An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0443
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Failure to process instructions in a timely manner Delayed or inadequate communication Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Disputed transactions Documents mislaid or lost Failure to process instructions in a timely manner Maladministration Errors in calculations Fees & charges applied (mortgage) Maladministration (mortgage) Settlement amount (mortgage) Maladministration regarding voluntary sale Failure to release security
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant entered into a mortgage loan agreement with the Provider in **March 2007** to purchase an apartment in the USA. An overdraft facility was sanctioned in **January 2008** in respect of the Complainant's current account and two further loan agreements were entered into **March** and **August 2008**. Following this, the Complainant began to experience difficulties making repayments under the loans and exceeded his overdraft limit. Owing to this and non-engagement from the Complainant, the Provider instructed its solicitors to recover the amounts owned by the Complainant and to also seek his consent to the voluntary sale of the apartment. The apartment was ultimately sold in **October 2014** and the Complainant's liabilities with the Provider were discharged. However, the Complainant is dissatisfied, for the reasons set out below, with the Provider's conduct and the manner in which the Provider approached, and dealt with, the sale of the apartment.

The Complainant's Case

The Complainant outlined his complaint in a letter to the Provider dated **29 October 2016**. In this letter, the Complainant states that in or about late **2014**/early **2015**, he repaid all loans in full and final settlement from the proceeds of the sale of his US apartment. The disposal of the apartment was executed and facilitated on a voluntary basis. The Complainant feels that he was unfairly treated by the Provider in respect of this, and associated, matters.

It is stated that the Complainant was not advised, whether orally or in writing, that the bank/customer relationship with the Provider was terminated. The termination of this relationship had a significant bearing on the manner in which the Complainant was treated.

Prior to **February 2013**, the Complainant received correspondence from the Provider in relation to his loans. During this period, the Complainant was also receiving correspondence advising him that some loans were being paid. However, funds were being deducted from the Complainant's current account despite an instruction given to the Provider not to do so as it was overdrawn. The Complainant also explains that he did not receive any statements from the Provider for any of the loans. He was, however, receiving monthly letters confirming the apartment loans were being paid. It is submitted that the Complainant was not contacted by the Provider to discuss his loans or afforded the opportunity to meet with anyone within the Provider, and on **5 February 2014**, without prior warning, received a letter from the Provider's solicitors demanding repayment of the loans within 7 days. The Complainant contacted the Provider in response to this letter but was informed that the matter had *gone legal*.

Following this, the Complainant made a freedom of information request on **5 February 2014** which was acknowledged by the Provider on **6 February 2014**. While this request was being processed, the Complainant received another letter from the Provider's solicitors on **13 March 2014**. It is stated that the Complainant *"… only received confirmation from [the Provider] on 25th March that his files were ready for collection. This fact alone clearly shows [the Provider] were not interested in a negotiated solution but were determined to go legal regardless."*

The Complainant wrote to the Provider's solicitors on **21 March 2014** and **10 April 2014**, to try arrange a meeting to resolve matters. An acknowledgement was received on **16 April 2014** but no meeting was arranged.

The Complainant wrote to the Provider's solicitors on **29 April 2014** advising that the apartment had been on sale since **December 2013**. This letter also contained a proposal to repay the loans associated with the apartment which were €449,353 and €120,663 respectively. This also included a proposal to repay *"… other loans which were a current account and a share loan for [Provider] shares."* No correspondence was received from the Provider's solicitors. Having followed up with the Provider's solicitors, the Complainant received an email on **11 June 2014** requesting a *Statement of Net Worth* be completed together with certain other forms. These were completed by the Complainant and returned by registered post on **13 June 2014**.

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The Complainant followed up with the Provider's solicitors by email on **30 June 2014** and only received an automated response. The Complainant wrote to the Provider's solicitors again on **16** and **18 July 2014**. The Complainant subsequently received a response from the Provider's solicitors which, the Complainant believes, appeared to suggest that the documentation previously sent by him was not received. These were faxed to the Provider's solicitors on **18 July 2014**. The Complainant remarks that following the letter of **5 February 2014**, he was proactive in attempting to reach a solution and his apartment had been listed for sale since **December 2013**.

The Complainant states he received no further communication from the Provider's solicitors after **18 July 2014** even though a proposal had been made, and all the while, interest was continuing to accrue on the loan accounts.

The Complainant did not have anyone to contact within the Provider and wrote to the CEO of the Provider on **5 September 2014**. The Complainant specifically asked that he not be referred back to the Provider's solicitors but this request was ignored and he was directed to the Provider's solicitors. It is submitted *"… this shows [the Provider] was set on 'going legal' even though [the Complainant] was co-operating fully and in fact was actually pushing [the Provider's solicitors] and [the Provider] on the matter. This also shows the lack of banker/client relationship."*

On **17 September 2014**, almost five months after the Complainant's offer was submitted, the Provider, through its solicitors, refused to accept it. On the same day, the Complainant received an email from the Provider's solicitors confirming that *'we are in the process of instructing our clients New York attorneys in relation to this matter'.* A further week passed before the Provider appointed an attorney to liaise with the Complainant's attorney.

The closing of the sale of the apartment was scheduled for **9 October 2014**, pending production of the Provider's *bank payoff figure*. On **6 October 2014**, the Complainant received a closing statement with a demand for $1,049,058 which included a demand for payment of the Provider's attorney.

On **7 October 2014**, the Provider's attorney informed the Complainant that *'the rate of exchange was the standard exchange rate for amounts up to €70,000 euro is 1.2808'.* The Complainant advises that the amount being converted was approximately €816,535, and for such a large amount, a better exchange rate could have been negotiated.

On **8 October 2014**, the Provider's attorney demanded payment in euro. It is submitted that no attempt was made to agree an actual figure and the exchange rate was constantly changing. This was unreasonable and put the Complainant in a difficult position. The Complainant obtained a quote from an exchange rate provider of $1,008,000 to convert into euro the amounts required to clear all loans. This Complainant submits this would have saved $41,000. It is also pointed out that a euro bank draft was required by the Provider which in *"… the modern age of digital transfer … this suggestion was in itself unreasonable and ridiculous. This was further illustrated by the fact that per diem interest was going to be added while the cheque was in transit to Ireland."*

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Between **8 October 2014** and **16 October 2014**, a third party title company (the **Title Company**) became involved in the transaction. The point is made that this company prevented the Complainant from routing the payment to the Provider through a specialist exchange rate provider and this delayed the closing of the sale of the apartment. During the period, the Complainant states there was no one within the Provider with whom he could speak and all negotiations were done with the Provider's attorney.

It is stated that the only way the Complainant could close the sale was to have his attorney wire funds in euro directly from their account to the Provider. This was an uneconomical way of completing the transaction but the Complainant had no choice and could not risk losing the sale.

It is explained that while the closing of the sale was ongoing, the Complainant did not have access to any personnel within the Provider to redeem his share certificates despite numerous requests from his attorney for the name of a relevant contact within the Provider. There was an urgency to selling the shares as the Complainant had to sell shares *"… to realize a loss to offset a gain and avoid a tax bill."* The loss on the Provider's shares was €99,000 following a €100,000 investment. The Complainant states the sale of the shares was required to be completed by **30 November 2014**.

The Complainant was left with no option but to write to the Provider's CEO on **11 November 2014**. The Complainant eventually got the original share certificates and sold the shares on **26 November 2014**, in time to realise the loss. The Complainant advises that the Provider supplied an old share certificate as it transpired that the Provider had lost the original share certificate. The Complainant was required to get a replacement certificate.

It is submitted that the above events demonstrate how poorly the Complainant was treated. The Complainant is seeking the following redress:

> *"1. Return of $5,380 paid to [the Provider's] attorney*
> *2. Payment of $41,000 due as a result of not being allowed to use FX provider*
> *3. Reduction in interest charged from April 2014 to Nov 2014 due to delay by [the Provider] in dealing with the matter.*
> *4. Compensation for all of the above."*

The Provider's Case

The Provider explains that a private banking loan was sanctioned on **23 March 2007** in the amount of $743,250 (account ending 040, formerly 852) to facilitate the purchase of an apartment in that USA. This apartment was used as security for the loan. In **February 2008**, the loan was converted to euro following a request from the Complainant. The conversion was sanctioned for €527,232 and was drawn down on **12 March 2008** for €499,353.18. The difference between the sanctioned and drawdown amounts was due to exchange rate fluctuations.

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A separate private banking unsecured euro loan was sanctioned on **11 March 2008** (account ending 872, formerly 746). The amount of €120,663.10 was drawn down on **7 April 2008**. An overdraft facility of €30,000 was sanctioned on **25 January 2008** (account ending 437). A branch loan was sanctioned in **August 2008** for the purpose of purchasing shares (account ending 783). This loan was secured by a Letter of Pledge over the shares, and restructured on **20 September 2010**. The security for the restructure was the Letter of Pledge and an all sums mortgage over the apartment.

When the Complainant first experienced difficulties with his branch facilities in **2011**, the Provider states that attempts were made by it to engage with the Complainant to resolve these difficulties as can been seen from the letters submitted in evidence and from a telephone call on **4 December 2012**, a recording of which was supplied in evidence. The Provider states that the Complainant failed to engage or provide any proposals.

As a result, the Complainant's loans were passed to the Provider's Collections Unit in early **2012**. On **20 July 2012**, a termination letter for the branch facilities was issued to the Complainant with further correspondence issuing in **September** and **December 2012**. No response was received to these letters. In **January 2013**, the Provider instructed its solicitors to begin collecting on the debt. The Complainant was advised of this by letter dated **22 January 2013** and a demand letter issued on **5 February 2013**. The Provider states that it is satisfied that notice was given to the Complainant of its intention to end its relationship with him and a number of opportunities were afforded to the Complainant between **July 2012** and **February 2013** to prevent this from happening. The Provider explains that the customer/bank relationship ended in **November 2014** following clearance of all the Complainant's liabilities.

The Provider states that the Complainant had the option of contacting his branch or the staff members in the Provider's Recovery Unit who had written to him. It states that there is no evidence to indicate he did so. The Provider states that the Complainant did not engage with the Provider until he wrote to the Provider's solicitors on **21 March 2014** having been in arrears on his branch loan since **2011**. The Complainant wrote to the Provider's solicitors again on **10 April 2014** as he had not received a response to his previous letter. The Provider's solicitors responded on **16 April 2014** advising of a voluntarily disposal of the apartment to reduce the Complainant's liabilities. The Complainant was asked if he was prepared to do this. The Provider acknowledges that the Complainant's request to meet with the Provider/its solicitors was not addressed and the Provider apologises for this. The Provider also acknowledges there were delays in responding to the Complainant's proposal of **30 April 2014** having received the required documentation in **June 2014**. The Provider apologises for this also.

The Provider states that the Complainant was seeking a settlement of his liabilities when it was clearly stated by the Provider's solicitors that a settlement could not be considered until the amount of any residual debt was known after the sale of the apartment. The Provider could not enter discussions on a settlement until the residual amount, if any, was established. When it was established that the full amount of the Complainant's liabilities were going to be repaid in full from the sale of the apartment, there was no further request for a meeting.

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The Provider explains that statements for account ending 437 issued, at a minimum, on an annual basis and on occasion, on a quarterly basis. Annual account statements were issued for account ending 783. Statements for accounts ending 040 and 002 issued on an annual basis every November and January respectively. The Provider furnished the relevant account statements in evidence. The Provider also states that the Complainant was issued with a loan rollover confirmation letter in **February 2013** setting out the balances and interest rates for the next period in respect of accounts ending 040 and 002.

It is submitted that statements were sent to the address held on the Provider's file and the Provider was not given with any alternative address for the Complainant.

The Provider does not have any record of statements not being issued or being returned with *Address Unknown*. The Provider also has no record of the monthly rollover confirmation letters being returned.

The Provider states that it is satisfied all direct debits set up on the Complainant's current account were stopped/cancelled in line with his written request dated **7 March 2011**. The debits to the current account for the personal banking loans were not by way of direct debit but by way of authorisation from the Complainant as set out on page 6 of the Credit Agreements dated **23 March 2007**, **15 February 2008** and **11 March 2008**.

The Provider explains the security for the Complainant's loans was located in the USA and as the apartment was located outside of the jurisdiction, it was necessary for the Provider to have legal representation within the relevant jurisdiction in order to assist with the sale, to accommodate the discharge of the Complainant's liabilities and to release the Provider's charge over the apartment. The Provider also states that the Complainant could not have completed the sale of the apartment without the assistance of its attorney.

It is acknowledged that the Provider's attorney provided the Complainant's attorney with redemption figures in dollars in its letter dated **3 October 2014**. The redemption figures were provided in dollars initially and this was for indicative purposes only. The Provider subsequently clarified that the settlement was required to be made in euro and re-issued the redemption figures in euro. This was appropriate as the loan was a euro domiciled account and was required to be discharged in euro. The Provider states that final settlement figures were provided in good time prior to the sale closing on **31 October 2014**.

The Provider rejects the Complainant's contention that it could have secured a better exchange rate. The Provider submits the exchange rate aspect of this complaint is a matter between the Complainant and the Title Company. The exchange rate was not set by the Provider nor did the Provider have any influence over the exchange rate provider used. The Provider adds that the Title Company did not allow the use of a foreign exchange provider.

The euro amount due to the Provider was to be wired to the Provider and the Provider had no dealing with the foreign exchange provider used. As set out in an email dated **8 October 2014**, the Provider's attorney advised the Complainant's attorney that the euro settlement funds could be provided by way of either a euro bank draft or a wire transfer.

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The funds were not wired by the Complainant's attorney but the Title Company. The Provider refers to an email from the Complainant's attorney to the Complainant dated **8 October 2014** which states *'The Title Company is unwilling to route the funds through a 3rd party exchange service.'* The Provider advises that it had no influence over this decision.

It is stated that the criteria for making a euro settlement payment were set out in letters to the Complainant's attorney on **14 October** and **29 October 2014**. The payment criteria were also outlined in an email dated **8 October 2014**.

The Provider did not outline that it could not accept payment from certain entities as it was aware the matter was being handled by the both parties' attorneys.

The Provider advises that it was not aware of any difficulties experienced by the Complainant in transferring the funds from the US and it was not a party to the transfer. The Provider also denies that it caused any delay in relation to this transaction. The Provider does not consider that it was *inflexible* regarding the transaction either. It states that the loan accounts were held in euro, the amount owing to the Provider was in euro and the Provider offered the option to pay by way of bank draft or wire transfer.

The Provider states that the Complainant was first advised that all fees had to be discharged on completion of the sale in an email dated **19 September 2014**, and was informed of the attorney fees through the letters dated **3 October**, **14 October** and **29 October 2014**. Under clause 14 of the terms and conditions of the mortgage, the Complainant was required to pay these fees. The Provider also states that it was not required to obtain an invoice for its attorney fees and this was a matter between the Complainant's attorney and the Provider's attorney. The Complainant's attorney confirmed the Complainant would pay these fees by email dated **7 October 2014** and the Complainant instructed his attorney to pay these fees by email dated **16 October 2014**.

In terms of the share certificates, the Provider states that it wrote to the Complainant by email on **18 November 2014** to advise him that the share certificates were issued to him by post on **14 November 2014**. The Provider denies that it did not respond to the Complainant's requests and submits that the certificates were provided in a timely manner in time for the tax cut off date.

<u>The Complaints for Adjudication</u>

The complaints are that the Provider:

1. Did not respond to the Complainant's proposals to clear his outstanding liabilities;

2. Delayed the sale of the USA apartment;

3. Wrongfully charged the Complainant for its attorney fees;

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4. Refused to allow the Complainant to use his nominated foreign exchange provider;

5. Issued a settlement figure in dollar and subsequently requested the relevant loan be settled in euro;

6. Delayed the sale of the Complainant's shares; and

7. Proffered below par communication, customer service, and complaints handling.

Decision

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

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The Loan Facilities

The Complainant entered into a loan agreement to purchase an apartment in the USA by way of Offer Letter dated **23 March 2007** in the amount of $743,250 (**Loan 1**). This loan was converted to a euro denominated loan by Offer Letter dated **15 February 2008** and repayable by way of 24 monthly instalments expiring on **15 February 2010**. This Offer Letter expressly stated that it would be replacing the previous offer. In both instances, the USA apartment was the security for Loan 1.

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The Complainant entered into a second loan agreement on **11 March 2008** in the amount of €129,078 (**Loan 2**). This was an unsecured facility and repayable by way of 24 monthly instalments expiring on **11 April 2010**. An overdraft facility in the amount of €30,000 was provided to the Complainant by letter dated **25 January 2008** (**Loan 3**) in respect of his current account. The final loan was sanctioned on **25 August 2008** in the amount of €100,000 (**Loan 4**). Loan 4 was used to purchase a number of shares in the Provider and a Letter of Pledge in respect of the shares was taken as security for the loan.

This loan was restructured on **20 September 2010** where additional security in the form of a mortgage over the apartment was agreed. The repayments under the loan were 120 monthly payments expiring on **3 September 2020**.

Correspondence

The Complainant wrote to the Provider on **7 March 2011**, as follows:

> *"Please cancel all direct debits and standing orders on this account and allow no further withdrawals with immediate effect."*

The Complainant wrote to the Provider again on **22 March 2011**, in respect of Loan 3 and Loan 4 stating:

> *"I refer to the above share loan and you will recall when we met last May I explained to you the extent of my financial difficulties and my inability to repay the loan. I agreed to pay interest only for a 12 month period in the hope that my situation would get better. Unfortunately my situation has deteriorated further …*
>
> *I have cancelled all direct debits from my current account and I suggest you sell the shares to clear the balance on this account. I am disappointed it has come to this and my remaining nest egg which I invested in [the Provider] shares is also now gone.*
>
> *I assume you will proceed and get a judgement for the outstanding loan and I wish to advise that I will not be defending any legal action."*

The Provider began to issue arrears letters to the Complainant in respect of Loan 4 from around **12 May 2011** advising that this loan had been in arrears since **April 2011**. The Provider wrote to the Complainant on **20 February 2012** to advise him that he had exceeded his overdraft limit, Loan 3. The Provider wrote to the Complainant on **20 July 2012**, in respect of Loan 3 and Loan 4 stating:

> *"The above account currently displays a debit balance in excess of the approved limit and is therefore in breach of the terms of your agreement with the Bank. This has been an ongoing matter for some time now and having endeavoured to engage constructively with you, we are left with no option but to notify you that if you do not make the payment or present an alternative proposal that is satisfactory to the Bank within two months of the date of this letter, all your banking facilities will be terminated. …*

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The Bank will take whatever steps are considered necessary to obtain payment in full of your total indebtedness. This may include legal action and enforcing any security held. You will be liable for the cost of enforcing any mortgage held, which will be at least €3,500. …"

On **13 September 2012**, the Provider's Insolvency and Debt Recovery Unit wrote to the Complainant in respect of Loan 3 as follows:

"Your account has been passed to this unit for collection and monitoring purposes due to non-payment.

We now require by return your proposals for clearing the debt.

Failure to respond will leave us with no option, but to take stronger action to recover the debt. …"

This unit wrote to the Complainant again on **4 December 2012** referring to its previous letters dated **13 September** and **16 October 2012**, noting that a proposal had not been received. The Complainant was advised that if he did not make contact with the Provider by **18 December 2012**, it would be forced to take legal action. The Provider explains in its Formal Response that while a letter was issued to the Complainant on **16 October 2012**, it has been unable to produce a copy of this letter.

A letter was sent to the Complainant on **22 January 2013** to notify him of the name of the Provider's solicitors who had been instructed to begin collecting the debt owed on Loan 3 which stood at €153,906.67. The letter advised that the Provider's solicitors would be in contact with the Complainant, and if a repayment plan could not be agreed, the Provider's solicitors were instructed to issue legal proceedings.

The Complainant wrote to the Provider on **2 February 2013** (which was received on **5 February 2013**) as follows:

"I refer to previous correspondence and I have not yet received all documentation i.e. correspondence, meeting records etc on file which I believe I am entitled to under the freedom of information act.

When I receive these I will then be able to prepare a detailed reply to your demand."

The Provider responded to this information request on **6 February 2013** advising that a fee of €6.35 was required to process a data subject access request. This fee appears to have been paid by the Complainant under cover of letter dated **19 February 2013**.

The Provider's solicitors wrote to the Complainant on **5 February 2013** outlining they were instructed to collect the sum of €152,636.44 due on foot of the Complainant's accounts for the past six years. The Complainant was advised that if the outstanding balance was not discharged within seven days, their instructions were to issue legal proceedings.

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The Complainant responded to the Provider's solicitors on **19 February 2013** enclosing a copy of the Provider's letter of **6 February 2013**, expressing the view that the request for payment was premature as the Complainant was still dealing with the Provider in relation to the matter.

There does not appear to have been any correspondence between the parties for over a year when the Provider's solicitors wrote two letters to the Complainant on **21 February 2014**. The first was a seven day formal demand, and the second letter requested that the Complainant consider the voluntary disposal of the apartment. The Provider's solicitors wrote two further letters to the Complainant on **13 March 2014** essentially identical to the letters of **21 February 2014**. The Complainant responded on **21 March 2014** stating:

> *"… I refer to the above and [the Provider] have advised I need to deal with you on this matter. I do not want to go to court even though I have been advised to defend the matter. I would prefer to try and resolve the matter otherwise and would appreciate if you could meet to discuss a way forward."*

The Complainant wrote to the Provider's solicitors on **10 April 2014** referring to his previous letter and repeated his request for a meeting. The Provider's solicitor acknowledged the Complainant's March letter on **16 April 2014**. This letter confirmed the Provider's preference to avoid legal proceedings but was silent on the Complainant's request for a meeting. It also sought Complainant's agreement to a voluntary disposal of the apartment.

By way of undated letter received by the Provider's solicitors on **30 April 2014**, the Complainant explained that the apartment had been on the market since **December 2013** but an offer had yet to be received. The Complainant proposed that he would discharge Loan 1 and Loan 2 with the sale proceeds; estimating this would leave a residual balance across all loans of €170,000. Making the following points, the Complainant proposed to pay €20,000 in full and final settlement of the residual debt:

> *"1. Part of this is a loan that I took out for €100,000 to buy shares in [the Provider]. This was after I had been advised by my relationship manager that it was a good time to do so. She gave this advice having consulted with [stockbrokers] who at the time were also owned by [the Provider].*
>
> *Firstly the advice was flawed and the fact it was taken from [the stockbrokers] was in itself a conflict of interest. This is not to mention the well documented fact that the directors of [the Provider] did not exercise their fiduciary duty of care when they ran the bank into the ground which resulted in the shares being worthless.*
>
> *2. Part of this loan was a €30,000 overdraft which is not secured. I instructed the bank on 7/3/11 not to allow any further withdrawals. This was ignored and direct debits and loan payments continued to be taken from this account. This resulted in the balance increasing and interest being added on an ongoing basis.*

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3. *I was never given a chance to meet with the local [Provider] team to resolve matters and my case was sent straight to the debt recovery unit which was unfair and unreasonable."*

The Provider's solicitors wrote to the Complainant by email on **11 June 2014** advising that before the Provider could consider his proposal, the Complainant would need to complete a Statement of Net Worth together with supporting documentation. The relevant information was furnished by the Complainant under cover of letter dated **13 June 2014**.

The Complainant wrote to the Provider's CEO on **5 September 2014**, complaining about the delay on the part of the Provider and its solicitors in dealing with his case. The Complainant pointed out that he submitted an offer on **29 April 2014** and Statement of Affairs on **20 July 2014** but had no communication from the Provider following the submission of these documents. The Provider's CEO responded on **11 September 2014**, advising the Complainant that his proposal was currently under consideration but additional information was required and the Provider's solicitors had written to the Complainant in this regard.

Sale of the Apartment

The Complainant's attorney furnished him with preliminary closing figures in respect of the sale of the apartment on **12 September 2014**. This included 12 items in the *Disbursements* section with item 12 being $4,000 in respect of the Complainant's attorney fees. No provision had been made for the Provider's legal fees.

The Complainant wrote to the Provider's solicitors on **13 September 2014**, advising that the apartment had been sold and enclosed an email from his attorney setting out the details of the sale. The Complainant stated *"… there is some urgency in the matter to avoid the sale falling through as I already missed a closing date due to the fact I had not reached agreement with [the Provider]."* The Complainant also requested confirmation that the offer was acceptable and details of the Provider's agent to whom payment was to be made. The Complainant wrote to the Provider's solicitors on **19 September 2014** as follows:

> *"I am prepared to proceed as long as the deductions set out by my attorney are acceptable. You might provide the details of your clients attorney as my attorney would like to contact them directly as time is of the essence."*

The Complainant sent a second email on **19 September 2014** requesting a response to his email of **13 September 2014**. This was followed by a series of email exchanges on **19 September 2014**. The first being the response from the Provider's solicitors advising that they had received instructions from the Provider and the parties were in the process of instructing the Provider's attorney in relation to the sale. The Complainant was also informed that the Provider consented to the sale:

> *"… on the basis that the net proceeds of sale are furnished on account after deductions only of agreed legal fees, agreed auctioneers fees and agreed deductions necessary to complete the sale of the property."*

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In reply, the Complainant wrote:

> *"Thank you for your e-mail and I have forwarded it to my us attorney.*
>
> *Your e-mail makes no mention of a settlement figure and until we agree an actual figure we will be unable to proceed. Accordingly I refer you to my previous offer and you might confirm a settlement figure."*

The Provider's solicitors explained that the Provider was unable to consider a settlement proposal until the apartment had been sold and the residual balance finalised. It was suggested that the residual balance be discussed once the sale had closed and net proceeds lodged with the Provider.

Settlement Figures and Attorney Fees

The Provider's solicitors wrote to the Complainant's attorney on **23 September 2014** stating the Complainant's *liabilities to our client* stand at €817,117.21.

The Complainant emailed the Provider's solicitors on **24 September 2014**, attaching and seeking a response to an email from his attorney of the same date which suggested that an attorney had not been instructed on behalf of the Provider regarding the sale. The attached email also stated: *"Please note, that time is of the essence with regard to obtaining a proper payoff letter from [the Provider]. If this cannot be resolved imminently, the sale of the Unit is in jeopardy of falling through."* The Complainant requested a settlement figure as the net sale proceeds of approximately $1,043,000 would exceed what was owed to the Provider.

The Provider's attorney issued a *payoff letter* to the Complainant's attorney on **3 October 2014** stating:

> *"… The sums necessary to pay Mortgage holder as of September 29, 2014 is $1,052,734.88, plus per diem interest as set forth below.*
>
> *…*
>
> *(a) $807,087.58 to be remitted to the benefit of [the Provider] … Please refer to [the Provider's] enclosed wiring instructions; and*
>
> *(b) $3,675.00 payable to [the Provider's attorney] for legal fees and disbursements in connection with payment of the Loan Account. Payment of this sum must be by an official bank check, and must be delivered to our office, or sent by wire transfer pursuant to section A of our enclosed wire instructions. …"*

In an email to his attorney dated **7 October 2014**, the Complainant explained that:

> *"… Even allowing for accrued interest and note that I have no way of verifying this as I have not received statements for years.*

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I am in fact still getting correspondence confirming some loans are being paid. I feel the bank should make some gesture and forego their accrual interest figure.

Even if you include the interest the total euro amount is €816,535 which at todays rate is $1,037,867. This figure is well short of what [the Provider] wants as per previous correspondence. …"

In a further email to his attorney on the same day, the Complainant wrote:

"… I got a breakdown of my accounts as of last Friday and the balance due is €749,669. I have checked the conversion factor today with [exchange rate provider] in ireland and the equivalent dollar amount is $1,006,465. …

Accordingly I can not allow you close the sale on Thursday until a proper settlement figure is agreed as [the Provider] is clearly trying to bully me into a corner and I have had enough. Also as outlined previously I am not responsible for the banks attorneys fees. …"

Following this, the Complainant's attorney wrote to the Provider's attorney attaching the above email:

"… I forwarded your payoff letter to [the Complainant] yesterday. He has advised that he checked his accounts yesterday, and that as of last Friday, considerably less is due than the amount stated in the payoff letter (see below). Is there a time today I can call you to discuss?"

Another email to the Provider's attorney on **7 October 2014**, states:

"He will pay attorney fees. I think its more about total amount due and conversion rates. His final number is 50K less than yours - so it's not just the conversion."

The Complainant wrote to his attorney on **8 October 2014** in respect of the discharge of his liabilities with the Provider:

"If you can agree a figure of around €1,040,000 to settle the matter I am ok for you to close on this basis. this might make it a bit easier for all involved. Just remember to get it in writing about the release of my share certs."

In response, the Complainant's attorney advised:

"Am working on all - but we have to adjourn tomorrow's Closing as the Title Company is unwilling to route the funds through a 3rd party exchange service. That said, we still need confirmation from the bank that they will release the shares and I do not know when I will have that."

/Cont'd…

The attorney corresponded again on **8 October 2014**, and responding to certain queries raised by the Complainant's attorney, the Provider's attorney wrote:

> *"[The Provider] had reviewed, and has responded to your inquiries and requests, as follows:*
>
> *(a) The figures are as set out in euro. Our clients' banking relationship is based upon the euro; accordingly, the rate quoted is indicative, and the actual figure varies as the rate is constantly changing.*
>
> *(b) It is the borrower's responsibility to ensure the correct euro sum is received by the bank to discharge the loan obligations.*
>
> *(c) If you prefer to provide a euro bank draft (official check) payable to [the Provider] at closing, [the Provider] would have no difficulty with that, either. If that is the case, let me know, and I'll obtain pay-off figures set forth in euro. You (or the title closer) could deliver the check to our office, and we would arrange for courier service delivery to [the Provider's] rep in Ireland. Sufficient per diem interest would have to be added to cover transit.*
>
> *(d) [The Provider] will not waive interest accrued; the figures are as set out.*
>
> *(e) [The Provider] doesn't understand [the Complainant's] statement that he does not receive account statements; if he wants another copy, please let me know, and we will arrange for same.*
>
> *…*
>
> *Additionally, [the Provider] had provided the following as its wire transfer instructions: …"*

After this, the Complainant's attorney asked *"[w]ho determined the exchange rate provided on the payoff?"* The response received was *"[t]he US$ figures on our pay-off letter to you were provided to us by [the Provider]. Similarly, any exchange rate set forth in our correspondence to you was provided by [the Provider]."*

The Complainant's attorney then advised the Provider's attorney that the Complainant was requesting a settlement letter in euro, and confirmation that upon payment, the share certificates would be released. The Provider's attorney responded as follows:

> *"I'll relay your requests to [the Provider], and will inform you of its responses.*
>
> *…*

/Cont'd…

And in connection with the method of paying [the Provider], please let me know whether:

(a) you will be providing a euro bank draft (official check) payable to [the Provider] at closing, or

(b) that the title company will be sending a wire transfer to [the Provider], and that these wire instructions are acceptable: …"

Following this, the Complainant's attorney wrote:

"My client has advised that in lieu of continued efforts to obtain a better exchange rate or payoff the loan in Euros, he would be willing to offer $1,040,000 to pay [off] the existing debt. Could you please forward this offer to [the Provider]? He has also requested the name of the party at [the Provider] who is handling this matter."

On **10 October 2014**, the Complainant's attorney wrote:

"As per our discussion, my client has agreed to payoff the loan in dollars as per the original payoff letter. Please forward a revised letter good through next Thursday and we will proceed."

A *payoff letter* in essentially similar terms to that outlined above was sent to the Complainant's attorney on **14 October 2014** outlining the amounts owed in euro. At paragraph (b), the letter advises that attorney fees were $5,275 and stated that such fees must be sent by wire transfer.

On **16 October 2014**, the Complainant wrote to his attorney in the following terms:

"Further to our conversation I am instructing you to pay [the Provider] €818,550 attorney $5275 to attorney to close the sale and register zero balances on all my accounts. I trust you can take it from there and you can also pay whatever per diem interest accrues. I really can not do anymore and as advised will not be signing anything for the bank.

I also note that the title company who I have no knowledge of till now or have no obligation to have prevented you from getting the best rate for me to pay [the Provider] in euros. Just for the record you would need $1,052,248 to pay [the Provides] €818,550 if you routed the payment through [exchange rate provider] today.

You might also get contact name from [the Provider] so I can chase him up for my original share certs after closing. …"

/Cont'd…

Within a couple of minutes of this email, the Complainant's attorney advised the Provider's attorney that:

> *"[The Complainant] is unwilling to sign the payoff letter but has provided authorization in the email below for me to pay off [the Provider] at Closing. Is that sufficient? …"*

A further *payoff letter* was issued on **29 October 2014**, stating the amount owed was €819,373.13 which included the Provider's attorney fees of $5,380.

Share Certificates

The Complainant wrote to the Provider on **11 November 2014**, as follows:

> *"… I am awaiting the return of my share certificates as I need to sell these to realise a loss to offset a gain and avoid a tax bill of circa 200k.*
>
> *Despite numerous attempts by my US attorney I have been unable to get a name of some in [the Provider] to liaise with and hence I am writing to you.*
>
> *Please arrange for the original share certs to be returned immediately …*
>
> *You will appreciate if I do not get these shares within 7 days [the Provider] will be liable for any tax bill."*

The Provider wrote to the Complainant on **18 November 2014** to advise that the share certificates had issued the previous Friday. The Complainant responded the same day advising that he was out of the country. However, on **1 December 2014** advised the Provider that he received the wrong share certificates; explaining:

> *"… The one you sent was the old one … I need the share cert … which I gave to the bank rather than the old one … I would appreciate if you could send this to me as a matter of urgency."*

The Complainant sent a follow-up email on **7 December 2014**. The Provider responded on **8 December 2014**:

> *"… Securities Dept had confirmed they do not hold the share cert … I have requested same from the branch were the original loan was taken out. Once I have same to hand I will send it to you."*

The Provider wrote to the Complainant again on **7 January 2015**, advising that:

> *"I have been in contact with Securities Dept who confirmed the only Share Cert held on file has been issued to you already. I suggest you contact the relevant company who should be able to issue a duplicate cert."*

/Cont'd…

The Complainant responded on **8 January 2015**:

> *"Thanks for your reply and I note your suggestion.*
>
> *However the cert was lost by [the Provider] and I now have to get a replacement.*
>
> *All costs associated with this including my own time will be sent to you for payment."*

Formal Complaint

The Complainant wrote to the Provider's CEO on **29 October 2016** indicating his intention to make a complaint to this Office. The Provider responded on **4 November 2016** advising that the Head of Retail Litigation and Personal Insolvency had been appointed to review the case. A Final Response letter was issued on **16 December 2016**.

Further Submissions

The parties have delivered further submissions in respect of this complaint. I note in a submission dated **24 April 2020**, the Provider has furnished an email from its attorney dated **23 April 2020** which contains their response to a number of questions posed by the Provider.

I will now set out the questions asked and the responses provided.

1. Who was responsible for the introduction of the Title Company into the transaction and why? Did the Complainant have any say or input into this decision?

   The title company would have been engaged by the buyer of the condo unit from [the Complainant]. The bank played no role in engaging the Title Company used by the buyer and seller in connection with the sale of the unit.

2. Was there a need for the Provider to appoint its own attorney to act for it even though the Complainant had appointed his own attorney?

   Yes the bank required separate counsel. The bank was required to release its mortgage interest in the condo unit being sold by [the Complainant] and this required the preparation and execution by the bank of collateral release documents. My firm was engaged by the bank to prepare the collateral release docs. required to terminate the mortgage on [the Complainant's] unit. Buyer counsel and seller counsel would not prepare these required bank documents. The bank required its own counsel to prepare the release docs.

3. Why the Complainant had to pay the Provider's attorney fees.

   In the US it is customary (and the bank loan docs require) that the borrower pay the legal fees incurred by a bank in connection with releasing its mortgage interest to facilitate the sale of a condo financed by that bank.

/Cont'd…

4. Who decided what exchange rate was used to convert the proceeds of sale from US dollars to Euro and was the Complainant given the opportunity to use an alternative exchange rate provider?

   We played no role in any FX matters associated with the repayment of [the Complainant's] loan and the release of the mortgage. My firm's role was to ensure that the bank was paid in full for all amounts owed by the seller – its borrower (a payoff letter was provided by {Bank} to us setting forth the full amount owed) and we would ensure the release of mortgage was delivered once all amounts owed were paid to the bank. The loan payoff funds were then transferred to an account identified to us by {Bank}. Again we played no role in exchanging US dollars to euros.

Analysis

The Complainant explains that the Provider allowed funds to be deducted from his current account despite a previous instruction from him to cancel all direct debits. It is also stated that the Complainant was not advised that the Provider was terminating its bank/customer relationship with him. Additionally, the Complainant outlines that he did not receive statements for any of his loans.

The Complainant wrote to the Provider on **7 March 2011**, instructing it to stop all payments from his current account. The Complainant's current account statements indicate that direct debit payments ceased during **March 2011**. However, repayments in respect of the Complainant's loans continued to be debited to the account. The Provider makes the distinction that the repayments were not necessarily direct debits, rather repayments were made by way of an authorisation as set out in the loan offer letters.

The Complainant entered into a number of loan agreements with the Provider where it was agreed that the Complainant would repay each loan in accordance with the terms and conditions of that loan. The Complainant wished to cease all payments from his current account, and this appears to have included an intention to cease loan repayments. While I am satisfied the Provider ceased all direct debit payments from the current account in line with the Complainant's instruction, I am not satisfied the Provider was obliged to refrain from collecting monthly loan repayments, and whether the loan repayments were direct debits or debit authorisations is not determinative of this aspect of the complaint. In essence, the Complainant was unilaterally seeking to alter the repayments terms of his loan agreements and require the Provider to stop collecting loan repayments without the Provider's consent or agreement. I do not accept the Complainant's request required the Provider to stop collecting monthly loan repayments. Accordingly, I believe the Provider was entitled to continue to do so.

Arrears first accrued on Loan 4 in **April 2011**. The Provider started notifying the Complainant about these arrears by way of monthly arrears letters which began to issue from **May 2011**. The Complainant exceeded his overdraft facility, Loan 3, in or around **January 2012**. The Provider wrote to the Complainant in **February 2012** to inform him of this.

/Cont'd…

The Provider wrote to the Complainant again on **20 July 2012** in respect of Loan 3 and Loan 4 stating that if he did not make the necessary repayments or put forward a proposal to address the situation within 2 months, all banking facilities would be terminated. During this period, there is no evidence of any engagement on the part of the Complainant with the Provider whether in terms of seeking to address the matters identified by the Provider or simply responding to the Provider's correspondence. Further to this, while the Provider indicated that it would terminate the Complainant's banking facilities, there is no evidence to show this actually occurred, and, in the circumstances, I accept the Provider was entitled to consider such a course of action.

The Complainant maintains that he did not receive account statements in respect of his loan accounts. The Provider's position is that it has no record of statements not being issued or statements being returned. Further to this, there is no evidence of the Complainant informing the Provider that he was not receiving statements nor is there any evidence of the Complainant seeking copies of his loan account statements. The matter appears to have been first mentioned in an email from the Complainant to his attorney on **7 October 2014** where the Complainant stated *"… I have not received statements for years."* However, I have no evidence that the Complainant did not receive loan account statements from the Provider.

The Complainant argues that he was not contacted by the Provider to discuss his loans or afforded an opportunity to meet with the Provider, and on **5 February 2014**, received a 7 day demand letter from the Provider's solicitors. Furthermore, while the Complainant's freedom of information request was being processed, he received a letter from the Provider's solicitors on **13 March 2014**.

The Provider advised the Complainant in **September 2012** that if it did not receive a response from the Complainant it would take *"… stronger action to recover the debt."* The Provider expressly advised the Complainant in **December 2012** that if he did not make contact with the Provider, the Provider would be forced to take legal action. The Provider notified the Complainant of the name of the solicitors appointed to recover the amounts owed in **January 2013**. The Complainant wrote to the Provider in **February 2013** advising that once he received a response to his information request, he would be able to prepare a detailed response to the Provider's demand. This was followed by a further exchange of correspondence between the Provider's solicitors and the Complainant. Following this, nothing appears to have occurred for over a year until the Provider's solicitors made a formal demand for payment in **February 2014** together with a request that the Complainant voluntarily dispose of the USA apartment. It is not clear why a year passed without any communication between the parties and no explanation has been offered in this regard. However, I accept that the Complainant was aware that the Provider had appointed a firm of solicitors to act on its behalf to recover the amounts owed to the Provider. Further to this, a demand had already been issued in **February 2013**. Also, the Complainant indicted to the Provider and its solicitors that once he received the information under his freedom of information request, he would be in a position to respond to the Provider's demand.

/Cont'd…

However, there is no evidence of a response or any engagement from the Complainant during this period. Therefore, I accept that the Complainant had sufficient opportunity to discuss his loans with the Provider prior to **5 February 2014**.

The Complainant wrote to the Provider's solicitors on **21 March 2014** and amongst the matters discussed was a request for a meeting. No response was received to this letter and the Complainant repeated his request on **10 April 2014**. The Provider's solicitors responded to the Complainant on **16 April 2014** but failed to address his request for a meeting. The Complainant wrote to the Provider's solicitors towards the end of **April 2014** highlighting certain matters regarding his loans and put forward a proposal regarding the repayments of his loans. This letter was not responded to until **11 June 2014** which included a request to complete a Statement of Net Worth. A completed statement and supporting documentation were returned by the Complainant on **13 June 2014**. However, it appears this was not responded to until **September 2014** by the Provider. Having considered this aspect of the complaint, it is patently clear that the Provider's solicitors and the Provider completely ignored the Complainant's request for a meeting, delayed in responding to his correspondence, and significantly delayed in responding to his proposal.

The Complainant sought the Provider's consent to the sale of the apartment on **13 September 2014**. During an email exchange between the Complainant and the Provider's solicitor, the Complainant was advised there was conditional consent to the sale.

In later correspondence on the same day, the Complainant requested settlement figures from the Provider's solicitors. In response to this, the Complainant was advised that the Provider would be unable to consider a settlement proposal until the apartment had been sold and any residual balance finalised. The Provider's solicitors furnished the Complainant's attorney with euro settlement figures on **23 September 2014**. A *payoff letter* was issued by the Provider's attorney on **3 October 2014** citing the settlement amounts in dollars. However, subsequent *payoff letters* cited the relevant amounts in euro. While the settlement figures were initially cited in dollars in the first *payoff letter*, a euro amount was previously provided on **23 September 2014** with subsequent *payoff letters* containing the euro amounts also. These letters were issued to the Complainant's attorney. Furthermore, section C of the Offer Letter for Loan 1 states:

> *"All monies payable by you whether in respect of principal or interest under this agreement shall be payable or in the event of default, shall be recoverable in the same currency as that in which the credit facility is designated."*

In the circumstances of this complaint, I have not identified that there was anything wrong with the manner in which the *payoff letters* were issued nor do I believe that this caused or was likely to cause any confusion on the part of the Complainant or his attorney.

Further to this, the Complainant was given the option to pay the settlement amounts by **either** bank draft or wire transfer with the Provider's wire transfer details being provided on several subsequent occasions. This is contrary to the Complainant's submission. It is clear that the Complainant was not required to furnish the Provider with a euro bank draft.

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Moreover, I do not believe the Complainant has demonstrated that the Provider delayed or unreasonably delayed the sale of the apartment. As the completion of the sale was not strictly dependent on the provision of a settlement figure, I accept the sale could have proceeded in the absence of a settlement figure. The email correspondence outlined above suggests it was the Complainant who unwilling to proceed until he received settlement figures from the Provider.

The Complainant believes the Provider wrongfully charged him for its attorney fees. The terms of the Mortgage are important when considering this issue. Clause14 deals with *Loan Charges* and states:

> *"Lender may charge me fees for services performed in connection with my default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorney's fees, property inspection and valuation fees. With regard to other fees, the fact that this Security Instrument does not expressly indicate that Lender may charge a certain fee does not mean that Lender cannot charge that fee. Lender may not charge fees that are prohibited by this Security Instrument or by Applicable Law. …"*

Therefore, contractually, I accept that the Provider was entitled to recover its attorney fees from the Complainant.

Further to this, in an email from the Provider's solicitors dated **19 September 2014**, the Complainant was advised that the Provider consented to the sale of the apartment subject to *agreed legal fees*. This was not disputed by the Complainant when responding to this email. Following this, while the Complainant advised his attorney in an email on **7 October 2014** that he was not responsible for the Provider's attorney fees, in an email from the Complainant's attorney to the Provider's attorney on the same day, it is stated: *"He will pay attorney fees."* Additionally, the Provider's attorney fees were expressly stated on each of the *payoff letters* issued to the Complainant's attorney. While the Complainant raised certain issues regarding the provision of settlement figure and exchange rates, no issues were raised regarding the discharge of the Provider's attorney fees despite the Complainant having the assistance of his own attorney at the time. Accordingly, I accept that the Provider was entitled to charge the Complainant for its attorney fees. Separately, I accept that the Provider was entitled to appoint an attorney to act on its behalf and I do not accept the Complainant's position that simply because he had already appointed an attorney, this rendered it unnecessary for the Provider to do so.

The Complainant asserts that the Provider refused to allow him to use a nominated exchange rate provider. The Provider submits the exchange rate aspect of this complaint is a matter between the Complainant and the Title Company. The evidence shows that the exchange rate was not set by the Provider nor did the Provider have any influence over the exchange rate provider used. The Provider adds that the Title Company did not allow the use of a foreign exchange provider.

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Crucially, the Complainant has not established that the Provider was responsible for converting and/or transferring the proceeds of sale. This appears to have been the role of the Title Company, and the evidence shows the Provider had no involvement in appointing or directing the Title Company. For instance, the Complainant's attorney advised him on **8 October 2014** *"… we have to adjourn tomorrow's Closing as the Title Company is unwilling to route the funds through a 3rd party exchange service."* In a separate email on **8 October 2014**, the Provider's attorney sought confirmation as to whether the Complainant would be providing a euro bank draft or whether the Title Company would be sending a wire transfer. It was also acknowledged by the Complainant in an email dated **16 October 2014** that: *"I also note that the title company who I have no knowledge of till now or have no obligation to have prevented you from getting the best rate for me to pay [the Provider] in euros."* Further to this, section C of the Offer Letter for Loan 1 states:

> *"**Exchange Loss***
>
> *You hereby acknowledge that your choice of currency for this credit facility is your own choice and has not been recommended, canvassed or advised by us and that we will not be liable for any loss or exposure you incur for obtaining foreign currency to meet the repayments under this agreement."*

Accordingly, I do not accept that the Provider had any role or involvement in the conversion or transfer of the sale proceeds, and, therefore did not prevent or interfere with the use of the preferred exchange rate provider.

In terms of the Complainant's share certificates, the Complainant instructed his attorney on **8 October 2014** as follows: *"… Just remember to get it in writing about the release of my share certs."* The Complainant wrote to his attorney again of **16 October 2014** stating: *"… You might also get contact name from [the Provider] so I can chase him up for my original share certs after closing."* At this juncture, it must be noted that there is no evidence of the Complainant's attorney following up with the Provider or its agents in respect of the Complainant's instructions regarding the share certificates. The Complainant wrote to the Provider on **11 November 2014** stating that: *"Despite numerous attempts by my US attorney I have been unable to get a name of someone in [the Provider] to liaise with and hence I am writing to you."* However, the Complainant has not provided any evidence of when these *numerous attempts* were made. It is also not clear why the Complainant did not attempt to make contact with the Provider directly.

The Complainant required the share certificates in order to sell his shares before a tax deadline on **30 November 2014**. It appears the share certificates were furnished to the Complainant in or around **14 November 2014** and the shares were sold on **26 November 2014**. Therefore, I do not accept that there was any delay on the part of the Provider in furnishing the share certificates. Furthermore, there is no evidence to support the Complainant's contention that the Provider issued the Complainant with the incorrect share certificates or lost the original share certificates.

/Cont'd…

Finally, having considered the evidence in this complaint, other than the specific matters outlined above, I am not satisfied that the Provider proffered below par communication, customer service, or complaints handling.

Goodwill Gesture

The Provider advises that it has reviewed the exchange of correspondence between its solicitors and the Complainant and has identified two periods where responses were not issued within its normal accepted timeframes. The Provider states these delays occurred from **April 2014** to **June 2014**, and **June 2014** to **September 2014**. The Provider has calculated the interest that accrued on each of the four accounts the subject of this complaint during these periods as amounting to €3,980.25. The Provider states that it:

> *"… wishes to offer to refund the Complainant the above interest amount of €3,980.25. The Bank recognises that this interest accrued in 2014 and bearing in mind the time that has passed since the delays would like to also offer €1,019.75 to give a total refund amount of €5,000 in respect of the above mentioned delays."*

In addition to this, the Provider acknowledges that the first settlement figure provided to the Complainant's attorney on **3 October 2014** was outlined in dollars. The Provider *"… accepts that this may have caused an element of confusion for the Complainant and we apologise for this."* The Provider also wishes to recognise that it did not acknowledge the meeting requests from the Complainant.

A meeting could not have been held without full financial information being provided and the residual balance of the loans following the sale, if any, being known. The Provider *"… apologises that this was not communicated adequately to the Complainant in a timely manner."*

The Provider states that:

> *"… in recognition of the Bank's shortcomings in this case, the delay in the Bank submitting this response and the length of time that the matter has been ongoing for the Complainant, the Bank wishes to offer a gesture of goodwill to the Complainant in the amount of €5,000 together with the refund of the interest reference above making a total offer of €10,000. This offer is being made in full and final settlement of the dispute."*

I consider this offer by the Provider to be a reasonable sum of compensation in respect of the issues outlined above, and those acknowledged by the Provider. In these circumstances, on the basis that this offer remains available to the Complainant, 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

8 December 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.