



<u>Decision Ref:</u>	2021-0283
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Disputed transactions Failure to provide correct information Failure to provide calculations
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant's late husband held in his sole name, a mortgage account with the Provider. This complaint relates to the Provider's suggested maladministration in the closing of this mortgage account, following the death of the Complainant's late husband.

The Complainant's Case

The Complainant says her late husband passed away suddenly in late 2017.

The Complainant's late husband held a life assurance policy with a named Insurer ('the Insurer'), which was assigned to the Provider as security in respect of the mortgage loan.

The Complainant says she first contacted the Provider by telephone 9 days after her husband died to inform it of the death of her late husband and with a view to closing his mortgage account. The Provider advised that she send it the Death Certificate.

The Complainant posted her late husband's Interim Death Certificate to the Provider the following day, which the Provider acknowledged by telephone on **8 November 2017** that it had received this. The Complainant also hand delivered the formal Death Certificate into a local Provider branch on **27 March 2018**.

The Complainant sets out her following communications with the Provider regarding this matter:

“21/11/2017 – informed by [local Provider branch] that matter was being processed, advised to contact mortgage advisor by phone.

24/11/2017 – attempted to contact mortgage advisor by phone, no response/reply.

27/03/2018 – completed BER Notification Form & provided full Death Certificate to [local Provider branch], assured it would be forwarded to appropriate section.

26/09/2018 – [The Provider] issued letter to my solicitor confirming mortgage balance at date of death was €73,532.46.

18/01/2019 – I received email from my solicitor following confirmation from [the Provider] that mortgage outstanding balance was €76,969.32 & it was the responsibility of [the Insurer] to correspond with [the Provider] regarding the payment of [the life assurance] policy against the mortgage.

[The Complainant’s] solicitor communicated with [the Provider] requesting an explanation regarding the outstanding balance and how this amount had accumulated.

05/02/2019 – Solicitor letter to [the Provider] having received confirmation that [the Insurer’s] [life assurance] policy had been paid on [25 January 2019] & requesting if there were surplus funds.

25/02/2019 – [Provider] letter confirming no surplus funds.

06/03/2019 – [Provider] letter confirming outstanding balance of €3,186.64 on mortgage account. [The Provider] still would not provide calculations or breakdown for sum outstanding.

22/03/2019 – [Provider] letter providing figures for outstanding balance of €3,194.34 & requesting transfer of funds.

27/03/2019 – [Provider] letter requesting marriage certificate & written authority in order to provide calculations/balancing statements regarding outstanding balance.

14/06/2019 – [Provider] letter stating they had submitted claim to [the Insurer] on [15 January 2018] and had received funds on [29 January 2019]. [Provider] had previously stated that it was the responsibility of [the Insurer] to communicate with them.

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I urge you to take note of this information as I strongly deny any responsibility for the outstanding balance I have been requested to pay in this mortgage account. I question the very lengthy timeframe that [the Provider] took in requesting funds from [the Insurer].

27/06/2019 – I personally made contact with [the Provider's] Customer Relationship Unit by phone in order to receive some answers/explanation & was assured someone in management would call me back within a few days.

02/07/2019 – I made contact with [the Provider] by phone, the matter was being investigated by senior management & someone would be in contact asap.

04/07/2019 – I made contact with [the Provider] by phone, someone would be in contact asap.

11/07/2019 – I made contact with [the Provider] by phone, someone would be in contact with my solicitor.

July & August 2019 – solicitor in contact with [the Provider] requesting information / balancing statements / annual statements.

05/09/2019 – letter from [the Provider] stating [the Insurer's] payment received on 29/01/2019 was insufficient to clear mortgage. Once again I query the delay in requesting policy funds from [the Insurer] as it is my understanding that the amount paid would have cleared the mortgage if it had been processed in a timely manner.

15/11/2019 – formal letter of complaint sent to [the Provider] by solicitor.

26/11/2019 – [Provider] letter confirming receipt of complaint & response by December 17th [2019].

17/12/2019 – [Provider] Final Response (received by solicitor January 2nd 2020). No information regarding annual mortgage statements or calculations/balancing statements for outstanding balance provided.

You will note from my record of events that I have been meticulous in my approach to resolving this matter despite finding it distressing. My late husband & I were financially responsible in our dealings with mortgage payments and life/mortgage insurance. It is therefore very upsetting to be informed that an error in [the Provider] has left an unsettled amount.

A breakdown in controls and communications in [the Provider] resulted in incorrect mortgage amounts being stated as outstanding, whereby [the Insurer] settled when requested ... The implication by [the Provider] that I am now responsible for [its] mistake and a balance of over €3,000 worries me every day. It has led to financial difficulty for myself and to this day has delayed the processing of my late husband[']s estate".

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The Complainant complains that the Provider did not communicate effectively with the Complainant or the Insurer, which led to delays in the Provider obtaining the life assurance benefit that was assigned to her late husband's mortgage loan which, she says, would have otherwise settled the outstanding mortgage if it had been applied for in a more timely fashion.

The Complainant says that this resulted in interest accruing on her late husband's mortgage account, thereby leaving an outstanding balance of €3,186.64 as at 6 March 2019, after the life assurance benefit had been applied to the mortgage account on 29 January 2019. This mortgage account remains open and interest continues to be charged on the outstanding balance.

The Complainant, through her Representative, received a letter from the Provider dated **28 September 2020**, as follows:

"Mortgage account number: 1583***

Current arrears: €18.58

Amount still owed to us: €3,394.27 ...

As [the Complainant's late husband] had died, and as the repayments have not been made on the mortgage loan the entire balance of the mortgage is now due to be repaid.

*We have already lodged €74,041.92, the entire proceeds of life-assurance policy number 1177****, to the mortgage account, towards paying off the mortgage loan. The amount still owned to us is shown above.*

As the Personal Representative of the [deceased] you must pay the amount still owed within 10 business days of the date of this letter from the estate of the deceased ...

Warning: *If you do not pay us the amount owed (along with any interest that arises after the date of this letter) from the [deceased's] estate within 10 business days, we can start legal action to enforce our rights. This may include, but not limited to, proceedings for repossession of the mortgaged property or appoint a receiver over the property and any other right of remedy we might have in respect of the debt outstanding".*

The Complainant, when she submitted her Complaint Form to this Office in **February 2020**, advised that to resolve this complaint to her satisfaction, she sought, as follows:

"[The Provider] to finally close mortgage account & release deeds of property so as to allow me complete the affairs of my late husband's estate – to accept responsibility on their part for delay in requesting payment from [a named life insurer] & therefore not my responsibility for outstanding balance.

This matter has caused further financial burden, accruing solicitor costs & personal unnecessary distress with delay in resolving".

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In its email to this Office on **19 November 2020** and in an effort to come to a mutually agreeable resolution to the complaint at hand, the Provider made the following offer to the Complainant:

“The Provider would like to offer to immediately close the mortgage loan account for the Complainant which has a current outstanding balance of €3,418.15. In turn, [the Provider] will then be in a position to release the title deeds of the security property to the Complainant. The Provider would like to advance a further offer of €500 to the Complainant in recognition of the impact that this had had on the Complainant and the time spent in bringing this matter to our attention”.

In her reply email to this Office on **20 November 2020**, the Complainant rejected this offer from the Provider and stated:

“I have considered the settlement proposal from the Provider and although I am keen to resolve the matter I cannot accept the proposal at present. I feel that I should afford myself the opportunity to allow the investigation stage to proceed after such a prolonged period attempting to resolve the issue with the Provider myself. I duly recognise the willingness of the Provider to close the mortgage loan account immediately and offer the sum of 500 euro in recognition of the impact this issue has had on me but I feel that this is unsatisfactory.

... I have suffered immense emotional and psychological distress over the past 3 years as a result of this ongoing issue. I have also accrued solicitor costs to the sum of 5,000 euro specifically dealing with the Provider and this ongoing situation. Finally, the estate of my late husband remains incomplete and I have subsequently lost out financially as a result of the lost interest accruing on the cash amount owned to me totalling 7,000 euro approx.”

The Provider’s Case

The Provider says that its records indicate that the Complainant’s late husband drew down a mortgage loan in the sum of €78,000 on 17 September 2014 for a term of 26 years, further to a Mortgage Loan Offer Letter dated 22 July 2014, signed and accepted by the Complainant’s late husband on 22 August 2014.

When it responded on **11 December 2020** to the formal investigation by this Office, the Provider advised that as at 2 December 2020, the Complainant’s late husband’s mortgage account remained active with a then outstanding balance of €3,429.95, which included arrears in the sum of €57.06.

The Provider sets out the following timeline of key events relevant to this complaint in chronological order, to include all communications between the Complainant or her Representative and the Provider or its Agents:

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- [redacted]: The Complainant's late husband, the mortgage account holder, died.
- [redacted]: The Complainant telephoned to notify the Provider of the death of her husband. She was advised that she would have to write in to the Provider and that the Insurer would get in touch with the Provider to encash the life assurance policy. The Provider also requested for the Complainant to send to it a copy of the death certificate, and queried if there was to be an inquest into the death.
- [redacted]: The Complainant wrote confirming the death of her husband and enclosed a non-certified Coroner's Interim Certificate of the Fact of Death.
- 23 October 2017: The Insurer wrote requesting the Provider to complete the enclosed Death Claim Form in respect of the deceased's life insurance policy, as the Provider was the assignee of the policy.
- 25 October 2017: The Provider wrote to the Insurer informing it of the death of the Complainant's late husband and asking if any further requirements were needed in order to process the claim, noting the deceased's life assurance policy was assigned to the Provider.
- 1 November 2017: The Insurer wrote advising that in order to proceed with the claim, it required the Provider to complete the Death Claim Form.
- 8 November 2017: The Complainant telephoned to see if the Provider had received her letter of 20th October. She advised that the Insurer had contacted her seeking to progress the claim form, noting that it had not received this from the Provider.
- 21 November 2017: A staff member telephoned on behalf of the Complainant requesting an update on any information received from the Insurer. The Provider confirmed that instruction had been received from the Insurer and it was awaiting a response from the Provider, and that this "*is in motion*".
- 22 November 2017: The Provider wrote to the Insurer enclosing the completed Death Claim Form.
- 28 November 2017: The Provider wrote to the Complainant requesting certain information and documentation to be provided by her in order to allow it to discuss the deceased's mortgage account with her, as follows:

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“To allow us to discuss this mortgage, please send us the following:

- *Confirmation of the name, address and phone number of the person dealing with the estate*
- *Confirmation of the name, address and phone number of the solicitor dealing with the estate*
- *A copy of the death certificate*
- *Confirmation of the life insurance company and the policy number of any life policy linked to the mortgage”.*

The Provider says that this letter issued to the address of the security property rather than to the Complainant, as she had not yet completed the Bereavement Notification Form.

- 6 December 2017: The Insurer wrote requesting additional documentation in order to process the claim, namely, the original Deed of Assignment for the life assurance policy and a certified copy of the Death Certificate.
- 13 December 2017: The Provider wrote to the Insurer to advise that it was unable to locate the original Deed of Assignment and asked the Insurer its requirements to progress the matter. In addition, the Provider advised that the Insurer contact the Estate of the deceased in respect of a certified copy of the Death Certificate, as it did not have this document.
- 9 January 2018: The Insurer wrote enclosing a Lost Deed of Assignment Indemnity form to be completed.
- 15 January 2018: The Provider wrote to the Insurer enclosing the completed Lost Deed of Assignment Indemnity form, thereby completing the claim process as it pertained to the Provider.
- 27 March 2018: The Complainant attended a local Provider branch to hand deliver a completed Bereavement Notification Form and a certified copy of the Death Certificate.
- 14 September 2018: The Complainant’s Representative wrote enclosing the certified Death Certificate of the deceased and requesting details of the deceased’s mortgage account, as follows:

“Please advise the amount of the mortgage owned at date of death, the payment amount under the [Insurer] Policy and the surplus, if any, now available for draw down and your requirements for same.”

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21 September 2018: The Provider responded to the Complainant's Representative advising that a claim cheque had not yet been received and that it had contacted the Insurer, which had confirmed that it had not yet received a certified death certificate from the Complainant, despite having requested one from the next-of-kin.

25 September 2018: The Complainant telephoned and advised that she had supplied the Provider with the interim and later the full death certificate. She was seeking an update on communication from the Provider to the Insurer, stating that the Insurer was awaiting a response from the Provider. She said she went into her local Provider branch with the full death cert in March 2018 and had not heard anything from the Provider since.

In addition, the Complainant's Representative telephoned seeking an update. The Provider said it had written to the Representative on 21st September. The Representative advised that the death certificate had been sent to the Provider and that there had been no communication from the Insurer concerning the death cert. The Provider advised that the Insurer are still awaiting a copy of the death certificate from the Complainant.

26 September 2018: The Provider wrote to the Complainant's Representative confirming that the balance of the deceased's mortgage account on the date of death, was €73,532.46.

18 January 2019: The Complainant's Representative telephoned seeking an update on whether the final sum had been paid off the deceased's mortgage account. The Provider confirmed that the mortgage account had not been redeemed and advised that the life policy had yet to be encashed, and that the Insurer would need to be contacted. The Provider advised the Representative that it would contact the Insurer and also advised that the balance of the deceased's mortgage account on that date stood at €76,969.32

26 January 2019: The Insurer wrote enclosing a cheque in the amount of €74,041.92, comprising a death benefit in the sum of €73,870 and a premium refund in the amount of €171.92.

29 January 2019: The Provider applied the funds of €74,041.92 to the deceased's mortgage account.

5 February 2019: The Complainant's Representative wrote noting that the Insurer had settled the death claim and asking whether there was any surplus owed to the Estate.

- 25 February 2019: The Provider wrote to the Complainant's Representative confirming that there was no surplus funds on the deceased's mortgage account.
- 6 March 2019: The Provider wrote to the Complainant's Representative confirming that the deceased's mortgage account balance was €3,186.64.
- 20 March 2019: The Complainant's Representative telephoned to ask if the Provider would release the title deeds without a grant, as the deceased had died intestate and the papers could not be competed without a copy of the title deeds. The Provider advised that there was a shortfall in the insurance claim benefit and said it would release the title deeds when the outstanding balance on the mortgage account was paid, which was advised to be approximately €3,200.
- 6 June 2019: The Complainant's Representative wrote to the Provider advising that:
- "[The Complainant] has instructed us that the Mortgage Redemption Policy with [the Insurer] should cover the entire mortgage due on this property. The Policy was assigned to [the Provider]. Please request payment of any monies from [the Insurer] directly".*
- 14 June 2019: The Provider responded to the Complainant's Representative, as follows:
- "Please be advised that we submitted our claim as Assignee to [the Insurer] on the 15/01/19 and received the death claim funds on the 29th January 2019.*
- The total claim fund received was €74,041.92 which unfortunately was not sufficient to clear the full mortgage balance".*
- The Provider says this letter contained a typological error, in that it submitted its claim as Assignee to the Insurer on 15 January 2018, and not on "15/01/19" as advised in the letter. The Provider apologises for any confusion that arose from this error.
- 27 June 2019: The Complainant telephoned querying the outstanding balance on the deceased's mortgage account after the life insurance cheque was lodged.
- 28 August 2019: The Complainant's Representative wrote requesting a breakdown of where the outstanding amount on the deceased's mortgage account had arisen.

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5 September 2019: The Provider responded to the Complainant's Representative, as follows:

"[The Provider] has received confirmation from [the Insurer] that they have paid the correct amount towards the mortgage. The amount was €74,041.92 on 29 January 2019. This was not sufficient to clear the outstanding mortgage balance in full".

17 October 2019: The Provider wrote to the Complainant requesting certain information to be provided by her in order to allow it discuss the deceased's mortgage account with her, as follows:

"To allow us to discuss this mortgage, we need the following:

- *Confirmation of the name, address and phone number of the person dealing with the estate*
- *Confirmation of the name, address and phone number of the solicitor dealing with the estate.*

Please send me a proposal for how the mortgage will be paid off".

The Provider says that in error, this letter issued to the address of the security property rather than to the Complainant. However, as there was already ongoing engagement between the Provider and the Complainant and her Representative, the Provider does not believe any prejudice arose due to this letter being misaddressed.

15 November 2019: The Complainant's Representative wrote requesting documentation concerning the outstanding amount due and owing on the deceased's mortgage account.

The Provider says that before it will provide information about a deceased's accounts and products, it requires certain information from the person seeking the information, so as to verify their identity and that they are the correct person to be providing that information to. As stated at pg. 4 of the Provider's **'Helping you to work through finances during bereavement'** brochure (which the Provider says is available on request, rather than being issued as a matter of course), the information required is, as follows:

- A certified copy of proof of death (for example, death certificate, coroner's certificate, interim certificate of fact of death);
- If there is a will, a certified copy of the will naming the executor(s) to confirm who is entitled to deal with the estate;

and

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- A certified copy of proof of identity and proof of address for the executor / administrator / next of kin who is authorised to deal with the estate of the deceased if they are not a Provider customer.

The Provider says it was initially informally notified of the death of the Complainant's late husband by telephone 9 days after his death and that an uncertified copy of the interim death certificate was received in a letter dated the following day. The Provider subsequently 3 days later, received notification from the Insurer requiring the completion of a Death Claim Form for the life insurance policy in respect of the deceased's mortgage account. The Provider says that it was in a position to complete this Death Claim Form at that time. and that it did not require any of the information outlined above from the Complainant, as the requests were unconnected to each other. The Provider ultimately completed the claim form process on 15 January 2018 and in that regard, it says that any further requirements became a matter between the Insurer and the Complainant.

The Provider notes that the Complainant attended a local Provider branch on **27 March 2018** and delivered the required documentation (as outlined above). The Provider says that it was after the provision of this information that it was in a position to discuss information pertaining to the deceased's mortgage account with the Complainant.

The Provider confirms, as per its letter of 13 December 2017 to the Insurer, that it cannot currently locate the Deed of Assignment of Life Policy in respect of the deceased's mortgage account.

The Provider acknowledges that it received the Complainant's letter shortly after her husband died, enclosing the interim death certificate, however this was not certified in the manner set out by the Insurer's Death Claim Form, which required a "*Certified copy of the Death Certificate which notes the medical cause of death*". The Death Claim Form defined a 'certified copy' as "*A certified copy is a copy of the original document which has been stamped as a true copy by [the claimant's] solicitor, any bank, financial institution or Garda station*".

As the copy of the interim death certificate the Complainant enclosed with her letter of 20 October 2017 was not certified in the manner set out in the Insurer's Death Claim Form, it was therefore the view of the Provider that the more appropriate party from whom the certified death certificate should be sought, would be the Complainant.

The Provider is of the view that the correspondence between it and the Insurer demonstrates that the Provider attempted to make the life policy claim to the Insurer in a timely and efficient manner. The Provider says that it dealt with the Insurer's queries when requested, including the provision of the Deed of Assignment. In this regard, once it was identified that the Deed of Assignment, which was a requirement for the claim, had been misplaced by the Provider, it completed the Lost Deed of Assignment Indemnity form as required, in order to process the claim. The Provider says that a fully completed Death Claim Form was provided to the Insurer on **15 January 2018**.

Further to the completion of all required documentation on the part of the Provider, the Provider is satisfied that any further steps in the process were a matter between the Insurer and the Complainant. The Provider is of the view (though it is not in a position to speak on behalf of the Insurer) that the Complainant did not furnish a certified death certificate to the Insurer until sometime in September/October 2018. The Provider submits that this may well have had a significant effect on the processing time of the death claim. The Provider says it cannot comment on this matter any further, noting that it is a matter solely within the knowledge of the Insurer and the Complainant.

The Provider is satisfied that it progressed the Death Claim Form in a timely and efficient manner, noting certain issues that arose in respect of the claim, namely, the requirement to complete a lost Deed of Assignment Form for the Insurer. The Provider says it received a blank copy of the Death Claim Form from the Insurer within 2 weeks of the deceased's death, and returned a completed version of this claim form to the Insurer within a month.

The Provider says it received a request for further documentation on 6 December 2017, which request was ultimately resolved on 15 January 2018, at which stage the Provider was satisfied that it had fully complied with its requirements in terms of processing the claim form. The Provider says that any further delays in the processing of the life insurance policy claim arose due to matters as between the Insurer and the Complainant, which are not the responsibility of the Provider.

However, the Provider says it must acknowledge that there may be a perceived delay on the part of the Provider in the completion of the original documentation in late 2017, and a further delay that arose from the procedure required to rectify the lost Deed of Assignment in December 2017. Whilst the Provider does not believe that the interest that has accrued on the deceased's mortgage account from the date of death, occurred purely due to the Provider's delay in the months of November and December 2017, the Provider acknowledges that the delay on its part occurred at a time which was clearly extremely stressful for the Complainant, when she was dealing with the affairs of her deceased husband.

With this in mind, the Provider offered the Complainant, in its email to the FSPO on 19 November 2020, as a gesture of goodwill, to close the deceased's mortgage account immediately and write off the remaining balance on the mortgage account, which at that time stood at €3,418.15. The Provider also offered the Complainant the sum of €500 as a further gesture to reflect the inconvenience associated with having to progress the complaint to this point.

The Provider says that it engaged with the Insurer in a full and timely fashion, and in compliance with its obligations under the Central Bank of Ireland's Consumer Protection Code 2012, and under its own terms and conditions. However, the Provider acknowledges that this must be weighed against a 3 month delay between being provided with a Death Claim Form by the Insurer, and that claim form process being completed to the Provider's satisfaction on 15 January 2018.

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The Provider says that when it is notified of the death of the holder of a sole mortgage loan account, it will action a freeze of automatically-generated correspondence to the registered address of the account. The Provider notes that the registered address for correspondence on the deceased's mortgage account was the security address, and not the address of the Complainant. The Provider placed a freeze on correspondence on the mortgage account 4 days after, having been notified initially by the Complainant of deceased's passing. As a result, no mortgage account statements issued until 9 June 2020, when the freeze on correspondence was lifted by the Provider. The Provider says that if these statements had have been issued, they would have issued to the security address.

The Provider acknowledges that a number of requests were made of the Provider for statements in respect of the deceased's mortgage account. The Provider says that requests were made in January, August and September 2019, however there was a freeze on automatically-generated correspondence issuing on that account. Therefore, whilst the Provider did make a request for the statements on 21 November 2019 further to a request by the Complainant's Representative on 20 November 2019, that request was not successfully actioned as there remained a freeze registered on its system for correspondence in respect of the deceased's mortgage account. The Provider says that there was a further request made by the Complainant on 9 June 2020 and at that stage, the freeze on automatically-generated correspondence was lifted. This allowed for the generating of the statements. The Provider says that it is for this reason that these statements were not furnished sooner.

In relation to her telephone contacts with it, the Provider notes that the Complainant telephoned on 27 June 2019 and says it is satisfied that this call was conducted in compliance with all requirements of the Consumer Protection Code 2012. The Provider notes that in her complaint to the FSPO, the Complainant refers to 3 further telephone calls she made on 2 July, 4 July and 11 July 2019. The Provider has been unable to locate any record of these telephone calls on its internal systems and therefore, it is unable to comment on the nature of these calls or with whom the Complainant spoke.

The Provider is satisfied that it acted properly and promptly throughout its interactions with the Complainant during the relevant period (namely from when the deceased died, and in January 2019, when the death claim benefit was lodged to his mortgage account) in compliance with all requirements of the Consumer Protection Code 2012.

In respect of being notified of the remaining balance on the deceased's mortgage account, the Provider says that it received the proceeds of the life insurance policy on **26 January 2019** and applied these funds to the mortgage account on 29 January 2019. The Complainant's Representative wrote to the Provider on 5 February 2019 inquiring as to whether there were any surplus funds in the mortgage account. The Provider confirmed in its letter of **25 February 2019** that there were no such surplus funds and by further letter of **6 March 2019** that there was an outstanding balance on the mortgage account in the sum of €3,186.64.

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The Provider says that the life insurance policy claim crystallises at the death of the mortgage holder. The Provider is entitled, pursuant to the terms and conditions of the mortgage account, to continue charging interest on the account throughout the period between the death of the mortgage holder and the lodgment of the life insurance claim benefit (and thereafter until the account is closed).

I note that the Provider says that because there was more than a year between the passing of the deceased, and the lodgment on **29 January 2019** of the life insurance claim benefit cheque, which was for the balance outstanding at the date of death, this resulted in the outstanding balance on the deceased's mortgage account, and it has confirmed that interest continues to apply to this outstanding balance.

The Provider refers to Condition 12.1 of the Irish Banking Federation's General Housing Loan Mortgage Conditions ('the General Conditions'), which the deceased's Mortgage Deed incorporates as part of the conditions of the mortgage loan, and which states:

"The security constituted by the Mortgage and these Conditions shall become enforceable and any of the Secured Liabilities not already payable on demand shall become due and payable on demand immediately upon and at any time after the occurrence, for any reason, whether within or beyond the control of the Mortgagor, of an Enforcement Event".

Condition 12.2.1 provides:

"12.2 Enforcement Events

The occurrence at any time and for any reason, whether within or beyond the control of the Mortgagor of any of the following events shall constitute an Enforcement Event:

12.2.1 If the Mortgagor fails to pay or discharge any of the Secured Liabilities when they ought to be paid or discharged".

The Provider wrote to the Complainant, in her capacity as the Personal Representative of the deceased, through her solicitor, on **28 September 2020**, as follows:

"As [the deceased] has died, and as the repayments have not been made on the mortgage loan the entire balance of the mortgage is now due to be repaid

*We have already lodged €74,041.92, the entire proceeds of life-assurance policy number 1177****, to the mortgage account, towards paying off the mortgage loan. The amount still owned to us is shown above [€3,394.27]".*

The Provider says that it issued this letter in circumstances where an enforcement event had occurred, namely the failure to make any payments to the mortgage account since the passing of the deceased, with the exception of the lodgment of the life insurance policy benefit.

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I am satisfied that this was an Enforcement Event as described by General Condition 12.2, and therefore the Provider was entitled to make such a demand of monies pursuant to the terms and conditions of the deceased's mortgage account.

The Provider further noted in its letter of **28 September 2020** that:

"If you do not pay us the amount owed ... we can start legal action to enforce our rights".

The Provider says that it derives the entitlement to issue proceedings against the Estate of the mortgage account holder by virtue of Condition 12.3 of the General Conditions, which states:

"After the security constituted by the Mortgage and these Conditions has become enforceable, the Secured Party may in its absolute discretion...enforce all or any part of the security in any manner it sees fit".

The Provider is therefore satisfied that the terms and conditioned of the agreement as set out in the mortgage deed signed and accepted by the deceased on or about **25 September 2014** entitled the Provider to issue the demand letter of 28 September 2020, and if necessary, begin enforcement proceedings against the Estate of the deceased at the Provider's discretion.

In addition, the Provider says it is not aware of any bar to it issuing enforcement letters when there is an ongoing FSPO investigation concerning a mortgage account.

The Provider says that following its letter of **28 September 2020**, it had, during the course of the formal investigation of this complaint by the FSPO, sought to engage with the Complainant to settle this matter amicably. This resulted in the Provider making an offer of settlement on **19 November 2020**, namely, namely, an offer to immediately close the deceased's mortgage account for the Complainant, which had at that time an outstanding balance of €3,418.15, together with payment to her of a goodwill gesture of €500.

The Complainant communicated a rejection of this offer on **20 November 2020**, making reference to legal costs in the amount of €5,000, as well as *"lost interest accruing on the cash amount owed to me totalling 7,000 euro approx."*. The Provider responded on 30 November 2020 requesting clarification and vouching documentation in respect of these sums, so that it may appropriately respond and consider the matter further. The Provider notes that the Complainant responded on **1 December 2020** refusing to provide any such clarification or vouching documentation.

The Provider is of the view that its offer originally made on 19 November 2020, which has a total benefit of around €4,000 to the Complainant, is a reasonable offer that reflects the inconvenience and stress suffered by the Complainant due in part to the delay on the part of the Provider up to January 2018. The Complainant has however, as is her prerogative, rejected that offer of settlement.

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The Provider notes that in rejecting that settlement offer, the Complainant alluded to loss suffered by her, without providing any clarification or vouching documentation to substantiate that that loss has actually occurred. It has indicated its view that if the FSPO believes further compensation outside of that offered by the Provider is warranted (which is not accepted by the Provider), that the FSPO should take into consideration the fact that the Complainant has claimed loss without evidence of same or clarification around what, in the Provider's view, is a vague claim concerning interest.

The Provider has reiterated that its offer to the Complainant, as first stated in its email to this Office on 19 November 2020, remains open for her to accept in full and final settlement of this matter, as follows:

"The Provider would like to offer to immediately close the mortgage loan account for the Complainant which has a current outstanding balance of €3,418.15. In turn, [the Provider] will then be in a position to release the title deeds of the security property to the Complainant. The Provider would like to advance a further offer of €500 to the Complainant in recognition of the impact that this had had on the Complainant and the time spent in bringing this matter to our attention".

The Complaint for Adjudication

The complaint is that the Provider maladministered the closing of the Complainant's late husband's mortgage account, in that the Provider did not communicate effectively with the Complainant or the Insurer, which led to delays in the Provider obtaining from the Insurer the life assurance benefit that was assigned to the deceased's mortgage which the Complainant says would have otherwise settled the outstanding mortgage, if it had been applied for in a more timely fashion.

The Complainant says that this resulted in interest accruing on her late husband's mortgage account, thereby leaving an outstanding balance of €3,186.64 on 6 March 2019, after the life assurance benefit had been applied to the mortgage account on 29 January 2019, a balance which continues to accrue interest.

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.

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

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

The Complainant's late husband, who held a mortgage loan account with the Provider in his sole name, died in late 2017. Details of the Complainant's interactions with the Provider in the weeks thereafter, are outlined above. The Complainant complains that the Provider unduly delayed in completing the death claim process to the Insurer, resulting in the death claim benefit not being lodged to her late husband's mortgage account until **29 January 2019**, leaving at that date a balance of approximately €3,000, which continues to accrue interest, such that the balance on the deceased's mortgage account on 2 December 2020 was €3,429.95.

In addition, the Complainant says that she, and her Representative, made numerous requests to the Provider throughout 2019 for statements in respect of the deceased's mortgage account, but the Provider did not issue her with these.

I note from the documentary evidence before me that the Insurer first wrote to the Provider shortly after the Complainant's husband died seeking that it complete the enclosed Death Claim Form, which included returning a certified copy of the Death Certificate and the original Deed of Assignment, as the policy was assigned to the Provider as security for the deceased's mortgage loan.

I note the Provider wrote to the Insurer on 22 November 2017, as follows:

"In order for you to proceed with the claim we have enclosed the completed claim form as requested in your letter dated 23.10.17.

Please contact us on receipt of this letter to advise of any other requirements you may have".

I note the Insurer wrote to the Provider on 6 December 2017 to advise that in order to proceed with the assessment of the death claim, it required both the original Deed of Assignment and a certified copy of the Interim Death Certificate.

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I note the Provider then wrote to the Insurer on 13 December 2017, as follows:

“ ... please be advised that we are unfortunately unable to locate the requested Deed of Assignment document.

Please advise your requirements to progress matters in lieu of same.

With regards to the certified copy of the Death Certificate, please contact the estate of the deceased in respect of that document, as we do not have a copy of same”.

I note from the evidence before me that at that time, the Provider was only in receipt of a non-certified copy of the Coroner’s Interim Certificate of the Fact of Death that the Complainant had posted to it shortly after her husband’s death. The Complainant did not provide a certified copy of the Death Certificate until she later hand delivered it to a local Provider branch on 27 March 2018.

I note the Insurer then wrote to the Provider on **9 January 2018** seeking it complete the enclosed Lost Deed of Assignment indemnity.

I note the Provider wrote to the Insurer on 15 January 2018, as follows:

“Please find enclosed the completed lost deed of assignment form ...

Please contact us on receipt of this letter to advise of any other requirements you may have”.

It appears that the Insurer did not write to the Provider again until 26 January 2019, when it enclosed a cheque for €74,041.92 in settlement of the death claim.

As a result, I accept the Provider’s position that any delays in the processing of the death claim after 15 January 2018 arose due to matters as between the Insurer and the Complainant, which are not the responsibility of the Provider. I accept that on 15 January 2018, the Provider had completed the death claim process as it pertained to the Provider, in that it had correctly advised the Insurer that it was not in receipt of a certified copy of the Death Certificate and that the Insurer should contact the Estate of the deceased to seek this document.

I have listened to the recording of the telephone call that the Complainant made to the Provider at 17:11 on **25 September 2018** and I am satisfied from the following exchange that the Complainant was, at that time, aware that the Insurer was still awaiting a copy of the Death Certificate in order to process the death claim, as follow:

Complainant: [The Insurer] *have the cheque ready and waiting to go but they need obviously paperwork from yourself -*

Provider Agent: *Ok, ok –*

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Complainant: *– and the death cert, I can forward that to them myself, why should you? You have a copy of the death cert, you're the bank looking for the money from them*

Provider Agent: *Right, so [the Insurer] are looking for a copy of the death certificate from yourself, is it?*

Complainant: *What's the usual that an insurer requires to pay out on a mortgage?*

Provider Agent: *As far as I know, they'd definitely need a copy of the death certificate alright from yourself*

Complainant: *Exactly, yeah, yeah, and obviously there's other paperwork that they need from yourself –*

Provider Agent: *Yeah*

Complainant: *– Yeah. So that's why you need to contact them with whatever paperwork you need them to supply to you and they can issue the cheque to you ... I don't know much about this business, you obviously do, but, I mean, you know what I mean, [the Provider] needs to get moving with whatever paperwork they need to try and claim the loan from [the Insurer].*

I note that the Insurer wrote to the Provider on 26 January 2019, enclosing a cheque for €74,041.92 in settlement of the death claim, and that the Provider lodged this sum to the deceased's mortgage account on 29 January 2019.

It would appear that the deceased's policy with the Insurer was one that provided him with reducing term cover, meaning that the amount that the policy covers (the death claim benefit) reduces in line with the outstanding balance of the mortgage. The death claim benefit paid by the Insurer to the Provider on 26 January 2019 was therefore calculated with due regard to the outstanding mortgage balance at the date the deceased died in late 2017.

As the Provider was entitled, pursuant to the terms and conditions of the deceased's mortgage account, to continue charging interest on the account balance, throughout the period between the death of the mortgage account holder and the lodgment of the death claim benefit (and thereafter until any outstanding balance is paid in full and the account thereby closed), I note that interest continued (and continues) to be applied to the deceased's mortgage account since the date of his death.

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I note that in its final response letter to the Complainant's Representative on **7 December 2019**, the Provider advised, as follows:

"The balance owing on the above mortgage account on [date of death] was €73,532.46. Until such a time as the mortgage balance is repaid, interest will continue to accumulate i.e. the account is not frozen.

On 29 January 2019 the balance outstanding had accumulated to €76,969.32. Proceeds of €74,041.92 were received on this date. This has resulted in the shortfall now owing on the mortgage account.

I hope the foregoing explanation clarifies with regard to the outstanding balance on the mortgage account".

In this regard, I note from the documentary evidence before me the Statement for the deceased's mortgage account since the date of his death in late 2017, shows the accrual of interest over that period, without any repayments being made.

The Provider has confirmed that the outstanding balance of the deceased's mortgage loan account on 2 December 2020 stood at €3,429.95, which included arrears in the sum of €57.06.

I note the Complainant and her Representative made a number of requests to the Provider throughout 2019 for statements in respect of the deceased's mortgage account, but the Provider did not issue her with these.

I note that pg. 4 of the Provider's '**Helping you to work through finances during bereavement**' brochure contains a section headed '**Before you get in touch with us**' which states:

"What documentation we will need before we provide account information"?

Before we provide any information, there are a number of documents that we will need:

- ✓ *A certified copy of proof of death (for example, death certificate / coroner's certificate / interim certificate of fact of death)*
- ✓ *If there is a will: a certified copy of the will naming the executor(s) to confirm who is entitled to deal with the estate*
- ✓ *A certified copy proof of identity and proof of address for the executor / administrator / next of kin who is authorised to deal with the estate of the deceased if they are not a Provider customer. In some circumstances, we may require an up to date proof of identity and proof of address for an existing [Provider] customer. We need this information so we can meet our legal duty under the law against money laundering and other crimes".*

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I note from the documentary evidence before me that the Complainant hand delivered a completed Bereavement Notification Form and a certified copy of the deceased's Death Certificate to a local Provider branch on **27 March 2018**.

In its response dated 11 December 2020 to the formal investigation of the Complainant's complaint by this Office, I note the Provider advises:

"The Complainant advises that she attended with the required documentation (as outlined [in the Provider's 'Helping you to work through finances during bereavement' brochure] in a branch of the Provider on 27 March 2018. It was after the provision of this information that the Provider was in a position to discuss information pertaining to the account.

Outside of this requirement, the Provider cannot identify any further restrictions the Complainant would have experienced in interacting with the Provider regarding the deceased's mortgage loan account".

The Provider further advises:

"[The Provider] acknowledges that a number of requests were made of the Provider for mortgage loan account statements for [the deceased's mortgage loan account]. The Provider notes that requests were made in January, August and September 2019. However...there was a freeze on automatically generated correspondence issuing on that account. Therefore, whilst the Provider did make a request for the statements on 21 November 2019 further to a request by the Complainant's Representative on 20 November 2019, that request was not successfully generated and issued by the system, noting the freeze registered on correspondence in respect of the same.

The Provider notes that there was a further request for statements made by the Complainant on 9 June 2020 and at that stage, the freeze on automatically generated correspondence was lifted. This allowed for the generating of the statements. The Provider says that it is for this reason that these statements were not furnished sooner".

I accept it is good practice for the Provider to stop its systems from automatically generating and issuing correspondence to a deceased person, however the Complainant and her Representative were not seeking for the continuation of automatically-generated statements (like the annual mortgage account statements) to continue to issue as due at some later date; rather it would appear to me that they were seeking specific information at a particular point in time.

Given that the Provider acknowledges that the Complainant had on 27 March 2018 provided it with the documentation it required in order to discuss the deceased's mortgage account with her, it is disappointing that the Complainant and her Representative's requests in January, August, September and November 2019 for statements of the deceased's mortgage account were not properly actioned.

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I am also uncertain, in light of the above, why the Provider wrote to the Complainant on 17 October 2019 (and to the security address rather than to her own address at that), requesting certain information to be provided by her in order to allow the Provider to discuss the deceased's mortgage account with her. Nevertheless, I am mindful that the Provider's repeated failure throughout 2019 to furnish the Complainant and her Representative with the statements of the deceased's mortgage account did not in any way delay the processing of the death benefit claim from the Insurer, as the Provider had already previously completed its role in this process by 15 January 2018.

I am also mindful that the Complainant and her Representation were advised on a number of occasions throughout 2019 that there was an outstanding balance on the deceased's mortgage account.

For example, the Provider wrote to the Complainant's Representative on 6 March 2019 to advise, as follows:

"We wish to confirm that the current balance on the above mortgage account is €3,186.64".

In addition, the Complainant telephoned the Provider at 15:00 on 27 June 2019 and having listened to the recording of this call, I note she advised during the course of that call that:

"... There's been toing-and-froing from the solicitor [indecipherable] just saying that there's an outstanding balance even after the mortgage death policy has been paid and I am just wondering why and what the outstanding balance is ..."

That said, the Provider's repeated failure to furnish the Complainant and her Representative with the statements of the deceased's mortgage account throughout 2019 was undoubtedly frustrating for the Complainant, both in her trying to understand why there remained an outstanding balance on the mortgage account and, more generally, in her efforts to deal with her late husband's affairs.

I note that shortly after this Office commenced its formal investigation of this complaint, the Provider sent an email to this Office dated 19 November 2020, making an offer of settlement to the Complainant, as follows:

"The Provider would like to offer to immediately close the mortgage loan account for the Complainant which has a current outstanding balance of €3,418.15. In turn, [the Provider] will then be in a position to release the title deeds of the security property to the Complainant. The Provider would like to advance a further offer of €500 to the Complainant in recognition of the impact that this had had on the Complainant and the time spent in bringing this matter to our attention".

I note that in her email to this Office on 20 November 2020, the Complainant rejected the Provider's offer, as follows:

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"I have considered the settlement proposal from the Provider and although I am keen to resolve the matter I cannot accept the proposal at present. I feel that I should afford myself the opportunity to allow the investigation stage to proceed after such a prolonged period attempting to resolve the issue with the Provider myself. I duly recognise the willingness of the Provider to close the mortgage loan account immediately and offer the sum of 500 euro in recognition of the impact this issue has had on me but I feel that this is unsatisfactory.

... I have suffered immense emotional and psychological distress over the past 3 years as a result of this ongoing issue. I have also accrued solicitor costs to the sum of 5,000 euro specifically dealing with the Provider and this ongoing situation. Finally, the estate of my late husband remains incomplete and I have subsequently lost out financially as a result of the lost interest accruing on the cash amount owned to me totalling 7,000 euro approx."

I note that in its email to this Office on 30 November 2020, the Provider advised:

"The Complainant has referenced solicitor costs in the amount of €5,000 in dealing with the Provider. In this regard, the Provider would ask for such expenses to be vouched in order for the Provider to appropriately respond and consider this matter. The Provider would also ask for clarity from the Complainant in relation to her comments that she has "lost interest accruing on the cash amount owed to [her] totalling 7,000 euro approx.""

I note that in her email to this Office at 0:48 on 1 December 2020, the Complainant advised:

"I firstly would like to state that I feel this is an unreasonable request by the Provider given that the issue is of their making. I further question if it is essentially necessary? I would have to engage my solicitor and accountant to file such statements and this in turn will incur further costs and compound my expenses to date I am not happy to have to undertake this while having no firm commitment from the Provider".

In this regard, I note that in its email to this Office at 10:43 on 1 December 2020, the Provider responded, as follows:

"I appreciate the comments made by the Complainant, however the Complainant clearly stated that she "accrued solicitor costs to the sum of 5,000 euro specifically dealing with the Provider" and further referenced a further financial loss "on the cash amount owned to me totalling 7,000 euro approx." By making such comment, the Provider has inferred this to mean that this was a cost which has been incurred by the Complainant and therefore, such invoice and evidence of financial loss would be readily available as it has been quantified by the Complainant.

In order for the Provider to meaningfully review the Complainant's correspondence and the financial impact claimed, it is necessary for the Provider to review such vouched expenses. The Provider would consider this a reasonable request as it would like to amicably resolve this complaint.

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The Provider has already acknowledged in its earlier email that it has taken this matter seriously and it wishes to come to a mutually agreeable resolution of this complaint. In light of this, the Provider had already offered to immediately close the mortgage loan account which has a current outstanding balance of €3,418.15 and has offered a gesture of €500 to the Complainant. This offer emails open to the Complainant to accept.

If further information can be provided by the Complainant to evidence the direct financial loss she has referenced, the Provider is happy to review same and will then be in a position to review the offer which has already been made”.

I also note that in her email to this Office at 14:10 on 1 December 2020, the Complainant advised, *inter alia*, that:

“... I am not in a position to comply with the Provider’s request today as I have no guarantee that they will comply or reimburse for further costs incurred”.

Having examined all the evidence before me, I am satisfied that the Provider was first instructed by the Insurer within 2 weeks of the Complainant’s husband’s death, as to what was required from the Provider in order to initiate the death claim process, and I take the view that the Provider met those requirements, in so far as it could, by 15 January 2018.

I am therefore satisfied that the Provider had by 15 January 2018, completed the death claim process as it pertained to the Provider, in that it had correctly advised the Insurer that it was not in receipt of a certified copy of the Death Certificate and that the Insurer should contact the Estate of the deceased to seek this document.

I therefore take the view that the Provider is not answerable to why the death claim benefit was not paid by the Insurer to the Provider until a year later, on 26 January 2019. That said, I note that the Provider appropriately advised the Complainant and her Representative on a number of occasions during 2018 to contact the Insurer in relation to the Insurer’s assessment of the death benefit claim.

I also take the view that the Provider appropriately notified the Complainant by way of letter to her Representative on 6 March 2019 that there remained an outstanding balance on the deceased’s mortgage account, after the death claim benefit had been lodged to the account. In that regard, I am satisfied that the deceased’s mortgage account properly remained open and active.

I am of the opinion, however, that it is disappointing that the Provider repeatedly failed on a number of occasions throughout 2019 to furnish the Complainant and her Representative with the statements of the deceased’s mortgage account that they had sought, particularly given that the Provider itself acknowledges that the Complainant had already provided it with the documentation it required in order to discuss the deceased’s mortgage account with her. This inevitably caused the Complainant unnecessary frustration in her efforts to deal with her late husband’s affairs.

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I note that when the Complainant made this complaint to this Office in February 2020, she sought the following redress:-

"[The Provider] to finally close mortgage account & release deeds of property so as to allow me complete the affairs of my late husband's estate – to accept responsibility on their part for delay in requesting payment from [a named life insurer] & therefore not my responsibility for outstanding balance.

This matter has caused further financial burden, accruing solicitor costs & personal unnecessary distress with delay in resolving".

I also note that in **November 2020**, the Provider offered to close the deceased's mortgage account and write-off the outstanding balance (which stood at €3,429.95 some weeks later, on 2 December 2020). This outstanding balance will have increased since that date, due to interest continuing to be applied to the balance. I note too that the Provider has advised that it will release the title deeds of the property, once the deceased's mortgage account is closed. In addition, the Provider has also offered the Complainant the sum of €500 *"in recognition of the impact that this [matter] had had on the Complainant and the time spent in bringing this matter to our attention"*.

I have examined the evidence made available by the parties. Whilst I acknowledge that the level of customer service that the Complainant received from the Provider, was at times disappointing and fell short of what she ought reasonably be entitled to expect from the Provider, I am of the opinion that the Provider acknowledged this situation and it made an offer at an early stage of this investigation process, which I take the view, in the circumstances, was a reasonable one. Accordingly, as this offer remains open to the Complainant to accept, I do not consider it necessary or appropriate to make any direction or to uphold this complaint, and it will be a matter for the Complainant to advise the Provider directly whether she now wishes to accept this offer.

It is my Decision therefore, on the evidence before me that this complaint is not upheld.

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.



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

23 August 2021

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

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

