

The complaint

Mr and Mrs G complain that Bank of Scotland plc trading as Halifax failed to return the deeds to their property, which they had entrusted to Halifax for safekeeping. Mr and Mrs G said this had very upsetting consequences and they wanted Halifax to put things right.

What happened

Whilst this complaint is brought by both Mr and Mrs G, as the mortgage was in both their names, our dealings have been with Mrs G. So I'll mainly refer to her in this decision.

Mrs G said their deeds had been lodged with Halifax when they first bought their house, many years ago. But when the mortgage was paid off, it didn't return the documents.

Mrs G said Halifax had lost their deeds. And because of this, she didn't have any way to show a neighbour that some building work he was doing, came onto her land. Mrs G says she and Mr G have been the victims of a land grab, and she says the core reason for this, was that Halifax didn't return the deeds to their property when they redeemed the mortgage.

Mrs G is adamant that if she had been in possession of the deeds, which were left with Halifax for safekeeping long after the mortgage could otherwise have been paid off, then none of this would have happened. So Mrs G wants Halifax to pay the costs of recovering the land their neighbour has claimed. She told us these costs are likely to be substantial.

At first, Halifax said it was sorry that it couldn't find the deeds. Then it said that it had found a record that these were sent to Mr and Mrs G in February 2019, and must not have arrived.

However, whatever had happened to these documents, Halifax said Mr and Mrs G weren't worse off because of it. Halifax said this was a registered property. That means that all the information about the property is now held online, and Mrs G could download it from the Land Registry. Halifax has stressed that once a property is registered, the original paper deeds which it had held were no longer of any legal value. So Halifax won't help Mr and Mrs G with any of the costs they're currently facing, due to a neighbour building on their land.

Our investigator thought only one small part of this complaint should be upheld. She said that Mr and Mrs G had paid a fee for the storage of their deeds, and Halifax couldn't show the deeds were sent to them when the mortgage was redeemed. So she thought that Halifax should pay Mr and Mrs G the fee they'd paid for deed storage, and the cost of obtaining new deeds for their property from the Land Registry. But she didn't think Halifax's actions had led to the situation Mr & Mrs G then found themselves in, because the deeds were accessible online.

Halifax accepted our investigator's view, but Mrs G didn't. She said she was pleased to see we'd accepted that her deeds were never sent, but she said although the deeds safekeeping fee was paid during the nineties, the mortgage was taken out many years before that, and the deeds were entrusted to Halifax then.

Mrs G still thought that if she'd received the deeds when the mortgage was redeemed, none of the trespass she and Mr G are now enduring would have happened. Mrs G said the only documents she could get online weren't "*official copies*" and the neighbour wouldn't accept them. She said getting the official versions took time. In the meantime, he built on their land.

Our investigator didn't change her mind. She said the date when the mortgage was taken out didn't affect her view. She said Halifax's advice to go to the Land Registry to obtain the information was reasonable at the time. So she didn't change her mind.

Mrs G replied again, with further evidence about the problems she and Mr G were having. She said Halifax had told her and Mr G in October 2019 that it didn't have the title deeds, and all the information was held at the Land Registry. She then detailed difficulties she'd had getting hold of those documents. And she said when she did manage to download copies, they weren't legal copies. She said that her neighbour had repeatedly pointed this out when she was trying to reason with him. There were heated discussions about this. By the time she got hold of official copies, the work was completed.

Mrs G said she held Halifax responsible for the advice given on 16 October 2019. She said it was responsible for holding their deeds. It hadn't done that, losing the documents and giving bad advice. Mrs G said it was because she didn't have the original deeds, that she was not able to put forward a plausible argument with our neighbour, prior to the encroaching building work being done.

Because no agreement was reached, this case came to me for a final decision.

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.

I've reached the same overall conclusion on this complaint as our investigator.

Like our investigator, I think it's more likely that the original deed documents were not safely returned to Mr and Mrs G. I can see that they ceased to use Halifax's safekeeping service in early 2019. Halifax has since claimed that the deeds were returned then, but it doesn't seem to have updated its systems fully at the time, to show that this return had been completed. So I do think it's reasonable to ask Halifax to repay the £10 fee that Mr and Mrs G originally paid for deeds storage, and £7 towards the cost of obtaining deeds from the Land Registry. I'm glad to see that Halifax has agreed to this.

However, I don't think Halifax has to pay any more than this. I understand Mrs G has faced a very difficult situation, and I've been very sorry to hear about the problems she encountered. But whether or not the neighbour has in fact encroached on her land, I don't think that having the old copies of the deeds which were lodged with Halifax, would be likely to help.

Mrs G said her neighbour ignored the details shown on the plan she downloaded from the Land Registry, because it was not an official copy. So it seems most likely that Mrs G's neighbour would equally have ignored the original deed documents which Halifax held, because they too no longer have the same evidential value, now that the definitive record of land ownership is the documentation held at the Land Registry. That's why Halifax said Mrs G should approach the Land Registry for evidence of ownership.

I have, as I say, been very sorry to hear about what Mr and Mrs G have faced, and the battles they tell us are still to come, to regain their land. However, I don't think that what has

happened is Halifax's fault. And I don't think that what has happened would have been likely to have been avoided, if Halifax had returned the documents which were formerly used to prove title to Mr and Mrs G's property.

I understand, particularly in the difficult circumstances that Mr and Mrs G find themselves, that they will be greatly disappointed by my decision, but I don't think Halifax has to do more than it has already agreed to do, in this case.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax must pay Mr and Mrs G £17.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 22 April 2024.

Esther Absalom-Gough
Ombudsman