Final Decision

30 September 2024

Mr A was the landlord of a property. He was seeking possession of a property from a tenant (to evict the tenant). In XXXX, court proceedings were ongoing.

In XXXX, Mr A approached Allerton & Gladstone Solicitors ('the firm' and subject of this decision) to represent him in these proceedings. The instruction was confirmed in XXXX. A directions hearing was already scheduled XXXX.

Directions were given. The next hearing was to take place on XXXX.

The XXXX hearing was not effective and was adjourned. It was relisted for XXXX.

The XXXX hearing was also ineffective and adjourned.

Mr A complained to the firm on XX April. The complaint was not resolved. A meeting took place on XXXX (which I understand ended acrimoniously), and this ended the firm's service.

I understand Mr A was ultimately successful in obtaining possession of the property in XXXX.

There is disagreement over the money Mr A has paid to the firm while they acted (including for third party costs such as barrister costs). The firm's position is that there are unpaid fees payable to them, totalling £24,040 inclusive of VAT. This is relevant to this decision.

Following the complaint, Mr A referred his complaint to the Legal Ombudsman.

The following complaints were subsequently agreed for investigation:

1. The firm advised to amend the possession claim to include grounds 12 and 13, which was unnecessary, and those grounds were thrown out.
2. The firm then failed to serve the amended particulars of claim in time.

3. The firm failed to properly prepare the bundle for the hearing on XXXX, so the hearing was adjourned to XXXX.
4. The firm then failed to properly prepare the bundles for the adjourned hearing on XXXX, resulting in another adjournment.
5. The firm took around £10,000 in fees, claimed that money was owed, but didn't issue proper invoices or give clear information about costs during instruction.
6. The firm failed to answer Mr A's complaint of XX April XXXX.

The Investigator completed his investigation and issued his Case Decision, explaining the outcome of his investigation, on 1 July 2024. He found the firm's service to be unreasonable in relation to complaints 2, 4, 5 and 6. He found the firm's service to be reasonable in relation to complaints 1 and 3.

To remedy the impact of the poor service he identified, he recommended the firm waive any outstanding unpaid fees (which would have an approximate value of £22,600 to the firm based on the information he discussed, although the unclear recording of payments made by the firm is part of the decision), and pay Mr A a further £500.

This has not been accepted by either party.

Mr A argues that the compensation is not sufficient for what he has suffered financially (in relation to the claim that was being made) and for the impact on his mental health. He raises the impact on his health for being demanded to pay £24,000 and for finding (what he believes to be) forged invoices. He says that is a serious issue and should be addressed appropriately.

He also challenges the findings of complaints 1 and 3. I will deal with that below.

The firm also does not agree with the decision reached.

Before issuing his decision formally, the Investigator had shared an audio recording Mr A had made of a meeting on XXXX (without the firm's knowledge), which he wished to rely on.

In response to this, the firm raised a challenge to the investigation continuing (which they have a right to have decided) under our Scheme Rule 5.4. This was determined by an Ombudsman colleague on 25 June 2024. The file was not dismissed.

I do wish to be clear here that the Legal Ombudsman can accept recordings as evidence. Rules 5.24 d and f state:

5.24 An ombudsman may:

d) include/exclude evidence that would be inadmissible/admissible in court.

[…]

f) make a determination on the basis of what has been supplied

It is then my decision (and it was the decision of the Investigator) what weight it given to that evidence. That is the case for any evidence submitted.

After the Case Decision was then issued, the firm responded further. On 11 July, they commented on the upheld complaints and explained why they disagreed. As part of this, they quote elements of rule 5.7, but I do not see this as a request to consider dismissal, they are quoted as establishing a standard the complaint has not reached (in my view).

In any event, the firm had requested consideration of 5.7g and 5.7n already, which was determined in June. They raised 5.7m in relation to complaint 2 and said they did not undertake the work as fees were outstanding, but in my view, that is their defence to the complaint, which I can determine within this decision.

They have also submitted a further document which shows the fees charged by and paid to the barrister. This shows that a total of £3,600 was paid to the barrister for the XXXX and XXXX hearings:

Date	Description	Amount	Vat%	Vat
[redacted]	Brief listed for trial	£1,750.00	20.0%	£350.00
[redacted]	Brief listed for trial	£1,250.00	20.0%	£250.00
[redacted]	Payment by BACS	£-3,000.00	20.0%	£-600.00

I take this into account.

I also confirm that I have fully reviewed the history of the file and all documents that are available.

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.

That said, I turn to the complaints:

1. The firm advised to amend the possession claim to include grounds 12 and 13, which was unnecessary, and those grounds were thrown out.

1.1. The 'Grounds' referred to here are the possible grounds which can be alleged when applying for possession of properties let on assured tenancies under Schedule 2 of the Housing Act 1988.

1.2. As explained in the introduction, Court proceedings were already underway by the time the firm was instructed. This was on the basis of rent arrears (using grounds 8, 10 and 11). Ground 8 is a mandatory ground for serious rent arrears. This was not the case by the time the firm was instructed (there were only arrears of £150). Grounds 10 and 11 were discretionary if some rent was lawfully due and if there was a history of persistent delay. They were not certain to be granted.

1.3. It appears at the point that the firm was instructed that Mr A's claim had been dismissed as insufficient rent was outstanding.

1.4. The tenant/defendant had issued a counterclaim alleging disrepair. Mr A was defending that and alleged the tenant's actions had caused the disrepair.

1.5. The XXXX hearing issued a directions order. Point 3 was:

> *The Claimant shall file and serve an Amended Particulars of Claim by 4pm on XXXX if so advised.*

1.6. The firm did complete amended particulars of claim (with the assistance of a barrister). In his own response, Mr A has provided additional emails from the time between the firm and a barrister.

1.7. This includes an email from the firm to the barrister setting out their understanding:

My understanding is:

- The possession claim is not to be changed. No further section 8 notice has been served, and the grounds for possession remain those based upon unpaid rent; - Could we also add that a claim for possession is made for breach of the Tenancy Agreement particularly sections A4, B4, B5, B7, B10, B16, B18 and B19 together with any other sections you deem fit.
- The major addition that is sought is a claim for damages for breach of repairing covenant and / or permitting [redacted] enter the premises. - client agrees

I have pleaded particulars of the breach as far as I was able, based upon [redacted] witness statement

1.8. This was based on points Mr A had made in seeking to defend the counterclaim. He had also been given permission to serve Amended Particulars by the Court.

1.9. I understand Mr A's position that at a hearing in XXXX, these additional grounds were 'dismissed out of hand' by the judge, and so the additional work was unnecessary, but this is looking back with hindsight. That is not how advice is given. It is given at a point in time when the outcome is not known.

1.10. What is important is whether that advice was reasonable at the point it was given. Here, these were points Mr A wished to make; he had permission to amend the Particulars, and they may have been successful. That is sufficient to say the firm's service was reasonable here.

1.11. In his response, Mr A says he only wanted to defend the counterclaim, and the court only allowed him to amend the particulars following an application by the firm (they did not recommend it).

1.12. I do not find either of these points to be persuasive. These were points that Mr A was making that potentially strengthened his claim, and it is recognised that the Court did not say that Mr A had to ('must') amend and include these issues, only that he had permission to do so if so advised. That is in line with my decision above. The firm's advice to include these points was reasonable at the time.

1.13. I find the firm's service was reasonable here.

2. The firm then failed to serve the Amended Particulars of Claim in time.

2.1. This heading is about the Reamended Particulars in XXXX (not the initial amended Particulars in XXXX).

2.2. The Minute of Order from the XXXX hearing recorded the following:

> 3. The Claimant is permitted to re-amend his Particulars of Claim restricted to (i) pleading reliance on Grounds 12 and 13 of Schedule 2 of the Housing Act 1988; and (ii) pleading reliance on the estimated costs of repairing alleged dilapidations.
>
> 4. The re-amended Particulars of Claim should be filed and served no later than 4pm on [redacted]

2.3. This was not done by XXXX. The firm only asked Mr A if he was instructing them to amend the particulars on XXXX (after he had started a complaint with them). They ultimately did meet with Mr A and reamended the Particulars on XXXX.

2.4. An email from the opponent to the court on XXXX shows the Reamended Particulars were not filed/served in time, and an application for Relief from Sanction had also been made.

2.5. The firm's response is that they did not serve the Particulars by the required date because the firm did not have fees on account to undertake the work, and this was made known to Mr A. They say withholding services for non-payment of fees is a legitimate and reasonable reason.

2.6. I accept that a firm can refuse to complete further work if fees are unpaid, but I do not see that is what happened here. The firm did not inform Mr A that was their position until after the deadline for service had passed. They simply did not complete the work that was expected. When they were challenged about this, they then completed the work without receiving further payment.

2.7. Had the firm informed Mr A prior to XXXX that they were consciously not undertaking further work due to unpaid fees, their position may have been reasonable. That is not what happened. This is a justification only provided after the fact and undermined by the actions the firm did take at the time. It would be an arbitrary line to be drawn when, on the firm's account, they had already allowed a deficit of £24,040 in fees to accrue without challenge or warning to Mr A.

2.8. I consider Mr A reasonably expected the firm to complete this work at the time. The firm did not, and they did not raise any issue with them completing the work until the deadline for service had passed. I find their service was unreasonable.

3. The firm failed to properly prepare the bundle for the hearing on XXXX, so the hearing was adjourned to XXXX.

3.1. This heading places the reason for the adjournment at the feet of the firm and their actions in relation to the bundle.

3.2. The Minute of Order from the XXXX hearing does not support this.

3.3. While it does record in the recitals that: *the court being advised that certain documents remain undisclosed to the Court,* it goes on to give an action the defendant had to take (to allow Mr A access to inspect the property).

3.4. Costs were also reserved to be dealt with at a later date.

3.5. This does not say Mr A (or the firm on behalf of Mr A) was responsible for the adjournment. There was no cost sanction, and the action that needed to happen was for the tenant to allow Mr A into the property. That was in line with the points he was raising in response to the counterclaim.

3.6. I also take into account a complaint response from the barrister instructed in this hearing. This records the barrister said she was not missing items from her bundle and the Court was minded to adjourn in order to obtain expert evidence and an inspection of the premises regardless of any application made.

3.7. Together, I find this shows the firm's preparation of the bundle for this hearing was reasonable, and their poor service did not cause the hearing to be adjourned.

3.8. In his response, Mr A says his query about the insufficient documents remains outstanding. He says if the parties were not ready for trial, then he should have paid for 1 hour, not 1 day. He says he believes the adjournment was due to issues with the inventory.

3.9. I take this response into account but do not find it changes my view. The document error was on behalf of the other side. This is explained in the barrister's complaint response. The question of costs of this hearing specifically is not part of this complaint heading, and overall costs are dealt with elsewhere.

3.10. I find the firm's service was reasonable here.

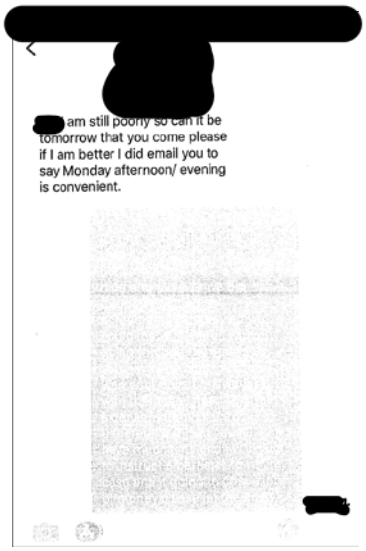
4. The firm then failed to properly prepare the bundles for the adjourned hearing on XXXX, resulting in another adjournment.

4.1. The Investigator found the bundle prepared by the firm was unreasonable and likely contributed to the adjournment of this hearing. In the bundle, he has included representative examples of illegible photocopies of text chats and photos from the 545-page bundle submitted.

4.2. The Minute of Order from the XXXX hearing does record additional work was required on the bundle for the next hearing:

> *A streamlined and agreed bundle (to avoid duplication) should be filed at court and served on the Defendant no later than 7 days before Trial. The bundle should be paginated numerically and not by way of alphabetical sections.*

4.3. I do find this shows the bundle was not satisfactory, and I combine this with the objective review of some photocopies which were within the bundle and carried little evidential benefit to say the firm's preparation of the bundle was unreasonable. To make this point, the following has a message on the right-hand side:



4.4. I do not, however, find this was the sole (or main) cause of the adjournment. The Minute of Order shows that the Court decided the time estimate was insufficient and that the claim should be reallocated to the Multi-Track. That is not directly relevant to the quality of the bundle.

4.5. Although the bundle may have needed to be relabelled and documents re-copied, Mr A had agreed and contributed to its contents, and so the fact the time estimate was insufficient was a product of the information Mr A provided.

4.6. I, therefore, find the firm's service was unreasonable, but the impact was not that their actions were the sole cause of the adjournment. This would have happened even if their service had been reasonable.

4.7. The firm, in their response, wishes it recorded that Mr A provided the non-compliant expert report only on XXXX and also raise the Order states the adjournment was due to the volume of documentation and number of issues in dispute.

4.8. I recognise these points but do not find they impact what I find the poor service to be (indeed I myself raised the point regarding the reallocation of the claim). I find the firm's service was unreasonable, but the detriment is limited as discussed above.

5. The firm took around £10,000 in fees, claimed that money was owed, but didn't issue proper invoices or give clear information about costs during instruction.

5.1. The Investigator discussed five elements relevant to this heading overall. These were:

- Cost information provided by the firm at the outset
- Cash payments and bank transfers made by Mr A
- The firm's invoices
- Disagreement about costs from XXXX to XXXX
- The meeting between the firm and Mr A on XXXX

5.2. I agree that these are relevant areas that require comment. A firm should provide reasonable cost information at the outset (and as the matter progresses), they should accurately account for payments made, they should invoice appropriately, and they should deal with disagreements reasonably.

5.3. The Investigator found the firm's service to be unreasonable here. I will not repeat those conclusions at length as I will give my own view.

5.4. The firm gives a brief response. They say the Investigator's findings and inferences are disputed, implausible and unreasonable. They say that for each finding, there is an alternative and plausible explanation. They say the

Investigator is assuming the role of a costs judge, and that all invoices were sent to the client. They say Mr A is choosing to deny knowledge for self-serving interests.

5.5. I take account of this response. Before continuing, I make the following observations:

- It is for a complaint to be determined 'on the balance of probabilities', not 'beyond reasonable doubt'. That an alternative, possibly plausible explanation exists does not mean the Investigator could not make the decision he did.
- It is within the powers of the Legal Ombudsman to determine complaints about costs. While this is not a detailed cost assessment, providing reasonable cost information and cost service is within the Jurisdiction of the Ombudsman. Indeed, in the *Belsner v CAM Legal Service Limited [2022] EWCA Civ 1387* judgment, the Master of the Rolls observed: "*The Legal Ombudsman scheme would be a cheaper and more effective method of querying solicitors' bills in these circumstances".* Querying solicitors' bills does form part of the Legal Ombudsman's powers.
- The firm repeats that all bills were sent. However, they have had the Investigator's decision (which effectively disputed this) but have provided no further evidence (such as emails they were attached to, nor any mention of them from the relevant time) to support this. The firm's statement is evidence itself, and I take this into account. However, I must decide what weight to place on all relevant evidence. I will discuss that below.
- Finally, I recognise the additional disbursements invoice provided, which shows £3,600 in total has been paid to the barrister.

<u>Cost information provided at the outset</u>

5.6. There is no evidence that an overall cost estimate was given at the outset. The information recorded in the Client Care Letter is £600 plus VAT for a Witness Statement and bundle, £300 plus for representation in XXXX, and any further work would be charged at £146 plus VAT per hour. This is also all that is recorded in the hand-written notes.

5.7. This means Mr A was never in a position to understand the full potential liability for costs he faced.

5.8. There is also no mention of alternative methods of funding. This is important and forms part of a reasonable service. It is not acting in a client's best

interests, and it is not taking account of their needs and circumstances to continue on a private paying basis if other funding methods were available.

5.9. The only discussion is contained in an internal email of XXXX: *"He will be cared for by one of his relatives, with regards to legal costs".*

5.10. Later (on XXXX, Mr A raised the possibility that he may have insurance coverage and asked the firm about this. The firm said they could not act under such a policy as they held insufficient indemnity cover and were not on the insurer's panel. They said they could not deal with the case if it was funded by insurance. The firm also pointed to the client care letter and attendance note to show he was advised of alternative ways of funding his case.

5.11. I do not agree that the client care letter and attendance note show this. Further, that Mr A was raising this nine months into the firm's instruction (and believed it would help him), shows it was not discussed earlier. If Mr A had been aware of this and discounted it at the outset, why would he raise this again?

5.12. Between the information which is available and the inferences drawn from this exchange I find the firm's initial cost information was severely lacking and that Mr A was not in a position to make a fair decision about how to progress with the firm's service. The firm's service was unreasonable.

Cash payments and bank transfers made by Mr A

5.13. There is evidence Mr A made payments directly to the firm, and bank accounts on behalf of the firm. £1,000 in cash was discussed in XXXX, but no receipt was provided. £2,400 is also evidenced through a bank statement that was sent to the name of the fee earner at the firm in XXXX.

5.14. This again was not accounted for by the firm, although (and I will go on to discuss this) these payments were ultimately acknowledged by the firm in the meeting of XXXX.

5.15. Although disputing this finding in general terms, the firm has provided no evidence, such as their client account ledger, to establish what has been paid by Mr A. I find that responsibility lies with the firm (they are the professionals here). The lack of clarity over the funds paid by Mr A is unreasonable, and that is due to the poor service of the firm.

The firm's invoices

5.16. There are two disputed invoices from the firm (disputed in so much as Mr A's position is that they were never sent and are retrospectively created).

5.17. The first is dated XX October XXXX and is for £11,457.30 plus VAT (£13,748.76). It is also noted that this gives the hourly rate of £177, which is different from the client care letter, and there is no evidence that Mr A was informed of this.

5.18. The second is XX March XXXX (the invoice itself contains an error on its first page and states XXXX). This is for £3,954.90 plus VAT (£4,745.88). It again states the hourly rate is £177. It also says the balance of the previous invoice (from six months prior) is unpaid and brought forward, but then says £2,673.84 has been written off as a goodwill gesture. This gave a balance of £15,820.80 inclusive of VAT owed:

	£	VAT amount £	VAT rate %
Total	£4,745.88		
Balance brough forward from invoice dated 30[redacted]	(£13,748.76)		
Amount written off as a goodwill gesture	£2673.84		
Balance due	£15,820.80		

5.19. £15,820.80 inclusive of VAT is equivalent to £13,184 plus VAT.

5.20. There is no other invoice. There are only the N260 Statement of Costs documents (which the firm prepared for Court). One dated XX November XXXX and one dated XX April XXXX, i.e., one day after the XX March invoice, which gives the total costs incurred, including third-party costs and VAT, as £24,040.

5.21. I read this later statement as saying the firm's costs were £16,470 plus VAT, barrister fees as being £3,600 + £780 = £4,380 (that figure already includes VAT), and other expenses of £310. That does equal £21,160, which matches the statement, although the VAT figure claimed is incorrect (as VAT is already contained in Counsel's fees, and VAT on the whole of the firm's fees works out at more than quoted).

5.22. VAT of £2,880 would mean fees of £14,400. As far as I can see, that number does not match any figure quoted in the documentation. It is the same VAT amount as the 23 November XXXX Statement, so it may not have been updated in error.

5.23. I do not need to resolve this disagreement for the purpose of this decision; I have simply worked through the figures. When it came to it in April XXXX, the firm did say that Mr A owed unpaid fees of £24,040. That claim would mean Mr A had paid nothing towards barrister costs.

5.24. The invoices are concerning. They contain several errors, such as the March XXXX invoice being incorrectly dated, incorrect(?) hourly rates being used, and many unedited prompts (which are exactly the same in invoices issued six months apart) – it is questionable that such errors had not been recognised within six months, Mr A's first name is spelt incorrectly on both, and his address is also incorrect (and the same) on both. This is despite these details being correct on the Client Care Letter, implying this is not a copying error from the firm's systems.

5.25. The unedited prompts are as follows:

> We are committed to providing high quality legal advice and client care. If you are unhappy about our bill, please contact [*insert name or role, eg our Complaints Partner*] on [*insert phone number and email*] or by post to [*state address*]. We have a written procedure that sets out how we handle complaints. It is available at [*state how to obtain it*].

> Bills should be paid within one month. We may charge interest on overdue bills at [*insert rate*]%.

5.26. Mr A says these were not sent to him at the time. The firm says he is choosing to deny knowledge for self-serving interests. I find, on the balance of probabilities, that they were not sent at the time.

5.27. I say this because they are not mentioned in any correspondence of the time. From October XXXX, Mr A allegedly owed the firm £13,000 and had been told this had to be paid within a month or interest could be charged. This was never raised. The firm has also now received this finding and has had the chance to provide further evidence but has not done so. No email where an invoice was sent, no email where it was discussed at the time.

5.28. These elements together lead me to find that the invoices were not sent, and the firm's service in relation to the invoices (and thus keeping Mr A informed of how costs were increasing as the matter progressed) was unreasonable. Mr A says he was asked to pay for the barrister in XXXX (which he did)

but received no other information. I accept that position.

5.29. I also find the information contained within the invoices to be lacking, and there is no justification provided for the full amount claimed from Mr A (the £16,470 plus VAT contained on the statement of costs).

5.30. The firm's service was unreasonable here.

Disagreement about costs from March to July XXXX

5.31. The first confirmed mention of costs is in a meeting note of XXXX. In this note, the firm told Mr A his statement of costs was about £17,000. Mr A challenged whether £17,000 of work had been done.

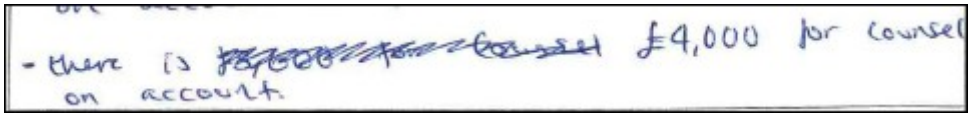
5.32. On XXXX, Mr A asked about insurance funding. The firm said this was not possible (discussed above). They explained Mr A had paid nothing towards their fees and all payments that had been made (so some were acknowledged) had been disbursements – court fees and third-party costs. The firm told Mr A they had been generous in allowing non- payment of their costs. It ends by saying that payment of their costs is unresolved.

5.33. Mr A then complained on XX April. He said that, in total, he had paid £5,200 to the firm.

5.34. My colleague quoted an undated reply and said it must be part of an email sent between XX and XXXX at this point. Having reviewed this myself, it appears to be the second half of an email sent by the firm on XXXX, 5:11pm. I will, therefore, discuss that email in its correct place.

5.35. The firm responded to the complaint on XX April. This did not address costs or the £5,200 Mr A said he had paid to the firm.

5.36. I can then see a meeting from XXXX, which appears to be the last contact with the initial fee earner. In this note, it is recorded that there is £4,000 on account:



5.37. On XXXX, Mr A contacted the firm as he had found out he needed a new case handler and needed to book a barrister.

5.38. The Principal Solicitor responded and took over the conduct of the file. Barrister fees were quoted, but the firm said they would need the necessary funds on account. This does not match the file note from June. If there was £4,000 on account, this would have covered the fees quoted.

5.39. Following the exchange about barristers for the upcoming hearing, the firm again explained why they could not work under insurance funding:

> *Whilst you have belatedly instructed us of the existence of the landlord's legal expenses insurance. However, we agreed with you, at the outset, that you will be funding this matter on a privately paying basis […] This is notwithstanding it is the policy of this firm to undertake privately funded work only and that the hourly rates payable under the landlord's legal expenses insurance policy are well below the minimum hourly rate for our junior fee earners, let alone solicitors. From a commercial standpoint and for the reasons set out hereto, we can only continue to act for you on a private paying basis alone.*

5.40. This does not address the point that Mr A should have been able to make this decision at the outset, and while the firm may consider it is not commercially viable, Mr A did not have to use the firm. Mr A's agreeing to pay privately when unaware of alternatives is not enough.

5.41. Mr A responded by saying he had already overpaid, and the firm responded by saying £24,040 was owed: "*You have unpaid fees owed to this firm which stand at £24,040 inclusive of VAT for litigating this matter on your behalf up to the hearing the last hearing on XXXX. We note you have made some small payments towards barrister fees for hearings on an ad-hoc basis"*.

5.42. This does not appear accurate as the £24,040 from the statement of costs includes barrister costs, which Mr A had paid, at the very least. At this point, the firm stated that Mr A needed to make a significant contribution to their costs. There appears to be confusion over exactly what Mr A had already paid when the Principal Solicitor took over the file, and the correspondence became very abrupt.

5.43. Mr A said he did not owe £24,000 in response and raised he had paid £1,000 and other cash payments as well as bank transfers of £2,400 and £300. Mr A has not evidenced other cash payments.

5.44. The firm responded, saying all payments made would be offset against the amount owed and asked Mr A to provide details of those payments. This demonstrates to me that the firm's record-keeping was unreasonable, and they themselves did not have a clear record of the payments made.

5.45. The firm then met with Mr A on XXXX (dealt with next), which was the end of their service.

5.46. Finally, there is then an unsigned/undated possibly draft agreement referring to current costs being '*£17k excluding barrister fees'*. It also records that *'client has paid about 2k'*. There is no evidence this was presented to or agreed upon by Mr A. This may have been a note of the firm regarding the XXXX meeting.

5.47. Considering this discussion, I find the firm's approach to be unreasonable and confrontational. They did not have clear records of what Mr A had paid and did not address his concerns about this in their response of XX April. I consider this demonstrates that their cost information and claims of what was owed were unclear and inaccurate. I find this builds the picture that the firm's service was unreasonable.

The meeting between the firm and Mr A on XXXX

5.48. As discussed in the introduction, Mr A has submitted a partial recording of this meeting, taken without the knowledge of the firm. I also explained I can accept this as evidence, even if it may be inadmissible in Court proceedings. I must then decide what weight to give it (including the fact that it does not record the end of the meeting where an alleged altercation took place).

5.49. That altercation allegedly took place between the principal solicitor of the firm and a relative of Mr A. The recording covers the detailed discussion with Mr A about costs, and I consider it addresses what is relevant for this investigation. If the firm considers a criminal act has taken place, they should report this to the police.

5.50. Turning to the recording itself, it reflects that Mr A wanted to use his legal expenses insurance, however, the firm was not in a position to act for

him if that was the case, and the process of obtaining this and switching to it would delay the case. That simply shows me this had not been fully explored at the outset, considering how insistent Mr A was that this should be used.

5.51. It also demonstrates that the firm's charges and record-keeping were not clear. The fee earner who had been working on behalf of Mr A was not currently working, and the firm did not have a clear record of what Mr A had paid. They were asking him to explain what he had paid and this became quite heated. Mr A was unclear about what had been paid for fees of the firm, what had been paid for others, and what had been achieved for that money.

5.52. Mr A is the lay client in these circumstances. If he did not understand (and if I find that to be reasonable), that is a failing of the firm.

5.53. In the meeting, the firm also mentioned that all of their fees may not be payable and that they could come to an arrangement (but not for barrister fees). This does strike me as the £24,000 was only a starting point, and a 'deal' (or 'compromise') could have been reached, but tempers flared.

5.54. I consider that to be the responsibility of the firm. They went into the meeting not understanding fully understanding what had been billed/paid and were asking Mr A to justify this in the moment. Mr A wanted to gain funding through an insurance policy but was being told repeatedly why this was not possible through the firm and was being questioned forcefully to justify payments he had made.

5.55. Those heated conversations were, in my view, caused by the poor service of the firm. They had not properly addressed insurance funding at the outset, they had not kept Mr A reasonably informed about escalating costs, and they had not kept clear records of what had been paid. The £24,000 figure that the firm repeatedly returned to appears to be inaccurate, at least as far as it includes barrister costs, which had been paid, and other firm costs above the £15,820.80 costs due on XX March XXXX, which have never been invoiced.

5.56. The firm's cost information, cost updates, and cost records are poor and greatly contributed to the frustrations in this meeting.

5.57. I appreciate that none of the people representing the firm at this meeting had been Mr A's case handler, and the poor record-keeping may have been on behalf of that member of staff, but Mr A instructed the firm.

The firm is responsible for the actions of its staff, and the raised voices and frustrations evident in this meeting were caused by the poor service of the firm.

Conclusion on Complaint 5

5.58. Mr A has not directly evidenced that he paid £10,000 to the firm. He has shown that he paid £1,000 in cash and £2,400 by bank transfer, and a total of £5,200 appears to be discussed in the recording of the meeting. I also recognise £4,000 being on account in XXXX, which is recorded in the XXXX attendance note but not then discussed when the file handler changed.

5.59. This shouldn't be a guessing game, but it is made so because the firm has not maintained accurate records.

5.60. The firm has unreasonably claimed money is owed, and even their final demand of £24,040 appears incorrect as it includes barrister fees, which were paid, costs which have not been invoiced, and there are discrepancies in the VAT claimed.

5.61. I question whether the invoices were sent at the time, and the evidence does not support that they were. There are also questions about the hourly rates used. Mr A was not informed they had increased from those quoted in the Client Care Letter.

5.62. The firm also provided unclear cost information at the start and throughout about alternative methods of funding. They appear to have said they would act under a private payment method and have not discussed alternatives (which were available as evidenced by Mr A's actions later). They have then rejected this later as not viable for them and required Mr A to continue paying privately.

5.63. Finally, the records of payments made, and money owed are unreliable/non-existent. In the final meeting with Mr A, the firm asked him to justify the payments that had been made and tried to debate this on the fly, which made the meeting more confrontational than it needed to be. They have not been able to provide a clear answer to this to the Legal Ombudsman, and disagreements remain, which I must now try to navigate on incomplete information.

5.64. Mr A was never in a position to know how much the firm's fees would be, or how they were increasing as the firm acted. He was not informed of alternatives which were available, and the firm's ultimate demand is incorrect.

Their failure to keep records of payments has meant Mr A has been placed on Mr A to evidence and has also directly contributed to the challenging meeting on XXXX.

5.65. The firm's service was poor here. I will discuss the impact and recommended remedy at the end of this decision.

6. The firm failed to answer Mr A's complaint of XX April XXXX.

6.1. The firm provided a response to Mr A's complaint in a letter of XX April XXXX (although Mr A says he did not receive it at the time and the firm only told him about owing £24,000).

6.2. The Investigator's view was that the firm did not answer all of Mr A's points of complaint (despite summarising them accurately) and did not follow the timeframes and steps in their complaint's procedure. It did not, for instance, offer a review of the decision.

6.3. The firm says a response was provided to the client, but he is choosing to deny knowledge of it. They say under Legal Ombudsman Scheme Rule 5.3a, a firm has 8 weeks to respond.

6.4. Dealing first with Scheme Rule 5.3, this says that unless a service provider has had 8 weeks to respond at the point the complaint is first referred to the Legal Ombudsman, the Legal Ombudsman will refer the complaint back to the service provider.

6.5. This is because of Scheme Rules 4.1 and 4.2, which are time limits. They say the Legal Ombudsman cannot accept a complaint for investigation unless a complaint has been made to the service provider and at least 8 weeks have passed (with some exceptions given).

6.6. These are time limits for the Legal Ombudsman; they are not standards of service applied to service providers. Where a service provider has a complaints procedure, they should follow it. If they do not follow their own complaints procedure, their service may be unreasonable.

6.7. The firm's complaints procedure is contained within the evidence bundle. In making this decision, I reviewed the website myself, and the policy was the same. It contained outdated references to the Office of the Legal Services Ombudsman, which was abolished in 2011. I passed this on to a colleague who contacted the firm, and this has now been updated. The initial steps, however, remain.

6.8. Even accepting the complaint response was completed at the time, I do not consider it a reasonable answer to Mr A's full complaint. It does not address the quality of the bundle despite summarising this at the outset, for instance. It also does not offer any further review in line with the firm's policy and only provides the contact details of the Legal Ombudsman.

6.9. A meeting was held to discuss Mr A's concerns and the fees owed, but this took place on XXXX, three months later. And there was no confirmation of the result of that meeting if the firm considered it was a further independent review (which it could not have been as the Principal Solicitor who had answered the complaint initially was in attendance).

6.10. While I accept actions were taken in relation to the complaint and Mr A's concerns, I do not find this amounts to providing a full answer to Mr A's complaint, and the firm's service was therefore unreasonable.

Remedy

R 1. I find the firm's service was reasonable in relation to complaints 1 and 3, and unreasonable in relation to complaints 2, 4, 5 and 6. Overall, the firm's service was unreasonable.

R 2. The firm failed to serve reamended and updated Particulars in time in XXXX. They did not confirm their position on this nor confirm their instructions (while remaining on record) until after the deadline had passed. Their preparation of the bundle for the XXXX hearing was also unreasonable, although I do not find this was the direct cause of the adjournment. The firm also failed to answer Mr A's complaint reasonably.

R 3. However, the most significant concerns are in relation to costs and cost information. I have summarised my conclusions above, and so do not repeat them here, but I wish to be clear that I consider the failings in relation to costs to be severe.

R 4. When considering remedies, I can, in general terms, do four things. First, award losses caused; second, direct a remedy in relation to fees charged; third, direct a firm to take a specific action; and finally, direct a payment for avoidable emotional distress/inconvenience caused.

R 5. In relation to losses, I do not see there are losses. Mr A ultimately obtained possession, and I do not find the firm's advice about the pleadings

incorrect, nor did I find that their actions were directly responsible for adjournments.

R 6. In his response, Mr A argues there is a loss (of £27,000), which is the estimated repair of the damage to the property. He says the firm was aware of the position with the tenant and that he had a low income.

R 7. I acknowledge these points, but I do not find that the firm is responsible for the damage to the property. They are also not responsible for the time it took to gain possession. I, therefore, do not award this loss.

R 8. In relation to the fees charged, I do find a remedy is required. First, I note that the barristers have been paid:

Date	Description	Amount	Vat%	Vat
[redacted]	Amended Particulars of Claim	£500.00	20.0%	£100.00
[redacted]	ayment from No.2 Account paid direct to Counsel's bank account by BACS	£-500.00	20.0%	£-100.00

Date	Description	Amount	Vat%	Vat
[redacted]	Brief listed for trial	£1,750.00	20.0%	£350.00
[redacted]	Brief listed for trial	£1,250.00	20.0%	£250.00
[redacted]	Payment by BACS	£-3,000.00	20.0%	£-600.00

R 9. This does not quite match what is recorded on the second Statement of Costs – and this just adds to my picture that this is not a statement which can be relied on absolutely – but it is sufficient for me to say these costs have been paid by Mr A:

Counsel's fees *(name) (year of call)*	[redacted]	
Fee for [advice/conference/documents]	£	780.00
Fee for hearing	£	3,600.00

R 10. This also demonstrates that the £4,000 said to be on account in XXXX is in excess of the disbursements Mr A needed to pay at that point (as the first barrister had been paid in XXXX). That is to say, there are payments that have been made to the firm for their costs (although the exact amount is not proven due to the discrepancies discussed, and that is due to the firm's unreasonable record keeping).

R 11. The Investigator's proposed remedy was for the firm to waive all unpaid and outstanding costs. This was because the firm had allowed costs to reach extremely high levels without asking for payment and without saying that Mr A was responsible for them until the complaint was made, that the firm's records are unreliable and that there was clear evidence that appropriate cost information was not given.

R 12. He recognised the firm did spend time on the matter, but he was unable to say if that was all necessary on the information available. He found that some of the work that was completed was not up to a reasonable standard. He finally noted that the firm took payments but did not keep a record of them, so there was no way of knowing accurately what these were.

R 13. He did not find that the firm should refund any money already paid, but due to the very severe failures identified overall, he considered the money paid to date should stand, and the firm should waive any fees above this.

R 14. The firm makes no specific argument against this outside of saying the Investigator should not act as a costs judge.

R 15. This decision is within the scope of the Legal Ombudsman's powers. I extend the investigator's reasoning by including that if the firm had given more attention to possible insurance coverage at the outset, Mr A might have been able to progress his case without paying privately at all. This may well not have been with the firm if they could not accept the insurer's terms, but it was not a requirement that the firm represent Mr A. He should have been able to explore this with much less urgency earlier.

R 16. I also reflect on comments made by the firm in the recording that once disbursements were paid, their fees were very much up for discussion. There is a lack of clarity throughout.

R 17. I, therefore, do find a waiver of outstanding costs to be appropriate. That is possibly the situation Mr A would have been in had the firm's service been reasonable. Mr A may never have had to pay privately, and then when he did, he was not informed what the overall costs might be, nor what they were as they were incurred. The demands from the firm are, as far as I can see, inaccurate, and I do not rely on them.

R 18. I am satisfied that Mr A has paid the disbursements and that the firm is not out of pocket, and so in recognition of the uncertainty that remains, I find a direction that any outstanding unpaid fees be waived is a suitable and enforceable outcome.

R 19. This would appear to have an approximate value of £16,470 plus VAT for recording purposes, although there are also issues with those numbers on the second Statement of Costs. This includes the fact that Mr A has never received an invoice for costs above £15,820.80, including VAT/£13,184 plus VAT, which is where the invoice for XX March XXXX ended.

R 20. I do not, however, consider there is a definitive answer as the figures are not consistent, and the amount Mr A has paid to the firm is uncertain.

R 21. As the firm is no longer acting, there is no action they could take; however, I do find these issues have caused distress and concern to Mr A beyond what is resolved by a remedy in relation to fees.

R 22. The Investigator's proposed payment was £500. This is a 'significant' payment under our guidance which reflects if there has been a serious but not permanent impact on the customer. I find that is an appropriate reflection of the failings here.

R 23. I do not consider a higher amount appropriate, and the firm was not at fault for the delays in the claim nor the damages to the property. The very severe impacts of the poor cost service are also mitigated by the remedy directed in relation to those failings.

R 24. I do not consider a lower amount to be appropriate because, while resolved, those failings have impacted Mr A for some time, and there are failures beyond cost information.

R 25. I, therefore, also direct a further payment of £500 in recognition of the emotional distress caused to Mr A.

Therefore, my final decision is that there has been unreasonable service that requires a remedy and direct that the firm:

- **Waive all outstanding unpaid costs (by way of a credit note confirming no costs remain to be paid) in the matter.**
- **Pay Mr A £500.**