



<b><u>Decision Ref:</u></b>	2021-0198
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Multiple Products/Services
<b><u>Conduct(s) complained of:</u></b>	Failure to process instructions Delayed or inadequate communication Level of contact or communications re. Arrears Failure to process instructions in a timely manner
<b><u>Outcome:</u></b>	Rejected

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

This complaint concerns the delay on the part of the Provider in the issuing of the title deeds to the Complainants in respect of an investment property.

**The Complainants' Case**

The Complainants submit that they first requested the release of their Title Deeds in **August 2017**:

*"Our solicitor wrote to [the Provider] seeking release of the Deeds in August 2017, sent a reminder after failing to receive a reply and thereafter over a number of weeks throughout (sic) late September, October and early November 2017 we repeatedly attended and rang the Branch in our attempt to obtain the Deeds."*

The Complainants submit that "In or around early October 2017", when they again requested that their title deeds be released by the bank, they were advised the deeds would be available within 2 weeks:

*"In the course of repeated attendances at [the Provider's branch], we were repeatedly told the Deeds would be made available within a 2 week period".*

The Complainants state, that once they secured a buyer, they felt they were left with no option but to *“refuse to leave the branch until the matter was resolved”*.

They submit:

*“Eventually we were forced to take a full day off work (having previously taken parts of days off to attend the branch during opening hours) on 13/11/2017 and wait in the branch until we could speak to a manager”*.

The Complainants submit that after meeting with a manager, they arranged to return later in the day to receive written confirmation of their complaint. They state they were refused written confirmation of other details in regards to their request for the title deeds.

*“The meeting ended with [the manager, Mr H] assuring us he would ‘look into’ the matter further, provide written confirmation of the complaint number that he would raise, but refused to provide written confirmation of*

- *The bank’s actions to date*
- *Details of any conversation between [the Provider’s Ms H and the Second Complainant]*
- *Details of the Bank’s standard procedure to obtain the Deeds as these were ‘internal Bank documents’, or*
- *A copy of his record of the meeting”*.

The Complainants contend that on their return, they were advised the deeds would not be released as they were held by the Provider as security. They submit that they were refused answers and were misinformed on how to get answers to their queries:

*“We returned at approximately 3:30 pm and when [Mr H] brought us into an office with [Ms H] we were firstly accused of not providing all the facts, i.e. the outstanding balances, however [Mr H] had reviewed the accounts during the earlier meeting. Only then were we informed by [Mr H] that you were refusing to provide the Deeds on the grounds that you held same as security not withstanding [Mr H’s] admission that he did not have details of the security in the document to hand. [Mr H] refused to provide a copy of the document he alleged was the basis for this assertion and then also proceeded to misinform us, in writing, as to the procedure we should follow to obtain access to same i.e. engage with [the Provider’s solicitor] in spite of having previous refused to provide this direction. [Mr H] also raised the matter of the arrears on our mortgage accounts and asked us specifically what we were doing to address these. We informed him of our intention to address same from the proceeds of the sale”*.

The Complainants submit that when they contacted the Provider's solicitor in respect of the deeds, they were informed they would need to contact the Provider again:

*"We immediately engaged with [the Provider's solicitor], to establish how to obtain the deeds, but [the Provider's solicitor] confirmed they had no part in the process and we should revert directly back to you to obtain access to the Deeds".*

The Complainants state that, shortly after their meeting with Mr H, the Complainants were notified the Provider had proceeded to commence the legal process to repossess their primary dwelling house (PDH). They submit that they were advised by the "mortgage arrears case officer" that they knew nothing of the Complainants' meeting with Mr H. They further submit that when they queried why Mr H "would not have passed the relevant information to the mortgage arrears unit", the reply received was that they should have addressed the matter directly to the Provider's mortgage arrears unit.

The Complainants submit, once they had been informed by the Provider's solicitor that the solicitor was not involved in the release of the deeds, they contacted the Provider again "to establish the correct procedure, find a contact person within the bank and go through the process again, while trying to assure the prospective buyer the matter was in hand". The Complainants submit that they felt they had no option but comply with whatever the bank required:

*"...we concluded we had no option but to comply with whatever [the Provider] required due to the pressure being exerted on us in relation to our dwelling house".*

The Complainants submit that there were further delays, and these delays caused issues again with the prospective buyer:

*"On 27th November we were informed the Deeds would be at [the Provider's branch] within 2 days... However the deeds did not arrive to [the Provider's branch] so we again had to contact the Legal Department who confirmed the Deeds had not been sent to the Branch but would be issued as soon as they could arrange for someone to sign for them in the branch. When our solicitor attended the Branch to collect the Deeds, [Mr H] refused to release them to our solicitor. Our solicitor then had to inform the buyer's solicitor that he had yet again been unable to obtain the Deeds from the Bank, as he had originally confirmed they would be available following confirmation from your own Legal Department. We again had to contact the Legal Department who subsequently instructed [Mr H] to hand deliver the Deeds to our solicitor".*

The Complainants submit that the sale fell through and that they were advised by their sales agent that "a number of potentially interested parties had refused to have any involvement with the property due to 'issues with the Deeds'".

The Complainants also submit that when an offer did come in, they felt they were left with no option but to accept it:

*“When we received an offer that realised approximately €20,000.00 less than the original offer, we felt we were left with no option but to accept it given the position we were placed in by the Bank and as we advised to your mortgage arrears unit”.*

The Complainants have submitted, as evidence of the delays, two letters from the Complainants’ solicitor, dated **10 October** and **26 October 2017**, requesting the release of the Deeds and a handwritten memo from the Provider’s Branch confirming the First Complainant visited the Branch on **3 November 2017** seeking the release of the Deeds. In further correspondence between the FSPO and the Complainants, the Complainants set out specific points they contend have not been addressed by the Provider:

*“[The Provider] has refused to explain why [Mr H] refused to give our solicitor the deeds.*

*At no time did [The Provider] acknowledge we had been in repeated contact with them prior to attending the branch on 13/11/2017.*

*[The Provider] has also refused to provide any documentation verifying their claim that they were entitled to retain the Deeds as security.”*

In respect of the complaint, the Complainants have raised specific points:

- *“you intentionally or negligently failed to supply any record of our repeated attendances at [Provider Branch] throughout October 2017*
- *you directly caused [both Complainants] to make themselves unavailable for work to resolve matters you were solely responsible for*
- *you have no documentation to justify your reason for refusing to release the Deeds to the property*
- *you intentionally or negligently provided incorrect instruction on how to proceed to obtain access to the Deeds causing further delay to the released (sic) of the Deeds*
- *you intentionally or negligently failed to supply any notes or record of the meeting of 13th November 2017*
- *you, through [Mr H]’s actions, having raised the matter of the arrears on the Mortgage Accounts and having been informed of the proposal for the resolution thereof and failing to raise any further request for information did intentionally or negligently fail to comply with the requirements of the Mortgage Arrears Resolution Process.*
- *you intentionally or negligently exerted undue and unfair pressure on [both Complainants] to instruct your solicitor to sign undertakings*

- *you intentionally or negligently put undue and unfair pressure on [the First Complainant] to accept an offer significantly lower than that previously available for the sale of [the Complainant's Property for sale, not PDH], and you are consequently responsible for the loss of approximately €20,000.00 in the proceeds of the sale...*
- *... any documentation you may have that contradicts the above has been deliberately or negligently withheld from the data supplied under the GDPR request, and*
- *You continue to withhold all records of the initial request for the release of the Deeds your response or lack thereof prior to the meeting of 13th November 2017"*

### **The Provider's Case**

The Provider, in its final response letter, references the "*Delay in Release of the Deeds*".

In its response, the earliest date noted is the meeting in the Provider's Branch on **13 November 2017**:

*"I understand you attended [the Provider's Branch] on 13 November 2017 and spoke with [Mr H] regarding your request for [the Provider] to release the Deeds to [Complainant's Property for sale, not PDH]"*

In respect of its solicitor, the Provider states:

*"As advised by [Mr H] the debt secured against the Property... was outsourced to [the Provider's solicitor]."*

The Provider acknowledges that the reason Mr H was unable to release the deeds was that he was not authorised to do so, and states that this authority was only given on **4 December 2017**:

*"... he does not have the authority to provide Deeds to any customers without prior approval from [the Provider] to do so. This authority was ultimately provided to [Mr H] on 04 December 2017 and the Deeds were hand delivered to [the Complainants' Solicitors] on 05 December 2017."*

### **The Complaints for Adjudication**

The complaint is that the Provider did not return the Complainants' Title Deeds to them in a timely manner when requested, and that it proffered poor communication and customer service throughout.

The Complainants want the Provider to resolve the complaint by paying them a compensatory sum, and have broken down the amount sought as follows:

*"Loss on Sale of Property €20,000.00*

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*Loss of wages due to taking time off €1,000.00*

*Time taken in lieu of holidays €2,000.00*

## **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 29 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.

Following the issue of my Preliminary Decision, the Complainants made a submission under cover of their letter to this Office dated 15 May 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 17 May 2021 that it had no further submission to make.

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

## **Analysis**

A large amount of material has been provided by the Complainants in support of their complaint (as is apparent from the summary of the complaint set out above) however their complaint is essentially that there was an inordinate and unreasonable delay in providing them with the title deeds to a property following the making of multiple requests for the

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deeds. It will be useful, in the first instance, to provide some background information.

The Complainants in this case owned two properties in the same general area, both of which had the same street number but which were located on different roads. Property A, which appears to be the Complainants' primary residence, is the subject of mortgage charges in favour of the Provider arising from two separate mortgage accounts held jointly by the Complainants with the Provider. The combined debt owing in respect of these two mortgages was approximately €96,000 as of July 2020. Property A had been the subject of 'legal' correspondence and indeed, on 17 November 2017, the Provider's solicitor had requested vacant possession of the house failing which Circuit Court proceedings were threatened.

Property B, which appears to be an investment property owned at the relevant time by the First Complainant, was the subject of different charges in favour of the Provider relating to three separate business accounts held with the Provider, one of them held jointly by the Complainants and the other two held by the First Complainant solely. A "*first legal/mortgage charge*" over Property B is expressly cited as security in the terms of the two accounts held solely by the First Complainant (the said loans having been offered as a restructuring of the First Complainant's existing facilities).

In respect of these three business accounts, the Provider had secured court judgments against the Complainants in October and November 2014 (in the amount of €16,159.31 plus costs against the First Complainant and in the amount of €11,038.24 plus costs against the Complainants jointly). These judgments were then registered as judgment mortgagees on Property B in January and February 2015. Following the First Complainant being summoned later in 2015 to the District Court for an 'Examination Hearing' to be examined as to his financial circumstances, an agreement was reached for the payment of these debts by way of annual payments however this agreement was not honoured. The debts remained unpaid at the time that the Complainants sought the deeds to Property B. It is this request for the title deeds that forms the basis for this complaint. The absence of any reference by the Complainants in their complaint to this office to the matters stated in this paragraph, or to the fact that Property B was charged under the First Complainant's business loans, is a serious omission as these are seen as significant to the matters being investigated.

In their email to this office of 18 May 2020, the Complainants maintain that the original request for the deeds to Property B was made in writing to the Provider by their solicitor "*in August 2017*" and that reminders were sent in "*September, October and early November 2017*". This account is inconsistent with the detail set out in the Complainants' letter of complaint to the Provider of 11 February 2019 which omits any reference to requests made in August and September 2017 and which suggests the request was first made in October 2017. I have been furnished with copies of letters to the Provider dated 10 October 2017 and 26 October 2017 from the Complainants' solicitors seeking the release of the deeds to Property B and thus I am satisfied to conclude that these letters represent the first requests for the deeds.

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However, the position appears to be that the debts secured on Property B were outstanding (or partially outstanding) at the time of the requests for the deeds and indeed they remained outstanding until late May 2018 following the sale of Property B. Letters from the Provider's solicitors to each of the Complainants dated 02 August 2017 (prior to any request for the deeds being made) noted that the amount of €2,231.89 remained outstanding on the joint account and further noted that the agreed repayment schedule had not been met. It is clear that a further amount remained owing at this time in respect of the accounts in the First Complainant's sole name.

A letter sent from the Provider's solicitors dated 21 November 2017, in response to the requests for the deeds, provided copies of the judgements as well as documentation confirming the registration of the judgment mortgages on Property B.

The letter went on to outline the "*current amounts due*" on foot of the judgments before noting that if an acceptable formal settlement offer were provided by the Complainants' solicitors, the Provider's solicitors would arrange for the Provider to execute an undertaking to release the judgment mortgages upon receipt of the settlement monies. Ultimately an offer to pay €1,800 and €13,200 in respect of the amounts outstanding was accepted by the Provider in May 2018 and payment followed shortly thereafter.

In circumstances where there remained money owing on two accounts which incorporated an express charge over Property B, in circumstances where there remained money owing in respect of the two judgments registered as judgement mortgages on Property B, and in circumstances where there had been a historic failure on the part of the Complainants to honour an agreement regarding the payment of the judgment debt, I am not satisfied that the Complainants have established any unreasonable delay on the part of the Provider in furnishing the deeds. It is clear that the management of these particular accounts had been removed from the local branch and were being dealt with centrally and with the assistance of outside solicitors and a certain amount of coordination between the various offices involved was inevitable and reasonable.

The Complainants' solicitors' letters from October 2017 made no mention of the judgement debts/mortgages. Equally, it is the Provider's case that the Complainants failed to mention these matters in the course of a number of attendances at the branch. Whilst I do not come to any conclusion regarding this assertion, I note that the assertion is consistent with the manner in which the complaint was presented to this office. Certainly, the failure to reference these most relevant facts at an early point contributed to the subsequent delay.

The Complainants' letter of complaint of 11 February 2019 states that the Complainants were advised on 13 November 2017 that the Provider was "*refusing to provide the Deeds on the grounds that [the Provider] held same as security notwithstanding...*" This seems to me to have been an accurate statement of affairs and a position that the Provider was entitled to adopt. It bears repeating that the debt owed to the Provider was secured not only by means of the judgment mortgages but also on foot of the security expressly extended in the loan agreement to the First Complainant.

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This was a valid basis for the Provider to retain the deeds pending the agreement of some proposal to clear the debt. In the event, the Complainants committed to clearing the debt out of the proceeds of sale and this was acceptable to the Provider.

I note that the Provider's internal system notes record that the First Complainant, upon being advised in the course of a meeting in the branch in early November 2017 that there remained debt outstanding on the accounts secured over Property B, expressed his dissatisfaction before going on to "*insist that the debt is repaid*", in other words, that the debt had already been repaid. Furthermore, the Complainants' handwritten account of a meeting in the Provider's branch on 13 November 2017 states as follows:

*When he returned he said he had rung the Bank's Legal Dept but had not received any direction as it was obvious the Bank had mixed up the two properties and the debt attaching thereto.*

*He acknowledged there is no balance due on the loan that was attaching to [Property B].*

This account is repeated in similar terms in the Complainants' letter of 11 February 2019. It seems to me that it may well have been the First Complainant's view (or his expressed view at any rate) at the time that there was no debt owing on the accounts secured on Property B but, if he was of this view, and though it may go some way to explaining the First Complainant's frustrations, it was an incorrect belief. The reiteration in the First Complainant's email of 3 August 2020 to this office, of this view that "*all debts were repaid in full*" is equally incorrect.

The Complainants are seeking €20,000 to reflect the loss of a more favourable sale than that ultimately secured, for which they hold the Provider responsible arising from the delay in furnishing the deeds. The deeds were ultimately furnished on 05 December 2017. The Complainants state in their letter of 11 February 2019 that the original prospective purchaser "*withdrew the offer in January 2018*". Quite apart from the fact that this is said to have happened on a date after the provision of the deeds, it is inconsistent with various entries in the Provider's timeline furnished to this office which record that the sale was still live as of 05 February and that the Complainants informed the Provider that the sale had fallen though only on 21 February 2018.

With regard to the compensation sought, I see no basis on which the Provider could be held responsible for the sale falling through.

A further issue is that the Complainants have asserted that the Provider pressurised them into a below value sale of Property B and that, in doing so, failed "*to comply with the requirements of the Mortgage Arrears Resolution Process*". The Complainants have provided no evidence whatsoever to substantiate this assertion. The engagement between the Complainants and the Provider, in terms of this complaint, related to three business accounts and the investment property charged as security for these loans and the investment property subsequently became the subject of the registration of judgement

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mortgages. Therefore, the '*Mortgage Arrears Resolution Process*', which applies to the mortgage loans of borrowers which are secured on primary residences, is not applicable.

Finally, I wish to address the Provider's acknowledged failure to issue a 'Calling-in Debt Letter' prior to issuing a letter dated 17 November 2017 threatening legal action in respect of the Complainants' home mortgage. The Complainants were unaware of this failing until notified of it by the Provider. Much more significantly, the Provider has confirmed that it did not go on to issue legal proceedings against the Complainants on foot of the letter of 17 November 2017. In circumstances where no action was taken on foot of the letter and in circumstances where the Provider identified the error, brought it to the Complainants' attention and offered an apology, I view this matter as resolved.

For the reasons set out 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**

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

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**(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**

