



Can we get some agreement over Mortgagee Protection Clauses (MPC)?

The Problem

Some lenders will not lend if a MPC is not included in a lease, some lenders will not proceed to lend unless a Deed of Variation is entered into, and some lenders will put the onus on the solicitor/conveyancer, *“if you, the conveyancer, consider this means the terms of the lease are unsatisfactory, you must get a DOV or report to us.”* Some lenders might proceed if a ‘suitable’ indemnity policy can be obtained.

But is it a problem?

Lenders already adequately protected by statute:

Relief is already provided for pursuant to **s146(4) Law of Property Act 1925**.

Lenders are protected by the Civil Procedure Rules:

The lender is required to be served notice of such proceedings in accordance with paragraph 2.5 of Part 55.4 of Practice direction 55A:

"If the claimant knows of any person (including a mortgagee) entitled to claim relief against forfeiture as underlessee under section 146(4) of the Law of Property Act 1925 (or in accordance with section 38 of the Senior Courts Act 1981, or section 138(9C) of the County Courts Act 1984):

(1) the particulars of claim must state the name and address of that person; and

(2) the claimant must file a copy of the particulars of claim for service on him."

The landlord (“claimant”) cannot bypass the mortgagee during litigation, and the court will physically serve papers to their registered address, alerting them to the threat. The mortgagee then has the opportunity to pay off the debt, fix the breach, or seek some form of relief from forfeiture (a brand-new lease directly to them?).

Points to consider

- The vast majority of existing residential leases do not include a mortgagee protection clause.
- Lenders who have amended their part 2s seem to be under the impression that there is some mechanism to compel the landlord to vary the lease. There is not.
- Indemnity insurance is effectively worthless as only operates on the basis that the landlord has been able to achieve forfeiture by court proceedings and at the same time circumvent the CPRs.
- The practical reality is that it is very difficult to forfeit a residential lease and the lender will be given notice under the CPRs. All this will lead to is delayed transactions where attempts are made to vary a lease which will invariably be refused.

“A mortgage protection clause is not necessary however, because the Landlord, who is taking the repossession proceedings, is required to serve notice of those proceedings on the mortgage Lender anyway, under the Civil Procedure Rules. Therefore, for a Lender to insist on a mortgage protection clause, which requires the Landlord to give prior notice to the Lender, before commencing proceedings, is a bit like a “belt and braces” exercise. The only benefit to the Lender is that it can pay off the Landlord at an earlier stage and thus has bit more time to stave off a potential repossession. There is, of course, no obligation on a landlord to agree to amend the lease and it might be seen to be “over the top” for a Lender to refuse a mortgage over a property for which the lease does not include a protection clause.”

The solution

Across the board agreement on what ALL lenders really need, why, and what they want conveyancers to do.