

## The complaint

M, a company, complains that Landbay Partners Limited forced it to change lenders as a result of which M was charged an early repayment charge ("ERC") of £42,000. M says that the charge is unfair as it was forced to change lenders through no fault of its own.

## What happened

M is a company that had a buy to let mortgage on a property with Landbay. The mortgage offer is dated November 2020 and is for a mortgage of £839,437.50 on a property with a valuation of £1,100,000.00. The application for the mortgage by M stated that the property was to be occupied by a family as buy to let on an assured shorthold tenancy ("AST"). The mortgage had a fixed interest rate mortgage product of 3.65% that was subject to an ERC if the mortgage was redeemed early. The term of the product was 60 months.

Landbay was notified by the relevant local authority Council of a draft licence on the property as a property in multiple occupation ("HMO"). The application seems to have been made by M's tenant. The HMO draft licence was for a maximum of six people in six different households. That notification was received on 23 December 2021 and dated 20 December 2021. M says that the application was made by a tenant without M's consent. The draft licence says that "*The applicant or any relevant person*" may appeal the granting of the licence.

Landbay then received two Enforcement Notices from the Council both dated 16 May 2022. One referred to a planning breach and an unauthorised development in the garden of the property. The other referred to a material change of use of the land to a Large House in Multiple Occupation as an unauthorised development.

Landbay says that it considered M in breach of the loan agreement and gave it the option of obtaining a loan based on the property being a HMO or to remove the HMO licence. M said that as it didn't apply for the licence it couldn't have it revoked and chose to refinance the property with another lender. But as this meant redeeming the mortgage with Landbay, it resulted in an ERC. M says this is unfair as it wasn't responsible for the HMO application.

Our investigator didn't recommend that this complaint should be upheld as M breached the terms and conditions of the mortgage and Landbay provided options that were fair in the circumstances. M disagreed and asked for a review.

## 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.

This was a buy to let mortgage. The application says that the property is to be let as an AST to a family as tenants on a one-year lease. As part of the loan documentation, M agreed to terms including:

### “7.3. Development

a The Borrower shall not:

1. make or allow to be made any application for planning permission in respect of any part of its Property without the prior written approval of the Lender (such approval not to be unreasonable upheld or delayed)
2. (without the prior written approval of the lender (such approval not to be unreasonably withheld or delayed) carry out, or allow to be carried out, any demolition, construction, structural alterations or additions, development or other similar operations in respect of any part of its Property

b. The Borrower must comply in all respects with all planning laws, permissions, agreements and conditions to which its Property may be subject. “

Under the term “7.5 Power to Remedy” it says that the Lender may take any action that the Lender may consider necessary or desirable to prevent or remedy any breach of any such term.

It seems to me that that there were several breaches by M of its agreement with M. Firstly there was an unauthorised development of an extension to a building in the garden of the property. That breached the term not to carry out development without consent of the lender. But also, more significantly there was a planning application to turn the buy to let property into a HMO and an unauthorised development of the property as a HMO which itself fell below the Council’s standards for such a development. As a result, the Council issued an Enforcement Notice dated 16 May 2022. The Council in that notice refers to the reasons it’s taking enforcement action including that *“The unauthorised development provides a poor standard of accommodation because of the small internal living room with no access to direct natural light, the lack of internal amenity space, bedrooms under 10sqm, and occupation above the maximum licensed occupiers, contrary to the Council’s HMO standards”*

Now, this mortgage was intended for a buy to let mortgage and not intended to be a mortgage on a HMO property. Under the terms of the mortgage offer headed “Major Product Restrictions” the terms say *“This mortgage may only be secured on a buy to let property which is let to tenants, excluding any member of your immediate family throughout the term of the mortgage.”*

So, although this was a buy to let mortgage, during the term of the mortgage without the lender’s consent, the property had been turned into an HMO, without looking for permission from Landbay. The application seems to be in breach of Clause 7.3. a.1 above and the Enforcement Notice references breaches of Clause 7.3.b above and the turning of the property into a HMO is contrary to the purpose of the mortgage agreement which was to provide a buy to let mortgage on a property occupied by a family.

As this was a buy to let mortgage Landbay of course objects to the transfer to a HMO and asked M to either rectify the situation to a non-HMO letting or look for finance elsewhere. M’s response is that it was its tenant which applied for the HMO and the Council has told it only the tenant can revoke the application for a HMO.

My role is to decide this complaint on the basis of what is fair and reasonable in the circumstances. Landbay and M had agreed a buy to let mortgage for a letting to a family. M let the property to a tenant which I understand, turned it into a HMO. Landbay had not agreed an HMO letting with M and I believe that it was reasonable for it to require that M turn

it back into a buy to let letting or seek finance elsewhere. That seems entirely reasonable. I'm also not convinced that M was helpless to do anything about the licence application. Although the Council may have said that only the applicant could withdraw the application it would seem from the terms of the draft licence that any relevant person could appeal the granting of the licence and the owner of the property, M, would seem to be a relevant person. In any case it's not Landbay's role to ensure that M's tenant complies with the terms of Landbay's agreement with M. It was matter for M to ensure that the property complies with the object of the letting as a buy to let property to a family and that the terms of its agreement with Landbay are complied with, which they were not.

So, I find that Landbay acted reasonably in the options it offered M. M chose to re-finance the property. But that meant the mortgage was redeemed early and an ERC became payable. But that was what was agreed by M when it took out the mortgage product as compensation to Landbay for early settlement of the loan. I see nothing wrong or unfair in Landbay requiring that M adhere to the terms of its agreement with Landbay and so, I can't fairly uphold this complaint.

### **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 M to accept or reject my decision before 23 August 2023.

Gerard McManus  
**Ombudsman**