

The complaint

Mr W complains that Godiva Mortgages Limited wanted written proof that he'd complied with enforcement notices issued by his local council, before making changes to the Buy To Let ("BTL") mortgage on that property. Mr W wanted Godiva to accept his verbal reassurance.

What happened

When Mr W called us about this complaint, he said he rents out a property which is security for a BTL mortgage with Godiva. Some time ago, he'd had an issue with the local council covering that property. At the time, he was renting the property out on a room by room basis.

Mr W said he was served with an improvement notice and a prohibition notice in 2018. He told us those were dealt with and the problem was resolved back in 2019.

Mr W said he'd told Godiva over the phone that the council was happy, and he'd been letting the property ever since. Mr W said more recently, in 2023, he tried to change his mortgage interest rate. But Godiva then said it wanted written confirmation that the problems Mr W told it were resolved, had been resolved, before it would allow him to make any changes to the mortgage.

Mr W said it was unreasonable for Godiva to be asking for this now. And he said he'd had quite a bit of difficulty in providing that evidence, because the people who originally dealt with this in the council had moved on. He said Godiva had eventually accepted his verbal reassurance that the work had been done, and had allowed him to change his rate. But he said there was still a restriction noted on his mortgage, and he said that would prevent him from moving his mortgage elsewhere. He said that was unfair.

Godiva said the dates it held didn't agree with those Mr W had mentioned. It said Mr W took this mortgage out in 2018. And it showed us two letters dated 20 August 2019, from the relevant local authority, about the mortgaged property. One of those was an improvement notice, and one was a prohibition notice.

Godiva has shown our service a letter it sent to Mr W on 28 August 2019, asking him to contact it urgently to confirm the notices had been complied with. Its contact notes say Mr W then rang on 3 September 2019, to say he was aware of the notices and was complying with them.

There are no further points about those notices recorded on Godiva's contact notes until 2023, when Mr W wanted to take out a new interest rate deal on this mortgage. Godiva said it still hadn't received confirmation that Mr W had complied with the notices.

Godiva asked Mr W to provide written confirmation that the notices had been complied with. It said it had received an email from Mr W's broker which showed planning permission for changes made to the property, as part of a planning appeal decision from early 2019. But Godiva said that wasn't what it wanted. It was after this that the prohibition and improvement notices were served on the property by the local council. Godiva said it needed to see official documentation that both orders had been complied with.

The contact notes then suggest Mr W told Godiva he was having difficulty obtaining this official documentation from the council, and Godiva agreed to allow the product transfer (to a new interest rate) to go ahead. But Godiva said it would still need to see the proof that the notices had been complied with.

Godiva said that other issues, which are not the subject of this complaint, had also delayed Mr W's remortgage. But it said his new mortgage rate followed on immediately from the old rate, so Mr W hadn't been charged more on his mortgage because of these delays. Godiva paid Mr W £200 to make up for those delays. But it didn't think it had made a mistake by asking for written confirmation that the notices from 2019 had been complied with. It said the presence of the notices was damaging to its security so it would still need to see that evidence.

Godiva said any future lender who agrees to lend using this property as security would also ask for evidence that the restrictions imposed by the notices had been lifted, so Godiva didn't think it was being unreasonable by asking for written confirmation before it made any further changes.

Our investigator didn't think this complaint should be upheld. He said it wasn't unreasonable for Godiva to have placed a hold on the account, restricting changes, when it received an improvement notice from the local authority. The notice would affect Godiva's security.

Our investigator said Godiva may have been happy to accept verbal confirmation in 2019 that improvements had been carried out, but Godiva now has a policy of requiring written confirmation that such orders have been complied with. Our investigator said this was a commercial decision that Godiva was entitled to make, and it wouldn't be unreasonable for Godiva to ask for written confirmation, going forward.

Mr W didn't agree, and he was concerned that our investigator had reached this conclusion without asking him to send any evidence. Mr W said we hadn't properly understood his complaint. Mr W said it wasn't fair for Godiva to have accepted his reassurance in 2019 that the notices had been complied with, but then in 2023 to say that he couldn't make changes to his mortgage without confirming this in writing.

Mr W then sent an email saying that in 2020 he'd advised the relevant council that the property was no longer an HMO, but was now a single dwelling, and he'd received an acknowledgement of this change from the council. This email doesn't clarify whether that means the previous orders no longer apply, or whether they had already been complied with. Mr W said this email hadn't been sent to Godiva.

Mr W said asking the council for written confirmation of compliance for something that occurred five years ago, when the property is now a family dwelling, wasn't reasonable. And he didn't think it was reasonable for Godiva to have restricted his mortgage either. He wanted that restriction removed.

Our investigator looked into this again, and contacted Godiva. It said it had put the restriction on Mr W's mortgage when it was first told about the notices, not recently. It had allowed Mr W to change his interest rate, in an effort to help him, but it wouldn't process any further advances or other changes to the mortgage until it got confirmation that the notices had been lifted.

Godiva said it didn't think this was unreasonable. It said the issue of an enforcement notice was a serious matter, and it would expect any customer who received one to comply with it, and to have evidence that the notice had then been lifted. Godiva said it hadn't received

such evidence from Mr W.

Our investigator then wrote again to both parties, to say he still didn't think this complaint should be upheld. He said the hold on the account had been placed there in 2019, not in 2023. And given the serious nature of the notices, and potential effect on Godiva's security, our investigator didn't think that was unreasonable.

Our investigator said Godiva hadn't received any evidence that the notices were fully satisfied, and our investigator didn't think it was unreasonable for Godiva to request that now, if Mr W wanted to make any further changes to the mortgage.

Mr W replied to disagree. He wanted to know what evidence we had that he'd spoken to Godiva in 2019, and of what was said. He wanted to know if we had any evidence of the conversation he said he'd had with Godiva in 2020, telling it that he had complied with all notices. Mr W said all restrictions should have been removed then.

Mr W wanted to know what evidence his broker had shared about whether he'd complied with the notices.

Mr W also wanted to query why, if Godiva didn't know he'd complied with the notices, it had allowed the property to continue to be let from 2020 until now? Mr W said that by law, the property couldn't continue to be let once improvement notices and prohibition notices have been served. And he also wanted to know why it had allowed the product transfer to occur for the new rate in 2023.

Mr W said our investigator had accepted evidence received from Godiva on face value, without giving him the chance to respond. He said we hadn't explained why Godiva didn't require written evidence that he'd complied with the notices in 2019, if it was really concerned about its security. And he said that if Godiva had asked for written confirmation back then, he would have provided it. He repeated that it becomes more difficult to provide such evidence some years later, and Mr W thought Godiva should have known that.

Mr W denied that any written evidence of complying with either notice had been sent to Godiva by his broker. And he said it was only after he'd complained to Godiva, explaining how difficult it was now to get written confirmation from the council that the notices had been complied with, that Godiva said it would accept verbal confirmation "*on this occasion*". Mr W said that showed Godiva had been willing to accept verbal confirmation after all, and he thought it was only putting restrictions in place to stop him moving to a different provider.

This case was then passed to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

Mr W referred to renting this property out on a room by room basis in 2019. It appears it was then a house in multiple occupation, or "HMO".

I note that there does appear to have been some confusion about dates here. Mr W told us at first that the notices were served in 2018, and in 2019 he'd told Godiva they were complied with. But Godiva said the notices dated from 2019, and its conversation with Mr W then was just that he was aware of the notices. Mr W then said he'd spoken to Godiva in 2020 to tell it the notices were complied with.

We know that Godiva did get copies of the notices in 2019. And it has shown us it wrote to Mr W in August 2019. Its notes say it spoke to Mr W in September 2019, and he was aware of the notices and taking action.

More recently, Mr W told us he'd had another conversation with Godiva in 2020, and that was when it was told the notices had been complied with. It does appear as if Mr W's recollections on this matter are not completely clear, and I do have to bear that in mind when I'm assessing the evidence provided in this case. Godiva has no notes of any further conversation with Mr W, about the notices, in 2020.

Mr W said he wasn't asked for written confirmation at the time that the notices had been complied with. He said he would have provided that at the time, if he'd been asked. But he was having difficulty getting this now.

Mr W said he was concerned that Godiva was only applying a requirement for additional documentation now, some years after the issue cropped up. He asked why it hadn't required this information earlier.

I think it's likely that Godiva did note Mr W's account in 2019, to say that it wanted to see written confirmation that the notices had been complied with. I do think it's reasonable for Godiva to say that the issue of these notices would be likely to affect its security.

Whilst Godiva may initially have been content to see that Mr W was aware of the issues, and had told it they were being addressed, in the longer term I don't think it was ever likely that Godiva would have been satisfied with just Mr W's verbal reassurance on this point. And I don't think it's unreasonable for Godiva to want to see written confirmation from the council that the notices were complied with, or for Mr W to otherwise satisfy Godiva that the council takes the view that these concerns have been resolved.

The restriction Godiva had placed on Mr W's mortgage became an issue in 2023, when Mr W wanted to fix a new mortgage interest rate. Godiva told us that the restriction it placed on Mr W's account triggered a request for written confirmation that the notices had been complied with, whenever Mr W wanted to make changes to the mortgage. So when Mr W wanted a new interest rate, Godiva asked Mr W and his broker for evidence that the notices had been complied with.

Our investigator said Mr W's broker had only provided evidence about one of the notices. I don't think Mr W's broker did send any such evidence. I think he supplied evidence of a successful planning permission appeal, from early 2019. But that didn't assist with showing that the notices, issued some month after this, had been complied with.

Mr W told Godiva he was having difficulty now getting this confirmation from the council. Godiva said it would allow the rate change to move forward for now. But I think this was done in an attempt to help Mr W deal with delays he'd told Godiva the council was causing, and to make sure Mr W didn't have to pay more for his mortgage, just because the council was delaying in replying. I think this was a reasonable step for Godiva to take, but I don't think Godiva ever said it wouldn't need those written reassurances at all. And I don't think it's unreasonable for Godiva to keep asking for this.

Mr W has raised a number of objections to what Godiva has done. He suggested Godiva shouldn't have allowed him to keep letting the property, if it wasn't satisfied the relevant notices were complied with. But I don't think it's Godiva's responsibility to monitor whether the premises meet the standards required for letting.

Mr W said Godiva had ignored that the property was no longer an HMO. But he also told us he hadn't shared with Godiva the email reply he got from the council, when he notified it of this change. Additionally, I don't think it's clear from the notices themselves that they would only apply to HMO properties. In these circumstances, if Mr W argues the notices are simply no longer relevant, I think it would have been reasonable for him to have provided Godiva with written reassurance that the council also accepts this is the case.

When Mr W first contacted our service, he told us that he got emails from the local council confirming that he had done what was required, and could re-let the property. I appreciate that Mr W says that he is having difficulty now showing Godiva that the notices he received from the council were complied with. It's not clear what happened to the emails the council sent about this. But my decision doesn't require Godiva to waive any requirement for written confirmation that the notices were complied with, so Mr W may wish to renew his efforts to obtain this from the council.

With that in mind, our service has copies of the letters sent by the relevant council to Godiva, as the mortgage lender, in order to notify it of these orders. These letters include the relevant reference number, which may assist Mr W in his discussions with the council, to obtain proof that the orders have been complied with. Our service would be happy to forward those to Mr W, if that would assist.

I know that Mr W will be disappointed, but I don't think his complaint should be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision.

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.

Mr W replied in detail, to object to my provisional decision. He said the events in question happened almost five years ago, and if Godiva really had concerns about its security, it would have been touch with him in writing, and it would have followed up to make sure he'd complied. He said it was unfair Godiva hadn't done that. Mr W didn't think he should have restrictions on his mortgage now, because Godiva hadn't been in touch with him at the time.

Mr W said he only found out there were restrictions on his mortgage in 2023, and he argued that he'd shown full compliance with the notices to the council back in 2019. Mr W said at the time, the council lifted all the restrictions.

Mr W also said the property was no longer an HMO, so the applicable standards were different. But he said the council still wouldn't provide a letter showing compliance with the improvement and prohibition notices.

Mr W said he was sorry he'd made a mistake, saying the notices were served in 2018. He said once corrected, that should have no impact on my decision. He accepted he'd spoken to Godiva in September 2019 to confirm he agreed to comply with the notices, and hadn't spoken to it about the notices again since then, until 2023.

Mr W said it was unfair for Godiva not to have told him it would restrict his account if he didn't provide written confirmation that he'd complied with the notices. He said he could have obtained the confirmation then, and repeated that he can't easily do that now. Mr W said the

property was inspected in 2020, and the council officer then accepted in an email that the notices had been complied with.

Mr W said Godiva had also accepted an independent valuation of the property on 4 August 2023. He said that survey confirmed improvements made to the general condition of the property as well as an extension.

Mr W said he'd understood we'd first said Godiva was happy to accept verbal confirmation back in 2019 that improvements had been carried out, but that it now requires written confirmation, as a change of policy. Mr W said that wouldn't be fair. And he said I'd then said I thought restrictions were put on the account in 2019, but he said that Godiva hadn't written to him to say this, and he didn't think that was fair.

Mr W said he did accept it wasn't Godiva's responsibility to monitor the standards required for letting. He said that was the council's responsibility, but he said it had done that in 2020. So he said it wasn't reasonable for Godiva to say it still had security concerns.

Mr W said I'd noted that he appeared to be saying that the notices weren't relevant now the property was no longer an HMO, and I said that wasn't clear from the notices. Mr W said it was evident in his case the notices had been served as his property had been deemed an HMO property at the time by the relevant Council.

Mr W said I'd noted it wasn't clear what happened to the emails the council sent confirming he'd had done what was required, and the property could be re-let. Mr W said he was sending us the full email trail. Mr W said he thought it was clear that the notices had been complied with.

Mr W said I'd said it wasn't Godiva's responsibility to monitor the standards required for letting but I had also said it wasn't unreasonable for Godiva to place restrictions on the mortgage account as this would affect Godiva's security, if it hadn't received written confirmation notices had been complied with. Mr W said that was unfair, because the council had deemed the property to be compliant.

Mr W said he'd gone back to the relevant council, and it revisited in October 2023. But the officer who attended said he wouldn't provide a written letter of compliance, because the property was currently tenanted by a family. So Mr W said he was at deadlock. And he said if the property was empty, this wouldn't be an issue.

Mr W said he was asking Godiva to consider the evidence he had presented to our service, which he said confirmed compliance. He didn't think it was unreasonable to ask Godiva to make a decision based on those emails, but he said Godiva had refused. Mr W repeated his assertion that it was unfair to ask for more, five years after the original issue arose.

I accept that Godiva doesn't appear to have set out in the letter it sent Mr W in 2019, that it wanted him to provide written confirmation of compliance with the relevant notices. But Mr W had reassured Godiva he was taking this issue seriously, and was taking action. So I don't think it would be unreasonable for Godiva to think Mr W would then be able to show that these notices had been complied with. And that means I don't think Mr W's complaint should be upheld, just because Godiva has said more recently that it would like to see evidence of compliance.

Mr W has also challenged whether Godiva's view that its security could be affected by the notices, was a reasonable one. But those notices record that the relevant council expressed serious concerns about a property, serving notices requiring not insignificant works to the property and prohibiting the use of part of it in the interim. The notices also say that when

they become operative, they will be recorded on the council's local land charges registry, so they would be visible to any future purchaser. So I don't think it's unreasonable for Godiva to have concluded that this may affect the security of its lending.

Mr W says that the notices the council issued are no longer relevant to his property, as it's no longer an HMO. And he says it's clear the property has been improved, because Godiva has recently obtained a valuation, which confirms this. I can't see that Mr W has asked Godiva to review its decision on this basis. He may wish to do so.

Mr W has set out his understanding that the emails he has sent us, show that the council accepted either that the notices were complied with, or were no longer relevant to his property. But before I reached my provisional decision, Mr W said the emails he had shared with our service hadn't been sent to Godiva. So I would encourage Mr W to share the evidence he has, with Godiva, including evidence of the change of the basis on which the property is let, and allow Godiva to reach a decision on the basis of that evidence.

I'm not an expert on property improvement and prohibition notices. As a non-expert, I can see that the notice itself provides for an application to revoke or vary a notice. It isn't clear to me that Mr W has made such an application. And it isn't otherwise clear to me that the evidence Mr W has provided does establish either that the notices never became operative, or that they must have been complied with, or that they would otherwise fall away because of the change in letting arrangements.

That's one reason why I don't think it would be fair and reasonable for me to direct Godiva to accept the evidence Mr W has offered our service, and remove the restriction on his mortgage now. The other is that Mr W doesn't seem to have presented all of his evidence to Godiva, and asked it to review its decision. I do think it is reasonable for Mr W to talk to Godiva directly about this.

For the above reasons, I haven't changed my mind. I'll now make the decision I originally proposed.

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 W to accept or reject my decision before 4 July 2024.

Esther Absalom-Gough

Ombudsman