

## **complaint**

Mr M has challenged the validity of five mortgages he holds with Capital Home Loans Limited (CHL).

## **background**

Mr M bought five properties with mortgages which he granted to CHL as security for the funds to enable him to purchase the properties. In 2017 Mr M decided that the mortgages weren't valid and that he had been a victim of fraud. He has sent various documents to CHL which he believes support his position that CHL acted only as a facilitator of credit and that no actual funds were lent. As a result, he wants the legal charges removed, as he thinks he's been a victim of fraud.

CHL rejected Mr M's contention that the mortgages are invalid. Mr M brought his complaint to us. An investigator didn't uphold the complaint, so Mr M has asked for an ombudsman to review the matter.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not upholding this complaint.

First, I'll explain that the Financial Ombudsman Service doesn't have the power to determine whether or not these mortgages are void – only a court can do that. What I have to decide is what's fair and reasonable in the circumstances.

Mr M's position is that there are no valid mortgages over his properties. He wants the mortgages removed. I can see why that might be an attractive proposition to Mr M. He would own the properties without having to pay for them, and still receive the rental income.

I've looked at the documents Mr M has sent to CHL. I've also watched the YouTube videos he's referred us to. The documents Mr M sent CHL are based on templates available on the internet. These ultimately purport to place CHL in "estoppel by acquiescence". In a nutshell, Mr M is claiming that unless CHL specifically rebuts what he has said in his letters within the period of time he has specified, CHL is deemed to have accepted the "truth" of those documents and has agreed with Mr M that there are no valid mortgages.

I have some bad news for Mr M. The documents he's sent consist of nothing more than a string of words that sound as though they belong in a legal document, but which, in reality, are meaningless. Mr M isn't able to foist unilaterally any terms on CHL. He already has binding agreements with CHL to pay the mortgages on his properties.

Mr M, by signing the mortgage deeds, agreed to the terms set out in the mortgage offers and to CHL's terms and conditions. There is no requirement under English law for a mortgage deed to be signed by CHL in order for it to be binding. Only the party granting the mortgage (in this case, Mr M) needs to sign it.

I've seen no evidence to persuade me that Mr M didn't grant binding legal mortgages over his properties in favour of CHL in return for the funds to purchase them. But it's fair to argue that even if a court found some technicality that affected the legal mortgages, Mr M, by his conduct in accepting the funds from CHL and purchasing his properties, has acquiesced to CHL's terms and conditions, and so would be estopped from disputing that valid equitable mortgages exist.

CHL isn't required to account to Mr M to explain the source of the funds lent to him to enable him to purchase the properties. Nor is CHL under any obligation to answer questions about its wider activities or how it structures its business. None of this affects Mr M's obligation to CHL to repay his mortgages.

CHL has made it clear it doesn't accept any of the "terms" stipulated by Mr M. I'm satisfied it doesn't have to. And English law doesn't allow one party to a contract to foist new terms on the other unilaterally. If Mr M thinks I'm wrong about this, he's welcome to ask a court to decide if he's able to cancel his mortgages in this way.

I appreciate this decision will be unwelcome news for Mr M. As I said above, he is free to test in court the theories that money is created by the borrower's signature, that CHL hasn't lent him any actual money and that CHL is bound by the meaningless terms he has sought unilaterally to impose on it. As far as I am aware, nobody has succeeded in having a mortgage cancelled in any court in England and Wales using these arguments.

But if he rejects my decision, Mr M will be able to take this matter to court if he wants to. I'd strongly suggest he takes advice from a solicitor, rather than from internet forums and videos, before attempting to do so.

### **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 M to accept or reject my decision before 26 February 2018.

Jan O'Leary  
**ombudsman**