

complaint

Mr and Mrs T have complained about the validity of a mortgage contract with Barclays Bank Plc.

background

Mr and Mrs T were customers of Barclays, having granted a mortgage to Barclays taken out in 2008 as security for a loan. The loan was repaid in August 2014. In May 2014 Mr and Mrs T wrote to Barclays demanding documents to prove there was a valid mortgage.

In the absence of a satisfactory response, Mr and Mrs T brought their complaint to us where it was considered by one of our adjudicators. She explained to Mr and Mrs T that arguments about the validity of a mortgage contract were best suited to a court.

Mr and Mrs T 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 Barclays as the sole beneficiary.

Mr and Mrs T said that in the absence of those documents they were "being restrained of their fundamental human right to pay arrears they don't lawfully owe, unless Barclays 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 T have made very detailed submissions, but I'm not required to respond to each and every point they've made. No discourtesy is intended by this – it simply reflects the informal nature of the service we provide.

I'm very familiar with the statements put forward by Mr and Mrs T – documents downloaded from the internet. I am fully aware of the wider issues Mr and Mrs T have raised. Their points concerning securitisation, powers of attorney, the nature of money, alleged failure to comply with Land Registry formalities and promissory notes are identical to those raised 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 T 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 am familiar with the arguments put forward by Mr and Mrs T about the validity of the mortgage. It is fairly common for people to follow what I consider to be somewhat dubious advice given on debt-avoidance websites encouraging them to dispute the validity of their mortgages on the basis of a failure to comply with the necessary legal formalities.

Mortgage lenders typically send a mortgage offer letter that they invite their borrower to sign. At the time of an advance there is a mortgage deed which, as required by law, is signed by the borrower - but it does not need to be signed by the lender.

In an unreported case in Preston County Court decided in July 2013 the borrower raised the argument that the mortgage did not comply with the required legal formalities and was therefore void. This is the argument Mr and Mrs T have raised here and so it is important to look at what the judge said about this argument.

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 court case 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 LP(MP)A. Therefore the mortgage did not exist at law and so could not be completed by registration as required by the LRA, and thus 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 arguments promoted on the internet were dangerous as they 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.

By signing a mortgage deed and by its registration at the Land Registry Mr and Mrs T created a valid mortgage in favour of Barclays. So as far as the law is concerned, I am not persuaded there is any merit to Mr and Mrs T's argument that they do not have a valid mortgage. I also do not agree that there is only a promissory note and that no bank is able to lend any actual money.

These arguments seem to me to have no basis in law, logic or common sense. As far as I am aware no claim in any UK court or tribunal has succeeded on the basis of the type of arguments raised by Mr and Mrs T.

But I have no power to decide whether a mortgage is void, invalid or unenforceable – only a court is able to do this. Mr and Mrs T have now repaid their mortgage and are no longer customers of Barclays. Should they wish to pursue their concerns against Barclays they are free to do so through the courts. Mr and Mrs T have said in their statement dated 6 May 2014 that they have requested a "prerogative writ of mandamus" (a High Court procedure that has, since 1998, been known as a mandatory order). So it appears Mr and Mrs T have

already referred this matter to the courts, and, having done so, are free to pursue their concerns through that avenue.

So I do not intend to order Barclays to disclose the documents Mr and Mrs T believe will support their contention that they have no valid mortgage. That is not an appropriate use of our service; it would compromise our independence and impartiality if we were to request documents from Barclays for the purpose of assisting Mr and Mrs T in any future litigation.

I must also explain to Mr and Mrs T that it is for us, not consumers or financial businesses, to direct the course of our investigations. Mr and Mrs T say that it is common practice for the Financial Ombudsman Service to require the production of appropriate documents from businesses. But that is only where we consider there is an issue which we can properly determine within the scope of our rules. That is not the case here because we have no power to determine the issue of whether or not a mortgage contract is valid.

Should Mr and Mrs T 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.

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 T to accept or reject my decision before 12 March 2015.

Jan O'Leary
ombudsman