

complaint

Mr and Mrs O have complained that The Mortgage Works (UK) Plc (TMW) has refused to credit their mortgage account with a cheque they provided to pay off their mortgage in full. Mr O has conducted the complaint throughout.

background

Mr and Mrs O have a mortgage with TMW. In May 2015 they had a balance of about £67,500 outstanding. Mr O sent TMW what purported to be a cheque in settlement of his mortgage account. The 'cheque' was from an entity known as 'WeRe Bank'.

Mr O complained to TMW asking why the 'cheque' was rejected. TMW says it isn't a valid cheque. It offered Mr O £25 for delay in logging his complaint.

Mr O didn't accept this. He says that, as TMW has retained the 'cheque', it is deemed to have accepted it and so the mortgage debt has been repaid.

Our adjudicator didn't recommend the complaint should be upheld. She was satisfied that WeRe Bank has no means of paying TMW the money required to redeem the mortgage.

Mr O disagreed with the adjudicator's findings. He says that, under the Bills of Exchange Act 1882, TMW's refusal to present the 'cheque' for payment means the debt has been discharged.

Mr O also argues that paying off his mortgage with a WeRe Bank 'cheque' is the same as if he owed his gardener £50 and paid him with a watch valued at £50 and the gardener accepted it. He would then not still owe him £50. If the gardener refused to return the watch but still claimed he was owed £50, Mr O argues that he could legitimately say the debt had been paid.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before I'm able to consider whether or not TMW acted unfairly in refusing to accept Mr O's WeRe Bank 'cheque' in settlement of his mortgage, I'll need to give some consideration to the method of payment Mr O tendered to TMW. I've conducted some detailed research on WeRe Bank and what follows is my understanding of how WeRe Bank operates and my opinion on whether or not it offers any valid method of payment for Mr and Mrs O's mortgage account.

what is WeRe Bank?

WeRe Bank was launched in the UK in about April 2015 by an individual. It isn't a regulated bank, a limited company or a partnership. It is operated by a sole trader, via a website and a mobile phone number.

It has its own invented currency – the Re – which it claims is a unit of energy that can be used to discharge debt. Its website describes the way it operates as follows:

WeRe Bank's principal trading asset is called the Re. It is a unit of space and time and has Value as it is "exchangeable" or "trade-able." Units are created through expenditure of effort over time and we hold these units "on account" and pay them out to our customers.

When people join they will receive a cheque book to help them create their own money. They sign a promissory note up to the value of £150,000 which is then transferred into their account. They can then write cheques, drawing on that £150,000, to pay their public liabilities - HMRC, VAT, Council Tax, Speeding and Motoring Fines, Mortgage repayments, Credit card bills, all court fines and utilities. Private payments can be made between consenting parties.

A promissory note is a promise to pay at some future date the amount written on the note. It is, in effect, an IOU. So Mr O has signed an IOU to WeRe Bank to pay it £150,000 at some point in the future.

This has potential future value to the person who operates WeRe Bank – because it is a binding contract on Mr O that he will pay WeRe Bank £150,000 on a future date. But it has no other value because – unless Mr O has the £150,000 available to deposit with WeRe Bank (which I believe he does not) – it is just a promise to pay this amount in the future.

WeRe Bank members must also pay monthly subscriptions in cash sent by post to a mail drop address. In return members are provided with 'cheque books'. These look like genuine cheques, but have no recognised sort code (the number it puts on the 'cheques' purporting to be the sort code is actually the date of birth of the owner of WeRe Bank, backwards).

WeRe Bank members are told they can write 'cheques' drawn against the promissory note to pay off their 'public' debts. But WeRe Bank has no money to pay the 'cheques'. All it has are the promissory notes signed by members each agreeing to pay WeRe Bank £150,000 in the future. Unless and until those promissory notes are called in and actually paid by the members, WeRe Bank has no assets.

'Cheques' have to be 'pre-approved' – so when a member wants to write a 'cheque' he has to upload the request for payment to the WeRe Bank website. If WeRe Bank approves the 'cheque', it tells its member that the 'cheque' has cleared. In other words, WeRe Bank 'clears' 'cheques' before they have even been written by the member or given to the recipient.

This is the complete opposite of recognised banking practice, where a cheque is only cleared by the recipient bank once the recipient bank has received cleared funds from the payee's bank.

if WeRe Bank has no funds, how does it make payment?

The short answer is that it doesn't.

WeRe Bank isn't a member of the Society for Worldwide Interbank Financial Telecommunication ["SWIFT"] system for inter-bank transfer of electronic funds. This is the system used globally by banks to transfer funds. Instead, WeRe Bank has invented its own systems – SPIT (Secure Protocol Information Transaction) and SWALLOW (Secure Waygate – Allow).

WeRe Bank's instructions are that banks are to send a scanned copy of the WeRe Cheque to its email account and then "Funds can be sent electronically via SWALLOW".

But no funds are actually sent. The fact is that WeRe Bank makes no promise of payment to recipients of its 'cheques'. Its website makes it clear that it sends no money at all. Instead it deducts negative energy (minus 'Re') to the value of the 'cheque' from the member's account.

In turn, the recipient of the 'cheque' is meant to add the equivalent amount of positive energy (plus 'Re') to its own ledger, thus purportedly discharging the debt. WeRe Bank explains on its website:

WeRe Bank does NOT have cash in it's vaults and neither does it deal with legal tender in the form of "notes and coins".

WeRe Bank transfers, to the PAYEES bank, "bank ledger", "cheque-book money" or "monetary unit of account." WeRe Bank transfers money [see definition of money] from the account of the WeRe Bank customer to the PAYEES bank/branch via the simple process of "informing them that the ledger, on our side of the "double entry book keeping system" has been debited (-ve) and as energy CANNOT DISAPPEAR [this would violate The Laws of Conservation of Energy as classically defined] then a corresponding positive (+ve) charge must accrue to their side of the ledger.(sic)

Given the above, I'm satisfied there is no possibility of WeRe Bank being able to make any form of valid payment or transfer of funds to TMW to settle the 'cheque' given to TMW by Mr O.

is TMW obliged to accept a WeRe Bank 'cheque'?

WeRe Bank members are told to rely on a statement of Lord Denning in the case of *Fielding & Platt Ltd v Najjar* [1969] 2 All ER 150 at 152 (UK CA):

We have repeatedly said in this court that a Bill of Exchange or a Promissory Note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary.

WeRe Bank claims that this means the 'cheque' is to be treated as if it is cash and so must be accepted by the recipient.

But the actual meaning of what Lord Denning said is the total opposite of this. Lord Denning said that if a debtor gives a bill of exchange or a promissory note to a creditor, it is binding

on the debtor and must be honoured (paid) by the debtor, unless there is a good reason to the contrary.

In addition, a bill of exchange will only extinguish an existing debt if the creditor agrees with that mechanism of payment. A creditor is entitled to insist on payment in legal tender. And that payment has to be made in a unit of currency recognised and accepted by the creditor - in the case of TMW and Mr O's mortgage, sterling, via a regulated UK bank.

In the circumstances, I'm satisfied TMW is under no obligation to accept a 'cheque' from WeRe Bank. My reasons for concluding this are:

- creditors are entitled to be paid in legal tender;
- cheques are not legal tender;
- creditors aren't obliged to accept cheques in payment of a debt;
- WeRe Bank isn't a bank, and so has no authority to issue cheques;
- WeRe Bank 'cheques' have no value, as there are no funds available to pay them;
- TMW isn't obliged to accept payment in the form of a unit of energy;
- imaginary energy units are not a form of currency and they do not pay debts.

In this regard, it's interesting to note that WeRe Bank refuses to accept payment for monthly subscriptions in Re or WeRe Bank 'cheques'. It will only accept payment in cash, sent by post to its mailing address. So if WeRe Bank will not accept its own invented unit of currency or its own 'cheques', I see no reason why TMW should be under any obligation to accept these either.

has the debt been discharged because TMW has retained the cheque?

WeRe Bank tells its members that if the creditor refuses to present a WeRe Bank 'cheque' for 'clearance', then the debt is extinguished. It says that the Bills of Exchange Act 1888 supports this position. This is patently untrue and a misinterpretation of the Bills of Exchange Act.

I've noted Mr O's analogy about paying his gardener with a watch worth £50. I agree with him that if a creditor *agreed* to accept payment by some other method than cash, such as goods to the value of the debt owed, then retention and use of the goods by the creditor may well constitute acceptance of that method of payment.

But the problem I have with Mr O's analogy is that TMW has not agreed to accept payment in Re. In fact, Re has no value and the 'cheque' is a worthless piece of paper.

A more appropriate analogy is if Mr O was to give his gardener a Post-it Note saying "This is my payment for £50. Phone the number written here and you'll get paid". The gardener phones the number and is told "I've deducted £50 worth of energy from Mr O's account, so you've been paid". But the gardener hasn't been paid at all, he's not agreed to be paid in energy, he doesn't have his £50, he just has a Post-it Note that has no value. He is still owed £50 and entitled to be paid in legal tender.

That is exactly the same situation as TMW is in. It's been given a piece of paper that purports to offer payment of the mortgage debt, but the payment will only be made in an invented imaginary unit of energy which TMW has not agreed to accept. No payment can or will ever be made by WeRe Bank to satisfy the debt.

In the circumstances, I'm satisfied retention of the 'cheque' does not mean that TMW has accepted the payment. TMW is entitled to retain the 'cheque'. It may require it for evidential purposes.

conclusions

I understand Mr O feels very strongly about this matter. I appreciate that he genuinely believes a WeRe Bank 'cheque' is a valid method of paying off his mortgage. But, for the reasons I've given above, it is not. Mr and Mrs O's mortgage debt has not been repaid and remains outstanding.

I am very sorry Mr and Mrs O are in this position. Mr O has paid cash to WeRe Bank for what is, in effect, a book of worthless pieces of paper designed to look like genuine cheques but which have no actual value and can't be used to pay debts. In addition, Mr O has signed a contract in the form of a promissory note to pay WeRe Bank £150,000. I don't know if WeRe Bank will ever call in the promissory note. But I've looked at the template on its website and it seems to me to create a legally binding obligation on Mr O to pay the money if WeRe Bank demands it.

So the only party which has benefitted from this transaction is WeRe Bank – it's receiving subscriptions in cash from Mr O and it also has a written promise from him that he will pay it £150,000. This leaves Mr and Mrs O in a very vulnerable position. It's possible Mr O has been the victim of a scam. If Mr and Mrs O believe this to be the case, they might consider contacting the police or Action Fraud about this.

I understand that the mortgage is now in arrears and that TMW is considering repossession action. This should be a last resort, after all other options have been exhausted. So I would strongly urge Mr and Mrs O to come to an arrangement with TMW to pay their mortgage arrears through an account with a regulated bank and to maintain their repayments in the future.

I cannot emphasise strongly enough the seriousness of the position in which Mr and Mrs O now find themselves. They are faced with the prospect of losing their home. If Mr and Mrs O are in financial difficulty, they may want to speak to a debt counselling service such as StepChange, Money Advice Service, Shelter or Citizens Advice. We can provide them with contact details for those organisations, if they would like us to.

I see that TMW offered Mr and Mrs O £25 for not logging their complaint immediately. I think this is fair and don't require TMW to offer any other compensation.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs O to accept or reject my decision before 8 February 2016.

Jan O'Leary
ombudsman