



<u>Decision Ref:</u>	2019-0070
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Lost or mislaid title deeds
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

Background

This complaint relates to the loss by the Financial Services Provider of the Complainant's title deeds for a property formerly mortgaged by the Provider through maladministration and poor customer service in relation to a mortgage account.

The Complainant's Case

The Complainant was a mortgage holder with the Provider. On foot of which, the Provider held the title deeds to the mortgage property in a branch since 1990. The mortgage was cleared in 1991.

In 2015, the Complainant needed the deeds in order to make changes to the title details of his property. He states that he handed in a written request to the branch for the title deeds in November 2015. He states that the Provider denied receiving that first letter. As the Complainant received no response or acknowledgement to this letter of November 2015, he delivered a second letter on 18 February 2016. The Complainant states that he received an immediate telephone call from the Customer Service Manager who informed the Complainant that his first letter had not been received. The Complainant states that he delivered it directly to the cashier in the branch.

The Complainant states that throughout the months of March and April 2016 he experienced a very poor customer service from the Provider who failed to give a straight answer as to the whereabouts of his title deeds.

In May 2015, the Complainant submitted a complaint to the Provider on the basis that he had written two letters seeking his title deeds, had called to the branch personally four times and had made at least six telephone calls. Notwithstanding all of that no action had been taken by the Provider and no explanation had been given to him as to the whereabouts of his title deeds.

The Complainant ultimately received communication from the Provider by letter dated 18 July 2016 in which the Provider informed the Complainant that they were unable to locate his title deeds.

The Complainant is wholly dissatisfied with what he says is the total lack of transparency and openness on the Provider's part leading up to the admission that it had lost his Title deeds. In addition, he states that as a result of the title deeds being lost he was unable to effect the necessary changes to the title deeds.

The Complainant is seeking compensation in excess of €40,000 in consideration of the damage, frustration, worry and injury caused to him by the Provider.

The Provider's Case

The Provider accepts that the title deeds have been lost or mislaid from its branch. The Provider denies any wrongdoing in respect of the handling of the Complainant's complaint.

The Provider states that after all avenues had been exhausted in an effort to locate the Complainant's title deeds, the Provider conceded that they been misplaced. In order to rectify the matter, the Provider's branch manager contacted a solicitor firm in order to re-constitute the Complainant's title deeds. The Provider explains that this was initially done without the clear written authorisation of the Complainant and that the Complainant ultimately stated that he would not provide written authorisation until such time as his complaint is fully dealt with.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

/Cont'd...

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 13 February 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issuing of my Preliminary Decision, the Complainant made a further submission to this Office on 28 February 2019, a copy of which was transmitted to the Provider for its consideration. The Provider has not made any further submission.

Having considered the Complainant's additional submission, together with the evidence submitted by both parties, I set out below my final determination.

The complaint is that the Provider has lost the Complainant's title deeds and provided a poor level of service.

The Complainant wanted to access his mortgage deeds, which had been stored by the Provider in its branch since 1992, to put his affairs in order on behalf of his family.

The Provider's response to the complaint details the in-branch and ancillary searches it conducted in an effort to locate the deeds but without success. The Complainant remains aggrieved at the length of time it has taken to reach the point where the Provider offered an apology, a financial gesture to compensate him for his inconvenience and an offer to re-constitute the lost deeds on his behalf.

The Complainant will not accept the offers until such time as his complaint has been adjudicated.

It will be useful to set out a chronology of the key dates and actions:

- | | |
|---------------|--|
| November 2015 | Complainant hand delivered letter to branch, requesting deeds. Provider has no record. |
| 18 Feb 2016 | Complainant hand delivered second letter. Customer service |

/Cont'd...

Manager telephoned Complainant to say Provider had no record of first letter. Provider began search for documents. When not found in branch, searches other branches and central repository.

- 8 May 2016 Complainant wrote letter of complaint, received by the Provider on the 12th May, letter points out that Complainant has been waiting for six months. No record of contact between Provider and Complainant in interim 3 months by Provider, although Complainant references numerous telephone calls.
- 18 May 2016 Provider acknowledged letter of complaint.
- 24 May 2016 Complainant responded to Complaints Section address of Provider. Letter contains sentence, "I will facilitate any action required to find or re-constitute my documents with my written consent".
- 9 June 2016 Provider sent 20 day letter that investigation is ongoing.
- 1 July 2016 Customer Service Manager from branch instructed a solicitor to re-constitute deeds including time frame and costs for completion. There is no reference in e-mail to instructions to do so nor an acknowledgement that the missing documents are not going to be found.
- 7 July 2016 Complainant wrote to Customer Complaints, reiterating frustration and complaints.
- July 2016 Provider wrote undated letter to Complainant, received by Complainant on 10 July stating investigation is ongoing. Letter from Provider undertook to revert to Complainant by 5 August.
- 15 July 2016 Complainant seeks update on progress and information held by Provider.
- 18 July 2016 Provider informed Complainant investigation complete. Final Response letter. Accepts that Complainant delivered two letters, November and February. Mentions locations of extensive searches. Also informs Complainant that Customer Service Manager at branch has asked for deeds to be re-constituted and that they would be ready in 4 – 6 weeks. Informs Complainant that the deeds have not been located. Apologises and offers €250.
- 20 August 2016 Complainant contacted Provider seeking financial information on potential mortgage payments.
- 3 August 2016 Complainant wrote to Provider, takes issue with re-constitution of deeds without his written consent. Expresses dissatisfaction at offer

/Cont'd...

of €250 compensation, 'appalling insult'. Complainant considers that €40k would be more appropriate. Also repeats pre-requisite that complaints must be resolved before re-constitution of deeds.

- 19 August 2016 Letter from Provider to Complainant. Explains extent of searches. Declined amount of suggested compensation and offered €500. Apologises for frustration and informs Complainant that the Customer Service Manager has been instructed to desist from deed re-constitution. Assured Complainant that it will only proceed with this course of action when he instructs it to do so in writing.
- 2 September 2016 Letter from Provider to Complainant. Reiterated offer and is a 'Final Response'.
- 14 November 2016 Letter from Provider to Complainant. Provider expresses further regret and increases offer to €1,500 in recompense.

I note the Complainant, in his post Preliminary Decision submission of 28 February 2019, states that his complaint was formally stated in writing in his hand-delivered letter of 18 February 2016.

This letter was addressed to the Branch Manager and states:

"Dear Manager,

Two months ago I personally delivered a letter requesting the return of the deeds to my home at [Location Redacted] The deeds are held in Lucan since 1990 and I hold a receipt.

I am surprised that there has been no response to my November letter; but I must say that I am less than impressed with the general level of service from [Provider] over recent years. Whereas staff at Lucan office have been without exception, courteous, efficient and helpful, this does not apply to senior management whose only concern is protection of their inflated egos and income.

Yours faithfully"

In response to this letter the Customer Service Manager telephoned the Complainant and commenced the search for the title deeds. While I accept the Complainant feels this letter constituted a formal complaint, I believe it was not unreasonable for the Provider to respond by telephone to the Complainant rather than treating it as a formal complaint. I note the Provider treated the Complainant's letter of 8 May as a formal complaint.

It is clear from the evidence submitted, that although it took some time, the Provider has acknowledged the loss of the title deeds and has tried to correct its error by having the deeds re-constituted. It subsequently transpired that this was in contravention of the

/Cont'd...

Complainant's wishes. The Provider has apologised on several occasions and has increased its offer of compensation from €250 to €1,500. Its offer of compensation and its offer to re-create the lost documents remains open to the Complainant.

In terms of correcting its error and handling the complaint, once it had been received, the Provider has adhered to the guidelines set out in the Consumer Protection Code (CPC). The gap between 18 February and 8 May in written communications may be explicable by telephone calls exchanged and the conduct of the searches by the Customer Service Manager.

I accept the Provider has complied with the relevant sections of the CPC. The loss of the first letter hand-delivered to a cashier in the branch in November 2015 is unfortunate. The Provider accepts in its investigation summary, 18 July 2016, that the letter was delivered, but offers no explanation for why it was not brought to the attention of the manager to whom it was addressed.

From 18 February 2016, when it became aware of the issue complained of, the Provider has searched for the deeds unsuccessfully, engaged with the Complainant and tried to resolve the issue. On 18 July 2016 the Complainant was informed that the documents could not be located in spite of the searches undertaken.

I understand that over 20 years had passed since the deeds were lodged with the Provider. That said, I do not accept that five months is a reasonable length of time for the process of conducting a search. I accept that the documents dated back to 1991 and that there would have been no need to access them in the interim. However, the responsibility remains with the Provider to ensure the safe retention of the deeds.

I note the Provider instructed solicitors to begin the process of re-constituting the deeds on 1 July.

I also note that the Provider estimated that this process would take between 4 to 6 weeks to complete.

I believe the Provider acted in good faith and in the best interest of the Complainant by instructing this course of action.

I note in this regard the Complainant had informed the Provider *"I will facilitate any action required to find or re-constitute my documents with my written consent"*.

I can see how this statement could have been thought to be consent by the Provider.

While it is unfortunate that the Provider did not seek more explicit consent before embarking on this course of action, I accept that it was done in an effort to resolve the matter to the benefit of the Complainant.

I note that when the Provider sought the express consent of the Complainant to

/Cont'd...

re-constitute the title deeds, the Complainant refused his consent pending the outcome of the adjudication of the complaint.

The Complainant, in his post Preliminary Decision submission of 28 February 2019, states *“the documents will be re-constituted by my solicitor and the Provider will pay the bill. This is not a concession and this would have been done with my blessing in January 2016 if the problem had been admitted”*.

The matter at the centre of the dispute was the loss of the title deeds. The Complainant says he had an important and urgent need to access the deeds. The Provider has conceded that it has mislaid/lost the deeds. It appears to me that the quickest way to resolve the problem would have been to allow the process of re-constitution to proceed.

The Complainant could have pursued his complaint with the Provider and with this Office even if the documents had been re-constituted.

Given the Complainant has stated that he had an urgent need to access the deeds, I find it difficult to understand why he was unwilling to proceed with this course of action. However, I accept that it was his entitlement to refuse this offer.

It is disappointing that the Provider has not explained how it lost the documents nor why it took five months to reach that conclusion and tell the Complainant. However, the Provider has offered compensation for the inconvenience and upset caused by the loss of the title deeds. The Provider has adhered to the requirements of the Consumer Protection Code. Once it was aware of the complaint, it discharged its obligations. Although the Complainant did not want it to do so, the Provider has tried to correct the error of its own volition by instructing solicitors to re-constitute the deeds.

In relation to the complaint handling and customer service aspect of the complaint, Sections 10.1 and 10.9 of the Consumer Protection Code 2012 provide:

- 10.1 *A **regulated entity** must have written procedures in place for the effective handling of errors which affect **consumers**.*
- At a minimum, these procedures must provide for the following:*
- a) *the identification of the cause of the error;*
 - b) *the identification of all affected **consumers**;*
 - c) *the appropriate analysis of the patterns of the errors, including investigation as to whether or not it was an isolated error;*
 - d) *proper control of the correction process; and*
 - e) *escalation of errors to compliance/risk functions and senior management.*

- 10.9 *A **regulated entity** must have in place a written procedure for the proper handling of **complaints**. This procedure need not*

/Cont'd...

apply where the **complaint** has been resolved to the Complainant's satisfaction within five **business days**, provided however that a **record of this fact is maintained**.

At a minimum this procedure must provide that:

- a) *the **regulated entity** must acknowledge each **complaint** on paper or on another **durable medium** within five **business days** of the **complaint** being received;*
- b) *the **regulated entity** must provide the Complainant with the name of one or more individuals appointed by the **regulated entity** to be the Complainant's point of contact in relation to the **complaint** until the **complaint** is resolved or cannot be progressed any further;*
- c) *the **regulated entity** must provide the Complainant with a regular update, on paper or on another **durable medium**, on the progress of the investigation of the **complaint** at intervals of not greater than 20 **business days**, starting from the date on which the **complaint** was made;*

I accept that the Complainant first requested his title deeds in November 2015 and the Provider failed to act upon this request. However, having examined carefully the correspondence following receipt by the Provider of the Complainant's complaint on 12 May 2016, I accept that the Provider complied with its complaint handling and investigation obligations.

The Complainant initially requested compensation of in excess of €40,000 for the injury, worry, loss, inconvenience, anger and frustration suffered by him. He reduced his request for compensation to €7,000 in his post Preliminary Decision submission.

In arriving at my Decision, I must take into account that the Provider had sought to instruct solicitors to re-constitute the title deeds as soon as it concluded that they were lost. However, it was unable to proceed with this course of action in the absence of consent from the Complainant as the Complainant has withheld his consent for this to happen, pending the adjudication of his complaint.

While I note the Provider's failings in losing the Complainant's title deeds and the time taken to inform him of this, I also note the Provider's offer to arrange and pay for the re-constitution of the Deeds and its offer of €1,500 in compensation. I find this to be reasonable in the circumstances.

On the basis that those offers remain available to the Complainant, I do not uphold this complaint.

/Cont'd...

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

25 March 2019

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
- and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.