

complaint

Mr and Mrs D have complained about irregularities on their mortgage account held with Lloyds Bank PLC. They also say that Lloyds has failed to provide them with copies of documents to prove there is a valid mortgage.

background

Mr and Mrs D have a mortgage taken out in 1989 with a bank which later merged with Lloyds. The mortgage has been in arrears for many years and Lloyds has a suspended possession order on it.

Mr and Mrs D have now queried whether or not they have a valid mortgage with Lloyds. They say that correspondence received about the mortgage has been on headed paper from a different lender. Mr and Mrs D have also sent a promissory note to Lloyds which they believe has repaid their mortgage in full.

Lloyds provided Mr and Mrs D with documentation about their mortgage. It explained that letters had been sent on headed paper from that part of its business which administers Lloyds' mortgage accounts, but that the mortgage was held with Lloyds. It didn't accept the promissory note in payment of the mortgage and considers the remaining unpaid debt to be outstanding.

Lloyds acknowledged that its customer service in handling the complaint could have been better. It offered Mr and Mrs D compensation of £350 - £300 for any inconvenience caused and £50 for any costs they had incurred.

Mr and Mrs D didn't accept this and brought the complaint to us, where it was considered by an adjudicator. He explained that the mortgage account was administered by a different branch of Lloyds' business, which was why letters had been sent by that part of the business. He also explained that the issue of whether or not there is a valid mortgage is one for the court, not the Financial Ombudsman Service. The adjudicator considered the £350 compensation offered by Lloyds to be fair.

Mr and Mrs D disagreed with the adjudicator's findings and so it now falls to me to make a final decision on this matter. Mr and Mrs D have made a number of detailed points in response to the adjudicator's findings, largely around their concerns that the mortgage has been securitised to a different business.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I will explain at the outset that I have read everything provided by both Mr and Mrs D and Lloyds. But I'm not required to respond to each and every point made by Mr and Mrs D, and so I will concentrate on what I consider to be the main issues in the complaint. No discourtesy is intended by this; it simply reflects the informal service we provide.

I'm familiar with all the arguments put forward by Mr and Mrs D in support of their contention that there is no valid mortgage contract. It is a view expressed on the internet on various 'debt-avoidance' websites where people are told that they can have their debts cancelled if

their lenders fail to comply with various demands or answer certain questions to their satisfaction.

I do appreciate Mr and Mrs D have strongly-held beliefs about Lloyds' entitlement to claim a debt from them. I understand the arguments they have made about why they think there is no valid mortgage – and I disagree with them. In my opinion, these arguments have no basis in law, logic or common sense. But I have no power to decide whether a contract is valid, binding, enforceable or void – that's a matter for a court to determine.

Lloyds is equally firm that Mr and Mrs J have an obligation to repay the substantial sum of money they borrowed. Only a court can decide if the promissory note Mr and Mrs D have given Lloyds has extinguished their debt. My own view is that a promissory note does not repay the debt, and the balance of the loan remains outstanding. In the circumstances, it is my opinion that it's fair and reasonable that Mr and Mrs D should repay their debt.

Lloyds' mortgages are administered by a different part of its business. Mr and Mrs D have received letters from that business. They say that their mortgage has been securitised and so is no longer with Lloyds. Their argument is that this means Lloyds has no right to pursue them for repayment of it.

Again I must reiterate that only a court is able to decide if Lloyds is entitled to pursue Mr and Mrs D for the outstanding balance of the loan taken out in 1989, for which Mr and Mrs D granted a mortgage over their property. Mortgage securitisation falls outside the remit of the Financial Ombudsman Service – it falls within the regulatory framework of the Financial Conduct Authority, the Prudential Regulation Authority and ultimately the Bank of England.

But it is worth explaining to Mr and Mrs D that the court has held in two cases decided in January 2014 (*Sinclair v Accord Mortgages Limited* and *Overson v Southern Pacific Mortgage Ltd t/a London Mortgage Co*) that it is irrelevant if the equitable interest in a loan has been transferred to a securitisation company. Where there is no transfer of the legal title to the mortgage a lender is still entitled to receive payment and enforce the loan if payment isn't made.

There is no evidence that their mortgage has been securitised. But even if it had been, I'm satisfied (applying the relevant law) that Lloyds would still be entitled to seek repayment of the debt from Mr and Mrs D. The fact that Mr and Mrs D may have received letters from a different part of Lloyds' business does not in any way invalidate the mortgage or lead me to conclude it has been securitised. If Mr and Mrs D consider their mortgage to be invalid due to securitisation, they will need to raise this issue with a court.

Lloyds has already offered Mr and Mrs D £350 compensation for poor customer service. I'm satisfied this is fair and reasonable. I can find no merit in any of the other issues raised by Mr and Mrs D and so I don't uphold the complaint.

As far as I am aware, no court or tribunal has found in favour of a borrower on the basis of the arguments put forward by Mr and Mrs D as to why they consider their mortgage is invalid or has been extinguished. On the other hand, there have been a number of cases where borrowers have lost their case after trying to raise these arguments and as a result have been ordered to pay the lender's substantial legal costs. In the circumstances I would strongly suggest Mr and Mrs D take legal advice from a qualified solicitor before attempting to raise in court the arguments they have put forward here in support of their complaint.

If Mr and Mrs D are in financial difficulty I would urge them to seek advice from a legitimate debt advisory service, such as StepChange or the Money Advice Service, so that an arrangement to pay can be put in place. We can provide contact details for these organisations if Mr and Mrs D would like us to do so.

my final decision

My decision is that I do not uphold this complaint, in that I'm satisfied that the compensation of £350 offered by Lloyds Bank PLC for poor customer service is fair and reasonable. I simply leave it to Mr and Mrs D to decide if they want to accept it in full and final settlement of their complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs D to accept or reject my decision before 2 March 2014.

Jan O'Leary
ombudsman