



<b><u>Decision Ref:</u></b>	2019-0337
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Level of contact or communications re. Arrears
<b><u>Outcome:</u></b>	Upheld

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

**Background**

This complaint arises out of a mortgage account and relates to alleged maladministration and poor customer service.

The mortgage letter of offer has been provided. The Complainants were offered a mortgage on 13 November 2008 for a period of 13 years for an amount of €100,000 in respect of a buy to let property.

**The Complainants' Case**

The Complainants are joint mortgage holders with the Provider in respect of a buy to let property. The Complainants state that the account fell into arrears resulting in the repayments to the Provider being "haphazard" and the last payment was made to the mortgage account in November 2014.

The Complainants state that the Provider appointed a receiver in August 2014 and they were notified of this appointment at that time. The Complainants explained that around this time and for some time previous, the First Complainant was unwell which resulted in correspondence from the Provider being ignored and not dealt with properly. The Second Complainant was finding it difficult to cope with the First Complainant's illness during this period.

The Complainants engaged a solicitor to visit the Provider in September 2014 to make an offer to the Provider for the rent being received with an additional €200 per month until November 2016 when the loan they held with a different Provider would be paid off and they would be in a position to make further payments.

The First Complainant was unwell and was hospitalised for a period from February 2015. The Complainants report that during this period, they struggled to deal with the situation and in many instances correspondence received at their house was taken by the First Complainant and never seen by the Second Complainant.

The Complainants were anxious that the property would not be sold and made efforts to try to come to some agreement with the receiver in May 2015. The Complainants state that the Provider in November 2016, undertook to furnish a balance to the Complainants' solicitor under separate cover. They state that this was never furnished and as of the time of making the complaint, they were unaware as to whether or not the property had been sold and whether or not there was a residual balance. In addition, the Complainants state that they are unaware as to whether their mortgage has been sold to third party.

The Complainants state that their financial situation had significantly improved from 2015 onwards but they were given no opportunity to try and come to some agreement with the Provider.

It has been submitted on behalf of the Complainants that if the Provider had engaged with the Complainants' solicitors in May 2015 regarding the reconstruction of the loan, then the Complainants would have had the opportunity to salvage the mortgage.

The Complainants makes this complaint on the basis that the Provider has treated them unreasonably and oppressively in its maladministration of the mortgage account. They also argue that they have received poor customer service.

### **The Provider's Case**

The Provider's position is the Complainants' mortgage account began to fall into arrears from March 2010 onwards. The Provider states that despite requests to the Complainants to complete an application for forbearance for assessment, the Complainants did not comply with these requests. The Provider states that it was agreed that the Complainants would provide an application for forbearance by 21 February 2014 but that the Complainants failed to make any such application. Arising out of the foregoing, the Provider states that the Complainants' mortgage account was referred to its arrears support unit (ASU) for management and on 20 August 2014, and in compliance with the terms of the mortgage, the Provider appointed a receiver due to non-engagement, failure to supply a forbearance application and lack of repayments being made to the account resulting in accruing arrears.

The Provider states that contracts pertaining to the sale of the property were signed on 25 February 2017 and that the Provider issued correspondence to the Complainants on 20 April 2017 confirming that it had agreed to sell the Complainants' mortgage to a third party. The Provider states that the net sale proceeds of the property were lodged to the Complainants' mortgage account in July 2017.

The Provider has however, conceded and acknowledged that it did not respond to correspondence received from the Complainants' solicitors during 2015 and 2016. The Provider acknowledges that it failed in delivering on customer service expectations and it states that, in recognition of this, it has offered a goodwill gesture payment of €1,000 to the Complainants.

### **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.

A Preliminary Decision was issued to the parties 19 February 2019, outlining my preliminary determination 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 issue of my Preliminary Decision, the parties made the following submissions:

1. Letter from the Complainants' solicitors to this Office dated 17 March 2019.
2. E-mail from the Provider to this Office dated 27 March 2019, together with enclosures.
3. Letter from the Complainants' solicitors to this Office dated 9 April 2019.
4. Letter from the Complainants' solicitors to this Office dated 30 April 2019.
5. E-mail from the Provider to this Office dated 23 May 2019.

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6. Letter from the Complainants' solicitors to this Office dated 6 June 2019.
7. Letter from the Provider to this Office dated 18 June 2019.
8. E-mail from the Provider to this Office dated 28 June 2019.
9. Letter from the Complainants' solicitors to this Office dated 4 July 2019.
10. E-mail from the Provider to this Office dated 22 July 2019.
11. Letter from the Complainants' solicitors to this Office dated 1 August 2019.
12. E-mail from the Provider to this Office dated 12 August 2019 advising it did not wish to make any further submission.

In addition to the above written submissions, the Provider also furnished this Office with recordings of various telephone calls. Copies of these recordings were transmitted to the Complainants for their consideration.

Having considered these additional submissions and all of the submissions and evidence furnished to this Office, I set out below my final determination.

The Complainants' mortgage began in November 2008 and fell into arrears from February 2010 onwards. The arrears are not disputed and the Provider appointed a Receiver to the property in question on 20 August 2014. There does not appear to be any prior warning by the Provider that it was its intention to appoint a Receiver, even though in a letter dated 7 November 2016, the Provider states "*this is not a step taken lightly*".

The Provider has made available copies of the documentation sent over the course of four years to the Complainants about the arrears.

The Complainants' solicitor called in person to the local branch of the Provider on 19 September 2014, as part of an attempt to get the mortgage arrears and repayments process back on track from the perspective of the Complainants. That meeting resulted in a call from the branch manager to the Arrears Support Unit.

In addition to the foregoing, the Complainants' solicitor put a proposal to the Provider's branch manager in September 2014. I have been provided with a recording of a phone call between this branch manager and the Provider's Arrears Support Unit which I have listened to. During this call, the branch manager asks if there is anything that can be done in relation to the Complainants' mortgage in relation to their buy to let apartment. She makes the point that if the receiver sells the property it is likely that the Provider would get a lesser value than if it was being sold through a recognised local estate agent. The branch manager states that the Complainants have had their heads in the sand and they have not been responding to any of the Provider's letters but they are now willing to co-operate if the Provider is willing to engage with them.

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The legal officer from the Provider's Arrears Support Unit states that once the receiver has been appointed it is "*game over*" and that the Complainants really need to talk to the receiver. In addition, he states that if they want to remove the receiver he has been advised that the Complainants will need to clear the arrears in full and that no more proposals will be entertained.

In February 2015, the First Complainant was admitted for a second time to a psychiatric facility for treatment. I accept that some of the delays by the Complainants were linked to his illness and their difficult personal circumstances at that time.

The Complainants' solicitor then wrote to the Provider on 3 June 2015. This letter and two subsequent reminders on 2 July and 1 September 2015, were received by the Provider. The only action taken by the Provider however, was to scan them on to the appropriate file. They were not responded to as the account was being managed on behalf of the Bank by the receiver.

An additional letter from the solicitor dated 19 May 2016 to the Provider's Complaints Department indicates that the Complainants were aware at that stage the property was up for sale and may have reached the stage of '*sale agreed*'. This letter clearly states the Complainants were unhappy and wanted to 'enter into meaningful discussions regarding the payment of the arrears'.

There is no communication between Provider and Complainants however, until the solicitor writes again on 15 August 2016.

As a result of that letter, on 20 September a member of the Provider's ASU telephoned the solicitor to inform him that the letter had been received and that a complaint had been logged on behalf of the Complainants. At that point in spite of having previous approval to act on behalf of the Complainants, the Provider's collections agent claimed to be unable to deal with the solicitor for data Protection reasons.

On 12 October 2016, the Provider's Legal Team contacted the solicitor to inform him that the property had been sold and contracts had been exchanged. No exact dates for those events were provided.

I note the Provider's position that once the receiver has been appointed, it is no longer in control of the property. Nevertheless, the Provider had received, scanned and then ignored the letters from the Complainants' solicitor. I find this conduct both unreasonable and unacceptable.

On 7 November 2016, a Final Response Letter from the Provider to the solicitor stated that it had investigated what had occurred within the account. That letter details the actions taken by the Provider between 2010 and February 2014 when it stated that a field visit had taken place, which it argued justified the appointment of a receiver.

On 20 April 2017, the Provider informed the Complainants that it was selling their mortgage to a third party financial service provider.

On 18 May 2017, the Complainants were notified by the receiver to remove any goods from the property prior to sale.

The sale was completed on 13 June 2017.

Proceeds from the sale **€62,000:**

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- €36,772.91 Paid to the Complainants and deducted from mortgage and arrears
  - €7,161.42 Service Charges
  - €4,220.00 Non Principal Private Residence fees
  - €2,306.69 Legal Fees
  - €2,029.50 Receiver's Fees
  - €1,825.30 Bank Charges
  - €1,783.94 Property Maintenance Fees
  - €1,660.50 Sales Agent
  - €1,296.10 Security
  - €1,186.98 Insurance
  - €3,017.66 Miscellaneous fees

After the €36,772.91 was paid off, the residual balance was **€62,183.34**. The Complainants have questioned some of the fees applied to the sale, such as services where the apartment is one of a block of four and there are no outstanding bills. Utilities were billed separately as €350. Similarly, they state that the property maintenance and insurance amounts are higher than average for a one room apartment. The Complainants express concern at the security fee since the property is secured by a keypad entry system. These are matters for the receiver and as such have not been investigated by this office as the receiver is not a financial service provider and in law is an agent of the Complainant. These matters therefore do not form part of this Decision as issues between the Receiver and the Complainants lie outside the jurisdiction of this Office.

On 4 July 2017, the Provider informed the Complainants that the residual mortgage was sold to a the third party financial service provider as of 30 June.

On 8 November, the [third party financial service provider] informed the Complainants that the redemption figure was then **€63,527** and interest rates were 4.85%



I note the lack of engagement by the Complainants in relation to the mortgage before the appointment of the receiver, but that cannot justify the complete absence of communication and refusal to respond to the Complainants' solicitor's letters between May 2015 and November 2016.

Section 2.2 of the Consumer Protection Code 2012 requires that a Provider to:

*"act with due skill, care and diligence in the best interests of its **customers**;"*

I do not accept that the absence of communication, following the telephone conversation of *"game over once a receiver is appointed"*, constitutes *'acting in the best interests of customers.'* Neither has the Provider met the timeline requirement to disclose relevant information under 2.6 of the CPC.

This is evident from the letter of 7 November 2016 where the Provider finally respond to the Complainants' solicitor's numerous requests for information and engagement.

This letter states, among other things:

*"Your letter of 19 May 2016 was addressed to [Provider] Home Mortgage Department and made reference to account number \*\*\*\*010. This letter outlined correspondence sent by you to [receiver], [Provider] Branch and the Arrears Support Unit. Having viewed this correspondence I note that in your original letter dated 16 May 2015, addressed to [receiver] you outlined [First Complainant's] medical condition. You advised that [First Complainant] wanted to make arrangements to recommence payments, and to address the arrears on his mortgage account. You enquired as to the amount that would be required and that you would revert with a proposal on receipt of this information".*

The letter goes on to outline a history of the account, including the various communications from the Provider and lack of engagement by the Complainants:

*"Unfortunately as there was no meaningful engagement and we had not received a completed SFS, a representative of the ASU met with [Second Complainant] in February 2014. The importance of completion of an SFS and the implications, including being deemed not co-operating, leading to progression of management of the account by our Legal Department, were explained during the meeting.*

*It was agreed by the [Second Complainant] during this meeting that the SFA would be completed and returned to ASU by 21 February 2014.*

*Prior to progressing the account to the Legal Department, ASU again wrote to the customers on 26 February 2014 (copy attached), to advise that the account would be passed to our solicitors to begin legal action with a view to sale of the property unless the full arrears were cleared, or a firm repayment proposal was agreed within 10 days.*

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*As this was not forthcoming, the account progressed to management by the ASU Legal Team which resulted in the appointment of a receiver on 20 August 2014. The decision to appoint a receiver is not taken lightly.*

*I understand that you called to [local] Branch and spoke with the Branch Manager [name] who subsequently rang ASU Legal Department on 19 September 2014. She was advised that the only way to stand down a receiver is if the full arrears due are cleared, and that Normal Monthly Repayments are resumed on the mortgage.*

*Our next contact from you was your letter dated 3 June 2015 received by ASU on 8 June 2015, and reminder letters received 2 July and 1 September 2015. While these letters were received by ASU and were scanned to the customers' file they were not responded to as the account is being managed on behalf of the Bank by the receiver [name]. I am sorry that you did not receive a response to these letters.*

*Subsequently you wrote to us on 19 May 2016 enclosing a copy of the letters outlined above, and noted that the property was for sale and that the clients wished to enter discussions regarding arrears and resolution. As previously advised the receiver cannot be stood down unless arrears are cleared and all communication must be directed to [receiver].*

*In response to your letter dated 15 August 2016 a call was made to you by an agent from the ASU Legal Team on 20 September 2016 to advise you that the correspondence had been received and a complaint logged on behalf of our mutual clients.*

*As you were unable to complete data protection questions at that time, the collections agent was unable to discuss the status of the account. On 12 October 2016 you rang our Legal Team who advised you of the current status of this account, that the property has now been sold and contracts have been exchanged.*

*As [receiver] are unable to quote you the balance or arrears on the account I have requested my colleagues in the [Provider] Asset Management Team to provide you with a current balance on the account. This will be issued to you under separate cover. If you have any other queries in relation to the account, please contact the [receiver]".*

This letter issued only after the Complainants' solicitor had written yet again on 16 August 2016. This happened following the Provider's ASU, on 20<sup>th</sup> September, acknowledging receipt of the letter and that a complaint has been logged.

By the time the Final Response letter dated 7 November was sent by the Provider, the property had been sold. Contracts had been exchanged prior to October. It appears that none of this information was known to the Complainants before the sale was agreed.

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Other than a bland *"I am sorry that you did not receive a response to these letters"*, no explanation is offered as to why this correspondence was ignored.

There is a dispute between the parties about a visit to the property by the agent of the Provider and the purported meeting between that same agent of the Provider and the Second Complainant. Whether this meeting took place or not is important in the context of the communications and issues leading up to the appointment of a receiver. Based on the evidence available to me at the time I issued my Preliminary Decision I accepted that, on balance, the meeting did take place. However, based on the further submissions from the parties, I have reviewed my position in relation to that meeting.

In a post Preliminary Decision submission of 17 March 2019, the Complainant argues that the field visit and meeting, as outlined in my Preliminary Decision, did not take place on 3 February 2014.

In a post Preliminary Decision submission on 27 March 2019 and in response to the Complainants' submission of 17 March 2019, the Provider submitted a copy of notes from the disputed field visit, previously furnished to the FSPO on 2 July 2018. In that submission, the Provider stated that it stood over its decision to appoint a receiver to the property.

In a post Preliminary Decision submission of 9 April 2019, the Complainants assert again that the field visit meeting did not happen and challenged the basis of my assumption that it had taken place.

In a post Preliminary Decision submission from the Provider of 23 May 2019, it states that it had re-interviewed the staff member who performed the field visit. The field visit outcome report which I took into account in arriving at my Preliminary Decision is a two page document set out in tabular format. Given the importance of this report, I have included a screenshot of the report appropriately redacted on the following pages:

### Visit Outcome Report

6001

#### Visit Request Details

Date Visit Notification Letter Issued	21-Jan
Requested By	Field
Visit Type Requested	Re-Engagement

#### Account & Customer Details

Account Numbers	[REDACTED]
Borrower 1 Name	[REDACTED]
Borrower 2 Name	[REDACTED]
Borrower 3 Name	[REDACTED]
Correspondence Address	[REDACTED]
Security Address	[REDACTED]
County	[REDACTED]
Folio Reference	[REDACTED]
Property Type	PDE
Bank	[REDACTED]
Date of Birth Borrower 1	[REDACTED]
Date of Birth Borrower 2	[REDACTED]
Date of Birth Borrower 3	[REDACTED]
Gender of Borrower 1	[REDACTED]
Gender of Borrower 2	[REDACTED]
Gender of Borrower 3	[REDACTED]
Customer Telephone Number	[REDACTED]

#### For Solicited Visits

Arrears at date of Visit Request	€16,938.49
Loan Balance at date of Visit Request	€85,311.17
LTV at date of Visit Request	

#### Comments for Visit Request

SFS sent in June 2013 - nothing back

#### Visit Outcome Report Details

Visit Number	Date of Visit	Time of Visit
Visit 1	2/3/2014	11

Visit 2	2/7/2014	15.450000000000001
Visit 3		

Field Agent the Visit was conducted by

[REDACTED]

Property Located	Yes
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SUS	
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Engagement Party	
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Customer Commitment to Contact the Arrears Support Unit

Commitment to Contact	Commitment to Contact Date	Commitment to Contact Time

Updated Customer Contact Telephone Number

Best Telephone Number to contact the customer on (if received from the customer)	[REDACTED]
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Property Type	Apartment
Occupied By	Tenant

Is the property suspect of being abandoned?	No
Outcome of the Final Visit	Customer Met - Engaged During Visit

Commentary on the Visit Outcome

The security is a 2nd floor apartment on [REDACTED] (located above a commercial premises). It is well maintained and is currently let. A photo is attached for the file. I spoke with [REDACTED] having called to the correspondence address and she admitted that she "had been burying her head in the sand" with regard to the situation, she also confirmed that all the current rent is being paid to the account. We discussed the possibility of some form of restructure including a term extension. I advised that it was imperative that a new SFS is completed and returned along with supporting documentation in order for the loan to be assessed for any restructure. I also advised of the consequences of non completion ie that the account would be deemed non cooperating etc. [REDACTED] agreed to have the SFS returned by 21/02/2014. Account to be reviewed at this point.

Systems that need to be updated and if so, details of same

Update to System Data Needed	
System to Update	
Fields to Update	

Based on this report, and the response of the Provider to this Office dated 29 May 2018, in which it stated clearly:

*"In February 2014 the Bank arranged for a field visit to be conducted to the Complainants' property. During this visit, the Bank's representative spoke with the second named Complainant wherein it was agreed that the Complainants would provide an application for forbearance by 21 February 2014. As a result of the Complainants' failure to supply the information requested, the Complainants' mortgage account was referred to the Bank's Arrears Support Unit (ASU) Legal team for management".*

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The Bank goes on to say that:

*“the Bank appointed a receiver on 20 August 2014 due to non-engagement, failure to supply forbearance application, lack of repayments being made to the account and accruing arrears”.*

In its post Preliminary Decision submission of 23 May 2019 in response to the Complainants’ submissions, the Provider has stated:

*“As part of our final due diligence we have had a further conversation with the staff member who carried out the field visit in relation to the property at [address].*

*The Bank has evidence (Visit Outcome Report) that the Bank’s staff member (i) attended the Complainants’ property at [address] (the **Correspondence Address**) and (ii) that he spoke to [Second Complainant]. The Bank staff member however cannot recall whether he spoke to [Second Complainant] (i) in person at the Correspondence Address or (ii) on the telephone after he attended the Correspondence Address.*

*The Bank staff member has confirmed the content of his report – and specifically that he had a conversation with [Second Complainant], during which [Second Complainant] gave a commitment to return the completed SFS to the Bank by 21/2/14 in order for the loan to be assessed for the possibility of a restructure.*

*In the absence of the SFS and supporting documentation being returned to the Bank to allow us to carry out an assessment, and in conjunction with the summary position provided in our response 27/3/2019, the Bank is satisfied that it had given the Complainants multiple opportunities to engage with us. On this basis, a letter issued from the Bank to the Complainants dated 26/2/14 advising of the potential for legal action to be taken by the Bank. The arrears at this point were €17,820”.*

I am very concerned by the Bank’s position in relation to this meeting. In its previous correspondence and submissions to this Office, the Bank was clear that its agent **met the Second Complainant** on this field trip. I also note the Visit Outcome Report states *“Customer met – Engaged during visit”*. However, its position in this regard has now changed.

I find it extraordinary that the Bank staff member can confirm the content of his report specifically in relation to conversations that he had with the Second Complainant and indeed a commitment allegedly given by her to return the SFS by a particular date. It is difficult to understand how the staff member can be so clear in relation to details of a conversation which he is unable to state whether it happened at a meeting or on the telephone.

Based on the evidence available to me at this stage I now accept that this meeting did not in fact take place and I accept the Second Complainant’s version of events.

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The Provider relies in part upon this meeting in terms of the appointment of the receiver subsequently, since the final undertaking to complete the SFS was allegedly given at this meeting. I cannot now rely on the Provider's contention that the deadline of 21 February was in fact given to the Second Complainant.

The Complainant has sought an Oral Hearing to establish whether or not this meeting took place. However, 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 now accept that this meeting did not take place. 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.

I am concerned about the conduct of the Provider in relation to its account of the disputed meeting, including some aspects of how the Provider has conducted itself in responding to this Office in relation to this complaint.

The information sought by this Office requested "A copy of all correspondence in chronological order, between the Provider, its servants and agents and the complainants for the period relevant to the conduct complained of". The Provider has replied, 'Not Applicable'. I do not find that to be an acceptable response.

This Office also sought, a copy of all correspondence in chronological order, between the Provider and the receiver in this case for the period relevant to the conduct complained of". The Provider replied, '*Copy of correspondence issued by [receiver] to the Complainant dated 20<sup>th</sup> August 2014.*' That was not the material required by this Office. I am surprised and disappointed that the Provider has no further material between it and the receiver from April 2014 until the conclusion of this case.

Further this Office sought notes of any kind prepared by the Provider in any format or medium regarding the dispute. The Provider states it has no evidence to supply. I also find that surprising, especially in light of the admission that the letters had been received, scanned and stored. It is surprising that there is no internal communication about that and the sale of the property.

This Office specifically sought evidence of compliance with Consumer Protection Code. The Provider has replied 'Not Applicable. Compliance with the CPC has not formed part of the conduct complained of.' While that statement may be accurate in terms of the words used, it does not accord with the general submission by the Complainants of unfairness and arbitrary treatment which permeate the dispute. In any event, the Provider is required, at all times, to act in accordance with the CPC and to supply responses to legitimate queries raised by this Office.

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This Office sought all relevant telephone recordings between the Provider and its servants and agents relating to the Complainants. The Provider's response was, *'Not applicable. There are no telephone conversations relevant to the conduct complained of which the Provider wishes to supply'*. Whether or not it wished to supply them, this Office still requires them. In my Preliminary Decision, I stated with regard to the Provider not providing calls, *"this may simply be an issue over terminology, but I would require the Provider's confirmation as to whether such calls exist"*.

I note that the Provider did, subsequent to my Preliminary Decision, supply recordings of telephone calls and confirmation that the mobile telephone recordings of the agent who states he may have spoken to the Second Complainant by telephone in 2014 are not available as calls from mobile phones are not recorded and the records are not available from the phone provider due to the lapse of time.

The Provider should have provided recordings of these calls and this information with the original Schedule of Evidence.

From the time a decision was made to appoint the receiver, where the Provider was acting in accordance with the terms and conditions of the contract, the tone of the dispute changed. While the Complainants accept they were in arrears with their mortgage, the alleged field visit and request for an SFS, if they were in fact made, would have come at a very bad time for them due to the First Complainant's illness. At that stage it is reasonable to conclude that the First Complainant would not have been able to assist. No explanation has been offered for the failure to explore the reasons for the situation at the field visit or phonecall and the appointment of the receiver seems to have resulted from events at that time. No record of the Complainants being deemed 'non-co-operating' is available from the Provider's submissions. There is ample evidence of negligent administration, poor communication and lack of adherence to the spirit of the CPC by the Provider from August 2014 onwards.

Documentation provided in evidence demonstrates that the Complainants fell into arrears and received numerous correspondence from the Provider in relation to those arrears from 19 February 2010 onwards. Ultimately, the Provider appointed a receiver over the property pursuant to a deed of appointment and the terms and conditions of the mortgage. The Complainants' solicitor's letter of 18 June 2018 to this office, does not take issue with the fact that the Provider was lawfully entitled to appoint a receiver and proceed to sell the Complainants' property.

However, it is submitted on behalf of the Complainants that while the Provider may have acted in accordance with the terms and conditions and the law, the manner in which the Complainants were treated was oppressive and discriminatory in its application to the Complainants.

The fact that the mortgage account fell into arrears, that the Complainants breached the terms and conditions of the mortgage and the Provider's legal entitlement to appoint a receiver on foot of this, is not in dispute.

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The Complainants submitted, at the time of making their complaint, that they were unaware as to whether or not their property has been sold, whether or not there is a residual balance on the mortgage and whether their mortgage loan has been sold to third party. Since then, the Provider has informed them that the property was sold, the net sale proceeds were credited to their mortgage account, their mortgage account has been sold to third party and in those circumstances, the Provider is unable to confirm the current balance as they are no longer the owners of the mortgage account.

The Complainants' representatives submit that while the Provider's conduct may have been in accordance with the law, the Provider's behaviour and treatment of the Complainants was oppressive in circumstances where the First Complainant was suffering from a severe illness at the time and had instructed their solicitor to attend at the Provider's branch on September 2014 to see if some progress could be made. In addition, the Complainants' solicitor wrote to the receiver who had stated that a copy of the correspondence had been furnished or forwarded to the Provider and thereafter, despite numerous letters asking the Provider to engage with the Complainants' solicitors, there was no response. The Complainants' representative asserts that the result of this failure to engage by the Provider was that the Complainants were deprived of an opportunity to salvage their mortgage.

The correspondence and the mortgage account statements furnished by the Provider clearly show that the Complainants fell into arrears from 2010 onwards. They were given notice of the arrears on a regular basis from that time onwards and it appears that they did not engage with the Provider. Letters were also sent by the Provider to the Complainants from time to time pursuant to the Code of Conduct for mortgage arrears, inviting the Complainants to contact the Provider to try and find a way to help them manage their financial situation. On 21 January 2014, the Provider's Arrears Support Unit wrote to the Complainants seeking to arrange a call out to the property in order to discuss the mortgage arrears and the next steps for dealing with the mortgage arrears.

There doesn't appear to be any documentation which suggests any material or meaningful engagement by the Complainants with the Provider at this particular time. It has to be acknowledged, that the First Complainant appears to have been suffering from a significant and protracted illness which, by the Complainants' own admission, resulted in correspondence from the Provider being taken by him and not being seen by the Second Complainant. Ultimately however, the Provider exercised its entitlement to appoint a receiver in 2014.

As stated above, the Provider has conceded and acknowledged that it did not respond to correspondence received from the Complainants' solicitors during 2015 and 2016. The Provider acknowledges that it failed in delivering on customer service expectations.

It is submitted on behalf of the Complainant that if the Provider had engaged or responded to this correspondence, the Complainants would have had an opportunity to salvage the mortgage.

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It is not possible for me to conclude whether or not engagement by the Provider with the Complainants or this solution could have salvaged the situation. However, what is clear is that the conduct of the Provider greatly added to a stressful situation for the Complainants at a particularly difficult time.

I find it most unacceptable and unreasonable that the Provider refused to even respond to the Complainants' solicitor's correspondence during such a difficult and important time for them. I also find the Provider's correspondence and engagement with this Office in dealing with the complaint to be unreasonable and unacceptable. I believe this has greatly added to the Complainants' distress and inconvenience.

While I note that the Provider offered a goodwill gesture of €1,000 in recognition of its failure to respond to correspondence received, I do not consider this sum to be at all sufficient in the circumstances.

In my Preliminary Decision I indicated my intention to uphold this complaint and direct the Provider to pay a sum of €15,000 in compensation to the Complainants. However, at that stage I was of the view that on the balance of probability the meeting that the Bank alleged to have taken place early in 2014 did in fact take place.

Based on the further submissions of the parties I now accept that on the balance of probability this meeting did not in fact take place. Given the significance of this event in relation to the appointment of a receiver, I believe that a greater sum of compensation is merited and I direct the Provider to pay a sum of €30,000 to the Complainants.

## **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 €30,000, 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.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

10 October 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.**