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| <u>Decision Ref:</u> | 2019-0246 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Repayment Mortgage |
| <u>Conduct(s) complained of:</u> | Dissatisfaction with customer service |
| <u>Outcome:</u> | Upheld |

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

Background

The Complainants held a mortgage account with an Irish bank which was assigned to a third party legal entity (the loan assignee) in **November 2015**. The Provider was appointed by the loan assignee to provide credit servicing, loan administration and relationship management services to borrowers such as the Complainants, including the collection of repayments in relation to the Complainants' loan account facilities.

The Complainants say that they have experienced extreme difficulties in contacting representatives of the Provider and in obtaining information from it, in relation to the account. When they queried an interest repayment amount in April 2016 that had been added to their statement of account in late 2015, for example, the Provider did not respond to the query until August 2016. They further say that their appointed financial adviser and solicitors encountered significant difficulties in obtaining responses from the Provider, including no response to four letters written by the financial adviser, and the Provider's failure for some 5 to 6 weeks to inform the Complainants that it required written authorisation from them, in order to deal with their solicitors. This occurred at the time when the Complainants were attempting to finalise the sale of the secured property and, in the Complainants' view, led to a delay in selling the property in question.

The Complainants say that the delay in the sale arising from the Provider's conduct caused them to incur unnecessary interest payments of €80 per day over a 90 day period (€7,200), and increased their legal (€1,000) and financial advisory (€1,000) fees, in addition to their

stress and anxiety. There are seeking a compensation payment of €14,200 from the Provider.

The Provider accepts that it should not have taken five months to issue a response to the Complainants in relation to the disputed interest amount and it should not have required repeated communications from the Complainants, their authorised representatives or a referral to this Office in order to receive the letters of explanation. The Provider confirms however that the interest amount in question is an accumulation of daily interest that accrued in the period 25 August 2015 to 23 November 2015 and it is correct. The Provider states that during the period April to July 2016, the Provider spoke with the Complainants' authorised financial adviser on several occasions and that there is no record of the four letters allegedly sent by the financial adviser in question, having reached the Provider. The Provider accepts that it failed to inform the Complainants that a letter of authority was necessary for it to speak with their solicitor and that this continued for approximately five weeks after first receiving the letter from the solicitor in question. The Provider accepts that its representatives could have answered queries from the Complainants in a timely manner and it has apologised for any distress caused which was unintentional.

The Complainants' Case

The Complainants say that in April to August 2016 while they were attempting to sell a secured property to repay the loan in question, they appointed a financial adviser to act on their behalf to obtain the required permission from the loan assignee, to the sale of the property. They say that the Provider failed to respond to four separate letters written by the financial adviser in question, which sought important information required by the Complainants in relation to the sales process, specifically in relation to an interest charge applied to the account in late 2015. The first letter was sent on **27 May 2016** and follow-up letters requesting an answer to the interest query were sent on **13 June, 22 June, and 30 June 2016**. While the Provider denies receiving these letters, the Complainants state that the financial adviser is an accomplished negotiator and that each time he wrote, he forwarded a copy of his letter to the Complainants.

The Complainants further state that the financial adviser in question made numerous attempts to speak to the Provider by phone but was mainly unsuccessful. While they accept that the financial adviser did speak to the Provider on several occasions during the relevant period, this does not, in their view, account for the many unanswered calls he has confirmed making to the Provider.

The Complainants' solicitor also made numerous attempts to contact representatives of the Provider in seeking to finalise the relevant sale. These attempts were unsuccessful and the solicitor repeatedly had to chase the Provider's representatives for responses. The Complainants were eventually informed of a requirement for their written authority for the Provider to communicate with their solicitor, some five or six weeks after their solicitor had first attempted to make contact with the Provider.

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According to the Complainants, both their financial adviser and solicitor were of the view that the conduct of the Provider's representatives was extremely unprofessional. The Complainants say they ultimately required the assistance of a representative of this Office, to get a reply from the Provider during the final crucial stages of negotiations to sell the property in question and clear the loan.

The Provider's Case

The Provider accepts that it cannot verify the number of times the Complainants attempted to phone its representatives, but it assures the Complainants that the Provider has a suitably equipped case management team to answer all inbound calls in a timely and expedient manner. It apologises for any difficulty experienced in speaking to it. The Provider states that its systems notes and telephone recordings demonstrate that the Provider spoke with the Complainants and their representatives on 30 occasions during the period April to August 2016. The Provider further argues that the Complainants did not advise the Provider that they had experienced difficulty in speaking with it, until it received contact from this Office on **10 August 2016**. The Provider states that when calls are made to its representatives on their direct lines, missed telephone calls can occur because its representatives are away from their desks or on calls with other borrowers but that the direct line holds a record of missed calls and its representatives return missed calls on their return. When a call is made to the main customer service line, the Provider states that there is no voicemail facility but that the line is resourced at all times and in the event of a call not being answered, the call will divert to reception and a call back will be logged.

The Provider accepts that it should not have taken five months to issue a response to the Complainants in relation to disputed interest amount and neither should it have required repeated communications from the Complainants, their authorised representatives or a referral to this Office to receive the letters of explanation. The Provider confirms, however, that the interest amount in question (€7,192.34) is an accumulation of daily interest that accrued in the period 25 August 2015 to 23 November 2015 and is correct. Further interest was charged 31 December 2015 to cover the period 24 November to 31 December 2015 in the sum of €3,080.67. The Provider states that the facility expired on 31 December 2015, and accordingly, all interest accrued at that point, fell due.

The Provider accepts that during a meeting on **7 April 2016** and then on several occasions in July and August 2016, the Complainants sought clarification on the interest charged in November 2015. The Provider states that this was not answered until **16 August 2016** and followed up with a further letter on 22 August 2016. The Provider accepts that this is not the level of service it strives to achieve and that the delay should not have occurred. It has apologised to the Complainants for the delay.

The Provider states that the first time that the Complainants complained (that they were experiencing difficulties in getting answers to their queries) was in an email to this Office dated 10 August 2016. The Provider states that prior to this, the only complaint raised by the Complainants or their representative was in relation to a letter sent to an allegedly incorrect correspondence address, which complaint was replied to in a letter of 1 July 2016.

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The Provider states that if the Complainants had raised the issue concerning difficulties in getting answers to their queries with the Provider directly, they would have received a response prior to the correspondence of 12 and 22 August 2016.

In relation to the four letters sent by the Complainants' financial adviser dated 27 May, 13 June, 22 June and 30 June 2016 regarding the disputed interest amount, the Provider states that it is unable to retrieve a copy of these letters from its records. It further states that the letters are not documented as having been received by it. It states that around this time, the Provider and the financial adviser exchanged communications during the investigation of the complaint about the correspondence address. The Provider states that the adviser did not raise the lack of reply to the interest charge or any offers to purchase, in this exchange of correspondence and that if he had, the Provider would have investigated the issue and replied. The Provider further states that during the period April to July 2016, the Provider spoke with the Complainants' authorised financial adviser on several occasions.

The Provider accepts that it failed to inform the Complainants that a letter of authority was necessary for it to speak with their solicitor, for a period of approximately five weeks after first receiving the letter dated 1 July 2016 from the solicitor in question. It accepts that it was only after having received a call from the solicitor that the Provider advised him on 5 August 2016 that a signed letter of authority was necessary to discuss the matter with him. The Provider states that at the relevant time, it was speaking with the Complainants and the financial adviser regarding the proposal of sale of the secured property and that it was in regular contact with the Complainants which included receipt of their Standard Financial Statement and supporting financial documentation on 14 July 2016, which was required for the assessment of the proposal. The Provider states that this documentation was sought in its letter of 15 March 2016. It states that following the assessment, a recommendation was put forward to the loan assignee to consent to the sale of the secured property for €880,000 and the residual debt to be paid in full by 31 October 2016. This was agreed in an email of 12 August and a letter of 16 August 2016 which confirmed the decision of the loan assignee to allow the sale. The Provider argues that a four to six week turnaround in relation to the proposal was reasonable.

The Provider accepts that its representatives could have answered queries from the Complainants in a more timely manner and it apologises for any distress caused, which the Provider states was unintentional. It notes that where the sale of the secured property was however insufficient to redeem the full outstanding debt, the loan assignee was under no obligation to accept any proposal that was received and it justifiably reserved its right to seek full repayment of the debt.

In relation to the alleged losses of €9,200 sought by the Complainants comprising €7,200 in additional interest repayments, as the sale should have closed in July 2016 and €2,000 in legal and advisory fees, the Provider contends that the Complainants did not address the outstanding residual debt in their proposals, including in the letter from the solicitors of 1 July 2016. Due to this shortcoming, it states that the loan assignee did not consent to the sale of the secured property and the Complainants cannot apportion blame to the Provider for any loss.

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The Provider further argues that the Complainants have not given any documentary evidence that they incurred additional costs; a solicitor would always have had to have been instructed in relation to the sale of the secured property. In relation to the financial advisory costs, the Provider points out that there are free services such as MABS available and that the Complainants have not given any documentary evidence that they incurred additional costs due to any alleged delay. The Provider states that from 1 July to 14 September 2016, the total interest charged on the account was €6,121.10. While the Provider acknowledges the lapse in service received, it does not believe that this merits refunding the Complainants the interest that accrued from 1 July 2016.

Furthermore, the Provider does not believe that compensation in the sum of €5,000 for stress and anxiety in relation to its failings and customer services is merited. The Provider suggests €500 as an appropriate level of compensation for the fact that it took five months to answer the Complainants' query about interest charged in November 2015, and that it took five weeks to notify the Complainants of the need for a letter of authority, before it could communicate directly with their solicitor.

The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration of the Complainants' mortgage account, specifically of multiple failures of communication and the non-provision of required and requested account information, resulting in a delay in the sale of the secured property as a result of which the Complainants incurred financial losses in terms of interest repayments and legal and financial advisory fees, in addition to considerable frustration, stress and anxiety.

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 Complainants were 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.

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A Preliminary Decision was issued to the parties on 6 August 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, the final determination of this office is set out below.

It should be noted from the outset that this Office will not investigate the details of any renegotiations of the commercial terms of a mortgage which, in this case, is a matter between the loan assignee and the Complainants and does not involve this Office, as an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**. The loan assignee in question is not a regulated financial service provider. I note that the Complainants and their financial adviser expressed ongoing frustration that the loan assignee would not consent to the sale of the secured property, unless the Complainants were in a position to clear the secured debt in full. While this frustration is understandable in the present case (given the fact that the residual sum was approximately €40,000 and this sum was also secured on a valuable third property) this is not a matter which this Office can investigate. Rather this Office can investigate only the complaints relating to the conduct of the Provider appointed by the loan assignee in question, which concerns maladministration and poor customer service.

The documentation and call recordings furnished in evidence in relation to this dispute show that there was considerable discussion between the Complainants, their authorised representatives and the Provider in the period April to October 2016 while the Complainants were attempting to obtain the consent of the loan assignee to the sale of the secured property and to close the sale and repay the loan in circumstances where the term had expired in December 2015. The recordings of some 28 telephone conversations have been submitted by the Provider and I note that the tone of all of these conversations was helpful and professional between all of the parties concerned. That said, there are a number of particular concerns that have been raised by the Complainants in relation to failures of communication and it is to these that I now turn.

The Interest Query and Four Unanswered Letters from the Complainants' Financial Adviser

It is common case that the first time the Complainants raised a concern in relation to the interest charged to the account in November 2015 was at a meeting on 7 April 2016. Thereafter a number of letters were sent by the Complainants' financial adviser, Z., to the Provider's then representative J., seeking clarification in relation to the interest applied. By letter to J. dated 27 May 2016, Z. stated that the Complainants had lost two potential

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purchasers for the house – one in January for €900,000 and another in April for €880,000. While the property remained on the market, he asked for an up-to-date statement. He also requested clarification in relation to an interest charge of €7,192.34 applied in November 2015. In a further letter to J. dated 13 June 2016, Z. referred to his last letter of 27 May and requested a reply. Again, by letter dated 22 June 2016, Z. pressed J. for a response to his letter of 27 May so that the Complainants could identify their precise situation and file their tax returns. He stated that there was a buyer for the property offering €880,000 and as the proposed purchaser was returning from Canada, the proposed sale had to happen immediately. He suggested a payment of €900,000 after the sale, with the Complainants to pay the shortfall and costs of sale over a three-year period.

By letter dated 30 June 2016, again addressed to J. of the Provider, Z. referred to his previous letters and the fact that she had failed to respond to them. He again requested details of the precise amount owing, and interest certificates, and clarification of the interest charge applied to the account in November 2015. He stated his opinion that the Provider's *"failure to respond to any correspondence or to take my telephone calls is unreasonable and unfair."*

It is not in dispute that the letters were not responded to. For its part, the Provider suggests that it never received the letters as the letters were addressed to the Complainants and not to the Provider. The letters before me are very clearly addressed to J. of the Provider and the evidence before me is that these letters were sent. I am therefore satisfied that these letters were in fact sent to the Provider, regardless of whether or not it has subsequently been able to locate copies of the letters. I note that there is no statement from J., for example, attesting to whether or not she received the letters in question. I therefore accept that over the period of some five or six weeks, four letters were sent to the Provider by the Complainants' authorised third party financial adviser Z., which the Provider failed to respond to. This standard of customer service falls very far short of the standard expected of a regulated financial service provider, in the circumstances.

In phone calls in July and August 2016, the Complainants and Z. continued to press the Provider for an answer to the queried interest applied to the account. In a call on 8 July 2016, the Provider committed to getting clarification in relation to the interest by the following week. On 11 July 2016, the second Complainant called the Provider and complained that there was still no update in relation to the interest and that they were very anxious to get the detail to their solicitor in order to finalise the deal with the loan assignee and then proceed with the sale of the property. She indicated that they were doing their utmost to sell the property and that she was having difficulty contacting the Provider.

On 14 July 2016, the first Complainant asked about the interest query to be told that there was still no answer but that the representative, K., had been prioritising the sale of the property instead. On 28 July 2016, Z. again brought up the ongoing query in relation to the interest and K. promised to get to the bottom of it in the next few days. On 5 August 2016, the first Complainant reminded K. about the ongoing interest query and K. denied that it had been an issue since April, though the Provider now appears to have accepted that this was the case. K. stated that he would try and get an answer in the next week. The first Complainant indicated his frustration at this standard response and K. accepted that it should not take as long as it had, to seek clarification of the interest query.

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The first Complainant rightly pointed out that he was entitled to the information and that the exact figure was needed in relation to the sale. K. stated that he would come back to the first Complainant later that day or else by the following Tuesday, 9 August 2016. It does not appear that K. followed up as promised. On 16 August 2016, the second Complainant again raised the interest query with the Provider. She was informed that the interest query had been labelled as a high priority but the representative could not indicate when it would be answered.

By letter dated 17 August 2016, the Provider wrote to the Complainants in relation to the queried interest. The letter stated that interest of €3,080.67 was charged between 23 November and 31 December 2015. It confirmed that the loan had been charged the correct amount of interest since its migration to the loan assignee. This letter did not address the actual query which was raised by the Complainants which related to the interest charged in November 2015. The Complainants responded by email dated 18 August 2016 noting that the query arose in relation to the interest charged at point of migration and not afterwards. A reminder was sent by them the following day.

In a letter dated 22 August 2016, the Provider confirmed that the figure of €4,694.36 that was applied at that point of migration was the correct amount which transferred on that date. It further stated that the €7,192.34 charged on 23 November 2015 was in line with typical quarterly interest charged to the facility. The Provider stated that if the Complainants still believed they had been overcharged, that the matter should be brought up directly with the original provider. By email dated 23 August 2016, the Complainants reverted and stated that the sum charged was not typical as this did not reflect the full quarterly period but that the delay in closing the sale was costing €80 in daily interest and that they had instructed their solicitor to proceed.

This five-month delay in answering what appears to be a relatively straightforward and simple query is very difficult to understand. This was not a situation where a query was raised and then forgotten about by all parties, for a period of many months. Rather, what happened in this case, is that numerous letters and telephone calls were made by the Complainants and their representatives appealing to the Provider to look at the interest that was charged to the account in November 2015 and to explain the basis of it.

One representative appears to have attempted to state that the Provider was prioritising looking into consent to the sale of the secured property, but this is not an acceptable explanation. It appears in any event that a different department was in fact dealing with the interest query. As the first Complainant rightly stated in one of his calls to the Provider, the Complainants were entitled to the information that they sought.

It must have been all the more frustrating for the Complainants that they could not get a response to this query, when the information was in fact required by them in order to progress the sale. The Provider left them in a position where it was demanding full repayment of the loan, but could not agree to consent to the sale of the secured property without an agreement with them in relation to the residual debt.

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The amount of this residual debt was not confirmed over this five-month period, due to the unexplained five-month delay in answering what should have been a straightforward query in relation to interest which had been charged to the account. It is also notable that the first response received from the Provider on 17 August 2016, did not in fact address the question that had been raised repeatedly by the Complainants.

To my mind, there are two general provisions of the Consumer Protection Code 2012 which are relevant here. Provision 2.6 CPC states that a Provider must “*make full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer.*” Provision 2.8 CPC mandates that a Provider “*corrects errors and handles complaints speedily, efficiently and fairly*”. The Provider in the present case has fallen very far short of meeting its obligations under these two provisions in its handling of the interest query raised and its failure to respond to correspondence.

I note that the Provider has accepted that it ought not have taken the length of time that it did to respond, but I also note that no real explanation has been made available as to why it took the Provider such an enormous length of time to respond to the query. The Complainants and their representatives should not have needed to raise the query on so many occasions and over such a long period of time without a response. In effect they should not have had to chase the Provider for an answer to their interest query. In all the circumstances, I consider it appropriate to uphold this aspect of the complaint.

Failure to Respond to the Complainants’ Solicitor

The solicitors appointed on behalf of the Complainants wrote to the Provider on 1 July 2016. This letter identified costs of sale in the amount of €20,140 and indicated that the shared belief was that the shortfall due to the loan assignee, would be in the region of €50,000, which was secured on another property with a minimum market value of €880,000. The solicitor indicated that there were no other resources available to discharge the residual sum so an arrangement would have to be agreed for the residual sum to be paid off on a long-term basis. The solicitors indicated that the second property on which the loan was secured, required pyrite mediation but was still yielding rental income of approximately €1,500 per month.

The solicitors requested a redemption statement which had not been furnished despite numerous requests. They also expressed their belief that the ultimatum to refuse consent to the sale of the property, was untenable and unreasonable, where the only revenue stream available was from pensions required by the Complainants to live on. The solicitors expressed their view that the demand for immediate and full repayment in order to allow the sale to proceed, was oppressive and exploitative.

I note that in its response to queries raised by this Office that the Provider has argued that the letter of 1 July 2016 did not deal with the residual balance. I do not accept that this is the case. This letter and other numerous communications and phone calls at the relevant time concerned a proposal from the Complainants that the loan assignee would provide a short-term extension or new facility to allow them to repay the residual balance of the debt

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(€40,000 to €50,000) but this proposal was ultimately refused by the loan assignee after the Complainants pressed the Provider repeatedly for a response .

It is not the case that the Complainants or their representatives simply did not address the issue as the Provider appears to now suggest. When their proposal was rejected, the Complainants obtained funding elsewhere and entered an agreement with the loan assignee to repay the residual debt in a single repayment, after the close of the sale of the secured property.

A further letter dated 28 July 2016 was sent to K. who was now dealing with the matter on behalf of the Provider, enclosing a copy of the original letter dated 1 July 2016. The solicitors indicated that the purchaser was anxious to proceed with the sale, which could not be progressed without the consent of the loan assignee. The solicitors also expressed their belief that there was a *“distinct danger that this purchaser will not wait any longer and an opportunity for our clients to sell the property and indeed for your client for the bank to reduce its indebtedness significantly will be lost”*.

The solicitors also indicated that the delay was causing severe anxiety and distress to the Complainants who are elderly and worried about their financial future. They requested an immediate response to the proposal set out in the letter of 1 July 2016. The solicitors wrote to the Complainants by emailed letter dated 5 August 2016 stating that after *“multiple attempts”* to contact K., they had just now got speaking to him to be told that he could not discuss anything with them without their written authority. The letter indicates that K. stated that the loan assignee was working on a letter in relation to the figure it would accept to release the property from the mortgage, but did not commit himself on a timeline. I have listened to a recording of a call from the same date which mirrors this correspondence.

The solicitors wrote to K. by letter dated 9 August 2016 informing him that a contract for sale had been signed which was unconditional, save for the loan assignee providing a letter indicating the amount it would accept to release the mortgage over the property. The letter indicated that if such a letter was not forthcoming to facilitate the sale in the immediate future, and the purchasers were lost as a result of the failure to nominate the correct amount due, the Provider/loan assignee will be held responsible and liable for any losses incurred.

Although the Provider informed the solicitor in a call on 5 August 2016 that it had no authority to speak with him, it does not appear that the Provider informed the Complainants directly of this fact until 16 August 2016. The second Complainant expressed extreme frustration that she was only then being informed that the authority was needed in light of the fact that her solicitor had written on 1 July 2016 and given the urgency of the situation. In addition to this, I note that in a call on 8 July 2016, the Provider confirmed to the Complainants' financial adviser, Z., that it had received the solicitors' letter of 1 July 2016 but its representative did not raise any issue during this call in relation to the absence of required third-party authority.

While I appreciate the need for third-party authority (which was forwarded by the Complainants following the call on 16 August 2016), it is not acceptable for any financial

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service provider to simply ignore correspondence sent by a solicitor instructed on behalf of customers in relation to an ongoing sale of secured property, without informing those customers that it cannot deal with the letter or liaise with the solicitors until formal authority has been received. This should have been done as soon as the letter was received from the solicitors in early July 2016. The situation must have been all the more frustrating for the Complainants in light of the fact that the same solicitors had dealt with solicitors appointed on behalf of the loan assignee in relation to the sale of an adjoining property in January 2015, and had issued further correspondence in relation to the release of the charge in March 2016. The Provider's delay in informing the Complainants and/or their representatives of the need for the third-party authority, fell short of the standards expected of a regulated financial service provider.

I note that the Provider has accepted that it should have informed the Complainants in a more timely manner of the requirement for third-party authority but again, no real explanation has been made available in relation to this delay. In the circumstances of urgency that pertained at the time, the delay in informing Complainants of its inability to liaise with the solicitor in question, is of more significance. In all of the circumstances, I consider it appropriate to uphold this aspect of the complaint.

Missed Telephone Calls

There is a dispute between the parties in relation to telephone calls and, specifically, the Complainants' ability to contact assigned representatives or get promised call backs from them. The Complainants have indicated that numerous attempts made by the Complainants themselves, their financial adviser and their solicitor to contact the Provider's representatives were unsuccessful. For example, the Complainants state that they received a commitment on 14 July 2016 from K. that he would have an answer for them in relation to their residual debt by 20 July. The Complainants contacted K. on 20 July and received a further commitment from him that he would call them by 22 July. The Complainants indicate that both they and their financial adviser, Z., tried all day on 22 July to contact K. to no avail. On 25 July 2016, the Complainants made contact with K. who said he would call back later in the morning and when he had not done so, the Complainants stated that they tried on numerous occasions to call K. but were told he was unavailable. They also tried to call on 27 July to no avail. Z. finally managed to speak to K. on 28 July.

In another example cited by the Complainants on 9 August 2016, the Complainants indicate that they rang to speak to K. on at least eight occasions and were told that he was either unavailable or his phone rang out and there was no voicemail available.

The Provider accepts that it does not have a voicemail facility on its main customer line but it states that the main line is resourced at all times and in the event of a call not being answered, the call is diverted to reception and a call back will be logged. It further states that the Complainants have not furnished evidence to support their allegation about unsuccessful calls made and consequently, it is not in a position to verify them.

The Provider assures the Complainants that it has a dedicated team that endeavours to answer all inbound telephone calls in a timely manner. It states that if the Complainants

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telephoned direct lines of the representatives, missed telephone calls may have occurred because the representatives were away from their desks, or on calls with other borrowers but as the direct line holds records of all missed calls, its representatives return missed calls on their return.

The Complainants have been quite clear that they attempted to call the direct line of K. so the fact that the main telephone line is manned is of limited relevance. What I do consider relevant, however, is the fact that the evidence available includes an email from 10 August 2016 in which the first Complainant states that he made eight unsuccessful attempts to contact K. on 9 August 2016 after K. had given his word that he would be contactable that day. Also relevant is a letter from the Complainants' solicitors dated 5 August 2016 which refers to the fact that the solicitor had to make "*multiple attempts*" to contact K. before speaking to him directly.

In addition, the call recordings made available also support the version of events of the Complainants. For example on a call on 18 July 2016, K. made a commitment to the first Complainant to revert within the next few days in relation to the residual debt. On a call at 09.30 on the 25 July 2016, the first Complainant indicated to K. that he had had a terrible weekend wondering what was happening and that he expected a call from K. the previous Friday (22 July 2016). K. indicated that he had been at meetings all afternoon on Friday and had just gotten back to his desk and apologised but said there was no update as of yet. K. made a commitment to follow up with Z. later that morning. K. then made a call on 28 July 2016 to Z. with the response that the loan assignee had just reverted but had not accepted the proposal and wanted a proposal to clear the debt in full. Z. expressed his shock that the loan assignee would not accept a sale for €880,000, leaving a €40,000 shortfall which the Complainants were still willing to repay and which was secured on another property. These recordings illustrate the timelines and frustrations encountered by the Complainants waiting for calls from the Provider, which were not followed up on.

While I acknowledge that there were numerous calls between the parties during the relevant period, and while I have already accepted that the tone of the calls that have been recorded was always helpful and professional, I accept that the Complainants and their representatives encountered difficulties in speaking to representatives of the Provider when they called.

I further accept that the Provider's representatives did not return phone calls on certain occasions after committing to do so. In all of the circumstances, I consider it appropriate to uphold this aspect of the complaint.

The Complainants have expressed their belief that the sale would have closed in July 2016 if not for the difficulties encountered with the Provider; they have requested to be compensated for the additional interest charged between July and October 2016. While I have accepted, and do accept, that the Provider delayed in reverting to certain queries raised by them, it seems to me that a large part of the delay that occurred in the sale of the property in question resulted from the fact that the loan assignee would not consent to the sale before an agreement was made in relation to the residual debt.

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As I have already explained, this Office is not in a position to investigate this issue which was a commercial decision of the loan assignee. As a result, it is not clear to me what, if any, delay in the closing of the sale resulted from the delays in responses received by the Provider. It would appear that from mid-August onwards, there was reasonable diligence in reverting to queries raised by the Complainants and their solicitor. It is also the case that certain documentation was required by the Provider and that time was needed to deal with all of these ongoing issues. Furthermore, I am not satisfied that the Complainants have established that any additional legal and advisory fees were paid by them as a result of the matters on which I have upheld the complaints, as opposed to the fees that would have been payable by them, even if the Provider had responded to their queries more promptly.

Nevertheless, I consider that it is appropriate to direct the Provider to pay an amount of compensation to the Complainants for the very poor customer service that they received during the relevant period. It is apparent from the evidence available to me that the Complainants did everything they could to progress the sale of the property and to clear their debt and that on many occasions, they were not assisted by the Provider in their attempts to do so.

The four-month delay in responding to the interest query, the five-week delay in informing them of the need for an authority to deal with their solicitor, and the ongoing difficulties which the Complainants encountered in contacting representatives of the Provider all added considerably to the stress that the Complainants were undoubtedly already under, in relation to the sale of the property, as the facility had expired and the potential purchasers were anxious to complete the sale. All of this was known to the Provider during the relevant time, so it should have acted with expedition in its dealings with the Complainants.

In all of the circumstances, I believe that a compensatory payment of €6,000 to the Complainants will be appropriate, to reflect the Provider's communications shortcomings in the present case and their effect on the Complainants in the circumstances outlined.

On a final note, the Complainants have indicated their belief that the Provider only responded to them due to the involvement of this Office. The Provider has stated that the first time that the Complainants complained that they were experiencing difficulties in getting answers to their queries, was in an email to this Office dated 10 August 2016 and that they would have received a response from it directly if they had raised a complaint.

This submission by the Provider is puzzling indeed, considering the number of times the Complainants and their representatives had raised concerns with the Provider in relation to a lack of response to the interest query and their difficulties in contacting the Provider. Whilst it is of course possible that the Provider would have responded very promptly to a complaint from the Complainants at that time, and certainly more promptly than to the other communications from the Complainants, one can understand the Complainants' concerns which arose.

I would remind the Provider that it is obliged to respond promptly to its customers and that there should be no question that a customer would need to contact this Office in order to progress communications with the Provider, or to receive account information from it.

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For the reasons outlined above, I am satisfied that this complaint should be upheld.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(b) and (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €6,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** 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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

28 August 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.