

The complaint

Mr M complains that Nationwide Building Society (NBS) won't accept a Promissory Note to redeem his mortgage. He has asked that his house deeds are returned to him and NBS confirm his mortgage is now redeemed.

What happened

NBS issued a mortgage offer to Mr M dated 4 January 2017 in relation to his then proposed purchase of a property 34 B St, at a purchase price of £90,000. The loan amount was for £76,500 plus fees. It was on a repayment basis over 30 years with a fixed rate for the first 2 years. Mr M accepted the offer and NBS advanced to him the mortgage monies.

NBS wrote to Mr M on 2 May 2023 advising that charges had been added to his mortgage account. They provided a statement of account which showed that he had not paid the monthly mortgage payments due in February, March, April, and May of that year. On 13 May NBS wrote again giving notice that they were going to start legal action as his account was in arrears. Subsequently proceedings were issued and following Mr M's complaint to this service, NBS agreed at the end of July to the proceedings being adjourned for a period of three months. At that time there were arrears on Mr M's mortgage account of over £25,000.

Mr M complains that NBS won't accept a Promissory Note which he believes should be sufficient to redeem his mortgage. Mr M has also challenged the validity of the mortgage itself saying that he never signed the agreement, nor did it have wet signatures.

NBS don't agree that the Promissory Note is a valid form of payment and have asked Mr M to clear his arrears and bring his account up to date in order to avoid repossession. It does not accept that it has done anything wrong, acted unfairly, or that the mortgage is invalid.

Mr M was unhappy with NBS's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that NBS hadn't done anything wrong and had dealt with the complaint fairly.

Mr M didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

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.

My summary of what happened is brief and I know the parties went into a lot more detail. I'm going to focus on what I think are the key issues. Our rules allow me to do this, and it reflects the nature of our service as an informal alternative to the courts. So, if there's something I've

not mentioned, it isn't because I've ignored it, it's because I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I've taken account of both sides' views and I've looked at the issues raised and considered all the available evidence.

The first issue is whether the mortgage is actually valid. That is a decision for a Court to make, not this service. We cannot decide whether a mortgage is void, invalid or unenforceable. That said, so as far as the law is concerned, I am not persuaded there is any merit to Mr M's arguments that he doesn't have a valid mortgage agreement with NBS or that it is not entitled to claim the mortgage repayments from him.

What I can say is that there is clear evidence that Mr M entered into an agreement with NBS. I say that because NBS advanced him a considerable sum of money, secured against his property, and which he used to purchase it. He has historically made the contractual monthly payments and I have seen no evidence that he ever complained or raised a dispute about the validity of the mortgage prior to making this complaint. It would seem that at least initially, Mr M accepted that he was in a contractual relationship with NBS.

Further, Mr M has undoubtedly benefited from the agreement he made with NBS since he has the use of the property he purchased. It is only fair and reasonable therefore for NBS to expect that he should repay the money advanced, in accordance with the terms and conditions of the mortgage he entered into.

Secondly, a promissory note is an unconditional promise to pay, made in writing, that the maker will pay on demand or at some specified time in the future, a specific sum of money. I accept the historic use of promissory notes and the role they have played in the financial world.

However, in the context of this complaint, the Promissory Note has no bearing. That is because Mr M entered into a contract with NBS and in so doing, in the return for monies advanced he agreed to certain terms. One of those terms is that he repays the monies advanced by contractual monthly instalments. There was no term within the mortgage agreement that he might unilaterally impose a Promissory Note upon NBS in substitution for the mortgage it holds. The effect of so doing would be to remove NBS' security and place them in the position of an unsecured creditor. It would also allow him to unilaterally escape from his contractual obligations.

NBS could of course agree to accept a Promissory Note in lieu of a mortgage, but the point is that in this case it hasn't. NBS seeks only to rely upon the original terms of the mortgage agreement and is entitled so to do, since the Promissory Note, in this context, is not a substitute for money and doesn't act to redeem the mortgage.

I'm required to decide what's fair and reasonable in all the circumstances of the case. Because I'm satisfied Mr M borrowed the money from NBS, it's fair and reasonable for him to repay it, via his bank account in accordance with the terms and conditions of the mortgage he entered into. NBS' actions in writing to Mr M about his arrears were also reasonable given that he had fallen into arrears and was not proposing to remedy that position. Equally, until Mr M redeems the mortgage, NBS are entitled to hold on to the property title deeds.

So, although Mr M will probably be disappointed with my decision, I can't say NBS has acted unfairly or unreasonably here and I'm not upholding this complaint. Mr M might find it helpful to take legal advice from a qualified lawyer or through Citizens Advice and/or Shelter.

My final decision

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 September 2023.

Jonathan Willis
Ombudsman