
Final Decision

28 January 2025

Introduction

I'd like to thank the parties for their responses to the Provisional Decision. With this Final Decision today I am bringing this case to a close.

Briefly, the background to this case is that Mr A was buying an investment property with the help of the Anthony & Jarvie ("the firm") when he fell victim to fraud and lost a significant sum of money.

We've investigated the following complaints:

- 1. The firm failed to take adequate steps to prevent their email account from being hacked**
- 2. The firm sent a non-secure PDF to him with their bank details which was intercepted and changed by scammers**
- 3. The firm failed to answer his calls or return his calls when he called them to check the new bank details provided and generally throughout the work**
- 4. The firm incorrectly sent him an email to confirm the altered bank details were correct**
- 5. The firm have failed to send him details of their professional indemnity insurers despite numerous requests**
- 6. The firm failed to respond to his letter of complaint dated XX October XXXX**

My colleague, XXXX investigated the complaint and sent the parties his Case Decision on 4 November 2024. He found the firm's service was unreasonable overall, finding in Mr A's favour on complaints 1, 5 and 6. He decided that the firm were the cause of most of the loss Mr A hasn't been able to recover and put forward a remedy of £45,147.70.

On considering the case myself, I agreed with my colleague's conclusions about service, finding that the firm didn't act reasonably on points 1, 5 and 6 and were ultimately responsible for financial losses suffered by Mr A. However, I issued a Provisional Decision because my view was that the remedy should be slightly lower.

XXXX had recommended reimbursement of a Land Transaction Tax ('LTT') payment which I didn't think was a separate loss.

Neither party accepted the Provisional Decision. Mr A explained why in his email dated 20 December. The firm responded with an email of their own dated 13 January 2025 which contained a few comments. In it, they said they were unsure whether a point by point response was required. It is up to the service provider in terms of how to respond. There is no prescribed format. I am satisfied the firm have been set a reasonable deadline and were aware that any comments they wanted me to consider needed to be submitted by then. As such, the case has been returned to me for a Final Decision, and it is fair for me to proceed with it now.

I should start by saying that I have decided the provisional conclusions should remain and have adopted them as my Final Decision. As with the Provisional Decision, I'll go through the complaints in turn and deal with comments about specific points as I go. The majority of the comments from Mr A are about the remedy, which I'll focus on at the end of the decision. Again, if any comment hasn't been directly addressed this does not mean it wasn't considered.

Conclusions

1. The firm failed to take adequate steps to prevent their email account from being hacked

- 1.1. In the Provisional Decision I agreed with my colleague and found the firm's service was unreasonable. This was because the available evidence shows, on balance, that the firm were hacked and that they did not have reasonable measures in place to protect against that or warn their clients about it.
- 1.2. Mr A hasn't made any significant comments about this. The firm have made some comments. The first is that it has not been established that their email account was hacked. They have provided an additional email from their IT provider which they argue shows the hack did not happen to them and that they took reasonable steps to respond to the incident at the time.
- 1.3. I have carefully considered the additional email from the IT provider dated XX November XXXX. It says they could not see any suspicious sign on attempts over the past week. I am not persuaded that this changes my conclusions. The IT company only commented on a limited time period and a sophisticated hacker might well have known how to avoid showing up in this type of check.

- 1.4. The key piece of evidence, replied on heavily on the Provisional Decision, is the email dated XXXX at 10:59am. This was an email from the firm's account which told Mr A the account details had changed. As I said in that decision, the only possibilities are that the firm were hacked, or the firm themselves decided to tell Mr A that their details had changed when they hadn't. The email refers to an account they knew was not theirs. No solicitor would have done that.
- 1.5. The firm has not engaged with or commented on this point in response. I have taken it that they don't have a rebuttal. I remind the firm that I am assessing the complaint on the balance of probabilities rather than requiring definitive proof. There is also evidence that the firm did not have the necessary IT protections in place, nor did they issue any warnings to Mr A about the dangers of cybercrime.
- 1.6. For these reasons and those given in the Provisional Decision I remain of the view that the firm's service fell below a reasonable standard on this complaint.

2. The firm sent a non-secure PDF to him with their bank details which was intercepted and changed by scammers

- 2.1. The provisional decision was that the firm's service was reasonable on this complaint because they did not send the PDF, this was done by the scammer.
- 2.2. There aren't any comments from the firm here. Mr A has made a comment. He says the firm did send a PDF with bank details, but it was intercepted by the hacker, and that the firm confirmed this by phone.
- 2.3. I do have attendance notes of calls between the firm and Mr A on XXXX, but they don't show the firm told him they had sent a PDF. This would have been unusual, as the firm did not change its actual bank details and there's nothing to suggest there were any plans to do so. We are an evidence-based organisation and the notes are the best available evidence here.
- 2.4. As such, I don't find that Mr A's comment changes my view. The firm acted reasonably in respect of complaint 2.

3. The firm failed to answer his calls or return his calls when he called them to check the new bank details provided and generally throughout the work

- 3.1. In the Provisional Decision I found the firm's service was reasonable because there wasn't enough evidence to support the complaint made.
- 3.2. Both parties have made some comments here. The firm has re-iterated that Mr A should not have made any payment when he could not get through to them. This is a repeat of comments previously made, which I have already considered. In my view, it is more relevant to the remedy awarded. This complaint is only about whether the firm acted reasonably in returning and answering calls, not about Mr A's actions when he made payment.
- 3.3. Mr A has said that on calling the firm, an automated system gives a list of options and on pressing a number he would be directed to the fee-earners line, but the call would not be answered. He says this is what his evidence shows and that he is unable to get hold of further evidence. He also says that if the firm had answered him the fraud could have been detected quicker, improving his chances of recovering the lost money. This latter comment is also more relevant to the remedy rather than the complaint at hand.
- 3.4. I appreciate what is being said about what would happen when Mr A called the firm. However, on XXXX one of the calls is shown on his undated phone bill as lasting 9 minutes, suggesting Mr A probably did get through. If he didn't, then the calls were made in very quick succession and very early in the working day. I don't know if Mr A was able to leave a message, but if not, I wouldn't reasonably expect the firm to have returned these calls straight away. It appears the firm were unavailable for a short period at the start of the day, but it doesn't show that Mr A could not get through for a longer period as he only made calls over the space of about 15 minutes.
- 3.5. As such, I am still of the view that the firm's service was reasonable here. In terms of the other aspect of the complaint about the retainer more broadly, Mr A hasn't commented on this or provided any further evidence so I remain of the same view and have taken it that he only wants to focus on the firm not calling back at the time he made the payment.

4. The firm incorrectly sent him an email to confirm the altered bank details were correct

- 4.1. The Provisional Decision found the firm's service was reasonable here for the same reason as complaint 2 – the scammer sent the email rather than the firm. Neither party has made any comments about this conclusion.

- 4.2. I remain of the same view. The firm's service was reasonable because they didn't send the email, the fraudster did. This was a consequence of the unreasonable service found at complaint 1 and is not a standalone service failing.

5. The firm have failed to send him details of their professional indemnity insurers despite numerous requests

- 5.1. I provisionally found the firm's service unreasonable on this complaint because they didn't respond to a reasonable request for their insurer's details.
- 5.2. Neither party has made any comments, and I am adopting that view as my Final Decision. There was no response to Mr A's email of XXXX so the firm's service was unreasonable for complaint 5.

6. The firm failed to respond to his letter of complaint dated XX October XXXX

- 6.1. I provisionally found that there was no response to the complaint Mr A made so the service was unreasonable. I remain of that view, and neither party has made any comments. The firm have not suggested they did reply to it, and the evidence is clear, as discussed in the Provisional Decision.
- 6.2. The service was unreasonable on complaint 6.

7. Remedy

- 7.1. In the Provisional Decision I put forward a remedy of £42,547.70. This was £2,600 less than the Case Decision because I did not make a separate award for lost LTT. I did however agree with all the other parts of the remedy my colleague recommended in the Case Decision.
- 7.2. Neither party has accepted my proposed remedy, and Mr A in particular has made a significant number of comments. The firm have also made a comment, which I will deal with first for convenience.
- 7.3. The firm have repeated that Mr A should have ensured he had spoken to the firm first and confirmed the details over the phone before making any payment. By extension, they argue that he bears responsibility for the loss.
- 7.4. I don't believe this comment raises anything new, and I addressed it in the Provisional Decision, particularly at paragraphs 7.5-7.8. I have little to add

to that, and don't accept that Mr A was responsible for the loss he suffered.

- 7.5. The first comment Mr A has made is that he does not understand the reduction of £22,000 that has been applied to the remedy, which he says forces him to pay £87,000 for the property when he actually paid less the second time round. He also says this allows the scammer to keep his money. He adds that price of the property on the first purchase was an overvalue, as shown by the lack of buyers at that price until he returned and bought it for much less a year later.
- 7.6. His second comment is that his loss on the first transaction, before considering any lost rent, time and stress, is £57,547.20. The third comment is that he would have received 26 months of rent at £600 per month had the first transaction completed. He adds that he has also lost rent on the second purchase/second property he planned to buy.
- 7.7. His fourth comment is that the emotional impact award seems 'incredibly low' and does not factor in time, loss of interest or loss of earnings. He asks if the award would be higher had he engaged his own legal representation.
- 7.8. The fifth comment is that LTT has not been refunded because the money recovered from one of the banks is in relation to the purchase price only. The sixth comment is that opportunity cost should not be ignored, because if he had not lost the money it would have been in an interest paying account instead.
- 7.9. The seventh comment is that the Legal Ombudsman's maximum award of £50,000 is illogical and makes no sense in the current environment. That said, he argues the award made should be for the maximum amount.
- 7.10. I remain of the view that I have calculated the remedy fairly. The most important consideration with financial loss remedies is whether the firm directly caused the loss. Another way to put this is to pose a question about what would have happened had the service been reasonable. When deciding on these things, the test is a balance of probabilities one, I need not be certain.
- 7.11. Here, all the evidence shows that Mr A was committed to buying the property at the higher price of £87,000 in XXXX. He was keen to complete for this amount because he tried to send the firm the money. Had the firm's service been reasonable, the hack would not have happened and Mr A would not have lost that money. He would however, on balance, have

completed the purchase for £87,000. That is why I consider it is fair to apply the deduction I have.

- 7.12. Comments about the true value of the property don't change my view. It was not the firm's role to advise Mr A what he should pay for it, or to prevent him from entering into a bad bargain and overpaying. The fact is that Mr A would not have paid £65,000 for the property had the service been reasonable, because there would have been no second transaction. He would not have had the chance to reflect on what he was prepared to pay and lower his offer accordingly.
- 7.13. I do not agree that this allows the scammer to keep the money. The scammer has the money regardless of what I decide in this decision. My role is to decide on the amount of financial loss the firm has caused Mr A, and I remain of the view that a £22,000 reduction from the total sum he did not recover from the banks is fair for the reasons given. This addresses the first and second comments Mr A has made about the remedy.
- 7.14. On the question of lost rent, I am still of the opinion that a fair approach is to award 10 months at £600. Had the service been reasonable, Mr A would have had the property 10 months sooner and, on balance, he would have received 10 additional months of rent. He has already received his rent from the date he actually did buy the property.
- 7.15. In terms of his view that he would have bought a second property and received rent on that had the firm's service been reasonable, I accept that is possible. However, the test here is a balance of probabilities one and I consider it too speculative to say it is more likely than not that this would have happened, or indeed what the market rent on this hypothetical second property would have been. As such, the third comment doesn't alter the overall remedy I am awarding.
- 7.16. Moving to the fourth comment, Mr A is welcome to his view about the emotional impact award being 'incredibly low'. However, this sum in fact sits at the very top end of the published guidance we have on these awards. It is at the top of the 'exceptional award' category. It is possible to depart upwards from this guidance, but we only do so in very exceptional circumstances. Mr A has not lost his liberty or been separated from family. He has also been awarded a remedy that puts him back in the position he would have been in had the poor service not occurred. The impact is not permanent or ongoing as a result, so I do not find a higher award is justified in this case.

- 7.17. Mr A has not evidenced any loss of earnings as a result of the firm's service and any such claim would likely be too speculative. The award does factor in the time he spent on the matter – it is a recognition of the impact caused both in terms of upset/stress and inconvenience. We do not approach these awards by trying to work out how much time was spent dealing with the problem and applying some sort of hourly rate to this.
- 7.18. There would not have been a higher award if Mr A had instructed a lawyer. He would either have done that to bring a legal claim, which would not have involved this office, or to have helped him bring the complaint to us. In the latter case, our scheme is designed to be informal and accessible to the public. Legal representation is not required, and reimbursement of legal costs is only awarded in exceptional circumstances, for example where the complainant was unable to bring the complaint without assistance due to a disability.
- 7.19. In support of this, I refer to Scheme Rule 5.39, which sets out that such awards are rare. Mr A has been able to navigate our process and argue his case without difficulty, so this is far from being a case where legal costs incurred in bringing the complaint would have been considered.
- 7.20. On the fifth comment, Mr A paid the full amount when he fell victim to fraud, this can be seen in his email of XXXX breaking down the figures. He paid stamp duty on the second purchase, but my calculation of the loss is based on the total sum he sent to the fraudster. My starting point, per paragraph 7.9 of the Provisional Decision, was £91,014. From that I have made various deductions including the purchase price difference and money that was recovered from the fraudster by the bank.
- 7.21. The figure left behind (£35,547.70), includes the payment for LTT that was made by Mr A as part of the £91,014 he transferred. There is therefore no separate loss in this respect to compensate him for.
- 7.22. Turning to the sixth comment, once again the right approach is to consider what would have happened had the service been reasonable. As explained, the likelihood is that Mr A would have bought the property in XXXX. That means he would have spent the £87,000 then. The money would not have been invested or used for some other purpose. Mr A would have had the asset he paid for. It is unfortunate that the property has now decreased in value, but that doesn't mean there is any financial loss here.
- 7.23. On the seventh comment, again Mr A is welcome to his personal view about the maximum award imposed on me by the Scheme Rules under which the Legal Ombudsman operates. The point is somewhat moot, and I

referred to this only to explain that I could not award the amount of loss Mr A believes he has suffered even if I agreed with him.

- 7.24. My actual view, as explained above, is that the loss suffered was £41,547.70, so the cap on awards does not come into play as I do not consider the loss to be £50,000.
- 7.25. To sum up, the firm did provide an unreasonable service and that unreasonable service, on balance, caused a serious financial loss to Mr A. I remain of the view that it is fair to direct the firm to reimburse him for that. I set out how I've calculated the remedy in the Provisional Decision and won't repeat that in detail. The award is made up of financial losses totalling £41,547.70 and a compensation payment for the upset and inconvenience caused of £1,000. That gives a total of £42,547.70.
- 7.26. I understand that Mr A disagrees with my calculations and feels the award should be higher. I have considered what he has said carefully but don't agree with him. I have a great deal of sympathy for what he has been through, and the fact he was about to significantly overpay for the property is another unfortunate aspect of this case, but it is an aspect which the firm are not responsible for.
- 7.27. By the same token, I acknowledge that the award is very large and will have a significant impact on the firm. They will naturally be disappointed with it, and I want to say again that I appreciate they were also the victim of a crime.
- 7.28. I hope Mr A and the firm can at least understand the reasons I've given even if neither party entirely agrees with them. To re-iterate, this is my Final Decision and it brings the investigation to a close. There is no further opportunity to argue or challenge the decision through this Scheme, and it is not capable of partial or piecemeal acceptance. If Mr A accepts the decision he cannot take further action against the firm in any other forum on the same facts.
- 7.29. My role is not to give Mr A legal advice. It is entirely his choice about whether to accept or reject the decision. I have directed a very large remedy here, and Mr A should be aware that if he chooses to reject this final outcome, the decision will not be binding on the firm and they will not have to pay him anything.

Therefore, my final decision is that there has been unreasonable service that requires a remedy. I direct the firm to pay Mr A £42,547.70. This is made up of:

- **£35,547.70 lost to the fraudster**
- **£6,000 in lost rent**
- **£1,000 to acknowledge the emotional impact and inconvenience suffered**