



<b><u>Decision Ref:</u></b>	2020-0450
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to process instructions in a timely manner Failure to release security
<b><u>Outcome:</u></b>	Substantially upheld

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

The Complainant entered into a loan agreement with a financial services provider (the **Original Loan Owner**) in **September 2005**. A mortgage agreement was then executed by the Complainant in favour of the Original Loan Owner in **December 2008** in respect of two properties, Property A and Property B. The mortgage was registered as a charge over both properties. The Complainant's loan and mortgage were subsequently transferred to Entity B with Entity A acquiring the loan and mortgage in **February 2015**. The Provider, against which this complaint is made, is an asset servicing firm and was appointed by Entity A to service the Complainant's loan. The Complainant redeemed the loan in **March 2018** and was entitled to have the charges registered on the properties discharged. It became apparent, however, that the charge over Property B was not registered in favour of Entity A but was still registered in the name of the Original Loan Owner. The charge over Property B was not rectified and ultimately discharged until **July 2019**.

**The Complainant's Case**

In his Complaint Form, the Complainant refers to a letter from his solicitor addressed to this Office dated **13 February 2019** as containing the basis of his complaint. This letter states:

*"We wish to make a formal complaint to your office as agent of our above-named client. We enclose herewith a copy of our file of correspondence with [the Provider] in relation to this matter.*

*Our client, through our office, have discharged the redemption amount requested by [the Provider] but [the Provider] has failed or refused to issue us with the vacated mortgage to which our client is entitled.*

*We would be obliged if you would consider this complaint and issue the appropriate direction to [the Provider] in relation to the provision of the vacated mortgage as soon as possible, together with any further direction that you may deem appropriate to compensate our client for the delay herein."*

## **The Provider's Case**

### ***The Loan***

The Provider explains that on **16 September 2006**, the Complainant signed his acceptance of a loan agreement dated **6 September 2006** which was secured on a residential investment property (the **Property A**). Special Condition 75.8 of the loan agreement states: *'That the [lender] is granted a Cross Collateral Charge on the property at [address] for the duration of the mortgage.'*

### ***Transfer and Servicing of the Loan***

The Provider explains that the Complainant's loan was initially transferred by the Original Loan Owner to Entity B, and was later acquired by a related entity (Entity A) on **13 February 2015**. The Provider performed the role of *Master Servicer* of the loan. Primary servicing activities were carried out by a third party servicing provider until **February 2018**, at which point, the Provider assumed all servicing responsibilities.

### ***Registration of the Charge on Property B***

The Provider clarifies that it was not a matter of registering a charge over Property B but rather transferring the charge from the Original Loan Owner to Entity A. The charge was registered in favour of the Original Loan Owner on **16 December 2008** and should have been transferred to Entity A as part of the original Form 56 transfer document when the loan was acquired by Entity A. The Provider submits that the delay in the provision of ownership documentation in respect of Property B was caused by the failure of the Original Loan Owner to correctly transfer the charge over the property which the Provider was not aware of until the loan was redeemed.

As long as the charge remained in the name of the Original Loan Owner, Entity A was unable to discharge it as the Provider could not release a charge registered in the name of another entity. When it became apparent that the charge for Property B had not been included in the Form 56, it was necessary to petition the Special Liquidators of Entity B to facilitate the preparation of a supplemental Form 56. The consent of the Special Liquidators was received on **19 September 2018**.

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Once the necessary consent was obtained, the Provider states that it began compiling the relevant documentation which was delivered to the Special Liquidators on **20 November 2018**. This was done as part of a bulk request for a number of affected accounts.

This was followed by a validation and verification process during which the Special Liquidators reverted to the Provider with additional queries and requests for certain documentation. The supplemental Form 56 was executed on **13 May 2019** and completed with the Property Registration Authority (PRA) on **17 May 2019**. The charge on Property B was released on **9 July 2019**.

The Provider submits that while the timeframe to completion “... undoubtedly appeared excessive to the complainant, it reflects a large-scale task of co-ordinating the compiling of documentation and the Special Liquidators’ review, assessment and consideration to ensure legal compliance.” The Provider adds that it had no power to compel the Special Liquidators to comply with such requests and the Provider was entirely dependent on the Special Liquidators’ co-operation and goodwill in assisting the Provider. Between **19 September 2018** and **13 May 2019**, the Provider engaged with the Special Liquidators to bring the supplemental Form 56 to a completion. As part of its efforts, the Complainant’s case was flagged as a high priority case which required urgent resolution.

#### ***Correspondence with the Complainant’s Solicitor***

The Provider states that on **14 June 2018**, it emailed the Complainant’s solicitor advising that the folio for Property B had been added to the Form 56 listing for the Special Liquidators. On **31 July 2018**, the Provider issued a complaint response letter reiterating that a Form 56 case was being prepared for the Special Liquidators.

The Provider wrote to the Complainant’s solicitor on **17 December 2018** advising that a Form 56 case was in progress and that it was envisioned the process would be complete in early **2019**. On **17 January 2019**, the Complainant’s solicitor was advised that the Provider had requested that the Form 56 submission be treated as a priority by the Special Liquidators. On **9 July 2019**, a completed discharge was issued to the Complainant’s solicitors.

#### ***eDischarge***

The Provider advises that during the time period to which this complaint relates, the Provider was not a participating lender in the eDischarge scheme. This would not have affected the delay in discharging Property B as an eDischarge would not have been possible until such time as the charge was correctly registered in favour of Entity A.

#### ***Redemption of the Loan***

The Provider advises that all liabilities under the loan were discharged by the Complainant by way of a lump sum payment of €611,515.14 on **27 March 2018** and a further payment of €6,044.86 on **1 April 2018**.

It is submitted that it would have been of no benefit to the Complainant to refuse or return the redemption monies because had this been done then neither Property A nor Property B could have been discharged, and the loan balance would have continued to accrue interest to the detriment of the Complainant. The Provider clarifies that as the loan was redeemed, no interest accrued while the discharge was being processed nor was any credit reporting taking place.

### ***Consequences of Delay***

The Provider acknowledges the substantial time taken to complete the discharge process and regrets any upset caused to the Complainant. The Provider asserts that the time taken to resolve the matter was entirely outside of its control.

The Provider states that it has not been made aware of the legal fees incurred by the Complainant. The Provider notes that Property B has not been sold or marketed for sale. It is also noted that the Complainant's solicitor has not submitted any evidence of prejudice or damage suffered due to the delay in obtaining a discharge.

### **The Complaint for Adjudication**

The complaint is that the Provider failed to obtain, and/or delayed in obtaining, a discharge/release of the charge in respect of Property B.

### **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.

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A Preliminary Decision was issued to the parties on 23 September 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Complainant made a further submission under cover of his solicitor's e-mail and attachment to this Office dated 29 September 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant's post Preliminary Decision submission and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

### ***The Loan and Mortgage***

The Complainant entered into a loan agreement with the Original Loan Owner in **September 2005**. The loan was secured on Property A together with a cross collateral charge on Property B. A *Mortgage* was then executed by the Complainant in favour of the Original Loan Owner in **December 2008**.

The Land Registry Folio in respect of Property B shows that a charge over the lands comprising Property B was registered in favour of the Original Loan Owner on **16 December 2008**.

The Complainant's loan and mortgage were subsequently transferred to Entity B. Special Liquidators were then appointed over Entity B. Entity A acquired the Complainant's loan and mortgage in **February 2015**. The Provider was appointed as *Master Servicer* around this time and assumed all servicing activities in **February 2018**.

### ***Redemption and Discharge***

The Complainant's solicitor requested title deeds to Property A by Accountable Trust Receipt on **3 January 2018**. The Complainant's solicitors requested redemption figures in respect of the loan by telephone on **21 March 2018**. A redemption statement appears to have issued on **21 March 2018**. The Complainant's solicitor wrote to the Provider on **21 March 2018** enclosing a cheque in the amount of €611,515.14 indicating that the balance of funds would be transferred on receipt of up to date redemption figures.

The Complainant's solicitor requested an updated redemption statement by telephone on **22 March 2018**. The Complainant's solicitor advised the Provider by letter dated **22 March 2018** that the sum of €6,044.86 was being transferred to the Provider.

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The Complainant's solicitor wrote to the Provider on **4 April 2018** referring to Property A and Property B, noting that an eDischarge was yet to be received or vacates of the mortgage. On **12 April 2018**, the Complainant's solicitor wrote to the Provider in respect of the sale of Property A and also requested a vacate in respect of the *Mortgage*. The Provider responded on **1 May 2018** furnishing a Deed of Discharge in respect of Property A.

The Provider wrote to the Complainant's solicitor on **23 April 2018** acknowledging receipt of €611,515.14 and enclosed up to date redemption figures. The Provider wrote to the Complainant's solicitor on **2 May 2018** enclosing a redemption statement and advised that €5,213.32 was outstanding on the loan.

By letter dated **8 May 2018**, the Complainant's solicitor advised the Provider that a discharge had not been received in respect of the charge over Property B. A letter in similar terms was sent to the Provider on **11 May 2018**.

The Complainant's solicitor wrote to the Provider on **16 May 2018** and stated, in respect of Property B:

*"We also note that your ownership of the charge over [Property B] has not been affected by your representatives and that this might take some time, however, this is less than satisfactory and an error was made by somebody but my client had paid off his loan and we will require a formal letter from you setting out the position that you are arranging to have your ownership of the charge registered and that that charge is in fact now discharged and that you will let us have a vacate as soon as possible. ..."*

Following this, the Provider wrote to the Complainant's solicitor on **16 May 2018**. Although Property B was referenced in the subject line, a Deed of Discharge in respect of further lands comprising Property A was enclosed.

By email dated **14 June 2018**, the Provider wrote to the Complainant's solicitor to advise that:

*"... we have added the Folio [Property B] for a Form 56 completion by the receiver of the special liquidators of [Entity B]."*

*Unfortunately, I cannot give a timeline of when this will be finalised but I can assure you that I have requested that it be treated urgently."*

The Complainant's solicitor wrote to the Provider on **20 July 2018** advising that:

*"... we have yet to receive a release of [Property B]."*



*My client is gravely upset with the delay in having such furnished and has advised me that he wants me to write to the Director of the Central Bank or the Financial Regulator.*

*The loan was discharged as far back as March and he sees no logical reason as to why after that incredible time spent, a release of mortgage has not been furnished to him, which is his right and in that respect we await hearing from you, as a matter of grave urgency.”*

The Provider acknowledged this letter as a complaint on **24 July 2018**. A Final Response letter was issued on **31 July 2018**. In this letter the Provider explained:

*“I fully understand the frustration which your client is experiencing, and I regret that we have been unable to resolve this issue in a more timely fashion. The fact, however, is that in this matter we are reliant on [Accountancy Firm] for their assistance, in their capacity as liquidators of [Entity B].*

*As you may be aware, when your client’s loan was purchased by [Entity A], the charge over the property had yet to be registered in the name of [Entity B]. Once this had been rectified, it was then necessary to request registration of [Entity A’s] charge after the fact, by means of what is referred to as a “Form 56” request.*

*I have recently been advised that [Accountancy Firm] have agreed to facilitate further Form 56 cases, and we are currently preparing the requisite documentation for review; your client’s case is being prepared as a priority, and we will confirm the dealing number to you as soon as the Form 56 has been lodged. Unfortunately, we have no control over the timeframe to completion once the Form 56 has been lodged with [Accountancy Firm], although from previous experience I anticipate that this will be a matter of months.*

*In view of the above, I am upholding your complaint, on the basis that your client has experienced unacceptable delays in releasing the mortgage over his property. Unfortunately there is nothing further that can be done in terms of expediting your client’s case; we remain reliant on [Accountancy Firm] to engage with us to bring this matter to completion.”*

The Provider has clarified in its Formal Response that, due to human error, it incorrectly referenced Property A instead of Property B in its Final Response letter.

The Provider wrote to the Complainant’s solicitor on **17 December 2018** explaining:

*“... At the time when [the Provider] acquired your client’s mortgage, our legal charge was only registered on [Property A]. [The Provider’s] charge was never registered for the cross charged property, [Property B].*

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*Due to this oversight, [the Provider] have begun the process of registering our charge on [Property B] via a Form 56 with the Property Registration Authority. We envision that this process will be completed early 2019. Once the Form 56 has been completed and [the Providers'] charge has been registered, we will provide an E-Discharge for [Property B]."*

The Complainant's solicitor wrote to the Provider on **16 January 2019** expressing his client's dissatisfaction "... at the arbitrary way the redemption of his loan is being treated." It was also stated that "... you sit on procedural basis or absence of proper procedures I should say in that you never registered your mortgage first day, now you wish to register it and have a discharge which does not make sense." The Complainant's solicitor indicated that the Provider was obliged to furnish a vacate in respect of the mortgage within one month of the redemption of the loan.

The Provider wrote to the Complainant's solicitor by email dated **17 January 2019** as follows:

*"I acknowledge the frustration which your client must be experiencing, and I regret that we have not been able to furnish a vacate to date.*

*A "form 56" has been lodged with ... the solicitor for the Special Liquidator of [Entity B]; until such time as [individual] approves the form 56, consenting to the transfer of the charge to [Entity A], we are unable to carry out a discharge - any such application to the PRA would be rejected, as [Entity A] is not the registered holder of the charge."*

Separately, I also note from the *Chronology of Events* prepared by the Provider, that a number of telephone conversations took place between the Complainant's solicitor and the Provider between **April 2018** and **January 2019** regarding the release/discharge of the charges over Property A and Property B.

### ***Registration and Discharge***

An updated version of the Land Registry Folio in respect of Property B shows the Original Loan Owner's charge was cancelled on **9 July 2019** with the ownership of the charge being transferred to Entity A. A separate entry further shows Entity A as the owner of the charge and its charge being cancelled on **9 July 2019**. An *eDischarge: Notice of Completion* dated **9 July 2019** has also been furnished by the Provider.

### **Analysis**

The Complainant's loan was not purchased by the Provider nor was the Provider at any time the legal owner of the loan or entitled to the benefit of the mortgage. The loan and the mortgage were owned by Entity A. The conduct of Entity A or B is not being investigated as part of this complaint. The Provider was, in essence, the servicing firm. As such, the Provider was not involved in the transaction transferring the loan and mortgage to Entity A; I accept that the Provider was not obliged to ensure the charge in respect of Property B was correctly registered in favour of Entity A at the time of the transfer.

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The evidence indicates that the Provider and ultimately the Complainant/the Complainant's solicitor became aware of registration issues following the redemption of the Complainant's loan. Essentially, the charge in respect of Property B was registered in favour of the Original Loan Owner despite the loan being transferred to Entity B and ultimately Entity A.

Once the Provider became aware of this, which appears to have been at some point during **March/April 2018**, the Provider submits that efforts were made to rectify the Folio/Land Register in respect of Property B. This required the cancellation of the Original Loan Owner's charge and the registration of the charge in favour of Entity A followed by its immediate cancellation. While I accept this was the appropriate process to follow, the Provider was nonetheless obliged to ensure this process was completed as quickly and efficiently as possible, particularly as the loan was being/had been redeemed.

While the Provider refers to the efforts made to rectify the situation, it has not furnished any documentation relating to its correspondence and/or contact with the Special Liquidators. Therefore, the precise extent of this contact, and the Provider's efforts in this regard, are unclear. Notwithstanding this, I accept that the Provider was in contact with the Special Liquidators with a view to rectifying the Folio/Land Register.

The Provider submits that once the relevant documentation was submitted to the Special Liquidators in **November 2018** the matter was out of its control and dependent on the Special Liquidators.

It appears from the Provider's Formal Response that the consent of the Special Liquidators to facilitate the preparation of the supplemental Form 56 was required. While the Provider states this was received on **19 September 2018**, there is no evidence to show when such consent was first sought or when the Provider first requested the assistance of the Special Liquidators. This gives rise to an unexplained 6 month gap between the point at which the Provider became aware of the issue and when consent was received.

The Provider then explains that the relevant documentation was delivered to the Special Liquidators (two months later) on **20 November 2018** as part of a bulk process for a number of affected accounts. Following the Special Liquidators' validation and verification process, the supplemental Form 56 was executed on **13 May 2019** and completed with the PRA on **17 May 2019**. The charge on Property B was released on **9 July 2019**. While the supplemental Form 56 was completed by the PRA on **17 May 2019**, no explanation has been given as to why it was not until **9 July 2019** that the charge was subsequently released.

I do not accept that the Provider was responsible for the failure to transfer the charge from the Original Loan Owner to Entity A or for any delays arising from the Special Liquidators' handling of the matter.

However, as I have pointed out, it is not clear what exactly occurred in the 6 month period between the Provider becoming aware of the registration issue in **March 2018** and when it sought/obtained the consent of the Special Liquidators in **September 2018**. This was then followed by a two month gap from when the consent of the Special Liquidators was received and the delivery of the necessary documentation to the Special Liquidators. While the Provider has indicated this was part of a bulk process, no further detail is given beyond this.

Accordingly, I am satisfied, due to the lack of explanation and documentary evidence, there was an unreasonable delay on the part of the Provider in terms of rectifying the Folio/Land Register in respect of Property B.

The Provider submits that it has not been made aware of any legal fees incurred by the Complainant. The Provider further submits that Property B has not been sold or marketed for sale, and the Complainant's solicitor has not submitted any evidence of prejudice or damage arising from the delay in obtaining the discharge. In an email from the Complainant to his solicitor dated **21 January 2019**, the Complainant states:

*"... There seems no point in writing to [the Provider]. I want to sell the place while property prices are up and before something happens me ..."*

In light of the foregoing, while the Complainant has found the rectification of the charge over Property B frustrating, there is no evidence of any lost sale opportunity or other revenue generating opportunity in respect of Property B arising from the delay in discharging the charge. Nevertheless, the continued and prolonged registration of the charge over Property B, and the unreasonable delay in securing the release of the charge, after the redemption of the loan, restricted the Complainant's ability to dispose of or create a further first legal charge over Property B and was most certainly a cause of inconvenience to the Complainant.

In my Preliminary Decision, I indicated my intention to substantially uphold this complaint and direct the Provider to pay a sum of €5,000 to the Complainant. I note the Complainant indicated, in a post Preliminary Decision submission, that this was not sufficient compensation. In the circumstances of this complaint, I believe this to be a reasonable and appropriate sum of compensation.

For the reasons set out in this Decision, I substantially uphold this complaint and direct the Provider to pay a sum of €5,000 to the Complainant.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2) (b), (f) and (g)**.

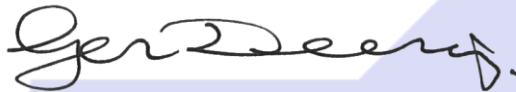
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Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €5,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

9 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.