



<b><u>Decision Ref:</u></b>	2021-0420
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service Maladministration
<b><u>Outcome:</u></b>	Rejected

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

The complaint concerns suggested discrimination and the withdrawal of banking services by the Provider.

The complaint was received by the Financial Services Ombudsman's Bureau in **April 2015**. Following the commencement of the ***Financial Services and Pensions Ombudsman Act 2017*** in **January 2018**, the Financial Services Ombudsman Bureau (the "FSOB") and Office of the Pensions Ombudsman were dissolved and the Office of the Financial Services and Pensions Ombudsman was established. In accordance with the powers conferred on the Financial Services and Pensions Ombudsman, the investigation of the complaint was assumed by this Office.

**The Complainants' Case**

In their Complaint Form, the Complainants explain that a complaint made to the Financial Services Ombudsman (the "FSO") in **2013** against the Provider was partially upheld. The Complainants further explain that the Provider has been their sole banker. In this regard, the Complainants advise that they hold their home loan, current accounts and credit cards with the Provider. The Complainants state that since their complaint was partially upheld by the FSO, *"we have encountered major problems in our day to day dealings with the Bank and fully believe we are being discriminated against for bringing the previous case against the Bank."*

At the time of making this complaint, the Complainants explained that they *“are classified on [the Provider’s] system as “[categorisation of customer redacted] banking” customers yet we cannot obtain any degree of customer service from the Bank.”*

The Complainants advised that they had *“a top up loan approved in 2014 centrally but have not been able to obtain any updated loan offer since [...]”* The Complainants state that the Provider’s *“[categorisation of customer redacted]”* banking literature says that it will ensure decisions on lending applications are turned around in 24 hours and that this literature also refers to *“best rates”* being available to *“[categorisation of customer redacted]”* customers, yet the Complainants only have a standard variable rate on their home loan.

The Complainants stated in their Complaint Form to the FSOB in **April 2015** that they:

*“want an explanation as to why we are being discriminated against by the Bank. We are being forced to close our accounts as we cannot operate day to day. We have been forced to look for finance elsewhere as we cannot proceed with an essential extension/renovation job to make our home habitable. This just doesn’t add up given we are deemed excellent customers.”*

By email dated **12 October 2015**, the Complainants furnished a number of documents in support of their complaint to the FSO. Amongst these documents was a letter to the FSO dated **10 October 2015**, which further set out the complaint, as follows:

*“I am now writing to clearly outline the basis of our complaint against [the Provider].*

*I make reference to our previous case [reference number redacted] to highlight what we believe it to be the pivotal turning point in our customer relationship with [the Provider]. We believe that we are being penalised for bringing our case to the Ombudsman.*

*Our previous case was partially upheld and the findings issued on the 9<sup>th</sup> September 2014. The Ombudsman found that the “Bank did act wrongfully, and in breach of duty, when it failed to offer the Complainants the option of switching mortgage account [151] back to the original tracker rate of interest”.*

*Subsequent to this date our relationship with [the Provider] deteriorated dramatically. We immediately recognised that the Bank was taking a stance with us to reprimand us for taking the original case.*

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*During the original complaint the Bank refused to return overpayment in the amount of €30,182.57 and withheld these monies throughout the FSO complaint process. Even after they were ordered to refund the monies they failed to do so in a timely manner. After several calls to the FSO and [the Provider] the monies were eventually returned to us on the 13<sup>th</sup> October 2014 – over a month after the findings were issued.*

*I outline below factual examples of how [the Provider] have systematically withdrawn any customer service and day to day banking from us since our complaint was partially upheld.*

### **Home Loan Top Up**

*Both myself and my husband were “[categorisation of customer redacted] Banking” customers with [the Provider]. [Categorisation of customer redacted] Banking customers are categorised as “valued” customers of the Bank [...]. We had all our day to day banking with [the Provider]; our salaries were mandated to the [Provider] current accounts, we uses (sic) [Provider] debit and credit cards etc. and critically our Home Loan was with [the Provider].*

*In the [categorisation of customer redacted] Banking literature we received it is confirmed that “your lending applications (including mortgages) are turned around in 24 hours [...] and we will ensure you have access to the best rates”.*

*Prior to the FSO finding issuing in 2014 we applied for and were approved a Top Up Home Loan to carry out essential structural works on our Home. We received an Offer Letter circa September 2014.*

*On this basis we applied for planning permission and had a builder lined up to commence works in April 2015. However when we followed up the Offer after the Findings issues[sic] from the FSO we encountered the following:*

<i>5<sup>th</sup> March 2015</i>	<i>Ph [number] – [The Provider] Mortgages Cannot locate any application! Eventually locate application and confirm they will reissue</i>
<i>16<sup>th</sup> March 2015</i>	<i>No Offer Letter received – ph [number] They give me [Customer Service] number. Then [Provider staff member] (Mortgage advisor [location]?) number – no answer, leave Message.</i>

*Ph [Provider staff member] [categorisation of customer redacted] Banking – 1 hr later phones back to say he cannot locate any application or approval.*

*Phone [Provider staff member], [Branch A], who says he will request copy offer letter.*

*16<sup>th</sup> April No Offer letter received. Left message for [Provider staff member] (Mortgage Advisor, [Branch A]). No response.*

*28<sup>th</sup> April Left another message – no response*

*We never received any updated Offer Letter from [the Provider] to help fund the essential structural works on our home.*

*We were forced to seek credit from an alternative Bank – [financial service provider] – who quickly approved and issued us with a new Offer Letter (for existing mortgage plus a top up to carry our [sic] works on home) within a matter of weeks.*

#### **Redemption figures – closure of Home Loan**

*By end of April 2015 the Builder was ready to start on refurbishment work on Home but [the Provider] refuses/ignores our request to issue up to date Top Up Offer Letter even though it was confirmed approved.*

*[Financial service provider] have approved Switcher Mortgage and Offer Letter received.*

*No choice but to move Home Loan so we have funds to carry out essential works to home.*

*28<sup>th</sup> April [The Provider] refuse to return any calls in relation to our “approved” top up.*

*28<sup>th</sup> April Requested Redemption figures on Home Loan with [the Provider] Mortgages Ph [number]. Cannot provide over phone but will post.*

*1<sup>st</sup> June Solicitor [...] advises he requested redemption figures but not received.*

*7<sup>th</sup> May Phoned [the Provider]. No redemption figures issued to date. Again requested redemption figures. Followed up with [categorisation of customer redacted] Banking to ask them to order redemption figures.*

*7<sup>th</sup> May Solicitor [...] confirms he has requested redemption figures on 4 separate occasions also but has had no response.*

- 7<sup>th</sup> May *Redemption figures received but are incorrect with a funding fee of €1,832 (on a variable mortgage!) and total redemption figure of €539,461 (balance is some €9,000 LESS than this figure at c.€530,000). It appears [the Provider] have issued redemption figures calculated in September 2014 to our solicitor.*
- 7<sup>th</sup> May *I inform solicitor that the figures are incorrect.*
- 8<sup>th</sup> May *Solicitor receives correct redemption figures; €530,514. €9,000 less than the original quotation the previous day.*

*[The Provider] were fully aware that the Top Up Loan was critical to our situation to ensure essential works were carried out on our family home. Their failure to follow through with their original approval forced us into a position where we had no choice but to look for financing elsewhere.*

*We fully believe this was a calculated move on the Bank's behalf to dissolve our Banking relationship and to reprimand us for bringing the original case against the Bank.*

*This is a serious situation where a "whistle blower" has been systematically and personally reprimanded for bringing a case against a Financial Institution and I believe the above factual timeline and events prove that to be the case."*

The following timeline was also attached to the Complainants' email:

- |                                     |  |
|-------------------------------------|--|
| <i>2<sup>nd</sup> February 2015</i> | <i>Complaint letter sent to [...] (Branch Mgr [Branch A]).</i>   |
| <i>9<sup>th</sup> February 2015</i> | <i>Bank acknowledged receipt and state they will revert at the very latest by 3<sup>rd</sup> March 2015</i>  |
| <i>9<sup>th</sup> February 2015</i> | <i>Spoke with [Branch Manager] who confirmed she had spoken with the complaints dept. and they had not yet responded but would endeavour to do so by Friday 13<sup>th</sup> March.</i>   |
| <i>10<sup>th</sup> March 2015</i>   | <i>Received letter from Complaints dept. confirming they will revert by the 1<sup>st</sup> April. This letter was backdated to the 3<sup>rd</sup> March (the initial deadline date) however [the Branch Manager] had confirmed on the 9<sup>th</sup> no letter had issued yet.</i> |
| <i>18<sup>th</sup> March 2015</i>   | <i>Final Response received.</i>  |
| <i>31<sup>st</sup> March 2015</i>   | <i>[The Branch Manager] left voicemail to ask if complaint has been resolved.</i>  |

/Cont'd...

*Meanwhile – Top Up account approved however ...*

*5<sup>th</sup> March 2015 Ph [number] – [The Provider] Mortgages  
Cannot locate any application!  
Eventually locate application and confirm they will  
reissue*

*16<sup>th</sup> March 2015 No Offer Letter received – ph [number]  
They give me [Customer Service] number.  
Then [Provider staff member] (Mortgage advisor  
[location]?) number – no answer, leave Message.  
Ph [Provider staff member] [categorisation of  
customer redacted] Banking – 1 hr later phones back  
to say he cannot locate any application or approval.  
Phone [Provider staff member], [Branch A], who says  
he will request copy offer letter.*

*16<sup>th</sup> April No Offer letter received. Left message for [Provider  
staff member] (Mortgage Advisor, [Branch A]). No  
response.*

*28<sup>th</sup> April Left another message – no response*

*Meanwhile – Term extension request*

*5<sup>th</sup> March 2015 Ph [number]. Told to request term extension by  
sending letter to [the Provider].*

*23<sup>rd</sup> March 2015 Ph [number]. Passed to Arrears Support (we are not in  
arrears) and told form now needs to be completed.*

*24<sup>th</sup> March 2015 [Location] Mortgage Advisor phones to say he needs  
to follow up with forms.”*

While a Final Response letter was issued by the Provider on **18 March 2015**, in light of the Complainants' email of **12 October 2015**, the FSO furnished the Provider with a copy of the complaint file on **27 October 2015**, drawing its attention to the letter dated **10 October 2015**, and invited the Provider to respond. The Provider set out its response in a letter to the Complainants dated **11 November 2015**, as follows:

*“Your letter of 10 October 2015 raises specific issues that have not been previously outlined to the bank nor did the bank have an opportunity to address. I now wish to respond to those.*

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*Firstly, I would like to re-iterate the Bank's position as set out in our letter dated 18 March 2015 with regard to your previous dispute [reference number redacted] and your allegations of discrimination.*

**Equity Release Application**

*Our records show you submitted an Equity Release Application \*\*\*\*5556 with [the Provider] on 15 September 2014, which was approved for you on the 16 September 2014 pending receipt of title deeds from your solicitor. I note that [the Provider] issued a Mortgage Loan Offer Letter ("Offer Letter") on 25 September 2014. This Offer Letter was issued despite the fact that the title deeds remained outstanding due to the fact that your solicitor was dealing with 'mapping issues'.*

*Almost six months later ten days prior to expiry of the Offer Letter (dated 16 September 2014); on 5 March 2015 you contacted [the Provider's staff member], [categorisation of customer redacted] Advisor [...] requesting that we reissue the Offer Letter as you had misplaced the original. [The Provider's staff member] submitted your request [...] however due to the period of time lapsed since the application [the Provider] required up to date information and on 16 March 2015 he contacted you to confirm the details therein which was duly furnished to [the Provider]. However, the following week [the Provider] sought further information via the branch. This further clarification from [the Provider] was not actioned by the branch. I sincerely apologise that this request was overlooked at the branch and as a result the Offer Letter was not reissued.*

*I note that in April you made a number of attempts to contact [Provider staff member], Customer Advisor at the branch in this regard and that your contention that messages were not returned; for this I apologise. The Branch have confirmed that [the Customer Advisor] was on compassionate leave during this period and that there was a voice message on her direct line to inform callers that she was out of the office until further notice. I am sorry if you did not receive this message.*

**Redemption Quote**

*On 28 April 2015 you contacted [the Provider] to request:*

*(a) Balance on your account [342]; this information was duly provided*

*(b) A redemption quote; I sincerely regret that the Bank's agent did not process this request.*

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*On 7 May 2015, [the First Complainant] contacted [the Provider] @12:59 as she had not received the redemption quote requested on 28 April 2015. On the same day a request was received from your solicitor [...]. We sincerely regret that the agent that processed these requests inadvertently selected a previous redemption quote issued (dated 9 September 2014) and faxed them to you and your solicitor. On the same day [the First Complainant] contacted the Bank again and brought this error to our attention; the agent that dealt with you confirmed that the incorrect redemption figures were issued and apologised for this error. He immediately arranged (circa 14:44) for the correct figures to issue to you and [your solicitor]; mortgage account [342] was redeemed on 18 May 2015.*

*Please accept my sincere apologies for the fact that our branch did not follow through on the process by re-issuing your Offer Letter and for the delays and error encountered in your endeavours to attain a redemption quote.*

*In light of the contents of my letter and by way of apology for the service you received from [the Provider], I would like you to consider a gesture in the amount of €500. This is offered in full and final settlement of your complaint. [...].”*

The Complainants responded to this letter in a letter to the FSO dated **25 November 2015**, as follows:

*“[The Provider’s] responses fall short and we do not accept excuses that a number of “errors” yet again ensured we could not conduct our business with [the Provider]. We do not accept their offer and believe the full case requires investigation and explanation.*

*On the foot of what has happened with our accounts over the last few years we cannot accept or believe [the Provider]. We again strongly believe our accounts had been “black listed” and we were systematically discriminated against because we had brought a previous case to the attention of the Financial Services Ombudsman.*

#### Equity Release

*The approval of the Equity Release was essential to ensure our family home was habitable. Full planning permission was required and a lengthy and expensive process was undertaken by ourselves to gain approval for the construction works, on the basis that we had Loan approval from [the Provider]. A builder was also engaged on the basis that we had loan approval from [the Provider] and was due to commence works. [The Provider] was aware that the works were essential.*

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*Mortgage Loan Offer issued 25<sup>th</sup> September 2014.*

*In the interim our Case against [the Provider] [reference number redacted] was partially upheld and Subsequent to this date our relationship was [the Provider] deteriorated dramatically.*

*To reiterate the timeline trying to obtain the approved Offer Letter; [...]*

*It is not acceptable that the Offer Letter approval and issuance was “overlooked”. Simply not acceptable. We believe the Offer Letter was not re-issued to reprimand us and force us to move Banks. The legal costs alone involved in moving banks to ensure we had funds to carry out the essential works and pay our builder was significant.*

*[The Provider] should take a holistic view and revisit all aspect of what has happened in our case. Instead of owning up to their errors on our accounts since 2008 they have lied to us and made excuses to cover their tracks. As a result of their “errors” we have lost a tracker on our Home and per the FSO the “Bank did act wrongfully, and in breach of duty ...”. Since this finding we have been provided no level of customer service and instead have been completely discriminated against by the Bank. We were excellent customers of [the Provider] with a large mortgage, current accounts, credit cards, insurance etc. However we have been treated with neglect and contempt.*

*This kind of retaliation to any whistleblower must be taken very seriously by the Ombudsman.”*

### **The Provider’s Case**

The Provider says that on **15 September 2014** its Mortgage Team submitted an application for Equity Release on behalf of the Complainants. At the time of the application, the Provider says the Complainants informed its Mortgage Team that they were due a refund in the amount of €30,000.00 from the Provider due to an issue with tracker interest rates. On **16 September 2014**, the Provider says an application ending 5556 was approved pending receipt of title deeds from the Complainants’ solicitor. On **19 September 2014**, the Provider says it issued a redemption quote in respect of loan account 342 in the amount of €539,461.15.

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The Provider says that on **25 September 2014**, a Mortgage Loan Offer Letter was issued subject to the conditions set out in parts 1 to 5 therein, for an additional €100,000 (new lending) to carry out home improvement works. The Provider says this offer was issued despite the fact that title deeds remained outstanding as the solicitor was dealing with 'mapping issues'. The Provider refers to the '**Borrowers Acceptance and Consents**' at page 8 of the Offer Letter, which states:

*"Acceptance of this Offer Letter must reach the Lender within 30 days of the date of this Offer Letter or the offer will lapse. (The Lender may, at its absolute discretion extend this period ..."*

On **13 October 2014**, the Provider says the First Complainant contacted its Mortgage Department for account balances which the Provider has set out in its Complaint Response.

On **26 January 2015**, after discussions with the First Complainant, the Provider says its Branch Manager made contact with the Mortgage Pricing Unit requesting that it review the Complainants' rates. The Provider has set out email correspondence dated **26 January 2015** in relation to this. On **30 January 2015**, the Provider says the Complainants wrote a letter of complaint which was received on **4 February 2015** and which set out the Complainants' complaint, as follows:

- Discrimination by the Provider since the "ruling" [reference number redacted]
- Requests to review mortgage rates on the Complainants' home loan were turned down
- The Complainants were told to close their accounts and were worried about the validity of the top-up loan approved centrally.

The Provider says it issued a letter acknowledging the complaint on **4 February 2015**. On **11 February 2015**, the Provider says the First Complainant contacted the Mortgage Department for account details and balances. The First Complainant further enquired about the cost of breaking out of the fixed rate on loan account 388. The Provider says its agent advised that there was no breakout fee and explained that this was subject to change on a daily basis as it was dependent on the cost of funds. The Provider says the First Complainant responded, as follows: *"Hopefully it will be like that when we go to close in a couple of weeks time"*. At the end of the call, the Provider says its agent enquired if there was anything else he could do, to which the First Complainant responded: *"No nothing, because [the Provider] can't do anything on the rate. So that's why we're closing the accounts."*

On **3 March 2015**, the Provider says it issued a letter to update the Complainants on the status of their complaint. On **5 March 2015**, the Provider says the First Complainant contacted its Mortgage Department and informed the agent that she had approval for a top up on loan account 342. The First Complainant enquired if the term could be extended on loan account 388 with 13 years remaining. The Provider says its agent advised that both account holders would need to write to the Provider seeking approval to extend the term and that life cover would be required. The Provider says the First Complainant made some further enquires and was transferred to the Applications Department.

On the same day, the Provider says the First Complainant contacted a [categorisation of customer redacted] Advisor requesting that the Provider re-issue the Offer Letter as she had misplaced the original. The Provider says that the period for acceptance of this Offer Letter dated **24 September 2014** had, at this time, lapsed. The Provider says the [categorisation of customer redacted] Advisor submitted the request and due to the period of time elapsed since the application, up to date information was required. The Provider states that the reactivation of an expired offer is not simply a matter of re-issuing a letter of loan offer and may require referral to underwriting for approval. On **16 March 2015**, the Provider says the [categorisation of customer redacted] Advisor confirmed no material changes to the application.

On **18 March 2015**, the Provider says it issued a response to the Complainants' letter of **30 January 2015** and it confirmed that the Complainants' request to extend the term of loan account 388 was approved. On **20 March 2015**, the Provider says its Mortgage Department sought confirmation on the Complainants' current account saving balance and whether the €30,000.00 had been received. The Provider says this request was not actioned by the branch. The Provider says it sincerely regrets that this request was not communicated to the Complainants and, as a result, approval for the reissue of the offer was never completed. On **23 March 2015**, the Provider says the First Complainant contacted the Mortgage Department for an update on the term extension application in relation to loan account 388.

On **10 April 2015**, the Provider says the First Complainant contacted the Mortgage Department seeking confirmation, in writing, of the maturity date, repayment details and balance for loan accounts 388 and 150. The Provider says its agent advised that it would take 3-5 working days and offered to fax the information to the First Complainant the following Monday. The Provider says its agent advised that she was unable to email them. In their letter of **10 October 2015**, the Provider says the Complainants contend that they attempted to contact a Mortgage Advisor on **16 and 28 April 2015**. The Provider refers to its letter of **11 November 2015** explaining that the Mortgage Advisor was on compassionate leave and that there was a voicemail on her direct line to inform callers that she was out of the office.

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On **28 April 2015**, the Provider says the First Complainant contacted it to request a redemption quote. The Provider says its agent advised that she was unable to give a redemption quote over the phone and offered to issue it by post which would take a couple of days. The Provider says the First Complainant enquired as to how long it would take if her solicitor made the request. The Provider says its agent advised that if the solicitor sent in a fax, it would take a couple of days. The Provider says its agent furnished the balance on loan account 342 as requested. The Provider says it regrets that its agent did not order a redemption quote on the understanding that the Complainants' solicitor would fax a request.

On **7 May 2015**, the Provider says it received a letter from the Complainants' solicitor by fax for a redemption quote. At around 1pm, the Provider says the First Complainant telephoned as she had not received the redemption quote requested on **28 April 2015**. The Provider says its records confirm that the First Complainants then contacted its [categorisation of customer redacted] Banking service which escalated the matter to 'mortgages'. The Provider says the agent who processed the redemption request inadvertently selected and issued a redemption quote dated **19 September 2014**. Shortly after 2:30pm, the Provider says the First Complainant contacted it and raised this error. The Provider says its agent apologised for the error and immediately arranged to re-issue the correct figure by fax.

The Provider says that the Complainants redeemed loan account 342 on **18 May 2015**.

On **5 November 2015**, the Provider says the First Complainant contacted it seeking account balances for loan accounts 150 and 388 and these details were supplied.

The Provider says it strongly rejects that the administration errors detailed in the timeline outlined above were inspired to reprimand the Complainants and it categorically rejects the assertions made by the Complainants. The Provider says it sincerely regrets the inconvenience caused by the errors detailed in the timeline and it contends that they were not due to any "black listing" of the Complainants as suggested.

Referring to the rate enquiry made by the Branch Manager to the Mortgage Pricing Unit on **26 January 2015**, the Provider says there is nothing in this email or the response from the Mortgage Pricing Unit that would indicate discrimination against the Complainants. To the contrary, the Provider says its position was not to deviate from the mortgage rates available. The Provider states it would appear that its refusal to provide the Complainants with a discounted rate was their initial motivation behind their assertions in the current complaint which was first raised on **30 January 2015**.

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The Provider says it cannot accept any assertion which links this refusal with discrimination or retribution which is simply not the case. The Provider says the Complainants can offer no evidence in support of these nebulous contentions because there is no correlation between the Provider's decision to maintain lending offers within the then current matrix rates and the Complainants' previous complaint with the FSO. The Provider says that the Complainants' decision to review their options with third party providers was their own decision, and was not driven by an agenda with the Provider.

In addition, the Provider contends that the Complainants made an application for a term extension to account 388 which was approved and issued to the Complainants by letter dated **18 March 2015**. In view of the customer service issues raised, the Provider says that by letter dated **11 November 2015**, it acknowledged its administration errors and the shortfall in service to the Complainants. The Provider advises that it offered to compensate the Complainants by offering a gesture in the amount of €500.00 for the inconvenience caused.

In respect of the Offer Letter of **25 September 2014**, the Provider says it does not accept that it was under an obligation to re-issue this letter following the Complainants' request on **5 March 2015**. It is important to note, the Provider says, that the terms of the offer lapsed if not accepted within 30 days. When the Complainants requested re-activation of the lapsed offer, the Provider says it was necessary to refer the matter to the Underwriting Department for consideration. Upon review, the Underwriting Department sought additional information on **20 March 2015** to confirm the approval. The Provider says it would appear that this information request was transmitted to the branch; however, the Provider has no record of the request being forwarded to the Complainants for reply. The Provider says it regrets this lapse in customer service which prevented the application process being completed, such that a letter of loan offer could issue.

The Provider says it accepts that customer service breakdowns occurred as set out above and it further accepts that these errors caused the Complainants frustration and inconvenience. The Provider says it would like to take this opportunity to again express its sincere apologies to the Complainants for their experience and it refers to its letter dated **11 November 2015** where it offered €500.00 to the Complainants in recognition of the inconvenience caused.

Nevertheless, the Provider says it absolutely rejects that there was any intention to reprimand the Complainants and it cannot accept the claim as to any motivation to discriminate or to encourage the Complainants to cease their relationship with the Provider.

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For the avoidance of doubt, the Provider says the Complainants' questionable suggestions of a motivation on the Provider's part to discriminate, as a means of retribution to their earlier FSO complaint, are completely unfounded and absolutely rejected.

### **The Complaint for Adjudication**

By letters dated **28 August 2015** and **7 October 2015**, the FSO wrote to the Complainants noting the nature of the conduct complained of and advised that the FSO could not re-examine matters raised and forming part of the Finding issued on **9 September 2014**. These letters also requested that the Complainants provide greater detail regarding the conduct the subject of their complaint. The Complainants responded to this request on **12 October 2015** and provided further detail regarding their complaint. This was followed by a further exchange of correspondence between the parties on **11 November** and **25 November 2015**.

Following a review of the jurisdiction of the FSO to investigate the conduct complained of, the FSO wrote to the Complainants on **11 April 2016** to clarify the parameters of the jurisdiction of the FSO to investigate this conduct, as follows:

*"Please note the I have carried out a full and thorough review of this file and it is my understanding that the conduct complained of is that the Bank has "systematically withdrawn" any customer service and day to day banking from you since your complaint [reference number redacted] was partly upheld by this Office, in that;*

- (A) With regard to your **Equity Release Application** which was submitted to the Bank in September 2014, customer service issues have arisen in relation to the manner in which the Equity Release Application has been progressed by the Bank, in that, communications were either unanswered and/or requests for documentation were not actioned by the Bank between March 2015 and April 2015, and*
- (B) With regard to your request for **Redemption Figures** from the Bank between April 2015 and May 2015, the Bank either failed to respond to your requests or responded with incorrect redemption figures.*

*You have outlined that the above was "a calculated move on the Bank's behalf to dissolve our Banking relationship and to reprimand us for bringing the original case against the Bank."*

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*In this regard, your letter of 25 November 2015 outlined that “[the Provider] should take a holistic view and revisit all aspects of what has happened in our case. Instead of owning up to the errors on our accounts since 2008 they have lied to us and made excuses to cover their tracks. As a result of their “errors” we have lost a Tracker on our Home.”*

*It is noted that you have alleged that the conduct, as outlined above, was triggered by you bringing a complaint to this Office on 12 July 2013 and a Finding in your favour, issuing in relation to Complaint [reference number redacted] on 09 September 2014. However it is important for you to note, that in accordance with section 57C(9) of the Central Bank and Financial Services Authority of Ireland Act 2004 the Finding that has issued in relation to Complaint [reference number redacted] is legally binding and this office will not, in the consideration of this Complaint [current complaint reference redacted] be considering the conduct of the Bank since 2008 or be “revisiting all aspects of what has happened” as you outlined in your letter of 25 November 2015. [...]*

*[I]t is important that in the progression of this complaint, that the parameters of the complaint by reference to your previous complaint [reference number redacted] are clearly defined. [...].”*

This Office wrote to the Complainants on **20 January 2021**, to again clarify the conduct complied of, as follows:

*“The conduct of complaint reference [current complaint reference redacted] is that the Provider has “systemically withdrawn” the level of customer service and day to day banking service from the Complainants since their previous complaint was partly upheld by the Financial Services Ombudsman (as it was then known).”*

Accordingly, the complaint for adjudication is that the Provider systematically and in a calculated manner, withdrew banking services from the Complainants following a Finding of the Financial Services Ombudsman dated **9 September 2014** in respect of Complaint Reference [reference number redacted].

## **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.

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The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties on 7 September 2021, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

### **Evidence**

#### ***Equity Release Loan***

It appears that an application for an Equity Release loan was submitted to the Provider around **15 September 2014** under application number 5556. In this respect, the Provider has submitted copies of internal 'MMail' correspondence relating to this application, beginning on **16 September 2014**. In an MMail dated **16 September 2014**, it states, as follows:

*"This case has been approved by credit subject to equity release section checking the deeds etc so while the case is approved, no offer letter has issued yet.*

/Cont'd...

*If delays anticipated in the full offer issuing, we will contact you in the next few days.”*

In an MMail from the Equity Release Team dated **24 September 2014**, it is stated that:

*“Please note that we still haven’t received the title deeds to date. Please ask the customers to contact their solicitors to have same returned.  
On receipt of title deeds we will assess to see if suitable to go inhouse.  
We can also instruct the solicitor again if that is what the customers would prefer.  
[...].”*

In an a further MMail on **24 September 2014**, a Mortgage Advisor requested confirmation as to when a letter of offer would issue, as the Complainants had yet to receive anything.

In response to this on **25 September 2014**, an agent in the Provider’s Credit Risk & Management Team referred to the message from the Equity Release Team from the previous day and indicated to the Mortgage Advisor that the Provider was still awaiting title deeds *“to assess whether the case can proceed in house.”* Later the same day, the Mortgage Advisor appears to have sent the following MMail:

*“Spoke to customer she was not aware solicitor still held title deeds she is going to get in touch with solicitor but has also asked can you make the request again also.”*

In a further MMail on **25 September 2014**, the Equity Release Team advised, as follows:

*“I have spoken to the solicitor and the customer. The registration is still not complete as there are some mapping issues that the solicitor is dealing with at the moment. They cannot return the title deeds until the registration is complete, but they expect to be finished shortly. As the customer urgently requires the Offer to issue, I have set this case up as a solicitor case for the time being and issued the offer. The customer has the option to switch in-house services anytime before the drawdown (provided the solicitor gets releases, we receive the title deeds and confirm the case is suitable for in-house – we cannot guarantee that it is suitable for inhouse until we actually see the title deeds and check all the documents included).  
[...].”*

A Mortgage Loan Offer Letter dated **25 September 2014** subsequently issued to the Complainants.

During a telephone conversation on **5 March 2015**, the First Complainant advised the Provider's agent that she could not locate a copy of the September Offer Letter to review it and she requested that a copy of the letter be reissued. The Provider's agent advised the First Complainant that she would have to request that her branch re-order the Offer Letter. The First Complainant advised that the application was not made at branch level but done "centrally". In response to this, the Provider's agent advised that he would transfer the First Complainant to "Applications". However, on being transferred to the Provider's Applications section, the recording of this call ended when the First Complainant was presented with the options menu.

A [categorisation of customer redacted] Advisor issued an MMail on **5 March 2015** in respect of the Offer Letter, as follows:

*"Customers have requested for loan offer to be reissued as they have misplaced original. Can you please reissue letter of offer."*

It appears there was a delay in responding to this request due to the manner in which the [categorisation of customer redacted] Advisor categorised the request in the subject line of the MMail. The relevant agent responded to this MMail on **13 March 2015** noting that the Offer Letter had expired and set out the information that would be required to reissue the letter, as follows:

*"Just a note in terms of the delay in replying to your mmail of the 5th – this sent with the subject "Equity Release Reactivation" and therefore has not appeared in our workflow queue.*

*The loan offer is nearly 6 months out of date – please address the following*

*1. Has there been any material changes in the applicants' circumstances*

*- are they still in the same employment/same incomes*

*- have they taken on any further debt since the last assessment*

*- what is the current level of savings (advised of 40k with [financial service provider] and 10k in c/a)*

*- has [the Provider] 30k refund been received as of yet*

*2. Is there any change to the market value of the property*

/Cont'd...

3. *When do they intend to commence the works*

4. *Is the rent on the [...] property still 950pm*

5. *Any other information considered relevant"*

The [categorisation of customer redacted] Advisor recorded the Complainants' responses to the above questions in a MMail dated **16 March 2015**. In a MMail dated **19 March 2015**, it is stated that: *"Your mail has been referred to U/W who will respond as soon as possible."* In a further MMail to the [categorisation of customer redacted] Advisor dated **20 March 2015**, the following queries were raised:

*"Can you please confirm current savings balances? 50k months ago so would expect increase here in line with regular savings?"*

*Also has the [Provider] 30k refund been received as of yet?"*

In terms of the above two queries, I note that in the MMail of **16 March 2015**, it was stated in respect of the Complainants' savings that: *"... savings are at the level advised and C/A balances are currently 7k"*. I also note that no information was given in response to the question regarding the €30,000.00 refund due from the Provider.

### ***Mortgage Loan Rates***

In a letter of complaint dated **30 January 2015**, the Complainants state, as follows:

*"Banks are currently competing on switcher mortgages and [the Provider] have competitive offers to make. However at each request by us to review the rates on our Home Loan we are turned down. [...]."*

In the Provider's Final Response letter dated **18 March 2015**, the Provider explained, as follows:

### **"Discrimination Allegations and Home Loan Rates**

*I have contacted the Bank's [categorisation of customer redacted] Banking Team and [...] Branch Manager [Branch A]. [The Branch Manager] confirmed that an Equity Release Application [5556] was submitted and approved by the branch on your behalf.*

/Cont'd...

*Following this your request for more favourable mortgage rates was escalated to [the Branch Manager] who contacted [the Provider's Mortgage Department] on your behalf; your request was escalated to Senior Management in [the Mortgage Department] following which you were informed that if you provided a Valuation Report (from a Valuer on [the Provider's] Panel) confirming the Loan to Value ("LTV") was 75% or below, you could avail of Mortgage Interest rates available to borrowers whose LTV was 75% or below; to date this Report remains outstanding. [...]."*

In its Complaint Response, the Provider has inserted the following email correspondence between the Branch Manager and the Mortgage Pricing Unit which took place on **26 January 2015**:

*"As per phone conversation I would be obliged if you would look at the following for me.*

*[The Complainants'] existing mortgage [342] balance o/s is 532,490 currently on fixed at 4.69% breakage fee 705 due to come off fixed in December of this year. New mortgage [application number 5556] for 100k*

*Total borrowings will be 632,490 on a house worth 1.1 million."*

The Mortgage Pricing Unit responded to this email, as follows:

*"I've discussed the case with senior management and unfortunately we cannot offer any additional discount to our matrix rates.*

*If the customers wish to break their current fixed rate they will potentially incur a funding fee for breaking the agreed rate.*

*They will need to take this cost into account when seeing if it is worthwhile to proceed.*

*Once you've a valuation from a prime panel valuer (required for new works proposed) you will be able to request MFA on the existing account reflecting the customers LTV. [...]."*

I note that the First Complainant telephoned the Provider on **11 February 2015** to request balances on the Complainants' loan accounts. The First Complainant also requested the remaining terms and repayments on the accounts.

/Cont'd...



Following this, the Provider's agent provided the First Complainant with certain information regarding the loan accounts. The First Complainant also referred to a breakage fee associated with one of the loan accounts. The Provider's agent advised there was no breakage fee due to the current cost of funds and, on the date of the call, there was no breakage fee. The First Complainant advised that she was switching mortgage provider. The First Complainant noted that the breakage fee was approximately €700.00 the previous week. The Provider's agent explained that the breakage fee depended on the cost of funds, on a daily basis. The First Complainant indicated that she hoped the breakage fee would remain like this when the Complainants closed their accounts in the coming week.

The Provider's agent then asked if there was anything else he could help the First Complainant with, to which the First Complainant responded: *"No, nothing, because [the Provider] can't do anything on the rates."* The First Complainant then stated that this was the reason why the Complainants were closing their accounts.

### **Formal Complaint**

By letter dated **30 January 2015**, the Complainants made a formal complaint to the Provider.

This letter states, in part, as follows:

*"As you are aware the Ombudsman ruled in our favour on a case [reference number redacted] in relation to our previous Home Loan. The Ombudsman found that the "Bank did act wrongfully, and in breach of duty, when it failed to offer the Complainants the option of switching mortgage account [151] back to the original tracker rate of interest". [...]*

*However each time we attempt to converse with the Bank or ask for any level of customer service we are confronted by a "closed ranks" attitude. [...]*

*Since the ruling we believe we have been discriminated against by [the Provider]. We believe that the ruling has impacted negatively on our dealings with the Bank and that we are actually being penalised for bringing our case to the Ombudsman. [...]."*

In the timeline provided by the Complainants, I note it is stated that this letter was sent to the Provider's branch on **2 February 2015**.

/Cont'd...

By letter dated **9 February 2015**, the Provider acknowledged receiving the above letter of complaint on **4 February 2015**. Amongst other matters, the letter advised that the Provider would be in contact with the Complainants regarding their complaint, by **3 March 2015**.

On **3 March 2015**, the Provider wrote to the Complainants with an update regarding the investigation of their complaint, advising that the complaint was still under investigation and that the Provider was not yet in a position to issue a final response. The letter further advised that the Provider would write to the Complainants again by **1 April 2015**.

I note that the Provider referred to its previous letter as being dated **4 February 2015**, however, as noted above, its previous letter was dated **9 February 2015**.

The Provider issued a Final Response letter in respect of this complaint on **18 March 2015**.

#### ***Term Extension Request***

The First Complainant telephoned the Provider on **5 March 2015** to enquire as to whether the term on loan account 388 could be extended. The Provider's agent advised the First Complainant that the term could be extended but that both Complainants would have to write to the Provider advising that they wanted the term of the loan extended, the Provider would then approve the request and that a life policy would be required to be in place to cover the additional years of the loan.

The Provider's agent advised that the maximum term by which the loan could be extended was 25 years. The Provider's agent then provided the First Complainant with the information that should be included on the written request, and the address to which to send this request. Following this, the First Complainant asked if the request would have to go to underwriting. The Provider's agent explained that it would, and that it would take approximately two weeks to get a response to the request.

By letter dated **12 March 2015**, the Complainants wrote to the Provider requesting a 25 year term extension on loan account 388 to **February 2040**.

By letter dated **18 March 2015**, the Provider wrote to the Complainants approving the term extension in respect of loan account 388, which now had a maturity date of **3 February 2040**.

The First Complainant telephoned the Provider on **23 March 2015** and advised the Provider's agent that a request for a term extension had been submitted over a week prior to the call. The First Complainant appears to have been seeking an update regarding this request. In response to this, the Provider's agent advised the First Complainant that he would transfer her to another department. However, the recording of this call ended when the First Complainant was presented with the subsequent options menu for the Provider's Mortgages Department.

### ***Redemption Figures***

The First Complainant telephoned the Provider on **28 April 2015** to request a redemption figure in respect of loan account 342. In response to this, the Provider's agent advised that a redemption figure would be ordered and that the First Complainant would have it "*within a couple of days*" The Provider's agent also advised that if the Complainants' solicitors sent a fax to the Provider requesting the redemption figure and that they "*would have it within a couple of days as well.*"

I note that the Complainants' solicitors wrote to the Provider on **7 May 2015** requesting redemption figures in respect of loan account 342 and any mortgage loan linked to mortgaged property. In this letter, it was also noted, in respect of previous requests for redemption figures, as follows:

*"We refer to our above named clients and have written on three occasions since the 24<sup>th</sup> of April 2015 seeking redemption figures for the above mortgage."*

The First Complainant telephoned the Provider on **7 May 2015** to advise that both the Complainants and their solicitor had requested redemption figures in respect of loan account 342 over a week before this call, and had not received anything from the Provider. The First Complainant enquired as to why there was a delay. The Provider's agent advised that she could not see anything on the Complainants' account and placed the First Complainant on hold while she looked into the matter. Following this, the Provider's agent advised the First Complainant that there were no notes on the account indicating that either the Complainants or their solicitor had requested redemption figures. The Provider's agent advised that she would submit the request for redemption figures and mark it as urgent. At this point in the call, the First Complainant expressed her dissatisfaction with the Provider's failure to respond to, or record, the previous requests for redemption figures.

/Cont'd...

It appears that during the afternoon of **7 May 2015**, the Provider faxed a copy of a redemption letter dated **19 September 2014** in respect of loan account 342 to the Complainants' solicitors with a redemption date of **19 September 2014**.

The First Complainant telephoned the Provider a second time on **7 May 2015**, in respect of the redemption figures sent to the Complainants' solicitors, advising that the figures quoted in the letter were incorrect. The First Complainant then remarked, noting the date of the letter as **19 September 2014**, that the Provider may have sent the wrong letter to the Complainants' solicitors. Responding to this, the Provider's agent apologised to the First Complainant and advised that he could fax a redemption figure to the First Complainant or her solicitors straight away.

The Provider's agent also provided the First Complainant with the current redemption figure. The First Complainant then gave the Provider's agent the solicitors' fax number.

Following this, it appears that a further redemption letter in respect of loan account 342 issued to the Complainants on **7 May 2015** with a redemption date of **7 May 2015**.

### **Analysis**

The Complainants believe that following the FSO Finding dated **9 September 2014** (which was "partly substantiated") that the Provider essentially discriminated against them and systematically withdrew banking services. In the course of their correspondence with the Provider and their submissions in respect of the present complaint, the Complainants have identified the conduct of the Provider which they say demonstrates that they have been discriminated against and they say that they were forced to close their accounts with the Provider.

In the Complainants' letter of **10 October 2015**, the Complainants refer to the FSO Finding and assert that the Provider: *"Even after they were ordered to refund the monies they failed to do so in a timely manner."*

By letter dated **9 September 2014**, the FSO wrote to the Provider enclosing a copy of the Finding. As part of this Finding, the Provider was directed to pay to the Complainants an amount totalling €30,182.57. The Finding also directed that the money be paid to the Complainants by cheque, draft or to an account of their choosing.

In respect of directions of this nature, I note that **section 57CI(8)(a)** of the **Central Bank and Financial Services Authority of Ireland Act 2004** stated that if the FSO made a direction such as the one contained in the Finding, the Provider was required to comply with that direction within such period as specified in the direction.

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I note that the Finding did not stipulate a time limit within which to pay the above money to the Complainants and accordingly, the Provider should have done so within a reasonable period of time.

In this respect, I note the Complainants' evidence that they received the money on **13 October 2014**. In the Provider's Final Response letter dated **18 March 2015**, it is stated that an amount of €30,182.57 was credited to the Complainants' nominated account on **13 October 2014**. While it is not clear when the Complainants advised the Provider of their preferred method of payment or the account they had nominated to receive the money, I can see from the evidence that the money was received within 24 business days of the date of the Finding. In these circumstances, I do not accept that the Provider failed to pay this money in a timely manner.

In their Complaint Form, the Complainants remark that as per the Provider's [categorisation of customer redacted] Banking service, lending decisions are to be made within 24 hours. The Provider's MEmails indicate that an equity release application was submitted around **15 September 2014** and an MEmail dated **16 September 2014** indicates that the application was approved the following day, but no offer letter was issued. Accordingly, I am satisfied that the lending decision in respect of the Complainants' equity release application was made within 24 hours.

In terms of issuing the Offer Letter, it can be seen that this was not issued at the time the equity release application was approved because there were certain issues regarding title deeds that were required to be resolved. It appears from the evidence that in order to progress the loan process and issue an Offer Letter, the Provider required sight of the relevant title deeds, which were to be provided by the Complainants' solicitors. However, although title deeds were not received by the Provider, an Offer Letter nevertheless issued on **25 September 2014**.

Having considered the evidence, it appears that issues relating to the title deeds were beyond the control of the Provider and were something to be resolved by the Complainants and their solicitors. However, even though title deeds were required by the Provider in order to issue the Offer Letter, the MEmail dated **25 September 2014** states that: *"As the customer urgently requires the Offer to issue, I have set this case up as a solicitor case for the time being and issued the offer."* As mentioned above, the Offer Letter issued the same day.

In my opinion, this desire on the Provider's part to facilitate the Complainants' urgent requirement, was entirely contrary to the Complainants' suggestion that the Provider had decided to treat them less favourably or reprimand them, because of the FSO Finding issued on **9 September 2014**. Far from discriminating against the Complainants, the Provider appears to have endeavoured to facilitate the Complainants by issuing the Offer Letter in advance of the resolution of the issues regarding the title deeds.

In the letter of complaint dated **30 January 2015**, the Complainants state that their requests for a review of the interest rates on their home loan were turned down by the Provider. In their Complaint Form, the Complainants also state that the "best rates" are to be made available to [categorisation of customer redacted] Banking customers.

In this respect, I note that the Complainants have not supplied any evidence of when each of the requests for a review of the rates were made following the FSO Finding. From the available evidence, it appears that a request regarding the interest rate applicable to the Complainants' home loan was made towards the end of **January 2015**.

It can be seen from the email exchange between the Branch Manager and the Mortgage Pricing Unit that the Provider was not in a position to offer more favourable rates to the Complainants. It also appears that the Complainants were advised that if a valuation report was provided in respect of the mortgaged property, the Complainants could avail of interest rates available to customers who had a loan to value of 75% or less. However, it does not appear that the required valuation was supplied by the Complainants. Therefore, I do not accept that there was any failure or unreasonable refusal on the part of the Provider to review or to consider the interest rates applying to the Complainants' home loan.

The Complainants made a formal complaint to the Provider by letter dated **30 January 2015**. It is the Complainants' evidence that this was sent to the Provider on **2 February 2015**. On **9 February 2015**, five business days later, the Provider acknowledged receiving the complaint on **4 February 2015**. An update regarding the complaint was then given on **3 March 2015** (although it incorrectly noted the date of the previous letter as **4 February 2015**). Following this, a Final Response letter issued on **18 March 2015**.

The Complainants assert that the letter of **3 March 2015** was received on **10 March 2015** and that the Branch Manager confirmed on **9 March 2015** that a letter had not issued yet. I note that **section 10.9(c)** of the **Consumer Protection Code 2012** ("the Code") requires the Provider to provide the Complainants with a regular update regarding their complaint at intervals of not greater than 20 business days from the date the complaint was made (that is, **4 February 2015**).

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I note that the Provider's letter was issued on the nineteenth business day and, from the Complainants' evidence, the letter was received on the twenty-fourth business day. While the update letter may have been received on **10 March 2015**, I am not satisfied that this letter was backdated as suggested by the Complainants. Although there may have been a delay in receiving the letter, I am satisfied that the Provider promptly acknowledged the complaint and issued a Final Response letter within the time limits contained in **section 10.9** of the Code. Further to this, if it is the case that the letter of **3 March 2015** was received on **10 March 2015**, I note this is only four days outside of the timeframe prescribed by **section 10.9(c)** of the Code. Accordingly, I do not accept that any delay associated with the Complainants receiving, or the Provider in issuing, this letter is sufficient to demonstrate that the Provider conducted itself in an unreasonable or discriminatory manner towards the Complainants.

During a telephone call on **5 March 2015**, the First Complainant made an enquiry regarding extending the term of loan account 388. On considering this conversation, which I have outlined above, I am satisfied that the Provider's agent clearly explained how the request should be made and where it should be sent.

The Complainants then made a written request for the term extension on **12 March 2015**, which was approved and responded to by the Provider on **18 March 2015**.

The First Complainant telephoned the Provider on **23 March 2015** appearing to seek an update regarding the Complainants' request for a term extension. This would suggest that, at the time of the call, the Complainants had not yet received the letter of **18 March 2015**. However, I note that the letter appears to have been correctly addressed and the address on the letter matches the address provided by the Complainants on their Complaint Form. While it is not entirely clear from the Complainants' evidence whether they are asserting that the letter was not received, I am satisfied that the letter was issued and I am also satisfied that there was no unreasonable delay on the part of the Provider in issuing this letter.

Accordingly, the fact that the Provider issued a response to the Complainants' request for a term extension within four business days, and the fact the Complainants' request for a term extension was approved, clearly suggests that the Provider was not discriminating against the Complainants or indeed that it was seeking to withdraw banking services from them.

However, in respect of the telephone call of **23 March 2015**, the Complainants state that the First Complainant was *“Passed to Arrears Support (we are not in arrears) and told form now needs to be completed.”* The Complainants further state that a branch Mortgage Advisor telephoned on **24 March 2015** *“to say he needs to follow up with forms.”*

In the first instance, I note from the recording of the telephone conversation of **23 March 2015** that the First Complainant was transferred to the Provider’s Mortgages Department and not to Arrears Support. However, as noted above, the recording ends at this point and the Provider has not supplied a recording of the conversation which took place once the First Complainant was transferred to the Mortgage Department nor has any explanation been offered as to why this piece of evidence has not been made available.

I also note that the Complainants have not offered any information regarding the nature of the forms that were required to be completed or whether these forms in fact related to the term extension nor have the parties provided a copy of the forms. However, as can be seen from the conversation which took place on **5 March 2015**, the First Complainant was not told that any form was required and, prior to the telephone call on **23 March 2015**, a letter had been issued by the Provider approving the term extension without the requirement for any form to be completed.

The First Complainant telephoned the Provider on **28 April 2015** to request a redemption figure for loan account 342. During the telephone conversation, the Provider’s agent advised the First Complainant that a redemption figure would be issued in a couple of days and this would also be the case if a request was made by the Complainants’ solicitors.

In its Complaint Response, the Provider further explained that a redemption figure was not ordered at that time, because its agent understood that the Complainants’ solicitors would send in a request by fax. However, regardless of whether or not the Provider’s agent believed that the Complainants’ solicitor would request a redemption figure, it was clear from the telephone conversation that the First Complainant was requesting a redemption figure separate from any request to be made by the Complainants’ solicitors. Further to this, I note that the First Complainant did not necessarily indicate that her solicitors would be submitting a request for a redemption figure, rather the First Complainant enquired as to how long it would take for a redemption figure to issue if the request was made by her solicitors.

The Complainants’ solicitors submitted a request for a redemption figure on **7 May 2015**. Shortly after this, the First Complainant also telephoned the Provider to enquire as to why a redemption figure had not been issued.

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In the course of this conversation, the Provider's agent advised that a further request for the redemption figure would be made and marked as urgent.

Later that day, the Provider faxed a redemption letter dated **19 September 2014** to the Complainants' solicitors. The First Complainant telephoned the Provider a second time to inform it that the incorrect redemption figure had been issued. The Provider's agent apologised for this error and gave the First Complainant the redemption figure over the telephone. Following this, a redemption letter dated **7 May 2015** was issued by the Provider.

It is clear that the Provider unreasonably failed to respond to the request for a redemption figure in **April 2015**. Further to this, the Provider failed to comply with the request for a redemption figure in **May 2015**. The Provider's response to this request is quite disappointing and demonstrates a lack of care and attention on the part of the Provider. It was clear that both the First Complainant and her solicitors were seeking a redemption figure which, reasonably understood, meant an up-to-date or current redemption figure, not one that was more than seven months old. Further to this, neither the First Complainant nor her solicitors requested a copy of, or made reference to, the **September 2014** redemption letter.

Accordingly, I am satisfied that the Provider's conduct was unreasonable in that it failed to respond to, and further failed to properly respond to, the First Complainant's and her solicitors' requests for a redemption figure in respect of loan account 342. While I have had reached this conclusion in respect of this aspect of the Provider's conduct, I am not satisfied this demonstrates that the Provider was discriminatory towards the Complainants. In terms of the Complainants' position regarding the withdrawal of banking services, I take the view that if the Provider had indeed been trying to bring an end to the customer relationship, then one would have expected the Provider to provide redemption figure details in as timely manner as possible, as this would have facilitated the redemption of the account. It is my opinion that the Provider's conduct demonstrates a lack of care and attention but does not establish, in the context of this complaint, that the Provider was discriminatory towards the Complainants or was attempting to withdraw banking services.

During the telephone conversation on **5 March 2015**, the First Complainant requested a copy of the Offer Letter because she could not locate her copy. The Provider's agent transferred the First Complainant to "Applications". However, as noted above, the recording of this call ended when the First Complainant was transferred and the Provider has not supplied a recording of the conversation which took place after this, nor has any explanation been offered as to why this piece of evidence has not been made available.

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In the Provider's Complaint Response, the Provider appears to advise that the First Complainant telephoned twice on **5 March 2015**. On the first occasion the First Complainant spoke with the Provider's Mortgage Department and was transferred to "Applications" and on the second occasion the First Complainant spoke with a [categorisation of customer redacted] Advisor. However, a recording of the conversation with the [categorisation of customer redacted] Advisor does not appear to have been furnished by the Provider.

This is quite disappointing particularly as the Complainants state in the letter of **10 October 2015** that when the First Complainant spoke to the Provider's Mortgage Department that: *"Cannot locate any application! Eventually locate application and confirm they will reissue"*.

Further to this, the Complainants state in the **10 October 2015** letter that when the First Complainant spoke to a [categorisation of customer redacted] Advisor on **16 March 2015**, the Advisor informed the First Complainant that *"he cannot locate any application or approval"*. It also appears that a recording of this conversation has not been supplied nor has the Provider offered an explanation as to why this is the case.

In their correspondence, the Complainants clearly communicated a level of dissatisfaction with the Provider's handling of the request to re-issue the Offer Letter. It is not entirely clear whether or not the Provider's agents were able to locate a record of the Complainants' loan application or their approval and, if its agents were unable to do so, why this was the case. However, the Provider has not addressed this aspect of the Complainants' correspondence in its letter of **11 November 2015** or its Complaint Response. I consider that it was reasonable to expect the Provider to have addressed these issues.

In respect of re-issuing the Offer Letter, I note that the Mortgage Loan Offer Letter dated **25 September 2014** states at the 'Borrower's Acceptance and Consents' section that:

*"Acceptance of this Offer Letter must reach the Lender within 30 days of the date of this Offer Letter or the offer will lapse. (The Lender may, at its absolute discretion, extend this period). ..."*

As a result, the Offer Letter was only valid for 30 days, something which I am satisfied that the Complainants ought reasonably to have been aware of. However, it is not clear why the Offer Letter was not signed in the 30 day period or why the Complainants did not seek to progress the drawdown of this facility.

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Once the request was made to re-issue the Offer Letter, I note from the MMail correspondence that a request to re-issue the Offer Letter was made by a [categorisation of customer redacted] Advisor on **5 March 2015**. However, due to the manner in which the subject line was drafted, there was a delay with the MMail being picked up by the relevant agent within the Provider. The [categorisation of customer redacted] Advisor's MMail was followed by a request for certain information regarding the Complainants' financial position and, having examined the information sought, I consider the Provider's requests in this regard to have been entirely reasonable. The information request was promptly responded to, however, certain further information and clarification was requested on **20 March 2015**. In respect of this request, I am also satisfied that it was reasonable to request this information. As can be seen, the **20 March 2015** MMail was not responded to by the Provider's branch nor is there any evidence to suggest that the person who issued this MMail sought to follow-up with the branch. As a result, the Provider did not complete its assessment and the Offer Letter was not re-issued.

I am satisfied that the failure to respond to the **20 March 2015** MMail and the failure to follow-up on this MMail was unreasonable. However, I do not consider that this is evidence of discrimination or of the withdrawal of banking services from the Complainants.

The evidence shows that the Provider was making reasonable enquires regarding the Complainants' present financial circumstances for the purpose of re-issuing an Offer Letter that had expired approximately five months previously and which was most likely approved based on financial information provided by the Complainants prior to approval in **September 2014**. I would also note that the Provider was not strictly required to re-issue the Offer Letter and the fact it sought to do so would suggest that the Provider was facilitating the continued provision of banking services to the Complainants rather than the withdrawal of such services.

The First Complainant attempted to make contact with a Mortgage Advisor on **16 April** and **28 April 2015**. In the Provider's letter of **11 November 2015**, the Provider explained that:

*"I note that in April you made a number of attempts to contact [Provider staff member], Customer Advisor at the branch in this regard and that your contention that messages were not returned; for this I apologise. The Branch have confirmed that [the Customer Advisor] was on compassionate leave during this period and that there was a voice message on her direct line to inform callers that she was out of the office until further notice. I am sorry if you did not receive this message."*

In the Complainants' letter of **25 November 2015**, I note that the above passage from the Provider's letter does not appear to have been responded to.

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As part of its Complaint Response, the Provider has provided the following statement from the relevant Mortgage Advisor:

*"I note [the First Complainant] advised that she contacted in April 2015 me to follow up on her request to re-issue an offer letter for an application for Equity Release which was dealt with by my colleague [...] [categorisation of customer redacted] Advisor. I can confirm that I was out of the office on compassionate leave for much of March and April, during this time there was an out of office message on my phone. I returned to the branch for a few days at the end of April prior to my move to [another Provider] Branch at the end of April 2015. I have no record of [the First Complainant's] attempts to contact me at that time."*

Having considered the Provider's evidence, I am satisfied that there is likely to have been an out of office recording on the Mortgage Advisor's phone. Further to this, the Complainants have not disputed that such a message was in operation when the First Complainant attempted to contact the Mortgage Advisor in **April 2015**. It also appears that the First Complainant may have left a voice message for the Mortgage Advisor and if she did, she is likely to have been aware that the Mortgage Advisor was unavailable.

However, the Mortgage Advisor also states that she had no record of any attempts to contact her around this time.

Accordingly, I do not accept that there was a failure on the part of the Provider to respond to the First Complainant's calls on **16 April** or **28 April 2015** and if there was any failure in this regard, I am satisfied that reasonable efforts were made to inform customers who telephoned the Mortgage Advisor, that she was out of the office for a period of time.

While the Provider failed to complete its assessment in respect of re-issuing the Offer Letter, I do not accept that this is a case where the Offer Letter would necessarily have been re-issued by the Provider nor have the Complainants established that the Offer Letter would in fact have been re-issued if the information sought in the **20 March 2015** MMail had been provided. That said and although the Provider possesses a commercial discretion as to whether it would re-issue the Offer Letter, based on the available evidence, it is likely that the Offer Letter may have been re-issued. However, the Complainants have not offered any evidence to show that they were relying on this facility, in order to progress with their home renovations. For instance, during the telephone conversation on **5 March 2015**, the First Complainant appeared to request a copy of the letter solely for the purpose of reviewing it.

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Significantly, almost a month prior to this, during a telephone conversation on **11 February 2015**, the First Complainant advised that the Complainants were switching mortgage provider and the reason why the Complainants were closing their accounts with the Provider was because the Provider could not offer more favourable interest rates.

Therefore, as the evidence suggests that the Complainants had made the decision to switch mortgage provider in advance of any delay or failures on the part of the Provider to re-issue to Offer Letter, I do not accept that the Provider's shortcomings in this regard adversely impacted the Complainants' ability to complete their house renovations nor were the Complainants forced to seek alternative credit because of this.

As part of its Complaint Response, the Provider has supplied statements from six staff members who appear to have been engaged with the First Complainant/the Complainants following the FSO Finding dated **9 September 2014**. I note that none of these staff members have indicated that they were aware that the Complainants had raised complaint reference [reference number redacted] with the FSO. I also note that one of the Provider's Mortgage Advisors states that:

*"I was not aware of [reference number redacted] [the First Complainant] did advise me she was being refunded 30,000 approximately from [the Provider] due to an issue with her tracker rate, however she did not mention anything about the Financial Services Ombudsman when speaking about this."*

In this respect, I note that the Complainants have not offered any evidence to show that the Provider staff members dealing with their account(s) were aware of the FSO Finding or the initial complaint to the FSO. It is therefore difficult to see how the Complainants can establish that the Provider discriminated against them or sought to withdraw banking services. Further to this and as noted above, during the telephone conversation on **11 February 2015**, the reason given by the First Complainant as to why the Complainants were closing their accounts was to do with the interest rates being charged by the Provider and not necessarily because of the fact the Complainants believed they were being discriminated against or that the Provider was trying to force them to close their accounts.

Therefore, having considered the matter at length, it is my opinion based on the available evidence that there is insufficient evidence to suggest or support the Complainants' position that the Provider systematically and in a calculated manner, withdrew banking services from them following the FSO Finding or indeed that it discriminated against them. However, I am satisfied that there were certain customer service failings on the part of the Provider surrounding its handling of the request to re-issue the Offer Letter and the request for a redemption figure in respect of loan account 342.

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When the issues regarding the request to re-issue the Offer Letter and the requests for redemption figures were brought to the Provider's attention in the Complainants' letter of **10 October 2015**, the Provider acknowledged and apologised "*for the fact that our branch did not follow through on the process by re-issuing your Offer Letter and for the delays and error encountered in your endeavours to attain a redemption quote*" in its response dated **11 November 2015** and offered a goodwill gesture in the amount of €500.00. The Provider's letter further advised that if the Complainants wished to accept the goodwill gesture, to sign and return the enclosed acceptance within 10 working days. I note that this goodwill gesture was not accepted by the Complainants, but I assume that this offer remains open to the Complainants to accept, in recognition of the Provider's errors, should they wish to do so.

Insofar as this complaint against the Provider is concerned however, that it systematically and in a calculated manner, sought to withdraw banking services from the Complainants, and discriminated against them, following the issue by the Financial Services Ombudsman in 2014 of a legally binding finding which upheld a previous complaint by the Complainants, I do not consider that there is any reasonable basis upon which this more recent complaint should be upheld, for the reasons outlined above.

### **Conclusion**

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

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



**ÚNA GATELY**  
**DIRECTOR OF INVESTIGATION SERVICES**

11 November 2021

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

(a) ensures that—

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

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

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