

## **complaint**

Mr R and Ms L complain that Bank of Scotland Plc trading as Halifax (“Halifax”) unfairly and unreasonably lost documents relating to their property. They want matters put right.

## **background**

Mr R and Ms L took out a mortgage with Halifax in 1999. They said that there was a bundle of documents relating to the property, including documents from before registration with the Land Registry. Mr R and Ms L said that they asked if they could keep these documents as their property was old, but said they were told that they were part of the security held by Halifax and had to be given to it. Their solicitors sent a bundle of documents to Halifax.

But in 2017, Mr R and Ms L wanted to see the documents to deal with a dispute over a right of way. Halifax said that it didn’t have the documents, and sent the title deed. The Land Registry also sent copies of some historic deeds it held. Mr R and Ms L believed that Halifax had lost some of the deeds and had caused them to have to spend time and money proving historic use of the right of way in dispute.

Mr R and Ms L complained to Halifax. It said that it had made a mistake in not coming back to Mr R and Ms L as promised about their query and paid £75 compensation for the trouble and upset caused by this. But Halifax said it sent all the documents it held to Mr R and Ms L’s solicitors in January 2018, and it was its policy to hold all the documents together so there was nothing missing. It also pointed out that it had sent a full copy of the deeds in 2011 to Mr R and Ms L and they didn’t say at the time that anything was missing. Halifax confirmed that it had nothing else in its possession.

Mr R and Ms L complained to us, saying that they’d been trying to get hold of the documents for years without success. The adjudicator’s view was that Halifax wasn’t at fault. He noted that Mr R and Ms L were unable to say what documents were in the original bundle sent to Halifax in 1999 and that Halifax hadn’t separated the documents it received. The adjudicator was content that Halifax had investigated and said that there was no guarantee whatever Mr R and Ms L were looking for would help with the right of way dispute.

Mr R and Ms L disagreed. They wanted to know if Halifax had a record of what it received in 1999 and if it denied receipt of what they were looking for. Mr R and Ms L also wanted to know if the “dematerialisation” process had affected their documents (this is a process where documents are electronically saved and the hard copies destroyed). They said Halifax has a duty of care to return documents received. Halifax confirmed that there was no record of what was received in 1999 as it didn’t go through the documents, just put them in the vault. It said it did return the documents it had received, and it hadn’t dematerialised the documents. Mr R and Ms L believed their documents had been destroyed. The adjudicator didn’t change his view.

## **my findings**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Mr R and Ms L say that they have shown this service what was sent to Halifax in 1999, but in my view they haven't. They recall seeing a bundle of documents, but can't say for certain what was in the bundle. They haven't shown what was sent to Halifax and what was retained by their solicitors in 1999, other than the fact that a documents were sent to Halifax. Halifax isn't responsible for the failure to set out exactly what was sent to it by a third party.

Halifax says that it has returned what it was sent in 1999. It has provided evidence that its process, like many lenders, is simply to store any bundle of documents in a single vault. The bundle isn't reviewed as that isn't necessary as the mortgage has been completed by the time it is received. This is standard industry practice. This has the benefit though of Halifax being able to state with confidence that nothing has been lost as the bundle wasn't opened – it was simply stored (until a copy was required in 2011). And Halifax has confirmed that nothing has been dematerialised as a result. Having looked at the evidence before me, I can't say Halifax has lost any documents as there's no basis on which I could make such a finding on the balance of probabilities.

I note that in 2011 Halifax responded to Mr R and Ms L's requests and sent a copy of what it held. No complaint of missing documents was made at the time. The next time that Mr R and Ms L asked for the documents according to the evidence before me led to Halifax's letter to Mr R and Ms L's solicitors in 2018 and its unreasonable failure to respond to calls. But I think £75 compensation for this failing is fair and reasonable, particularly as Mr R and Ms L are more upset about the possibility of lost documents, something for which I haven't found Halifax to be at fault.

### **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 R and Ms L to accept or reject my decision before 27 January 2019.

Claire Sharp  
**ombudsman**