



<u>Decision Ref:</u>	2021-0423
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions Application of interest rate Errors in calculations
<u>Outcome:</u>	Rejected

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

This complaint concerns a mortgage loan, originally taken out by the Complainant with a third party provider in **1988** and subsequently transferred to another third party entity (hereinafter referred to as the 'previous loan owner'). The loan was transferred to the Provider in **2015**.

The Complainant's Case

The Complainant, in his letter dated **9 November 2018**, states:

*"The last payment on my mortgage account...is on **10 November 2018** and the maturity is on **13 November 2018**";*

"The documents should have been made available to me to collect once the funds have cleared which should be no longer than 5 working days";

[The Provider] shall be liable to pay interest (19.6%) on the value of the property until the documents/the Title Deeds are available for me to collect/ The title deeds are in my custody".

The Complainant contends that the Provider would not return the property deeds to him following the mortgage maturity date, and that this prevented him from selling his property when he wished to do so:

*“Delayed **13 November 2018- 26 June 2019**. This is more than 7 month. It prevent me to sell the house to a prospective buyer.”*

The Complainant states that:

*“I had received a letter **22 November 2017** to inform the mortgage would be mature on **13 November 2018** never mention about any outstanding balance”*

and further states that he:

*“Also learned from the [previous loan owner] statement for the year **2013** that I have excess in my payment and paid for payment protection”.*

The Complainant emailed this Office on **7 November 2019** stating that he had been informed by the Provider by way of letter dated **13 November 2018** that it would charge him €0.29 interest per day on the total amount which was outstanding on his mortgage account. The Complainant asserts that this is a yearly interest rate of 187.763%. The Complainant contends in this email that the Provider should pay him 19.6% interest or alternatively interest at a rate of €0.29 per day.

The Complainant sent a further email to this Office dated **27 February 2020** wherein he states that statements from the previous loan owner from **2013** informed him that he had made excess payments to his mortgage account. The Complainant also states that the Provider informed him by way of the letter dated **13 November 2018** that he would have to pay interest of 0.29% per day which equates to a yearly interest rate of 187.76%. He also stated that he was going to sell his house in **December 2018** to someone for €650,000 and was going to use that money to buy another house in Dublin and one in Portugal but now he has missed that opportunity. He states that the Provider has delayed over 7 months from **13 November 2018** to **26 June 2019** in dealing with his complaint and that *“justice delayed is justice denied”*. The Complainant also submitted the blueprints for his house as part of his evidence.

The Complainant sent a further letter to this Office dated **29 July 2020** wherein he sought verification of the interest rate charged by the Provider. The Complainant also stated that he was paying a payment protection insurance policy and home insurance policy with the previous loan owner.

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The Complainant made a further submission to this Office by way of email dated **9 November 2020**. He stated that the Provider's "submission is a document that does not related to my case". He stated that the issue is that the Provider informed him "in writing that the mortgage ends in **November 2018**" and that it is the Provider's responsibility to verify from the previous loan owner the repayment amounts prior to purchasing the mortgage from the previous loan owner. The Complainant states that "it was no fault of mine that, the [Provider's] failure to check and verify the documents from [the previous loan owner]. It is the reflection of their inability to communicate, coordinate and collaborate at the time of purchase from [the previous loan owner]".

Ultimately the Complainant wants the Provider to pay him compensation for "injuries suffered" as a result of its actions and pay him interest on the "value of the property" from **November 2018 to June 2019**.

The Provider's Case

The Provider wrote to the Complainant on **3 December 2018, 2 January 2019, 31 January 2019, 1 March 2019, 29 March 2019, 30 April 2019** and **28 May 2019** stating that it was still investigating his complaint of **9 November 2018**.

The Provider, in its Final Response Letter dated **26 June 2019**, sets out its position with regard to the Complainant's mortgage which was transferred from the previous loan owner in **2015**:

"I note your complaint concerns the balance outstanding on the mortgage account at maturity";

"The monthly repayments advised by [the previous loan owner] was €226.54.

Unfortunately the repayment amount advised by [the previous loan owner] when this account was transferred to [Provider] was understated. This meant that the repayment amount was not sufficient to clear the loan resulting in an outstanding balance at the maturity date of €610.70";

"As a gesture of good will [the Provider] has made a decision to waive the outstanding balance of €610.70. The balance has now been waived and I can confirm that the mortgage account is now fully redeemed".

The Provider made submissions to this Office dated **2 July 2020** wherein it stated that it was entitled to retain possession of the title deeds of the property until the Complainant redeemed his mortgage. The Provider stated that the mortgage was not redeemed until it made the decision to waive the Complainant's balance post-maturity. The Provider states that once that decision had been taken and notified to the Complainant on **26 June 2019**, the Complainant's title deeds were promptly issued to him on **18 July 2019**.

The Provider stated that it dealt with the Complainant's request in line with its obligations under provision 2.8 of the Consumer Protection Code 2012 (as amended) (hereinafter referred to as '**the CPC 2012**'). It noted that this complaint was made in **November 2018** and a Final Response Letter was issued on **26 June 2019**. It stated that the complaint involved a "*degree of complexity*" given it concerned redemption figures for a mortgage loan account that transferred from the previous loan owner to the Provider. The Provider notes that the Complainant also had a separate data protection complaint running in tandem with the complaint the subject of these proceedings which added to the amount of time taken for the investigation. The Provider states that it updated the Complainant regularly as to the status of its investigation in line with its obligations pursuant to provision 10.9.

The Provider also states that it "*acted entirely appropriately and legally at all times*" and the "*suggestion that the Provider could be liable*" to pay interest to the Complainant "*is clearly without merit*". The Provider notes that the Complainant has provided no evidence that he was unable to sell his property as a result of the Provider's retention of his title deeds and in any event notes that the property in question is registered land and any prospective purchaser would not have required sight or possession of the Complainant's title deeds prior to the completion of any sale.

The Provider made a further submission to this Office dated **10 September 2020** addressing the point raised by the Complainant in his email of **19 July 2020** that there was some interplay between payment protection insurance, home insurance, and the interest rate applicable to the Complainant's mortgage loan account by stating that "*there is no such interplay; the point has been asserted without any evidence or elaboration, and does not accord with banking practice generally or with the Provider's practice specifically*".

The Complaints for Adjudication

The complaints are that the Provider:

Delayed in returning the Complainant's title deeds to him following the maturity date of his mortgage, resulting in him not being able to sell his property at that time;

Did not communicate to the Complainant in a timely manner that his mortgage would not be fully paid by the maturity date; and

Proffered poor customer service throughout.

Decision

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

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

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions 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 5 October 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.

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In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

I note that the Complainant drew down a mortgage of IR£40,625.00 (€51,583.11) on **11 November 1988** for a term of 20 years under a Mortgage Loan Offer Letter dated **3 August 1988**, signed and accepted by the Complainant on **16 August 1988**. The mortgage loan agreement was completed between the Complainant and the previous loan owner. The mortgage loan account was then transferred to the Provider on **30 March 2015** and I note that at this point in time, a balance remained on the mortgage of €9,594.57. The mortgage payments were made by the Complainant on a regular basis and a letter issued to the Complainant from the Provider on **7 June 2018**, informing the Complainant that his mortgage loan account was due to mature on **13 November 2018**.

This letter of **7 June 2018** prompted the Complainant to call the Provider on **11 June 2018** and enquire as to how the Complainant would get his title deeds back once the mortgage had been redeemed. He was told by an agent of the Provider that his deeds would be returned to him upon written request or could be kept by the Provider on his behalf. A phone call took place on **6 November 2018** which again asked for details concerning the redemption of the title deeds and again the process of redemption was explained to the Complainant. During a phone call on **7 November 2018** between the Complainant and the Provider's representative, the Complainant was informed that a balance of €809.94 remained outstanding on the Complainant's mortgage account. On **13 November 2018**, a letter issued to the Complainant setting out the redemption figures and informing him that the sum of €586.98 remained outstanding on his mortgage loan account. On this same date, the Complainant handed in his letter of complaint dated **9 November 2018**.

In respect of the complaint that the Provider delayed in returning the Complainant's title deeds to him following the maturity date of his mortgage, I accept that there was a sum outstanding on the Complainant's mortgage account and the title deeds could not be redeemed until this sum was settled. The Provider's letter of **13 November 2018** clearly stated in two separate places that the deeds would not be released until all outstanding balances have been cleared on all mortgages relating to this property. There has been no evidence to contradict the Provider's submissions that this outstanding amount was due to an understatement by the previous loan owner of the amount required to be paid by the Complainant on a monthly basis. I also note that, further to the Complainant's complaint and as a gesture of goodwill, this sum (and the interest that accrued upon the failure by the Complainant to pay the outstanding sum) was waived by the Provider on **26 June 2019** and that the title deeds were issued to the Complainant via registered post on **18 July 2019**.

Therefore, I do not accept that the Provider delayed in returning the Complainant's title deeds to him following the maturity date of his mortgage. Furthermore, no evidence has been submitted to this Office that the Complainant was delayed/hindered in selling his property as a result of the actions of the Provider.

In respect of the complaint that the Provider did not communicate to the Complainant in a timely manner that his mortgage would not be fully paid by the maturity date, I note that the Provider contacted the Complainant on **7 June 2018** to inform him that the mortgage would mature on **13 November 2018** and that a letter issued to the Complainant on that date setting out the outstanding payments remaining on the Complainant's mortgage account. Again, I note that there is no evidence to contradict the Provider's submissions that this outstanding amount was due to an understatement by the previous loan owner of the amount required to be paid by the Complainant on a monthly basis.

I note that the Provider must have known that the level of repayments being made by the Complainant would mean that an amount would have been left outstanding on the maturity date of the mortgage and should have informed the Complainant of this as soon as it became aware of this fact. This does not meet the requirements of provision 4.2 of the CPC 2012 (as amended) which obliges the Provider to supply information to the Complainant "*on a timely basis*".

In respect of the third complaint, I accept that the Provider proffered poor customer service to the Complainant in that it took over 7 months to resolve his complaint. I do not accept the Provider's submission that this was a complex complaint, nor do I accept that the Complainant lodging a separate data protection complaint should have any effect on the Provider in dealing with the complaint the subject matter of these proceedings.

In the interest of completeness, I note that the Provider's statement in its letter of **13 November 2018** that interest of €0.29 per day was payable by the Complainant on the outstanding amount of €586.98 necessary to close the mortgage amount did not mean that the Provider was charging the Complainant a yearly interest rate of 187.763%. I also do not accept that there is any basis for the Complainant's argument that Provider is under an obligation to pay him interest on the value of his property from the period of **November 2018** to **June 2019** when the mortgage account was closed and the title deeds redeemed.

Therefore, based on the foregoing, I accept that the Provider should have informed the Complainant at an earlier date that there would be an outstanding balance remaining on his mortgage account at the date of maturity, however, I note that the Provider has waived this outstanding amount and for this reason, I do not uphold this complaint.

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Conclusion

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

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

18 November 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.