

complaint

Mr and Mrs W complain that the pre-registration documents of title to their house were damaged and destroyed by flooding while in the custody of their mortgagee Yorkshire Building Society.

background

Mr and Mrs W bought their property in 2003 with a mortgage loan from YBS. Either the title was already registered at HM Land Registry or it was registered at that point. The pre-registration documents of title ("the deeds") were lodged with YBS.

In November 2017 Mr and Mrs W redeemed the mortgage and requested the deeds. YBS wrote to them:

"Please accept our sincere apologies as we regret that when we went to retrieve your deeds packet from our strongroom, they were found to have suffered water damage from a leak on the floor above. Unfortunately, most of the paperwork was damaged beyond repair, but we enclose those which we were able to save."

Mr and Mrs W made a complaint to YBS. It apologised and offered a redress payment of £250.00 to cover the cost of their phone calls, letters and the distress and inconvenience caused. Mr and Mrs W weren't happy with this and brought their complaint to this service. They said:

- YBS owed them a duty of care to look after the deeds, which it had failed to do. They wondered whether YBS' deed storage facilities were fit for purpose. A building society's deed storage facility shouldn't be at risk of flooding or burst pipes (or whatever else happened). YBS had been negligent in not having adequate safe custody facilities for documents of title;
- YBS had asserted that because of the electronic register at the Land Registry, the old paper documents were no longer required. This might be true to a large extent, but not entirely. There could be overriding interests which weren't noted on the electronic register, where parties might need to refer back to old deeds and documents. Given that unknown documents had been destroyed, they had no idea whether a party could have a right which could be asserted against their property in the future;
- if they sold the property, the purchaser's solicitor might want a report on title which considered whether there were any subsisting rights under the old deeds, and Mr and Mrs W didn't know what deeds had been lost. They would be unable to say that they could produce all the documents which might affect the property.
- the offer of £250 compensation for YBS failing in its duty to provide safe custody of their deeds should be significantly increased.

Our adjudicator didn't think YBS needed to do any more. He thought the leak was an accident. On a sale of the property the solicitor would be relying on public records and given what the land registry had on record he didn't think there would be any issues with selling the house without the original deeds.

Mr and Mrs W were concerned whether any other documents were damaged when the leak occurred. The adjudicator said YBS had confirmed that no other documents had been damaged.

The adjudicator couldn't say this was anything other than an accident. He felt that YBS had engaged with Mr and Mrs W throughout this process although he was sure it could have done better when initially communicating with them. He felt that £250 in recompense was appropriate and in line with what he would have recommended.

Mr and Mrs D didn't agree and asked for review by an ombudsman. They had never sought to argue that the loss of the deeds was anything other than an accident. But they didn't believe this absolved YBS from its responsibility to safeguard their documents. Its assurance that no others had been damaged didn't tally with its admission that some were lost. It didn't know what those documents were and neither did Mr and Mrs W. They had no idea whether there could be documents which evidenced over-riding interests.

They would have expected £5,000 at the very minimum as a reasonable offer.

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 and Mrs W have sent me a helpful letter drawing my attention to the relevant sections of the mortgage conditions, notably condition 43 which provides that all documents relating to land on which loans are secured shall be kept in safe custody by YBS. They say:

"The documents may have been destroyed by accidental flood, but this does not absolve the Society from its obligations. It was obliged to retain our documents in safe custody and it failed in this duty."

In other words, YBS is contractually liable to them irrespective of proof of negligence. And they would also say, if necessary, that YBS was negligent in not maintaining safe custody facilities which were proof against flooding.

But what these propositions mean, if they are correct, is that YBS is bound to make good Mr and Mrs W's losses. However I don't think any financial losses have been made out. Mr and Mrs W properly acknowledge that the deeds aren't required in order to make title to a purchaser. They are worried about interests not noted on the register, where parties might need to refer back to old deeds and documents, and that a purchaser could be concerned about this.

But the deeds were evidently examined by the Land Registry on first registration. The Property Register records that the property has the benefit of the rights granted by, and is subject to the rights reserved by, a Deed of Assent the original of which is filed at the Registry. And the Proprietorship Register records a conveyance containing personal covenants, the original of which is also filed. I think Mr and Mrs W can be confident that if

there had been any other rights or obligations referred to in the deeds, which would have concerned a purchaser, these would have been noted.

While the matters referred to above haven't caused actual financial loss, I accept that they have caused considerable anxiety to Mr and Mrs W. But in the circumstances, I agree that £250 is an appropriate amount to compensate for this.

my final decision

Yorkshire Building Society has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances. I understand that YBS' cheque for £250 and an earlier cheque were returned to it by Mr and Mrs W.

So my decision is that Yorkshire Building Society should pay Mr and Mrs W £250 compensation for their trouble and anxiety.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 26 October 2018.

Edward Callaghan
ombudsman