



<u>Decision Ref:</u>	2021-0197
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Selling mortgage to t/p provider Dissatisfaction with customer service Arrears handling (non- Mortgage Arrears Resolution Process)
<u>Outcome:</u>	Substantially upheld

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

The Complainants entered a mortgage loan agreement with the Provider, against which this complaint is made, in **November 2005**. The loan was secured on two properties located in Dublin (the **BTL properties**). A Portfolio Manager began to engage with the First Complainant in respect of the loan in **February 2016**. The Complainants wanted to sell the BTL Properties or put a repayment arrangement in place. The Complainants' loan was sold by the Provider, against which this complaint is made, to a third party in **February 2019** and no arrangements were put in place to sell the BTL Properties or agree a repayment arrangement.

The Complainants' Case

On their Complaint Form, the Complainants explain that the Provider's Portfolio Manager "... engaged with us to restructure [the] loan or give consent to sell properties." The Complainants say that over a two and a half year period "... he did nothing. He got all paperwork from us but did nothing." The Complainants say that due to this *incompetence and laziness*, the Provider sold their loan to a third party. The Complainants explain this has caused severe stress and heartache for their family and "... has also brought our family home to the hand of [the third party purchaser of their loan]."

Prior to the submission of their Complaint Form, the Complainants wrote to this Office on **15 August 2018**, explaining that:

"... We have been dealing with [the Portfolio Manager] since Feb 2016 trying to get a resolution on two buy to let properties.

I understood that the mortgage was to change to principal and interest on 4th August 2017. So we gave them plenty of notice that we wanted the properties sold immediately and the balance outstanding was to be either paid off over [an] agreed period or to [be] cleared immediately. The balance would have been approx. 20,000/10,000 euro. Our sole purpose was to get rid of the properties. In our dealings with [the Portfolio Manager], he constantly asked for information which had already been supplied to him. He missed meeting (sic), never turned up. So two and a half years later due to his complete incompetence and even with us offering solutions and even having both properties sold, the [Provider] have now sold on the mortgage."

The Provider's Case

The Provider explains the mortgage loan account the subject of this complaint is secured by two properties located in Dublin, the BTL properties, and cross-charged on the Complainants' family home. A Letter of Approval was issued on **29 November 2005** and the loan was drawdown on **21 December 2005**. The loan was sold to a third party on **4 February 2019**.

The Provider has set out the history to the loan in its Formal Response. Picking up at **31 January 2013**, the Provider states that it issued a Letter of Offer to the Complainants offering capitalisation of arrears and a 3 year interest only arrangement with monthly repayments of €811.82. On receipt of the Complainants' acceptance of the offer dated **14 February 2013**, the Provider advises that the loan was switched to interest only repayments and the existing arrears of €40,042.00 were added to the outstanding balance of the loan. A letter was issued to the Complainants on **19 February 2013** advising them of this.

On **8 February 2016**, the Provider states it wrote to the Complainants advising that the 3 year interest only arrangement was due to expire on **1 July 2016**. The Provider advises that the loan remained on interest only repayments for longer than outlined in the letter and switched to principal and interest on **3 July 2017**. The Provider explains, on **3 July 2017**, it informed the Complainants that the loan repayments had been changed to principal and interest. The Provider also states there was no arrangement in place on the account from that date to the date the loan was sold.

The Provider states the loan fell into arrears on **4 August 2017**. Its Collections Department attempted to contact the Complainants by telephone on **14 August 2017**, however, this was unsuccessful. Prior to this, the Provider says an arrears letter issued to the Complainants on **9 August 2017** requesting they get in touch to discuss the arrears.

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The Provider states it continued to engage with the Complainants in order to agree an approach in handling the arrears on the account. The Provider submits that its records indicate there was a lack of supporting financial information from the Complainants which hindered the loan being assessed for Long Term Treatment (LTT).

The Provider says: *“Given the Portfolio Manager’s knowledge of underwriting it was clear that the loans were not sustainable but in order to comply fully with CPC all documents must be received for assessment before a formal response could issue.”*

The Provider says the Complainants first spoke with the Portfolio Manager by telephone on **16 February 2016** where the Portfolio Manager was following up on a letter issued to the Complainants on **8 February 2016** in respect of the loan reverting to full principal and interest repayments. The Portfolio Manager agreed to meet with the Complainants once the Standard Financial Statement (SFS) and supporting documentation were returned for assessment. The Provider states the Portfolio Manager organised for an SFS to be sent to the Complainants for completion.

The Provider’s Formal Response proceeds to set out, over the course of six pages, a timeline of the Portfolio Manager’s engagement with the Complainants between **February 2016** and **August 2018**.

On **12 May 2016**, the Provider states the Portfolio Manager met with the First Complainant in relation to reviewing the account and to discuss the options available to the Complainants. The Provider says that its system notes state there was no sustainable LTT available from the documentation provided at the time and the First Complainant was in talks with a new business venture that would produce an income within the next 6 months. The Provider states that *“[i]t was agreed to accept level of payments on a “without prejudice” basis on the mortgage account but would need to be sorted or flow to legal.”*

The Provider states that further engagement took place between the First Complainant and the Portfolio Manager in **October 2017** when it was outlined that the Complainants wished to sell the BTL properties and have the outstanding balance written off. The Portfolio Manager was informed that the BTL properties were *sale agreed* for €455,000 excluding additional costs of approximately €15,000. The Provider advises that the balance outstanding on the loan at the time was €525,000 and, had the Provider consented to the sale, there would have been a shortfall of €85,000 which would have transferred to the Complainants’ home loan.

On **13 April 2018**, the Provider says the Portfolio Manager contacted the First Complainant and agreed to meet him in branch on **18 April 2018** to review and discuss the SFS for a possible LTT. The Provider states its records indicate that the Portfolio Manager contacted the First Complainant by telephone on the day of the meeting to apologise and advise that he had been delayed at a previous meeting which lasted longer than expected, and attempted to re-schedule the meeting. On **27 April 2018**, the Provider says the Portfolio Manager added a note to its system stating he had been in contact with the First Complainant advising that he would not be able get to the meeting and attempted to re-schedule.

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The Provider states it did not suit the First Complainant to re-schedule the meeting as he had personal commitments the following day and the Portfolio Manager also had meetings arranged.

The Provider states the system notes record that the First Complainant confirmed he would send the necessary documentation to the Portfolio Manager. The Provider remarks that the same note states: *'there was no change in the past year as the Complainant was still awaiting starting paid employment and was unable to make any sustainable proposal up to now. Hence, no assessment fully complete to date. Will assess if any LTT available if documents in order.'*

The Provider states there is no record to indicate the Portfolio Manager attempted to arrange another meeting and, as the Portfolio Manager no longer works in the Provider, it is unable to ascertain why this was the case. The Provider states that it would like to apologise for the Portfolio Manager missing the arranged meeting but this was unavoidable. However, the Provider accepts that the Portfolio Manager should have made more of an effort to arrange an alternative meeting at that time.

During the month of **May 2018**, the Provider states its Debt Collections Department attempted to contact the Complainants on a number of occasions but was unsuccessful. The Provider states the Portfolio Manager telephoned the First Complainant on **12 June 2018** to discuss the SFS that had been received and any available options. The system notes state that the Complainants still had no income and there was a problem with one of the tenants residing in one of the BTL properties.

On **14 June 2018**, the Provider says the Portfolio Manager contacted the First Complainant by email and listed the items that were outstanding in relation to the proposal to sell the BTL properties which included a signed SFS, proof of income, up to date medical information, sensitive personal data form, and tax balance for previous years accounts submitted to the Revenue Commissioners.

Referring to the system notes entered by the Portfolio Manager, the Provider says the First Complainant stated he was not aware of the outstanding requirements for a full assessment due to being under pressure as a result of personal circumstances at the time.

The Provider advises that it received a letter dated **22 July 2018** appointing a third party adviser (the **Adviser**). A representative of the Provider telephoned the Adviser on **25 July 2018** and the Adviser told the Provider's agent that the Complainants wished to sell the BTL properties and that there would be no shortfall. According to its system notes, the Provider says the Portfolio Manager met the Adviser on **2 August 2018** and an SFS and supporting documentation was provided during this meeting.

On **2 August 2018**, the Provider states it issued a letter to the Complainants informing them of the sale of the loan. On **3 August 2018**, the Provider says it received a letter from the Adviser advising the Portfolio Manager that he would not be submitting a formal proposal on behalf of the Complainants until he received further instructions from the Complainants. The Provider states that it has no record of a formal proposal being received.

The Provider states that for any proposal to be considered, it requires a completed SFS and supporting documentation. As this was never received in full during period in respect of this complaint, no proposal could be fully assessed. The Provider states that no proposals for LTT or for consent to sell the BTL properties were sent for assessment due to a number of factors: insufficient documentation being received; a period where the Complainants, due to personal circumstances, were not in a position to submit documents; and because of a time lapse, it was necessary to request a new SFS and up to date supporting documents. The Provider also states *"... there were shortcomings in the engagement of the PM with the Complainant in relation to the matter, and the Bank would like to sincerely apologise for same."*

Notwithstanding this, the Provider says the loan was completely unsustainable and not having a proposal submitted at an earlier time actually benefitted the Complainants as it allowed time for them to improve their financial situation, and for property prices to increase resulting in higher sales proceeds to avoid any shortfall.

Formal Complaint

The Provider states it received a formal complaint on **8 June 2018** and an acknowledgement letter issued on **14 June 2018**. A further letter was received from the Complainants on **16 August 2018** regarding their complainant. The Provider says holding letters issued on **5 July** and **2 August 2018**.

The Provider explains that its CEO received a letter from the Complainants dated **22 August 2018** on **27 August 2018**. This was forwarded to the Customer Resolution Centre to investigate and logged on the complaints system on **27 August 2018** with an acknowledgement letter issuing on **29 August 2018**. The Provider states further holdings letters issued on **21** and **28 September 2018**.

The Provider states that a Final Response letter issued on behalf of its CEO on **11 October 2018** and a Final Response letter in respect of the formal complaint issued on **19 October 2018**. The Provider *"... acknowledges that the final response letter dated the 11th October 2018 should have gone in to more detail regarding the Complainants dealings with the Banks PM."*

In respect of the Final Response letter dated **19 October 2018**, the Provider clarified that the Complainants were not engaging in an arrangement with the Provider and the Provider would like to apologise for this error and for any confusion this may have caused to the Complainants.

The Provider advises that its records show correspondence was received from the Complainants on **28 November 2018** expressing their dissatisfaction with the Provider's response to their complaint and they would be escalating the matter to this Office. The Provider states it should have re-activated the complaint and issued a letter to the Complainants with more detailed information regarding their dealings with the Portfolio Manager. The Provider states that it "... sincerely apologises for this oversight."

The Complaint for Adjudication

The complaint is that the Provider acted unreasonably and/or unfairly in failing to engage with the Complainants regarding their loan from **February 2016**.

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.

The Complainants' representative in his letter to this Office dated **3 May 2021** stated that "*there is a clear conflict of fact as regards the communications between the Portfolio Manager and the First named Complainant that can only be resolved through an oral hearing of the evidence of the Portfolio Manager and the First named Complainant*".

However, 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 26 January 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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Following the issue of my Preliminary Decision, the following submissions were received:

1. E-mail from the Complainants to this Office dated 27 January 2021.
2. E-mail from the Complainants to this Office dated 12 February 2021.
3. Letter from the Provider to this Office dated 26 February 2021.
4. Letter from the Complainants' newly appointed solicitors to this Office, together with enclosures, dated 11 March 2021.
5. E-mail from the Provider to this Office, together with attachment, dated 25 March 2021.
6. E-mail, together with attachment, from the Complainants' newly appointed representative to this Office dated 3 May 2021.

Copies of these submissions were exchanged between the parties.

The Provider has not made any further submission.

Both the Complainants and their newly appointed representative have, through their post Preliminary Decision submissions, sought to broaden the scope of the complaint which has been investigated and adjudicated upon by this office.

As detailed above, the complaint, as based on the complaint and submissions made by the Complainants prior to the issuing of my Preliminary Decision, which has been investigated and adjudicated is that *"the Provider acted unreasonably and/or unfairly in failing to engage with the Complainants regarding their loan from **February 2016**".*

The Complainants and their representative have sought to have this Office adjudicate on an element of complaint concerning the alleged advice given to the Complainant by the Portfolio Manager *"to remove the tenants from the apartments as a sale was to be agreed by [the Provider] and this was in anticipation of an early resolution"*.

The Complainants submit that as a consequence of the advice *"[they] could not rent the properties in that period. (sic) and [they] [are] at a loss of rental income from January 5th 2018 to August 2020 at a total figure of 108,800 euro"*.

It is not possible to broaden the scope of this adjudication at this stage. For the avoidance of doubt, this new element of complaint has not formed part of my adjudication of the current complaint.

This new complaint was introduced after the investigation process and in response to my Preliminary Decision. Therefore, it has not been investigated nor considered by me and I will not comment further on it.

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Similarly, the Complainants and their representative have sought to have this office investigate both the “*removal of [the Complainants’] interest only*” rate and the “initial sale of the loan to the Complainants and has requested this office to adjudicate on “*Whether or not [the Provider] was entitled to, at any stage, compel the Complainants to pay Capital and Interest*” repayments.

The Complainants’ representative submits that “*it ought to be noted, the Complainants only now seek legal advice and it is clear from the correspondence, they do not have the expertise to identify and explore such an issue.*”

[The Complainants’ representative] *respectfully submits I do not believe the complaint of the Complainants can be fully and adequately considered, for the foregoing reasons, in the absence of an analysis of the product sold and the contract*”.

I would again state for the avoidance of doubt, that this new element of complaint has not formed part of my adjudication.

Yet again, this element of complaint was only introduced after the investigation process and in response to my Preliminary Decision. Therefore, it has not been investigated nor considered by me.

It may be possible for the Complainants to make a separate complaint to the Provider, and ultimately to this Office if necessary and appropriate, on these issues. However, this is a matter for the Complainants and their advisers to consider.

Another point that I must address before returning to my analysis of the present complaint, is the Complainants’ and their representative’s post Preliminary Decision submission regarding the new loan owner.

It should be noted that this complaint is maintained solely against the Provider. It does not involve any consideration of the actions or duties of the new loan owner.

Having considered these additional submissions and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

Background

The Provider offered to capitalise the arrears on the loan account and a 3 year interest only arrangement by letter dated **31 January 2013**. This was accepted by the Complainants on **14 February 2013**.

The Provider wrote to the Complainants on **8 February 2016** to advise them that the interest only arrangement was due to expire on **1 July 2016** and the loan would revert to capital and interest repayments. The letter outlined the need to have an affordable repayment strategy in place and of the importance of engaging with the Provider to arrange for the completion of an Income & Expenditure Review.

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The Complainants were advised that one of the Provider's case managers would be in contact within the next 10 day to arrange a review. Finally, the letter advised that the Provider proposed to extend the interest only arrangement for a further 5 months. Although the interest only arrangement was due to expire in **July 2016**, it appears to have continued until **July 2017**.

The Provider's system notes (the **Notes**) contain an entry dated **16 February 2016**, in respect of a telephone conversation between the First Complainant and the Portfolio Manager:

"PM spoke to [the First Complainant] & advised of purpose of call as a follow on from recent letter.

Advised of procedure & aware that SFS & P60's for both parties required. Will [get] doc's together & will expect the SFS & list of requirements next couple of days. ... Agreed to meet once all doc's are in order."

The Notes record that *"PM sent SFS/Doc's to client for Comp. & return to PM in the next 10 days. ..."* on **17 February 2016**.

The Portfolio Manager entered a note on the system on **14 March 2016** stating that he *"... rang & left n/n for call back. Need doc's for Review."* This was followed by a further entry the following day which recorded further unsuccessful telephone contact.

The Notes also state that the Portfolio Manager sent a text message to the First Complainant requesting that a completed SFS be returned. On **28 April 2016**, the Notes says that *"PM advised SFS/Doc's posted to [redacted]. Will review upon receipt."*

The Notes indicate that the Portfolio Manager received the relevant documentation in or around **27 May 2016** and *"... will review for PC&I or other possible remedy."*

It appears the Portfolio Manager telephoned the First Complainant on **31 May 2016** requesting further information.

The Notes state that:

"PM rang [the First Complainant] as need Tax Bal. stat. & details on income as not evident what his exit strategy is. Income reduced he states due to repossession of properties he was managing but adv. that I needed a breakdown of Income as unless we agree a strategy that a RR may be appointed. Client to ring/text me back on this next 24 hours."

The following entry was made in the Notes on **7 June 2016**:

"PM put call in to [the First Complainant] looking for Tax Bal. Stat for 2014 as need to submit for LTT. No response & left v/mail. Got the following e mail just recently in response ... from client.

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'Hi [Portfolio Manager] I have requested some paperwork from [financial services provider] so i will be in touch with you as soon as i have seen these and i have got my income cert etc ...'

Responded that happy to await the outcome of the doc's he has requested & that I'm prepared to meet with him to discuss all possible scenarios for a sustainable & affordable solution & that he can contact me once the situation at home has improved ..."

The First Complainant wrote to the Portfolio Manager on **15 June 2016** outlining his financial position and put forward the following proposal:

"My proposal is as follows:

- *to continue paying Interest Only and managing the apartment for a further 3 years Jan 2017 – Jan 2020*
- *commence payments of Euro240 towards [capital] – Jan 2017 – Jan 2020*
- *Review this proposal in 3 years time with a view to marketing the properties if*
 1. *Market conditions improve*
 2. *Individual sales rather than group sale to remove risk of market saturation*
 3. *If market conditions do not support sale – extend agreement for a further 3 years*

..."

The Notes state that the Portfolio Manager spoke with the First Complainant on **23 June 2016** to arrange a meeting.

On **28 July 2016**, the Notes state:

"PM got sms from client 23/06 that he would fwd. paperwork on his return from UK ... Further sms from client on 27/06 that was in the process of getting doc's from medical practitioners on behalf of wife & son which had large medical expenses ..."

It appears a meeting took place between the First Complainant and the Portfolio Manager on **19 January 2017**. The Notes record the meeting as follows:

"Had the Sensitive Doc. form & letters as regards wife's medical history & his son. Is liking to get a LTT in place but is having difficulties with 1 of his tenants.

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Advised him that he needs to sort this ASAP as the a/c is overdue being assessed & need to put either a LTT in place or it will flow to legal. ... Said I was preparing the doc's for assessment & that he should be in receipt of doc's in the next week or so."

The Notes indicate that on **7 April 2017**: "PM loading SFS for CDST assessment to take place."

A letter in similar terms to that issued on **8 February 2016** was sent to the Complainants on **3 January 2017** and advised that the interest only arrangement was due to expire on **1 July 2017**. The Provider wrote to the Complainants in respect of this arrangement again on **31 May 2017** reminding the Complainants of its expiry and that a case manager had attempted to make contact but had been unsuccessful.

The First Complainant telephoned the Provider in response to this letter on **7 June 2017** to explain that he had been dealing with the Portfolio Manager for the last 9 months. The First Complainant told the Provider's agent that he had provided the documentation to the Portfolio Manager following his various requests. The First Complainant also explained that he met with the Portfolio Manager 2 months before the call, gave him the relevant information and the Portfolio Manager told the First Complainant he would be in touch with him.

It appears the First Complainant submitted a query to the Provider in or around **17 July 2017**. In an internal email to the Provider's Mortgage Query section, one of the Provider's agents wrote:

"Customer has been notified by us that he will be moving over to capital and interest. He was on IO since 2013. He has advised he does not wish to go on C&I. He was with [the Portfolio Manager] back in Feb where he filled out a new SFS, [the Portfolio Manager] said he sent this in to mortgage services. Nothing appears on [the system]. ..."

In response to this on **20 July 2017**, the Mortgage Query Section wrote:

"We don't assess SFS's here in the mortgage dept so [the Portfolio Manager] may have sent it to Collections/AMU as they look after SFS. If there is nothing to us on [the system] then we don't have the docs. ..."

One of the Provider's agents emailed the Portfolio Manager on **26 July 2017** as follows:

"Above customer called today in relation to his account returning to full C&I and he advised he cannot afford same. He stated that he submitted all docs requested by yourself 3 months ago. I cannot see same on file.

Customer requested that you call him at your earliest convenience ... to clarify going forward."

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On **23 August 2017**, another of the Provider's agents emailed the Portfolio Manager in respect of a telephone call from the First Complainant that day:

"Received a call from [the First Complainant] RE I/O property that has reverted to Full C&I. Account is in arrears now and customer cannot afford meet full C&I repayment. [The First Complainant] advised had been in contact with you and had submitted SFS and all required docs earlier this year. There is no record of this on [the system] or notes.

Would it be possible to contact the customer regarding?

Also note he called in to request you contact him approx. 3 weeks ago 27/07 but to date had advised he had not heard from you."

The Portfolio Manager responded to this email on **25 August 2017** stating he would contact the First Complainant the coming Monday. The Notes indicate that the Portfolio Manager telephoned the First Complainant on **31 August 2017** and "... advised that he can discuss the account tomorrow morning as will have free time then. Agreed to call tomorrow morning to discuss ..." However, I note that this call does not appear to have taken place and there is no entry on the Notes to indicate that any telephone contact or attempted telephone contact was made by the Portfolio Manager the following day.

One of the Provider's agents emailed the Portfolio Manager on **27 September 2017** advising that the First Complainant telephoned regarding an arrears letter he received and told the Provider's agent that he submitted an SFS and supporting documentation to the Portfolio Manager and is waiting hear back from the Portfolio Manager. The email also advised the Portfolio Manager that the First Complainant requested that he telephone him to discuss the account and was anxious to reach a resolution. The Portfolio Manager responded to the agent on **28 September 2018** saying: "Will ring him this a.m. & update [system] with the result."

The Portfolio Manager received an email from one of the Provider's agents on **13 November 2017** informing him that the First Complainant telephoned and requested that the Portfolio Manager call him. The Portfolio Manager responded to the agent on the same day advising that he would call the First Complainant later that day.

On **17 November 2017**, one of the Provider agents wrote to the Portfolio Manager stating that:

"... I see as per [the system] 17/07/2017 you advised you would call the customer back on 13/7/2017.

There has been no update on the account since, could you please advise if you contacted the customer?"

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In an email dated **22 November 2017**, one of the Provider's agents wrote to the Portfolio Manager querying "... to see has contact been made with the customer as I seen you did say you would be in touch with him. Would there be an update at all?"

Following a telephone call from the First Complainant, the Provider's agent emailed the Portfolio Manager on **13 March 2018** requesting that he telephone the First Complainant: "... He says he has been liaising with you for a while now and he would like to sell a property. He was waiting for an update from you and the sale fell through."

In a further email, one of the Provider's agents wrote to the Portfolio Manager on **21 March 2018** requesting that he contact the First Complainant having spoken to the First Complainant that day, stating:

"He said he sent in an SFS with all the docs last year which I can see from notes in April last year and noting has been done.

We are now continually dialling him on our dialler system here because nothing has been done. Do you know what happened here? The calls are going out every week and we have not had an update from you and the customer advised has not heard from you."

The Portfolio Manager responded on the same day, explaining: "Will do, stuck with [named] project but yes, I have him in my list to get sorted."

During a telephone conversation on **9 April 2018**, the First Complainant referred to a telephone conversation with the Portfolio Manager which took place 3/4 weeks prior to this call. The First Complainant explained that the Portfolio Manager told him they would meet in the days following that conversation and he would be in contact with the First Complainant. The First Complainant told the Provider's agent that he had not heard from the Portfolio Manager since their initial conversation. The First Complainant also told the Provider's agent that he made an offer to sell the BTL properties and to make repayments over a 12 month period but the Portfolio Manager did not revert to the First Complainant on these proposals.

The Complainants wrote to the Portfolio Manager on **9 April 2018** as follows:

"With ref to the above properties and to try to get this resolved

1. I propose to pay 1000 euros a month, starting 1st May 2018 for 12 months then sell both properties and if there is a shortfall, the balance to be written off

2. To sell the properties now and to write off any balance

..."

By letter dated **18 April 2018**, the Provider wrote to the Complainants explaining that in order to assess their financial situation, an appointment with a specialist in a local branch together with a completed SFS together with supporting documentation was required. During a telephone call with the Collections Department on **27 April 2018**, the First Complainant told the Provider's agent that he submitted a new SFS and supporting documentation to the Portfolio Manager the previous week.

The First Complainant wrote to the Provider in seemingly identical terms on **15 May** and **8 June 2018**. In these letters, the First Complainant says:

"I have been dealing with [the Portfolio Manager] since Feb 2016. I wanted this issue resolved ASAP and either a review of the payments or to sell the apartments. To this date nothing has happened. The mortgage went to principal and interest and I pointed out a year before this happened that I could not pay it. Since then, through various meetings, nothing has happened. I offered to pay 1000 Euro a month for a year then sell apartments and any balance owed to be written off.

I always offered to sell apartments now and any balance written off. I supplied valuations to [the Portfolio Manager]. Our last meeting was scheduled for 18th April for which he never turned up. I got a call on 1st May saying that it would all be resolved by the end of the day. To this date nothing has happened. I have furnished you with medical reports on my wife and my son. ... I have an email stating that a 3 year structure was been put in place but nothing has happened. I either want a new payment and all existing arrears gone or instructions to sell apartments and all balances written off."

The Notes indicate that the Portfolio Manager telephoned the First Complainant on **12 June 2018** "... & asked for call back to discuss SFS & any available options."

The above letter from the First Complainant was forwarded to the Portfolio Manager for comment on **13 June 2018** by one of the Provider's agents. The Portfolio Manager responded the same day advising that:

"...Spoke with [the First Complainant] yesterday & have e mailed him the remaining requirements for assessment to be completed for his accounts.

He had sent in an SFS & bank statements but had omitted the last tax returns & the working account bank statements for the 6 months required.

Once in receipt the case will be assessed. ..."

The Portfolio Manager wrote to this agent again on **14 June 2018** as follows:

"Spoke to [the First Complainant] & he's happy to produce full set of doc's for the assessment to be carried out.

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His wife is in hospital, his son is not well & with no work under a lot of pressure so wasn't aware that more doc's required for a full assessment. ..."

The Portfolio Manager made the following entry in the Notes on **14 June 2018** in respect of an email sent to the First Complainant.

"[First Complainant],

I need some u.t.d. doc's for the formal proposal to be submitted on both the Buy to Lets & on your PDH. Can you e mail them to me or send via your local [branch] to ... [location] please. Page 10 of the attached SFS to be signed & dated by both [the Second Complainant] & yourself please for the SFS Form you sent me recently. Sensitive personal data to be stored separately, again signed by both.

Any u.t.d. letters or reports for both [the Second Complainant] and your son as to show that only reliant on sole income & have ongoing medical issues & expenses.

Proof of Income for the E910 monthly as shown on the SFS. U.T,D. balance of [company] account for properties Tax Bal. Stat. for last year's Accounts as submitted to Revenue. Snr, Mgr. is in Dublin today & tomorrow but I have e mailed him the synopsis of the figures across the 3 accounts to see if he requires anything further for sign off. ..."

The Complainants wrote to the Provider on **22 July 2018** advising that a third party, the Adviser, had been appointed to deal with the Provider on their behalf. The letter also requested that the Provider furnish the Adviser *"... with whatever information he requires in that regard."* The Provider wrote to the Adviser on **2 August 2018** enclosing the Complainants' account correspondence.

Analysis

The evidence indicates that the Portfolio Manager first became engaged with the Complainants **16 February 2016**. An SFS appears to have been issued the following day. A completed SFS was returned by the Complainants in or around **27 May 2016**.

The Provider's Notes indicate that the Portfolio Manager attempted to contact/contacted the First Complainant regarding the return of the SFS prior to it being returned in May. Further information appears to have been requested by the Portfolio Manager on **31 May 2016**.

The First Complainant submitted a proposal to the Portfolio Manager on **15 June 2016**. However, the Notes entry dated **28 June 2016** indicates that certain information/documentation remained outstanding and had yet to be provided.

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A meeting took place between the First Complainant and the Portfolio Manager on **19 January 2017**. It appears documentation was provided by the First Complainant during this meeting and that the Portfolio Manager was preparing the previously submitted SFS for assessment. The relevant information appears to have been loaded onto the Provider's assessment system in or around **7 April 2017**.

Up to this point, having considered the evidence, I accept that the Portfolio Manager engaged with the Complainants in a reasonable manner. An SFS was given to the First Complainant for completion, reasonable requests for supporting documentation were made, and there appears to have been reasonably regular contact between the parties. Once the Portfolio Manager received the appropriate information, this was submitted for assessment in **April 2017**. However, while the First Complainant submitted a proposal in **June 2016**, it is not clear if this was responded to or whether the First Complainant was advised that it was not possible to assess the proposal until the relevant information had been received and assessed.

Disappointingly, the evidence shows that after **April 2017** there is a clear lack of engagement and serious lack of communication from the Portfolio Manager. Further to this, the Portfolio Manager failed to maintain proper notes or records in respect of his interactions or contacts with the First Complainant and failed to record or upload to the Provider's system the documentation received from the First Complainant.

The First Complainant attempted to follow up with the Provider on several occasions and the agents with whom the First Complainant spoke also sought updates from the Portfolio Manager and, in particular, requested that the Portfolio Manager telephone the First Complainant. However, the evidence does not show that the Portfolio Manager responded to or took any action on foot of these communications and very little action appears to have been taken by the Portfolio Manager around this time.

It also appears that, despite the deficiencies in the Provider's Notes (which the Portfolio Manager should have been aware of and which were brought to his attention), the Portfolio Manager failed to bring the Notes up to date. As can be seen, this resulted in unnecessary and unreasonable telephone contact with the First Complainant from the Collections Department.

It is not clear, on the basis of the evidence presented, whether or to what extent the Portfolio Manager communicated with the First Complainant, if at all, regarding the outstanding information required to submit his 2017 SFS and proposal for assessment. A further SFS appears to have been provided to the Portfolio Manager in **April 2018**.

It seems that the First Complainant was not made aware of the additional supporting information required until **June 2018**. The Portfolio Manager's request in this regard appears to have been prompted by the First Complainant's complaint rather than the proper discharge of the Portfolio Manager's functions. Again, I consider this to be an unacceptable delay and I believe that had the Portfolio Manager acted in a reasonable manner, a second SFS would not have been required.

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The Complainants made a formal complaint on **8 June 2018**. This was acknowledged on **14 June 2018**. The Provider issued update letters on **5 July** and **2 August 2018**. A further letter was sent to the Provider by the Complainants in respect of the complaint on **14 August 2018**. The Complainants also wrote to the Provider's CEO on **22 August 2018** expressing their dissatisfaction in respect of the Portfolio Manager's management and handling of their loan account. This appears to have been received by the Provider on **29 August 2018**. The Provider wrote to the Complainants on **29 August 2018** referring to a *recent communication* and identified the point of contact in respect of their complaint. The letter also advised that the complaint was currently being investigated. The letter to the Provider's CEO was expressly acknowledged on **21 September 2018**. A final update letter issued on **28 September 2018**.

The Provider issued a Final Response letter in respect of the Complainants' letter to the CEO on **11 October 2018**. A Final Response letter in respect of the Complainants' formal complaint issued on **19 October 2018**. Both Final Response letters apologised for the delay in responding to the complaint, explaining this was due to an unprecedentedly high volume of complaints.

While there was a delay in responding to the letter of complaint and the letter to the Provider's CEO, I do consider this delay to have been particularly unreasonable and I note regular update letters were issued to the Complainants.

The complaint made to the Provider was predominantly concerned with the Portfolio Manager's conduct towards the Complainants. Given the nature of the complaint and the general tenor of the First Complainant's communications with the Provider's agent regarding the Portfolio Manager's conduct together with the internal communications between the Provider's agents and the Portfolio Manager, having considered the first Final Response letter, I am not satisfied the Provider gave proper consideration to the complaint and surrounding circumstances which is clearly evident in the first Final Response letter.

This is quite disappointing and shows a failure on the part of the Provider to properly investigate and respond to the complaints.

The letters of complaint were similar in terms of the complaint being made. The Final Response letter dated **11 October 2018** set out the Provider's response to complaint made to its CEO. The Final Response letter dated **19 October 2018** set out the Provider's response to the formal complaint by referring to and enclosing the Final Response letter dated **11 October 2018**.

Given that the Provider's substantive response was contained in the first Final Response letter and the fact that the complaint being made in each of the Complainants' letters were essentially the same, I do not consider the Provider's conduct in referring to and enclosing the first Final Response letter as its response to the formal complaint to be unreasonable or inappropriate.

Following this, the First Complainant wrote to the Provider on **20 November 2018** in response to the Provider's Final Response letter of **11 October 2018** expressing his dissatisfaction with the contents of this letter. This does not appear to have been responded to by the Provider. The Provider states that it should have re-activated the complaint and issued a letter to the Complainants with more detailed information regarding their dealings with the Portfolio Manager. While the Provider is not necessarily obliged to engage with a complaint once a final response letter has issued, I accept that it would have been helpful if it had in relation to this complaint.

Goodwill Gesture

The Provider states that:

"[h]aving reviewed the Complainant's complaint and in an effort to reach an amicable resolution, the Bank would like to offer the amount of €1,000.00 as a gesture of goodwill for the service issues identified."

In light of the deficiencies and shortcomings in respect of the Provider's conduct and the Portfolio Manager's conduct, I do not consider that the goodwill gesture offered by the Provider constitutes a reasonable sum of compensation for the very considerable inconvenience caused to the Complainants by this conduct.

Therefore, I substantially uphold this complaint and direct the Provider to pay a sum of €5,000 to the Complainants in compensation.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2) (b) and (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 €5,000, 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

17 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.