Final Decision

Date 19 July 2025

Introduction

In summary, the background to this case is that Mr A was involved in a family dispute, and he approached Cuthbertsons ("the firm") after mediation had failed to resolve his access to his two XX who were living with his wife.

On 12 June 2020, Mr A instructed the firm to formalise the child access, if necessary, through the courts. Mr A was to pay the firm privately, on an hourly basis.

No agreement was reached between the parents, and the matter was listed for a Final Hearing on XX XX September 2022, however this was ineffective, and the judge was critical of the firm's documentation, which was also supplied late.

Consequently, the court issued an interim order with directions and listed a new hearing for March 2023.

Mr A complained to the firm on 20 January 2023, and it is my understanding he then ended his instructions to the firm.

A new solicitor was instructed by Mr A, and they were able to finalise the documentation, represent him at a Pre-Trial hearing, and instructed barristers on his behalf for the Final Hearing.

The March 2023 Order shows that Mr A was successful in his application at the Final Hearing, and he obtained a Child Arrangements Order for shared care, with a Prohibited Steps provision which included a Penal Notice, should the mother fail to adhere to the conditions.

The firm finally acknowledged the complaint in July 2023, which was after Mr A had escalated the matter to the Legal Ombudsman. Nevertheless, Mr A did not receive a formal response from the firm.

Mr A has complained that:

1. **The firm failed to disclose to Mr A the CAFCASS report and a letter from the mothers' solicitors ahead of the final hearing**
2. **The firm grossly exceeded the costs estimate Mr A was given at the outset of £3000**
3. **After a change of file handler, the firm rushed and failed to draft Mr A's final witness statement correctly**
4. **The firm failed to respond to Mr A's emails and voice messages**
5. **The firm failed to provide a copy of the court bundle to the Court ahead of the hearing. The Barrister had to obtain a copy for them.**
6. **The Judge was unhappy with the quality of the bundle provided and the hearing was not then able to go ahead due to lack of time**
7. **The firm failed to serve the committal paperwork as they should have done. The Judge had to serve the paperwork on the mother on the day.**

My colleague investigated Mr A's complaints and, as she explained in her Case Decision of 13 May 2025, she found that the firm's service was unreasonable, so she recommended that a remedy was required.

Mr A accepted the findings in an email dated 16 May 2025, but no response was received from the firm, so they were presumed to have accepted the decision because they did not object. Consequently, my colleague finalised the matter under Rule 5.20 of the 2019 Legal Ombudsman Scheme Rules as being resolved by the Case Decision.

The firm were told this in a letter on 16 June 2025, and the firm should have paid Mr A the remedy by 30 June.

However, the same day, 16 June 2025, the Solicitors Regulation Authority (SRA) intervened in Cuthbertson's which means that they shut the firm down.

According to the SRA website, the reason for this was because Mr Trevor Carroll, who had taken on Mr As's case and was the only legal practitioner at the firm, was found to have failed to comply with rules paragraph 1(1)(c) of Schedule 1– Part I to the Solicitors Act 1974.

The firm did not finalise the complaint before they were closed and Mr A has not received the remedy recommended in the Case Decision.

On 16 July 2025, my colleague, ombudsman, reopened Mr A's complaint, and I will now consider the circumstances and issue a Final Decision.

Issuing a Final Decision means that Mr A should be able to recover some or all of the remedy, but my colleagues in the Decision Team will explain what happens next.

I have read the Case Decision, the evidence received from the parties, and Mr A's response to the Case Decision. Having done so, I am satisfied that the firm's service was unreasonable, and a remedy is required.

However, my conclusion on the level of service and remedy is different since I found that the firm's service was unreasonable under complaint 4, and my view of the remedy is different.

Normally, I would have to issue a Provisional Decision to give both parties an opportunity to respond with their comments to the changes, however, since the firm have not engaged with the complaint process, and have now been closed by the SRA, they are not in a position to comment.

I am satisfied that my colleague has taken reasonable steps to engage with the sole practitioner from the firm, who was himself subject to the intervention, and I am of the view that it is unlikely he would respond if I issued a Provisional Decision.

I view the changes as being to Mr A's benefit, and therefore I see no useful purpose in issuing a Provisional Decision because he has already accepted the Case Decision. Therefore, I believe that it is still fair and reasonable to issue a Final Decision without seeking further comments from the closed firm.

I will explain my reasons for my different views below, which is why my Final Decision is made up of both this letter and the Case Decision enclosed.

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.

Conclusion

1. The firm failed to disclose to Mr A the CAFCASS report and a letter from the mothers' solicitors ahead of the final hearing

1.1 In her Case Decision, my colleague has explained that, in her view, the service the firm provided here was unreasonable because the firm failed to provide the evidence requested to show that they had shared the report and letter with Mr A. Consequently, my colleague inferred that they had not.

1.2 I can see that the firm billed Mr A for reviewing the CAFASS report in June 2022, so they certainly received it, but there is no evidence to show that the discussed the report with Mr A or provided him with a copy.

1.3 In accordance with the Legal Ombudsman Scheme Rules, I may make a determination on the basis of what has been supplied, and I am entitled to draw inferences from any party's failure to provide information requested.

1.4 The Court Order, issued by the judge after the ineffective hearing, is scathing about the standard of the firm's work and the lack of a paper bundle for the hearing. This tends to show a pattern of poor preparation by the firm which is relevant to my determination.

1.5 My colleague requested evidence that the firm shared the CAFCASS report and the letter from the mother's solicitors ahead of the final hearing when she wrote to the firm on 28 November 2024, and when she chased the firm for the evidence on 13 December, but no evidence about these documents was received.

1.6 Therefore, like my colleague, I will infer that these documents were not shared or shown to Mr A until the hearing, which is unreasonable.

1.7 These documents should have been shared so that Mr A had a chance to comment on them, or to produce evidence to support his case, but this, like much of the other paperwork, was only shown to him at the ineffective hearing, which deprived him of the opportunity to review or comment on them.

1.8 Neither Mr A or the firm have raised any comments or concerns with my colleague's view and, having reviewed the evidence, I share my colleague's view that the service was unreasonable.

1.9 Therefore, I endorse my colleague's view on the firm's service here.

2. The firm grossly exceeded the costs estimate Mr A was given at the outset of £3000

2.1 My colleague, in her Case Decision, has concluded that, in her view, the service the firm provided on this issue was unreasonable.

2.2 She established that the only estimate in the evidence supplied was given to Mr A in the Client Care Letter on 12 June 2020, which said

> It is not possible to say precisely how much the final costs figure will be until the case is concluded however, should the matter proceed to a final hearing I would estimate my costs to be approximately £2,500-£3,000 plus VAT plus disbursements.

2.3 My colleague found that Mr A paid the firm regularly, but the evidence only contained three invoices. However, she found no evidence that the firm had updated Mr A about the likely overall cost as the matter progressed.

2.4 The Case Decision contains a table of Mr A's payments, which amount to £16,829, which means that the estimate was significantly breached.

2.5 When considering complaints about cost information, I use the Solicitors Code of Conduct, which was in place at the time of the retainer, alongside the Legal Ombudsman publication*, "An ombudsman's view of good costs service"*, as benchmarks to ensure a consistent approach.

2.6 These require that a firm should provide a client with the best possible information, both at the time of engagement and, when appropriate as their matter progresses, about the likely overall cost of their matter.

2.7 They also say that disbursements, such as barrister's fees (also known as counsel fees) should also be estimated at the outset so that the likely overall cost is clear.

2.8 There are only three invoices supplied in the evidence, however, I can see that it is likely that there were other invoices because they each have figures carried forward ("*c/f*"), and the 14 June 2022 invoice is listed as the "*14th interim*" invoice, so I do not have a complete picture of the costs.

2.9 The firm were given the opportunity to provide evidence of their costs and costs information, including invoices, but they have not. Therefore, I will rely on the evidence of the payments made by Mr A, which would undoubtedly include payments for a barrister at the various hearings.

2.10 I will assume that Mr A received the other invoices, but regular invoicing does not mean that a firm does not have to revise their estimate because, although Mr A may have known how much he had already paid, he would not know how much more he could have to pay.

2.11 Once again, the firm's failure to provide any evidence that they updated Mr A about the likely overall cost means that I will infer that they did not provide Mr A with any revised estimates.

2.12 This is particularly troubling because, as I will mention later, the costs were increasing swiftly, and the cost would have jumped up again because of the ineffective hearing which was blamed on the firm by the judge.

2.13 Consequently, when Mr A made the last transfer to the firm's account on 7 July 2022, he had no idea about the likely cost of work after the payment, or after the ineffective hearing. Indeed, I have seen no evidence that following the hearing the firm said anything to him about future costs.

2.14 Looking at the costs information in the Client Care Letter, I can see that the firm mentions the likelihood of the additional cost of instructing a barrister for Mr A at any hearings, but they gave no indication of how much that could be.

2.15 Consequently, the firm's costs information, at the outset, was unreasonable because it did not include an estimate of all the things that Mr A would have to pay for since it only estimated a maximum of £3,000 + VAT (£3,600) for the firm's fees.

2.16 Additionally, Mr A had paid £3,430 (inc VAT) by 8 October 2020, but there is no evidence that the firm revised their estimate, despite a further payment by Mr A of £1,600 on 8 February 2022.

2.17 Although there are no comments about the Case Decision, having reviewed the evidence, I am satisfied that my colleague's view on the level of service is correct.

2.18 Therefore, my view is that the service Mr A received on this issue was unreasonable because the firm failed to provide a realistic estimate in their Client Care Letter, and because they did not include the likely cost of a barrister at the outset.

2.19 Likewise, the firm quickly exceeded the highest estimate, and I will infer that they did not provide any revised estimates to Mr A, which is also unreasonable.

3. After a change of file handler, the firm rushed and failed to draft Mr A's final witness statement correctly

3.1 My colleague has explained, in her Case Decision, that, in her view, the service the firm provided here was unreasonable because the draft did not reflect Mr A's wishes for the Child Arrangements.

3.2 She also found that Mr A had to chase the firm for a draft a few days before it was due to be served, which meant that he only saw the draft statement four days before it was due to be served.

3.3 She concluded that this meant he did not have sufficient time to review the statement and discuss any changes with the firm.

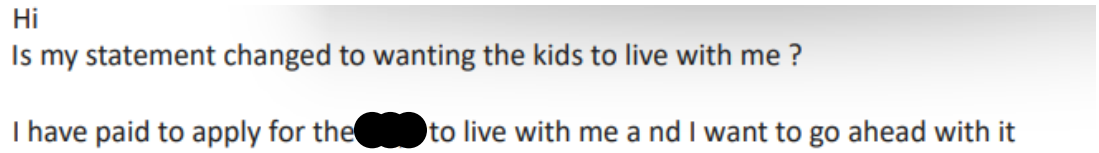
3.4 However, she felt that Mr A did not have to sign a statement he did not agree with, but she could see why he felt pressured to do so.

3.5 I note, in some of the correspondence with the Legal Ombudsman, that Mr A has told us that he has trouble reading. The firm would have had more contact with him and would have seen that he may have struggled with his

reading and writing, but I can see no evidence that they made any reasonable adjustments. However, this may explain why Mr A says that he preferred to ring the firm about his case, rather than write or read emails.

3.6 We have not been provided with copies of the draft statements, or his instructions to the firm about his statement, but I have no reason to disbelieve that Mr A's claim that the firm disregarded his instructions to include a request that the children could live with him, permanently.

3.7 Indeed, on XX September 2022, before the hearing, he emailed the firm to say:


Hi
Is my statement changed to wanting the kids to live with me ?

I have paid to apply for the [redacted] to live with me a nd I want to go ahead with it

3.8 Therefore, I believe it is more likely than not that these were his instructions, and that the firm failed to reflect this in his statement, which is unreasonable since it is not just a drafting issue, but a failure to follow instructions.

3.9 Likewise, I agree with my colleague that the firm should not have waited for Mr A to prompt them, and it was their failure to prepare the statement in a timely fashion which led to Mr A feeling under pressure to sign the draft.

3.10 However, his email of XX September implies that the firm had agreed to revise the statement, which did not happen.

3.11 Since no further comments or concerns have been raised with this aspect of the Case Decision, having reviewed the evidence, I share my colleague's view that the firm's service here was unreasonable.

3.12 Therefore, for the reasons outlined above, I am of the view that the firm's service was unreasonable.

4. The firm failed to respond to Mr A's emails and voice messages

4.1 In her Case Decision, my colleague has explained that, in her view, the service the firm provided here was reasonable because she had no evidence that the firm did not return Mr A's calls.

4.2 However, although my colleague noted that Mr A's email about the statement, which he sent on 6 September and chased on XX September, was not answered, she concluded that she had insufficient evidence to show that the firm persistently failed to respond to his emails.

4.3 I believe that this email, although overlapping with the above complaint, was critical to Mr A's case so I do believe that the lack of a response, and the fact

Mr A had to chase the firm twice on XX September, verges on unreasonable service.

4.4 Whilst I may have been content to agree with my colleague, I feel that there is other evidence which swings the balance against the firm. In particular, I can see that Mr A did not receive any response to his complaint emails of 20 January 2023, which led to him contacting the Legal Ombudsman.

4.5 Moreover, the firm's performance on other issues indicates that they were disorganised and ill equipped to deal with routine work.

4.6 Therefore, having reviewed the evidence available, in the absence of evidence from the firm to the contrary, I believe it is more likely than not that the firm's service here was unreasonable because there is a pattern of not responding promptly to Mr A's emails.

4.7 Therefore, I have reached a different view to my colleague since my view is that the service Mr A received on this issue was unreasonable.

5. The firm failed to provide a copy of the court bundle to the Court ahead of the hearing. The Barrister had to obtain a copy for them.

6. The Judge was unhappy with the quality of the bundle provided and the hearing was not then able to go ahead due to lack of time

6.1 My colleague, in her Case Decision, has concluded that, in her view, the service the firm provided on these two issues was unreasonable.

6.2 My colleague relied on the judge's comments in the Court Order to demonstrate that the firm had failed to provide a copy of the bundle to the Court, which delayed the start of the hearing, and that the bundle provided was not compliant with the Practice Directions (PD) for Family Hearings.

6.3 She also concluded that these two factors meant that the court had insufficient time for the hearing, and that the judge attributed the ineffective hearing to the firm's failings.

6.4 The judge's comments are irrefutable; the firm failed to provide a bundle to the court for the hearing, and when they did it was far below the standards expected by the court under PD27.

6.5 Neither Mr A or the firm have raised any comments or concerns with my colleague's view and, having reviewed the evidence, I share my colleague's view.

6.6 Therefore, I endorse my colleague's view that the firm's service was unreasonable in both aspects considered here.

6.7 Moreover, I believe that the firm's failure would have caused more work, and potentially more costs, for Mr A, which is why I have looked again at the recommended remedy.

7. The firm failed to serve the committal paperwork as they should have done. The Judge had to serve the paperwork on the mother on the day.

7.1 My colleague has explained, in her Case Decision, that, in her view, the service the firm provided here was reasonable because no evidence was provided to show that the committal paperwork had not been served.

7.2 I have seen the full Court Order arising from the ineffective hearing on XX September 2022, and although it states no paper bundles were at court for the hearing, it does not state that the mother had not received service of this sub-standard bundle.

7.3 In the absence of comments about the Case Decision, and since no new evidence has been supplied, I share my colleague's view that the firm's service here was reasonable.

7.4 Therefore, I endorse my colleague's view on the firm's service here.

Remedy

I have explained, above, my views on the level of service the firm provided to Mr A.

In her Case Decision, my colleague explained that she felt that a remedy was warranted and what, in her view, was an appropriate remedy.

My colleague felt that the firm's estimate had been breached to such an extent that a fee refund of £4,037.22 inclusive of VAT was appropriate, which equated to a 33% reduction of the fees over the original estimate.

She also recommended a payment of £500 for the emotional impact caused to Mr A by the firm's unreasonable service.

When the Legal Ombudsman investigates complaints and finds a firm has provided unreasonable service, we direct a remedy to put the person back into the position they would have been in had it not been for the unreasonable service.

We can direct remedies for financial loss suffered, bill reductions, or ask the lawyer to complete further work to put things right. We can also direct an impact payment to reflect the fact that service failures can cause stress, upset, and inconvenience.

I have to say that, given the breach of the estimate, combined with the firm's failings which indicates he did not receive full value from the firm, I may have awarded a higher fee refund than my colleague. However, I am aware that it is unlikely that Mr

A will be able to recover the fee refund through the firm's insurers, so it would be an empty gesture to award a higher fee reduction here.

However, the lack of invoices from the firm gives me no confidence that Mr A has settled all of the firm's bills, and although closed, it occurs to me that the firm's affairs will be handed to administrators, who could seek to recover unpaid invoices to offset costs and repay creditors.

Therefore, although I do not know the specific amounts that may be involved, I will include in my remedy the provision that Mr A not only has a fee reduction of £4,037.22 including VAT, but that the firm's fees, including any outstanding bills, is capped at £11,796.78 including VAT. This equates to the overall fees we can show he paid to the firm, minus the fee reduction, so he owes the firm nothing.

I believe this provision is necessary to protect Mr A's interests, and to prevent a perverse outcome should the administrators deem there are outstanding fees.

I am of the view that I can justify this cap since, although the last payment to the firm was in July 2022, the work that the firm may have done after that time was substandard, and did not serve Mr A's best interests.

Therefore, Mr A can be considered a creditor of the closed firm to the tune of £4,037.22 (including VAT) which is the fee reduction I have awarded.

It has also occurred to me that the firm's failure to prepare for the Final Hearing, as stated by the judge, directly affected the outcome on XX September 2022.

The firm, who remained on the record for the hearing, were heavily criticised by the judge, and given the nature of the Order, I am confident that the hearing was ineffective as a direct result of the firm's unreasonable service.

Consequently, this meant that Mr A had to instruct new solicitors for a Pre-trial Review hearing and another Final Hearing.

The new solicitor was required to undertake rework on Mr A's case so that the file, his statement, and the evidence to be considered at court was of the right standard.

I have reached the view that this rework and the new hearings were only necessary because of the firm's unreasonable service which meant that Mr A incurred more expense, pushing the total cost much higher than the firm's estimate.

I can see that the March Order was in Mr A's favour, and I am satisfied that, on the balance of probability, but for the firm's unreasonable service in respect of the preparation for the first Final Hearing, this outcome would have been achievable on XX XX September 2022

Therefore, I am of the view that the additional expense incurred by Mr A with his new representatives was required to put things right after the firm's failures. Therefore, I

have decided that the firm should pay for the work done preparing for, and representing him at, the Pre-trial hearing and the second Final Hearing on XX March 2023.

At my request, Mr A has provided the Order from the Final Hearing in March 2023, and three invoices covering work undertaken by the firm and his barrister ahead of the hearing, at the hearing, and subsequently, and these are summarised below.

Date	Period covered		Fees	Disbursements	VAT	Total	Description
31/10/2022			£ 100.00		£ 20.00	£ 120.00	Initial Advice
18/01/2023	09/11/2022	18/01/2023	£1,957.50		£391.50	£2,349.00	Correspondence, Preparation and attendance
25/04/2023	19/01/2023	25/04/2023	£3,330.00		£666.00	£3,996.00	Correspondence, Preparation and attendance
25/04/2023	19/01/2023	25/04/2023		£ 2,597.28	£ 3.46	£2,600.74	Counsel Fees and Travel
						£9,065.74	**Total**

Therefore, I will direct the firm to pay Mr A £9,065.74 which is the amount he had to pay to get his case ready and heard at court.

My colleague also awarded Mr A £500 for the distress and inconvenience caused by the firm's unreasonable service.

However, against the background of the trauma caused by the child access issues, and the six-month delay in resolving it due to the ineffective trial, I believe a payment of £750 is more appropriate.

Decision

Therefore, my Final Decision is that I find that the firm's service was unreasonable, and a remedy is required, hence I direct the firm to:

1. **Refund £4,037.22 (including VAT) of fees already paid.**
2. **Cap the firm's fees for all work undertaken on these matters to £11,796.78 including VAT which he has already paid in full.**
3. **Pay Mr A £9,065.74 (including VAT) which are the legal expenses he incurred from 31 October 2022 to 25 April 2023 arising from the Child Arrangement and associated matters settled on 27 March 2023.**
4. **Pay Mr A £750 to reflect the distress and inconvenience caused by the firm's unreasonable service.**