



<u>Decision Ref:</u>	2021-0132
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Investment/buy to Let Mortgage
<u>Conduct(s) complained of:</u>	Level of contact or communications re. Arrears Dissatisfaction with customer service Failure to process instructions in a timely manner Refusals (banking) Maladministration regarding voluntary sale
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants held a number of loan accounts with the Provider. During **2017**, the Complainants sold a property securing on one of their loans and lodged the proceeds of sale to the loan account. The Provider subsequently sold a separate loan held by the Complainants to a third party during **2020**. The Complainants are dissatisfied with the level of customer service received by the Provider and its decision to sell their loan.

The Complainants' Case

In **October 2016**, the Complainants explain that the First Complainant made an appointment with the Provider's branch manager. The First Complainant says he outlined the Complainants' current position with regard to the property and the history of the issues/problems with tenants over the previous four years, which could no longer be sustained. This included the property being trashed on four occasions with considerable costs to repair and the Complainants being regularly threatened and harassed by their tenants.

The Complainants explain that all of this drove them to an untenable position that they could not sustain any further. At this juncture, the Complainants say they were advised by the Provider that they needed to have a firm offer of sale in place and engaged a solicitor to work with the Provider on options that is, using the sale proceeds to reduce the loan and paying any residual debt.

In **February 2017**, the Complainants advise they placed the property up for sale using a local estate agent at what they were informed was the market price of €95,000. After a number of viewings, the Complainants say they received a firm and final offer for the asking price of €95,000 on **27 April 2017**. On **28 April 2017**, the Complainants say they engaged solicitors to act on their behalf in respect of the sale of the property and to negotiate with the Provider regarding *“the options & release of the deeds.”*

Between **5 and 7 May 2017**, the Complainants say their solicitors initiated contact with the Provider and issued a letter on **7 May 2017**. The Complainants state that no correspondence was received from the Provider during **May or June 2017**, with their solicitors following up with phone calls to ascertain the reason for the delay in responding.

On **6 July 2017**, the Complainants explain their solicitor received a letter from the Provider outlining that the Provider would not consider a lower sum settlement of the debt/no waiver. However, the Provider:

“did outline a consideration to discharging the property on a multitude of considerations including the price of the sale of the house & bank receiving an amount in reduction of the loan to the satisfaction of the bank. Borrowers would continue to be liable for the shortfall in their personal capacities before consent to sell & letter of authorization to release deeds would be issued.”

On **19 July 2017**, the Complainants say: *“Detail requested as per letter above made available to the bank ...”* The Complainants say that when they informed the Provider of the completion of this request, they were advised *“this needed to be left in without (sic) local [Provider] branch.”* The Complainants explain that when they contacted their local branch, the only time for a meeting was **28 July 2017**.

On **28 July 2017**, the Complainants say the First Complainant met with an assistant manager and had with him all of the information requested by the Provider on **6 July 2017**. At this point, the Complainants say the First Complainant was told he would need to complete a Standard Financial Statement (**SFS**) and the Second Complainant was also required to be present. The Complainants explain that at this meeting *“the detail was stepped through on the system printed out & signed & I agreed to call down the next day with additional information now requested to support the SFS for submission & scanning up to the assessment team.”*

On **1 August 2017**, the Complainants say that the Second Complainant spoke with the Provider to understand the position. On **16 August 2017**, the Complainants say they received a letter from the Provider advising that a number of items were outstanding and that it was unable to assess the SFS. The Complainants state: *“This was not true as everything had been issued & verified by [the Provider] branch.”* The same day, the Complainants explain the Second Complainant contacted the Provider and *“confirmed the details they want are there on file.”*

The Complainants outlined a number of contacts they had with several of the Provider's agents between **16 August** and **22 August 2017**. The Complainants say on each occasion they spoke with a different member of staff and each person provided different information.

The Complainants state that the First Complainant contacted the Provider on **23 August 2017** to explain the *deplorable* manner in which the Complainants were being treated; the *disgraceful* manner in which the Second Complainant was treated during her telephone conversations and the tone of language used; and that the Complainants had been trying their utmost to get a timely resolution.

The Complainants advise that the purchaser of the property had been in regular contact with their solicitors to complete the sale and due to the delay, had threatened to pull out of the sale. The Complainants say the First Complainant was advised that a meeting was being held that day and that there would be a definitive outcome of which the Complainants would be immediately informed. The Complainants say the First Complainant *"offered not only to give the asking price of €95k in addition €5k & pay the remaining shortfall (approx. €28k) over the remaining period of the loan agreement at the current tracker rate."*

The Complainants explain that at 4:30pm on **23 August 2017**, they received a call from the Provider confirming its agreement to the proposal and that it would shortly be issuing a letter confirming this to the Complainants' solicitors. The Complainants say a letter to this effect was received by their solicitors on **29 August 2017**.

On **11 September 2017**, the Complainants say they received a letter from the Provider's Collections & Recoveries Department rejecting the proposal. On **23 October 2017**, the Complainants received a letter advising of a recent amendment to the loan repayments which were showing as €19.56. The Complainants say this is incorrect as repayments of €266 per month had been agreed. The Complainants say they spoke to the Provider about this on **2 November 2017** where the First Complainant also asked about mortgage protection insurance and was advised that the policy would need to remain in place. The Complainants say they also arranged a new life policy at this time.

On **5 December 2017**, the Complainants explain they received a letter from the Provider advising that details of a new life policy and deed of assignment had been received. The letter also advised that the Provider had contacted the insurer to cancel the previous policy.

For **November 2017**, **December 2017** and **January 2018**, the Complainants say that no repayments were collected by the Provider. However, the insurance payments were being collected. The Complainants state that the First Complainant contacted the Provider on **1 February 2018** to find out what was happening and was advised that he would have to set up a standing order for the new repayments at his local branch.

On **26 February 2018**, the Complainants say they arranged a branch appointment for noon on **28 March 2018**. When the First Complainant attended the branch on **28 March 2018**, the Complainants say he was advised that there was no record of his appointment.

The Complainants say a manager came out and spoke to the First Complainant at 12:20pm and proceeded to show him the loan packages the Provider had on offer. The First Complainant explained why he was at the branch. The First Complainant was then informed that he was sent to the wrong place. The Complainants say the staff member contacted Property Management Services to express her disappointment at the First Complainant being asked to attend the branch. The Complainants say that the First Complainant could hear what the individual at the other end of the phone was saying in that:

"I could actually hear [the Provider's agent] speaking ... & indeed he committed this would be fixed by his office by cob today & latest 29th. He committed also to getting back to [the staff member] to confirm this, the branch Manager ... took my number & e-mail apologized sincerely & also committed to get back to myself as soon as possible & by end of week latest."

Since this meeting and at the time of writing this letter, the Complainants say after some 9 months, they are still waiting for the *elusive* call or email confirming everything is in place and the standing order for the agreed amount is being collected. The Complainants advise that there is still no standing order in place.

The Complainants furnished this Office with further submissions by letter dated **30 March 2020**. In particular, the Complainants advised that a loan, not the subject of their original complaint, has been sold to a third party (account ending 124). The Complainants advised that this loan was not in arrears and they were making the repayments, but it was sold by the Provider *"because no payments to the outstanding balance of the current dispute ... have been received."* The Complainants further say that the loan was sold as a non-performing loan due to the non-payment of the residual balance on the loan the subject of this complaint.

The Provider's Case

The Provider explains that the loan, the subject of this complaint, is a residential investment loan with an interest rate of 0.00% and the current payments being made are €300 per month by way of direct debit.

In respect of the meeting which took place on **28 July 2017**, the Provider refers to correspondence received from the Complainants' solicitors dated **21 June 2017**, stating that this letter advised that a sale price of €95,000 had been obtained in respect of the property with a net sum of €92,000 less fees which would be remitted to the Provider if the sale proceeded. The Provider says the letter outlined that the Complainants had requested consent to sell the property with the net proceeds being remitted to the Provider in full and final settlement of the loan.

The Provider says a response was issued to the Complainants' solicitors on **6 July 2017** which advised that the Provider would not accept a lower sum settlement of the debt as there would be a shortfall on the redemption figure which stood at €128,061.99.

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The letter further advised that the Provider would consider discharging the property from the mortgage to allow the sale and that the Complainants would be liable for any shortfall remaining, and detailed the information required in order to consider this position. The Provider says the letter advised of the following requirements: a full valuation, details of the selling agent, confirmation that it was an arm's length transaction, confirmation of any outstanding property charges and details of conveyancing and selling agent fees. The Provider advises that a written proposal as to how the Complainants intended to repay the shortfall was also requested.

As part of these requirements, the Provider says the letter advised as follows:

"We would be obliged if the borrowers could make an appointment with a Mortgage Advisor in the local [Provider] branch for all parties to the mortgage to complete a Standard Financial Statement."

The Provider advises that an appointment was made as requested for **28 July 2017**.

With respect to the Complainants' request for consent to sale of the property, the Provider has set out the following timeline:

- | | |
|---------------|---|
| 11 May 2017 | Correspondence received from the Complainants' solicitors requesting to take up title deeds on accountable trust receipt. |
| 2 June 2017 | Correspondence received from the Complainants' solicitors enclosing signed accountable trust receipt. |
| 23 June 2017 | Correspondence received from the Complainants' solicitors dated 21 June 2017 advising that the property had achieved a sale price of €95,000 and requested consent to sale with net sale proceeds of €92,000 to be remitted to the Provider. |
| 6 July 2017 | Correspondence issued to the Complainants' solicitors advising the Provider would not accept a lower sum settlement of the debt as there would be a shortfall on the final redemption figure. The letter advised that the Provider would consider discharging the mortgage to allow the sale and that the Complainants would be liable for any shortfall. |
| 28 July 2017 | SFS completed with supporting documentation. |
| 3 August 2017 | Correspondence from the Complainants' solicitors which advised valuation would be submitted to the Provider directly and provided a response to outstanding item. |
| 4 August 2017 | Valuation received. |

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- 8 August 2017 The Complainants contacted the Provider for an update and were advised SFS received on 28 July 2017 was with the assessment team and this could take a further 2/3 weeks.
- 14 August 2017 Correspondence issued to the Complainants advising self-employed income proof required for the Second Complainant.
- 15 August 2017 The Complainants contacted the Provider and queried why the assessment was taking so long and that further information was required.
- 16 August 2017 The Provider contacted the Complainants to advise that a Notice of Assessment would be accepted as a joint assessment, and that the assessment would be expedited and hopefully assessed that week.
- 21 August 2017 The Complainants contacted the Provider for an update and were advised that if an outcome was not received by the coming Wednesday, the matter would be escalated.
- 22 August 2017 The Complainants contacted the Provider for an update and were advised the Provider would revert the next day.
- 23 August 2017 The Provider telephoned the Complainants to advise that the case had been escalated for assessment, it would be reviewed that day, and the Provider would revert once a decision was made.
- An internal assessment took place and was declined due to affordability based on 95% free cash flow of €2,112: full affordability of current interest only repayments of €117.73, and capital and interest repayments of €1,228 per month without factoring in savings.
- The Provider contacted the Complainants and advised that the case had been assessed, underwritten and sent to the Shortfalls Department for a decision which could take 2/3 days. The Complainants then asked to be transferred to the Shortfalls Department.
- The Complainants spoke to an assistant manager in the Shortfalls Departments and was advised the case would be reviewed and a decision made within 3 working days. The Complainants were advised that the loan had been deemed sustainable and savings were evidence which could be used to reduce the shortfall amount. The Complainants advised that these funds were for educational purposes.
- 25 August 2017 Consent to sale issued to the Complainants' solicitors.

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The Provider acknowledges that correspondence incorrectly issued to the Complainants on **14 August 2017** but asserts that this did not cause undue delay. During a conversation on **15 August 2017**, the Provider says the Complainants outlined that the documentation submitted was a joint assessment and noted as income proof for spouse. The Provider says it confirmed the Notice of Assessment was acceptable in a telephone call on **16 August 2017**.

The Provider states that the Complainants' SFS and supporting documentation deemed the loan sustainable due to affordability and savings that could be used to reduce the shortfall amount. The Provider says the Complainants were advised of the sustainability of the loan on **23 August 2017**. The Provider says the Complainants explained the savings were for educational purposes and that due to issues with the property they did not wish to retain it. Following a review by its Shortfalls/Property Management Department, the Provider says taking these matters into consideration, it acceded to the Complainants' request and consent to sale at a shortfall and release of security issued on **25 August 2017**.

In respect of the monthly repayment of the shortfall amount, the Provider says when the consent to sale letter issued, it included an 'Agreement to Repay the Outstanding balance' by repayments of €266.40 over a term of 109 months at an interest rate of ECB +0.80%. The Provider advises that this agreement was returned signed by the Complainants on **18 September 2017**.

The property was subsequently sold, and the sale proceeds lodged to the loan account on **12 October 2017**. The Provider says following receipt of the proceeds of sale, the repayments reduced from €117.73 (including insurance of €32.41) to €51.97 (including insurance of €32.41). The Provider says as the property had been sold and there was no longer any collateral/security attached to the loan, it set the interest rate at 0.00% on **1 January 2018** and the direct debit ceased.

The Provider advises that repayments continued until **1 January 2018** when the interest rate set to 0.00% and repayments ceased because a direct debit cannot be set up on an account billing at €0.00. As a result of setting the interest rate to 0.00%, the Provider says no interest has accrued on the account since **1 January 2018** and the Complainants have not incurred any additional cost of not setting up the standing order. In addition, the Provider advises that there were no returns to the Irish Credit Bureau in relation to this account.

On **1 February 2018**, the Provider says the First Complainant contacted it regarding repayment methods and was advised to contact his local branch to complete a standing order form. The Provider says the First Complainant called to a branch on **28 March 2018** to complete the form, but some confusion arose due to the account having a billing amount of €0.00 as the interest rate was set at 0.00%. The Provider says the branch contacted the Property Management Department and asked that they contact the Complainant to clarify matters. The Provider says, regrettably, this was not followed up on and the Provider would like to apologise for any inconvenience caused as a result.

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The Provider says it appreciates a standing order was not set up in a timely manner following receipt of the sale proceeds and wishes to apologise for this. The Provider advises that a standing order has since been set up with monthly payments being received from **April 2020**.

The Provider explains that it is unable to assign one agent to each case for all queries due to the high volume of telephone calls made and received by its Collections Department. However, every agent is trained to deal with customers queries. While they may not know the history of the account, the Provider advises that at the outset of a telephone conversation, the agent would be able to review the notes on the account during the call. In some instances, it may be necessary to transfer customers to another department in order to assist customers with their specific query.

The Provider says it sought to resolve this complaint in compliance provision 10.7 of the **Consumer Protection Code 2012** (the **Code**). On receiving the Complainants' formal complaint on **31 December 2018**, the Provider says it logged a complaint in accordance with provision 10.9 of the Code and issued an acknowledgement letter to the Complainants on **7 January 2019** which advised the Complainants of their dedicated point of contact. The Provider advises that further correspondence issued to the Complainants on **28 January** and **February 2019** advising that the complaint was still being investigated, and a Final Response letter issued on **21 March 2019** detailing the outcome of the investigation and the terms of the offer of settlement.

In response to the Complainants' submission regarding the sale of loan account ending 124, in a submission dated **17 September 2020**, the Provider advises that this loan was sold in **February 2020** to a third party. As the legal basis for the transfer, the Provider says it relied on the terms and conditions of the mortgage contract. The Provider says the contract with the Complainants consists of the Letter of Approval dated **1 July 2005**, the General Mortgage Loan Approval Conditions, the Mortgage Conditions, and the Acceptance of Loan Offer dated **6 July 2005**. Specifically, the Provider refers to sections 1.5 and 1.15 of the Loan Approval Conditions and clause 6.7 of the Mortgage Conditions in respect of its entitlement to transfer the loan.

Addressing the reason for the sale, the Provider says, referring to its entitlement to transfer the loan irrespective of the performance or non-performance of the loan, the transfer was a transfer of non-performing loan accounts and the Complainants' loan was included as it was identified as a non-performing loan.

The Provider says correspondence issued to the Complainants dated **5 February 2020** in response to their query regarding the sale of the loan. The Provider says the correspondence outlined the regulatory guidelines and definitions regarding classification of loans as non-performing which included: *"An account holder had previously agreed a sale or surrender of a property and the proceeds did not clear the loan."*

The Provider says the letter stated:

“In relation to your account ending -0124, the applicable reason is that the proceeds of sale of the property secured against loan ending -5740 did not clear the loan. In addition to this, no payments have been received towards the residual balance outstanding on the loan ending -5740.”

The Provider submits that the status of a loan is not determinative of the Provider’s entitlement to sell a loan. The Provider says the mortgage loan terms and conditions issued to the Complainants on **14 June 2005**, prior to acceptance and drawdown, clearly informed the Complainants of the Provider’s entitlement to transfer accounts to third parties.

The Complaint for Adjudication

The complaint is that the Provider 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 Complainants were given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 15 April 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.

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

Background

The Complainants' solicitors wrote to the Provider on **10 May 2017** as follows:

"We refer to the above matter and enclose herewith our client's authority to take up the title deeds on Accountable Trust Receipt. We would be obliged to receive the title deeds at your earliest convenience."

By letter dated **21 June 2017**, the Complainants' solicitors wrote to the Provider in respect of the sale of the property, stating:

"Our client has put the property on the open market with a local Auctioneer and it has obtained a sale price of €95,000 exclusive of auctioneer and legal costs which are expected to be €3,000 leaving a net sum of €92,000 which can be remitted to [the Provider] if the sale proceeds.

Our client has asked us to write to seek your consent to the sale of the property for a sum of €95,000 with a net proceeds of sale of €92,000 to be remitted to [the Provider] in full and final settlement of their liability in respect of the property and that on receipt of this sum that a vacate of the Mortgage will be provided to us. ..."

The Provider wrote to the Complainants' solicitors on **6 July 2017**, stating that:

"I confirm that the Bank will not accept a lower sum settlement of the debt as there will be a shortfall on the final redemption figure. Please note that the Bank will be seeking repayment of the full amount outstanding on the loan, and no waiver of debt can be given in circumstances where the outstanding mortgage balance is not repaid in full.

...

However, without prejudice to the above the Bank will consider discharging the property from the Mortgage to allow the sale of the property if it can be demonstrated that this is the best price available in the current market and the bank receiving an amount in reduction of the loan to the satisfaction of the bank. Borrowers continue to be liable for the shortfall in their personal capacities.

To evaluate our position, can you please provide us with the following details once a sale price is agreed, in order for the Bank to consider the case further:

- *Full valuation carried out on the property ...*

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- *Name and address of selling agent.*
- *Following details from the selling agent;*
 - *Date of taking instructions*
 - *Details of sales/marketing campaign*
 - *Number of enquiries/viewing of the unit*
 - *Number and level of offers*
 - *Rationale for sale price/Comparables*
- *Confirmation that the sale is an arm's length transaction*
- *Confirmation of any outstanding property charges...*
- *We would be obliged if borrowers could make an appointment with a Mortgage Advisor in their local [Provider] branch for all parties to the mortgage to complete a Standard Financial Statement. This document requires information in relation to monthly Income & Expenditure ... Six months current account statements, current P60 and 2 up to date payslips for all parties will be required.*
- *Written proposal confirming how borrowers intend to repay the remaining shortfall if property is sold*

Please return all documentation together to avoid any delay with your application to the following address: ...

...

***** Please note that the Bank will only be in a position to consider the proposed sale on receipt of all documentation outlined above. This letter should not be interpreted as consent to sell ** ..."***

The First Complainant telephoned the Provider on **19 July 2017** to make a branch appointment to complete a SFS on foot of the above letter. Due to availability issues, the parties were unable to arrange an appointment during this call. The First Complainant telephoned the Provider the next day, **20 July 2017**, to arrange a branch appointment, however, the call appears to have been unexpectedly terminated.

The Complainants completed and signed a SFS dated **28 July 2017**. This also included certain supporting documentation and the following signed proposal:

<i>“Outstanding loan amount</i>	<i>€128,062</i>
<i>Sale of property €95,000 > payment to bank €95,000</i>	
<i>Balance outstanding</i>	<i>€33,062</i>

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Proposal: *Repay @ €200 per month plus current interest at existing agree tracker rate for remaining of outstanding loan agreement & pay balance outstanding during or before end of term."*

The Complainants' solicitors provided certain of the information sought by the Provider in a letter dated **2 August 2017**. This was followed by a property valuation dated **3 August 2017**.

By letter dated **16 August 2017**, the Provider wrote to the Complainants to advise that it was unable to fully assess their SFS as certain self-employed information was required in respect of the Second Complainant. I note this appears to be the letter mistakenly and incorrectly sent by the Provider.

The Account Notes indicate that the Second Complainant telephoned the Provider on **21 August 2017** to explain that the Complainants were awaiting the outcome of the assessment of their SFS and the sale of the property would fall through if the assessment took much longer. The note indicates that the Provider's agent advised the Second Complainant, as follows: *"will keep an eye on acc and nothing done by Wednesday, will escalate ..."* The Account Notes indicate that the Second Complainant telephoned the Provider the following day, **22 August 2017**, enquiring as to when the assessment would be complete. There were also a number of recorded telephone calls between the Second Complainant and the Provider's agents on **23 August 2017** regarding the assessment of their case, and during the first of these conversations, the Provider's agent apologised for the delay being experienced by the Complainants.

The Provider wrote to the Complainants' solicitors on **25 August 2017** advising as follows:

"We wish to confirm that the Company is agreeable to the sale of the above mortgage property for the sum of €95,000.00 subject to the following terms and conditions:

- *That the gross sale proceeds of €95,000.00 together with additional sum of €5,000 and the signed Payment Agreement to be received by the Bank within 5 days of completion of the sale following which a Deed of Discharge will be executed by the Bank*
- *...*
- *The resulting shortfall of approximately €27,999.04 is to be repaid in accordance with the enclosed Repayment Agreement. ..."*

The enclosed Payment Agreement provided for a repayment term of 109 months in respect of the shortfall amount at an interest rate of ECB +0.08% with monthly repayments being estimated at €266.40.

On **11 September 2017**, the Provider wrote to the Complainants as follows:

"Your recent request for a restructure ... together with your completed Standard Financial Statement has now been fully assessed by our Arrears Support Unit.

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We are unable to offer an alternative repayment arrangement at this time. The reason for this decision is as follows:

- *Your Standard Financial Statement indicated affordability to repay the full contractual monthly bill without the need for an Alternative Repayment Arrangement. ...”*

In response to the Provider’s letter of **25 August 2017**, the Complainants’ solicitors wrote to the Provider on **10 October 2017** as follows:

“We refer to the above matter and your letter of the 25th August 2017 wherein you consented to the sale of the property subject to payment of the gross sales proceeds of €95,000 together with an additional sum of €5,000. You also required signed Payment Agreement.

Accordingly we now enclose:

- 1. Cheque in the sum of €100,000 ...*
- 2. Signed Payment Agreement ...*
- 3. Copy Contract of Sale ...*

...

We would be obliged to receive Deed of Discharge as soon as possible. ...”

The Complainants’ solicitors then wrote to the Provider on **10 January** and **8 March 2018** requesting a Deed of Discharge.

Analysis

The Complainants say they received no correspondence from the Provider during **May** or **June 2017** in response to a letter issued by their solicitors on **7 May 2017** or in response to their solicitors’ follow up telephone calls.

From the documentation provided, the earliest letter from the Complainants’ solicitors is a letter dated **10 May 2017** requesting title deeds on Accountable Trust Receipt with no mention of any sale. I note that the Complainants have not provided the letter of **7 May 2017** nor is there any evidence to suggest that the title deeds were not furnished to their solicitors. It is also not clear from the evidence presented, when the various telephone calls took place between the Complainants’ solicitors and the Provider or the precise details of these conversations. Therefore, I have no evidence that the Provider failed to respond or delayed in responding to the May correspondence or telephone calls.

It appears from the evidence that the Provider was first notified of the marketing of the property for sale in a letter dated **21 June 2017**, where consent to sale was sought from the Provider together with its agreement to accept the net sale proceeds in full and final settlement of the loan. The Provider responded to this letter within 11 business days on **6 July 2017**, which I consider to be a reasonable timeframe. In this letter, the Provider advised that it would not accept the net sale proceeds in settlement of the loan but it would consent to the sale if it was demonstrated that the current market price was the best price available.

The letter also advised that the Complainants would be liable for the shortfall amount, and listed the documentation and information required to evaluate their position.

The letter also expressly asked that *“an appointment with a Mortgage Advisor in their local [Provider] branch for all parties to the mortgage to complete a Standard Financial Statement.”* The letter also provided the address to which the various documentation was to be sent.

In their submission, the Complainants say that on **19 July 2017**, they made the requested information available to the Provider and were told this would need to be brought to their local branch. The Complainants also say that when they contacted their local branch the only available time to meet was **28 July 2017**.

As can be seen, the Complainants were expressly advised of where to return the documentation and that they were also required to attend their local branch to complete a SFS. Further to this, the purpose of the telephone conversations which took place on **19 July** and **20 July 2017** was to arrange a branch appointment. During the first of these calls, the First Complainant requested an appointment for **20 or 21 July 2017**, however there were no available appointment times. Despite not being able to accommodate this request, the evidence shows that an appointment was made for **28 July 2017**. In the circumstances, I accept that reasonable efforts were made to arrange a branch appointment for the Complainants.

The Complainants say that on **28 July 2017** when the First Complainant attended the local branch, he was advised of the need to complete a SFS and that the Second Complainant was required to be in attendance also. It is important to note that the Complainants were also clearly advised of this, in advance of the meeting, in the Provider’s letter of **6 July 2017**.

The evidence suggests that the Provider was in receipt of the information necessary to assess the Complainants’ case from early **August 2017** following receipt of a completed SFS on **28 July 2017**, certain information from the Complainants’ solicitors on **2 August 2017**, and a valuations report dated **3 August 2017**. Up to this point, I do not accept that there were any unreasonable delays on the part of the Provider.

The Provider issued correspondence to the Complainants on **14 August 2017** advising that it was unable to fully assess their SFS as certain self-employed information was required in respect of the Second Complainant. The Provider has acknowledged that this letter was incorrectly issued and says this did not cause any undue delay.

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It is clear from the Provider's letter that until the requested information was received, the Complainants' SFS could not be fully assessed. It is my opinion that this is likely to cause a delay in the assessment process. However, the evidence suggests that matters were clarified during telephone conversations on **15 and 16 August 2017**. While I accept the Provider's letter caused a certain amount of delay, it is unlikely to have significantly impacted the assessment of the Complainants' SFS.

The Complainants have expressed significant dissatisfaction at the manner in which the Provider's agents spoke to the Second Complainant over the course of a number of telephone calls on **23 August 2017**. Recordings of these calls have been provided in evidence. I have considered each of these conversations. It is clear that the Second Complainant was frustrated with the progress being made by the Provider in terms of the assessment of their case, particularly as the purchaser of the property was at risk of withdrawing from the sale in circumstances where an offer had been made in **April 2017**. While the Second Complainant was frustrated with what she was being told during these conversations, I do not accept that the Second Complainant was treated in the *deplorable* or *disgraceful* manner described by the Complainants in their submission. I am satisfied that the Provider's agents spoke to the Second Complainant in a reasonably courteous and professional manner, apologised for the delays being experienced and attempted to respond to the Second Complainant's concerns.

The Provider consented to the sale of the property by letter dated **25 August 2017** which also enclosed a Payment Agreement in respect of the shortfall amount. The signed agreement and proceeds of sale were forwarded to the Provider under cover of letter from the Complainants' solicitors on **10 October 2017**.

Having considered the evidence, I do not believe that there was any unreasonable delay on the part of the Provider in assessing the Complainants' case or in consenting to the sale of the property.

However, on **11 September 2017**, the Provider wrote to the Complainants informing them that their request for a restructure was being declined due to the existence of evidence of affordability to repay the full contractual amount. From the evidence presented by the parties, the circumstances in which this letter was issued are not entirely clear. However, the position adopted by the Provider in the September letter appears to contradict its earlier letter of **25 August 2017**. It is my opinion that it is not appropriate for the Provider to issue correspondence of this nature. This correspondence appears to have failed to take into consideration the previously agreed arrangement and failed to explain the effect this would have on the previous arrangement.

Following receipt of the signed Payment Agreement a number of repayments went uncollected by the Provider. The reason for this appears to be that a payment method had not been set up on the loan account following the new Payment Arrangement. I note from the evidence that it seems to be the case that the Complainants' loan was subject to interest only repayments and because the interest rate was set to 0.00%, no loan repayments were accruing. It also appears to be the case that direct debits will not be called for in such circumstances.

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The Provider's correspondence to the Complainants in respect of the Payment Agreement appears to be silent on whether any new arrangements were required to be put in place in order to facilitate the new shortfall repayments. There is also no evidence to show that the Complainants were aware that payments would not be called for due to the 0.00% interest rate being applied to their loan.

It appears that the First Complainant first contacted the Provider about the repayments on **1 February 2018**. The Provider's Account Notes indicate that during a telephone call on **1 February 2018**, the First Complainant made an enquiry as to how to make the new repayments and was advised he would have to contact his local branch to complete a standing order form. When the First Complainant subsequently attended the Provider's branch on **28 March 2018**, I note, disappointingly, that quite a bit of confusion arose. I also note that during this branch visit the First Complainant was advised that he would be contacted by the Provider by the end of the week. This is also reflected in the Provider's Account Notes for **28 March 2018**, which state that "... [the Property Manager] *advised he would contact [the Branch Manager] later today and i would advise customer.*" I note that the Provider's commitment to follow-up with the First Complainant does not appear to have materialised.

In the Provider's Final Response letter dated **21 March 2019**, the Provider acknowledged that it was not necessary to attend the branch to set up a standing order. In its Complaint Response dated **6 July 2020**, the Provider also acknowledges that there was a delay in setting up the standing order and that it did not follow-up with the First Complainant as promised. Despite this, a standing order does not appear to have been set up until **April 2020**.

In these circumstances, I accept there were a number of failings on the part of the Provider regarding its failure to properly outline how the repayments under the Payment Agreement would operate and how repayments would be made. These include its failure to identify that no repayments were being received, the reason for this and not notifying the Complainants; and incorrectly telling the First Complainant to attend his local branch to set up a standing order, the resulting confusion and inconvenience, failure to follow-up with the First Complainant, and the ultimate delay in setting up the standing order.

By letter dated **27 December 2018**, the Complainants made a formal complaint to the Provider. This was received by the Provider on **31 December 2018** and acknowledged by letter dated **7 January 2019**. The Provider informed the Complainants by letter dated **28 January 2019** that it was still investigating their complaint. This was followed by a further letter on **25 February 2019** where the Provider advised the Complainants that it hoped to be in a position to issue a response to their complaint by **26 March 2019**. The Complainants expressed their disappointment with the length of time it was taking the Provider to formally respond to their complaint on **27 February 2019**. The Provider issued a Final Response letter on **21 March 2019**.

Section 10.9(d) of the **Consumer Protection Code 2012**, states that the Provider "... *must attempt to investigate and resolve a complaint within 40 business days of having received the complaint ...*"

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While a Final Response letter was not issued within the 40 day period, I note the complaint was acknowledged by the Provider, with monthly updates being issued in **January** and **February 2019**. The Final Response letter issued approximately 55 business day after the complaint was received and while this is outside the timeframe contained in the Code, taking into consideration matters raised by the Complainants in their complaint and the level of investigation required to properly respond to these matters, I am not satisfied that the Provider unreasonably delayed in responding to the complaint.

In a further submission dated **30 March 2020**, the Complainants have taken issue with the Provider's decision to sell another of their loans (account ending 0124).

In terms of the sale of this loan, the Complainants signed an 'Acceptance of Loan Offer' dated **6 July 2005**, which states:

- "1. I/we the undersigned accept the within offer on the terms and conditions set out in*
- i Letter of Approval*
 - ii the General Mortgage Loan Approval conditions*
 - *iii the [Provider] Mortgage Conditions*

copies of the above which I/we have received, and agreed to mortgage the property to [the Provider] as security for the mortgage loan.

...

- 4. My/our Solicitor has fully explained the said terms and conditions to me/us.
..."*

I note that clause 1.15 of the 'General Mortgage Loan Approval Conditions' states that the Provider "... may at any time transfer the benefit of the Mortgage to any person or company in accordance with the Mortgage Conditions." I note that clause 6.7 of the 'Mortgage Conditions' states that Provider: "... may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person ..."

In the Provider's letter of **5 February 2020**, the Provider responded to a complaint made by the Complainants in respect of the sale of this loan. This letter states:

"...

2. The loan is included in the sale as it has been classified as a non-performing loan in line with European regulatory guidelines and definitions for one [or] more of the following reasons:

...

- The loan is linked to another loan which is in arrears;*
- ...*

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- *An account holder has previously agreed a sale or surrender of a property and the proceeds did not clear the loan*

As a regulated entity, the Bank is required to adhere to the regulations set out by regulators. From time to time new regulations are introduced and existing regulations amended.

The European Banking Authority (EBA) guidance on NPLs was first introduced in 2017 with the final report and guidelines published in 2018 and applicable tom 30 June 2019.

In relation to your account ending -0124, the applicable reason is that the proceeds of the sale of the property secured against loan ending -5740 did not clear the loan. In addition to this, no payments have been received towards the residual balance outstanding on loan ending -5740.

Notwithstanding the NPL classification, the Bank is entitled to sell loans at its absolute discretion. This right is outlined in the General Mortgage Loan Approval Conditions ...”

The terms on which the Complainants entered this loan permit the Provider to sell the loan. These terms do not require a particular reason for the sale, nor do they require the consent of the Complainants to the sale.

In its letter of **5 February 2020**, in addition to identifying its discretion to sell the loan, the Provider advised the Complainants that the reason for the sale was that the sale of the property, the subject of this complaint, did not clear the underlying loan and that no repayments had been received in respect of that loan.

It is clear that the Provider is entitled to sell the loan in question on foot of the terms and conditions outlined above. It is also clear that the proceeds from the sale of the property did not discharge the underlying loan. On these grounds alone, I accept that the Provider was entitled to sell the loan.

As noted above, there was a delay in setting up the standing order on the Complainants' loan. The parties were aware of these issues from around **March 2018**, but the standing order was not set up until **April 2020**, after the loan sale.

It is my opinion that both parties must accept a certain degree of responsibility for the delay in setting up the standing order and for repayments not being made. However, simply because a standing order was not set up until **April 2020** does not mean that the Complainants were not required to make the agreed repayments. Irrespective of the payment method, the obligation was on the Complainants to make the required repayments and it is clear from the evidence that they were aware repayments were not being made. Equally, I believe the Provider should have enquired into the reason for the missed payments before relying on this as a reason for the sale of the linked loan, and had it done so, the reason for the repayments not being made are likely to have been apparent.

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It is also not clear if any arrears letters were issued by the Provider or notifications of missed payments. In the circumstances, it may not have been appropriate for the Provider to seek to rely on the non-payment of a linked loan as a reason for the sale of the loan in question.

However, notwithstanding all of this, I accept that it remains the position that the Provider was entitled to sell the Complainants' loan.

Goodwill Gesture

The Provider has stated:

“The Bank acknowledges that it failed to provide an acceptable level of service on some occasions during the process and would like to apologise for same. In view of this the Bank would like to offer an increased gesture of goodwill in the amount of €1,500.00. Alternatively, the Bank will accept a lump sum payment of €24,000.00 minus any payments made since January 2020 (currently €900.00) in full and final settlement on the basis that it is paid within two months from the date of the Ombudsman’s findings. The Bank will then return a CCR profile as completed once funds received. ...”

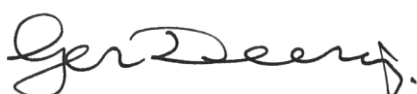
I consider the Provider’s goodwill gesture to be a reasonable sum of compensation for the customer service failings on the part of the Provider. For this reason, I do not uphold this complaint. It is a matter for the Complainants to decide if they wish to accept either of the Provider’s offers.

For the reasons outlined in this Decision, 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

6 May 2021

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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.

