

NOTICE OF DETERMINATION

A notice made under section 318 of the *Legal Profession Uniform Law (Victoria)* ("Uniform Law").

Complainant: [REDACTED]
Respondent Lawyer / Law Practice: [REDACTED] / [REDACTED]
Case reference: [REDACTED]

Pursuant to section 292 of the Uniform Law, I make a binding determination about the costs of the Respondent Lawyer's bill dated 8 September 2015, which is the subject of the dispute.

I consider the amount of legal costs that are fair and reasonable in relation to this bill to be **\$1,439.00** (GST inclusive), which the Complainant must pay the Law Practice in relation to this bill.

Order

Pursuant to section 290(2)(d)(i) of the Uniform Law, I make the following order –

That the Respondent Lawyer undertakes a professional development course with a focus on practice management: specifically, appropriate billing and compliance with costs disclosure obligations, to be approved by me **within 6 months** of this date.

Statement of Reasons

Background

1. On or around 26 August 2015, the Complainant approached the Respondent Lawyer in relation to a common law matter involving an injury she suffered in the course of employment.
2. Under cover of letter dated 28 August 2015, costs disclosure was provided to the Complainant under the Uniform Law.
3. Just prior to 4 September 2015, the Complainant terminated the Respondent Lawyer's retainer. On that date, the Complainant's new lawyer, [REDACTED] contacted the Respondent Lawyer and advised that he would now be acting for the Complainant.
4. On 8 September 2015, the Respondent Lawyer rendered a lump sum bill for an amount of \$2,206.80 ("Respondent Lawyer's bill"). No disbursements were included in this bill.
5. On 15 October 2015, my office received the Complainant's complaint about the Respondent Lawyer.
6. On 28 October 2015, the Respondent Lawyer provided the Complainant with an itemised bill in response to her request. The bill totaled \$2,730.80, including GST, and 10% loading (\$248.20) for skill, care and responsibility.

7. The Complainant and Respondent Lawyer attempted to resolve the dispute informally. Both made offers to one another. However, these offers did not result in a satisfactory resolution of the matter for each other.
8. The Respondent Lawyer's bill remains outstanding.

Issue in Dispute

The issues that remain in dispute are whether –

1. the Respondent Lawyer's bill is fair and reasonable; and
2. any further action should be taken against the Respondent Lawyer as a result of the issues raised in the Complainant's complaint.

Complainant's Case

The Complainant said the following in her complaint –

- a. She was not liable to pay the Respondent Lawyer's bill, as she had not signed the conditional costs agreement;
- b. She was unhappy with the way in which the Respondent Lawyer had spoken to her;
- c. The Respondent Lawyer's costs were excessive; and,
- d. The Respondent Lawyer had failed to provide an itemised account upon request.

On 22 February 2016, the Complainant offered to pay the Respondent Lawyer's bill with a 30% reduction (rounding amount off to \$1,545.00) on a payment arrangement of \$50.00 per month.

On 23 February 2016, the Complainant rejected the Respondent Lawyer's counter offer to pay \$1,545.00 within 3 months to resolve the dispute.

On 26 July 2016, the Complainant responded to our letter foreshadowing my position. She said that the Respondent Lawyer failed to act honestly, professionally and with all due care and skill in handling her legal matter.

Respondent Lawyer's Case

The Respondent Lawyer –

- Disagrees with all of the concerns raised in the complaint.
- Denies the Complainant's allegation that he spoke to her in an unprofessional manner.

- Said that he was required to ask the Complainant some difficult questions in relation to her legal matter and this resulted in her becoming distressed, which was appropriate in the circumstances.
- Does not accept the outcome of the costs review, but indicated a willingness to resolve the complaint on the basis of the costs review.

On 23 February 2016, the Respondent Lawyer rejected the Complainant's offer made on 22 February 2016, and made a counter offer as discussed above.

No written response was received from the Respondent Lawyer to our letter foreshadowing my position.

Findings on Issues in Dispute

A costs review has been undertaken of the Respondent Lawyer's file, which concluded that \$1,439.00 (including GST) represents the fair and reasonable legal costs for professional legal costs charged for the Respondent Lawyer's bill. I accept that this amount represents fair and reasonable legal costs for this bill. The Respondent Lawyer's file was assessed in accordance with the Professional Remuneration Order relevant at the time the bill was issued.

The Complainant was not required to sign the costs agreement. It therefore does not follow that she does not have to pay the Respondent Lawyer's bill because she did not sign it.

The Complainant's concern that the Respondent Lawyer's lump sum bill and itemised bill were excessive is correct. I will now discuss the issues of Costs Disclosure and Notification of Rights, which influenced the findings made in the costs review –

(a) Costs Disclosure

The disclosure statement indicated that the matter was conditional and involved the payment of an uplift fee in certain circumstances. However, the costs agreement did not mention an uplift fee.

The total legal costs estimated in the disclosure statement did not indicate the estimate of the scope of the work to be performed or what factors would contribute to the changing of the estimate.

There was no indication in either the disclosure statement or the costs agreement what liability the Complainant would have to pay for legal costs in the event, as happened in this case, that she terminated the retainer prior to a successful outcome being reached.

(b) Notification of Rights

The Notification of Rights provided by the Respondent Lawyer was deficient. It did not provide full and correct information in relation to the Complainant's rights to dispute the bill, including that it:

- Failed to advise that the Complainant had a right to request an itemised bill;

- Failed to advise that the seeking of an itemised bill may result in the Complainant being pursued for any higher amount in that bill.
- Gave incorrect information in relation to the ability of the Complainant to seek a costs review in the Costs Court (specifying 60 days instead of 12 months).
- Incorrectly advised that the Victorian Civil and Administrative Tribunal could set aside the costs agreement. This avenue no longer exists under the Uniform Law.

(c) Request for an itemised bill

The Complainant requested an itemised bill in a letter to the Respondent Lawyer dated 14 September 2016. The Respondent Lawyer failed to respond to the request within 21 days. The Respondent Lawyer provided an itemised bill dated 28 October 2016, which was 44 days after the request was made by the Complainant. The significant delay in providing the itemised bill within 21 days of being requested to do so, has contributed to the order that the Respondent Lawyer attend professional development in relation to costs.

(d) Service related concerns

There is no evidence before me to suggest that the Respondent Lawyer communicated with the Complainant unprofessionally or that the Respondent Lawyer acted dishonestly or without due care and skill. I accept that the Respondent Lawyer had to ask the Complainant some difficult questions and that this may have been upsetting for the Complainant to hear.

Determination & Reasons

Having considered all of the evidence and relevant law, and having made the above findings on the issues in dispute, I determine that it is fair and reasonable in all the circumstances to make the order detailed above.

Further, in making a determination as to costs, I have determined that the amount is fair and reasonable in all the circumstances having regard to section 200 of the Uniform Law, and the following matters. I have also considered the principles in section 172.

Non-compliance

Please be aware that a failure to comply with a determination in a consumer matter may amount to conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

Michael McGarvie
Victorian Legal Services Commissioner
7 September 2016