

## **complaint**

Mr G's complaint is that Santander UK Plc has failed to answer his questions and provide him with certified copies of documents to prove he has a valid mortgage account.

## **background**

In 2003 Mr G granted Santander a mortgage as security for a loan used to purchase the property in which he now lives.

In 2014 Mr G asked Santander to provide answers to questions he had raised about the Power of Attorney (POA) and who had signed "the Note".

Unhappy with Santander's response, Mr G brought his complaint to us where it was considered by one of our adjudicators. He didn't recommend the complaint should be upheld. Mr G asked for an ombudsman to review the complaint.

In summary Mr G says that Santander has confirmed it used his POA to instruct its solicitors. But he doesn't believe Santander when it says the POA hasn't been used for anything else. Mr G says that he believes Santander created a promissory note using the POA. Then it used the POA to create securities which were then treated as cash. Santander then generated funds in his name which were deposited into private escrow accounts.

So Mr G believes people are lending money to themselves, in breach of the Law of Property Act, and rules of contract.

Mr G has also raised questions about Special Purpose Vehicles (SPVs) and wants to know the name and contact location for the Trustee of the SPV holding the rights over his security. Mr G says he might be able to settle his mortgage account direct with the Trustee.

He has reported Santander to the police because of this mortgage fraud, but was told to contact the Financial Ombudsman Service.

## **my findings**

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

Arguments about POAs and "the Note" are ones I'm familiar with; they're the subject of much discussion on various internet forums.

At its most basic, the theory is that lenders use borrowers' POAs to create financial instruments, and this "money" is then "lent" to other mortgage borrowers. The argument is that no actual money has been lent and there is only false debt created out of thin air using the POAs borrowers have given to create "the Note". So no actual mortgage debt exists and there's nothing to be repaid. But this theory is flawed and incorrect – there is no legal or factual basis to it whatsoever.

There is nothing wrong in Santander borrowing in the money markets. All banks do this. Santander doesn't use – or need to use – mortgage borrowers POAs to borrow money. It couldn't use a POA for this purpose anyway.

Santander as legal owner of the mortgage is entitled to collect the payments due from Mr G under the mortgage agreement. This is the case whether or not the money lent to Mr G was originally borrowed by Santander from another financial institution, or if Santander has securitised the debt to a third party. This is also the view taken by the courts, most recently in two cases decided in January 2014 (*Sinclair v Accord Mortgages Limited* and *Overson v Southern Pacific Mortgage Ltd t/a London Mortgage Co*).

In any event, Santander's activities in the wider money markets are outside the remit of the Financial Ombudsman Service. This would come under the regulatory framework of the Financial Conduct Authority, the Prudential Regulation Authority and ultimately the Bank of England.

Mr G has said that the Financial Ombudsman Service should compel Santander to provide the documents he has been requesting concerning a Special Purpose Vehicle, Power of Attorney and "the note" to show there is an actual loan to him. But I should explain here that the Financial Ombudsman Service is independent and impartial. When we consider a complaint, it is for us to decide what information we consider relevant in order to investigate the complaint. I note Mr G's requirement that we should ask Santander to provide the documents he has asked for.

Having reviewed the file, I'm satisfied that there is sufficient information to address Mr G's complaint about Santander's failure to provide him with documents he has requested. I do not require Santander to provide me with any further documents. I have a copy of the mortgage application and the mortgage offer, which satisfies me that Mr G asked Santander to lend him the money for which he granted Santander a mortgage, and that it agreed to do this.

I am familiar with the arguments put forward by Mr G about the validity of his mortgage on the basis of a failure by Santander to comply with the necessary legal formalities. Mortgage lenders typically send a mortgage offer letter that they invite their borrower to sign. Often the mortgage lender does not formally sign the offer letter. At the time of an advance there is usually a mortgage deed which is signed by the borrower but not the lender.

In an unreported case in Preston County Court decided in July 2013 a borrower raised the argument that the mortgage did not comply with the required Land Registry formalities and was therefore void. This is one argument Mr G has raised here and so it is important to look at what the court said about this.

Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (LP(MP)A) provides that a contract for the disposition of an interest in land must be made in writing, incorporating all the terms of the contract, and signed by each party to the contract. Section 27 of the Land Registration Act 2002 (LRA) provides that if a disposition is required to be completed by registration then it does not operate at law until the relevant registration requirements are met; and that the grant of a legal charge (or, a mortgage) is a disposition which is required to be completed by registration.

The borrower's argument in the court case was that her mortgage was null and void because it was signed by the borrower only and not the lender (as is the case with the vast majority of mortgage deeds) and as such it did not comply with the LP(MP)A. Therefore, according to her, the mortgage did not exist at law and so could not be completed by registration as required by the LRA, and thus it was not binding on the borrower.

But the judge held that the borrower's argument was "illusory" and "false". He was concerned that the promulgation of these dangerous arguments on the internet could mislead borrowers into wrongly thinking that their mortgage was not binding upon them and that in the event of default they would not be in danger of losing their homes.

The relevant statutory provision for a mortgage, section 53 of the Law of Property Act 1925, does not require every term to be included in a document signed by both parties; rather the document just needs to be signed by "the person creating or disposing of the interest" (i.e. the mortgagor/borrower). The judge also explained that section 27 LRA does not go so far as to say that a disposition required to be completed by registration (such as a mortgage) is created by registration and that it does not therefore exist or operate in equity before registration.

By signing the mortgage deed and by its registration at the Land Registry, applying what the judge said above, I'm satisfied Mr G created a valid mortgage in favour of Santander.

Again I must reiterate that only a court is able to decide if Santander is entitled to recover the outstanding balance of the loan from Mr G. The court has, in fact, already decided this by granting a possession order and a money judgment against Mr G in October 2014. Mr G says that Santander lied in its Statement of Truth filed with the court and that there are irregularities in its paperwork. But the court was satisfied Santander was entitled to a possession order.

I have no power to decide whether there is some legal technicality that might render Mr G's mortgage invalid. My remit, pursuant to the powers granted to the Financial Ombudsman Service by the Financial Services and Markets Act 2000, is to decide what's fair and reasonable in all the circumstances. I'm satisfied that it is fair and reasonable for Mr G to repay the money he borrowed from Santander in 2003 and that Santander is entitled to receive this money.

As far as I'm aware, no court or tribunal has found in favour of a borrower on the basis of the arguments put forward by Mr G as to why he considers his mortgage to be invalid. On the other hand, there has been a number of cases that borrowers have lost after trying to raise these arguments. As a result they've been ordered to pay the lender's substantial legal costs. So I would strongly suggest Mr G takes legal advice from a qualified solicitor rather than relying on advice given on internet forums before attempting to raise in court the arguments he has put forward here.

Mr G says his account is "in dispute" – something which is encouraged on internet forums where people are urged to challenge the validity of their mortgages. But the mortgage contract requires Mr G to make his monthly repayments. So I hope Mr G has been keeping the money aside so he can bring his account up to date. Otherwise Santander will be entitled to enforce the possession order it was granted in October 2014.

If Mr G is in financial difficulty and unable to repay his mortgage arrears he might want to take advice from a legitimate debt advice service, such as StepChange, Citizens Advice or National Debtline. We can provide Mr G with their contact details, if he'd like us to.

**my final decision**

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 11 May 2015.

Jan O'Leary  
**ombudsman**