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## Final Decision

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20 May 2025

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### Introduction

In XXXX Mr A instructed Rowe Radcliffe ('the firm') to act for him in the purchase of a property. The purchase completed at the end of that year. When he came to sell the property in XXXX, his buyer discovered that the lease had only 56 years of its term left, which meant his buyer insisted that he extend the lease before the sale, which cost Mr A £45,000 for the premium to extend, plus his landlord's and his own costs for this.

The following complaint made by Mr A about the firm has been accepted for investigation by the Legal Ombudsman:

- 1. The firm failed to provide any advice to Mr A regarding the possible risks of him purchasing the property with only 77 years remaining on the lease, or what he might need to do should he wish to sell the property.**

My colleague XXXX in her Case Decision dated 17 April 2025, concluded that the firm's service had been unreasonable, and that they should pay Mr A £5,434 to remedy this. Mr A has accepted the Case Decision.

On 31 August 2021 the firm ceased to be a Solicitors Regulation Authority ('SRA') regulated entity, and it was later intervened by the SRA on 30 March 2023. Therefore, the firm has closed.

In line with our office's process where a firm complained about has closed, my colleague XXXX wrote to the firm on 11 December 2024, at their last known business address (XXXXXXXXXXXXXXXXXX), to inform them she was investigating a complaint about them and asking them to contact her so she could provide details of the complainant and complaint made. However, she did not receive any response.

She also wrote to the firm at the stage of our investigation when she was ready to send her Case Decision to the parties, on 10 April 2025, asking them again if they wished to engage with our office's process for this complaint. Again, no response was received. The firm has, therefore, been given the opportunity to engage with our process, but has not done so.

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. Mr A has accepted the Case Decision, and the firm have closed. However, I have a discretion whether to close the case under rule 5.20, but in this case, I consider it would be fair and reasonable for a Final Decision to be made instead.

This is because I have taken a different view from my colleague on the appropriate remedy in this case, so I need to explain in a Final Decision my reasons for this. My colleague and I have both agreed that the firm's service was unreasonable. However, while my colleague recommended a total remedy of £5,434, I will explain why I consider the remedy should be £34,900.

As I will be directing a different remedy from the remedy recommended by my colleague in the Case Decision, I have considered whether it is necessary to make a 'provisional' decision and then allow the parties 14 days to provide any comments, before I make a Final Decision.

However, I do not consider that this would serve any useful purpose. This is because Mr A has already accepted the Case Decision which recommended a much lower remedy to resolve his complaint, so it is highly likely that he will be agreeable to the higher remedy that I have directed. The firm have closed, and despite being contacted at the outset of our investigation by XXXX, and again at the point she was ready to send her Case Decision, they have not engaged with our process. In view of this, it is highly unlikely they would engage with us if I were to contact them now. In these circumstances, I have decided it is fair and reasonable to proceed to make a Final Decision.

Before I set out my decision on this complaint, I would like to explain my role. As an ombudsman, I will 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 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.

## **Conclusions**

### **1. The firm failed to provide any advice to Mr A regarding the possible risks of him purchasing the property with only 77 years remaining on the lease, or what he might need to do should he wish to sell the property.**

- 1.1 In the Case Decision, my colleague XXXX found that the firm's service was unreasonable. When they advised Mr A on the purchase of his property in XXXX, they should have told him that the lease had an unexpired term of only 77 years, and the implications of this for him should he wish to sell the property in the future.
- 1.2 I note that there is no evidence that any information on the risks of purchasing a property with less than 80 years of the lease term remaining was given to Mr A by the firm, before or after the purchase. The firm's invoice for the work they did for Mr A makes no mention of any advice given.
- 1.3 Completion took place on XXXX. On XXXX the firm wrote to him and provided their report on title, seven months after the purchase has completed. This noted that the term of years for the lease was 99 years from XXXXX. There was no mention that this meant there was only 77 years unexpired at that point, and that this could cause problems should Mr A want to sell the property in the future.
- 1.4 When dealing with the purchase of a leasehold property, I would expect a firm to give information about the length of the lease. If there were 85 years or less, I would expect a firm to provide detailed information about marriage value, including that it would come into effect when the remaining lease term fell below 80 years, and would increase the premium to extend the lease each year the unexpired term fell below 80 years. Also, a firm should advise on the impact of short leases on saleability and mortgages, and the process in relation to lease extensions.
- 1.5 That information would usually be set out in the report on title, but I note that no such information was given in the report sent by the firm on XXXX. Mr A obtained his file from the SRA Intervention Archives Team, as the firm was intervened, and no such evidence was found on his file.
- 1.6 Mr A remortgaged the property for the first (and only) time on XXXX. There is no evidence that Mr A was told by the conveyancers acting for the mortgage lender in XXXX that there was an issue with the length of the lease, which at that time

had 73 years of its term unexpired (the relevance of the remortgage in XXXX is discussed further in the remedy section below).

1.7 When Mr A came to sell the property in XXXX, his buyer's solicitors identified that the unexpired term of the lease was, at that point, 56 years, and insisted that Mr A extend the lease before the sale. Mr A's landlord offered a premium of over £51,000 to extend the lease, plus costs, which Mr A was able to reduce to £45,000 plus costs.

1.8 Therefore, the firm's service was unreasonable because they should have advised Mr A on the impact of a short lease on the property's future saleability and mortgages, and also the process in relation to lease extensions and that the longer this was left, the higher the premium would be. There is no evidence that the firm gave any advice to Mr A on these risks.

## **Remedy**

The firm should have advised Mr A in XXXX about the implications of the lease having an unexpired term of less than 80 years, and that he would need to extend the lease or there could be problems when he came to sell it. Also, that each year he delayed extending the lease, the premium would increase.

Had they done so, Mr A could have had the option not to proceed with the purchase, or to have sought a reduction in the purchase price from the seller, or to have asked his seller to serve a '*section 42 notice*' on the landlord, so he could start the lease extension process immediately on owning the property (and not have to wait the two years required under the relevant legislation to own the property himself).

Given that in XXXX the lease had an unexpired term of only a few years below 80 years, and many mortgage providers were (and many still are) prepared to lend if there is 70 years and above unexpired, finding another buyer prepared to pay the sale price would have been an option. It would be fair to say, therefore, that the seller may not have agreed to a price reduction. However, in these situations it is common for a seller to agree to serve a section 42 notice to enable a buyer to extend the lease as soon as they have bought the property, rather than having to wait for two years. Therefore, Mr A would most likely have had to pay the premium and associated costs due in XXXX.

The Leasehold Advisory Service, which is government funded and provides independent advice for residential leaseholders, has a lease extension calculator on its website [Lease extension calculator for flats - The Leasehold Advisory Service](#). The below calculation is based on the purchase price of £139,950, with a ground

rent at that time of £50, and 77 years unexpired. It gives the likely premium Mr A would have paid had he extended the lease immediately on purchasing the property (the seller having served the section 42 notice, so he did not have to wait two years to do so):

**Location of the flat:**

- ☒ Outside Prime Central London  
☐ Prime Central London

The following areas are considered as Prime Central London (PCL): Knightsbridge, Belgravia, Mayfair, Chelsea, Kensington/Holland Park, South Kensington, Regent's Park, Notting Hill, St John's Wood and Marylebone. Views on what constitutes PCL are subjective, but we have identified these areas as those most commonly considered to constitute PCL.

**Long lease value of flat:**

This is the expected value of the flat with a long lease, *after* a lease extension.  
Please enter amount in pounds without any commas or decimal points - e.g. £200000, not £200,000.00.

139950

**Current Ground Rent:**

This calculator does not take into account rising ground rents.

50

**What is the expiry date of the lease?**

Use this format: dd/mm/yyyy

01/01/2103

**Calculate**

The price of your lease extension is likely to be between **£10000** and **£11000** plus costs.

You have 77 years unexpired. Because your lease has less than 80 years left, [marriage value](#) has been included in the price.

The online calculator will give you a general guide to costs for renewing a lease, but it cannot give you the actual costs. You should not use this information in tribunal or court proceedings and neither should you take any other action based on this information without first getting [professional advice](#). Although we provide a summary about valuations under the Leasehold Reform, Housing and Urban Development Act 1993 (as amended), you should remember that the law and the way property is valued can change over time.

I propose taking the average of the higher and lower estimate, £10,000 and £11,000, to give a figure of £10,500 for the likely premium Mr A would have paid in XXXX had the firm's service been reasonable.

In XXXX he paid £45,000 for the premium when he extended the lease, so his loss due to the firm's unreasonable service is £45,000 less £10,500 = £34,500. I do not consider he is entitled to the costs associated with the lease extension as part of his loss, as he would always have had to pay those costs.

I am satisfied that Mr A took reasonable steps to mitigate his loss in 2024, as he made a counteroffer for the premium of £45,000 to the landlord's original offer of £51,340 (made in the letter dated 29 April 2024), which the landlord accepted. Mr A explained in his 9 May 2024 email to the landlord's agent that before requesting the extension, he had done some research of his own using online calculators, and the average estimate was £45,000. The landlord agreed to this.

The agreed premium of £45,000 is just lower than the Leasehold Advisory Service's website's calculator gives. I have used that calculator, which gives an estimate for the premium of between £46,000 and £49,000 where there is an unexpired term of 56 years, and the value in XXXX was £305,000 (the sale price). This shows that by agreeing a premium that was even lower with his landlord, £45,000, Mr A has mitigated his loss.

In the Case Decision, my colleague took the view that the firm's responsibility for Mr A's losses ended in XXXX, when Mr A remortgaged the property and the conveyancers acting for the bank in the remortgage should have advised him of the issue regarding extending the lease.

However, I have taken the view that the XXXX remortgage did not stop the firm being liable for Mr A's losses at that date. This is because the conveyancers acting in the remortgage were instructed by the bank, which was their client, not by Mr A. Although they owed some duties to him when providing their services, I do not consider that their duty extended to giving Mr A advice on the length of the lease.

In XXXX there was still 73 years unexpired, and I note that the *UK Finance Mortgage Lenders' Handbook for Conveyancers* shows that currently the bank Mr A remortgaged within 2007 lends on leases with 70 years unexpired from the date of the mortgage [Lenders' Handbook - UK Finance Mortgage Lenders' Handbook](#).

This shows that an unexpired term of 73 years would not, most likely, have been an issue for those conveyancers' own client, the bank.

Although I have not been able to find information on what the criteria regarding a lease's unexpired term for the bank used by Mr A was in XXXX, generally lending criteria have tightened since that time. It would, therefore, be fair to say that it is unlikely that that bank would have wanted a longer unexpired term than 70+ years, which they currently accept.

There are some limited circumstances in which our office investigates complaints brought to us by the person taking out the mortgage, about conveyancers, solicitors or other authorised persons that acted for a lender in a remortgage. However, the

majority of such complaints would fall outside our office's jurisdiction. Complaints that do fall within our jurisdiction, tend (for example) to be where the retainer included an additional service being provided to the complainant, such as a transfer of equity, as well as a remortgage. That would not apply here.

In these circumstances, I am not persuaded that it is more likely than not, on balance that the involvement of conveyancers in the XXXX remortgage would have broken the chain of causation between the firm's failure to advise on the lease extension in XXXX, and discovery in XXXX by Mr A that he had to pay £45,000 to extend the lease before he could sell his property.

Therefore, it would be fair in these circumstances that the firm pay the loss to Mr A, which is the difference between the likely premium he should have paid in XXXX of £10,500, and the premium of £45,000 he actually paid in XXXX. This is £34,500.

I agree with my colleague that the sum of £400 for the emotional impact of the firm's unreasonable service on Mr A is appropriate. This falls within the 'significant' band of payments (between £250 and £750), which is suitable in addition to the financial losses award. Mr A was caused considerable shock and upset, as well as inconvenience, when he discovered in XXXX that he could not sell his property without paying a premium of £45,000 plus costs to extend the lease. This makes a total remedy of £34,900.

### **Final Decision**

**Therefore, my Final Decision is that the firm's service has been unreasonable, and they should pay Mr A £34,900 to remedy this.**