



Neutral Citation Number: [2021] EWHC 1656 (Admin)

Case No: CO/4927/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

As at Manchester Civil Justice Centre  
1 Bridge Street West, Manchester, M60 9DJ

Date: 08/06/2021

**Before :**

**MR JUSTICE JULIAN KNOWLES**

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**Between :**

**THE QUEEN ON THE APPLICATION OF**  
**DAVID MOTTLER**  
**- and -**  
**THE LEGAL OMBUDSMAN**

**Claimant**

**Defendant**

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**The Claimant appeared in person**  
**Taranjit Hayre (In-house Solicitor for the Legal Ombudsman) for the Defendant**

Hearing dates: 21 May 2021  
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**Approved Judgment**

## **Mr Justice Julian Knowles:**

### **Introduction**

1. This is a renewed application for permission to seek judicial review by Mr David Mottler, the Claimant, following refusal by Turner J on the papers on 30 January 2021. I held a remote hearing by Microsoft Teams on 21 May 2021 at which I was addressed by Mr Mottler and by Mr Hayre for the Defendant. Both sides filed written submissions in advance of the hearing. A number of members of the public dialled-in to the hearing.
2. The decision challenged is that of the Defendant dated 18 September 2019 awarding Mr Mottler £9597.10 compensation by way of remedy for poor service from his former solicitors, GS Law Northwest Ltd, trading as Singleton Day (the Firm). The SRA intervened in the Firm in 2016 and it has since ceased trading.
3. The compensation awarded by the Defendant comprised £1200 which Mr Mottler paid the Firm for a barrister whose services were not needed; £750 for upset, frustration and inconvenience; and £7647.10, being 50% of the £15 294.20 Mr Mottler paid to the Firm for its fees. This figure was considerably more than the initial award of £1950 determined by the Defendant. The case was then reviewed, and the amount of compensation was increased to £9597.10 in a provisional decision. Mr Mottler made representations, but this figure was confirmed in the Defendant's final award.
4. Mr Mottler rejected that award. He considers he is entitled to much more.
5. In his decision refusing permission (and requiring Mr Mottler to pay the Defendant's costs of preparing the Acknowledgement of Service) Turner J said:

“As the authorities relied upon in the Summary Grounds of Defence make clear, the role of the Ombudsman is not equivalent to that of a court. Its approach is more flexible and informal. Furthermore, the court will, necessarily, be very slow to interfere with an Ombudsman's exercise of judgment. Whereas, a different Ombudsman may have reached a different conclusion, it cannot be said that the decision in this case fell outside the broad parameters of *Wednesbury* unreasonableness.”
6. I also consider that the claim is not arguable and I therefore refuse permission.

### **Factual background**

7. In summary, in April 2016 Mr Mottler instructed the Firm to represent him in Court of Protection proceedings concerning his late partner, MS. They held themselves out as specialists in this area of work. The issue concerned the future place of residence of MS, who was then living in a care home. The Claimant and MS wished MS to be discharged back to her home. He also sought to maintain interim contact arrangements with MS and to recover fees from the local authority that had been ordered by the Court.
8. The matter went to a final hearing in the Court of Protection on 3 and 4 August 2016. The Court found that it was in MS' best interests to reside in the care home. The

Claimant instructed the Firm to file an appeal however, unfortunately, MS died shortly afterwards.

9. Mr Mottler was very critical of the service which the Firm had provided. As summarised in his Statement of Facts and Grounds at [33], he says the Firm failed adequately to prepare the case; failed to obtain and/or file relevant evidence; and failed to provide proper instructions to counsel.
10. Mr Mottler says the proceedings and their failure affected his mental health and he suffered from stress and anxiety (among other things). He was also diagnosed with post-traumatic stress disorder.
11. He filed a complaint with the Defendant in November 2016. The Defendant was created by, and operates under, Part 6 of the Legal Services Act 2007 (LSA 2007). That established a scheme by which complaints about lawyers ‘may be resolved quickly and with minimum formality by an independent person’ (s 113(1)) (the Scheme). Section 115 requires there to be rules for the operation of the Scheme (the Rules). Mr Mottler’s complaint was dealt with under the Rules.
12. The complaint was investigated by an investigator on behalf of the Defendant who, on 17 December 2018, issued a case decision that the Firm’s service had been poor and recommended that the Firm pay Mr Mottler £1950 in compensation. That award was immediately rejected by Mr Mottler.
13. The matter was further considered and the Defendant issued a provisional decision in May 2019 awarding Mr Mottler £9597.10. As I have already said, this was confirmed in a final decision in September 2019 which was signed by the Ombudsman personally, Mr Chapman. The Defendant upheld the majority (but not all) of Mr Mottler’s complaints about the service he received from the Firm, including that it had failed to apply for costs from the local authority; that it had provided poor costs information and incorrectly charged him; that it provided poor service in response to a complaint; it failed to make an application to reinstate contact with MS and failed to lodge an appeal.
14. The Defendant’s decision letter responded point by point to the representations which Mr Mottler had made, including that the Ombudsman was ‘biased’ against him and had been ‘desperate’ to exonerate the Firm. The decision explained the part refund of the Firm’s fees was on the basis that it had done *some* work which had been of value that it was entitled to paid for; the £1200 was a straight reimbursement of fees paid on account for counsel who was never instructed (because no appeal was ever pursued); and the award of £750 was at the top of the ‘Significant Award’ category in the table for compensation for ‘distress and inconvenience’ in the Defendant’s document, *‘Putting Things Right: our approach to remedies’*. This table goes up to £1000 (the top of the range for awards of compensation under this head of damage – described as ‘exceptional’ – where ‘there has been a long-term impact on the customer’s wellbeing or life’). It also says:

“Payments are not limited to £1000 as some circumstances could be so exceptional and require compensation above £1000, but in practice awards above this amount are extremely rare.”

## Discussion

15. Section 137(1)(2) of the LSA 2007 provides:

“(1) A complaint is to be determined under the ombudsman scheme by reference to what is, in the opinion of the ombudsman making the determination, fair and reasonable in all the circumstances of the case

(2) The determination may contain one or more of the following -

...

(c) a direction that the respondent pay compensation to the complainant of such an amount as is specified in the direction in respect of any loss which has been suffered by, or any inconvenience or distress which has been caused to, the complainant as a result of any matter connected with the complaint;”.

16. These statutory provisions are reflected in the Rules.

17. Rules 5.36-5.38 provide:

“5.36 An ombudsman will determine a complaint by reference to what is, in his/her opinion, fair and reasonable in all the circumstances of the case.

5.37 In determining what is fair and reasonable, the ombudsman will take into account (but is not bound by):

a) what decision a court might make;

b) the relevant Approved Regulator’s rules of conduct at the time of the act/omission; and

c) what the ombudsman considers to have been good practice at the time of the act/omission.

5.38 The ombudsman’s determination may contain one or more of the following directions to the authorised person in favour of the complainant:

a) to apologise;

b) to pay compensation of a specified amount for loss suffered;

c) to pay interest on that compensation from a specified time;

d) to pay compensation of a specified amount for inconvenience/distress caused;

e) to ensure (and pay for) putting right any specified error, omission or other deficiency;

f) to take (and pay for) any specified action in the interests of the complainant;

g) to pay a specified amount for costs the complainant incurred in pursuing the complaint;

h) to limit fees to a specified amount.”

18. These statutory provisions and the Rules require an exercise of judgment by the Defendant about what is fair and reasonable. The cases set out by the Defendant in his Summary Grounds of Defence make clear that the court will be slow to interfere with the Defendant’s decision where it is challenged on rationality grounds and that the threshold is a high one. That is because Parliament has entrusted it to the Defendant, first and foremost, to decide what is fair and reasonable in all the circumstances of the case before him/her: see *R (Crawford) v Legal Ombudsman* [2014] EWHC 182 (Admin), [21]; *R (Siborurema) v Office of the Independent Adjudicator* [2007] EWCA Civ 1365, [74]; Summary Grounds of Defence, [22]-[26].
19. In his Grounds for Seeking Reconsideration following Turner J’s decision, as amplified orally, Mr Mottler said that the Defendant was biased, corrupt and dishonest (when I challenged him about his use of some of these terms, Mr Mottler did not resile from them); failed to make appropriate inquiries and failed to obtain relevant evidence. He said he had suffered serious mental health issues which justified an award under the Scheme of the maximum of £50 000, and had spent a lot of money in relation to the Court of Protection proceedings which should have been reimbursed. He also referred to a legitimate expectation.
20. I have carefully considered the points made by Mr Mottler but in my judgment there is no arguable basis for suggesting that the Defendant’s decision was unlawful in public law terms having regard to the principles I must apply. I reject without further comment his allegations of bias, corruption and dishonesty. The Defendant’s decision letter was lengthy and detailed and responded to all of the main points which the Claimant had made during the complaints procedure. There was a rational basis for each head of damage for which the Defendant awarded compensation. In particular, he was entitled to conclude that there should be less than a full refund of fees paid to the Firm because they had carried out some work of value. He was also entitled to award £750 for distress and inconvenience and his decision was not irrational or out of line with the published guidance. It was not arguably irrational for the Defendant not to award Mr Mottler £50 000. Mr Mottler said to me that he had spent sums of money on and in connection with the Court of Protection litigation; I accept he did but that does not mean he was entitled to be awarded those sums back by way of compensation for failures by the Firm. Mr Mottler made a reference in his letter before action of 10 November 2019 to consequential loss, but without any further detail or elaboration. I accept what is said in the Summary Grounds of Defence at [37], namely, ‘The Claimant refers to the issue of ‘consequential loss’. It is not clear what this refers to. The Ombudsman properly directed appropriate remedies to those complaints which were upheld. The Ombudsman does not have a general power to direct compensation.’

21. For these reasons, therefore, I refuse permission. Mr Mottler also challenged the award of costs made against him by Turner J, however there is no basis for interfering with that award given this renewed application has been unsuccessful.