LCRO 228/2014

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the [Area] Standards Committee
BETWEEN	**AB** Applicant
AND	**CD** Respondent

DECISION

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

Introduction

[1] Mr AB has applied for a review of a decision by the [Area] Standards Committee which, following an inquiry into fees rendered by Mr AB to Ms CD, determined that the fees charged were unreasonable, such as to merit a finding of unsatisfactory conduct.

[2] Various orders flowed from the unsatisfactory conduct finding.

Background

[3] The background to the complaint is comprehensively set out in the Committee's decision of 11 September 2014.

[4] Mr AB and Ms CD have conflicting views on material issues relating to the retainer, including:

(a) When the retainer came into existence.

(b) What work was covered by the retainer.

(c) Whether Ms CD had instructed Mr AB to fly to [Overseas], and whether his attendances on Ms CD in [Overseas] were attendances which formed part of the retainer, and attendances for which Ms CD could properly be charged.

[5] What is not in dispute is that:

(a) Ms CD was introduced to Mr AB through a third party.

(b) In [Month] 2013 Mr AB met with Ms CD in [Overseas].

(c) Ms CD paid $50,000 to Mr AB's personal bank account on [Month 2013].

(d) Ms CD travelled to New Zealand in [date] 2013.

(e) Mr AB introduced Ms CD to lawyers from [XX Law], and signed a contract engaging the services of [JK] Immigration Limited and an authority authorising [XX] Law to act.

(f) Ms CD terminated the retainer and sought a refund of fees paid.

(g) Mr AB rendered an account in the sum of $50,000.

The complaint and the Standards Committee decision

[6] Ms CD, through her representative Mr EF, lodged her first complaint with the New Zealand Law Society Complaints Service (NZLS) on 11 June 2013. That complaint concluded with indication that "following receipt of any invoices or statement from Mr AB a complaint regarding fees may also be made by Ms CD."

[7] Mr EF wrote further to the Complaints Service on 28 January 2014. In that correspondence he:

(a) Confirmed that a complaint was being made in respect to the quantum of Mr AB's fee.

(b) Advised that Ms CD disputed significant components of the work that Mr AB had said he had done.

(c) Advised that Mr AB had completed work that he had not been instructed to complete.

[8] The Committee distilled the issues to be considered as follows:

(a) Was the complaint properly made against Mr AB personally?

(b) If the answer to (a) was yes, was the fee rendered by Mr AB fair and reasonable based on chapter 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008?

(c) If the answer to (b) was no, what determinations and/ or order should be made in relation to the breach?

[9] The Committee delivered its decision on 11 September 2014.

[10] The Committee concluded that fees charged were unreasonable, such as to merit the entering of an unsatisfactory conduct finding, together with penalty orders.

[11] In reaching that decision the Committee determined that:

(a) The complaint was properly made against Mr AB.

(b) The terms of engagement were defined in the contract to engage [JK] Immigration Limited and the authority for [XX Law] to act dated [Month] 2013.

(c) There was no basis for Mr AB to charge for attendances prior to [date] 2013, or to claim for disbursements incurred in [Overseas] (including travel to [Overseas]).

(d) There was no basis for Mr AB to charge for Family Court applications and related attendances between [April] 2013 and [May] 2013.

(e) There was no basis for Mr AB to charge time at $300 plus GST per hour, when the charge out information provided to Ms CD recorded a fee of $250 plus GST per hour.

(f) There was no basis for Mr AB to charge Ms CD for attendances in dealing with her complaint.

(g) The fee charged for work completed was not fair and reasonable.

[12] Having concluded that the fee was unreasonable, the Committee directed that the fee be reduced to $10,000, that the balance of $40,000 be refunded to Ms CD, and that Mr AB pay compensation to Ms CD in the sum of $5,000 as contribution to her legal costs, together with $2,000 for stress and the loss of use of money. A fine of $1,000 was ordered to be paid to the New Zealand Law Society. Those monetary orders were accompanied by a censure and the unsatisfactory conduct finding.

Application for review

[13] Mr AB filed an application for review on 30 October 2014.

[14] Mr AB instructed Mr GH to act for him on the review.

[15] Mr GH submits that:

(a) The Committee failed to take into account Mr AB's submissions and/or evidence.

(b) The Committee wrongly adopted the complainant's version of events or supporting arguments without any explained or due supported basis for preferring them.

(c) The Committee failed to provide Mr AB due s 141(a) of the Lawyers and Conveyancers Act 2006 (the Act) particulars, contrary to its statutory obligation and nor any in the notice of hearing, contrary to basic natural justice.

(d) The Committee denied Mr AB the opportunity to consider and respond to the complainant's submissions (and evidence) for the hearing, which varied materially from the original heads of complaint, and as such, was a breach of natural justice.

(e) There was no evidential basis to support the direction that Mr AB pay the complainant $5,000 in legal fees and $2,000 for stress and the loss of money (and, in any event, this was also ultra vires).

(f) The Committee made one or more errors of fact or law.

(g) The decisions were arbitrary and capricious.

(h) The Committee made a determination as to the appropriateness of costs without reference to a cost assessor or to an individual standards Committee member, as required by 10.3 of the practice note concerning the functions and operations of lawyers Standards Committees (not to mention custom and convention) and/or also without any finding as to whether the services provided were reasonably congruous with the fees charged and/or without a s 161(2) certificate (much less fair certification process).[1]

(i) There was never a s 137(1)(a) decision followed by a s 140 enquiry, which is a prerequisite to a s 152(1)(a) determination, thus making the process void ab initio.

(j) The legal standards officer who had managed the file, had acted improperly.

(k) Mr EF should have been debarred from representing Ms CD.

(l) It was wrong for the Committee to refer some matters to the Disciplinary Tribunal and at the same time determine other matters.

[16] Ms CD's counsel was invited to comment on Mr AB's review application. In submissions filed with the Legal Complaints Review Officer (LCRO) on 17 November 2014, Mr EF submitted that:

(a) He placed reliance on the submissions provided to the Committee.

(b) Mr AB had received sufficient particulars of the fee complaint.

(c) Mr GH failed to identify in what respect the decision was arbitrary or capricious.

(d) There was no obligation on the Committee to appoint a costs assessor.

The Hearing

[17] A review hearing proceeded on 12 November 2015. On that day, three reviews were heard which flowed from the [Area] Standards Committee delivering three decisions following inquiry into matters arising from the CD/AB retainer.

[1] New Zealand Law Society, Practice Note concerning the Functions and Operations of Lawyers Standards Committees.

[18] The hearings occupied a full day and whilst each complaint was considered as a discrete complaint, there was understandably a considerable degree of overlap in the submissions. Mr GH's submissions occupied a good part of the day. All that could be said for Mr AB, on all matters, was said.

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

The role of the LCRO on review

[20] The role of the LCRO on review is to reach his own view of the evidence before him. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting his own judgment for that of the Standards Committee, without good reason.[2]

[21] The High Court has described a review by this Office in the following way:[3]

> 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.

[22] Given those directions, the approach on this review is to:

(a) Consider all of the available material afresh, including the Committee's decision; and

(b) Provide an independent opinion based on those materials.

Analysis

[23] I propose to address each of the review grounds advanced by Mr GH in the order set out in his written submissions.

[24] Before doing so, I remind myself of the factors to consider when addressing complaint that a fee rendered is unreasonable.

[25] A complaint relating to a solicitor's bill of costs is treated in the same way as a complaint about any other conduct of a legal practitioner. Complaints are made

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[2] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [41].
[3] *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475, at [2].

pursuant to s 132(2) of the Act. All complaints, including complaints about bills of costs, fall to be considered within the disciplinary framework of the Act.

[26] Under the Act, any adjustment to be made to the practitioner's account pursuant to s 156(1)(e), may only be made following a finding of either misconduct or unsatisfactory conduct.

[27] Careful examination as to whether a fee is fair and reasonable must be the starting point in a Committee's deliberations. However, the Committee must then exercise a discretion as to whether or not any particular bill of costs is so at variance with what the Committee considers to be a fair and reasonable fee, that a disciplinary finding should be made.

[28] Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) provides that a lawyer must not charge a client more than a fee that is fair and reasonable for the services provided, having regard to the interests of both client and lawyer and having regard also to the factors set out in Rule 9.1.

[29] It has been recognised that determining a reasonable fee "is an exercise in assessment, an exercise in balanced judgment - not an arithmetical calculation".[4]

[30] The consequence for a practitioner of having an adverse conduct finding made in the context of a fee complaint is recognised in the practice note provided by the New Zealand Law Society to Standards Committee members, which cautions that:[5]

> Standards Committee members must bear in mind that an adverse finding against a lawyer in the context of a fee complaint is a finding of unsatisfactory conduct, and therefore has a significant stigma associated with it in addition to the penal consequences and the reduction of the fee itself. It follows that there should be an adverse finding on a fee complaint only where the fee is found to be significantly excessive and is beyond tolerable limits suggesting only a minor adjustment.

The Focus of the Review

[31] The primary focus of Mr GH's submissions, was on argument that Mr AB had never been properly informed as to the nature of the complaint, and had, as a consequence, been denied opportunity to respond to it.

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[4] *Property and Reversionary Investment Corporation Ltd v Secretary of State of the Environment* [1975] 2 All ER 436, [1975] 1 WLR 1504 at 441.
[5] Above n 1, at [10.9].

[32] Mr GH submitted that the fees complaint had evolved from the first complaint lodged by Ms CD, and had never been properly formulated.

[33] Whilst there had been some attempt at clarifying the nature of the complaint, those attempts were, argued Mr GH of a preliminary nature, and fell well short of meeting the Committee's statutory obligation to ensure that Mr AB knew what the complaint was about.

[34] This failure to sufficiently inform reached its nadir, says Mr GH, when the Committee provided the parties with a generic notice of hearing which, he says, abjectly failed in its obligation to inform Mr AB as to what the Committee would be considering at hearing.

[35] To a degree, argument that Mr AB was ignorant as to the nature of the complaint, and denied as a result an opportunity to respond to it, overlaps (a) (c) (d) and (i) of the review grounds above.[6]

Failure to take into account Mr AB's submissions or evidence/ failure to allow opportunity to consider and respond to the complainant's submissions (and evidence) for the hearing.

[36] I have carefully reviewed the exchanges between Mr GH's office and the Complaints Service.

[37] Because more than one complaint was before the Committee, the abundant correspondence reflects a degree of overlap.

[38] On 11 June 2013, Mr EF filed, on Ms CD's behalf, a complaint against Mr AB. In a submission filed in support of that complaint, Mr EF signalled that a complaint in respect to fees would likely follow, once Ms CD had received Mr AB's invoice.

[39] On 28 January 2014, Mr EF, in response to request from the Complaints Service, confirmed that Ms CD was pursuing a complaint about the fees charged.

[40] Mr AB was advised by the Complaints Service on 11 February 2014 that a costs complaint had been received. He was provided with a copy of the complaint.

[41] On 25 February 2014, Mr GH sought an extension of time for filing a response to the complaint, and advised that he did not consider that the complaint sufficiently identified the concerns advanced about Mr AB's account.

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[6] At [15].

[42] In March 2014, Mr GH sought a direction that Mr EF be prevented from continuing to act for Ms CD.

[43] On 12 March 2014, Mr GH was advised that the Committee considered that the costs complaint had been sufficiently particularised. Mr GH was granted an extension to 28 March 2014 for filing of his submissions.

[44] On Friday 28 March 2014, after close of business, Mr GH emailed the Complaints Service seeking a further extension. An extension was granted to 4 pm, on 1 April.

[45] Submissions were filed by Mr GH on 1 April 2014. Those submissions advanced, as a preliminary point, argument that it had been improper to allocate a separate complaint number for the costs complaint, as it was contended that the fee had been incurred by an incorporated firm, not Mr AB. That being said, Mr GH indicated that he would nevertheless address the points raised by the complaint. He proceeded to do so in what I consider to be, comprehensive fashion.

[46] On 28 April 2014, Mr EF provided response to Mr GH's April 1 submissions. Those submissions were also comprehensive.

[47] On 30 April 2014, the parties were advised that the Committee was to decide whether to proceed with further inquiry into the complaint, or to take no further action, that followed by correspondence dated 12 May 2014 advising that the Committee was intending to proceed an inquiry into the complaint, and attaching a notice of hearing which advised the parties that submissions were to be received by 26 May 2014.

[48] Mr GH sought an extension which was granted to 3 June 2014.

[49] Mr EF provided submissions by email on 3 June 2014, followed by a hard copy on 10 June 2014.

[50] Mr GH also provided submissions on 3 June 2014. Those submissions commenced with a rehearsal of argument first raised by Mr GH in April, that Mr AB would have difficulty responding to the complaint, as the complaint had not been sufficiently particularised.

[51] In his submissions, Mr GH addressed complaint that Mr AB had charged for work that he was not authorised to complete, and complaint that he had charged for costs incurred in traveling to [Overseas]. He argued that Ms CD had seemingly committed a serious immigration fraud, and that accordingly, she had less credibility

than Mr AB, who was described by Mr GH as an officer of the Court in good standing. Mr GH submitted that "there was no doubt" that the [Overseas] trip and the family court attendances (in addition to various immigration attendances) would reasonably cost $50,000.

[52] Mr EF and Mr AB were each provided by email, with a copy of the other's submissions on 3 July 2014. Both parties were advised that they would receive advice explaining the process from that point on. Further correspondence followed, in which the Committee advised that a hearing date would be allocated, and that no further correspondence would be accepted.

[53] Running parallel with the fee complaint was the Committee inquiry into complaint that Mr AB had failed to provide Ms CD with a letter of engagement, failed to provide files, and failed to deposit funds received to his trust account.

[54] As part of that inquiry, the Committee had, in September 2013, appointed an Investigator with brief to investigate the payment of $50,000 made to Mr AB, the client information provided to Ms CD, the work undertaken, and the fees rendered.

[55] That report was made available to the Committee and to the parties on 29 November 2013.

[56] The Standards Committee met on 12 August 2014. A decision was issued on 11 September 2014.

[57] It is against that history of exchanges between the Complaints Service and Mr GH that Mr GH's submissions that the Committee failed to properly inform Mr AB about the CD's complaint, failed to allow opportunity to Mr AB to respond to the complaint, or to take into account Mr AB's evidence, must be considered.

[58] It is approaching the trite to emphasise that if complaint is made against a practitioner, that practitioner must be properly informed as to the nature of the complaint, and be given opportunity to respond to it.

[59] In his correspondence of 28 January 2014, Mr EF advises that Ms CD is pursuing complaint about the quantum of Mr AB's fee. He identifies the basis of his client's objections. He advises that Ms CD disputes that she said she would pay for Mr AB to travel to [Overseas], or that agreement was reached that she would pay Mr AB for his attendances on her in [Overseas]. Ms CD rejects suggestion that she had instructed Mr AB to prepare Family Court proceedings.

[60] The nub of the complaint is identified. Despite Mr GH's protestations that insufficient particulars were provided to enable Mr AB to respond to the complaint, his comprehensive submissions to the Committee of 1 April 2014 give clear indication that Mr AB had no doubt as to what was being complained about.

[61] Mr GH responds to allegation that Ms CD did not instruct Mr AB to travel to [Overseas]. He responds to complaint that Mr AB had not been instructed to attend to Family Court matters. He clarifies his client's view as to the scope of the instructions received.

[62] If there remained room for uncertainty as to what the complaint was about (and I do not consider that there was) those uncertainties would have been removed following receipt of Mr EF's submissions of 28 April 2014. Those submissions comprehensively detail the basis of Ms CD's objections to Mr AB's account.

[63] This was not a fee complaint that required comprehensive explanation in order for the practitioner to understand what was being complained about. Ms CD was alleging that Mr AB had charged for work that he had not been instructed to complete.

[64] Moreover, that allegation arose from a very particular and distinctive set of circumstances, sufficient to merit description of them as unusual.

[65] Following receipt of Mr AB's invoice recording fees charged of $50,000, Ms CD complained that she had not instructed Mr AB to travel to [Overseas], that she had not agreed to pay Mr AB for time spent travelling to and returning from [Overseas], and that the scope of her instructions were limited to engaging Mr AB to act for her on immigration matters. She advises that it was her understanding that Mr AB had travelled to [Overseas] to promote his law firm, and provides background to her meeting with Mr AB. This to affirm her position that she had not instructed Mr AB to travel to [Overseas].

[66] All of this was identified in Mr EF's correspondence of 28 January 2014, and responded to by Mr GH (in some detail) in his correspondence of 1 April 2014.

[67] Mr GH argues in his submissions to the Committee of 3 June 2014 that the inquiry process was fundamentally flawed, and that Mr AB is being required to respond to a complaint in circumstances where he has been seriously disadvantaged as a consequence of not being informed as to the nature of the arguments being levelled against him. I do not consider that accurately reflects Mr AB's position.

[68] I am not persuaded that Mr AB lacked opportunity to respond to the complaint.

[69] In any event, if it was the case that Mr AB had been denied opportunity to respond to the complaint, that is a matter that is capable of cure on review.

[70] Both in his submissions to the LCRO, and in the course of his comprehensive submissions at hearing, Mr GH conscientiously addressed the complaint. All that could be said for Mr AB, was said.

The Committee wrongly adopted the complainant's version of events or supporting arguments without any explained or due supported basis for preferring them.

[71] This is argument that the Committee preferred the evidence of the complainant to that of Mr AB.

[72] The Committee, as the decision maker charged with pursuing inquiry into the complaint, was entitled to form its view of the evidence and to make findings on credibility. That was its job.

[73] To elevate complaint that a Committee erred in preferring the evidence of one party over that of another from mere expression of disagreement with outcome, to that of persuasive argument that a Committee has demonstrably got it wrong, clear errors in the decision must be identified.

[74] To the extent that Mr GH argues that the Committee erred, that submission, relies to a significant extent on acceptance of Mr AB's explanation as to the basis on which the retainer was commenced, and argument that Ms CD was likely a person who was prepared to engage in dishonest conduct in order to achieve her goals.

[75] I do not consider that the Committee's indication that it preferred Ms CD's account, was indicative of it having failed to consider the explanations provided by Mr AB.

[76] I do not agree that the Committee failed to provide reasons for its decision though accept that the reasons provided are brief.

[77] To a degree, that brevity is explainable by the fact that the critical issue that the Committee was required to determine at first instance, was the question as to whether Mr AB had received instructions to act for Ms CD prior to his departure from New Zealand, and whether the scope of those instructions provided that Mr AB would be reimbursed for attendances on Ms CD in [Overseas].

[78] The Committee provided explanation as to why it had accepted Ms CD's view as to what had been agreed between her and Mr AB, and its preference for accepting her account was adequately explained, it not considering it plausible that a [Foreign] resident would engage a New Zealand Lawyer to travel to [Overseas] to provide advice on immigration matters.

[79] The Committee's finding on this pivotal issue, was bolstered by its view that it could reasonably be expected that a retainer in the nature of that described by Mr AB, would have been recorded at commencement in a letter of engagement.

[80] Conflicting views as to the scope of the retainer may have been resolved if Mr AB had provided a letter of engagement at commencement that recorded the terms of the agreement, particularly when the retainer, according to Mr AB, required Ms CD to meet the cost of his travel to [Overseas].

[81] Mr AB submitted that Ms CD had advised him that she was reluctant to engage a [Overseas] based lawyer for fear of possible recriminations from her partner. The Committee did not accept that explanation, noting that it was Ms CD's evidence that her partner was residing in [foreign country], and in those circumstances, it was difficult to see how her partner could have any knowledge of, or special influence over, a lawyer engaged by Ms CD in [Overseas].

[82] The Committee also accepted Ms CD's evidence that she had met with Mr AB in [Overseas] on the basis of an agreement that those attendances would not be charged for.

[83] These were findings that were open to the Committee, and qualified by explanation that the Committee did not consider it credible that Mr AB had travelled to [Overseas], without first recording the arrangements in a letter of engagement.

[84] Whilst brief in their exposition, I do not consider that the Committee failed in its duty to provide explanation for its decision. Whilst it could have said more, its conclusion that it did not accept Mr AB's account of matters because it considered the unusual circumstances of the retainer did not support his explanation, was a finding, when arrived at, that spoke for itself.

[85] I do not agree that the Committee failed to provide reasons for its decision, or an adequate explanation for the decision arrived at.

The Committee failed to provide Mr AB due s 141(a) particulars, contrary to its statutory obligation and nor any in the notice of hearing, contrary to basic natural Justice.

[86] The Standards Committee conducted a hearing 'on the papers' pursuant to s 152(1).

[87] Notice of the hearing was provided to Mr AB on 12 May 2014. The Committee invited submissions in respect of the following matters:

(a) The nature of the alleged conduct itself.

(b) The possibility that the Standards Committee may make a determination that the complaint or the matter, or any issue involved in the complaint or matter, be considered by the Disciplinary Tribunal.

(c) The appropriate orders that the Standards Committee may make in the event that an unsatisfactory conduct finding was made.

(d) The possibility of publication.

[88] The notice of hearing made request of the practitioner to provide his full file, whilst noting that it was up to the parties to supply the evidence on which they placed reliance. Request was also made of the parties to identify any other issues that they may wish to put before the Committee.

[89] Section 141 of the Lawyers and Conveyancers Act provides as follows:

> **141 Notice to person to whom complaint or inquiry relates**
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> The Standards Committee –
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> (a) must send particulars of the complaint or matter to the person to whom the complaint or inquiry relates, and invite that person to make a written explanation in relation to the complaint or matter;
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> (b) may require the person complained against to appear before it to make an explanation in relation to the complaint or matter;
>
> (c) may, by written notice served on the person complained against, request that specified information be supplied to the Standards Committee in writing.

[90] In addition, Regulation 9 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service Standards Committees) Regulations 2008, provides:

> (1) When a complaint is received, the Complaints Service must –
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> (a) must acknowledge receipt of that complaint in writing; and
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> (b) as soon as is reasonably practicable, refer the complaint to a Standards Committee; and
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> (c) notify the firm to which, or the person or persons to whom, the complaint relates; and
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> (d) provide a copy of the complaint to that firm, that person, or those persons.

[91] Mr GH submits that the Committee failed to sufficiently particularise the complaint. He contends that Mr AB, based on the notice of hearing, "literally had no idea" what the complaint was that was being made against him. Mr AB could not, says Mr GH, have been anymore disadvantaged.

[92] The question to be considered is whether it is necessary for a notice of hearing to include more detailed particulars of the complaint other than to refer in general terms to "the alleged conduct".

[93] This question was considered in *Auckland District Law Society v O*, which considered the similar requirements of s 101(3)(a) of the Law Practitioners Act 1982.

[94] In its decision, the Court criticised the Law Practitioners Disciplinary Tribunal for paraphrasing words used in the Act. In its decision, the Tribunal had cited a passage from *H (a law practitioner) v Auckland District Law Society* [1985] 1NZLR 8 at 21 as follows:[7]

> In our view, the legislature clearly intended that persons who ultimately found themselves charged before the Tribunal should first have been notified by their District Law Society of the charge against them (meaning full particulars of the charge) and give them an opportunity to reply before the District Law Society took the first step in the disciplinary process; i.e. is, to lay charges at all and if so, whether locally or nationally.

[95] The Court made the following comment of the decision:[8]

> The words in round brackets are not part of the citation. It appears that the Tribunal inserted them to explain what it considered to be the meaning of the expression "charge against them".

[96] The Court observed that s 101(3)(a) required the District Law Society to send particulars of "the complaint" not "the charge" as is recorded in *H*, and agreed with:[9]

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[7] *Auckland District Law Society v O HC Auckland* HC 237/94, 27 April 1995.
[8] *H (a law practitioner) v Auckland District Law Society* [1985] 1 NZLR 8 at 21.

> … the observations made by the Full Court in *Wihapi v Hamilton District Law Society* that the requirements of s 101(3)(a) should be observed and a failure to is very likely to result in any decision and the consequences of any decision being set aside.

[97] The Court went on to say (at page 9):[10]

> It will be a question of fact in every case whether the particulars of the complaint have been sent to the person complained against. In some cases sending a copy of the letter of complaint will be sufficient. In other cases the Council or the Committee will be required separately to identify the particulars of the complaint intended to be considered in a manner that will enable the practitioner to give an explanation in answer to the identified complaints.

[98] Whilst it was advanced for Mr AB from the earliest stages of the inquiry that Mr AB was "in the dark" as to what the nature of the complaint was, I do not agree that was the case.

[99] The nature of the complaint made against the Mr AB was readily identifiable from the letter of complaint and subsequent correspondence provided to the Committee. The complaint involved three core issues:

(a) Was Mr AB instructed to fly to [Overseas], and to attend on Ms CD in [Overseas]?

(b) Was Mr AB instructed to prepare Family Court proceedings, or did he make it clear to Ms CD that it would be necessary, as an adjunct to her immigration proceedings, for Family Court proceedings to be filed?

(c) Were the fees charged fair and reasonable?

[100] All matters raised by Ms CD were addressed by Mr AB in his responses to the Committee, and I cannot find any indication that he has been disadvantaged by the generalised wording of the formal notice of hearing.

[101] I accept, as Mr GH contends, that the notice of hearing presents as a generic document, lacking specific detail as to the nature of the complaint. The New Zealand Law Society Lawyers Complaints Service procedure manual states that a notice of hearing should clearly identify the matters to be considered at the hearing, and should be sufficiently descriptive.[11] It would have been preferable if the notice of hearing had more specifically defined the issues.

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[9] Above n 7, at 8.
[10] At 9.
[11] New Zealand Law Society, Lawyers Complaints Service, Procedures Manual at [11.1].

[102] On balance, however, I am not persuaded that the failure of the notice of hearing to more comprehensively particularise the complaint compromised Mr AB's ability to respond to the complaint.

[103] In any event, any concerns that Mr AB was insufficiently informed as to the nature of the complaint, or lacked sufficient opportunity to respond to the complaint, are matters which are capable of cure on review.

[104] It could not be said, by time of review, that Mr AB could have anything but a comprehensive understanding of the complaint, and Mr GH had opportunity, and properly availed himself of that opportunity, to address all issues at the review hearing.

The Committee denied Mr AB the opportunity to consider and respond to the complainant's submissions (and evidence) for the hearing, which varied materially from the original heads of complaint, and as such, was a breach of natural justice.

[105] This is, in part, a reiteration of the matters previously addressed.

[106] To the extent that fresh issues arise, Mr GH argues that Mr AB should have been given opportunity to respond to the submissions filed by Mr EF prior to the hearing, and that a failure to allow him opportunity to do so deprived Mr AB of opportunity to respond to new matters that had been raised by Mr EF in those submissions.

[107] Inquiry into a complaint is commenced by filing of the complaint, at which point a Standards Committee may elect to inquire into a complaint, provide directions, or decide to take no further action on the complaint.[12]

[108] If a Committee decides to proceed with an inquiry into a complaint it must do so as soon as practicable.[13]

[109] On commencing its inquiry, a Committee must forward particulars of the complaint to the party complained of, and invite that person to provide a written explanation.[14]

[110] After having inquired into a complaint and conducted a hearing a Standards Committee has the power to determine that complaint.[15]

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[12] Lawyers and Conveyancers Act 2006, s 137.
[13] Section 140.
[14] Section 141(a).
[15] Section 152(1)(a).

[111] A hearing conducted under s 152 is to be a hearing on the papers unless the Committee directs otherwise.[16]

[112] A party in respect of whom a complaint is made, may make written, but not oral submissions to the Committee, as may the Complainant.[17]

[113] Those parties may include in their submissions additional relevant material, and responses to any submissions made to the Committee by any other party.[18]

[114] A Standards Committee is required to make its determination on the basis of the written material before it.[19]

[115] Consideration of the written material may be undertaken in whatever manner the Standards Committee thinks fit.[20]

[116] A Standards Committee may receive into evidence any statement, document, information or matter that may assist it to deal effectively with the matter.[21]

[117] A Standards Committee must exercise and perform its duties in a way that is consistent with the rules of natural justice.

[118] It is an objective of the Complaints Service, that complaints be dealt with in a fair, efficient and effective manner.[22]

[119] The desirability of achieving expeditious resolution of complaints would potentially be compromised if the parties were allowed opportunity to engage in a continuous “tit for tat” exchange of submissions.

[120] That being said, there will be occasions when parties should be accorded an opportunity to respond further to matters raised in submissions filed by a party prior to the hearing.

[121] I have carefully considered Mr EF’s submissions of 3 June 2014, and considered whether those submissions contained material which should properly have been made available to Mr AB for comment before the Committee commenced its

[16] Section 153(1).
[17] Section 253(3)(a) and (b).
[18] Section 153(5).
[19] Section 153(7).
[20] Section 153(8).
[21] Section 151(1).
[22] Section 122(2).

consideration of the complaint. In doing so, I have also considered Mr GH's submissions.

[122] It is unquestionably the case that Mr EF's submissions of 3 June 2014 provide a more comprehensive view of his client's position than had been provided to that date. There is nothing in that itself which is remarkable. It would be expected that submissions filed in response to the notice of hearing would endeavour to comprehensively cover off the applicant's case.

[123] But the substance of the complaint remains as it was described in Mr EF's submissions of 28 April 2014. Complaint is made that:

(a) Ms CD was charged for services that were not requested.

(b) Ms CD was charged for time spent by Mr AB travelling to [Overseas].

(c) Fees charged were excessive.

[124] Mr GH continues to advance argument in his submissions of 3 June 2014, that Mr AB is disadvantaged because he has not properly been informed as to the nature of the complaint he has been asked to answer.

[125] I do not accept that to be the position. At the heart of the fee complaint was allegation that Mr AB had charged for time spent travelling to and from [Overseas], and for attendances on Ms CD in [Overseas], and had charged for preparing Family Court proceedings when he had not been instructed to do so. Those complaints were signaled to Mr AB in correspondence to the Complaints Service on 28 January, and expanded on in further submissions filed on 28 April 2014.

[126] Further, Mr GH had, despite continuing to advance argument that the substance of the complaint had not been sufficiently particularised to allow opportunity for Mr AB to respond, addressed the complaints in submissions of 1 April 2014 and 3 June 2014.

[127] I am satisfied that Mr AB understood the substance of the complaint.

[128] That being said, it is clearly the case that Mr EF's submissions of 3 June provide a more comprehensive analysis of the basis on which Mr AB's account is being challenged.

[129] Those submissions challenge the account by specific reference to time records, and importantly, for the first time, identify complaints concerning the barrister's invoices which comprise an important part of Mr AB's final account.

[130] The barrister's invoices were issued from Mr GH's chambers, and record time completed both by Mr GH and a lawyer from his chambers.

[131] By the time of the review hearing, Mr AB was fully aware that Ms CD took significant challenge to his fee, (including the barrister's accounts) and the nature of the reduction in fee that was being sought.

[132] At review, little focus was placed by Mr AB, on addressing the reasonableness of the fees by reference to the specific accounts, although Mr GH had identified in his April 1 correspondence that extensive work had been completed for Ms CD, and that "whatever grievances may be raised as to the fees paid, it would certainly not meet the roughly 4.1 ratio required for serious disciplinary action".

[133] Further, in his submissions of 3 June 2014, it is proffered as explanation for the fees complaint that:

> Ms CD is disgruntled because Mr AB refused to be her servant in her fraud. It is understandable that she may think that she paid this lawyer $50,000 and got nothing out of it. However, that is how the hourly billing system works. She has nobody to blame for the breakdown of the relationship, other than herself.

Those submissions again reference Australian authorities, and argues for the proposition that "there is no doubt that the [Overseas] trip and Family Court attendances (in addition to various immigration attendances) would reasonably cost $50,000 in today's marketplace".

[134] I do not consider that Mr AB was denied opportunity to respond to the complaint. In my view, any shortfalls in Mr AB's response to the complaint, were not a consequence of him not being fully informed. If there were shortfalls, argument could fairly be made that those arose as a result of the approach he took to responding to the complaint.

[135] Rather than respond by clarifying his position as to the extent and nature of the actual work done (in detail, rather than by generalisation) Mr AB relies heavily on argument that Ms CD is a "disgruntled" client, who was endeavouring to ensnare Mr AB in her fraudulent plan, and by the continued advancing of what I consider to be faux argument, that he did not understand what was being complained about. A more focused response to the complaint was warranted.

There was no evidential basis to support the direction that Mr AB pay the complainant $5,000 in legal fees and $2,000 for stress and the loss of money (and, in any event, this was also ultra vires)

[136] Mr GH objects to the $7,000 cost awards made by the Committee, the award comprised of $5,000 contribution to legal costs, and $2,000 for stress and the loss of use of money.

[137] Mr GH contends that:

(a) There was insufficient evidence advanced to support the claim for recovery of legal costs.

(b) The evidence provided in support of those costs was by way of submission from Mr EF, a submission which should be rejected as Mr EF was providing evidence from the bar.

(c) There was no jurisdiction for the Committee to make an award for stress.

[138] The power to award costs in respect to the Standards Committee proceeding is found in s 156(1)(o). The power to award compensation is found in s 156(1)(d). The power to award costs in this proceeding is found in s 210.

[139] A Committee may direct that a party pay to a complainant any costs or expenses incurred by the complainant in respect of the inquiry, investigation, or hearing by the Standards Committee.[23]

[140] Section 156(1)(d) provides an order for compensation may be made, where it appears that any person has *suffered loss* by reason of any act or omission of a lawyer.

[141] The ability to compensate for anguish and distress in the lawyer client relationship has been recognised in a number of cases.[24] Emotional stress has been recognised by this Office as a compensatable form of loss.[25]

[142] Awards for stress and anxiety in the region of the amount awarded by the Committee have been made, or approved, by this Office on a number of occasions.

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[23] Section 156(1)(o).
[24] *Heslop v Cousins* [2007] 3 NZLR 679 (HC).
[25] *Hartlepool v Basildon* LCRO 79/2009.

[143] It has been noted that given the purpose of the Lawyers and Conveyancers Act (which, in s 3(1)(b) includes the protection of consumers of legal services) it is appropriate to award compensation for anxiety and distress where it can be shown.[26]

[144] The maximum amount of compensation that can be ordered pursuant to s 156(1)(d) is $25,000.[27] An award for stress and anxiety is not punitive in nature, but compensatory[28] and should be modest, but not grudging.

[145] Whilst I am satisfied that jurisdiction exists to make an award to compensate for stress, the Committee's $2,000 award, is said to compensate for both stress and the loss of use of money.

[146] There is no indication in the Committee's decision that it had before it any specific evidence to support argument that Ms CD had suffered any particular stress which would merit an award of compensation, nor is there any indication as to how the Committee calculated the compensation awarded for loss of use of money.

[147] Mr EF filed two comprehensive submissions in support of Ms CD. In neither of those submissions does he seek compensation for stress, or particularise grounds to support a claim for stress related compensation.

[148] In my view, orders made in compensation for stress and anxiety suffered, should be supported by evidence particularising the adverse consequences suffered by the complainant as a consequence of the practitioner's conduct. Orders made in compensation for loss of use of money, should provide explanation as to the basis on which the compensation sum was calculated.

[149] In the absence of that evidence and explanation, I consider it appropriate to dismiss the order directing that Mr AB pay Ms CD the sum of $2,000 for stress and loss of use of money.

[150] Ms CD was awarded $5,000 by way of contribution to her legal costs.

[151] This claim was advanced in Mr EF's submissions. No accounts have been provided.

[152] In *OL v RY*, this office considered the extent to which a party could seek recovery of legal costs incurred in the pursuing of a complaint.[29]

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[26] *RI v Hart* LCRO 158/2011 at [77].
[27] Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees Regulations 2008, Reg 32.
[28] *Air New Zealand Ltd v Johnston* [1992] 1 NZLR (CA).

[153] It was noted in that decision that:[30]

(a) It is not necessary for any person wishing to lodge a complaint with the Lawyers Complaints Service to engage the services of a lawyer.

(b) Once a complaint is lodged, it is the function of a Standards Committee to inquire into and investigate the complaint (s 130(a) of the Act), or to take such other steps as are referred to in s 130.

(c) Section 156(1)(o) of the Act enables a Committee to order a practitioner to pay to the complainant "any costs or expenses incurred by the complainant in respect of the inquiry, investigation or hearing by the Standards Committee". Any inquiry, investigation or hearing must necessarily occur after the complaint is lodged.

(d) Consequently it is not possible to order a practitioner to reimburse a complainant for legal costs incurred in lodging the complaint.

(e) Once the complaint is lodged, it is the role of the Committee to inquire into and investigate the complaint.

(f) That process does not require a complainant to act as a de facto prosecutor.

(g) If a complainant does not engage the services of a lawyer to lodge and pursue the complaint, the Standards Committee is required to inquire into and investigate the complaint with the same degree of care and diligence as would be provided by a complainant's lawyer.

(h) An adverse finding by a Standards Committee will usually result in a lawyer being ordered to pay the Standards Committee's costs and expenses, pursuant to 156(1)(n) of the Act. If the complainant has engaged a lawyer, and the Committee orders the lawyer to pay the complainant's lawyer's costs pursuant to s 156 (1)(o), then the lawyer is being exposed to a double set of costs merely because of the complainant's choice to engage counsel.

[154] It was the conclusion of the Review Officer in *OL v RY*, that s 156(1)(o) should be restricted to circumstances where, as part of its inquiry or investigation, a Standards

[29] *OL v RY* LCRO 261/2014.
[30] At [27]–[29].

Committee calls on the complainant to provide further information, which is only obtainable by the complainant incurring cost or expense in order to be able to comply with that request.[31]

[155] I agree that s 156(1)(o) cannot properly be advanced to support a claim for costs incurred in the preparation of the complaint, but do not agree that opportunity for recovery of legal costs is limited to those circumstances where costs are incurred in obtaining further information.

[156] In my view, there will be occasions in the course of pursuing a complaint, that a complainant can properly seek recovery of legal costs incurred. In saying that, I am not oblivious to the fact that the complaints process is designed to be informal and readily accessible, and that the engagement of legal counsel is the exception rather than the rule.

[157] The question to be addressed is whether it was necessary for Ms CD to instruct Mr EF, and whether it was necessary to do so as a consequence of the conduct of Mr AB. I consider it was.

[158] In this case, Ms CD instructed Mr EF on terminating her retainer. She had difficulty obtaining her files. Her attempts to uplift her files were met with argument that the files would not be released on grounds that the files were said to contain evidence of criminal conduct on her part. She had not been provided with an account, and despite request, that account was not immediately forthcoming. She was confronted with argument that her lawyer could not represent her. She was confronted with argument that her complaint did not disclose grounds for a complaint, that argument continuing right up to the point where the Committee was to conduct its hearing. Her fee complaint was preceded by a substantive complaint. The quantum of fees involved in the complaint was not insignificant. In these circumstances, particularly taking into account that Ms CD had newly arrived in New Zealand, I think it understandable that the lawyer she had instructed would inevitably have been asked to provide her with advice and assistance in respect to her complaint.

[159] That being said, I consider the award of $5,000 to be excessive. I consider an award of $2,000 to be appropriate to reflect the time involved in providing general advice.

[160] I accept Mr EF's submissions as to the costs incurred in representing Ms CD on the complaint. I accept that the documents provided in support of Ms CD's

[31] At [30].

complaint reflect a considerable amount of time having been spent. Ms CD's claim for recovery of legal costs has been significantly reduced. I have no need to examine Mr EF's accounts.

The Committee made one or more errors of fact or law.

[161] I identify no material errors in fact or law such as would compromise the Committee's findings.

The decisions were arbitrary and capricious.

[162] I do not consider that there is evidence of the Committee determining the matter in an arbitrary or capricious fashion.

Failure to refer to a costs assessor, failure to address whether fees reasonable for services provided

[163] A Standards Committee, in the course of progressing inquiry into a costs complaint, may appoint a costs assessor.

[164] There is no compulsion on a Standards Committee to appoint a costs assessor. It is for a Committee to determine whether it considers it necessary to do so.

[165] I do not consider that the Committee's decision to not appoint a costs assessor presents as untoward or surprising in the circumstances, or that its failure to do so provides a basis for interfering in the decision.

[166] In significant part, the Committee's determination that the fee charged was unreasonable rested on its conclusion that Mr AB had charged for work that he had not been instructed to complete. Over $26,000 of the fee charged was for work that the Committee concluded Mr AB had not been instructed to carry out.

[167] In reaching that view, the Committee considered the accounts provided by Mr AB and Ms CD as to the scope of the work that had been agreed at the commencement of the retainer, and concluded that it found Ms CD's version of events to be the more credible.

[168] In my view, the Standards Committee's task of assessing whether Mr AB had been instructed to fly to [Overseas] and to attend on Ms CD in [Overseas], was an issue which was capable of being appropriately determined by the Committee members, and not a matter in which their deliberations could have been materially

assisted by the obtaining of a report from a costs assessor. Nor would its inquiry into whether Mr AB had been instructed to prepare Family Court proceedings have required the assistance of a cost assessors report.

[169] A consideration as to whether Ms CD had been charged at a rate which exceeded that recorded in the [JK] contract, and for work completed after the retainer had been terminated, were also matters that the Committee were well able to address without need for involvement of a costs assessor.

The legal standards officer, who had managed the file had acted improperly.

[170] This issue was addressed by Mr GH in his submissions advanced in *AB v CD*.[32] I do not need to traverse the issue further here having dealt with it in the earlier review. Suffice to say that I was not persuaded that the legal standards officer responsible for managing the file had acted improperly.

Mr EF should have been debarred from representing Ms CD.

[171] Mr GH did not advance this ground at hearing but as the matter was raised in his written submissions, for completeness I will deal briefly with it.

[172] At the commencement of the complaint inquiry, Mr GH raised objection to Mr EF representing Ms CD on grounds that Mr EF had been the subject of an adverse conduct finding arising from complaint made by Mr AB against Mr EF.

[173] I see no basis to support argument that Mr EF was unable to act for Ms CD because of the adverse conduct finding. Mr EF had been instructed by Ms CD. I do not consider that the fact that he had been the subject of a conduct complaint by Mr AB materially compromised his ability to advance her complaint, or had potential to (in ways unspecified) compromise or taint the conduct inquiry.

[174] If the allegation is that Mr EF was too close to the matter, or had a special interest in the outcome, that is criticism that Mr EF argued could also be directed to Mr GH. The barrister's invoices that formed part of Mr AB's account issued from Mr GH's chambers and recorded time spent on Ms CD's matters by both Mr GH and another barrister from his chambers.

[32] *AB/CD* LCRO XXX/2014.

[175] In representing Mr AB on the fee complaint, Mr GH was advocating for Mr AB in circumstances where his own interest in the fee complaint could be seen to be closely aligned with Mr AB.

[176] In the course of considering argument that Mr EF should be excluded, the Committee also turned its attention to the question as to whether it was appropriate for Mr GH to act for Mr AB, when it appeared he had acted for Ms CD. A file note on the Committee file records that the Committee had considered raising concern that Mr GH may be conflicted, but determined on the evidence before it that the circumstances did not reach the threshold for raising the issue with the parties.

[177] I have been unable to locate on the Standards Committee file, evidence of the Committee formally reporting to Mr GH and Mr EF its lack of objection to Mr EF continuing to represent Ms CD, but clearly the inquiry continued.

[178] I do not consider that Mr EF's representation of Ms CD compromised the inquiry.

Other Matters

[179] Finally, I turn to the Committee's findings on the substantive issues.

Fees to 30 March 2013

[180] Mr AB's fees to 30 March 2013 were $16,439.40. If it was the case that Ms CD had not instructed Mr AB to complete work for that period, it is self evident that Mr AB cannot charge for work he was not instructed to complete.

[181] If Ms CD did not instruct Mr AB to fly to [Overseas] to take her instructions, nor engage him to attend on her in [Overseas], the Committee's conclusion that $16,439.40 of the fees should be refunded is correct.

[182] Whilst a substantial amount of time was spent at hearing in advancing argument that the Committee's decision was tainted by procedural flaws, little evidence was advanced to substantiate Mr AB's position as regards the scope of the retainer.

[183] If the scope of the retainer was as Mr AB describes it, then it would have been critical for him to have documented the arrangements before setting off for [Overseas].

[184] It was his obligation as a lawyer to record the terms of the retainer at commencement, particularly in view of the fact that he was dealing with a client whom he had never met, who resided in another country.

[185] Mr AB argues that he was instructed, on the basis of phone calls with Ms CD, to fly to [Overseas] and to attend on Ms CD in [Overseas]. It is advanced that Ms CD was reluctant to engage a [foreign] lawyer, out of fear that her husband would cause her problems if he was to find out she had engaged a [foreign] based lawyer.

[186] Ms CD says that she never instructed Mr AB to travel to [Overseas], that Mr AB travelled to [Overseas] for his own purposes, and that she was introduced to Mr AB in [Overseas], by a friend. She maintains that at her initial meeting with Mr AB, he made it clear that he would not be charging her for the [Overseas] attendances. She says she instructed Mr AB solely on immigration matters. She denies instructing Mr AB to prepare any Family Court proceedings.

[187] It presents in my view as surprising, if not approaching the improbable, for a lawyer to speak on the phone with a client he has never met before, to travel to [Overseas] on the basis of an agreement that he would represent that client (and be reimbursed for his travel costs and attendances) and to have made no record of the arrangements at commencement.

[188] There are no emails from Mr AB to Ms CD confirming the arrangements he says had been agreed. There is no correspondence. There is no acknowledgement from Ms CD that she has agreed to this arrangement. There is no indication that Mr AB had required, as would be expected, payment of funds into his trust account prior to him setting off.

[189] Mr AB provided file notes recording his understanding of the retainer. Those file notes present as a summary of his recollection of events, as opposed to a contemporaneous record, detailing events as and when they occurred.

[190] Mr AB's early attempt to address what was to emerge as a credibility contest by argument that Ms CD had attempted to commit immigration fraud was diverting, and failed to provide explanation as to why Mr AB had not recorded the terms of the agreement he says was in place, at commencement.

[191] Mr AB says that he provided Ms CD with a letter of engagement on 28 March 2013. He says that he delivered that letter to Ms CD by hand.

[192] Ms CD denies ever having received a letter of engagement from Mr AB.

[193] I have carefully considered Mr AB's correspondence of 28 March 2013.

[194] That letter, if provided, was given to Ms CD some weeks after Mr AB says he had been instructed. By the time Mr AB provided the letter of engagement, Ms CD had incurred costs of $9,400.

[195] A lawyer must, in advance, provide in writing to their client, information on the principal aspects of client service, including advice as to the basis on which fees are to be charged.[33]

[196] Whilst "in advance" is not specifically defined in the Act, it is recommended that lawyers provide the information set out in rule 3.4. prior to commencing work.

[197] In *McGuire v Manawatu Standards Committee*, the High Court, when considering the application of rule 3.4, noted that the mandatory nature of rule 3.4, would appear to be significantly softened by the note to the rule which informs that it was "recommended" that a letter of engagement be provided, before commencing work.[34]

[198] The Court noted that it was still not entirely clear as to whether (taking into account the footnote to rule 3), the requirement to provide a letter in advance was a recommended rather than a mandatory requirement.

[199] In that case, the Court concluded that the breach complained of was of a minor technical nature, and even if the Court was incorrect in its view that the rule did not require that a letter of engagement be provided before work commenced, the breach did not justify the imposition of a disciplinary sanction.

[200] The facts of this case are quite different from those in *McGuire*. In this case, circumstances demanded that Mr AB provide Ms CD with information in advance. To take a different view of rule 3.4 in the circumstances of this case, would, in my view, render the rule meaningless.

[201] A letter of engagement should have been provided to Ms CD prior to Mr AB departing for [Overseas].

[202] I have carefully considered Mr AB's letter of engagement of 28 March 2013.

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[33] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 3.4.
[34] *McGuire v Manawatu Standards Committee* [2016] NZHC 1052 at [62].

[203] Mr AB states that the correspondence was hand delivered. The correspondence is simply recorded as being directed to Ms CD, [Overseas]. No other identifying details are provided.

[204] This correspondence commences with reference to preliminary phone discussions between Mr AB and Ms CD, and then notes as follows, "in light of the meeting arranged on 28 March 2013 we undertake the following may be carried out as action plans".

[205] Mr AB's correspondence does not record that he had already carried out work which had been agreed to by Ms CD. Mr AB's introductory paragraph appears to indicate that arising from his meeting with Ms CD on 28 March 2013, an agreement was reached as to the work Mr AB understood he was to undertake.

[206] Mr AB's time records confirm that he travelled to [Overseas] on 15 March 2013.

[207] Those records indicate that Mr AB's first meeting with Ms CD was on 28 March 2013, the day that Mr AB says he provided Ms CD with his letter of engagement. That is consistent with Ms CD's recollection that she first met with Mr AB in late March 2013.

[208] I think it unusual that Mr AB would travel to [Overseas] and on arrival, commence working for a client he had never met before taking steps to meet with his client. It was emphasised for Mr AB that the primary purpose of Mr AB's trip to [Overseas] was to complete work for Ms CD. Whilst Mr AB conceded that his travel to [Overseas] was for both personal and professional reasons, he submits that he would not have travelled to [Overseas], "but for attending on Ms CD", and that the "main purpose of his travel which was to commence work on Ms CD's affairs".[35]

[209] Much of the work that Mr AB reports as having been completed prior to meeting with Ms CD, appears to be work in the nature of research.

[210] Mr AB's time records indicate that he spent six hours travelling on 28 March 2013, and two and a half hours reporting to Ms CD and preparing his engagement letter, which he says, was hand delivered to Ms CD on the same day.

[211] I think it surprising that Ms CD would instruct a New Zealand based lawyer to travel to [Overseas], in order to provide advice to her on issues of the nature described

[35] Letter GH to NZLS (1 April 2014).

in Mr AB's time sheets. It would be reasonable to conclude that Ms CD would have been able to access advice on issues relating to [foreign] law, and how that may impact on her desire to move with her children to New Zealand, in [Overseas].

[212] On Ms CD's arrival in New Zealand, Mr AB arranged for her to execute two documents being:

(a) An authority authorising Mr GH or counsel from his office to act as her legal agent on immigration matters.

(b) A contract with [JK Immigration]Limited, which provided that [JK] would complete specified work, including preparation of an application for a long-term business visa, preparation of a business plan, resolving nationality issues, lodging of permanent residence applications, and providing assistance with NZ Immigration.

[213] To a significant degree, the work to be completed reflects the matters that Mr AB records in his 28 March correspondence.

[214] Mr AB and Ms CD's views as to both when the retainer commenced, and the scope of the retainer, are diametrically at odds. Whilst opportunity for genuine misunderstanding cannot be discounted, the differences in recollection on significant points are emphatic.

[215] The Standards Committee did not find it credible that a letter of engagement was provided to Ms CD on 28 March 2013, and accepted Ms CD's submission that she had not made request of Mr AB to attend on her in [Overseas].

[216] Having carefully considered the evidence, I arrive at a similar view to the Committee.

[217] In reaching that view, I am mindful of the guidance offered to this Office in the decision referenced in [21] above, and the need to ensure that both a robust and independent approach is brought to the process of review.

[218] There is a marked conflict in the evidence of Ms CD and Mr AB as to what was agreed.

[219] I prefer Ms CD's account for the following reasons:

(a) It presents as improbable that a practitioner would commence a retainer of this nature without recording the arrangements before commencing work.

(b) I think it unlikely that Ms CD would have instructed a New Zealand based lawyer to travel to [Overseas] to carry out work that could have been completed for her by a lawyer in [Overseas].

(c) I consider it improbable that Mr AB would travel to [Overseas] to commence work for a client he had never met, without ensuring security for at minimum, his disbursement costs, before departure.

(d) I consider it surprising that Mr AB would travel to [Overseas] with specific purpose to represent Ms CD, yet fail to take steps to meet with her on arrival to confirm instructions before commencing work.

(e) It presents as confusing, that Mr AB would provide Ms CD with a letter of engagement which detailed the work he proposed to complete for her (without referencing work he had already completed), and then require her to execute further authorities (particularly the [JK] contract) on her arrival in New Zealand.

(f) In preparing a memorandum for the Family Court, Mr AB records at [7] of that memorandum, that Ms CD provides in support of her application, a legal opinion:

> done by AB, Solicitor of New Zealand High Court whom happened to be in [Overseas] during [Date], and he had specifically researched the Chinese family law in relation to family in custody, of which detailed information were provided for this purpose.

(g) That memorandum does not record that Mr AB had specifically travelled to [Overseas], on instructions from Ms CD, with the specific purpose of preparing legal opinions for her, but reports that the opinion was secured whilst Mr AB "happened to be" in [Overseas], a position consistent with Ms CD's understanding that Mr AB had travelled to [Overseas] for his own purposes.

[220] In the alternative, if I am wrong in reaching similar view to the Committee, and the circumstances surrounding the retainer were as Mr AB describes them, his failure to appropriately document the terms of the engagement was an error of such significance, that the benefit of the doubt must fall in Ms CD's favour. Whilst Mr AB

may consider that to be a harsh approach, it was his professional obligation and responsibility to ensure at the outset, that the scope of the retainer, in circumstances such as these, was clearly defined.

[221] I agree with the Committee that fees incurred to 30 March 2013 should be refunded. I have calculated the fee on the basis of the time records for the period provided by Mr AB. In doing so, I have not included the disbursement cost of the air tickets, which is not recorded in the invoice provided, but recorded as a disbursement in Mr AB's time records. The Committee included the cost of the air tickets in its calculation of costs incurred to 30 March. Time charged from 1 March 2013 to 30 March 2013, totals inclusive of GST $13,943.75.

Fees between 2 April – 20 May 2013

[222] The next component of the account considered by the Committee, related to work completed between 2 April 2013 and 20 May 2013 totalling $14,576.25 inclusive of GST. The Committee concluded that $9,918.75 of that component of the account was for Family Court work which had not been authorised by Ms CD.

[223] This returns the inquiry to a further examination of the scope of the instructions. Having concluded that Ms CD was not provided with a letter of engagement on 28 March 2013, focus then shifts to the [XX] contract.

[224] A matter not pursued at the review hearing, but raised by Mr AB in his early response to the complaint, was argument that Mr AB could not properly be the subject of the complaint, as the fees complained of were rendered by [AB] Lawyers Limited, an incorporated firm. The Committee concluded that at all material times Ms CD was under the impression that she was dealing with Mr AB, and the complaint was properly made against him.

[225] The Committee in conducting its inquiry, looked at the account rendered in its totality, its assessment as to the fairness and reasonableness of the total fee arrived at, and by considering the time records and accounts provided by both Mr AB and [XX Law].

[226] I agree with that approach, and Mr AB took no objection to that approach on review. There is such a significant interplay between the work completed by Mr AB and the work completed by [XX Law], that it is proper that the account rendered by Mr AB as a single account, be considered in its totality.

[227] Mr AB's account when rendered, was dated 21 June 2013.

[228] Mr AB says that he discounted the account, and rendered an account which, in total (GST inclusive) reflected the amount of fees ($50,000) held on account.

[229] The notation recording work completed, is relatively brief. The account records that Ms CD is charged for travel to [Overseas] and all related affidavits, Family Court work, immigration work, meetings, correspondence, briefing counsel and barristers fees.

[230] The account is rendered by [JK] Law.

[231] I agree with the Committee that the subject of the complaint is properly Mr AB.

[232] I am uncertain as to why it was considered necessary for Ms CD to enter into a contract with [JK]Immigration Limited. The contract with [JK] records Ms CD meeting with "one of the consultancy's consultants to discuss an immigration issue with a view towards referral to a lawyer for the completion of your work".

[233] The [JK] contract as expressed presents as confusing, in that it records that in consideration for the consultancy referring Ms CD to an immigration practitioner, Ms CD will pay the consultancy and/or "the law practice" an hourly rate of $250.00 for specified work.

[234] The law practice is not identified. Presumably it is intended to reference Mr AB. At the same time, Ms CD is asked to execute an authority authorising Mr GH, or counsel from his office, to act as "my legal agents in regard to my immigration and all other legal matters".

[235] Mr AB proceeds to undertake, he says, immigration work for Ms CD, as does Mr GH and other counsel from his chambers.

[236] Mr AB accounts to Ms CD for his services under the name of his legal practice, [JK] Law.

[237] Mr GH, and his colleague, invoice Ms CD, care of [JK] Law. Mr GH refers to discussions with his instructing solicitor.

[238] Mr GH does not submit his invoices directly to Ms CD, or to [JK] Immigration Limited, which would indicate his understanding of the arrangement as being that he had been instructed by Mr AB.

[239] The Committee concluded that Mr AB's terms of engagement were reflected in the [JK] Immigration Ltd contract.

[240] Mr AB's arrangements could have been more clearly recorded.

[241] I note that the [JK] contract was only signed by Ms CD. There is no indication as to who was acting on behalf of [JK] Immigration Ltd.

[242] The arrangement with [JK] introduces a further tier into Mr AB's relationship with Ms CD, but does not assist in clarifying as to whether Mr AB had been instructed to prepare Family Court proceedings.

[243] The [JK] contract:

(a) Records that it is the "consultancy" which is referring Ms CD to an immigration practitioner.

(b) Sets the hourly rate for the consultancy and a law practice's (presumably Mr AB's) services.

(c) Records the work to be completed for Ms CD as arguably, exclusively relating to immigration matters.

[244] I say arguably, as clause two of the contract refers to "resolving your son's nationality issues as planned".

[245] If an expansive construction was placed on clause two, it could be argued that Mr AB's argument that he was engaged to file proceedings in the Family Court, may have fallen within the category of work contemplated by clause two, although it is difficult to see why work of that nature would be included in a contract between Ms CD and [JK] Immigration Limited.

[246] But viewed in its totality, the [JK] contract is clearly intended to define the scope of the immigration work that will be provided to Ms CD.

[247] I agree with the Committee that the [JK] contract related solely to immigration issues. That contract does not assist Mr AB with his claim that he had specifically discussed his intention to file proceedings in the Family Court with Ms CD.

[248] In my view, Mr AB does not sufficiently clarify that, as part of the work he would be undertaking, he would be filing proceedings in the Family Court. The filing of Family Court proceedings is significant work, and work the nature of which, should be

very clearly identified, and discussed with a client. An intention to file proceedings in the Family Court should be identified in a letter of engagement. In the absence of such clarification, I agree with the Committee that costs incurred in charging for Family Court work should be refunded.

[249] Whilst I am not required, in light of that conclusion, to examine the Family Court proceedings, for completeness, I will briefly do so.

[250] Mr AB's time records are sufficiently particularised to enable, with a reasonable degree of accuracy, a calculation as to the time spent on Family Court matters. Time spent by Mr AB on work identified as Family Court work, amounted to 29 ½ hours, and incurred fees ($250 an hour) of $7,375.

[251] Ms CD contends that the Family Court documents produced by Mr AB were inaccurate, and appeared in her view, to be documents which had been superficially and clumsily adapted from a precedent file. I make no comment on the accuracy of the information in the documents prepared, but what is clear from an examination of the proceedings, is that the proceedings were incomplete, and in the very early stages of drafting.

[252] Mr AB's time records reflect the considerable amount of time that is charged for the preparation of the Family Court documents.

[253] I appreciate that a considerable amount of the time engaged in preparing proceedings of this nature would involve meeting with Ms CD, and compiling information to be put before the Court. Assembling that information in the form required by the Court, would be a relatively straightforward process.

[254] Mr AB records that eight hours were spent attending a meeting with Ms CD and drafting documents. That was followed shortly thereafter, by the following:

- Clarifying affidavits and further drafting – 5½ hours
- Checking documents, researching and drafting – 4½ hours
- "Tidy up most of the drafting and ready to complete documents to the client satisfaction, once further information are sought on 20 May" – 6½ hours

[255] The documents on the file are not reflective of documents that are close to completion. Nor do the documents indicate any particular degree of complexity. They

present as comprising a narrative (incomplete) of Ms CD's circumstances, and an incomplete memorandum providing a summation of Mr AB's understanding of the guardianship law applicable in [Overseas].

[256] Considering the reasonable fee factors (rule 9.1) to be taken into consideration when addressing the reasonableness of the fee, it is my view that the fees charged for the Family Court work were unreasonable, particularly taking into account the complexity of the matter, the time and labour expended, and the skill required to properly perform the services. In light of the finding made that Mr AB could not properly charge for work reported as Family Court work, I do not have need to draw conclusion as to what would have been a reasonable fee for the Family Court work that Mr AB said that he had completed, other than to note that the draft proceedings on the file were reflective of minimal work having been spent on finalising the drafting of the documents that Mr AB says were intended to be filed in court.

Fees between 20 May to June 2013

[257] I turn now to the fees charged for work completed by Mr AB for the period 20 May 2013 to June 2013.

[258] The issues to be considered when considering fees charged for this period are:

(a) When was the retainer terminated?

(b) Was Mr AB entitled to charge Ms CD for time incurred after the retainer had been terminated?

[259] Ms CD submits that she advised Mr AB on 20 May 2013 that she wished to terminate the retainer. She says that on advising Mr AB of her intention to do so, she made request of him to refund her $50,000, less reasonable fees incurred to that point.

[260] She says that Mr AB refused to refund her fees. She then sought the help of a friend to assist her with drafting a formal notice of termination. She says that she returned to Mr AB's office on 23 May 2013, accompanied by her friend, and made further request of Mr AB to refund her fees.

[261] I accept Ms CD's submission that she terminated the retainer on 20 May 2013. That is consistent with Mr AB's notation in his time records for that day, where he records meeting with Ms CD, and being advised by her of a "change of plan" with which he disagreed, and Mr AB's decision to seek advice from senior counsel.

[262] Mr AB records charging Ms CD for two hours time engaged in the 20 May meeting at which Ms CD confirms her instructions to terminate the retainer. On that same day, he records two hours charged to Ms CD spent taking advice from senior counsel on a conflict issue.

[263] On 23 May 2013, Mr AB charges Ms CD for one hour in time spent meeting with her and her support person. In my view, that meeting was, as Ms CD describes, a meeting which was necessitated by Mr AB's earlier reluctance to release her files, and a meeting at which Ms CD, assisted by her support person, was endeavouring to uplift both her files, and her funds. On that same day, Mr AB charges Ms CD for a further hour spent on discussing conflict issues with senior counsel.

[264] On May 24, Mr AB charges Ms CD an hour of time for receiving instructions to terminate, and to "tidy file up". A further hour is charged for yet more time spent seeking advice from senior counsel.

[265] In June, two hours are recorded for preparing for the transfer of the file, for "deciding on documents to withhold" and administration, but those costs do not appear to have been charged.

[266] Ms CD says that when she met with Mr AB on 23 May 2013, Mr GH was called into the meeting.

[267] Two accounts were rendered to Ms CD from [XX Law]. It was Ms CD's understanding that two barristers from Mr GH's chambers worked on her immigration matters, one of whom was Mr GH himself.

[268] The [XX Law] accounts do not identify which of the barrister's work is recorded in the specific accounts, but the account recording work completed in relation to the business visa application, records a barrister attending a meeting with Ms CD on 23 May 2013. That would have been the meeting attended by Mr GH, and it is reasonable to assume from the nature of the work detailed in the [XX Law] invoice number 1363, that this invoice records work completed by Mr GH.

[269] It is also reasonable to conclude that when Mr AB refers to meeting with senior counsel, he is referring to Mr GH.

[270] When Ms CD makes request for her files and return of her funds, she is denied both and charged by both Mr AB and Mr GH for matters arising from her request to release her files.

[271] Time spent discussing her request to have her file released incurs charges from both Mr AB and Mr GH.

[272] Mr AB's explanation for refusing to release the files was argument that there was evidence on the file of Ms CD having committed a criminal offence. That is denied by Ms CD, and there is no evidence advanced to substantiate the allegation.

[273] I make no comment on the merits or otherwise of the decision to refuse to release Ms CD's file to her. That is not the focus of this fee complaint, but Mr AB's response to his concerns of possible illegality, and his decision to seek advice as to whether he should release the file is materially relevant to the complaint, as he charged Ms CD for time spent after he had been advised that Ms CD did not wish to continue with his services.

[274] Any concerns that Mr AB may have had regarding release of documents, could have been addressed by Mr AB simply retaining certified copies of the documents about which he held concerns, and I note that Mr EF for Ms CD advised Mr GH that his client would have no objection to that course.

[275] Mr AB would understandably be concerned if Ms CD was asking him to file an immigration application supported by fraudulent documents. A lawyer must not assist any person in activity that the lawyer knows is criminal or fraudulent. A lawyer must not knowingly assist in the concealment of a fraud or a crime.[36]

[276] A lawyer may terminate a retainer for good cause. Good cause includes circumstances where a client instructs their lawyer to breach any professional obligation, or a client misleads the lawyer in any material respect.[37]

[277] If the position was, as Mr AB advances it to be, that Ms CD was insistent that he assist her in filing an immigration application which Mr AB considered was fraudulently misrepresenting the identity of children who were the subject of the application, it could be questioned as to why Mr AB himself did not take steps, for his own protection, to immediately terminate the retainer and send Ms CD on her way. That is not what happened. Mr AB resisted releasing the file, and continued, together with the barrister instructed, to run up legal costs of over $6,500.

[278] Mr AB charged Ms CD for seeking advice on a matter affecting his professional obligations. Not only did he charge for his time, the barrister who had been instructed to represent Ms CD, also charged Ms CD (not Mr AB) for discussions

[36] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[37] Rule 4.2.1 (a) and (c).

that took place arising from her decision to terminate the retainer. In total, Ms CD was charged $2,140 (exclusive of GST) for attendances, and the securing of advice from senior counsel.

[279] But that is not all of the costs incurred following termination of the retainer. On 27 May 2013, Ms CD's barrister charges her $2,250.00 for "drafting for instructing solicitor, including file perusal and chats" with persons referred to by initial rather than name.

[280] A further $1,170 is charged by Ms CD's barrister after that date. All of these charges were absorbed into Ms CD's account.

[281] Neither Mr AB, nor the barrister instructed was able, in my view, to charge Ms CD for attendances on her following her decision to terminate the retainer.

[282] If Mr AB required advice as to his obligations regarding release of the file, that was a professional issue for him to resolve, and not an issue for which Ms CD could be charged as if the retainer remained in place.

[283] I consider that costs totalling $6,560.00 charged by both Mr AB and the barristers for attendances following termination of the retainer should be refunded. That figure, which differs slightly from that of the Committee, is calculated by refunding all of the costs incurred in both Mr AB's account, and the [XX Law] invoice number 1363, for the period 20 May 2013 to 10 June 2013.

[284] That leaves an assessment of the work which was completed in respect to the immigration matters.

[285] I agree with the Committee that there was no basis for fees to be charged at $300.00 per hour, when the charge out information provided to Ms CD recorded a rate of $250.00 per hour.

[286] The Committee, having determined that fees could not be charged for work completed in [Overseas], or work completed after termination of the retainer, determined that a fee of $10,000 (inclusive of GST and disbursements) was reasonable for the immigration work.

[287] In providing reasons for that decision, the Committee noted that it had accepted Ms CD's arguments for a reduction of the fee.

[288] The Committee noted that the outcomes achieved were completion of work involved in obtaining a visitor's visa for Ms CD, and work on applications for long term business and student visas. The Committee concluded that work on the student and long term business visas had not been significantly progressed.

[289] I have given consideration to returning the matter to the Committee with a view to appointing a costs assessor to look solely at the cost of the immigration work, but have decided not to do so. I am mindful that there has been some significant delay in having this complaint, determined, and there is need for the parties to have the matter resolved.

[290] I am also mindful that it is the role of a Review Officer to bring an independent and robust approach to a review.

[291] In my view, there is sufficient information before me to allow a proper assessment to be made, of the fees charged.

[292] For the period 2 April 2013 to 29 April 2013, Mr AB spent (as identified by his time records) in excess of 16 hours on immigration matters (incurring fees of approximately $4,000).

[293] Fees charged by the two barristers from 14 April 2013 to 20 May 2013 (calculated at a charge out rate of $250 per hour), was $17,250.00. Total fees charged were approximately $20,400.

[294] In considering this fee complaint, I am mindful that determining a reasonable fee is an exercise in balanced judgment, not an arithmetical calculation.[38]

[295] I agree with the Committee that the fee presents as considerable for the outcomes achieved. The reasonableness of the fee must be considered in the context of the whole retainer.

[296] The accounts rendered (supported by the time sheets) reflect, in my view, a considerable amount of repetition. Whilst I do not discount the fact that gathering information from a client is an important part of the process, and one which can engage a considerable amount of time, there is a significant amount of time recorded which presents as repetitive. This within a context of Mr AB spending, he says, seven and a half hours discussing with Ms CD, her strategy and plans before the immigration

[38] Above n 4, at .

contracts are entered into, and him spending several hours completing research and drafting work.

[297] The total time spent on attendances presents as excessive.

[298] There is no evidence advanced which persuades me that the matters being attended to had a particular complexity. Fees involved in preparing a standard visitor visa application, even if that application involved some complicating factors, would not be expected to be overly significant, and there is no indication from the time records, or other evidence produced to indicate that there were any particular problems encountered.

[299] I accept that significant costs may be incurred in the preparation of a business visa, but Ms CD's argument that little progress was made with this application was not challenged.

[300] The time records indicate, in my view, a disproportionate amount of time spent on Ms CD's affairs, particularly time spent on attendances.

[301] I note that on 8 May 2013, Mr AB records having spent eight hours on Ms CD's file. He records time meeting with Ms CD to prepare affidavits. As Mr AB believed he was acting on instructions to prepare Family Court applications, it is reasonable to infer that time he spent meeting with Ms CD on that day was not inconsiderable.

[302] On that same day, one of the barristers engaged records meeting with Ms CD and organising photographs (four hours forty eight minutes), further attendances with Ms CD and emails (two hours eighteen minutes), attendance to client meeting (four and a half hours) perusal of documents (three hours), a total of 14 hours thirty six minutes.

[303] The second barrister records having spent four hours forty two minutes on Ms CD's file on 8 May 2013.

[304] Two hours are recorded by this barrister as having been spent in "attendance to meeting and going over documents". I note that the first barrister records having spent an hour and a half on 29 April with "attendance to meet you" work, and over six and a half hours on 8 May 2013 with further "attendance to meet" work.

[305] In total, Ms CD was charged $7,790.00 for work carried out on 8 May 2013.

[306] In considering the reasonableness of the fee charged, I remind myself that the concept of a fee that is fair and reasonable for the services provided, is fundamental to the analysis of the fee charging principles and the legal profession. It contemplates fairness to the client and the lawyer, and reasonableness by standards of the legal profession in the context in which the services are provided.

[307] I consider that a significant reduction in the fees charged for immigration services is justified.

[308] I do not propose to interfere with the Committee's decision. Tinkering with the decision would achieve little. I am mindful that a Standards Committee is comprised of experienced practitioners who have brought their collective mind to a consideration of the reasonableness of the fee. Looked at in its totality, I am satisfied that the Committee's decision to find unsatisfactory conduct on the basis of conclusion that the fee was unreasonable, was a proper decision for the Committee to arrive at.

[309] In the course of conducting this review, I have given very careful attention to the time records, and my view as to the scope of the retainer. I have also given, as I am required to do, careful attention to factors to be considered under rule 9.

[310] Whilst the rule provides guidance on the factors that should be considered when considering the reasonableness of the fee, the factors listed in the rule are not intended to be exhaustive, and the task of assessing a fee should not be reduced to a merely arithmetical exercise, or a task that endeavours to wrestle all the aspects of the retainer into an accommodating selection of " tick boxes".

[311] What singularly distinguishes the analysis as to the reasonableness of the fee in this particular case, is the conclusion reached as to the scope of the retainer, and the conclusion reached that Ms CD was charged for work that did not properly arise from the retainer, after the retainer had concluded.

[312] In considering carefully the work that was completed on the immigration matters and the outcomes achieved, I consider that the Committee's conclusion that Mr AB reduce his fee to $10,000 was appropriate.

The decision of the Standards Committee is confirmed, except in that order 15 (d) is varied to provide that Mr AB is to pay to the complainant, as contribution to her legal costs, the sum of $2,000, and the order made in for compensation for stress and loss of money is dismissed.

Costs

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

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

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed, except in respect to matters detailed in orders (1) and (2) below:

Orders.

(1) The order made at [15](d) is varied to provide that Mr AB is to pay to the complainant, as contribution to her legal costs, the sum of $2,000 pursuant to s 156(1)(o) of the Lawyers and Conveyancers Act 2006.

(2) The order made at [15](d) that Mr AB is to pay to the complainant the sum of $2,000 for stress and loss of use of money is reversed.

(3) In all other respects, the decision of the Standards Committee is confirmed.

(4) Pursuant to s 210(1) of the Lawyers and Conveyancers Act 2006 Mr AB is ordered to pay the sum of $1,200 to the New Zealand Law Society by way of costs, such sum to be paid within one month of the date of this decision.

DATED this 27th day of October 2016

R Maidment
Legal Complaints Review Officer

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

Mr AB as the Applicant
Mr GH as the Applicant's representative
Ms CD as the Respondent
Mr EF as the Respondent's representative
[Area] Standards Committee
The New Zealand Law Society