

complaint

Ms J has complained about the validity of a mortgage contract with GE Money Home Lending Limited. She says GE Money has failed to provide evidence of a valid contract.

background

Ms J is a customer of GE Money, having granted a mortgage to it in January 2006 as security for a loan. In October 2014 Ms J wrote to GE Money demanding documents to prove there was a valid mortgage.

Unhappy with GE Money's response, Ms J brought their complaint to us where it was considered by one of our adjudicators. Our adjudicator explained to Ms J that arguments about the validity of a mortgage contract were best suited to a court. But she thought there was a valid mortgage in place and that GE Money was entitled to ask Ms J to repay the debt.

Ms J disagreed with the adjudicator's findings. She requested a copy of the agreement signed by both parties to show that a legally-binding contract had existed. She also requested a copy of a Deed of Assignment to show who was assigned the debt, and the mortgage indemnity insurance showing GE Money as the sole beneficiary.

Ms J said that in the absence of those documents she was "being restrained of her fundamental human right to pay arrears she doesn't lawfully owe, unless GE Money could show a prima facie case concerning the debt."

It now falls to me to issue a final decision on the complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Ms J has made very detailed submissions, but I haven't responded to each and every point she has made. No discourtesy is intended by this – it simply reflects the informal nature of the service we provide.

I'm familiar with the documents put forward by Ms J – statements and template letters downloaded from the internet, various mediaeval and ancient charters and other documents that Ms J believes support her contention that her mortgage is invalid.

I am also fully aware of the wider issues Ms J has raised. Her points concerning securitisation, powers of attorney, the nature of money and promissory notes are identical to those discussed on a number of internet forums where various parties set out the reasons why they believe mortgages are invalid or the legal charges are defective.

I've considered everything Ms J has said about whether or not there is a loan, the nature of a promissory note and the validity of the mortgage. In doing so, I have considered what is fair and reasonable, as well as giving consideration to the relevant law applicable to the circumstances of this particular complaint.

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.

So that is the case here, because the Land Registry entries for Ms J's property show a registered charge in favour of GE Money, the legal title holder of the mortgage.

I should also explain that 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 I have no power to decide whether a mortgage is void, invalid or unenforceable – only a court is able to do this. Should Ms J wish to pursue her complaint against GE Money she is free to do so through the courts.

In this respect Ms J has said in her affidavit sworn on 9 February 2015 that she has requested a “prerogative writ of mandamus” – a High Court procedure that, if granted by the court, would compel a public authority or government body to perform an act required by law when it has neglected or refused to do so. In my opinion, it is unlikely the High Court would grant Ms J a writ of mandamus, because GE Money is not a public body.

But should Ms J decide to continue to pursue her complaint through the courts, I would urge her to take legal advice from a qualified solicitor rather than relying on advice obtained on the internet before attempting to raise in court the arguments she has put forward here. As far as I am aware, no court or tribunal in the UK has ruled that a mortgage is void on the basis of these theories.

In all the circumstances of this case, I am satisfied it is fair and reasonable that Ms J repays the mortgage loan to GE Money in accordance with the terms of the mortgage offer.

If Ms J is experiencing financial hardship and is having difficulty meeting her mortgage repayments, I would urge her to maintain an open dialogue with GE Money over repayment of the debt in the hope that a satisfactory arrangement can be reached. Ms J might also want to seek advice from a legitimate debt counselling service, such as StepChange or National Debtline. We can provide Ms J with contact details for those organisations, should she request them.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms J to accept or reject my decision before 23 March 2015

Jan O'Leary
ombudsman