

complaint

Miss L complains that she has asked Kensington Mortgage Company Limited for the deeds to her property, but it won't give them to her until she has paid off her mortgage.

our initial conclusions

Our adjudicator thought that Kensington was entitled to retain the deeds, so he didn't uphold the complaint. Miss L didn't agree. She said that she bought the property for cash, she is the first charge holder and Kensington is just the second charge holder. She said it isn't entitled to keep them. So the case has come to me to decide.

my final decision

To decide what is fair and reasonable in this complaint, I have considered everything Miss L and Kensington have provided.

I've noted what Miss L says about being the first charge holder. But I'm afraid she's wrong. I've checked the current Land Registry entry for her property, and it shows her as the registered proprietor – and that Kensington has a first charge. This is exactly what I would expect it to show for a mortgaged property. "First charge" doesn't mean the same thing as "owner" and Miss L doesn't have the first charge. "First charge" means that Kensington has the right to be paid first out of the proceeds of sale – ahead of any other charge holder (though there aren't any here), and ahead of Miss L herself. Once the mortgage is repaid, Kensington should discharge its charge, and it will then not have any interest in or power over the property or the proceeds of its sale.

In any case, the mortgage terms and conditions require Miss L to give Kensington the deeds, and allow it to keep them until the loan is paid back. So it is within its rights to hold on to them – and I can't tell it to do otherwise.

For the reasons I have given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss L either to accept or reject my decision before date 10 August 2015.

Simon Pugh

ombudsman at the Financial Ombudsman Service

The ombudsman may complete this section where appropriate – adding comments or further explanations of particular relevance to the case.

ombudsman notes

It may reassure Miss L to know that these days the paper deeds to a property don't have any real function. For some years the Land Registry has used electronic title registration, and it is the contents of the register that determine whether or not a property can be sold and what happens to the proceeds when it is.

For the same reason, Kensington might want to think about whether it needs to keep the paper deeds. It is clear Miss L has very strong feelings about it, and the fact is that possession of them doesn't make a great deal of difference to Kensington's ability to protect or enforce its security. Miss L wouldn't be able to sell the property or charge it to another lender without Kensington's charge being repaid or without its agreement, whether or not it has possession of the paper deeds. But, as I said overleaf, because I don't think Kensington has actually done anything wrong I don't direct it to do anything; I merely suggest that it might want to think again.

what is a final decision?

- A final decision by an ombudsman is our last word on a complaint. We send the final decision at the same time to both sides – the consumer and the financial business.
- Our complaints process involves various stages. It gives both parties to the complaint the opportunity to tell us their side of the story, provide further information, and disagree with our earlier findings – before the ombudsman reviews the case and makes a final decision.
- A final decision is the end of our complaints process. This means the ombudsman will not be able to deal with any further correspondence about the merits of the complaint.

what happens next?

- A final decision only becomes legally binding on the financial business if the consumer accepts it. To do this, the consumer should sign and date the acceptance card we send with the final decision – and return it to us before the date set out in the decision.
- If the consumer accepts a final decision before the date set out in the decision we will tell the financial business – it will then have to comply promptly with any instructions set out by the ombudsman in the decision.
- If the consumer does not accept a final decision before the date set out in the decision, neither side will be legally bound by it.