



<u>Decision Ref:</u>	2020-0231
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Interest Only
<u>Conduct(s) complained of:</u>	Failure to implement payment terms Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

This complaint concerns an "*interest only*" mortgage loan, taken out by the Complainants in **2003**. The loan was secured against a residential investment property.

The Complainants assert that the Provider had made an error and furnished their solicitor incorrect redemption figures in **2005**. The Provider accepts that incorrect redemption figures were provided to the Complainants in May 2005. The complaint about this error has not been made within the time limits for complaints to this Office as provided for in the ***Financial Services and Pensions Ombudsman Act 2017***.

The complaints under consideration relate to the conduct of the Provider from **2013** onwards with respect to the mortgage loan.

The Complainants' Case

The Complainants state that they took out an Interest Only home loan in the amount of €160,000 from the Provider in **2003**, charged against one of their properties, which was to be redeemed on **28 January 2013**. In **2005**, the Complainants took a decision to sell this property, and submit that they requested a redemption figure from the Provider in **May** of that year.

The Complainants submit that the Provider reverted to them with a figure of €41,070.87. The Complainants contend that following the sale of the property, their solicitor, having paid the Provider the abovementioned sum, deposited €367,953.92 to the Complainants' bank account (held with the Provider).

The Complainants state that they were *"led to believe that this was the full and final payment of all funds outstanding and these funds were ours to keep"*. The Complainants assert that they *"never associated the €160,000 ... with the sale of [the property] ... and didn't know it had to be paid back when this house was sold"*. They submit that they had *"plenty of money"* at the time to pay that sum had they been asked for it. They state that they gave/loaned €200,000 to their daughter and son-in-law in **July 2005** on the understanding that €160,000 would be repaid to them by **December 2012**. The Complainants state that *"a few months later [the Provider] realised [its] error and demanded full payment"*.

The Complainants state that the economic downturn resulted in their daughter and son-in-law not being in a position to pay them back to the agreed €160,000 by **December 2012**, but that they were able to pay them €80,000. The Complainants submit that they contacted the Provider immediately as they could no longer *"fully fulfil"* their agreement to repay the loan in full the following month. They state that they have *"done everything within [their] power to resolve the issue"*, completing *"all requested documentation including income and expenditure forms"* and requesting a lower interest rate.

The Complainants submit that in **2014** they asked the Provider for a lower interest rate to help them repay what was owing. The Complainants assert that the Provider's offer to them in **October 2014** of a reduced interest rate would have meant a reduction in monthly repayments totalling €2.59 and they did not respond to this *"so-called"* offer. The Complainants submit that the *"new Loan Offer Letter that issued was not in keeping with what [they] were trying to do – resolve an issue that was not of [their] making"*.

The Complainants further submit that they made two lump sum payments (€10,000 on **8 March 2016** and €20,000 on **21 December 2016**), totalling €30,000, and that they have *"constantly"* tried to engage with the Provider to try and find a resolution. They state that correspondence has not been replied to, and that their requests for a meeting with *"someone who had the authority to ... come to some sort of agreement"* with them have not been facilitated. The Complainants contend that despite their efforts to engage, the Provider *"stubbornly refused"* to help them resolve the issue, resulting in financial loss due to costs incurred and *"pain and suffering"* due to the Provider's *"lack of help and understanding throughout this process"*.

The Complainants submit that the Provider requested that they deposit the deeds of their property with their solicitor, when they agreed to the Provider's proposal on **6 March 2013** of providing additional security for the loan *"in the form of the deeds of our Private Dwelling House (PDH)"*. The Complainants submit that they were asked to provide a certificate of title in respect of their PDH. The Complainants state that they duly complied with this request and have the receipt to prove this, however their Solicitors were never approached in relation to the collection of these deeds.

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The Complainants want the Provider to pay them an amount totalling "€92,785.14", comprising "€17,785.14" for expenses they say they incurred due to the Provider's conduct and compensation in the amount of €75,000.

The Provider's Case

In its Final Response Letter dated **7 December 2016**, the Provider acknowledges that a redemption quote did not issue to the Complainants in **2005** which included the balance of the loan subject to this dispute, and that the account matured on **28 January 2013** when the balance became fully payable. The Provider submits that the Complainants did not repay the outstanding principle balance at the end of the term, and were in breach of the terms and conditions of the Offer Letter.

The Provider submits that it engaged with the Complainants and "*attempted to come to an agreement that would be suitable and sustainable to all the parties*". The Provider asserts that it approved "*10 year interest only repayments subject to [the Complainants] providing additional security by way of a legal charge over their [family home]*" in **February 2013**. The Provider states that on **6 March 2013**, the Complainants accepted the Provider's proposal and agreed to the Provider's conditions for additional security over their PDH. The Provider further states that the Complainants sought a rate reduction, to which they were advised that it would request one but could not guarantee that it would be granted. The Provider submits that it was "*not in a position to offer a rate reduction to the Complainants as the mortgage was an investment property and therefore investment rates would apply to it. The rate applicable at that time for investment property mortgages was 5.7%*".

The Provider submits that on **5 April 2013**, it issued the mortgage pack to its appointed solicitors to engage with the Complainants' solicitors about the charge over the PDH, but that "*as the Complainants did not appoint a solicitor, the [Provider] was unable to progress this matter*".

No alternative arrangement was entered into between the Complainants and the [Provider]. Therefore, the outstanding principle balance remained outstanding in its entirety and was full repayable by the Complainants". The Provider submits that it "*did not receive a "certificate of title" from the Complainants solicitors and the [Provider] was unable to implement the proposed repayment arrangement and put a legal charge in place as required*". The Provider asserts that the Complainants continued to make payments towards their mortgage loan account, without any agreed arrangement in place, up until the mortgage loan account was redeemed in **April 2018**.

The Provider states that the Complainants have refused on previous occasions to complete and submit a standard income and expenditure form, and notes that the Complainants stated that they proposed to pay the remainder of the balance by **March 2017**. The Provider asserts that it would have required the Complainants to complete the above mentioned form, and submit their supporting documents and proposals had they foreseen any potential difficulties in clearing the outstanding balance by **March 2017**.

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The Provider states that any proposal received from the Complainants would have been subject to "*commercial discretion and independence*". The Provider submits that it "*made several attempts to work with the Complainants to find a suitable resolution for all parties*".

The Provider submits that "*a number of meetings were arranged with the Complainants throughout 2013*". In the Final Response Letter dated **7 December 2016**, the Provider acknowledged that the Complainants requested a "*further meeting*", having met with the Provider's Network Account Manager (NAM), but that this could not be facilitated "*without any proposals being put forth*". The Provider informed the Complainants in its Final Response Letter that "*all proposals must be submitted in writing accompanied by an Income and Expenditure form and supporting documents...*"

The Provider acknowledges that the Complainants are "*loyal and diligent customers*" and that they made "*significant repayments to the mortgage loan to reduce the outstanding balance*".

The Provider accepts that there was a delay in responding to correspondence from the Complainants' solicitor and that it "*sincerely apologised for the delay*". The Provider submits that it logged the complaint on its internal complaints system on **19 May 2017** and "*reported the CPC breach*". The Provider made an offer of €5,000 for poor service and states that the offer is still available to the Complainants.

The Complaints for Adjudication

The complaint is that the Provider:

1. Did not engage with the Complainants meaningfully in **2013** or subsequently, with a view to putting a fair and sustainable solution in place for the repayment of their Interest Only mortgage loan;
2. Did not offer the Complainants a meaningful reduction in their interest rate in **2013** when a reduction was requested;
3. Requested that the Complainants employ the services of a solicitor to provide a certificate of title as "*additional security*" in **2013**, but then did not liaise with the Complainants' solicitor to finalise the matter;
4. Refused to grant the Complainants a face-to-face meeting with "*someone who had the authority to come to some sort of arrangement*" between **2013** and **2017**;
5. Proffered poor customer service to the Complainants throughout (from **2013** to **2017**).

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information.

The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties on 17 April 2020, 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 Complainants made a further submission under cover of their e-mail and attachments to this Office dated 29 April 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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

Background

The Complainants held two mortgage loan accounts with the Provider. Mortgage loan account (**6847), which is not the subject of this complaint, was drawn down in **June 1994** and was secured by way of charge on a residential investment property (the property). Mortgage loan account (**4857), which is the subject of this complaint, was drawn down in **January 2003** and was secured by way of charge on the same property. The Complainants signed and accepted the Offer Letter for this mortgage loan account on **2 December 2002**.

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This was a ten year Interest Only mortgage to the value of €160,000, which was due to mature on **28 January 2013**. On the date of maturity, the entire principal sum became payable, namely €160,000.

The property was sold in **May 2005** and mortgage loan account ***6847 (which is not the subject of this complaint) was redeemed in full in **May 2005**. Mortgage loan account ***4857 was redeemed in **April 2018**.

This complaint only relates to mortgage loan account ****4857, which is the subject of this complaint.

I note that the following special conditions applied in relation to that mortgage loan:

"(ii) Repayments of the Loan shall be comprised of interest and any other amounts payable and General Condition 4(a) hereby varied. At the end of the term, or earlier, if a call is made by the Lender for early repayment in accordance with these Conditions and the Lender's Security, the Borrower shall discharge the outstanding principle balance, interest and all other monies payable in connection with the Loan".

As complaints 1 to 3 (as outlined above) relate to the Provider's failure to engage with Complainants "*meaningfully or subsequently, with a view to putting a fair and sustainable solution in place for the repayment*" of the mortgage loan account, I will deal with these complaints together.

As a preliminary issue, it is important to set out the limitations of the jurisdiction of this Office in relation to complaints of this kind. This Office may investigate the procedures undertaken by the Provider regarding its compliance with the **Consumer Protection Code** but will not investigate the details of any re-negotiation of the commercial terms of a mortgage which is a matter between the Provider and the customer, and does not involve this Office, as an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60 (2)(b) of the Financial Services and Pensions Ombudsman Act 2017**.

I note that the **Consumer Protection Code 2012** (the "**CPC 2012**") applies in respect of this mortgage loan account which was not related to the Complainants principal private residence.

I set out below some of the events relevant to these aspects of the complaint based on the evidence submitted, including the recordings of telephone calls.

- **22 October 2012**: Letter from the Provider to the Complainants informing them that their current fixed interest rate (4.25%) was due to expire on **19 November 2012**. The letter states that the new interest rate would be 5.7% and the new monthly repayment would increase from €568.36 to €762.33.

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- **13 November 2012:** The Provider submits that the Complainants contacted the Provider to inform it that they would be unable to pay their mortgage balance on maturity in **January 2013** and requested a meeting with the Provider. This Office has not been provided with a copy or a recording of this communication.
- **21 November 2012:** The Provider submits that the First Complainant met with the Provider's appointed Network Account Manager (NAM). The Provider has furnished its internal computer contemporaneous account notes (System notes) to this Office. In respect of this meeting, the System notes record that the Complainants were in a position to pay €80,000 of the amount outstanding and requested a meeting with someone to discuss the remaining balance. The System notes state that the First Complainant "*sees this shortfall as a result of error when vacating deeds*". The Provider submits that NAM requested that the Complainants complete a Standard Financial Statement (SFS). The Provider submits that this was to assess their financial circumstances with a view to "*brokering an alternative repayment arrangement (ARA)*".
- **3 December 2012:** The System notes state as follows: "*[The First Complainant] hopes to complete SFS over w'end, appointment to meet... on 03/12. She also advsd she will be in receipt of 10k x 2 over coming weeks, which she will lodge....this is 20k of tot 80k she hopes to lodge by end of Jan*".
- **4 December 2012:** Complainants submitted the completed SFS to the Provider.
- **7 December 2012:** Complainants made a lodgement of €40,000 to the mortgage loan account to bring the balance to €119,982.75.
- **25 January 2013:** The Complainants made a lodgement of €25,000.
- **7 February 2013:** The Provider wrote to the Complainants and advised that their financial circumstances were assessed pre-Christmas 2012 which indicated that the Complainants had capacity to repay the loan.
- **11 February 2013:** The Complainants made a lodgement of €5,000.
- **12 February 2013:** NAM met with the Complainants.
- **15 February 2013:** The System notes state that "*Approval to accept long term interest only (10 yrs) subject to additional security. If borrower fail [sic] to comply commence judgment proceedings*". The Provider submits that the decision was relayed to NAM to discuss with the Complainants.

- **6 March 2013:** The Provider has furnished this Office with an extract of the email from the Complainants to the Provider on this date as follows:

"In your mail dated March 1st the ASU offered us an interest only mortgage for 10 years if additional security is assigned to them. As we have already agreed to give you our family home as security we are now waiting to hear what our interest rate and exact monthly repayments will be....we will go about finding a new solicitor."

This Office has not been provided with a copy of this email or with a copy of the email from the Provider to the Complainants (referred to above) dated **1 March 2013**.

- **6 March 2013:** The Provider has furnished this Office with an extract of the email from the Provider to the Complainants on this date as follows:

"Current interest rate on mortgage is 5.70%. A rate reduction request has been submitted to Treasury Dept, but RATE REDUCTION IS NOT GUARANTEED. You will be issued with an Offer Letter outlining terms and conditions, but you need to appoint a solicitor first".

This Office has not been provided with a copy of this email.

- **21 March 2013:** NAM met with the Complainants.
- **3 April 2013:** System notes state that "14 day granted to client to employ a solc. Re registration of charge on PDH..."
- **5 April 2013:** Complainants made a lodgement of €10,000.
- **16 September 2013:** Complainants made a lodgement of €5,000. The Provider submits that the "mortgage account was recalculated and the monthly repayments reduced to €310.23".
- **10 April 2014:** Telephone call from the First Complainant to the Provider where she stated she would make a further lump sum lodgement of €5,000 that day. The Provider submits that the "monthly repayments reduced to €286.11 which the Complainants continued to meet". The Provider submits that the Complainants continued to make these monthly payments until **29 November 2015**.
- **9 December 2015** and **8 March 2016:** Complainants made two lump sum lodgements of €5,000 and €10,000.
- **15 March 2016:** Letter from the Provider to the Complainants enclosing an Income & Expenditure Form for completion.

- **29 September 2016:** Letter from the Complainants' solicitor to the Provider in response to the Complainants' receiving arrears letters, raising concerns about this correspondence and the stress that it was having on the Complainants. The Complainants' solicitor requested a meeting.
- **13 October 2016:** Telephone call from the Provider to the Complainants' solicitor, where the Provider advised that it was obliged under the CPC to issue quarterly review letters and that there was no alternative repayment arrangement entered into in 2013. The Provider said that it would be happy to review an alternative proposal.
- **3 November 2016:** Letter from the Complainants' solicitors to the Provider raising concerns about the Provider "*alleging that she and her husband refused to enter into a new loan agreement...in 2013*". A meeting was requested with the Provider.
- **7 December 2016:** The Provider issued a Final Response Letter to the complaints raised in the Complainants' solicitor letter dated **3 November 2016**.
- **11 January 2017:** The Complainants' solicitor sent the Complainants' completed Income and Expenditure Form and supporting documentation to the Provider. In the letter from the Complainants' solicitor to the Provider, it was proposed that the Complainants' would make another payment in **July/August 2017** of €20,000 (in addition to their lodgement of €20,000 in **December 2016**), in full and final settlement.
- **15 March 2017:** The Provider issued a decline letter to the Complainants in respect of their proposal. It states that "*this is not acceptable to us because we have assessed that you have enough income, savings or assets to enable you to pay the full amount owed*".

I note that there were further exchanges between the Provider, the Complainants' solicitor and the First Complainant between **March 2017** and **9 April 2018** when the mortgage was redeemed in full. These exchanges include a proposal put forward by the Provider in **May 2017** that the Provider was prepared to accept a further lump sum of €20,000 by **31 July 2017** and that an agreed schedule could be put in place for the remaining balance of €5,000. This Office has not been provided with any correspondence from the Provider which outlines this proposal.

Complaint 1 – That the Provider failed to engage with the Complainants meaningfully in 2013 or subsequently, with a view to putting a fair and sustainable solution in place for the repayment of their Interest Only mortgage loan account

I must point out that the Provider is not obliged to provide the Complainants with an alternative repayment arrangement or a revised payment arrangement. The Complainants had a contractual obligation to repay the mortgage in full and in the terms originally agreed.

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I appreciate the Complainants' frustration in relation to the Provider's failings in furnishing the incorrect redemption figure in **2005**, however I am of the view that the Complainants were aware that there were two mortgage loan accounts on the property (with one of the mortgage loan accounts being redeemed in 2005). I accept that the Complainants continued to pay interest only payments on this mortgage loan following the sale in **2005**. The Complainants have a contractual obligation to repay the monies borrowed to the Provider. This was agreed when they originally entered into the mortgage agreement with the Provider. In addition, there is no regulatory requirement for financial institutions to agree to a particular demand from a borrower regarding changes to agreed mortgage repayments.

From a review of the timeline of events submitted by the Provider and the correspondence submitted in evidence, I accept that the Provider did make efforts to engage with the Complainants in respect of the repayment of their mortgage loan between **2012** and **2018** when the mortgage loan was redeemed. As I have outlined above, this Office will not interfere with the commercial discretion of the Provider, but it will investigate whether it has complied with the CPC 2012.

Provision 8.11 of the **CPC 2012** states as follows:

"Where a regulated entity reaches an agreement on a revised repayment arrangement with a personal consumer, the regulated entity must, within five business days, provide the personal consumer, on paper or on another durable medium with a clear explanation of the revised repayment arrangement and clarification on what data relating to the consumer's arrears will be shared with the Irish Credit Bureau or any other relevant credit reference-agency."

In addition, **Provision 8.12** of the **CPC** states as follows:

"Where arrears arise on an account and where a personal consumer makes an offer of a revised repayment arrangement that is rejected by the regulated entity, the regulated entity must formally document its reasons for rejecting the offer and communicate these to the personal consumer, on paper or on another durable medium".

It appears that an agreement in principle had been reached between the Provider and the Complainants in the email exchange that took place between **01 March 2013** and **06 March 2013** to extend the term of the mortgage loan (interest only period of 10 years) subject to the additional security of the PDH being put in place. The Provider submits that "there was no formal alternative repayment arrangement ("ARA") issued and put in place as the Complainants had not responded in relation to the charge on their PDH". I accept that no formal ARA was put in place at this time, however I do not accept that the Complainants had not responded about the charge to the PDH at the time. The evidence shows that the Complainants had agreed to the charge being put in place in their email on **06 March 2013**. In these circumstances it is not clear to me why the Provider did not issue any formal paper work to the Complainants with respect to the ARA at this time.

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I am of the view that the Provider did not comply with Provision 8.11 of the Code as it does not appear that it wrote to the Complainants within 5 days with a clear explanation of the revised repayment arrangement as was required of them. This Office not been provided with any correspondence from the Provider to the Complainants setting out the details of this arrangement. I accept that the lack of communication from the Provider to the Complainants in this respect added to their confusion.

In respect of the proposal discussed between the Provider and Complainants in respect of the repayment of the mortgage loan in **2017**, I note that the Provider issued a decline letter to the Complainants on **15 March 2017**. I accept that the Provider acted in line with **provision 8.12** of the **CPC 2012** at this time.

Complaint 2 – That the Provider failed to offer the Complainants a meaningful reduction in their interest rate when a reduction was requested

The Complainants submit that *"in 2014 [they] asked the [the Provider] to give [them] a lower interest rate (current then interest rate 5.700% which was way above the normal) to help [them] repay what was owing and they offered [them] a new rate of 5.650% which would have reduce [sic] [their] monthly repayments by just €2.59.... [they] took this to be an insult and didn't correspond further with them on this matter...."*

I note that the Provider has supplied a copy of the Mortgage Form of Authority ("MFA") dated **22 October 2012** which advised that the interest rate of the Complainants' account would be reverting to the Existing Variable LTV Rate for Buy to Let (BTL), an interest rate of 5.70%. The MFA states that the pre-existing rate of 4.25% was to expire on **19 November 2012**.

The Provider submits that on **19 November 2012**, the Complainants' mortgage moved to the Variable LTV BTL rate of 5.7% which it remained on until **28 November 2017**. It states that on **9 October 2014**, the Provider issued a MFA advising the Complainants of the availability of a Variable LTV BTL rate priced at 5.65%. The Provider submits that this mortgage was secured by the Complainants' residential investment property and was subject to BTL investment property interest rates. It states that the *"interest rate reflected the type of mortgage account the Complainants' held with [the Provider]"*. The Provider states that the Complainants did not return the MFA to the Provider and that it remained on the rate of 5.7% until **28 November 2017**.

The Provider submits that on **20 February 2017**, it made a counter-offer to the Complainants' solicitors by phone to reduce the interest on the residual balance to 0.005%, provided the Complainants suggested a suitable timeline for repayment of this residual balance.

In the Complainants' response to the Provider's submissions, they state that *"I can honestly say the offer of 'freezing the balance due' and putting the remaining residual balance on a nominal interest rate was never properly explained to us. I have no paper work from the Bank outlining this offer"*.

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I accept that the setting of the interest rate is a matter which falls within the Provider's commercial discretion. I also accept there is no regulatory requirement for financial institutions to agree to a particular demand from a borrower regarding changes in interest rates. In respect of this aspect of the complaint, I find no wrongdoing on the part of the Provider. I note that the Provider has provided an extract of its email to the First Complainant on **6 March 2013** where it stated that there was no guarantee of a rate reduction. However, I have not been provided with a copy of this correspondence which is most disappointing.

Complaint 3 – That following a request by the Provider that the Complainants employ the services of a solicitor to provide a certificate of title as "*additional security*" in 2013, it then did not liaise with the Complainants' solicitor to finalise the matter

The Provider submits that it "*began making arrangements for a mortgage pack to be sent to the [Provider's] appointed solicitors to engage with the Complainants solicitors once the details were supplied by the Complainants. However, the Complainants did not appoint a solicitor and the [Provider] could not progress with the undertaking of the security as agreed with the Complainants*".

The Provider further states that no formal alternative repayment arrangement issued as the Complainants had not responded in relation to the charge on their PDH. It states that the Complainants began making monthly repayments of €334.48 to their mortgage account without a formal agreement in place and that the Provider continued to accept the repayments and monitored the account.

The Complainants submit that, "*Whilst making every effort to resolve this situation, we were requested by [the Provider] to deposit the deeds of our house with our Local solicitor... We duly complied with this request and have the receipt to prove this, however [the Provider] claim that this deposit was never made. From what we can understand from the solicitor, the solicitor's Office was never approached in relation to the collection of these deeds.*"

The Complainants have provided this Office with "*proof that [they] did engage a solicitor and [they] did lodge the security as requested*" in the form of a letter from the Complainants' solicitors (instructed in 2013) to the Complainants dated **9 May 2013**. This letter states that "*We forwarded by email on the 17th April the authorisation signed by both of you*". The Complainants state that "*the fact that the [Provider] never followed up with our solicitor despite them being informed by telephone call and in writing is not our fault.*"

I accept from a review of the extract of the email from the Provider to the First Complainant dated **6 March 2013** and from the Provider's System notes, that it made the Complainants aware that they were to instruct a solicitor to certify the title in respect of the additional security of the PDH.

Whilst it is clear from the evidence before me that the Complainants instructed a solicitor, I have not been provided with a copy of any correspondence directly from the Complainants' solicitor to the Provider. I note that there is no record in the System notes that the Provider received the form of authorisation.

Having regard to the above, it appears to me that the Complainants have not provided substantive evidence to support that the form of authorisation was given to the Provider. I note however that there is an entry on the System notes on **3 April 2014** which states that a text was received with the following information "*will t/f money 2moro [sic], not poss 2day [sic] no transport.*" The name and address of the Complainant's solicitor is provided in the text. It is clear that the Provider did not act upon the information provided in this text message. As I have outlined above, I would have expected the Provider to have written to the Complainants if they did not receive any communication from their solicitors, and it is most disappointing that they did not do so. It is my view that as the Provider proposed getting the additional security and requested the certificate of title, it should have instigated this and communicated with the Complainants further. The lack of correspondence from the Provider to the Complainants in respect of this issue is a short coming on the part of the Provider. I note that I have not been provided with any correspondence about this issue from the Provider.

Complaint 4 – That the Provider refused to grant the Complainants a face-to-face meeting with "someone who had the authority to come to some sort of arrangement"

I note that the Complainants requested meetings with the Provider on **21 November 2012, 23 January 2013, 29 January 2013, 11 February 2013, 6 March 2013, and 26 September and 8 November 2016** (through their solicitor).

I note from the telephone calls that the First Complainant was particularly dismayed by the Provider's unwillingness to allow a face to face meeting with a senior member of the Provider's management.

I accept that the Provider appointed NAM had facilitated a number of meetings with the Complainants (as referred to in the timeline of events above). Whilst I understand that the Complainants wanted to meet with someone who had authority to make decisions at the meeting, I accept that this was a matter for the Provider to decide. It is reasonable to expect that the Provider has a process to follow in respect of commercial decisions being made, and I would not expect these decisions to be necessarily made at meetings such as the one requested.

Complaint 5 – That the Provider proffered poor customer service throughout

I have considered the content of the phone calls submitted in evidence. I accept that communications with the First Complainant during the telephone calls complied generally with the requirements under the CPC 2012.

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I note that around the date of maturity of the Complainants' mortgage loan account in **2013**, the Complainant had a number of phone calls with one of the case Officers. I find that some of the communications of this case Officer did not comply with the **General Principles** outlined in sections 2.1 and 2.2 of the CPC 2012, which relate to dealing with customers. Examples of this are as follows:

- *"I'm not concerned if you go to Court or not"*
- *"I'm going to have to wrap it up here okay?"*
- *"there's no point in saying that again because it's not happening ok so you can forget about that"*
- *"I'm not entertaining that at all right?"*
- *"No I can't, I certainly can't ok? So I'm going to have to end the call".*
- *"[First named complainant], it's not happening [first named complainant]"*

I note that there were additional customer service failings on the part of the Provider. In the Final Response Letter from the Provider to the Complainant dated **7 December 2016**, the Provider accepts that one of its staff misspoke in a telephone conversation *"in that he erroneously stated [the Complainants'] proposal was to pay the remainder of the balance within the year i.e. by December 2016, as opposed to within a year, ie by March 2017"*. The Provider apologised for this *"human error"*. In addition, the Provider accepts that it delayed in responding to the Complainants' solicitors in respect of their letter dated **3 November 2016** and three emails sent from **27 March 2017** to **9 May 2017**. The Provider submits that this was down to *"human error"* and that it *"sincerely apologises for this delay"*.

I note that following a telephone call on **19 May 2017** between the Provider and the Complainants' solicitors, it logged a complaint and reported the CPC breach.

The Provider also acknowledged the poor level of service experienced by the Complainants when they requested a copy of the telephone call recording in **October 2018**.

Furthermore there were shortcomings in the extent of the evidence supplied to this Office, in particular, I note the Provider quotes from certain e-mails and references certain e-mails in its internal system which it has not supplied to this Office in evidence.

However, I note the Provider acknowledges its shortcomings in relation to this complaint and offered the Complainants €5,000 in compensation. I consider this compensation offered to be reasonable in all the circumstances.

On the basis that the €5,000 compensation remains available to the Complainants, I do not uphold this complaint.

/Cont'd...

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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

8 July 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.