

The complaint

Mrs and Mr B have complained that Barclays Bank UK PLC failed to return their original title deeds after they redeemed their mortgage.

What happened

I won't go into detail about the background of the complaint as it has become very protracted and muddled, and to try to detail a timeline here wouldn't help matters.

The mortgage was repaid in July 2018. In 2019 Mrs and Mr B contacted Barclays to find out where their deeds were. Barclays said it didn't have them.

Our investigator didn't think Barclays had done anything wrong. Mrs and Mr B 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 Mrs and Mr B 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 Mrs and Mr B's solicitor in 2016. Mrs and Mr B have said

“... we were thinking of selling the property about two years ago, the solicitors were [name of the firm] but we never went through with the sale, when I asked Barclays for the deeds I think they said that they did not have them as they sent them to the solicitors which they did, I spoke to the solicitors and they did have some papers still which had gone into their storage, I don't know why they did this and not returned them to Barclays however they did then send them to me but this is when we found out that the majority of history papers were no longer there, I did ask [the solicitor] to double check which they did but there was nothing else.”

So it's clear from this that at least some of the original deeds were sent to Mrs and Mr B's solicitor, and also that the solicitor didn't tell Mrs and Mr B they had them nor did they tell Barclays they no longer needed them as the sale wasn't going ahead. There would have been absolutely no reason for Barclays 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 Mrs and Mr B are the ones bringing the complaint against Barclays, to uphold the complaint Mrs and Mr B's version needs to be *more likely* than Barclays' version; not *just as likely*. Having considered everything I can't say Mrs and Mr B'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 2016 Barclays sent all the deeds it held out to Mrs and Mr B's solicitor at their request, so Barclays doesn't have any paper deeds and other documents Mrs and Mr B asked for. I can't reasonably require Barclays to provide documents that it doesn't have, nor can I award compensation to Mrs and Mr B 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 Mrs B and Mr B to accept or reject my decision before 24 June 2020.

Julia Meadows
Ombudsman