

## **The complaint**

Mr M complains that Rooftop Mortgages Limited is unreasonably preventing him from continuing to let out a property on which it has a residential mortgage.

## **What happened**

Mr M took out a residential mortgage in 2007 with a different lender. The mortgage was transferred to Rooftop in April 2019.

Mr M has been letting out the property since 2015. He says the previous lender agreed he could let the property perpetually and amended the terms and conditions. Rooftop says this is a residential mortgage and it didn't consent to Mr M continuing to let out the property. It suggested Mr M refinance to a buy to let mortgage.

Our investigator didn't uphold the complaint, saying Rooftop acted in accordance with the mortgage terms and conditions and its own policies.

Mr M didn't agree and asked that an ombudsman re-consider the matter.

## **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.

We provide an informal dispute resolution service. I'm required to explain why I reach my decision. But I don't have to comment on or respond to each point made by Mr M or use his numbered questions as the format for my decision. I should also say that where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr M took out a residential mortgage in 2007. Rooftop provided a copy of the mortgage terms and conditions issued to Mr M by the original lender. I'm satisfied these are the mortgage terms and conditions that apply to Mr M's mortgage.

The mortgage terms and conditions say the property must be used as Mr M's principal residence. The mortgage offer issued to Mr M in 2007 says it's a condition of the mortgage that the borrower must not let the property without prior written consent. Mr M agreed to these terms and conditions when he took out the mortgage.

Mortgage lenders can consent to borrowers taking steps that would otherwise be a breach of the mortgage terms and conditions, such as letting the property.

In late 2015 the previous lender gave consent for Mr M's property to be let on an assured shorthold tenancy (AST) for six months. The tenancy – and the lender's consent to it – expired in mid-2016. Mr M has continued to let the property. He didn't provide evidence of the previous lender agreeing to this.

Mr M contacted Rooftop about a payment deferral in 2020 as his tenants weren't paying rent (this was during the Covid-19 pandemic). Rooftop told Mr M in mid-2020 that this was a residential mortgage and he should consider taking advice about re-mortgaging with a buy to let mortgage. Mr M said he'd provide evidence he had consent to let the property on a long-term basis. Rooftop says it didn't receive this from Mr M and couldn't find any record of it in the mortgage records. Mr M hasn't provided this evidence to us.

In late 2021 Rooftop received notice from the local authority that Mr M had applied for a HMO (house in multiple occupation) licence. It contacted Mr M and there were discussions about him letting the property.

Rooftop wrote to Mr M in late 2021 saying while it would honour consent given by the previous lender this would be reviewed at the end of the AST. It said it wouldn't consent to the property being let as a HMO and if Mr M wanted to proceed with this he'd need to re-finance. Rooftop also referred to a letter from the local authority about the unauthorised use of an outbuilding as self-contained accommodation.

Rooftop told Mr M its policy is not to consent to properties being let beyond a maximum period, which Mr M had already exceeded.

Mr M says the lender gave consent for the property to be let on a perpetual basis. He didn't provide evidence of this. Mr M says the mortgage terms and conditions were amended to allow him to let the property. He didn't provide evidence of this either. I don't agree that by writing to Mr M at his correspondence address Rooftop (or the previous lender) consented to him letting the property indefinitely.

Based on the available evidence, I don't think the previous lender amended the mortgage terms and conditions or consented to Mr M letting the property indefinitely. I think it's for Rooftop to decide whether to consent to Mr M continuing to let the property.

Rooftop's policy is to give consent to let on an AST in certain circumstances (which don't apply here). It doesn't consent to long term lets. Mr M has been letting the property since 2015. From what he's said he has no intention of moving into the property. Rooftop told Mr M clearly that it wouldn't consent to him continuing to let the property or use it for a purpose other than his principal residence. I think this was consistent with its own policy and I don't think it was unfair. I don't think it's unfair for Rooftop to suggest that Mr M refinances with a buy to let mortgage. That would be consistent with Mr M's use of the property.

Mr M told Rooftop the same tenants (the two people that signed the AST in 2015) were still living in the property. He didn't provide a copy of a recent tenancy agreement to support this. Mr M also told Rooftop in late 2021 the reason he applied for a HMO was so that he could let the property to more tenants. He told Rooftop there were already locks on internal doors, which he said was allowed under the selective licence he currently had.

In the circumstances, I think it was reasonable for Rooftop to send an agent to inspect the property and to establish how it was occupied. I think it was reasonable for the agent to leave letters for the occupants. The mortgage terms and conditions say that Mr M must allow Rooftop (or its agent) access to the property at all reasonable times for any survey or inspection which it deems reasonably necessary, for which allow Rooftop can apply a charge. The charge for a field agent's visit is set out on Rooftop's fee tariff.

Rooftop refunded the charge for the field agent sent in early 2022 as it hadn't given Mr M prior notice of its intention to send a field agent to the property. I don't think it's fair and reasonable to require Rooftop to refund fees related to other visits.

Mr M has explained his interpretation of various parts of the mortgage terms and conditions. For instance, he says Rooftop can only send a surveyor to inspect the property and then only if something needs to be fixed. I don't find Mr M's interpretation reasonable. However, whether a contract has been breached is ultimately a matter for a court.

The mortgage terms and conditions say the property must be used as Mr M's principal residence. So there's no need for the terms and conditions to set out the basis on which the property could be used for any other purpose. Rooftop doesn't have to provide its internal policies to Mr M, and wouldn't consider it fair to require it to do so.

I don't think Rooftop treated Mr M unfairly when it didn't give consent to let and suggested he refinance on a buy to let basis. It follows that I don't think it's fair and reasonable to require Rooftop to consent to Mr M continuing to let the property.

I think Rooftop gave a clear explanation as to why additional interest was applied to Mr M's account in some months (in summary, due to interest rate changes and months having different numbers of days).

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 January 2024.

Ruth Stevenson  
**Ombudsman**