

## **complaint**

Ms D complains that Leeds Building Society (LBS) has refused to provide her with information about a Power of Attorney (POA), a Special Purpose Vehicle (SPV) and about “the Note” in relation to her mortgage.

## **background**

Ms D has a mortgage account with LBS. In 2014 she wrote to LBS asking about the Power of Attorney contained in the mortgage conditions. Ms D said she hadn’t consented to this. Ms D was concerned LBS had used her POA to sign a promissory note. Ms D was also worried that LBS was using her signature to create other financial products without her knowledge. Ms D said she was exercising her right to freeze future mortgage payments while the mortgage is in dispute.

LBS explained that the POA had not been invoked and that there are only very specific circumstances relating to Ms D’s mortgage account where it would ever be used. None involves creating money elsewhere using Ms D’s signature. Unhappy with LBS’s response, Ms D complained to us. The adjudicator didn’t recommend her complaint should be upheld. He was satisfied LBS had answered Ms D’s queries.

Ms D asked for an ombudsman to review the complaint. She doesn’t accept the answers LBS or the adjudicator gave to her questions.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Ms D says she wasn’t told about the POA in the mortgage agreement. But Ms D had advice from a mortgage broker, who would (or should) have told her about it. The POA isn’t “hidden” as Ms D believes – it’s set out in the terms and conditions. Ms D says she wouldn’t have consented to LBS having a POA if she’d known about it. In that case, LBS wouldn’t have lent her the money she wanted to borrow from it. Borrowers don’t have the option to decide which of the lender’s terms and conditions they want to be bound by.

Ms D also talks about “the Note”. Ms D has asked if her mortgage has been securitised by a SPV. LBS has said it hasn’t. Ms D doesn’t accept this.

Arguments about SPVs and “the Note” are ones I’m familiar with; they’re the subject of much discussion on various internet forums. There’s a theory – which has no basis in fact, law or logic – that the use of SPVs renders mortgages void or unenforceable.

The courts have rejected this theory. Even where a mortgage lender has securitised a mortgage (which isn’t the case here), the courts have said that the lender is still entitled to collect the payments and enforce the debt.

But LBS has explained to Ms D that it hasn’t evoked the POA and that it hasn’t securitised her mortgage. Ms D doesn’t accept this. She says she wants to see the original “Note” for her mortgage – that is, the financial instrument by which the money loaned to her was raised by LBS – so she can be satisfied that what LBS is telling her is true. But LBS doesn’t have to provide borrowers with documents showing the source of the funds it has lent.

In any event, LBS's activities in the wider money markets is 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.

I also have no power to decide whether a mortgage is void, invalid or unenforceable – only a court is able to do this.

Ms D has stopped paying her mortgage while she says her account is “in dispute”. This is something which is encouraged on internet forums where people are urged to challenge the validity of their mortgages. But the mortgage contract requires Ms D to make her monthly repayments. So I hope Ms D has been putting the money aside so that she is able to repay any arrears that have accrued.

I would urge Ms D to talk to LBS about repaying her arrears. As Ms D probably knows, if an agreement can't be reached, LBS has the option – as a last resort after exploring all other ways to pay the arrears – to ask the court for a possession order.

I sincerely hope this situation doesn't arise and that Ms D is able to pay the arrears and start making her monthly payments again. But if the only option is possession proceedings, I'd strongly suggest Ms D takes legal advice from a qualified solicitor before raising any of these arguments in court. As far as I am aware, no court or tribunal in the UK has ruled that a mortgage is void or unenforceable on the basis of theories discussed in internet forums about POAs, SPVs or promissory notes.

Ms D says she doesn't believe LBS is acting in her best interests. But if that's the case, there's nothing to prevent her from repaying the mortgage and moving to a new lender.

If Ms D is in financial difficulty, she might want to take advice from a legitimate debt advice service, such as StepChange, Citizens Advice or National Debtline. We can provide Ms D with their contact details, if she'd like us to.

### **my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms D to accept or reject my decision before 9 April 2015.

Jan O'Leary  
**ombudsman**