

**Private and Confidential**

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File Ref: CAS012565 \_2

26 August 2024

Dear Dr Stonis

**Complaint about Gillian Potts**

I write to you regarding your complaint about Ms Gillian Potts received by my Office on 13 May 2023.

**Background to your complaint**

You state that you were involved in a traffic accident on 30 March 2015.

I note that a Certificate of Determination dated 3 July 2023 from the Personal Injury Commission (PIC) assessed your damages at \$410,929.40 as well as legal costs and disbursements in the sum of \$41,319.20.

I further note that you accepted the above award and provided a signed statement in that regard on 27 August 2023. It appears that these monies have been received into your most recent solicitor's account.

**Your Complaint about Ms Potts**

It appears that Ms Potts and Mr Pryde of Counsel acted for you sometime from March 2018 to early/ mid 2020 in your motor vehicle/ personal injury claims.

Broadly, you complain about the manner in which Ms Potts handled your claim. You say she failed to gather evidence relevant to your claim, failed to include certain evidence relating to your PTSD diagnosis when submitting documents for assessment and gave you negligent advice regarding your claim.

I understand that you also dispute the firm's legal costs- represented by the itemised invoice dated 13 May 2020 for \$178,327.22.

### **My decision and reasons**

I note that the previous Case Officer in this matter, Ms Gilbert wrote to you and Ms Potts on 18 May 2023 seeking out of time conduct submissions and informed you of the time and monetary limits applicable to complaints to this Office.

Under cover of your letter dated 7 June 2023, you state *"the main reason for late submission is my mental health problems, mainly PTSD"*. You further submit that there were other obstacles such as the delay in the files being transferred to your subsequent solicitors.

Under cover of Ms Potts' letter dated 16 June 2023, Ms Potts submits that I should not exercise my discretion to waive the time limit and states:

1. *"Mr Stonis has had legal representation throughout the course of his claim and would have been in a position to lodge a complaint at an earlier time.*
2. *My memory of the events and ability to provide details of the matter are made more difficult due the passing of time.*
3. *Counsel briefed at the time is no longer a practicing practitioner and he may not have any records of this matter and may not be willing to be involved in this matter."*

Section 272 of the LPUL does not require an assessment of the merits of the complaint and it is only if I decide to exercise my discretion to deal with the complaint, lodged outside the timeframe of 3 years, that it would then be necessary for me to review the merits of your submissions and those of Ms Potts regarding the complaint.

Having carefully considered the matter, I have determined not to waive the time requirement as I am not satisfied that:

(a) It is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or that

(b) the complaint involves an allegation of professional misconduct, and it is in the public interest to deal with the complaint.

### **My reasons**

1. There were various opportunities available for you to have submitted a complaint with this Office during the time Ms Potts represented you, given your submissions that you were dissatisfied with her conduct at many stages between March 2018 to early/ mid 2020.
2. Ms Potts acted in the matter a significant time ago and it would not be reasonable for her to recall details or facts relating to your complaint given the passage of time.

While I acknowledge you submit that your ongoing mental health issues were the main reason for the delay in submitting your complaint, I am conscious that these issues do not appear to have impacted your ability to change your legal representatives on various occasions after the occurrence of the conduct complained of and particularly note that you had the benefit of that representation at a time when an in-time complaint may have been lodged with my Office. You have also acknowledged that you have a high degree of education (holding a doctorate) and it appears that from the nature of your complaints and your submissions that you were not an unsophisticated client.

3. The subject invoice dated 13 May 2020 for \$178,327.22 is both out of time and outside the monetary limit for this Office to consider and hence my Office has no jurisdiction to make any determination about these costs. (the monetary limit applicable as at 13 May 2023 when your complaint was first received by this Office was \$149,375) Please note that I can only waive the time limit for invoices within the 'discretionary period', which is a period between 2 and 6 months after the date the invoice became payable and the invoice dated 13 May 2020 is significantly outside of this time frame.
4. It would not be in the public interest to expend resources to investigate your allegations, some years after the fact, in circumstances where your matter has already been finalised, a Certificate of Determination has been issued, you have accepted the award and settlement monies have already been paid into your most recent solicitor's trust account.

**Accordingly, after careful consideration of all the information before me, I am writing to advise that your complaint about Ms Potts has been closed pursuant to section 277(1)(b) of the *Legal Profession Uniform Law (LPUL)* as the complaint was made out of time.**

## **Conclusion**

It is my view that this Office can be of no further assistance to you and hence your complaint about Ms Potts is closed.

Please refer to Fact Sheet 1 previously provided to you should you require more information about the complaint handling process.

You may also access Fact Sheet 1 on our website at [www.olsc.nsw.gov.au](http://www.olsc.nsw.gov.au).

A copy of this closing letter has been forwarded to Ms Potts for her records.

Thank you for taking the time to alert me to your concerns.

Yours sincerely



Samantha Gulliver  
**NSW Legal Services Commissioner**