

The complaint

Mr P complains that The Royal Bank of Scotland Plc ("RBS") have acted unfairly and unreasonably by losing the deeds to his commercial property. He wants compensation.

What happened

Mr P had a commercial property, which he mortgaged with RBS in 1988. Mr P explained that the property was unusual in that it was accessed through several strips of private land and was at the end of a cul de sac. He said that the deeds set out the details of the access and parking rights, and that RBS held the deeds as security for its loan. Mr P said that the existence of the deeds affected both the property and rental value. Mr P also said that he took out a loan for a residential property in 1990 and again RBS held the deeds.

In 2018, both properties were released from RBS' charges, but the deeds for neither property could be found. Mr P said RBS wasn't very helpful, but admitted that the deeds were lost. He felt that RBS had acted in dereliction of the duty it owed him. Mr P said that he didn't know if he'd suffer loss in relation to the residential property until he tried to sell it, but he believed he had suffered loss in relation to the commercial property as he said the value of both the property and rental had been reduced due to the loss of the deeds.

RBS said that the deeds for both properties couldn't be found in its possession. It pointed out though that both properties were registered at the Land Registry, so the deeds were less important as rights should be registered there. RBS also explained that the deeds weren't needed to sell the property due to the land registration. Mr P accepted that the deeds weren't needed to sell, but said they did contain information about rights of way, which was necessary. RBS paid £250 to cover the cost of any replacements Mr P needed, and said if more money was needed, Mr P should let it know.

Mr P complained to us, saying that the land registration didn't show the information within the lost deeds. The investigator's view was that RBS was at fault and matters needed to be put right. He noted that RBS accepted that it was likely it had lost the deeds, but thought matters could be put right by payment of another £50 to Mr P. This was because the investigator thought that it would cost £24.95 to get a replacement of the title register and plan for each property with the Land Registry, and this would set out all the necessary details. The investigator said the £250 paid to date covered Mr P's distress and upset.

Mr P disagreed. He said the Land Registry didn't have the information about rights of way from the deeds registered with it, and only provided information about boundaries and ownership. Mr P said the compensation recommended by the investigator was not enough.

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.

Mr P said that the Land Registry doesn't record information about rights of way. This is incorrect. Title information about a property can record these points within the registration of

a property. The real question is whether in the case of Mr P's two properties this information has been registered. If it hasn't, it will cost a significant sum for a solicitor to apply to put this information on the register, and make require several witness statements. If the information has been registered, then it's a very simple matter to get a copy from the Land Registry, and can be done direct without involving a business, such as that suggested by the investigator.

I asked to see the official copy of the register and the plan for each property currently held by the Land Registry. Upon looking at these documents, I could see that they do record the rights each property has over other properties, including rights of way. The rights arising from as early as 1787 are recorded, and the details of the relevant deeds are set out in the official copy, enabling those interested to ask the Land Registry for a copy of those deeds. I can see that the details of the property registration were updated when RBS took out its security over the properties, which suggests that all the necessary information has been registered for the properties at that time. I can't say that the details of the rights of way aren't registered, given that the information is set out. I'm not persuaded that key information about the properties has not been registered, and therefore is affected by the loss of the deeds.

But I note the investigator referred to getting a copy of the registered title from a third party, rather than the Land Registry itself, which is more expensive. The Land Registry will provide a copy of the official copy and plan for £7 per property (if Mr P applies by post or in person). There are additional costs to get copies of other documents held by the Registry, which might be useful to Mr P as they should give more information. This is currently £7 a document. So while I think the method of calculation used by the investigator was incorrect, assuming that Mr P might want to see the additional documents, I think £50 for the costs of accessing information from the Land Registry for the two properties is fair and reasonable.

RBS has already paid £250, which it says is to cover both trouble and upset, and the costs of replacing documents. All agree that RBS should also compensate Mr P for the trouble and upset he's suffered due to its inability to find the deeds it held or explain what happened to them. RBS says it paid a global figure, but the investigator is correct that the approach of this service is to separate financial loss from non-financial loss. Money never truly compensates for trouble and upset, but I can see from the evidence available to me that Mr P is worried and disturbed by what has happened. I don't think that it's helped that no-one sent Mr P a copy of the official copy of the register, so he could see what was registered. Taking all the circumstances into account, I think the fair and reasonable compensation for the trouble and upset caused to Mr P is £250. This means RBS should pay him an additional £50 to cover his financial loss.

My final decision

My final decision is that I uphold the complaint and The Royal Bank of Scotland Plc should pay Mr P an additional £50. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 June 2020.

Claire Sharp
Ombudsman