



<u>Decision Ref:</u>	2019-0206
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Documents mislaid or lost Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Maladministration
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the misplacing of the title deeds relating to the Complainant's home following her solicitor being struck off the roll of solicitors by the Law Society of Ireland and the delay by the Provider in communicating this to the Complainant.

The Complainant's Case

On **19 May 2010**, the Complainant's solicitor gave an undertaking to the Provider that she would send the title and security documentation in respect of the Complainant's property to the Provider, as security for the Complainant's mortgage facility.

The Complainant's solicitor did not send the title and security documentation to the Provider. The Complainant's solicitor was struck off the Law Society's Roll of Practising Solicitors in early **2016**.

The Complainant first became aware of the issue in respect of the title and security documents by letter dated **30 January 2017**, which she received from the Provider and which stated:

"We have been unable to establish the location of the title & security documents relating to the property, which should have been sent to the Lender by your solicitor to be held by the Lender during the term of your mortgage..."

"Please advise if you have appointed a new solicitor to act for you in this matter, and who may have obtained the title documents from your previous solicitor without our knowledge..."

"Please note that from title searches you are not registered as owner of the property..."

Upon receipt of this letter the Complainant telephoned the Provider in relation to this matter. The Complainant received a letter dated **8 February 2017** from the Provider referring to the telephone call that took place on **6 February 2017** where the Complainant requested to receive all documents relating to her mortgage including the solicitors undertaking. This correspondence stated;

"Upon review of the matter in 2016 and noting that your solicitor had been struck off the Roll of Solicitors in Ireland in February of that year, we sought to trace the current location of the title/security documents in this matter; however investigations with the Law Society and another legal firm the Law Society advised may have received the documents from [the Complainant's solicitor], were unsuccessful"

"Accordingly, as your solicitor is not in practice, we have contacted you to advise you of the situation"

"You can make a Subject Access Request (SARS) specifying what exact documents you are looking for, however the SARS Team are unable to provide information in relation to the title deeds as part of a SARS request"

The Complainant states that the letter dated **8 February 2017** implies that the Provider, upon review of the Complainant's case in 2016, discovered that the Complainant's solicitor was struck off the Roll of Solicitors in Ireland.

The Complainant states that by letter dated **20 July 2016**, the Law Society of Ireland wrote to the Provider informing it of the closure of the Complainant's solicitor's practice. The Complainant states that the sequence of events does not explain the Provider's delay in notifying the Complainant of this until **February 2017**.

The Complainant states that after obtaining advice on this matter, she was horrified at the estimated potential cost to her of resolving the issue of the misplaced title deeds, and the Complainant felt that the Provider was seeking to place the responsibility of rectifying the situation on the Complainant.

The Complainant wrote a letter of complaint to the Provider dated **3 March 2017**, in relation to the delay by the Provider in informing the Complainant that there was an issue with the registration of title to the Complainant's home.

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The Complainant received a final response letter from the Provider dated **29 March 2017** which stated;

"...I have decided that on this occasion we acted in line with our procedures and followed our terms and conditions"

The Complainant states that the Provider did not provide her with a copy of the Provider's procedures or terms and conditions.

The Complainant states that had the Provider acted with urgency in **July 2016**, when it discovered the Complainant's solicitor had ceased to practice, the Complainant would not be in this position.

The Complainant has since instructed an alternative solicitor to act on her behalf. A partial file recovered from her previous solicitor's practice contains a letter dated **20 May 2011** from the Provider to the Complainant's solicitor which states:

*"Please be aware that, as the Undertaking has been in place for more than 6 months, failure to reply to this request for information/items **within 14 working days** will oblige the lender to take immediate action to establish that you have or are in the process of fully complying with your Undertaking"*

The Complainant states that this correspondence is not included in the Provider's submission and the Complainant states this suggests that to pursue a solicitor in respect of an undertaking was part of the Provider's procedures and terms and conditions. The Complainant states that there is no indication as to whether the Provider followed up on the content of its letter dated **20 May 2011** and she is of the view that if it was acting in the best interests of its customers in insisting on the delivery of the items covered by the undertaking, then this matter could have been entirely avoided.

The Complainant submits that it was not until the third submission of the Provider made to this Office that the Provider revealed the efforts made by the Provider to make contact with the Complainant's solicitor and have her comply with her undertaking in respect of the title deeds and the security in respect of the property. The Complainant stated that the Provider was acting in the Providers best interests throughout this correspondence and not in the best interests of the Complainant. The Complainant states that she is of the view that had the matter been resolved and the security been put in place then she would not have been notified about the issue.

The Complainant notes that in the Provider's submissions, the Provider appears to take credit for the location of her title documents. She states that she had not been aware of the "*significant efforts*" of the Provider in locating some of her title deeds and submits that both her and her current solicitor had been making their own efforts to locate the deeds.

The Complainant is seeking for the Provider to explain the delay which occurred between the Provider realising that the security upon which the Provider was relying was not in place and the notification of this to the Complainant.

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The Complainant further seeks for the Provider to assist the Complainant with obtaining the title deeds for her home.

The Provider's Case

The Provider states that it investigates outstanding securities, whereby the solicitor who gave an undertaking on behalf of a customer in relation to mortgage lending, upon which the Provider relies, ceases to practice without complying with that undertaking.

The Provider has furnished copies of correspondence to the Complainant's solicitor dated 20 May 2011, 27 September 2011, 15 November 2011, 30 April 2012, 11 June 2012, 23 August 2012, 1 October 2015, 28 October 2015 in which it followed up with the Complainant's solicitor and requested that she comply with the undertaking in respect of the title and security documents. The Provider advised the Complainant's solicitor that should it not receive a satisfactory response from her in respect of the documents, it would escalate this matter which could result in a complaint to the Law Society and notification of the matter to the customer.

On **20 July 2016**, the Law Society wrote to the Provider to inform it that the Complainant's solicitor's practice had closed and that the Law Society had taken possession of some of the files and documents relating to that practice.

The Provider states that it carried out investigations in an attempt to locate the title deeds but was unable to establish the location of them. The Provider states that property searches were carried out by the Provider which indicated that the Complainant's title and security were not registered.

The Provider states that in circumstances where the Provider has been unable to establish the location of the title and security documentation it writes to customers to inform them of this issue and advises the customer to appoint a new solicitor to deal with the matter, if they have not already done so. The Provider states that such a letter issued to the Complainant on **31 January 2017**.

The Provider states that the Complainant responded by telephone to the letter on **3 February 2017**. The Provider states that its notes indicate that the Complainant advised she would contact the Law Society and instruct an alternative solicitor.

The Provider states that it received a further telephone call from the Complainant on **6 February 2017** whereby the Complainant requested all documentation in relation to her mortgage and an explanation of the position.

The Provider states that it sent a letter to the Complainant dated **8 February 2017** providing her with information of the options open to her regarding the actions of her solicitor via the Law Society and advising the Complainant how to make a data access request to the Provider.

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On **3 March 2017** the Provider received a letter from the Complainant outlining her dissatisfaction with the way in which the Provider has been handling this issue. The Provider states that on **16 March 2017** it wrote to the Complainant acknowledging receipt of the complaint. On **29 March 2017** the Provider wrote to the Complainant detailing the investigations carried out by the Provider in final response to her complaint.

The Provider states that it continued to seek assistance from the Law Society in locating the Complainant's documents. By email correspondence dated **20 February 2017** from the Law Society to the Provider, the Law Society furnished the Provider with details of another solicitor who, it says, the Complainant's solicitor had passed her files to. The letter from the Law Society advised that:

"The solicitor confirmed to the Law Society that she had handed over all of her current files to that practice, and in the event that this is not the case, the matter may be re-visited"

The Law Society confirmed to the Provider that it would write to the Complainant's solicitor.

On **26 May 2017** the Provider was informed by the Law Society that the solicitor who had obtained the files following the Complainant's solicitor's practice closure had now received further documents including deeds relating to the Complainant and he had advised the Law Society that ;

"[t]here were some title documents included with the file provided. There was a registered leasehold property. The file contained a lease in 3 parts dated 18th August 2010 which was not stamped. But was signed by all parties except the Lessee. The property could be a new build whereby there may be no stamp duty liability at the date of the conveyance. There was one Mortgage Deed which was signed by the borrower"

The Provider states that there was no unreasonable delay in this matter and that it acted in the Complainant's best interest in carrying out investigations into the whereabouts of the title deeds before contacting the Complainant and afterwards continuing to assist in following up with the Law Society in respect of the matter, which ultimately led to the discovery of the Complainant's deeds. The Provider submits that this will considerably reduce the Complainant's costs in regularising her title.

The Provider states that the appropriate party against whom the Complainant has a complaint is the complainant's solicitor and that the Law Society is the correct body to whom the complaint should be made. The Provider notes that the Complainant has not been impacted financially in respect of this matter. Notwithstanding this, the Provider has made an offer as a gesture of goodwill, to discharge the Complainant's legal fees and outlay to remediate title and security up to a maximum of €2,583 (inclusive of VAT) for fees and miscellaneous outlay and up to €1,000 for actual outlay.

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The Complaints for Adjudication

The complaint is that the Provider delayed between July 2016 and February 2017 in informing the Complainant that her former solicitor had been struck off the roll of solicitors and her title deeds could not be located, and further failed to follow up adequately with the Complainant's solicitor between May 2010 and July 2016 to seek compliance with the undertaking.

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.

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 on **10 June 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, within the period permitted and taking all of the evidence and submissions into account, my final determination is set out below.

Conclusion

The Complainant first became aware that there was an issue in locating the title and security documents relating to her home on **30 January 2017** when she received a letter from the Provider advising her of this. This issue arose due to the failure of the Complainant's solicitor to furnish the Provider with this documentation, in compliance with an undertaking given by that solicitor to the Provider on 19 May 2010.

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This letter undoubtedly came as a shock to the Complainant given the importance of having title documentation secure for the duration of a mortgage period.

The Complainant was advised that following a High Court Order made in **February 2016** the Complainant's solicitor had ceased to practise as a solicitor and that she had been struck off the Roll of Practising Solicitors in Ireland.

The Complainant believes that there was an unreasonable delay in the Provider informing her of this issue and that the Provider never gave reasons to the Complainant for this delay.

The Provider became aware that the Complainant's solicitor was no longer in practice by letter dated **20 July 2016** from the Law Society of Ireland to the Provider.

The Provider contacted the Law Society of Ireland by email dated **31 January 2017** in an attempt to locate the title deeds. I note from the documentary evidence before me that the chain of correspondence between the Provider and the Law Society of Ireland dates from July 2016 to June 2017. From the correspondence during this period it is clear that the Provider made enquiries with the Law Society on a number of occasions in respect of the whereabouts of the title deeds. The Provider did not receive confirmation until **26 May 2017** that the title deeds of the Complainant's home had been located.

The Provider did not inform the Complainant of the issue in respect of the title deeds until **30 January 2017**. I accept that it is clear from the correspondence between the Law Society of Ireland and the Provider that it was attempting to clarify and rectify the matter in the intervening time period, however it remains the case that there was a time lapse of approximately 7 months before the Complainant was notified of the position.

I note the Provider was attempting to rectify the issue during this time. Ultimately, after some months of continued correspondence the Provider was successful in its efforts in locating the deeds and therefore the Complainant was not prejudiced by this time lapse on the part of the Provider.

However, the Complainant submits that this issue could have been avoided entirely if the Provider had insisted on the delivery of documentation by the solicitor as at an earlier stage, in compliance with the undertaking provided by the solicitor, which required compliance within a period of 6 months.

I note from the documentary evidence available to me that the Provider sent a letter to the Complainant's solicitor dated **20 May 2011** asking the solicitor to send the title documentation as per her undertaking. The Provider gave the solicitor 14 days' notice to furnish evidence that she had already or was in the process of complying with the undertaking. There is no evidence furnished by the Provider to suggest that this letter was responded to. The Provider also issued correspondence to the Complainant's solicitor dated **20 May 2011, 27 September 2011, 15 November 2011, 30 April 2012, 11 June 2012, 23 August 2012, 1 October 2015, 28 October 2015** in which it followed up in respect of the

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undertaking. I have considered the complaint in the context of the Consumer Protection Code 2006, which was in force at the relevant time, which provides:

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;

2.2 acts with due skill, care and diligence in the best interest of its customers”

I accept that the Provider was entitled to rely on the solicitor's undertaking and that it is not unusual for registrations to take up to a number of years to complete in order for a solicitor to comply with its undertaking. The Complainant submits that the Provider was only acting in its own best interests in this follow-up correspondence, however, I find that the follow-up correspondence issued by the Provider between May 2011 and June 2016 does show that the Provider was acting with due skill, care and diligence in the best interests of the Complainant. While I accept that it was in the interests of the Provider to have its security for the loan resolved, it was also in the best interest of the Complainant that the deeds be located. The Complainant's solicitor did not appear to have been engaging with the Provider at all in this period. It can be seen from this correspondence that the Provider was attempting to put pressure on the Complainant's solicitor to comply with the undertakings and had threatened to report her to the Law Society in respect of her failure to comply.

I note that as a gesture of goodwill, the Provider has offered to discharge the Complainant's legal fees and outlays not recovered through the Law Society Compensation Fund to remediate title and security on the following basis:

“Fees and miscellaneous outlay to a maximum of €2,583.00 inclusive of VAT. This will be payable upon receipt of invoice after the work has been completed and the Provider has received the Complainant's title and security documents and confirmed they are in order.

Actual outlay to a maximum of €1,000.00. Outlays must be vouched and where they will be discharged by the Complainant's solicitor in advance, the Provider will accommodate such payments as they fall due.”

I believe that the offer represents a reasonable contribution towards costs incurred by the Complainant in rectifying the situation, which arose primarily as a result of the misfortune of the Complainant in being a client of a solicitor who was struck off the Roll of Solicitors by Order of the High Court and who had failed to comply with an undertaking provided to the Provider in respect of the Complainant's mortgage. It would not be reasonable to hold the Provider responsible for the conduct of the Complainant's solicitor. On the basis that the offer made by the Provider is reasonable and remains available to the Complainant, I do not uphold this complaint.

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Conclusion

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

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**

11 July 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.