



<u>Decision Ref:</u>	2020-0352
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner 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 relates to a mortgage loan and the Provider's alleged maladministration and customer service.

The Complainants' Case

The Complainants held a mortgage account with the Provider. In **November 2017**, the Complainants decided to switch their mortgage to another mortgage provider. They authorised their Solicitor to liaise with the Provider to gather the requisite documentation in order to allow for the re-mortgage to take place. The Complainants have asserted that the Provider failed to adequately deal with the requests for requisite documentation in any reasonable or timely manner. They say that as a consequence of this inordinate delay on the part of the Provider, the Complainants were unable to switch their mortgage which resulted in them having to pay the monthly re-mortgage payments to the Provider, rather than their new proposed mortgage provider, which was offering a cheaper mortgage rate. As a result of this, the Complainants state that they have incurred unnecessary expense by having to continue making payments to the Provider when they should have been making cheaper payments to their proposed new mortgage provider.

The Complainants state that in addition to this loss, the matter has caused concern, inconvenience and undue stress.

The Provider's Case

The Provider states that it is satisfied that it has, from the outset, made available the necessary details in relation to the structure of the sale of the loan, confirmation that an application was lodged with the Property Registration Authority of Ireland (PRAI) in order to transfer the relevant security from the Provider's predecessor in title and that the completion of this transfer was solely reliant on the PRAI completing the necessary actions.

The Provider does however, concede that incorrect information was given to the Complainants' solicitor on **27 February 2018** and that the issuing of the title deeds, on *Accountable Trust Receipt (ATR)* and subsequent closure of the account could have been handled in a more timely manner.

The Provider does not accept that it is liable to the Complainants for the savings that they would have made if they had been in a position to switch their mortgage earlier. However, the Provider has offered a sum of €3,000 in recognition of the incorrect information made available in February 2018 and the failure to handle the issuing of the title deeds on ATR, and the closure of the account, in a more timely manner.

The Complaint for Adjudication

The complaint is that the Provider failed in its level of customer service to the Complainants, as it failed to furnish them with certain information/documentation that they required, in order to effect a mortgage switch to another provider.

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 **16 September 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 consideration of one additional submission from the Complainants, the final determination of this office is set out below.

Background

I note that on **18 October 2017**, the Complainants' original mortgagee bank (Bank A) wrote to them to confirm that it was entering into an agreement to transfer a loan portfolio which included the Complainants' mortgage, to the Provider, with a proposed transfer date of **15 December 2017**. This transfer of ownership forms the background to the Complainants' complaint.

It is important at the outset to note that the ***Financial Services and Pensions Ombudsman Act 2017***, as amended, empowers the Ombudsman to investigate complaints relating to the conduct of a financial service provider involving (i) the provision of a financial service (ii) an offer to provide such a service or (iii) a failure to provide a particular financial service requested by a Complainant.

It is striking that the issues which have given rise to very considerable dissatisfaction on the part of the Complainants, are essentially conveyancing matters, albeit linked to the Complainants' desire to bring an end to their ongoing relationship with the Provider in respect of the borrowing in question. Those issues in this matter are very considerably interlinked but it is worth noting that the FSPO will make no comment or any legally binding decision regarding the adequacy or otherwise of the steps taken by any party in respect of that conveyance.

I note that a number of calls were made to the Provider on **4 January 2018**. In those calls, the Complainants were informed that, on that date, the balance on the mortgage was €168,840.05 and the redemption figure was €168,906.15. During this call, the Complainants informed the Provider that they were re-mortgaging. In addition, during another call on the same date, the Complainants' solicitor sought the release of the title deeds from the Provider, which informed the Complainants' solicitor that the title deeds were being transferred from Bank A into the name of the Provider. On **24 January 2018**, the Provider issued an ATR schedule to the Complainants' solicitor and by letter dated 30 January 2018, the Complainants' solicitors returned to the Provider a signed ATR schedule. This was acknowledged by the Provider by letter dated **1 February 2018**.

By letter dated **5 February 2018**, the Complainants' solicitor wrote to the Provider stating that the Complainants expected to be in a position to redeem their mortgage shortly, and therefore the Provider was asked to provide details of the amount due as of 5 February 2018, in order to enable the Provider to release or vacate all mortgages in relation to the Complainants' property.

/Cont'd...

I note that the Complainants' solicitor's letter went on to state that it was noted that the charge on the Complainants' Folio was still registered to the predecessor in title, Bank A, and the Provider was asked to confirm that it had purchased the said charge document and to furnish it with documentary evidence in support of the Provider's ownership. The letter then went on to ask the Provider to confirm that (i) it would become registered as owner of the charge on the Folio and that a deed of discharge would be furnished in due course or alternatively, (ii) the third party was to furnish the relevant deed of discharge.

It appears to me from this complaint that it is these matters raised in this letter of **5 February 2018** that go to the heart of the dispute. In particular, the primary issue is the suggested delay on the part of the Provider in providing proof of the Provider's ownership of the charge on the Complainants' Folio and that the Provider would therefore be entitled to supply a deed of discharge. A deed of discharge would ultimately be necessary for the conveyancing of title to take place, so that the mortgage switch could take effect.

On **13 February 2018**, the Complainants' solicitor telephoned the Provider. In this call, she asked if her letter of 5 February 2018 had been received and raised queries in respect of the ability of the Provider to vacate the charge on the property, if it was not named as the charge holder on the Folio. Following this, redemption figures were made available by the Provider.

On **9 March 2018**, the Complainants' solicitor telephoned the Provider confirming that the redemption letter was received but that the other two items identified in the letter of 5 February 2018 remained outstanding. It was explained by the Complainants' solicitor that it would be necessary for the charge over the property to be removed and that it was currently registered to Bank A, but it needed to be registered in the name of the Provider. In response to this, the Provider informed the Complainants' solicitor that the certificate had been lodged with the land registry but that it could take a few months. The Complainants' solicitor emphasised that this must be prioritised and not just "left in the queue" as the mortgage offer with the other mortgage provider was due to expire in a month. It was explained by the Provider that the Folio would not necessarily show up in a land registry search, due to the volume of transfers necessary arising out of the transfer of loans from Bank A to the Provider. In that context, certificates were being submitted to the land registry in batches of 500. The Provider offered to send a letter from the Provider's legal department containing the land registry dealing number, as evidence that the application had been submitted to the Land Registry and the Complainants' solicitor agreed.

Following this, by letter dated **13 March 2018**, the Provider furnished the land registry Form 17 with confirmation of the dealing number as had been discussed during the call on 9 March 2018.

It is important to note that prior to this, on **27 February 2018**, it had been erroneously stated by the Provider in a telephone call that in fact the land registry certificate has been transferred into the name of the Provider already, and that a Land Registry record had been updated to show this. This statement was incorrect at this time. This is accepted by the Provider.

/Cont'd...

Following receipt of the Provider's letter of **13 March 2018**, the Complainants' solicitor wrote to the legal department of the Provider by letter dated **22 March 2018**. That letter stated that there was still insufficient documentary evidence in support of the ownership of the charge. The solicitor requested (A) confirmation of the dealing number provided including the transfer of ownership of the charge in respect of the Complainants' Folio and (B) an undertaking that on redemption of the mortgage, the Provider would furnish an effective deed of discharge to remove the entry and would also deal with all Land Registry queries.

What followed was another confirmation from the Provider that it would furnish an effective deed of discharge upon redemption of the mortgage. What appeared to remain in issue between the parties was the Complainants' solicitor's insistence that it be furnished with documentary evidence in support of ownership of the charge, to include the relevant transfer/purchase deed. This is evident in the letter of 13 April 2018 from the Complainants' solicitor.

The Provider then responded on 17 April 2018 reiterating that it had already been confirmed to the Complainants on 18 December 2017 that from 15 December 2017, Bank A transferred all legal rights and agreements relating to the Complainants' account to the Provider. The letter went on to confirm that this account transferred as part of the sale of a portfolio of loans and that on receipt of the full cleared redemption monies, the Provider would furnish a sealed deed of discharge in relation to the charge registered as a burden on the Complainants' Folio. The letter went on to state that the discharge would refer to the current pending application to register the Provider as legal owner of the charge which had been lodged under the referenced dealing number. I note from the evidence available, the copy of the letter dated 17 April 2018 with an office stamp from the Complainants' solicitor confirming receipt of this letter on 18 April 2018.

It appears that thereafter communication ceased between the parties until the Complainants wrote on 31 October 2018 to the Provider complaining about the Provider's lack of action and failure to provide information relating to his mortgage and requesting that this be resolved by releasing the Complainants' documents. Thereafter followed further communication between the Complainants and the Provider's complaints department.

I note that, ultimately, the PRAI completed the registration of the charge in the name of the Provider on **22 June 2018**.

In my opinion both the Provider and the Complainants' solicitor acted reasonably at all material times. It was entirely reasonable for the Complainants' solicitor to endeavour to seek as much information and assurance for his clients but simply because the type of assurances and information sought by the solicitor were not provided, this is not immediate or conclusive evidence of wrongdoing on the part of the Provider.

It strikes me that, until such time as the PRAI completed the application process it is difficult to see what more the Provider could have done, in light of the fact that the application process is a matter entirely within the remit of the PRAI.

/Cont'd...

Certain information was sought in the Complainants' solicitor letter of **5 February 2018**, as follows:

1. The redemption figure to release or vacate all mortgages affecting the Complainants' property
2. confirmation that the Provider has purchased the said charge and documentary evidence in support of ownership:
3. confirmation that a deed of discharge would be furnished in due course.

Numbers 1 and 3 were provided but the discord between the parties emerged in respect of the item sought at number 2. The ensuing telephone calls and correspondence, show the Provider confirming on a number of occasions that the application to transfer the land certificate into the name of the Provider had been lodged and was being processed by the PRAI.

Notwithstanding all of the foregoing, the Provider wrote again in April 2018 confirming that the application before the PRAI had been lodged and was pending but that a deed of discharge would be furnished along with the letter referring to the pending application. The Provider submits that it provided the necessary details in relation to the structure of the sale of the loan, confirmation that an application was lodged with the PRAI and that completion of this transfer was solely dependent on the PRAI completing the application. This in my opinion was reasonable.

There is a suggestion or an argument that perhaps the legal agreement showing the transfer between Bank A and the Provider should have been provided, but it is not clear to me that the information made available by the Provider, held up the switching of the mortgage, although I accept on balance that it was delayed by the time taken to transfer the ownership of the charge. This delay was not however caused by the Provider as the necessary steps to be taken were for the PRAI.

Consequently, and in light of all of the foregoing, I am of the view that the Provider acted reasonably, professionally and provided as much information as it was reasonably in a position to provide, in the context of the Complainants' desire to switch to another mortgage provider. Be that as it may, some misinformation was provided on 27 February 2018 and the Provider has conceded that it could have acted in a more timely manner in issuing the title deeds on ATR and on the subsequent closure of the account. In recognition of this, the Provider in its formal response to the investigation of this complaint, offered the Complainants a sum of €3,000 in recognition of those issues. I am of the view that this is a reasonable and adequate figure of compensation and accordingly, on the basis that this figure remains open to the Complainants for acceptance, I do not consider it necessary to uphold this complaint or to make any direction in that respect.

I note that since the preliminary Decision of this Office was issued to the parties, The Complainants have indicated a willingness to accept the Provider's settlement proposal, and this has been communicated to the provider by this Office. It will be a matter for the parties to liaise directly to arrange the required payment in that regard, in order to bring the matter to finality.

/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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

9 October 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.