

## The complaint

Mr H complains that HSBC UK Bank Plc said it couldn't find the deeds of his house, then an unregistered property. Mr H instructed a legal firm to register the house without deeds, and asked HSBC to pay. HSBC then found the deeds and said it wouldn't pay for the work.

## What happened

Mr H told us he'd taken out a mortgage with HSBC in the 1980s, and paid it off not long after. When he did so, the bank manager offered to continue to keep Mr H's deeds safe for him, and Mr H accepted that offer. He has shown us a letter from the time confirming that his deeds were in safekeeping with HSBC.

More recently, Mr H wanted to review the deeds, and he asked HSBC to retrieve them. There was an exchange of emails, indicating HSBC was carrying out a search, but in summer 2021, HSBC wrote to Mr H to say it couldn't find them. Its letter says "*After an exhaustive search of our records and safe we have not been able to locate your deeds.*"

In 2022, Mr H instructed a firm of solicitors to carry out the work of first registration of his house. Without the deeds, this work would be considerably more complex and expensive. And on 19 April 2022, Mr H's solicitors wrote to HSBC, saying that as HSBC had lost the deeds, Mr H would expect HSBC to cover the cost of this work.

HSBC replied promptly on 25 April, to say that the staff member who wrote the letter no longer worked for HSBC, and it would look into this afresh. HSBC asked Mr H's solicitors for more information, which was sent on 28 April 2022.

HSBC said the deeds were located on 16 May 2022. It emailed Mr H's solicitors right away to say they had been found. HSBC asked Mr H to authorise the release of these deeds to his solicitor, and they were then sent, with the solicitors confirming receipt on 10 June.

Some time later, in October 2022, Mr H's solicitors wrote to HSBC again, asking it to pay for all the legal work that Mr H had commissioned, other than the work which would have been required to register the property with the deeds present. Mr H's solicitors said this came to a little over £1,700.

HSBC said it had never agreed to pay for this work. It said it had never told Mr H that his documents were actually lost, and that it had advised him to contact it, if he needed any further assistance. So HSBC felt that it was Mr H's choice to approach a firm of solicitors instead of asking HSBC again to look for the deeds.

HSBC said it would pay Mr H £500 to recognise the incorrect information initially given and for the delays in actually locating and returning the deeds. But it wouldn't pay the legal costs he wanted it to cover. And HSBC said that all property deeds are now held digitally at the Land Registry Offices, so a physical copy of a property's deeds is no longer required.

Our investigator didn't think this complaint should be upheld. He said HSBC didn't tell Mr H the deeds were lost. It asked him to come back to HSBC if he needed further help. And our

investigator thought if Mr H had complained at this stage, then that would have been likely to prompt a more in-depth search.

Our investigator said that after HSBC had received the solicitors letter, it located the deeds in less than a month. Our investigator said he didn't know why Mr H's solicitors continued to work on preparing the first registration, and ultimately this wasn't needed.

Our investigator thought HSBC should pay some compensation, because it had made a mistake by informing Mr H that it couldn't locate the deeds originally. But he thought that HSBC's offer of £500 was fair for that. He said it wasn't HSBC's decision to instruct solicitors, and it had never agreed to pay the costs.

Mr H replied to say he'd accept a payment of £500 for the distress and inconvenience, but HSBC should still pay his legal costs. He said he'd spent over 4 months in early to mid-2021 trying to get his deeds from HSBC, and it then confirmed then that they couldn't be found. So the only way to register his property was to have the deeds reconstructed, and that's a specialist task. But our investigator didn't change his mind. Mr H asked for his complaint to be considered by an ombudsman, so it was passed to me for a final decision. And I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it in part. This is what I said then:

I understand that Mr H spent a considerable amount of time in 2021, asking HSBC to return his deeds. He's shown us correspondence from the time. Mr H had documentation showing that HSBC had the deeds in safekeeping in 1988, but HSBC apparently couldn't find the deeds themselves, or any records of its own showing they had been taken into safekeeping.

I don't think it was unreasonable then for Mr H to conclude that the deeds were lost.

Although HSBC has expressed the view that physical deeds to a property are no longer actually required, this is only the case once a property's ownership has been recorded electronically at the Land Registry. Mr H has told us that his property was unregistered, so the physical deeds were his proof of ownership, and were extremely important documents. I think that being told these deeds could not be located, after an extensive search, would have been very distressing for Mr H. I think HSBC's offer of £500 in compensation does reflect the seriousness of this issue, and the distress this would have caused Mr H. So I think that provides a fair and reasonable outcome to this part of Mr H's complaint.

I've said that at this point I don't think it was unreasonable for Mr H to assume the deeds must be lost. I also note that HSBC's letter about his missing deeds didn't tell Mr H he could complain about this, or mention the role of our service in resolving such issues. So I also don't think it was unreasonable of Mr H to think he would need to engage a legal firm to do this work, and to approach it to commission the work. Because of that, I do think HSBC should make some contribution towards the costs that Mr H initially incurred in doing this.

But I don't think that it would be fair and reasonable to ask HSBC to cover all the costs that Mr H has incurred. That's because when HSBC was contacted by Mr H's solicitors, it wrote back promptly to ask for enough information to allow it to look into this again. Whilst this letter indicating HSBC would search again may have been somewhat

surprising, in view of HSBC's previous statement that it had already carried out an exhaustive search, and couldn't find the deeds, I do think that at this stage, HSBC was saying that the deeds might not be irretrievable after all. And because of that, I don't think it would be reasonable for HSBC to continue to contribute towards legal costs which Mr H incurred after this point.

Mr H has sent us the itemised invoice from his solicitors. In my view, HSBC should pay for the costs Mr H incurred, up to and including the point on 28 April 2022 when those solicitors replied to HSBC's letter with the further information HSBC wanted to allow it to reinvestigate. That comes to £440 plus VAT, or £528 in total. So my current view is that HSBC should pay that amount to Mr H towards his legal costs, as well as £500 in compensation. I think that would provide a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

### **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.

HSBC said it was disappointed with the potential outcome, but it had nothing more it could add to the case so it would have to agree.

Mr H replied to say he had no further material facts to add either, but he was also unhappy with my proposal. He still felt the whole issue was due to HSBC's serious failure in its duty to provide the offered guaranteed document storage and retrieval. He said confirmation that extensive searching had failed to locate his documents, destroyed any possibility of mutual trust and further relationship with the bank. So Mr H said he was left with no alternative but to seek professional help, and he had then taken steps to recoup the reasonable costs.

I explained in my provisional decision I thought it was reasonable for Mr H to conclude, after HSBC said its extensive search hadn't located the documents, that the deeds were lost. And, also bearing in mind that HSBC hadn't then mentioned its complaints process (so hadn't made Mr H aware of any alternative way of resolving this issue at that point) I also thought it wasn't unreasonable for Mr H to approach solicitors to reconstruct his deeds.

That's why I thought it was reasonable for Mr H to have incurred some initial solicitors costs in the particular circumstances of this case, and also reasonable here for HSBC to be asked to pay those initial costs, as well as some compensation for the impact I thought HSBC's mistake would have had on Mr H.

But I thought the position changed when HSBC replied to Mr H's solicitors to say it would look again. I haven't been able to see why the work those solicitors were doing couldn't be paused at this stage, to see if the deeds could in fact be located. So I haven't been able to see that costs incurred after this point, were reasonable, and that it would also be fair and reasonable to ask HSBC to pay those further costs.

So, for the above reasons, I haven't changed my mind. I'll now make the decision I originally proposed.

**My final decision**

My final decision is that HSBC UK Bank Plc must pay Mr H £528 for legal costs, and £500 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 November 2023.

Esther Absalom-Gough  
**Ombudsman**