



<u>Decision Ref:</u>	2021-0276
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling (non- Mortgage Arrears Resolution Process) Maladministration (mortgage)
<u>Outcome:</u>	Rejected

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

This complaint concerns a number of loan agreements held by the Complainant with the Provider. The Complainant is dissatisfied with the approach taken by the Provider to his loans and the standard of service received from the Provider.

The Complainant's Case

In setting out his complaint against the Provider, the Complainant submitted a 'Communication Timeline' with the Provider between **30 September 2014** and **11 October 2018**. The Complainant explains that his complaint arises out of a decision made by the Provider in connection with an alternative payment arrangement relating to an investment property mortgage loan in the amount of €396,000, which the Provider advanced to the Complainant on **24 April 2006**, when his then principal private residence was re-mortgaged by the Provider (the **Investment Property Loan**). The Complainant says the effect of this decision is that in order to comply with the terms of the alternative payment arrangement it would be necessary for him to breach the terms of another mortgage loan, a 'Home Loan Pension Mortgage', that was also advanced to the Complainant by the Provider on **24 April 2006** in the amount of €874,000 for the purpose of constructing the Complainant's family home (the **Family Home Loan**).

The Complainant explains that he complained to senior representatives within the Provider about this decision and its effect on numerous occasions. However, the Complainant says the Provider refused to reconsider its decision and, in addition, in dealing with the Complainant in connection with his complaint, the Provider refused to communicate with him for significant periods of time or to provide certain critical documents.

The Complainant says the Provider also appointed a fixed asset receiver over the property securing the Investment Property Loan without informing him in advance and before issuing the Complainant with a final determination on his complaint.

In respect of the Investment Property Loan, the Complainant advises that it has a term of 25 years and, in accordance with its terms and conditions, during that term, the Complainant is required to make monthly payments of capital and interest, with interest being calculated by reference to the Provider's standard variable rate. The Complainant says that between **April 2006** and **September 2014**, all amounts due in respect of the Investment Property Loan were made in full when due. The Complainant advises that these payments were funded by a combination of rental income from the mortgaged property (the **Investment Property**) and his own funds. However, in **September 2014**, the Complainant says he was made redundant and as a result was unable to contribute his own funds towards the monthly payments that were due. The Complainant says he continued to direct the rental income from the Investment Property towards the monthly repayments, but the Investment Property Loan went into arrears at this time. The Complainant explains that he immediately entered into communications with the Provider.

In respect of the Family Home Loan, the Complainant explains that this is for a term of 30 years and, in accordance with its terms and conditions, the Complainant is required to make monthly repayments of interest to the Provider. The Complainant explains this loan is a tracker mortgage loan with interest repayments being calculated by reference to the European Central Bank's base rate. The Complainant says he is not required to make capital payments during the term of this loan. However, it is an express condition of this loan that during its terms, the Complainant makes regular payments of unspecified amounts to an unspecified pension product, the cumulative value of which will equal at least €874,000 on the expiry of the Family Home Loan, which the Complainant says he is required to pay to the Provider. The Complainant says that the Family Home Loan is a highly unusual product particularly for use as a family home loan. The Complainant advises that he has questioned the Provider on several occasions on how it deemed this product to be suitable for him in **2006**.

The Complainant says he was employed in a career which required him to retire when he was 30 years old. After 10 years in the role, the Complainant says he was approaching his retirement and retired in **2007**. The Complainant says the Provider was aware that he held pension products with a combined value of no more than €20,000 at that time and he was advanced the Family Home Loan with no prospective employment to commence following his imminent retirement. The Complainant advises that it took almost three years to secure regular employment following his retirement. The Complainant says that he has not received a satisfactory explanation from the Provider in relation to his questions about the suitability of the highly unusual Family Home Loan.

In **August 2007**, the Complainant says he was advanced a further mortgage loan by the Provider in connection with his family home in the amount of almost €50,000 (the **Top-Up Loan**). The Complainant explains this loan was for a term of 29 years and that he was required to make monthly repayments of capital and interest at the standard variable rate.

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The Complainant says that all payments in respect of this loan have been made when due and no arrears have arisen. The Complainant explains that the Top-Up Loan differs from the Family Home Loan in that *“it is a usual type of mortgage loan and not a pension mortgage loan.”* The Complainant advises that he requested, in writing, the documentation relating to this loan on more than one occasion, but he is yet to receive it.

The Complainant explains that from his retirement in **2007** until **2010** when he next secured regular employment, he used savings to fund the interest due on the Family Home Loan, and the shortfall between the net rental income from the Investment Property and the payments due on the Investment Property Loan. The Complainant says he also paid income tax on the rental income and passed all rents to the Provider. As a result, the Complainant says he was unable to make any payments to a pension product in order to meet his obligations at the expiry of the Family Home Loan and this situation persisted until the commencement of his full time employment in **2010**. During this period of employment, the Complainant says he made some payments to a pension product while also making capital and interest payments on the Investment Property Loan. When the Complainant was made redundant from this position in **2014**, he explains that he was unable to continue to meet the repayments due on the Investment Property Loan and arrears began to accrue. Further to this, the Complainant says he was unable to make payments to a pension product in connection with the Family Home Loan. The Complainant says, during this time, he was able to make full capital and interest repayments toward the Top-Up Loan. The Complainant says he entered further direct communications with the Provider at this point and, during this and subsequent periods, the Provider wrote to the Complainant to remind him of his obligations under the terms of the Family Home Loan and the requirement to make provision for this loan.

The Complainant advises that the outcome of his communications with the Provider has been that the Provider carried out an assessment of the Complainant’s capacity to repay the Investment Property Loan and offered an alternative repayment arrangement in respect of this loan. The Complainant submits that the Provider’s assessment and offer of an alternative arrangement was *“fundamentally flawed”* because:

“... they did not take any account or any proper account of my obligations under the Family Home. The offer also did not consider actual commercial costs associated with the Investment Property Loan, specifically income tax due from rental income from the property. The offer of the alternative repayment arrangement was such that it would not be possible for me to comply with its terms without breaching the terms of the Family Home Loan and ensuring that I would not be in a position to pay the Bank the capital amount of €874,000 due on the expiry of those loans with the consequently (sic) risk to my family home.”

The Complainant says he brought this to the attention of the Provider on several occasions and requested that it be addressed. However, the Provider refused to engage with the Complainant and consistently called on the Complainant to repay the amounts due on the Investment Property Loan while at the same time continuing to write to him to ensure he is making sufficient payments to a pension product in order to accrue at least €874,000 before **2036**.

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The Complainant says the Provider is on notice that he does not have capacity to meet his obligations under the Investment Property Loan (as revised by the alternative repayment arrangement), the Family Home Loan and the Top-Up Loan. The Complainant further says that the Provider's representatives have confirmed to him that its offer of an alternative repayment arrangement makes no allowance for the required level of income tax payable on the rental income and is based on the Complainant making maximum payments of €2,000 per month from post-tax income to a pension to fund the capital due on the Family Home Loan and this was acknowledged by a representative of the Provider. The Complainant says that in refusing to take proper account of the Family Home Loan, the Provider refused to make any meaningful alternative repayment arrangement and compliance with the terms of this offer has, in effect, directed the Complainant to breach the terms of the Family Home Loan.

The Complainant says that when he refused to agree to the alternative repayment arrangement and requested for the Provider to engage with him, the Provider first agreed to meet with him but did not honour that agreement and then proceeded to appoint a fixed asset receiver without informing him. The Complainant says the Provider refused to engage any further with him. The Complainant also says the Receiver was appointed before he was provided with a response to his complaint in respect of the alternative repayment arrangement.

Throughout his dealings with the Provider, the Complainant says the Provider has refused or failed to engage with him for considerable periods and refused to provide critical documents. As recently as **11 October 2018**, the Complainant says the Provider wrote to his solicitor in response to a request for specific information regarding the appointment of the Receiver, and in this letter, the Provider stated that it wrote to the Complainant on **27 November 2017** advising him of the appointment of the Receiver. The Complainant says that he never received this letter and the Provider did not provide a copy of this letter. The Complainant further notes that a copy of this letter was also not supplied by the Provider as part of a Data Subject Access Request (**DSAR**) made by the Complainant in **August 2018**.

The Complainant wrote to this Office by letter dated **2 November 2018** following receipt of documentation on foot of a DSAR. In this letter, the Complainant explained that the documentation received was heavily redacted. The Complainant says he wrote to the Provider in respect of these redactions and to highlight his concerns around the fact key loan documentation was missing. The Complainant refers to subsequent correspondence in this regard and says that the Provider has refused to address the matters raised.

In a further letter to this Office dated **20 September 2019**, the Complainant explained as follows:

"Firstly, please note that my complaint does not now or never has been in relation to the sustainability of a buy-to-let/Investment property

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The central element of my complaint relates to the following:

- 1. The ongoing direction by the Bank to prioritise payments due on an investment property loan over making adequate provision for my pension-backed mortgage family home loan ...*
- 2. An unwillingness by the Bank to recognise the interdependence of my loans and their refusal to engage with me in any meaningful way on the entirety of my loans held with them ...*
- 3. A continued and ongoing refusal by the Bank to send me critical loan documents, requested in person at the meeting on March 20th, 2018 and subsequently in writing on three separate occasions, including submission of a Subject Access Request (SAR) (Exhibit 3). Please note that at the time of writing, I still have not received these loan documents.*
- 4. The Bank did finally agree to meet with me and with my solicitor in a without prejudice meeting on March 14th, 2018. While no minutes were taken at this meeting, the bank unilaterally elected to send to your office notes purporting to be minutes from the meeting without (i) sending me or my solicitor their notes in advance for review, verification or comment (ii) informing us that they intended to send minutes of the meeting to your office or [(iii)] informing us that they had sent notes to your office purporting to be meeting minutes after they had done so. The contents of this supposed minutes did not accurately represent matters discussed at the meeting.”*

The Provider's Case

The Provider says that it rejects the Complainant's position that it refused to engage with him and that it failed to recognise the interdependence of the Complainant's loans. The Provider says it is satisfied that it fully considered its obligations to the Complainant.

By way of background, the Provider says the Complainant was sanctioned three loans. Pursuant to Letter of Offer dated **24 April 2006**, a mortgage loan in the amount of €396,000 was sanctioned by the Provider to be repaid at a variable buy-to-let rate of 4% per annum, the Investment Property Loan. The Provider says the loan was sanctioned over a 25 year term with the first five years being interest only repayments. The Provider says the balance outstanding on this loan as of **12 June 2020** was €58,596.31 and net sale proceeds of €287,905 were lodged to the account on **11 March 2020**.

The Provider says the contractual repayments are €763.98 per month and the account is up to date with no arrears outstanding.

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Pursuant to Letter of Offer dated **24 April 2006**, the Provider says a pension mortgage in the amount of €874,000 was sanctioned by the Provider to be repaid at a variable rate of 3.6% over a term of 30 years, the Family Home Loan. The Provider says the balance outstanding on this loan as of **12 June 2020** was €873,673.35. The Provider says the contractual repayments are €582.77 per month and the account is up to date with no arrears outstanding.

In respect of the suitability of the pension aspect of this loan, the Provider says this loan originated in **June 2006** and that the Consumer Protection Code 2006 was not implemented until **July 2007**. Notwithstanding this, the Provider says this loan was not sold to the Complainant by the Provider and was sold through a broker. The Provider says the broker was not an agent of the Provider and would have been independently selected by the Complainant. Pre-drawdown, the Provider says, it would not have any direct contact with the Complainant. The Provider submits that it is satisfied it met its responsibility and duty of care to the Complainant in terms of the fair assessment of affordability for the loan prior to it being sanctioned.

The Provider says the Complainant also had the benefit of independent legal advice prior to drawdown. The Provider also says the Complainant provided income documentation at the application stage which clearly demonstrated sufficient affordability and repayment capacity which met the Provider's credit policy guidelines at that time and confirmed the Complainant could support the loan.

Pursuant to Letter of Offer dated **16 August 2007**, the Provider says a top-up mortgage loan in the amount of €50,000 was sanctioned by the Provider to be repaid at a variable rate of 5.25% over a term of 29 years, the Top-Up Loan. The Provider says the balance outstanding on this loan as of **12 June 2020** was €35,346.95. The Provider says the contractual repayments are €239.23 per month and the account is up to date with no arrears outstanding.

The Provider says the Complainant sought forbearance on a number of occasions since drawdown of the loans and the following periods of forbearance were sanctioned:

- 12 months interest only on the Investment Property Loan from **June 2011 to May 2012**
- 6 months interest only on the Investment Property Loan from **June 2012 to November 2012**
- 6 months interest and part capital repayments on the Family Home Loan from **June 2012 to November 2012**
- 6 months interest only repayments on the Investment Property Loan from **December 2012 to May 2013**
- 2 months interest only repayments on the Investment Property Loan from **June 2013 to July 2013**

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- 6 months interest and part capital repayments on the Investment Property Loan from **June 2015** to **November 2015**
- 3 months interest and part capital repayments on the Investment Property Loan from **December 2015** to **February 2016**

The Provider says its position is that prior to **January 2017**, when the first demand letter was issued, the Complainant had sought and been sanctioned a number of periods of forbearance. By **January 2017**, the Complainant had accrued arrears of approximately €19,224 on the Investment Property Loan. Referring to its timeline of events, the Provider says there has been significant engagement with the Complainant throughout the arrears process. The Provider says the requests for financial information from the Complainant were in order to carry out an assessment of the Complainant's financial situation and, where possible, come to an agreement on the repayment of the debt.

The Provider says it does not agree that the alternative repayment arrangement was "*fundamentally flawed*" and refers to the assessments it carried out in respect of the Complainant. The Provider submits that these assessments demonstrate how it assessed the financial information provided by the Complainant in his Standard Financial Statements (SFSs) and supporting documentation. Following each assessment, the Provider says the Complainant was advised of their outcome.

The Provider says the Complainant sought a meeting with it on a number of occasions throughout the arrears process. The Provider says that a meeting took place with the Complainant on **16 August 2011**. The Provider refers to correspondence issued on **25 August 2011** in respect of this meeting and says it confirmed that the interest only arrangement as agreed at the meeting had been placed on the Investment Property Loan.

On **24 March 2016**, the Provider says it received correspondence from the Complainant's solicitors dated **23 March 2016**. In this letter, the Provider says the Complainant's solicitors advised they wished to appeal the decision of the Provider in relation to the Investment Property Loan being affordable. On **12 April 2016**, during a telephone conversation with the Complainant, the Provider says he was advised there was no appeals process for buy-to-let cases. In the letter of **23 March 2016**, the Provider says the Complainant's solicitors advised they were requesting a formal meeting in order to put 'the correct position' to the Provider for its consideration. The Provider says it did not facilitate a meeting with the Complainant at the time and the reason for this was due to the Investment Property Loan being deemed affordable.

On **28 October 2016**, the Provider says it received a letter dated **27 October 2016** from the Complainant's solicitors requesting a meeting. On **25 November 2016**, during a telephone conversation with the Provider, the Provider says the Complainant was advised that a meeting would not be facilitated as the Complainant's mortgage loan repayments were deemed affordable. Subsequent to this, the Provider says a meeting took place on **1 February 2017**.

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On **24 January 2018**, following another request for a meeting, the Provider says it was noted on file that a further meeting would not be facilitated due to the Complainant declining the Provider's offer of a term extension. The Provider says the Complainant was advised of this decision during a telephone call on **14 February 2018**.

The Provider says it received a further request for a meeting on **9 March 2018** when it received a letter from the Complainant's solicitors dated **3 March 2018**. The Provider says this also was raised by the Complainant in correspondence dated **23 March 2018**. In this correspondence, the Provider says the Complainant requested a meeting with his case manager but no date had been scheduled by the Provider. In its Final Response letter dated **20 March 2018**, the Provider says it confirmed that a meeting would not be facilitated as advised to the Complainant on **14 February 2018**.

On **14 March 2019**, the Provider says a meeting took place as requested by the Complainant. It was following this meeting that documentation was exchanged between the parties and which ultimately resulted in a Voluntary Sale for Loss agreement being reached with the Complainant. The Provider says a meeting also took place on **17 February 2020**.

The Provider says the Complainant was provided with loan documentation when each of the facilities were taken out. On **26 May 2011**, the Provider says its records indicate that a copy of the Letter of Offer in respect of the Family Home Loan was posted to the Complainant.

On **18 March 2016**, the Provider says it received a telephone call from the Complainant which was missed and later returned. The Provider says the Complainant advised that he had a pension plan in place, he was in a position to make repayments and the other loan accounts were also briefly discussed. The Provider says the Complainant requested a copy of the Letter of Loan Offer for the Family Home Loan as well as the terms and conditions, and its agent confirmed they would send them out to the Complainant. The Provider states they were issued to the Complainant on **31 March 2016**.

The Provider says it received a request from the Complainant on **4 April 2016** for a copy of all loan agreements for all three loan accounts. The Provider says this request was referred to its Records Department. However, the Provider acknowledges that it was not until **29 August 2016** that the Letters of Loan Offer were issued to the Complainant. The Provider explains that: *"Unfortunately Bank records do not provide any explanation for this delay and the Bank apologises for any inconvenience that this may have caused."*

The Provider says that it has reviewed the timeline of events submitted by the Complainant and that it does not consider it to be complete. In this respect, the Provider has set out a timeline of events in its Complaint Response, over the course of approximately 20 pages, covering the period from **April 2006 to April 2020**.

In addressing the issue of the fixed asset receiver, the Provider says that correspondence issued to the Complainant on **11 January 2017**, **10 November 2017** and **26 September 2018** which demanded the full payment of the Investment Property Loan within a certain period of time.

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The Provider says that on each of these occasions, the Complainant was put on notice that failure to clear the balance on the loan would result in the Provider taking further action to recover the debt. The Provider says its records indicate that on **14 February 2018**, the Complainant was advised that a Receiver was appointed and would be in contact with the Complainant. The Provider advises that while the Investment Property Loan account was referred for a Receiver appointment, a Receiver was not appointed and the Provider *“apologises for misinforming the Complainant in February 2018.”*

In its letter of **1 November 2018**, the Provider says it confirmed that a Receiver had not been appointed; however, in order to prevent this action, the arrears on the account needed to be cleared in full. The Provider says the letter went on to say that as a matter of courtesy, the Provider had suspended the appointment of a Receiver to allow the Complainant time to submit an up-to-date Standard Financial Statement (SFS) and all supporting documentation so that it could carry out an assessment. The Provider advises that the arrears were not cleared.

The Provider says that it apologises for any confusion caused by advising the Complainant during the telephone call on **14 February 2018** that a Receiver had been appointed when in fact this was not the case. The Provider submits that by not appointing a Receiver, the Complainant was not disadvantaged although the Provider accepts that the Complainant understood that a Receiver was in place.

On **1 May 2019**, the Provider says it responded to an email from the Complainant’s solicitors. In this email, the Provider says it confirmed the following options as being available to the Complainant: 1) accept the decision and residual debt payments as proposed; or 2) accept the decision to consent to sale and proposed alternative residual debt payment. The Provider says it also advised that it could explore the option of consenting to the sale and leave the residual debt outstanding to prevent delays in progressing the sale. On this basis, the Provider says the Complainant remained fully liable for the residual debt.

Following engagement during **August** and **September 2019**, the Provider says it issued a Letter of Agreement to the Complainant on **26 September 2019**. In this letter, the Provider advises that it outlined the terms of the agreement and confirmed that the repayment of the residual debt was to be paid by way of monthly repayments of €730.39 (estimate) over 84 months. The Provider says the Complainant signed the Letter of Agreement on **2 January 2020**.

On **9 January 2020**, the Provider says it received correspondence from the Complainant’s solicitors seeking a meeting with the Provider in relation to the residual debt. The Provider says it facilitated this meeting on **17 January 2020**. At this meeting, the Provider says it confirmed the assessment of the Complainant had been completed based on his financial circumstances and affordability. The Provider says it advised that if there was a significant change in the Complainant’s circumstances, the Complainant could revert to the Provider and request for the case to be reviewed.

Similarly, the Provider says it confirmed it would consider an offer of a lump sum payment in full and final settlement of the debt. The Provider says this meeting ended with the Complainant advising that he revert to the Provider following the sale of the Investment Property.

The Provider states that on **11 March 2020**, it received €287,905 into the Investment Property Loan account following the sale of the Investment Property. In its Complaint Response, the Provider says there was currently no proposal with it for consideration in relation to the repayment of the residual debt.

In respect of the Complainant's letter of **13 May 2020** to this Office, the Provider says its position remains as outlined above, that is, it will consider a proposal from the Complainant regarding the repayment of the residual debt. In this regard, the Provider says it will require an SFS, supporting documentation and details of the proposal from the Complainant.

The Provider states it is satisfied that it has responded to all elements of the Complainant's complaint in its Final Response letters dated **20 March 2018**, **11 October 2018** and **1 November 2018**.

The Complaints for Adjudication

The complaints are that the Provider:

- Refused to engage with the Complainant in a meaningful way in respect of his loans;
- Failed to recognise the interdependence of the Complainant's loans;
- Refused to meet with the Complainant;
- Delayed in responding to the Complainant's queries;
- Refused to provide 'critical' loan documentation; and
- Incorrectly informed the Complainant that a Receiver had been appointed.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his letter to this Office dated 3 June 2020 [sic], a copy of which was transmitted to the Provider for its consideration.

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

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

The Provider acknowledged receipt of a SFS from the Complainant by letter dated **12 February 2016** and, in this letter, requested further documentation from the Complainant. I note that a Case Assessment Summary dated **29 February 2016** was then completed by the Provider. The Provider wrote to the Complainant on **1 March 2016**, to inform him that it was not in a position to offer an alternative repayment arrangement in respect of the Investment Property Loan because the Provider considered the Complainant had capacity to meet the contractual repayments.

By letter dated **23 March 2016**, the Complainant's solicitors wrote to the Provider stating that they wished to appeal the Provider's decision not to offer the Complainant an alternative repayment arrangement because the Provider based its decision on "*... incorrect information and/or inaccurate assumptions and has not considered the full information provided ...*" In this letter, the Complainant's solicitor also requested a formal meeting with the Provider so that the correct position could be put before the Provider for consideration. By separate letters dated **29 March 2016**, the Provider explained to the Complainant and his solicitor that it required the Complainant's authorisation to discuss the loan account with the Complainant's solicitor.

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It appears from the parties' timelines that the Complainant made a request for documentation relating to his loans during a telephone call on **18 March 2016**.

I note from the Provider's timeline that a telephone conversation took place on **12 April 2016** where the Complainant disputed that the loan repayments were affordable. The timeline indicates the Complainant was advised that this decision stood unless there was a change in the Complainant's circumstances. The Complainant was also advised that there was no appeals process in respect of buy-to-let cases. While this conversation does not appear in the Complainant's timeline, the Complainant does not appear to dispute this call took place.

The Complainant wrote to the Provider on **13 April 2016** authorising the release of the title documents, all loan and mortgage documentation, and Letters of Offer in respect of the loans the subject of this complaint on accountable trust receipt to his solicitors. The Complainant's solicitors forwarded a letter of authority to the Provider on **21 April 2016** and enquired as to when the requested documents would be made available. The Provider responded to this letter on **5 May 2016** enclosing title deeds relating to the Investment Property.

The Complainant's solicitors noted that the documentation provided by the Provider related to only the Investment Property Loan and requested that the Provider furnish the outstanding documentation in a letter dated **8 June 2016**.

Following this, it appears from the Provider's timeline that the Complainant's solicitors wrote to the Provider on **13 July 2016** requesting certain documentation. The Provider furnished the Complainant's solicitor with title deeds in respect of the Family Home Loan under cover of letter dated **21 July 2016**.

The Provider acknowledged receipt of a SFS by letter dated **24 August 2016**. The Provider requested further information from the Complainant on **25 August 2016** which appears to have been provided by the Complainant under cover of letter dated **31 August 2016**. A Case Assessment Summary dated **21 September 2016** was then completed by the Provider.

The Provider wrote to the Complainant by letter dated **29 August 2016**, referencing the Family Home Loan account number and the Complainant's letter of **18 August 2016**. The letter advised that the writer previously requested a copy of the Letter of Offer be sent to the Complainant in **March 2016**. This letter also enclosed a copy of the Letter of Offer.

A copy of the previously mentioned letter of **18 August 2016** does not appear to have been provided by the parties nor is it recorded in the Provider's timelines. However, in the Complainant's timeline, it is stated that he wrote to the Provider *"regarding my request on 18/3/18 to send copies of all documentation related to my Home Loan Pension Tracker mortgage as I had still not been sent them by the bank five months after requesting them. They arrived soon after."*

The Provider wrote to the Complainant on **23 September 2016** to inform him that it was not in a position to offer a revised repayment arrangement in respect of the Investment Property Loan as the Provider considered that the Complainant had capacity to meet the contractual repayments under the loan. In response to this letter, the Complainant wrote to the Provider on **6 October 2016**, as follows:

“As you will no doubt be aware you have a duty to ensure that the assessment of my financial position you carry out before arriving at your decision is an accurate and credible assessment. However, in this instance the methodology applied in your assessment and the assumptions that underpin same are fundamentally flawed. In specific cases your interpretation of certain information I have provided has led to conclusions by you that are factually incorrect. As a result, your assessment was neither accurate nor credible and in those circumstances you have not discharged your duty and I cannot accept your decision.

I am currently considering the options available to me in light of the above and will write to you separately in relation to this in due course. ...”

The Complainant’s solicitor wrote to the Provider on **27 October 2016**, noting the Provider’s decision to decline to offer an alternative repayment arrangement “... has been arrived at resulting from erroneous assumptions.”, and requested a meeting with the Provider to resolve matters.

I note from the Provider’s timeline that a telephone conversation which is not referred to in the Complainant’s timeline, appears to have taken place on **25 November 2016**. The Provider’s note of this conversation states as follows:

“Telephone call made to the Complainant who confirmed he is looking for confirmation as to whether or not a meeting will be facilitated. The agent confirmed this would not be facilitated as the Complainant’s account had been deemed affordable.”

The Provider issued a demand for payment in respect of the Investment Property Loan on **11 January 2017**, noting, amongst other matters, its right to appoint a Receiver.

This was followed by a further letter from the Complainant’s solicitors dated **17 January 2017**, noting that a reply had not been received to its October letter and that the Provider’s letter of **30 December 2016** was only received on **16 January 2017**.

I note that a meeting took place between the parties on **1 February 2017**. It appears that the implications the Investment Property Loan and the Family Home Loan had for one another were discussed at this meeting.

By letter dated **30 May 2017**, the Provider offered the Complainant an alternative repayment arrangement in respect of the Investment Property Loan, which was ultimately not accepted by the Complainant. This arrangement consisted of a term extension of 171 months and the capitalisation of arrears with the new monthly repayments being €1,293.48 as opposed to the current monthly repayments of €2,206.09.

The Provider issued a demand for payment in respect of the Investment Property Loan on **10 November 2017**, noting, amongst other matters, its right to appoint a Receiver.

During a telephone conversation with his case manager on **20 November 2017**, the Complainant requested a meeting with the Provider. In response to this, the case manager indicated that there would be no problem holding a meeting with the Complainant. The case manager told the Complainant that she would contact the relevant individual within the Provider. The case manager advised the Complainant that she would telephone him during the week to let him know if it was possible to facilitate a meeting.

It appears from the parties' timelines that the Complainant wrote to the Provider on **15 January 2018**, highlighting the absence of contact from the Provider and requested a meeting with the Provider.

The Complainant telephoned the Provider on **14 February 2018**, to make a payment to the Investment Property Loan account. Having made the payment, the Provider's agent advised the Complainant of the appointment of a fixed asset receiver over the Investment Property and that the Receiver would be in contact with him. The Provider's agent explained the Receiver was appointed because the Complainant declined a term extension in respect of the loan and that the account was in arrears. The Provider's agent also advised the Complainant that there was a note on the system that there would be no meetings with the Complainant.

By letter dated **3 March 2018**, the Complainant wrote to the Provider (which appears to have been logged as a complaint) as follows:

"On January 15th, 2018, I wrote to you to formally request a meeting to discuss ongoing to my borrowings with the bank and requesting a meeting with you at your earliest convenience to discuss my borrowings and arrears with the Bank. To date I have received no response to this letter nor to my request to meet with you.

A previous request for a meeting, made via my case manager in November in 2017, had been confirmed after several previously unsuccessful attempts had been made by me to contact the bank following receipt of correspondence from you on May 30th, 2017. Despite this undertaking by the bank, no meeting was forthcoming, hence my letter on January 15th of this year. ...

In addition to the above, on February 14th, 2018, I contacted the bank, as I have done every month, to pay off a portion of my mortgage arrears, pending further meaningful engagement from you.

/Cont'd...

Following confirmation of my payment by the banks representative, I was informed, as an aside, that a fixed asset receiver had been or may have been appointed to me / my account by the bank. This news came as a complete shock to me as I have not been contacted by the bank to inform me of this. This fact (that I had not been contacted by the bank) was confirmed by the banks representative. For the record, I have not been contacted by the bank notifying me that a fixed asset receiver has been appointed to me / my account.

Given my ongoing engagement with you to date, the repeated attempts by me to secure a meeting with you to resolve issues relating to my outstanding loans with the bank and the public urging by the banks senior management to come forward and engage with the bank, it is highly inappropriate for the bank to appoint a fixed asset receiver ...

Considering this alarming situation, I am again requesting a meeting at the earliest possible convenience with a representative of the Bank who can discuss the entirety of my loans with [the Provider] to resolve this serious matter definitively ..."

During a telephone conversation on **13 March 2018**, the Complainant was advised that a meeting would not be facilitated because the Complainant had declined to accept the term extension.

It appears the Provider issued a Final Response letter to the Complainant on **20 March 2018**. The Provider's timeline stated that this letter "*acknowledged that the Complainant did not receive a written response to correspondence from the Complainant dated 15 January 2018; however contact was attempted by telephone.*" I note that a meeting also took place at branch level on **20 March 2018** following the Complainant's attendance at the branch in question.

In a letter dated **23 March 2018**, the Complainant stated:

"Secondly, please note that rather than reject the so-called 'long-term solution of a term extension' proposed by the bank, I did, in fact immediately make multiple attempts (as did my solicitor separately on my behalf) to contact the bank to seek an urgent meeting to seek clarity as to the Banks 'solution'. ... I received a written proposal from you dated 30th May 2017, which bore no resemblance to the solution that had been discussed and agreed ... on February 1st and which required me to make inadequate provision for the repayment of my family home mortgage to [the Provider] in order to make full provision for the repayment of an (sic) commercial loan to [the Provider]. ...

I urge you once again to reconsider your position and my request to meet with you and understand your position in relation to the matters discussed at the meeting on February 1st, 2017."

/Cont'd...

The Complainant wrote to the Provider on **10 May 2018**, referring to his March correspondence and the Provider's letter of **13 April 2018** where it was stated that the Complainant would have an update by **9 May 2018**, and noted that no update had been received from the Provider.

The Provider issued a demand for payment in respect of the Investment Property Loan on **26 September 2018**, noting, amongst other matters, its right to appoint a Receiver.

The Provider wrote to the Complainant's solicitors on **11 October 2018** as follows:

"The above account first went into arrears in June 2011 and over the following years intermittent full and part payments have been made to the account. The account was transferred to our legal department in January 2017 and a demand letter issued to your client on 11/01/2017 advising of the appointment of a receiver, copy enclosed.

In response, a meeting was requested by your client and held on the 01/02/2017. A proposal was put forward for a voluntary sale of the buy to let property ... with the residual debt of approximately €100,000.00 written down. It was agreed that a Standard Financial Statement with all supporting documents was to be submitted so that this proposal could be assessed.

The decision of the assessment was advised to your client on the 23rd of May 2017. The bank's decision was that a term extension and a capitalisation of the arrears should be applied to the account. ...

On the 17/10/2017 your client requested a meeting, as he believed that the offer of the term extension did not reflect the conversation had at the meeting in February 2017. Your client's case manager was on annual leave at this time. She returned his call on the 20th of November 2017 and your client advised that he wanted to have the meeting with his past case manager The Banks position in relation to a meeting was that we have already met with your client, assessed the proposal as outlined in the meeting and we offered the best possible solution based on the outcome of the assessment.

On the 30th of May 2017 your client was sent a Letter of Offer, this letter outlined the Term Extension and it also advised that he had 20 business days to accept it. Your client responded to this letter and [the Provider] received it on the 27th of June 2017, requesting more time to consider the offer, bank allowed this time but as the offer was ultimately not accepted, the bank had no option but to proceed with the appointment of a receiver. A further demand letter issued on the 27th of November advising of the appointment of a receiver, copy enclosed. ...

I can confirm that there has been a delay in the appointment of a receiver due to an internal process issue. A further demand letter recently issued on the 26/09/2018 and your client will be contacted in due course, by the appointed Receiver.

/Cont'd...

In the meantime should your client wish to make a proposal in relation to the repayment of any residual mortgage balance we will require an updated Standard Financial Statement with supporting documents and a written proposal. ...”

The Complainant’s solicitor wrote to the Provider on **24 October 2018** in response to the Provider’s letter of **11 October 2018**, noting that the letter referred to by the Provider dated **27 November 2017** regarding the appointment of the Receiver was not received by the Complainant and no such letter was enclosed with the Provider’s correspondence.

During a telephone call on **30 October 2018**, the Complainant was told that a fixed asset receiver had been appointed in respect of the Investment Property Loan. In response to this, the Complainant said he had been told about this in **February 2018** but had not been given name of the Receiver.

In response to the above letter (which appears to have been received by the Provider on **30 October 2018**), the Provider wrote to the Complainant’s solicitor on **1 November 2018** clarifying that the reference to the letter of **27 November 2017** was intended to be a reference to a final demand letter dated **10 November 2017**. The Provider apologised for this oversight and for that fact that the various correspondence was not included in the DSAR.

This letter also noted that the Complainant had informed its Arrears Support Unit on **30 October 2018** that his circumstances had changed and *“that he may return an SFS, dependent on him seeking advice in this regard.”* The Provider advised that it requested a suspension of the appointment of a Receiver for 21 days to allow the Complainant to return a completed SFS with supporting documentation for assessment.

The letter also advised that if the relevant information was not received by **30 November 2018**, the appointment of a Receiver would proceed.

The Complainant’s solicitor wrote to the Provider on **30 November 2018**, indicating that the Provider’s correspondence *“... really puts the matter no further and appears to be an offer to our client to engage with the Bank again in the same manner which has been going on now for a number of years.”* The letter also advised that the matter had been referred to this Office. In response to this, on **10 December 2018**, the Provider advised the Complainant’s solicitor that it would suspend appointing a Receiver over the Investment Property pending the outcome of this complaint.

Analysis

The Complainant entered three loan agreements with the Provider: two in **April 2006**, being the Investment Property Loan and the Family Home Loan; and a third in **August 2007**, being the Top-Up Loan.

I note that the Complainant has taken issue with the suitability of the Family Home Loan arising from the fact that this loan is a pension linked loan and his circumstances at the time this loan was entered into. In its Complaint Response, the Provider says this loan was arranged through a broker and not directly with the Provider. I note this is not disputed by the Complainant in his submission dated **12 August 2020** in response to the Provider's Complaint Response. In addition to this, I note that the loan was arranged prior to the commencement of the **Consumer Protection Code 2006** and that the Complainant engaged a firm of solicitors to facilitate the drawdown of the loan. Taking these matters into consideration, I do not accept that the Provider was required to assess the suitability of this type of loan for the Complainant. Furthermore, the conduct of the third party broker does not form part of this investigation.

The Complainant maintains that the Provider failed to properly appreciate the interdependence of his loans, in particular when assessing the Investment Property Loan. It appears that the Provider deemed the Investment Property Loan affordable from around **March 2016**, following an assessment of the Complainant's circumstances in **February 2016**. Correspondence from the Complainant and his solicitor followed this, where it was submitted that the Provider's assessment was based on incorrect information and inaccurate assumptions. A further assessment was carried out in **September 2016** and the Provider formed the same view as its previous assessment as to affordability.

In **October 2016**, the Complainant argued that the Provider's assessment was fundamentally flawed. It appears that a meeting took place between the parties on **1 February 2017** where the Complainant set out his position regarding the interdependence of his loans. I note that up to **February 2017**, the Complainant and his solicitors made a number of vague and generalised statements regarding the Provider's assessment of the Complainant's circumstances and provided no detail as to what they considered the shortcomings in the Provider's assessment to be. A further assessment appears to have taken place in **March/April 2017** which resulted in the Provider offering an alternative repayment arrangement in respect of the Investment Property Loan on **30 May 2017**.

The Complainant declined this alternative repayment arrangement because he believed that he would not be able to make the required pension contributions in respect of the Family Home Loan. I also note the Complainant queried the Provider's consideration of his employment income and rental income. In particular, the Complainant queried the amount being allowed in respect of pension contributions and the decision to reduce the rental income from the Investment Property by a standard 15% rate without taking into account the Complainant's tax liability and other expenses associated with the Investment Property and the income generated from this property.

The purpose of the Provider's assessments was to assess the Complainant's affordability to make his loan repayments. When completing the various SFSs, I note the Complainant provided details of his income, expenditure, borrowings and assets. The Provider's Case Assessment Summaries and Assessment Sheets demonstrate that the Provider took into consideration the information provided by the Complainant, including his other borrowings and not only those with the Provider.

/Cont'd...

The Provider's assessments also indicate that it took the repayments being made in respect of the Family Home Loan (being the interest only payment) into consideration.

While not clear from the 2016 assessments, the 2017 assessments appear to expressly recognise the treatment of the Complainant's pension contributions. In the **March/April 2017** assessment, I note the assessment document states as follows:

"Also allowing €2k of the €4k pension deduction on the basis it is being used to fund the pension for his home loan."

In the Assessment Sheet dated **9 May 2017**, it states:

Also allowing €2k of the €4k pension deduction on his payslip on the basis it is being used to fund the pension for his home loan ...

[The Complainant] is making interest payments on his home loan ... Balance €847287, this is a pension backed mortgage and is on interest only payments for the life of the mortgage. There are no arrears on this account and I have allowed Pension Premium in his expenditure ..."

The evidence available to me does not indicate anything unreasonable with the Provider taking the approach it did when assessing the Complainant's income or pension contributions.

When assessing the Complainant's affordability, the Provider appears to have adopted an approach of allowable income/expenditure as opposed to actual income/expenditure, as can be seen from the amount allowed in respect of pension contributions and the application of a 15% reduction applied to the rental income. The 15% reduction of rental income appears to be done in an effort to reflect what the Provider considers to be the allowable costs associated with rental income. However, this may not always be the actual or perceived costs associated with the rental property.

The evidence shows that the Provider allowed a certain amount of the Complainant's pension contributions to reflect the pension backed nature of the Family Home Loan. While the total pension contribution amount was not allowed by the Provider, I do not accept that this constitutes unreasonable conduct on the part of the Provider nor does it mean that the Provider failed to have regard to the Family Home Loan when assessing the Complainant's affordability in respect of the Investment Property Loan.

In my Preliminary Decision I stated that the Provider was obliged to offer an arrangement in respect of the Investment Property Loan such that would allow the Complainant to make the level of pension contributions that he considers are now, or will be, required to discharge the principal amount of the Family Home Loan. There was a typographical error in this statement. It should have read that the Provider was **not** obliged to offer such an arrangement.

/Cont'd...

Neither was the Provider required to assess the extent of the pension contributions the Complainant should make in order to meet the capital repayment due on the Family Home Loan when it matures. I apologise for this error and any confusion it may have caused.

I remain of the view that the Provider was not obliged to offer such an arrangement.

Further to this, I do not accept that the arrangement offered to the Complainant necessarily means he would be required to breach the terms of the Family Home Loan. Simply because the Complainant would not have what he considered to be the desired level of funds to make the appropriate pension contributions were he to have accepted the arrangement, does not mean the arrangement offered by the Provider would cause of him to breach the terms of the Family Home Loan. Furthermore, I note that the repayments due on the Investment Property Loan prior to the alternative repayment arrangement were almost €1,000 higher than those offered by the proposed arrangement. Therefore, I cannot see how this arrangement, in itself, would have caused the Complainant to breach his obligations in respect of the Family Home Loan.

Taking the above matters in consideration, I do not accept that the Provider failed to give an appropriate level of consideration to the Family Home Loan.

It appears from the available evidence that meeting requests began in **March 2016** following the Provider's decision regarding the affordability of the Investment Property Loan. This was followed by a number of further requests. It appears that the Provider did not facilitate the requested meetings because it had deemed the loan affordable. However, a meeting was ultimately held in **February 2017**.

The basis for the meeting requests was that the Complainant considered the Provider's assessment of his circumstances to be flawed. While a number of meeting requests were made, I believe it was unhelpful that they were sought on the basis of generalised and unsupported statements challenging the Provider's decision as to affordability as contained in the correspondence sent by the Complainant and his solicitors. It would have been prudent and helpful to put forward a clear basis for challenging the previous assessments.

That said, it appears from the evidence presented by the parties that it was not until a telephone conversation on **25 November 2016** that it was explained to the Complainant that a meeting would not be facilitated because the Investment Property Loan was deemed affordable. Further to this, the meeting requests made by the Complainant and his solicitors do not appear to have been acknowledged or responded to by the Provider.

As can be seen, there was a clear failure on the part of the Provider to respond to the various meeting requests and a significant delay in communicating to the Complainant that a meeting would not be facilitated and the reason for the Provider's refusal.

On **20 November 2017**, the Complainant was led to believe that a meeting would be facilitated by the Provider. The case manager with whom the Complainant spoke also told him that she would be in touch to confirm if it would be possible to facilitate the meeting.

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This was followed by a written request by the Complainant for a meeting on **15 January 2018**. The Complainant was subsequently informed on **14 February** and **13 March 2018** that a meeting would not be facilitated; the reason being that the Complainant had declined a previously offered alternative repayment arrangement.

Despite the assurances given to the Complainant on **20 November 2017** the meeting did not take place. Further to this, there is no evidence to show that the case manager telephoned the Complainant regarding the meeting as promised nor was the Complainant's letter of **15 January 2018** responded to. It is quite disappointing that the meeting was not facilitated as indicated by the Provider's case manager and that this individual did not follow-up with the Complainant.

The Provider's conduct in not responding to correspondence and refusing to meet was most unreasonable and unhelpful. It is difficult to understand why the Provider took such an unhelpful stance.

It appears the Complainant first made a request for documentation regarding his loans during a telephone call on **18 March 2016**. The Provider does not appear to have provided any documentation in response to this request until **5 May 2016**, and it appears that only a portion of the requested documentation was provided. However, this does not appear to have been brought to the Provider's attention until **8 June 2016**. Following this, it appears that the outstanding documentation was provided on **29 August 2016**. However, it is not clear why only part of the documentation was provided in **May 2016**. Accordingly, having considered the evidence, I accept that there were delays on the part of the Provider in complying with the Complainant's request and providing the requested documentation.

I note that the Complainant has also raised issues with the Provider's response to a data subject access request which appears to have been made around **3 August 2018**. The conduct being complained of in respect of the Provider's compliance with the Complainant's data subject access request does not come within the jurisdiction of this Office. It is more properly a matter for the Office of the Data Protection Commissioner.

During a telephone conversation on **14 February 2018**, the Complainant was advised that a fixed asset receiver had been appointed in respect of the Investment Property. As the evidence shows, this was not the case. It is also not clear what led the Provider's agent to conclude that such an appointment had been made. The Complainant raised this with the Provider by letter dated **3 March 2018**. It appears the Provider treated this letter as a formal complaint and issued a final response letter on **20 March 2018**. While a copy of this letter does not appear to have been furnished by the parties, it does not appear, as can be seen from later communications, that this issue was addressed by the Provider. In particular, in the Provider's letter of **11 October 2018**, it advised that:

"... there has been a delay in the appointment of a receiver due to an internal process issue. A further demand letter recently issued on the 26/09/2018 and your client will be contacted in due course, by the appointed Receiver."

/Cont'd...

This passage would suggest that the appointment of a receiver was imminent. Following this, the Complainant was told on **30 October 2018** that a fixed asset receiver had been appointed.

There is no evidence to show that a receiver had been appointed in **February** or **October 2018**, yet the Complainant was advised there had. As noted already, it is not clear what information the Provider's agents were relying on when imparting this serious and ultimately incorrect information to the Complainant.

The appointment of a receiver is a significant step for the Provider to take and the Provider should have sufficient systems in place or sufficient information available to its agents to ensure that customers are not incorrectly informed of the appointment of a receiver. Therefore, I accept that there were very serious failings on the part of the Provider regarding its communication with the Complainant surrounding the appointment of a receiver.

While there were serious failings on the part of the Provider in its communication with the Complainant, I do not accept that the Provider failed to engage with the Complainant regarding his loans outside of the matters discussed above. The evidence shows that a number of alternative repayment arrangements were offered by the Provider across all three loans between **February 2011** and **May 2017**, with the arrangement offered in **May 2017** being declined by the Complainant. I also note that a number of assessments of the Complainant's circumstances were carried out by the Provider.

However, taking the evidence of this complaint into consideration, it is clear that the Provider failed or delayed in responding to, and communicating with, the Complainant and his solicitors.

I also note this was raised by the Complainant during a number of telephone conversations with the Provider, but this does not appear to have had any effect in correcting matters. Therefore, I am satisfied that the level of customer service provided to the Complainant fell well below the standard of service reasonably expected of the Provider.

Goodwill Gesture

In its Complaint Response to this Office, the Provider explains as follows:

"In review of this case and in preparation of this submission, the Bank acknowledges customer service failings in relation to poor communication, failure to respond to all requests for meetings and delays in providing copies of documentation as requested. In particular the Bank would like to acknowledge that incorrect information was provided to the Complainant regarding the appointment of a Receiver and we apologise for any confusion that this caused. In consideration of these service failings, the Bank would like to offer the Complainant a gesture of goodwill in the amount of €12,000 in full and final settlement of this complaint."

/Cont'd...

While the Provider's failings were serious, I consider this goodwill gesture to be an acceptable sum of compensation for the customer service failings on the part of the Provider. In these circumstances, on the basis that this offer remains available to the Complainant, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

19 August 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.