



<u>Decision Ref:</u>	2021-0339
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Application of interest rate Delayed or inadequate communication Failure to process instructions in a timely manner Failure to provide product/service information Increase in interest rate Lost or mislaid title deeds Failure to release security
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants are customers of the Provider and their dealings with the Provider were through their local branch (the **Branch**). The Provider sanctioned a mortgage loan in favour of the Complainants in **December 2008** in order to consolidate the Complainants' borrowings.

The Provider is the lending arm a wider group banking structure. In an email to this Office dated **22 May 2018**, the group entity advised that it was responding to this complaint on the Provider's behalf (the **Respondent Provider**).

The Complainants' Case

In a submission dated **30 September 2016** accompanying the Complaint Form, the First Complainant explains that he has been a Branch customer since a young age and has been a business customer since **1994**. The First Complainant says he has only ever dealt with his Branch. The First Complainant refers to 'off-set arrangements' with the Branch where interest earned on business deposit accounts were legally off-set against personal loans, leading to an agreed interest rate of 1%. The First Complainant says this became the standard and expectation for future loan agreements.

Following the retirement of Account Manager 1, the First Complainant says this structure, and good relations, continued with Account Manager 2 and additional loans were automatically assumed to maintain this continuing loan structure.

In **2005**, the First Complainant says his business structure changed and merged with two other businesses. The First Complainant also says the business account facilitating the 'set-off' would be interrupted for a period. In the next paragraph of the submission, the First Complainant says the set-off arrangement continued against run-off and personal accounts.

Around **2006/2007**, following the retirement of Account Manager 2, the First Complainant says he was allocated a Business Manager and Account Manager 3. The First Complainant describes his relationship with the Business Manager and that his recollection is that they had discussions on more than one occasion about the First Complainant's business and personal accounts where the First Complainant expressed his preference to move his business accounts back to the Respondent Provider to facilitate the set-off arrangement. The First Complainant says he expressed his personal disappointment in the Respondent Provider for failing to win the business of the merged business in the **2005** tender process. The First Complainant says he received no indication that the *status quo* would change or that the Provider/Branch would not support the set-off structure going forward. The First Complainant says "[t]his facility was unwritten but was clearly evidenced in every loan transaction."

The First Complainant says there was no "*minute records*" available within the Branch whatsoever regarding any conversation he had with the Business Manager or Account Manager 3 at this point. At some stage in **2007/2008**, the First Complainant says he met with the Business Manager/Account Manager 3 again and detailed his intention to merge all of his loans into one for the purpose of readying for set-off with the intention of changing the banking structure within his company. The First Complainant says this restructure took place and his personal loans were merged into one and put on an interest only arrangement for an interim period after which the trading accounts would return to the Respondent Provider and the set-off arrangement would come into effect. The First Complainant explains that the banking collapse then ensued and the Business Manager sadly passed away. The First Complainant says he subsequently found himself in limbo.

In **2009**, the First Complainant says he was ready to complete the set-off structure but everything had changed for the Respondent Provider and banks were not prepared to facilitate loan set-offs going forward. The First Complainant says this was confirmed by his Relationship Manger and the Branch Manager. The First Complainant says that because of the uncertainty within banks and their survival, very little business was being done which caused some drift with the restructuring of the First Complainant's personal business.

At the date of his submission, the First Complainant says there had been many meetings with several Branch staff and there appeared to be no interest in dealing with the matter on impartial grounds, with the Branch only taking "*a bank interested view*".

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The First Complainant says he advised the Branch at two of the most recent meetings that if they would not look objectively at the situation, the First Complainant would have no alternative but to take other action to facilitate discussion. The First Complainant says Branch staff members have been sympathetic but the response he gets is that *“we have no record”*.

The First Complainant says he has never missed a payment in his life and he felt ignored and intimidated. In an act of *force majeure*, the First Complainant says he had no alternative but to take alternative measures to bring the parties to discussions. The First Complainant says he made data subject access requests which were unfulfilled and that his complaints were not taken seriously.

In **January 2016**, the First Complainant says he changed his mortgage loan direct debit to an alternative account and reduced payments to €1,000 per month and *“[a]ll this time the bank were aware the remaining payments were held in the original account awaiting communication with the bank.”* The First Complainant says these funds remain in this account, continue to accumulate and are visible to the Branch.

The Branch is aware, the First Complainant says, both verbally and in writing that this is a long running dispute and complaint that it has chosen to ignore or ignore to the point of actually doing something meaningful. The First Complainant says this is not a situation of non-payment.

The First Complainant states that he has asked the Branch to sit down and have a meaningful discussion. The First Complainant says he asked the parties in various face-to-face meetings in **2015** to look at its file records and that there were gaps, but the Branch refused to take the First Complainant’s complaints seriously and acknowledge there was a problem. The First Complainant says that he has been consistent in asking the Branch to come to a meaningful discussion and arrangement to close the matter. The First Complainant submits that an arrangement can carry many forms but the Branch has failed to engage and consistently relies on the position that it has no record of any discussions or set-off arrangements on the current facility. The First Complainant states that the gaps identified by him are regulatory requirements and that the Provider/Branch rely on its errors as their only defence.

The First Complainant continues this submission by outlining the complaint under 35 numbered paragraphs, as follows:

1. The Branch withdrew normal banking facilities without any verbal warning or notice. The consequence is an overcharging in loan rate payable in excess of 1%.
2. The Branch sold the First Complainant a mortgage loan held with another financial service provider, the Provider, without making the First Complainant aware of this.
3. The Branch failed to notify the First Complainant that his business was being dealt with exclusively by a third party – the Provider.

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4. The Branch failed to recommend legal advice when undertaking the restructure of the First Complainant's loans.
5. Contract documents have not been witnessed and may be deemed invalid.
6. Contract signatures are absent on some documents.
7. Some contract documents are undated.
8. The Branch accepts that meetings are not recorded which is in breach of the Consumer Protection Code, "CPC".

9. The Branch failed to issue a statutory 'reasons why' letter attaching to a new loan account ending 278 which is a breach of the CPC and own procedures.
10. It took the Branch from **22 May 2015** to **26 July 2016** to comply with a data subject access request.
11. The Branch failed to complete a 'fact-find' which is a breach of the CPC and own procedures.
12. The Branch relies on its breaches of the CPC as their main defence – "*we have no records*".
13. Other than the First Complainant's personal explanation for restructuring his current loan, the Branch has no understanding or records for why this was done.
14. The Provider failed to advise the First Complainant that an additional rate discount could be offered if he gave additional security at the time of taking out the restructured loan.
15. The Branch retained "*my personal residential deeds*" from the period of the restructure to the date of the above submission. The deeds were not agreed as security and the Provider acknowledges this yet gives no credit as security.
16. The Provider has "*enjoyed the security value of my personal residential property as loan collateral and use for their solvency requirements over a period of extreme difficulty for the bank regarding their own solvency.*" Essentially, the Provider has profited from the unlawful retention of title deeds.
17. Despite numerous requests, the Provider has failed to return the "*personal residential deeds*". The First Complainant says he requested these on several occasions and despite the Branch advising that the deeds were held locally, failed to return the deeds and in doing so have "*denied me free possession of my unencumbered property and failed to return what is rightfully mine.*"
18. The Provider failed to pass on loan savings which the First Complainant says he is entitled to due to the Provider's retention of the title deeds. The First Complainant says the Provider cannot claim it was safeguarding the deeds as it returned other title deeds once the loans were repaid.
19. The Provider wrote to the First Complainant on **2 June 2015** advising of preferential rates with higher levels of security but failed to process in the First Complainant's case.
20. The Provider failed to comply with the correct complaints procedure in the CPC in managing the First Complainant's repeated complaints in the period **2013 to 2016**.
21. The Provider failed to comply with data protection legislation.
22. The Provider continually and repeatedly frustrated the process of the First Complainant's investigation.

23. The Provider confirmed that it is happy for the complaint to be referred to this Office and accept there are gaps in its records where no minutes of meetings exist and appear to take no issue with the lack of minutes, affecting their customers adversely.
24. *"In my last meeting with the bank on 24th August the bank accept that there was never a missed repayments prior to our dispute and they are happy for FSO to adjudicate on these matters.*

The bank own annual report recognises that it is experiencing "profound difficult" with "many of its customers" and is "working hard to improve customer experience". The bank experienced 50,063 complaints in 2015 and this appears to be a cultural problem with the bank in addressing its customers challenges. The bank established "resolvers" across its branches. I cannot see where [the Provider] have complied with their own procedures in involving "these dedicated resolvers" in my dispute. Records do not show any meaningful involvement other than for 10 mins in the branch office on 24th August which basically concluded with what was to me a "hands thrown in the air" – what can be do? Despite my having requested a meaningful meeting – nothing of the sort came to realisation. The bank fail to comply with their own procedures. (See memo from my accountant ...26/4/16)."

25. *"In the hundreds of items of correspondence of bank supplied records one piece of evidence exists on THEIR FILES asking the purpose behind the restructure of loans of the intention or expectation of the customer. The file speaks only of "bank Security on the loan" "reducing risk" "noting interest" Loan to value". Not one member of the bank/branch has recorded one single item of consumer interest or protection or a "reason why". Not a "fact find" to protect or understand the consumer intention – NOTHING. Yet having met with the branch and written to them and called them over three years – they can see no wrong."*
26. *"The Bank issued their first and only "final response Letter" on Friday 26th Aug 2016 following a personal meeting on 24th August. In this meeting of 24th August I was advised that the bank had issued several "Final Response Letter" and this was reiterated in their memo of 26th Aug. Records show that those referenced in memo of 26th August make no reference to they being "Final Response Letters" as required by CPC. I advised [staff member] and [staff member] in this this meeting that the correct procedure was to issue a final response letter after the entire matter had been concluded between the parties and not to issue a final response at every opportunity to close matters down. In any event they never sued the correct title of "final response letter" in their prior issues as required by the code. This appears to me to be a cultural problem."*
27. *"There are no records provided of [the] Branch making communication with [the Provider] regarding the current ongoing process. No record between them of the banks legal breaches in providing the required information to enable the consumer to lodge a formal complaint to the FSO. The bank were made clearly aware that a FSO complaint would be the ultimate in the process resolution and this was the expectation."*

28. *"Did the ... Branch make the [Provider aware] that the full o/s repayments were sitting in a branch account accumulating whilst awaiting progress with a resolution? I believe the branch failed to relay the current situation and their own difficulties with Data releases."*
29. *"If the [Branch] was not the lender surely they are then they would be regarded as the "agent" yet no hard copy not email nor telephone records have been provided in the Data releases to indicate communication on the dispute or any progress. This is now having a very negative effect on me – their customer."*
30. Telephone records are not available within the data releases.
31. *"The bank agreed in our last meeting of 24th August 2016 to let this matter to FSO and confirmed same in follow up letter of 26th inst but failed to honour the commitment and have not given me adequate time to engage with the FSO on this matter and have with great haste moved to progress matters. It is my belief that the bank know it has made serious errors and they now continue to obfuscate the complaints process. I believe having Checked the records that do exist the bank found the breaches and anomalies I spoke to them about in 2015. Matters of breaches in procedures codes laws and regulations."*
32. The Provider has caused the Complainants great stress in failing to co-operate and operate to correct procedures.
33. The Provider has caused damage to the First Complainant's *"financial rating"*.
34. The Provider has caused reputational damage to the First Complainant knowing he is a regulated entity.
35. The First Complainant estimates the loss arising from the conduct complained of is approximately €180,000 and that other damages may need further assessment.

The Provider's Case

The Respondent Provider in its response to this Office (the **Complaint Response**) explained that a 1% set-off arrangement existed between credit funds in the First Complainant's company's accounts and accounts ending 096, 074, 679 and 023. In **2005**, the First Complainant amalgamated with a number of other businesses to form a new company at which point the new business was lost. As the First Complainant's business was wound down and client funds transferred to the new company with another financial institution, the Respondent Provider says there were less funds to set off and ultimately none. The Respondent Provider says 'the bank' did not withdraw the set-off arrangement between company funds and personal mortgage account ending 278 as no set-off ever existed between those accounts as per the Letter of Offer dated **31 December 2008**.

Following conversations between the First Complainant and the Branch in **2008**, the Respondent Provider says a number of applications were processed to restructure the Branch loans onto a home loan to take advantage of the lower mortgage interest rate. At the time, the Respondent Provider says the First Complainant had little if any funds available to set-off against his loan as he had joined a number of other parties and they moved their working accounts to another financial institution.

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On that basis and given the rates applying to the First Complainant's accounts, the Respondent Provider says it made sense for the First Complainant to amalgamate his four loan accounts (096, 074, 679 and 023) to a home loan account.

Following this, the Complaint Response addressed the First Complainant's data subject access request.

Regarding the interest rate applied to loan account 278, the Respondent Provider says it is satisfied that the correct rate was applied and the Buy-to-Let variable rate was being charged in line with the signed Letter of Offer dated **31 December 2008**. The Respondent Provider says the BTL Tracker Rate was not available to the Complainants due to the increased Loan-To-Value.

In respect of the Provider, the Respondent Provider says that it set up this entity in **2005** to house its mortgage business: the Respondent Provider is the retail/business unit and the Provider is the mortgage lending unit. The Respondent Provider says that it introduces and arranges Provider mortgage loans and this is the entity its customers will contract with. The Respondent Provider says it services Provider mortgage loans for the lifetime of the product but the Provider has its own banking licence and is separate and independent from the Respondent Provider. From **13 February 2006**, the Respondent Provider says all new business through its home mortgages section was in the name of the Provider. The Respondent Provider says the Letter of Offer dated **31 December 2008** (the **Letter of Offer**) issued on the Provider's letterhead and the footer continued regulatory information regarding this entity and also outlines that it is from the Provider.

In respect of legal advice, the Respondent Provider refers to the following passage from the Letter of Offer:

"The Bank strongly recommends that you take independent legal advice before signing your Letter of Loan Offer. The Bank shall not be responsible if you elect not to do so. If you chose to forego taking of legal advice, your signature on the Letter of Loan Offer, accepting the conditions of the Loan offer, must be witnessed by [a Respondent Provider], Bank Official or a Solicitor."

On **7 January 2009**, the Respondent Provider says the Complainants signed Part 7 'Acceptance and Consent' of the Letter of Offer and clause 8 states: *"I/We confirm that I/We have been advised by the Lenders to obtain independent legal advice."*

In respect of a Fact Find and Reasons Why letter relating to loan account 278, the Respondent Provider says that as staff members who worked with the Complainants' application at the time no longer work for the it and owing to the passage of time, it is unable to confirm if a Fact Find was completed. The Respondent Provider says it could not locate one on file, however, there are a number of blank application forms signed by the Complainants on file. The Respondent Provider says there is historic information on file and it is assumed that this was used to complete the application process.

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The Respondent Provider also refers to a copy of its 'Know Your Customer' letter dated **11 October 2008** which explains the reasons why the home loan was suitable for the Complainants based on the information they provided.

In respect of additional rate discount and the provision of additional security, the Respondent Provider says the Complainants were originally sanctioned for a mortgage loan of €487,500 on the BTL Tracker <60% LTV interest rate in a Letter of Offer dated **23 September 2008**.

The Respondent Provider says the Complainants signed this letter but did not proceed to draw down the facility and confirmed by letter dated **10 November 2008** that this application had been cancelled/destroyed. The Complainants subsequently sought an increased amount on the BTL facility of €687,000 to incorporate facilities of €196,000 which had been secured against their private dwelling home (**PDH**), as the Complainants were not willing to upgrade the legal charge against their PDH.

The Respondent Provider says the new facility was sanctioned as per the Letter of Offer dated **31 December 2008** with an LTV of 84.2%. The Respondent Provider says the Provider did not offer the tracker rate on loans exceeding 80% LTV at this time so the Letter of Offer issued at the BTL variable rate which was accepted by the Complainants on **7 January 2009**.

In respect of the signing and witnessing of documents, the Respondent Provider says it is unaware as to which documents the Complainants are referring to as the Letter of Offer is signed by the Complainants and witnessed by a Bank Official.

In respect of the retention of title deeds, the Respondent Provider says the deeds to the PDH were released as they were no longer required as security. On **3 July 2015**, the Respondent Provider says one of the Branch staff advised the First Complainant by phone that the deeds were available at the Branch for collection. The First Complainant was also advised that the deeds were in the joint names of the Complainants and both of them would need to call to collect the deeds. At the date of the Complaint Response, the Respondent Provider says this has not been done.

Regarding the complaints procedure, the Respondent Provider says in the handling of the complaints raised by the Complainants, it is satisfied that the provisions of the Consumer Protection Code 2012 have been adhered to.

Jurisdiction

Following a further exchange of submissions between the parties, this Office wrote to the First Complainant on **31 May 2018**, advising, amongst other matters, that the complaint file was being referred to the Legal Department as there were certain concerns as to whether the conduct complained of fell within the statutorily prescribed time limits.

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This Office issued a Preliminary Determination on jurisdiction on **19 March 2019** which considered the jurisdiction of this Office to investigate the conduct complained of by the Complainants. For the reasons set out in this letter, this Office formed the opinion that conduct falling under the following three headings fell within the jurisdiction of this Office:

- i. Complaints in relation to the release of the Private Dwelling House Deeds from February 2009;
- ii. Complaints in relation to the manner the Complainants' complaints handled by the Provider commencing in 2013; and
- iii. The complaint in relation to interest rates in June 2015.

The Complainants responded to this letter on **23 April 2019** requesting that this Office, for the reasons set out therein, reconsider its position on the aspects of the complaint that were considered to fall outside of the jurisdiction of this Office. On **24 May 2019**, the Respondent Provider indicated its acceptance of the position taken by this Office regarding jurisdiction.

This Office considered the Complainants' letter of **23 April 2019** and issued a Final Determination as to jurisdiction on **14 November 2019**, which, while addressing the further points raised by the Complainants, maintained the position expressed in the Preliminary Determination.

Following this, a Supplemental Summary of Complaint was issued by this Office on **27 January 2020**. The Supplemental Summary of Complaint categorised the conduct complained of in the First Complainant's letter of **30 September 2016** under each of the above headings, as follows:

- i. *Complaints in relation to the release of the Private Dwelling House Deeds from February 2009*
 - Points 15 to 18
- ii. *Complaints in relation to the manner the Complainants' complaints were handled by the Provider commencing in 2013*
 - Points 20, 22, 24, 26 to 29 and 31
- iii. *The complaint in relation to interest rates in June 2015.*
 - Point 19

By letter dated **22 February 2021**, this Office confirmed that the scope of this complaint was confined to the above three categories and that any matters arising outside of these categories of complaint were matters that would not form part of this investigation and adjudication.

The Provider's Response to the Supplemental Summary of Complaint

The Respondent Provider responded to the Supplemental Summary of Complaint on **5 March 2020** (the **Supplemental Complaint Response**).

Complaints in relation to the release of the Private Dwelling House Deeds from February 2009

Point 15: The Respondent Provider says Provider records indicate that it requested title deeds for the Complainants' PDH on **12 August 2003** as this related to a branch loan. The Respondent Provider says records also indicate that a solicitor's Letter of Undertaking was received on **25 February 2002** committing to provide title deeds. However, the Provider did not receive confirmation from the solicitor of the mortgage deeds until **12 August 2003** and the Respondent Provider states that receipt of mortgage deeds is not the same as receipt of actual title deeds.

The Respondent Provider says the solicitor's undertaking was dated **25 February 2002** but the solicitor did not provide formal registered title deeds until **July 2009** – a period of 7 years. As a result, the Respondent Provider says the Provider was effectively restructuring the Complainants' borrowings in **December 2008**, relying on four investment properties as security, excluding the PDH. However, the Respondent Provider says that as the Provider did not have the actual deeds for the PDH, it had nothing to formally release except for the solicitor's undertaking.

The Respondent Provider says that the Provider did not write to the solicitor in **December 2008** to advise that it did not need to rely on the undertaking any further, and that it was an oversight on the Provider's behalf for which it apologises. However, the Respondent Provider says the solicitor would have been well aware that the Provider was no longer relying on the PDH as security as the solicitor was working on registering the four BTL properties. The Respondent Provider says the solicitor had the opportunity to raise a discharge on the undertaking at that time. The Respondent Provider says the solicitor continued to fulfil the undertaking for the PDH and the Provider recorded it as an undertaking on its security record. At this stage, the Respondent Provider says the Provider was not relying on the PDH as security.

The Respondent Provider states that the Complainants' contract for the newly formed amalgamated home loan dated **31 December 2008** superseded all previous arrangements and contracts. In this contract, the Provider makes no reference to the PDH and therefore, the Provider was not relying on it as security.

Point 16: The Respondent Provider states that the Provider did not require the Complainants' PDH as security and the contract from **December 2008** specifies the four properties relied on and does not include the PDH. The Respondent Provider says while the Provider held the deeds for the PDH on its system, the deeds were not used in any way or benefited from a securitisation or solvency perspective.

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The Respondent Provider say that “[t]hese deeds were registered in favour of the Provider and were never registered under the Provider Mortgage Bank book. It is only mortgage book loans that are used from a securitisation perspective.”

Point 17: The Respondent Provider says it acknowledges that the Provider held title deeds for the Complainants’ PDH when it did not require them as security. The Respondent Provider says there was no benefit in holding the deeds and they were stored safely.

The Respondent Provider notes that under Point 17, the First Complainant states that he requested the title deeds on several occasions and the Provider failed to return them. The Respondent Provider says it does not have any written evidence alluding to these requests but cannot confirm if the Complainants asked for the deeds verbally.

The Respondent Provider notes that under Point 17 it is mentioned that the deeds were held locally in branch. The Respondent Provider says records tell it that the Branch requested repatriation and release of the deeds from Central Securities in **May 2015**. The Respondent Provider says records also tell it that a Branch staff member advised the Complainants that the deeds were held in safekeeping and would need to be signed out by both Complainants. Referring to an ‘Instruction to Release Property as Security’ form, the Respondent Provider says that deeds can either be sent to a solicitor or the Provider for collection. In the Complainants’ case, the Respondent Provider says this section was not completed and the deeds were sent to the Branch as the default options. As of **30 January 2020**, the Respondent Provider states the deeds are still in safekeeping in the Branch and have not been collected by the Complainants.

Point 18: The Respondent Provider says that despite the fact that the Provider held on to the deeds for the PDH, it was not relying on them as security for any borrowings the Complainants held with it and the contract dated **31 December 2008** detailed four investment properties relied on as security. The Respondent Provider says the Complainants were contacted on **3 July 2015** to advise that the Branch had received the title deeds which could be collected at any time provided both parties called to the Branch to sign and collect them.

Referring to the letter dated **31 December 2008** and the drawdown of the loan amount of €687,000 on **3 February 2009**, the Respondent Provider says that the Provider did not have title deeds to the PDH at this time. The Respondent Provider says best practice would have been to write to the Complainants’ solicitor in **February 2009** to advise that the Provider did not rely on the undertaking. Due to an oversight at branch level, the Respondent Provider says no such instruction was issued to Central Securities to formally release the solicitor from the undertaking. When the titled deeds were received in **July 2009**, it should have reviewed the requirement for the deeds internally and advised the solicitor that the deeds were not required anymore under the fresh contract agreement and that the Provider would be returning them.

The Respondent Provider says that when the deeds were received, the Provider recorded them on its internal system as 'received' and while the deeds were sent directly to Central Securities, they operate on an 'execution only' basis and would not have been dependent on the Business Area (in this case, the Branch) advising them to release the undertaking/deeds.

The Respondent Provider explains that the title deeds were held in respect of loan account ending 023 which was originally opened on **20 December 2001** for a branch based home loan facility and required the Branch to obtain title deeds to the PDH.

To fulfil the terms of that contract and to facilitate drawdown, the Complainants' solicitor provided a Solicitors Undertaking dated **25 February 2002** to effect the legal charge over the PDH. The Respondent Provider says the Provider did not receive the completed registered legal charge for the PDH until **2009**. The Respondent Provider says account ending 023 was closed on **4 February 2009** on foot of the drawdown of the amalgamated home loan. The Respondent Provider says title deeds for the PDH were required for the period **25 February 2002 to 4 February 2009**.

When the Branch requested formal release of the title deeds in **May 2015**, the Respondent Provider says there is nothing on file to suggest what prompted the request at this point in time. The Respondent Provider says records indicate that when the deeds were received in Branch in **July 2015**, a phone call was placed to the Complainants to advise that the deeds were held for collection in the Branch. The Respondent Provider says there does not appear to be any further records after this date requesting the Complainants to collect the deeds. The Respondent Provider advises that customers are often happy to leave deeds with it in the knowledge that they are safely held in the vault and that it would not be unusual for deeds to remain uncollected. The Respondent Provider says it would not have been practice to contact customers periodically to advise them to collect their deeds.

In respect of the release of the Provider's charge over the PDH, the Respondent Provider says that it does not hold evidence of the release of its charge after the loan was cleared in **February 2009**. The Respondent Provider says it appears the focus was on the drawing down of the new facility and the setting up of security for the four new properties. The Respondent Provider says it may well have been an oversight that while getting everything in order for the new drawdown, the release requirements for the title deeds to the PDH was overlooked.

The Respondent Provider says it appears that the Provider did not write directly to the Complainants and/or their solicitor and/or the Property Registration Authority to advise that the mortgage on loan account 023 was cleared. The Respondent Provider says the only correspondence it has in relation to this is a letter from the First Complainant dated **8 May 2015**. The Respondent Provider says a staff member put a note on this letter to state that she spoke with the Complainants confirming that the return of the title deeds had been requested and to let them know when the deeds were received. The Respondent Provider says there is no evidence of any other correspondence in relation to this matter from **2009 to 2015**.

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In respect of provision 3.6 of the Consumer Protection Code 2012, the Respondent Provider says it is not satisfied that the Provider complied with this provision regarding the return of title deeds after the discharge of the Complainants' borrowings and due to an oversight it did not return title deeds to the Complainants in **2009**. The Respondent Provider says there does not seem to be a written agreement that the deeds be held for safekeeping, rather it was the verbal conversation which was recorded on the Provider's 'Remarks' screen.

Complaints in relation to the manner the Complainants' complaints were handled by the Provider commencing in 2013

Point 20: The Respondent Provider says it refutes that the Provider has failed to comply with the correct complaints procedures in the Consumer Protection Code in how it managed the Complainants' repeated complaints over the period **2013** to **2016**.

The Respondent Provider says the first complaint was logged on its systems on **3 July 2015**. The Respondent Provider says there is no reference to the Complainants formally making any complaint prior to this period. The Respondent Provider says there is evidence on file that the Complainants were interacting with the Provider on a normal business as unusual basis, but there was never any indication that it had progressed to formal complaint until **3 July 2015**. On **3 July 2015**, the Respondent Provider says that the Complainants met two staff members at the Branch who felt it appropriate that they create a file note given the customers' expression of dissatisfaction with some issues. The Respondent Provider says a complaint was created on **3 July 2015** and closed off on **20 July 2015**. The Respondent Provider says the Complainants attended the Branch on **13 August 2015** and met with the same staff members and a hand written file note was drafted at this meeting. Based on the continued expression of dissatisfaction relating to certain matters, the Respondent Provider says a new complaint was created on **14 August 2015** and this complaint was closed on **7 September 2015**. The Respondent Provider says the Complainants attended the Branch on **12 February 2016** and another complaint was opened which was closed on **2 March 2016**. Following receipt of a letter dated **30 March 2016**, the Respondent Provider says a complaint was opened on **11 April 2016** and closed on **16 May 2016**.

The Respondent Provider says in all cases, the Branch closed out the complaint by writing a Final Response letter to the Complainants setting out what the Provider had done to investigate the complaint and advising the Complainants to contact the Financial Services and Pensions Ombudsman (**FSPO**) as the next step, if they remained unhappy.

Following closure of the complaint in **May 2016**, the Respondent Provider says the First Complainant wrote to the Branch on **8 June 2016** and again on **25 July 2016** continuing to express dissatisfaction with a number of issues and the response to those issues. The Respondent Provider advises that in **July 2016**, it had recently set up a centralised complaints unit and given that the Branch dealing with the Complainants was one of the first to be on-boarded to that unit, the Respondent Provider says the Branch Manager felt it prudent that a manager from the centralised complaints team would meet with the Complainants. A meeting took place on **24 August 2016** between the Complainants and a Manager in the Centralised Complaints Unit and the Branch Manager.

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Following this meeting, the Respondent Provider says a further complaint was logged on **25 August 2016**, a Final Response letter issued and the complaint was closed on **26 August 2016**. The Respondent Provider says the Complainants subsequently wrote to the Branch on **26 September 2016** advising that the First Complainant was preparing a file for submission to this Office.

In response to the contention that the Branch failed to comply with the correct complaints procedure, to the contrary, the Respondent Provider says the documents contained at Appendices XI to XIV of its Schedule of Evidence clearly indicate that the complaints procedure was fully followed. The Respondent Provider says that prior to the recording of the first complaint in **July 2015**, conversations which took place were considered to be normal business as usual discussions and therefore did not require the logging of a formal complaint.

Point 22: The Respondent Provider says it refutes that the Complainants' process of investigation has been continually and repeatedly frustrated. The Respondent Provider submits that file notes of meetings, the logging of complaints and the issuance of complaint response letters are a clear indication that the Provider/Branch engaged with the Complainants in an attempt to explain the position and resolve matters. The Respondent Provider says complaint letters clearly outlined the position around the First Complainant's continuing assertion that he was entitled to a set off facility on his mortgage loan borrowings. The Respondent Provider notes that this issue has been excluded on grounds of jurisdiction.

Point 24: The Respondent Provider says that this complaint was managed appropriately in line with all regulations and that sufficient time was provided to the First Complainant by the staff member to hear out his concerns which were responded to appropriately and in line with complaint procedures.

Point 26: The Respondent Provider says the First Complainant takes issue with the absence of the phrase 'final response letter' in the correspondence closing out each individual complaint. The Respondent Provider says it was taken that each complaint was closed off correctly and appropriately on its own merits, and each time the Complainants responded, a fresh complaint was opened. The Respondent Provider says the Branch/Provider was not to know that the Complainants wanted to progress with the complaint and as such, closed each complaint out individually as it was entitled to do.

The Respondent Provider says it is acknowledged that letters which issued prior to the letter dated **26 July 2016** did not include the phrase 'final response letter'. The Respondent Provider advises that standard templates up to mid-2016 was not to use this phrase, rather to ensure that it advised the Complainants to contact the FSPO as their next step if they remained unhappy.

The Respondent Provider says that reference to final response requirements is set out on FSPO's website. On the formation of the Central Complaints Unit, the Respondent Provider says it was felt best to create a new style of final response letter and hence included the phrase 'final response letter'.

Point 27: The Respondent Provider says its response is that it was not a necessary or regulatory step that needed to be taken. Any issue that the Complainants had in relation to their borrowing position is a separate matter between the Provider's credit business area and the Complainants which it considers to be outside the remit of this complaint.

Point 28: The Respondent Provider says *"it was not the Providers responsibility to confirm to the Bank's lending area that repayments were sitting in an account while the FPSO investigation continued."* The Respondent Provider says repayments were due on the mortgage loan account and the fact that funds were 'sitting' in another account was of no relevance to the arrears position which accumulated. The Respondent Provider says that the issue of repayments due on the mortgage loan account and the ongoing FSPO complaint were separate and mutually exclusive.

Point 29: The Respondent Provider says that local branches do not know what was included in the Complainants' data releases. However, the Respondent Provider says it is satisfied that all relevant data has been provided to the Complainants.

Point 31: The Respondent Provider refutes that there was a failure to honour a commitment to provide the Complainants' details to the FSPO. The Respondent Provider says all regulatory and FSPO complaint procedures were clearly outlined to the Complainants in all letters. The Respondent Provider says it was up to the Complainants to outline their complaint to the FSPO which they subsequently did and any issue relating to the Arrears Support Unit contacting the Complainants was a completely separate matter to the progression of the complaint. The Respondent Provider says the raising of a complaint and the subsequent progression of it to the FPSO does not in any way halt the follow up of credit arrears, if such were the case.

Addressing a meeting which took place on **27 November 2013**, the Respondent Provider says the letter of **12 April 2016** explained that a record of the meeting in file note format was not documented. The Respondent Provider says there is no other reference to file notes relating to this meeting apart from a copy of a letter dated **27 November 2013** confirming the issues which were discussed at the meeting and the information required to progress the Complainants' request.

The Respondent Provider says the letter of **27 November 2013** does not give any indication that there was a complaint at hand, rather it being a business as usual discussion about the Complainants' affairs and some associated issues that needed to be addressed.

The Respondent Provider says that it cannot provide a copy of its Internal Complaints & Errors Management as it contains sensitive information. The Respondent Provider says it has implemented its own policies in line with Consumer Protection Code requirements.

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The Respondent Provider says its complaints policy supports a common, shared standard for investigation and resolving complaints across its business. The process supports the timely resolution of complaints and ensures that the Provider complies with its regulatory timeline and written communication requirements with complaints.

Explaining the investigation of complaints, the Respondent Provider says during **2013** to **2016**, the logging, investigation, resolution and closure of the complaint would all be undertaken at branch level with little input necessary from the Head Office complaints function.

The Respondent Provider says there was and continues to be a complaints and errors management system (CEMS) in place where the Provider could log and manage out the complaint in accordance with its regulatory obligations around timeframes. The Respondent Provider says the logging of the complaint in **August 2016** coincided with the establishment of the centralised complaints function for branch banking. Given the complexity of the issue at hand, the Respondent Provider says the assistance of a manager within the Centralised Complaints Unit was requested to support discussions and resolution with the Complainants. Following formal closure of this complaint through the issuance of a Final Response letter on **26 August 2016**, the Respondent Provider says the Centralised Complaints Unit continues to support the Branch through the FSPO process, hence their involvement to date. The Respondent Provider advises that this case continues to be managed by the Head of its Centralised Complaints Unit in conjunction with the local Branch Manager.

The Respondent Provider says it is satisfied that the provisions of Chapter 10 of the Consumer Protection Code were complied with. The Respondent Provider says it has been outlined a number of times that the Complainants were engaging with the Branch/Provider in relation to a number of personal financial matters and there were commercial issues at hand which were discussed, particularly in relation to the assertion that the First Complainant was entitled to set-off arrangements regarding his borrowings. The Respondent Provider says the view was taken that these discussions were part of a normal business as usual negotiation process and did not take the view that the logging of a complaint was necessary from the conversations. On receipt of correspondence from the Complainants in **2015** and following robust discussions in relation to a range of issues which the Complainants raised, the Respondent Provider says it was only on **3 July 2015** that it was deemed necessary to formally log a complaint.

The Respondent Provider notes that provision 11.1 of the Consumer Protection Code states that: *"A regulated entity must ensure that all instructions from a customer are recorded."* During the period **2013 – 2016**, the Respondent Provider says it does not have on record any instruction to provide the Complainants with a new product, to close a product or any other scenario relating to formal instructions. Conversations that were taking place during this period, the Respondent Provider says, did not form the basis of being an instruction and therefore did not need to be recorded. In this case, conversations that took place were considered to be business as usual discussions about a commercial decision rather than specific instructions from the Complainants.

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Referring to provisions 45 to 49 of the Consumer Protection Code 2006, the Respondent Provider says these provisions have been adhered to. The Respondent Provider says the Complainants were issued with an acknowledgement letter signed by the staff member investigating the case and all letters were issued within the regulatory timelines. The Respondent Provider says Final Response letters issued to the Complainants which included the outcome of the investigation and along with information on how the Complainants could progress the matter to the FSPO.

The Respondent Provider says that it is not deemed necessary to record every single conversation with customers on file notes following meetings.

The complaint in relation to interest rates in June 2015

Point 19: The Respondent Provider says the Complainants were written to on **2 June 2015** advising that the BTL variable interest on the existing facility was reducing from 5.35% to 5.1% and there was an accompanying brochure attached to the letter detailing a summary of those and other changes to interest rates. The Respondent Provider says the brochure made reference to the reduction in the BTL rate and also included reference to variable LTV rates, which were specific for owner occupier facilities and for BTL facilities. As the loan contract dated **21 December 2008** was specifically for a BTL property loan, the Respondent Provider says the Complainants were not entitled to apply for this LTV rate option. The Respondent Provider refers to an account statement for the Complainants' loan for the period **March 2016 to August 2016** showing reference to the rate reduction to 5.1%. The Respondent Provider says the Provider was not relying on the title deeds to the PDH as security and the deeds did not form part of the overall loan to value ration against the Complainants' borrowings.

The Complaints for Adjudication

The complaints are that the Provider:

Failed to return, wrongfully retained and wrongfully benefited from the title deeds to the Complainants' private dwelling house;

Failed in its handling of the Complainants' complaints from **2013**; and

Failed to apply preferential interest rates to the Complainants' loan account.

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.

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The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 30 June 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, both parties made further submissions, copies of which were exchanged between the parties.

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

I note the Complainant, in a post Preliminary Decision submission, requested this Office to investigate a number of additional complaints. This is not possible as it would not be appropriate to introduce new complaints at this stage of the investigation and adjudication process.

The Provider/Branch Conduct

The background to this complaint demonstrates that the Branch was very much central to and involved in the conduct complained of. However, as the conduct complained of ultimately relates to a Provider product, the Branch's conduct will be considered to be that of the Provider for the purposes of this complaint.

The Title Deeds

The evidence indicates that the security offered for loan account ending 023 was the PDH.

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This facility appears to have been entered into around **December 2001** and while this loan was secured on the PDH, title deeds do not appear to have been received from the Complainants' solicitor by the Provider until **July 2009**. However, following the drawdown of the funds advanced on foot of the Letter of Sanction dated **31 December 2008**, loan account 023 was cleared in **February 2009**. The security offered for this loan, however, did not include the PDH. As such, the Provider received title deeds at a point when they were no longer required for the purpose of securing any of the Complainants' borrowings.

Having regard to the security forming part of the Letter of Sanction and the fact that loan account 023 was cleared in **February 2009**, I am of the view that the Provider should have been aware that the title deeds were no longer required for the purpose of securing the Complainants' borrowing and steps should have been taken to notify the Complainants or their solicitor that this was the case.

This has been acknowledged by the Respondent Provider in the Supplemental Complaint Response in response to this aspect of the complaint.

It appears that title deeds to the PDH were not requested from the Central Securities unit until **May 2015**. From **July 2015**, the deeds were available for collection from the Branch. However, all of this occurred over six years after loan account 023 was cleared. Provision 16 of the **Consumer Protection Code 2006** (the **2006 Code**) and Provision 3.6 of the **Consumer Protection Code 2012** (the **2012 Code**) require documents conferring ownership to be given to consumers in a timely manner or are held for safe keeping under an agreement between the parties. Having considered the evidence, I am not satisfied that the Provider has complied with these requirements. There is no apparent justification for the retention of the title deeds by the Provider after **February 2009** and there is a clear absence of any agreement between the parties that the title deeds would be retained for safe keeping. Accordingly, I am satisfied that the Provider unduly retained the title deeds to the PDH.

At Point 17, the First Complainant says that "[d]espite numerous requests", the Provider has failed to return the title deeds. The First Complainant further says that he "*requested these on several occasions.*" There has been an extensive exchange of submissions in respect of this complaint, however, the Complainants have not identified or provided any evidence or clarity as to the dates (or months even) when these requests were made, whether they were made in writing or verbally or to whom they were made, nor has a copy of any correspondence been provided by the Complainants in support of their position.

Further to this, in respect of the Complainants' submission dated **9 June 2020** in response to the Supplemental Complaint Response, I do not accept that it is sufficient for the Complainants to seek to rely on any apparent failure on the part of the Provider/Branch to maintain proper records regarding meetings or conversations which took place between the parties in support of their position that several requests were made for the return of title deeds without providing any details of these requests.

On **8 May 2015**, the First Complainant wrote to the Branch Manager requesting the return of the title deeds to the PDH, as follows:

"I refer to the above and previous request for return of the unencumbered deeds of the above property.

To-date I have not received same and this is seven years after the loan completion. [The Provider] have had continued use of this capital asset for this period and this is unacceptable."

This is the earliest document evidencing a request for the title deeds and, in this letter, the First Complainant refers, in a singular sense, to a 'previous request'. While there is a reference to a previous request, it is not clear when this request was made. Therefore, on the basis of the evidence, I am not satisfied that numerous requests were made by the Complainants for the return of the title deeds to the PDH prior to **8 May 2015**.

As noted in the previous paragraph, the first documented request for the return of the title deeds appears to have been the letter of **8 May 2015**. There is an undated handwritten note on this letter which I understand was made by one of the Branch staff members. This note states:

"Spoke to [the First Complainant]. Advised that we have requested return of title deeds & would let him know when received."

An Instruction to Release Property as Security dated **14 May 2015** was sent to the Central Securities unit. I note that the release of two properties was requested on this form, one of which was the PDH. At Appendix III to Schedule of Evidence 3 of the Supplemental Complaint Response, a file note dated **3 July 2015** is referenced by the Respondent Provider. This file note states, as follows:

"Title deeds to [PDH] (In joint names) held in press in safe awaiting collection. Client advised that they will need to be collected by both [Complainants]."

In a statement dated **25 February 2020**, prepared by the staff member who submitted the request for the release of the title deeds, it is stated that when the deeds arrived in Branch, this individual contacted the First Complainant on **3 July 2015** to advise that the deeds had arrived in the Branch and were available for collection. From the evidence, it does not appear to be disputed that the staff member contacted the First Complainant on **3 July 2015**.

In the circumstances, it is my opinion that the first request for the return of the title deeds to the PDH is likely to have been made around **8 May 2015**. The title deeds were then available for collection from the Branch from around **3 July 2015**. Therefore, I am satisfied that once a request was made for the return of the title deeds, they were available for collection by the Complainants within a reasonable period of time.

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In terms of the benefit enjoyed by the Provider through the prolonged retention of the title deeds to the PDH, I note that in the Letter of Sanction dated **31 December 2008**, the Provider wrote to the Complainants to advise that a mortgage loan had been sanctioned in the amount of €687,000 and enclosed certain documentation for the Complainants' attention. As noted already, this loan cleared the loan that was secured on the PDH. Within the Letter of Sanction, Part 1 of the Letter of Offer of Mortgage Loan identifies a 'Property already Mortgaged' which is not the PDH. Part 2 contains a number of Special Conditions which record the additional security being taken by the Provider in respect of this loan - three properties are identified, none of which are the PDH.

The Provider wrote First Complainant on **28 September 2009** to advise him of the account facilities held with the Branch. These facilities included the **December 2008** loan agreement. This letter also listed the security for this loan as the properties identified in the Letter of Sanction (that is, the letter of **31 December 2008**). In a letter dated **5 June 2012**, the Provider wrote to inform to the Complainants that security was outstanding which was required to be put in place in respect of the **December 2008** loan agreement. The properties identified in this letter were the properties listed in above Special Conditions.

The letter advised that the Provider was currently relying on a Solicitors Undertaking in respect of these properties but now required the relevant charges to be registered. The Provider wrote to the Complainants on **14 May 2015** identifying the properties being relied on for the above loan. These properties are those noted in the letter of **31 December 2008**.

Although the Provider may have unduly retained the titled deeds to the PDH, I do not accept that the Provider benefited in the manner suggested by the First Complainant (or at all) from the delayed return of the title deeds nor do I accept that a failure to return the title deeds means that the Provider, in some way, benefited from its continued possession of them. There is no evidence to suggest that the Provider intended or sought to derive any benefit from the title deeds to the PDH once loan account 023 was redeemed and there is no evidence that the Provider has, in fact, benefited from its retention of the title deeds to the PDH post **February 2009**.

It appears from the Supplemental Complaint Response that the title deeds remain to be collected by the Complainants. In a submission dated **31 August 2017**, the First Complainant advises that "[t]here will be no collection of the deeds by the complainants with the period of the FSO complaint and until such time as the complaint is finalised." It is surprising that, given that the Complainants state they sought to get the deeds back and the Complainants' position regarding the benefit being obtained by the Provider, they did not immediately seek to collect the title deeds when they were received by the Branch in **July 2015**.

Complaints Handling

The position adopted in the Complaint Response and the Supplemental Complaint Response is that for the period to which this aspect of the complaint relates (that is, 2013 to 2015), the first time a complaint was required to be logged was **July 2015**.

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In a submission dated **31 August 2017** in response to the Provider's Complaint Response, the First Complainant says that that first complaint was made in **November 2013**:

"Bullet Ten:- the bank(s) are incorrect with their measurement of first notification of complaint. Their communication of 12th April 2016 confirms meeting of 27th Nov 2013 and acknowledges their retention of "file notes" are again inadequate. This was the first date of complaint.

Bullet Eleven & Fourteen:- It is reasonable that the bank(s) investigations "could see no evidence to support the Complainants complaint". This is because the bank(s) fail to maintain adequate records ..."

In a letter to this Office dated **23 April 2019**, the Complainants stated that:

"The defendants failed to open complaint files for expressions of dissatisfaction expressed to them in 2009-15. Only at the latter end of the engagement were formal records taken by the defendants. The complainants believe the earlier culture within the bank of not keeping records was a practice of self-interest and preservation – because where records do not exist then no story can be told. The complainants supporting records of complaints referred to here by the FSO do not exist with them nor do records exist with the defendants. This should not imply that complaints were not made and the complainants asks the FSO to take into consideration the entire case and suggests it is necessary to make assumptions to close some of the gaps that exist irrespective of whether or not these gaps exist by error or by design. ... It is not unreasonable to request the FSO to make an assumption that verbal complaints were being expressed on telephone calls and at face to face meetings with the defendants."

The Complainants have also addressed this aspect of the complaint extensively in a submission dated **9 June 2020**.

The Complainants contend that the first complaint was made on **27 November 2013**. In an email to this Office on **19 March 2020**, the First Complainant explained the complaint made on **27 November 2013** related to the "withdrawal of the 1% arrangement". In a submission dated **9 June 2020**, in addition to referring to the set-off arrangement, the Complainants say that: *"The Bank also failed to separately record accurately (2013) meeting minutes – complaints made to them regarding their refusal to extend loan agreements in facilitating the Complainants with an interest only repayments structure."*

I accept that a meeting took place with Branch staff on **27 November 2013**. Disappointingly, the Respondent Provider advises there is no file note this meeting. However, I see that a statement has been prepared by the Branch staff member who attended this meeting which is dated **3 March 2020**. This is quite a short statement and does not contain any details of the meeting itself. I am also aware this statement was drafted several years after the meeting took place.

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However, this individual states that, following the meeting, *“the customer was issued with a letter on the same day requesting information which related to the Customer request at the particular meeting.”* This letter, which is dated **27 November 2013**, states:

“Further to our meeting today, you might please provide the following information as soon as possible:

1. *2012 Financial Accounts*
2. *Copy of your Notice of Assessment.*
3. *Tax clearance certificate*

With regard to your request for a moratorium, you might please provide the following information in the coming days:

...

Should you have any questions please feel free to contact me”

There is nothing in this letter to suggest that a complaint had been made during the meeting nor that the First Complainant expressed dissatisfaction with the Provider’s conduct or the Branch’s conduct. The letter contains a request for certain documentation, however, the items requested would not suggest that a complaint had been made. Further to this, were a complaint made at this meeting, it is reasonable to expect this to be reflected in the correspondence which issued on foot of the meeting. I would also consider it reasonable to expect the Complainants to communicate to the Provider/Branch that it failed to acknowledge their complaint in this letter (or at all) or to have taken steps to follow-up with the Provider/Branch regarding the investigation or resolution of the complaint. Accordingly, I have no evidence that a complaint was made by the Complainants at this meeting.

While the Complainants have delivered extensive submissions, they have not identified the dates on which they made their complaints, the person to whom they were made nor have they given details of what these complaints were. In particular, the Complainants have not given evidence of any complaint being made at any point during 2014 or at any time in 2015 prior to the complaint being logged in **July 2015**.

However, having considered the evidence, I am satisfied that there are likely to have been interactions between the Complainants and the Provider/Branch between 2013 to 2015. The Respondent Provider’s evidence is, in essence, that these were business as usual interactions and did not constitute an expression of dissatisfaction such that required a complaint to be logged.

On reviewing the documents submitted by the Respondent Provider in response to this complaint, I must say that there is a distinct lack of file notes recording these interactions. While I accept that the Provider/Branch is not necessarily required to record every interaction with a customer, I would nonetheless expect there to be more file notes than those submitted in response to this complaint.

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While I accept that a complaint may have been made during the period 2013 to summer 2015, owing to the absence of any details from the Complainants as to when complaints were made during this period, I have no evidence that a complaint was made prior to the complaint being logged in **July 2015**.

By letter dated **8 May 2015**, the First Complainant wrote to the Branch, as follows:

"I refer to the above and wish to revisit the structure of this loan agreement and the original agreement notes. I made a request at the counter of your branch in February for a review meeting and a note was taken for a new account manager to commence in March – but to-date I have heard nothing from you (sic) offices.

I acknowledge that a meeting took place some two years ago on this same subject but I wish to reopen same and formally request a copy of the file notes relating to the loan agreement. I cannot accept that no file notes exist as was indicated in or (sic) last meeting."

There is an undated handwritten note on this letter which I understand was made by one of the Branch staff members. This note states:

"Spoke to [the First Complainant]. Apologised for delay in coming back to him. Told him I had checked file & could see no reference to set off agreement in recent years. Sent out SAR form. Meeting to be set up with [agent]."

One of the primary complaints made by the First Complainant related to the set-off arrangement, the above reference to the structure of the loan agreement appears to have been a reference to the set-off arrangement. As can be seen in the second paragraph, the First Complainant refers to a meeting which took place two years previously and was now seeking to reopen the matter. As the set-off arrangement was such a central aspect of the Complainants' complaints and in light of the absence of details from the Complainants regarding when their complaints were made, this letter would suggest that the issue of the set-off arrangement was not necessarily discussed during 2014 or prior to the date of this letter. As such, the Provider/Branch's position towards this arrangement could not necessarily be the subject of a formal complaint if it had not been raised since mid-2013.

It appears that a meeting took place between the First Complainant and certain Branch staff members on **3 July 2015**. The Respondent Provider has provided a file note of this meeting which is also dated **3 July 2015**.

In this note, it is stated that:

"[The First Complainant] outlined the issues he has with the bank at present.

Firstly, he referred to previous queries and meetings he had with regard to the reference set-off agreement ...

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When the issue was previously raised with the bank, [the First Complainant] stated that we pointed out that set-offs were no longer permitted and that he had felt 'fobbed off'. Also, he had previously asked for deeds to be released at that meeting, said we were slow in doing so. It was confirmed that the deeds have remained available for collection and were not being held as security.

A second issue brought up in the meeting was that of the rate which his account ... is on (at 5.1%). [The First Complainant] feels that this is excessive and he would like this reviewed. ..."

The file note records that a complaint was then logged. By letter dated **3 July 2015**, the Branch acknowledged the complaint, identifying the person investigating the complaint and provided the First Complainant with relevant contact details.

The Branch wrote to the First Complainant on **20 July 2015**, identifying the complaints as relating to the set-off arrangement and the interest rate applicable to the Complainants' loan. In the second paragraph of the letter, the Branch outlined the response to the complaints and, in the final paragraph, advised the First Complainant of his right to refer the matter to this Office and provided relevant contact details for this Office.

A meeting took place on **13 August 2015**. The meeting note indicates that the First Complainant communicated his dissatisfaction with the information released in response to a data subject access request and the interest rate being applied to the Complainants' loan. The Event Report in respect of this complaint records a complaint being logged on **14 August 2015**. A complaint was acknowledged by letter dated **18 August 2015** in similar format to the previous complaint acknowledgement letter. The Branch wrote to the First Complainant on **7 September 2015**, outlining the complaints raised and responded to each of those complaints. The letter also advised the First Complainant of his right to refer the matter to this Office and provided relevant contact details for this Office.

A further meeting took place on **12 February 2016**. A note of this meeting recorded a number of issues raised by the First Complainant, as follows:

"...

- *Mortgage – wants independent review – split costs*
- *Rate being charged is wrong in his opinion*
- *Client suggests credit rating will now be affected*
- *DD moved to bring matter to a head.*
- *Back-to-back/Set-off was to restart when various loans were put into one big loan*

...

- *Gap in file from SARS noted.*
- *Cost estimated by [the First Complainant] at >€100k"*

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The relevant Event Report indicates that a complaint was recorded on **12 February 2016**. An acknowledgement letter was issued by the Branch on **17 February 2016** in similar format to previous acknowledgement correspondence. The Branch wrote to the First Complainant on **2 March 2016**, identify the complaint as relating to the set-off arrangements and the interest rate which should apply to the Complainants' loans. The letter proceeded to set out the Provider's position on these matters and advised the First Complainant of his right to refer the matter to this Office.

In response to this, the First Complainant wrote to the Branch on **30 March 2016**, as follows:

"I am disappointed that having taken the time to have two personal meetings with your staff and the serious issues I raised – in my opinion have been largely ignored.

This matter is not going away and I am now requesting that you copy me with the minutes of meetings held in the branch with yourself in 2012 and also minutes of my last two meetings with [named individuals] in 2015 and 2016. Additionally please copy me with the file notes pursuant to the taking out of my current loan along with your statutory "fact find" and "signed reasons why" communications.

To prove my long standing facilities with your branch you might kindly issue me with a copy of every loan statement from commencement of each loan to completion. Also please copy me with all documents pursuant to loan contracts which were contracted in my personal name or that of [company]. The records date back to October 1994. Please treat this as a formal data request

As you are aware I have previously indicated ... that I was willing to have this matter and dispute independently investigated on a split costs basis. I trust your communication is indicating you are unwilling to engage in such a dispute resolution process. ..."

In a letter dated **5 May 2016**, the First Complainant appears to clarify that the reference to a meeting in 2012 should have been a reference to a meeting in 2013.

The Branch issued a complaint acknowledgement letter on **11 April 2016**. The Event Report in respect of this complaint records the complaint as being received on **31 March 2016** and logged on **11 April 2016**. The Branch wrote to the First Complainant on **12 April 2016** setting out its response to the complaint. With respect to the provision of information, the letter advised that loan statements had been issued periodically over the years and the Provider does not issue this information again.

The letter further advised that if the First Complainant misplaced individual statements, duplicate statements could be arranged at a charge of €3 per page. The letter also advised that the data subject access request had been submitted to the relevant department where it would be actioned.

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The First Complainant responded to this letter on **5 May 2016** expressing his dissatisfaction with the Branch's response. This letter was responded to by the Branch on **16 May 2016**. I note that in respect of the provision of account statements, the letter advised that complying with such a request involved a considerable amount of manual work by staff members and this was the reason for the charge. The letter also asked that the First Complainant check his records to identify which statements he was missing, and if it was only a small number, the Branch could provide them free of charge. The letter also advised that the Subject Access Request Department had not responded to the request for loan documentation in respect of the company referred to in the First Complainant's earlier correspondence as this request related to a corporate entity. However, the Branch letter enclosed a copy of a loan agreement in the name of the company, which was the only loan account the company held with the Provider.

The First Complainant wrote to the Branch on **8 June 2016** in response to its previous letter explaining that the documentation released as part of the data subject access request "*were duplications and not the information actually being sought.*" The First Complainant then clarified the information he required. In the next paragraph, the First Complainant stated that "*I need the bank to supply me with my historic data to support my claim.*" The First Complainant then requested "*the copy documentation for cover loan on properties situate*" at five addresses.

The Event Report records that the matters raised in this letter were referred to the Subject Access Request Department. The Event Report also notes that one of the Branch staff members spoke with the First Complainant by telephone on **21 June 2016** to discuss this. This entry also notes that a meeting between the parties was discussed. This was followed by a further series of communications.

The Complainants received correspondence from the Provider dated **22 July 2016** calling in the loan sanctioned in **December 2008**. The First Complainant wrote to the Branch in respect of this correspondence on **25 July 2016** stating that it was "*a pure act of intimidation and obfuscation.*" This letter continued, as follows:

"The bank is clearly aware that the reduced payment on my monthly loan repayment is as a result of an ongoing dispute and that monies equal to full payment are sitting in an account in your branch continuing to accumulate whilst awaiting resolution of this matter. In a spirit of good will I continued to make reduced payments to the loan account whilst awaiting a resolution or mediation process to commence with the bank. To-date I see no intent whatsoever by the bank to engage in a meaningful process of problem resolution for a complaint now ongoing with years.

I have clearly indicated in previous communication that it is my intention to forward this serious complaint to the FSO but in order to frustrate this I believe the bank is now pursuing an alternative route which may disenfranchise me from using this option.

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The bank is obliged to issue me with the information requested in my last communication and on that matter the said information has been requested in previous communications also but not forthcoming. At this juncture and in light of your unwillingness to work with me - if you fail to deliver the requested documentation to me by Friday 29th July I will have no alternative to but to (sic) proceed with submission of my complaint to FSO which will be clausued with an incomplete set of documents due to non-cooperation with the bank and a spirit of unwillingness to resolve or engage in a meaningful way in this customer dispute. ...”

A meeting took place on **24 August 2016**. Following this and in response to the above letter, the Branch wrote to the First Complainant on **26 August 2016** addressing issues under the following headings: ‘Subject Access Request’, ‘Set-off’, ‘Reduced Home Loan rate’, ‘[Provider] Communication’ and ‘Bank’s engagement’. In respect of the set-off arrangement, the letter advised that the Respondent Provider and the Provider were two distinct and separate legal entities.

In respect of the Provider’s correspondence of **22 July 2016**, the letter advised that this was a standard loan arrears letter and that it was in the Complainants’ best interests to attend to the arrears at their earliest convenience. The letter concluded by advising the First Complainant that this was the final response to his complaint and provided details of this Office.

By letter dated **26 September 2016**, the First Complainant wrote to the Branch regarding the above letter. At the second paragraph of his letter, the First Complainant states:

“I have advised you on several occasions that it is my intention to prepared (sic) a file for FSO and this was clearly communicated in our last meeting. I am not completely satisfied with your minutes and in my opinion there are several omissions.”

In the context of this aspect of the complaint, provisions 10.7 to 10.12 of the 2012 Code deal with complaints handling and, in particular, provision 10.9 sets out certain timeframes for the acknowledgement, investigation and response to complaints. Having considered the dates the above complaints were made and the correspondence issued by the Branch in response to those complaints, I accept that the relevant timeframes have been adhered to. In respect of the complaint received on **31 March 2016**, I note that this complaint was not logged until **11 April 2016**. The reason for this is stated in the Event Report. The first entry in the ‘Complaint Note’ is dated **11 April 2016** and states:

“Letter recd 31/3. Not originally logged as a complaint as issues therein have been responded to previously & letter is predominantly seeking SARS info. SARS request forwarded to appropriate unit to action. Letter referred to complaints unit for opinion as to how we should deal with it. Per discussion with them today they have advised us to open fresh complaint, due to timelines we are immediately in breach of first letter response time. Letter being issued to client today.”

In light of the nature of the complaint and its similarity to previous complaints, it is my opinion that there was nothing unreasonable with the initial approach taken by the Branch in respect of this complaint. In any event, while the complaint was not acknowledged within 5 business days, a formal response was issued on the eight business day (**12 April 2016**) which is well within the time limits prescribed by the 2012 Code for issuing a formal complaint response.

I do not accept the First Complainant's point that the Branch issued its first and only Final Response letter on **26 August 2016**. The 2012 Code does not require the issuance of correspondence expressly identified as a Final Response letter. This is simply a term that is used to refer to a financial service provider's final response to a complaint. Provision 10.9(e) sets out the information the Branch was required to provide to the Complainants following the completion of its investigation. Having reviewed the correspondence issued by the Branch regarding the outcome of its investigation into the various complaints, I am satisfied this correspondence complies with the requirements of Provision 10.9(e).

Further to this, I do not accept that the manner in which the Branch recorded each of the above complaints was wrong or unreasonable. Following the initial complaint being logged on **3 July 2015**, the Branch was entitled to issue a formal response to this complaint. While the Complainants may not have been satisfied with the response received or considered that it did not address the issues raised, this does not mean the Branch was required to treat any further correspondence received from the Complainants regarding this complaint or any subsequent complaint as a continuation of the initial complaint or any subsequent complaint. On each occasion, the Branch was entitled to log a new and discrete complaint.

In any event, the Branch's conduct in this regard does not appear to have prejudiced the Complainants.

The First Complainant has stated that the Provider/Branch continually and repeatedly frustrated the process of his investigation. This position appears to relate to the Provider/Branch's response to the First Complainant's requests for information. These requests were part of a data subject access request which, as explained in the letter of **19 March 2019** from this Office to the Complainants, do not come within the jurisdiction of this Office and do not form part of this investigation or adjudication.

As is evidence from the letter of **12 April 2016**, the Branch responded to the request for information and indicated, in respect of account statements, that these could be provided but at a charge. On **16 May 2016**, the Branch explained the rationale for this charge and indicated a willingness to accommodate the First Complainant if he could identify the particular statements required. As part of this correspondence, the Branch also provided loan documentation for the First Complainant's company, as this did not come within the scope of the data subject access request. Therefore, taking the evidence into consideration and in the context of this complaint, I do not accept that the Provider/Branch frustrated the process of the First Complainant's investigation.

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In respect of the handling of the complaints made by the Complainants, I accept that each complaint was dealt with appropriately by the Branch and the Provider. Regarding Point 27, I do not accept that the Branch was required, in the manner suggested, to communicate with the Provider, particularly as I have not found there to be any *“legal breaches in providing the required information”*.

It appears that around **January 2016**, the First Complainant took the decision to make reduced payments to the loan account and lodge the balance of the repayment amount to a separate account to encourage engagement from the Branch and the Provider. At Point 28, the First Complainant queries whether the Branch made the Provider aware that the outstanding loan repayments were held in a Branch account pending resolution of matters. I also note that in a meeting note dated **12 February 2016** it states: *“DD moved to bring matter to a head.”* While the First Complainant took this course of action, I do not consider that the Branch was required to bring this to the attention of the Provider. At pages 10 and 11 of the **9 June 2020** submission, the Complainants make the point that as the Branch and the Provider are part of the same group structure, there was an obligation on the Branch to bring this to the attention of the Provider. However, I do not accept that the Branch was required to inform the Provider of the Complainants’ decision to make reduced repayments. If the Complainants wished for this to be brought to the Provider’s attention, it is reasonable to expect that the Branch be expressly requested to do so. Alternatively, it was open to the Complainants to communicate directly with the Provider in respect of the decision to make reduced loan repayments.

At Point 31, the First Complainant says that:

“The bank agreed in our last meeting of 24th August 2016 to let this matter go to FSO and confirmed same in follow up letter of 26th inst but failed to honour the commitment and have not given me adequate time to engage with the FSO on this matter and have with great haste moved to progress matters. ...”

This point is further addressed by the Complainants in the submission of **9 June 2020**. In this submission, the Complainants appear to suggest that the Provider agreed to refrain from taking any action in respect of the loan account pending a referral of a complaint to this Office and/or the determination of the present complaint. Having considered the evidence, I do not accept that any such agreement was made by the Provider nor do I accept that the Provider was required (whether pursuant to the 2012 Code or otherwise) to allow the Complainants a particular period of time to refer a complaint to this Office before taking any steps regarding the administration of the loan account or that the Provider was similarly required to refrain from taking any such steps while the complaint was being investigated by this Office.

Preferential Interest Rates

At Point 19, the First Complainant says that the Provider wrote to the Complainants on **2 June 2015** advising of preferential interest rates where higher levels of security were held but failed to apply these rates to the Complainants' loan.

By letter dated **2 June 2015**, the Provider wrote to the Complainants regarding a reduction in the interest rate applicable to their loan, as follows:

"The Interest rate, Buy to Let Standard Variable rate, applying to your loan is being amended from 5.35% to 5.1%. ..."

This letter appears to have enclosed the following 'Summary of changes' document:

"Variable Rates

Owner Occupier	Current	New	Reduction
Standard Variable Rate	4.15%	3.90%	0.25%

Buy to Let	Current	New	Reduction
Standard Variable Rate	5.35%	5.10%	0.25%

Loan To Value Variable

Owner Occupier	Current	New	Reduction
LTV <=50	3.85%	3.60%	0.25%
LTV >50% <=80%	4.05%	3.80%	0.25%
LTV >80%	4.25%	4.00%	0.25%

"..."

In their submission dated **9 June 2020**, the Complainants further explain:

"The Bank claims that the brochure advertises improved interest rates for "Owner Occupiers" and not "buy to let" properties. Being aware that the Bank had a similar LTV rate structure for BTL it was taken by the Complainants that the LTV BTL rate the LTV Owner Occupier rates were similar. The Bank did not separately highlight the improved BTL tiered variable LTV rates available to consumers where improved loan security is held by the Bank. The Bank were aware that the security held by them was far in excess of the value of the mortgage original loan amount – both at inception of the loan and also for the outstanding loan balance at the date of issue for the said document."

Pursuant to the Letter of Sanction dated **31 December 2008**, the Complainants' mortgage agreement was noted to be subject to BTL variable interest rates. As can be seen from the above 'Summary of changes', only one interest rate change was applicable to borrowers on a BTL rate, which was a reduction from 5.35% to 5.1%. Further to this, it was only owner occupiers that were eligible for interest rate changes by reference to LTV. As the Complainants were not owner occupiers, these rates were not available to them.

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Moreover, I do not accept that simply because the LTV ratio of the Complainants' loan may have been in excess of the amount due on foot of the loan agreement meant that the Provider was obliged to offer an interest rate change outside of what was being offered in the letter of **2 June 2015**. These are matters which fall within the commercial discretion of the Provider. Therefore, I do not accept that the Provider wrongly failed to apply preferential interest rates to the Complainants' loan.

Goodwill Gesture

In its Supplemental Complaint Response, the Respondent Provider says it:

"... would like to apologise for not releasing the deeds of the Complainants' PDH in 2009 and for the length of time it took to discover and release the deeds. In acknowledgement of this error and in recognition of the length of time this dispute has been outstanding for the Complainants, the Bank would like to offer a goodwill gesture of €1500 in full and final settlement of this Complaint."

In a submission dated **25 June 2020**, the Respondent Provider says that:

"The Complainants allege that they made numerous complaints to the Bank since 2013 but the first complaint was only logged in July 2015. The Bank have no record of any expression of dissatisfaction prior to this date either orally or in writing. However, it is the Complainants' position that they had expressed dissatisfaction before that date. To acknowledge this, the Bank would now like to increase its settlement offer to €3000 as a gesture of goodwill to resolve this dispute. ..."

For completeness, I note that in the Complaint Response, the Respondent Provider offered a separate goodwill gesture in the amount of €1,500 in respect of certain shortcomings regarding the response to the First Complainant's data subject access request. However, as matters relating to the Branch and Provider's response to the data subject access request is outside of the jurisdiction of this Office, this offer will not be considered as part of the present complaint.

I consider the goodwill gesture of €3,000 offered by the Respondent Provider to be a reasonable sum of compensation for the customer service failings on the part of the Branch/Provider. In these circumstances, on the basis that this offer remains available to the Complainants, I do not uphold this complaint.

Conclusion

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

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

28 September 2021

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

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,**
 - (ii) a provider shall not be identified by name or address,**
- and**

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