



<u>Decision Ref:</u>	2021-0117
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - Mortgage Arrears Resolution Process Level of contact or communications re. Arrears Arrears handling (non- Mortgage Arrears Resolution Process)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant entered a mortgage loan agreement with the Provider in **July 2007**. In **July 2013**, the Complainant submitted an asset disposal agreement to the Provider which was accepted in principle in **September 2013**. In **May** and **August 2015**, the Complainant was advised that a *bespoke letter* was being prepared in respect of the proposal. However, the Provider issued a letter of demand in **December 2015** calling in the Complainant's loan.

The Complainant's Case

The Complainant explains that he has not been treated equitably by the Provider when seeking a resolution to his loan difficulties. Over the past four years, the Complainant says agreements in principle have been verbally agreed with case managers and his financial adviser, and email correspondence was received in respect of these negotiations.

The Complainant says these negotiations have not been followed through by the Provider. As a result of this, the Complainant says his life has been in abeyance for the previous 18 months.

In a letter to this Office dated **17 April 2017**, the Complainant explains that he is dissatisfied with the Provider's formal response to his complaint after 12 months of investigations. The Complainant believes his complaint was not fully investigated and key details were omitted from the formal response which he asserts does not comply with sections 10.7 or 10.9 of the **Consumer Protections Code 2012** (the **Code**).

The Complainant states that the Provider did not explain why it failed to follow through on an asset disposal agreement reached with the Complainant, his financial adviser and the Provider in **September 2013** and during **2015**. The Complainant explains the asset disposal proposal was first submitted by his financial adviser in **August 2013** which meant that after the asset disposal, the Provider would recover 200% of the value of the security.

On **2 September 2013**, the Complainant states that one of the Provider's Arrears Support Unit (**ASU**) agents confirmed with his financial adviser that: *'[The Provider] are prepared to do the deal proposed subject to certified statement of affairs and the pro rata split.'* In **May 2014**, the Complainant says the same ASU agent advised again that he would be assisting in *'closing the deal as agreed.'* The Complainant further says that the Statement of Means requested by the Provider was submitted for a second time in **July 2014** which a view to concluding the agreement but the Complainant did not receive a response from the Provider.

The Complainant explains that a separate ASU agent took over management of his case during **2014** and the management of his account moved from Dublin to [another city]. The Complainant advises that both he and his financial adviser requested a meeting with the Provider to try and progress his case. The Complainant explains that the parties met on **27 November 2014**. During this meeting, the Complainant says he was given a clear indication that both sides were still progressing with the asset disposal proposal as previously agreed subject to additional information sought by the ASU agent.

The Complainant states that all of the requested information was provided *"so far as I could"* in the first quarter of **2015**. The Complainant advises that a number of follow-up calls and emails were made to the ASU agent in **July** and **August 2015** seeking an update but there was no response. On **26 August 2015**, the Complainant explains that the ASU agent emailed his financial adviser stating: *'I am working on a bespoke letter regarding asset disposal and that I will be in contact within 2 weeks.'*

In response to this email, the Complainant states that despite a number of phone calls and emails during the rest of **2015** to the ASU agent, there was no further communication from the Provider until the loan was called in without warning in **December 2015**.

The Complainant advises that this was hugely frustrating and worrying for him, and the entire situation had a serious impact on his health. The Complainant also states that he is unhappy with the *general and misleading nature* of the Provider's formal response letter.

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In a letter dated **27 July 2018**, the Complainant sets out the loss of rental income arising from the Provider's conduct in respect of 4 apartments totalling €185,000 over 4 years and a property comprising a ground floor retail unit, and first and second floor residential units totalling €335,000 over 4 years. The Complainant explains these properties were left vacant at the request of the Provider with a view to a speedy asset disposal as per the original agreement. The Complainant also describes the further deterioration of his health.

In a letter dated **4 September 2018**, the Complainant explained that his solicitors requested title deeds to one of his properties in **July 2016** on Accountable Trust Receipt (**ATR**) for inspection purposes and contacted the Provider's securities department on several occasions. The Complainant advises that the title deeds were required for production to solicitors acting for a party proposing to lease a portion of the relevant property which was not held by the Provider as security. The Complainant explains that he was not able to *activate the lease* resulting in loss of rental income.

The Complainant explains that he visited the Provider's headquarters on **28 September 2017** and spoke to an ASU manager, advising him of his situation. The Complainant says this individual promised to call him the next day to try resolve/progress matters. The Complainant says he received no contact from this individual or anyone else in the ASU.

The Complainant says the Provider never gave an explanation as to why the asset disposal agreement was not progressed and the *bespoke* letter never issued. The Complainant has also set out the Provider's non-compliance with sections 8.2, 8.11 and 8.12 of the Code.

The Provider's Case

The Provider explains that the loan the subject of complaint relates to a buy-to-let (**BTL**) property located [outside of Dublin]. The balance outstanding on the loan is €1,092,699.12 which includes arrears of €646,902.72.

On **30 July 2013**, the Provider explains the Complainant's financial adviser sent an email where it was acknowledged that the Complainant was not in a position to meet full capital and interest repayments and that an asset disposal plan was required. The Provider advises the financial adviser proposed that the Complainant would dispose of all of his assets except his family home and the net sale proceeds would be split between the Provider and another of the Complainant's lenders. The Provider advises that the Complainant's total debts at the time were €850,000 and €657,000 respectively. The expected proceeds from the disposal was €1,120,000 with the sale proceeds to be distributed with €627,000 being paid to the Provider and €493,000 being paid to the other lender. Following the sale, payments of €500 per month were to be made to the loan account for 5 years in full and final settlement of the debt with the residual balance of €195,000 being written off.

The Provider advises that the proposal was reviewed in **August 2013** and an email issued to the financial adviser on **2 September 2013** confirming the Provider's acceptance of the proposal subject to the Provider being provided with a certified Statement of Affairs and an agreement as to how the sales proceeds would be distributed to the parties on a pro rata basis.

On **15 January 2014**, the Provider states that its case manager contacted the financial adviser by telephone and advised that the Provider required confirmation from the other lender that it was agreeable to the Complainant's proposal. The Provider says the financial adviser stated that he would request such confirmation but it might take a number of weeks.

During a follow-up call on **24 January 2014**, the Provider says the financial adviser informed the Provider that he was trying to arrange a meeting with the other lender but was finding it difficult to arrange one.

On **17 February 2014**, the Provider states that it spoke with the financial adviser who advised that the other lender requested a letter from the Provider confirming its agreement to the proposal before it would consider it. The Provider states its agent advised that she would look into getting this confirmation to the other lender.

The Provider explains it received a Statement of Affairs at the end of **June 2014** and on **19 August 2014**, the Provider's agent telephoned the financial adviser to advise that the Provider would require a full valuation to be carried out on the Complainant's property. A valuation was carried out on **24 September 2014**. Referring to a telephone conversation on **20 October 2014**, the Provider explains that its agent spoke with the financial adviser and asked if the Complainant's apartments were vacant. The Provider says the financial adviser advised that two of the apartments were being rented to which the Provider's agent queried why this money was not being lodged to the loan account. The Provider states that the financial adviser told its agent that he would discuss this with the Complainant and would arrange for the rents to be paid to the loan account as soon as possible. The financial adviser stated that one of the properties was on the market but the remainder were not. The financial adviser also said he would discuss with the Complainant, his plans for the residual debt and would revert with an up to date Asset & Liability Statement.

The Provider says its agent spoke to the financial adviser on **29 October 2014**. The financial adviser stated that he was drafting an up to date Statement of Affairs which would be submitted to the Provider within a week. The financial adviser also advised that rents would start being lodged to the loan account. The Provider says its agent advised that when all requested information was received, a meeting could be arranged.

The Provider says that a meeting took place on **27 November 2014**. At this meeting, the Complainant's financial position and the properties were discussed. The Provider explains that the Complainant was requested to provide a Notice of Assessment for **2012** and **2013** and up to date accounts. The Provider says the Complainant was advised that once this was received, the Provider would revert to the Complainant. The Provider says its agent sent an email to the financial adviser on **29 November 2014** confirming the information required.

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The Provider advises that it received some of the requested information on **16 January 2015** and it wrote to the financial adviser on **21 January 2015** outlining the outstanding documentation. The Provider states this information was received in **March 2015** and the Complainant's case was reviewed in **March/April 2015**.

Following this, the Provider says it agreed to a Voluntary Sale for Loss for the Complainant's property for €390,000 and the sale of the Complainant's three unencumbered properties to be progressed. The Provider states that payments of €1,500 per month were to be made until the property was vacated with payments of €900 per month after this.

On **7 April 2015**, the Provider's agent received an email from the financial adviser who advised that the Complainant's assets were not being sold in the absence of an agreement from the Provider, that rent on the properties was being lost as they were vacant pending sale, and that the other lender was moving their loans to its Recoveries Department.

The Provider says its agent responded on **8 April 2015** advising that she would revert with a decision on **13 April 2015**. The Provider explains that its agent contacted the financial adviser by phone on **20 April 2015** telling him that a letter would issue in approximately two weeks in relation to the credit decision.

The Provider explains that its agent:

"... referred this matter to a number of different areas within the Bank but the Bank was unable to fulfil the credit decision that had been made. The Bank did not have the mechanism to fulfil this type of scenario at this time. This was due to the number of properties involved and also the fact that there were two separate financial institutions involved, the Bank was unable to produce the agreement letters needed to cover off the decision reached."

The Provider advises that when it reached its decision in relation to the Complainant's case, it was not aware that there would be difficulty fulfilling it. The Provider also advises that it was unable to issue bespoke agreement letters to cover off the decision reached.

When accepting the Complainant's proposal, the Provider says that it was, at that time, of the understanding that it would be able to put the proposal in place. However, as this was a bespoke solution, the Provider was unable to put the proposal in place. The Provider says it acknowledges that when it became aware of this it should have engaged with the Complainant to explain the situation and endeavour to put an alternative solution in place.

Addressing the Complainant's position regarding the loss of rental income, the Provider states that during a call with the financial adviser on **3 June 2014**, the financial adviser told the Provider's agent that all properties were vacant. In a call on **20 October 2014**, the Provider says the financial adviser stated that two properties were rented. On **8 April 2015**, the financial adviser sent an email which advised that the properties were vacant. Referring to a letter from the financial adviser dated **5 January 2016**, the Provider says it was stated that the properties were left vacant from **2013** at the request of the Provider.

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The letter then refers to one apartment being rented to a student who moved out around **March 2015** and the rent had been €750 per month.

The Provider states it acknowledges that its staff member confirmed to the financial adviser via email on **2 September 2013** that the Provider was agreeable to accepting the Complainant's proposal subject to certain terms. The Provider states it also acknowledges that it was reasonable for the Complainant to expect that he would be in a position to proceed with the sale of his assets shortly after it had indicated acceptance of the proposal and that the Complainant would have ensured that the properties were vacant to speed up the property sales.

In **August 2015**, the Provider says the case manager dealing with the Complainant's loan was making efforts to get the offer fulfilled by way of a bespoke letter. In **October 2015**, due to the fact that this letter could not be produced, and in light of the arrears on the account, the loan was routed to the Recoveries Department. The Provider explains that as the account was with the Recoveries Department, there was no direct contact with the Complainant.

The Provider advises that a demand letter issued on **10 December 2015** and no further action was taken until a review of the case in **January 2017** when the decision was taken to appoint a Receiver. The Provider advises that it was unable to proceed with the appointment of a Receiver due to issues with the perfection of the title of the relevant property. The Provider says a second demand letter issued on **26 January 2017**.

The Provider states that this case should not have progressed to its Recoveries Department in **October 2015** given the previous communications with the Complainant and his financial adviser, and the fact it was the Provider's issue that a bespoke letter could not be provided in this instance.

On **1 July 2016**, the Provider advises that it received an ATR request from the Complainant's solicitors. The Provider says it received a letter from the Complainant's solicitors on **30 August 2016** to contact them urgently. On **7 September 2016**, the Provider says that Central Securities received a call from the Complainant's solicitors. Central securities advised that they sent two requests to the Provider's solicitors to recall the title deeds and a third was in process. Central Securities received a phone call on **12 September 2016** from the Complainant. The Provider states the Complainant was advised that the deeds were with the Provider's solicitors at the request of the ASU and although the Provider had recalled them several times, they had not yet been received. The Provider states a further call took place on **28 September 2016** with correspondence received from the Complainant's solicitors on **29 September 2016**. The Provider refers to further correspondence and advises that the title deeds were sent on ATR to the Complainant's solicitors on **1 February 2017**.

The Provider states that there was an unacceptable delay in releasing the title deeds which was due to a delay on the part of the solicitors employed by the Provider. The Provider states it acknowledges this matter should have been escalated with its solicitors once the title deeds had not been provided following the initial request.

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The Provider advises that it received correspondence from the financial adviser on **24 December 2015** which was logged as a complaint and acknowledged on **4 January 2016**. The Provider says holding letters in line with section 10.9(c) of the Code issued over the following months and a complaint response letter issued on **5 January 2017**.

The Provider states that it acknowledges the delay in responding to the complaint and accepts this was not in line with the provisions of the Code. The Provider states that it wishes to apologise to the Complainant and his financial adviser for any inconvenience caused. The Provider also says that the delay in issuing a response was due to the large volume of complaints being dealt with at that time and also the complexity of the complaint.

Referring to the letter of complaint, the Provider acknowledges that its complaint response letter did not adequately address all of the issues raised by the financial adviser and apologises for this and the poor customer service experienced by the Complainant and his financial adviser.

The Complaints for Adjudication

The complaints are that the Provider:

1. Failed to progress the asset disposal agreement;
2. Unreasonably requested that the Complainant's properties be vacated;
3. Failed to furnish title deeds when requested; and
4. Proffered poor 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.

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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 22 February 2021, 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 further submissions to this Office under cover of his e-mails dated 12 & 15 March 2021, copies of which were transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 23 March 2021 that it had no further submission to make.

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

The Asset Disposal Agreement

The Complainant entered a commercial mortgage loan agreement with the Provider in **July 2007**. This loan was secured on one of the Complainant's properties.

Arrears subsequently began to accrue on the loan. The parties met around **14 February 2013** to discuss the loan and the arrears. The Provider's note of this meeting indicates that a proposal was required to deal with the arrears which stood at €83,000.

This was followed by further meetings on **13 June 2013** and **19 July 2013** where asset disposals were discussed. The Provider's note of the July meeting states that:

"... Key here is that adviser and [the Provider] on the same wavelength now in that [location] property must be vacated and sold. ..."

By email dated **30 July 2013**, the Complainant's financial adviser put forward the asset disposal proposal which comprised a number of properties and certain farmlands with an estimated sales value of €1.12million. The financial adviser proposed that:

*"... His total debts are [the Provider] 850k (56%) and [other lender] 657k (44%) and so I propose that the 1120k is split in proportion to total debts ie **627k to [the Provider] and 493k to [the other lender]. If there is a shortfall [the Complainant] will sell the residual land to make up the difference.**"*

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In addition he will pay [the Provider] 500 pm and [the other lender] 392 pm for 5 years from wife's income ...

In conclusion I am asking you if [the Provider] will accept 627k within say 6 months and 500pm for 5 years thereafter in full and final settlement. ..."

This proposal was assessed, approved and recommended internally by the Provider on **15, 21 and 29 August 2013** by three different agents subject to the receipt of certain information from the Complainant.

The Provider emailed the financial adviser on **2 September 2013** advising that:

"As confirmed [the Provider] are prepared to do the deal proposed by your goodself subject to

1) receipt of Certified Statement of Affairs

2) pro rata split between [the Provider] and [the other lender]. (figures to be agreed) ..."

The account notes indicate that a telephone call took place with the financial adviser on **7 January 2014** where the financial adviser explained that a letter had not been received from the Provider regarding the proposal. It appears from the financial adviser's email dated **7 January 2014** that the Provider's agent was under the impression that a letter had issued regarding the proposal. The notes also record a conversation with the financial adviser on **15 January 2014**, where the financial adviser was told that the Provider required confirmation that the other lender would agree to the proposal. The note show that the financial adviser indicated that he would contact the other lender but it would take a number of weeks to obtain their agreement to the proposal. The account notes show that a conversation took place on **24 January 2014** with the financial adviser. The financial adviser explained that he was waiting for an appointment with the other lender and was finding it hard to arrange.

A conversation is also recorded as taking place on **17 February 2014**. During this conversation, the financial adviser told the Provider that the other lender wanted a letter from the Provider confirming their agreement to the proposal. The notes state that the Provider's agent advised she would *"... look into getting this confirmation ... and get back to him."*

The Provider's notes indicate that an unsuccessful call was made to the financial adviser on **7 May 2014**. The notes also indicate that the Provider sent an email to the financial adviser requesting that he contact the Provider immediately. A copy of this email is not available and it is not clear from the account notes what exactly was mentioned by the Provider in this email. However, the notes indicate that the purpose of the call was to explain that the letter confirming the Provider's agreement to the proposal could not issue until a certified Statement of Affairs was received.

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During a telephone conversation on **3 June 2014**, the account notes indicate that the financial adviser told the Provider that the Statement of Affairs was sent to the Provider the previous week. It appears from the account notes that the financial adviser agreed to send the Statement of Affairs again on **20 June 2014**.

This was followed by a number of telephone conversations in **August** and **September 2014** arranging a valuation of the mortgaged property which appears to have taken place in or around **24 September 2014**. It appears that the Provider requested a copy of the valuation report from the valuer on **29 September 2014**.

The account notes indicate that the financial adviser informed the Provider on **29 October 2014** that he was in the process of preparing an up to date Statement of Affairs.

A meeting took place between the parties on **27 November 2014**. The Provider's note of this meeting states that one of the Complainant's apartments was rented and the remaining three apartments were vacant.

The note continues as follows:

"... Tp adv that there may be a CGT issue depending on timing of sale of assets which Mr brw needs to discuss this in depth with his Accountant. [Agent] adv that we would require information regarding CGT position as soon as possible. ...

[Agent] enquired if any agreement had been reached with [the other lender] regarding debt. Tp adv that debt with [the other lender] is with their SRM team and there is no movement on same currently.

...

[Agent] requested utd info and tp undertook to furnish noa/accounts for 2012 and 2013 and [Agent] adv that she will follow meeting up with a letter advising al up to date information required ...

[Agent] gave tp a new sfs for completion ..."

The Provider emailed the financial adviser on **29 November 2014** listing the information requested from the Complainant. The financial adviser emailed the Provider on **14 January 2015** providing the requested information and noted that the Provider's request regarding confirmation of the capital gains tax liability arising from the asset disposal was still to be confirmed. The Provider responded to the financial adviser by letter dated **21 January 2015** setting out the documentation that remained outstanding and requested clarification in respect of certain matters arising from its review of the information previously provided.

The Provider's account notes indicate that a follow-up email was sent by the Provider on **10 February 2015** and that the Provider forwarded its letter of **21 January 2015** to the Complainant under cover of letter dated **4 March 2015**.

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Further to this, the notes indicate that the financial adviser emailed the Provider around **8 March 2015** advising that the asset disposal would not take place in the absence of an agreement from the Provider and that rent was being lost as the properties were vacant pending sale. The account notes indicate that a telephone conversation took place on **20 April 2015**, where the Provider's agent advised the financial adviser that a letter would be issued in approximately two weeks.

The Provider's notes indicated that an email was received on **14 May 2015** from the financial adviser enquiring as to the status of the Complainant's proposal. Responding the same day, the Provider advised the financial adviser that: *"I am still working on having letters issued, I hope to revert by the end of the month regarding same."*

By emails dated **22 July 2015** and **19 August 2015**, the financial adviser wrote to the Provider requesting an update in respect of the Complainant's proposal and advised that rental income was being lost. The Provider emailed the financial adviser on **26 August 2015** advising that:

"I am working on getting a bespoke letter out to [the Complainant] regarding the asset disposal. Unfortunately it is taking a great deal longer than anticipated. I apologise for the delay and hope to be in a position to be in contact with you within the next two weeks with an update."

Further updates were requested by the financial adviser on **2 November**, **18 November** and **5 December 2015**, the financial adviser requested an update from the Provider regarding the Complainant's proposal. However, this correspondence does not appear to have been responded to.

This was followed by a formal demand for repayment of the loan on **10 December 2015**.

Formal Complaint

The financial adviser wrote to the Provider in response to the formal demand by way of an undated letter which appears to have been received by the Provider around **24 December 2015**. This letter expressed the Complainant's dissatisfaction with the Provider's decision to issue a formal demand despite the parties' negotiations surrounding the asset disposal proposal. The letter stated that the Provider was confirming the proposal while its formal demand was suggesting that the Complainant was not co-operating with the Provider. This letter was acknowledged as a formal complaint by the Provider on **4 January 2016**.

By letter dated **5 January 2016**, the financial adviser informed the Provider that he wished to make a formal complaint regarding the Provider's treatment of the Complainant, its lack of engagement and failure to progress the asset disposal proposal.

A Final Response letter issued on **5 January 2017**. The second and third paragraphs of this letter state that:

“In your letter dated 5th January 2016, you noted that you were waiting on a letter to address the disposal of the mortgaged property. The case manager presented their findings to our Credit Department for review. The case was reviewed by management on 20th October 2015 and it was determined again that the loan was unsustainable.

Given that we were unable to come to a resolution, there wasn't a recent Standard Financial Statement (SFS) on file, the arrears balance outstanding at that time was €316,981.72, and the last lodgement to the account was received on 27th February 2015 the case was progressed to our Legal Department for management who determined that the Bank would manage the sale of the property. I note that you were in contact with the case manager and on a number of occasions requesting updates on a letter which you were advised was due to issue concerning the disposal of assets. I apologise that you did not receive a response to these requests and that it was not communicated to you that the Bank would manage the sale of the property.

I appreciate that you are unhappy with the Demand letter that was issued on 10th December 2015, however, we required a resolution to the case, and given that the last payment received on the account was 27th February 2015, and there was no current SFS, and the outstanding arrears balance at that time was €333,471.62 the letter was issued. ...”

Request for Title Deeds

By letter dated **1 July 2016**, the Complainant's solicitors requested the title deeds to the mortgaged property on ATR. The Complainant's solicitors requested a response to this letter on **30 August 2016** and further requests for the title deeds were made on **29 September, 12 October, 1 November, 23 November 2016** and **19 January 2017**. Title deeds were eventually furnished by the Provider under cover of letter dated **1 February 2017**.

Analysis

The Complainant and his financial adviser put forward an asset disposal proposal in **July 2013**. What ultimately transpired, as explained by the Provider in its Formal Response, was that due to the nature and structure of the proposal, the Provider did not have the *mechanism* to implement the proposal and it was unaware of this at the relevant time.

Quite frankly, having considered the evidence, I do not accept this response and it is totally unacceptable that it took the Provider over 2 years to realise that it was not in a position to accept the proposal.

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The *Case Assessment Summary* shows that in **August 2013**, three separate individuals within the Provider considered and approved this proposal, and apparently none were aware that it could not be implemented. I believe it is reasonable to expect that the Provider's staff members who are charged with reviewing and considering customer proposals are reasonably aware and familiar with the types of proposals that can be accepted or that the relevant staff members are aware or in a position to identify proposals or certain aspects of proposals that would be likely to cause difficulty.

Notwithstanding this, the proposal was essentially accepted in principle in **September 2013** subject to certain information being provided, and without qualification. As is evident, the proposal then progressed over the following months with very clear indications from the Provider in **May** and **August 2015** that the proposal had been accepted and that a *bespoke letter* was being drafted in respect of the proposal. However, following the Provider's email of **26 August 2015**, there was no further contact with the Complainant or his financial adviser, despite a number of requests for an update, and the next correspondence received from the Provider was a formal demand in **December 2015**.

It is quite clear that there were serious failings on the part of the Provider in this complaint. As noted above, the Provider should have been aware from an early stage in the proposal process that it would not be in a position to agree to the proposal, and not over 2 years after the proposal was made. When the Provider became aware that it could not agree to the proposal, which appears to have been somewhere between **August** and **October 2015**, the Provider failed to notify the Complainant of this and explain the reasons why this was the case, offer alternatives or give the Complainant the opportunity to submit an alternative proposal. As is evident, the Complainant was willing to engage and co-operate with the Provider. However, what happened instead is that the Complainant's loan was transferred to the Recoveries Department and a formal demand letter issued.

While the evidence suggests the Complainant was advised during the **July 2013** meeting that the secured property (the apartments) should be vacated and sold, I am satisfied this was a legitimate request at the time. However, as stated above, it should not have taken the Provider over 2 years to realise that it could not accept the Complainant's proposal. In such circumstances, had the Complainant been advised at an earlier point in time that the Provider could not accept the proposal, it is likely that the Complainant's properties could have been rented or sold or some other arrangement agreed.

However, the evidence also shows that certain of the Complainant's properties were rented at various times following the July meeting and rental income was received. Further to this, the evidence also suggests that the retail unit was not necessarily in a rentable condition. In this respect, the Provider's note of the meeting which took place on **27 November 2014** states that: "*this property needs complete renovation to meet fire regs, etc.*"

A formal complaint was made in **January 2016**. However, almost exactly one year later, a Final Response letter was issued. While monthly letters were issued by the Provider in respect of the complaint, these were generic, *pro forma* letters stating that the complaint was still under investigation. However, no explanation was offered in respect of the delay.

The Provider states that a delay in responding arose due to a large volume of complaints and the complexity of this complaint. While the Provider states that it was experiencing a large volume of complaints, a statement this simple and without any further detail is not sufficient to justify the delay in responding to the Complainant's complaint. Further to this, having considered the evidence, I do not see, and the Provider has not identified, what was so complex about the complaint that required a year for a response to issue, even if the Provider was experiencing a high volume of complaints.

Looking at the Complainant's complaint and the Final Response letter (the **FRL**), it is quite clear that the Provider failed to properly investigate the complaint and also failed to properly appreciate the findings contained in the FRL. The FRL explains that a review was carried out in **October 2015**, the loan was determined to be unsustainable and no resolution was reached. However, this totally ignores and fails to acknowledge or appreciate the proposal made by the Complainant and the correspondence and discussions which followed. This was simply brushed over by the Provider without any proper appreciation of the gravity of the Provider's failings.

In the circumstances, I am satisfied that the Provider unreasonably delayed in responding to the Complainant's formal complaint and failed to properly respond to the complaint.

A request for title deeds was made on **1 July 2016**. Despite repeated and unanswered requests, title deeds were not provided until **1 February 2017**. Having considered the evidence, I am satisfied that the Provider unreasonably delayed in providing the title deeds to the Complainant's solicitors and it should not have taken 7 months to provide title deeds.

It is also disappointing that the correspondence requesting title deeds went unanswered. This was further compounded by the fact that when title deeds were eventually provided, the letter enclosing the deeds offered no apology or explanation for the delay.

Goodwill Gesture

In a letter to the Complainant dated **27 March 2020**, the Provider stated that:

"In our submission dated 9 February 2019 we recognised and apologised for a number of service failings, poor communication and delays and the Bank now wishes to make an offer to you in the amount of €17,000 for these Customer Service Failings relating to the management of your accounts.

Separately, we would like to assure you that the Bank remains willing to meet with you to discuss your outstanding debts, all credit issues and any proposals that you might have ..."

In a letter to this Office dated **6 November 2020**, the Provider advised that:

"The Bank notes that a formal offer of €17,000 has been made previously in respect of the customer service failings identified.

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In a further effort to try and resolve this complaint with the Complainant, the Bank is willing to further increase this to a final offer of €20,000 in full and final settlement of this complaint.”

In my Preliminary Decision, I indicated that while I found the conduct of the Provider to have been totally unacceptable and unreasonable, I considered this goodwill gesture of €20,000 offered by the Provider to be a reasonable sum of compensation for the failings on the part of the Provider. The Complainant, in his post Preliminary Decision submissions, stated that considering the financial loss he incurred he found this offer to be inadequate.

However, I remain of the view that in light of all the circumstances of this complaint, €20,000 is reasonable. On the basis that this offer remains available to the Complainant, I do not uphold this complaint.

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**

26 April 2021

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,

/Cont'd...

**(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.

