



<u>Decision Ref:</u>	2021-0185
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Endowment mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants held a mortgage loan agreement with a financial service provider (the **Lender**) which was due to mature in **November 2018**. The loan was subject to interest only repayments during its term, with the capital balance falling due at the end of the term of the loan. To provide for the repayment of the capital balance, the Complainants incepted a policy of insurance with the Provider which was assigned to the Lender. This policy was also due to mature in **November 2018**. However, the surrender value of the policy was not received by the Lender until **January 2019**.

The Complainants' Case

In their Complaint Form, the Complainants state, as follows:

"Pursuit by [the Lender], as assignee of an endowment policy from [the Provider] of €90,045, of the entire balance of the mortgage from us. Simultaneously there was for a considerable period, ongoing correspondence between [the Lender] and [the Provider], on which we do not have full details and therefore are not clear in our own minds of the degree of culpability of both parties.

Failure of [the Provider] and [the Lender] to interact in a timely fashion.

Stress and medical intervention an outcome.

Pl. see attached letter of 25/9/19 and encls ..."

In the Complainants' letter to this Office dated **25 September 2019**, the Complainants explain that they held a mortgage loan and their complaint relates to an endowment policy incepted with a predecessor of the Provider in **November 1998**, which was assigned to the Lender and due to mature in **November 2018**.

The Complainants say that they have always made their mortgage loan and endowment policy premium payments on time and they had initiated contact with the Provider and the Lender, but these entities failed to engage with one another in a timely fashion.

The Complainants say the Lender put them under severe pressure by issuing heavy handed correspondence around Christmas **2018** and at a time when the Complainants were sending documents to the Provider which the Lender had failed to supply. The Complainants say the Lender was seeking repayment of the loan of over €90,000 (with threats) despite its Complaints Department stating in a letter of **14 February 2019** that it was aware this money was to be received through the Provider. The Complainants advise they had to engage solicitors to act on their behalf and the Complainants themselves put enormous time into this matter.

The Complainants says that retrieving their data from the Lender was unduly slow due to errors on the part of the Lender. The Complainants say the Lender did not have the courtesy or professionalism to advise them when the Provider had transferred the proceeds from the policy. The Complainants say this caused a lot of stress for the Second Complainant and that the Lender was aware of this.

The Complainants continue their letter by setting out the background to the policy. The Complainants explain that they first contacted the Lender and the Provider on **11 October 2018** to try to ensure the smooth conclusion of the matter. Referring to correspondence from the Lender, the Complainants say the loan was due to mature on **30 November 2018**. The Complainants say their contact in **October 2018** seems to have been the impetus for any action commencing in respect of the policy encashment towards the redemption of the mortgage loan. The Complainants submit that the Lender and the Provider should have engaged with one another in a timely fashion to ensure matters were finalised on time. The Complainants say that several attempts were made to get a balancing figure of the shortfall amount between the outstanding loan balance and the policy value, as the Complainants would need to make up the shortfall.

During a telephone call on **29 November 2018** and prior to the loan becoming due, the Complainants say they were advised that the Provider had not remitted the surrender value of the policy to the Lender, apparently despite repeated requests from the Lender. The Complainants say they were *"... given to understand that [the Lender] was very understanding that we were dependent on [the Provider] making payment to them ..."* and that the Lender had sent the requisite documentation to the Provider who would be in touch with the Complainants, if required. The Complainants explain that this call concluded with them being of the opinion that the source of the delay rested with the Lender and the Provider.

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On **13 December 2018**, however, the Complainants say they received a letter from the Lender dated **7 December 2018** in an envelope postmarked **12 December 2018** which did not display much understanding of the Complainants' position. Describing the letter, the Complainants say it spoke of repossession, imposition of charges and surcharges and the engagement of solicitors, if necessary, at a minimum cost of €5,000. The Complainants say the tone of this letter was set in its heading which highlighted in bold and capital letters in places that the situation was urgent, requiring immediate attention, their loan account was in the Mortgage Arrears Resolution Process and it referenced the consequences of not co-operating. The letter also pointed to potential adverse consequences for the Complainants' credit rating. The Complainants say this letter was unanticipated for several reasons, including:

- their proactive efforts to ensure matters were concluded on time,
- the Complainants' call to the Lender on **29 November 2018**,
- the Provider's email of **29 November 2018** advising it was awaiting documentation from the Lender.

The Complainants say the above letter also spoke of them having missed (for the first time in 20 years) a payment of €37 on **6 November 2018**. The Complainants explain that the Standing Order had been cancelled on the advice of the Lender during a telephone call on **11 October 2018**. The Complainants say they received a letter dated **9 November 2018**, advising of a missed payment. The Complainants say that as at **11 October 2018**, it was immaterial to them when the final payment was due as they assumed that the Provider would pay the Lender on time and that the Complainants stood ready to immediately pay the shortfall balance, which they had advised the Lender of.

The Complainants say they wrote to the Lender by registered post on **17 December 2018** advising that the fault did not lie with them, they were going to engage a solicitor, they were not going to complete the Standard Financial Statement provided by the Lender and a request was made for call recordings and correspondence. The Complainants say they also advised the Lender how utterly reprehensible it was that it would date a letter of such importance a full six days in advance of posting it. The Complainants say that although they rescinded any authority for the Lender to communicate with them by telephone, they received a telephone call from the Lender on **3 January 2019** seeking clarification regarding their data subject access request.

The Complainants say the Lender's acknowledgment letter of **24 December 2018** committed that the complaint would be "*thoroughly and fairly*" investigated. The Complainants say they appointed and met with their solicitors on the first available opportunity in early **January 2019**, and complied immediately with their advice to cease direct contact with the Lender. The Complainants also refer to a solicitor's letter sent to the Lender and the Provider on **30 January 2019**.

The Complainants say they received a letter dated **14 February 2019** from the Lender in response to their complaint. The Complainants say they find the Lender's response utterly unsatisfactory, even unclear/insufficiently transparent and duplicitous in places.

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The Complainants say this letter failed to acknowledge some key issues and fell well short of the standard the Lender set in its letter of **24 December 2018**. The Complainant say it is apparent that:

- the Provider and the Lender failed to liaise with one another in a timely fashion,
- the Provider appears to have engaged meaningfully only late in the day notwithstanding the Complainants' contact beginning on **11 October 2018**,
- the Lender behaved in a heavy-handed and unprofessional manner,
- the Lender did not reference the fact the policy was assigned to it,
- the loan was drawn down on **19 November 1988** yet in some instances the Lender sought full repayment on **6 November 2018**.

The Complainants says that they have been proactive in their efforts to have everything regarding their loan concluded on time, something which was not reciprocated. The Complainants say the telephone call to the Lender on **11 October 2018** seems to have been the impetus for the Lender, but not the Provider, to commence engagement with one another. The Complainants wish to reiterate that, as made clear to the Lender in the initial telephone call, at all times, the Complainants stood ready to repay whatever balance was required to meet the shortfall between the loan balance and the surrender value of the endowment policy.

In respect of a letter received from the Provider dated **13 February 2019** in response to a letter from the Complainants' solicitor dated **30 January 2019**, the Complainants say the Provider advised that most of the points raised were matters for the Lender as assignee. The letter acknowledges there was a delay on the part of the Provider in issuing maturity papers for which it offered an *ex gratia* goodwill payment of €250. The Complainants note that maturity papers apparently issue, in normal course, four weeks in advance of maturity and, as a result, the telephone call to the Provider on **11 October 2018** was timely. The Complainants quote from the final paragraph of the Provider's letter as follows:

"As we had a Notice of Assignment we were obliged to deal with [the Lender] for this maturity encashment. Papers were issued on 9th November and we then had to await receipt of all of the claim requirements, which were received on 10th January, 2019."

The Provider's Case

The Provider explains that the Complainants' mortgage protection life assurance policy commenced on **6 November 1998** and matured on **6 November 2018**. The Provider says a cheque issued to the Lender on **18 January 2019**.

The Provider says there was a delay in communication with the Complainants and the Lender when the policy matured. The Provider says it is ordinarily expected that maturity papers would be issued about three to four weeks in advance of a maturity date. In this case, the Provider says maturity papers issued three days after the policy maturity date.

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The Provider says this is “*very regrettable, and we have apologised for this previously and offered a commensurate compensatory payment.*” The Provider says, this is, however, an undue delay.

The Provider says that delays unfortunately occur from time to time for unforeseen reasons. In this case, the Provider says there was:

“... a prompt response to the then issue of the maturity papers when this was brought to our attention; prompt responses to the assignees for the outstanding claim requirements and a prompt response to the issue of the maturity cheque.”

The Provider says it would be reasonable to expect a return of the claim requirements requested on **9 November 2018** by **9 December 2018**, following which a cheque would issue. As a result, the Provider says its view is that it accounted for a maximum of four weeks of the total delay experienced in this matter. The Provider says that if the claim requirements were received for example within seven days from **9 November 2018**, it could have issued a cheque within two weeks of the maturity date.

Except as outlined above, the Provider says all instructions regarding the maturity claim with the Lender were processed properly and promptly. The Provider also says that clear, accurate and updated information was provided to the Complainants and the Lender which is demonstrated in its letter of **9 November 2018** and subsequent correspondence.

The Provider says the Complainants have identified a number of issues, the majority of which relate to communications between the Complainants and the Lender. In particular, communications that occurred between the Lender and the Complainants whilst the maturity claim was being processed. The Provider says it was not a party to these communications.

The Complaint for Adjudication

The complaint is that the Provider failed to engage with the assignee of the Complainants’ policy in a timely manner in advance of the maturity of their endowment policy and their mortgage loan.

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.

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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 **10 May 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the consideration of an additional submission from the Provider, the final determination of this office is set out below. The Provider has made clear its view that it is a stranger to the inconvenience caused to the Complainants as a result of an administrative delay which should have remained an issue between the Provider and the Lender only. It believes that no complaint would have arisen if the Lender had communicated more appropriately with the Complainants.

The Complainants wrote to the Provider by email dated **11 October 2018** in respect of the maturity of their policy, as follows:

“Our policy will mature on 6 November next. Having spoken to [the Lender], I understand that the procedure for closure/full repayment will involve you transferring the maturity value to [the Lender] I understand [the Lender] will be in separate contact with you on this matter ...

When will you be able to advise me of the final maturity value of the policy so that I can arrange with [the Lender] to have the balance transferred electronically to them? If there is any other procedure that is required of us by yourselves please let us know ...”

The Provider also wrote to the Complainants on **9 November 2018** advising that the policy matured on **6 November 2018**. The letter also advised that the policy was assigned to the Lender and that ‘Maturity Options’ has been issued to the Lender directly.

The Provider also wrote to the Lender on **9 November 2018** in respect of the maturity of the policy, as follows:

“According to our records this policy is assigned to you. We are pleased to advise that the policy matured on 06/11/2018. ...

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... In order to proceed with payment the following documents are required.

- **Maturity Options Form.**
- **Original policy document.**
- **Deed of Assignment/Reassignment.**

Please have the Maturity Options form signed by an Authorised Official ...

As part of its Complaint Response, the Provider furnished a copy of this letter which I note bears the Lender's date stamp of having been received on **16 November 2018**.

The Lender wrote to the Provider on **20 November 2018** (which appears to have been received by the Provider on **23 November 2018**), enclosing a completed 'Surrender Form' and original deed of assignment of the policy to the original lender. Six business days later, the Provider wrote to the Lender on **30 November 2018**, as follows:

"In order to process the maturity, we require the following:

- 1. The Original Policy Documents. Alternatively, if the document had been mislaid please complete the enclosed Lost Policy Declaration and Indemnity form and have same witnessed by a third party ...*
- 2. Original Deed of Assignment to [the Lender]. Unfortunately, we only received a copy of this document. If this document has been mislaid please complete the enclosed Lost Policy Declaration and Indemnity form and have same witnessed by a third party ...*

On receipt of the above requirements, the claim can be processed without delay. ..."

The Lender wrote to the Provider on **11 December 2018** (which appears to have been received by the Provider on **13 December 2018**), enclosing the original policy document. It appears that the documentation supplied by the Lender which it considered to constitute the original policy documents were a 'Life Quote' in respect of the policy dated **7 April 2006** and a policy review letter from **September 2014**.

The Provider wrote to the Lender six business days later, on **21 December 2018**, as follows:

"Unfortunately the documentation recently received was a Life Quote and a Policy Review not the original Policy Schedule and original Deed of Assignment as requested."

The letter continued by repeating the contents of the Provider's letter of **30 November 2018**. A copy of this letter has been supplied by the Complainants and bears a Lender date stamp of **2 January 2019**.

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On **2 January 2019**, during a telephone conversation between the Lender and the Provider, the Lender's agent advised that she had sent the original deed of assignment to the Provider. The Provider's agent told the Lender's agent that the original policy documents were from 1988, and the documents received from the Lender were a quote from 2006 and a letter from 2014. The Provider's agent explained that the Provider would require the original policy document from 1988 or a Lost Policy Declaration. There also appears to have been confusion as to whether the deed of assignment previously sent was an original, or a copy. The Lender's agent also told the Provider's agent that it was confirmed during a telephone call with another of the Provider's agents on **11 December 2018** that the original deed of assignment had been received by the Provider. The Provider's agent advised the Lender's agent that she would check the documents received from the Lender. (Separately, I note that a recording of the call which the Lender said took place on 11 December 2018 does not appear to have been furnished in evidence by the Provider.)

During a telephone conversation the following day, **3 January 2019**, the Provider's agent advised the Lender's agent that the deed of assignment received was in respect of the original lender and that there had been some confusion between the Provider's Contact Team and its Claims Team. The Lender's agent explained that generally with these types of claims it would send the original deed of assignment from when the policy was taken out. The Provider's agent explained that while the Provider had received the original deed of assignment for the original lender, the assignment in respect of the original lender had finished and closed off the Provider's system in **December 2017** and had been replaced with an assignment to the Lender. The Provider's agent explained that because the assignment was transferred to the Lender, it required the original deed of assignment for the Lender. The Provider's agent advised that the simplest thing to do would be for the Lender to complete a Lost Policy Declaration in respect of the original policy documents and the deed of assignment.

The Lender returned the 'Lost Policy Declaration & Indemnity Form' to the Provider under cover of letter dated **3 January 2019**. By letter dated **7 January 2019**, the Provider returned the form to the Lender advising that it had not been witnessed and requested that it be witnessed and returned to the Provider. The Lender wrote to the Provider on **9 January 2019** (which appears to have been received on **10 January 2019**), enclosing a completed 'Lost Policy Declaration & Indemnity Form'. The Provider wrote to the Lender six business days later on **18 January 2019** enclosing a cheque in the amount of €90,046.

I note that the Complainants' solicitors wrote to the Provider on **30 January 2019** regarding the matters raised in this complaint. The Provider responded to this letter on **13 February 2019** outlining a timeline of events in respect of the surrender of the policy. The Provider also apologised for the delay in issuing maturity papers and offered a goodwill gesture of €250.

In its Final Response letter dated **23 March 2020**, the Provider again accepted responsibility for the delay in issuing maturity papers and offered a goodwill gesture of €250. The Provider advised that maturity papers issued to the Lender on **9 November 2018** and that the full claim requirements needed to process the claim had not been received from the Lender until **10 January 2019**. The Provider also advised that it was not responsible for this delay.

Analysis

The Complainants' policy was due to mature on **6 November 2018**. The Provider's evidence is that maturity papers usually issue 3 to 4 weeks before a policy's maturity date. The Provider acknowledges there was a delay in issuing the Complainants' maturity papers, which issued 3 days after the maturity date. The Provider says that it is responsible for 4 weeks of the delay, which arose in relation to the surrender of policy.

The Provider issued correspondence to the Lender regarding the maturity of the policy on **9 November 2018**. This appears to have been received by the Lender on **16 November 2018**. However, it is not clear why it took five business days to reach the Lender. Having reviewed this letter, I accept that it clearly indicated the documents required to redeem the policy. In particular, I note it expressly listed the 'Original policy document' and 'Deed of Assignment/Reassignment'. In light of the Lender being the new assignee of the Complainants' policy, it is arguable that it was reasonable to deduce that the deed of assignment to the Lender, and not necessarily the deed of assignment to the original lender, was the one required.

A Surrender Form and deed of assignment to the original lender, were received by the Provider on **23 November 2018** but the original policy documents do not appear to have been included. A week later, the Provider wrote to the Lender on **30 November 2018** requesting the original policy documents and the deed of assignment, identifying the Lender by name in respect of the deed of assignment. In the event these documents were unavailable, the letter advised the Lender to complete a Lost Policy Declaration.

The Lender wrote to the Provider on **11 December 2018**, enclosing a Life Quote and a policy review letter which appears to have been in response to the Provider's request for original policy documents. The Provider wrote to the Lender some 10 days later on **21 December 2018** bringing this to the Lender's attention and repeated its request for the relevant documents. This appears to have been received by the Lender on **2 January 2019**. While there is a 12 day gap between when the Provider's letter was sent and when it was received, I note that **21 December 2018** is likely to have been the last business day before Christmas with **2 January 2019** being the first business day of **2019**.

The next point of contact between the Provider and the Lender was a telephone conversation on **2 January 2019** where it was clarified that either the original policy documents or a Lost Policy Declaration was required, as the documents previously supplied were not the original policy documents.

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During a telephone conversation the following day, on **3 January 2019**, it was explained to the Lender's agent why a deed of assignment to the Lender (and not the original lender) was required. It appears that a properly completed Lost Policy Declaration was received on **10 January 2019** and a cheque representing the surrender value of the policy was then issued by the Provider on **18 January 2019**.

Having considered the evidence, I am satisfied that the Provider failed to issue maturity papers in advance of the maturity of the Complainants' policy in accordance with its usual practice. This is disappointing, given that the Complainants had taken the trouble to write to the Provider on 11 October 2018, well in advance of the pending maturity of the endowment policy. In this instance, the relevant documents were issued three days after maturity. There also appears to have been a delay in relation to the Lender receiving the Provider's letter of **9 November 2018**, however it is not clear if this delay is attributable to the Provider.

I have reviewed the correspondence issued by the Provider to the Lender regarding the documentation required to redeem the policy. It is my opinion that the Provider's letters clearly set out the precise documents that were required and explained that, in the event these documents were not available (such as the original policy documents or the deed of assignment) a Lost Policy Declaration should be completed.

I accept that the required documentation was not received by the Provider until **January 2019** which, on top of the original delay caused by the Provider, then compounded the Complainants' difficulties. Further to this, the Lender does not appear to have understood the Provider's request for the deed of assignment to the Lender. As can be seen, the Lender sent the deed of assignment naming the original lender. In the circumstances, it appears that the Lender did not have the required documentation and ultimately, the Lost Policy Declaration was completed.

I am satisfied that the Provider delayed in issuing maturity papers to the Lender and that this caused a delay in redeeming the policy. I note that the Provider has not offered any explanation as to why this delay arose but having considered the correspondence issued by the Provider and the manner in which it outlined the required documentation, I am not satisfied that the Provider is responsible for the delays that arose thereafter.

The Provider received documentation from the Lender on **23 November** and **13 December 2018**, and whilst the response could have been more prompt, the period of six working days to progress, was not what I would consider to be unreasonable. Likewise, when the completed Lost Policy Declaration was received by the Provider on **10 January 2019**, the issuing of the relevant cheque six business days later, on **18 January 2019**, on that date, did not in my opinion constitute an unreasonable delay, though it could have been more promptly dealt with.

Goodwill Gesture

The Provider says that it:

“... did delay in our initial servicing of this maturity claim and it is only right and appropriate that we apologised and offered compensatory payment for our part in this complaint, namely a maximum four-week delay. We offered €250 compensation award in our letter dated 13th February 2019 and would be prepared to increase this to €500 if that assists in resolving this complaint that related to [the Provider].”

I do not however accept in the circumstances, that the compensatory gesture of €500 offered by the Provider is adequate to reflect the difficulties caused to the Complainants by the Provider. Whilst it may well be the case that the Provider was responsible for only a portion of the delay in the policy proceeds being received by the Lender, in order to redeem the majority of the loan, nevertheless it appears to me that based on the evidence and the timeline, if the maturity documentation had been issued by the Provider to the Lender in accordance with its usual process, the difficulties which thereafter ensued in the necessary documentation being completed and supplied to the Provider, might well have been rectified in sufficient time for the Complainants to have avoided the very considerable inconvenience which they were ultimately caused, when they found themselves in an arrears situation, and in receipt of formal regulatory notices regarding these arrears, which they found upsetting.

I do not accept the Provider's contention that in substantially upholding this complaint that it failed to engage with the assignee of the Complainants' policy in a timely manner, that it is being *“punished for another's behaviour”*. The conduct of the Lender is a matter for an entirely separate complaint; it is the conduct of the Provider which is at issue in this decision.

As indicated above, I am satisfied that the Provider delayed in issuing the maturity papers to the Lender and this caused a delay in redeeming the policy, but I am not satisfied that the Provider is responsible for the delays that arose thereafter. It is important for the Provider to be aware however, that the transfer of endowment policy proceeds towards the redemption of the mortgage loan, was a critical step for the Complainants, to achieve the redemption of the outstanding loan. Any delays which ensue in the transfer of such funds, can give rise to a worrying arrears position for the borrower in question and indeed the potential for negative indicators to be registered with the Central Credit Register.

In this instance, it is unclear as to why the delay ensued on the part of the Provider in issuing maturity documentation to the Lender. As events transpired, the delay which arose, occurred at an unfortunate time of the year for the Complainants insofar as the redemption of the loan ultimately traversed the Christmas break and included a 12 day period during which, although neither the Lender's nor the Provider's offices may have been open, the Complainants were nevertheless incurring arrears.

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It is in those circumstances, that I consider it appropriate to substantially uphold the complaint and to mark that decision, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainants in the sum of €1,000, in order to conclude.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €1,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



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

11 June 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,
 - (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.