



<b><u>Decision Ref:</u></b>	2020-0081
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant entered into two mortgage loan agreements with the Provider between **2007** and **2008**. The first loan was advanced in respect of the Complainant's family home with this property being offered as the security in respect of this facility. The second loan was advanced in respect of certain investment properties. A number of properties were provided as security for this facility. One of these properties bore the same address as the Complainant's family home. It subsequently transpired that two charges were registered over the Complainant's family home and no charge was registered in respect of the second property with the same address as the family home.

**The Complainant's Case**

The Complainant describes his complaint as follows:

*"[The Provider] referring to reply to my solicitors who are attempting to establish why a second mortgage was wrongfully registered against my family home.*

*My solicitors have made strenuous efforts to agree a repayment plan on arrears but [the Provider] ignores all correspondence."*

In resolution of this complaint, the Complainant wants the Provider to:

*“Enter into correspondence openly and honestly – discharge mortgage and pay costs estimated at €3,500 + VAT and outlay.”*

In correspondence to this Office dated **7 September 2015**, the Complainant’s solicitors state:

*“... the difficulties complained of by our client do not in the main relate to the wrongful registration of a second mortgage but rather to the failure of [the Provider] to rectify the wrong when it was brought to the bank’s attention in 2011, four years ago.”*

The Complainant’s solicitors explain that in **October 2011**, the Complainant secured a purchaser for his family home. Subsequently, in telephone discussions with the Provider on **8 November 2011**, he was informed that a commercial mortgage had been registered as a second charge on the property. It was at this point in time when the Complainant first became aware of the registration of the second charge. The Complainant’s then solicitors wrote to the Provider on **8 November 2011** in connection with the second mortgage. The Complainant’s solicitors state that a further letter dated **9 December 2011** was sent to the Provider but this was ignored.

On **19 January 2012**, the Complainant’s present solicitors advised the Provider that it had taken over the Complainant’s file. It is submitted that on **31 January 2012**, the Provider was again alerted to the Complainant’s concerns surrounding the registration of the second charge. Further correspondence and telephone conversations culminated in a letter dated **4 January 2013** from the Provider *“... dismissing our client’s complaint out of hand.”* The Complainant’s solicitors state that after protracted correspondence extending over a period of almost four years the Provider confirmed that the second charge which was wrongfully registered on the Complainant’s family home was discharged.

The Complainant’s solicitors advise that the delay on the part of the Provider in dealing with this issue prevented the Complainant from selling the property and *“... suffered significant financial loss and costs, as well as stress, worry and upset by the refusal of [the Provider] to accept that the second mortgage should never have been registered on his family home.”*

In relation to the second aspect of the complaint, the Complainant’s solicitors advise that:

*“Our client’s complaint is that [the Provider] refused to reply to correspondence and queries which were forwarded to it on his behalf by this firm.”*

In a further letter dated **19 October 2015**, the Complainant’s solicitors state that:

*“The substance of our client’s complaint is that the bank did not treat seriously his claims regarding wrongful registration of the second charge; ignored most correspondence sent to it in respect of same and, when it did reply, insisted that the second charge was correctly registered by it.”*

## The Provider's Case

### *Alleged Irregularity with Security*

The Provider states that the solicitors acting on behalf of the Complainant at the time of his mortgage applications provided the usual Solicitor's Undertaking to stamp and register the mortgage deeds such that the Provider obtained a first legal charge on the secured properties in question.

The Provider explains that the Complainant's family home was provided as security for the family home loan and the five properties including the second property located at the Complainant's family home address were provided as security for the second loan.

The Provider states that on receipt of the allegations that certain irregularities appeared to surround the execution of some of the mortgage documents, its legal department investigated the allegations and was satisfied that the Provider had received two undertakings from the Complainant's former solicitors. The security to be given to the Provider was, as per the loan offers, and included two separate premises at the Complainant's address. The Provider submits that the letters of offer issued to the Complainant were accepted and when signing these, the Complainant confirmed that his solicitors had explained fully the terms and conditions set out in the letter of approval. The Provider states that on **22 April 2008**, the Complainant's then solicitors furnished an amended undertaking relating to five investment properties. On **10 July 2009**, the Provider advises that it received two certificates of title in relation to all of the properties given as security. The Provider submits that based on the information available including valuations, it understood that there were two properties known at the Complainant's address and it was its understanding that the Complainant's solicitors would register a charge on each property as per the conditions of the loan offers.

The Provider submits that it was not brought to its attention that two properties were known at the same address by the Complainant, the Complainant's company or the solicitors acting on their behalf during the loan application stage or prior to signing the acceptance of loan offers.

The Provider submits that the Complainant's solicitors should have registered one mortgage on the Complainant's family home relating to mortgage loan account ending 911 and a separate charge should have been registered on the second property known at the same address relating to mortgage loan account ending 468 as per the solicitors' undertaking.

The Provider states that there is no evidence that the solicitors acting on behalf of the Complainant complied with the undertaking. The Provider states that it subsequently

/Cont'd...

transpired that two charges were registered on the Complainant's family home and none on the second property.

The Provider advises that it has corrected the error made by the Complainant's solicitors and removed the second charge in respect of account ending 486 in **July 2015**. The Provider explains that the second property was transferred to a third party in **2012** without its consent and this has placed it in an unsatisfactory position with regard to the security. The Provider submits that the error in registration was not a matter for it to confirm.

The Provider states that the Complainant was aware that, in accordance with the letters of offer and the executed mortgage, the Provider's full expectation and intention in return for the monies advanced to the Complainant was receipt of good security over the Complainant's family home and the second property. The Complainant was further aware that the consent of the Provider and its agreement regarding net sale proceeds in redemption of the appropriate charge were basic requirements in the event of the sale of either property.

The Provider points out that the Complainant transferred the second property to a third party aware that the expected charge was not in place and did so without obtaining the consent of or reaching agreement regarding the net sale proceeds. The Provider emphasises that it did not receive any funds pursuant to this third party transfer in redemption/partial redemption of the loan account ending 468.

The Provider states that it received a letter dated **16 September 2011** seeking agreement to the sale of the Complainant's family home for €247,000 and confirmation that on payment of the sale proceeds, the Provider would discharge the mortgage on the property and allow the sale to be completed. The Provider advises that it replied on **26 September 2011**, advising that while it was prepared to consider discharging the property from the mortgage, it would not accept a lower sum in settlement of the Complainant's indebtedness as there would be a shortfall on the final redemption figure. The Provider also advised the Complainant that he would be liable for the full amount of the loan and would remain liable for any residual balance.

### ***Frustration of the Sale of the Complainant's Family Home***

The Provider rejects any allegation that any delay in responding to the irregularities surrounding the charges frustrated the sale of the Complainant's family home. The Provider points out that it was under no obligation to consent to a sale of the property where the sale proceeds would not meet the balance outstanding on the loan.

The Provider states that on **15 September 2011**, it received a letter from the Complainant's solicitors at the time advising that the Complainant's financial position was quite precarious and he was no longer be in a position to meet the monthly repayments. The Provider was advised that the property was for sale and an offer of €247,000 had been received from a cash customer. The solicitors requested consent to sale and on payment of the proceeds to the Provider, it would discharge the mortgage and allow the sale to be completed.

/Cont'd...

The Provider explains that it informed the Complainant's solicitors on **26 September 2011**, it would not accept a lower sum in settlement of the debt and that the Complainant would be liable for the full amount outstanding. The Provider states it advised that it may consider discharging the charge if it could be demonstrated that the offer of €247,000 was the best price on the market and the Complainant would remain liable for the remainder of the debt in his personal capacity.

The Provider was informed by the Complainant's solicitors on **5 October 2011** that there was little point in proceeding with the sale unless payment of the net proceeds resulted in an absolute discharge of the Complainant's liabilities arising from the loan. The Provider states it advised that it would not be in a position to write off €290,000. The Provider states it then received a request that senior management review the request for the write off on **8 November 2011**. Following this, the Provider states that it spoke with the Complainant and confirmed that there was another property named at the same address as the family home and secured on the loan account ending 468.

The Provider states that it wrote to the Complainant's solicitors on **10 November 2011** advising that the Complainant would remain liable for the outstanding balance. In a letter dated **14 November 2011**, the Complainant's solicitors expressed their dissatisfaction with the Provider's response. The Provider received a further letter dated **24 November 2011**, again requesting confirmation that on the sale of the property, the Complainant would be released and discharged from payment of any shortfall. The Provider states that it wrote to the Complainant again confirming that the Complainant would remain liable for the shortfall.

On **18 January 2012**, the Provider states that it issued the Complainant's solicitors with a consent to sale of the property (noting that the Complainant would remain liable for the outstanding balance) subject to the Provider receiving confirmation of the following:

- there were no access issues in relation to the second property;
- the second property was on a separate folio and has good marketable title; and
- the sale of the family home was an arm's length transaction.

The Provider states that it received a letter dated **19 January 2012** from the Complainant's current solicitors confirming that they had taken over the Complainant's file and issued copy consent to sale on **23 January 2012** to the Complainant and the Complainant's new solicitors.

The Provider advises that on **23 January 2012**, the Complainant's solicitors requested a draft of the discharge which the Provider proposed to have sealed on receipt of the payment of €242,128. The Complainant's solicitors confirmed that the Complainant did not own any other dwelling at the address of the family home and second property, and that they would not be commenting in any way on the title of the second property. The Provider advises that

it then received confirmation from a valuer that there were two properties at the relevant address.

The Provider states it was made clear that it was not in a position to offer any debt forgiveness and/or write offs. The Provider further states that it agreed to consent to sale on the conditions outlined above.

The Provider explains that it required confirmation surrounding both mortgages before it consented to the release of the security. The Provider states that it wrote to the Complainant's solicitors on **4 January 2013**, advising that it held a legal charge over the properties and it was not prepared to release the charges until such time as the loan accounts were cleared. The Provider states it received two undertakings from the Complainant's former solicitors and the security to be given for the Complainant's two loans were as per the loan offers which included two separate premises. The Provider explains that its position in relation to the releasing of the charge remained unchanged.

#### ***Failure to Engage with the Complainant's Solicitor***

The Provider states that the loan account ending 911 fell into arrears in 2012, prior to the implementation of the Code of Conduct on Mortgage Arrears 2013 (CCMA) on **1 June 2013**. The Provider states that it complied with the Code of Conduct on Mortgage Arrears 2010 when dealing with the Complainant's account.

The Provider states that it issued correspondence to the Complainant in accordance with provision 28 of the CCMA on **2 October 2013**. The letter requested that the Complainant contact the Provider and complete a Standard Financial Statement (SFS) within 20 business days. On **6 December 2013**, the Provider again wrote to the Complainant requesting that he complete a new SFS and supply the relevant supporting documentation.

In line with provision 29 of the CCMA, the Provider states that it issued further correspondence on **19 December 2013** indicating that the Complainant has been deemed non co-operating with regard to his home loan mortgage account as he had not engaged with the Provider regarding his mortgage account. The Provider advises that this letter also set out the Complainant's right to appeal this decision.

The Provider advises that on **4 April 2014**, it received a letter from the Complainant's solicitors enclosing an SFS. On **15 April 2014**, the Provider issued correspondence to the Complainant detailing the Mortgage Arrears Resolution Process (MARP) along with a copy of the SFS it received. The Provider wrote to the Complainant's solicitors requesting supporting documentation in order to complete an assessment of the Complainant's full financial circumstances. The Provider states that it has no record of receiving the requested information.

The Provider states that the Complainant subsequently attended its [location] branch on **1 May 2014** and completed a new SFS and provided the relevant supporting documentation.

/Cont'd...

The documentation was forwarded to the Provider's Arrears Support Unit (**ASU**) and an assessment was completed. The Provider lists the alternative repayment arrangements (**ARAs**) that were taken into consideration in line with provision 39 of the CCMA.

The Provider states that following its assessment, the ASU deemed a split mortgage agreement as the most suitable option for the Complainant's home loan mortgage.

On **4 June 2014**, the Provider offered the Complainant a six month moratorium restructure agreement with monthly repayments of €2,403. This offer included an incorrect term of one month and an amended copy issued to the Complainant and his solicitors on **17 June 2014**. The Complainant's solicitors wrote to the Provider seeking clarification on how the interest rate of 2.5% was arrived at since the Complainant was on a tracker interest rate. The Provider advises that it responded to this letter on **29 July 2015**. The Provider states that it wrote to the Complainant and his solicitors on **25 June 2014**, **19 July 2014** and **16 July 2014** to inform them that its offer of a moratorium was due to expire.

The Provider states that on **28 July 2014**, in accordance with provision 47 of the CCMA, a letter issued to the Complainant stating that as it had not received the signed ARA, it was taking the view that the Complainant had decided not to enter into an ARA. The Provider advised the Complainant that he was now considered to be outside the MARP process. On **30 July 2014**, the Complainant spoke with one of the Provider's agents and indicated that he was unhappy with its offer of a split mortgage agreement. The Provider advised the Complainant of his right to appeal its decision to remove him from the MARP process. The Provider advises that it has no record of the Complainant appealing this decision.

The Provider advises that the Complainant completed a further SFS in **November 2015** which was submitted by his solicitors on **18 December 2015**. The Provider wrote to the Complainant's solicitors confirming receipt of the documents submitted however, it still awaited receipt of other documentation not received. On **28 January 2016**, the Provider received further documents from the Complainant and having reviewed the documents submitted, required proof of payment of disability benefit in order to make a full assessment of the Complainant's financial circumstances.

On **11 April 2016**, the Provider offered the Complainant a short term arrangement moratorium offer. The Complainant advised that he could not understand how the figures shown in the assessment had been arrived at and requested that the Provider recheck the calculations. The Provider states that *"... even though solicitor (sic) requested clarification on this on a number of occasions a response did not issue. The Bank would like to offer its sincerest apologies in this regard."*

The Provider has set out how the Complainant's SFS was assessed and states that based on its assessment, a short term moratorium offer was a suitable option for the Complainant. The Provider advises that this was not accepted by the Complainant.

In respect of the loan account ending 468, the Provider states that it wrote to the Complainant on **28 May 2013** requesting that he contact the Provider within seven days and that it may refer this account to a debt collection agency. The Provider states that a letter

/Cont'd...

was issued on **6 December 2013** requesting that the Complainant complete a new SFS and provide relevant supporting documentation.

The Provider received an SFS from the Complainant's solicitors on **4 April 2014** however, it was unable to complete its assessment without the necessary supporting documentation. A letter of demand was issued on **16 April 2014** as the Complainant had not furnished the supporting documentation required to assess the SFS or entered into an ARA.

The Provider states that the Complainant attended its [location] branch on **1 May 2015** to complete an SFS. The Provider states that it reviewed all options for an ARA. The Provider advises that following an assessment of the SFS, a part capital and interest arrangement was identified. Prior to placing this account on a long term arrangement, the Provider states that a six month trial period was required to ascertain whether the Complainant would be in a position to meet the proposed repayments going forward. The Provider states that documentation for the six month trial period was issued on **4 June 2014** with repayments set at €1,721. Following the successful completion of the trial period, the Provider approved a part capital and interest arrangement which included capitalisation of any existing arrears on **28 November 2014**. The Provider advises that this arrangement superseded any previous agreement.

The Provider states that its ASU received a letter dated **11 December 2014** from the Complainant's solicitors enclosing the signed agreement to the part capital and interest arrangement. In signing the agreement, the Provider states that the Complainant confirmed his acceptance of the new monthly repayments of €1,720.99 with the capitalisation of the account arrears of €38,172.72 and the outstanding payment due at the end of the loan term of €1,051,603.

### **The Complaints for Adjudication**

The complaints are that the Provider:

1. wrongfully and/or unreasonably delayed in responding to queries and/or correspondence in respect of the registration of a second charge over the Complainant's family home; and
2. failed and/or refused to reply to correspondence from the Complainant's solicitors.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's

/Cont'd...



response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 22 January 2020, 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 issue of my Preliminary Decision, the Complainant made a submission under cover of his solicitors' letter to this Office dated 30 January 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider, under cover of its e-mail to this Office dated 11 February 2020, advised it had no further submissions to make.

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

### ***Previous Complaint to this Office***

A complaint had previously been made to the Office of the then Financial Services Ombudsman (FSO) by the Complainant in respect of the conduct of the Provider surrounding the registration of the second charge over his family home. This Office declined to investigate this aspect of the complaint as it was deemed to be more properly a matter for a court of law and/or the Land Registry. This Office further decided that, in light of such a determination, any alleged delay associated with the sale of the Complainant's family home and/or the frustration of such sale was inextricably linked to the aforementioned conduct and therefore, it would not be appropriate to make a determination as to whether or not there was a delay on the part of the Provider in considering the Complainant's request for consent to sale. It follows from this that this Office cannot investigate whether there was any delay on the part of the Provider in removing the second charge.

/Cont'd...

### **Correspondence**

On **15 September 2011**, the Complainant's former solicitors wrote to the Provider advising that the Complainant's financial position was *quite precarious*. The Provider was advised that the Complainant was endeavouring to sell the family home and had received a firm cash offer of €247,000. A request was also made to discharge the mortgage on the property to allow the sale to proceed.

By letter dated **8 November 2011**, the Complainant's solicitors advised the Provider of the following:

*"Our client has instructed us that in conversations with you he was advised that the above property has also been secured against commercial loans. Our client was not aware of this arrangement and we would be obliged if you would furnish us with full details including the documentation relied on by [the Provider]."*

The Provider wrote to the Complainant on **14 December 2011** citing account ending 468 and enclosing a copy of the letter of approval dated **19 December 2007** "... which clearly sets out all the properties required as security for this advance."

By letter dated **19 December 2011**, solicitors on behalf of the Complainant wrote to the Provider in the following terms:

*"We note that the letter offer dated December 19<sup>th</sup> 2007 does not, as you allege, set out all the properties required as security for the advance. You will note that it simply lists properties over which [the Provider] already held First Legal Charges on the date of the issue of the loan offer. It does not state that they comprise further or additional security."*

On **18 January 2012**, the Provider wrote to the Complainant's solicitors in respect of loan account ending 911 stating:

*"We confirm that, without prejudice to the Bank's entitlement to recover the entire of the Loan amount with interest, the Bank is agreeable to the sale of the above Mortgaged property on condition we receive the net sale proceeds ...*

*Please note this approval is on the basis that we receive written confirmation of the following:*

- *That there are no access issues in relation to the remaining property at [address] mortgaged with [the Provider] under account [ending 468].*

/Cont'd...

- *Solicitor to confirm that the property at [address] is on a separate folio and has good and marketable title.*
  
- *Solicitor to confirm that sale of [the Complainant's family home] is an arms length transaction.*

*On receipt of the above we will complete a Deed of Discharge to allow the property to be sold, however we will not be vacating the mortgage."*

The Complainant's present solicitors wrote to the Provider on **19 January 2012** to advise the Provider that they had now taken over the Complainant's file. The Provider's letter dated **18 January 2012** and outlined above, was sent to the Complainant's new solicitors on **23 January 2012**.

The Complainant's solicitors replied on **31 January 2012**, as follows:

*"Our client does not own any other dwelling at [address] and none such is mortgaged to [the Provider]. You have previously been notified regarding irregularities in the creation of mortgage ref no. [ending 468] but you have not addressed our client's concerns. ...*

*We will not be commenting in any way on the title to any of our client's properties. We have no valid reason to certify title ... Neither will be commenting on the transaction itself for precisely the same reason. ...*

*Finally, we are instructed that although our client furnished you with a new direct debit in line with his current ability to make repayments you have continued to take excess funds from his bank account. Our client is now cancelling all direct debits until such time as you update your records."*

On **8 March 2012**, the Complainant's solicitors wrote to the Provider advising of its disappointment "... that this matter has not progressed any further due to the delay by [the Provider] in dealing with the issues of discharge." Referring to previous correspondence received from the Complainant's solicitors and a recent telephone call, the Provider advised the Complainant's solicitors by letter dated **12 March 2012** that it was investigating the matters that were highlighted and would revert as soon as it had an update.

On **14 March 2012**, the Provider wrote to the Complainant to notify him that the direct debit for account ending 911 had been returned unpaid. On **22 March 2012**, the Complainant's solicitors responded as follows:

*"If you check your records you will discover that we have been in correspondence with [the Provider] for a considerable time in respect of irregularities in the creation of certain mortgages and also in respect of a sale of one of the properties. You will also discover that [the Provider] was informed that our client was unable to continue the*

/Cont'd...

*agreed payments, that he was sent a fresh direct debit for signature, that the direct debit was signed and returned, but ignored by [the Provider].*

*Our client will not be in a position to reactivate the direct debits until such time as [the Provider] brings its records up to date."*

On **23 April 2012**, the Complainant's solicitors wrote to the Provider expressing concern at the delay in responding to the Complainant's queries. By letter dated **23 May 2012**, a formal complaint was made to the Provider on the Complainant's behalf in respect of the manner in which the Complainant was being dealt with and that correspondence sent on his behalf was being ignored. The Provider responded by letter dated **6 June 2012** to advise that the matter was currently being investigated. The Provider wrote to the Complainant's solicitors on **27 June 2012** to update them that the matter was still being investigated. The Complainant's solicitors were advised on **9 July 2012** that the Provider has been in contact with its legal departments and that a representative from this department would be in contact directly. The Complainant's solicitors wrote to the Provider on **10 December 2012** looking for an update as to the status of the investigation of the complaint.

The Provider issued a response to the Complainant's solicitors on **4 January 2013**, stating as follows:

*"I wish to advise that [the Provider] holds a legal charge over the properties and the Bank is not prepared to release the charges until such time as the above mortgage loans have been cleared.*

*The Bank received two undertakings from your client's former solicitors. The security to be given to the bank for the two loans as per the loan offers, as accepted by your client included two separate premises.*

*The Bank's position therefore remains unchanged in regard to the releasing of the charge."*

The Provider wrote to the Complainant in respect of account ending 468 on **28 May 2013** advising that:

*"We have been trying to contact you and unfortunately have been unsuccessful to date. We can see that you're experiencing difficulty with your mortgage repayments and we believe that by working together we can find a solution to help you get back on track and regularise your financial situation."*

The Complainant's solicitors replied to this letter on **30 May 2013**, stating in part:

*"As your files will show we are on record in this matter and have been in correspondence with [the Provider] for well over a year in respect of irregularities in the creation of the mortgage. ..."*

/Cont'd...

The Provider wrote to the Complainant's solicitors on **13 June 2013**, referring to recent unspecified correspondence and for bringing "... *this matter to our attention.*" The Provider advised that the issues raised were currently being investigated. On **18 June 2013**, the Provider wrote to the Complainant's solicitors referring to the letter of **30 May 2013** advising that the contents of that correspondence was noted and that the terms and conditions of the Complainant's loans would continue to apply while the complaint to the FSO was being investigated.

The Provider wrote to the Complainant in respect of account ending 911 on **27 August 2013** asking that the Complainant contact it to discuss proposed mortgage solutions. The Complainant's solicitors replied on **29 August 2013** stating:

*"... this firm has been in continuous correspondence with [the Provider] in respect of the above accounts for upwards of two years past. We continue to be available to discuss any meaningful proposals from [the Provider] which might lead to an amicable resolution of the matters arising."*

The Provider replied on **6 September 2013**, stating that a complaint had been received by the Provider's customer relations department and that the FSO had written to the Provider requesting further information. The Provider also advised that it was awaiting the outcome of the decision of the FSO.

A letter in similar terms to those contained in the letter of **29 August 2013** was sent on **7 October 2013** but in which the Complainant's solicitors advised that the Provider was furnished with an SFS one year previously.

In a response dated **4 November 2013**, the Provider advised that a new SFS would need to be completed by the Complainant as any previous SFS would be out of date. On **5 December 2013**, the Complainant's solicitors sought a copy of the SFS from **December 2011**. This request was repeated on **6 January** and **20 January 2014**. The Provider wrote to the Complainant on **6 December 2013** in respect of both loan accounts requesting that he meet with a *specialist* in his local branch and complete an SFS in order for the Provider to fully understand his financial position and consider the most suitable options for the Complainant.

The Complainant's solicitors received a letter from the Provider dated **14 January 2014** advising that it did not have a signed authority to deal with this firm of solicitors on the Complainant's behalf.

The Complainant's solicitors wrote to the Provider on **27 January 2014**, expressing dissatisfaction in respect of the Provider "... *again denying that it received a Standard Financial Statement ...*" and again called on the Provider to furnish a copy of the SFS from

/Cont'd...

**December 2011.** By letter dated **10 February 2014**, the Provider forwarded a copy of the relevant SFS to the Complainant's solicitors and requested that a further SFS be completed by the Complainant.

The Complainant's solicitors wrote to the Provider on **10 February 2014**, stating that the Provider had not replied to its request for an SFS and further requested that the Provider:

*"Please confirm that [the Provider] now accepts that there is only one mortgage due on the family home i.e. account [ending 911] with a stated balance of €547,461.74."*

The Provider responded on **17 February 2014**, the relevant part of this letter states:

*"I further refer to your letter dated 10<sup>th</sup> February. I can advise that the property [address] is charged under both accounts [ending 911] and [ending 468] as per the letters of approval."*

The Complainant's solicitors wrote to the Provider on **24 February 2014** requesting copy valuations with corresponding maps in respect of the creation of the mortgages on foot of the Complainant's loan agreements. A request for this information was repeated on **20 March 2014**. In an email dated **27 March 2014**, the Complainant's solicitors, referring to a telephone conversation with the Provider earlier that day and noting the Provider was unable to locate its letter of **24 February 2014**, attached the said letter to the email. Copies of the relevant valuation reports were forwarded to the Complainant's solicitors on **23 April 2014**.

In a letter dated **3 April 2014**, the Complainant's solicitors wrote to the Provider enclosing an SFS:

*"Please confirm that [the Provider] now accepts that there is only one mortgage due to be registered on the family home i.e. account [ending 911] ..."*

The Provider wrote to the Complainant's solicitors on **16 April 2014**, advising that it was awaiting receipt of certain documentation. In a letter dated **April 2014** and bearing the Provider's stamp of **28 April 2014**, the Complainant's solicitors responded to the Provider's letter dated **16 April 2014**, as follows:

*"We note that we have been in ongoing correspondence with [the Provider] in respect of the above mortgage accounts for almost three years. ..."*

*With this in mind we would be obliged if you would note the following: ..."*

*2. [The Provider] has refused and neglected to furnish us with copies of the valuations allegedly carried out in respect of the creation of both of the above mortgages on the ... property. ..."*

/Cont'd...

3. *Our client has made it abundantly clear through this office that he is anxious and available at all times to enter into a mutually acceptable arrangement for dealing with his outstanding liabilities to [the Provider] but so far neither him nor us have received any constructive response from you. ...*

4. *Our client has filed his SFS in respect of the family home on two occasions. The filing of the first one was denied by [the Provider] until our complaint to the Ombudsman forced an admission that it had in fact been filed. ...”*

On **28 April 2014**, the Complainant’s solicitors wrote to the Provider advising that they were seeking copies of the valuations of the properties including maps. The letter continues as follows:

*“It is alleged by [the Provider] and denied by our client that two mortgages were taken out on his family home.*

*For record purposes we note that the copy valuation furnished refers to a bungalow while our client’s family home is unquestionably a two storey dwelling.*

*We note that we have been in ongoing correspondence with [the Provider] in respect of the above mortgage accounts for almost three years and have yet to receive proof of identity of the property alleged to be mortgaged.”*

On **29 April 2014**, the Provider wrote to the Complainant’s solicitors thanking them for bringing the above matters to its attention and advised that it was presently investigating the matter and would be in contact as soon as possible.

The Complainant’s solicitors wrote to the Provider on **8 May 2014** in respect of a meeting with one of the Provider’s agents at its [location] branch, stating:

*“We were extremely disappointed to find that [agent] had not been briefed by you prior to the meeting and that he had not been made aware of the irregularities surrounding the creation of a mortgage on the family home.*

*Much of the meeting was taken up by [agent] inputting on the bank’s computer system the information already furnished to you by way of a SFS. ... After [agent] completed the formalities we discovered that he had not been given an authority to discuss any repayment or settlement agreement with our client. ...”*

On **16 May 2014**, the Provider wrote to the Complainant thanking him for bringing the above matters to its attention and advised that it was presently investigating the matter and would be in contact as soon as possible. Correspondence was sent to the Complainant’s solicitors dated **26 May** and **9 June 2014** advising that the above matters were still being investigated.

By letter dated **4 June 2014**, the Provider offered the Complainant a six month moratorium on account ending 911. By further letter dated **4 June 2014**, the Provider offered a Split

/Cont’d...

Mortgage in respect of the same loan account as the appropriate restructure option for the Complainant. The Complainant's solicitors wrote to the Provider on **16 June 2014**, as follows:

*"Unfortunately the details of the split mortgage referred to were not included with your correspondence. ...*

*Please also clarify how the interest rate of 2.5% on the restructuring proposal is arrived at since our client is on a tracker mortgage.*

*Please confirm that [the Provider] now accepts that there is only one mortgage due on the family home ..."*

The Provider wrote to the Complainant on **17 June 2014** in respect of account ending 911 advising that:

*"Based on our assessment of the information that you provided to us in your Standard Financial Statement, we are pleased to confirm that a Moratorium has been identified as the most appropriate restructure 'Offer' for your account."*

By letter dated **18 June 2014**, the Provider advised that Complainant that it had amended his monthly repayments in respect of account ending 468 to €1,721 for a period of six months commencing on **6 July 2014**. The Provider wrote to the Complainant on **12 November 2014** advising him that this arrangement was due to expire the following month.

The Provider wrote to the Complainant's solicitors on **24 June 2014**, thanking them for their patience in allowing the Provider to investigate that matter and assured the Complainant's solicitors that it hoped to be in a position to issue a response on **22 July 2014**.

Correspondence offering a split mortgage and moratorium in respect of account ending 911 was sent to the Complainant's solicitors on **25 June 2014**. A letter of the same date was also sent to the Complainant advising him that he had ten days within which to return his signed acceptance form in respect of the restructure agreements that had been offered.

The Provider wrote a Final Response letter to the Complainant's solicitors on **26 June 2014**, in respect of the matters previously raised. The Provider referred to the facilities offered to the Complainant on **19 December 2007** and in the context of the present complaint to this Office, I note the following:

*"Please note that there are two properties known as [address].*

*Property No. 1. – circa 100+ years – Home Loan Mortgage xxx 911 (as of 2007)*

*Property No. 2. – Circa 7 years old (as of 2007). – Held as security for Mortgage xxx468*

*The Bank received 2 Acceptance of Loan Offer forms signed by [the Complainant] for each respective Mortgage Loan Approval offer dated the 26<sup>th</sup> March 2008 ... By signing the Acceptance of Loan Offers, [the Complainant] signified that with the*

/Cont'd...



*benefit of independent Legal advice he fully understood and accepted the terms and conditions of the mortgage as explained by his Legal representative ...*

*If [the Complainant] had any concerns regarding any issues or conditions attached to the Loan offers, he had the opportunity to raise his concerns with his legal representative ... prior to signing and accepting the relevant Loan Offers.*

*The Bank refute the allegation that inclusion of the family home at [address] as security for Mortgage [account ending 468] was included after [the Complainant] signed the Acceptance of Loan form and without his knowledge.*

*As outlined above there are two properties known as [address], the family home and another property. The second property was the property held as security for the Residential Investment Property Mortgage xxx468."*

The Complainant's solicitors responded to the Provider on **14 July 2014** as follows:

*"While many of the issues are dealt with in your letter (some agreed not others) the significant issue not dealt with is the registering of two mortgages on our client's family home. You state that there are two properties at [address] ... You have furnished a poor copy map showing the two properties ...*

*We now enclose a copy of our client's folio and map of [address]. This is Folio ... on which [the Provider] has incorrectly registered two mortgages. If you check you will immediately see that the orange plot (bungalow) is not within the Folio boundaries. In fact there is only one house on this folio and there should only be one mortgage registered on this folio. We have been trying to get this point across to [the Provider] for the past three years without success."*

The Complainant's solicitors wrote a further letter to the Provider dated **14 July 2014** requesting details surrounding the split mortgage and clarity on the interest rate being applied.

Letters dated **9 July** and **16 July 2014** were sent to the Complainant's solicitors advising that the Complainant had ten days to return a signed acceptance form in respect of the proposed restructure agreement. The Provider wrote to the Complainant by letter dated **28 July 2014**, noting that a signed acceptance form had not been received and that deadline for receipt of this was overdue.

The Provider wrote to the Complainant's solicitors on **7 August 2014**, acknowledging receipt of their most recent communication and advised that it was investigating the issues raised. The Complainant's solicitors wrote to the Provider by letters dated **14 August** and **10 November 2014** requesting a response to their letter of **14 July 2014**. The Complainant's solicitors wrote to the Provider on **11 December 2014** requesting a twenty five day letter in

/Cont'd...

order for the matter to be referred back to the FSO. This request was repeated on **2 March 2015**.

By letter dated **26 November 2014**, the Provider offered the Complainant a part capital and interest ARA in respect of account ending 468. In a further letter dated **11 December 2011**, the Complainant's solicitors returned a signed restructure agreement in respect of account ending 468. The Provider informed by letter dated **16 December 2014**, this loan account had been restructured in the form of part capital and interest repayments.

The Provider wrote to the Complainant's solicitors on **4 June 2015** to advise that it was still investigating the matter. A letter in similar terms was sent on **15 June 2015** which advised that "... due to the complex nature of the complaint it is taking longer than anticipated to issue a response." A further update was sent on **2 July 2015** advising that the Provider hoped to be in a position to issue a response by **30 July 2015**.

The Provider issued a Final Response letter on **29 July 2015**, the relevant parts of this letter are as follows:

*"Due to human error on behalf of [the Provider] the issues raised in your correspondence of the 14<sup>th</sup> July 2014 were not responded to. I apologise for the inconvenience caused to your client as a result of the delay in responding to this matter. In light of this lapse in service the Bank would like to offer a Gesture of Goodwill in the sum of €400.00.*

...

*[The Complainant's former solicitors] acted for your clients behalf at the time in relation to this matter. They provided the usual Solicitors Undertaking to the Bank to stamp and register the Mortgage deeds such that the Bank obtained a first legal charge on the security properties in question.*

*Based on the information available including the enclosed Valuations, the Bank understood that there were two properties known as [address] and it was the Bank's understanding that [the Complainant's former solicitors] would register the Bank's charge on each property as per the conditions of the loan offers set out below.*

...

*It was not brought to the attention of the Bank that both properties were not known as [address] by your client ... during the Loan Application stage or prior to signing the Acceptance of Loan Offers.*

/Cont'd...

*The borrower's Solicitors should have registered one Mortgage on your client's family home ... and a separate charge should have been registered on the second property ...*

*There is no evidence that [the Complainant's former solicitors] complied with their Solicitors undertaking as the Bank has ended up with two charges on the borrowers detached house ... and no charge on Property 2.*

*The Bank has corrected the error made ... and removed that Mortgage registered on the home loan ... The folio [in respect of the second property] was transferred to the name of ... in 2012 without the consent of the Bank.*

*We would respectfully suggest that that (sic) your client and his Solicitor were aware that a separate charge should have been registered on each property, rather than two charges being registered on one property. As [the Complainant's former solicitors] appear to be no longer practicing, the Bank has been deprived of the remedies open to it against any Solicitor who fails to comply with an undertaking.*

*Notwithstanding the unsatisfactory position which this places the Bank in with regard to security, the duplicate charge has been released as set out above. ..."*

## **Analysis**

The investigation of this complaint is solely concerned with whether or not there was a delay on the part of the Provider in responding to queries regarding the registration of the second charge over the Complainant's family home and also the Provider's failure to respond to correspondence from the Complainant's solicitors.

The correspondence exchanged between the parties and submitted to this Office has been set out above. Having considered this correspondence, I accept that there were delays on the part of the Provider in responding to this correspondence. In particular, I note the following instances of unacceptable and/or unreasonable delay.

First, on **23 April 2012**, the Complainant's solicitors wrote to the Provider expressing concern at the delay in responding to the Complainant's queries. By letter dated **23 May 2012**, a formal complaint was made to the Provider on the Complainant's behalf in respect of the manner in which the Complainant was being dealt with and that correspondence sent on his behalf was being ignored. The Provider responded by letter dated **6 June 2012** to advise that the matter was currently being investigated.

The Provider wrote to the Complainant's solicitors on **27 June 2012** to advise that the matter was still being investigated. The Complainant's solicitors were advised on **9 July 2012** that the Provider has been in contact with its legal departments and that a representative from this department would be in contact directly. Nothing happened for a number of months until the Complainant's solicitors wrote to the Provider on **10 December 2012** looking for an

/Cont'd...

update as to the status of the investigation of the complaint. The Provider issued a response to the Complainant's solicitors on **4 January 2013** over seven months after the initial complaint.

Second, the Complainant's solicitors replied to previous correspondence of the Provider on **30 May 2013** and highlighted the length of time that had passed since the irregularities concerning the registration of the second mortgage had been brought to its attention. The Provider wrote to the Complainant's solicitors on **13 June 2013**, referring to recent unspecified correspondence and for bringing "... *this matter to our attention.*" The Provider issued a Final Response letter to the Complainant's solicitors over on year later on **26 June 2014**.

Third, the Complainant's solicitors wrote to the Provider on **24 February 2014** requesting copy valuations with corresponding maps in respect of the creation of the mortgages on foot of the Complainant's loan agreements. A request for this information was repeated on **20 March 2014**. In an email dated **27 March 2014**, the Complainant's solicitors, referring to a telephone conversation with the Provider earlier that day and noting the Provider was unable to locate its letter of **24 February 2014**, attached the said letter to the email. Copies of the relevant valuation reports were not forwarded to the Complainant's solicitors until **23 April 2014**.

Fourth, the Complainant's solicitors wrote to the Provider on **14 August 2014** and **10 November 2014** requesting a response to their letter of **14 July 2014**. The Complainant's solicitors wrote to the Provider on **11 December 2014** requesting a twenty five day letter in order for the matter to be referred back to the FSO. This request was repeated on **2 March 2015**. This correspondence does not appear to have been acknowledged until **June 2015**. A Final Response letter was issued on **29 July 2015**.

In its submissions dated **13 April 2018**, the Provider states as follows:

*"From reviewing the Complainants file, the Bank acknowledges that are (sic) shortcomings in in (sic) the level of service provided and in light of this, we would like to offer the Complainant €2,000.00."*

In my Preliminary Decision I had indicated that I considered this goodwill gesture offered by the Provider to be a reasonable sum of compensation for the delay on the part of the Provider and the service issues experienced by the Complainant.

The Complainant's solicitors in their post Preliminary Decision submission dated **30 January 2020** has commented on this as follows:

/Cont'd...

*“There is no basis in law for the Financial Services and Pensions Ombudsman to facilitate the buying out of a complaint by a financial institution. Section 60 (1) of the Act grants no such authority”.*

*“We respectfully suggest that the Financial Services and Pensions Ombudsman reconsider the preliminary decision and apply the law fairly and evenly”.*

I can assure the Complainant and his solicitors that I have applied the law fairly and evenly in relation to this complaint as I do with all complaints.

My role as set out in the Act is to investigate complaints in an appropriate manner proportionate to the nature of the complaint.

Section 12 (11) of the Act provides:

*“Subject to the Act, the Ombudsman, when dealing with a particular complaint, shall act in an informal manner and according to equity, good conscience and the substantial merits of the complaint without undue regard to technicality or legal form”.*

The Complainant’s solicitors have, in their post Preliminary Decision submission of **30 January 2020**, made some spurious points in relation to the powers given to regulatory bodies of the Oireachtas.

I must point out that this Office is not a regulatory body and the Complainant’s solicitors’ remarks in this regard are of no relevance to the complaint.

I would point out that **Section 60 (1)** of ***the Financial Services and Pensions Ombudsman Act 2017 (the Act)*** allows for a complaint to be rejected. Such a decision is reached having fairly considered all relevant details of the complaint. Further this Office encourages parties to resolve complaints in a fair and reasonable manner at the earliest opportunity, the Provider’s offer represents a reasonable attempt on the Provider’s behalf at resolving the complaint at an early stage.

Having considered all relevant details of the complaint and on the basis that the offer of €2,000 remains available to the Complainant, and I believe it to be reasonable in all the circumstances, I do not uphold this complaint.

### **Conclusion**

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

/Cont’d...

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

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

9 March 2020

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.