

**A
GLIMPSE
INTO THE
RECEIVERSHIP
PROCESS**

T HAS BEEN CLAIMED THAT THE BRIDGING MARKET HAS SEEN A RISE IN RECEIVER APPOINTMENTS OVER THE PAST SIX TO 12 MONTHS. ALTHOUGH *LENDERS* MAY BE RELUCTANT TO ADMIT TO THE TREND, RECEIVERS ARE NOTICING THAT BORROWERS ARE FINDING IT INCREASINGLY DIFFICULT TO REFINANCE, RESULTING IN MORE DEFAULTS. WHAT EXACTLY HAPPENS DURING THE COURSE OF RECEIVERSHIP, WHERE DO THE COMPLEXITIES LIE, AND WHAT COULD THIS DEVELOPMENT MEAN FOR THE LENDERS, BROKERS AND, MOST IMPORTANTLY, CUSTOMERS IN OUR SPACE? WE DECIDED TO BREAK IT DOWN FOR YOU *Words by* **SIMON THOMPSON**

CG&Co, a property receivership specialist, reported a significant growth in the volume and value of property-related cases during 2019. It experienced a 40% rise in the number of appointments and a 200% increase in the value of the properties under its control to £300m.

WHY DO LENDERS APPOINT RECEIVERS?

Receivers can be called in when a borrower fails to pay interest, a loan goes over term, or the borrower breaches conditions of the loan agreement. As a partner at Bellevue Mortlakes Chartered Surveyors & LPA Receivers, Hinesh Varsani oversees the receivership process. He claims that, in most cases, the borrower has simply mismanaged their funds and assets. In other instances, they have been too ambitious and left themselves overexposed. More recently, Bellevue Mortlakes has been more active in prime London, where assets are owned by international investors. He explains that currency controls and diplomatic issues often limit a borrower's ability to bring more money into the UK in a timely fashion. "Some borrowers have the money—[a lot of it]. But [getting it here] is the major issue. Government policies change and, all of a sudden, that international borrower is unable to redeem their loan."

Hinesh highlights that lenders can technically recoup the funds secured against the borrowers' assets themselves, but instead utilise receivers to streamline the process, maximise returns and limit reputational risk. "The main reason [is] to put distance between the borrower and the lender. If they get bad press saying that they undersold or mismanaged a security or property, then that can destroy or tarnish the lender's reputation." Daniel Richardson, partner at CG&Co, speculates that around 99% of established lenders now use receivers. "As their books grow, the laws of probability dictate that there will be a greater number of defaults and they find themselves needing a receiver's services." Hinesh adds that lenders which manage the process themselves increase the likelihood of any missteps getting reported to the FCA. Even when it is managed adroitly by finance providers, he says that borrowers faced with losing their homes aren't any less likely to take their complaints to the regulator. According to him, in the majority of cases, borrowers respond to receivership appointments with litigation.

Gary Bailey, managing director at Hope Capital, says that if a borrower isn't communicative and it cannot see a way to

support them to keep within the terms of the loan in a reasonable period, it may have no choice but to apply the conditions of that loan. He explains that it is only in the worst-case scenarios that this could result in receivership or repossession. "Every consideration and endeavour" will have been taken before this final option is instructed. Lenders should be monitoring their loan books carefully, and skill, care and diligence are said to be key to account performance. "When these are applied before granting the loan, it helps to ensure the borrower's plans are feasible and that they have strong affordability and a plausible exit," adds Gary.

RECEIVER RESPONSIBILITIES

Although receivers are appointed by the lender, their duty of care is equally to the borrower. They are obliged to make sure the process is undertaken in a way that delivers the best return for the borrower. A fast receivership is a good receivership as, ultimately, the property owner is paying the bill for it on top of any additional default interest. "It's not fair for receivers to slow down, [otherwise] the equity in the property just gets eroded," explains Hinesh. Daniel states that a receiver's responsibilities can involve dealing with tenants, collecting rent and ensuring there's full compliance with all legal obligations and requirements. "If there's value to be added, then a good receiver will always find it—from entering into new leases to enhancing the investment values of vacant properties, or finishing part-completed building projects."

RESISTANCE

The prospect of losing everything may result in borrowers doing whatever they can to stall the process. Hinesh has seen some engage in mortgage fraud by claiming to be living in places on unregulated loans or alleging they have refinance options, which may be fabricated or exaggerated. "A home is a man's castle and they'll do everything to protect it." He says that it is usually better for the borrower to co-operate with the receiver, as it makes the process far quicker. A shorter period of time to dispose of the asset results in less default interest and professional fees being accrued. Hinesh explains that the borrower can often end up with some money back following the sale of the property—after receivership fees are taken out.

Paul Joseph, associate director at Strettons Receivership & Development Consultancy, asserts that it often requires winning over the customer. "...If we can gain their trust and co-operation, then the whole

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case becomes easier and cheaper for the borrower because we spend less time.”

Daniel highlights that the mere appointment of a receiver often results in borrowers “upping their game” by recommencing payments or quickly completing a refinance.

COSTS

The costs are taken out of the funds from the eventual sale of the property, with Paul adding that Strettons’ standard practice is to charge an initial fee on account, followed by a time-based fee. As an example, he says that a security worth £1m may take the same amount of time as one worth £50,000. “The liability may be different, but a flat percentage may not reflect this, and our fees have to be measurable, appropriate and fully justifiable in the event of a [legal] challenge.” Specifically speaking, the initial fee covers accepting the appointment, placing insurance cover, inspecting the property and preparing a strategy report for the lender. Thereafter, costs are charged based on time spent. I am told that most receiverships are done within three to six months, depending on how much litigation is involved.

THE INVOLVEMENT OF A BORROWER’S SOLICITOR

Hinesh claims that, in most cases, borrowers’ solicitors that get contracted to work against a receiver don’t have expertise in the area. In these instances, solicitors usually end up making the receivership process more drawn out and, therefore, more costly. It also makes managing the process difficult and can create barriers, stopping personal dialogue with the borrower. “When you’ve got a solicitor in between, [just] earning [their] fees ... I might tell a borrower, ‘It’s in your best interest to get out of the property,’ but their solicitor might say, ‘Don’t.’” While Hinesh asserts that there is not much solicitors can do to stop the process, he admits that those with the right expertise can be effective in holding receivers accountable and ensuring it is managed in a fair fashion.

DO BROKERS PLAY A ROLE?

Liaising with the borrower’s broker can be extremely fruitful for receivers, for a number of reasons. One is that they can encourage a borrower to see the benefits of complying with the process to minimise the erosion of equity in their property. Hinesh says that they can also give credibility to a borrower’s claims about having refinance options. “If the broker is able to persuade the receiver that [refinancing] is going to happen, the receiver will take

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a view and say to the lender, ‘Look, we think this borrower is going to be able to refinance, let’s give them a bit of time.’”

Steve Burns at Adapt Finance argues that a good broker should have found a solution *prior* to issues occurring. In cases when they can’t, he says that the broker has an “essential role” among the receiver, lender and client to bring about the best scenario for the borrower.

Paul claims that Strettons often deals with those who are able to refinance, but notes that it requires detailed information of [their] offers. “Until the proposed refinance completes, we continue with our strategy because, virtually in every case, as we are appointed, borrowers say they are in the process of refinancing.” If it does go through, the lender still has to pay the receivership fees, and these are added to the borrower’s debt.

AFTER THE RECEIVERSHIP

Hinesh speculates that around 35% of borrowers get money back after outstanding debts are paid to lenders, while 65% of cases end up with bankruptcy proceedings. After the receivership process has played out, lenders can look to use personal guarantees to recoup any funds that are outstanding.

THE BIGGER PICTURE

What is concerning is the potential for higher levels of receivership to attract attention from the FCA. “It makes the whole industry more nervous,” states Steve, adding that it also spills into a valuer’s and lawyer’s workday. He feels that it could lead to a more cautious approach when advising on short-term loans. “Regulators will and should look at these cases. I maintain that the term is often the single biggest issue—give a borrower the correct term to exit the facility!” Paul believes that the impact of more borrowers going to the industry watchdog to complain about the receivership process is that it could present the short-term bridging market in a negative light. However, he claims that if lenders behave responsibly and properly, and appoint registered receivers under the Insolvency Practitioners Association, Royal Institution of Chartered Surveyors and the Non-Administrative Receivers Association’s scheme, then there should be fewer valid complaints. “There will always be borrowers who feel dissatisfied—that is the nature of the position that they find themselves in...”, he adds. Hence the need to treat borrowers respectfully and sympathetically—even when it may not be reciprocated. ■