



<u>Decision Ref:</u>	2019-0135
<u>Sector:</u>	Banking
<u>Product / Service:</u>	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

In early 2015, the Complainant contacted the Provider requesting the Title Deeds for her property (“the property”), which the Provider was unable to locate. The Complainant then logged a complaint with the Provider regarding her dissatisfaction at the loss of the title deeds by the Provider and requested compensation.

The Complainant’s Case

The Complainant attended a branch of the Provider and sought to obtain the title deeds to the property as she wished to dispose of the property. The Complainant’s agent (the “Agent”) corresponded with the Provider on her behalf in respect of locating the title deeds and on or about **6 May 2015**, after extensive correspondence between the Agent and the Provider, and after the Complainant attending at the Provider’s branch on a number of occasions, the Provider confirmed to that it was unable to locate the title deeds.

The Provider confirmed to the Agent that it would discharge the professional fees associated with the reconstituting of the title, together with any Engineer’s costs for the preparation of maps etc.

The Complainant is dissatisfied with the fact that the Provider has lost the title deeds to the property and she seeks compensation for the inconvenience that the loss of the title deeds

has caused to the Complainant and the delay caused by the loss of the title deeds in her transferring the property to her son.

The Provider's Case

The Provider has accepted responsibility for the loss of the title deeds.

The Provider explains that the deeds were released in **February 1995** to the Agent in respect of an intended sale of the property at that time, but the sale of the property fell through and the transaction did not proceed. The deeds were then returned by the Agent to the Provider's local securities unit in **March 1995**. The mortgage on the property was redeemed in **March 2002** but the deeds were never returned to the Complainant after the loan was cleared. The Provider's unit which had been holding the deeds disbanded and any deeds held by it were sent to the Provider's central securities department, who issued all items that were no longer needed to local branches.

In **January 2015** the Complainant attended at the Provider's branch to obtain the title deeds to the property. The Provider, however, was unable to retrieve the deeds from any of its branches despite a thorough search.

In an attempt to locate the deeds, the Provider maintains it contacted all of the county branches that had been serviced by the local securities unit before it was disbanded and it also contacted the Provider's central securities department.

The Provider ultimately accepts that it was its responsibility to ensure that the Complainant's title deeds were kept safe at all times but that the deeds could not be located after all avenues had been exhausted.

After the Provider had exhausted all avenues, it decided that, as the deeds were mislaid whilst in its care, the charges attached to the reconstitution of the deeds should be borne by the Provider. The Provider advised the Complainant and her Agent of this on **6 May 2015**. The Complainant's solicitor advised by letter of **12 May 2015** that their professional fee for the reconstitution would be €200 per hour plus VAT. A further letter dated **4 June 2015** from the Complainant's solicitor to the Provider confirmed that third party costs would also apply, as a new Certificate of Compliance would need to be prepared in order to progress the matter. The Provider responded by letter dated **11 June 2015** confirming that third party fees of €1,800.00 plus VAT would be paid as would any reasonable additional third party charges that may be incurred, provided that invoices would be submitted in advance.

The Complainant's solicitor wrote on **22 June 2015** to the Provider, confirming the Provider's intention to discharge legal fees. The Provider also received on that day an email from an Engineer confirmed his fee of €700 plus VAT.

The Complainant had concerns regarding Capital Gains Tax and the potential increase to her liability due to the delay in receiving her deeds. The Provider clarified the Complainant's concerns regarding Capital Gains Tax in a letter dated **30 July 2015**, wherein it outlined that

/Cont'd...

if the property was put on the market, any increase in liability would be nullified by the increased sale proceeds.

The Provider maintains that as the deeds were required to transfer the property to the Complainant's son, Capital Gains Tax to the Complainant should not incur. The Provider then offered a sum of €1000 as a goodwill gesture to compensate the Complainant for the loss of deeds and inconvenience caused.

The Complainant's Solicitor replied by letter dated **17 October 2015** refusing the offer for compensation on behalf of the Complainant, requesting (i) payment of €861 for the Engineer, (ii) €3,116.04 for Solicitors' fees, Certificate of Compliance preparation and reconstitution of the deeds, and (iii) requesting a sworn lost deed Affidavit so that it could be lodged as requested by the Property Registration authority.

Drafts regarding payments as requested were sent on **11 November 2016** to the Complainant's solicitor. The Provider also provided a sworn affidavit to the solicitor on the same day, but it subsequently transpired that the affidavit was incorrect and required to be prepared again and ultimately refurnished on **3 February 2017**.

The Provider maintains that it continued to liaise with the Complainant's solicitor and the central securities department in an effort to resolve the complaint made by the Complainant.

As a result of the failure to locate the deeds, the Provider has offered the Complainant €5,000 as a goodwill gesture for the inconvenience involved, and the length of time it has taken to resolve the issue. The Provider has also covered all costs, as requested by the Complainant, relating to the reconstitution of the deeds for the property, namely €861.00 for the Engineer's fees and €3,116.04 for the Agent's fees.

The Complaint for Adjudication

The complaint for adjudication is that the Provider lost the title deeds to her property, causing her inconvenience and causing a delay in the intended transfer of the property to her son, for which the Complainant seeks compensation.

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 16 April 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.

In the absence of additional submissions from the parties, I set out below my final determination.

The Provider ultimately accepts that it was its responsibility to ensure that the Complainant's Title Deeds were kept safe at all times and that, unfortunately, the deeds could not be located after all avenues were exhausted.

I note the Provider has acknowledged its fault in losing the Complainant's property deeds and has apologised for the inconvenience caused and the length of time taken to rectify the error.

I accept that the Provider made reasonable efforts to locate the deeds but was ultimately unable to. The Provider has paid €861.00 for the Consulting Engineer and €3,116.04 for the discharge of Complainant's Solicitors professional fees, Certificate of Compliance preparation and reconstitution of the deeds. I am aware that, in its response letter of **23 May 2018** to this Office, the Provider has also offered the Complainant a sum of €5,000 as a goodwill gesture for the inconvenience involved, and the length of time it has taken to resolve the issue.

I consider this to be a reasonable sum of compensation for the Provider's failings and the inconvenience and delay caused to the Complainant arising from this. The Provider has acknowledged its fault, taken responsibility and apologised from the outset, after attempting to locate the deeds. In these circumstances, on the basis that this sum of €5,000 remains available to the Complainant, I do not uphold the complaint.

Conclusion

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

/Cont'd...

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**

14 May 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.