP had perfect [language].

[111] This is again primarily an "over-lawyering" argument and consequently an element of the fees complaint that I have dismissed for the reasons previously explained. It could nevertheless be argued to constitute misleading conduct as to an aspect of [Law firm A]'s legal practice and thereby a breach of what is now r 10.9 of the Rules.[22]

[112] I find that grounds to make such a finding are not made out, for several reasons. The first one is that Ms FM was clearly involved in advisory capacity and appears to have been the main contact point for some of the work.

[113] Secondly, it is vital for any lawyer giving legal advice to ensure that the client understands it. Ms FC's lack of facility in English was a problem that had to be appropriately managed at every step. Ms FC had presumably engaged [Law firm A] in the first place because it offered legal services to [language] speakers. The steps taken by [Law firm A] to ensure Ms FC's understanding demonstrate their diligence in providing legal services to her.

[114] Thirdly, Mr QP's evidence contradicts Ms FC's assertion. He relevantly stated:[23]

> Firstly I never misled Ms FC about my level of [language] proficiency. I tried my best to communicate with Ms FC in [language] as much as possible. However, I was upfront with her that while I could speak in informal conversational [language], my proficiency and grasp of formal [language] was limited. I immigrated to New Zealand when I was 4 years old and I have had only limited exposure to the [language] language until moving to Auckland for University. Representing my [language] as otherwise to a new client would not have been proper or professional.
>
> Secondly, it is incorrect to state that Ms FM attended meetings simply 'to translate" for me. Ms FM's proficiency in [language] helped me translate important points that were difficult for me to explain in [language], but the more important reason she was present was due to her being an important part of the team working on Ms FC's cases. Given the complexity and urgency of the cases, and significant evidence being oral and written [language], having Ms FM at key meetings helped expedite understanding of key evidence and subsequent action on cases.

[115] I have also had regard to Mr QP's additional contextual comments in paragraphs [9] and [12] of the same letter.

[116] Ms FC has advanced no evidence in support of her assertion that Mr QP spoke perfect [language]. This being a hearing on the papers, I can make no finding of

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[22] At the time, the applicable rule was numbered r 11.1.
[23] Mr QP's letter of 18 November 2020 to the NZLS at [8a] and [8b].

credibility regarding the matter. That being said, there is no evidence to contradict Mr QP's explanation.

[117] Consequently, I find that Ms FC's complaint on this ground is not made out.

[118] Lastly there is Ms FC's assertion that documents were translated for her unnecessarily. I find this element difficult to comprehend given the heavy emphasis throughout the rest of the complaint on Ms FC's lack of proficiency in English and the vital importance to her of [language] translation.

[119] If [Law firm A] erred at all in this respect, it erred on the side of caution. In the circumstances, that would have been appropriate and prudent.

[120] There is no evidence before me that it did so, however. Ms FC does not identify any document that was translated for her against her wishes. She has not produced any contemporaneous correspondence expressing concern about unnecessary translation.

[121] In contrast, Ms FM has produced the email correspondence discussed at paragraphs [94 – [99] above, which indicates her concern about not doing translations unnecessarily at Ms FC's cost.

[122] I find there is no factual basis for this element of Ms FC's argument on the evidence.

(f) If so, does that breach warrant a disciplinary response?

[123] I find there has been no breach of any of the applicable Rules by any of Ms HS, Ms FM or Mr QP. Consequently, this question falls away.

(i) If so, what should that response be?

[124] This question does not call to be answered.

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

Publication

[125] Ms HS, [Law firm A] and Ms FC are permitted to disclose the outcome of Ms FC's fees complaint for the purposes of the District Court proceedings by [Law firm A] against Ms FC, namely that:

(a) Ms FC made a fees complaint against [Law firm A];

(b) Regulation 29(a) of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 provides that a standards committee must not deal with a complaint relating to a bill of costs rendered by a lawyer if the bill of costs was rendered more than two years prior to the date of the complaint unless the Standards Committee to which the complaint is referred determines that there are special circumstances that would justify otherwise;

(c) Ms FC's complaint was made more than two years after the relevant invoices were rendered;

(d) The Standards Committee found there were no special circumstances for the purposes of reg 29(a);

(e) The Standards Committee's finding has been confirmed by this Office;

(f) Accordingly, the Standards Committee's decision to take no further action of Ms FC's fees complaint has also been confirmed by this Office.

[126] 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.

DATED this 08TH day of September 2023

FR Goldsmith
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:

Ms FC as the Applicant
Ms HS, Ms FM and Mr QP as the Respondents
[Law firm A] Limited as a related entity at the time the complaint was made
[Area] Standards Committee [X]
New Zealand Law Society