

## **complaint**

Mr and Mrs J claim that there is no valid mortgage between them and GE Money Home Lending Limited. They are asking GE Money to “*redress all their grievances*”.

## **background**

Mr and Mrs J are customers of GE Money, having granted a mortgage to it in 2008 as security for a loan. In 2014 Mr and Mrs J wrote to GE Money demanding documents to prove there was a valid mortgage.

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

Mr and Mrs J disagreed with the adjudicator’s findings. They requested a copy of the agreement signed by both parties to show that a legally-binding contract had existed. They 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.

Mr and Mrs J said that in the absence of those documents they “*being restrained of their fundamental human right to pay arrears they don’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. Mr and Mrs J have made very detailed submissions, but I haven’t responded to every point they have 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 Mr and Mrs J – statements and template letters downloaded from the internet, various mediaeval and ancient charters and other documents that Mr and Mrs J believe support their contention that their mortgage is invalid.

I am also aware of the wider issues Mr and Mrs J have raised. Their 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 Mr and Mrs J have 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.

I think Mr and Mrs J may have misunderstood the legal position. 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. I have seen a copy of Mr and Mrs J's mortgage deed signed by them in 2008 in which they acknowledge receipt of the money advanced to them.

In an unreported case in Preston County Court decided in July 2013 a borrower raised the argument that the mortgage documentation did not 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) and as such 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 GE Money. They signed the mortgage deed and 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 GE Money 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.

But I have no power to decide whether a mortgage is void, invalid or unenforceable – only a court is able to do this. Should Mr and Mrs J wish to pursue their complaint against GE Money they are free to do so through the courts.

In this respect Mr and Mrs J have said in their affidavit sworn on 16 February 2015 that they have 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 Mr and Mrs J a writ of mandamus, because GE Money is not a public body.

But should Mr and Mrs J decide to continue 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.

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

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

### **my final decision**

My decision is that I do not uphold this 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 7 April 2015.

Jan O’Leary  
**ombudsman**