Decision Ref:	2020-0279
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Settlement amount (mortgage) Delayed or inadequate communication Dissatisfaction with customer service
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's management of the Complainants' mortgage loan accounts, and its communication, customer service and complaints handling throughout. The Complainants' business accounts were transferred from the previous loan owner (hereinafter referred to as 'the Bank') to the current loan owner ('the Loan Owner'). The Provider, against which this complaint is made, is a credit servicing firm, managing the accounts for the Loan Owner.

The Complainants' Case

The Complainants contend that they have been trying to resolve their outstanding liabilities to the Provider since **2017**. They submit that the Provider has declined their repayment proposal and wrongfully imposed a condition on its consent to the sale of their property by requiring them *"to pay a disputed shortfall by 30th August 2017 before consent to the sale would be given"*. The Complainants state that they were unable to comply with this request, and contend that their interactions with the Provider to date have been *"less than satisfactory"* in many ways, including, but not limited to, the following:

- Correspondence from the Complainants to the Provider was *"ignored"*;
- Replies to correspondence were conflicting;
- The Complainants felt *"bullied and threatened"*;

- Decisions made by the Provider *"seemed unfair and unreasonable"*;

- The Provider contacted the Complainants directly, though it was aware that they had a third party representative;
- The Provider has failed to *"vouch"* the amount owed by the Complainants.

The Complainants submit that they are particularly unhappy with the conduct of a named member of Provider staff, and contend that the Provider threatened *to "issue proceedings"* and to *"retain receivers and estate agents"*. The Complainants further submit that they dispute the amount owed to the Loan Owner and that the Provider has *"failed to vouch the alleged amount"*.

In later submissions, the Complainants also take issue with the conduct of the receiver appointed by the Loan Owner.

The Provider's Case

The Provider maintains that it engaged with the Complainants, on behalf of the Loan Owner, on numerous occasions, in the hope of resolving their outstanding liabilities. The Provider submits that it communicated the Loan Owner's consent to the sale of the Complainant's property on condition that a proposal for the resolution of the residual liability was agreed in advance of the sale. In its Final Response Letter dated **8 September 2017**, the Provider acknowledges:

> *"As the [Complainants] were given 20 business days to sign and return acceptance to the AA [Alternative Arrangement] and/or appeal the decision granted, [the Provider believes] the timeframe set to repay the debt in full was unfair".*

The Provider recommended in **September 2017** that the Complainants appeal the Loan Owner's decision to decline their settlement proposal but has maintained throughout that the Loan Owner will not consent to a *"write off"* of the Complainants' residual liability.

The Provider notes the Complainants' *"discontent"* at its management of their accounts but states that it found *"no evidence"* to suggest that its agent, Mr D, had conducted himself in a "discourteous or unprofessional manner" in his interactions with the Complainants' representative, Mr N, or with the Complainants.

The Provider, in later submissions, notes that the Complainants' concerns regarding the receiver have not been raised as a complaint with the Provider. However, the Provider addressed its communications with the receiver in its most recent submission.

The Complaint for Adjudication

The complaint for adjudication is that the Provider dealt with the Complainants' mortgage loans in an incorrect and unreasonable manner.

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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 **28 July 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.

No additional submissions were received from the parties within the period permitted. I now set out my final determination below.

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 Preliminary 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 do 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 are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

In its formal response to this office dated **5 February 2019**, the Provider submits that the dispute rests with the outstanding balances which transferred from the Bank to the Loan

Owner in **March 2017**. The Provider further submits that the Complainants *"never disputed their indebtedness"* to the Loan Owner until **July 2017**, when the Provider, on behalf of the loan owner, declined the Complainants' initial repayment proposal. The Provider states that the Complainants *"have never provided any evidence to support why they believe that the outstanding debt was incorrect"*. The Provider states that it will *"continue to rely on the balances on the Transfer Date as being a true and accurate reflection of how the Complainants' accounts performed with [the Bank]"*. The Provider contends that *"since the Transfer Date, no payments have been received"* from the Complainants and that *"interest has continued to accrue"* as a result.

I note that the Provider has submitted in evidence copies of the statements of account, and that on transferring from the Bank in **March 2017** the opening balances were as follows:

Account 1: €87,419.22
Account 2: €94,301.08

These statements also illustrate that no mortgage repayments were made by the Complainants during **2017** or **2018**.

The Complainants take the position that the Provider should seek evidence from the Bank that the transfer value of the Complainants' loans is correct. The Complainants' representative stated in an email to the Provider on **1 August 2017**:

> *"Unfortunately, your figures to us are based on a figure tendered to you by [the Bank] when it sold our client's debt to your client.... and neither you, us, or your client have seen the evidential basis for this figure.*
>
> *And so it follows that while your client is seeking the full debt due, it is not in a position to evidence what the exact figure is at any time".*

The Complainants' representative goes on to state that the Complainants have tried to clarify this matter with the Bank, *"but no relevant paperwork has been supplied"*.

In its formal response to this office, the Provider contends that it is not privy to any information regarding the Complainants' accounts prior to the transfer of the Complainants' liabilities in **March 2017** and submits that the Bank *"will not share this data with us"*. Furthermore, in an email to the Complainants' representative on **22 August 2018,** the Provider attests that its client *"has purchased the balances as communicated"*.

The Complainants disagree with the Provider's position, and in their submission dated **16 March 2019**, respond to the Provider's contention that it is not privy to their transactions with the Bank and state that *"this is misleading"*. The Complainants further state:

> *"It is not that the Provider is not privy, it appears that the records do not exist in relation to [the Bank's] calculation and charging of interest on [the Complainants'] account prior to March 2017".*

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The Complainants add:

> *"It is common sense and good practice to ascertain whether the debt has been calculated properly. In this case, the Provider concedes this is not possible in respect of [the Complainants'] debt"*.

The Complainants reiterate this opinion in subsequent submissions dated **10 April 2019**, **2 May 2019** and **24 May 2019**.

While the Complainants' frustration at not being able to have sight of the interest levied on their loan accounts prior to the transfer to the Provider in **March 2017** is understandable, it is important to emphasise that this lack of clarity is not due to any wrongful conduct on the part of the Provider. The Provider submits that the Bank *"remains the data controller of all matters prior to the sale of the Loan Facilities, and, as such, this data would not be shared with the Provider or its client"*. Indeed this was clarified for the Complainants in **July 2017** by the Provider which, in response to the Complainants' suggestion that the Provider should seek out the requested information, stated that the Complainants needed to take the matter up with the Bank.

It may well be that the Complainants made unsuccessful attempts to obtain the information they required from the Bank, but I must reiterate that this is not the responsibility of the Provider against which this complaint is maintained.

I also accept that the Provider's inclusion on the statements of account of the opening balance amounts for each of the Complainants' loan accounts constitutes the *"vouching"* of the outstanding liabilities on the date of transfer, insofar as the Provider is concerned.

These sums constitute what the Bank calculated the Complainants' liabilities to be when the loans were sold. The accuracy of those calculations is not the Provider's, nor its client's, responsibility, but rather that of the Bank. Indeed, the Bank's responsibility for the calculation of the liability at transfer date appears to have been accepted by the Complainants, given that their representative stated in his email to the Provider dated **1 August 2017**:

> *"Unfortunately, your figures to us are based on a figure tendered to you by [the Bank] when it sold our client's debt to your client"*.

The Complainants, in their submission to this office dated **24 May 2019**, state:

> *"If the Provider had not bought the account from [the Bank] and [the Bank was] the provider this ongoing failure to vouch and the potential errors in the amount being claimed would be able to be dealt with within this complaint without any issue"*.

I accept the Complainants' above statement, in that their uncertainty regarding the residual liability stems from the fact that their liabilities were sold by the Bank to the current loan owner. However, the responsibility for this uncertainty rests with the Bank, and not with the Provider.

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The Complainants also maintain that the Provider wrongfully imposed a condition on its consent to the sale of their property by requiring them *"to pay a disputed shortfall.... before consent to sale would be given"*. They further contend that they could not comply with the condition because they were *"not in a financial position to repay this alleged amount"* and because they were unsure that the shortfall amount was correct due to the Provider's failure to *"vouch the alleged amount"*.

In its Final Response Letter dated **8 September 2017**, the Provider states that the Complainants' settlement proposal was initially declined, but that a letter issued to the Complainants on **21 August 2017** agreeing to an alternative arrangement *"in circumstances where the Compromise Deed was subject to the Borrowers repaying the total debt (plus costs) by 30 August 2017"*. The Provider submits that the Complainants were given 20 business days to sign and return acceptance of this alternative arrangement, and/or to appeal the decision, and acknowledges that *"the timeframe set to repay the debt in full was unfair"*.

I would emphasise that the Provider in this case is a credit servicing firm, and is not responsible for the decisions of its client, the Loan Owner, with regard to the Complainants' proposal(s). The Loan Owner in this case was an unregulated entity at the time the Complainants were making their proposals, but even in circumstances where a provider is regulated, it is under no obligation to accept any proposals received from account holders as this is a matter which falls within the commercial discretion of the Loan Owner.

The Provider reiterates in its Final Response Letter that the loan owner *"reserves its right in seeking full repayment of the debt owed by the Borrowers"*, and it is important to note that the Provider was entitled to engage with the Complainants, on behalf of the Loan Owner, regarding any expected residual liability. Under Regulation 18(3)(d) of the Lending to Small and Medium Sized Enterprises Regulations 2015, a financial service provider *"may"* agree an alternative arrangement with borrowers, *"where appropriate"*. The Loan Owner was not obliged to agree to any repayment arrangement suggested by the Complainants, and the Loan Owner's decision was communicated to the Complainants in the Provider's letter dated **8 September 2017**.

However, while the Provider was not obliged to accept the Complainants' proposal on behalf of the loan owner, it is clear that the Provider erred when it wrote to the Complainants on **21 August 2017**, agreeing to an alternative arrangement with the proviso that the total liabilities would have to be discharged some nine days later. I note that the Provider acknowledged this error in its Final Response Letter dated **8 September 2017**.

The Complainants make a further complaint regarding the Provider's customer service throughout, stating that *"from the outset"*, the Provider's conduct was *"less than satisfactory"*. They state that they were threatened with litigation *"clearly designed to frighten"* and they contend that *"the effect was to bully"* them. The Complainants attest that the Provider contacted them directly, despite previously being advised that the Complainants were represented. They further state that they were *"entreated"* to *"take out a loan to finance the alleged shortfall debt"* and that they would have had difficulty

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repaying such a loan. Furthermore, the Complainants submit that they were compelled to continue liaising with a Provider representative, despite having made a complaint about this agent; a situation that they describe as *"unreasonable and humiliating"*. The Complainants are unhappy that they were unable to ascertain whether it was the Provider or its client, the Loan Owner, who was responsible for this decision.

From the evidence before me, I note that Provider wrote to the Complainants on **30 March 2017** regarding their repayments, following the *"Transitional Period"* from **December 2016** to **March 2017** (when the Complainants' accounts were transferred from the Bank to the Loan Owner). The Provider also made the Complainants aware of the *"Collection Account"* details and enclosed a copy of the Provider's Terms of Business and a short list of changes relating to *"Product Allignment"* (including information regarding statements and direct debits).

The Provider wrote again to the Complainants on **27 April 2017**, requesting a meeting with them *"to discuss repayment of the underlying facilities"*. The Provider also offered the Complainants the option of submitting a proposal for repayment, requesting that any such proposal, along with supporting documentation, should be forwarded within 28 days. The Provider stated that all loan repayments should be paid as previously outlined, and advised that it was managing the Complainants' accounts on behalf of the loan owner but had *"no authority to bind, commit or conclude contractual arrangements on its behalf"*.

The Complainants subsequently engaged a third party representative, hereinafter referred to as 'Mr N'. Mr N emailed the Provider on **19 June 2017**, to submit a proposal on behalf of the Complainants. He stated that the Complainants were requesting the Provider's consent *"to a shortfall sale"*, and that they had a buyer for the secured property, subject to the Provider's consent.

Mr N emailed the Provider some four days later, requesting a response to the Complainants' proposal. That same day Mr D, for the Provider, responded to Mr N, stating that the Complainants' proposal *"for the net proceeds of the sale from the secured property to be accepted in full and final settlement of their outstanding obligations to [the loan owner] is not acceptable to my client and the proposal has therefore been rejected"*.

Mr D further stated:

> *"My client expects full recovery of the outstanding debt. Can you please ensure [the Complainants] are made aware of this position. A revised proposal addressing full repayment should be submitted by no later than Friday 30th June 2017. In the absence of a satisfactory proposal, my client will seek to enforce on its secured asset and pursue your clients for the outstanding debt"*.

The Provider wrote to the Complainants on **14 July 2017**, advising that both of their accounts were *"in arrears for three consecutive months"* and that, as a result, the accounts were being treated as financial difficulties cases under the Regulations on Lending to Small and Medium-sized Enterprises (hereinafter referred to as the 'SME Regulations').

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Mr N emailed the Provider again on **19 July 2017**, and raised the issue of *"the alleged debt"* and the Complainants' historic difficulties with the Bank. Subsequent correspondence between Mr N and Mr D indicates that while Mr D (for the Provider) was attempting to focus on addressing the Complainants' liabilities to the Loan Owner, Mr N wished the Provider to consider the Complainants' proposal as they had *"no other assets or savings to provide additional funds to clear the debt alleged by [the Bank]"*. It is apparent from this correspondence that Mr N believed the Provider was treating the Complainants unfairly, and that the appointment of a receiver or the issuing of legal proceedings would represent *"an abuse of process"*. Mr D reiterated that the loan owner was *"under no obligation to consent to a write off of that debt"* and that there was *"no abuse of process"*. He stated that he had *"firm instructions from [the loan owner] that full redemption of the debt is the only way forward here"*.

I note that Mr D, for the Provider, in his email to Mr N, for the Complainants, dated **19 July 2017** states that:

> *".... given your threats of litigation, which are inflammatory to the process we were engaged in, it is likely that they will now need to take steps to enforce the security and protect their position. The associated costs will be added to your clients loan account, and they will be liable for same.*
>
> *This is frustrating as I understand that, subject to a formal approval process, they had been minded to provide your clients until the end of August to repay"*.

Having carefully examined Mr N's previous email, I can find no reference to a threat of litigation by the Complainants, though Mr N does state that any legal proceedings issued by the Provider would be resisted.

In a subsequent email on the same date, Mr N takes issue with Mr D's handling of the matter, and states that he is concerned that Mr D has misrepresented his correspondence. Mr N suggests that Mr D might not *"have authority to resolve this matter"* and asks him to detail the limit of his authority and furnish Mr N with his line manager's contact details by return.

Subsequent emails between Mr D and Mr N follow a similar pattern, with Mr N seeking to have the Provider *"vouch"* the outstanding liability from the Bank and Mr D seeking to assert that the Complainants' full liability is *"due and owing"* to the Loan Owner. Mr D forwards statements of account to Mr N, showing the opening balances of the accounts after transfer from the Bank. He also includes the current *"payoff figures"* and states that he looks forward to receipt of the Complainants' proposal to address their liability *"by no later than COB on Friday"*.

In response, Mr N states that *"[the Provider's] figures to us are based on a figure tendered to you by [the Bank]"* when the accounts were transferred. He further states:

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> *"[The loan owner] no doubt does not wish to pursue [the Complainants] for an amount of money greater than that owing and so must be able to demonstrate in a transparent way the debt owing. At present, it can not".*

After Mr D contacted the Complainants directly to discuss his interactions with Mr N, their representative, Mr N made a formal complaint to the Provider about Mr D, stating that he had threatened the Complainants with litigation and undermined the efforts of Mr N, and furthermore that he had failed to treat the Complaints fairly. Mr N also requested that *"a neutral contact"* with the Provider be appointed to take over the case as it would be unfair for the Provider to seek to require the Complainants to continue to engage with Mr D.

Thereafter, Mr N addressed all his correspondence to a Senior Provider Manager who had been copied into earlier emails by Mr D. This Senior Provider Manager reaffirmed that the Provider would not consent to the write-off of the Complainants' residual liability. She also stated that Mr D would continue to manage the Complainants' accounts.

I do not propose to go into the details of the subsequent communications regarding the Provider's consent to the sale of the Complainants' property as I have already addressed this issue, however I note that Mr N continued to request that the Provider *"vouch"* the Complainants' liability and also to request the Provider to consent to the sale of the Complainants' property, with no proposal in place to deal with the residual liability.

Furthermore, Mr N later stated in an email to the Senior Provider Manager that he believed the relationship between the Provider and the loan owner to be *"an unhealthy arrangement"* and questioned the allocation of case managers.

Taking all of the above into account, it is my view that the substantive issue, that is, finding a solution to the Complainants' arrears, was impeded by Mr N's refusal to accept that the opening balance of the Complainants' accounts was accurate, insofar as the Provider was concerned. Despite being referred to the Bank on a number of occasions for clarification on this point, Mr N persisted in asking the Provider to *"vouch"* these amounts despite acknowledging that the *"figures"* provided were based on those tendered to the Provider by the bank when the accounts were transferred. It is difficult to see how progress could have been made with these important negotiations in such circumstances, and the communications surrounding these issues reflect the lack of progress.

I note that the Complainants, in submissions to this Office during **May 2019**, acknowledged that they may also make a separate complaint against the Bank in relation to its calculation of the transfer balance.

In the course of this adjudication, a copy of the Global Deed of Transfer was requested from the Provider. The Provider reverted to state that it had communicated this request to its client, the loan owner, as the Deed was held by that entity rather than by the Provider. A redacted copy of this document was furnished to the FSPO by the Provider, and shared with the Complainants. I note that the Bank's closing balance was not visible on the version of the document submitted to the FSPO. However, the Provider cannot be held responsible for a document furnished to it by the loan owner. I note the Provider had

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requested the document from the loan owner, in order to submit it in evidence to this Office.

Regarding the Complainants' submission that the Provider proffered poor customer service throughout, I accept that there were shortcomings, particularly regarding communication, and the Provider has acknowledged this. These shortcomings include the communication of an incorrect time frame for acceptance of an alternative arrangement, sent in **August 2017**, and an incorrect statement from the Provider that it was awaiting submission of a completed Standard Financial Statement - this had, in fact been forwarded to the Provider the previous month. However, as set out above, I am of the view that though the Provider has made errors, there is no evidence of the *"bullying and irrational"* treatment based on *"a punitive motive"* that the Complainants refer to. The Provider is entitled to expect the Complainants' liabilities to be repaid in full, and is also entitled to communicate this to the Complainants.

Though there is no evidence to show that Mr D suggested to the Complainants that they might take out a loan to resolve the residual liability (neither in the call note submitted by the Provider, nor in the first Complainant's letter to the Senior Provider Manager two days after the call), I accept that this conversation could have taken place. However, I do not consider that such a discussion constitutes *"bullying".*

I would also point out that the Provider was obliged to notify the Complainants of the possible consequences of not resolving their arrears, under the SME Regulations, and in this regard, I do not consider Mr D's communication of the possibility of *"litigation"* to the Complainants, through Mr N, as inappropriate in the circumstances.

The Complainants also take issue with the Provider contacting their representative Mr N, instead of contacting them directly. Having examined carefully the letter of authority furnished to the Provider by the Complainants, I note that it states:

> *"For the avoidance of doubt please take this letter as my/our authority to provide [MR N] and/or my nominated Solicitor with any information that they may request as necessary to pursue my/our claims fully"*.

It further states:

> *"Delivering this information to me/us, rather than [third party representative] or my/our nominated Solicitor Ltd directly, will result in a formal complaint being made to the British Banker's Association for failing to abide by section 11.1 of the Banking Code".*

The Provider acknowledges that it telephoned the Complainants directly on one occasion, a telephone call on **2 August 2017**, for which the Provider's call notes were submitted in evidence:

> *"[Mr D] telephoned [first Complainant] to discuss [Mr N's] engagement with [the Provider] to date.*

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[Mr D] advised [first Complainant] that the debt must be repaid in full, a position that [Mr N] would not accept, and [Mr D] advised that [Mr N] was threatening litigation to force the matter, and advising that [the Provider] was abusing process. He also advised that [Mr N's] general manner was not helping matters.

[First Complainant] specifically noted that he did not want any of this (particularly litigation) and advised that he would look for ways to address the shortfall on the loan (8-9k) and revert to [Mr D] next week.

[Mr D] acknowledged this and the call ended".

While I accept that the letter of authority from the Complainants to the Provider set out that the Provider should engage with their third party representative rather than directly with them, I also acknowledge that the Provider may have formed the view that previous engagement with the Complainants' third party representative had not been as effective as it might have been.

A regulated entity must act with due care and diligence in the best interests of its customers, and though the regulations governing the Complainants' accounts make no specific reference to the type of contact permissible between customer representatives and providers, I note that the Consumer Protection Code 2012 (as amended) states:

> *"At the personal consumer's request and with the personal consumer's written consent, a regulated entity must liaise with a third party nominated by the personal consumer to act on his or her behalf in relation to an arrears situation. This does not prevent the regulated entity contacting the personal consumer directly in relation to other matters".*

Given that the Provider's call note reflects that the Provider telephoned the Complainants directly on only one occasion, to discuss their representative's engagement with the Provider, I consider that this direct contact was proportionate and appropriate to the circumstances.

The Complainants also state that the Provider was not prepared to give them any credit *"for rectifying defects in title that arose as a result of [the Bank] losing the title deeds to the property"*. In this regard, the Provider states that it cannot compensate the Complainants for any costs that they incurred when their loan was with the Bank. However, the Provider subsequently submits that following an update from the receiver regarding the sale of the secured property:

> *"…it has been brought to our attention that from December 2017 to October 2018, the Borrower's solicitor was communicating with the Receiver to have their costs paid before it would release the reconstituted title deeds. As the title deeds were not released to the Receiver, it could not fulfil its legal obligation to sell the asset on behalf of the Borrower. In view of this, steps were [taken] for [the loan owner's] solicitor to reconstitute the title deeds so that the sale of the asset could progress".*

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It is important to note that it was the Complainants' solicitor who did not facilitate the release of the reconstituted title deeds to the receiver between **December 2017** and **October 2018**. Had the Loan Owner's solicitor not taken steps to reconstitute the title deeds after that time, it would not have been possible for the sale of the Complainants' property to progress. The Provider further states that it does not believe that it, or the Loan Owner, should compensate the Complainants as the original title deeds were lost by the Bank. I am of the view that the Provider's actions in reconstituting the deeds so that the sale of the Complainants' property could proceed were helpful to the Complainants in circumstances where the Complainants' solicitor had declined to release the deeds until their fees were discharged by the receiver.

In their submission dated **5 February 2020**, the Complainants state that the receiver had made *"no effort to engage"* with them, despite having a *"duty of care"* to the Complainants to act in their best interests and *"ensure best price is achieved"*. The Complainants further state that the Provider's submission of **13 January 2020** was *"the first notification they have received of an offer on the property"*.

It is important to note that, at law, the receiver is an agent of the borrower, and not of the financial service provider. The Provider is not, therefore, responsible for any communication shortcomings on the part of the receiver.

The Complainants submit that they were unhappy about the appointment of a receiver to their property. I note that the receiver was appointed by the loan owner on **23 October 2017**, prior to the enactment of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018. As the appointment was not made by the Provider, but by the Loan Owner, the Provider cannot be held responsible for this conduct.

The Provider, in its submission to this office dated **13 January 2020,** acknowledges its shortcomings with regard to its communications with the receiver:

> *"We accept that we may not have replied to correspondence from the Receiver in a timely manner and this delayed the Receiver selling the secured asset on behalf of the Borrower"*.

Finally, I wish to address the Provider's attempts to resolve this complaint with the Complainants between **September 2019** and **January 2020**. During this time, the Provider made an offer of €1,000 *"in full and final settlement"* (**6 September 2019**), a further offer of €5,000 on **30 September 2019**, and the most recent offer of €10,000 on **13 January 2020**.

In their email dated **11 September 2019**, the Complainants described the Provider's offer of €1,000 as *"derisory"* and stated that they were seeking *"Full write off of any shortfall debt following the eventual sale of the property"*, along with compensation in the amount of €5,000.

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In their email dated **30 September 2019**, the Complainants rejected the Provider's offer of €5,000 stating that they were seeking *"Full write off of any shortfall debt following the eventual sale of the property"*.

In response to the Provider's most recent offer, the Complainants submit that the *"alleged shortfall debt has rocketed to €40,000 due to the intransigence of [the Provider]"*. They state that the Provider's submission that it *"failed to reply to correspondence from the Receiver in a timely manner and delayed selling the secured asset on behalf of the borrowers"* is noted, but that they wish the FSPO to adjudicate on the matter.

Given the conduct of the Provider, I believe compensation for the Complainants is merited.

However, I do not consider it appropriate to direct the Provider to write off the shortfall, particularly in circumstances where the Provider has always been clear that this is not something that its client, the Loan Owner, would agree to.

It must be acknowledged that the Provider accepts it was responsible for a number of customer service shortcomings. The Provider also accepts that it delayed in responding to the receiver's communications and that this impacted on the sale of the Complainants' property. However, it should be noted that some of these communications came about as a result of the Complainants' solicitor not releasing the reconstituted title deeds to the receiver. Furthermore, the Provider facilitated the reconstitution of the Complainants' title deeds in order to allow the sale of their property to proceed. Therefore, the Provider is only partly responsible for the delayed sale of the Complainants' property. The Complainants believe that the Provider should reimburse them for the reconstitution of title deeds previously lost by the original lender, the bank, which must also bear some responsibility for the resulting delay. As I have already stated, the Provider cannot be held responsible for the actions of the bank.

Taking all of the above into account, I consider that €10,000 is a very reasonable amount of compensation for the Provider's acknowledged customer service shortcomings. Given that this offer remains open to the Complainants, I do not uphold this complaint.

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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

24 August 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.