
Final Decision

Date 25 February 2025

Introduction

In summary, the background to this complaint is that Mrs B and Mr C were long-term partners and lived together in a house owned by Mr C since 1987.

Mr C instructed Underwood & Co. (the firm) to prepare his Will in 2005, and Mr C executed his Will at the firm's office on XX XXXX 2006.

The Will, as executed, gave Mrs B a lifetime interest in Mr C's house, and one-fifth of his residuary estate. Each of Mr C's four children were also to receive one fifth of the residuary estate.

Mr C died in XXXXX but, although Mrs B was his named executor, she felt unable to fulfil the role. The firm had been named as replacement executors under the Will, therefore, when Mrs B renounced her duties, the executorship was taken on by a named solicitor at the firm.

Probate for Mr C's estate was granted to the firm in XXXXX, whilst Mrs B remained in the house under the terms of the Will.

On XXXXX the firm made an interim distribution of £21,600 to Mr C's children, but Mrs B's share of the interim estate was withheld.

Ms D was Mrs B's daughter, and she was also her mother's attorney, under a Lasting Power of Attorney (LPA) for property and finance.

In XXXXX, Ms D had been living with her mother, at the house, to provide her with care following an illness.

The firm wrote to Ms D in June and July XXXX, when they raised concerns about her occupation of the premises and her mother's health, so she sought independent legal advice in August. Ms D replied to the firm and explained the situation, but she also requested an update on the administration of Mr C's estate. However, despite several further letters, no response was received from the firm.

Sadly, on XXXXX, Mrs B died. Ms D, who was the executor for her Will, appointed another firm of solicitors (F&E), who approached the firm about Mr C's estate and the monies due to Mrs B's estate for probate and Inheritance Tax purposes.

Although basic values, sufficient for probate were provided to F&E in January XXXX, despite further enquiries about the administration of Mr C's estate, no responses were received, and the first update was only provided by the firm in March XXXX.

However, this update was accompanied with a claim for money for repairs on the house, made against Mrs B's share of the estate. This was disputed, and F&E continued to act for Ms D in her capacity as executor, however, the firm failed to respond to F&E's correspondence.

F&E wrote to the firm on XX September XXXX and expressed Ms D's dissatisfaction with the firm's administration of the estate and the lack of responses to legitimate enquiries. F&E requested the details of the firm's Compliance Officer so that they could take the matter up with them, however, no response was received.

The firm completed the sale of Mr C's house in XXXXX, and £261,673.20 was received by the estate.

In December XXXX, Ms D discovered that the house had been sold, but despite continued requests for information from the firm, neither the Estate Accounts nor any distribution was forthcoming.

Meanwhile, following the sale of the house, the firm distributed £65,000 to each of Mr C's four children on XXXXX, leaving the estate with a balance of £17,502, held by the firm.

Ms D wrote a formal complaint to the firm on XX May 2022, which the firm acknowledged on XX May. However, the firm did not provide any response to her complaints. Hence, her initial complaints were raised with the Legal Ombudsman.

The firm next wrote to Ms D on XX July 2023 when they said they were ready to pay £17,709.89 to Mrs B's estate as they were winding up Mr C's estate.

Ms D challenged the low amount being paid, and on XX July the firm responded to say that the value of the house sale had been excluded from Mrs B's inheritance.

On XX August, following a request from Ms D, the firm provided the Estate Accounts. These showed that Mrs B's estate was to inherit £17,725.80. The firm explained that this was the final amount because the proceeds from the house sale were not included in her residue, and because of deductions for repairs.

Ms D disputed the firm's distribution of Mr C's estate and their interpretation of the Will, and she raised another formal complaint to the firm on XX October 2023.

Although the firm responded on XX October, they did not address the complaints. Instead, the firm said that their position had not changed and paid £17,725.80 to the estate of Mrs B.

Ms D remained dissatisfied with the service that her mother and her mother's estate received from the firm, and the service which she received, as her executor, hence she escalated her complaints to the Legal Ombudsman.

The complaints made by Ms D are that:

- 1. The firm acted unreasonably when they wrote to Ms D in XXXXX and XXXXX regarding her staying in the property to provide care for Mrs B.**
- 2. The firm failed to respond to requests made by Mrs B's attorneys in XXXXX and XXXXX to see a copy of the Will and a copy of the interim estate accounts.**
- 3. The firm failed to inform Mrs B of the reasons why they had decided not to make an interim distribution to her when they made interim payments to the other four residuary beneficiaries.**
- 4. The firm failed to provide any information or financial statements on the monies held in trust for Mrs B.**
- 5. Following Mrs B's death in XXXXX, the firm failed to respond to requests for information regarding Mrs B's inheritance, which were required for the purpose of applying for probate.**
- 6. The firm failed to respond to correspondence from Ms D's solicitors dated XX March XXXX, XX May, XX June, XX August and XX September, requesting the payment of the balance of the residue due to Mrs B, and information regarding the estate and the firm's compliance officer.**
- 7. The firm failed to provide updates on the sale of the property or administration of the estate.**
- 8. The firm unreasonably refused Ms D's request to see the complete estate accounts.**
- 9. The firm failed to administer the estate in accordance with the terms of the Will dated XXXXX and deprived the estate of Mrs B of one-fifth of the value of the property.**
- 10. The firm failed to respond to Ms D's formal complaint.**

My colleague investigated Ms D's complaints and issued a Case Decision on 7 May 2024.

This Case Decision was rejected by Ms D because it did not consider the firm's approach to the interpretation of the Will and their distribution of the estate, hence the matter was allocated to me for a Final Decision.

I reviewed the evidence and the Case Decision, along with the original complaints to the firm and the Legal Ombudsman. Having done so, I considered that the agreed complaints did not embrace Ms D's complaint letter to the firm on XX October 2023, which was that the firm had not distributed the estate in accordance with Mr C's Will.

Consequently, I instructed my colleague to re-scope the complaint, which led to her issuing a revised Case Decision on 30 October 2024 ('Revised Case Decision'), which included the new wording for complaint 9.

My colleague explained, in her Revised Case Decision of 30 October 2024, that she found that the firm's service was unreasonable in all but one respect because she found the service, under complaint 8, reasonable. She also found that the firm's unreasonable service warranted a remedy, and she explained why she was recommending a remedy of £50,596.64

Ms D accepted the Revised Case Decision, but the firm rejected it.

However, when I reviewed the Revised Case Decision and the evidence received from the parties, I considered that I needed more information from the firm about the progress of the matter, and on 20 December 2024, following my Evidence Request, the firm provided three Ledger Cards showing the Client Accounts for the estate of Mr C.

After I considered the remedy in the Revised Case Decision, the evidence, and the new evidence of the ledger, alongside the Legal Ombudsman Scheme Rules, I decided that the firm's service was unreasonable in all areas and I took a different approach to the overall remedy, which is why I issued my Provisional Decision on 17 January 2025.

In my Provisional Decision, I said that I intended to direct the firm to:

- Pay the estate of Mrs B £50,000, plus
- Pay interest of £10,244.11 on the above amount,
- Refund the firm's fees of £596.64 (including VAT) to the estate of Mrs B, and;
- Pay interest of £122.24 on the fee refund

This gave a total remedy of £60,962.99, which would be payable to the estate of Mrs B.

Ms D responded to my Preliminary Decision on 21 January 2025, and she included comments from two other beneficiaries of Mrs B's estate.

The three beneficiaries confirmed that they agreed with the Decision and the Remedy, and were grateful for the addition of interest which, they said, helped to put the estate as close as possible to the value it would have been when it should have been distributed.

They also expressed their gratitude for the Decision, which they found detailed and accessible, and how they felt that it demonstrated that the Legal Ombudsman had examined every element of the complaint.

The family commented how shocked they were to finally see the ledgers which revealed the firm's poor treatment of Mrs B and subsequently, Ms D.

They also clarified that Mr C and Mrs B moved into the house in 1987, and they had lived there together for 30-years before Mr C died.

Ms D went on to highlight my comment that, but for the remedy cap, I would have awarded her mother a substantial remedy. She said the recognition of the impact on her late mother was *"priceless and better than any financial redress, because it acknowledges what we have been through & validates our complaint."*

The firm, in their email of 31 January 2025, confirmed that they were willing to comply with the remedy laid out in my Provisional Decision.

Because both parties have agreed to my Provisional Decision, it is open to me to treat the matter as resolved, however I have chosen not to do this.

I have reached the view that it is appropriate (and perhaps even necessary) for me to proceed to issue a Final Decision in this case for a number of reasons.

Firstly, the complaint was not resolved at the earliest possible stage, which led to a lengthy investigation through the Legal Ombudsman, effectively reaching the end of our process (save for this Final Decision). It therefore seems to me to be appropriate and proportionate to simply proceed to make my Final Decision at this late stage.

Secondly, the remedy is significant, and I wish to provide Ms D and the other beneficiaries with the certainty that the complaint is resolved once and for all and that the remedy is enforceable – once accepted by a complainant, a Final Decision is final and binding.

Thirdly, I believe that it is in the public interest to ensure that the relevant complaint data is recorded against the firm so that it can be published in accordance with the Scheme Rules. Allowing the complaint to be treated as resolved would prevent this, and I think that it is right that the firm should be held accountable, particularly given the circumstances of this case.

Fourthly, for reasons that will become apparent from this decision, I have been concerned by how the firm behaved in this case (and I am conscious of the possibility that this may not be isolated to this case) and I will therefore be recommending that this decision be considered for publication under what the Legal Ombudsman calls a 'Public Interest' or 'Category 1' Decision. As is explained on our website¹ we can publish a decision in a *"set of individual circumstances which*

¹ <https://www.legalombudsman.org.uk/who-we-are/corporate-publications/corporate-policies/policy-statement-publishing-our-decisions/>

indicate that it is in the public interest that we should publish a decision with a report and the service provider should be named”.

Whether there should be such a publication is a matter for the Board of the Office for Legal Complaints, and it is not a matter for me to decide. However, such a publication can only take place following a Final Decision, therefore I consider it appropriate to proceed to issue a Final Decision to allow for the potential publication as a ‘Public Interest’ / ‘Category 1’ Decision.

For the above reasons, I consider it is appropriate, fair and reasonable for me to issue this Final Decision. I also believe that this approach furthers the following regulatory objectives set out in section 1 Legal Services Act 2007:

- (a) protecting and promoting the public interest;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers; and
- (h) promoting and maintaining adherence to the professional principles.

My Final Decision

For clarity and convenience, my Final Decision is adapted from my Provisional Decision so that it can be read as a standalone document.

However, where appropriate, I have made some additional observations, including some concerning the new information about the length of time Mr C and Mrs B lived in the house together.

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.

I will now outline the decisions I have reached on Ms D’s complaints.

Conclusion

- 1. The firm acted unreasonably when they wrote to Ms D in XXXXX and XXXXX regarding her staying in the property to provide care for Mrs B.**

- 1.1 In my Provisional Decision, I endorsed my colleague's conclusions, laid out in her Revised Case Decision, that the service the firm provided on this issue was unreasonable.
- 1.2 It was established that Ms D was staying at the house to care for her mother, following a stroke. This became known to Mr C's children, who notified the firm as they were concerned that Ms D could remain in the house should Mrs B die or move to a care home.
- 1.3 I agreed with my colleague's findings that the firm, as executors and trustees, were entitled to establish if Mrs B was continuing to live in the house, and to remind Ms D of the restrictions on Mr C's devise of the property to Mrs B.
- 1.4 However, I felt that the firm were unreasonable because they did not accept Ms D's explanation, and they had overstepped the mark when they suggested Ms D needed their permission to temporarily stay at the house whilst caring for her mother.
- 1.5 My colleague and I agreed that the firm's suggestion that they would take further action failed to reflect Ms D's explanation and misrepresented the legal position.
- 1.6 The firm said, in their letter of XX June XXXX, that the Will had no provision for anyone else to stay at the house, and in their letter of XX July, that the firm's permission was required. However, having read the Will, it appears there were few restrictions on occupancy, and Mrs B had a full licence to reside in the house.
- 1.7 I accept that Ms D had no right to occupy the house in the event of Mrs B's death, but I am of the view that there was nothing obvious to prevent her temporary stay as her carer. Likewise, there is nothing in the Will to suggest that Mrs B needed the permission of the firm (as trustees) to invite Ms D to stay.
- 1.8 Therefore, I am of the view that the firm's views and advice, contained in the letters, was unreasonable because they went far beyond any justifiable enquiries to establish the situation.
- 1.9 I also consider that the firm, in their second letter, sent on XX July XXXX, made suggestions about Mrs B's long-term care which strayed beyond the firm's duties to the estate or the other beneficiaries. Indeed, they downplayed Mrs B's right to reside in the home where she had lived for over 32-years, and, in the circumstances, their letters lacked the empathy that I would have expected.

1.10 The firm, in their response to the Revised Case Decision, has accepted that their service here was unreasonable.

1.11 Since no further concerns have been raised about this aspect of the Revised Case Decision or my Provisional Decision, having reviewed the evidence, I share and endorse my colleague's view on the firm's service here.

1.12 Therefore, I remain of the view that the firm's service was unreasonable.

2. The firm failed to respond to requests made by Mrs B's attorneys in XXXXX and XXXXX to see a copy of the Will and a copy of the interim estate accounts.

2.1 In her Revised Case Decision, my colleague has explained that, in her view, the service the firm provided here was unreasonable because Ms D was contacting the firm on behalf of her mother, a residuary beneficiary.

2.2 My colleague established the sequence of events, and she found that the firm had been provided with evidence of an LPA, and although they rejected that Ms D was acting in that capacity, they made no effort to contact her, or Mrs B, to explain the situation, or why they would not correspond with Ms D.

2.3 In my Provisional Decision, I also concluded that the firm's service was unreasonable, but I expanded on my colleague's findings, and I added my own observations and interpretations of the evidence, good practice, and the service provided, which I have reproduced below.

2.4 When considering complaints concerning Wills and inheritance, I am mindful that the duties of a professional executor are quite different to those cases where a client has instructed a solicitor. Where the solicitor is instructed by a client who is lay executor, they are answerable to the client, but when acting as professional executors, their duty is to the estate and the beneficiaries.

2.5 Good practice on how a firm should act, if acting without a lay executor, can be found in the 2013 Law Society Wills and Inheritance Protocol.

2.6 According to the Protocol, the firm, as professional executors, should have provided Mrs B, as a residuary beneficiary of Mr C's estate, with Client Care information, and:

20.3.1 As soon as practicable after ascertaining beneficiaries:

- (a) inform them of their interest and, if established, its approximate extent;
- (b) give an estimate of the time frame for the *administration of the estate* and any time constraints that will affect it; and
- (c) give an explanation of the frequency of communication.

- 2.7 However, I have no evidence that Mrs B was provided with any of the above information, so it is reasonable to expect the firm to respond to requests about the above during the estate administration.
- 2.8 Furthermore, there is no evidence to show that the firm had made any contact with Mrs B about the administration between her renunciation of the executorship in XXXX and Ms D's emails to the firm in XXXXX and XXXXX.
- 2.9 Whilst I acknowledged that these two requests for an update about the administration were from the attorneys, not Mrs B, I can see, from the sequence of events, that the firm had already written directly to Ms D about the house.
- 2.10 Moreover, they had been told by Ms D on XX June XXXX that she was staying at the house because of Mrs B's ill health, which was just two-months before Ms D and her son wrote to the firm in their capacity as attorneys.
- 2.11 Frankly, I find the firm's reasons for not responding to the attorneys to be without any basis since it was clear, from the above letter, that Mrs B was not, as they claim, in good health. Indeed, the firm had suggested to Ms D, just two-weeks earlier, that Mrs B may be best cared for in a nursing home.
- 2.12 Additionally, it is my understanding that a registered property and financial affairs LPA, such as the one copied to the firm, can be used while the donor still has capacity, unless it specifies that it cannot. Therefore, if the firm had any doubt about Ms D's use of the LPA, they should have responded and requested further information to establish if she was acting on Mrs B's behalf.
- 2.13 The updates requested by Ms D and the other attorneys in August XXXX were, in my view, a reasonable request. I recognise that the right to a copy of the Will is not universal, but Mrs B had been the executor, and the Will had been proved at Probate, so I see no legitimate reason for the firm to withhold it from her.
- 2.14 Nonetheless, the evidence shows that the firm failed to respond to Ms D, nor did they seek to contact or update Mrs B directly, which, in the circumstances, amounts to unreasonable service.

- 2.15 Ms D's email of XX September XXXX, as Mrs B's attorney, also included a request to be provided with "*accurate, full and complete estate accounts*", and for an explanation about the outstanding distribution of the money held by the estate.
- 2.16 The new evidence shows that the interim payments were made to Mr C's children on XX April XXXX, a fact that the firm omitted to reveal in their only acknowledgement of the interim payments, sent on XX March XXXX.
- 2.17 In my search for good practice, I was again drawn to the Law Society's Protocol, which refers to interim payments, and states:

33.8 In the case of residuary beneficiaries:

- (a) consider whether interim estate accounts are appropriate;
- (b) consider whether distributions can be made before preparation and approval of final estate accounts; and
- (c) prepare interim estate accounts and make distributions as appropriate.

- 2.18 It is apparent that an interim distribution was appropriate since the house remained in trust, so there was no reason to withhold the ready money that was held by the firm in April XXXX.
- 2.19 The requirement for an update at this milestone is also supported by the Protocol's expectation that the firm, acting as executor, would have notified the beneficiaries about the frequency of communication and a timescale for distribution.
- 2.20 Therefore, I am of the view that this demonstrates that, when the firm made the interim distribution in April XXXX, they should have prepared and shared interim estate accounts with all residuary beneficiaries, including Mrs B.
- 2.21 However, the evidence shows that the firm failed to disclose the interim distribution to Mrs B in April XXXX, and that the firm failed to explain their rationale for withholding her portion of the estate's liquid assets.
- 2.22 Had the firm acted in accordance with good practice in April XXXX, I believe it is likely that Mrs B would have challenged the firm's approach, but that opportunity was denied by the firm's decision to withhold this information.
- 2.23 I am of the view that Ms D's requests on XX September were genuine requests for information relating to the Estate because Mrs B had not received any updates or payments, despite Probate being granted to the firm in November XXXX.

- 2.24 I am also drawn to the conclusion that the firm's refusal to share the interim estate accounts or other financial information in August and September XXXX was because they anticipated that Mrs B, supported by Ms D, was likely to challenge the way the firm were withholding her share of the estate.
- 2.25 Therefore, I am of the view that the firm were unreasonable when they failed to provide any response to Ms D's genuine requests for this information.
- 2.26 The firm have accepted that their service was unreasonable, but they have not raised any further comments or concerns about the Revised Case Decision. Hence, having reviewed the evidence, I share my colleague's view that the firm's service here was unreasonable.
- 2.27 Since no further comments have been received in response to my Provisional Decision, my view remains that the service Ms D received, when acting as Mrs B's Attorney, was unreasonable.

3. The firm failed to inform Mrs B of the reasons why they had decided not to make an interim distribution to her when they made interim payments to the other four residuary beneficiaries.

- 3.1 In my Provisional Decision, I agreed with my colleague's view that the firm's service here was unreasonable because they failed to discuss the distribution of funds to Mrs B, or their reasons for withholding them, until March XXXX.
- 3.2 However, I drew upon the new evidence of the ledgers, and I referred to good practice, to provide further support for my conclusions.
- 3.3 My colleague established that, although Mr C died in April XXXX, the firm did not make any payments to Mrs B before she died in October XXXX and only made one payment to her estate in October XXXX.
- 3.4 She found that the firm confirmed that they had made interim distributions to the other four residuary beneficiaries, but my colleague found no evidence that they attempted to contact Mrs B, her attorneys or, after she died, Ms D, her executor, to explain their approach to the distribution.
- 3.5 However, the firm had not previously provided evidence of when they made the interim distribution, hence my colleague was not aware that the firm had paid Mr C's children £21,600 each in April XXXX.
- 3.6 The firm, in their response to the Revised Case Decision, have accepted that their service here was unreasonable.

3.7 The sequence of events provided by the evidence and summarised in my introduction demonstrates that the firm consistently failed to respond to most of the requests for information about the administration of Mr C's estate. This was despite receiving letters from Ms D, as Mrs B's attorney, and then via her solicitors, when Ms D was acting as her executor.

3.8 I can see that the firm eventually told Ms D's solicitor, by phone, in January XXXX, the likely value of Mrs B's legacy. However, the firm failed to disclose that interim payments had already been made to Mr C's children, nor did they explain their rationale for withholding Mrs B's interim share.

3.9 I am, once again, drawn to the Law Society Protocol, which states that:

27.3.2 Within 10 working days of obtaining the grant, or within such other time frame set by the *practice* which ensures consistently prompt action in this regard, communicate with beneficiaries to:

- (a) remind them of their interest and, if established, its approximate extent;
- (b) give an estimate of the time frame for distribution and any time constraints that will affect it;
- (c) give an explanation of the frequency of communication;
- (d) if appropriate, ask for instructions as to whether they want assets encashed or transferred in specie.

3.10 Since Probate was granted to the firm on XXXXX, I would have expected the firm to have contacted Mrs B promptly to inform her of the grant and explain what this meant for her. However, as discussed elsewhere, I have no evidence that the firm kept Mrs B informed about progress or the likely value of her share.

3.11 Additionally, as I have already mentioned, the Protocol describes how, when making interim payments, a firm should share the interim accounts with the residuary beneficiaries.

3.12 I note that the firm have never disclosed to Ms D the date that they had made the interim payments to the other beneficiaries. However, I now have the evidence to show that their payments were made on XX April XXXX.

3.13 I believe the firm's failure to share this date is significant because it shows how long the firm withheld this information from Mrs B and Ms D. Indeed, the first declaration that an interim payment had been made only came in the firm's letter of XX March XXXX, which stated that:

I can confirm that I have previously paid the sum of £21,600 each to Mr [REDACTED] four children in their capacity as residuary beneficiaries of the Will. I can also confirm that I made the decision to hold Mrs [REDACTED] £21,600 on the basis that I could use these funds to service any outgoings on the property as I was advised that Mrs [REDACTED] was struggling with her health and capacity following Mr [REDACTED] death.

- 3.14 This letter did not disclose the date of the payment, but I will infer from the letter that the firm's decision to withhold Mrs B's share was made when they paid the other residuary beneficiaries in April XXXX.
- 3.15 I will also infer that the firm's decision to withhold the interim payment was based on information provided by the other beneficiaries because there is no evidence that the firm reverted to Mrs B, or later, to Ms D, to establish the situation with the house.
- 3.16 Likewise, despite the firm making the decision to reserve Mrs B's payment in April XXXX, the firm's letter of XX March XXXX, cited disrepair as the reason for the low interest from buyers, which is why they justified the ongoing retention of Mrs B's share.
- 3.17 This was, again, based on information from the other beneficiaries. However, there is no evidence that the firm had previously raised any concerns about the condition of the house with Ms D when it was handed back to the estate after her mother's death.
- 3.18 Additionally, despite being in contact with Ms D over her occupancy of the house, with her mother, in June XXXX, the firm failed to disclose any concerns about the upkeep of the property. Neither did the firm remind her of Mrs B's responsibility to keep the property in a reasonable state of repair, under the terms of the Will.
- 3.19 Consequently, having reviewed the evidence, I believe that the firm's rationale for reserving payment during her lifetime does not bear scrutiny because they took the decision to withhold Mrs B's interim payment without any direct knowledge of the condition of the house, and without reference to her.
- 3.20 I am mindful, however, that the complaint is not focused on whether the firm could legally reserve payment of Mrs B's legacy, but whether they failed to inform Mrs B of the reasons why they had decided not to make an interim distribution of her legacy to her.
- 3.21 In accordance with the Legal Ombudsman Scheme Rules, I may make a determination on the basis of what has been supplied, and I am entitled to draw inferences from any party's failure to provide information requested.

- 3.22 Despite the evidence requests, made by my colleague, the firm has failed to show that they discussed their decision to reserve the interim payment to Mrs B, or that they informed her of their reasons why. Therefore, I will infer that they made the decision to reserve payment without reference to Mrs B, and that they failed to disclose their reasons to her.
- 3.23 I have already found that there is evidence to show that the firm also failed to disclose this information in response to Ms D's request for updates in XXXX, when acting as Mrs B's attorney.
- 3.24 Therefore, irrespective of the validity of the firm's reasons for withholding the money, I am of the view that the lack of any explanation to Mrs B, during her lifetime, was unreasonable.
- 3.25 Moreover, the evidence shows that the firm, without good reason, withheld details of the interim estate distribution from Ms D, in her role as executor, despite the intervention of her solicitors, F&E.
- 3.26 The firm have not responded to these inferences, first made in my Provisional Decision, and no new evidence has been provided to give me any reason to change my views.
- 3.27 No further comments or concerns have been raised about this aspect of the Revised Case Decision or my Provisional Decision, and having reviewed the evidence, for the reasons outlined above, I remain of the view that the service Mrs B received was unreasonable.

4. The firm failed to provide any information or financial statements on the monies held in trust for Mrs B.

- 4.1 In my Provisional Decision, I endorsed my colleague's view that the service the firm provided on this issue was unreasonable.
- 4.2 My colleague established that Mr C's Will created a trust and, as such, the firm, as executors and trustees, should have kept accounts for the trust. She also explained that, as a beneficiary of the trust, Mrs B was entitled to be provided with information about the trust accounts.
- 4.3 Nevertheless, my colleague found no evidence that the firm had provided any response to Ms D's requests, on behalf of her mother, about the trust accounts, until July XXXX, when the firm were finalising the estate.
- 4.4 I acknowledge the firm's acceptance, in their response to the Revised Case Decision, that their service here was unreasonable.

- 4.5 I note, in my colleague's Revised Case Decision, that she has focused on Ms D's letter of XX September XXXX, which I have already established, was made as Mrs B's attorney, and, like her letter of XX August, went unanswered by the firm.
- 4.6 However, I am also concerned that the firm failed to respond to F&E's repeated requests for information about the money held in trust for Mrs B, which was now due to her estate. That said, these concerns are also dealt with in complaint 5 and 6, below.
- 4.7 I acknowledge that the executor has the discretion on how much detail to provide to residuary beneficiaries. However, the firm has failed to demonstrate that they provided any financial information or updates to Mrs B or Ms D about the sum held in trust for Mrs B, or, after her death, what was held for her estate.
- 4.8 In the circumstances, I am of the view that the firm's failure to respond to these genuine requests for information was unreasonable.
- 4.9 Since no further comments or concerns have been raised about this aspect of the Revised Case Decision or my Provisional Decision, having reviewed the evidence, I share and endorse my colleague's view that the firm's service here was unreasonable.

5. Following Mrs B's death in XXXXX, the firm failed to respond to requests for information regarding Mrs B's inheritance, which were required for the purpose of applying for probate.

- 5.1 In my Provisional Decision, I also endorsed my colleague's Revised Case Decision, where she explained that the service the firm provided here was unreasonable because there was a delay of three-months before the firm provided any information to F&E.
- 5.2 My colleague also found that the verbal briefing by the firm in January XXXX was limited, and despite their assurances that they would provide written information, the firm did not write to confirm the value of her legacy until March XXXX, despite repeated requests. Therefore, she concluded that the firm's poor service also interfered with Ms D's effort to establish Mrs B's estate.
- 5.3 The firm has, again, acknowledged that their service was unreasonable, but have made no further comments in response to my Provisional Decision.
- 5.4 I have already commented on the firm's consistent failure to respond to genuine and reasonable requests for information, and there is little that I can add here.

- 5.5 Suffice it to say that I also consider that it was unreasonable for the firm to fail to respond to Ms D's solicitors, despite several reminders, between October XXXX and January XXXX.
- 5.6 Furthermore, the value of the legacy indicated verbally in January XXXX included a share of the house, but, as I have established elsewhere, the firm removed this from Mrs B's legacy without notice. Hence, the amount held was significantly less than the firm told F&E in January XXXX. Likewise, in their letter sent on XX March XXXX, the firm gave no indication that the house was excluded from her share.
- 5.7 Consequently, I am of the view that the firm's failure to confirm the value of any part of Mrs B's residue, in writing, until March XXXX, was also unreasonable.
- 5.8 Neither Ms D or the firm have raised any comments or concerns about my colleague's view or my Provisional Decision and, having reviewed the evidence, I remain of the view that the firm's service here was unreasonable.

6. The firm failed to respond to correspondence from Ms D's solicitors dated XX March, XX May, XX June, XX August and XX September XXXX, requesting the payment of the balance of the residue due to Mrs B, and information regarding the estate and the firm's compliance officer.

- 6.1 My colleague, in her Revised Case Decision, has explained that, in her view, the service the firm provided on this issue was unreasonable because they failed to respond to multiple requests for payment of the legacy which was due to the estate of Mrs B.
- 6.2 She also found that the firm failed to engage with Ms D's solicitor, and that the firm failed to provide details of their compliance officer when requested.
- 6.3 In their response, the firm has again acknowledged that their service here was poor.
- 6.4 My colleague has outlined the terms of Ms D's solicitor's request, and the chronology of the events, and I see no reason to repeat that again.
- 6.5 In my Provisional Decision, I found that the firm's reluctance to respond to genuine enquiries from Ms D, as executor of her mother's estate, via F&E, persisted into XXXX.
- 6.6 I then went on to respond to the firm's comments about my colleague's views, and I explained my rationale to show why I considered that the firm's service was unreasonable.

- 6.7 I note that the firm, in their response to the Revised Case Decision, whilst not specifically mentioning this complaint, have stated that the question of the property residue was only brought to their attention on XX February XXXX.
- 6.8 Whilst I will deal with the question of the inclusion of the property in Mrs B's residual legacy later, I can see how the concern, apparently raised by one of Mr C's children, may have caused some disruption to the firm's timetable. However, the firm has failed to engage with Ms D or her legal team over the concerns raised by the other beneficiary.
- 6.9 Indeed, whilst the firm highlighted, on XX March XXXX, that:

You should also be aware that I am seeking Counsel's advise in respect of my position generally as Executor of Mr [REDACTED] Will and in particular the final distribution of the Estate following the sale of the property.

They failed to explain the reasons behind seeking that counsel advice, or the potential impact on Mrs B's legacy.

- 6.10 The firm, in their response to the Revised Case Decision, stated:

"We initially undertook the administration of the Estate based purely on the wording of the Will. The question of the property residue was not relevant at this point as Ms [B] was still alive and had a life interest in the property."

- 6.11 Whilst I note their comments, I am of the view that, irrespective of the firm's developing position on the exclusion of the house from Mrs B's legacy, she remained a residuary beneficiary throughout the estate administration, as shown by her reduced residue being the last share to be distributed.
- 6.12 Therefore, I believe her executor should have been given an equal footing with Mr C's children in matters pertaining to the estate and the interpretation of the Will. However, the evidence demonstrates that the firm actively withheld the developing situation about the house proceeds from Ms D and her solicitors.
- 6.13 In the March XXXX letter, the firm also stated that they were consulting with Mr C's children, the other residuary beneficiaries, over the condition of the property and funding repairs. However, Ms D, despite being Mrs B's executor, was effectively excluded from these conversations by the firm.
- 6.14 Ms D's clarification, in her response to my Provisional Decision, that Mrs B and Mr C had lived in the house for 30-years before his death, also sheds a poor light on the firm's one-sided approach to the alleged dilapidations of the house.

- 6.15 This is because some of the claimed disrepair may have occurred well before Mrs B had sole occupancy. Hence, without a baseline of the house condition upon Mr C's death, I believe it would be difficult to establish what repairs fell within Mrs B's responsibility, under the Will, to keep the property "*in reasonable repair.*"
- 6.16 Given that Ms D had been caring for her mother at the house before her death, and would, therefore, have a view on the condition, I consider that the firm's exclusion of Ms D from these discussions is a notable example of bias in their duties as executor.
- 6.17 Nevertheless, the firm failed to give the updates promised in their letter of XX March, which meant F&E had to chase them for the interim payment on at least four more occasions during XXXX. Indeed, the only payment was withheld until XXXXX, despite the house being sold in XXXXX.
- 6.18 Ms D's request for a payment was initiated by the firm's admission, in their letter of XX March XXXX, that they had been in discussion with the other beneficiaries, and the revelation that the firm had previously elected to pay Mr C's children an interim distribution.
- 6.19 Ms D's requests, via her solicitor, on XX March and XX April XXXX, were for the firm to provide the interim estate accounts, the anticipated final figure, and a likely timescale for the distribution.
- 6.20 I am of the view that this was a genuine request for information relating to the Estate since Ms D had received no confirmation of the figures required for Mrs B's probate, and the firm were proposing deductions from the portion due to Mrs B's estate.
- 6.21 I have already explained that good practice meant Mrs B should have been provided with some of this information at the outset, then updated after Grant of Probate in XXXXX.
- 6.22 Likewise, I have shown that the interim distribution, in April XXXX, should have been accompanied by interim estate accounts, shared with all residuary beneficiaries, including Mrs B.
- 6.23 However, the evidence shows that no response was ever received from the firm, such that Ms D's solicitors repeated the requests in an email to the firm on XX August, and in a letter on XX September XXXX. This letter appears to have a date stamp from XX September, so I am satisfied that the firm received these requests, but they elected not to respond.
- 6.24 I can see that F&E's letter to the firm, on Ms D's behalf, sent on XX September XXXX, not only asked for an update, but requested details of the

firm's compliance officer "*by return*". However, the firm has provided no evidence to show that they ever responded to this request, so I will infer that they did not.

- 6.25 The firm's total lack of engagement with Ms D and her solicitor, and their persistent failure to respond to their legitimate requests, is, in my view, unreasonable. Furthermore, I believe that their poor service has been exacerbated by their persistent exclusion of one residuary beneficiary, Mrs B, from the ongoing consultation about estate matters.
- 6.26 Having considered the firm's comments in response to the Revised Case Decision, I was satisfied that my colleague's view on the level of service is correct.
- 6.27 No new concerns have been raised about this aspect of my Provisional Decision; therefore, my view remains that the service the firm provided on this issue was unreasonable.

7. The firm failed to provide updates on the sale of the property or administration of the estate.

- 7.1 No comments had been received in response to my colleague's Revised Case Decision, so, in my Provisional Decision, I endorsed her view that the service the firm provided here was unreasonable, but I also added my own conclusions and rationale.
- 7.2 My colleague had established that the firm provided some updates about the property sale and estate administration, but they were infrequent and lacking in detail, and they did not inform Ms D when the house was sold. She also found that the firm ignored multiple requests for an update, and did not communicate with Ms D or her solicitor for about 19 months.
- 7.3 The firm has, in their response to the Revised Case Decision, acknowledged that their service on this issue was poor. However, I note that they initially responded to the Legal Ombudsman that Ms D had not been updated because she wasn't a beneficiary of the sale.
- 7.4 I have already established that the firm's views on the status of the house were not explained to Mrs B during her lifetime, nor to Ms D in her capacity as executor, until the estate was finalised. Hence, Ms D was unaware of the firm's position on the property throughout the estate administration.
- 7.5 Nevertheless, the firm's decision to reserve payment, without consultation, rested on the other beneficiaries' claim that Mrs B, as the occupier, should pay for the repairs from her residue. Consequently, the cost of repairs, along with the valuation, marketing, and sale of the property, were all significant

milestones in the administration of the estate, which affected the settlement of Mrs B's legacy. However, no updates were provided to Ms D.

- 7.6 Indeed, I can see that the firm failed to respond when they were asked about the sale on XX December XXXX, just two-weeks after its sale on XX November.
- 7.7 Furthermore, the new evidence shows that the firm had, on XX January XXXX, paid the proceeds of the sale to Mr C's children, which was before F&E chased the firm for an update about the house and distribution in February and April XXXX.
- 7.8 The ledgers also show that there was no significant financial activity on the matter after XX January XXXX, and only the residue which the firm subsequently paid Mrs B remained, untouched, in the client account.
- 7.9 Despite Mrs B's reduced residue being the only outstanding matter, the firm also failed to respond to a request for a meeting about "*a comprehensive update on the estate administration*", sent by Ms D's solicitor on XX February XXXX. Likewise, the firm failed to respond to their letter of XX April, requesting an update about the sale of the house.
- 7.10 Although the firm did acknowledge Ms D's complaint of XX May 2022, the firm failed to furnish her with any financial information about the estate, the house sale, or Mrs B's legacy. Nor did they expedite the distribution of the residue of the estate.
- 7.11 The firm has failed to produce any evidence that they provided regular updates for significant periods during their administration of the estate, which, in my view, was unreasonable. Likewise, they failed to respond to legitimate requests for updates about the house sale or the administration of the estate.
- 7.12 The evidence shows that the firm had already distributed the estate to the other beneficiaries before the requests for financial information and updates were made in February, April and May XXXX. However, despite there being no good reason to retain the balance, they failed in their duty to notify Ms D of the amount retained, or make any move to settle the estate, until July XXXX.
- 7.13 The firm's unreasonable behaviour here further supports my view that the firm treated Mrs B unfavourably compared to the other four beneficiaries.
- 7.14 Therefore, in the absence of any new comments about my Provisional Decision, having reviewed the evidence available, I remain of the view that the firm's service here was unreasonable.

8. The firm unreasonably refused Ms D's request to see the complete estate accounts.

- 8.1 In her Revised Case Decision, my colleague has explained that, in her view, the service the firm provided here was reasonable because they provided a copy of the Estate Accounts when requested.
- 8.2 My colleague concluded that the firm were not, however, obliged to provide other documentation to support the deductions from Mrs B's legacy.
- 8.3 In my Provisional Decision, I explained why my view on the level of service differed from my colleague's Case Decision.
- 8.4 I reviewed the evidence, including the new evidence of the ledgers, alongside good practice, and I concluded, for the reasons laid out below, that the firm's service was unreasonable.
- 8.5 The Law Society Protocol, which I mentioned earlier, states that, prior to distributing the estate, a firm should:

- 35.2 Send residuary beneficiaries the estate accounts for approval.
- 35.3 Provide a copy of the bill to the residuary beneficiaries if members of the *practice* are the only personal representatives.
- 35.4 Once the residuary beneficiaries have approved the accounts, carry out the searches as required in obligations 33.5 and 33.6 above, and transfer the balance of assets and cash to them.

- 8.6 The Protocol also provides the following list of information that should be included in the estate accounts:
- the value of assets at the date of death;
 - profits and losses on the sale of assets during the administration period;
 - payments made during the administration period;
 - charges made by the practice;
 - transfers of assets made to non-residuary beneficiaries;
 - income receipts, including interest allowed on money held in the client account;
 - income payments;
 - interim distributions to residuary beneficiaries;
 - retention of funds to meet contingent or future liabilities; and
 - balance of capital and income due to residuary beneficiaries
- 8.7 I can see, from the evidence, that contrary to good practice described in the Protocol, the firm did not provide Ms D with a copy of the Estate Accounts for

approval before the firm distributed the residue to the other four beneficiaries in January XXXX.

- 8.8 Likewise, when they proposed paying Mrs B's legacy to her estate, they only sent her a brief letter, on XX July XXXX, revealing that a legacy of £17,709.89 was payable.
- 8.9 Moreover, the accompanying summary of payments only listed brief details of the payments made, and the amount deducted from Mrs B's legacy for repairs. It did not include, amongst other details, the total assets, the firm's fees, and the interim distributions. Consequently, I am of the view that this document, entitled "*Residue split calculations*", fell short of the detail expected in Estate Accounts.
- 8.10 I have already established that, regardless of the firm's stance on the house as part of Mrs B's legacy, she was still a residuary beneficiary, and as such, her estate should have been afforded equal treatment before the firm distributed the estate.
- 8.11 Therefore, in accordance with good practice, I am of the view that the firm should not have waited to be asked for the Estate Accounts when it is likely that they already had sought the approval of the accounts from the other residuary beneficiaries.
- 8.12 Indeed, the new evidence shows that their legacies were paid with an interim payment of £21,600 on XX April XXXX, and a final payment of £65,000 on XX January XXXX. It also shows that the only activity in the account after this date was the addition of interest and some minor adjustments. Therefore, I can see no reason why the Estate Accounts were not made available to Ms D sooner.
- 8.13 Nevertheless, when the firm did provide the accounts in August XXXX, it became apparent that Mrs B's legacy, reduced by the exclusion of the house, was further eroded by deductions made from her legacy that the other residuary beneficiaries escaped. For instance, only her legacy contributed to the insurance costs, even though the house returned to the estate upon her death, and such costs should have been paid by the estate.
- 8.14 Likewise, the repair costs were disproportionately paid by her legacy, with a deduction of £3,050, which was transferred to the other four beneficiaries, increasing their payments by £762.50 each. Hence, I can see why Ms D questioned these unauthorised deductions, and why she asked the firm to explain and justify the amounts.
- 8.15 Had Ms D been provided with the Estate Accounts to approve before any distribution, as good practice dictates, I believe it is likely that she would have

raised similar concerns and questions about the omission of the house proceeds from Mrs B's legacy, and the unequal deductions from her residue.

- 8.16 However, I acknowledge that the firm could still have finalised the distribution without her approval. Nonetheless, earlier access to the Estate Accounts would have given Ms D the opportunity to consult with her solicitors and to challenge the firm's actions sooner, which may have prevented the funds being distributed otherwise than in accordance with the Will.
- 8.17 I acknowledge that, some two-weeks after the request was made, the firm did provide the Estate Accounts on XX August XXXX. Nevertheless, the firm still failed to disclose to Ms D that the other beneficiaries' legacies had been settled in January XXXX.
- 8.18 On examination of the documents, the lack of detail about some deductions and payments in the Estate Accounts, alongside the inequity of deductions displayed on the residue split, understandably gave rise to further queries. For instance, on XX September, Ms D asked the firm to provide details of the deductions and for copies of the original invoices and expenses. She also highlighted some of the expenses on the house which had been incurred after Mrs B's death, and she asked why they had not been shared five ways.
- 8.19 Again, I am of the view that this is a genuine and legitimate request for information about the reasons for the inequity of the deductions, and for evidence that the expenses were properly incurred and deducted.
- 8.20 Moreover, when some costs appear to have been refunded to another residuary beneficiary, not the firm, I believe it is incumbent on the firm to demonstrate that the deductions and payments were appropriate.
- 8.21 Furthermore, both the Law Society Protocol, and the SRA accounting rules, require that a firm keep accurate records, which is why I believe the firm's letter of XX September fails to satisfactorily explain what the deductions were, and why they were levied, unequally, on Mrs B's estate.
- 8.22 Because the firm have used figures provided by Mr C's children to decide deductions from the estate and from Mrs B's legacy, I will infer that the firm had consulted them and had sought their approval of the Estate Accounts, and that they were ready for inspection by the residuary beneficiaries in January XXXX.
- 8.23 Conversely, the evidence shows that Ms D was never consulted about the distribution to Mrs B's estate, or shown the Estate Accounts, so she had no opportunity to question the firm before the payments were made to the other beneficiaries. Hence, I will infer that the firm deliberately failed to disclose the

Estate Accounts at the time the other residuary beneficiaries had access to them.

- 8.24 The Estate Accounts, provided to Ms D so long after the other beneficiaries were paid, do not appear to show outgoings for the house refurbishment, so the accounts seem incomplete. Indeed, the firm's letter of XX September implies these payments bypassed the estate accounts, and were deducted, without Ms D's authority, from Mrs B's residue, to repay Mr C's children.
- 8.25 I have mentioned, above, how I consider that the new information that Mr C and Mrs B moved into this house in 1987 also calls into question the firm's approach to the repairs.
- 8.26 No baseline for the dilapidations was confirmed, and the firm failed to give Ms D an opportunity to examine or challenge the claimed dilapidations or expenditure before it was deducted from her mother's estate.
- 8.27 Furthermore, I can see that the figures on the Residue Split calculations appear inconsistent with the distributions shown on the Estate Accounts. I am also concerned that the Residue Split indicates that the other four beneficiaries were each paid £238.83 more than the residue due, which may have further reduced Mrs B's legacy.
- 8.28 I am of the view that the firm failed to follow good practice when they withheld the final Estate Accounts from Ms D ahead of their distribution of the residue of the house sale to Mr C's children in January XXXX. They also unreasonably withheld the Estate Accounts from her when they finalised sought to finalise the estate in July XXXX.
- 8.29 Moreover, the Estate Accounts were finally provided, it was 18-months after the other beneficiaries' residues had been paid, meaning Ms D's opportunity to challenge the firm's distribution of the estate had diminished.
- 8.30 Furthermore, when Ms D requested the full Estate Accounts on XX August XXXX, the firm did not send them until XX August.
- 8.31 When Ms D received the estate accounts it was evident that the deductions which had only been made from Mrs B's residue were not itemised, and there were inconsistencies in the residue split, so Ms D could not be confident that the deductions were fair or reasonable.
- 8.32 Additionally, I have found the firm's lack of transparency concerning because the firm made significant decisions about the Will and the distribution of the estate, including deductions from Mrs B's residue, and they did so without any reference to Mrs B or her executor.

- 8.33 I have already found that Mrs B was denied the opportunity to see the interim estate accounts when the other beneficiaries shared their interim payment in April XXXX. Likewise, I have found that the information about their interim payments was withheld from her and Ms D. Additionally, the firm unreasonably failed to disclose the reasons for reserving Mrs B's payment.
- 8.34 Taking all these issues into account, had Ms D been provided with the Estate Accounts in line with good practice, I believe it likely that she would have formally challenged the firm's approach and decisions, which would have been likely to have prevented the distribution of Mr C's estate otherwise than in accordance with his Will.
- 8.35 Furthermore, it is evident that the other four residuary beneficiaries had received their residue long before the firm contacted Ms D about the final distribution, further supporting my view that the firm demonstrated preferential treatment of Mr C's children to the detriment of Mrs B's estate.
- 8.36 Consequently, I am of the view that the firm should have provided sufficient documentation to Ms D to prove, to her satisfaction, that the deductions and payments to the other residuary beneficiaries were properly accounted for.
- 8.37 The fact that the firm's Estate Accounts and the firm's subsequent explanations failed to provide Ms D with any confidence in their accuracy or fairness is, in my view, unreasonable.
- 8.38 The firm have not responded to the change in finding, save to say that they accept my Provisional Decision. Therefore, my view remains that the service the firm provided on this issue was unreasonable.

9. The firm failed to administer the estate in accordance with the terms of the Will dated XXXXX and deprived the estate of Mrs B of one-fifth of the value of the property.

- 9.1 In my Provisional Decision, I agreed with my colleague's conclusion that the service the firm provided on this issue was unreasonable.
- 9.2 She found that, under the terms of the Will, Mrs B was a beneficiary of one-fifth of the residue of Mr C's estate, and this included proceeds from the sale of the house.
- 9.3 My colleague established that Mr C had met with the firm, and approved the draft Will on XX August 2005, and that he subsequently executed the Will on XX XXXX 2006.
- 9.4 She acknowledged that the notes of a meeting on XX June XXXX cast some doubt on whether the house should have been split five ways. However, she

was of the view that the later notes, and Mr C's duly witnessed signature on the Will, which included some alterations, was evidence which demonstrated that the Will, as executed, reflected Mr C's wishes.

- 9.5 My colleague was of the view that the evidence showed the firm acted beyond their discretion when they favoured the other residuary beneficiaries to the detriment of Mrs B, and that they failed to distribute the estate of Mr C in accordance with his Will.
- 9.6 In my Provisional Decision, I also examined the firm's comments, sent in response to her Revised Case Decision, and I explained the reasons why I believed that the firm's service was unreasonable. I also drew a significant inference from the firm's failure to provide a lawful basis for distributing the estate otherwise than in accordance with Mr C's Will.
- 9.7 Since no comments or concerns have been raised about my Provisional Decision, I remain of the view that, for the reasons stated below, the firm's service here was unreasonable.
- 9.8 The firm, in their response to the Revised Case Decision, sought to clarify a few points.
- 9.9 The firm confirmed that they initially undertook the administration of the estate based on the wording of the Will. However, the division of the property residue was not an issue whilst Mrs B still lived in the house.
- 9.10 The firm has also stated that the question of the division of the property proceeds was first brought to their attention on XX February XXXX, but they have stated that only one of Mr C's children raised his concerns, not all four, as my colleague had assumed.
- 9.11 Indeed, the firm now claim that they had no contact with the other three of Mr C's children in relation to Mrs B receiving a share, although this contradicts their earlier accounts. Additionally, their claim tends to conflict with the email from XX May XXXX to the firm about the house repairs, where two of Mr C's sons are clearly aware of the proposals that deductions for repairs to the house repairs should come solely from Mrs B's residue.
- 9.12 The firm have also said that the representations made by Mr C's son matched their own interpretation of the notes of XX June XXXX. They have claimed that this is why they, as executors, then took the decision to administer the estate according to their interpretation of these notes.
- 9.13 However, the firm have refuted my colleague's suggestion that their actions showed that they had treated Mr C's children more favourably to the detriment of Mrs B and her estate.

- 9.14 The firm, in their response to the Revised Case Decision, have also explained that the time limits for issuing a Deed of Variation or Deed of Rectification had passed by the time they were made aware of the concerns.
- 9.15 I can see that the firm's chronology appears likely since, in their conversation with F&E on XX January XXXX, the firm had clearly included one-fifth of the value of the house in their assessment of Mrs B's legacy.
- 9.16 Likewise, in their letter on XX March XXXX, they said, of the house repairs:

I am very much of the opinion that all residuary beneficiaries should share these costs equally.

- 9.17 Which indicates that, at this point, they had not made the decision to exclude the house from Mrs B's residue. However, they said they were seeking counsel's advice on their role as executors, and about "*the final distribution of the estate*". These comments imply that they felt that their position may have been conflicted because the Will did not reflect Mr C's family's understanding of his intentions.
- 9.18 Nevertheless, I am also drawn to the difference in the firm's explanation, given above, to that which they gave in their response to the revised complaint heading, when, on XX October 2024, the firm stated:

During the course of the administration, we were advised by the children of the deceased (beneficiaries) that their understanding of the division of assets was not as was contained in the Will. They were very clear that their father had told them that Ms [REDACTED] was entitled to live in the property until her death and that the sale proceeds of the property following her death were to be distributed between the surviving children.

- 9.19 Since this was the firm's response to my colleague's Evidence Request, I am puzzled as to why, now, they have sought to change their story.
- 9.20 Nevertheless, the fact remains that the firm's decision to deviate from the terms of the Will caused Mr C's four children to gain financially to the loss of Mrs B's estate.
- 9.21 Notably, the firm has, in their response to the Evidence Request, fully acknowledged that:

Mr [REDACTED] appointed us as Executors to ensure his wishes were carried out and we believe our administration of his Estate was indeed carried out according to his initial wishes and instructions albeit not as per the wording of the Will which we fully accept did not fully detail Mr [REDACTED] wishes.

- 9.22 Therefore, the firm have admitted deviating from the terms of the executed Will, so my decision is not simply whether the firm acted otherwise than in accordance with the Will, but whether the firm had the discretion or authority to do so.

- 9.23 The firm has mentioned a Deed of Variation, but it is my understanding that such a deed can only be executed within two-years of Mr C's death in April XXXX. Nonetheless, a Deed of Variation is voluntary, and would only be valid if Mrs B had agreed to the variation to remove the residue of the house sale from her share.
- 9.24 Given that any variation would be to the significant detriment of Mrs B's beneficiaries, I believe that this outcome, even if within time, would not have been agreed.
- 9.25 A Deed of Rectification can be applied for if the Will, as executed, fails to carry out the testator's intention due to either a clerical error, or a failure to understand the testator's instructions. However, this process has a tighter timescale, with a six-month limit from Grant of Probate.
- 9.26 It is also my understanding that a Deed of Rectification needs an application to the court, and that its grant is discretionary. Furthermore, in order to persuade the court to exercise its discretion to change the terms of the Will, there must be convincing evidence of the testator's intention.
- 9.27 The firm has confirmed that there was no application for a Deed of Rectification because it was out of time. Therefore, the question of whether the evidence is compelling, is moot.
- 9.28 Nevertheless, having reviewed the notes, I will make some observations.
- 9.29 The firm have appeared to rely on a single-bracketed "(not prop)" comment on the notes from XX May 2005, as showing that the house was excluded from Mrs B's residue.
- 9.30 However, the arrow, alongside the above extends from the address of Mr C's house to the note.

Residue : 5 (not prop.)

Life interest for girlfriend carer + residue to her or her Estate

- 9.31 This arrow tends to suggest that the house itself is to be subject to a *“Life interest for girlfriend and carer + residue”*, which may be interpreted as contradicting the firm’s stance that the house was excluded from Mrs B’s residue.
- 9.32 Moreover, I cannot overlook the comment, at the foot of the first page of this note, which warned that Mr C felt that his children *“would not be too impressed by”* the lifelong interest in the house. I am of the view that this should have served as a caution to the firm that some of the Will’s clauses could prove contentious with Mr C’s children.
- 9.33 Nonetheless, the firm’s notes from their review of the draft Will with Mr C on XX August 2005, demonstrates that the firm explained and clarified its wording to Mr C. Importantly, these record that Mr C *“confirmed the Draft Will reflected his intentions”*.
- 9.34 Faced with the executed Will with initialed amendments, combined with the notes of Mr C’s approval from XX August 2005, and the contradictory notes of XX May 2005, I believe it is unlikely that a court would be convinced that the Will did not reflect Mr C’s wishes. In reaching this view, I have also taken account of Mr C’s comments that his children would feel aggrieved, compared to his trust in Mrs B whom he appointed as executor, in preference to any of his family.
- 9.35 Since there was no opportunity to seek a legal change to the Will, the firm has, by their own admission, relied upon their own discretion, as executors, to administer the Will otherwise than in accordance with its terms.
- 9.36 I have already concluded that the firm lacked transparency in their dealings with Mrs B, and latterly with Ms D and her solicitors, which is why the firm’s actions came as a surprise to Ms D.
- 9.37 I have also established that the firm has failed to provide evidence that they consulted with Ms D, or that they updated her about the estate administration. I have also found that there is evidence to show that they failed to tell her about their intentions to stray from the Will.
- 9.38 I am mindful that, had Ms D become aware of the firm’s deviation from the Will earlier, she could have applied to the court to remove the firm as executors. However, since the firm failed to respond to her requests for updates, she did not discover the change to the distribution until the firm had all but completed the administration of the estate.
- 9.39 Additionally, when Ms D complained in May 2022, the firm failed to respond to any of the points she had raised. This, even though, in January XXXX, the

firm had already paid quarter shares of the house sale income to Mr C's children, thus excluding Mrs B's estate from this part of her inheritance.

- 9.40 In my review of the complaint, I have also seen evidence that the firm were regularly engaged with the other residuary beneficiaries. For example, the letters to Ms D from the firm, considered in complaint 1, were initiated following an approach from Mr C's family.
- 9.41 Likewise, I have found that Ms D was given no opportunity to discuss or challenge the cost of repairs to the house, or given any choice over how it was to be funded, yet the firm have acknowledged that they were consulting with the other beneficiaries.
- 9.42 The other four beneficiaries were also paid an interim distribution in April XXXX, but Mrs B was kept in the dark. Furthermore, these payments were not confirmed with Ms D until March XXXX, which was the first time the firm had stated that they were reserving payment of Mrs B's share.
- 9.43 Similarly, I have inferred that the other beneficiaries had the opportunity to approve the Estate Accounts in XXXXX, whilst Ms D did not, which meant she had little opportunity to challenge the disproportionate costs and insurance deducted from her mother's legacy.
- 9.44 Taking this evidence, alongside the firm's lack of transparency about their decision to distribute the estate otherwise than in accordance with Mr C's Will, like my colleague, I believe that it is more likely than not that the firm favoured the other beneficiaries over Mrs B and her estate.
- 9.45 In view of the circumstances, I have little doubt that, had the firm been transparent in their dealings with Ms D, she would have objected, and, if necessary, taken legal advice about removing the firm as executors.
- 9.46 Nevertheless, the first explanation that was provided to Ms D about the firm's decision came on XX August XXXX, when they merely stated:

I can confirm that the share of Residue due to your Mother from the Estate does not include a fifth share of the property sale as per the wishes of Mr [REDACTED]

- 9.47 When Ms D challenged this, they responded, on XX September, saying:

I appreciate that the wording of the Will is somewhat ambiguous, however, the notes taken at the original Will meeting with Mr [REDACTED] clearly outline his instructions in respect of the distribution of the Estate and the Estate was administered and wound up according to these wishes.

- 9.48 However, they omitted to provide any further explanation or legal grounds for their decision to deviate from the terms of the Will.

- 9.49 Having reviewed the Will, the residue of the estate is described as the proceeds of the house sale and “ready money”. It goes on to say that the residue was to be divided “in equal shares” between five residuary beneficiaries: the four children and Mrs B. In my view, the Will is not complicated, and the terms are not ambiguous.
- 9.50 It is my understanding that, as executors, the firm should have followed the terms of the Will unless there was a specific legal authority to vary it, and that the principle of executor’s discretion does not extend to such a significant change as enacted by the firm.
- 9.51 However, to ensure that my understanding is correct, I directed my colleague to ask the firm, in her 1 October 2024 Evidence Request:

“... please explain the legal grounds for distributing the proceeds of the sale of the property to only four of the residuary beneficiaries. Please provide any supporting evidence.”

- 9.52 The firm did not, in their response, provide any legal grounds to support their actions, but have reiterated, as quoted above, that they were not following the distribution set out in the Will because they were acting in accordance with Mr C’s initial wishes.
- 9.53 Therefore, I will infer that the firm acted against the terms of the Will without any legal authority.
- 9.54 Additionally, the evidence shows that the firm failed to disclose their plans to Ms D, despite milestones including: the return of the house to the estate after Mrs B’s death, the Grant of Probate to Ms D, repeated enquiries from Ms D and her solicitor, the sale of the house, and the distribution of the sale proceeds in January XXXX.
- 9.55 Furthermore, the firm’s failure to disclose their plans and actions, and their omission of details about the timing of payments to the other beneficiaries, seriously compromised Ms D’s opportunity to challenge the firm’s actions.
- 9.56 Moreover, the executor occupied a position in which he was expected to safeguard, or not to act against, the financial interests of Mrs B, or her estate, as a residuary beneficiary. However, the evidence shows that, by deviating from the Will without lawful authority, and without any consultation with Mrs B or Ms D, the firm diverted money rightfully payable to Mrs B’s estate to the other beneficiaries, which, in my view, is unreasonable.
- 9.57 The firm have not raised any concerns about my Provisional Decision, nor have they challenged my inference that they had no legal authority to vary the terms of the Will.

9.58 Consequently, having reviewed the Provisional Decision and the evidence, I am satisfied that there are no grounds to change my view on the firm's service.

9.59 Therefore, my view is that the service which Mrs B and her estate received on this issue was unreasonable.

10. The firm failed to respond to Ms D's formal complaint.

10.1 In my Provisional Decision, I explained why I endorsed my colleague's view that the service the firm provided here was unreasonable because the firm never provided a response to Ms D's complaint of XX May 2022, despite acknowledging its receipt.

10.2 My colleague was satisfied that the firm should have investigated and responded to Ms D's complaint since, as a personal representative of Mrs B's estate, she was receiving a service from the firm.

10.3 When determining whether a firm's complaint handling is reasonable, I compare the firm's response to the expected standards.

10.4 The SRA Code of Conduct provides the benchmark on how a complaint should be handled, requiring the authorised person to provide a client with all the necessary information concerning the complaint, and to deal with any complaints promptly and fairly.

10.5 Another source of good practice is The Legal Ombudsman's publication, *Listen, Inform, Respond: A guide to good complaint handling*, which states a firm should acknowledge a complaint and respond within eight-weeks.

10.6 I can see that Ms D's letter of XX May 2022, listed several complaints, and the firm's letter of XX May clearly accepted that this was a complaint which they would investigate.

10.7 Nevertheless, the firm has failed to show that they investigated the complaint or formally responded to Ms D, hence I agree with my colleague that their complaint handling fell well short of the expected standards.

10.8 It is worth mentioning a point I missed in my Provisional Decision but noticed in my review of the evidence subsequently. I noted that the firm had ignored Ms D's expression of dissatisfaction, sent via F&E, when they requested details of the firm's Compliance Officer on XX September XXXX.

10.9 The Legal Ombudsman Scheme Rules define a complaint as:

“an oral or written expression of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment.”

- 10.10 Therefore, firm should have considered this letter as a complaint and acted upon it, but there is no evidence that they did. Indeed, examining Ms D’s letters and emails, many fit the above criteria.
- 10.11 Furthermore, I can see that Ms D’s subsequent letters to the firm, including those of XX September and XX October XXXX, raised more areas of dissatisfaction, including the exclusion of the house from Mrs B’s legacy, which the firm should have treated as a complaint.
- 10.12 However, like the earlier correspondence raising her dissatisfaction about the legacy, there is no evidence that the firm treated this letter as a complaint. Instead, they merely responded that *“their position had not changed”*, ignoring the concerns raised by Ms D, demonstrating that they failed to investigate her complaint or provide a formal response, as required by the standards.
- 10.13 After reviewing the evidence again, I also feel compelled to reiterate the chronology, as demonstrated by the ledgers revealed after my Evidence Request.
- 10.14 This shows that the firm had already distributed the money to the other four beneficiaries four-months before Ms D’s formal complaint to the firm on XX May 2022. Nonetheless, the firm took no apparent steps to resolve the complaint or the estate administration, and the firm failed to release the reduced residue for a further 18-months.
- 10.15 No further comments or concerns have been raised with this aspect of my Provisional Decision and, having reviewed the evidence, I remain of the view that the firm’s service here was unreasonable.

Remedy

I have explained, above, my views on the level of service the firm provided to Mrs B and to Ms D, as the personal representative of her estate.

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

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

In my Provisional Decision, I examined the remedy proposed by my colleague in her Revised Case Decision, I considered the comments received, and I explained my rationale for the remedy and the reasons why I believed interest should be added to the remedy.

Having considered the comments received in response to my Provisional Decision, I have decided that my views on the appropriate remedy, explained in full below, remain reasonable. Therefore, I will adopt my proposed remedy in my Provisional Decision in my Final Decision.

For the avoidance of doubt, the firm has admitted that they distributed the proceeds of the house sale otherwise than in accordance with Mr C's Will, whilst I have found that the firm has failed to provide me with any lawful grounds for deviating from the terms of the Will, which they drafted and witnessed in 2005/6.

I have also found that there is substantial evidence to demonstrate that their independence as executors was compromised because they treated Mrs B and her estate less favourably than Mr C's children, who were the other four residuary beneficiaries.

I believe there is overwhelming evidence of a lack of parity of treatment between the residuary beneficiaries because the firm communicated with the other beneficiaries about the condition of the property, but did not revert to Mrs B or Ms D. Likewise, the firm paid interim payments to Mr C's children in XXXXX, whilst they failed to disclose the interim payments to Mrs B or her executor until XXXXX.

My view is further supported by the new evidence which shows that the firm distributed the proceeds of the house sale and finalised the residual payments to Mr C's children in January XXXX. However, they made no effort to pay the residual balance, which was Mrs B's share, or explain their reasons for deviating from the Will, until July XXXX.

Furthermore, I have concluded that the firm's lack of transparency limited Ms D's opportunity to prevent the firm excluding Mrs B's estate from the distribution of the full residue.

Frankly, the firm's offer of £1,000 as a gesture of goodwill fails to reflect the scale of the loss caused to Mrs B's estate, or their unequitable approach to Mrs B, as a residuary beneficiary, compared to Mr C's family.

The Ledger shows that, after an advance of £50 for conveyancing costs, the estate received £262,578.52 for the sale of Mr C's house on XXXXX. It also shows that the estate paid an estate agent £1,383.00 on XXXXX.

This gives the net income from the sale of the house as £261,195.52, however after further deductions, according to the Residue Split Calculations, the sum of £256,179.29 was divided four ways and paid to Mr C's children.

Consequently, on the evidence available, I am of the view that because of the firm's unreasonable service, the estate of Mrs B was deprived of the one fifth share of the £256,179.29 proceeds of the house sale, due to her under the terms of the Will.

This means that the firm diverted £51,235.86 rightfully payable to Mrs B's estate to the other beneficiaries.

Having considered the evidence, I have no hesitation in awarding the whole financial loss to Mrs B's estate, though regrettably, this is capped at £50,000.

Had the remedy not been capped, I would have also awarded Ms D a serious remedy for the distress and inconvenience caused to her. Due to the serious failings of the firm, this would have been at least £1,000.

Likewise, Mrs B suffered because, during the last 18 months of her life, she was unaware that the firm had reserved payment of her interim residue, whilst the other beneficiaries received a payment. Hence, I would have considered a further significant payment for her distress and inconvenience, payable to her estate.

However, I have decided to prioritise the loss of Mrs B's estate's loss of the house proceeds in my award as her beneficiaries will then receive a share according to her Will.

The cap of £50,000 in respect of the loss suffered does not, however, extend to a reduction of fees, or to the payment of interest on the loss suffered or fees refunded.

In respect of the firm's fees, having considered the evidence, like my colleague, I believe that the firm's service was significantly biased against Mrs B's estate. Likewise, I consider that the firm's treatment of Ms D, as her personal representative, lacked transparency, and was of such a poor standard, that I do not consider Mrs B's estate should be deprived of the fee deduction.

The total fees payable to the firm are listed on the Estate Accounts as £2,983.20 (including VAT) so the share paid by Mrs B's estate was £596.64.

Therefore, the £596.64 fees deducted from Mrs B's residue in XXXX should be refunded, to her estate, by the firm.

I believe that the firm's decisions to exclude Mrs B's estate from the residue of the property has deprived her estate of £51,235.86 from XXXXX until the present day. During this period, the value of the legacy has been significantly

eroded, therefore, I consider that it is appropriate to add interest to the unpaid legacy.

When determining what is a *'fair and reasonable'* remedy, I am expected to take into account (but I am not bound by) what decision a court might make.

Courts have made many decisions about appropriate interest rates, and a judge has significant discretion on their award of interest on pre-judgment debts, although legislation provides for a fixed rate of 8% on judgment debts.

The Legal Ombudsman Scheme Rules also gives the ombudsman discretion on the award of interest, stating that:

"Any interest payable under the determination will be at the rate:

a) specified in the determination; or

b) (if not specified) at the rate payable on High Court judgment debts"

As with judgments in the courts, there is a general principle that any interest awarded should be sufficient to compensate for the loss of value to the sum which they should have received at an earlier date, but it should not be punitive. This means that I consider it appropriate to take account of inflation as well as underlying interest rates.

Looking at the Bank of England Base Rate, there was considerable movement in the period, with a rate of just 0.25% in XXXXX, rising to 3.50% by XXXXX, peaking at 5.25% between XXXXX and XXXXX, before dropping to 4.75% in XXXXX.

Applying a variable simple interest at the Basic Rate over this period would give £5,759.47 interest, an equivalent of 3.8% per annum.

However, the cost of goods and services during this period has risen more steeply than interest rates meaning that the legacy has lost more buying power.

A calculation, based on the Retail Price Index (RPI), shows that an investment of £51,235.86 in XXXXX would have needed to grow by an average of 7.6% per year to keep pace with inflation, to give a value of £63,050 at the end of XXXXX.

That said, the lower, Consumer Price Index (CPI), which is used for most inflation related measures, has been slightly lower, giving an adjusted value of £60,199, the equivalent of 6.3% per annum, to the end of XXXXX.

I am of the view that awarding interest at the Bank of England Base Rate would still significantly erode the value of Mrs B's legacy because of the high inflation during

the period. However, I consider the 8% High Court Rate could be seen as punitive given the underlying base rates.

Therefore, I consider that an annual interest rate of 6.95%, the mid-point of the CPI and RPI measures, would be the fairest way of ensuring the buying power of the legacy is equivalent to its value in XXXXX.

Unfortunately, it appears that the Legal Services Act 2007 and the Scheme Rules limit the payment of interest to the capped award, so I can only award interest on my proposed capped remedy of £50,000, although I can also add interest to the fee refund.

Therefore, I will award simple interest at 6.95% per annum on £50,000 from XXXXX until XXXXX, which is £10,244.11.

Likewise, I will award simple interest at 6.95% per annum on £596.64 from XXXXX until XXXXX, which is £122.24

This award will be made to the estate of Mrs B, which will then allow Ms D to add this to the residue of her mother's estate and distribute the remedy in accordance with the terms of Mrs B's Will.

Decision

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

- **Pay the estate of Mrs B £50,000, plus**
- **Pay interest of £10,244.11 on the above amount,**
- **Refund the firm's fees of £596.64 (including VAT) to the estate of Mrs B, and;**
- **Pay interest of £122.24 on the fee refund.**

Consequently, I direct the firm to pay the estate of Mrs B a total of £60,962.99 (sixty-thousand, nine-hundred and sixty-two pounds and 99 pence).