Final Decision

Date 10 July 2025

I issued a Provisional Decision in respect of Mr A's complaint on 18 June 2025 (a further copy of which is attached) as I had reached a different conclusion to that of my colleague. This was in respect of my colleague's conclusion on the firm's service relating to aspects of complaints 19 and 26. However, I agreed with the remedy recommended by my colleague.

It was only fair to allow both parties the opportunity to comment on my Provisional Decision and the conclusions that differed to that of my colleague before my decision became final.

To recap, the following complaints have been investigated by this office:

2. **The firm:**
    b. **Proceeded to trial though the LEI had not approved funding.**
    c. **Exceeded the LEI limit though Mr A told them not to.**
    d. **Failed to update Mr A, Mrs A and/or Ms C about costs and advise them the LEI limit had been reached to agree how funds beyond the limit would be covered.**
3. **The firm failed to help Mr A, Mrs A, or Ms C go through the bundle.**
4. **The firm's approach with the witness statements were wrong as:**
    a. **They asked Mr A to draft his witness statement himself; and**
    b. **They should not have submitted mirror statements, but instead one witness statement from Mr A, and two statements from Mrs A and Ms C stating they agreed with Mr A' statement.**
5. **The firm failed to tell Mr A they would not attend the trial.**
6. **The firm did not respond to the barrister or Mr A during the trial.**
7. **The firm failed to respond to JR's email of 19 November 2021 that was sent on Ms C's behalf.**
8. **The firm failed to advise on the prospects of success or to settle given the trial was to take place at short notice.**
10. **The firm failed to amend the following documents:**
    b. **The abstracted deed plans enlarged to assist reference of P to Q.**
11. **The firm failed to respond to the other side's letters from September 2022.**
12. **The firm failed to arrange a cost hearing for the adverse costs.**
15. **The firm failed to consider the barrister's opinion in 2020 that said the prospects of success were low.**

16. **The firm's view the claim had prospects of success from the outset and throughout was wrong.**
17. **The firm failed to tell the court the reason for requesting an adjournment was due to the firm not being prepared.**
18. **The firm didn't respond within a reasonable time to the email of 11 May at 20:01.**
19. **The firm failed to contact the chosen barrister (PP) within a reasonable time after finding out the date of the trial.**
21. **The firm failed to send the invoice by email to Mr A before sending a reminder by post, and then said the monies weren't due. The firm also failed to provide a breakdown of the costs.**
23. **The firm failed to explain the relevance of the following documents to the barrister in the brief:**
    a. **The property sale photograph of the north boundary;**
    b. **The photos of Ms C on the north boundary that showed the use of the land;**
    c. **The letter of 6 November 2017;**
    d. **The letter of 23 March 2018;**
    e. **The letter of 30 November 2018;**
    f. **The email of 21 March 2020 at 18:00; and**
    g. **The email of 25 March at 13:33.**
25. **The firm charged for dealing with the complaint.**
26. **The firm invoiced duplicate charges.**
27. **The firm paid the barrister a briefing fee though no brief was provided.**
28. **The firm did not advise about the option of After the Event ('ATE') insurance.**
30. **The firm failed to provide a brief to the barrister.**

I explained in my Provisional Decision why the firm's service was reasonable in respect of complaints 3, 4b, 5, 8, 15, 16, 18, 23a to g, 27 and 30, but unreasonable in respect of complaints 2b, 2c, 2d, 4a, 6, 7, 10b, 11, 12, 17, 19, 21, 25, 26 and 28.

I also explained why I am satisfied that the remedy recommended by my colleague totalling £34,817.85 is justified in the circumstances.

My Provisional Decision was accepted by Mr A during a call with my colleague on 18 June 2025. Whilst the firm accepted my conclusions on complaints 19 and 26, they challenged my conclusions on complaint 25 in their email of 26 June 2025. Further comments and evidence were submitted within the firm's email which I will address below.

I will point out, though, that having reviewed the matter again in light of the firm's comments and additional evidence, my view remains the same as set out in the

Provisional Decision. Therefore, the enclosed decision along with this letter forms part of my Final Decision.

I do not intend to repeat the contents of my Provisional Decision which now stands as my Final Decision along with this letter, as the background contained therein together with my conclusions on each complaint remains unchanged.

The purpose of this letter is to address the comments and evidence submitted by the firm, and to summarise my conclusions on each complaint.

Conclusions

2. The firm:

b. Proceeded to trial though the LEI had not approved funding.

2.1 In my Provisional Decision, I concluded that the evidence shows the firm failed to obtain prior authorisation from Mr A's Legal Expense Insurers ('LEI') for funding before proceeding to trial. The firm were aware of the trial date from XX April 2022 so ought to have requested authorisation from the LEI sooner than they did.

2.2 The firm accept the costs information that gave to Mr A should have been clearer, and I maintain that they denied him the opportunity to make a fully informed decision on how to proceed as a result. No further comments have been forthcoming in response to this issue, so my view remains as in my Provisional Decision. I conclude unreasonable service.

c. Exceeded the LEI limit though Mr A told them not to.

d. Failed to update Mr A, Mrs A and/or Ms C about costs and advise them the LEI limit had been reached to agree how funds beyond the limit would be covered.

2.3 I concluded within my Provisional Decision that although there is no evidence Mr A told the firm not to exceed the LEI limit of £50,000, there is evidence that he continually informed them that he couldn't fund the matter outside of the LEI limit.

2.4 On 5 May 2022, the firm ought to have reasonably known from the LEI's confirmation that they had authorised £34,312.35 up to that point, £31,054.27 of which had been billed, so there was £18,945.73 left. Despite this, the firm instructed a barrister whose fees were £20,000 plus VAT and expenses without Mr A's or his LEI's approval.

2.5 For these reasons, I concluded that the firm's service was unreasonable in relation to complaints 2c and 2d. I have not received any comments in response to these issues, so my view remains unchanged.

3. The firm failed to help Mr A, Mrs A, or Ms C go through the bundle.

3.1 I explained in my Provisional Decision why I had found the firm's service was reasonable here. That is because Mr A did not raise any concerns about the bundle or ask the firm to go through it with him. I would not have expected them to have gone through the bundle without being asked to do so.

3.2 Neither party has submitted any further comments on this complaint, so my view remains the same that the firm's service was reasonable.

4. The firm's approach with the witness statements were wrong as:

a. They asked Mr A to draft his witness statement himself

4.1 I concluded in my Provisional Decision that as this was a complex matter and Mr A had expressed how much he was struggling to write his witness statement and that of Mrs A and Ms C, the firm should have had more of an input. For these reasons, I concluded unreasonable service.

4.2 As no comments have been forthcoming from either party in respect of this issue, my view remains unchanged.

b. They should not have submitted mirror statements, but instead one witness statement from Mr A, and two statements from Mrs A and Ms C stating they agreed with Mr A' statement.

4.3 As pointed out in my Provisional Decision, there is nothing within the Civil Procedure Rules that says witness statements cannot be mirrored. I acknowledged the comments made by the judge but stated that there is nothing to say the outcome would have been any different. Mr A, Mrs A and Ms C were all able to provide oral evidence to support their position, but it's unfortunate the judge preferred the other side's version of events.

4.4 No further comments have been forthcoming from either party on this issue. My view, therefore, remains unchanged and I conclude that the firm's service was reasonable.

5. The firm failed to tell Mr A they would not attend the trial.

5.1 I concluded that the firm's service was reasonable in relation to this complaint within my Provisional Decision and I have not received any comments from either party in response. Therefore, my view remains unchanged.

5.2 The firm wished Mr A good luck and had instructed a barrister to represent him at the trial. The firm could have been clearer here, but it was enough to indicate that they wouldn't be attending, and we are looking for reasonable service, not a perfect one.

6. The firm did not respond to the barrister or Mr A during the trial.

6.1 My Provisional Decision concluded unreasonable service on this issue in respect of the firm not responding to the barrister during the trial. As no comments have been forthcoming from either party on this complaint, my view remains unchanged.

6.2 There is evidence that the firm left a voicemail for Mr A at 14:34 on XX June 2022 following his calls timed at 09:24 and 13:52. However, there is no evidence that the firm responded to the barrister's email timed at 09:37 requesting the title plans urgently. This is unreasonable.

7. The firm failed to respond to J's email of 19 November 2021 that was sent on Ms C's behalf.

7.1 The firm accept that they didn't respond to Mr J's email of 19 November 2021 that was sent on Ms C's behalf. I therefore concluded unreasonable service in my Provisional Decision. No comments have been received in response. My view remains unchanged.

8. The firm failed to advise on the prospects of success or to settle given the trial was to take place at short notice.

8.1 I concluded that the firm's service was reasonable in respect of this complaint in my Provisional Decision. I haven't received any comments from either party in response. My view, therefore, remains unchanged. The evidence shows that the firm advised both Mr A and his LEI throughout the matter on the prospects of success, and attempts had been made to negotiate a settlement without success.

10. The firm failed to amend the following documents:

b. The abstracted deed plans enlarged to assist reference of P to Q.

10.1 Within my Provisional Decision, I explained why I concluded unreasonable service here, and that's because Mr A specifically asked the firm to enlarge the image to help the judge during trial. The firm did not acknowledge this request or explain why they weren't going to do this.

10.2 The evidence shows that comments were made by the judge about the size of the plans, and whilst I cannot say this had any detrimental impact, Mr A had asked for these to be enlarged prior to the trial. Mr A foresaw this being an issue for the judge, hence why he had asked the firm to enlarge the plans. It would have come as a shock to him to learn that the firm hadn't done this.

10.3 I haven't received any comments in response to my Provisional Decision. Therefore, my view remains that the firm's service was unreasonable.

11. The firm failed to respond to the other side's letters from September 2022.

11.1 I explained in my Provisional Decision why I considered the firm's service to have been unreasonable. This is because the evidence shows they did not respond to the other side or their solicitors (collectively referred to as 'N'), despite saying they would. The correspondence that wasn't responded to was dated 29 September, 5, 10 and 11 October 2022, and 6 January 2023.

11.2 The firm's position as set out in my Provisional Decision is that they were no longer acting for Mr A. However, they remained on the court record and continued charging him. No further comments have been forthcoming from either party in response. My view, therefore, remains unchanged.

12. The firm failed to arrange a cost hearing for the adverse costs.

12.1 I concluded unreasonable service in respect of this complaint because although the firm's position is that it wasn't up to them to arrange a costs hearing, Mr A had specifically asked them to do so. I cannot see that they explained why they couldn't.

12.2 I haven't received any further comments in response. Therefore, my view remains unchanged. The least the firm should have done was explained to Mr A that it wasn't down to them to arrange a cost hearing.

15. The firm failed to consider the barrister's opinion in 2020 that said the prospects of success were low.

15.1 As explained in my Provisional Decision, the evidence shows that the barrister's opinion dated XX March 2020 stated that they had insufficient material to be able to advise on the claim's prospects. There is nothing to support that the barrister advised the prospects were low.

15.2 It would, therefore, be unfair to conclude that the firm failed to consider this and that their service was unreasonable. In the absence of any further comments, I maintain the view that the firm's service was reasonable.

16. The firm's view the claim had prospects of success from the outset and throughout was wrong.

16.1 The evidence shows that the firm advised both Mr A and his LEI throughout that his claim had prospects, as explained in my Provisional Decision. This was supported by the view of a surveyor and two barristers, but this did not guarantee success. Although the judge decided in favour of N, this does not mean that the firm's advice was wrong.

16.2 I therefore concluded reasonable service. I haven't received any comments in response, so my view remains the same.

17. The firm failed to tell the court the reason for requesting an adjournment was due to the firm not being prepared.

17.1 I explained in my Provisional Decision why I found the firm's service to have been unreasonable in respect of this complaint. That is because despite the firm informing Mr A that they needed more time to prepare in their email of 16 May 2022, they did not inform the court of this.

17.2 I concluded that the firm should have enquired about the barrister's availability when the court advised them of the provisional trial dates rather than leave this until the last minute. No further comments have been made by either party in response. Therefore, my view remains unchanged.

18. The firm didn't respond within a reasonable time to the email of 11 May at 20:01.

18.1 Within my Provisional Decision, I explained the reasoning behind my conclusion of reasonable service in respect of this complaint. As no comments have been forthcoming from either party, my view remains the same.

18.2 To recap, Mr A emailed the firm at 20:02 on 11 May 2022, outside of office hours, and they responded two and a half days later on 16 May. The firm explained they were responding to the court, and I am satisfied they needed time to consider Mr A's email before responding. We are looking for reasonable, not perfect, service, and I am of the view the firm's service was reasonable.

19. The firm failed to contact the chosen barrister (P) within a reasonable time after finding out the date of the trial.

19.1 Both my colleague, in the Case Decision, and I, in the Provisional Decision, dealt with this complaint in two parts: one being if the firm asked for the barrister, P, who had been involved in January 2021, and the second being if the firm took steps to instruct a barrister within a reasonable time.

19.2 I explained the reasons for concluding the firm's service was unreasonable in relation to both aspects, and the firm have accepted my view in response. My view, therefore, remains unchanged.

19.3 The firm should have enquired about the barrister who had been involved before, but there's no evidence they did. The firm also should have enquired about the barrister's availability as early as February 2022 when the provisional trial dates were released, or at least in April 2022, but they didn't do so until late May 2022. This was unreasonable.

21. The firm failed to send the invoice by email to Mr A before sending a reminder by post, and then said the monies weren't due. The firm also failed to provide a breakdown of the costs.

21.1 As explained in my Provisional Decision, this complaint is in three parts. The first is *'The firm failed to send the invoice by email to Mr A before sending a reminder by post,'* and the firm have accepted this. I therefore concluded unreasonable service and, in the absence of any comments in response, my view remains the same.

21.2 The second part is *'then said the monies weren't due,'* but there is no evidence to support this, and nothing has been submitted in response. My view remains that the firm's service was reasonable.

21.3 The third and final part is *'The firm also failed to provide a breakdown of costs,'* and there is no evidence they did, despite Mr A raising queries about the firm's letter dated 19 December 2022 on 29 December and 3

January 2023. I concluded unreasonable service, and as I haven't received any comments in response, my view remains unchanged.

23. The firm failed to explain the relevance of the following documents to the barrister in the brief:

a. The property sale photograph of the north boundary;
b. The photos of Ms C on the north boundary that showed the use of the land;
c. The letter of 6 November 2017;
d. The letter of 23 March 2018;
e. The letter of 30 November 2018;
f. The email of 21 March 2020 at 18:00; and
g. The email of 25 March at 13:33.

23.1 In relation to this complaint in its entirety, I concluded reasonable service in my Provisional Decision on the basis that the firm didn't provide a brief to the barrister. Although the bundle was provided to the barrister, no concerns or queries were raised, and Mr A would have had chance to discuss the matter with the barrister prior to trial.

23.2 I haven't received any comments in response, so my view remains the same.

25. The firm charged for dealing with the complaint.

25.1 I explained in my Provisional Decision that the firm had accepted charging for dealing with Mr A's complaint but had removed these charges. This is enough to conclude unreasonable service here as charging for dealing with the complaint goes against the Solicitors' Code of Conduct Rule 8.5.

25.2 I noted that this was in respect of charges made after October 2022 but explained that I had seen evidence of charges being made before October 2022 by the firm for dealing with Mr A's complaint. This is why I agreed with my colleague and concluded unreasonable service.

25.3 In response to my Provisional Decision, the firm have provided the detailed breakdown provided to Mr A on 31 October 2022. This is something that neither I or my colleague has seen before, and I am disappointed that it has taken the firm until now to provide this.

25.4 The firm have also provided a copy of their letter to Mr A prepared on 4 August 2022, and their letter to his LEI on 3 October 2022. Again, this evidence has not been considered before as it has never been provided.

25.5 Dealing with the firm's letter to Mr A first, I can see on the detailed breakdown provided by the firm that there were three items on 4 August 2022, two of which were charged for and one that wasn't:

04/08/22	Communicate (other external)	[redacted]	0.10	150.00	15.00	0.00
04/08/22	Communicate (with outside counsel)		0.10	150.00	15.00	15.00
04/08/22	Communicate (with client)		0.10	150.00	15.00	15.00

25.6 At the point I sent my Provisional Decision, the only correspondence available to me was the firm's response to Mr A's concerns dated 4 August 2022; no other correspondence was evident. This is why it was fair for me to conclude that the firm's service was unreasonable as a charge was made for this based on what I had seen at that point.

25.7 However, this new evidence shows that the letter to Mr A dated 4 August 2022 was correctly charged for, and the other letter responding to his concerns was not charged for. This is reasonable.

25.8 Now turning to the letter to Mr A's LEI on 3 October 2022, the detailed breakdown shows the following entries:

03/10/22	Draft/ Revise	[redacted]	1.00	150.00	150.00	150.00
03/10/22	Communicate (internally within legal team)		0.50	150.00	75.00	75.00
03/10/22	Communicate (other external)		0.10	150.00	15.00	0.00
03/10/22	Communicate (other external)		0.10	150.00	15.00	0.00
03/10/22	Communicate (internally within legal team) re complaint to Arc		0.40	150.00	60.00	0.00
03/10/22	Communicate (internally within legal team) email [redacted]re email from Arc		0.10	150.00	15.00	15.00
03/10/22	Review/Analyse urgent given comements		0.40	150.00	60.00	60.00

25.9 I concluded that whilst three of these entries were not charged for, there were more than three entries that related to dealing with Mr A's complaint, whether through his LEI, liaising with the internal legal team, or corresponding with Mr A direct.

25.10 In the absence of any other evidence showing other work done on the file aside from dealing with Mr A's complaint, I concluded unreasonable service.

25.11 In response to my Provisional Decision, the firm comment that the chargeable entries related to the legal matter including work completed by their fee earners in considering the legal situation and writing to the LEI in relation to the progress of the claim. The firm say that they also took advice and discussed the matter internally.

25.12 Having reviewed the firm's letter to Mr A's LEI, this simply confirmed the outcome of the matter. There was an entry for *'draft/revise'* that was charged for, and a further entry for *'review/analyse'* that was charged for.

There were also three entries for *'communicating internally with the legal team'*, two of which were charged for and one that was not.

25.13 The firm have had ample opportunity to provide evidence to support their position, and whilst I can see that they wrote to Mr A's LEI on 3 October 2022 to confirm the outcome of the matter, which was chargeable, I am not convinced the other entries all related to the legal matter itself.

25.14 I maintain the view that there are more than three entries that relate to dealing with Mr A's complaint and, therefore, conclude unreasonable service. There are three entries that weren't charged for, but there are another four entries that were. I have not seen any evidence which would lead to a conclusion that it was necessary for the firm to liaise with their legal team three times on the same day unless this was to do with Mr A's complaint.

25.15 Nor have I seen evidence to support that the drafting/revising/reviewing/analysing was to do with the legal matter rather than Mr A's complaint, particularly as the matter had concluded at that point. I therefore conclude unreasonable service.

25.16 I do not need to issue a further Provisional Decision because whilst I have accepted that the firm didn't charge for dealing with Mr A's complaint on 4 August 2022, they charged for dealing with it on 3 October 2022, so this complaint is still upheld as it was in my Provisional Decision.

25.17 The overall remedy remains unchanged, the reasons for which I will explain below. This complaint is less of an issue compared to the other complaints I have found unreasonable service on. As my conclusion remains that the firm's service was unreasonable, the compensation payment awarded for distress and inconvenience accounts for this finding rather than the two separate occasions.

26. The firm invoiced duplicate charges.

26.1 This complaint was addressed in three parts within my Provisional Decision, (a), (b) and (c), and I explained why I had found unreasonable service on all three. To recap, this was because although some of the duplicate charges had either been paid back to Mr A's LEI or used against another invoice, the fact remains that the firm still invoiced duplicate charges. The position didn't become clear until after the Case Decision, so it is not surprising that Mr A complained about this.

26.2 I do not intend to repeat the contents of my Provisional Decision, particularly as the firm have accepted my view in relation to the information provided to Mr A. For these reasons, my view remains unchanged.

27. The firm paid the barrister a briefing fee though no brief was provided.

27.1 As explained in my Provisional Decision, this complaint stemmed from the fact that a brief was never provided to the barrister. However, this is a term used when a barrister has been instructed to represent a client at court, which was the case here. So, the £20,000 plus VAT 'brief fee' was for the barrister to act for Mr A at the trial.

27.2 For these reasons, I concluded reasonable service. I haven't received any comments from either party in response; therefore, my view remains unchanged.

28. The firm did not advise about the option of After the Event ('ATE') insurance.

28.1 I concluded unreasonable service on this complaint in my Provisional Decision, and no comments have been received in response. My view, therefore, remains unchanged.

28.2 The firm had already accepted that although their initial letter sent to Mr A dated 1 October 2018 mentioned ATE insurance, there was no further mention of this throughout the whole of the matter. Regardless of whether or not he'd have taken it out at the time, Mr A still lost the opportunity to explore this option.

28.3 He wasn't kept informed about the level of indemnity that had been used, and had he known that this was likely to be exceeded on his costs alone, he may well have considered taking ATE insurance out to cover N's costs. I maintain that the firm's service was unreasonable on this complaint.

30. The firm failed to provide a brief to the barrister.

30.1 It is not disputed that the firm didn't provide a brief to the barrister, but I explained in my Provisional Decision that as the barrister was only instructed a few days before the trial, which isn't unusual, time was of the essence. The firm provided all the relevant documentation to the barrister to enable them to prepare for trial, and no concerns were raised.

30.2 I reiterate that I am looking for reasonable, not perfect, service. No comments have been received in response. For these reasons, my view remains that the firm's service was reasonable.

31. Remedy

31.1 For the reasons explained above, my view on the firm's service remains as stated in the Provisional Decision. I have already considered the remedy I proposed and remain of the view that it is appropriate for the reasons I gave at the time.

31.2 I consider that as a direct result of the firm's unreasonable service, Mr A was denied the opportunity to make a fully informed decision about proceeding. This is because he wasn't kept informed of costs, nor was he made aware of any possible payment options he could have explored, such as ATE insurance or a CFA.

31.3 It is fair, therefore, to direct that the firm waive all of the outstanding fees of £32,567.85 including VAT. Mr A made it clear that he couldn't fund the matter himself, and the firm and barrister would not have worked beyond the LEI limit without knowing how they would be paid. The firm failed to inform Mr A that the LEI limit had been exceeded and instead incurred costs without his knowledge and authority.

31.4 Had the firm's service been reasonable, Mr A would have been able to make an informed decision on whether to represent himself or use the remainder of the LEI limit to negotiate with N.

31.5 I explained in the Provisional Decision why it is also fair to recommend a payment of £750 compensation to each of the complainants, Mr A, Mrs A, and Ms C, and I stand by this reasoning. They were all party to the proceedings and suffered an exceptional impact as a result of the various aspects of unreasonable service identified above.

31.6 For example, finding out funding wasn't in place at the start of the trial, trying to get hold of the firm during the trial, the lack of assistance from the firm and their failure to respond and follow instructions. This was avoidable exposure to particularly stressful situations and financial liabilities.

Decision

Therefore, my final decision is that the firm's service has been unreasonable, and I direct that the firm:

- **Waive/cover all outstanding fees amounting to £32,567.85 that the LEI didn't cover and doesn't charge anything further to Mr A, Mrs A, and Ms C.**
- **Pay £750 compensation to Mr A.**
- **Pay £750 compensation to Mrs A.**
- **Pay £750 compensation to Ms C.**

This is a total remedy of £34,817.85.

I have asked Mr A to let us know what his decision is by **24 July 2025**. We will then let you know whether Mr A has accepted or rejected my decision and what that means for your firm.

Provisional Decision

Date 18 June 2025

Introduction

Mr A, Mrs A, and Ms C (who collectively I will refer to as Mr A throughout this decision) live on one plot of land. A boundary dispute arose with a neighbour (referred to as 'N') who subsequently submitted a claim against Mr A in May 2018.

On 5 July 2018, Irwin Mitchell LLP ('the firm') were instructed by Mr A' Legal Expense Insurer ('LEI') under a Discounted Collective Conditional Fee Agreement ('DCCFA') to defend the claim and submit a counterclaim on Mr A' behalf as the respondent.

The matter went to trial in June 2022 and a judgement was made on XX August 2022. The judge found in favour of N and costs were awarded against Mr A. He was ordered to pay around £80,000 of N's legal costs. As a result of non-payment, a charge was made against Mr A' property. This was discharged through a loan from Ms C's brother, Mr J, who features heavily in this decision as he has represented all three complainants throughout the investigation.

The LEI cover limit was £50,000 but this was exceeded by around £35,000. The firm charged Mr A this amount which remains outstanding.

A number of complaints were withdrawn by Mr A which were listed within the Case Decision. Using the same numbering as the Case Decision, the remaining complaints have been investigated by this office:

2. **The firm:**
    b. **Proceeded to trial though the LEI had not approved funding.**
    c. **Exceeded the LEI limit though Mr A told them not to.**
    d. **Failed to update Mr A, Mrs A and/or Ms C about costs and advise them the LEI limit had been reached to agree how funds beyond the limit would be covered.**
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The Case Decision concluded that the firm's service was reasonable in respect of complaints 3, 4b, 5, 8, 15, 16, 18, 23a to g, 27 and 30, but unreasonable in respect of complaints 2b, 2c, 2d, 4a, 6, 7, 10b, 11, 12, 17, 19, 21, 25, 26 and 28.

As a remedy, my colleague recommended the firm waive all outstanding charges which the firm say are £32,567.85, pay compensation of £750 to Mr A, a further £750 to Mrs A, and a further £750 to Ms C, so £2,250 compensation in total. Together with the waiving of the outstanding fees, this amounts to a total remedy of £34,817.85.

This was accepted by Mr J on behalf of the complainants in his email of 18 February 2025 but rejected by the firm in their emails of 7 and 10 March 2025. Further comments were submitted within the firm's emails which I will address below. Where a comment hasn't been mentioned, it does not mean it hasn't been considered when making this decision.

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.

Under Rule 5.20 of our Scheme Rules, we can treat the complaint as resolved on the basis of the Case Decision if:

- Neither party responds to the Case Decision, or
- in response to the Case Decision neither party has provided any new facts or evidence or makes a material challenges to the facts or evidence on which the Case Decision relies.

Before making my decision, I have considered whether or not the case could be dismissed under Scheme Rule 5.20, however I have decided that it is fair and reasonable in the circumstances to issue a Final Decision. This is because a remedy has been recommended by my colleague which the firm have rejected, and only a Final Decision is legally enforceable.

I will now explain why, having considered the information available and the comments received from the firm, I am satisfied that my colleague has reached a fair and reasonable conclusion on each complaint, and I agree the firm's service was reasonable in respect of complaints 3, 4b, 5, 8, 15, 16, 18, 23a to g, 27 and 30, but

unreasonable in respect of complaints 2b, 2c, 2d, 4a, 6, 7, 10b, 11, 12, 17, 19, 21, 25, 26 and 28.

I am also satisfied that the remedy recommended by my colleague totalling £34,817.85 is justified in the circumstances. However, because part of my conclusion differs to that of my colleague on complaints 19 and 26, it is only fair that I give both parties an opportunity to comment on this decision before it becomes final.

Conclusions

My colleague provided a reasonable summary of events within the Case Decision, which I do not intend to repeat here. I will, however, address the important points to show how I have arrived at my decision.

2. The firm:
b. Proceeded to trial though the LEI had not approved funding.

2.1. I understand that the firm accept there has been a shortfall in the cost information provided to Mr A, so this complaint is not disputed.

2.2. It is clear that the LEI required prior authorisation before costs were incurred as confirmed in their letter to the firm dated 2 January 2019. They stated: *"You will not incur costs without our prior authorisation. We will release authority to you to incur costs up to defined level on a periodic basis."*

2.3. The matter was listed for a XX-day trial from XX XX June 2022 as confirmed in the court's letter to the firm dated 27 April 2022.

2.4. In their email to the LEI on 29 April 2022, the firm provided a 'stage 4 update' and asked them to confirm the total authorised indemnity at that point. The firm estimated costs and disbursements to conclusion as being £25,000. The LEI responded on 5 May confirming that they had authorised £34,312.35 up to that point, £31,054.27 of which had been billed, leaving a reserve balance of £3,258.08.

2.5. Although the firm applied for a postponement of the trial, this was rejected on XX May as confirmed in the firm's letter to the LEI dated 30 May 2022. Within this, the firm explained the barrister's brief fee was £22,500 plus VAT plus daily refreshers of £2,500 plus VAT and expenses.

2.6. I have seen the barrister's invoice for the 'agreed fee' dated 1 June for the trial starting on XX June amounting to £20,000 plus VAT and expenses. The evidence shows that funding for this had not been authorised by the LEI, nor

had the firm chased the LEI for a response to their funding request. This is unreasonable.

2.7. On 6 June, the LEI acknowledged the funding request had been made at short notice but confirmed this had been sent for an urgent referral. They reminded the firm of the £50,000 cover limit and that £34,312.25 had already been authorised, leaving a balance of £15,687.75. The LEI stated: *"Can you therefore confirm if the insured is aware, and is in a position to fund the matter beyond the limit of indemnity."*

2.8. Taking the above into account, I agree with my colleague that the evidence shows the firm failed to obtain prior authorisation from Mr A' LEI for funding before proceeding to trial. Although they requested an adjournment of the trial sometime in May, they were aware of the trial date from XX April, and ought to have submitted the funding request at the earliest opportunity to the LEI in case their application was refused. For these reasons, I conclude the firm's service has been unreasonable.

2.9. In response to the Case Decision, the firm accept that they could have given clearer cost information to Mr A in the lead up to the trial but maintain that they would always have had to go to trial as the claimants weren't prepared to settle. The firm say they were unable to cease court action on the basis of the lack of funding.

2.10. Mr A made it clear throughout that he could not fund this matter outside of the LEI cover, so had he been made aware that his cover would not extend to the trial, he would have been able to make a fully informed decision about proceeding. The fact remains that the firm failed to comply with the LEI requirements to obtain prior authorisation for funding before proceeding to trial. They incurred the barrister's fees before funding was authorised, and in the knowledge that the LEI cover limit would have been exceeded, which is unreasonable.

2.11. The firm comment that, on the balance of probabilities, the judge would have likely reached the same decision, finding in favour of N, even if legal expense funding had been in place, and Mr A would have faced a costs order in any event. However, the funding issue would not have made any difference to the judge's decision.

2.12. The firm further comment that Mr J's statement has been accepted that although he was happy to lend the money to meet the adverse costs order following the unsuccessful trial, he would not have been willing to provide a lesser amount to fund the costs of the trial. They say this is with the benefit of hindsight after the trial proved unsuccessful.

2.13. I would respond by saying that Mr J funding the claim is entirely different to him loaning money to avoid his sister being made homeless, so I cannot agree with the firm's comment here. The firm imply that Mr J may have stepped in to help fund the claim, but this is something we will never know because of the firm's unreasonable service. Regardless of this, the firm's comments do not in any way address why the finding of unreasonable service here is unjust.

2.14. I will deal with an appropriate remedy at the end of this decision.

c. Exceeded the LEI limit though Mr A told them not to.
d. Failed to update Mr A, Mrs A and/or Ms C about costs and advise them the LEI limit had been reached to agree how funds beyond the limit would be covered.

2.15. I have seen the firm's initial letter to Mr A dated 5 July 2018 which enclosed their terms of business. Within these, the firm stated:

> We will keep costs under review and will discuss matters with you if we form the view that your insurance limit is unlikely to be enough to cover whatever costs you may become liable to pay. If that happens we will advise you on other ways of paying legal costs.

2.16. As my colleague pointed out, the firm further advised Mr A in their letter dated 1 October that they would not incur costs above his LEI indemnity without his authority to do so. The firm noted the £50,000 indemnity cover limit.

2.17. The evidence shows that Mr A raised concerns about costs with the firm throughout. For example, in the email of 19 November 2021, where Mr J stated that Ms C did not have money to fund the matter beyond the LEI limit.

2.18. As noted above, Mr A' LEI informed the firm on 5 May 2022 that they had authorised £34,312.35 up to that point, £31,054.27 of which had been billed, leaving a reserve balance of £3,258.08. The firm would have reasonably known that only £18,945.73 of the indemnity limit was left. Despite this, however, the firm proceeded to instruct the barrister on 30 May for a fee of £20,000 plus VAT and expenses, which exceeded the LEI limit. There is no evidence that they obtained Mr A' prior approval or informed him of any shortfall, which is unreasonable.

2.19. In his email to the LEI on 6 June, Mr A expressed his concern that he could not cover any costs outside of the LEI limit and would not have proceeded had he known. He confirmed the firm were made aware of this at mediation. Mr A was not able to make a fully informed decision about proceeding to trial

or instructing the barrister to represent him, as he wasn't aware that he'd have to fund this himself.

2.20. Whilst there is no evidence that Mr A, Mrs A or Ms C told the firm not to exceed the LEI limit, the firm failed to meet the expectation they set at the outset, that they would obtain Mr A' prior authority before incurring costs above the LEI limit. I therefore find the firm's service was unreasonable on complaint 2c.

2.21. The firm were aware that the LEI limit was going to be exceeded when they instructed the barrister, but there is no evidence that they advised Mr A, Mrs A or Ms C about this. Nor is there any evidence that they discussed how funds would be covered outside of the LEI limit. Despite the LEI requesting confirmation from the firm in their email of 6 June 2022 that Mr A was able to fund the matter beyond the indemnity, there is no evidence the firm did so.

2.22. I can see that Mr A and the LEI had made several attempts to contact the firm from 6 to 10 June, but the firm didn't respond to the LEI until XX June. This was after the trial had concluded.

2.23. I also find that the firm's service for complaint 2d has been unreasonable, as they failed to update the complainants on costs and obtain agreement on how funds would be covered once the LEI limit had been exceeded.

2.24. As my colleague quite rightly pointed out, Rule 8.7 of the Solicitors Code of Conduct provides that a firm have a duty to provide the best costs information possible to their client at the outset of a matter and throughout. The firm failed comply with this duty.

2.25. The firm's comments in response to the Case Decision do not explain why they failed in their provision of costs information or why a finding of unreasonable service is unjust here. They themselves accept that they did not meet their own expectation in providing cost updates.

2.26. I will deal with an appropriate remedy at the end of this decision.

3. The firm failed to help Mr A, Mrs A, or Ms C go through the bundle.

3.1. The evidence shows that the firm received the trial bundle on 27 May 2022 and sent this to Mr A the next working day, 30 May. I cannot see that any

requests were made by Mr A, Mrs A or Ms C to go through the bundle with them before the trial. It was, therefore, reasonable of the firm to proceed on the basis that Mr A had no issue with the bundle.

3.2. Had Mr A had any concerns about the bundle, he had an opportunity to raise them before the trial, having managed to get access to the bundle by 31 May. As my colleague pointed out, 2 and 3 June were public holidays, but he could have raised any concerns on 1 June prior to this and before the trial began on XXJune. I cannot see that he did.

3.3. For these reasons, I find the firm's service was reasonable here. I would not have expected them to have gone through the bundle unless they were asked to do so. No further comments have been forthcoming from either party on this complaint.

4. The firm's approach with the witness statements were wrong as:
a. They asked Mr A to draft his witness statement himself

4.1. The firm accept that they ought to have explained to Mr A that they could have offered to do this but, in their response to the Case Decision, say that he was asked to provide a draft witness statement, which they then reviewed and amended. They also say that in their professional opinion, Mr A was capable of drafting his own witness statement in accordance with the Civil Procedure Rules ('CPR') guidelines which provide that the statement should be in the client's own words.

4.2. The firm comment that had they met with Mr A, Mrs A and Ms C to prepare each of their witness statements, this would have incurred additional costs. However, having considered the evidence available, I agree with my colleague that as this was a complex boundary dispute, supported by the fact that the trial lasted five days, it would have been reasonable for the firm to have provided more input.

4.3. In some cases, it is not unusual for firms to ask their client to complete their own witness statement, and this would be reasonable in less complicated cases. The firm are the legal experts and were being paid to represent Mr A and his best interests, but instead, they provided details of the CPR and Practice Directions to Mr A on 14 February 2022 that he needed his statement to comply with.

4.4. It is clear Mr A was struggling with writing his own witness statement as well as that of Mrs A and Ms C. This is evident in the extensive correspondence exchanged back and forth throughout February and March in relation to the statements.

4.5. Mr A even mentioned taking time off work to complete them in his email to the firm on 9 March. Later that day, he informed them he was struggling to complete the statements, *“given the wealth of correspondence, photographs and evidence all of which I am having to recount without assistance. As you appreciate, I did not realise that we would have to do witness statements.”*

4.6. There had been numerous versions of the statements up to this point, and I would have expected the firm as part of a reasonable service to have taken the reigns as the legal expert and offered some assistance to Mr A, particularly as this matter was complex. However, they did not, and there was more back and forth throughout March, resulting in the deadline for filing these with N needing to be extended.

4.7. Whilst I accept that Mr A was best placed to draft his witness statement as he was extremely familiar with the case, and it needed to be in his own words, I would have expected the firm to have provided some assistance once the first draft had been completed. As they did not, I conclude unreasonable service. I will address an appropriate remedy at the end of this decision.

b. They should not have submitted mirror statements, but instead one witness statement from Mr A, and two statements from Mrs A and Ms C stating they agreed with Mr A’ statement.

4.8. I understand this complaint stems from N’s barrister’s criticism of the firm’s approach regarding the witness statements at paragraph XX of the judgement dated XX August 2022. This stated that the majority of Mrs A’ statement followed Mr A’ statement word for word. Further, at paragraph XX, the judge commented that Mrs A’ witness statement was *“plainly drafted by Mr A and followed his narrative.”*

4.9. However, as my colleague quite rightly pointed out, there is nothing within the CPR that say witness statements cannot be mirrored, or that there should be one statement and then two others stating that they agree with the one witness statement. This to me would be the same as mirroring the witness statements.

4.10. Furthermore, we cannot say that the outcome would have been any different or that the judge wouldn’t have made any criticism had a different approach been taken in terms of the witness statements. Mr A, Mrs A and Ms C all had the opportunity to provide oral evidence at the trial and be questioned on their witness statements. It is just unfortunate that the judge chose to believe N’s version of events over theirs, but the firm cannot be held accountable for the judge’s decision.

4.11. For these reasons, I cannot conclude that the firm's service was unreasonable here.

5. The firm failed to tell Mr A they would not attend the trial.

5.1. I have seen the firm's email to Mr A on XX June 2022 in which they stated that they will be available *"throughout next week if I can be of assistance…and wish you good luck for the trial."*

5.2. This indicates to me that the firm would not be attending the trial as they had instead instructed a barrister to represent Mr A which he was aware of. Mr A interpreted this to mean the firm would be of assistance at trial.

5.3. In Mr A' email to his LEI on XX June, the first day of the trial, he stated that he had no solicitor, and the barrister only had one afternoon to prepare, so it is clear that he was shocked. However, it is not unusual for firms to not attend court when there is a barrister representing their client in order to save costs.

5.4. Whilst it would have been ideal had the firm explicitly stated they would not be attending the trial on Mr A' behalf because they had instructed a barrister, we are looking for reasonable, not perfect, service.

5.5. No further comments have been forthcoming from either party, I therefore conclude the firm's service was reasonable.

6. The firm did not respond to the barrister or Mr A during the trial.

6.1. As confirmed elsewhere in this decision, the trial began on XX June 2022 and lasted XX days until XX June. I have seen the firm's internal email on XX June at 09:24 which recorded that Mr A had called and required an urgent call back. I have also seen Mr J's email to the firm timed at 13:52 later that day confirming that they had tried to make contact with the firm several times and asked why the firm weren't at court.

6.2. The firm replied at 14:34 confirming that a voicemail message had been left on the number they had been provided with, and answering the queries raised.

6.3. However, there had also been an email sent to the firm by the barrister timed at 09:37 that same day requesting the title plans urgently. But I cannot see that any response was provided, despite requests for this from my colleague as part of their investigation. Nor has any reasonable explanation been

forthcoming from the firm in response as to why they never replied to the barrister.

6.4. For these reasons, I conclude unreasonable service. Whilst the evidence shows the firm responded to Mr A during the trial, there is no evidence they responded to the barrister, despite his urgent request for documents.

7. The firm failed to respond to J's email of 19 November 2021 that was sent on Ms C's behalf.

7.1. I have seen Mr J's email of 19 November 2021 sent to the firm on Ms C's behalf which clearly stated: *"I am contacting you on behalf and at the request of my sister, (Ms C)."* This raised several concerns on Ms C's behalf, including costs, and concluded by saying *"I eagerly await your response."*

7.2. The firm forwarded this on to the LEI on 22 November, but did not say anything in their covering email. Nor is there any evidence that a response was ever provided to Mr J or any explanation as to why, despite requests.

7.3. In response to the Case Decision, the firm accept that they didn't respond to this email and have apologised, but say they weren't authorised at the time to discuss matters with Mr J. If this was the case, then I would have expected the firm as part of a reasonable service to have either responded to Ms C or Mr A directly addressing these concerns or obtained authority from Ms C to correspond with Mr J on her behalf. The least they could have done was to explain their position to Mr J.

7.4. As they did none of these, I find their service was unreasonable. I will address an appropriate remedy at the end of this decision.

8. The firm failed to advise on the prospects of success or to settle given the trial was to take place at short notice.

8.1. I note that on 2 January 2019, the firm provided the LEI with an update and confirmed that prospects of successfully defending the claim were more than 51%. This was supported by a surveyor's report which they had shared with the LEI. A barrister's opinion was then sought and they too advised that prospects of success were more than 50% in their email to the firm on 21 January 2021.

8.2. On XX April 2022, the court listed the matter for trial from XX XX June as confirmed in their letter to the firm that day. The firm confirmed to the LEI on 29 April that the case continued to enjoy prospects.

8.3. Prior to this, the evidence shows that mediation had taken place but wasn't successful. I do not know when this took place, but it was mentioned in Mr A' email to the firm on 11 May 2022. There had also been various correspondence exchanged between the parties and a Case Management Conference on 24 November 2021.

8.4. In response to the Case Decision, the firm maintain that they attempted to negotiate a settlement, but N had no interest in settling the claim, and Mr A was the defendant in the matter along with Mrs A and Ms C. For these reasons, the firm dispute that they could have sought to settle the matter between contacting the LEI on XX April 2022 and the start of the trial on XX June.

8.5. I appreciate the firm's comment here, and the fact that mediation had taken place prior to the trial being listed shows that attempts had been made to settle the matter but without success. It isn't the firm's fault if N wasn't prepared to accept Mr A' position, or if the parties were still at odds.

8.6. The evidence also shows that the firm continued to advise Mr A' LEI on prospects throughout when updates were provided. This then enabled funding to be put into place.

8.7. For these reasons, I do not find the firm's service was unreasonable.

10. The firm failed to amend the following documents:
b. The abstracted deed plans enlarged to assist reference of P to Q.

10.1. I can see that Mr A asked the firm in his email of 15 March 2022 timed at 14:24, to enlarge the abstracted deed plans to assist reference of P to Q and help the judge. He raised other queries in his other emails of the same date, which the firm responded to at 15:26 that day. They did not acknowledge his request to enlarge the deeds or explain why this wasn't going to be done.

10.2. As noted by my colleague, the comments made by the judge in their judgement dated XX August 2022 at the bottom of paragraph XX show that the plan was not enlarged by the firm as requested by Mr A. The judge was talking about the buildings falling within 40ft to the south of the boundary, but said: *"given the small scale of the plan, it is not possible to scale up to identify whether 40ft from the Hall is consistent with the location of the stepped boundary along line P-Q."*

10.3. Mr A had prompted the firm to enlarge this prior to the trial to help the judge and to assist reference of P to Q, but it is evident that that they didn't without reasonable explanation. Mr A could foresee this being a problem for the judge due to the size of the plan, which is why he made this request.

10.4. I note the firm's comments in response to the Case Decision that a digital copy had been provided to the court and the judge could have zoomed in or requested assistance, but he didn't do so. Nonetheless, Mr A should have been advised of this when he made the request beforehand which would then have avoided the distress he experienced when the judge made these comments at trial.

10.5. Whilst I cannot say that this had any detrimental effect on Mr A' defence, it does not mitigate the inevitable frustration he would have experienced when he had specifically asked for this to be enlarged prior to the bundle being submitted to court. For these reasons, I conclude unreasonable service and will deal with an appropriate remedy at the end of this decision.

11. The firm failed to respond to the other side's letters from September 2022.

11.1. I understand that Mr J has clarified that reference to the other side's letters means those from N/their solicitor (referred to collectively as 'N') sent to the firm from September 2022.

11.2. I can see that the first correspondence sent by N to the firm was on 29 September by email setting out the costs order made against Mr A and what he owed, which the firm acknowledged and said they'd respond to, but never did. This is because they were then informed by Mr A' LEI on 3 October that he wanted nothing further to do with them.

11.3. As a result of this, the firm wrote Mr A that day confirming they could no longer act. However, I cannot see that they made him or his LEI aware of the need to respond to N's email of 29 September. This is unreasonable.

11.4. Further correspondence was sent by N to the firm on 5, 10 and 11 October, and again on 6 January 2023. Despite the firm saying they no longer acted for Mr A, they remained on the court record as acting for him, which is supported by N's email to Mr A dated 15 February. Mr A had attempted to correspond with N himself but was told he couldn't because the firm remained on the court record as acting for him.

11.5. In addition to this, the firm continued to charge Mr A for work completed on his matter from 3 October, as demonstrated in their invoice dated 31 October. So, it was unfair for them to say they no longer acted for Mr A when they were clearly still charging him and remained on the court record.

11.6. No further comments have been forthcoming from either party, and in the circumstances, because the firm failed to respond to N's correspondence and did not inform Mr A or his LEI that there was correspondence that needed responding to, I agree with my colleague that the firm's service has been unreasonable.

11.7. I will deal with an appropriate remedy at the end of this decision.

12. The firm failed to arrange a cost hearing for the adverse costs.

12.1. In response to the Case Decision, the firm comment that it is not for them in their role representing the defendants to arrange for a costs hearing. They say it is for the claiming party to make the request. However, the firm accept that they could have explained that to Mr A.

12.2. I can see that Mr A requested the firm arrange a cost hearing in his email to them on 10 October 2022 as he had no funds to pay N's costs. I have already established above that the firm were still acting for Mr A at this point and remained on the court record. Therefore, they could have arranged this for Mr A or at least explained to him why one couldn't be arranged.

12.3. The purpose of a costs hearing would have been to determine the reasonableness of N's costs and would not have met Mr A' expectation to be able to challenge these on the basis that he couldn't pay them, and that his LEI should. However, this explanation was never provided by the firm, which I would have expected as part of a reasonable service, and as the firm were still acting for Mr A at the time he requested they arrange one.

12.4. At some point following the trial, costs would have been agreed, and Mr A would have been notified how much he was required to pay towards N's costs. If he wished to challenge the extent of these, then a costs hearing may have been arranged. However, my understanding is that Mr A simply couldn't pay these, and this is what he wanted a cost hearing for.

12.5. The firm ought to have also explained that it would have been for N to request a hearing, not the firm on Mr A' behalf, which would have further managed Mr A' expectations. Instead, the firm provided neither of these explanations, which would have inevitably caused frustration to Mr A.

12.6. I therefore find the firm's service was unreasonable here. I will address the appropriate remedy below.

15. The firm failed to consider the barrister's opinion in 2020 that said the prospects of success were low.

15.1. Having considered the evidence available, I cannot see a barrister's opinion was obtained in 2020 that said the prospects of Mr A' defence/counterclaim succeeding were low. Instead, I have seen the barrister's opinion dated XX March 2020 which stated that they had 'insufficient material' to be able to advise on the claim's success. This is different to advising that the prospects were low.

15.2. I can see that a conference then took place on 2 June between the firm, the same barrister who provided the opinion mentioned above, a surveyor, and Mr A. During this, the firm's attendance note records that the barrister was *"comfortable that we could defeat any claim for adverse possession."* The note also records that the barrister considered the claim in relation to the northern boundary had better prospects than the western boundary. Again, there is no evidence to support that the barrister advised the prospects were low, and that the firm failed to consider this.

15.3. For these reasons, I do not find the firm's service was unreasonable.

16. The firm's view the claim had prospects of success from the outset and throughout was wrong.

16.1. Moving on to head of complaint 16, it is not disputed that the firm viewed Mr A' defence and counterclaim as having prospects of success from the outset and throughout. For them to take the claim on under a DCCFA, the firm would have viewed it as having a 51% or higher chance of success. This was also the term of Mr A' LEI, and the evidence shows that the firm continued to advise his LEI that the claim continued to enjoy reasonable prospects, i.e. 51% chance or above.

16.2. As confirmed at paragraph 8.8 above, the firm confirmed to Mr A' LEI on 2 January 2019 that prospects were more than 51%, which was supported by a surveyor's report. An opinion was then sought from a different barrister and they too advised that prospects of success were more than 50% in their email to the firm on 21 January 2021. The firm confirmed to the LEI on 29 April 2022 that the case continued to enjoy prospects.

16.3. It is not for this office to provide legal advice or to determine whether or not Mr A' defence and counterclaim had prospects of success at the time the firm

were acting. Instead, it is for this office to determine whether the firm's advice was reasonable based on the information available to them at the time. The fact that a surveyor and two different barristers shared the same view as the firm on prospects supports that the firm's advice was reasonable.

16.4. As noted by my colleague in the Case Decision, there is nothing to support that the judge criticised the firm or Mr A for letting the matter get to trial, he simply preferred the evidence of N over Mr A. Simply because a firm or barrister advise that prospects of success are 51% or more does not guarantee success, and simply because the judge decided in favour of N and not Mr A does not automatically mean the firm's advice was wrong.

16.5. No further comments have been made by either party on this complaint in response to the Case Decision. For these reasons, I do not find the firm's service was unreasonable.

17. The firm failed to tell the court the reason for requesting an adjournment was due to the firm not being prepared.

17.1 I can see that the firm informed Mr A on 8 February 2022 that the trial window was between XX May and XX June, and to let them know of any dates he wasn't available during this period.

17.2 The court's letter to the firm dated XX April 2022 acknowledged that the trial hadn't been listed in a timely manner but confirmed that the trial had been provisionally listed for XX XX June 2022. The court asked the firm to let them know by 9 May if there were any changes to the parties' availability or if the venue was unsuitable.

17.3 The firm forwarded this to Mr A the next day and asked him to confirm if he was no longer able to make these dates or if the venue was unsuitable. There was no mention of the firm being unable to prepare in time.

17.4 Mr A raised an issue with the venue in his email to the firm on 3 May, but again, there was no mention of the firm being unable to prepare in their response to Mr A that day. Nor was there any mention of it in their response to the court on 4 May, despite the deadline for raising an issue being 9 May. Despite requests, no explanation has been forthcoming from the firm as to why this was.

17.5 In response to the Case Decision, the firm say that the reason they applied for the trial to be postponed was because they couldn't secure the barrister, not because they weren't prepared. However, this is not supported by the

evidence available. The firm's email to Mr A on 16 May confirmed that there was a substantial amount of preparation still to do.

17.6 The firm say that they couldn't secure the barrister until the actual hearing date had been confirmed by the court. However, there was nothing to stop them enquiring about the barrister's availability at the earliest opportunity, i.e. XX April, and to put the barrister on notice that the dates were only provisional at that point.

17.7 Even when the court asked the firm on XX May whether there were any other issues preventing the trial going ahead on XX June, the firm did not respond until 19 May, which was after the court had issued the Notice of Hearing. The court criticised the firm in their response of 20 May, as they had only raised issue with the venue and not the dates and had delayed responding.

17.8 The firm then made an application to adjourn the trial on XX May because they could not arrange a suitable barrister, and the barrister would have insufficient time to prepare in any event. The firm stated that reasonable notice of the trial date hadn't been given. The judge refused their application on XX May.

17.9 Taking all of the above into account, I agree with my colleague that the firm would have been reasonably aware on XX April of the significant amount of preparation needed which meant that it would be preferable for the hearing not to take place on XX XX June. This is what the firm said in their email to Mr A on 16 May, but not what they said to the court when the court asked on XX April if there were any other reasons why the trial couldn't go ahead on XX June.

17.10 The trial was set towards the latter end of the window contained in the firm's email to Mr A on 8 February. Reasonable steps should have been taken by the firm from this point, and at least from XX April when the trial was provisionally set for XX XX June, to prepare. This includes enquiring about the barrister's availability.

17.11 Although the firm had informed Mr A that they needed more time to prepare in their email of 16 May, they did not inform the court of this, despite having the opportunity to do so before their application of XX May. Nor did they include this in their application. For these reasons, I find their service unreasonable.

18. The firm didn't respond within a reasonable time to the email of 11 May at 20:01.

18.1 I can see that Mr A emailed the firm on 11 May 2022 timed at 20:02, setting out actions that needed to be done before the trial. The firm responded to this three working days later on 16 May. Mr A' position is that the firm should have responded sooner as they had referred to the urgency required, but this was for Mr A' response to them so they could then respond to the court.

18.2 I agree with my colleague here that the firm's response to the court was more urgent than their response to Mr A, as they had got the response from him as required. Whilst it would have been ideal had the firm responded sooner, the matter was not impacted as a result, and we are looking for reasonable service.

18.3 The firm would have received the email on 12 May as Mr A had sent it on 11 May outside of office hours. The firm responded on 16 May at 14:36. I do not see that two and a half days is an unreasonable amount of time. The firm needed time to consider the contents of Mr A' email before responding. I therefore find their service was reasonable.

19. The firm failed to contact the chosen barrister (P) within a reasonable time after finding out the date of the trial.

19.1 I have already touched upon this aspect under complaint 17 above. Although the firm were informed of the provisional trial date of XX XX June 2022 in the court's letter dated XX April, there is no evidence that they contacted the barrister or their chambers until 27 May, after their application to adjourn the trial had been refused.

19.2 The firm's position is that they could not secure a barrister until they had received the actual hearing notice, but I am of the view that enquiries could potentially have been made as early as 8 February when the firm were notified of the trial window, or at least from XX April when provisional dates were given by the court.

19.3 That being said, I do not think it is reasonable to expect a barrister to have agreed to act on a matter that was to take place any time over a XX-day window. But I do believe enquiries could have been made when the provisional dates were confirmed to the firm by the court, which was XX April.

19.4 I can see that the firm confirmed in their email to Mr A on 27 May that they had made enquiries as to the availability of a barrister and included a link to the one that was available. This wasn't a barrister they had instructed in

the matter before, and there was no mention of ‘P’ who was involved in January 2021.

19.5 Whilst the firm say they had telephoned the chambers about P and he wasn’t available, there is no evidence to support this. Nor is there any mention of P in the correspondence exchanged between the firm and the barrister’s chambers, or the firm and Mr A during the period up to the trial date. This does not support that the firm enquired about barrister P at that time.

19.6 My colleague dealt with this complaint in two parts: one being if the firm asked for P, and the second being if the firm took steps to instruct a barrister within a reasonable time. My colleague concluded that the firm’s service was unreasonable on the first part as the evidence doesn’t support that the firm asked for P, the previous barrister. However, my colleague concluded that the firm’s service was reasonable for the second part on the basis that the firm did not know for sure when the trial was going ahead until 27 May, and they contacted the chambers that same day.

19.7 I appreciate the firm’s position that they could not secure a barrister until the trial date had been confirmed, and it is not unusual for barristers to be instructed at short notice. However, I do believe they could have enquired about the barrister’s availability before they received the hearing notice and, therefore, I have taken a slightly different view to my colleague and find their service unreasonable on the second part. The provisional dates were provided on XX April, but the firm didn’t make enquiries until a month later, on 27 May.

19.8 As my conclusion differs to that of my colleague, it is only fair that both parties are given a chance to comment on my conclusions before they become final, although my overall finding is the same as is the remedy.

19.9 No further comments have been forthcoming from either party in response to the Case Decision. For these reasons, I find the firm’s service was unreasonable on both aspects of this complaint. I will deal with an appropriate remedy at the end of this decision.

21. The firm failed to send the invoice by email to Mr A before sending a reminder by post, and then said the monies weren’t due. The firm also failed to provide a breakdown of the costs.

21.1 My colleague broke this complaint down into three parts within the Case Decision, and I will do the same here for ease.

21.2 The first part covers *'The firm failed to send the invoice by email to Mr A before sending a reminder by post'*. In response to the Case Decision, the firm accept that this invoice wasn't sent by email to Mr A at the time and have apologised for this oversight. I agree their service was unreasonable in respect of this aspect. Although the firm's invoice is dated 30 November 2022 and addressed to Mr A, the firm accept this was never sent. Mr A was not aware of this invoice until he was chased for payment on 19 December.

21.3 The second part covers that the firm *'then said the monies weren't due'.* However, no evidence has been forthcoming to support this part of the complaint. As a result, I am unable to conclude that the firm said this without evidence that they did.

21.4 The third and final part covers *'The firm also failed to provide a breakdown of costs.'* The evidence shows that following receipt of the firm's letter dated 19 December 2022, Mr A emailed the firm to query this on 29 December and 3 January 2023 but received no response, nor did the firm provide a breakdown of their costs. This amounts to unreasonable service.

21.5 In response to the Case Decision, the firm comment that the reason they didn't reply to Mr A was because he raised a complaint with them on 4 January, the next day, and their complaints procedure allows them 15 working days to respond. However, this doesn't explain why a breakdown of costs was never provided to Mr A, either with the firm's complaint response or after.

21.6 For these reasons, I find the firm's service unreasonable. I will address an appropriate remedy at the end of this decision.

The firm failed to explain the relevance of the following documents to the barrister in the brief:

a. The property sale photograph of the north boundary;
b. The photos of Ms C on the north boundary that shown the use of the land;
c. The letter of 6 November 2017;
d. The letter of 23 March 2018;
e. The letter of 30 November 2018;
f. The email of 21 March 2020 at 18:00; and
g. The email of 25 March at 13:33.

23.1 The evidence shows that once the firm's application to adjourn the trial was rejected on 27 May 2022, they sent the trial bundle to the barrister.

The firm say they didn't send a brief due to the trial commencing only XX working days later, although it was actually XX working days later. Even so, I understand why a brief hadn't been sent.

23.2 I agree with my colleague that as the barrister was sent the bundle, they had chance to raise any questions they had with the firm prior to the trial commencing, but they didn't.

23.3 As a brief wasn't provided, it would be unfair to conclude that the firm failed to explain the relevance of certain documents to the barrister. Mr A would have had chance to discuss the matter with the barrister prior to or during the trial. I agree with my colleague that the firm's approach was reasonable.

25. The firm charged for dealing with the complaint.

25.1 The firm accept that they charged for dealing with Mr A' complaint from 3 October 2022 onwards and I understand that they have subsequently removed these charges.

25.2 My colleague found that charges had also been made prior to this point as raised by Mr A, from July to October 2022, so it is this period that the Case Decision focused on.

25.3 As set in the Case Decision, Rule 8.5 of the Solicitors' Code of Conduct provides that complaints are to be dealt with free of charge. Therefore, if the firm have charged for any time spent dealing with Mr A' complaint, this is unreasonable and not in line with this rule.

25.4 Having reviewed the evidence available, I have identified two occasions that were charged for by the firm and related to the handling of Mr A' complaint.

25.5 The first is their letter dated 4 August 2022 to Mr A in *'Response to your concerns'* and listed on their breakdown of costs attached to the invoice dated 31 October 2022 as *'Communicate (with client)'.* As I cannot see any other correspondence relating to the matter exchanged with Mr A that day aside from the firm's response to his complaint, it's fair to conclude that this was charged for when it shouldn't have been.

25.6 In response to the Case Decision, the firm have sent a 'WIP breakdown', which I have enclosed with this decision. They say this shows the entry for 26 July 2022 was non-chargeable. Yet, I am unsure why the firm have mentioned 26 July, as it was 4 August that was covered in the Case

Decision and that I have mentioned above. The firm's breakdown shows that a charge was made on 4 August for communicating with Mr A as shown below; this charge should not have been made:

04/08/2022	012959	[redacted]	0.10	150.00	15.00	FALSE	0.10	150.00	15.00	TRUE	3633438	A106	Communicate (with client)

As stated above, the only correspondence I can see for 4 August is the firm's response to Mr A' complaint. Therefore, this should not have been charged for.

25.7 There are then the following entries for 3 October:

03/10/22	Draft/ Revise	1.00
03/10/22	Communicate (internally within legal team)	0.50
03/10/22	Communicate (other external)	0.10
03/10/22	Communicate (other external)	0.10
03/10/22	Communicate (internally within legal team) re complaint to Arc	0.40
03/10/22	Communicate (internally within legal team) email RHC re email from Arc	0.10
03/10/22	Review/Analyse urgent given comements	0.40

[redacted]

It is clear that some of these relate to dealing with Mr A' complaint which have, but should not have been, charged for. I find this unreasonable.

25.8 The firm say their correspondence in dealing with Mr A' complaint was not charged for. However, their WIP breakdown shows that it was:

123815571	03/10/2022	011438	[redacted]	0.40	150.00	60.00	TRUE	0.40	0.00	0.00	TRUE	3633438	A105	Communicate (internally w
123815561	03/10/2022	011438		0.10	150.00	15.00	FALSE	0.10	150.00	15.00	TRUE	3633438	A105	Communicate (internally w
123809382	03/10/2022	012959		1.00	150.00	150.00	FALSE	1.00	150.00	150.00	TRUE	3633438	A103	Draft/ Revise
123809381	03/10/2022	012959		0.50	150.00	75.00	FALSE	0.50	150.00	75.00	TRUE	3633438	A105	Communicate (internally w
123802089	03/10/2022	009267		0.40	150.00	60.00	FALSE	0.40	150.00	60.00	TRUE	3633438	A104	Review/ Analyse
123802088	03/10/2022	009267		0.10	150.00	15.00	TRUE	0.10	0.00	0.00	TRUE	3633438	A108	Communicate (other extern
123802083	03/10/2022	009267		0.10	150.00	15.00	TRUE	0.10	0.00	0.00	TRUE	3633438	A108	Communicate (other extern

Whilst three of these entries were not charged for, there were more than three entries that relate to dealing with Mr A' complaint, whether that was through Mr A' LEI, communicating with the legal team, or corresponding with Mr A direct. I cannot see any other work was done on the file aside from dealing with the complaint, therefore no entries should have been charged for. I find it unreasonable that they were.

25.9 I will deal with an appropriate remedy at the end of this decision.

26. The firm invoiced duplicate charges.

26.1 The Case Decision split this complaint into three as follows:

a. Invoices 3429986 and 3458222 and 3486732 all charged £1,665 plus VAT for barrister N.
b. Invoices 3458222 and 3486732 both charged £3,000 plus VAT for the firm's fees and £3,300 for barrister P.
c. Invoices 3577333 and 3383478 charged for £1,200 of the same work.

26.2 Concerns had also been raised about the charges for the complaint, but these have already been dealt with under complaint 25 above.

26.3 The evidence shows that whilst there were duplicate charges for the barristers N and P on some of the firm's invoices, the duplicate payments made by the LEI had been credited back. This means that the LEI have only paid once for each of these disbursements.

26.4 Dealing with (a) first, invoice 3429986 was dated 27 November 2020, invoice 3458222 was dated 26 February 2021, and invoice 3486732 was dated 26 May 2021. All three invoices included the same disbursement for barrister NT equating to £1,665 plus VAT as shown below:

Unpaid Disbursements

Date	Description	VAT Rate	Amount
07/05/20	N[redacted] - T1073 - 53665 - 07/05/2020 Perusing additional documentation	20.0%	£875.00
27/05/20	N[redacted] - T1073 - 53665 - 27/05/2020 Telephone conference	20.0%	£175.00
02/06/20	N[redacted] - T1073 - 53665 - 02/06/2020 Telephone conference with client	20.0%	£615.00

26.5 The firm have provided two statements of account, one dated 14 January 2025 and another dated 29 January 2025. The first of these statements shows that whilst invoice 3429986 was raised on 27 November 2020, this was credited on 13 January 2021, and whilst invoice 3458222 was raised on 26 February 2021, this was credited on 6 May 2021. Invoice 3486732 was raised on 26 May 2021 and paid on 28 June 2021 by the LEI.

26.6 The second statement did not include the first two invoices but shows that invoice 3486732 was raised on 26 May 2021 and paid on 28 June 2021.

26.7 So, whilst it is evident that the firm invoiced duplicate charges, two of the payments made were credited by to Mr A' LEI. Therefore, only one payment has been made; the firm have not been paid more than once for the barrister, N.

26.8 However, I can see where the confusion has stemmed from, as the evidence shows that the firm did in fact invoice for duplicate charges. This meant that they were paid more than once but this then had to be credited back to the LEI. For these reasons, I find the service was unreasonable.

26.9 Dealing with (b) next, both invoices 3458222 and 3486732 included the same charges, which were £3,300 for barrister P, and £3,000 plus VAT for the firm's fees. However, the firm's statements show that invoice 3458222 was raised on 26 February 2021 but credited on 6 May 2021 (this didn't

appear on the second statement dated 29 January 2025), and 3486732 was raised on 26 May 2021 and paid on 28 June 2021.

26.10 So again, whilst the charges were duplicated, there has only been one payment for barrister P and the firm's fees of £3,000 plus VAT from the LEI. But I would reiterate what I have said above, which is that without the firm's explanation and further information to clarify the position, I can see why Mr A/Mr J were of the view that duplicate charges had been invoiced, because they were. I find the service unreasonable.

26.11 Dealing with (c), the firm's statements show they were paid £1,200 for invoice 3383478 three times; twice on 21 July 2020 and once on 20 August 2020. However, the firm only returned one of these payments to the LEI on 5 January 2021. Therefore, there was a duplicate charge here, which is unreasonable.

26.12 However, in response to the Case Decision, the firm say that they received two payments of £1,200 from the LEI to cover invoice 3383478 (dated 26 June 2020), one of which they returned on 5 January 2021. They say the LEI then sent a further payment of £1,200 on 16 January 2023 which wasn't returned but instead was used against invoice 3642318. The firm therefore dispute that they have been paid for invoice 3383478 more than once.

26.13 The firm have provided a breakdown of the £1,200 which I have enclosed with this decision. This shows that £1,200 was deducted and *'created to pay cash receipt for invoices (3642318)'.* The invoice 3642318 is dated 30 November 2022 and was for the firm's charges of £34,071.68 including VAT. The firm's statements dated 14 January 2025 and 29 January 2025 include the same information shown below:

30/11/2022	Invoice 3642318	34,071.68		-34,071.68
20/01/2023	IPA MAIN CLAIMS - Payment of invoice 3642318		1,200.00	-32,871.68
24/01/2023	IPA MAIN CLAIMS payment of invoice 3642318		303.83	-32,567.85

26.14 This shows that whilst the firm had been paid for their charges of £1,200 three times and had only returned one of these payment to the LEI, the other duplicate payment was used against invoice 3642318.

26.15 However, my view remains as above that the firm's service was unreasonable because they have invoiced duplicate charges. The clarification around the £1,200 has only been made available by the firm after Mr A' complaint and after the Case Decision was issued. I can understand why Mr A complained that the firm had invoiced duplicate

charges because they had based on the information that was available to him at the time of his complaint.

26.16 Furthermore, charges were included on invoice 3642318 for the firm dealing with Mr A' complaint which should not have been made. This has been dealt with under complaint 25.

26.17 Taking all of the above into account, I find the firm's service to have been unreasonable on all three aspects of this complaint. As this is different to the conclusion of my colleague, it is only fair that this decision is provisional to allow both parties an opportunity to comment before it becomes final. However, the difference is not significant and has no bearing on the remedy, and my overall finding is the same as my colleague's.

26.18 I will address the remedy at the end of this decision.

27. The firm paid the barrister a briefing fee though no brief was provided.

27.1 The evidence shows that the barrister's chambers agreed a 'brief fee' with the firm on 1 June 2022 of £20,000 plus VAT. An invoice for this amount was issued that same day setting out a charge of £10,000 for 'First Stage Brief Fee' on 30 May 2022, and £10,000 plus VAT for 'Second Stage Brief Fee' on 31 May 2022.

27.2 I understand why Mr A has queried this, because it was concluded under complaint 23 that the firm didn't provide a brief to the barrister. However, my colleague quite rightly pointed out within the Case Decision that this is a term used when a barrister has been instructed to represent the client, as was the case here.

27.3 I therefore do not find unreasonable service on the part of the firm. The £20,000 plus VAT paid to the barrister was for them to act for Mr A at the trial. No further comments have been forthcoming on this complaint.

28. The firm did not advise about the option of After the Event ('ATE') insurance.

28.1 Having reviewed the evidence available, this supports my colleague's finding of unreasonable service. This is because although the firm mentioned ATE insurance at the outset in their letter to Mr A dated 1 October 2018, they did not revisit this at any point during their instruction.

28.2 Despite the firm's letter saying they'd keep costs under review and discuss these if the LEI limit was unlikely to cover costs Mr A may become liable to pay, this didn't happen. By 5 May 2022, the firm had already billed £31,054.27 including VAT as confirmed in the LEI's email, which is more than half of the limit. In order for Mr A to explore the option of splitting the limit to cover both his and N's costs, he needed to be made aware of this and also of when the firm had reached £25,000, but he was not. This is unreasonable.

28.3 In response to the Case Decision, the firm accept this finding. They say that they did not revisit ATE insurance when it became clear that going to trial would be necessary for which they apologise. However, the firm say that it should be taken into account the clients may have opted against taking out ATE insurance given that they were confident they would be successful at trial, and such a policy would likely have been costly at that stage in any event.

28.4 However, Mr A still lost the opportunity to explore this option and consider taking out this policy due to the firm not revisiting this at any point. Had he known that the £50,000 LEI limit was likely to be exceeded on his costs alone, he could have considered taking out ATE insurance to cover N's costs. But because he wasn't told by the firm that his cover would not be split between his and N's costs, or that the £50,000 had been exceeded or at least half of it, he wasn't able to consider this option.

28.5 I will address the remedy at the end of this decision.

30. The firm failed to provide a brief to the barrister.

30.1 As I have said under complaint 23 above, the evidence shows that once the firm's application to adjourn the trial was rejected on XX May 2022, they sent the trial bundle to the barrister. The firm say they didn't send a brief due to the trial commencing only XX working days later, although it was actually XX working days later. Even so, I understand why a brief hadn't been sent.

30.2 The bundle included all witness statements and supporting evidence to enable the barrister to prepare for the hearing and get to grips with the background of the matter. The barrister also had chance to raise any questions they had with the firm prior to the trial commencing, but they didn't.

30.3 Time was of the essence, and due to the barrister being instructed only XX working days before the trial commenced, I do not find it unreasonable that

the firm didn't provide a brief. This would have taken time to prepare, albeit not too much time as it was only an overview of the matter and would more than likely have been one or two pages, but it was important that the barrister was given time to consider the case prior to the trial.

30.4 Mr A' position statement was included in the bundle, and the fact that the barrister didn't have any questions shows that they were aware of what was required of them. And that they had all they needed to carry out the instructions. I recognise that the service could have been better here as it would have been useful for the barrister to have had a brief, but I am reminded that I am looking for reasonable service, not perfect.

30.5 For these reasons and those given in the Case Decision, I do not find the firm's service was unreasonable. No further comments have been forthcoming.

Remedy

31.1 To recap, I have found unreasonable service on the following complaints:

2. The firm:
- **b. proceeded to trial though the LEI (Legal Expense Insurer) had not approved funding.**
- **c. exceeded the LEI limit though Mr A told them not to.**
- **d. failed to update Mr A, Mrs A and / or Mrs C about costs and advise them the LEI limit had been reached to agree how funds beyond the limit would be covered.**

4. The firm's approach with the witness statements were wrong as:
- **a. they asked Mr A to draft his witness statement himself.**

6. The firm did not respond to the barrister or Mr A during the trial.

7. The firm failed to respond to J's email of 19 November 2021 that was sent on C's behalf.

10. The firm failed to amend the following documents:
- **b. The abstracted deed plans enlarged to assist reference of P to Q.**

11. The firm failed to respond to the other side's letters from September 2022.

12. The firm failed to arrange a cost hearing for the adverse costs.

17. The firm failed to tell the court the reason for requesting an adjournment was due to the firm not being prepared.

19. The firm failed to contact the chosen barrister (P) within a reasonable time after finding out the date of the trial.

21. The firm failed to send the invoice by email to Mr A before sending a reminder by post. The firm also failed to provide a breakdown of the costs.

25. The firm charged for dealing with the complaint.
26. The firm invoiced duplicate charges.
28. The firm did not advise about the option of After the Event (ATE) insurance.

31.2 The Case Decision addressed the impact of each complaint separately, but I am not going to do that as it felt a little repetitive. Instead, I am going to address any fee reduction first and then deal with any compensation for distress and inconvenience as a whole.

31.3 There has been a clear failure on the part of the firm to provide costs information and updates on costs throughout. It was around April 2022 that options on the payment of costs going forward ought to have been discussed with Mr A, as over half of the LEI limit had been billed by this point. The firm ought to have known it was going to be exceeded with the instruction of a barrister. Mr A was denied the opportunity of making a fully informed decision about proceeding.

31.4 Had the firm's service been reasonable and had they explored payment options with Mr A, I cannot say for certain that the firm would have offered a no win no fee agreement/Conditional Fee Agreement ('CFA') at this stage. CFAs are rare in boundary disputes, and the firm would need to be confident that they would recover their costs from the other side.

31.5 It is clear that Mr A could not fund the matter himself because he said as much throughout. Mr J would not have loaned the money to fund the case which I have covered elsewhere in this decision. This leaves Mr A either representing himself or using the remainder of the LEI limit to try to reach a settlement with N. I agree with my colleague that both the firm and the barrister would not have worked beyond the limit of the LEI without knowing how they would be paid.

31.6 For these reasons, my colleague's recommendation for the firm to waive all of the outstanding fees, which they say are £32,567.85, is reasonable. This is because the firm did not obtain Mr A' authority or allow him the opportunity to explore alternative funding options prior to the LEI limit being exceeded. Instead, they incurred costs without Mr A' knowledge and subsequently asked him to pay them.

31.7 The outstanding fees are everything beyond the £50,000 limit that would not have been incurred had the firm's service been reasonable because Mr A made it clear that he didn't have any funds to pay for the matter outside of the LEI limit. He would have been able to make an informed decision about whether to represent himself or use the remaining LEI

funds (prior to the barrister being instructed) to attempt a settlement with N.

31.8 The firm comment that this remedy is unfairly in the favour of Mr A whom they have worked extremely hard assisting. However, I have explained why I agree with this remedy and why I am persuaded as to what is more likely than not to have happened had the firm's service been reasonable.

31.9 Turning now to the compensation element of the remedy, there is no doubt that Mr A, Mrs A and Ms C have experienced significant distress and inconvenience. All three were party to the proceedings and would have experienced frustration when finding out funding wasn't in place at the start of the trial. There was then the distress of trying to get hold of the firm whilst the trial was ongoing which could have been avoided.

31.10 There was also the additional stress of the firm failing to respond to correspondence, failing to offer assistance and explanations where necessary, and failing to follow instructions which could have been avoided. I acknowledge that Mr A took the lead and was corresponding with the firm directly throughout, but my colleague recommended that the same amount of compensation should be paid to each of the three complainants.

31.11 It could be argued that Mr A suffered more distress and inconvenience than the other two complainants because, for example, he drafted all of their statements himself. However, I haven't seen any comments to show that any of the complainants are unhappy with the level of compensation recommended by my colleague and my colleague's proposed remedy in this regard does not strike me as unreasonable overall.

31.12 My colleague recommended a payment of £750 be made to each of them, meaning a total of £2,250 compensation. Their reasoning for this was because there has been an exceptional impact as there was avoidable exposure to particularly stressful situations and financial liabilities.

31.13 For example, the shock experienced in finding out on the first day of the trial that funding had not been authorised beforehand; being reminded to pay outstanding fees without first receiving the invoice; being denied the opportunity to make a fully informed decision on how to proceed in terms of funding; and the lingering doubt of whether the outcome could have been any different had the firm's service been reasonable.

31.14 I am satisfied that £750 is a fair and reasonable amount for each of the complainants to receive from the firm. So, the compensation amount is

£2,250. I am not awarding any more than this because there is also the waiving of fees.

Decision

Therefore, my Provisional Decision is that the firm's service has been unreasonable in respect of complaints 2b, 2c, 2d, 4a, 6, 7, 10b, 11, 12, 17, 19, 21, 25, 26 and 28. I intend to direct that the firm:

- **Waive/cover all outstanding fees amounting to £32,567.85 that the LEI didn't cover and doesn't charge anything further to Mr A, Mrs A and Ms C.**
- **Pay £750 compensation to Mr A.**
- **Pay £750 to Mrs A.**
- **Pay £750 to Ms C.**

This is a total remedy of £34,817.85.

Please provide any comments you have on this Provisional Decision by **2 July 2025**.