
Final Decision

18 March 2025

Introduction

In my Second Provisional Decision dated 31 January 2025 I found that the standard of service provided to Mr A by Ansham White Limited ('the firm') was unreasonable, and that they should pay him the sum of £25,473.10.

The firm acted for Mr A in his claim against a local council between XXXXX and XXXXX. His complaint to the firm is that:

1. The firm sent the bundle at 22:58 night before the hearing to Mr A that the appeal bundle would be the reference point for the appeal hearing but Mr A did not need to take any action with it.
2. The firm failed to notify the other party and the court in a correct manner that they were acting on behalf of Mr A.
3. The firm failed to notify the court of the dates Mr A could not attend, and they failed to get the hearing moved to another date.
4. Mr A did not receive any communication from the case handler instructed at the outset between XXXXX and XXXXX after the appeal hearing.
5. The firm failed to inform Mr A that the person responsible for his case as per the client care letter had left the firm.
6. The firm failed to take any action regarding the Part 36 offer and they failed to advise the judge correctly on XXXXX regarding the Part 36 offer.
7. The firm delayed progressing matters and Mr A had to prompt the firm.
8. In the absence of the case handler, the firm failed to assign another person to work on the file.
9. The firm failed to reasonably challenge or raise appropriate questions regarding the joint expert report.
10. The firm failed to formally seek the court's permission to include the third report.
11. The firm failed to correctly draft the authority to confirm that they were instructed.
12. The firm was influenced by their opinion of the judge's conduct at the trial when they advised that there were grounds for appeal.
13. The firm failed to obtain a copy of the court transcript after the initial hearing within a reasonable time.

- 14. The firm failed to say that Mr A wanted to have the trees cut down instead the firm said the basis of the claim was about damages.**
- 15. The firm failed to provide advice to Mr A within a reasonable time regarding obtaining a medical report.**
- 16. The costs charged by the firm was excessive and Mr A has not been provided with a breakdown.**
- 17. The firm provided poor advice to Mr A that they intended to seek the court's permission to include the report which cost £2,160 but it was not used.**
- 18. The firm arranged to attend Mr A's home but attended late at night at 11:00pm.**
- 19. The firm failed to submit documents to the Court on time.**
- 20. The firm failed to provide enough time for Mr A to review documentation.**
- 21. The firm failed to respond to Mr A's request for the firm to return the documentation relating to the case including the original file.**
- 22. The firm accused Mr A of racist comments.**
- 23. The firm incorrectly stated to the judge that Mr A was seeing a counsellor as this was in relation to another matter.**
- 24. The firm incorrectly stated to the judge that Mr A had previous dealings with another representative and all evidence was supplied to them.**
- 25. The firm incorrectly stated that Mr A did not hand over the transfer of papers.**

In response to the Second Provisional Decision, Mr A has confirmed that he has no further comments to make. The firm have rejected it, and provided their comments in their letter dated 25 February 2025, which I will address below.

Having carefully considered the firm's comments in their 25 February 2025 letter, I have not changed my views as set out in my First and Second Provisional Decisions. Therefore, my Final Decision is that the firm's service has been unreasonable, and they should pay Mr A £25,473.10.

The firm's comments on the Second Provisional Decision raise some important points that I want to deal with in this decision. Although they do not change my view on this complaint, it is important I explain why. I have not responded to every comment made by the firm, but I have considered them all. I will focus, however, on the most significant points that they have raised.

Many of the comments made by the firm relate to the level of compensation proposed. I will address those comments in the remedy section below. Some of the firm's comments make more general points, which I will address in this section.

The firm's comment that Mr A was fully aware of the litigation risks.

The firm have said that Mr A was made aware - both by the firm and counsel - of the risks involved in pursuing his appeal. They have said that these risks were set out clearly in legal advice provided prior to the appeal proceedings, and that he had the opportunity to withdraw his appeal, yet he chose (in writing) to proceed. They have said that litigation inherently involves risk, and the mere fact of an unsuccessful outcome cannot justify such an award against the firm.

In the First and Second Provisional Decisions, I explained that the evidence showed that Mr A was not made fully aware of the litigation risks in this case. He did not have the full information he should have had to make an informed decision on whether to pursue the appeal or not. The XXXXX written advice from the barrister was based on a note the firm prepared of what happened at the XXXX trial, which the transcript later showed was inaccurate in many respects.

The firm were told by the barrister in XXXXX that if there was any doubt as to the accuracy of the firm's note of the trial, that they should get the transcript (as he said that in his written advice). The barrister had said that *'my above advice is, and must be, entirely based upon the recollection of those instructing as to the judgment delivered by the judge at trial'*. He went on to say that if it was inaccurate, then that *'could make all the difference to my advice on the merits of an appeal'*. Only the firm would have known what happened at the trial as Mr A wasn't present.

Mr A has said that he never received the barrister's XXXXX written advice before the decision was made to appeal. He has said that he did not see it until it was shared with him by our office during this investigation. I have not seen any evidence that the barrister's written advice was sent to Mr A by the firm.

Indeed, the firm's XXXXX email to Mr A advising him on the appeal made no reference to any written advice from the barrister. That email referred to the firm *'having spent a considerable amount of time with the barrister'*, but made no mention of the barrister's comment regarding the accuracy of the firm's note of the trial, and the need to obtain a transcript if there was any doubt as to its accuracy.

When the firm received the transcript in late XXXXX they asked the later barrister, who would be representing Mr A on the appeal, to advise on the impact of the transcript on the appeal's prospects.

The barrister responded to this in his XXXXX email to the firm, when he noted that the transcript meant the appeal's prospects were *'weaker than they were'*. I haven't seen earlier written advice on the prospects of the appeal from that barrister, but note that the initial advice from the first barrister in XXXXX had been that there were reasonable prospects of success.

The later barrister did consider that there remained '*a reasonable argument*' (for the sole remaining appeal ground, the other having been withdrawn when the firm accepted the Part 36 offer had been made in the correct form). However, he also said in the same sentence '*but given the factors above from the transcript this is not as strong an argument as it was on the information available before seeing the transcript*'.

Neither the barrister's concerns in his XXXXX email, nor his comment to the firm by phone on XXXXX that the appeal would be '*difficult and challenging*', were ever shared with Mr A.

Also, Mr A wasn't provided with the transcript (which showed many problems regarding what happened at the trial), until late the night before the appeal hearing. It wasn't until he attended the appeal hearing that he realised that there were significant problems with the appeal. He was only then able to fully appreciate what had happened at the trial itself, from the submissions made at the appeal hearing and when he later had an opportunity to read the transcript for himself.

Therefore, I don't accept the firm's comment that Mr A was fully aware of the litigation risks. Their advice to him on the appeal was incomplete, both at the time the decision to appeal was made, and throughout the time the firm acted in the appeal.

The firm's comments regarding '*client conduct and relationship with the firm*'.

The firm have said that it is important to highlight that Mr A was, at times, aggressive and demoralising towards the fee earner handling his case. They have said that at one stage they considered terminating the retainer due to a breakdown in trust, but, following multiple apologies from the client, chose to continue representing him in good faith to prevent unnecessary disruption to his case. They have said that this is not indicative of poor service but rather a commitment to professionalism and client care; they consider that they went above and beyond that which would reasonably be expected, in order to cater to Mr A's excessive demands and unrealistic expectations.

In the Second Provisional Decision, I noted that the firm had said that Mr A was a difficult client to deal with generally, such as being confrontational. However, they had not (and still have not) said specifically how they consider that would impact the findings I have made in relation to the complaint issues investigated by our office. I have not been provided with evidence that would support Mr A's 'behaviour' impacting my findings regarding the complaint issues investigated.

I note that the firm have now said that the fact they continued acting for Mr A shows their commitment to professionalism and client care. However, I have explained at

considerable length in the First and Second Provisional Decisions what was a reasonable standard of service, in relation to each complaint issue, and why the firm did or did not meet that standard for those issues I upheld.

Regarding Mr A having '*excessive demands and unrealistic expectations*', the standard of service that I have applied to each complaint issue is what is fair and reasonable in the circumstances of this case. I have not expected the firm to provide a higher standard of service to Mr A than that.

The firm's comment that I gave insufficient consideration to the firm's evidence

The firm have said that they submitted to our office over 100 pages of documentary evidence detailing their management of this matter, including records of advice given, client communications, and case strategy. They have said that, however, little credit appears to have been given to this evidence in the decision-making process, and that this shows that a fair and balanced approach requires greater weight to be placed on documentary evidence rather than '*ex post facto*' assertions by the client.

I have considered all the evidence provided by both parties during this investigation, including the evidence provided by the firm. Our office's process requires us to share with the parties all documents relied on when making a decision.

The Case Decision of my colleague dated 26 April 2024, attached 286 pages of documents, many of which had been provided by the firm. My First Provisional Decision attached a supplementary evidence bundle of a further 103 pages, many of which had been provided by the firm. My Second Provisional Decision attached a bundle of a further 14 pages of evidence (emails between the firm and the barrister), again, including evidence provided by the firm (or between the firm and the barrister, but provided by the barrister).

The firm have not noted a specific document that they consider I have not given sufficient weight to in relation to a particular issue of complaint. Also, they have had ample opportunity to provide evidence to support their position, both during the investigation and in response to the Case Decision, and then in response to my First and Second Provisional Decisions. Therefore, I don't accept that I have failed to consider the firm's evidence provided in this matter.

I note that the firm feels that although they have made many written representations to date, that I have taken a very '*one-sided*' view of this complaint and have given little to no weight to the '*overwhelming amount of evidence we have sent to mitigate many of the assertions of poor service levels*'.

I understand that my view on the firm's service and the remedy will be very disappointing for the firm. However, I have carefully reviewed all their comments and evidence provided to our office. I note that over 400 pages of documents were relied on in the Case Decision, and the First and Second Provisional Decisions (as explained above). Many of those documents were provided by the firm. I don't accept that the firm have provided '*an overwhelming amount of evidence*' in their favour, as much of the evidence I have seen supports the complaint issues that have been investigated.

The firm have now had a second opportunity to respond to my findings and provide any further comments or evidence that might support their position, as I issued a Second Provisional Decision. However, they have still not provided comments or evidence that in my view would support their position, in relation to those complaint issues I have upheld.

As I explained in the First and Second Provisional Decisions, 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 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 sent the bundle at 22:58 night before the hearing to Mr A that the appeal bundle would be the reference point for the appeal hearing but Mr A did not need to take any action with it.

1.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable because they sent the bundle to Mr A very late the night before the hearing, which was listed for the next morning. The bundle contained the transcript of the trial, which Mr A had not seen before, and its contents were concerning regarding the firm's conduct at the trial. It was, therefore, understandable that he would have questions for the firm about the appeal that he would have wanted to discuss with them before the appeal hearing.

1.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

2. The firm failed to notify the other party and the court in a correct manner that they were acting on behalf of Mr A.

2.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable because they did not notify the other party in the correct manner that they were acting for Mr A, by sending them the notice of acting in the first instance. The defendant's solicitors were entitled to object to not having received the formal notice of acting as court proceedings were already underway. The firm do, however, appear to have reasonably notified the court that they were acting, as the court noted at the trial that the firm were acting for Mr A.

2.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

3. The firm failed to notify the court of the dates Mr A could not attend, and they failed to get the hearing moved to another date.

3.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable, as they knew Mr A's availability to attend the trial on XXXXX, when the XXXXX trial date was given, but didn't take steps to adjourn the XXXXX trial date until July that year. By that point, the trial had already been postponed from its original XXXXX date, so the court then appears to have insisted on relisting the case for XXXXX, even though neither party were content with that date.

3.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

4. Mr A did not receive any communication from the case handler instructed at the outset between XXXXX and XXXXX after the appeal hearing; and

5. The firm failed to inform Mr A that the person responsible for his case as per the client care letter had left the firm.

5.1 In the First and Second Provisional Decisions, I found for complaint issue 4 that the firm's service was unreasonable because Mr A reasonably expected to receive correspondence from NA during the case. He had understood at the outset that she would be '*carrying out most of the work in this matter personally*' (as stated in the firm's client care letter to him dated XXXXX).

5.2 On XXXXX he was told by the case handler that he would be doing *'some of the work'* on the file (as recorded in the firm's phone call note), but that NA *'still had overall conduct and supervision of this file'*. However, all correspondence after XXXXX appears to have been from the case handler. The firm did not clearly explain that to him after the position changed.

5.3 For issue 5, the firm's service was unreasonable because they had not been clear as to what NA's involvement was in his case. Based on the information that Mr A had been given he was entitled to believe that NA still had a role in his case, even though the firm are clear she was not in charge of his file.

5.4 Had the firm communicated who was supervising his case, and who had the day-to-day conduct clearly at the outset, and again if that changed at any time, then their point that they didn't need to inform Mr A when she left would be appropriate. However, as they didn't, Mr A was surprised and shocked when he discovered that the person he thought had supervision of his case had left.

5.5 As the firm have not specifically commented on these two issues of complaint in response to the Second Provisional Decision, my view on them remains that the firm's service was unreasonable for both issues, for the reasons set out in detail in the First and Second Provisional Decisions.

6. The firm failed to take any action regarding the Part 36 offer and they failed to advise the judge correctly on XXXXX regarding the Part 36 offer.

6.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable overall for this issue of complaint. While their service was reasonable regarding the first part of this complaint issue (as they took reasonable action regarding the Part 36 offer), it was unreasonable for the second part.

6.2 That was because the firm failed to correctly answer the judge's questions at the trial on XXXXX about the timing of the offer in relation to when they were instructed by Mr A, and whether they had seen the offer before it expired.

6.3 They told the judge that they were only involved *'after the offer expired'* (the expiry date was XXXXX). However, the evidence shows that they had been instructed from XXXXX and that they had been provided with the Part 36 offer letter dated XXXXX by Mr A on XXXXX. They had acknowledged receipt of the Part 36 offer to the defendant's solicitors in their XXXXX email to them, when they told them they would *'respond more formally to this offer in due course'*.

6.4 I am concerned regarding what happened here, as the Solicitors Regulation Authority's *Code of Conduct* refers to a solicitor's obligation not to mislead or attempt to mislead the court.

6.5 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

7. The firm delayed progressing matters and Mr A had to prompt the firm.

7.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable. Initially, the firm only ordered the 'judgment' part of the court transcript of the trial, when they would have known that the relevant parts needed for the appeal included the submissions made after judgment was given. Had the firm ordered all relevant parts of the transcript at the same time, they most likely would have all been received in XXXXX (when the judgment part was provided). At the very least, the firm would have received all relevant parts of the transcript before the XXXXX hearing date and so avoided an adjournment of that hearing.

7.2 In any event, the firm had been advised by the barrister in XXXXX to obtain the transcript before deciding whether to appeal, if the firm considered their note of the trial might be inaccurate (which it was later discovered to be). The barrister also said that even if the firm didn't get the transcript before lodging the appeal, they should have done so within seven days of lodging the appeal notice (which they did on XXXXX).

7.3 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

8. In the absence of the case handler, the firm failed to assign another person to work on the file.

8.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable as they should have ensured that when the case handler was absent due to illness that another fee earner would be assigned his workload while he was away, to ensure important deadlines were not missed.

8.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue

remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

9. The firm failed to reasonably challenge or raise appropriate questions regarding the joint expert report.

9.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable because they had not asked the appropriate questions of the expert, and this was so obvious to the judge that she noted it in her judgment.

9.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

10. The firm failed to formally seek the court's permission to include the third report.

10.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable because they failed to seek permission at the right time, and in the correct manner, for KB's report to be allowed in evidence. I was not persuaded that this was because the firm did not consider it relevant as they suggested, as the transcript of the hearing shows they were trying to adduce it at the trial. In any event, even if they believed the report was nonsensical and damaging, I would expect them to have clearly advised Mr A of that, rather than including it in the court bundle and seeking permission to use it in evidence on the day of the trial.

10.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

11. The firm failed to correctly draft the authority to confirm that they were instructed.

11.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable because they had drafted a 'letter of authority' for Mr A to sign to authorise them to act for him, but I cannot see that they sent the appropriate notice of acting in the required form to the defendant's solicitors.

11.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue

remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

12. The firm was influenced by their opinion of the judge's conduct at the trial when they advised that there were grounds for appeal.

12.1 In the First and Second Provisional Decisions, I found that the firm's service was reasonable as the advice they gave to Mr A that he had grounds to appeal was based on advice obtained from the barrister (although based on the firm's inaccurate note of the trial), and I have not seen evidence that it was influenced by the conduct of the judge at the trial.

12.2 As no party has specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was reasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

13. The firm failed to obtain a copy of the court transcript after the initial hearing within a reasonable time.

13.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable because they should have ensured the appropriate parts of the transcript were obtained promptly after the barrister advised them to on XXXXX. That was the date that the barrister advised that if there was any doubt as to the accuracy of the information he received from the firm as to what happened at the hearing on XXXXX that they should get a transcript. The barrister also advised at that time that if a transcript wasn't obtained before lodging the appeal, that Mr A '*must apply for an approved transcript with[in] 7 days of filing the [appeal] notice*' (so in XXXXX).

13.2 In any event, it was also not reasonable after the XXXXX order to obtain the 'judgment' part of the transcript only. The firm failed to request what they should have known were all the relevant parts of the transcript that the appeal court would want to consider. The comments on cutting down the trees were made after judgment had been given, as the firm knew as they made those submissions. Instead, further unnecessary delay was caused because a key part of the transcript wasn't requested until XXXXX.

13.3 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

14. The firm failed to say that Mr A wanted to have the trees cut down instead the firm said the basis of the claim was about damages.

14.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable because they did not ask for the trees to be cut down at the appropriate stage in the proceedings, which was before judgment was given. Indeed, they confirmed to the judge that it was only damages being sought. After judgment had been given and costs determined, the case handler then mentioned cutting down the trees.

14.2 The transcript shows how annoyed the judge was by the firm's failure to mention cutting down the trees until after judgment had been given. The barrister noted in his XXXXX email his concern that this submission was not made until after judgment had been given.

14.3 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

15. The firm failed to provide advice to Mr A within a reasonable time regarding obtaining a medical report.

15.1 In the First and Second Provisional Decisions, I found that the service provided to Mr A was unreasonable as the firm were aware that he wanted to claim for personal injuries. This is evidenced in his claim form which incorporated the original particulars of claim, and in the amended particulars of claim that the firm drafted and served dated XXXXX.

15.2 However, I have not seen evidence that the firm advised Mr A that he would need to serve suitable medical evidence, what that evidence would be, and what the court's requirements for serving that evidence were. The transcript shows that it was agreed by the judge and the parties that, under the court rules, there must be a medical report attached to the particulars of claim, and therefore there had been a breach.

15.3 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

16. The costs charged by the firm was excessive and Mr A has not been provided with a breakdown.

16.1 In the First and Second Provisional Decisions, I found that the firm's service was reasonable for the first part of this complaint, that the firm's costs were not excessive. However, the firm's service for the second part of this issue of complaint was unreasonable, because the firm provided their invoices, but these did not explain clearly how the money Mr A had paid to the firm was spent, how it was divided between his matters, and what disbursements were paid directly by the firm.

16.2 I have set out the information in the table in the First Provisional Decision to work out that there was a sum unaccounted for from the invoices and client account ledger alone, and it wasn't until receiving the office account ledger, that it was possible to understand how the firm had applied the sums received from Mr A to this case and whether there was indeed a balance due to Mr A.

16.3 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable overall, for the reasons set out in detail in the First and Second Provisional Decisions.

17. The firm provided poor advice to Mr A that they intended to seek the court's permission to include the report which cost £2,160 but it was not used.

17.1 In the First and Second Provisional Decisions, I found that the firm's service was broadly reasonable because they told Mr A that they would use the report and apply to adduce it in evidence (for the appeal), but then a few days later, on speaking to the barrister, they agreed with him that it wouldn't be used, because it would be mostly damaging to his case. While it would have been better if the firm had discussed the point with the barrister first, so as not to give Mr A contradictory information, the reasons not to use the report appear sensible.

17.2 As the parties have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was reasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

18. The firm arranged to attend Mr A's home but attended late at night at 11:00pm.

18.1 In the First and Second Provisional Decisions, I found that the firm's service was reasonable because Mr A agreed to the firm's case handler attending his home late, and he did not raise any issue with it.

18.2 As the parties have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue

remains that the firm's service was reasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

19. The firm failed to submit documents to the Court on time.

19.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable because they missed the original filing date for the transcript of XXXXX by many months, as the transcript was not filed until late XXXXX, and the XXXXX hearing date was pushed back from XXXXX to XXXXX.

19.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

20. The firm failed to provide enough time for Mr A to review documentation.

20.1 Mr A agreed, in response to the Case Decision, to not include this complaint within the investigation as it has been covered as part of complaint issue 1.

21. The firm failed to respond to Mr A's request for the firm to return the documentation relating to the case including the original file.

21.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable because they did not respond to the Mr A's email dated XXXXX regarding his original file. He said that he had given this to NA at his meeting with her on XXXXX. However, the firm did not respond to his email.

21.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

22. The firm accused Mr A of racist comments.

22.1 In the First and Second Provisional Decisions, I found that the firm's service was reasonable because they were entitled to note in their correspondence with Mr A what they understood had been said by him.

22.2 As the parties have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue

remains that the firm's service was reasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

23. The firm incorrectly stated to the judge that Mr A was seeing a counsellor as this was in relation to another matter.

23.1 In the First and Second Provisional Decisions, I found that the firm's service was reasonable because Mr A had accepted he was seeing a counsellor, so it may have been relevant to him having psychiatric injuries, so it was reasonable that the firm mentioned this.

23.2 As no party has specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was reasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

24. The firm incorrectly stated to the judge that Mr A had previous dealings with another representative and all evidence was supplied to them.

24.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable, because I had not seen any evidence to support why the firm would have said this at the trial, as I cannot see that Mr A told the firm this.

24.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

25. The firm incorrectly stated that Mr A did not hand over the transfer of papers.

25.1 In the First and Second Provisional Decisions, I found that the firm's service was unreasonable as it was not correct for them to say at the trial that Mr A did not handover all his papers.

25.2 As the firm have not specifically commented on this issue of complaint in response to the Second Provisional Decision, my view on this complaint issue remains that the firm's service was unreasonable, for the reasons set out in detail in the First and Second Provisional Decisions.

Remedy

I have found that the firm's service was unreasonable for the following issues of complaint: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 19, 21, 24 and 25. For the

reasons explained in detail in the First and Second Provisional Decisions, I have found that the firm should pay Mr A £25,473.10 to remedy the impact of their unreasonable service on him. This is comprised of the following:

75% of the firm's costs up to and including trial of £7,020 including VAT	£5,265.00
Costs from the appeal including VAT (as set out in the [below] table)	£19,208.10
Emotional impact payment	£1,000.00
	£25,473.10

The costs from the appeal referred to in the above table of £19,208.10 are comprised as follows:

Various	The firm's costs including VAT from the [REDACTED] invoice (number 1566)	£5,984.00
[REDACTED]	Barrister's fee on permission hearing	£1,500.00
[REDACTED]	Barrister's advice	£600.00
[REDACTED]	Expert report of MD	£2,160.00
[REDACTED]	Barrister's costs of the appeal hearing	£1,500.00
[REDACTED]	Order to pay the defendant's costs of the appeal	£7,464.10
Total		£19,208.10

In response to the Second Provisional Decision, the firm have made a number of comments regarding why they consider the remedy.

The firm's comments that the remedy proposed is an 'excessive and unjustified' compensation award, and on the 'legal precedent and principle of fair compensation'.

The firm has said that my proposed remedy is disproportionate and punitive in nature. They have said that it is well established that damages awarded in legal complaints should not serve as a punitive measure but should reflect actual losses.

While I agree that our office's remedies must not serve as a punitive measure but reflect actual losses, I disagree with the firm that I have proposed a punitive remedy. I explained at considerable length in the First and Second Provisional Decisions why the remedy I proposed was to address only the losses – emotional and financial - to Mr A resulting from the firm's unreasonable service. Our office's remedies aim to put a complainant in the position they would have been in had a firm's service been reasonable, which is what my remedy does.

The firm have said that the compensation sum of £25,473.10 far exceeds the total fees paid to them by Mr A, which they have said were approximately £12,000. They

have said that awarding more than 75% of the legal fees paid would be both excessive and inequitable.

The loss caused to Mr A far exceeded the sum he paid the firm for their costs. Our office is not limited in the remedies we can direct to only a proportion of costs paid. I explained in considerable detail in the First and Second Provisional Decisions why the firm's service in relation to preparing for the trial and representing Mr A at that trial fell so far short of a reasonable standard that a 75% reduction of those costs was appropriate.

The firm then advised Mr A to embark on an appeal, but they had provided the barrister with inaccurate information on which to advise on the appeal. Once those inaccuracies were discovered, after the full transcript was obtained, the later barrister concluded that while there remained a reasonable argument for the sole remaining ground of appeal, that it would now be '*difficult and challenging*'.

I explained in the First and Second Provisional Decisions why it was more likely than not, on balance, that had the firm's service been reasonable they would have provided the first barrister who advised on the appeal with accurate information about what had happened at the trial (in order for him to advise appropriately on the merits of an appeal).

That would either have been an accurate note of the trial taken by the firm, or a transcript of the appeal. However, they did neither and instead advised Mr A to proceed with an appeal, despite the barrister's warning to the firm that '*it could make all the difference to my advice on the merits of an appeal*' if the note of the trial was even slightly inaccurate.

That led to Mr A incurring considerable unnecessary additional costs with the firm, also barrister's costs, and an adverse costs order when the appeal failed. Those are costs that would not have been incurred had the firm's service been reasonable. Therefore, these are losses that directly flow from the unreasonable service upheld. Therefore, they are appropriate sums for the firm to pay to remedy the impact of their unreasonable service on Mr A.

When formulating the proposed remedy, I was careful to distinguish between the costs incurred up to and including the trial, and those that were incurred in relation to the appeal. I proposed a costs reduction of 75% of the costs up to and including the trial of £7,020 including VAT (so a refund to Mr A of £5,265.00 including VAT).

Regarding costs from then on, in relation to the appeal, these formed the largest part of the remedy. I was careful not to include all costs, as I recognised that had the firm's service been reasonable there would have been some costs reasonably

incurred by the firm in obtaining an initial advice from the barrister, and possibly for an extension of time to file the appeal while a transcript of the trial was obtained.

However, after that point, I considered that a fair and reasonable remedy was one that acknowledged that Mr A would most likely, on balance, not have been advised that he had reasonable prospects of success for an appeal. Had he been advised in XXXXX/XXXXX on the prospects of success in the clear terms the barrister did in his XXXXX email, after the transcript had been received when he then knew what had taken place at the trial, he would most likely not have proceeded with an appeal.

Mr A would not then have incurred the costs that followed, which is why the remedy directs that the firm pay him those losses, including the barrister's fees after the initial advice on the appeal.

Also, I noted that the firm's invoices were unclear as from a particular date they combined two different litigation matters, that the firm were acting for Mr A in. I went through the breakdown for each invoice to be sure that only the costs of this litigation complained about would be the costs refunded as part of the remedy (and not the second litigation case the firm were acting for Mr A in).

Therefore, I don't accept that the remedy proposed is unfair or punitive. The remedy in this matter is consistent with putting a complainant in the position that they would have been in had a firm's service been reasonable, for the reasons I have explained.

The firm have also said that Mr A suffered no costs payable to the other side out of his pocket and did not physically suffer. However, that is not correct as Mr A was ordered to pay the other side's (the respondent's) costs of the appeal at the XXXXX hearing:

IT IS ORDERED THAT

1. The appeal herein do stand dismissed.

2. The Appellant do pay seventy five per cent of the Respondent's costs appeal and do pay the sum of £7,464.10 payable in 21 days

██████████

This was the sum set out in Mr A's XX May 2021 complaint to the firm and the First Provisional Decision, and I cannot see that they have ever previously suggested it wasn't paid. On 23 September 2024 Mr A confirmed in an email to our office that:

'I confirm that we paid £7464.10 to the defendant's solicitors for their appeal costs by bank transfer on [REDACTED].'

Therefore, I don't accept the firm's comment that Mr A didn't pay the other side's costs, and they have provided no evidence to support this assertion.

Regarding the firm's comment that Mr A *'did not physically suffer'*, the reasoning for the remedy does not allege physical injury. The element of the remedy of £1,000 is for the emotional impact of the unreasonable service, as explained in the First and Second Provisional Decisions.

The firm have said that the trial judge did not have the full claim file bundle, part of the original having been lost by the court. They have said that she had the particulars of claim (drafted by the client as litigant in person) and she clearly did acknowledge that he asked for the trees to be removed, and she had the option to award an injunction, but she failed in her duty to make a decision based on the facts.

I addressed the firm's comment that the court had lost the file and that this impacted the case, as in the transcript the judge also mentioned seeing the amended particulars of claim dated XXXXX (as she noted that in it there was no 'prayer for relief' to indicate an injunction was sought). It was also reasonable to suggest that one or both of the trial bundles would have contained a complete set of the statements of case and court orders, including the claim form (which included on its second page the original particulars of claim) that was issued on XXXXX.

Also, I noted that the court file not being available at the trial was not a ground of appeal. If the firm did not have a complete set of statements of case and court orders for their own consideration from when they were instructed, then they could have requested them from either the court (the suggestion by the judge at the trial was that the file remained at X County Court rather than being lost), or from the defendant's solicitors. The firm had a year of acting for Mr A before the trial in which to do so. I did not, therefore, agree with the firm that this issue with the court file would impact the firm's service in relation to the complaint our office has investigated.

It is not for our office to give a view on whether the judge was right or wrong to make the decision that she made at the trial, or whether the judge on the appeal also got it wrong. The unreasonable service that I have upheld is that the firm failed to provide the barrister with the information he needed to advise Mr A on the merits of the appeal. That information was, as stated by the barrister in his XXXXX written advice, either an accurate note of what happened at the trial or (if the firm were the slightest bit unsure of the accuracy of their note of the trial) the transcript of the trial.

Had the firm's service been reasonable, then the evidence supports the finding that the correct information would have been provided to the barrister in XXXXX. Given what the barrister who did have that correct information advised the firm (in XXXXX following receipt of the full transcript), then the first barrister's advice on the prospects of the appeal succeeding is likely to have been far less positive.

I remain of the view that had the firm's service been reasonable, the barrister advising in XXXXX would have advised in substantially the same terms as the barrister did in XXXXX and XXXXX, when he had the correct information from the transcript. Mr A would not then have embarked on the expensive and risky appeal.

The firm's comment that substantial work was undertaken on the file

The firm have said that contrary to the client's assertions, extensive legal work was undertaken on his behalf, including:

- *Comprehensive case preparation and analysis, including review of evidence and legal arguments.*
- *Engagement with and instruction of counsel, whose fees were incurred with the full knowledge and consent of the client.*
- *Management of correspondence and procedural requirements necessary for the litigation process. Furthermore, barrister's fees should not be reimbursed as part of the compensation award, as these costs were incurred at the explicit instruction of the client and with full disclosure of litigation risks*

By directing a refund of 75% of the firm's costs up to and including the trial I have acknowledged that some work of value was done for Mr A. However, the service failings were so many and so extensive in relation to that work, as set out at length in the First and Second Provisional Decisions, that the value of the work was seriously diminished, justifying such a large reduction.

The barristers who were instructed in this matter were instructed in relation to the appeal only, not at any time up to or including the trial on XXXXX. As explained at length in the First and Second Provisional Decisions, had the firm's service been reasonable only the costs of obtaining the first barrister's advice on whether to appeal would have been incurred (and that's why those costs don't form part of the remedy in this case).

However, all subsequent costs for the barristers, as well as the firm's costs of instructing those barristers, should not have been incurred at all on Mr A's behalf,

had the firm's service been reasonable. That is why those costs and disbursements should be reimbursed to Mr A.

As noted above, there is no evidence that Mr A ever had '*full disclosure of the litigation risks*' of the appeal. He was not sent the barrister's written advice of XXXXX. In any event, that advice was based on an inaccurate note made by the firm of the XXXXX trial, when the firm had been warned they must get a transcript if they were even slightly unsure as to its accuracy.

The firm then failed to pass on to Mr A the transcripts of the trial until late the night before the appeal. They had also, prior to that point, failed to pass on the barrister's XXXXX email to the firm explaining the problems with the appeal in light of the transcript, and they failed to tell him that the appeal was going to be '*difficult and challenging*', as confirmed by the barrister to the firm on XXXXX.

In these circumstances, while I note considerable work was done by the firm for Mr A, the value of that work was substantially diminished due the service failings identified (the work up to and including the trial). The subsequent failings meant that an appeal was pursued based on inaccurate information provided to the barrister by the firm, leading to incomplete advice on the prospects of appeal, and therefore Mr A incurred substantial costs making the appeal without being reasonably advised on the considerable risks of doing so.

Final Decision

Therefore, for the reasons set out above and in the First Provisional Decision dated 31 October 2024 and the Second Provisional Decision dated 31 January 2025, my Final Decision is that I find there has been unreasonable service that requires a remedy, and I direct that the firm pay Mr A £25,473.10.