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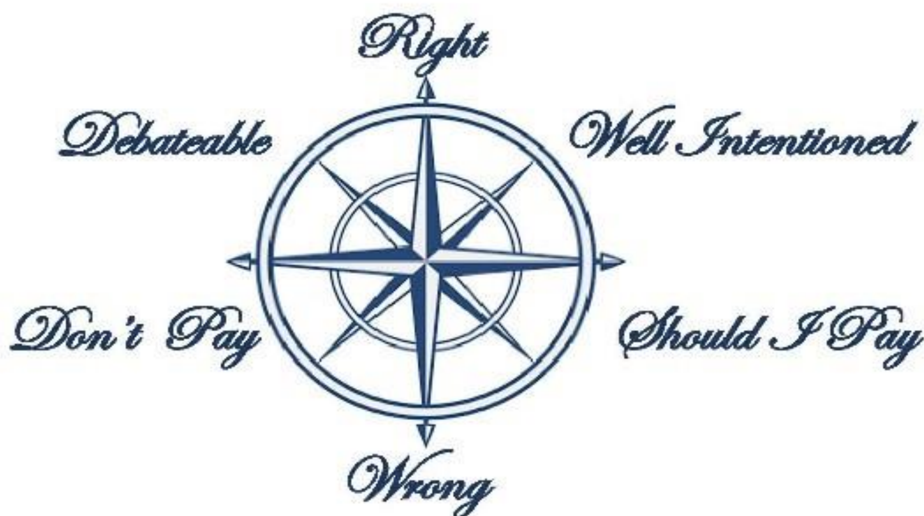
THE LEGAL QUEST MORTGAGE CHALLENGE



The Legal or Moral Compass Dilemma?

The Legal Quest Mortgage Challenge creates the potential for 8 out of 10 UK borrowers to reduce the outstanding balance of their current mortgage account with their original bank or building society involving a difficult and lengthy two-part Validation and Dispute Process which could take up to 2 years to complete.

If their Mortgage Challenge is successful, any borrower who completes the Validation Process and has a positive or probable legal opinion to continue and, as a result of either negotiation or an award at Court, the borrower(s) win their case either individually or as part of the proposed Class Action(s), **a moral dilemma will result.**

Legal Quest were recently asked: ***"Should a borrower morally continue to pay their mortgage repayments, if they are no longer legally required to do so?"***

The simple answer is that there will always be a moral obligation. The borrowers entered into a contract to repay a certain amount of money and interest and they are still enjoying the ownership of the property.

However, the question every borrower will need to ask themselves is ***"IF they no longer have a legal obligation to pay, WHERE would their individual 'Moral Compass' be? Which of the points shown above would it point to?"***

Before ANY borrower can ask themselves the Moral Compass question, they must understand what the Legal Quest Mortgage Challenge is and is it something they should look into further?

Hopefully, this article will help them decide and possibly lay the foundation for them to answer their own moral dilemma question, **if they qualify and 'win' their case.**

What exactly is the Legal Quest Mortgage Challenge?

Quite simply, it is initially a qualified professional validation review of the status of your "mortgage", the issue of a legal opinion to confirm that you have a case or not, followed by a professional Class Action dispute or negotiated settlement,

Legal Quest can provide a full professional legal review of the borrower's mortgage file documentation obtained from their lender under the Data Protection Act [1998] using a Data Subject Access Request (DSAR) which would normally cost over £4,500, for a fixed fee of only £260.00 including VAT.

They are able to do this by using the latest cutting edge technology where 'Robotic Process Automation' replaces most of the human touches needed to analyse the data. The entire matter is directly linked to the "Mortgage" which most, if not all, borrowers will believe they obtained from their bank or building society in order that they could buy a property.

The fact is that in **ALL** cases the "mortgage" will be granted by the borrower to the lender, **NOT** the other way round. They do **NOT** get a mortgage from the lender, although the lenders regularly wrongly advertise that they offer them!

The fact that the mortgage was granted by the borrower is an important point and is the start of the Legal Quest Mortgage Challenge, where each borrower needs to find out what happened to the actual mortgage after the 'loan account' was created by the bank or building society, in the name of the borrower(s).

Without going into finer details, (all of which are fully explained by Legal Quest on their website) the reality is that the bank or building society actually buy the 'security' which the borrower offers the bank or building society for the loan money.

The lender(s) credit' the agreed amount to the borrower's mortgage account, which is also created at the time of the completion.

The lender doesn't actually 'lend' any money, they create 'new money', as allowed by the Bank of England licence to do so, and **credit this new money to the account of the borrower(s).**

What actually happens is the mortgage (which comprises of the entire set of paperwork prepared by the lender and sent to the prospective borrower to sign) is treated as a 'cash security'.

Even though the paperwork is just that, a number of pieces of paper, because of the wording on the paperwork, and the fact that it contains a 'security instrument' as defined in legal and accounting terms it is treated as 'cash' against which the lender can credit the mortgage 'loan'!

The Offer & Acceptance of a 'Loan' and the Mortgage itself.

To understand the whole process, after an application is made by a borrower, and, after the normal credit check, property valuation and other in-house standard procedures of the lender, the formal loan offer will be sent to the borrower by the bank or building society. These documents are required to be signed by the borrower and they will form the 'mortgage' which, believe it or not, has a cash 'value'.

Before we go into this aspect, everyone should know that the laws which govern the process are very old, well established and date back to the Bills of Exchange Act [1882], which remains the basis for almost all of the international banking and financial transactions in the world.

Contained in this important piece of legislation are the legal definitions of 'money' and 'cash', which we all use in everyday life, including 'Promissory Notes'.

The banknotes in your wallet, pocket or purse are all Promissory Notes. Take one out and read what it says on the front of the £5; £10; £20; and, for those of you who are 'flush', the £50 folding paper money or 'notes' in your possession.

It won't matter if they are issued by the Bank of England or, for that matter, by one of the Scottish or Northern Irish commercial banks who are also authorised to issue 'banknotes' in Pounds Sterling.

ALL of the notes will "promise" to pay 'the bearer' (which is whoever holds it or has it in their possession) the number of pounds it says on the front, so they are not actually cash or coins.

They are **ONLY** a 'promise of pounds if the note is presented back to the head office of the bank who issued the promise. We all live, breathe and exist on nothing other than a revolving exchange of paper promises of money and **they are never 'collected', simply exchanged one person to another.**

A revolving merry go round of what are, in reality, 'empty' promises, being passed from hand to hand, with none of us really understanding the implications of what this means and why we continue to accept it.

So, back to the actual mechanism of creating a mortgage, when a borrower signs the loan documentation, included in the paperwork are several items.

Each borrower should have been asked to read and understand all of the terms and conditions **BEFORE** signing on the dotted line(s), with their signature being witnessed, so the various sections are considered to be 'delivered as a deed'.

It is doubted that very few if any borrowers actually read or understood what they were signing!

In **ALL** loan document packs, provided to a borrower by a lender, **there will be a Power of Attorney** or equivalent clause in the General or Special Terms & Conditions ("the T&C's").

These may be provided or simply referred to on the lender's website or in a separate booklet. In addition, a Consent to a Mortgage or similar document and/or the authority to register a legal charge on the deeds of the property at HM Land Registry is included.

In most cases, the actual property is going to be purchased with the 'loan' funds.

One huge mistake all borrowers make is thinking that the 'loan' is secured by the property. That is a physical impossibility because **the borrower has not bought it yet!**

So, what is the security the borrower gives to the lender to allow them to advance the money required to buy the property?

This is where we need to look at the accounting aspects of the transaction and the 'value' of the security which was 'offered and accepted' in accordance with the laws contained in the Bills of Exchange Act [1882].

Whereas the banknotes you looked at have a value as defined on the front of the 'promissory note', a mortgage 'value' has to be calculated and is based on the three elements contained in the paperwork.

1. The principle amount of the advance which, for ease of explanation, we will use £100,000.
2. The interest rate which the borrower will agree with the lender, on whatever terms are currently commercial. For the purpose of the example, we have used 5% per annum without any variables, such as reduced initial term, tracker, fixed rate for x years etc.
3. The last element I, of course, the term of the advance which, for example purposes, we have used a 25-year period.

The 'value' of the mortgage in the example is therefore £100,000 plus £125,000 interest (based on £5,000 per annum times 25 years) which is obviously £225,000.

There are other factors which include compound interest and other calculations which the financial sector will use to give a true Forward Value ("FV").

By using an on-line annuity calculator, the actual FV is in the region of £320,000 which, depending on the view of the bank or building society or their accountants, and possibly the regulators, a Present Value ("PV") will be calculated.

The PV will be based on the Bank of England base rate, LIBOR, and other current 'cost of money' items. In today's market, the example 'loan' would probably have a PV in the region of £125,000.

To bring this into focus, Moody's rated an offering of mortgage backed securities by a major UK high street bank in May 2016 with a 'credit enhancement' of slightly more than 23%.

So, what actually happens in accounting terms is the lender will 'accept' the security which was 'offered' (the mortgage) and will count it as 'cash' in accounting and legal terms, with a PV of more than the face value or the actual 'loan' amount asked for by the borrower.

They technically and legally purchase the security, (the 'cash') from the borrower with, let's say, a PV of £125,000 and their 'purchase price' is agreed at £100,000, which is then 'credited' to the borrower's new mortgage account, **although the borrower doesn't actually realise that is what has just happened!**

The lender will create new money into existence out of thin air. **Yes, that is correct, they magic it into the borrower's new mortgage account, to be able to 'pay' the borrower for their security.**

If the lender simply waited for the 25 years in our example, the two items would cancel themselves out over the term, with the lender making a profit (the interest) and all parties would be happy.

However, the lender doesn't want to wait the 25 years!

Mortgage Securitisation – A Great Idea! or a Big Problem?

About 40 years ago, the lenders came up with a novel, creative and commercially beneficial way for them to improve their balance sheet liquidity and capital adequacy, so that they could lend more money.

More lending is good for the economic growth of a country and only when lenders stop lending does it result in a recession. Anyway, the complicated and technical way for the lender to effectively sell off their future income resulting from the 'mortgages' granted by borrowers, where the lender also has a legal charge on the various properties, creates a AAA rated bond.

They were titled Mortgage Backed Securities or MBS's, sometimes with the word Residential or Commercial added in front of the title.

The appetite for these securities, especially in the United States, was incredible leading to more and more, relaxed lending terms and, by 2007/2008, the market had got out of control. The result was the financial crash of 2008 which we are all still feeling the results of today. It was firmly blamed on Mortgage Securitisation. However, the blame should have been placed on the actual banking sector firms who abused their position and ignored all of the standard cautions because the regulators had allowed them to 'self-regulate' since 1972.

The Good Idea turned out to be a big Problem!

Everyone should be aware that, in November 1991, the UK government were warned by the Law Commission that the emerging problem of selling the needed immediate attention. **Now some 25 years later, the problem is still here, and is much bigger than anyone ever expected.**

In legal terms, the process of mortgage securitisation is sound providing the lender executed all of the paperwork correctly. Due to the fact the borrowers gave the lenders the right to sell transfer or assign their mortgages, the borrowers cannot really object and should simply agree to any correction of the paperwork.

If, however, the lender(s) did NOT execute the paperwork correctly, then a completely different outcome may well exist. If it can be proven, that a particular mortgage was securitised, then in order for it to be sold, transferred or assigned, the original loan liability on the lender's balance sheet **MUST have been paid off in full**, there can be no other way for the mortgage to be released.

The borrower(s) should now owe the balance of their mortgage, to the new owners, and should legally and morally continue to make the payments on a monthly basis. All payments continuing to be made to the original lender, under a servicing agreement they will have with the new owners, when they sold the mortgage.

Most of the borrowers have been continuing to pay their monthly repayments for years without knowing that their mortgage had been sold by their lender.

The only thing which is really in error, is the fact that the original lender remains as the named legal charge holder, **instead of the new owner of the mortgage**. Each borrower should and must consent to the rectification of this error, **BUT** only **IF** the documentation legally binds the borrower to the new owner.

What if there is no legal paperwork?

Well, this is where the **"Legal v Moral"** paradox question may result! The original lender will have been paid in full, plus a probable 'hidden profit', so has no loss or further claim on the property via the legal charge.

The new owners are not secured by a legal charge on the property **AND** they may have no legal contract with the borrower(s), so cannot claim anything further from the borrower(s). If so, the borrower(s) will effectively have a default 'win' and be released from their original liabilities under their mortgage(s) but, although this is effectively a 100% reduction in the balance(s) outstanding, **that is not the true position for the majority of borrowers.**

Most will have entered into a No Win – No Fee agreement with Legal Quest and have a new liability equal to 25% + VAT = 30% of the balance that was effectively 'written off'. A further advance or new mortgage for this amount will need to be agreed, which is why the potential benefit is stated to be 'up to 70% reduction in the balance of the mortgage'. **So, finally we leave you all with the big Moral Compass Question?????????**

If you are successful and it can be proven that you legally don't owe anything on the original mortgage, and in most cases now only owe the new further advance to settle the Legal Quest No Win – No Fee agreement.

" Would YOU morally pay the difference to the original lender, or NOT?"

We believe it will all depend on each of the borrower's own Moral Compass and, which way it will swing we do not know. Will it swing towards their family or towards someone who they do not know, if a successful settlement or award is made? Remember, ALL of the speculative investors, who purchased YOUR mortgage, along with hundreds of thousands of other mortgages, were fully aware that their investment was at risk, and could possibly be less than they invested.

Legal Quest believe that the majority of our clients will make the right informed choice!

Take the Legal Quest Mortgage Challenge today, to find out IF you would be able to make this Moral Compass decision or not.