

The complaint

Mr C complains that an appointed representative of TenetLime Ltd trading as Tenet Network Services failed to secure him a mortgage, which resulted in substantial costs and upset.

What happened

Mr C consulted Tenet's representative about obtaining a mortgage over a leasehold flat he wanted to buy. Tenet submitted an application to a lender I'll call A. A issued a mortgage offer and Mr C instructed solicitors.

During the legal process, it came to light that the property's lease had a term relating to ground rent increases that A wouldn't accept. It therefore withdrew the mortgage offer.

Tenet then found a new lender which I'll call N. It says it discussed the lease issue with N and was told N had no specific criteria regarding leasehold property. So an application was submitted.

N assessed the application, and said it would lend around £27,000 less than Mr C wanted – Mr C also owns some buy to let property, and N took into account his buy to let mortgage payments when considering affordability. Mr C couldn't increase his deposit by that amount. He discussed alternatives with Tenet, and it was agreed that Tenet would explore whether it would make a difference if Mr C reduced his outgoings by repaying his car finance, saving around £300 per month.

On this basis, N agreed to lend the full amount. However, following a valuation N also declined Mr C's mortgage application because of the issues with the property's lease.

Mr C complained. He said that he'd ended up selling his car to try and get a mortgage that wasn't available to him. He said that Tenet should have checked the position with the lease before applying both to A and to N. He'd paid broker, lender and solicitor fees unnecessarily and ended up losing out on a mortgage. He lost this property and because of rising interest rates he can no longer afford a mortgage even if he could find another property, so he's now stuck in rental accommodation. And he'd lost earnings because of time spent dealing with the applications. He said his overall losses, including the difference between the mortgage and the rent he'd now have to pay, amounted to around £40,000.

Tenet didn't uphold his complaint. It said it wasn't responsible for the lenders' decisions and couldn't know whether they would accept the property until the applications were underwritten. It didn't know about the relevant term in the lease before applying to A, and it had checked with N before making an application. Tenet didn't know that Mr C would be selling his car, rather than simply repaying the finance, and in any case it was his choice to do that knowing that it would help obtain the mortgage he wanted.

Our investigator didn't recommend upholding the complaint, so Mr C asked for it to be reviewed by an ombudsman.

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.

It's unfortunate that Mr C was unable to get the mortgage, or buy the property, that he wanted. What I have to decide is whether Tenet acted unfairly as part of the process.

The issue with the property Mr C wanted to buy was a term in the lease which allowed for regular reviews of ground rent with no overall cap. Many mortgage lenders are wary about accepting such a term. Firstly, if the ground rent significantly increases over time, it can make the property difficult to sell or re-mortgage in the future. And secondly once the ground rent reaches a certain level it makes it easier for the freeholder to recover the property, which impacts on the lender's security for the lending. In addition, the frequency of ground rent reviews provided for in the lease was also too often – as it would allow the ground rent to increase further.

With that in mind, I've thought about what Tenet actually knew about the lease terms at various stages of the process, as well as whether it ought to have done more to make sure it was aware sooner.

In respect of the first application, to A, I can see that Mr C forwarded an email from the estate agents on 9 May 2022. That email only contained very brief details about the lease – the term, the initial ground rent and service charge. It didn't say anything about the ground rent review mechanism.

I've not seen any other evidence to suggest that the broker was aware of the specific issues with the lease before the application to A, or anything to suggest that the broker ought to have been aware that A might not agree to the mortgage because of it.

I've checked A's published lending criteria and it does say that it doesn't accept ground rent that can be increased without an overall cap, and it says that it doesn't accept ground rent reviews more frequently than every ten years (this lease contained a review every ten years). But neither of those two things were mentioned in the email from the estate agent. And on its application form, all that A asks for is the current ground rent, current service charge and the remaining term of the lease. The property Mr C wanted to buy was acceptable on those three elements. The more detailed and specific terms of the lease are checked at valuation and conveyancing stage – which is what happened in this case.

When A withdrew its mortgage offer, Tenet asked why it had been withdrawn. A said that it had been withdrawn because of the frequency of the ground rent review. It didn't mention the uncapped ground rent review – though Tenet was also aware of this since it had been flagged as a potential problem by Mr C's solicitor.

Tenet then looked for another lender. It selected N as a lender it was aware had accepted leases in the past that other lenders had rejected, so it recommended making an application to N.

I haven't seen the details of any discussion with Mr C at this stage – such as an advice letter, emails or notes of a call. So I don't know to what extent Tenet advised Mr C that there was a risk that N might not accept his application. However, I think Mr C was aware that there were problems with the lease, which included whether it would be acceptable to mortgage companies – he'd been advised of that by his solicitor when the solicitor first flagged up the problem which led A to withdraw its offer. And I can see that Mr C was keen to proceed with the purchase and mortgage, and was regularly chasing up progress having

been given a deadline for completion by the vendor. It's also worth noting that – while he hasn't complained about this – a third lender had already rejected an application before the application to A. On balance I'm satisfied that Mr C understood the risk that the application to N might not be accepted too because of difficulties with the lease and wanted to go ahead.

Tenet discussed the situation with N – N said that it couldn't guarantee the lease would be acceptable until it had been reviewed by an underwriter. An application was submitted on that basis. But, as with A, in the end N wasn't prepared to go ahead.

Before the lease issue had been considered, N reduced the amount it was willing to lend due to concerns about affordability. Mr C says this was because Tenet gave it the wrong information – confusing his net income with his gross income – but I don't think that was the case. I've seen emails from N confirming that the reason the lending limit was reduced was because of how it took into account Mr C's buy to let properties and his mortgage commitments in respect of those properties.

One option considered to resolve this was reducing Mr C's other expenditure to make a higher amount affordable – another was increasing his deposit so he needed to borrow less. I've seen that Mr C had substantial savings at this time, so increasing the deposit would potentially have been open to him. But he agreed to pay off his car finance, reducing his outgoings. I don't think I can reasonably hold Tenet responsible for this. Mr C didn't actually have to repay his car finance at that point, just commit to doing so before the application completed – so he could have waited until the offer was in place and the lease had been confirmed as acceptable. And in any case he understood that it would be necessary for him to agree to do so at some point if he wanted to pursue the mortgage with N without increasing his deposit.

Ultimately there can never be a guarantee that a lender will be willing to lend – either because of affordability, because of problems with the property, or for other reasons, an application might fail at any time. No mortgage broker can therefore be sure that it will be able to secure a mortgage for its client. A broker should make sure that they understand their client's situation, recommend the mortgage most likely to be accepted which is suitable, and ensure the client understands the risks that it might not be accepted – but they can never be sure what a lender's decision will be.

The underlying problem is that Mr C wanted to buy a property that had terms in its lease that made it difficult to get a mortgage. Even after A withdrew the mortgage offer on that basis, knowing the lease was a problem, Mr C wanted to go ahead with the purchase – rather than, for example, looking for a different property. That meant there was always a risk that another lender might take the same view, and that Mr C wouldn't be able to get a mortgage over this property at all. While it was unfortunate that Mr C ended up in that position, I don't think it was because of failings on Tenet's part. Tenet did its best to secure a mortgage for Mr C, and wasn't to blame that it turned out not to be possible on that particular property. It acted fairly based on the knowledge it had at the time. And so I don't uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 January 2024.

Simon Pugh
Ombudsman