



<u>Decision Ref:</u>	2021-0323
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Loans
<u>Conduct(s) complained of:</u>	Arrears handling - commercial lending Appointment of debt collection agency Delayed or inadequate communication Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Maladministration Misrepresentation (at point of sale or after) Selling mortgage to t/p provider Maladministration regarding voluntary sale
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the settlement of the Complainant's liability under a mortgage loan agreement.

The Complainant's Case

In his Complaint Form, the Complainant refers to his letter of complaint to the Provider dated **6 December 2017**, in which he informed the Provider that he wished to make a formal complaint *"about the conduct of the bank leading up to the current situation."* The Complainant outlined that on foot of an approval letter dated **25 November 2005**, he borrowed the sum of €658,200.00 from the Provider to repay an existing loan on two industrial properties. The Complainant stated that the approval letter referred to the loan as a *'Residential Business Loan'* but the loan was secured on two industrial units in [locations redacted].

The Complainant's letter explained that due to the global financial crisis which led to a downturn in business and impacted local rental value and demand, his loan became unaffordable. The Complainant said that he made every effort to keep up the repayments and to communicate fully and openly with the Provider. The Complainant said that he regularly wrote to the Provider's CEO. The Complainant also made reference to the *copious* amounts of emails, letters and telephone conversations.

At all times, the Complainant said he sought a resolution to the matter and urged the Provider to come to the table with a settlement figure. The Complainant also referred to the amount outstanding on the loan and the favourable Euro/Sterling exchange rate.

The Complainant then stated that he was asked to submit a statement of affairs, which he did, and which he says was verified by an accountant and solicitor. The Complainant said this gave the Provider "*the complete financial picture.*" Subsequently, the Complainant said that the Provider permitted him to dispose of one, and then the other, of his properties at a time when property values were low, in the full knowledge that the property constituted the security on which the loan was based. The Complainant stated that:

"The implication from my dealings with the bank was consistent in that if I disclosed my situation then a settlement could be made."

The Complainant further stated that:

"The properties were sold on the understanding that there was no additional money and that the matter would be finally closed."

The Complaint goes on to say that:

"had I been told plainly that this was not the case, then I would have sought another course of action."

The Complainant then posed the question of:

"Why would I sell the properties at such a low rate, disposing of the only collateral I had unless it was to settle the debt?"

The Complainant also asked:

"why did the bank allow me to do this without advising me to the contrary?"

In the meantime, the Complainant said that the Provider was negotiating the sale of his loan at face value plus interest.

The Complainant contended that he acted in good faith and took advice from the Provider. At no point, the Complainant said, was he advised “*that the debt was to be sold or that [the Provider] had no intention of settling the debt, as was strongly indicated*”. The Complainant stated that the Provider failed in its duty of care and did not act in his best interests as a consumer.

At the time of writing his letter in December 2017, the Complainant said he found himself in the unwelcome position of being pursued for the debt through the High Court and that the stress of matters had already hospitalised him, impacted his general health and his ability to function in work. The Complainant also outlined the stress his wife was experiencing.

In resolution of his complaint, the Complainant urged the Provider to contact the parties pursuing him for the debt and request that they cease legal proceedings. The Complainant also requested that the Provider:

“acknowledge that the bank misled me into believing it was moving towards a settlement, failed in its duty of care to me as a consumer and – in addition to rectifying the situation mentioned above – has a further duty to compensate me for the inconvenience and stress it has caused.”

In his Complaint Form in March 2018, the Complainant said that:

“I would like the bank to admit it has been mis-handled, for them to somehow stop the current litigation against me, pay me back my legal costs (around €10,000) and compensate me for the stress & worry.”

The Provider’s Case

The Provider explains that the purpose of the loan the subject of this complaint, was to redeem an existing loan with another financial service provider and to release equity in certain properties. The Provider advises that the ownership of the loan was transferred to third parties on **19 October 2015**. The Provider has also set out a timeline of events over the course of eight pages in its Complaint Response covering the period **May 2010 to June 2015**.

The Provider says confirmation that it is not the policy of the Provider, to accept a sum less than the full redemption balance, in full and final settlement of the debt, was provided to

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the Complainant and his agents on several occasions. In this respect, the Provider refers to the following correspondence:

- 26 August 2011** Correspondence issued to the Complainant advising that his proposal to mark down the loan was not acceptable and no such agreements had been entered into.
- 29 June 2012** Correspondence issued to the Complainant. The Provider says the letter notes that the Provider had previously rejected a request to write down some of the debt in **September 2011**. The letter refers to correspondence of **11 May 2012** outlining the documentation to be submitted and the necessity to complete a Standard Financial Statement (“SFS”). The letter outlines that once the documents were returned, the proposal would be assessed. The Provider says the letter clarified that it was not Provider policy to accept a sum less than the full redemption balance, and added that while in some cases the Provider will consent to allowing the sale of property, customers continue to be liable for the shortfall amount.
- 1 October 2012** Correspondence issued to the Complainant. The Provider says the letter noted the Complainant’s wish to arrange a settlement figure but clarified the Provider’s policy in that regard had not changed. The Provider says the letter acknowledged the correspondence that had been sent to the Commercial Department.
- 20 January 2014** Correspondence issued to the Complainant advising that the Provider would not be in a position to consider a settlement request until such time as the details of the settlement proposal were submitted along with supporting documentation. The Provider said that on receipt of this information, it would assess the proposal but added that it was not the Provider’s policy to accept a sum less than the full redemption balance, in full and final settlement. The Provider says the letter re-iterated that its consent to the sale of the [Location 1] property was subject to the conditionality set out in the letter dated **15 January 2014**.
- 20 June 2014** Correspondence issued to the Complainant requesting details of the lease, reiterating that the Provider was willing to meet with the Complainant. The Provider says the letter added that a settlement could not be considered until such time as the Complainant outlined details of the proposal with supporting documentation. The Provider

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says the letter again advised that it was not its policy to accept a sum less than the full redemption balance as the full and final settlement of the debt.

- 28 August 2014** The Provider says it contacted the Complainant regarding an email he sent on **8 August 2014**. The Provider says the Complainant stated that his preferred approach in respect of the loan, was to sell the securing property and remit the sale proceeds in full and final settlement of the loan. The Provider says the Complainant was advised that no assurances could be provided regarding the residual debt post sale of the property, but that he could submit a proposal with supporting documentation for review. The Provider says the Complainant was further advised that the Provider's policy was that all sums borrowed were repayable. The Provider states that its system notes outline that the Complainant acknowledged the position and advised he would consider his options before reverting to the Provider with a proposal.
- 28 January 2015** The Provider says its agent (K) spoke to the Complainant to advise as to the reason why the consent to sell was declined for €80,000.00, was because the property value was detailed as €90,000.00 and it was not the Provider's policy to consent to sell a property for below market value. The Provider says K noted that the Complainant had not submitted a proposal in writing and that it was not the Provider's policy to write off debt but should the Complainant request such a proposal for consideration, supporting documentation would be required including any assets/liabilities the Complainant had an interest in.
- 17 February 2015** The Provider refers to an internal email detailing K's conversation with the Complainant's solicitor. The Provider says K confirmed that he had advised the Complainant's solicitor that the Complainant's request that the Provider accept the sale proceeds in full and final settlement of the debt was outside Provider's policy and that he could not provide any assurance that this request would be approved by the Provider. The Provider says K stated that he could

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forward the proposal for consideration once supporting documentation was received.

The Provider says it clearly outlined the necessity to repay any residual balance that remained outstanding as a result of the sale of the properties. The Provider further says that this was detailed in the correspondence that issued to the Complainant on foot of his requests to sell the properties. In respect of the sale of the [Location 1] property, the Provider refers to certain passages contained in letters dated **15 January 2014** and **19 February 2014**.

Following a request from the Complainant's third party representative in respect of the [Location 2] property, the Provider says correspondence issued to the Complainant dated **13 March 2015**. The Provider says the letter informed the Complainant of the Provider's consent to the sale of the property for €90,000.00. The Provider has also referred to a number of passages contained in this letter. The Provider says that further correspondence issued to the Complainant on **11 May 2015** following a request from the Complainant's third party representative to extend the date for the receipt of funds. The Provider states that the letter reiterated that it was not waiving its rights under the Facility Letter. The Provider has also referred to a number of passages from this letter.

The Provider states that it did not provide advice or guidance to the Complainant regarding the timing of the sale of the two properties. The Provider says the Complainant and his agents approached the Provider regarding the desire to sell the properties and consent to sale was provided on foot of requests from the Complainant and his agents.

In respect of the financial implications for the Complainant regarding the sale of the properties, the Provider refers to the above correspondence. In addition, the Provider says that K spoke to the Complainant's solicitor on **12 February 2015** and advised of the requirement for clarification with regard to the costs associated with the proposed sale. Regarding the Complainant's proposal, the Provider says K advised that it was outside of the Provider's policy so, therefore, he could not provide any assurances. The Provider says that K did advise of the documentation that was required if the matter was to be put forward before a credit committee.

On **9 March 2015**, the Provider says it emailed the Complainant's solicitor detailing the Complainant's requirement to submit a proposal to service the residual debt post sale. The

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Provider has cited extensively from this email. On **13 March 2015**, the Provider says correspondence issued to the Complainant informing him that the Provider's consent to the sale of the [Location 2] property for €90,000.00. The Provider has also referred to a number of passages from this letter. Further correspondence, the Provider says, issued on **11 May 2015** following a request from the Complainant's third party representative to extend the date for receipt of funds.

The Provider says the letter re-iterated that it was not waiving its rights under the Facility Letter. The Provider has also cited a number of passages from this letter. In addition to this, the Provider says the Complainant was advised by correspondence dated **20 January, 21 January and 20 June 2014**, and by telephone calls dated **28 August 2014, 28 January 2015 and 17 February 2015** of the Provider's policy regarding debt write down.

In respect of the sale of the Complainant's loan, the Provider says that negotiations with the third party purchaser were commercially sensitive and involved a large number of loans in addition to the Complainant's loan. The Provider contends that it would not have been appropriate to keep the Complainant, or any other borrower, advised of these negotiations, nor was it obliged to do so.

The Provider also refers to clause 1.15 of the General Mortgage Loan Approval Conditions and clause 6.7 of its Mortgage Conditions in respect of its rights and obligations regarding the sale of the Complainant's loan. The Provider says that the terms and conditions which issued prior to acceptance and drawdown of the loan, clearly advised of the Provider's right to transfer the benefit of the loan to a third party. The Provider says it is satisfied that it transferred ownership of the Complainant's loan, in accordance with the terms and conditions referred to above. The Provider also says that the Complainant accepted the loan offer in the presence of his solicitor confirming: *"My/our Solicitor has fully explained the said terms and conditions to me/us."*

The Provider submits that while it was not obliged to provide advance notification to the Complainant of its intention to transfer the loan, it informed the Complainant of this in correspondence dated **23 July 2015**. The Provider says that this correspondence advised the Complainant that his mortgage loan was included in a portfolio of loans that would be transferred to the third party purchaser.

The Provider states that ownership of the Complainant's loan was transferred on **14 October 2015** and correspondence issued to the Complainant advising of this on **15 October 2015**.

The Provider says that it acted fairly and transparently and in the best interests of the Complainant. The Provider submits that, as detailed in its timeline and the documentation

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contained in the Schedule of Evidence submitted to this Office, it repeatedly advised the Complainant and his agents of its policy on debt write down. The Provider says the necessity to submit a detailed proposal to service any residual debt, together with supporting documentation, was outlined to the Complainant and his agents. The Provider says it also declined consent to sell the property at less than market value.

The Provider says it acted honestly, fairly and professionally, in the best interests of the Complainant and the integrity of the market in its dealings with the Complainant. In addition, the Provider says it is satisfied that it acted with due skill, care and diligence.

The Provider says it endeavoured to assist the Complainant with his requests for consent to sell the properties. Prior to this, the Provider says the Complainant was provided with alternative repayments arrangements, to assist with his financial circumstances. Furthermore, the Provider says it did not recklessly, negligently or deliberately mislead the Complainant as to the real or perceived advantages or disadvantages of a product. The Provider states that the Complainant was informed of the agreed costs associated with the property sales and the Provider's credit policy regarding debt write down.

The Provider says that any decisions made, or actions taken by the Complainant, were based on him receiving sound and independent legal advice. The Provider further says that the Complainant informed it of the solicitors acting on his behalf, and provided authority for the Provider to liaise with these parties.

The Complaint for Adjudication

The complaint is that the Provider wilfully misled the Complainant regarding the resolution and settlement of his loan, failed in its duty of care to him and failed to ensure, and act in, his best interests.

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. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions

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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 **27 August 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 regarding the contents of the preliminary decision, within the period permitted, the final determination of this office is set out below.

The Delay in receiving the Provider's Complaint Response

By letter dated **11 December 2019**, by way of commencement of the formal investigation of this complaint, this Office sent the Provider a **Summary of Complaint** incorporating a Schedule of Questions to be addressed and responded to, together with a Schedule of Evidence Required to be submitted. This letter requested that the Provider supply a response to the Summary of Complaint within 20 working days. The letter also drew the Provider's attention to **Section 59** of the **Financial Services and Pensions Ombudsman Act 2017** in respect of its obligation to respond to the complaint investigation.

In the absence of a response, on **13 January 2020**, this Office sought an update from the Provider by email, however a response was not received to this request.

This Office sent a further email to the Provider on **21 January 2020** and, responding the same day, the Provider advised that it was experiencing a high volume of complaints but hoped to be in a position to respond within three weeks. Disappointingly, more than five additional weeks then passed and this Office had not received any communication from the Provider, whether in the form of an update or a formal response to the Summary of Complaint.

This Office sent a further email to the Provider on **27 February 2020** requesting an update on matters. On **3 March 2020**, the Provider apologised for the delay in responding and advised that it was taking longer than expected to investigate the complaint. The Provider requested a further 10 working days to furnish its response.

Following a reply from this Office, the Provider advised by email dated **6 March 2020**, that it hoped to provide a response the following week. In a subsequent email dated **12 March 2020**, the Provider informed this Office that it would not be in a position to respond as previously advised and indicated an expected response date of **23 March 2020**.

The Provider further advised on **31 March 2020**, that the relevant staff member had been absent from the office for the previous week and a half, and that she would be returning to the Office the coming Friday *“to print and image required information [and] then to return midweek next week to compile response for submission.”*

This Office wrote to the Provider on **2 April 2020** expressing surprise at the absence of progress being made by the Provider in formally responding to this complaint and advising that in light of the delays which had been encountered to date, if the Provider’s formal response to the Summary of Complaint, including all items of evidence, was not made available to this Office within a final period of 10 working days, the FSPO would proceed with the adjudication of the complaint, on the basis that the Provider had failed, refused and/or neglected to make available the evidence and information which the FSPO has requested. Ultimately, the Provider supplied its formal response on **13 May 2020**, some five months after the Summary of Complaint had been issued to it.

Separate from the challenges faced by all businesses, including the Provider, arising from the Government guidelines introduced from March 2020 onwards, to curb the spread of COVID-19, the Provider’s approach in responding to this complaint has been very disappointing. The Provider failed to provide a response within the timeframe requested by this Office and also within its own requested timeframe. If those timelines had been met, this would have avoided the additional delays which ensued, no doubt contributed to by the requirement to adhere to Government guidelines calling on all commercial organisations to implement a policy, where possible, of working from home.

The Loan Agreement

I note that by Letter of Approval dated **25 November 2005**, the Provider sanctioned a ‘Residential Business Loan’ in favour of the Complainant in the amount of **€658,200.00**. The loan was secured on commercial properties located in [Location 1] and [Location 2]. The Complainant signed an ‘Acceptance of Loan Offer’ dated **2 December 2005**, indicating his acceptance of the terms set out in the Letter of Approval, the General Mortgage Loan Approval Conditions and the Provider’s Mortgage Conditions.

In terms of the repayment of the loan, clause 1.6 of the **General Mortgage Loan Approval Conditions**, states that:

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“1.6 *The Applicant will promptly pay all monthly or other periodic repayments and other sums due under the provisions of the Mortgage. [...]*”

I note that Clause 2 of the **Mortgage Conditions 2002** provide for the repayment of the loan, as follows:

“2 Provisions For Payment

2.1 *The Mortgagor will and hereby covenants [...] repay to [the Provider] with interest the whole of the Advance and all further Advances on the Security of the Mortgage [...]*

2.2 *The Mortgagor is intended to provide for repayment of capital and payment of interest primarily by combined payments at monthly intervals save where [the Provider] has stipulated that repayments in respect of all or part of the advance may be made at intervals other than monthly intervals.*

2.3 *The Mortgagor will discharge his primary obligations under Clauses 2.1 and 2.2 by making to [the Provider] on the specified day in every month the Monthly Repayment [...]*

2.5 *The Mortgagor will and hereby covenants to pay to [the Provider] and discharge on demand (or on such terms as may otherwise be agreed in writing) the general indebtedness and liability.*

2.6 *[The Provider] may extend the term or suspend any increase or decrease of the Mortgagor’s obligations to pay the Monthly Repayments or part or parts thereof for such period as [the Provider] may think fit.*

[...]

2.11 *If on the sale of the Property by the Mortgagor with the consent of [the Provider] the net proceeds are insufficient to discharge the Total Debt the Mortgagor will immediately pay the amount of the deficiency with interest until fully discharged, and the vacating of the security by receipt reconveyance discharge or otherwise to enable the sale to proceed or complete shall not adversely affect or prejudice the right of [the Provider] to recover the deficiency or the obligation of the Mortgagor to pay same with interest.”*

Correspondence

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The Complainant wrote to the Provider's CEO by letter dated **28 May 2012**. I note that, beginning at the fourth paragraph, this letter stated, as follows:

"One of my reasons for writing is to ensure that one of my messages had got through. On a couple of occasions I have suggested discussing a settlement figure, to which I have no immediate access I confess, but if this were a likelihood then I would make every effort to raise funds via friends and family. Neither the bank not (sic) I would achieve our ideal outcome, but I suspect we could get an agreement, draw a line under it and move on. I would be happy to come to Ireland with an open mind to meet if the [Provider] would do the same.

In the short term, [Estate Agent] and his team ([Location 3]-based agents who I am sure you may know) are redoubling their efforts to find good tenants so that I may be able to once again take up interest payments, so as to not aggravate the current situation. They are also looking out for purchasers for the property and I am due to have a review of progress with them this week.

In the same way that you are anxious to implement clear plans to take the bank forward, as am I keen to make the best of a bad situation with these property investments. I trust that our similar outlooks will enable us to come to an amicable outcome and that we can go on to prosper as things improve."

I note that the following month, the Provider issued a formal response to the Complainant on **29 June 2012**, as follows:

"I have been in contact with [named individual], Head of Commercial Credit, in relation to your account. I understand that in September 2011 the Bank rejected a request to write down some of the debt and that at this time your repayments were up to date.

I note that you have been in regular contact with the Bank in relation to your repayments. As per [named individual's] letter of 11 May 2012 our Commercial department require the following;

- A rationale/explanation for the request together with the period required
- Updated rental schedules, rents currently being received etc.
- 6 months personal bank account statements

You will also need to complete the Standard Financial Statement (SFS) form which was sent to you.

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Once those documents are returned your proposal will be assessed. However I should advise you that it is not Bank policy to accept a sum less than the full redemption balance as the full and final settlement of the debt.

In certain cases [the Provider] will consider discharging the property from the Mortgage to allow the sale of the property, if it can be demonstrated that this is the best price available in the current market. It is normal policy however that where this occurs, the customer(s) continue to be liable for the shortfall. [...].”

I see that in response to this, the Complainant wrote to the Provider on **23 July 2012** and stated in the penultimate paragraph that:

“Regarding a settlement figure, I do understand your point on policy. Could I once again suggest you look at this whilst the Euro/Sterling exchange rate makes it a slightly easier prospect. I am willing to go to family and friends for help if this is a possibility. At least the Bank would be getting something today rather than the uncertainty of the situation dragging on. We could then draw a line under this.”

This was followed by a further exchange of correspondence between the parties during the remainder of **2012** and into **2013**.

By letter dated **18 February 2013**, the Complainant wrote to the Provider, as follows:

“It is about a month since we spoke and I have yet to hear back from anyone regarding my loan proposal.

[The Asset Service Provider] has not contacted me, neither has any [Provider] office. I was expecting to at least hear from your [Location 4] office.

I feel [the Provider] has missed a real opportunity as the Pound is now sliding against the Euro and had moved a long way off of its highest point.

My intention had been to negotiate with the Bank at a much earlier stage but it will soon be a year since my original approach. [...].”

By letter dated **4 June 2013**, the Complainant again wrote to the Provider, in part, as follows:

“Can I again say, that it has been approximately one year since I originally offered to meet with [the Provider’s CEO] and discuss a settlement of this and I have not received any offer of such a meeting, at least none which has materialised.

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Please be advised that in the meantime, all efforts are being made to secure tenants/buyers for the property. I have just spoken to the Agent and we have had a few enquiries on the property, but no viewings. The price is on the low side to attract buyers, but no luck yet."

In a letter dated **12 August 2013**, I note that the Provider advised the Complainant in respect of his meeting request *"that any requests or proposals arising from such a meeting must be brought forward to the appropriate sanctioning authority for consideration in line with the Bank's Credit Policy."*

In response to the Provider's correspondence, in a letter dated **2 September 2013**, the Complainant referred to the Provider's invitation to submit a proposal and advised that he would do so that week. By letter dated **6 September 2013**, the Complainant put forward the following proposal:

"May I suggest that we conduct 'without prejudice' discussions around the following 2 ideas?

1. I attempt to raise a capital sum – it would only be 'pence on the pound' I am afraid – for a one-off payment to settle so we can draw a line under it. I also have lost a great deal since the peak of the property market so I empathise with the bank's position.

2. I surrender ownership of the properties to the bank for its disposal with no further obligation on my part."

In an email to the Provider's agent (K) on **29 October 2013**, the Complainant enquired, amongst other matters, about his previous proposals. Responding to this aspect of the Complainant's email on the same day, K advised that he was currently completing a review of the Complainant's account with a view to forwarding the proposed options to the relevant sanctioning authority for consideration.

It appears that the Provider carried out a '**Loan Review Sustainability & Affordability Assessment**' following this email exchange where it was recommended that the Provider would write to the Complainant to decline the proposals set out in his correspondence of **6 September 2013**.

By letter dated **19 December 2013**, the Provider issued consent to sale in respect of the [Location 1] property for an amount of €125,000.00.

On the second page of this letter, it was stated that:

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“Note: Please insure the relevant paragraph overleaf is included in the Deed of Release depending on whether the land is Registered Land or Unregistered Land.

PARTIAL DISCHARGES (LAND REGISTRY)

PROVIDED ALWAYS and it is hereby agreed and declared that the hereditaments comprised in the said recited instrument of Charge (other than the hereditaments hereby released) shall remain subject to and charged with the principal sum and interest now outstanding and secured thereby and the powers and remedies for enforcing payment thereof and conditions in the said recited instrument or charge as if these presents had not been executed.

And for

PARTIAL RELEASES (REGISTRY OF DEEDS)

PROVIDED HOWEVER that nothing hereinbefore contained shall prejudice, limit or affect the rights of the Mortgagee to rely on the Mortgage as a continuing security for all monies now owing or which at any time may become due and/or owing by the Mortgagor to the Mortgagee and to enforce payment thereof against the remaining property of the Borrower other than the property comprised in the Release.”

I note that further letters consenting to the sale of the [Location 1] property were issued by the Provider on **15 January, 19 February** and **18 March 2014** which contained the same passages as those cited above. In respect of the value of this property, a Commercial Valuation Report dated **12 December 2013** and commissioned by the Provider provided an estimated value of €120,000.00.

In the Provider’s system notes, I note the following entry made by K on **15 January 2014** in respect of a telephone conversation which took place with the Complainant on **14 January 2014**:

“I spoke with [the Complainant] on 14/01/2014 to discuss the sale of the property at [Location 1]. I advised [the Complainant] that the Bank had consented to the sale of the property as per the request which he made to the Bank in November 2013. [The Complainant] enquired as to the impact of the proposed slae on the borrower’s debt. I advised [the Complainant] that the net sales proceeds should be remitted to reduce the debt and added that further discussion would be required to ascertain an appropriate strategy in respect of the loan post sale of [the Location 1 property].

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[The Complainant] advised that he thought this (sic) previous requests to settle the loan would have been taken into consideration along with the request to sell [the Location 1 property].

I advised [the Complainant] that this was a separate matter and noted that at no stage during our discussions concerning the sale of [the Location 1 property], had the matter of loan settlements been discussed. [The Complainant] advised that he would need further time to consider his options."

In an internal email dated **15 January 2014**, I note that K stated in respect of the conversation with the Complainant, as follows:

"I spoke with [the Complainant] on the afternoon of 15/01/14 to discuss the proposed sale of [the Location 1 property].

I advised [the Complainant] that I had received confirmation that [the Provider] had consented to the sale of [the property] in line with [the Complainant's] recent request (i.e. Gross Selling Price €125k less deductions €4k – estimated net sales proceeds €121k). I advised [the Complainant] that I would arrange to issue formal confirmation of the Bank's consent at the earliest convenience.

[The Complainant] acknowledged the position and enquired as to the impact of the proposed sale on his outstanding debt (€666k). I explained to [the Complainant] that the impact of the proposed sale would be to reduce his outstanding liability and that the Bank would require that the net sales proceeds be remitted to the loan following the completion of the sale. I explained to [the Complainant] that we would then need to have a further discussion in respect of his preferred strategy in respect of the loan and the second property post completion of the sale of [the Location 1 property].

[The Complainant] acknowledged this position and advised that he was not comfortable with same if the outcome of the proposed sale of [the Location 1 property] was only to reduce his debt by the amount of the net sales proceeds. [The Complainant] noted that he has made a number of requests to the Bank (over the past 2 – 3 years) to agree a settlement of the loan and added that he thought these requests may have been taken into consideration at this time.

I advised [the Complainant] that while I was aware of his prior requests to settle the loan, this was considered a separate matter to his request to sell [the Location 1 property].

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I explained that I had prioritised [the Complainant's] request to sell [the Location 1 property] and added that at no time during our discussions concerning the sale of [the Location 1 property] had the matter of loan settlement been discussed. I noted to [the Complainant] that in any event it is the Bank's policy not to accept any amount which is less than (sic) the total outstanding balance in full and final settlement of a loan.

[The Complainant] advised that he would consider [the Location 1 property] as the better of the two assets which secure the Bank on the basis that it is a larger unit. On this basis, [the Complainant] is of the view that the sale of [the Location 1 property] represents his best option to reduce his debt to the Bank and as such [the Complainant] is reluctant to sell [the Location 1 property] at "firesale" price if there is no benefit in doing so. [...]. [The Complainant] added that he could alternatively hold the asset in the hope that market values increase at which time he would be in a better position to make a settlement offer to the Bank (i.e. the value of the asset would increase and represent a higher portion of his outstanding debt). [...]

[The Complainant] enquired as to whether I thought that the sale of the [Location 1 property] would be beneficial to him. I advised [the Complainant] that this was a matter which he needed to consider himself in order to make a final decision in respect of proceeding with the proposed sale.

[The Complainant] advised that his preferred approach would be if the Bank agreed to settle a part of his debt on a pro rata basis post completion of the sale of [the Location 1 property]. I advised [the Complainant] that if he wished to make a loan settlement request at this time, I would be obliged to submit the request to the Bank's Credit Committee for consideration. I added I was not in a position to confirm when such a request would be brought before the Bank's Credit Committee. [...]."

By email of the same date, **15 January 2014**, the Complainant emailed K in respect of their conversation the previous day, as follows:

"In the meantime, I would make the following written observations (already made during our call yesterday) for your consideration, pending sight of the loan document;

Whilst it would appear to be helpful to secure a sale on [the Location 1 property], unless this implies and concludes a pro-rate settlement on the total loan, I do not

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see how this advances our mutual needs. It would merely reduce the amount of collateral by possibly its lowest sales value and leave the other smaller building as the only remaining collateral on the loan.

This is clearly acceptable to the Bank as they have made a decision to allow a sale of [the Location 1 property], but I re-stress that there is a zero possibility at this point of being able to pay back the remaining loan. It merely pushes the problem further down the road.

I was expecting the decision to be one of settlement, as all of my correspondence for the best part of 2 years now has been requesting just that, so I am surprised that the bigger picture was not taken into account. [...].”

In a further email from the Complainant some days later, on **20 January 2014**, he stated that:

“Regarding the settlement of the loan pro-rata, I have instructed [Estate Agents/Property Consultants] to solicit the best possible offer with a view to proceeding, on the basis that we will have an answer on the former by the time it all goes through.”

By letter of the following day, on **21 January 2014**, the Provider wrote to the Complainant regarding the suggested settlement of his loan, as follows:

“I refer to your correspondence of 15 January 2014 and 20 January 2014 regarding a settlement of the above mentioned Loan. [The Provider] (“the Bank”) will not be in a position to consider your settlement request until such time as you outline details of your settlement proposal and remit the following documents:

- 1. A certified statement of affairs including all assets and liabilities.*
- 2. A certified statement of income.*

On receipt of the above, the Bank will assess your proposal. However, I should advise you that it is not the Bank’s policy to accept a sum less than the full redemption balance as the full and final settlement of the debt.”

On **26 January 2014**, the Complainant emailed K, stating, in part, that:

“Regarding a settlement, I have provided on several occasions a complete list of assets in my sole name.

I need to take some advice on how to take this forward. I note the comment about the Bank’s policy which is unlikely to be a helpful stance in the circumstances.”

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In his email on **5 February 2014**, the Complainant advised K of an offer of €137,500.00 in respect of the [Location 1] property. In this email, the Complainant also requested that the Provider arrange to send title deeds to his solicitors.

I note that the system note entered by K on **3 March 2014** which records a telephone call received from the Complainant's solicitor on **26 February 2014** to discuss correspondence received by the Complainant in respect of the sale of the [Location 1] property and the release of the Provider's security following the sale. The entry also notes that, on this basis, K referred the Complainant's solicitor to the Provider's Legal and Securities Division.

By letter dated **28 March 2014**, the Complainant's solicitor wrote to the Provider enclosing a cheque in the amount of €132,117.50 representing the proceeds from the sale of the [Location 1] property.

Following this, the Complainant stated in an email to the Provider on **11 June 2014** that "*I re-state my wish to get together and negotiate a settlement to this so we can draw a line under it.*" Responding to this request, the Provider wrote to the Complainant on **20 June 2014** advising that it was willing to meet with the Complainant but it repeated the statements contained in its letter of **21 January 2014** regarding the assessment of any proposals and that its policy was not to accept a sum less than the redemption balance in full and final settlement of a loan.

In an email to the Provider on **8 August 2014**, the Complainant advised that:

"We have had a valuation of the remaining property and it's not that great due to depressed demand in the area. We are also looking for a co-tenant to share the building. Not easy.

If we had clearance to sell it, it would be on condition that this would then draw a line under the loan and no further payment could be expected. I appreciate this isn't what you want to hear, but it will be a fact. Otherwise I expect this will drag on an on. [...]."

The following month, in an internal email dated **1 September 2014**, K of the Provider stated in respect of a conversation with the Complainant on **28 August 2014**, as follows:

"I spoke with [the Complainant] on the afternoon of 28/08/2014 to discuss an email he sent to me on 08/08/14 regarding his loan exposure (€559k) with [the Provider].

[...]

/Cont'd...

I enquired as to [the Complainant's] preferred approach in respect of the loan. [The Complainant] advised that as per his email of 08/08/14 he is prepared to sell the remaining security [the Location 2 property] on condition that the Bank will accept the net sales proceeds in full and final settlement of the loan (€559k). I advised [the Complainant] that I could provide no assurances in respect of the treatment of the residual debt post sale of the Property but noted that he could submit a proposal in respect of the same supported by (i) a certified statement of income and (ii) certified statement of assets and liabilities. I advised that I would escalate any proposal submitted for review by the relevant sanctioning authority but added that the Bank's policy is that it is not the Bank's policy to write off debt. [The Complainant] acknowledged this position and advised that he would consider his options further and revert to be in due course with a proposal in respect of the loan."

An entry dated **1 September 2014** has also been made in the Provider's system notes in respect of this conversation.

I note that K wrote to the Complainant by letter dated **23 October 2014**, outlining the information required in order for the Provider to consider any proposal in respect of the loan. In the concluding paragraphs, the letter states that:

"In the event that you wish to arrange a meeting to discuss your proposal in respect of the Loan, the Bank is willing to meet with you, in Ireland, at a time convenient to you. In the interim, you should continue to make repayment in line with the terms and conditions of the Loan and the methods of payment remain unchanged.

This letter is sent without prejudice to the Bank's rights whether under the Facility Letter or otherwise and shall not be construed as a waiver of any rights or remedies which the Bank may have. The Bank expressly reserves all its rights to take any action and to utilise all remedies pursuant to the Facility Letter and the Bank's security (as defined in the Facility Letter) should it deem it appropriate to do so."

Some months later, in an email on **5 December 2014**, the Complainant advised K that there was an offer of €65,000.00 in respect of the [Location 2] property but a higher one was expected the coming Monday.

By email dated **24 December 2014**, K emailed the Complainant in respect of the sale of the [Location 2] property, as follows:

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"[I]t is my understanding that the Bank has appointed [valuers] to complete a valuation of the property [...]. As outlined in my email of 8 December 2014, the Bank requires confirmation of the following [in respect of the purchase].

Based on the proposed purchase price (€80k), there will be an (sic) residual balance of c.€490k in the event the sale of the [Location 2] property proceeds and the Bank requires your written proposal in respect of same. On receipt of the above, the Bank will be in a position to assess your proposal and request to sell the [Location 2] property. In the interim, you should continue to make repayments in line with the terms and conditions of the loan account and the methods of payment remain unchanged."

On **20 January 2015**, the Provider wrote to the Complainant to advise that it was declining to consent to the sale of the [Location 2] property for a price of €80,000.00 *"based on the current estimated market value of the Property and the outstanding debt in respect of the Loan."* The letter further advised that:

"This letter is sent without prejudice to the Bank's rights whether under the Facility Letter or otherwise and shall not be construed as a waiver of any rights or remedies which the Bank may have. The Bank expressly reserves all its rights to take any action and to utilise all remedies pursuant to the Facility Letter and the Bank's security (as defined in the Facility Letter) should it deem it appropriate to do so."

In this respect, a Commercial Valuation Report dated **7 January 2015** and commissioned by the Provider provided an estimated value of the [Location 2] property at €90,000.00.

In an internal email from K dated **28 January 2015** in respect of a conversation with the Complainant that morning, K recorded as follows:

"I spoke with [the Complainant] this morning to discuss his loan exposure [...].

[The Complainant] confirmed that he had received correspondence from the Bank declining his proposal to sell the securing asset at [Location 2] ("the Property") for a consideration of €80k.

I explained to [the Complainant] that the offer of €80k was below the marker value of the Property (€90k) as per the Bank instructed valuation report [...]. I advised [the Complainant] that it was not the Bank's policy to sell a property for below market value and enquired as to whether [the Complainant] could approach the proposed purchaser and seek an improved offer. [The Complainant] advised that he would need to revert to the proposed purchaser in respect of this matter.

/Cont'd...

[...]

We continued by discussing [the Complainant's] proposal in respect of the residual balance post sale of the Property. I noted that it is my understanding that [the Complainant] will request that the Bank accept the net sales proceeds in full and final settlement of the loan however added that the [the Complainant] had not set out his proposal in writing. I explained that it is not the Bank's policy to write off debt but should [the Complainant] request for me to present such a proposal to the Bank for consideration, I will require a sworn statement of affairs in support of such a proposal. [The Complainant] acknowledged this position and noted that the requirement was not unreasonable. [...]."

A series of correspondence was exchanged between the parties in **February** and **March 2015**. In particular, the Complainant's solicitors emailed the Provider on **10 February 2015** with a draft settlement agreement which, in essence, provided that in consideration for the Complainant furnishing the proceeds from the sales of the [Location 1] and [Location 2] properties to the Provider, the Provider would release the Complainant from all liability under the loan.

Subsequent to this, on **16 February 2015**, the Complainant's solicitors informed the Provider that an offer of €90,000.00 had been received in respect of the [Location 2] property.

In an internal email from K dated **17 February 2015** in respect of a conversation with the Complainant's solicitors, K recorded in respect of the settlement proposal, as follows:

"We continued by discussing the Borrower's proposal in respect of the residual balance post sale of the property (i.e. that the Bank accept the net sales proceeds in full and final settlement of the loan). I explained that this request is outside of the Bank's credit policy and accordingly I could provide no assurances as regards whether this request would be approved by the Bank. I advised that while I could forward the request to the Bank's Credit Committee for consideration, I would require a sworn statement of affairs [...]."

In an email to the Complainant's solicitors on **9 March 2015**, K advised that a consent to sale request had been submitted to the Credit Committee for consideration. The email further advised that following the sale there would be a residual balance of approximately €493,000.00. K then stated that the Provider awaited the Complainant's written proposal in respect of the residual balance which the Provider would assess in the event that the sale of the [Location 2] property completed.

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In an 'Annual Review/Restructure Request' dated **12 March 2015**, the Provider recommended issuing consent to sale of the [Location 2] property for €90,000.00. Further to this, it was stated that:

"As outlined above, the Borrower's proposal in respect of residual debt (€493k) post sale of the [Location 2] Property is awaited. Accordingly, it is recommended that the Bank writes to the Borrower to reserve its rights and to request that the Borrower submits his proposal together with any outstanding supporting documents [...] by 30 April 2015."

The Provider issued consent to sale in respect of the property by letter dated **13 March 2015** in the amount of €90,000.00. I note that in this letter, the Provider stated that:

"Your proposal in respect of the residual balance post sale of the Property is awaited. On receipt of same, the Bank will be in a position to assess your proposal. In the interim, you should continue to make repayments in line with the terms and conditions of the Loan and the methods of payment remain unchanged.

For the avoidance of doubt, please note the Bank is not waiving its rights under the Facility Letter and that it expressly reserves all its rights to take any action and to utilise all remedies pursuant to the Facility Letter and the Bank's Security (as defined in the Facility Letter) (together "the Finance Documents") should it deem it appropriate to do so.

Please note that nothing in this letter or other correspondence from the Bank shall be deemed to constitute a waiver of any right or remedy that the Bank may have under the Finance Documents, and the Bank hereby reserves all its rights and remedies that it may have under the Finance Documents. In addition, any acceptance by the Bank of performance from, or performance by you or any other person of the terms of the Finance Documents, or any delay by the Bank in exercising any remedies the Bank may have, shall not constitute a waiver or forbearance of those rights or remedies.

Please be advised that any verbal communication from or on behalf of the Bank by any party shall not constitute agreement, commitment, or evidence of any assurance or intention of the Bank with respect to the subject matter of such communication. Any agreement, commitment, assurance, or intention expressed by the Bank shall be effective only if in writing and duly executed on behalf of the Bank."

/Cont'd...

The was followed by a further series of correspondence between the parties regarding the sale of the [Location 2] property. A further consent to sale letter in respect of the [Location 2] property issued on **11 May 2015**, in essentially identical terms to the one issued in **March 2015**. It appears that the amount of €84,339.50 was received by the Provider on **5 June 2015** in respect of the sale of the property in question.

Analysis

Having considered the evidence, I note that the Complainant does not appear to have been resident in the State for quite some time and it appears (from an internal email dated **1 May 2013**) that the Complainant returned abroad in **2003**. I also note that the correspondence issued by the Provider to the Complainant was sent to an address abroad and likewise the address maintained by the Provider in respect of the Complainant was an address abroad. In addition, I note that the return address given for the letter of complaint dated **6 December 2017** is an address abroad. I make this observation because the provisions of the **Consumer Protection Code 2012** are specified to apply to 'customers' and 'consumers' in the State.

The terms and conditions agreed to by the Complainant when he accepted the Provider's loan offer in **December 2005** make clear that the Complainant was under an obligation to repay the amount advanced on foot of the Letter of Approval together with the payment of interest.

Further to this, I am satisfied that in the event that a shortfall occurred following the sale of the property securing the loan, the Complainant (as per clause 2.11 of the Mortgage Conditions) remained contractually bound to pay the shortfall balance with interest, and the release by the Provider of its security over the property did not affect the Complainant's obligation to pay the shortfall balance. It appears that as early as in the Provider's letter of **26 August 2011**, the Provider informed the Complainant that:

"Your proposal to mark down the loan is not acceptable to the bank and no such agreements have been entered into by us."

I note that in the Complainant's letter of **28 May 2012**, he proposed that the parties try reach agreement regarding the settlement of the loan. In this letter, the Complainant also advised that his Estate Agent was *"looking out for purchasers for the property"*. In this respect, I note that the Complainant appears to have considered, and taken steps regarding, the sale of one of the secured properties, before any form of settlement proposal was discussed and before the Provider indicated any willingness to engage with or to consider any form of settlement proposal.

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In response to the Complainant's letter, I note that the Provider informed the Complainant in clear, plain language that it was not the Provider's policy to accept a sum less than the full redemption balance in settlement of a loan, but that the Provider would consider releasing a property from a mortgage once it was demonstrated that the selling price was the best price in the current market, and that customers continue to be liable for any shortfall. In the Complainant's email of **23 July 2012**, the Complainants stated that: *"I do understand your point on policy."*

In the correspondence that followed, I am satisfied that the Provider repeated the above policy in a clear and consistent manner, which I note, was acknowledged by the Complainant. The Provider's policy was also communicated to the Complainant's solicitors. While the Provider advised the Complainant that it would consider any proposals he wished to make, there is no evidence to suggest that the Provider advised the Complainant that these proposals would be accepted. Rather the evidence shows that the Complainant was advised that any proposal would have to be submitted to the Provider's Credit Committee for consideration.

The evidence also shows that the Complainant was advised that the sales of the secured properties was a separate issue, from any settlement proposals. Further to this, it is clear that the Provider's position in respect of the sales of the secured properties and the Complainant's settlement proposal were communicated to the Complainant in advance of the sale of each property, thereby giving the Complainant the opportunity to withdraw from the sales, if he was not satisfied with the Provider's position.

Having considered the evidence, I am not satisfied that the Provider in any way misled the Complainant in respect of the sale of the secured properties or the settlement of his loan. It is my opinion that the position adopted by the Complainant in his letter of complaint dated **6 December 2017**, is absolutely inconsistent with the communications that took place between the parties.

In particular, the evidence shows that whilst the Complainant repeatedly indicated a desire to *"draw a line"* under the debt, he nevertheless acknowledged and was aware of the Provider's position in respect of the sale of the secured properties and the assessment of any settlement proposal. Although the Complainant was seeking a debt write down and it was his desire for the Provider to accept the sales proceeds, in satisfaction of the money due on foot of the loan, it is quite clear from the evidence that the Provider was not consenting to, and did not consent to, the sale of the secured properties on this basis. The evidence shows that no settlement agreement was in place.

Therefore, I do not accept that the Provider in any way misled the Complainant regarding the resolution and settlement of his loan.

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In terms of the sales of the secured properties, I note that as part of the terms and conditions of the loan, the Complainant required the consent of the Provider before any sale of the secured properties could proceed. When a request such as this is made, the Provider should not unreasonably withhold its consent and accordingly, I am satisfied that this is the extent of the Provider's duty insofar as allowing the Complainant to sell the secured properties, is concerned.

Further to this, I do not accept that the Provider was required to consider or to advise the Complainant as to whether it was in his best interests to sell the secured properties. If the Complainant was dissatisfied with the sale prices, if he considered the prices to be too low or if he was not content to sell the properties, he was not obliged to proceed with those sales.

I also note that it was the Complainant who proposed the sale of the secured properties and not the Provider. In circumstances such as this, I do not accept that the Provider owed the Complainant a duty of care in relation to the sale of these properties or the ultimate sale prices. In this respect, I note that the Complainant had the assistance of his own selling agents and solicitors in respect of the sale of each property. Further to this, the Complainant's email of **4 June 2013** suggests that the Complainant was relying on a low selling price as a sales tactic to attract a purchaser: *"The price is on the low side to attract buyers, but no luck yet."*

In any event, while the Complainant may have considered the sale prices to be low, there is no evidence to suggest that they were below market value or did not reflect current market value. In respect of the [Location 1] property, I note from the Provider's valuation report, that a market value of €120,000.00 was provided, however this property appears to have sold for over €137,000.00. In respect of the [Location 2] property, the Provider's valuation report indicated a market value of €90,000.00, and the property appears to have sold for this amount.

Further to this, on **5 December 2014**, the Complainant advised the Provider of an offer of €65,000.00 in respect of the [Location 2] property, stating that *"I just wanted to prime you on it so if it's acceptable we could get things in motion."* If the Complainant considered the sale price in respect of the [Location 2] property to be low, he nonetheless appears to have sought to progress a sale of this property based on an offer of €65,000.00. However, I am also aware that the Complainant indicated that a higher offer was expected. This higher offer, however, was €80,000.00, which was still lower than the Provider's valuation. On **20 January 2015**, the Provider declined consent to the sale of the [Location 2] property, in part because the price being offered at that time was less than what the Provider considered to be the current market value.

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In these circumstances and although the Provider wished to obtain at least market value for the property, I do not accept that the Complainant can maintain a position that the Provider failed to act in his best interests.

In respect of the sale of the Complainant's loan, I note that clause 1.15 of the **General Mortgage Loan Approval Conditions**, states that:

"1.15 [The Provider] may at any time transfer the benefit of the Mortgage to any person or company in accordance with the Mortgage Conditions."

I also note that clause 6.7 of the **Mortgage Conditions 2002**, states that:

"6.7 [The Provider] may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person [...]"

In light of these contractual provisions, it is my opinion that the Provider was entitled to negotiate the sale of the Complainant's loan while at the same time as, and regardless of the fact that, the Complainant was engaged in the process of selling the secured properties. Further to this, the loan terms and conditions accepted by the Complainant entitled the Provider to transfer the Complainant's loan without needing to first inform the Complainant or to obtain his consent.

However, I am of the view that the Provider should give reasonable notice of the sale. In this respect, I note that the Provider wrote to the Complainant on **23 July 2015** to inform him that it had entered a contract to sell his loan. This letter also advised that the Provider would write to the Complainant again to confirm the date on which the transfer would take place.

The Provider wrote to the Complainant again on **15 October 2015**, to inform him that the transfer of his loan took place on **14 October 2015**. Accordingly, I am satisfied that the Complainant was given reasonable notice in respect of the sale of his loan.

Therefore, I do not accept that the Provider failed in its duty of care to the Complainant or failed to act in his best interests.

By letter dated **6 December 2017**, the Complainant made a formal complaint to the Provider in respect of the conduct which is the subject of this complaint. This letter has been stamped with a Provider 'CEO Office' stamp dated **11 December 2017**. The Provider acknowledged receipt of this letter on **15 December 2017**. This was followed by update letters dated **11 January, 8 February, 8 March, 10 April** and **9 May 2018**. A Final Response letter issued on **30 May 2018**.

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The Provider set out its response, as follows:

“As per the attached correspondence of the 13th March 2015 from [the Provider] granting consent to sell the property. As advised in this letter, the Bank noted that it was awaiting your proposal in respect to the residual balance owing post the sale of the property. This consent to sell was granted on the basis that any residual balance be repaid and that the funds from the sale did not constitute a Full and Final settlement of the balance outstanding.

In relation to your comments that you were not made aware that the Bank was selling your loan to [the third party purchaser], I have enclosed a copy of your correspondence of the 23rd July 2015 which advises you of the transfer of your loan to [the third party purchaser].”

As can be seen, it took more than five months for the Provider to issue a Final Response Letter (“FRL”) to the Complainant’s complaint. However, I note that no explanation was given by the Provider as to why it took this length of time to respond to the Complainant nor, quite disappointingly, did the Provider offer an apology for the length of time taken to investigate and respond to the complaint. This is all the more disappointing when I consider the following opening paragraph in the FRL:

“[The Provider] place great emphasis on customer service and we are concerned if any aspect of our service does not meet the standard as expected by our customers.”

Having considered the nature of the complaint and the available evidence, it is not clear why it took this length to issue an FRL. In particular, having considered the substance of the Provider’s response to the issues raised, which is contained in two very brief and not so detailed paragraphs, it is difficult to see how it could have taken the Provider five months to formulate this response.

Further to this, given the nature of the complaint and when the conduct complained of first appears to have begun, I am not satisfied that the Provider properly investigated or responded to the complaint. The FRL simply refers to the consent to sale letter that issued on **13 March 2015** and does not appear to have any regard to the communications between the parties which preceded this letter or the earlier sale of the [Location 1] property, despite the fact that the Provider notes *“your complaint is that you sold the secured properties in relation to your loan”* in its FRL.

[my underlining for emphasis]

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In respect of the sale of the Complainant's loan, the Provider refers to the enclosed letter of **23 July 2015** which advised the Complainant of the sale. However, I would expect a more reasonable and complete response to have referred to, and in some manner explained, the relevant loan terms relating to the Provider's entitlement to sell the loan. Accordingly, although regular update letters were issued to the Complainant, I am satisfied that the Provider unreasonably delayed in its investigation of, and its response to, the Complainant's complaint. I am also of the opinion that the Provider did not demonstrate in its Final Response Letter that the complaint had been fully investigated, nor was a proper explanation given for the conduct complained of.

Therefore, I consider it appropriate to partially uphold this complaint and to direct, pursuant to **Section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider pay the sum of €1,500 to the Complainant, in recognition of the significant inconvenience caused to the Complainant by the Provider.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(f) and (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

20 September 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.

