
Final Decision

Date 24 February 2025

The background to the case is that Mr. A instructed Curtis Law LLP ('the firm') in January 2012 to act on his behalf in the purchase of a 3 bedroomed maisonette which occupied the ground floor and first floor of a three-storey dwelling. The transaction was completed later in 2012.

Mr A has complained that the firm failed to identify or advise during the retainer that the property did not have the relevant planning permission or building regulations certificates for the conversion of the maisonette to a single dwelling in what had formerly been two self-contained flats.

The investigator upheld the complaint and found that the service provided by the firm was unreasonable. Further, the failings were detrimental to Mr A and resulted in financial loss and inconvenience. They proposed compensation for financial loss and the emotional impact as follows:-

- £13,964.61 for the financial loss being the costs associated with work carried out on the property to sell it and legal fees to rectify the position; and
- £500 compensation for the stress, anxiety and uncertainty caused by the firm's service failings.

Total £14,464.61.

Mr A has accepted the conclusions in the Case Decision. The firm has not accepted the findings and has provided their response by email dated 20 December 2024. They have asked whether Mr A should share a proportion of the responsibility for the issues with the purchase and have challenged the proposed remedy. The comments are noted and addressed in my decision where relevant.

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.

Turning to the complaint:-

1. The firm did not identify that the property did not have any planning permission or building regulations certificates.

- 1.1. Mr A says that in 2012 he understood that he had purchased a three-bedroomed maisonette, with relevant planning permission and building regulations. When he came to sell the property in January 2022, he became aware the property had originally been two separate flats which were converted into a maisonette. This was done without the requisite planning permissions and/or building regulations.
- 1.2. Mr A could not sell the property before having remedial work undertaken to obtain building regulations.
- 1.3. The firm was retained to act in the purchase in 2012 for its professional skill, expertise and experience. As a reasonable service, the firm having made all standard searches and following their review of the information would be required to raise and pursue appropriate enquiries with the seller and their solicitor concerning the property. In the absence of a satisfactory response, the firm would be required to either raise further enquiries or to have advised Mr A of any issues affecting the property, such as a lack of planning permission or the lack of building regulation consent before the exchange of contracts.
- 1.4. The firm was aware that the property being purchased was a three-bedroomed maisonette. I have seen from the evidence the firm obtained searches and correspondence on file shows the following documents were made available to the firm during the transaction:
 - Property information form completed by the seller stating no works/conversion had been undertaken, even though it now appears that there had.
 - The firm's letter dated 6 February 2012, which raised enquiries with the seller's solicitor which included whether the seller had recently converted the property into 2 units. They asked for the relevant planning permission and building regulations consent authorising the conversion
 - In response on 8 February the seller's solicitor, sent a Copy of the Certificate of Lawful Use dated XX October 2002 which states that the property has been arranged as three self-contained flats for a period in excess of four years. (The enquiry raised by the firm was not addressed).
 - The Local Authority search dated XX February 2012, has just one entry under Planning Register Entries. The entry dated XX October 2002 refers to three self-contained flats. Under Building regulation applications since 2000, none are recorded.

- 1.5. I find the firm's service fell below a standard that could be reasonably expected as the Local Authority Search and the Certificate of Existing Lawful Use dated XX October 2002, indicated that the only permission recorded was for three self-contained flats. The firm was on notice that the property had been converted from two flats to a single three-bedroom maisonette.
- 1.6. Although the firm raised an initial enquiry with the seller's solicitor asking about planning permission and building regulation and whether the property had been converted into two units (as opposed to the three in the searches).
- 1.7. In the absence of a response from the seller or evidence of either planning permission and/or building regulations for the conversion, the firm did not pursue this enquiry further. A point which appears to have been conceded by the firm in the comments in their email dated 15 July 2022, in which they say that they should have pursued the query over the conversion more closely and not simply relied on the Certificate of Lawful Use.
- 1.8. Further, in the absence of a response from the seller or evidence of planning permission or building regulations the firm should have advised Mr A of the issues with the property and his options at the time and I have seen no evidence that the firm did.
- 1.9. The firm in its response has asked if the disclosure of the "Certificate of Existing Lawful Use" to Mr A during the transaction should have prompted him to have made enquiries with them about the conversion. They have asked for consideration to be given to a share of the responsibility to be apportioned to Mr A.
- 1.10. The firm's comments are noted. Mr A understood from the sale particulars, the contract and his inspection of the property that he was buying a three bed-roomed maisonette. He was entitled to rely on the expertise of the firm to advise and raise any concerns about the property with him. In the absence of evidence of advice from the firm, I do not consider that disclosure of the single document amongst either a report and/or other searches, without specific advice on the firm would be sufficient to prompt him to raise further enquiries. Therefore, there is no apportionment of responsibility to Mr A.

Detriment

- 1.11. For the reasons outlined above, I find there were significant failings in the firm's service which have been detrimental to Mr A. If the firm had correctly

identified and followed up on the issues with the property during the purchase these could have been put to the seller who could have either paid for the rectification work or in the alternative Mr A could have withdrawn, either way, he would not have incurred the costs of rectification.

- 1.12. Mr A says that he was not aware of the issues until he came to sell the property in 2022. It is apparent that the property did not have the necessary Building Regulations and Mr A was required to undertake the work before the requisite documentation could be obtained to enable the property to be sold. He has provided a letter from the Local Council Building Control dated XX April 2022, which lists requirements to be complied with to meet the building regulations.

Financial loss

- 1.13. The issue and the associated costs would not have been something Mr A would have incurred if the firm identified the issues with the property at the time of purchase. Having been required to have rectification work carried out Mr A has provided evidence of the costs he has incurred when carrying out the rectification work on the property as follows:-
- 1.14. He had to pay £490 to XXXXXX Council for a Lawful Development Certificate, evidenced by an email dated XX February 2022 from the council. This was a requirement of the rectification work to circumvent the lack of planning permission.
- 1.15. I have seen the letter dated XX February 2022 from the Council which shows that Mr A paid £1431.94 for a Building Regulations Certificate.
- 1.16. A letter from the Council dated April 2022 sets out specific work for fire safety and acoustics had to be completed to show compliance with Building Regulations. Also supported by an email from the Council dated XX July 2022 where they say work for acoustics and fire safety needs to be completed and that copies of certificates for electric, gas safe and EPCs for both the maisonette and the garden flat were required.
- 1.17. The cost of the fire door, electrical safety certificate, sound insulation testing and gas safety certificate were therefore required as part of the remedial work.
- 1.18. Mr A incurred costs of building work carried out by a third-party company (R). He has provided three invoices of £1,838.79, £4,359.18 and £260, which are also recoverable as a loss arising from the failure in service.

1.19. Third-party company for waste removal (W) dated XXAugust 2022 for £150. Mr A's email dated XXAugust 2022 says half of this cost was for rubbish being collected at his parent's house and that half of the costs included his fridge freezer and building waste. The waste removal would have been a service linked to the remedial work being carried out on the property. I have therefore directed that the sum of £37.50 for the waste removal.

Cost	Amount
• Lawful Development Certificate	£490
• Building Regulations	£1,431.94
• Fire door	£276
• R first bill	£1,838.19
• R second bill	£4,359.18
• R final bill	£260
• Waste removal	£37.50
• Electrical Safety Certificate	£380
• Sound Insulation Testing	£600
• Gas Safety Certificate	£96

Building rectification costs **£9,769 (inc VAT)**

Legal Fees

1.20. Mr A says that he incurred legal fees of £4,195.80 as he had to retain another firm (W) to help with the rectification work.

1.21. I refer to the client care letter from W dated XX June 2022 that showed they were instructed to contact the leaseholders of the garden flat for access to the property; to check to see what remedial work would need to be done to gain compliance with building regulations.

1.22. For this work, W invoiced Mr A as follows:-

4 July 2022	£1,296.00	inc VAT
20 July 2022	£2,899.80	inc VAT

Legal costs for the remedial work totalled £4,195.80 inc VAT.

1.23. I note W was also hired by Mr A to help complete the purchase of a new property and he has provided invoices. These are not included in the compensation as they do not relate to the remedial work and this is accepted.

- 1.24. The firm in their response has questioned the fees charged by the new firm and whether they should all be awarded. The firm has commented the work included having to engage with the leaseholder who did not reside at the property to obtain access. The firm is concerned that Mr A may not have mitigated his losses concerning these fees.
- 1.25. It is acknowledged that legal work included having to contact the leaseholders of the garden/basement flat to gain access. These fees are recoverable as access was required to enable the work to be undertaken. Mr A would not have been in the position have having to resolve the issue some 10 years on, but for the failings at the time of purchase.
- 1.26. The firm says that the invoices do not provide a summary of the work carried out, the time incurred or the fees charged for each task. The firm's comments are noted, however, within the evidence bundle, there is a breakdown of the time charged and work undertaken concerning each of the invoices provided.
- 1.27. I find the legal fees were appropriately incurred for the rectification of the issues with the property. Further, these are costs that Mr A would not have incurred but for the failure in the firm's service. Accordingly, I direct that this is a financial loss for which Mr A is entitled to be reimbursed.

Distress and inconvenience

- 1.28. Selling the property would have already been a stressful time and this would have proved to be even more difficult with the realisation that the property Mr A was attempting to sell would had a number of issues addressed before it could be sold.
- 1.29. Mr A upon attempting to sell his property was informed that he had not purchased what he thought he had and that to sell the property he would have to carry out substantial corrective work. I feel this would have had a significant. Our remedies guidance outlines our categories of compensation. The 'significant award' is made where there has been a serious, but not permanent effect on the customer. I therefore consider the sum of £500 would be fair compensation for the emotional impact and inconvenience.

Therefore, my final decision is that there has been unreasonable service that requires a remedy and directs that the firm pay.

- **£500 compensation for the stress and anxiety; and**
- **£13,964.61 for the financial loss**

Total payment, £14,464.61.