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## Final Decision

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Date 19 July 2025

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### Introduction

In summary, the background to this case is that Mr A instructed Strain Keville LLP in 2011 in connection with the conveyancing to purchase a property.

Strain Keville LLP (“the firm”) were subsequently acquired by Law Direct Limited.

The property, a leasehold maisonette in London, had been created by the merging of two flats in 2009, XX and XX, but each flat still had a separate entry on the Title Register.

The firm made their Report on Title to Mr A on 5 May 2011 after completing their searches, and they highlighted that the two Titles remained separate, which had led to the seller and the freeholder (M) drawing up a Deed of Surrender and Re-Grant to create a single lease on XX May. However, the firm cautioned that the lease for the combined property still referred to older leases which meant that five lease documents were involved.

The firm also addressed issues with the seller’s solicitors over other matters, including a licence for the alterations, and confirmation of consent from a charity who held an interest in the freehold.

Once the outstanding matters were resolved, completion took place on XX June 2011. The firm then registered the transfer of the new lease, combining the two original properties under a single entry on the Title Register, with the designated address XX, in July 2011.

In November 2021, Mr A decided to sell the maisonette, and instructed a new conveyancer, CTW, in connection with the sale.

In January 2022, CTW and the buyer’s solicitor became concerned that the maisonette may not have had “*clean title*”. Their concern arose from a restriction under paragraph A.5 on the 2011 Title for XX. This restriction arose from a 2005 charge on the underlying Freehold Title which was in favour of R.

This restriction indicated that the original freehold owner, R, had a charge on the freehold because of his mortgage to M when she acquired the freehold, however their agreement did not permit M to enter into new leases.

Consequently, the leases for XX/XX and the new lease for XX had been granted by M without permission of R, and this adversely affected Mr A's title on the maisonette, which meant that the sale could not proceed.

It transpired that R had died, and his estate was being administered, and although M claimed that the mortgage had been settled, when CTW contacted R's administrators, they responded on 26 January 2022, and they confirmed that the mortgage referred to in the charge on the Freehold Title was outstanding.

The executors of R's estate also declined retrospective consent to either of the 2007 leases upon which the 2011 combined lease relied, and they refused to consent to the 2011 lease. R's estate also required the settlement of the outstanding mortgage before they would consent to the leases and the removal of the charge on the Freehold Title, which would free the maisonette from the A.5 restriction.

Subsequent negotiations between the parties meant that R's estate would accept £75,000 from Mr A as a contribution to the mortgage repayment, after which they would remove the restriction from XX and the charge from the freehold.

Mr A received a repayment of £25,000 from M, which meant he paid £50,000 to rectify the Title. He also incurred additional legal costs of £1,800 including VAT.

Meanwhile, Mr A's buyer contributed a further £20,000 to R, for which they also received a lease extension.

Consequently, R's estate removed the restrictions and charges, and the sale was completed on XX April 2022.

Mr A raised a complaint with the firm in November 2022, but he did not receive any response until XX April 2023. Mr A remained dissatisfied, and he escalated the matter to the Legal Ombudsman in April 2023.

The firm entered administration on 20 June 2023, which led to intervention by the Solicitors Regulation Authority (SRA) on 22 June.

Mr A has complained that:

- 1. The firm failed to advise him that there was a pernicious clause/charge in the lease which meant that there was no clear title to the property making it un mortgageable to any prospective purchaser / that he may have trouble selling/mortgaging the property in the future;**
- 2. The firm delayed in responding to his complaint of 4 November 2022.**

My colleague investigated Mr A's complaints and, as he explained in his Case Decision of 23 May 2025, found that the firm's service was unreasonable. After considering the evidence, my colleague also recommended that significant remedy was required.

No one from the firm, although contacted, wishes to be involved, and the administrators have declined to comment, consequently, I am bound to treat them as not accepting the Case Decision.

Mr A has accepted my colleague's Case Decision and the recommended remedy.

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 challenge 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.

I have decided that it is fair and reasonable in the circumstances to issue a Final Decision in this case because the firm entered administration on 20 June 2023 and were closed by the Solicitors Regulation Authority (SRA) on 22 June, and the firm is now in the last stages of dissolution.

Since the closure, no one from the firm has engaged with the Legal Ombudsman, and since the administration has finished, the firm are unable to pay any remedy directly. This means that any remedy will have to be considered by the firm's insurers which requires a Final Decision.

I have read the Case Decision, the evidence received from the parties and both parties' responses to the Case Decision. Having done so, I am satisfied that the firm's service was unreasonable, and a remedy is required.

I am satisfied that the Case Decision accurately summarises the facts behind this complaint, and for that reason, I do not intend repeating them again here. Hence, I intend to rely on the Case Decision to support my Final Decision, which is why my Final Decision is made up of both this letter and the Case Decision enclosed. However, I will explain my reasons for my decision below.

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.

I will now outline the decisions I have reached on Mr A's complaints.

## **Conclusion**

### **1. The firm failed to advise him that there was a pernicious clause/charge in the lease which meant that there was no clear title to the property making it un mortgageable to any prospective purchaser / that he may have trouble selling/mortgaging the property in the future.**

- 1.1 My colleague, in his Case Decision, has concluded that, in his view, the service the firm provided on this issue was unreasonable.
- 1.2 My colleague gave a detailed account of how the mortgage and charge appeared on the Freehold Title, and the subsequent steps that were required to remove the charge and the restriction.
- 1.3 He established that the charge from XX May 2005 was clearly listed on the Freehold Title XXXXXXXXXX , and because the freehold was referred to in correspondence between the firm and Mr A, and commented on in the Report on Title, he was satisfied that it had been examined by the firm.
- 1.4 However, my colleague found that the firm's Report on Title made no mention of the charge on the Freehold, nor of any implications that charge could have on his purchase or future sales.
- 1.5 He also established that the firm had identified that it was unlikely that the 2007 leases or the 2011 Deed of Surrender and re-grant had been subject to the correct notices, but they had failed to ensure that R, the chargee, had granted permission for the new leases.
- 1.6 That said, he noted that neither of the 2009 Titles for XX and XX contained the restriction referring to the charge on the freehold which was added when the firm registered the new combined 2011 Title for the maisonette, identified as XX.
- 1.7 Additionally, my colleague found that when the firm reported on the new registration to Mr A in July 2011, they did not highlight this new restriction to him.

- 1.8 My colleague concluded that the charge on the Freehold Title was a significant issue which warranted further comment or enquiry by the firm, but he found no evidence that they had understood the significance of it, nor that they had drawn it to Mr A's attention.
- 1.9 I can see, from the legal discussions that followed the discovery of the restriction and charge in 2022, that because the 2007 leases and the new 2011 lease were granted after the mortgage from R to M, this undermined ownership of the leases which is why the new buyer and CTW believed that Mr A did not have clean title to XX.
- 1.10 It is my understanding that this was because only R, as the lender, had the authority to grant leases, since R had not expressly permitted M to enter into new leases. Whilst this may not have invalidated the lease, it may have allowed R to trigger his right to sell.
- 1.11 Consequently, few mainstream lenders would offer a mortgage on a leasehold property where the freeholder has granted a lease without the express permission of the lender. This is because the lease may be vulnerable to being lost as the result of action by the mortgagee/chargee or someone deriving title from them.
- 1.12 In their April 2023 complaint response, the firm have stated that the charge and restriction had no impact on Mr A's ownership since he was a cash buyer.
- 1.13 However, I do not believe his mortgage-free purchase removes the risk to his ownership since the lease was still vulnerable to being lost to action by R. Consequently, I am of the view that the firm owed the same duty to Mr A, as a cash buyer, as they would to a buyer and their lender if the purchase had been funded by a mortgage.
- 1.14 Likewise, I believe Mr A would have experienced the same problems in selling the maisonette, even if his buyer had intended to buy it without a mortgage.
- 1.15 The 2011 Law Society Conveyancing Protocol, which is a benchmark of good practice at the time of Mr A's purchase, highlights the need for a buyer's solicitor to consider the effect of any restrictions on the Title, which would also include charges on the freehold.
- 1.16 I can see that the charge was clearly shown and dated on the Freehold Title, and the two leases for XX and XX, listed on the same document, post-dated the charge, hence I believe a competent solicitor should have identified the potential implications for anyone buying the lease for the properties.

- 1.17 Whilst the 2009 versions of the Title Register did not contain the specific restriction A.5, which stems from the charge and was entered by the Land Registry on the 2011 Title, the 2009 document for XX (reference XXXXXXXX 2) contained the following entry under A.6:

 There are excepted from the effect of registration all estates, rights, interests, powers and remedies arising upon, or by reason of, any dealing made in breach of the prohibition or restriction against dealings therewith inter vivos contained in the Lease.

- 1.18 I am led to believe that, at the time of this registration, the Land Registry entered this on the Property Register when they found that a lease contained a provision prohibiting or restricting dispositions.
- 1.19 This entry, and its omission from the lease for XX, should have highlighted to the firm that there may have been issues if R had not granted the lease or consented to M agreeing to it. Therefore, I am of the view that this warranted further investigation by the firm.
- 1.20 However, despite a comprehensive Report on Title covering many issues that the firm had correctly identified, they have not mentioned the charge on the freehold within the Report. Likewise, the firm have not highlighted the implications for the lease or clean title, and there is no evidence that they took any steps to investigate what this could mean for the leases or titles.
- 1.21 Irrespective of the chronology of the charge and leases, the firm have not drawn Mr A's attention to the charge on the Freehold Title or the above entry on the Title for XX.
- 1.22 Moreover, the evidence shows that the firm's concerns about the reliance on the separate flat leases and titles for the maisonette, which had precipitated the agreement between the seller and M for the surrender and re-grant of the lease to create the new 2011 combined lease. Hence, I am satisfied that the firm had scrutinised the leases, but they had failed to recognise the restrictions on M's authority to grant the leases created by the earlier charge.
- 1.23 Nevertheless, I can see that the firm identified that some of the covenants and leases may have been breached because of a Scheme of Management in favour of the XXXX trustees and they wrote to the seller's solicitor and the scheme's management company about this on May 2011.
- 1.24 In these letters the firm also recognised that it was unlikely that notice had been given to the Scheme Managers (also called the landlord) about either the 2007 or the new 2011 lease.
- 1.25 These letters show that the firm were diligent in seeking reassurance and some retrospective permissions, which confirms that they understood many of the issues that could affect Mr A's ownership and lease.

- 1.26 However, because the firm did not recognise R's control over the leases or confirm whether R had permitted the post-charge leases in the letters, this demonstrates that the firm overlooked the freehold charge and its implications on a clean title.
- 1.27 Had the firm's service been reasonable, I am of the view that they should have identified that the 2007 leases were drawn up after the 2005 charge on the Freehold Title which, alongside the entry on XX, warranted further investigation. Likewise, they should have ensured that the new 2011 combined lease had been properly authorised by R before they moved to complete the purchase.
- 1.28 In the event, the evidence shows that the firm did not recognise the implications of the freehold charge upon the lease or notify Mr A of any concerns, nor did they revert to Mr A to seek his instructions.
- 1.29 This meant that Mr A completed the purchase without being given this crucial information about the vulnerability of his lease, and it prevented him from making an informed decision about his options.
- 1.30 Once furnished with the views of R and the freeholder (M), Mr A would have been able to make an informed decision on his options. However, I believe it is unlikely that he would have agreed to contribute to paying off the mortgage to remove the charge, which means he would have either negotiated for M or the seller to rectify the situation, or he would have withdrawn from the purchase.
- 1.31 The firm's failure to identify the issue meant that Mr A was denied the opportunity to make an informed decision about the purchase, and it left his lease vulnerable during his ownership.
- 1.32 Once the matter was completed, the firm were also responsible for the registration of the new Title. The evidence shows this was not straightforward because the two existing titles were to be merged, and as my colleague highlighted, the firm told Mr A that the new registration had been "*a struggle.*"
- 1.33 The firm's comments, at the time of registration, demonstrate that they spent additional time on this process. However, there is no evidence that they recognised the significance of the new restriction A.5 entered on the Title Register, nor that they drew Mr A's attention to the implications.
- 1.34 This meant that Mr A was also denied the opportunity to revert to the seller, M, or R at the time, which may have provided a negotiated and cheaper solution at that juncture.
- 1.35 Therefore, because of the firm's continued unreasonable service, Mr A remained oblivious until the vulnerability was identified when he came to sell.

- 1.36 The executors of R's estate declined retrospective consent to either of the 2007 leases upon which the 2011 combined lease relied, and they refused to consent to the 2011 lease. This left Mr A in the unenviable position of having to pay £50,000 to extract himself from the situation.
- 1.37 Based on the evidence I have seen, I am confident that, had the firm identified the freehold charge and established the implications on the leases, Mr A would not have bought the maisonette whilst the lease remained vulnerable, and he would not have been forced to pay R anything, either in 2011, or subsequently.
- 1.38 Hence, I am satisfied that Mr A's payment of £50,000 to rectify the encumbrances flows directly from the firm's failures at the time of his purchase. Likewise, this caused him to incur legal fees which were only necessary because the firm's 2011 conveyancing was flawed.
- 1.39 No further comments or concerns have been raised about this aspect of the Case Decision, and having reviewed the evidence, I share my colleague's view that the firm's service here was unreasonable.
- 1.40 Therefore, my view is that the service Mr A received on this issue was unreasonable

## **2. The firm delayed in responding to his complaint of 4 November 2022.**

- 2.1 In his Case Decision, my colleague has explained that, in his view, the service the firm provided here was unreasonable because the firm made no contact with Mr A until five-months after his complaint.
- 2.2 He established that the email complaint was sent by Mr A on 4 November 2022, but that his complaint was not acknowledged.
- 2.3 My colleague noted that when the firm responded to the complaint on 19 April 2023, they apologised for the delay.
- 2.4 When determining whether a firm's complaint handling is reasonable, I compare the firm's response to the expected standards.
- 2.5 The SRA Code of Conduct provides the benchmark on how a complaint should be handled, requiring the authorised person to provide a client with all the necessary information concerning the complaint, and to deal with any complaints promptly and fairly.
- 2.6 Another source of good practice is The Legal Ombudsman's publication, *Listen, Inform, Respond: A guide to good complaint handling*, which states a firm should acknowledge a complaint and respond within eight-weeks.

- 2.7 However, the evidence shows that the firm failed to acknowledge receipt of Mr A's complaint at all, and that their only response, though detailed, was not sent until 19 April 2023.
- 2.8 I note that the firm have apologised and stated that they needed time to retrieve the information to provide a detailed response, but the lack of any acknowledgement or update in the intervening five-months undermines this explanation, and the firm's complaint handling falls well below the expected standards.
- 2.9 Since no further comments or concerns have been raised with this aspect of the Case Decision, having reviewed the evidence, I share my colleague's view that the firm's complaint handling was unreasonable.
- 2.10 Therefore, I endorse my colleague's view on the firm's service.

## Remedy

I have explained, above, my views on the level of service the firm provided to Mr A.

When the Legal Ombudsman investigates complaints and finds a firm has provided unreasonable service, we direct a remedy to put the person back into the position they would have been in had it not been for the unreasonable service.

We can direct remedies for financial loss suffered, bill reductions, or ask the lawyer to complete further work to put things right. We can also direct an impact payment to reflect the fact that service failures can cause stress, upset, and inconvenience.

In his Case Decision, my colleague explained that he believed that the requirement for Mr A to pay R's estate £50,000 flowed from the firm's failure, in 2011, to identify or investigate the Freehold Charge and the implications for the leases.

Consequently, he recommended that a remedy was warranted, and he explained why, in his view, the firm should be responsible for the £50,000 paid by Mr A in 2022.

My colleague also recommended that Mr A should be awarded the additional legal fees of £1,800, including VAT, which he incurred with his new solicitor in 2021/22 to remedy the situation.

He also felt that Mr A should receive £750 compensation to reflect the distress and inconvenience caused following the discovery of the firm's omission.

However, my colleague highlighted that the Legal Ombudsman Scheme Rules placed a cap on the remedy that can be awarded, which means that the maximum he can receive is £50,000.

Mr A has accepted the remedy, and he has acknowledged that the sum is capped at £50,000 for the loss, meaning that he has to forgo the balance of the remedy of

£2,550 made up of the two other elements. Mr A is also aware that, because the firm have been closed, he will need to seek recovery of the remedy from the firm's insurers.

In my decision, above, I have explained why I believe that the £50,000 payment, made by Mr A in 2022, flowed directly from the firm's failure to identify the vulnerability of the leases, created by the Freehold Charge, which denied Mr A the opportunity to make an informed choice.

I have also explained why I am satisfied that, but for the firm's omission, Mr A would not have been exposed to the situation where his only option was to pay £50,000 to R's estate to facilitate his sale.

Consequently, I share my colleague's view that the firm should pay Mr A £50,000 for the loss he suffered as a consequence of their unreasonable service.

Likewise, the additional legal fees of £1,800 including VAT flow from the need to remedy the situation, and I also agree that the sum of £750 for the distress and inconvenience caused is appropriate.

## **Decision**

**Therefore, my Final Decision is that I find that the firm's service was unreasonable, and a remedy is required, hence, although subject to the cap of £50,000, I direct the firm to pay Mr A:**

- **£50,000 to cover the loss he suffered because of the firm's unreasonable service**
- **£1,800 including VAT which he paid in fees and costs to his new solicitor**
- **£750 in compensation for the distress and inconvenience caused.**