

complaint

Mr S complains that Bank of Scotland Plc ("BoS") is acting unfairly and unreasonably when setting conditions on its release of the deeds of his property. He wants matters put right.

background

Mr S had an interest only mortgage with BoS, which ended in October 2017 without being paid in full. Mr S and BoS discussed the matter, but they weren't able to agree a new mortgage. Mr S then wanted to re-mortgage with another lender, but this required him to register his property with the Land Registry (which his solicitors at the time of purchase should've done). This meant that he needed the deeds held by BoS. It said that it was willing to lend the deeds to Mr S' solicitor if they agreed to be responsible for them, including when the deeds are with the Land Registry. Mr S said that his solicitors wouldn't agree to be responsible for the deeds when not in their possession and BoS wouldn't agree to send the deeds direct to the Land Registry. He felt BoS was acting unfairly and unreasonably.

Mr S complained to BoS. It agreed that it had delayed writing to Mr S' solicitors and paid £100 compensation for the trouble and upset caused by this (£450 compensation was separately paid for related service issues). But it was adamant that Mr S' solicitors had to promise to look after the deeds and cover any costs of reconstruction if anything happened to them.

Mr S complained to us, and said he'd got the Land Registry's agreement to accept certified copies of the deeds, which meant the registration could be progressed. He still felt BoS had been awkward. BoS explained that this was the standard process, and partly caused by the fact that Mr S' solicitors weren't on its panel (it said that Mr S had been told this was an issue). The investigator's view was that BoS was reasonable in requiring Mr S' solicitors to be responsible for the deeds and it didn't prevent registration. Part of the delay was because the solicitors weren't willing to agree, but that wasn't in her view BoS' fault. She also said that it was Mr S' choice to use solicitors to chase BoS, and that the compensation paid to date was fair and reasonable.

Mr S disagreed. He said the focus of his complaint was the conditions set by BoS upon his solicitors regarding the deeds. Mr S felt BoS hadn't acted reasonably and the investigator had failed to explain her reasoning for her findings. He wanted this service to change BoS' practices.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I'm going to focus on the core of this complaint, which is about whether BoS acted unfairly and unreasonably when setting conditions for the release of the deeds to Mr S' solicitors. The service issues have been resolved through compensation payments and Mr S didn't raise them as an issue when complaining to this service. Also, this service only deals with individual complaints and cannot make a business change its practices.

Mr S' property hadn't been properly registered at the Land Registry – this wasn't the fault of BoS. But in order to allow Mr S to remortgage, the property needed to be registered and the deeds held by BoS as security was needed to do this. As the property wasn't registered, the deeds are extremely valuable and it's likely to cost a significant sum to reconstruct them if they were lost e.g. in the post when sent to the Land Registry by Mr S' solicitors. Effectively, what BoS' conditions did was to make it clear that if anything happened to the deeds, the solicitors would be expected to reconstruct (or pay for the reconstruction) the deeds – BoS would need the deeds to be reconstructed to preserve its security.

In my experience, solicitors often ask their clients to agree to be liable for the costs if something happens to the deeds and matters proceed. Mr S was also told that he could use a panel solicitor, but chose not to do so. Having considered the matter, and the relevant law, I think BoS acted fairly and reasonably in requiring the solicitors to be responsible for the deeds and not sending the deeds direct to the Land Registry in order to ensure as much as possible that its security was protected at Mr S' expense.

And some of the delays were caused by the solicitors not agreeing to BoS' conditions. I don't know if they asked Mr S to agree to pay if the deeds were lost or damaged. It's also relevant for me to note that the Land Registry was willing to accept certified copies of the deeds, something which solicitors should be able to advise meant that the original deeds didn't need to be sent.

I also don't think that it's fair or reasonable for the legal fees incurred in chasing BoS should be paid as it was Mr S' choice to instruct solicitors to do this. The evidence shows Mr S was able to complain. And in any event, he has received £550 compensation for the trouble and upset due to the service issues accepted by BoS, which in my view does fairly and reasonably compensate Mr S, as much as money can compensate for his trouble and upset.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 February 2019.

Claire Sharp
ombudsman