

The complaint

Mr and Mrs A complain that Barclays Bank UK PLC (Barclays) hasn't been able to provide them with complete title deed documents for their property when their mortgage was settled in February 2023. They would like the original documents to be returned and compensation for the impact the matter has had on them.

What happened

In early 2004 Mr and Mrs A completed a remortgage of their property with Woolwich Plc (now part of Barclays). Barclays has provided screenshot evidence from its system to show that at this time the deeds were passed to the solicitor who completed the legal work involved with the remortgage.

In early February 2023, the mortgage was settled so Mr and Mrs A owned their property without charge. This was confirmed in a letter from Barclays dated 24 February 2023. The letter also said *"we'll return the Title Deeds - your home ownership document - directly to you. Please complete the form included with this letter advising us of where to send your deeds."*

On 17 March 2023 Barclays wrote to Mr and Mrs A advising them it was *"sending you all the relevant documents that we've held in respect of your property and your mortgage."* The letter was sent by special delivery. But Mr and Mrs A say that when they received the letter the Title Deeds weren't enclosed. Barclays said it had sent all the documentation that it held. It also explained that a copy of the Land Registry register – which proved ownership – could be obtained directly from the Land Registry.

Mr and Mrs A continued to request their Title Deeds and said these were promised to them in May 2023, but they never received them. They complained because they thought that not only were the deeds important for their personal records, but they were crucial for any future transactions on the property. They asked for the complete series of title deed documents to be issued to them.

But Barclays said that after further checks it could confirm it no longer held any documents relating to the property. It said it may have made a mistake with the information it provided as its letter of 24 February 2023 was intended to ask where it should send the Title Information Document (TID) it held – not the Title Deeds.

However it recognised that it hadn't responded to Mr and Mrs A's contact promptly and had failed to set up their complaint when it was made.

It paid a total of £225 for the distress and inconvenience this caused along with any phone and postal costs incurred with contacting the Land Registry for copy documents.

Mr and Mrs A were unhappy with the level of compensation paid but more importantly wanted Barclays to provide the original Title Deeds as they concluded that it – or the solicitor it appointed – had held them in 2004, so they thought Barclays was responsible. So they brought their complaint to us where one of our investigators looked into the matter. He said Barclays should pay a further £350 for the distress and inconvenience caused by the

apparent loss or destruction of the Title Deeds but he couldn't tell Barclays to provide them as it was clear that for whatever reason they no longer existed.

Mr and Mrs A didn't agree. They thought Barclays hadn't acknowledged the importance of the deeds to them and wanted it to have to undertake a fuller investigation – involving the solicitors from 2004 – to determine the whereabouts of the documents, which they thought would be discovered. They were also concerned about the implications for them – and their children – of not having the deeds in their possession including the possibility of someone else now being in possession of the deeds and making a later claim on the property.

The investigator wasn't persuaded to change his view and didn't think the potential loss of the title deed documents would lead to someone disputing the ownership of the property. He said that there were other factors which could cause a challenge of ownership or cause a future mortgage application to be declined but these wouldn't be because of issues with the deeds.

Mr and Mrs A acknowledged that the complaint had been upheld and further compensation had been awarded – which Barclays has agreed to pay. But they said the investigator hadn't mandated Barclays to return their original Title Deeds even though he held it responsible. They wanted the complaint to be referred to an ombudsman – 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.

And having done so I've reached the same conclusion as the investigator. I can imagine this outcome will disappoint Mr and Mrs A hugely, and in reaching this decision I do not underestimate how strongly they feel about the loss of these historical documents and how much they mean to them for both sentimental and security reasons. I'll explain my reasons below.

The Title Deeds

I think it's important to first set out the historical changes that occurred to Title Deeds around the time that Mr and Mrs A remortgaged in 2004. Following the Land Registration Act of 2002 it became normal practice after October 2003 for Title Deeds to be scanned onto the Land Registry records and held as electronic records. This was considered to be sufficient for property transactions at, and following that time, so original paper copies of the deeds – which were no longer required – were simply destroyed. This was deemed to be normal practice at this time.

So although Barclays' records show that it issued Title Deeds to the solicitor in late 2003 at the start of the remortgage process, it's more likely than not that as Barclays would no longer have needed to hold the documents they would have been destroyed.

Of course it's understandable that due to the passage of time – over 20 years – there's no longer a documented trail of exactly what did happen, but I think it's more likely than not the documents either weren't returned to Barclays or were simply destroyed.

So it's my assumption that in 2023 – when Mr and Mrs A's mortgage was settled and they owned the property outright – Barclays only held a copy of the TID as documentation in relation to the property. I think this is supported by the fact that this was the only document that it returned to Mr and Mrs A in March 2023 as the letter it sent with the document enclosed was sent by special delivery and was the only document in the envelope when it

was opened by Mr and Mrs A. Barclays said it sent all the documents it held to Mr and Mrs A and I think it's likely that all the documents would have been lost in transit if that possibility existed rather than one of the documents still arriving intact.

In my view it was Barclays' communication which caused the problem here. In its letter from February 2023 it simply said it would "*return the Title Deeds*" without confirming what those deeds comprised. Barclays itself said it should have referred to the TID within this letter. And Barclays also confirmed previously to Mr and Mrs A that it held (and presumably lost) the Title Deeds, which I think raised their expectations of what documents were actually held at that time. I note that Barclays didn't provide an itinerary of exactly what it held during any of these communications simply referring to the term "*Title Deeds*," so it's difficult to reasonably conclude what was held.

So looking at what Barclays did provide in March 2023, along with the fact that the series of documents commonly described as Title Deeds were routinely destroyed around the time of Mr and Mrs A's remortgage application in 2004, I don't think it's surprising that when Mr and Mrs A redeemed their mortgage, they were given back a document that didn't include pre-registration (2003) deeds paperwork. I think it is most likely, given the circumstances of this case, that the documentation Barclays returned is simply all it ever held for them.

I understand Mr and Mrs A firmly believe Barclays do hold additional documentation for them which they want returned, but Barclays says it has searched, and it can find nothing else relating to Mr and Mrs A's property. I understand Mr and Mrs A want Barclays to carry out a much more thorough search, but in the light of my overall conclusions in this case, I don't think it would be fair and reasonable to ask that. That request was supported by Mr and Mrs A's assertion that in a letter that was sent by the solicitors to them on 30 January 2004 to confirm their remortgage it stated, "*I am now attending to the registration of the new mortgage at HM Land Registry and when that has been completed I will be sending the deeds and documents to your lender, who will retain them until such time as the mortgage is repaid.*"

Mr and Mrs A say this confirms deeds were held at this time and were going to be passed to Barclays to hold until the loan was eventually settled. But there's no further evidence to support the claim the Title Deeds were sent to Barclays when the remortgage completed, and I don't think it would be possible – given the time that has now passed – to be able to confirm that action one way or the other. But in any case, as I've said previously, even if the deeds were returned Barclays would, more likely than not, have destroyed them in line with normal practice at that time.

I don't take lightly the emotional attachment Mr and Mrs A have to the series of documents that set out the history of their journey to unencumbered home ownership. They've set that out strongly in their submissions. But they also set out three practical reasons why they feel that the loss of the Title Deeds could affect them and their family in the future.

These were:

- A guarantee of future borrowing against the property.
- Property ownership concerns.
- A challenge to their ownership.

While I can understand their concerns in these areas, I think Mr and Mrs A should be comforted by the fact that, because the ownership of the property is now held electronically,

there's no more likelihood of these events happening now than there would be if they were in possession of the pre-registration title papers they've requested to be returned. Most homes in the UK are now transferred based on the information the Land Registry holds, so I don't think this is likely to impact any future sale or challenge to the ownership of the property.

The compensation

Barclays paid Mr and Mrs A £225 for the distress and inconvenience caused by not setting up their complaint when it was first registered and the delay in responding to them.

But I note the investigator recommended a further award of £350 for the distress and inconvenience caused by Barclays not returning documents that it suggested it held and which had great value to Mr and Mrs A who were expecting them to be returned when they settled their mortgage. As I've concluded above, I think it's unlikely Barclays held the documents in the form Mr and Mrs A expected to see. I think the TID was most likely the only document it held following the move to electronic registration in 2003.

But I do think Barclays should have been clearer in its communication in 2023 by explaining exactly what it held and would return instead of simply talking about the "Title Deeds" which I think raised Mr and Mrs A's expectation of what they were going to get. Along with the letter from the solicitor from January 2004 I think this led to Mr and Mrs A expecting to receive the bundle of documents that would have formed what were described as "*the Title Deeds*" pre-2003 registration. So I think Barclays ought to make a compensatory payment for the impact this had on Mr and Mrs A and their subsequent disappointment – which led to them pursuing this complaint that Barclays still holds the documents somewhere.

Putting things right

I note Barclays agreed to pay the additional £350 proposed by the investigator and as this amount falls within the range of what I'd expect to see for such a matter, I think that is what Barclays should pay.

My final decision

For the reasons that I've given I uphold Mr and Mrs A's complaint against Barclays Bank UK PLC in so much as Barclays Bank UK PLC should pay an additional £350 for the lack of clarity in its communication when setting out what Title Deed documents it held and what it would be providing when Mr and Mrs A settled their mortgage.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 7 November 2024.

Keith Lawrence
Ombudsman