Final Decision

Date 29 August 2025

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.

Under Rule 5.20 of our Scheme Rules, we can treat the complaint as resolved on the basis of the Case Decision if:

- Neither party responds to the Case Decision, or
- in response to the Case Decision neither party has provided any new facts or evidence or makes a material challenges to the facts or evidence on which the Case Decision relies.

Before making my decision, I have considered whether or not the case could be dismissed under Scheme Rule 5.20, however I have decided that it is fair and reasonable in the circumstances to issue a Final Decision. This is because the firm are closed and as such the only way to recover any remedy is through a Final Decision.

Introduction

The background to this matter is that Mr B instructed Stocker & Co LLP (the firm) in July 2018 to assist him and his partner invest in a new build development.

The firm sent the deposit for the investment to the developers and after this point Mr B's investment partner pulled out of the investment. Mr B paid them the money they had invested and he became the sole investor. However, he never intended to complete the purchase and wanted to assign the sale to a new purchaser at a profit prior to completion. This was not possible as the building developer went into administration before the property was completed and Mr B lost his deposit. He tried to claim it back from the insurance policy in place but was unsuccessful.

The firm closed on 11 March 2022 and as such are no longer trading.

Mr B remains dissatisfied with the firm's service and has raised the following complaints:

1. The firm did not give Mr B the opportunity to decide which building warranty provider he would like to take insurance out with, despite it being in the contract that there were five companies to chose from;
2. The firm did not provide Mr B with a copy of the insurance policy, which was applied for in 2018, although it was under the Rider deposit clause 2 in the contract;
3. The firm released Mr B's deposit to the developers before the build warranty provider had been confirmed by the developers;
4. The firm failed to activate the deposit protection cover;
5. The firm failed to advise Mr B on the terms of the warranty and his obligations;
6. The firm did not advise Mr B about the risks of removing his partner from the contract and how this might affect the insurance policy; and
7. The firm did not inform Mr B that they were closing

The Case Decision found that the firm's service was unreasonable for complaints 2, 4, 5, 6 and 7. It recommended that the firm pay a total of £55,238.58 to Mr B, however due to the cap in our Scheme Rules, this was limited to £54,956.58.

Mr B has accepted the findings of the Case Decision in full. However, he has provided some comments in relation to the calculation of interest. I will address these comments later on in my decision.

As the firm have closed, the Case Decision has been provided to the former director of the firm. They have provided comments indicating that they do not agree with the decision, however say that the firm's administrators will respond. To confirm, this office does not have jurisdiction to correspond with the administrator. In any event, despite the former director confirming they had provided this to them, and further time granted to receive a response, none has been provided.

Having considered the Case Decision, I agree with the conclusions within and the remedy directed. As such, I am endorsing the Case Decision as my Final Decision and I have attached a copy of this to my decision. However, I will provide a summary of the conclusions below.

Conclusions

Dealing with each of Mr B's complaints in turn, my decision is as follows:

1. The firm did not give Mr B the opportunity to decide which building warranty provider he would like to take insurance out with, despite it being in the contract that there were five companies to chose from

    1.1. The firm's service was found to be reasonable in relation to this complaint. This is because there is no evidence to show that Mr B was meant to chose which building warranty provider he would like to take insurance out with.

Instead, the evidence shows that it was the developers who would be choosing this. This is confirmed in the firm's email of 27 July 2018 and the email from the investment company on 9 October 2018.

1.2. Having reviewed the evidence, I agree with this conclusion and endorse it as my Final Decision on this complaint.

2. The firm did not provide Mr B with a copy of the insurance policy, which was applied for in 2018, although it was under the Rider deposit clause 2 in the contract

2.1. The Case Decision found that the firm's service was unreasonable in relation to this complaint. It concluded that Mr B did not receive a copy of the insurance policy. There was a clear expectation that Mr B would receive this, not only as it was referenced in the Rider of the contract, but also that Mr B's investment partner would have sight of this. Mr B would need a copy of this policy as it would have terms that affected decisions he may make and also provide him details of what to do if there were issues.

2.2. Having reviewed the evidence, I agree that the firm's service was unreasonable here. As such, I endorse the conclusions of the Case Decision as by Final Decision for this complaint.

3. The firm released Mr B's deposit to the developers before the build warranty provider had been confirmed by the developers

3.1. The firm's service was found to be reasonable in relation to this complaint. This is because although the evidence shows that there was a build warranty insurance policy in place, and the deposit was transferred, there is nothing to show that the firm released this to the developers before they should have. When refusing the claim, the insurance company didn't state the policy was not valid due to the deposit being sent before build warranty was in place.

3.2. Having reviewed the evidence, I agree with this conclusion. As the insurance company didn't state this as a reason not to provide cover, it is reasonable to infer from this that the warranty was in place prior to the deposit being sent. I therefore endorse this conclusion as my Final Decision on this complaint.

4. The firm failed to activate the deposit protection cover

4.1. The Case Decision found that the firm's service was unreasonable in relation to this complaint. The insurance company emailed Mr B on 28 July 2023 and said that the firm did not active the deposit protection cover when contracts were exchanged. This confirms that activating the deposit protection cover was something that the firm was supposed to have done and they didn't.

4.2. As such, I agree with the conclusions in the Case Decision and endorse them as my Final Decision for this complaint.

5. The firm failed to advise Mr B on the terms of the warranty and his obligations

5.1. The Case Decision found that the firm's service was unreasonable in relation to this complaint. It is clear the firm were aware that Mr B was intending to purchase the property as an investment. However, despite this there is no evidence to show the firm gave any advise on the warranty and whether it was appropriate or not in the circumstances. There is also no evidence that the firm advised of the risks of proceeding with a contract not designed for investments.

5.2. Having considered the evidence, I agree with this conclusion. As such, I endorse the conclusions of the Case Decision as my Final Decision in relation to this complaint.

6. The firm did not advise Mr B about the risks of removing his partner from the contract and how this might affect the insurance policy

6.1. The Case Decision found that the firm's service was unreasonable in relation to this complaint. There is no evidence that the firm checked the insurance policy or gave Mr B any advice on the risks of removing his partner from the contract.

6.2. I agree that this is unreasonable. Mr B emailed the firm on 8 March 2021 asking if a letter from his business partner was sufficient to remove them from the contract. The firm's response on 7 April 2021 only confirmed they would write to the seller's solicitors to inform them of this change. No advice was given on how this might affect the insurance policy.

6.3. As such, I agree the firm's service was unreasonable here and I endorse the conclusions of the Case Decision as my Final Decision in relation to this complaint.

7. The firm did not inform Mr B that they were closing

7.1. The Case Decision found that the firm's service was unreasonable in relation to this complaint. I agree with my colleague that it would have been reasonable for the firm to have informed Mr B that they were closing as they were still acting for him at the time they closed. However, there is no evidence that they did so and Mr B's email to the developer's solicitor on 20 June 2023 confirms he found out from an internet search.

7.2. I therefore agree that the firm's service was unreasonable and endorse the conclusions of the Case Decision as my Final Decision for this complaint.

Remedy

The Case Decision provided a detailed explanation of the remedy recommended. For clarity, I endorse this recommendation as my Final Decision. I will summarise this below.

In relation to the refund of the deposit, my colleague has recommended that the entire investment amount should be returned to Mr B. This includes the £28,434 which he sent to the firm for his deposit and the £19,850 he paid to purchase this investment partner's share. This is a total of £48,282.

I agree that this is reasonable as the loss of this flows directly from the firm's unreasonable service. I have found the firm's service was unreasonable in not providing Mr B with a copy of the insurance policy, not activating the policy, not providing advice or explaining the risks of the policy and not advising on the implications of removing the investment partner. The impact of this being that Mr B's deposit was not protected. If the firm's service had been reasonable and they had done all of this, it is unlikely that Mr B would have lost the deposit monies.

For the reasons explained in the Case Decision, there is clear evidence of the reasons why the insurers would not pay out under the policy. If the firm had explained the risks to Mr B, including that the policy was not intended for investors, or had even provided him with a copy of this, it is more likely than not that Mr B would have either requested a different policy or not proceeded with the transaction. Essentially, he was not aware of the risks and implications and had he been it is unlikely he would have lost the £28,434 he initially paid.

Further, if the firm had advised him the policy would no longer be valid when the business partner was removed as he would no longer be the first owner of the property, it is unlikely he would have bought the partner's share of £19,850.

Overall, for the reasons set out here and in detail in the Case Decision, this loss flows directly form the firm's unreasonable service and the firm should reimburse the £48,282 to Mr B.

Turning to the loss of interest, the Case Decision has recommended that the firm pay Mr B £3,660.58 of interest. There is a detailed explanation and calculation in the Case Decision which I have considered and agree with. Essentially, this has been calculated using simple interest and an average interest rate for the two periods of time where Mr B invested money. The sums of £28,434 and £19,850 have been calculated separately as they were paid at different times and as such attracted different interest rates. I agree with his calculation and endorse it as my Final Decision.

In response to the Case Decision, Mr B has made comments in relation to the calculation of interest. He considers there are two alternative methods. Firstly he describes a benchmark based approach using the actual returns from the Fund,

where the funds were previously invested and would likely have remained invested. Whilst I note his comments here, I do not consider this reasonable to use. This is because there is no guarantee he would have left the money here during the whole time it was used as a deposit. If Mr B chose not to proceed, he may have used the funds elsewhere. There is no way of knowing how the funds would have been used and it is only with the benefit of hindsight that he may have kept them where they were. Due to this uncertainty I do not consider it would be fair and reasonable to award this level of interest to Mr B.

Secondly, Mr B says a statutory interest rate of 8% per annum under Section 35A of the Senior Courts Act 1981 could be used. This is the legislation he quotes, however 8% interest is contained within the Judgments Act 1838. Again, whilst I have taken on board his comments here, I do not consider this to be fair and reasonable. The purpose of awarding interest here is to try and put Mr B back into the position he would have been in had the firm's service been reasonable. This is difficult to do as there is no way of knowing what he would have done with this money. He could have invested it, or he could have spent it. It is for this reason the simple award set out by my colleague is the most fair and reasonable one as it takes into account this level of uncertainty, and recognises interest should be due without the potential of putting Mr B in a far greater position than he could have been in. I consider if I were to award 8% there is a potential he would be better off and this would not be fair and reasonable or the purpose of my decision.

The Case Decision also considers a refund of fees and recommends a full refund of £1,296. I agree with the reasoning here and endorse it as part of my Final Decision. Essentially, Mr B was informed he would not pay legal costs (as they would be covered by the developers), however he was still billed £1,296. For this reason, coupled with the fact the firm's work was of no benefit as the insurance policy was not activated or advised on, I agree a full refund is reasonable here.

The final part of the remedy to consider is compensation for emotional distress. The Case Decision recommends a payment of £2,000 for this which I agree and endorse. Mr B has suffered serious distress at the loss of such a large amount of money and inconvenience in having to try and recover this. I endorse the Case Decision's explanations for his as part of my Final Decision.

The total remedy I am directing is therefore:

1. £48,282 loss of deposit
2. £3,660.58 for loss of interest
3. £1,296 refund of fees
4. £2,000 compensation for emotional distress

This is a total of £55,238.58.

However, as explained in the Case Decision, under Scheme Rule 5.43a and b, a £50,000 limit applies on the total value for financial loss and compensation for distress and inconvenience. In this case, that applies to remedies 1 and 4 above which together exceed the limit by £282.

The limit does not apply to interest for loss suffered nor the refunding of fees – this is under Scheme Rule 5.45b and c, and therefore does not apply to remedies 2 and 3 above.

This means that my total direction is limited to £54,946.58.

Final Decision

Therefore, my final decision is that the firm's service has been unreasonable. I direct that the firm pay a total of £54,946.58 to Mr B.