



<u>Decision Ref:</u>	2021-0476
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Documents mislaid or lost Delayed or inadequate communication
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a mortgage account. The complaint is made by the father of the account holder, on the account holder's behalf and he is referred to below as 'the Complainant'.

The Complainant's Case

The Complainant submits that he had a mortgage account with the Provider in respect of his family home, since **2005**. The Complainant states that he *"had a head injury at work"* and that as a consequence, he *"retired on medical grounds, and remains unemployed"*. The Complainant further states that he *"had difficulty making repayments"* on his mortgage account.

The Complainant submits that, after a *"settlement"* of his legal action in relation to his injuries, he made two proposals to the Provider to settle his mortgage account. The Complainant further submits that both of these proposals were rejected by the Provider.

The Complainant advises that the Provider's valuation of the property was for an amount of €160,000.00 and that it subsequently demanded from him, the full amount of €160,000.00, in full and final settlement of the mortgage account. The Complainant advises that his mortgage account was settled with the Provider, for this amount, in **April 2018**.

The Complainant submits that the Provider subsequently disclosed to him that it never received the title deeds for his property, from his solicitor. The Complainant further submits that, as a consequence, he had to engage a solicitor to reconstruct the title deeds.

The Complainant states that he was:

*“extremely annoyed and upset that the Provider would deliberately enter into such extremely serious discussions to finalise and demand an outstanding payment, without providing him with knowledge and the difficulties [the Provider] had with the solicitors, or did not have [the Complainant’s] title deeds from the time the mortgage was drawn down on **16 March 2005**”.*

The Complainant contends that this information *“completely undermined[d] our ability to negotiate a substantial reduced payment to [the Provider] by withholding vital information in their possession since **2006**”*. The Complainant further contends that the Provider demanded *“the maximum amount of money from [the Complainant] for the purpose [of] finalising an agreement, before informing him of their difficulties in not obtaining the title deeds”*.

The Complainant asserts that he is *“extremely concerned”* with the Provider’s behaviour, considering that it was aware of the Complainant’s *“medical condition and circumstances”*. He seeks to recover:

“the figure that we sought in our original application £36,000 was fully justified in relation to the upset, the annoyance, anxiety, and stress caused to [the Complainant], due to [the Provider]’s breach of Duty of Care to [the Complainant] their customer/client by deliberately withholding [the Complainant]’s legitimate entitlement information which has also affected his Health & Wellbeing, which should have been avoided if the Provider... had to carry out their legitimate Customer Care to its client/customer being [the Complainant] in this case.”

The Provider’s Case

In its Final Response Letter dated **1 May 2019** the Provider states that it is the borrower who instructs their solicitor *“to act and to deliver the title deeds to the bank with a first legal charge on same”* and that it is *“the borrower’s responsibility to make sure that their solicitor complies with the undertaking, as it is furnished to the bank by their solicitor, on the borrower’s behalf”*.

The Provider submits that this arrangement forms part of the terms and conditions of the loan agreement and that in this instance the Provider’s charge was registered, but the title deeds were not delivered to the Provider, as they should have been.

The Provider contends that it followed up with the Complainant’s solicitor, with regard to the missing title deeds and that it was advised, in its most recent correspondence, on **23 January 2019**, that *“they were unable to locate these documents”*.

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The Provider submits that it rejected the Complainant's two settlement proposals for €100,000.00 and €130,000.00, and that it accepted the Complainant's offer of €160,000.00, which was in line with its valuation of the property. The Provider further submits that on receipt of the settlement payment, that it intended to release its charge over the property and to *"terminate the residual debt of €65,000.00 approximately"*. The Provider contends that this was in *"recognition of the then health and financial circumstances"* of the Complainant.

The Provider asserts that it did not intentionally withhold information or mislead the Complainant in relation to the title deeds. The Provider contends that because the title deeds are managed and stored centrally *"their absence would only come to light when the department that you were dealing with, sought to retrieve and return them to the nominated solicitors"*.

The Complaint for Adjudication

The complaint is that the Provider:

1. Failed to return the Complainant's title deeds as part of a settlement agreement in respect of his mortgage account, with the Provider;
2. Misled the Complainant during the settlement negotiations regarding his mortgage account during **2017** and **2018**, *"for the purposes of finalising an agreement, before informing him of their difficulties in not obtaining the title deeds"* for his property;
3. Undermined the Complainant's *"ability to negotiate a substantial reduced payment"* to settle his mortgage account during **2017** and **2018**, *"by withholding vital information in their possession since 2006"*;
4. Caused the Complainant to be *"extremely concerned"* with the Provider's behaviour, throughout the course of this complaint, considering that it was aware of the Complainant's *"medical condition and circumstances"*.

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.

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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 **27 October 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. Following the consideration of an additional submission from the Complainant, the final determination of this office is set out below.

I note that the Complainant suffered a most unfortunate injury at work, resulting in a severe impact on his ability to continue earning a living, and thereby continue to service his mortgage payments. The Complainant pursued legal proceedings in respect of his injuries which resulted in a certain amount of compensation being recovered by the Complainant. The Complainant then, very sensibly in my opinion, sought to come to some arrangement with the Provider regarding the mortgage account, whereby the Complainant would retain the property and the Provider would accept a certain write-down of the debt owed.

At the time when a settlement of the mortgage account was ultimately agreed and implemented between the parties, the total amount due on the mortgage loan was approximately €225,000. The property was valued at the time at considerably less, in the order of €160,000.

The Complainant initially offered (in August 2016) an amount of €100,000, before increasing the offer to €130,000 (in October 2016). The offer was increased further to €160,000 in June 2017 and this was approved by the Provider in **July 2017** subject to the condition that the payment be made before **10 January 2018**.

It should be noted that it is not the function of this Office to review matters falling within the commercial discretion of financial service providers. This includes any review of any particular figure a bank has agreed to accept (and thereby any write-down that bank has agreed to implement) in settlement of a liability.

A lending institution has a broad discretion (subject to the provisions of the Code of Conduct) over a commercial decision such as whether to accede to an application of this nature, and, if it does decide to accede, on what terms it so decides. Nonetheless, it warrants mentioning that, in this instance, the Provider accepted a write-down of approximately €65,000 (approximately 29% of the balance outstanding) which the Provider describes as

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action taken *“in recognition of the then health and financial circumstances of [the Complainant]”*.

The Complainant does not take issue with the specific amount of the write-down ultimately achieved. Rather he complains more generally that the Provider failed to inform him that it did not have the title deeds and that this undermined his ability to achieve a better deal. The suggestion in that respect seems to be that if the Provider had informed the Complainant earlier in the process, that it did not have the title deeds, the Complainant's bargaining position would have been strengthened:

“we would have obtained a substantial reduction in the amount [the Complainant] agreed to pay [the Provider].”

With regard to the timing of the emergence of the title deeds issue, the Complainant wrote to the Provider on 29 August 2017, more than six weeks after the parties had agreed a lump sum payment of €160,000, enquiring as follows:

Please confirm at what stage does [the Provider] return Title Deeds to [the Complainant] regarding his secure property

The Provider responded the following day indicating that the title deeds would be returned upon receipt of the lump sum payment.

Thereafter, there was a delay in making the lump sum payment which had initially been due before **10 January 2018**, owing to the Complainant experiencing a delay in accessing the compensation funds secured in his legal proceedings (owing to the necessity for a ward of court application).

It should be noted that the Provider was satisfied in such circumstances, to accept the funds after the originally agreed deadline. In that respect, more than 3 months after the deadline agreed, the payment was ultimately made to the Provider on **27 April 2018** and the mortgage account was ultimately closed on **13 June 2018** with all further liability of the Complainant, written-off.

With regard to the title deeds, I note that the Provider wrote to the Complainant on **25 May 2018** seeking the identity of the solicitor to whom the title deeds should be returned, and a response identifying the appropriate solicitor was sent on 19 June 2018. Thereafter, the Complainant sent emails on 04 October 2018 and 15 January 2019 noting that the title deeds had not yet been sent to the solicitor in question.

On 15 January 2019, the Provider wrote to a firm which had taken over the practice of the Complainant's former solicitor (the former solicitor having acted for the Complainant at the time of purchase of the property) noting that it had taken over the practice of the Complainant's former solicitor, and stating as follows:

We would be obliged if you could please check your files and confirm if you hold the title deeds for the above property, as the Customer is now seeking the title documents.

The said firm of solicitors responded on 23 January 2019 indicating that it had undertaken “exhaustive searches” and confirming that it did not hold the relevant documents.

A further email on the issue from the Complainant was followed by a substantive response from the Provider on **08 February 2019** in which the following was set out:

The mortgage was drawn down on 16th March 2005. The bank was given a letter of undertaking by [the Complainant’s former solicitor] to register our charge over the property and deliver the title deeds to us thereafter. The Bank’s charge was registered but the title deeds were never actually sent to us as they should have been. The Bank wrote continuously to [the Complainant’s former solicitor] requesting the deeds from 20th March 2006 onwards. Their offices ceased to practice in 2009 and their files were passed to [the practice which took over from the Complainant’s former solicitor]. We have also written to [the practice which took over from the Complainant’s former solicitor] seeking the return of the title deeds but to date we have not received them. Our most recent correspondence from them of 23rd January 2019 advises that after conducting extensive searches they have been unable to locate them. I have enclosed this letter of your attention.

...

While I fully understand your frustration, unfortunately the matter is outside of the Bank’s control and we are therefore unable to resolve it for you. We do however accept that we should have brought the matter to your attention sooner and I apologise most sincerely for that breakdown in communication. Title Deeds as valuable documents are managed and stored centrally rather than here with the case management team and we were unaware of the issue.

Thereafter, the Complainant raised a formal complaint with the Provider regarding the matter, leading to a Final Response Letter dated **01 May 2019** being issued, in which the following was added by the Provider:

I wish to assure you that the bank did not intentionally withhold information or deliberately mislead [the Complainant] in relation to this matter. As previously advised to you in our letter dated 8 February 2019, title deeds are valuable documents and are managed and stored centrally. Their absence would only have come to light when the department that you were dealing with sought to retrieve and return them to the nominated Solicitors.

For absolute clarity, under the agreement, the Bank had advised that we would release our charge on the property upon receipt of the settlement figure as outlined above. The funds of €160,000 were received by the Bank in April 2018. The balance of the mortgage was terminated and the Bank released our charge over the property as agreed. The return of the title deeds was discussed by email at a later date, but

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we were not in a position to fulfil this request as they had not been delivered to the Bank initially as they should have been.

Firstly, I accept that, at the time when negotiations about a write-down were taking place, the Provider was unaware that it did not possess the title deeds. Indeed, it seems that this arose due to the failure by the Complainant's agent (his former solicitor) to deliver them, rather than from any failing on the part of the Provider (albeit the Provider's systems appear to have been deficient in failing to effectively record that the deeds had not been delivered).

I note that both the Complainant and his father remain convinced that the Provider deliberately:

“withheld the legitimate information that we were entitled to for the purpose to minimise our negotiation/ability to conclude, and finalise an agreed settlement figure that was outstanding.”

I do not however accept this. Neither do I accept that if the Complainant had been aware of his former solicitor's outstanding obligations to deliver the title deeds to the Provider, that this would have enabled him to secure a great write down from the Provider, over and above the reduction of some €65,000 which he achieved. I do not accept that his bargaining position as regards those write-down negotiations, was undermined as he suggests. The Provider's charge over the mortgaged property was valid and properly registered. The fact that the Provider did not possess the physical title deeds did not detract from this in any manner from that security.

As a result, the relative bargaining positions of the respective parties was not impacted. The Complainant owed a specific amount of money. The Provider was entitled to refuse any write down of the balance, but it exercised its discretion to agree to accept less than the full amount in light of the unfortunate circumstances of the Complainant.

I do not accept that the Complainant would have secured a better deal if he had been aware that the Provider did not possess the deeds, particularly as the fact that the Provider did not have the deeds would appear to stem from a failing by the Complainant's representative to deliver them.

This however is not the end of the matter. The Provider has, quite correctly, acknowledged a failure on its part to bring the matter to the Complainant's attention sooner:

We do however accept that we should have brought the matter to your attention sooner and I apologise most sincerely for that breakdown in communication.

The Complainant first made enquiries regarding the title deeds in **August 2017**. Further communications issued in respect of the matter in **May 2018** and **June 2018** following which the Complainant sent emails on **04 October 2018** and **15 January 2019** querying the failure

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to return the deeds. I note that it was not until **08 February 2019** that a response ultimately issued to the Complainant providing an explanation.

This extensive period was a very unsatisfactory timeframe, within which to address the matter. I accept that the Provider has explained that title deeds are managed and stored centrally by a department, other than the one which was directly engaging with the Complainant, but the issue should nonetheless have been identified much earlier and communicated to the Complainant, not least in light of his vulnerable medical condition. In light of this particular failing, I consider it appropriate to partially uphold this complaint and to direct compensation as outlined below.

I do not accept that the appropriate compensatory payment to redress this element of wrongdoing by the Provider should be:

“the figure that we sought in our original application £36,000 was fully justified in relation to the upset, the annoyance, anxiety, and stress caused to [the Complainant] ...by deliberately withholding [the Complainant]’s legitimate entitlement information”

I am satisfied that the evidence does not disclose deliberate wrongdoing by the Provider, and the compensation directed is to reflect only the inconvenience caused to the Complainant by the Provider’s failure to respond until **February 2019**, to the Complainant’s queries and reminders, which commenced in August 2017, and continued through May 2018, June 2018, 04 October 2018 and 15 January 2019.

The failure to respond to the Complainant for a period of 18 months is not acceptable and, in my opinion, this failure constitutes conduct on the part of the Provider which was unreasonable and unjust within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**. In my opinion, this is particularly disappointing given the Complainant’s father’s consistent efforts to achieve financial security for the Complainant.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,500, to an account of the Complainant’s choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section**

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22 of the *Courts Act 1981*, if the amount is not paid to the said account, within that period.

- The Provider is also required to comply with **Section 60(8)(b)** of the *Financial Services and Pensions Ombudsman Act 2017*.

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



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

3 December 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.