

The complaint

Miss G and Mr K complained about the mortgage advice given to them by Stepping Stones Financial Planning LLP.

They say this meant they lost money by having to pay for unsuitable re-mortgage advice, extra stamp duty and legal costs.

What happened

Miss G and Mr K owned a leasehold property. The existing lease was only 56 years, and there had been problems getting a longer lease. They found a property they wanted to move to, on which they'd also want to carry out home improvements.

Miss G and Mr K met an adviser from Stepping Stones on 21 May 2019. They took all their documents with them, including the title deeds for their current property. They explained the situation. They also said that Miss G would be selling another property abroad, which would cover renovation costs on their new property.

The mortgage fact-finding document from that meeting includes a heading "*Years on lease.*" Stepping Stones' adviser filled in that section with "*TBC. Client in the process of extending.*"

Stepping Stones recommended to Miss G and Mr K that what they should do was to keep their current property and change their existing mortgage into a buy-to-let mortgage. So Miss G and Mr K would have a residential mortgage on the property they wanted to buy, and a buy-to-let mortgage on their existing property. Miss G and Mr K said that Stepping Stones also told them that if they did that, they'd save a lot of money in stamp duty.

A valuation was carried out on Miss G and Mr K's property by Stepping Stones' recommended lender. The property was down-valued, but the lender issued a mortgage offer. Stepping Stones had also recommended another lender for the purchase of the new property, and a mortgage offer was issued on that property too.

But the transactions didn't go through quickly, because of the problems with the lease. At the end of July, the seller of the property Miss G and Mr K wanted to buy said they were going to put the house back on the market because of the delays.

Miss G and Mr K asked Stepping Stones whether they could go ahead with the new purchase without re-mortgaging their existing property, and whether this meant they'd pay more stamp duty. Stepping Stones replied that "*obviously the re-mortgage of your current address is going to take some time to go through due to the land registry issues discussed.*"

On 6 August, Miss G and Mr K's conveyancer said that the existing lease on Miss G and Mr K's property was 56 years, not 85 years which was recorded on the mortgage valuation report. Stepping Stones' recommended lender had a minimum lease term of 70 years. This meant that the mortgage offer which the lender had issued couldn't go ahead.

Stepping Stones then recommended a replacement buy-to-let re-mortgage for Miss G and Mr K's existing property. It asked Miss G and Mr K to pay a further £195 for this advice.

But Miss G and Mr K said they didn't want to go ahead with Stepping Stones' replacement recommendation, and they complained. They said they'd been led to believe they were taking out a product which was appropriate for their needs. They asked for compensation, to cover the £295 fee for the original re-mortgage advice, and £4,847 stamp duty and £315 legal costs, which they said the poor advice had cost them.

Stepping Stones didn't agree. In its final response letter, it acknowledged that Miss G and Mr K had told them about problems with the lease extension, but it said it wasn't authorised to provide advice on contractual issues. Stepping Stones also said that at the initial meeting, its adviser had spoken to the conveyancing firm and *"They stated at the time if you will only own one residential home you will not be liable for additional stamp duty tax... Stepping Stones do not and cannot advise on UK tax liabilities. Only your conveyancer, HMRC or a qualified tax accountant can formally do this."* Miss G and Mr K have disagreed that this call happened, saying the adviser couldn't have phoned their conveyancer at the initial meeting because they hadn't at that point chosen one.

Stepping Stones also said that, at the time when Miss G and Mr K had asked if they could go ahead with the purchase of the new property without the re-mortgage of the existing property:

"We also made you aware if you would retain 2 residential properties there could be further tax costs (stamp duty) and asked if you had provisions for this."

Stepping Stones told Miss G and Mr K that it had completed fact findings, spent a great deal of time on advice, and had provided mortgage offers which met Miss G and Mr K's needs. It said it could not provide advice on tax or legal contracts for leasehold but had *'endeavoured to provide help and support in these areas.'*

Miss G and Mr K weren't satisfied and complained to this service.

Our investigator didn't uphold their complaint. He didn't think Stepping Stones had done anything wrong, as it wasn't permitted to comment on lease issues. It also wasn't for the adviser to advise of the full costs of stamp duty.

Miss G and Mr K weren't satisfied. They said that they had told Stepping Stones' adviser about the problem with the lease from the beginning. They felt that Stepping Stones had given them the wrong advice, and asked for an ombudsman decision.

My provisional decision

I issued a provisional decision on this complaint. Before doing so, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint. I also explained that there had been multiple points raised in the submissions to this service. I understood and looked into these, but commented on what I thought vital to my conclusions.

The short lease on Miss G and Mr K's existing property

In my provisional decision I accepted that, at the initial meeting, Miss G and Mr K did tell Stepping Stones that there was a problem with the short lease. They said they took all the documents, including deeds, with them. I found it would have been clear that it wasn't a straightforward increase in the lease term, but a legal dispute about a previous attempt to extend the lease. That wasn't going to be a quick fix. The fact finding document, which I've

quoted above, records that there was an issue with it. So I found that from the outset, Stepping Stones knew that there was a significant lease problem.

I recognised that financial advisers can't advise specifically on the detail of legal issues regarding a lease. But I said it's reasonable to expect Stepping Stones to know the detail of the products they recommend. This re-mortgage was recommended on an advised basis, and the product which was recommended would only accept properties with at least 70 years remaining on the lease. So I found that the re-mortgage product wasn't suitable for Miss G and Mr K's needs.

I had no evidence about why the valuation report had a figure of 85 years remaining on the lease, when in fact it was only 56 years. It could have been an error by Stepping Stones when it informed the lender; it could have been an error by the lender when it instructed the valuer; or it could have been an error by the valuer. But I considered it unlikely that Miss G and Mr K would have had input into that form, so I didn't consider it was their mistake.

So I found that Stepping Stones' adviser knew there were problems with the lease, and it recommended a re-mortgage which wasn't suitable for a property with under 70 years remaining on the lease. So I considered Stepping Stones should refund Miss G and Mr K the £295 it charged them for the advice.

Advice and Stamp duty

What Miss G and Mr K wanted to do when they went to see Stepping Stones was to talk about a way of buying the house they'd found and wanted to buy. They had some money coming from a property abroad, as well as their existing property which had the problem with the lease.

Miss G and Mr K said that Stepping Stones advised them to change their existing residential mortgage to a buy-to-let. They said the adviser told them that by doing so, they would avoid high stamp duty, because at the end of the transactions they'd only own one property which was categorised as residential.

As I've set out above, in its final response letter, Stepping Stones said that during the initial meeting, its adviser phoned a conveyancing firm. They said that that firm told Stepping Stones' adviser that if Miss G and Mr K only owned one residential home, they wouldn't be liable for extra stamp duty. Miss G and Mr K say that no such call happened, because they hadn't yet chosen a conveyancer. But in any case, in its final response, Stepping Stones said that it had made Miss G and Mr K aware that if they kept both properties on a residential basis, there could be more stamp duty costs.

So the evidence indicated that Stepping Stones told Miss G and Mr K that they'd pay less stamp duty if their existing property was changed to a buy to let mortgage, instead of having both as residential mortgages. At the time, Miss G and Mr K thought this was good advice and would save them £4,847.

But in my provisional decision I explained that this isn't correct, and it makes no difference whether one property was on a buy to let mortgage and the other on a residential mortgage, or whether they were both on residential mortgages. Stamp duty is chargeable at an extra 3% on any second property purchase. That's in addition to whatever the stamp duty rate is for the purchase price. There's a provision that if owners sell the original property within 36 months of buying the new one, they can get a refund. That's to help people who want to sell the original home but can't do so at the same time as buying their next one. But it makes no difference at all whether the mortgages are buy-to-let or residential. Miss G and Mr K would

have had to pay the extra 3% stamp duty on the second purchase anyway, whatever sort of mortgages they had on the two properties.

I recognised that Stepping Stones had said it doesn't provide tax advice. And I agreed that I wouldn't expect it to provide detailed personal tax planning advice. But knowledge of the principles of paying 3% extra stamp duty on the purchase of a second property is basic information. I'd expect a financial adviser to be aware of this. Instead, Stepping Stones gave Miss G and Mr K incorrect advice.

Compensation

When this service considers compensation, we look at it in two parts: compensation for financial loss, and compensation for the trouble and upset which consumers have suffered.

Looking first at financial loss:

- For the reasons I've set out above, I considered that Stepping Stones should reimburse the £295 advice fee it charged Miss G and Mr K. It didn't appear that Miss G and Mr K did pay the second advice fee, for £195, which Stepping Stones requested, so this does not need to be refunded.
- I said I didn't intend to order that Stepping Stones should reimburse the £4,847 stamp duty which Miss G and Mr K paid, because that stamp duty would always have been payable regardless of what type of re-mortgage was taken out on the first property.
- Miss G and Mr K had asked for legal fees of £315 to be refunded. I asked them for a copy of the invoice, which they supplied. This shows costs of £315 for "*abortive legal costs*" for the "*re-mortgage of [property address]*". So I accepted that they incurred these costs as a result of the unsuitable advice from Stepping Stones. I recognised that Stepping Stones then recommended a different mortgage, but I found it was understandable that by that stage, Miss G and Mr K no longer wanted to accept a Stepping Stones recommendation. And their legal costs for the abortive re-mortgage had already been incurred by then anyway. So I found that Stepping Stones should refund these legal costs.

Looking at compensation for trouble and upset:

I said it was clear that Miss G and Mr K had a very stressful experience. To some extent, the fact they had a short lease on their existing property was always likely to cause problems when they wanted to move. And buying and selling property is always stressful. But I considered that the stress was significantly worsened by the fact that Stepping Stones recommended a mortgage which, after some weeks, proved to be one which couldn't possibly proceed because a basic element of it was a 70 year remaining lease, which Miss G and Mr K didn't have. They'd disclosed this from the outset.

The buy-to-let mortgage was recommended to them on an advised basis, so Stepping Stones was responsible for that advice. As a result of the unsuitable advice, there was a delay, as a result of which the sellers of the new property told Miss G and Mr K that they'd put the property back on the market. I considered that if Stepping Stones had, at the outset, recommended a re-mortgage which would have accepted the short lease, this situation would have been avoided. The fact that Stepping Stones later suggested a re-mortgage which would accept the short lease, proves it would have been possible.

And although the higher stamp duty would always have been payable on a second property purchase regardless of the type of mortgage, the incorrect information from Stepping Stones led to additional disappointment and frustration when Miss G and Mr K found they had to pay the extra. If they'd been given the correct information at the start, they'd have had less of a shock and would have been able to plan their finances to cope with this.

Miss G explained that they'd be paying for the property for more than 30 years, and it was a large sum of money, so they came to professionals for advice. Given everything that happened, I could understand why they felt let down and upset. So I considered that £300 would be fair and reasonable compensation for this.

Finally, I'd seen no evidence that Stepping Stones told Miss G and Mr K that, if they sold one of their properties within three years of completing on the second one, they'd be entitled to a refund of the extra 3% they'd been charged. So I said that Miss G and Mr K should discuss that with their financial and legal advisers before that point.

So my provisional decision was that I intended to uphold Miss G and Mr K's complaint and to order Stepping Stones to pay Miss G and Mr K:

- £295 refund of the advice fee they paid;
- £315 refund of their legal fees for the re-mortgage which didn't happen; and
- £300 compensation for trouble and upset caused by the unsuitable advice provided for the re-mortgage requiring a 70 year remaining lease, plus the inaccurate information about stamp duty.

responses to my provisional decision

Miss G and Mr K accepted the provisional decision.

Stepping Stones didn't accept the provisional decision. It sent a detailed, paragraph by paragraph, disagreement with each of the points in the provisional decision. I've understood and looked into this, and the other documents Stepping Stones sent with its objection to the provisional decision. But I've commented on what I think is vital to my conclusions.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account the strong objections which Stepping Stones has made, including:

Length of lease

Stepping Stones said that its adviser wasn't aware of the lease term at fact finding stage, and didn't look at the lease documents, telling Miss G and Mr K he couldn't advise on that. It said that after the meeting, Miss G and Mr K told the adviser that the lease was 114 years, and the fact that the lease was only 56 years was only discovered after the mortgage offer.

Stepping Stones also said that its adviser put 114 years as the length of lease on the application form it prepared for the mortgage offer. It's said *"To insinuate that the adviser has lied on the application will be a complete mis truth and has serious implications."*

The fact-finding document records that Miss G and Mr K were in the process of extending the lease. So I consider it's unlikely that there was no discussion during the meeting about the lease currently being short. And it's reasonable to expect a mortgage adviser to ask the

clients about the length of the lease, as it's an important factor in selecting a mortgage. Miss G and Mr K may have said they'd like to extend it to 114 years, but it's clear they were concerned about it and I accept they raised it. I also accept their evidence that they took relevant documents to the meeting, in case they were needed.

In its reply to the provisional decision, Stepping Stones maintained that *"the clients stated they had gained a full lease extension.. The adviser was not aware that the extension had not been registered with land registry."* In other words, Stepping Stones has said that Miss G and Mr K lied about the status of the lease extension, saying they already had the extension agreed and sorted. This is a new argument, and it's not what Stepping Stones said in its final response, where it referred to *"your concerns around the lease contract."* But, importantly, the fact finding document, completed by Stepping Stones' adviser doesn't say Miss G and Mr K said the lease extension had all been sorted out. This document records *"client in the process of extending"* - an ongoing process. So I don't accept that Miss G and Mr K told Stepping Stones that they'd already got a full lease extension.

I made no allegation that the adviser lied on the mortgage application form, as Stepping Stones claim to believe. It may have been a genuine mistake. That's indicated by the fact that there are different figures – 114 years on the mortgage application which Stepping Stones' adviser submitted, and 85 years on the valuation. But the fact finding document completed by Stepping Stones' adviser clearly shows that the short lease was raised in the meeting. In those circumstances I consider the adviser had a responsibility to find out the correct position – for example by asking the clients to check with their solicitor – before making a mortgage recommendation. I don't agree with Stepping Stones that it's proved that the adviser wasn't at fault because neither the surveyor and lender challenged the figure of 85 years left on the lease.

Stamp duty

In its response to the provisional decision, Stepping Stones said that it hadn't been the adviser's suggestion, but Miss G and Mr K's objective, to keep the current property and change their existing mortgage into a buy-to-let mortgage. Stepping Stones also said its adviser hadn't told Miss G and Mr K that by doing so, they'd save a lot of money in stamp duty. Stepping Stones said it wanted this service to provide evidence of what its adviser had said.

It's Stepping Stones' own final response letter to Miss G and Mr K's complaint, which says that keeping the current property and changing their existing mortgage to a buy-to-let was Stepping Stones' suggestion. This letter says *"at fact find stage you made us aware that you would like to raise funds to complete home improvements on the new residential home...We made you aware a Let to Buy remortgage would be an option."*

There's a dispute about what was said about stamp duty at the meeting. Miss G and Mr K said the adviser told them that if they changed the residential property to a buy-to-let, they'd avoid high stamp duty because at the end of the transaction they'd only own one residential property. Stepping Stones, in the final response letter, said during the initial meeting the adviser spoke to a conveyancing firm which told the adviser *"if you only own one residential home, you will not be liable for additional stamp duty tax"* - in other words, that its adviser did say it at the meeting, but as a result of a call during the meeting to a third party. Miss G and Mr K have said there wasn't any such call.

We often have situations where there are disagreements between two parties to a complaint, about what happens. When that happens, I take my decision on the basis of what I think it more likely to have happened. Here, I consider it's most likely that Stepping Stones

did tell Miss G and Mr K that they'd avoid higher stamp duty if they changed the residential property to a buy-to-let. That's borne out by the documents.

In fact it isn't particularly relevant whether or not the adviser rang conveyancers during the meeting. That's because, although mortgage advisers can't provide detailed personal tax advice, the stamp duty information is basic and I'd expect the adviser to have known the correct information. He should have known that without having to refer to any third party. I also note that the fact find document says *"I have explained any tax implications of the new mortgage – Yes."*

Outcome

It's clear that Stepping Stones feels very strongly about the outcome of this complaint. It's said:

"It is insulting that the clients have fabricated statements to the FCA [sic] for whatever reason. The damage their claims have had on the adviser and company are substantial. Neither the company nor adviser have ever received any formal complaints in their working history. The hours it has taken to respond to the claims from the clients has caused damage to a small company and provided a great deal of stress."

With any complaint, there are always two sides to a story. And there is rarely a perfect chain of documents proving events. But for the reasons I've set out in detail above, I consider it's more likely than not that Miss G and Mr K didn't fabricate statements in their complaint to this service. As I've set out, some of the key evidence is from Stepping Stones' own documents, including the fact finding document and final response letter.

I have considered Stepping Stones long and detailed objections carefully. Having done so, I consider my original conclusions were fair and reasonable in the circumstances of this complaint.

My final decision

My final decision is that I uphold Miss G and Mr K's complaint and I order Stepping Stones Financial Planning LLP to pay Miss G and Mr K:

- £295 refund of the advice fee they paid;
- £315 refund of their legal fees for the re-mortgage which didn't happen; and
- £300 compensation for trouble and upset caused by the unsuitable advice provided for the re-mortgage requiring a 70 year remaining lease, plus the inaccurate information about stamp duty.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G and Mr K to accept or reject my decision before 20 January 2021.

Belinda Knight

Ombudsman