

complaint

Ms L complains that Yorkshire Building Society has lost her title deeds and her divorce decree.

background

In April 2017 Ms L repaid her YBS mortgage, and YBS executed a discharge of standard security (the property being in Scotland) on 26 April. On 15 May YBS wrote to Ms L:

"The legal formalities are now complete and we enclose the Title Deeds to your property. They should be kept safe as they will be required when the property is next sold or transferred."

Ms L made a complaint call to this service. She acknowledged that she was sent house documents but said this didn't include the title deeds. And she said YBS had lost her divorce documents. Ms L also made a data subject access request (DSAR).

YBS responded to Ms L's complaint. It said:

"The Deeds Team confirm that the documents we previously enclosed with our letter dated 15 May 2017 are what we consider to be the title deeds to your property. Additionally, they've checked our records and confirm we hold no further documents related to this matter....The Deeds Team have provided me with a reference of [...] which you can give to the Land Registry with any queries you may have. I'm informed your property is registered with the Land Registry."

"With regard to the second part of your complaint, I understand you feel that Yorkshire Building Society may have destroyed or lost your Decree Nisi [sic] and you're unhappy this document wasn't returned to you following your DSAR....I again looked into the matter with your concerns in mind. I was unable to find any evidence that you provided Yorkshire Building Society with your Decree Nisi at any time. It appears to be the case that this is why the document was not returned to you following your DSAR."

Our investigator didn't recommend Ms L's complaint be upheld. YBS had said it had sent the deeds along with other documents to Ms L's solicitors in 2001 for a transfer of equity. Once this was completed the solicitors had sent the documents back. But YBS was unable to confirm if the title deeds were returned at this time. YBS said no property title deeds had been destroyed, and it wasn't part of its policy to do this.

The investigator said YBS should have taken more care and should have checked that it received the deeds. But the title to Ms L's property was registered and if disputes arose the land registry would be able to clarify things. The investigator didn't think this had been detrimental to Ms L as the home owner.

The investigator said YBS hadn't been able to locate Ms L's divorce documents, but couldn't say that she had never provided them to YBS. YBS had offered Ms L some £600 for this and other complaints, which included £150 for Ms L to get these documents replaced. The investigator thought this was a fair offer.

Ms L didn't agree. She said YBS had lost or destroyed her title deeds and notarised copies of her financial separation and divorce certificate. YBS didn't have permission to destroy any of these documents if that was what they did with them. The title deeds pinpointed which strips of land within the estate went with her house. Without knowing this she'd never be able to sell the house. And the title deeds could be used to take out a new mortgage against it.

my findings

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

YBS can't confirm whether the documents sent back by the solicitors in 2001 included any pre-registration title deeds. There was a package containing some documents, which YBS sent to Ms L on 15 May. YBS says that's all it had. We don't know whether the solicitors didn't return the pre-registration title deeds, or whether YBS didn't send them, or whether they were retained by the Land Registry on first registration.

YBS clearly assumed that what it received from the solicitors was the pre-registration title deeds. It should have checked this at the time and noted its records accordingly. On redemption it ought to have been able to return to Ms L her pre-registration title deeds, if there were any.

But nothing follows from this as far as the title to the house is concerned. The title is registered. The pre-registration title deeds are no longer needed. It's probable that the title was already registered when Ms L and her former husband bought the house, and if not, that it was registered at that time. There's no reason for the registration to have been made subsequently.

Title deeds to registered properties are not needed for legal purposes. It's common on estate developments for a house title to include another strip of land, usually for use as a parking space. But if that happens, it's shown on the registered title or the filed plan. There's no need to refer to the pre-registration title deeds for this purpose. There need be no difficulty in selling the house, and I can't see that any financial loss has been caused.

Nor could the pre-registration title deeds, if found by somebody else, be used by them to mortgage the house. Only the identified registered proprietor could do that.

There's no evidence that YBS ever had a sealed original or a notarised copy of Ms L's decree absolute. And there's no suggestion that Ms L has tried to obtain a copy of the decree absolute from her divorce solicitors or from the court. I can't see any basis for an award against YBS.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 12 February 2018.

Edward Callaghan
ombudsman