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## Final Decision

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Date 12 September 2025

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### Introduction

Mrs ██████ home was damp. She believed the damp was caused by defective installation of cavity wall insulation at her home.

Mrs ██████ instructed a solicitor ('the first solicitor') to represent her in a cavity wall insulation claim, and after that another solicitor ('the second solicitor') was instructed.

Following this, Heselwood & Grant Solicitors ('the firm') took over responsibility for the claim in April 2019. The firm sent their client care letter on 26 April 2019.

Mrs ██████ claim was issued on ██████ April 2020 against several defendant insurers ('the defendants'). The firm sent instructions to an expert to prepare a report about the condition of the property on 22 July 2020, and the report was provided on ██████ August 2020. After an application was made to court to extend the deadline, the Particulars of Claim were issued in mid-February 2021.

The firm sought advice from a barrister on 5 February 2021, but on 8 September 2021 wrote to Mrs ██████ to explain as the After the Event (ATE) insurer had refused permission to update expert evidence, which was crucial to progressing the claim, the firm would not continue the matter on her behalf. They provided Mrs ██████ with some options.

The claim was then discontinued, and the defendants pursued Mrs ██████ for their costs. The firm entered administration on 29 October 2021 and was intervened by the Solicitors Regulation Authority (SRA) on 10 March 2023.

Mrs ██████ brought the following complaints to the Legal Ombudsman for investigation:

1. The firm did not fully inform Mrs ██████ of the financial implications of the different outcomes of the case.
2. The firm did not inform Mrs ██████ that she would not be able to pursue her case in the future, once it had been closed by them.

My colleague, ██████, in her Case Decision of 27 August 2025 found the firm's service was unreasonable. She recommended the firm pay £23,010.28 for the financial loss Mrs ██████ suffered and pay £1,000 to reflect the emotional impact of the firm's unreasonable service.

Mrs [REDACTED] responded with her comments in response to the Case Decision in emails of 2 and 3 September 2025, which I have read. When the Case Decision was sent to Mrs [REDACTED], my colleague made a further attempt to contact former partners at the firm by writing to their previous postal address. However, no response was received from any former partners.

My colleague took the approach in line with our usual process when dealing with a firm that has closed, and I am satisfied she has taken reasonable steps during the investigation to try and engage former partners of the firm with the complaint. For this reason, I consider it is fair and reasonable to make a decision at this time.

My role as an ombudsman is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

When determining what is 'fair and reasonable', I am expected to take into account (but I am not bound by) what decision a court might make, relevant regulatory rules and what I consider to be good practice.

I confirm that I have taken such factors into account, and the decision that I set out below, is what, in my opinion, I consider to be fair and reasonable in all the circumstances of this case.

## **Conclusions**

- 1. The firm did not fully inform Mrs [REDACTED] of the financial implications of the different outcomes of the case.**
  - 1.1. The Case Decision found the firm's service was unreasonable for complaint 1. The firm haven't engaged with the investigation, and Mrs [REDACTED] hasn't disagreed with the conclusions for this complaint 1.
  - 1.2. There were a few potential outcomes of Mrs [REDACTED] claim: she could be successful; she could be unsuccessful; Mrs [REDACTED] could end the instructions before the claim ended; the firm could end the instructions before the claim ended.
  - 1.3. I would expect the firm to provide information to Mrs [REDACTED] about the financial implications at the start of the instructions, and at relevant times during the instructions. I will discuss this below.

## **The start of the instructions**

### Claim successful

- 1.4. I am satisfied at the outset the firm did explain to Mrs [REDACTED] the financial impact should her claim be successful. This was explained in the Conditional Fee Agreement ('CFA'):

*"If you win your claim, you are entitled to seek recovery from your opponent of part or all of our basic charges plus our expenses and disbursements. In order to do this, you must at all times remain responsible to pay our basic charges, our expenses and disbursements and a success fee together with the premium for any insurance you take out. Your opponent does not have to pay the success fee or any insurance premium."*

#### Claim unsuccessful

- 1.5. The firm sent Mrs [REDACTED] a copy of the 'Law Society Conditions' which explained she would lose her claim if:

*"The court has dismissed your claim or you have stopped it on our advice."*

- 1.6. The same document explained if Mrs [REDACTED] lost her case she would need to pay her opponent's fee.

- 1.7. The CFA explained:

*"... if you lose, you do not pay our basic charges but we may require you to repay us all of the additional charges, expenses and disbursements paid during your claim."*

- 1.8. And:

*"You may be able to take out an insurance policy against the risk of paying expenses and disbursements (but not our charges) if you lose, or some or all of your opponent's costs, even if you win. You will be responsible for paying the insurance premium for this cover if you win. If you lose, the premium is not payable."*

- 1.9. Based on the firm's explanations, Mrs [REDACTED] was told that if she lost her case, she would not be required to pay the firm's fees but may be required to pay disbursements and other expenses. The firm also told her should be responsible for the other side's costs, but an insurance policy could protect her against this. This type of policy is called 'After the Event' (ATE) insurance.

- 1.10. This shows the firm did tell Mrs [REDACTED] about the financial implications should her claim be unsuccessful. An ATE insurance policy was in place, as discussed below.

Mrs [REDACTED] ended the instructions

1.11. The CFA explained to Mrs [REDACTED]:

*“If you have a right to cancel this agreement under Schedule 3 (see below) and do so within the 14 day time limit, you will pay nothing. Otherwise if you end this agreement before you win or lose, you pay our basic charges and expenses and disbursements. If you go on to win, you also pay a success fee.”*

1.12. This shows Mrs [REDACTED] was told of the consequences should she end the instructions.

The firm ended the instructions

1.13. The Law Society Conditions explained:

(i) *We can end this agreement if you do not keep to your responsibilities. We then have the right to decide whether you must:*

- *Pay our basic charges and our expenses and disbursements including barristers’ fees but not the success fee when we ask for them; or*
- *Pay our basic charges and our expenses and disbursements including barristers’ fees and success fees if you go on to win your claim for damages.*

(ii) *We can end this agreement if we believe you are unlikely to win. If this happens, you will only have to pay our expenses and disbursements. These will include barristers’ fees if the barrister does not have a conditional fee agreement with us.*

(iii) *We can end this agreement if you reject our opinion about making a settlement with your opponent. You must then:*

- *Pay the basic charges and our expenses and disbursements, including barristers’ fees;*
- *Pay the success fee if you go on to win your claim for damages.*

*If you ask us to get a second opinion for a specialist solicitor outside our firm, we will do so. You pay the cost of a second opinion.*

(iv) *We can end this agreement if you do not pay your insurance premium when asked to do so.*

1.14. This shows that Mrs [REDACTED] was told about the cost consequences should the firm decide to end the instructions.

1.15. Overall, at the start of the instructions, the firm did tell Mrs [REDACTED] about the financial implications of different outcomes of the case.

### Relevant times during the instructions

1.16. Mrs [REDACTED] claim was issued on [REDACTED] April 2020, as the firm explained to her in their letter of 16 July 2020. The same letter explained a Particulars of Claim and a surveyor's report needed to be served by [REDACTED] August 2020. I understand that an application was made to extend this date, and the other parties received the Particulars of Claim on [REDACTED] February 2021.

1.17. I think the firm's letter of 16 July 2020 is important. It explained to Mrs [REDACTED] that all cavity wall insulation claims were "*legally complicated*" and "*all being robustly defended*". The firm had a responsibility to provide full and frank advice, and I am satisfied at that time the firm did so. I appreciate Mrs [REDACTED] likely didn't want to hear that the complaint would be complicated and robustly defended, but the firm had a duty to make her aware of this.

1.18. The reference to the claim being robustly defended likely meant Mrs [REDACTED] believed the defendants in her case would take the same approach, and that resolving the claim would not be straightforward.

1.19. The expert completed his report on [REDACTED] August 2020, and the firm drafted a Schedule of Losses which calculated Mrs [REDACTED] losses to be £38,681.87. This shows that Mrs [REDACTED] reasonably believed her losses were significant.

1.20. The firm had arranged ATE insurance, as the firm have referred to this throughout their correspondence with Mrs [REDACTED], and in the brief to the barrister.

1.21. I note on 16 September 2020 the firm wrote to Mrs [REDACTED] to explain her ATE insurer was refusing to authorise payments of disbursements. They firm told Mrs [REDACTED] that this "*could have severe consequences on the successful outcome*" of her claim. I have assumed that this problem must have been resolved, because after this date the firm issued the Particulars of Claim in February 2021.

1.22. It isn't clear what happened in the months that followed the firm sending the Particulars of Claim to the defendants. This is because I haven't seen any emails or letters from the firm to Mrs [REDACTED], nor notes from calls or meetings between them. I note the firm sent one of the defendants' solicitors an email on [REDACTED] June 2021 to suggest a drop-hands offer, where Mrs [REDACTED] would discontinue her claim, and the parties would all bear their own legal costs.

- 1.23. However, I have not seen any evidence the firm discussed this offer with Mrs [REDACTED] before it was put to one of the defendants' solicitors. On balance, I consider this lack of evidence shows that no such discussion took place with Mrs [REDACTED] about this offer.
- 1.24. I have read the undated email in response from the solicitor, and it mentioned:
- The drop hands offer was rejected.
  - Mrs [REDACTED] should discontinue the claim.
  - Mrs [REDACTED] failure to do so as soon as possible meant that further costs would be incurred, which would be recoverable from her.
  - Mrs [REDACTED] case relied upon expert evidence, from an expert unable to perform his duties.
  - Another of the defendants' solicitors had refused consent to substitute the expert.
  - Even if substitution was permitted, Mrs [REDACTED] would be liable for the defendants' costs.
  - Mrs [REDACTED] Particulars of Claim had many deficiencies, which were listed.
  - They believed the claim was doomed to fail.
- 1.25. Based upon this email, the firm were aware in June 2021 of very serious problems with Mrs [REDACTED] claim which left her at risk of both the claim being unsuccessful and exposing her to significant risk of adverse costs. They should have promptly discussed this with Mrs [REDACTED], so she could decide how to proceed, but didn't do so.
- 1.26. I am satisfied no discussion took place with Mrs [REDACTED] about discontinuing the claim, and the possible financial or costs consequences of doing so in or around June 2021. There are no call notes, meeting notes, letters or emails from the firm to Mrs [REDACTED] which mentioned this.
- 1.27. By this point, two of the defendants had solicitors who were communicating with the firm. The firm should reasonably have known that the defendants' legal costs were likely increasing and there was a risk Mrs [REDACTED] would be responsible for these costs.
- 1.28. In fact, one of the defendants' solicitors asked the firm on 17 and 26 August 2021 if the firm had received instructions to discontinue the claim; the firm responded on 23 August 2021 to explain they were awaiting instructions.
- 1.29. However, I am not satisfied the firm had explained to Mrs [REDACTED] about the problems with her claim, and whether she wished to discontinue because there is no evidence they had such discussions with Mrs [REDACTED] about this in August 2021, or previously.

- 1.30. I consider Mrs ██████ email of 6 September 2021 shows there had been no recent meaningful discussion with the firm about the claim and the problems the claim faced. This is because her email simply asked for an update. In my view, if Mrs ██████ had been told about the problems with the claim, she likely would have asked for more information and a deeper discussion with the firm in the circumstances.
- 1.31. The firm replied to Mrs ██████ on 8 September 2021 to explain the ATE insurer wasn't willing to confirm the ATE was valid and wouldn't provide funding to update expert evidence which was "*crucial to progressing*" her claim. The letter gave Mrs ██████ three options: pay privately; discontinue the proceedings; or transfer the file to another firm.
- 1.32. Mrs ██████ chose the second option, as shown by the firm's email which stated she didn't wish to proceed. A notice of discontinuance was then sent to court on ██████ September 2021.
- 1.33. The firm's letter of 8 September 2021 explained:
- "We can discontinue the current proceedings against the Defendant.*
- We would need your authority for this. Under the terms of the ATE policy with [name of ATE insurer] we would also require their consent to discontinue the case if we have issued proceedings. Unfortunately, despite repeated requests, we have not received their formal consent. If we were to discontinue without ATE consent, there is a risk that the ATE provider will pursue you for the disbursements paid to date and the Defendant's could pursue you for their legal costs. However, as the claim has not yet been served, no solicitors for the Defendant are on record as yet."*
- 1.34. The firm's explanation here was wrong. The firm failed to fully inform Mrs ██████ of the financial implications should she discontinue the proceedings.
- 1.35. The first thing I have noted is that the firm had already discussed discontinuing the claim with the ATE insurer before mentioning this to Mrs ██████ in their letter of 8 September 2021. I consider it would have been more appropriate to do this only once they had explained Mrs ██████ options to her. I have assumed the ATE insurer ultimately did agree to discontinue, given the firm sent a notice of discontinuance to the court on ██████ September 2021.
- 1.36. Secondly, it was wrong for the firm to tell Mrs ██████ that the claim had not been served. The firm should reasonably have known the claim was issued on ██████ April 2020, and the Particulars of Claim issued in mid-February 2021. This is because the firm did that work.

- 1.37. Thirdly, the firm should have known at least two of the defendants had solicitors representing them in the dispute, because they had been in discussion with them. In fact, the communication the firm received from the defendants' solicitors in our around June 2021 made it explicitly clear that legal costs had been incurred, would continue to be incurred, and Mrs █████ would be made responsible for those costs.
- 1.38. It was an unreasonable approach by the firm when they didn't explain to Mrs █████ that the defendants' solicitors would likely pursue her for costs in the circumstances, and that those costs would likely be considerable.
- 1.39. As I have explained elsewhere in this decision, the firm had a responsibility to provide full and frank advice to Mrs █████, but they did not do so here. When they explained to her about the option to discontinue the claim, there was no suggestion Mrs █████ would likely be made responsible for significant defendants' costs, and the firm wrongly gave the impression the defendants were not represented.
- 1.40. The firm should reasonably have known the defendants were represented, and that Mrs █████ would likely be pursued for the defendants' legal costs. This is because the firm had communicated with the defendants' solicitors, been warned the defendants would pursue Mrs █████ for their costs and were on notice from early on that such claims were "*robustly defended*".
- 1.41. In fact, the firm should have had the discussion about discontinuing the claim with Mrs █████ in or around June 2021 when they received the defendants' solicitor's communications. Their failure to do so meant Mrs █████ wasn't told sooner about the significant problems with her claim, that the defendants' costs increased, and ultimately, Mrs █████ was made responsible for those. The firm's failure to fully inform Mrs █████ about the financial implications of discontinuing the claim as an outcome was unreasonable.
- 1.42. I will explain my view about a suitable remedy at the end of this decision.

**2. The firm did not inform Mrs █████ that she would not be able to pursue her case in the future, once it had been closed by them.**

- 2.1. The Case Decision found the firm's service was unreasonable for complaint 2. I agree, and I shall explain why.
- 2.2. In paragraph 1.33 I have referred to the relevant paragraph of the firm's letter dated 8 September 2021 and I don't intend to refer to the same here. As I have explained, the firm had a responsibility to provide full and frank advice to Mrs

██████ to allow her to make an informed decision about how to proceed. The firm didn't do this.

- 2.3. The firm had a golden opportunity to explain to Mrs ██████ that if she chose to discontinue the proceedings, she would be unable to continue the proceedings in the future. This may have been obvious to the firm, but the firm should have explained this to Mrs ██████ so she could decide how to proceed. Their failure to do so in their letter of 8 September 2021 or in other letters and emails was unreasonable.
- 2.4. I will explain my view about a suitable remedy at the end of this decision.

### **3. Remedy**

- 3.1. The Case Decision found the firm should pay two of the defendants' legal costs of £14,399.28 and £8,611.00 respectively. This is a total of £23,010.28. My colleague also recommended the firm should pay Mrs ██████ £1,000 to reflect the emotional impact of the firm's service failings.
- 3.2. In response to the Case Decision Mrs ██████ has said there are other losses which she believes she has suffered which she believes flow from the firm's service and should be directed as a remedy by this office.
- 3.3. The first is that her home required £38,681.87 worth of repairs to return it to its original condition. As the claim was discontinued, and she can no longer pursue it, these losses cannot be recovered. In her view, the firm's failure to explain about the consequences of discontinuing the claim means that this loss flows from the firm's unreasonable service.
- 3.4. The second point she has made is that her home was worth £150,000, but due to the damp and mould caused by the faulty cavity wall insulation, she had to sell it for £90,000. In her view, the difference between the value of the property and the amount it sold for, flows from the firm's unreasonable service too.
- 3.5. The purpose of a remedy ordered by the Legal Ombudsman should be, as far as possible, to put the complainant in the position they would have been in, had the service been reasonable.
- 3.6. Mrs ██████ is seeking compensation for financial loss based upon the two further alleged losses she has said she suffered due to the firm's unreasonable service.
- 3.7. When this office considers whether to direct an award a financial loss, we consider four points: causation; calculation; mitigation; and betterment.

- 3.8. Turning to causation, we must be satisfied the detriment was caused by the failing in service. We must consider had the service been reasonable, would the complainant still have suffered the loss. If so, the firm's service failing cannot have caused it.
- 3.9. In respect of calculation, we need to be confident about the financial loss amount a complainant has said they have suffered and will need evidence to support this.
- 3.10. It will also be important for a complainant to keep their losses to a minimum. It isn't acceptable to allow a loss to grow if reasonable steps could have been taken to prevent it from getting higher.
- 3.11. Lastly, we must consider betterment too. This office should direct like-for-like redress and should not leave the complainant better off.
- 3.12. To direct the firm should cover either the cost the repairs Mrs ██████ has mentioned of around £38,000 which are detailed in the Schedule of Losses, or the decrease in the value of her home when she sold it, I need to be satisfied that those losses flowed from the firm's unreasonable service.
- 3.13. Basically, to direct those alleged losses, I need to be satisfied, on the balance of probability, that had the firm's service been reasonable that Mrs ██████ claim would have been successful.
- 3.14. If the claim had been successful, it would have meant that she would likely have received compensation of around £38,000 and that when her property was sold, it would have sold at a full price and not for less than she believes it was worth had it been in good repair.
- 3.15. Even if the firm's service had been reasonable and they had fully informed Mrs ██████ of the financial implications of different outcomes of her case, and that she would have been unable to pursue her claim in the future, I am not confident that her claim would have been successful.
- 3.16. Although the barrister's advice was positive, based on the content of the firm's 15 February 2021 letter, I can't conclude Mrs ██████ claim likely would have been successful. This is because, as I have explained in paragraph 1.24, a defendants' solicitor explained in or around June 2021 about very serious problems with the claim, including that the expert she had instructed was unable to perform his duties. Linked to this, the firm explained to Mrs ██████ that the ATE wasn't willing to fund an alternative expert either.

- 3.17. A lack of expert evidence would have had a very significant negative impact on Mrs [REDACTED] claim and for this reason I consider it is unlikely that her claim would have been successful.
- 3.18. There were wider problems with Mrs [REDACTED] claim, and it follows that there was a break in the chain of causation between the firm's unreasonable service and the alleged financial loss Mrs [REDACTED] has suggested in paragraphs 3.3 and 3.4. As these alleged losses don't pass the causation test, I don't intend to comment on calculation, mitigation or betterment.
- 3.19. However, I do think Mrs [REDACTED] has suffered a financial loss due to the firm's unreasonable service. As I have explained in my conclusions to complaint 1, I am satisfied that the firm failed to explain to Mrs [REDACTED] about the likelihood that she would be made responsible for the defendants' costs. They should reasonably have known they had issued the claim, sent the Particulars of Claim and communicated with the defendants' solicitors too.
- 3.20. As the firm mentioned that such claims are "*robustly defended*", they should have known that the defendants would likely strongly defend their position, and likely would incur significant costs doing so.
- 3.21. I have explained in my conclusions to complaint 1 that some things the firm explained in their letter of 8 September 2021 were wrong, as detailed in paragraphs 1.36 to 1.42.
- 3.22. Based on the Law Society Conditions which the firm sent to Mrs [REDACTED] at the outset, she reasonably believed she was stopping the claim based on the firm's advice. She also knew there was an ATE policy in place, and that was to prevent her from paying the defendants' costs in the event she was unsuccessful.
- 3.23. Given those earlier explanations, along with the firm's wrong explanations that the claim hadn't been served and the defendants didn't have solicitors on record, implying that the defendants wouldn't have incurred any legal costs at that time, I consider she chose to discontinue the matter on the understanding she wouldn't be responsible for paying the defendants' costs from her own pocket.
- 3.24. The firm's advice here was unreasonable, and it follows as they led Mrs [REDACTED] to discontinue the matter based upon wrong information causing her to be responsible for the defendants' costs, I am satisfied they should bear the defendants' costs, rather than Mrs [REDACTED].
- 3.25. Furthermore, in the alternative, had the firm discussed the problems Mrs [REDACTED] claim faced sooner, she may have chosen to discontinue the claim far earlier than she did.

- 3.26. Based on the evidence, the firm's failure to advise Mrs [REDACTED] about the financial implications once they found out about the problems with the claim in or around June 2021 meant that the defendants incurred significant costs in the months that followed.
- 3.27. In my view, had the firm provided reasonable advice and done so sooner, Mrs [REDACTED] likely would have chosen to discontinue the claim in or around June 2021. This would have meant the defendants' costs would have been far lower or even at a negligible level.
- 3.28. Due to the firm's lack of advice or warning in or around June 2021, it meant she was made responsible for the defendants' costs which continued to accrue in the months after June 2021.
- 3.29. I have seen documents to show £14,399.28 and £8,611.00 was owed to two defendants for their legal costs. This is a total of £23,010.28. I also note that the ATE insurance had a limit of £25,000, so the adverse costs incurred would likely have been covered by the policy.
- 3.30. I also agree that an impact payment of £1,000 is fair. I have no doubt that it has been a very stressful and upsetting time in Mrs [REDACTED] life. She believed her home had been damaged by poorly or wrongly installed insulation which had caused damp and mould to cause it to deteriorate. However, this was outside the firm's control.
- 3.31. When she instructed the firm, she expected the firm to deal with her claim in a reasonable and professional manner, which didn't happen. I expect it was an enormous shock to Mrs [REDACTED] when she found out she was responsible for the defendants' solicitor's costs, and the size of those costs.
- 3.32. It would have been a shock at the time she was told of the problem, but the impact of the costs has had a long-lasting impact on her too. This is because she has been left with a very large debt, which will have been stressful and upsetting to deal with, and she has been paying towards this debt monthly to settle it. I consider this debt would likely have been avoided had the firm's advice been reasonable during the instructions.
- 3.33. As the initial shock Mrs [REDACTED] suffered was huge, and as the impact and stress has been ongoing, I think the impact on her has been severe, and a payment from the firm to Mrs [REDACTED] of £1,000 as tangible recognition of this is fair and reasonable in the circumstances.

**Therefore, my final decision is that there has been unreasonable service that requires a remedy and direct that the firm:**

- **Pay Mrs [REDACTED] £23,010.28 to cover the financial loss she has sustained.**
- **Pay Mrs [REDACTED] £1,000 to recognise the emotional impact of their unreasonable service.**

I have asked Mrs [REDACTED] to let us know what her decision is by 26 September 2025. We will then let you know whether Mrs [REDACTED] has accepted or rejected my decision.

If the decision is accepted, we will require you to take the actions I have directed within 10 working days of us informing you of their acceptance.

If the remedy includes a financial payment, you will either need to make this within 10 working days, if you are able, or if you need any information from Mrs [REDACTED] in order to make the payment e.g. identification, bank details, to have requested this within 10 working days, and then make the payment within 10 working days of the information being received.

