

complaint

Mr G has complained that Mortgage Express (ME) has failed to provide him with documents and information he has requested from it relating to the mortgage he granted to ME in 2007.

background

Mr G has a buy-to-let mortgage with ME taken out in 2007. In 2014 he wrote to the CEO of ME enquiring whether he had invoked a Power of Attorney, and if so, what documents had been requested in his name. Mr G also asked to know who had signed "*the note*", that is, the document giving the security

ME said that a Power of Attorney would only be invoked to perfect security or to take action on a borrower's behalf. Mr G then sent further letters to ME requesting that it send him the security instrument. ME said it had nothing further to send to him and so Mr G made a complaint to us. He says that all he wants is information to confirm that the contract between him and ME is valid.

The complaint was considered by one of our adjudicators, who didn't recommend it should be upheld. He was satisfied that, notwithstanding Mr G's concerns, it was fair and reasonable for him to repay the money he'd borrowed from ME.

Mr G asked for an ombudsman to review the complaint. In summary, Mr G has said that what he wants is for ME to supply "*the mortgage note*" or at least explain the whereabouts of "*the security note*" as he has previously requested it to do. Mr G says that ME holds all the details for the security and that if it has decided not to provide these it is a miscarriage of due process. So he is asking us to request that ME provides these documents on his behalf.

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 should first explain 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 ME to provide the documents he has asked for. But we do not take instructions either from consumers or the financial businesses they are complaining about. To do so would compromise our independence. Having reviewed the file, I'm satisfied that there is sufficient information to address Mr G's complaint about ME's failure to provide him with documents he has requested. I do not require ME to provide me with any further documents.

Mr G appears to have concerns about the process that created the legal charge. When Mr G took out the mortgage, he signed a document called a legal charge (the mortgage deed), granting a mortgage over the property in favour of ME. In his letter to the CEO of ME sent in April 2014, Mr G acknowledges he signed the mortgage deed.

To register the legal charge, a certified copy of the document is sent to the Land Registry, along with the application form and fee, and the charge is registered in favour of ME. The Land Registry entries for the property show Mr G as the Registered Proprietor (legal owner) of the property, and there is one charge registered in favour of ME. So this satisfies me that the legal charge has been properly registered.

I am required to decide what is fair and reasonable. The Land Registry entries satisfy me that there is a registered charge in favour of ME. I have seen no evidence to persuade me there is any irregularity in the mortgage granted by Mr G to ME as security for the money he borrowed from it. Given this, it seems fair and reasonable that Mr G repays to ME the money he borrowed from it, in accordance with the mortgage offer. The fact that ME is now a part of another business has no effect on Mr G's contract with it.

I have no power to decide whether or not a legal charge is valid, binding or enforceable. Only a court is able to decide this. So if Mr G has concerns about the validity of the legal charge, he will need to pursue this through the courts (or with the Land Registry if Mr G believes the charge has not been validly created or that there is some irregularity in the registration of the charge). If Mr G considers ME has failed to provide information to him, this is something which is more appropriate for the Information Commissioner.

Overall I've seen nothing to persuade me there has been any irregularity by ME in its handling of this mortgage account. I do appreciate Mr G believes that there might not be a valid contract between him and ME. But it would be for a court – not the Financial Ombudsman Service – to decide if there is some technicality which renders the contract between Mr G and ME void or unenforceable.

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 G to accept or reject my decision before 15 January 2015.

Jan O'Leary
ombudsman