



Complaints with no reasonable prospect of success

Some complaints we receive have no reasonable prospect of success, and rule 5.1 of our [terms of reference](#) allows us to decline to consider such complaints. However, we do not exercise this discretion lightly because it would deny customers the opportunity to express their concerns.

We may consider exercising our discretion if it is clear from the outset the complaint plainly lacks merit. Such complaints include those that depend on an untenable position of law or fact or have only a remote possibility of merit. Declining to look into such a complaint saves the customer, the bank and us from spending time and resources on a matter that has no merit.

After identifying a complaint as lacking any reasonable prospect of success, we notify the customer and bank of our view and offer the customer an opportunity to comment. We review any comments, and, if these do not alter our view, we issue our decision declining to look into the complaint.

The threshold for declining to look into a complaint on this basis is very high, and we exercise this discretion rarely. Examples include a complaint that a bank was not entitled to debit a customer's account following a council demand for payment of rates, and complaints based on "pseudo-legal" arguments.

Pseudo-legal complaints

We sometimes receive complaints based on pseudo-legal arguments, in which a customer challenges a bank's attempts to recover debt using arguments that have no basis in law. Groups on the internet and elsewhere purport to offer debtors a way to successfully challenge a claim for repayment of a legitimate debt. They say their strategies are grounded in law, but this is not true. Most arguments are extremely unusual.

Main types of arguments

Despite the wide variety of pseudo-legal arguments and fresh iterations, they generally run along one of the following lines:

- The bank did not advance real money (or physical currency) to the borrower. Rather, all it did was make book entries or electronic transfers, in effect creating funds out of thin air. Thus, if no real money was advanced, a customer cannot be required to repay it.
- On signing a loan agreement and establishing a mortgage, the customer's signature converts the loan contract into a financial asset (promissory note). This asset is the



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property of the customer since the customer created it by their signature, and the lender is liable to the borrower for the value of this asset.

- A bank cannot require repayment of a loan unless it provides the original signed loan and mortgage documents, referred to as “wet ink” documents. The customer may challenge the bank practice of scanning documents.
- The customer purports to revoke the power-of-attorney clause in the mortgage document, which they suggest means there is no debt to repay ([see case note](#)).
- An individual has two personas, one of flesh and blood, and the other a separate legal personality (the “strawman”), and all debts, liabilities, taxes and legal responsibilities apply to the strawman rather than the flesh-and-blood persona.
- A loan is not valid unless it is drafted in a particular way, stated as in “Correct Sentence Structure Communication Parse Syntax Grammar” (C.S.S.P.S.G).

There may also be certain phrasing in correspondence that indicates a customer is presenting pseudo-legal arguments, for example:

- Without prejudice. Notice to Agent is Notice to Principal; Notice to Principal is Notice to Agent.
- No assured value, No liability.
- Errors and Omissions Excepted.
- Without Prejudice – Without Recourse – Non Assumpsit.

Correspondence from a complainant may also contain fingerprints in red ink, stamps or seals.

Pseudo-legal arguments have not been upheld in the courts in New Zealand or overseas.¹ No court has ever ruled that a loan agreement or mortgage is invalid on the basis of such arguments.

Tactics of pseudo-legal complainants

A customer relying on pseudo-legal arguments will often present the bank with a long list of questions demanding yes or no answers. The questions are designed to elicit certain admissions, including that the bank did not lend “real money” to the borrower, that the borrower’s signature on the loan and security documents was in some way “monetised” and used to fund the loan to the borrower, and that the bank had sold the loan documents to another entity to be securitised.

The customer may also ask the bank to disclose “the bookkeeping side of the ledger to show the source of funds” for the loan, supported by “exemplified data”.

If such customers do not receive the admissions and information sought, they may lodge complaints through various levels of the bank and then to us, claiming the bank has no legal right to require payment of the loan and must discharge any mortgage over their property. They may claim the bank has breached the Privacy Act 2020 by refusing to disclose its internal records and information on the funding of its loans.

¹ See, for example, *Westpac New Zealand v Nicol* [2016] NZHC 172 (15 February 2016); *Stewart v Bank of New Zealand* N[2015] ZHC 2864 (16 November 2015). Overseas courts have also declined to uphold such submissions (see *Gacias v Equifax Canada Co*, 2019 ABQB 640).

Some customers may also stop making loan payments in the mistaken belief they have the right to cease making payments once they have lodged a complaint.

Some groups offering pseudo-legal “advice” may present invoices to the bank requiring payment of penalties for perceived breaches of the law.

Our approach to pseudo-legal complaints

We usually identify pseudo-legal complaints quickly because the arguments are unusual or the complainant’s tactics are typical of such cases. We are aware that complainants employing such arguments may be under considerable stress, such as a mortgagee sale, relationship break-down or business failure, and this can make it more challenging to deal with their concerns. Some customers hold determinedly to the theories they have picked up on the internet or from “advisers” and are unwilling to hear contrary views.

Our first step is to find out whether there is a genuine complaint buried beneath the pseudo-legal arguments. If this is the case, we recommend complainants contact the bank for help if they are experiencing financial hardship. If such customers are resistant to taking this step, we suggest they seek help from a legitimate debt advice service, such as [Money Talks](#) or the [Citizens Advice Bureau](#). We explain that making a complaint about their loan does not free them from their obligation to make loan payments as they fall due.

We also explain that their pseudo-legal arguments have no legal basis, and, in the absence of any other valid grounds, we may exercise our discretion to decline to consider the complaint. If customers persist with a pseudo-legal approach and we have not identified a legitimate issue, we are likely to decline to look into the complaint.