LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2021] NZLCRO 176

Ref: LCRO 80/2021

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	**A LN and B LN** Applicants
AND	**QG** Respondent

DECISION

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

Introduction

[1] Mr and Mrs LN have applied to review a decision by the [Area] Standards Committee [X] (the Committee) dated 11 May 2021, in which the Committee decided to take no further action on their complaint about Mr LN's former lawyer, Ms QG.[1]

[2] The Committee based its decision upon s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act). This allows a Standards Committee to dismiss a complaint at an early stage if, based on the information it has, the Committee considers further action on that complaint is neither necessary nor appropriate.

[1] Although the complaint and review application were lodged by Mr and Mrs LN, the retainer was between Ms QG and Mr LN. Throughout this decision I will simply refer to Mr LN.

Background

[3] Mr LN instructed Ms QG to act for him in March 2019, and a personal grievance he had against his former employer XYZ Ltd (XYZ). Mr LN considered that he had been unjustifiably dismissed from his employment.

[4] Ms QG gave XYZ notice of Mr LN's personal grievance.

[5] On X September 2019 the parties attended mediation, but the dispute was not resolved.

[6] Mr LN instructed Ms QG to proceed with haste to an investigation hearing before the Employments Relations Authority (ERA).

[7] At this time, Ms QG was dealing with personal legal matters.

[8] The parties spoke by telephone on 10 November 2019. At the conclusion of that Mr LN decided to instruct a new lawyer to act for him.

[9] Several days after that discussion, Mr LN asked Ms QG for an invoice for her attendances.

[10] On 3 December 2019 Ms QG spoke to Mr LN's new lawyer and said that her email data had been irretrievably lost due to a hard drive failure.

[11] On 10 July 2020 Ms QG contacted Mr LN and said she would be sending an invoice. She did so on 4 September 2020.

[12] Ms QG's invoice was for $9,000 plus GST and disbursements.

Complaint

[13] In an email to the New Zealand Law Society Lawyers Complaints Service (Complaints Service) sent on 6 September 2020, Mr LN outlined his complaint about Ms QG as follows:

(a) Ms QG was instructed on 3 March 2019 to act in a personal grievance claim against XYZ.

(b) Ms QG gave XYZ notice of Mr LN's personal grievance.

(c) The parties attended mediation on 27 August 2019, but the matter was not resolved.

(d) On 5 September 2019 the Mr LN instructed Ms QG to proceed with haste to any investigation hearing in the ERA.

(e) Ms QG appeared preoccupied with personal matters.

(f) On 10 November 2019 Mr LN had a one hour telephone call from Ms QG, which left him feeling dissatisfied.

(g) Mr LN engaged another lawyer and Ms QG was informed.

(h) Mr LN asked for an itemised invoice from Ms QG on 19 November 2019. On 3 December 2019 Ms QG informed Mr LN's new lawyer that a computer crash meant that she had lost all of her data.

(i) On 10 July 2020 Ms QG contacted Mr LN and said that she would be sending him an invoice. He received the invoice on 4 September 2020 (10 months after first requesting it).

(j) The fees charged by Ms QG ($9,000 plus GST of $1,350 and disbursements of $115) were neither fair nor reasonable.

[14] Mr LN attached a copy of Ms QG's letter of engagement, together with copies of email exchanges between him and Ms QG, a copy of her final invoice and time records relating to that invoice.

Response

[15] Ms QG responded to Mr LN's complaint through a nine-page letter to the Complaints Service dated 24 September 2020. In summary Ms QG submitted:

(a) The hard drive failure concerned email data relating to a particular period. It did not affect electronically stored client files. However, paper files might not have included copies of emails exchanged.

(b) Nevertheless, Mr LN should have copies of all emails he received from Ms QG.

(c) When the retainer was terminated Ms QG asked Mr LN to provide copies of emails he had received, so that she could reconstruct her file. However, Mr LN did not respond to this request.

(d) Ms QG's time recording is manual, rather than electronic.

(e) Ms QG's practice when acting for employees in employment cases, is to defer billing until after mediation. She does so "to allow clients the ability to access justice and not be hampered by monthly bills."

(f) If a matter does not settle at mediation, and proceeds to an investigation hearing at the ERA, Ms QG's practice is to make arrangements concerning fees.

(g) Each invoice is accompanied by "work and progress notes" which show how an invoice has been calculated.

(h) Ms QG acknowledges inadvertently recording time against Mr LN's file that should have been recorded elsewhere. She also omitted to record approximately 40 minutes of time to Mr LN's file. The net effect was that Mr LN received an overall discount on the final invoice of $457 plus GST.

(i) As well, Ms QG often did not record time spent on Mr LN's matter, after hours and over weekends (for example receiving and responding to emails).

(j) Prior to the mediation in August 2019, Ms QG spent time with Mr LN going through the forthcoming mediation in detail. He was claiming significant costs as part of his personal grievance.

(k) Ms QG's hourly rate was $290 plus GST, less than his new lawyer would have been charging.

(l) The circumstances of Mr LN's dismissal involved a redundancy, with technical circumstances which included health and considerations. Both Mr and Mrs LN were closely involved in the process of drafting the notice of personal grievance to XYZ.

(m) Ms QG's practice is for the personal grievance letter to be detailed as it is an "operative document" which may need to be referred to down the line. Having a level of detail assists when people's memories fade with time.

(n) What may appear to be a relatively straightforward notice of personal grievance, often masks the amount of time and effort required to draft it, particularly when there was a technical background to the dispute.

(o) Mr and Mrs LN had a prearranged family trip to Continent for six weeks from mid-June to late July. Resolution of the personal grievance was not going to be possible before their departure.

(p) XYZ's response to the notice of personal grievance required Ms QG to take further instructions.

(q) In the middle of 2019 Ms QG was also involved in personal legal matters that had some media prominence and were also the source of considerable stress to her.

(r) The mediation (X August 2019) proceeded in the afternoon. Ms QG also had a mediation that morning, involving another client. Mr LN was aware of this, and raised no objection. The mediation took 3.5 hours. A full debrief followed.

(s) Ms QG spoke to both Mr and Mrs LN on 10 November 2019. She did not dominate that call with a discussion about her own legal issues, although undoubtedly they surfaced. The thrust of the telephone conversation was Mr LN's wish to swiftly escalate matters to the ERA. Ms QG indicated that she did not have capacity to move swiftly because of her hard drive crash, and other client matters requiring her attention.

(t) As well, there was a backlog of hearings in the ERA and a shortage of available ERA Members.

(u) Ms QG suggested that Mr LN might like to instruct another lawyer if he required more prompt action.

(v) On 19 November 2019 Mr LN informed Ms QG that he had instructed another lawyer. He said that this was unrelated to the quality of Ms QG's work, but he wanted to progress matters much more quickly. Ms QG accepted and agreed with this.

(w) Ms QG indicated that she would send an invoice but said she was not sure when that would be done.

(x) Ms QG spoke to Mr LN's new lawyer on 18 December 2019, who made it clear that the change in representation was "no reflection on the quality of the work" that Ms QG had undertaken.

(y) Two events after this significantly delayed Ms QG sending her invoice. First, the personal legal matter in which she was involved had significantly affected her and others in her family, and secondly by March 2020 all of New Zealand was locked down because of COVID-19.

(z) Ms QG does not accept that she has acted incompetently or with any lack of diligence or timeliness. She carried out significant work on Mr LN's behalf.

[16] Ms QG also attached relevant emails to her response.

Comment by Mr LN

[17] Mr LN commented on Ms QG's response in an email to the Complaints Service dated 28 September 2020. In summary he said:

(a) His complaint was not limited to the fees charged; Ms QG did not act professionally, competently and in a timely manner following the mediation.

(b) Ms QG had said she had lost all of her data in the hard drive crash and had no backup. Mr LN considered this to be unprofessional.

(c) Nine hours to draft and send the notice of personal grievance appears excessive.

(d) Ms QG did not inform Mr LN about legal costs incurred prior to the mediation. The claim for legal costs made as part of the mediation strategy was $6,000, which Ms QG had said to Mr LN was "on the high side." A subsequent invoice of $9,000 was therefore a shock, particularly as very little time was spent on the matter following the unsuccessful mediation.

(e) The telephone discussion on 10 November 2019 was dominated by Ms QG discussing her personal legal issue. Mr and Mrs LN considered this to be "very inappropriate and unprofessional" and this is why Mr LN decided to instruct a new lawyer.

(f) The COVID-19 lockdown should not have affected Ms QG's ability to access her office.

(g) It was unreasonable for Ms QG to send an invoice 10 months after the request was made.

Further response from Ms QG

[18] Ms QG provided a further, comprehensive, response to the comments made by Mr LN in his 28 September 2020 email to the Complaints Service.

[19] I mean no disrespect to Ms QG by describing her comments as largely rehearsing what she had said in her initial response to Mr LN's complaint.

[20] For these purposes, it is sufficient if I record the following:

(a) Ms QG moved with all due haste in arranging a mediation for Mr LN.

(b) The hard drive crash was unforeseen and arose when a local computer technician incorrectly installed a new drive which then failed.

(c) Spark, Ms QG's email account provider, stopped backing up emails to a cloud server. Ms QG was unaware of this.

(d) The personal litigation in which Ms QG was involved significantly impacted on her ability to practice, in a practical way, as well as in other ways. Ms QG explained that to Mr LN.

(e) The 10 November 2019 telephone call was not dominated by discussion about Ms QG's personal legal issues. Discussion centred on how quickly matters could be progressed to an ERA investigation hearing with Mr LN "[conveying] his impatience to have proceedings filed as soon as possible."

(f) Ms QG also discussed strategies, pitfalls and dangers with the ongoing employment litigation. She had reservations about Mr LN's attention to detail in connection with matters which were important.

(g) The demands of the March 2020 COVID-19 had a significant impact on Ms QG and her family (a household of seven people). Ms QG's office was some distance away from their home, and travel restrictions prevented access. Her "home office" was very basic and did not include a photocopier or printer, nor access to billing records.

(h) Immediately after the first 2020 lockdown ended, Ms QG was involved in lengthy matters before the Employment Court and the ERA.

(i) Time recorded and charged represents actual time spent on Mr LN's matter.

Standards Committee decision

[21] The Committee identified the issue to be determined as being:[2]

(a) Whether Ms QG breached any of her professional obligations in her advice to Mr LN.

(b) Whether Ms QG's fees were fair and reasonable.

Breach of professional obligations?

[22] The Committee noted that a lawyer has an obligation to "always act competently and in a timely manner consistent with the terms of their retainer and the duty to take reasonable care."[3]

[23] The Committee considered that matters between the parties were reasonable until Mr LN indicated his intention to instruct another lawyer.

[24] It was the Committee's view that Ms QG's work prior to then had been conducted with reasonable diligence and "was broadly consistent with what would be expected in the same or similar circumstances."[4]

[25] In relation to the delay in sending Mr LN an invoice, the Committee referred to r 9.6 of the Rules which requires a lawyer to send their final invoice within a reasonable time of concluding the matter or terminating a retainer.

[26] The Committee took into account Ms QG's explanations for the delay which included computer difficulties, lockdown, COVID-19 related issues and personal issues affecting Ms QG's capacity to address matters.

[27] The Committee noted that "the delay in the provision of the invoice was considerable" but was nevertheless satisfied that because of the circumstances described by Ms QG, it was understandable.[5]

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[2] Standards Committee decision (11 May 2021) at [6].
[3] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules), r 3.
[4] Standards Committee decision (11 May 2021) at [8].
[5] At [10].

[28] In particular, the Committee observed that Mr LN was aware of the computer issues that had affected Ms QG's practice.

Fees fair and reasonable?

[29] The Committee considered that its members had "sufficient expertise and disputes, mediation, and related matters" and with that experience was able to assess the reasonableness of Ms QG's fees, without the need to appoint a costs assessor.[6]

[30] The Committee noted that in assessing the fee, it took into account the reasonable fee factors set out in r 9.1 of the Rules.

[31] It was the Committee's assessment that, at Ms QG's hourly rate of $290 (which it held was "consistent with lawyers of a similar experience and in a similar location"), a fee of $9,000 represents 32 hours of Ms QG's time.[7]

[32] The Committee held that the matter "was of considerable importance to Mr LN as it related to his employment", although it was not "unduly complex", nor did it otherwise raise issues not normally present in other similar cases.[8]

[33] It was the Committee's view that Ms QG could have "provided more regular information to Mr LN regarding the level of fees and how they were accumulating" but, nevertheless, "the work undertaken by Ms QG was required in order to progress to mediation."[9]

[34] The Committee concluded that in all the circumstances, the fees charged by Ms QG were fair and reasonable.

Review Application

[35] Mr LN filed his application for review on 10 June 2021. He says:

(a) He understood that Ms QG would keep a record of her costs with the intention of claiming them back as part of the mediation outcome.

(b) Ms QG's hourly rate is not challenged. It is accepted that legal fees are payable.

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[6] At [15].
[7] At [17].
[8] At [19].
[9] At [21].

(c) Mr LN's understanding was that "typical" legal fees up to mediation is approximately $5,000. Ms QG indicated she would claim $6,000 at the mediation, noting that this was "on the high side."

(d) Mr LN's "firm belief" was that legal fees, as at the conclusion of the mediation, would be a maximum of $6,000.

(e) The Committee's decision is unfair and Mr LN's "main issues and concerns" have not been understood or dealt with.

(f) Those main issues and concerns include the late invoice, and the amount of the invoice.

(g) Very little time was spent on the case after mediation apart from two lengthy phone calls. Ms QG dominated both phone calls with discussion about her personal legal issues.

(h) The Committee did not address the delay in sending the invoice (10 months after it was requested).

(i) Ms QG did not act in a timely manner by sending the invoice 10 months after it had been requested.

(j) It is not "professional" for a lawyer to lose electronic data. Ms QG told both Mr LN and his new lawyer that all of the information stored on her computer system had been irretrievably lost including all information in her email software. Ms QG should have had a backup system in place.

(k) Ms QG's only discussion about costs occurred at the mediation, when she said that she would claim $6,000 as part of the compensation package from XYZ.

Response by Ms QG

[36] Ms QG responded to the review application in a document received by the Case Manager on 3 August 2021. She said:

(a) Mr LN is wrong to say that most of the post-mediation discussions involved Ms QG talking about her personal legal issues. The subject was raised briefly as part of a wider discussion about Mr LN's wish to escalate matters to the ERA.

(b) Post-mediation Ms QG had concerns about Mr LN's attention to detail in relation to issues that were relevant to his personal grievance. She was concerned about how that might play out before the ERA.

(c) Mr LN was not Ms QG's only client and she had to prioritise her work according to the client needs.

(d) Significant work was carried out between Ms QG being first instructed, and Mr and Mrs LN departing for their overseas trip in mid-June 2019.

(e) Fees were discussed at Ms QG's initial meeting with Mr LN, and that the mediation.

(f) There is no "average fee" for a matter that advances to an employment mediation.

(g) Ms QG did not charge for attendances outside work hours, which were frequent.

(h) Ms QG's reasons for sending the invoice in September 2020, "were genuinely premised." The March 2020 lockdown had a significant impact on Ms QG's ability to access her business. By law, she was unable to do so. Invoicing could only occur at her office, so that was put on hold for all clients.

(i) A member of Ms QG's family was also diagnosed with a serious medical condition which created additional stress on her and her family. As well, the personal legal case in which Ms QG was involved, took a significant toll on her.

(j) As well, Ms QG suffered the computer failure. Nevertheless, she still had "a lot" of Mr LN's file as well as most of the emails which she had printed out. Ms QG was unaware that her email account provider had stopped providing cloud-based backup of emails.

(k) The hard drive malfunction caused an irretrievable loss of data.

(l) The pre-mediation work on behalf of Mr LN was extensive, and included proper explanation about the process, its advantages and disadvantages, expectations and costs.

Comment by Mr LN

[37] In an email to the Case Manager dated 8 August 2021, Mr LN commented on Ms QG's response to his review application, as follows:

(a) The COVID-19 lockdown from March 2020 was for six weeks. That does not provide excuse for either the failure to issue an invoice before then, all the delay following the lockdown.

(b) Ms QG had initially told Mr LN's new lawyer that she had "irretrievably lost [all the information stored on her computer]" and that this was "all information on my Outlook [including] all email correspondence concerning [Mr LN's matter]". She now appears to be saying that she nevertheless retained electronic and paper data after the hard drive crash.

(c) Mr LN considers that "it is unprofessional and very concerning for a lawyer to irretrievably lose data and not have a functioning back up system in place."

(d) The 10 November 2019 telephone call was dominated by Ms QG, including talking about her personal legal case.

(e) Ms QG did not keep Mr LN "properly informed of her costs."

(f) The principal concerns relate to the delay with sending the invoice, and the amount of the invoice bearing in mind that Ms QG was claiming $6,000 by way of costs at the mediation. The final invoice was $9,000.

Review on the papers

[16] This review has been undertaken on the papers pursuant to s 206(2) of the Lawyers and Conveyancers Act 2006 (the Act), which allows a Legal Complaints Review Officer to conduct the review on the basis of all information available if the Review Officer considers that the review can be adequately determined in the absence of the parties.

[17] In anticipation of that process being followed, on 2 November 2021 the parties were given an opportunity to make submissions as to whether they wished Mr LN's review application to proceed by way of a hearing in person, or a hearing on the papers.

[18] The parties were advised that in the absence of any response, it would be assumed that there is no objection to the matter being determined on the papers.

[19] In an email also dated 2 November 2021, Ms QG acknowledged receipt of the Case Manager's letter but otherwise made no comment about the format of the hearing.

[20] Mr LN has not provided any response to the Case Manager's letter dated 2 November 2021.

[21] From the lack of a substantive response from either party, and consistent with what they were advised in the Case Manager's letter dated 2 November 2021, I infer that they are both content for the review application to be dealt with on the papers.

[22] On the basis of the information available, which I have carefully considered, I have concluded that the review may be adequately determined on the papers and in the absence of the parties.

[23] I record that I have carefully read the complaint, the Committee's decision and the submissions filed in support of the application for review. There are no additional issues or questions in my mind that necessitate any further submission from either party.

Nature and scope of review

[24] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:[10]

> … 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.

[25] More recently, the High Court has described a review by this Office in the following way:[11]

> 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

[10] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41] (citations omitted).
[11] *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

> 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.

[26] 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

[27] There are three issues for me to consider:

(a) Do any conduct issues arise as a result of Ms QG losing electronic data in connection with Mr LN's case?

(b) Do any conduct issues arise as a result of Ms QG's retainer with Mr LN ending in November 2019, with Ms QG issuing her final invoice in September 2020?

(c) Were the fees charged by Ms QG fair and reasonable?

Data loss

[28] Both parties have written extensively about Ms QG's computer failure towards the end of 2019.

[29] What emerges from all that has been written, is that sometime in either October or November 2019 Ms QG arranged for a computer technician to upgrade one of her computers by installing a Solid State Drive (SSD). I infer this to be a specialised internal hard drive on which data may be stored.

[30] The technician who installed the SSD failed to remove a small piece of protective packaging. The SSD heated up with processing use, as would normally be expected, but this also melted the protective packaging which then caused a catastrophic malfunction of the SSD. That in turn led to data was stored on it being irretrievably lost.

[31] I accept what Ms QG says about that event. It was unforeseen and completely beyond her control.

[32] What is less clear, is the nature of the data that was irretrievably lost.

[33] In an email to Mr LN's new lawyer sent by her on 3 December 2019, Ms QG described the SSD failure as follows:

> Essentially, I've lost all information on my Outlook to include all email correspondence concerning [Mr LN's file]. However Mr LN has all of the information, as he was copied into and/or send it to me. That information also includes all correspondence with XYZ.

[34] Ms QG appears to be saying that only emails were irretrievably lost as a result of the SSD failure. Presumable this included incoming emails to which documents had been attached as well as the documents themselves.

[35] However, in that email Ms QG also said that all of this information had been forwarded to Mr LN, so was essentially still in existence. She described Mr LN's file as being "95% electronic", with the balance being consultation and file notes.

[36] Ms QG's explanation to Mr LN's new lawyer is slightly different from the explanation she gave the Complaints Service when responding to Mr LN's complaint on 24 September 2020. In that letter, she said the following:

> Information on my Outlook for a defined period was lost but the failure of the SSD did not impact my electronic client files. While I essentially had most of Mr LN's substantive file saved in an electronic file, and on hard copy I could not be certain that I had a copy of all email correspondence between us at that given time. Mr LN would have had all the emails on file as he was copied to everything, and therefore his file would have resonated with being more complete.

[37] It is not entirely clear what comprises Ms QG's "electronic client files." For example, I do not know whether Ms QG, on receiving an email to which a document was attached, separately saved the attachment to the relevant electronic client file. From the description in the email she sent Mr LN's new lawyer, that does not appear to be the case. It is even less clear as to whether she printed those documents and put them on her paper file.[12]

[38] Nevertheless, it seems to me that the only conduct issue (if indeed it is a conduct issue) is whether Ms QG ought to have had a system whereby outgoing and incoming emails, and any attached documents, were backed up; either electronically or as a paper copy.

[39] Ms QG has said that her understanding at the time was that her email account provider automatically backed up account-holder emails to a cloud storage facility.

[12] I refer later in this decision to what appears to be another inconsistency in Ms QG's explanations about the way in which client time is recorded.

However, that service was discontinued at some point, although Ms QG was unaware of that.

[40] I infer from Ms QG's description of her law practice, that she does not employ any staff and does not work in partnership with any other lawyer. Hers truly is a sole practice.

[41] As such, she administers her document management system single-handedly.

[42] Generally, an individual will store electronic information that they have created (such as documents and the like) on their computer's hard drive (and/or SSD). They may also elect to back-up that electronic information to cloud-based storage, or to an external hard drive (or both). That may be done manually or automatically.

[43] Alternatively, they may elect only to print the documents and maintain a complete paper-based file.

[44] Cloud-based storage has the advantage of access by the account holder from any device.

[45] Emails are in a slightly different category and tend to reside on the email service provider's server and synchronise with the account holder's software. There is generally a facility for the account holder to archive emails on their hard drive, and back that up in the ways described above; account holders may also print the emails and retain paper copies.

[46] It is reasonable to expect a lawyer to also save documents that are attached to an incoming email, to an electronic client folder on their computer's hard drive; or to print them and retain a paper copy.

[47] It is also reasonable to expect that a lawyer operating a practice will have appropriate electronic or paper backup of information stored on their computer hard drive. The obvious reason is to prevent data loss if the computer hard drive crashes in some way.

[48] Quite apart for any other reason, the Privacy Act 2020 obliges any agency (such as a lawyer) who holds personal information about another person (such as a client) to do so safely and securely.[13]

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[13] Privacy Act 2020, s 22, Information Privacy Principle 5:

> *Storage and security of personal information*
> An agency that holds personal information must ensure—

[49] In the context of electronic data, secure retention of client information must include a backup of some description.

[50] It is not clear whether Ms QG maintained cloud-based back-up storage of electronic data on her computer's hard drives.

[51] I tend to think that she did not. Her description of the limited access to information in her office during the COVID-19 lockdown from March 2020, was that because she could not get into her office, she could not access certain types of electronically stored information. As indicated above, cloud-based storage can be accessed from any device, anywhere.

[52] Nevertheless, it appears that Ms QG maintained both paper-based and electronic files of client data. Indeed, my experience is that most lawyers operate a combination of paper-based and electronic files.

[53] It is not entirely clear whether the electronic and paper files maintained by Ms QG were mirror copies.

[54] Extrapolating from the above, I would venture to suggest that it is also reasonable to expect that a lawyer will take steps to ensure that emails sent and received through their practice, are either backed up in a similar way, or printed out and kept with a paper-based file.

[55] There is no difference in principle between safe and secure storage of documents on the one hand, and emails on the other hand.

[56] Ms QG acknowledges that she was unaware that her email account provider had stopped what she had understood were automatic cloud-based backups of emails. It could be said that this was the sort of development that Ms QG should have been alert to.

[57] Nevertheless, it seems to be the case that Ms QG printed emails and placed them on her paper-based client files.

[58] Ms QG indicated to Mr LN's new lawyer that although certain that his electronic information had been irretrievably lost as a result of the hard drive failure, all of that

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(a) that the information is protected, by such security safeguards as are reasonable in the circumstances to take, against—
  (i) loss; and
  (ii) access, use, modification, or disclosure that is not authorised by the agency; and
  (iii) other misuse ….
…

information had earlier been provided by her to Mr LN as part of her client reporting processes.

[59] I do not consider that appropriate backing up of data – whether emails or other documents – is satisfied by saying that the client has their own copies of the material.

[60] The whole question of Ms QG's document management system is unclear to me. I accept that the SSD failure was unforeseeable and due to circumstances completely beyond her control. However, I do not know whether the SSD in question was the only hard drive on the computer on which client data was stored – or, indeed whether this was the only computer on which client data was stored.[14]

[61] It seems to be the case that Ms QG kept some printed copies of client emails on her paper-based file, and I am certainly not prepared to say that there are conduct issues arising out of her not having an electronic backup of those emails at the relevant time.

[62] I am less clear about management of documents attached to incoming emails. Self-evidently documents attached to outgoing emails would already have existed on Ms QG's computer.

[63] The issue really boils down to one of efficient client data management by Ms QG, rather than whether there were more systemic conduct issues relating to storage backup of data and the quality of hardware.

[64] I do not necessarily agree with Ms QG that because she is not "tech savvy" then this means that she cannot be expected to have proper document management systems in place.[15] It is not necessary for her to understand how the technology works, but nevertheless it could reasonably be expected that a lawyer would have systems in place when they are using technology, to ensure adequate backup in the event of a SSD or other hard drive failure such as Ms QG experienced.

[65] Ultimately, I do not have enough material to say one way or the other, whether Ms QG's document and email management systems were, at the relevant time, managed by her efficiently or otherwise.

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[14] There is reference by Ms QG to a second computer in her office, used for billing purposes. Again, it is unclear whether other data was stored on this computer's hard drive. It is also unclear whether the two computers were networked.

[15] See Ms QG's letter to the Complaints Service (16 October 2020) at [5].

Invoice timing

[66] It is accepted that on 19 November 2019, Mr LN asked Ms QG to invoice him for the legal work she had carried out on his behalf, up until that time. Both parties also agree that the retainer ended on or about this date.

[67] This was the last time that the parties spoke.

[68] On 10 July 2020 Ms QG sent Mr LN a text message indicating that she would be sending an invoice in the next few weeks. She followed that up with an email to him on 7 August 2020, eventually sending the invoice on 4 September 2020.

[69] The text message that Ms QG sent Mr LN on 10 July 2020 simply said that she was "hoping to send [Mr LN an account in the next coming weeks for] services rendered."

[70] Ms QG's 7 August 2020 email said the following (where relevant):

> … I did send a text to [Mr LN] (10 July) but didn't receive a reply so I thought I would email you.
>
> …
>
> I need to send an account for the work I undertook in getting the matter off the ground. As you may be aware, I have had a big issue [with my personal legal matter] which has caused me a lot of grief because of their terrible lies. … At the time when [Mr LN] called my computer had failed as a result of a poorly installed SSD … Which resulted in further stress and having to purchase a new computer et cetera. With these factors and the COVID-19 lockdown that forced me out of my town office this has a huge backlog for me. I have also been heavily timetabled with hearing matters immediately following the lock down making for a very tight timetable.
>
> I hope to send your account soon. Yes, there will be detailed time records – I think you requested those in your last email some time back, but I always pass them to clients.

[71] On 4 September 2020 Ms QG forwarded her invoice to Mr LN, together with an electronic version of her time records and a covering letter.

[72] The invoice was for a total amount of $10,465, of which $9,000 was represented by legal fees. The rest was GST and disbursements.

[73] The covering letter noted that Ms QG had discounted her recorded time by $314 plus GST.

[74] Ms QG said the following in her covering letter:

> I apologise for the time taken to get this account out, but as you are aware, I have been bogged down by events that have occurred over the last year. Further, with the lockdown I was unable to access my town office which I

> require to complete client invoicing. Albeit in saying this I note I have made contact by email and text but have not received a response from you.

[75] Rule 9.6 of the Rules provides (where relevant):

> **Final account**
>
> 9.6 A lawyer must render a final account to the client … within a reasonable time of … the retainer being … terminated. The lawyer must provide with the account sufficient information to identify the matter, the period to which it relates, and the work undertaken.

[76] As a preliminary point, I am satisfied that Ms QG complied with the second part of r 9.6, in that she provided sufficient information to Mr LN together with the invoice; specifically, electronic time records.

[77] The conduct issue is whether Ms QG rendered her final account to Mr LN "within a reasonable time of the retainer being terminated."

[78] As I have noted above, Ms QG's retainer with Mr LN was terminated on or about 19 November 2019. Her invoice was sent on 4 September 2020. That is a period of a little under 10 months.

[79] Mr LN submits that this is the very opposite of a final account being provided "within a reasonable time."

[80] Ms QG argues that a combination of circumstances beyond her control caused the delay. Those circumstances included the hard drive failure, personal legal issues, the COVID-19 lockdown, a family health issue, pressure of ongoing work and a post-lockdown backlog of work.

[81] The rationale for the requirement that a lawyer must send their final invoice within a reasonable time of a retainer being terminated is tolerably clear.

[82] On the one hand, it encourages lawyers to conduct their practices in an efficient and business-like manner. It is also consistent with a lawyer's obligation on termination of a retainer, to confirm termination, to summarise the completed work and where appropriate identify future steps that might be necessary.[16] Hand-in-glove with that obligation would seem to be the obligation to provide a final account.

[83] As well, receiving an invoice within a reasonable time of a retainer being terminated enables a client to financially plan with a degree of certainty. It is reasonable to observe that people do not like receiving notice of large unexpected costs. Ms QG

[16] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 7.6.

herself acknowledged this in relation to the need to purchase a new computer after the hard drive failure in late 2019.

[84] The latter rationale is consistent with the consumer protection focus of the Act.[17]

[85] It is trite to observe that "reasonable time" does not mean immediately, or even soon after.

[86] Whether an invoice has been issued within a "reasonable time" will always be a question of fact. Reasonableness must be measured against all of the prevailing circumstances: those relating to the lawyer as well as those relating to their client.

[87] I accept that Mr LN could have reasonably expected to receive Ms QG's invoice sooner rather than later. Indeed, Ms QG intimated as much in her email to him on 19 November 2019 when she said "yes, I will send an itemised account shortly."

[88] As well, Mr LN had engaged another lawyer to act for him in his employment dispute and was undoubtedly facing further legal bills. Careful financial planning would have been required to ensure that he could meet Ms QG's costs as well as future legal costs (not to mention the myriad of other costs faced by most people in living their daily lives).

[89] The issue is whether the explanations offered by Ms QG for the delay provide her with a defence to the claim that she did not issue her final invoice with a reasonable time of the retainer being terminated. In other words, that she issued the invoice as soon as it was reasonably practicable for her to do so.

[90] For reasons which follow, I do not consider that those explanations provide safe harbour for Ms QG to claim that it was reasonable for her to delay sending her final invoice to Mr LN.

[91] First, I note that there appears to be an inconsistency in Ms QG's descriptions to the Complaints Service as to her time recording system.

[92] In Ms QG's initial response to Mr LN's complaint, dated 24 September 2020, she said the following:

> … I would like to comment on my practice approach to recording client time. This is recorded by hand on a daily diary. This has been my practice for the last 12 years. Each year I operate two diaries, one for timetable scheduling, and the other for recording client time.

[17] Lawyers and Conveyancers Act 2006, s 3(1)(b).

[93] In Ms QG's further response to the Complaints Service dated 16 October 2020, she referred to her "billing software programme [that] has always been accessed on a separate computer and all printing is set up from my office printer."

[94] The time records that Ms QG attached to Mr LN's invoice are consistent with time records customarily seen by Review Officers as having been generated by a billing software programme.

[95] It may well be the case that Ms QG's practice is to transcribe her handwritten client time records from her diary to her time recording software. But the inconsistency referred to by me above has not been explained.

[96] It does however appear to be the case that Ms QG's electronic time records (such as Ms QG attached to Mr LN's invoice) were not affected by her SSD failure at the end of 2019.

[97] It would also seem to be the case that Ms QG "had essentially most of Mr LN's substantive file saved in an electronic file, and on hard copy…"[18]

[98] The national COVID-19 lockdown began on 26 March 2020, and ended (or at least dropped a level) on Tuesday, 28 April 2020. Level 2, which generally allowed greater access to workplaces, began on Thursday, 14 May 2020.

[99] I accept that Ms QG was unable to go to her office for at least the first part of the COVID-19 lockdown, and may well have been unable to do so until the alert level was dropped to Level 2.

[100] Self-evidently Ms QG cannot avail herself of any COVID-19 lockdown restrictions before 26 March 2020. By then, a little over four months had elapsed since the retainer had been terminated and Mr LN had requested Ms QG's final invoice.

[101] It appears to be the case from Ms QG's explanations for the delay, that she was preoccupied with the SSD failure and her personal litigation issues during this four-month period.

[102] Nevertheless, there is no doubt that Ms QG had unrestricted access to her office between the hard drive crash and the beginning of the national COVID-19 lockdown. Obviously this would have included access to her electronic time records as well as Mr LN's electronic file.

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[18] See Ms QG's letter to the Complaints Service (24 September 2020).

[103] I have difficulty in accepting that this provides Ms QG with a reasonable explanation for a four-month delay in issuing a final invoice.

[104] The obligation to provide a final invoice arises irrespective of whether a client requests one. In this instance, Mr LN made that request and so this should have added a degree of focus to Ms QG's obligation to provide one.

[105] Whilst I accept, without reservation, that Ms QG's personal legal issues were demanding and draining, I do not accept that this excuses her professional obligations to her clients, including providing a final invoice within a reasonable time.

[106] Ms QG had elected to initiate the legal action which then apparently became all-consuming. Her obligations to her clients, including the obligation to issue a final invoice, cannot take second place to personal issues of that nature.

[107] There may be matters affecting a lawyer's personal life which might allow for some flexibility when it comes to what amounts to a "reasonable time" for issuing a final invoice. Unforeseeable issues affecting health and the ability to manage a law practice are examples of this.

[108] That being said, as a matter of fairness some allowance could be made for the impact on Ms QG of receiving the court's judgement in her litigation. However, Ms QG said that the judgment was not issued until 21 February 2020.[19]

[109] Nevertheless, Ms QG has not provided any compelling reason to explain why she could not have issued Mr LN with a final invoice, between indicating that she would do so (19 November 2019), and 26 March 2020.

[110] The Committee dealt with this issue by focusing on COVID-19 related issues, as well as "other personal issues at affecting her capacity to address the matter."[20]

[111] With respect to the Committee their analysis seems to overlook the pre-COVID-19 national lockdown period, between 19 November 2019 and 26 March 2020. At the very most for Ms QG it could be said that her personal legal issues had some prominence for her, but as I have indicated above I do not accept that those matters can be said to take priority over her professional obligations to her clients.

[112] For the reasons set out by me above, I must respectfully disagree with the Committee's conclusion.

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[19] See Ms QG's letter to the Complaints Service (16 October 2020) at [6].
[20] Standards Committee decision (11 May 2021) at [10].

[113] However, that is not an end to the matter. I also consider that this delay was aggravated by the fact that it was not until 4 September 2020 that Ms QG actually issued Mr LN with a final invoice.

[114] That being said, I would note that if, hypothetically, Ms QG's retainer with Mr LN had been terminated on (say) 20 March 2020 (i.e. approximately six days before the national COVID-19 lockdown), then there is room to say that a delay until such time as Level 2 had commenced before issuing a final invoice, could, in all the circumstances, be a "reasonable time".

[115] However, I have reservations about accepting that Ms QG's delay after the return to Level 2 and until 4 September 2020 was, in all the circumstances, reasonable. This represents a period of about three-and-a-half months.

[116] I note that Level 2 began on 14 May 2020 and so beyond that date Ms QG would not necessarily have had any COVID-19 related reasons for delay. Her explanations for delays after that date appear to be related to pressures of work and her personal legal issues; although I do note that there is reference to what may have been an ongoing health issue affecting a family member.

[117] But in my view it cannot present as reasonable for a lawyer to say that pressure of other work justified a delay of three-and-a-half months, on top of an earlier delay of some four months.

[118] By mid-May 2020, Mr LN's final invoice should have been a priority for Ms QG.

[119] In my view, this additional delay aggravates what I have already found to be an unreasonable delay between the termination of Ms QG's retainer, and the beginning of the national COVID-19 lockdown on 26 March 2020.

[120] In all of the circumstances, I consider that Ms QG breached r 9.6 of the Rules by failing to issue Mr LN with a final invoice, within a reasonable period of time after their retainer was terminated.

[121] I deal further below with the question of penalty.

Fees fair and reasonable?

[122] I say at the outset that I am satisfied that Ms QG's time records, which were attached to her invoice to Mr LN, accurately and honestly reflect the time that she spent dealing with his employment matter.

[123] I would also add that I agree with the Committee's assessment that Ms QG "had the necessary skill and specialised knowledge to undertake the work" and that "she was an experienced employment lawyer."[21] I also agree that her hourly charge out rate of $290 per hour was quite reasonable.

[124] On the face of it therefore, Ms QG's fee of $9,000 reflects the work that she did on Mr LN's behalf.

[125] Mr LN has emphasised that either prior to or during the employment mediation in August 2019, Ms QG indicated that her costs to date were $6,000, and that she would claim these as part of the costs to be sought from XYZ noting that it was "on the high side".

[126] Ms QG has not explicitly dealt with this, other than to object to Mr LN referring to it on grounds that matters discussed during an employment mediation are privileged.[22]

[127] What Ms QG says about matters discussed at mediation and the privilege that attaches to them, is of course correct.[23]

[128] However, Mr LN was referring to a discussion that Ms QG had with him (which apparently included showing him a piece of paper with the figure of $6,000 written on it). Therefore, this was not a discussion in which the other side was participating, in the context of a mediation.

[129] Nevertheless, I place little weight on the significance of this discussion with Mr LN. Quite apart from anything else, it is generally the case that costs claimed at a mediation are less than the full lawyer–client costs that have been incurred.

[130] The general approach by lawyers to billing their clients for work in progress, is to do so monthly, or following significant events during a retainer.

[131] Ms QG's approach in employment matters is to delay billing until after any mediation. She notes that, for employee clients in particular, there may be significant cash flow problems and rather than add to those requiring payment of regular invoices with the possible consequence of a client deciding not to take matters further, she suspends billing until her client might be in a better position to meet legal costs. For example, a successful mediation for an employee might result in a contribution towards those costs.

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[21] Standards Committee decision (11 May 2021) at [18].
[22] See Ms QG's email to the Complaints Service (3 November 2020).
[23] Evidence Act 2006, s 57(1); Employment Relations Act 2000, s 148.

[132] I note that Ms QG's Letter of Engagement to Mr LN (1 March 2019) describes her "billing arrangements" in the following terms: "to help you budget, we can issue interim accounts, on a monthly basis, while work is in progress, with a final bill on completion."

[133] This is largely repeated in the terms of engagement attached to that letter where at [2.4] Ms QG says: "We may send interim invoices to you."

[134] I anticipate that Ms QG and Mr LN discussed invoicing at a very early stage of the retainer, and agreement was reached that monthly invoices would not be sent, and that an invoice would be issued at some point after the mediation and prior to the matter going further (if that was anticipated).

[135] This is a commendable approach. The one disadvantage would appear to be that, at least in Mr LN's case, despite not sending regular invoices Ms QG did not keep Mr LN informed on costs incurred due to the work in progress.

[136] If Ms QG had done so, then Mr LN's apparent shock at receiving an invoice for $9,000 in September 2020 may have been diminished somewhat.

[137] Ultimately however the assessment I am required to make is whether Ms QG's fees for the work she did on Mr LN's behalf, were fair and reasonable.

[138] In considering this issue, the Committee noted that its membership included lawyers with relevant experience. The decision recorded that the Committee had taken account of the reasonable fee factors set out in r 9.1 of the Rules, as well as Ms QG's experience and expertise and her hourly rate.[24]

[139] At [123] above I indicated my agreement with the Committee's views about those matters.

[140] The reasonable fee factors referred to by the Committee are as follows:[25]

> The factors to be taken into account in determining the reasonableness of a fee in respect of any service provided by a lawyer to a client include the following:
>
> (a) the time and labour expended:
> (b) the skill, specialised knowledge, and responsibility required to perform the services properly:
> (c) the importance of the matter to the client and the results achieved:
> (d) the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client:

[24] Standards Committee decision (11 May 2021) at [15]–[18].
[25] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 9.1.

(e) the degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved:
(f) the complexity of the matter and the difficulty or novelty of the questions involved:
(g) the experience, reputation, and ability of the lawyer:
(h) the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients:
(i) whether the fee is fixed or conditional (whether in litigation or otherwise):
(j) any quote or estimate of fees given by the lawyer:
(k) any fee agreement (including a conditional fee agreement) entered into between the lawyer and client:
(l) the reasonable costs of running a practice:
(m) the fee customarily charged in the market and locality for similar legal services.

[141] It was the Committee's conclusion that Ms QG's fees were fair and reasonable.

[142] On a purely time-cost assessment, Ms QG's fees represents a little over 31 hours of her time.

[143] I agree with Ms QG's comments that it can produce a misleading picture to focus simply on outputs in a matter (such as sending a letter), when expressing an opinion about whether the associated fees were fair and reasonable.

[144] Ms QG makes the point that an initial notice of personal grievance must be carefully drafted and must also comprehensively describe the nature of the employment problem. She is right to say that any gaps can make it difficult to introduce further evidence, as a matter advances.

[145] As a matter of strategy, it is very difficult to quibble with that approach.

[146] It seems clear from the electronic time records, that a reasonable amount of time was devoted to preparing Mr LN's notice of personal grievance, which was sent to XYZ on 18 April 2019. This is consistent with Ms QG's approach to these matters, described by me above.

[147] XYZ responded to the notice of personal grievance, approximately four weeks later on 20 May 2019.

[148] Clearly this did not resolve the employment problem, and mediation proceeded on 27 August 2019 – approximately three months later.

[149] I do not consider that there can be any criticism of Ms QG for her management of Mr LN's employment dispute up until this time. A delay of some five months between being first instructed in a matter such as this, and getting to mediation including in circumstances when Mr LN was unavailable for about six weeks, is unremarkable.

[150] Ms QG's time records reveal what I would describe as conventional work being carried out by her between receiving XYZ' response to her notice of personal grievance and attending the mediation.

[151] In particular, I note the preparatory work undertaken during August and up until the date of the mediation (27 August 2019), as being consistent with diligent attention to the matter in hand, thorough preparation including preparing Mr LN for the mediation.

[152] Whilst it could be said that some lawyers might charge less than $9,000 to get a personal grievance to mediation, it is wrong to conclude that this means that Ms QG's fees were unfair and unreasonable.

[153] I take little account of Mr LN's comments about what the lawyer he instructed after Ms QG, has said. Comments of that nature are singularly unhelpful.

[154] I note that this lawyer has not supported Mr LN's criticisms by providing his own critique of Ms QG's fees.

[155] Whilst there can be some criticism of Ms QG for not keeping Mr LN sufficiently informed about the mounting costs up to mediation, I do not consider that this warrants any particular disciplinary response.

[156] In considering the question of Ms QG's fees, I have given due weight to the fact that lawyers on the Committee with experience in this area have each brought that experience to bear in assessing those fees.

[157] Nevertheless, and as I am required to do, I have approached the question of Ms QG's fees independently, and have formed my own objective view as to whether they are fair and reasonable.

[158] I have measured that question against the reasonable fee factors, set out by me above.

[159] I have taken into account my assessment that Ms QG's time records are accurate, and her approach to Mr LN's legal problem was comprehensive and diligent. Although I have been critical of Ms QG's delay in sending her final invoice, that issue is quite separate from the question of whether the fees she charged were fair and reasonable.

[160] I am not persuaded that Ms QG's fees are excessive.

Concluding remarks

[161] I have carefully read all of the material that has been provided by both parties to the Standards Committee and as part of his review application.

[162] The process of review has been described as independent and robust. A Review Officer is required to assess all of the material that was before the Committee and come to an independent assessment as to whether or not conduct issues have been raised which require a disciplinary response.

[163] That being said, a Review Officer should not substitute their own view for that of a Standards Committee's, unless there is good reason to do so. That "good reason" would generally be founded upon some error on the part of the Committee's assessment and reasoning.

[164] In my view, the Committee's assessment of whether Ms QG issued Mr LN with a final invoice within a reasonable time of their retainer terminating, was unduly focused upon the COVID-19 issues at the expense of not carefully looking at whether or not there were any relevant pre-COVID-19 issues.

[165] In all other respects, I agree with the Committee's assessment, and its conclusions.

Breach of r 9.6 of the Rules

[166] I have found that Ms QG breached r 9.6 of the Rules, by failing to send Mr LN a final invoice within a reasonable time of their retainer ending. I concluded that Ms QG could, and should, have done so before 26 March 2020. I have found that breach to have been aggravated by the further delays after 17 May 2020.

[167] The question now is whether this breach warrants a finding of unsatisfactory conduct and if so what, if any, penalty should be imposed.

[168] It will sometimes be the case that a Review Officer will find that a lawyer has breached a statutory or regulatory or rules-based requirement, but otherwise not impose a finding of unsatisfactory conduct. Generally, that is a rare occurrence and might arise where the breach could be said to have been technical, or otherwise minor.

[169] However, I am not persuaded that Ms QG's breach of r 9.6 of the Rules could be said to be in the category of technical or minor.

[170] Rule 9.6 of the Rules exists for good reason and is consistent with the consumer protection principles underpinning the Act. It is consistent with community expectations of lawyers conducting themselves professionally.

[171] No compelling explanation has been advanced by Ms QG to justify the delay between 19 November 2019 and 26 March 2020. Matters simply became compounded after 17 May 2020.

[172] Delaying sending a final invoice due to stress, occasioned by external matters in which a lawyer has chosen to become engaged, does not present as a consumer-focused approach to the provision of legal services.

[173] Even so, Ms QG has not sought to argue that the undoubted stress that her personal legal issues caused consumed her for the whole of this period to the point that she was unable to send Mr LN an invoice. She appears to have had all of the necessary ingredients to do so: an electronic file and electronic time records.

[174] In my view this breach requires me to make a finding of unsatisfactory conduct, pursuant to s 12(c) of the Act.

[175] When considering penalty, I am cognisant that the legal work that Ms QG carried out on Mr LN's behalf was, in all respects, competently and diligently performed, and done so in a timely way.

[176] Ms QG's failure to send the final invoice with reasonably alacrity was generally inconsistent with the diligence that she applied to Mr LN's legal work.

[177] I also accept that matters began to become derailed for Ms QG from the early part of 2020 onwards, and that this provides some small measure of mitigation for what is otherwise a breach of an important client care requirement.

[178] I am satisfied that a finding of unsatisfactory conduct sufficiently marks this matter.

Decision

[179] Pursuant to s 211(1)(a) of the Act, the decision of the Committee is:

(a) reversed as to the finding that no professional conduct issues arise as a result of Ms QG's delay in sending a final invoice to Mr LN following the termination of their retainer, and replaced by a finding that Ms QG

breached r 9.6 of the Rules and that this was unsatisfactory conduct by her;

(b) confirmed as to the finding that Ms QG's fees were fair and reasonable.

Costs on review

[180] Where a finding of unsatisfactory conduct is made by a Review Officer, costs will be awarded in accordance with the Costs Orders Guidelines of this Office. It follows that Ms QG is ordered to pay costs in the sum of $900 to the New Zealand Law Society by 5pm on Friday 10 December 2021, pursuant to s 210(1) of the Act.

Enforcement of money orders

[181] Pursuant to s 215 of the Act, I confirm that the money order made by me above may be enforced in the civil jurisdiction of the District Court.

Anonymised publication

[182] Pursuant to s 206(4) of the Lawyers and Conveyancers Act 2006, I direct that this decision may be published but without any details that may directly or indirectly identify the parties, or any other person named in this decision.

DATED this 09th day of November 2021

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R Hesketh
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 and Mrs LN as the Applicants
Ms QG as a Respondent
[Area] Standards Committee [X]
New Zealand Law Society