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## Final Decision

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27 November 2024

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### Introduction

Mrs A instructed The Foster Partnership ('the firm') on XX May XXXX to assist her in purchasing a piece of land. The purchase completed on XX May and the firm made an application to register the purchase in October. The application was returned as the land size was incorrect.

The firm didn't respond to the Land Registry's requisitions from July XXXX and February XXXX, resulting in the application being cancelled.

Mrs A raised a complaint to the firm in July XXXX, but the firm didn't issue a final response, before they were intervened by their regulator and closed on XX October. Mrs A brought her complaint to our office, and we accepted the following issues of complaint for investigation:

- 1. The firm failed to identify that the land she was purchasing was misrepresented by the seller's solicitors.**
- 2. The firm agreed that two clauses would be removed when the seller did not have the authority to agree.**
- 3. The firm failed to ensure that the land was registered.**

As a resolution, Mrs A wants a full refund of fees and expenses. My colleague's Case Decision dated XX October XXXX concluded that the firm's service was reasonable in relation to issue 1 but unreasonable in relation to issues 2 and 3. They proposed that the firm pay Mrs A a total remedy of £22,496.60 made up of;

- £20,000 towards the financial losses suffered by completing before the issue with the overage provisions were resolved;
- £1,480 including VAT for representative fees;
- £600 compensation for the distress and inconvenience caused; and
- £416.60 including VAT fee refund.

Mrs A accepted the Case Decision on XX October but as the firm are closed, they have been unable to accept the Case Decision, and the matter has been passed to me to make a Final Decision.

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 consider (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**

I have reviewed the evidence that was sent in during my colleague's investigation and I have considered the comments that have been received in response to the Case Decision. Having done so, I am satisfied that the Case Decision accurately summarises the facts behind this complaint, and for that reason, I do not intend repeating them again here.

Dealing with the issues in turn, my decision is as follows:

### **1. The firm failed to identify that the land she was purchasing was misrepresented by the seller's solicitors.**

1.1. In the Case Decision, my colleague has explained that, in their view, the service the firm provided here was reasonable because there is no evidence to show that they were aware, prior to exchange, that the size of the land wasn't as advertised.

1.2. On XX February XXXX, prior to the firm's instruction, the auction house stated that the plot of land was 0.84 acres, and it was reasonable of the firm to have relied on this information. It's not the role of the firm to have surveyed the land or confirmed whether the measurements were correct.

1.3. Neither Mrs A nor the firm have raised any comments or concerns with my colleague's view and, having reviewed the evidence, I share my colleague's view. Therefore, I endorse my colleague's view on the firm's service here.

### **2. The firm agreed that two clauses would be removed when the seller did not have the authority to agree.**

2.1. In the Case Decision, my colleague has explained that, in their view, the service the firm provided here was unreasonable because they agreed with the seller on XX May XXXX to remove Clause 8 from the special conditions and the Overage Provisions from the Transfer Deed. However, the firm

should have been aware that they didn't have the power to agree this directly with the seller, because the title register stated that no disposition of the estate was to be registered without the written consent of the beneficiaries of the Overage Provisions.

2.2. The Land Registry sent a requisition to the firm the following year, on XX July XXXX, requesting evidence that they'd satisfied the restrictions. The firm then wrote to the beneficiaries of the Overage Provisions the same day, but they didn't agree to remove the restriction.

2.3. Neither Mrs A nor the firm have raised any comments or concerns with my colleague's view and, having reviewed the evidence, I share my colleague's view. Therefore, I endorse my colleague's view on the firm's service here.

### **3. The firm failed to ensure that the land was registered.**

3.1. In the Case Decision, my colleague has explained that, in their view, the service the firm provided here was unreasonable because they failed to respond to the Land Registry's requisition dated XX July XXXX by the extended deadline of XX August, resulting in the Land Registry confirming the application had been cancelled on XX August.

3.2. The firm didn't then try to satisfy the previous requisitions before attempting to register the land in Mrs A's name again in February XXXX. The Land Registry gave them until XX March XXXX to provide evidence that they had satisfied the restrictions, but the firm were unable to do so before they were intervened in October.

3.3. Neither Mrs A nor the firm have raised any comments or concerns with my colleague's view and, having reviewed the evidence, I share my colleague's view. Therefore, I endorse my colleague's view on the firm's service here.

### **Final Decision**

I have explained, above, my views on the level of service the firm provided to Mrs A. In the Case Decision, my colleague explained that they felt a remedy was warranted and what in their view was an appropriate remedy.

Having considered the evidence and the comments that have been received in response to the Case Decision, I have decided that my colleague's views on the appropriate remedy are reasonable. Therefore, I endorse my colleague's conclusions (attached) as my Final Decision dated 27 November 2024.

**Therefore, my Final Decision is that there has been unreasonable service that requires a remedy and direct that the firm pay Mrs A a total remedy of £22,496.60.**

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## Case Decision

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Date 22 October 2024

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### **Introduction**

Mrs A instructed the Foster Partnership ('the firm') on XX May XXXX to assist with the purchase of a plot of land at auction. The exchange of contracts took place on XX May XXXX before the auction. A deposit of £5,000 and auctioneer fees of £1,000 were paid. The transaction completed on XX May XXXX. Mrs A paid a total of £25,000 for the plot of land.

However, during the registration process concerns were raised relating to the size of the plot owned by the sellers and what was advertised. In addition, there were complications with overage provisions included in the title that were agreed to be removed.

The firm informed Mrs A to take independent legal advice on whether litigation against the seller for misrepresentation was a viable route. The firm were intervened by their regulator and closed on XX October XXXX. This was before the outstanding issues were resolved and the land could be registered into Mrs A's name.

Mrs A has received the assistance of a representative on this matter. This included attempts to correspond with the seller's solicitors and the auctioneers involved in the transaction.

It has transpired that the sellers who were a company dissolved on 25 February 2020. This meant that the property remained in their name and was passed on to the Crown in a principle known as '*Bona Vacantia*'. Essentially, when a company is limited, any assets it had at the time of dissolution become ownerless, and therefore revert to the Crown.

[REDACTED]

Mrs A has confirmed her complaints as the following:

1. **The firm failed to identify that the land she was purchasing was misrepresented by the seller's solicitors;**
2. **The firm agreed that two clauses would be removed when the seller did not have the authority to agree; and**
3. **The firm failed to ensure that the land was registered.**

Having considered the evidence, I have found that the firm's service has been unreasonable. My recommendation is that the firm should do the following:

- a. Pay £20,000 to cover the financial loss suffered by completing before the situation with the overage provisions were resolved;
- b. Return the fees paid to their firm amounting to £416.60 inclusive of VAT;
- c. Pay Mrs A £1,480 inclusive of VAT for fees she paid to her representative; and
- d. Pay Mrs A £600 for the distress and inconvenience.

This is a total payment of **£22,496.60 inclusive of VAT.**

## **Conclusion**

I have reviewed all of the evidence and comments received when investigating this case. For the purpose of this document I will refer to some of this evidence, and explain the conclusions I have reached.

Most of the evidence provided and available has been from the purchase file provided by the regulator of the intervened firm in September 2023. Mrs A and her representative have provided further correspondence relating to their communication with other parties involved in the transaction.

Taking the issues in turn:

**1. The firm failed to identify that the land she was purchasing was misrepresented by the seller's solicitors.**

- 1.1. Mrs A says that it was the firm's duty to fully investigate the title. I have noted the firm's view on the matter when they were still operating.
- 1.2. They believed it was the seller who misrepresented the size of the plot. In their response to Mrs A's concerns on XX September XXXX, they explained that their report did not cover the actual shape or size of the plot as this could only be accurately measured by a qualified surveyor.
- 1.3. I would expect the firm to have checked the legal pack provided by the seller's solicitors and if there was anything to suggest the land Mrs A was purchasing was not the size she intended to purchase, to provide this information to her prior to the exchange of contracts.
- 1.4. As explained in my introduction, most of the information I have reviewed to investigate the complaint is held within the file provided by the regulator. This means that the file I have seen may not have included all the documents the firm received during their retainer. However, prior to Mrs A instructing the firm, her brother on her behalf was involved in the background checks of the property she intended to buy.
- 1.5. On XX February XXXX, he emailed the auctioneers advertising the property and requested confirmation of the size of the plot of land they were interested in purchasing. The auction house confirmed on XX February XXXX that the plot of land was 0.84 acres.
- 1.6. Following the firm's instruction, on XX April XXXX, I have seen a copy of the covering letter the firm sent to Mrs A. This included a copy of the report put together by the firm after reviewing the legal pack. It must be noted that I have not seen the actual report, but it is important to note that it was sent.
- 1.7. On XX December XXXX, I shared my initial views with Mrs A. In addition, I requested some further information which was as follows:

*"a. Could you please confirm whether you have a copy of the report sent to you prior to exchange. If so, please provide a copy of the report; and b. Do you have any evidence to support your view that the firm had*

*information prior to exchange which should have alerted them that the size of the land was not as advertised.”*

- 1.8. Mrs A confirmed on XX January XXXX that she did not receive a copy of the report prior to exchange and was not asked to confirm whether the plan was correct.
- 1.9. The firm’s service in this matter has been reasonable. Firstly, there is no information within the purchase file or information requested from Mrs A on XX December 2023 which supports her view that the firm should have been aware that the plot of land was not the same size as advertised.
- 1.10. In this scenario, I would expect Mrs A to have received a report which requested a confirmation of the title plan prior to her instructing the firm to proceed with the purchase. The evidence shows that this was sent on XX April XXXX to Mrs A. The firm have also suggested this during their response dated XX September XXXX.
- 1.11. I appreciate that Mrs A argues a report was not sent. However, I have also seen a copy of Mrs A’s brother’s email to the firm’s insurers prior to our organisation’s involvement. The email dated XZ June XXXX, confirmed the following:

*We paid them for their professional services to complete the transaction of the purchase of the land to successful completion, even paying for a preauction report to mitigate risk of which, incidentally, did not identify any of the issues which transpired. Why was the ownership of the land or not as the case transpires picked up during this investigation/ report activity?*
- 1.12. I am persuaded that whilst Mrs A argues that she did not receive a report, the evidence shows that it was sent and reviewed by Mrs A prior to completion.
- 1.13. In addition, the evidence suggests that the title plan was included. The Land Registry confirmed in their requisition dated XX July XXXX that part of the land had been registered under a separate title number. However, I have seen the title register dated XX May XXXX. The register shows that the seller had sold numerous plots from a larger parcel of land.
- 1.14. I would not expect the firm to know the title plan did not include the full 0.84 acres that the auctioneers confirmed they were selling. The firm relied on the information available. Their service has been reasonable.

**2. The firm agreed that two clauses would be removed when the seller did not have the authority to agree.**

- 2.1. Mrs A says that the firm agreed with the sellers that the overage rights could be removed. However, it was not something they could do.
- 2.2. The firm have not commented specifically on this point.
- 2.3. I have seen a copy of the title register issued on XX August XXXX. I am satisfied that whilst this was after the completion date, the firm would have seen a document like this within the legal pack.
- 2.4. The firm have referred to this in their response to Mrs A on XX September XXXX. The title register confirmed the following that following a transfer between the previous owner and the seller on XX August XXXX, the following restriction was applicable:

3 [REDACTED] RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a written consent signed [REDACTED] the survivor of them or by the personal representatives of the survivor.

- 2.5. I have also seen correspondence between the firm and the seller's solicitors between XX and XX May XXXX. The firm made it clear that Mrs A's intention to proceed to purchase, was dependent on the overage provisions being removed. This was agreed and on XX May XXXX, contracts were exchanged. and the completion took place on XX May XXXX. The overage provisions were removed from the transfer submitted to the Land Registry dated on the completion day.
- 2.6. However, on XX July XXXX, the Land Registry sent a requisition to the firm. They highlighted amongst other factors, that the firm needed to provide evidence to establish they had satisfied the restriction dated XX August XXXX.
- 2.7. Following the cancellation of the first application registration by the Land Registry, the firm made a further application in late XXXX. The same requisition relating to the restriction were raised again on XX February XXXX. This resulted in the firm writing to the seller's solicitors, and the parties identified within the restriction dated XX August XXXX.

- 2.8. The seller's solicitors confirmed on XX May XXXX that the firm would need to write directly to the solicitors of the beneficiaries of the overage. Their solicitors confirmed on XX July XXXX the following:

The Overage Provisions contained in the Overage Deed dated [REDACTED] would not be repeated within your client's transfer. Your client purchased the property subject to the matters within the title register, which includes the restriction relating to the obligations within the [REDACTED] deed.

The overage provisions referred to within your email exchange would appear to relate to separate overage provisions between your client and [REDACTED]

- 2.9. The firm reiterated this point to Mrs A's brother on XX July XXXX. They confirmed the following:

Good morning

I have been in correspondence with the solicitors with regard to the overage. It would seem that the sellers have also misled everyone in connection with the overage as although this was removed from the transfer to [REDACTED] remained on the title deed and the beneficiary of the overage provisions will not remove the restriction and are insisting that [REDACTED] enter into a deed of covenant with them to be bound by the provisions and to pass them on to any buyer.

- 2.10. I appreciate that the firm were informed by the seller's solicitors that the overage provision would be removed. However, the title register made it very clear that written consent would be necessary from the previous owners of the property before the property could be registered. It was incumbent on the firm to ensure that they did not solely rely on the seller's solicitor but to check the register which explicitly confirmed the restriction applicable to the plot of land.
- 2.11. They only attempted to do this 11 months after completion and during the second attempt of registering the property with the Land Registry. At this point, the beneficiaries of the overage provisions were not prepared to remove them and insisted on Mrs A entering into a deed of covenant which would keep her, and future buyers, bound to the provisions. This position should have been checked after the contacts were exchanged and before matters progressed to completion. The firm's service has fallen under a reasonable standard.

### **3. The firm failed to ensure that the land was registered.**

- 3.1. Mrs A says that the firm failed to respond to the requisitions from the Land Registry which resulted in the application being cancelled.
- 3.2. The firm have not commented on this complaint.
- 3.3. Under complaint two, I confirmed that the firm made their application to the Land Registry on XX May XXXX. The Land Registry sent a requisition on XX July XXXX. They confirmed that if there was no response, the application would be cancelled on XX August XXXX.
- 3.4. The firm contacted the seller's solicitors on XX July XXXX and received a response on XX July XXXX. However, this response was incomplete in respect of question 4 relating to the part of the land that would not be included in the registration.
- 3.5. However, the seller's solicitors provided the firm details of the previous owner's solicitors details to deal with point 1 of the requisition. The Land Registry wrote to the firm on XX July XXXX warning of a cancellation if there was no response. The firm requested an extension which was confirmed to be XX August XXXX by the Land Registry.
- 3.6. On XX August XXXX, the Land Registry confirmed that the application had been cancelled and a new application would need to be submitted.
- 3.7. On XX September XXXX, the firm wrote to the seller's solicitors as matters could not be resolved amicably. The firm wrote a pre-action letter which set out Mrs A's claim. I understand that there was no response from the seller's solicitors.
- 3.8. The firm were not able to register the property due to the seller's solicitors not providing all the information they needed to proceed. This resulted in the firm sending out a pre-action letter. In addition, I have not seen any evidence which shows Mrs A wanted to register the plot of land without resolving the issue of the size of the plot of land during the first application attempt.
- 3.9. However, I understand that the firm attempted to register the property again in XXXX. The Land Registry wrote to the firm on XX February XXXX, explaining that an application had been previously made and the same requisitions as before were still outstanding. The firm were given until XX March XXXX to respond.

3.10. The firm would have been aware since the first application that the issue with the restriction was outstanding. I have not seen any attempt being made to contact the owners at that stage and I would have expected the firm to have tried to resolve this issue first before attempting to register the property again. This is where the firm's service has fallen under a reasonable standard.

3.11. Unfortunately, the previous owners would not agree to remove the overage provisions unless a deed of covenant was entered. I understand that Mrs A was not prepared to do this. By October XXXX, the firm were intervened by their regulator and no further work was carried out in respect of the registration.

### **Remedy**

In order to direct a remedy, I need to consider the impact the firm's service failings have had on Mrs A.

In respect of complaint two, the firm's failure to ensure that they received written consent for the overage clauses to be removed before completing has resulted in poor service. In respect of complaint three, the firm failed to ensure that all the required paperwork was available before they tried to register the plot of land on the second attempt.

### **Financial loss awarded**

As a starting point, it is clear that the firm made a request to the seller's solicitors that the overage provisions had to be removed before the exchange of contracts could take place. This is highlighted within the firm's email to the other side dated XX May XXXX. I am satisfied that this was an important criterion for Mrs A for her to continue with the transaction.

However, it was clear by XX July XXXX that the beneficiary of the overage provisions wanted Mrs A to enter in a deed of covenant to comply with the overage obligations. Therefore, the removal of the provisions was never a possibility. Had the firm ensured written consent was obtained as necessary, the position on the overage provision would have been clearer before completion could take place. Instead, this was pursued one year after their initial application to the Land Registry.

My view here is that the firm's service failing has meant Mrs A has proceeded with the purchase of land which she would not have, had the overage position been identified when it should have through obtaining written consent.

My recommendation is that the firm should pay Mrs A £20,000 that she paid the sellers for the plot of land after contracts were exchanged. As explained above, this is the direct financial loss from their service failing to ensure the position of the beneficiary of the overage provision was identified before completion. Their service has resulted in the provisions remaining, and the beneficiary not prepared to remove them. This ultimately means she paid £20,000 for a piece of land she no longer owns and can't get back and a direct financial loss from the firm's service failing. I will discuss the £5,000 deposit Mrs A paid later in my Case Decision.

### Interest

An important point to reflect on is that Mrs A was using her money for the purpose of investment. This was confirmed under the firm's client instruction form dated XX May XXXX. Due to the firm's service failing, she has not been able to benefit from this intended use.

On consideration of this, I am of the view that it would have been unlikely that Mrs A would have been able to have invested the monies in similar circumstances. She was purchasing a piece of land, not a property. The land was identified before the firm were instructed and before the auction had taken place. There is no evidence to suggest that there would have been similar parcels of land available to purchase for a similar price range or location.

However, in those circumstances it is more than likely, on balance, that the money would have been placed in a savings account as opposed to being spent Mrs A has provided me with details of the bank account she used to pay for the transaction. The money that was used to pay for the land was transferred from a savings account to a current account.

Mrs A has not been able to provide any definitive information which would allow me to make a fair determination on the interest rates that would have been applied on those savings. Her representative in the matter also confirmed on 24 September 2024 that *"with regard to interest, she will forward whatever information she can locate at this time, although this may be insignificant and difficult to ascertain."*

In those circumstances, I am satisfied that an acknowledgment that Mrs A would have had some sort of interest accruing can be reflected within a compensation payment. I will discuss this later in my decision.

## Betterment

I have also considered that by recommending the firm cover the £20,000 paid by Mrs A, whether she could achieve a position of betterment. This means in addition to our award, are there barriers in her reaching an agreement with the beneficiaries of the overage provisions and entering into a deed of covenant. This would then mean she could potentially have an award from our office of £20,000 and then also have property registered.

However, as explained in my introduction, the property title is no longer with the sellers. As the sellers were a company dissolved on XXXX, the title was passed to the Crown. There would be two ways for Mrs A to obtain it and to achieve betterment. They are:

- Identifying the former members of the sellers, then asking them to restore the company and resolving the outstanding issues; or
- Applying to the Crown to purchase it from them at market value.

This process is not straightforward and there are various obstacles that may arise. This ultimately means that there would be cost implications, and I am satisfied that this route is not viable for Mrs A. Therefore, I have established that Mrs A would not be able to agree to the overage provisions and register the title of the property to herself.

Any remedy our organisation directs should be to put the person complaining in the position they would have been, had the service they received been reasonable. I'm satisfied the remedy I'm proposing doesn't leave Mrs A in a better position than she should be in.

## Financial loss not awarded

I have not included the £5,000 deposit to the sellers and the £1,000 auctioneer's fees Mrs A paid when contracts were exchanged. At that point, the sellers agreed to remove the overage provisions, and the firm would have relied on that.

Had the firm's service been reasonable, as addressed above, they would have realised the overage provisions would not be removed before completion and Mrs A would not have proceeded. This meant there would have been a possible claim against the sellers for the deposit already paid and the auctioneer fees.

At this point, I would need to consider what advice Mrs A would have received from the firm and whether she would have acted on that advice. Also, I would have to decide on whether the sellers would have accepted to return the deposit or allowed the matter to progress through a claim. Ultimately, to progress the claim, there would have been costs incurred for the firm's fees and there would need to be consideration on whether Mrs A would have prepared to continue.

Even if Mrs A was prepared to continue, the next step would then be to establish whether the claim would have been successful or whether it would have been resolved before the seller's company were dissolved in February XXXX.

I am of the view that there is not enough evidence for me to be confident on balance that Mrs A would have avoided these losses. Therefore, this is not a loss I can award Mrs A.

#### Representative fees

I have also considered the costs Mr A has incurred in pursuing her complaint. I have seen a copy of an invoice dated 19 September 2024 from Mrs A's representative who was instructed to assist with the recovery of the money. The representative in their capacity as a consultant was tasked with the following:

- Taking instructions and reviewing the file;
- Investigating the title and the vendors;
- Liaising with land owners, auctioneers and the Legal Ombudsman.

This cost Mrs A £1,480 inclusive of VAT. I am satisfied that these costs were only incurred due to the firm's service failings which left Mrs A in a position where a professional had to be instructed to pursue her options.

I am aware that some of the costs incurred by Mrs A's representatives included liaising with our organisation. However, my correspondence with Mrs A's representative in this matter was not in respect of confirming complaints, requesting evidence or discussing potential agreed outcomes. Instead, the correspondence was related to technical information that only the representative could have provided due to their involvement in the matter. This would not have been information Mrs A could have provided herself.

Therefore, I am recommending that the firm pay Mrs A £1,480 that she incurred additionally trying to rectify the situation she found herself in.

#### Firm's fees and compensation

In addition to above, I have seen a copy of the firm's invoice dated XX May XXXX. The firm charged Mrs A a total of £416.60 inclusive of VAT. I am satisfied that the firm's work has been of no value. Due to the issues with the overage provisions, Mrs A has paid legal fees for a property that cannot be registered in her name. This should be returned to her.

Finally, I am satisfied that the firm's service failings have been a cause for frustration and worry for Mrs A. This plot of land was purchased in XXXX and until now Mrs A would have been worried that she paid £25,000 for a plot of land she would not have purchased or can even own.

In the circumstances, I am recommending a compensation payment of £600. This takes into account that the service failing impact has been over a long period of time. In addition, it reflects that Mrs A would have accrued some interest on the monies she would have had in a savings account had the firm's service been reasonable.

However, I have not recommended a higher amount as I am satisfied that my recommendation of the financial loss, firm's fees and representative fees considers Mrs A's concerns about the outlay of costs the transaction had cost her.

It is important to bear in mind, where a service provider has closed or a lawyer has stopped practising and a complaint about them has been investigated, it will usually be necessary for an ombudsman to issue a Final Decision.

Therefore, as explained to Mrs A's representative in all cases involving closed service providers that it can be difficult to recover any remedy directed by an ombudsman should the ombudsman recommend a remedy in their Final Decision.

There are no guarantees that any claim to the SRA compensation fund, solicitors indemnity fund or a firm's insurers will result in the payment of the remedy.

### **Case Decision**

Having considered the evidence, I have found that the firm's service has been unreasonable. My recommendation is that the firm should do the following:

- a. Pay £20,000 to cover the financial loss suffered by completing before the situation with the overage provisions were resolved;
- b. Return the fees paid to their firm amounting to £416.60 inclusive of VAT;
- c. Pay Mrs A £1,480 for fees she paid to her representative; and
- d. Pay Mrs A £600 for the distress and inconvenience.

This is a total payment of **£22,496.60 inclusive of VAT.**