

## The complaint

Mr B and Mrs S, as trustees of a Discretionary Loan Trust ('DLT'), complain that Countrywide Assured Plc mishandled the original trust deed by failing to ensure its safe delivery and refused to provide a certified true copy, leaving them concerned about legal and tax implications.

## What happened

In September 2021, a DLT was set up using an onshore investment bond. In January 2025, Mr B approached Countrywide for the original trust form, but they explained that they no longer held the original; only a copy. Countrywide explained that the original was sent to the trustees shortly after the plan was set up, in November 2021.

After exchanging multiple messages, shortly afterwards, the trustees decided to formally complain to Countrywide. In summary, they said they were unhappy because Countrywide:

- were unable to provide them with another original Trust Deed, and neither were they able to provide them with a legally certified copy.
- did not send the original Trust Deed when the bond was set up and were concerned that the original document (or an equivalent certified copy) may be required by HMRC in the future.
- should be required to provide proof that the Trust Deed was issued to the trustees in 2021.

After reviewing Mr B's complaint, Countrywide concluded they were satisfied they'd done nothing wrong. They also said in summary:

- having consulted with their Technical Team, it would not be possible to draft another original Trust Deed, as that would mean breaking the trust.
- however, they confirmed that they would be happy to provide another copy from their records and confirm in writing that it was a true copy.
- a physical copy of the Trust Deed was subsequently posted to the trustees with their letter dated 20 November 2024.

On 2 December 2024, Countrywide received a further email from the trustee, which stated:

*"Thank you for your letter but your covering letter does not tie it to the original Document therefore could you certify the actual document by Sealing the copy document and write on it:*

- *CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT and stamp or emboss with your*

*company seal. You will also need to sign each page. Once received I will forward a copy of the completed Trust Document to the HMRC for their approval on the understanding that I hold the original Copy. Should there be any doubt please ask your Legal advisors to provide a Certified Copy.”*

Countrywide explained that they then referred the matter back to their Technical Team, who confirmed that unfortunately it would not be possible for them to certify a copy of a Trust Deed in this way. This was because they did not have the original deed in their possession and therefore could not provide a legal attestation of this kind.

Countrywide went on to say that in order for them to ‘certify’ a document in the way that the trustees requested, it would be necessary for them to have the original document in their possession. However, as the trustees have already confirmed that the original Trust Deed has been mislaid, Countrywide explained that this will not be possible; they went on to say that all they were able to do is confirm that the copy they have sent the trustees is a genuine copy of the copy that they hold. However, Countrywide explained that they cannot state “this is a true copy of the original” without having the original. They also said that as there can only ever be one ‘original’, it will not be possible to recreate or certify an original.

The trustees responded to Countrywide on 19 December 2024, explaining that they needed a legally certified copy, because they were concerned that HMRC might require it in the event of the trustees’ death and if the document was not forthcoming, then it could potentially cause issues for the beneficiaries.

Countrywide responded saying:

- whilst they appreciated the trustees’ concerns about the hypothetical need to have another original Trust Deed, or a legally certified copy of it, this wasn’t something that they are able to do for the reasons they’d provided.
- whilst the trustees had stated that they did not receive the original Trust Deed when the bond was set up, their system records indicate it was sent to them on 1 November 2021.
- they are unable to provide a copy of the covering letter which would have accompanied it, and it is not their practice to retain proof of posting. But, they are confident their system records are accurate, so they were unable to conclude that they failed to issue it.

Mr B was unhappy with Countrywide’s response, so he referred the trustees’ complaint to this service. In summary, he said the trustees were unhappy because Countrywide:

- claim they sent him the original trust deed back, but he did not receive this.
- are unable to provide a copy of the cover letter they sent when they returned the original copy, or any proof of postage.
- won’t now provide a new trust deed.
- won’t certify that the copy they have now provided is a ‘certified true copy of the original document’.
- won’t provide a confirmatory trust deed.

The complaint was then considered by one of our Investigators. She concluded that Countrywide hadn’t treated the trustees unfairly because:

- firms regularly return documents via postal services. There are also no rules that say they have to do this via recorded delivery.
- there is no expectation of Countrywide to notify customers when returning documents.
- Countrywide were not expected to certify the copy of the trust deed they kept.
- there are also no rules that say firms have to keep a copy of the documents they send.

Our Investigator went on to say that Mr B had asked for a confirmatory trust deed. Countrywide looked into this and said that they don't have a way of organising this. Because she'd not found any failings, our Investigator concluded that she was unable to ask them to pay to have it implemented for the trustees.

Mr B, however, disagreed with our Investigator's findings. In summary, he said:

*"1. Duty of care and professional standards - A discretionary loan trust deed (Discretionary Trust Deed) is a critical legal instrument, central to estate planning and inheritance tax arrangements. It is not equivalent to routine correspondence. Sending such a deed by untracked post, without informing me, created an entirely foreseeable and avoidable risk of loss. Any reasonable professional would have:*

- *retained a certified copy before releasing the original; or*
- *used a secure, tracked, or signed-for delivery method.*

*Countrywide did neither. I submit that this amounts to a breach of their duty of care, regardless of whether explicit FCA rules mandated those steps.*

*2. Disproportionate consumer harm - The loss of the original trust deed exposes me and the trustees to significant legal and financial risks, including:*

- *uncertainty over the trust's enforceability;*
- *potential challenge by HMRC, which could result in the loss of inheritance tax relief through the discount mechanism;*
- *the need to incur legal costs to attempt reconstruction or validation of the trust.*

*The harm caused is vastly disproportionate to the modest cost or administrative burden that would have been required for Countrywide to handle the document appropriately.*

*3. Consumer vulnerability - I am now left in a highly vulnerable position. Unlike Countrywide, I do not have the resources to reconstruct the trust or to obtain a confirmatory deed without incurring significant costs. To suggest that it is "not uncommon" for original trust deeds to be lost is no comfort—it simply illustrates the importance of robust handling procedures, which Countrywide failed to follow and are required to by the FCA.*

*4. Fairness and reasonableness - The Ombudsman's test is not limited to checking whether a firm broke FCA rules. It is also about applying standards of fairness and reasonable care. On that test, Countrywide's conduct falls short. At a minimum, I believe it would be fair and reasonable to require Countrywide to:*

- *bear the cost of arranging a confirmatory trust deed; or*

- *provide a certified true copy of the deed they hold, to mitigate the risks I now face. This will be the document they will claim is a true copy upon redemption. All I am asking for is that they sign and stamp this document to say it is a true copy.”*

Shortly after receiving our Investigator's view of the complaint, the trustees stated that they had also raised their concerns with the Information Commissioner's Office (ICO). The trustees explained to the ICO that they believed Countrywide Assured had lost the original Trust Deed. Their complaint went on to say that they believed Countrywide claims to have posted the document to them in November 2021, but cannot provide proof of postage. The ICO explained that they had reached the following outcome:

*“We have raised the matter with Countrywide Assured and taken the opportunity to provide them with compliance advice to improve their information rights practices. Specifically, we recommended that the organisation:*

- *Reviews the processes it has in place for sending postal correspondence and considers whether, given the nature and context of the information in question, the current processes are appropriate for the level of risk involved.*
- *Maintains clear accountability measures, including records of dispatch.*
- *Revisits internal procedures and staff training to reduce the risk of similar issues occurring in the future.*
- *Reviews security measures in place since November 2021.*

*We have made a record of this complaint but do not intend to take any further action at this time. The information we record may be used to guide any further action we may choose to take in the future.”*

Unhappy with our Investigator's view, the trustees then asked for their complaint to be passed to an Ombudsman for a 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 have summarised this complaint in less detail than the trustees have done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No courtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by the trustees and Countrywide in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have

happened. And, having done so, I'm not upholding the trustees' complaint and it's largely for the same reasons as our Investigator - I'll explain why below.

#### Sending the trust document using standard mail

Countrywide say that the trust document was sent using standard mail on 1 November 2021. The trustees state that they were unaware that the trust document had been posted to them and are disappointed that Countrywide used a normal mail service, rather than tracked or special delivery.

As the trustees have also raised this specific point with the ICO who have issued a response, I think it's worth noting here that their compliance advice is about information rights and process improvements; it is relevant background, but it doesn't determine fault or impose remedial obligations in this individual dispute. The ICO's compliance advice does not determine whether Countrywide lost the deed in this case and therefore it does not change my finding on what is more likely to have occurred.

I am not aware of the regulator having in place any specific rules that mandates the use of either tracked or special delivery for certain types of documents. And, typically, we would usually consider a document that has been posted by the firm as having been received by the customer. I have looked at the address that Mr B provided on his complaint form to this service and it appears to be the same as that which was provided to Countrywide at the time the trust was set up.

So, while there's no rule requiring tracked post, I've weighed Countrywide's contemporaneous record (noting dispatch on 1 November 2021) against the trustees' assertion of non-receipt and the absence of proof of posting. On balance, the firm's system record carries more weight here, so I find it more likely than not that the deed was sent.

Whilst I accept that the trustees state that they never received the trust form, I can't reasonably conclude that Countrywide have done anything wrong by failing to use special delivery. There's no regulatory requirement to do so, though I accept that using tracked or signed-for delivery for such an important document would have been a more robust approach.

#### Provision of a new trust deed

Countrywide say that they're unable to provide a new trust deed as it would involve 'breaking the trust'. In short, issuing a fresh 'original' would amount to creating a new settlement (which is often referred to as a resettlement). That introduces legal and potential tax consequences the firm cannot reasonably be required to trigger, particularly in the absence of any failing found.

#### Certification of the trust document

I can well understand Countrywide's reluctance to provide attestation that the copy they hold of the trust document, is a copy of the original. When providing attestation, the individual signing it on behalf of the firm is providing confirmation that they have had sight of the original, but in this instance, because the document Countrywide holds is a copy of the original, it wouldn't be fair or reasonable to ask an individual to claim that they've seen something that they haven't. I think Countrywide's confirmation that the enclosed document matches the copy held on file is reasonable. By contrast, attesting 'true copy of the original' would imply sight of the original document, which the firm does not possess.

#### Confirmatory trust deed

A confirmatory trust deed is a document that confirms the terms of an existing trust when the original deed is missing. Mr B wants Countrywide to pay his legal costs in having such a document drawn up. However, for me to be able to instruct Countrywide to shoulder that cost, I'd need to be satisfied that they'd done something wrong, but that threshold hasn't been met because I've already concluded that there's no evidence to suggest that Countrywide didn't send the original trust deed.

I've considered the trustees' points on potential consumer harm and vulnerability. Those concerns are understandable. However, in the absence of any evidence of a failing by Countrywide, fairness does not extend to requiring the firm to underwrite legal costs for a confirmatory deed.

As I've not been able to reasonably conclude that Countrywide have done anything wrong, it therefore follows that I'm not upholding the complaint.

### **My final decision**

I'm not upholding Mr B's and Mrs S's, as trustees of a Discretionary Loan Trust, complaint and as such, I won't be instructing Countrywide Assured Plc to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs S as trustees of the Discretionary Loan Trust to accept or reject my decision before 27 January 2026.

Simon Fox  
**Ombudsman**