

The complaint

Mr and Mrs F have complained that The Royal Bank of Scotland Plc (RBS) failed to return all their title deeds to their solicitor in 2012 when they redeemed their mortgage.

What happened

Mr and Mrs F took out this mortgage with RBS in 2001, and in February 2012 it was fully repaid. Mr F phoned RBS on 28 February 2012 to request the deeds be sent to his solicitor.

According to the correspondence that we've been provided, it seems RBS liaised with the solicitor, signed the discharge paperwork, and it sent it all to the solicitor in March 2012.

Nothing further happened until Mr and Mrs F wanted to arrange an equity release mortgage in 2019. They were using a different firm of solicitors for that and it was discovered the RBS charge hadn't been released. The original solicitor also couldn't find the deeds to Mr and Mrs F's property, they could only find the deeds for a plot of land next door that Mr and Mrs F had bought separately from their neighbour.

Mr and Mrs F complained to the original solicitor and to RBS. All this decision is dealing with is RBS, as we don't have jurisdiction over the solicitor.

Our investigator didn't think RBS had done anything wrong. Mr and Mrs F didn't agree and so it's 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. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I trust Mr and Mrs F won't take it as a discourtesy that I've condensed their complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

For almost 80 years after the passing into law of the Law of Property Act 1925 and the Land Registration Act 1925, conveyancing was done 'on paper' with processes and practices that were the same for decades. Property titles were registered in documents which were held by the owners or mortgagees. But since 2003 scanning and subsequent destruction (known as 'dematerialisation') of physical documents became the required practice, as a result of the Land Registration Act 2002, which came into force on 13 October 2003.

Rule 203(6), Land Registration Rules 2003, makes provision for the destruction of original documents; an electronic image is deemed a sufficient copy and is used to produce official copies. This means that paper documents are obsolete and are no longer evidence of title.

Given the passage of time, it's not possible to say with certainty what happened to the paper documents. But what we do know is that they – or at least some of them – were sent to Mr and Mrs F's solicitor in 2012 at their request.

It's clear that at least some of the original deeds were sent to Mr and Mrs F's solicitor. There would have been absolutely no reason for RBS to have gone to the trouble of splitting up the paperwork and only sending part of the deeds out to the solicitor, instead it would most likely have sent all or nothing. When considering any complaint like this, as Mr and Mrs F are the ones bringing the complaint against RBS, to uphold the complaint Mr and Mrs F's version needs to be *more likely* than RBS' version; not *just as likely*. Having considered everything I can't say Mr and Mrs F's version is anything more than *just as likely*, which isn't enough for me to uphold their complaint.

I'm satisfied - on the balance of probabilities - that in 2012 RBS sent all the deeds it held out to Mr and Mrs F's solicitor at their request, so RBS doesn't have any paper deeds and other documents Mr and Mrs F asked for. I can't reasonably require RBS to provide documents that it doesn't have, nor can I award compensation to Mr and Mrs F for it not having those documents.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 26 June 2020.

Julia Meadows
Ombudsman