

## **The complaint**

Miss M complains that her mortgage isn't valid because The Mortgage Works ("TMW") haven't provided her with the original signed mortgage agreement.

## **What happened**

In 2005 Miss M got a 25-year mortgage with TMW. In 2022 Miss M got behind with her mortgage and arrears began to build up. Miss M paid off most of the arrears by early 2023, but unfortunately the arrears increased again after that.

In mid-2023 Miss M wrote to TMW. She said she was happy to repay the arrears if TMW would provide her with a copy of the original mortgage offer signed by her. TMW didn't do that. Initially Miss M complained that TMW had been neglectful of her and flippant of her complaint. Miss M went on to question the validity of the mortgage contract.

TMW says Miss M agreed to the mortgage. It sent her and provided the Financial Ombudsman Service with relevant point of sale documentation including a copy of the mortgage application form, the mortgage offer, and the terms and conditions of Miss M's mortgage. It said that it doesn't hold a signed mortgage offer but it's clear that Miss M accepted the mortgage, and it said that Miss M could go to the Land Registry to get more information from it if she wanted, including a copy of the charge document and mortgage deed.

Our investigator considered what happened. He said that he had been provided with several point-of-sale documents that show that Miss M agreed to the mortgage. He could also see from Land Registry records that the TMW had registered a charge against the mortgaged property in connection with the mortgage. In the circumstances he thought it was fair and reasonable that TMW had asked Miss M to repay the money she'd borrowed from it. He said that if Miss M didn't repay the money she owed TMW, there was a risk her property could be repossessed.

In early 2024 TMW it said that it would start legal proceedings against Miss M in relation to the arrears on her mortgage. That action was put on hold while the Financial Ombudsman Service investigated this complaint,.

Miss M didn't agree with our investigator. She said she has provided TMW with documentation (including a Notice of Intent, a Security Agreement, UCC Financing Statement and a Statutory Declaration Cestui Qui Vie) but it hadn't acknowledged what she'd sent. She believes that the documentation she has provided nullifies TMW's charge against the mortgaged property

Miss M asked for her complaint to be reviewed by an ombudsman. So the complaint has been passed to me to decide.

## **What I've decided – and why**

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. I'll explain why.

I'm familiar with the documentation Miss M has provided in connection with her complaint. I'm also familiar with the suggestion that, by signing a mortgage document, the signatory "creates money". There is no factual or legal basis to this notion. I can understand why it is a popular argument on internet forums which promulgate "Freeman on the Land" theories. If it were true in this case, then Miss M would have the benefit of owning the property, but without any obligation to pay back the money she borrowed to buy it.

I'm required to decide what's fair and reasonable in all the circumstances of the case. I'm satisfied Miss M borrowed the money from TMW. That's clear to me from the documentation TMW has provided me with and the mortgage deed (signed by Miss M) available at the Land Registry.

In the circumstances, I think it's fair and reasonable for Miss M to repay the money she owes in accordance with the terms and conditions of the mortgage contract she entered into. That means that TMW is entitled to collect payment from Miss M for the mortgage loan. In other words, she's required to repay her mortgage, including the mortgage arrears.

The reality is that, by not repaying her mortgage, including the mortgage arrears, Miss M is at risk of losing the property.

I understand that TMW has suspended legal action while we look at this complaint. If TMW decides to continue with legal action, Miss M is free to raise in court all the points she has made to us and TMW. But I'm unaware of any case which has succeeded using the arguments/documents Miss M has used.

Ultimately, it's up to the court to decide if Miss M's mortgage is valid or not. Miss M might find it helpful to take legal advice from a qualified solicitor before trying to raise in court any of the arguments she's put to us about this. Advice is also available through Citizens Advice and Shelter. We can provide her with contact details for those organisations if she'd like us to.

Finally, I think it's worth saying here that while I don't underestimate Miss M's strength of feeling about the issues she has raised, I don't think it's fair to say that TMW has made a mistake or been neglectful of her in some way by not focusing on the documentation she has provided in connection with this complaint. I say that because TMW has provided evidence to show that Miss M borrowed the money from it. I don't think it would be fair and reasonable for me to say that TMW needs to disprove the arguments Miss M has raised which she believes invalidate her mortgage.

### **My final decision**

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 June 2024.

Laura Forster  
**Ombudsman**