



<u>Decision Ref:</u>	2019-0379
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Lost or mislaid title deeds Failure to process instructions in a timely manner Maladministration
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to the release of title deeds to the Complainants' residence ('Property B') by the Provider to the Complainants' solicitor.

The Complainants' Case

The Complainants contend that the Provider was aware that the Complainants wanted to sell a property which was owned by the Complainants and mortgaged to the Provider ('Property A'). Furthermore, the Complainants state that for the sake of expediency and in an attempt to repay their mortgages, they put Property B on the market for sale on **23 November 2016**.

The Complainants submit that Property B went "Sale Agreed" between the Complainants and a third party cash purchaser for €530,000 on the **4 February 2017**. On **23 February 2017**, the Complainants' solicitor requested title deeds for Property B from the Provider. On **24 March 2017**, in error, the Provider issued the title deeds for Property A to the Complainants' solicitor. As a result of this error, a delay arose in the issuing of the title deeds for Property B and the Complainants say that the third party cash purchaser, as well as all under-bidders, withdrew from the proposed sale. In support of this contention, the

Complainants submitted a letter from their auctioneer dated **4 August 2017** which advised that

“the purchaser withdrew her offer due to the delay on receiving contracts. The solicitor for the vendors informed me that this was due to the fact that the title deeds could not be retrieved from the lending institution”.

The Complainants state that the Provider responded positively to the Complainants' complaint and acknowledged its error. However, the Complainants *“feel that [the Provider] have not taken into account the trauma and stress caused to [the Complainants]”.*

The Complainants state that the Provider is guilty of maladministration in relation to the release of the title deeds for Property B to the Complainants' solicitor causing loss, inconvenience and expense.

Ultimately, the Complainants want the Provider to take the trauma and stress caused to them by its error into account in the Provider's offer of redress.

The Provider's Case

By way of response in its final response letter dated **29 August 2017**, the Provider has accepted that it was aware of the plans of the Complainants to sell Property A. The Provider further accepts that the Accountable Trust Receipt was sent to the Provider by post by the Complainants' solicitor as per the letter dated **23 February 2017**. The Provider confirms that the deeds to Property A were issued by post to the Complainants' solicitor on **24 March 2017**. As a result of the Provider being made aware on **17 May 2017** of its error, the deeds to Property B were sent by post to the Complainants' solicitor on **29 May 2017**.

The Provider apologised for the poor customer service given to the Complainants and confirmed that there was a delay in executing the Complainants' instructions. The Provider acknowledges that it made an error as to the property identified to go on the Accountable Trust Receipt and the rectification of this error resulted in an unacceptable delay in carrying out the instructions of the Complainants. The Provider has apologised for its error and for the inconvenience caused.

The Provider further acknowledges that due to this error, the request for the title deeds for Property B was not processed properly or promptly in accordance with provision 3.3 of the Consumer Code of Conduct 2012 (as amended) ('the CPC') by the Provider and apologises for this. The Provider does submit, however, that it complied with provision 2.8 of the CPC in that it corrected its error *“speedily, efficiently and fairly”*. In support of this the Provider states that the correct deeds were provided by it to the Complainants' solicitor within 12 days of becoming aware of its error.

In an attempt to satisfactorily compensate the Complainants for the delay in furnishing the title deeds to Property B, the Provider has agreed to revise the loan accounts in relation to the interest payments on the loan account for **February, March, April and May 2017**. This

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would equate to the interest payments from when the ATR was first received in **February 2017** and when the correct title deeds were sent in **May 2017**. These revisions would amount to a deduction of €1,164.89 from one loan account and a reduction of €4,398.94 from another account, giving a total reduction of €5,563.83.

The Provider states that this was the remedy sought by the Complainants in their letter to the Provider on **7 June 2017** wherein they stated that they *“expect that [they] should not have to pay any interest for that period of time between ‘sale agreed’ and the present time”*. Despite this remedy being sought by the Complainants, the Provider states that these revisions have not been accepted by the Complainants and therefore have not been put into effect by the Provider.

The Provider states that the Complainants first raised the matter of stress and trauma when they made their complaint to this Office. The Provider further states that while it acknowledges that there was a delay in providing the correct deeds to the Complainants’ solicitor, it does not accept that the Provider’s error was the reason for the sale of Property B not progressing.

In recognition of the Provider’s error and the length of time this matter has been ongoing for the Complainants, the Provider has formally offered the Complainants a goodwill gesture of €25,000. The Provider states that this offer is in addition to the revision of the interest on both loan accounts as outlined above.

The Complaint for Adjudication

The complaint for adjudication in this instance is that the Provider has failed to take into account the trauma and stress caused to the Complainants as a result of its error in releasing the incorrect title deeds to the Complainants’ solicitor.

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

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

Following the consideration of additional correspondence from the Provider, enclosing a copy of an undated letter it had received from the Complainants, the final determination of this office is set out below.

I note that the Provider has accepted that it was aware of the plans of the Complainants to sell Property A. I further note that the Provider also accepts that the Accountable Trust Receipt was sent to the Provider by post by the Complainants' solicitor as per the letter dated **23 February 2017** and the Provider confirms that the deeds to Property A were issued by post in error to the Complainants' solicitor on **24 March 2017**. Furthermore, I note that once the Provider was made aware on **17 May 2017** of its error, the deeds to Property B were sent by post to the Complainants' solicitor on **29 May 2017**.

I note that the Provider apologised for the poor customer service given to the Complainants and confirmed that there was a delay in executing the Complainants' instructions. The Provider acknowledges that there was an error by it as to the property identified to go on the Accountable Trust Receipt and the rectification of this error resulted in an unacceptable delay in carrying out the instruction of the Complainants. I accept that the Provider has apologised for the error and for the inconvenience caused.

I further accept that the Provider breached provision 3.3 of the CPC by reason of the fact that the Complainants' request for the title deeds for Property B was not processed properly or promptly. However, I also accept that the Provider complied with provision 2.8 of the CPC in that it corrected its error "*speedily, efficiently and fairly*" by issuing the correct deeds to the Complainants' solicitor within 12 days of becoming aware of its error.

I note that in an attempt to satisfactorily compensate the Complainants for the delay in furnishing the title deeds to Property B, the Provider has agreed to revise the loan accounts in relation to the interest payments for **February, March, April and May 2017**. I accept that this was the remedy sought by the Complainants in its letter to the Provider on **7 June 2017**. I also note that the Complainants first raised the matter of stress and trauma in their complaint to this Office, and thus this could not have been dealt with by the Provider at an earlier juncture.

While I note the letter from the Complainants' auctioneer in relation to the third party purchaser, there is not sufficient evidence before this Office as to enable me to identify a definitive reason for not only the third party purchaser but also all of the underbidders, withdrawing their bids and the sale of Property B not progressing.

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Finally, I note that that in June 2019 an offer of €25,000 was made by the Provider to the Complainants in recognition of the Provider's error and the length of time this matter has been ongoing for the Complainants. This is in addition to the proposed revision of the loan accounts by the Provider as outlined above. I have formed the view that in all the circumstances, this offer of €25,000 plus a revision of the interest payments on the loan accounts by the Provider to the Complainants is more than adequate.

The Provider has long since accepted that there was an error in the release of the incorrect title deeds to the Complainants' solicitor. I also note that it has attempted to make adequate redress to the Complainants from a very early stage of this complaint. Accordingly, noting the offer which is open to the Complainants of €25,000, together with the revision of the interest payments on the loan accounts (which the Provider has confirmed will amount to a deduction of €1,164.89 from one loan account and a reduction of €4,398.94 from another account) I do not consider it necessary or appropriate to uphold this complaint.

Indeed, I note that since the Preliminary Decision was issued to the parties on 7 November 2019, the Complainants sent an undated letter to the Provider, which they both signed, advising that they accepted the decision of the FSPO, and in that context, they wished to accept the Provider's settlement offer. In those circumstances, the FSPO has noted that this matter will now be concluded directly between the parties, on that basis.

In the circumstances outlined, this complaint is not upheld.

Conclusion

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

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

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

29 November 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.