

## **complaint**

Mr and Mrs J have questioned the validity of their mortgage with Barclays Bank Plc.

## **background**

In February 2004 Mr and Mrs J took out a mortgage with Barclays (trading as The Woolwich). They borrowed £120,000 over nine years, on an interest-only basis. The mortgage expired in February 2013. Mr and Mrs J are continuing to pay £500 to Barclays each month.

In January 2015 Mr and Mrs J questioned whether there was an 'Original Instrument' bearing 'wet ink signatures' which would verify the existence of a loan agreement between themselves and Barclays.

They have also raised the following concerns:

- Missing securitisation information from a Data Subject Access Request
- Securitisation of the mortgage deed
- Misleading Insurance Indemnity Policy declaration
- Fraudulent use of a Power of Attorney
- Threat and duress made against them by Barclays.

Barclays didn't uphold the complaint, so it was brought to us. One of our adjudicators looked at what Mr and Mrs J had said, but didn't recommend the complaint should be upheld. He explained that we have no power to determine if a contract is valid.

Mr and Mrs J disagreed with the adjudicator's findings and asked for an ombudsman to review 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. I confirm I've read Mr J's detailed representations. I'm not required to reply to each and every point he's made, or to respond in similar detail. This simply reflects the informal nature of the ombudsman service and my role within it.

I see that there have been two previous final decisions from us – in February 2014 and July 2014.

In the February 2014 complaint, Mr and Mrs J argued that Barclays had created the money loaned to them out of thin air. They asked to see a copy of Barclays' balance sheet to prove if any money was in fact made to them. In his final decision the ombudsman said: "[Mr and Mrs J] *have complained that they never received the funds from the mortgage from Barclays. I reject this further complaint as it is clear that Barclays duly advanced the funds for the mortgage in February 2004.*"

In the complaint decided by a final decision in July 2014 I see that Mr and Mrs J queried whether or not there was a mortgage loan, a contract by deed for the mortgage or a contract by deed of mortgage. The ombudsman explained in his final decision that this was a matter

best dealt with in court. They also raised the issue of the Power of Attorney, which the ombudsman addressed in his final decision.

So it seems that a number of the issues Mr and Mrs J are raising in this complaint have already been dealt with in previous final decisions. So, other than the general comments I make below about the nature of the issues Mr and Mrs J are complaining about, I won't consider those matters any further here. That's because our rules say that, where another ombudsman has already made a final decision on a complaint, it's not appropriate for a different ombudsman to reconsider the same matter.

With regard to the rest of the issues about which Mr and Mrs J have complained, I will comment as follows:

Mr and Mrs J say their complaint is about Barclays' failure to provide documents. They say those documents will prove whether there is a valid mortgage. They have also sent us a number of questions that they want Barclays to answer to their satisfaction. But I think Mr and Mrs J may have misunderstood the role of the Financial Ombudsman Service and the extent to which we can become involved. Our role is to investigate disputes between customers and financial businesses. If the customer's suffered financial loss or distress and inconvenience, we can ask the business to put it right.

As the adjudicator explained, we can't decide if a mortgage contract is binding or enforceable. An ombudsman has already explained that Mr and Mrs J would need to go to court about this. A judge would be able to decide whether or not Barclays should provide the answers to Mr and Mrs J's questions and order it to do so if it was considered appropriate.

Mr and Mrs J also have concerns about Barclays' response to a Data Subject Access Request. They say that important documents were missing from the Subject Access Request and that Barclays hasn't provided them. In my opinion this is more suitable for consideration by the Information Commissioner, which is responsible for the regulation of data, rather than us.

I also note what Mr and Mrs J have said about duress and threats made by Barclays. But this would be a matter for the police not the Financial Ombudsman Service. We have no power to investigate allegations of criminal behaviour.

I think Mr and Mrs J may have misunderstood the legal position in relation to mortgages. 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 a mortgage deed which is signed by the borrower but not the lender.

It's a popular misconception, repeated widely on internet forums, that a mortgage deed has to be signed by both the borrower and the lender, or that the borrower's signature has to be witnessed by two people. In the absence of this, the argument goes, the mortgage is invalid. But this is incorrect and is based on a misunderstanding of the law.

In an unreported case in Preston County Court decided in July 2013 a borrower raised the argument that the mortgage documentation didn't comply with the required legal formalities and was therefore void. This is the argument Mr and Mrs J have 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.

In the case I refer to, the borrower's argument was that her mortgage was "null and void for want of statutory formality" because it was signed by the borrower only and not the lender (as is the case with the vast majority of mortgage deeds). Her argument was that it did not comply with the LP(MP)A. Therefore, according to her, the mortgage didn't exist at law and so could not be completed by registration as required by the LRA, and so 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 spreading 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.

So as far as the law is concerned, I am not persuaded there is any merit to Mr and Mrs J's argument that they don't have a valid mortgage agreement with Barclays. They signed the mortgage deed and in doing so acknowledged they received the money. That is all that is required for the granting of a valid mortgage.

As far as securitisation is concerned, 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, even if the mortgage has been securitised Barclays is still entitled to receive payment and enforce the loan if payment isn't made. 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.

I'm afraid Mr and Mrs J have misunderstood the position on the Mortgage Indemnity Insurance Policy. This type of insurance is taken out to cover any shortfall on repossession and sale. In the event of this, the insurers will pay the shortfall to Barclays. The insurers will then usually look to the borrowers to reimburse them.

Mr and Mrs J's property hasn't been repossessed and sold by Barclays. So there has been no claim on any indemnity policy. Mr and Mrs J believe there are other benefits under the policy. Again, this is an argument I have come across before. It is a misconception that a lender can make a claim for the full balance owing on the mortgage under an indemnity

policy 90 days the borrower misses a payment, or at the end of the mortgage term if the capital isn't repaid. There is simply no basis in fact to this.

I have no power to decide whether a mortgage is void, invalid or unenforceable – only a court is able to do this. If Mr and Mrs J decide to pursue their complaint through the courts, I would urge them 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 they have 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.

I don't dispute Mr and Mrs J's strength of feeling about this matter. They have attempted to challenge the validity of their mortgage through our service a number of times, using different arguments. None of those complaints have succeeded. The reason for this is that theories about void mortgages, securitisation, the nature of money, 'wet ink' signatures and similar 'freeman on the land' arguments are flawed and are based on a misunderstanding of banking practice and the law relating to mortgages.

I don't doubt that it's worrying for Mr and Mrs J that their mortgage term has now come to an end. It seems a large capital sum remains outstanding. I would urge them to maintain an open dialogue with Barclays about repayment of any outstanding balance. If Mr and Mrs J are in financial difficulty, they may want to take advice from a legitimate debt-advisory service such as StepChange, Citizens Advice or Money Advice Service. We can provide contact details for these organisations, if they'd like us to.

### **my final decision**

For the reasons above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs J to accept or reject my decision before 6 July 2015.

Jan O'Leary  
**ombudsman**