Case No: H1QZ65P0

IN THE COUNTY COURT AT SOUTHEND

Southend County Court and Family Court
The Court House
80 Victoria Avenue
Southend-on-Sea
SS2 6EU

BEFORE:

HIS HONOUR JUDGE HOLMES

BETWEEN:

NC INVESTIGATION SERVICES LTD **CLAIMANT**

- and -

KENNETH CROSSLEY **DEFENDANTS**
BRENDA CROSSLEY

Legal Representation
Martin Lewis Hirst (Counsel) on behalf of the Claimant
Mr Kenneth Crossley (First Defendant), Litigant in person

Other Parties Present and their status
None known

Judgment

Judgment date: 1 March 2024
(start and end times cannot be noted due to audio format)

Reporting Restrictions Applied: No

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Number of folios in transcript 96
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His Honour Judge Holmes:

1. Mr Crossley is a week short of his eighty-eighth birthday. He was a man of business, working for many years in demolition. He was successful and had built up a substantial amount of savings, which he no doubt intended to make use of in his retirement and that of his wife.

2. For those who rely on savings, as opposed to those paying their mortgages, the last few years have not been kind. Mr Crossley was concerned by the small amount of interest that he was receiving and wanted to do better. In 2018, he investigated online and found companies that would sell investment bonds which would provide a better return for his money. He considered that he had investigated matters fully, and that the companies were legitimate.

3. Sadly, Mr Crossley was the victim of a sophisticated fraud. The fraudsters were cloning the identity of legitimate businesses. Mr Crossley paid them a total of £300,000 in three equal payments. It did not take him long to realise the sad reality. Mr Crossley contacted the police and Action Fraud. He also contacted the family's solicitor, the well-known local firm of BTMK. Mr Fleming of that firm looked at the problem, but he was not certain what could be done. He recommended that Mr Crossley contact an investigator to look into the matter. He was aware of the possibility that Mr Crossley could contact the Financial Ombudsman Service, and the time limits for so doing.

4. Mr Fleming made some enquiries and suggested that Mr Crossley contact ITUS Ltd. That is a company operated by Mr Martyn Osment. In 2012, Mr Neil Casey had begun to work for ITUS. Mr Casey is a former detective sergeant with the Metropolitan Police. Like many other officers, when his police service came to an end, he moved into private investigation or similar work. He has worked for a number of firms since his police service came to an end in 2005, including as an investigator for Waltham Forest London Borough Council, for Hermes and for a gold bullion company. In 2011, Mr Casey began to work on his own account, and he incorporated NC Investigation (NCIS) Ltd, which I will refer to as NCIS.

5. Mr Casey was never employed by ITUS. He worked for that company on an ad-hoc basis. He would take referrals from them, and they would receive a proportion of the fee recovered. Mr Osment gave Mr Casey the grand sounding title of Operations Director. He had business cards printed and provided Mr Casey with an ITUS email address. As Mr Osment accepted in his evidence before me today, it was to give an impression to potential customers and there is, of course, nothing unlawful in that.

6. When Mr Crossley had spoken to ITUS it was arranged that Mr Casey would go and speak to Mr and Mrs Crossley. That was the arrangement between Mr Osment and Mr Casey. That meeting took place on 29 November 2018 at the family home, and together with his parents was Mr James Crossley, their son. What was said at that meeting is, to a degree, in dispute, and I will need to return to those points of difference in a moment. What is agreed is that, at that meeting, Mr Casey was provided with some paperwork, and he agreed to take an initial look.

7. Subsequent to that meeting Mr Casey sent a number of emails to Mr Crossley and/or his son. The first was on 14 December 2018. In that email, which was sent only to James Crossley, he set out that he had

> **"Spoken with the lawyers I ordinarily work with, and they agree there is an opportunity to take on the banks and a fair to good chance we will get some of the funds back, though probably not all."**

He also said it would be a long, hard fight, and the email also speaks of trying to identify the perpetrators.

8. The email then turns to fees, and Mr Casey says this:

> **"The next issue will be funding/fees. It is extremely difficult for me to guesstimate my costs, never mind solicitors' fees. We chatted about the possibility of a success rate if we can get some funds back for your father, and I am happy to explore that with you, though at this time the solicitors are not. This is to be expected, and they may review or revisit this if or when we get in a stronger position, and when we actually might come to need them. My aim would be to try and do without them fully, but this may not be possible. This will be a time extensive instruction, involving many hours of work my end, and if I was to charge my normal hourly rate, £75 per hour, I would expect my fees to be at least some £15,000. Yes, it sounds a lot, but in long protracted cases you could double that and more, plus, for law firms, add a zero on top. I also have to pay researchers and other people to assist, especially on the fraud aspect, and visit various addresses and speak to various people. There may be some surveillance involved, subject to funding, which can be very expensive. However, I am mindful your father has already lost a substantial amount of money and so my offer, as such, will be based on a combination of reduced fees and a success fee, as you suggested. The variations I suggest for you and the family to consider are as follows, £15,000 and no additional success rate if monies are recovered, £10,000 fees and 10% of any fees recovered, £7,500 and 15%, and finally, £5,000 and 20%. If you go for one of the success fee options, then I would require full payment of the fee aspect before I could go ahead. It could be in cash, if you want to avoid invoicing and thus VAT. We can get some form of legal document drafted between us regarding success fees once we are up and running."**

He then continued:

> **"To be honest, I have never undertaken work on this basis as it can clearly be the case I would work long hours, usually more than budgeted for, and thus a substantial reduction in my hourly rate with potentially nothing additional in return if the case proves unsuccessful."**

He then gives his personal view that there is a good chance of getting £100,000 back, but he says he does not know how long that would take. He then says that he has undertaken some work already now free of charge, reviewing the case in its initial form, and he adds:

> **"As such, I cannot do any more now until such time as a final decision is made by the family regarding whether any of my suggested fee**

breakdowns are suitable or, indeed, whether you still wish to pursue the matter with my assistance."

9. Mr Casey sent a polite reminder on 13 January of the following year, and a meeting was arranged on Friday 18 January. This again took place at the family home. A couple of days after that meeting, Mr Casey sent an email to Mr Crossley and his son. Given the nature of the dispute it is necessary to refer to a reasonable amount of that email:

> **"Hi James and Ken. As promised, here is my suggested way forward, but do remember these are my initial thoughts, as we must remain flexible throughout what could be a long, painstaking process where tactics might have to be varied and fluid depending on what develops: -**

> **1. Approach - A six pronged methodology to be utilised in order to achieve the ultimate goal of receiving a significant amount of compensation for Ken, whether it be from the banks (more likely) or through the criminal processes available to the police (less likely).**
> **2. Gather 'Evidence' - Spend some time with Ken gathering as much intelligence, evidence and information as is possible in order to strengthen his case for a claim and to put everything in chronological factual order and to "fill the gaps" where necessary.**
> **3. Police Liaison - This would also include putting a package together for the police (statement, exhibits, etc) to assist them in their investigation and to keep them interested in Ken's case and keep them onside. They have much more powers and a better sway with the banks than us (especially Data Protection Act requests) so we could do with their help/support.**
> **4. Banks - Communicate with ALL the banks involved in ALL of the transactions of interest in order to gather as much information as possible from them and if they do not provide the same then at least show the Financial Ombudsman that we have repeatedly asked for the same. This will include establishing details of the suspect(s) accounts, how they were opened, with what documents (possible forged documents),**
> **confirmation of why they returned the £100,000 payment and why they did not inform Ken directly (appreciate Friday's meeting might change our thinking around this), plus in general just obtain as much information from them we possibly can, particularly anything that shows them in a bad light, etc.**
> **5. Media - After the first initial strands are completed, seek some support from the media into Ken's case. This could be programmes such as Watchdog, Rip off Britain, Don't Get Done Get Dorn, etc., or from the press (newspapers, magazines, fraud journals), or just online ways (blogs, forums, etc). This is to publicise what has happened to Ken, how he has been treated by the banks, raise this issue further to the public, embarrass the banks and to also look for other victims and those who might have made similar successful claims and establish how they went about this (what worked, what didn't, etc). As discussed**

Friday, this may mean showing Ken as an elderly vulnerable victim, as indeed he is.

6. Research - Going slight hand in hand with the media aspect, NC INVESTIGATIONS will also undertake detailed research (whether through the media work or our own research) to identify any similar (especially successful) claims against the banks under similar circumstances, identify such victims or their representatives and seek intel from them about how they obtained a settlement, ensure we do not follow unsuccessful paths, etc.

7. Present Findings - As well as providing police with our findings and continued liaison with them, the banks and media by letters and email regarding a claim for damages and a refund of funds 'lost' by the client to the fraudsters, NC INVESTIGATIONS ultimate aim will be to present our detailed findings and (hopefully) the bank's refusal to accept liability where it is due, its inability and refusal to co-operate with the client nad NC INVESTIGATIONS to the Financial Ombudsman for consideration for them to to act and determine the merits and credibility of the client's claim in a fair and transparent manner.

Regarding fees, as discussed and agreed, you have decided to instruct NC INVESTIGATIONS on the following basis:

- **Set fee of £5,000 PLUS a "success fee" of 20% of any compensation received by Ken as a consequence of the work being undertaken by NC INVESTIGATIONS and from the point of instruction (formally instructed Friday 18th January 2019).**

NOTE: The £5,000 fees agreed is specifically for ALL the fees that might be incurred by NC INVESTIGATIONS for time spent investigating this matter and preparing all associated paperwork (including all disbursements such as travel, communications, etc); whether it be to assist the police with statements, exhibits, information, etc., or to assist in preparing documents and paperwork regarding Ken's claim(s).

It does NOT include any potential third party specialist fees which could be required by the client in this matter going forward. This could include such things as IT forensic interrogation of laptops, standalone PCs, iPads, etc, or possible legal fees for any legal work/assistance going forward. However, any potential third party fees of this nature which could be incurred would have to be discussed first with the client to establish their necessity, cost and worth to the investigation before the client decides whether to agree to them or not.

Ordinarily in a case such as this, where fees are a combination of both an agreed reduced amount fee (compared to what might be incurred should fees be charged by a standard hourly rate as is the norm) plus a success fee we would ask that all fees agreed should be paid in full before the work begins,

However, NC INVESTIGATIONS are mindful that our relationship is new, you need to be satisfied that progress is being made continuously and you

would require some peace of mind it is being spent wisely and for the principal purpose of this instruction.

As such, on this occasion NC INVESTIGATIONS are happy to accept half the fees (£2,500) up front (ideally when we meet Tuesday) and the second tranche of funds would be due within 4 weeks of the date of this email and associated letter of engagement (as such, this would mean the second half would be due on or before Sunday 17th February 2019).

Please find attached a copy of a letter of engagement (a hard copy will be provided Tuesday) which virtually covers all the above and more (to be retained by Ken as the client), plus a signed copy of our terms and conditions, for which Ken will need to sign a copy as the client and return to me, plus sign and retain a copy for himself. (Again, I will bring hard copies Tuesday to make things easier.)

I trust all the above is in order and look forward to getting started formally on Tuesday at about 1000 hrs. Any problems or issues do let me know."

10. Attached to that letter was a formal letter of engagement. That letter is in very similar terms to the email which accompanied it. However, it begins with this:

> **"Thank you for your discussions with NCIS Investigations Services (NCIS Ltd). As per the ongoing communications by email and meetings in person, concluding in your formal instruction in person on Friday 18 January 2019, subject to agreeing to NC Investigation's Terms and Conditions, Service description (services). As per our most recent discussion, NC Investigations undertake a six pronged methodology in order to achieve the ultimate goal of receiving a significant amount of compensation for the client, whether it be from the banks, or through the criminal processes available to the police."**

The letter then repeats points 2 to 7 from the email I have already made reference to.

11. The terms and conditions were also attached to the email. The relevant part for these purposes is the beginning of clause 5, which reads as follows under the heading "Charges and Expenses":

> **"Our charges in respect of any instruction are normally billed at £75 per hour, for each employee engaged on an investigation. However, for this particular project we have agreed for our fees to be capped at £5,000 plus a success fee of 20% of any compensation received by the client as a consequence of the work being undertaken by NC Investigations and from the point of instruction subject to the conditions outlined in the letter of engagement."**

12. Clause 6 is headed "Payment Arrangements" and the second and third paragraphs read as follows:

> **" In addition, should any compensation be obtained by the client from any banks or third parties, police, courts, etc., following NC**

Investigations instructions and specifically in relation to this matter, then 20% of all such fees should be made payable to NC Investigations within 28 days of the client receiving such compensation. In the unlikely event of any bill or request for payment not being met, we reserve the right to stop acting for you further or to suspend acting for you until payment is made."

13. Finally, clause 7 is headed "Interest" and it reads:

> **"We do not envisage holding any monies for you and therefore do not envisage the payment of interest to you."**

14. The contract was signed by Mr Crossley on 4 February. He erroneously wrote January. It would have been signed by Mr Casey on behalf of NCIS when the contract was sent to Mr Crossley on 20 January. £2,500 was paid in cash at about the same time that the contract was entered into, and the remaining £2,500 of that initial fee was paid in early March. Mr Casey set to work. There is some dispute about what was done, and that is a further issue that I will need to return to.

15. There is little detail about what was actually done, but it certainly included liaising with the police, because there was a time when all of the parties attended at a police station and Mr Casey was interviewed by the police. There is also no dispute that Mr Casey made a detailed submission to the Financial Ombudsman Service in or around May of 2019. I have not been provided with a copy of that document, and no doubt rightly so. I do not need to assess the value of the work that Mr Casey did.

16. It took a long time for the FOS to appoint an investigator to the case, and when they did, it took time for them to investigate and to make their findings. Mr Crossley was not very patient, perhaps understandably given the situation that he found himself in, and was wanting updates from Mr Casey. Mr Casey, perhaps should have provided more regular updates, even if there was not a great deal to say, but when Mr Crossley asked for updates, Mr Casey provided long emails in response. The reality was that, with the matter being pending before the FOS, there was not a great deal that could or should have been said.

17. By September of 2020, the wind was blowing in Mr and Mrs Crossley's favour and, at some stage in the autumn of 2020, they received full compensation from their bank, or an indication that it was coming quickly, and a small sum of £600 for injury to feelings.

18. Mr Casey attended the family property on 11 December 2020 to deliver the good news. Mr Crossley is critical of Mr Casey for doing so, given the rise in Covid-19 cases at the time, and he describes them all sitting in the kitchen when he was not well and more particularly when his wife was particularly vulnerable. I am not here to determine whether there was a breach of Covid regulations, or whether it was wise or whether it was necessary. I will leave that to each to ponder for themselves.

19. Mr Crossley accepts that at that meeting he was not pleased with Mr Casey. Indeed, he said to me in submissions today that he was angry, and to a degree one can understand the feelings that he had. He had seen no need for that face to face meeting. It was perhaps in light of that feeling that, when Mr Casey turned the conversation to money and to his fees, that he got fairly short shrift from Mr Crossley about it. Mr Casey says that he said words to the effect of:

> "Well don't think you are getting what you want."

Whether it was those words, whether it was something similar, I am satisfied that something along those lines was said.

20. On 17 January 2021, Mr Crossley sent a cheque addressed to Mr Casey personally with a letter which said it was:

> **"In full and final settlement of our business together."**

Mr Casey did not accept it, and returned it, and his final invoice followed on 19 January. It sought £60,918.65 together with VAT of £12,183.73, a total of £73,102.38. It is that invoice which has been sued upon in these proceedings, which were issued on 12 May 2021.

21. In a letter which accompanied the invoice, Mr Casey set out all the details of his calculation. It was based upon a total figure of £60,918.65 plus VAT as I have said, and included the £600 for compensation and also an element of interest that Mr Casey thought would have been provided by Nat West in lieu of the time that Mr and Mrs Crossley had been kept out of their money.

22. The claim was initially brought against Mr Crossley alone, but after a hearing before District Judge Ashworth and, no doubt, out of an abundance of caution, Mrs Crossley was added as a second Defendant. It was as much her money as it was Mr Crossley's, but Mrs Crossley does not seem to me to have entered into any contract with NCIS. I understand why she was added, but I do not think, in the end, it added a great deal to these proceedings. She has provided a witness statement, but is too unwell to attend court, and her husband has represented her in these proceedings.

23. At first, Mr and Mrs Crossley retained solicitors and a defence and counterclaim was settled by counsel. Within them, the Defendants plead that Mr Casey had represented to them that ITUS Ltd were dodgy, that ITUS Ltd would overcharge for the work, that the investigation would be complex and potentially very expensive, that it was highly unlikely that the Defendants would ever recover their losses in full, that the Claimant had a team of investigators, and could deliver the same level of service as ITUS Ltd but at much lower cost. In addition Counsel pleaded various representations from Mr Casey's email of 14 December 2019 which I have already made reference to.

24. The case is then pleaded on the basis of breaches of the Consumer Protection from Unfair Trading Regulations 2008, as amended in 2014. It is said that the various representations were an unfair commercial practice, within the meaning of Regulation 3(a) and (b). Those two paragraphs of the regulation read as follows:

> "3. A commercial practice is unfair if—
> a) it contravenes the requirements of professional diligence; and
> b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product."

It is further said the acts and representations amount to an aggressive commercial practice contrary to Regulation 7 which reads:

"7.— Aggressive commercial practices

(1) A commercial practice is aggressive if, in its factual context, taking account of all of its features and circumstances—

(a) it significantly impairs or is likely significantly to impair the average consumer's freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion or undue influence; and

(b) it thereby causes or is likely to cause him to take a transactional decision he would not have taken otherwise.

(2) In determining whether a commercial practice uses harassment, coercion or undue influence account shall be taken of—

(a) its timing, location, nature or persistence;

(b) the use of threatening or abusive language or behaviour;

(c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgment, of which the trader is aware, to influence the consumer's decision with regard to the product;

(d) any onerous or disproportionate non-contractual barrier imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader; and

(e) any threat to take any action which cannot legally be taken.

(3) In this regulation—

(a) "coercion" includes the use of physical force; and

(b) "undue influence" means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision."

The relevant part of Regulation 5 read as follows:

"5.— Misleading actions

(1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).

(2) A commercial practice satisfies the conditions of this paragraph—

(a) if it contains false information and is therefore untruthful in relation to any of the matters in paragraph (4) or if it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that paragraph, even if the information is factually correct; and

(b) it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

(3) A commercial practice satisfies the conditions of this paragraph if—

(a) it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor; or

(b) it concerns any failure by a trader to comply with a commitment contained in a code of conduct which the trader has undertaken to comply with, if—

(i) the trader indicates in a commercial practice that he is bound by that code of conduct, and

(ii) the commitment is firm and capable of being verified and is not aspirational, and it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

Paragraphs (4), (5) and (6) set out the various factors. Then Regulation 6 says this:

> "6.— Misleading omissions
>
> (1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in paragraph (2)—
>
> (a) the commercial practice omits material information,
>
> (b) the commercial practice hides material information,
>
> (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
>
> (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context, and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.
>
> (2) The matters referred to in paragraph (1) are—
>
> (a) all the features and circumstances of the commercial practice;
>
> (b) the limitations of the medium used to communicate the commercial practice (including limitations of space or time); and
>
> (c) where the medium used to communicate the commercial practice imposes limitations of space or time, any measures taken by the trader to make the information available to consumers by other means.
>
> (3) In paragraph (1) "material information" means—
>
> (a) the information which the average consumer needs, according to the context, to take an informed transactional decision; and
>
> (b) any information requirement which applies in relation to a commercial communication as a result of an EU obligation.
>
> (4) Where a commercial practice is an invitation to purchase, the following information will be material if not already apparent from the context in addition to any other information which is material information under paragraph (3)—
>
> (a) the main characteristics of the product, to the extent appropriate to the medium by which the invitation to purchase is communicated and the product;
>
> (b) the identity of the trader, such as his trading name, and the identity of any other trader on whose behalf the trader is acting;
>
> (c) the geographical address of the trader and the geographical address of any other trader on whose behalf the trader is acting;
>
> (d) either—
>
> (i) the price, including any taxes; or

    (ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated;
(e) where appropriate, either—
    (i) all additional freight, delivery or postal charges; or
    (ii) where such charges cannot reasonably be calculated in advance, the fact that such charges may be payable;
(f) the following matters where they depart from the requirements of professional diligence—
    (i) arrangements for payment,
    (ii) arrangements for delivery,
    (iii) arrangements for performance,
    (iv) complaint handling policy;
(g) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right."

25. The Defendants then plead that they are entitled to the remedy provided by Regulation 27I (6) and (7), in essence that the consumer is entitled to a reduction in the amount of money being charged.

26. The counterclaim seeks not only those same remedies but also compensation pursuant to regulation 27J(1)(b).

27. Finally, perhaps as a belt and braces given the nature of the Consumer Regulations, counsel makes reference to section 2 of the Misrepresentation Act 1967 but, frankly, there is nothing contained in the Misrepresentation Act that is not also included in the Regulations.

28. Mr and Mrs Crossley have dispensed with the services of their solicitors. Mr Crossley has represented himself with the benefit of his grandson Kieran Crossley acting as a Mackenzie Friend.

29. In my judgment there are a number of matters upon which I need to make factual findings. First, what was said at the meeting on 29 November 2018 that might have induced Mr Crossley to enter into the contract? Secondly, are any of the matters set out as being misrepresentations, established? Thirdly, what was the extent of the contractual obligations upon NCIS? Fourthly, was the payment from NatWest as a consequence of the work undertaken by NC Investigations? Fifthly, was the money received from NatWest compensation or reimbursement? Once I have made those findings, I can then turn to whether or not any of the breaches of the regulations are established, or any breaches of the Misrepresentation Act are established.

30. On the pleaded allegations, Mr Crossley accepts that Mr Casey did not describe ITUS as dodgy at the meeting on 29 November 2018. To use his phrase, he was trying to blacken their name. I am not satisfied that Mr Casey said that ITUS would overcharge for the work. He may have gone as far as to say that he had his own company. There is a dispute as to whether that was raised first by the Crossleys or whether by Mr Casey, but in my judgment nothing turns on that. All parties agree that there was a discussion about Mr Casey's own company during the course of that meeting.

31. On the balance of the evidence that ultimately Mr Crossley, and certainly his son, gave about that meeting, the essence of what was said was that ITUS would in essence put

an additional markup on whatever it was that Mr Casey was going to charge, and that is no doubt true. Ultimately, the business model that Mr Casey had with ITUS was that they would introduce clients to him, that he would provide a quotation for the work, and ITUS would add a proportion on top as payment for their introduction. There is nothing surprising about that business relationship. There is nothing wrong about it, and if you strip out that markup there will no doubt be a reduction for the customer. All of that, in my judgment, is entirely true.

32. Mr Casey accepts that he said that the investigation would be complex and potentially very expensive. At that stage, Mr Casey having only just been given some of the documents, that was not an untruthful statement. It was potentially complicated and it was potentially expensive. I am certainly not sure that it was untrue, which it would need to be to amount to a misrepresentation.

33. I accept that Mr Casey may have said words to the effect of him having the same level of investigators as ITUS. It may not have been the whole truth, given the size of the two companies. The two companies did not employ investigators plural, and it is not untrue that ITUS was of similar size, or the same size, as Mr Casey's own company.

34. The matters sent out at paragraph 7 of the amended defence are the points made in the email of 14 December 2019. None of those matters are demonstrably false. Indeed, what they are, are expressions of opinion, such as, that they had a fair to good chance that they would be able to assist the First Defendant, although recovering not all of his losses. It was unlikely that the First Defendant would recover more than £100,000, that it would be a long hard fight. Those are opinions, and I am not satisfied that any of those representations are false or misleading.

35. I also have to consider fair dealing. Mr Casey set out his position in writing on at least two occasions before the contract was signed on 4 February 2019. He provided fee options. Whilst one can understand why Mr Crossley took the option that he did, the smallest amount upfront and the potential largest amount if the money was recovered, there is no suggestion that £15,000 would not have been a fair fee for the work that Mr Casey was prepared to undertake. Indeed, the last document that we looked at in evidence this morning was a quotation obtained from NCIS that £20,000 would have been a fair figure for them to quote. Mr Casey was prepared to do the work for £15,000.

36. I am also entirely satisfied that Mr Crossley understood what these options were, and I am sure of that because Mr Crossley said that he wanted to make sure that Mr Casey worked for his money, and he therefore went for the option that incentivised him the most. Mr Crossley was perfectly entitled to take that view, and who knows, he may actually be right. It may well be that Mr Casey went the extra mile to ensure that he recovered as much money as he could, and therefore received the greatest return himself.

37. I also find that the purpose of the contract was to recover compensation. That is what it says. The contract says:

> **"In order to achieve the ultimate goal of receiving a significant amount of compensation."**

That was the purpose of this contract. He sets out what he intends to do, and that is the six prongs that I have already referred to, but it is important that the paragraph under those six prongs is not overlooked, which says:

> **"We must however remain flexible throughout what could be a painstaking process where tactics might have to be varied and our methodology remain fluid depending on what develops throughout the process."**

38. It is also the basis of the payment structure. The payment is based on compensation. It could have had a provision that said, and you get a £5,000 bonus upon the identification of the person who perpetrated the fraud. It could have said that, but it does not. It is entirely premised on the basis that the purpose of this contract is to obtain compensation for Mr Crossley. The reality is that it was inevitably going to be so. The police have far more tools at their disposal for the detection of crime. They can apply to the courts for bank statements, and telephone records. They have the power to search properties, the powers to arrest and interview under caution. None of those power are available to somebody like Mr Crossley. The prospect of Mr Crossley identifying the perpetrators without police assistance were diminishingly small.

39. The best prospect was to help the police and try and keep the police investigation going and it does seem that investigation has now found a number of people who were involved. Whether they found the people who were in charge, or whether they found the people who were directly involved with Mr Crossley, I do not know. I also do not know whether the investigation is still ongoing, but Mr Casey did liaise with the police and whether the police officer was dismissive about the file that was produced, and whether he wanted it in electronic form or not, does not seem to me to make a material difference. Mr Casey did what could be done, which was to gather the information, and keep the police interested. That ultimately, it seems to me, is what he did.

40. In contract, you bargain for a result. Sometimes you can promise too much, and lose money. Sometimes, it turns out to be easier than you think and it becomes a windfall, but you cannot rewrite contracts after the event. There are some legal rules that allow the courts to step in. Misrepresentation, fraud, unfair consumer practices, are amongst them but, in my judgment, there was no misleading commercial practice and no misrepresentation in this case. The contract was for recovery of money and money was recovered.

41. There was an argument advanced yesterday that the only compensation recovered was £600, and the remainder was reimbursement. It does not seem to me that any of these parties understood the contract to mean that when they entered into it. Indeed, I asked Mr Crossley about it yesterday, as to whether he had done the maths of £300,000 and 20% of it, and he clearly had. Indeed, Mr James Crossley said something very similar when he gave his evidence today.

42. Ultimately therefore, the defence and counterclaim fail on their facts, because, for the purposes of the regulations, I am not satisfied that NCIS has engaged in any practice which contravenes the requirements of professional diligence or materially distorts the economic behaviour of the average consumer with regard to the product. There is no indication that there has been an omission or a misrepresentation that had any impact at all on the contract in this case. I would have found, as indeed was conceded by counsel on behalf of the Claimant this morning, that Mr and Mrs Crossley were

vulnerable, and the court needs to be alert to any sharp practice or exploitative behaviour but the key factors are the Mr Crossley had lost £300,000, he had a natural desire for compensation and justice, and he was capable of being exploited on that account and on account of his age.

43. On that latter point, Mr Crossley came across to me as a man who is no fool. He said a number of times that he is uneducated, and he may not have a string of formal qualifications, but he is also an experienced man of business who remains sharp and knows one end of a contract from another. In my judgment he got what was contracted for, and there was no actionable misrepresentation and no breach of the regulations.

44. Turning to the amount of money that the Claimant is entitled to, he is entitled to compensation of 20% of the sums recovered, which was £300,600.00. 20% of that is £60,120.00 and there will be judgment in that sum. There will be interest pursuant to section 69 of the County Court Act, running from 28 days after the invoice as per the term in the contract, that is just over three years. When that invoice was produced, interest rates were 0.1%, and they did not begin to rise significantly until the middle of 2022, but they are now 5.25%. It would be possible to work out, on all the increases in those interest rates, precise figures, but I am going to allow 2% for three years which is a further £3,607.20.

45. There will therefore be judgment for the Claimant in the sum of £63,727.20.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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