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| <b><u>Decision Ref:</u></b>             | 2022-0001  |
| <b><u>Sector:</u></b>                   | Banking  |
| <b><u>Product / Service:</u></b>        | Repayment Mortgage   |
| <b><u>Conduct(s) complained of:</u></b> | Maladministration (mortgage)<br>Delayed or inadequate communication<br>Level of contact or communications re. Arrears<br>Complaint handling (Consumer Protection Code)<br>Dissatisfaction with customer service<br>Disputed transactions<br>Failure to process instructions in a timely manner<br>Failure to process instructions<br>Maladministration<br>Maladministration (mortgage) |
| <b><u>Outcome:</u></b>                  | Substantially upheld   |

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

The complaint concerns the administration of the Complainants' loan accounts by the Provider and its appointed Asset Service Provider.

**The Complainants' Case**

In their Complaint Form, the Complainants state that on **6 December 2017**, a complaint was submitted to the Asset Service Provider by registered post and was received on **6 December 2017**. The Complainants state that at the time of completing their Complaint Form, 40 business days had passed since the complaint was submitted to the Asset Service Provider and the Complainants had still not received an acknowledgement of their complaint.

The Complainants submit that this is clearly in breach of the Asset Service Provider's complaints procedure which states that it would respond to a complaint within five working days of receiving it and would respond with the outcome of its investigation within four weeks. The Complainants further submit that section 2.8 of the **Consumer Protection Code 2012** states that a regulated entity must correct errors and handle complaints speedily, efficiently and fairly. The Complainants contend that the Provider is clearly ignoring this process.

In a letter of complaint to the Asset Service Provider dated **5 December 2017**, the First Complainant states, as follows:

*"I wish to submit a formal complaint to [the Asset Service Provider] for unauthorised Contact with a Third party, breaches of confidentiality under the Data Protection Act by sending account information to the wrong address, Possible breach of AML & breach of Central Bank's Code of Conduct on Mortgage Arrears and the Consumer Protection Code.*

**1. Breach of confidentiality & Unauthorised Contact with our Daughters business Accountants [...] by a [Asset Service Provider] senior mortgage executive**

*On the 6th September 2017, the managing partner of our daughter's business accountants [...] received a call from [the Asset Service Provider] wanting to discuss the financial details of our 3 above Buy to Let Mortgages. [The Accounting Firm] is our daughter's company accountants & are not involved in our personal borrowings since April 2014. I instructed [the Managing Partner, 'DG'] to inform [the Asset Service Provider] to call me directly. On the 7th September 2017 at 10.46 am, [an Asset Service Provider agent], whose title was senior mortgage executive from [the Asset Service Provider] rang me. Our conversation lasted 6 minutes & 26 seconds. I asked [the Senior Mortgage Executive] to clarify who had instructed [the Asset Service Provider] to ring my business accountants [...]. She informed me that [the Asset Service Provider] was acting on instructions from [the Provider]. I explained to her that that (sic) I had 3 letters from [the Provider] dated 3rd May 2017 authorising [the Complainants' Financial Adviser] to be our 3rd party contact with [the Provider].*

**[The Provider] clearly state on the Banks third party mandate section 2 that any existing third party signatories on our accounts will be received on acceptance of this new authority.**

**Why wasn't [DG's] authority removed upon receipt of [the Financial Adviser's] new authority? [...]**

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**(2) Contravention of [the Provider's] Acknowledgement of [the Financial Adviser] as the Third Party dated 3 May 2017**

[The Financial Adviser] was the only person authorised to discuss all our financial dealings with [the Provider] & by default, [the Asset Service Provider] on the transfer instruction of [the Provider] I informed [the Senior Mortgage Executive] that this was a breach of confidentiality by both [the Provider] & [the Asset Service Provider].

I also informed [the Senior Mortgage Executive] about our reported efforts about trying to get into contact with [the Provider] & our SFS with [the Provider] on March 18 2017.

She said she couldn't contact [the Financial Adviser] without authorisation from [the Provider]. She asked if I wanted to put in a complaint & I confirmed that I did. Complaint ref [1317] has been registered & is currently being investigated by [the Provider's] dedicated Complaints Handling Team.

**27 October 2017** ... I noticed a missed call from [the Asset Service Provider]. At 11.43 am. I listened to her voice mail asking me to ring back [...]. At 13.03 I rang [the Asset Service Provider] & spoke to [an Asset Service Provider agent] for 8 mins & 40 seconds after verifying my identity, he asked if my complaint with [the Provider] was ongoing. I said yes. I then gave him a briefing of communication so far plus the 2 DD attempts by [the Provider] to take money from my [financial service provider] Personal account. I informed him that instead of [the Provider] classifying me as a Non-co-operating customer, I have no other option than to classify [the Provider] as a Non cooperating bank. He then informed me that he had received no files whatsoever in relation to our accounts with [the Provider]. This is in total contradiction to the letter we received from [the Provider] on the 21<sup>st</sup> of Sept 2017.

The call ended amicably at this point!

**3 Contravention of Central Bank Guidelines & Consumer Protection Code in relation to assessing overall financial repayment capacity to deal with all borrowings by a [Asset Service Provider] senior mortgage executive**

[An Asset Service Provider Mortgage Executive] called at 09.01 on 3 November 2017.

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*I explained that there was a complaint currently being investigated by [the Provider] for breach of data protection. He rejected this & insisted that there was no basis for the complaint as the 3<sup>rd</sup> party Authority from March/April 2014 still was in place.*

*[The Mortgage Executive] deliberately chose to ignore the fact that Section 2 of the [the Provider's] Third Party Mandate which he forwarded to me, clearly states & I quote "If you have any existing third party signatories on your accounts, they will be removed on acceptance of this new authority.["]*

*He was very insistent that that (sic) I deal with him as a matter of urgency & in relation to one mortgage only [account 4318] & did not wish to engage on the other mortgages. I tried to explain to him one mortgage could not be dealt with in isolation to the other mortgages when completing a SFS but to no avail. He repeated he was only interested in getting an agreement on Account [4318] Surely, this is in contravention of Central Bank Guidelines relating to overall financial repayments capacity to deal with all borrowings. He then insisted that I submit a new revised SFS for this account only or else the other alternative was to send in a receiver if I didn't cooperate with him & agree to sign another third party letter of Authority.*

***I should not have been subjected to a threat of this nature over the phone.***

*He finished by stating he was going to send out a 3<sup>rd</sup> part[y] Authorisation form & that I was to sign it. The call ended after 19 minutes & 5 seconds.*

*I felt at all times during his conversation with me, that I was being harried, intimidated and being bullies into carrying out his demands to the exclusion of all the pertinent facts of the case. As I had been informed that this call was being recorded, I would respectfully suggest that you listen back to the recording of this call (which lasted 19 minutes & 5 seconds).*

*[...]*

*On the 6<sup>th</sup> November, I received the letter as promised from [the Mortgage Executive] in [the Asset Service Provider] addressed to [the First Complainant], [address], [County].*

*(Copy enclosed)*

/Cont'd...

A. *The first page of the letter dated 3 November 2017 [...] outlined the arrears on account [5546].*

*Our Client: [the Provider]*

*The account names were incorrect as the letters states the account names as [the First Complainant] & [the First Complainant]*

B *The second page was a blank [Provider] Third Party Mandate.*

*Section 2 of the enclosed Third Party Mandate clearly states & I quote*

***“If you have any existing third party signatories on your accounts, they will be removed on acceptance of this new authority.***

***4 Breach of confidentiality & The Data protection act – Letter sent to Incorrect Address***

*On the 7<sup>th</sup> November 2017, our son [name] notified that he had received a letter to his PPR at [Address 3], [County]. The letter was from [the Mortgage Executive] in [the Asset Service Provider] [...]. The first page of the letter [...] outlined the arrears on account [5546] [...].*

*This letter was opened by my son’s partner his partner WHO HAD NO KNOWLEDGE PRIOR TO THIS OF OUR MORTGAGES ARREARS.*

*This is clearly a Major breach of confidentiality & a breach of the Data protection act by disclosing the complainant’s personal data to a third party without his knowledge or consent. [...]*

***5 Contravention of AML***

*The letter sent to [the Complainants’ son’s address] dated 3 November 2017 [...] outlined the arrears on account [5546] was addressed to [the First Complainant], C/O [the Provider’s Branch].*

*It is of great concern to me that the above mentioned address is now been used as one of my account correspondence address. and I am unsure as to where my documentation is originating from, going to & then eventually arriving to me.*

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*Surely, this goes against all proper procedures under the Ant-Money (sic) Laundering Regulations & contravenes Data Protection regulations. [...].”*

A separate letter of complaint dated **5 December 2017** was also sent to the Provider. Similar issues were raised in this letter, but, in addition, the First Complainant complained about the absence of a response from the Provider following an assessment which took place in **March 2017**, and unauthorised direct debits in **May** and **July 2017**.

In a letter to the Provider dated **17 January 2019**, the First Complainant stated, as follows:

**“3. Direct debits**

*I acknowledge that [the Provider] are entitled to attempt to collect the normal monthly payments by Direct Debit as originally agreed by the Bank and myself. However, from my discussions with our [...] Bank where our Current Account resides, we were informed that fresh and new Direct Debits, with newly created OIN references, were instigated by [the Provider] to subvert the existing Direct Debit mandates. We had instructed [our] Bank to place a stop on any illegal and unwarranted direct debits from our accounts at that time.*

*Also, and notwithstanding the above, I have noted from recently acquired Subject Access Request records [...] which were received by us on 20 December 2018, that attempts are still being made every month by [the Provider] up to and including January 2019, to take fresh and new Direct Debits with the newly created OIN references.*

*On the 3<sup>rd</sup> April 2017 [the Provider] increased the Direct Debits on the 3 mortgages from €904.63 to €3,945.54 without prior notification. Our bank, [...] contacted to say our bank account was over drawn & we instructed [our bank] in writing to place a stop on THESE UNAUTHORISED DIRECT DEBITS.*

*Then 1<sup>st</sup> August 2017, the exact same attempt was made **again** by [the Provider], using fresh and new direct debit OINS. Again, 3 direct debits for a total of €3,945.54 was submitted to be paid from our account. [The Complainants’ bank] refunded this payment on 4 August 2017.*

*I can only conclude that the use of new OIN references was a method employed by [the Provider] to circumvent the stop payment procedures used with direct debits.*

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*Consequently, and in the circumstances [the Complainants' bank] had to formally refund us with the payments taken by [the Provider]. I contend that [the Provider] did not follow the correct procedure as outlined in your [letter of 21 December 2018].*

[...]

**[Provider] Vulnerable List**

*I also wish to remind the [Provider] Complaints Team that I, [the First Complainant] has been classed as a Vulnerable Customer since 27 November 2015. This information was obtained under FOI Subject Access Request [...]. Notwithstanding, [the Provider] have a fiduciary responsibility to us as a customer to act in our best interests, which you can see from above is not the case. [...]."*

**The Provider's Case**

The Provider says the Asset Service Provider acts on its behalf in respect of Buy to Let mortgage loan accounts which require a financial arrangement or which are in arrears. The Provider says the Asset Service Provider has acted on its behalf in respect of the Complainants' mortgage loan accounts, as follows:

|              |  |
|--------------|--|
| Account 4318 | <b>19 June 2013 to date</b>            |
| Account 5546 | <b>19 June 2013 to 25 April 2019</b>   |
| Account 1969 | <b>16 October 2018 to 8 April 2019</b> |

The Provider says letters advising the Complainants that their accounts were being transferred to the Asset Service Provider were issued on **19 June 2013** and **21 February 2019**.

In respect of sending correspondence to an incorrect address, the Provider says it understands this is a reference to the letter sent by the Mortgage Executive on **3 November 2017** which quoted a reference number ending 1185. The Provider says this letter was addressed to the First Complainant care-of the Complainants' local Provider branch. By way of background, the Provider says each customer has their own unique Customer Identification Number (CIN). The Provider advises that the CIN links accounts in the name of the customer.

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The Provider says the CIN for the First Complainant under loan account 4318 and 5546 were historically associated with CIN ending 1185. The Provider says this was the reference quoted on the above mentioned letter from the Asset Service Provider.

The Provider says that under this CIN, its system recorded the correspondence address for the First Complainant as care-of the Provider's branch and that had been the case since **2002**.

The Provider says when it was identified during the investigation of complaint reference 1317 that having this address on its records had caused issues for the Complainants, the address under this CIN was amended to the address where it was understood that the Complainants resided.

However, the Provider says that on its mortgage platform, where the Complainants' mortgage accounts are held, the correspondence addresses are note as:

|              |           |
|--------------|-----------|
| Account 5546 | Address 1 |
| Account 4318 | Address 1 |
| Account 1169 | Address 2 |

The Provider advises that these are also the addresses that the Asset Service Provider state it has on record for the Complainants' loan accounts.

The Provider notes the letter of **3 November 2017** refers to account 5546 as being in the joint names of the First Complainant's name and the First Complainant's name. The Provider says this is incorrect as this account does not bear the name of the First Complainant's name and suffix 'Jnr' - this loan account is in the name of the First and Second Complainants (and the Provider understands that the Complainants' son spells his name with only one 'n'). [It is noted that the First Complainant and the Complainants' son appear to have the same name]. The Provider says it is unable to explain why the Mortgage Executive stated both names in the address field of the letter as the First Complainant, other than possibly as a result of human error.

The Provider says the letter quoted arrears of €30,302.00 and that the purpose of this letter was to provide the First Complainant with a blank Third Party Authorisation form for completion and return. The Provider says the letter was sent as a result of a telephone conversation between the First Complainant and the Mortgage Executive, during which the Mortgage Executive stated he did not have authority on file to speak with the Complainants' Financial Adviser on the Complainants' behalf.

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The Provider says it would appear that when the letter was received in the Complainants' local branch, it was re-directed to the First Complainant's name at Address 3, using a new envelope which bore these handwritten name and address details.

During the investigation of this matter in **December 2018**, the Provider says staff at the branch stated that they were of the clear understanding that the Complainants lived at Address 3 at the time the letter was forwarded in **November 2017**. The Provider says it appreciates this may be a point of contention for the Complainants.

The Provider says it has a record of this address also being on record for the First Complainant and that Address 3 was the address of the First Complainant under a separate CIN 7718. The Provider says that CIN record noted the First Complainant's address was Address 3 since **November 2009**.

The Provider says the First Complainant has stated that he shares the same name as his son (albeit the Complainants' son spells his name with one 'n') and that his son resides at Address 3. While branch staff were confident that the letter would reach the First Complainant safely, the Provider says it wishes to apologise for any distress or inconvenience which the forwarding of the letter to Address 3 caused the Complainants.

The Provider says the Mortgage Executive forwarded another identical letter to the First Complainant on **3 November 2017**. However, this letter quoted the reference 1104 and was sent to the First Complainant at Address 1 which the Provider understands to be the Complainants' business address. The Provider says it also understands that the Complainants live or have in the past, lived in a residence within their business premises.

The Provider also wishes to highlight that the Asset Service Provider has posted many of its correspondence to the Complainants at Address 1. During the investigation of complaint reference 1317, the Provider says its Complaints Handler provided feedback to the Asset Service Provider regarding discrepancies in contact and customer details which became evident upon examination of correspondence issued by the Asset Service Provider. The Provider advises that this was done to ensure learnings were made and that such a matter would not recur.

In respect of contacting unauthorised third parties, the Provider says that on **13 April 2017**, its Third Party database was updated to reflect the Complainants' Financial Adviser as the nominated third party authority in respect of the Complainants' mortgage loan accounts. The Provider says this was done on foot of a written, signed instruction from the Complainants in respect of their three loan accounts dated **18 March 2017**.

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On **6 September 2017**, the Provider says the Asset Service Provider contacted a 'previous' Third Party Authority by telephone (DG, the Managing Partner of the Accounting Firm) with regard to the Complainants' loan accounts. The Provider says that DG was not available to take the call and the Asset Service Provider left a message with a receptionist to call the Asset Service Provider. The Provider says it is satisfied, from listening to a recording of the call, that no personal information was disclosed to an unauthorised third party regarding the Complainants' accounts.

On **7 September 2017**, the Provider says a return telephone call was received from DG, who advised that he was no longer acting as financial adviser for the First Complainant/the Complainants regarding their personal accounts. The Provider says the Financial Adviser was now acting as the financial adviser for the First Complainant/the Complainants.

The Provider states that the Asset Service Provider advised that it would remove DG as a third party authority for the accounts of the First Complainant/the Complainants. The Provider says that it has listened to a recording of the call which took place on **7 September 2017** and is satisfied that no personal information was disclosed to an unauthorised third party regarding the Complainants' accounts.

On **3 November 2017**, following a telephone call between the First Complainant and the Mortgage Executive, during which the Mortgage Executive advised that he could not see reference to the Financial Adviser as being the appointed third party authority, the Provider says the Mortgage Executive posted a blank Third Party Authority form to the First Complainant.

The Provider says it apologises that the Asset Service Provider's files were again not updated for the period between **September 2017** and **November 2017** to reflect that the Financial Adviser had authority to act on the Complainants' behalf. The Provider says this necessitated the letter of **3 November 2017** and that it recognises that this created knock-on effects for the Complainants.

The Provider says the Complainants provided a signed letter of authority to the Asset Service Provider dated **27 March 2017** instructing the Asset Service Provider that they were nominating the Financial Adviser to discuss all three accounts on behalf of the Complainants.

In respect of the telephone contact with the Managing Director in **September 2017**, the Provider refers to the following passage from the First Complainant's letter of **5 December 2017**:

*"On the 6<sup>th</sup> September 2017, the Managing Director of our daughter's business accountants [...] received a call from [the Asset Service Provider] wanting to discuss the financial details of our 3 above Buy to Let Mortgages. [The Accounting Firm] is our daughter's company accountants & are not involved in our personal borrowings since April 2014 ... I explained to her [named [Asset Service Provider] agent] that I had 3 letters from [the Provider] dated 3<sup>rd</sup> May 2017 authorising [the Complainants' Financial Adviser] to be our 3<sup>rd</sup> part(y) contact with [the Provider]."*

The Provider says there is no record that the Complainants amended their third party authorisation instruction between **April 2014** and **April 2017**. That being said, the Provider says it regrets that the information received from the Complainants in **April 2017** authorising the Financial Adviser to act as their third party authority (and thus removing DG) was not highlighted to the Asset Service Provider upon receipt of these instructions. Also, the Provider says it recognises the fact that the Financial Adviser advised the Asset Service Provider that such an instruction had been provided on other occasions prior to **April 2017**, but apparently not actioned.

The Provider advises that it has since put corrective measures in place to ensure that any data amendments are communicated promptly and correctly between it and the Asset Service Provider and *vice versa*. In this regard, the Provider says it undertook a project to review the data being issued to the Asset Service Provider in **2018/2019**. During this project, the Provider advises that data was aligned to the accurate data in its system which therefore provided the Asset Service Provider with up-to-date and accurate customer information going forward.

Further to this, the Provider says it regrets that the third party instruction which was placed on its database in **April 2017** was not relayed to the Asset Service Provider, thus resulting in the Asset Service Provider contacting the previous third party authority in **September 2017**. Therefore, the Provider says, it was not a case that it incorrectly updated the Complainants' third party instruction on their accounts, rather it was a case that the updated information was not relayed to the Asset Service Provider.

In order for a correspondence address to be amended or updated, the Provider says it requires a signed and dated written instruction from the customer(s) noted on the mortgage loan account outlining the new correspondence address. Upon verification of the customer signature(s), the correspondence address is then updated on its systems.

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The Provider advises that further to the project undertaken by it, the Asset Service Provider was instructed that they were not to update their systems when advised by customers over the telephone. The Provider says the Asset Service Provider was advised that it must follow the Provider's internal procedure, as noted above, whereby customers would be asked to furnish a signed letter to the Provider's dedicated correspondence team if they needed to request a change to their correspondence address.

The Provider advises that this review was completed to identify any mis-alignments where the customer address did not align to the Asset Service Provider's systems with the data being sent by the Provider and to ensure the Provider's system was updated with the up-to-date correspondence address for customers whose accounts were being managed by the Asset Service Provider.

In addition to the letter of **3 November 2017**, the Provider advises that it has identified further correspondence sent to the Complainants care-of the Provider's branch as follows:

**21 September 2017** Account 4318 – Provider letter advising that the Asset Service Provider had been appointed to manager this account

**27 September 2017** Account 5546 – Asset Service Provider notification of arrears of €28,912.22

**27 September 2017** Account 4318 – Asset Service Provider notification of arrears of €24,610.99

The Provider says it is not aware that the above letters were forwarded to the Complainant at Address 3 as occurred with the letter of **3 November 2017**. The Provider says that Address 3 is no longer noted as a valid correspondence address for the Complainants.

In respect of provisions 3.3 and 3.7 of the **Consumer Protection Code 2012** ("the Code"), the Provider says it wishes to reassure the Complainants and this Office that it has put corrective measures in place to ensure any changes to customers' personal or financial information, including the appointment or changes of authorised third parties, are relayed expediently and correctly between the Provider and the Asset Service Provider.

The Provider also states that according to the First Complainant's letter of **5 December 2017**, DG acted as third party for the Complainants up to **April 2014**. Therefore, DG would have been aware since **June 2013** that the Asset Service Provider was managing the Complainants' loan accounts on behalf of the Provider.

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In respect of anti-money laundering, the Provider says it is satisfied there are no anti-money laundering issues relating to correspondence for the Complainants being sent to their local branch.

Addressing the unauthorised direct debits, the Provider says there is no evidence to suggest that it changed the way in which direct debits were presented for payment on the Complainants' account.

Rather, the Provider says, it understands the Complainants' issue is that the full Normal Monthly Repayment for each of the three loan accounts, which legitimately fell due when the Complainants were no longer in a financial arrangement, were correctly presented for payment from their financial service provider account.

The Provider says the Mortgage Repayment Direct Debit Mandate form states the following:

*“By signing this mandate form, you authorise (A) [the Provider] to send instructions to your bank to debit your account and (B) your bank to credit your account in accordance with the instruction from [the Provider] Mortgages. As part of your rights, you are entitled to a refund from your bank under the terms and conditions of your agreement with your bank. A refund must be claimed within 8 weeks starting from the date on which your account is debited. Your rights are explained in a statement that you can obtain from [the Provider].”*

The Provider notes the documentation submitted by the Complainants as part of their complaint and says this shows that the Originator Identifier Number (“OIN”) for its mortgage section was originally 0034. The Provider says this was replaced by OIN ending 4775. The Provider says this code identifies the originator as the Provider. The Provider says it understands that the change in the OIN occurred when it migrated its mortgages from one platform to another. This migration occurred in **May 2017** and correlates to the change in OINs. Under the terms of the mortgage loan agreements, the Provider says it is entitled to make such changes and this does not have any detrimental impact on affected customers. The Provider says any such change would be done to ensure that the funds, applied by direct debit to customers' accounts, would be directed to the correct beneficiary bank account.

The Provider says the Unique Mandate Reference (“UMR”) is specific to the direct debit signed by the payers. In this case, there was a specific UMR for each of the three direct debit mandates, each identifying the Provider mortgage account in the Complainants' names under which the payments were being presented.

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The Provider says the direct debits were subsequently and speedily refunded to the Complainants. The Provider says three direct debits were presented by it on the Complainants' financial service provider account on **2 May 2017** which related to the monthly repayments due on the Complainants' three mortgage accounts and were for €1,243.16, €1,312.57 and €1,389.81. The Provider says these exact amounts were credited back to the Complainants' financial services provider account on **4 May 2017**, with the narrative 'REFUND [the Provider]'.

In the next section of its Complaint Response, the Provider has set out the arrears which accrued on the Complainants' accounts.

In terms of the consideration given to the Complainants' accounts when carrying out an assessment for an alternative repayment arrangement, the Provider says as the Complainants' loans were Buy to Let mortgages, they were not protected by the **Code of Conduct on Mortgage Arrears 2013**. However, the Provider notes the application of provisions 5.1 and 13.10 of the Code. The Provider also refers to the Standard Financial Statements ("SFSs") prepared in respect of each of the Complainants' loan accounts on **18 March 2017** between the Provider's Arrears Support Unit ("ASU") and the First Complainant and the Financial Adviser. The Provider says that although it did not have receipt of a written notification from the Complainants authorising the Financial Adviser to act on the Complainants' behalf at that point in time, voice authority was taken from the First Complainant over the recorded telephone line which satisfied the Provider's requirement that the matter could be discussed with the Financial Adviser.

The Provider says the recording of this conversation, during which the SFSs were completed, clearly demonstrates that all of the Complainants' three mortgage loan accounts were taken into consideration, together with the necessary gathering of income and expenditure figures, and discussion regarding assets, liabilities and the Complainants' future plans regarding their borrowings under review.

The Provider says the First Complainant and the Financial Adviser were advised during the telephone conversation that the ASU agent would not be able to make a proposal to them during the telephone conversation, rather he would need to forward the details to the Provider's Underwriting Department in order for them to make an assessment on the case. The Provider says it was agreed that the agent would make contact with the First Complainant on the following Monday to discuss matters. The Provider says the telephone call recordings of **18 and 20 March 2017** document these discussions which were held between the Provider, the Complainants and the Financial Adviser. The Provider submits the discussions were clear that the Provider was assessing the position on all three mortgage accounts.

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The Provider says the underwriting assessment that subsequently occurred shows that all three of the Complainants' accounts were reviewed as part of the SFS of **18 March 2017**. The Provider states the outcome of the underwriting review was that the Complainants' case was deferred because the underwriters did not consider that the three loan accounts were unsustainable. The Provider says it was identified that there was scope to extend the repayment term by nine years on two accounts and by seven years on one account. This would result in a total monthly repayment uplift of €1,157.00 per month, which the Underwriting Department considered would be affordable if the Complainants reduced their expenditure.

The Provider says it was noted that many areas of the Complainants' expenditure were too high and if expenditure was immediately reduced, then the Complainants would have affordability to meet the higher loan repayments, with sufficient monthly surplus to meet rental costs.

The Provider states that although efforts were made by agents in the ASU to communicate this outcome to the Complainants, Provider notes show that efforts to contact both of the Complainants by telephone were unsuccessful, resulting in the Provider's inability to communicate the views of the Underwriting Department to the Complainants verbally.

Having considered this, the Provider says it understands the reference to the fact that the Provider did not wish to engage on the Complainants' other mortgage loans may relate to a telephone call which the First Complainant had with the Mortgage Executive in the Asset Service Provider on **3 November 2017**. The Provider says it is true that the Mortgage Executive advised the First Complainant that he was only dealing with the mortgaged property in respect of loan account 4318 that day and that he subsequently said that he could look at the mortgaged property in respect of loan account 5546 also. The Provider notes that the Mortgage Executive stated that he was not dealing with the third mortgage account, account 1969. The Provider says the Mortgage Executive advised that: *"... I can only do the two account we [the Asset Service Provider] are working with, you can always deal with [the Provider] on the third property ..."* and referred to the First Complainant's Third Party Authority in this regard with a view to tying the positions on all three loan accounts together for the First Complainant. The Provider says it understands from this that the Mortgage Executive meant that the nominated third party could liaise separately with the Provider regarding loan account 1969.

The Provider says the reason the Mortgage Executive could not discuss loan account 1969 was because that particular account was not transferred to the Asset Service Provider at the point in time and the Asset Service Provider only became involved with this account in **October 2018**.

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The Provider asserts that this is why the Complainants/their nominated third party needed to deal with the Provider directly as advised during the call on **3 November 2017**.

The Provider says it regrets any confusion or inconvenience caused to the Complainants in relation to this. However, the Provider says it is satisfied that the information relayed to the First Complainant on **3 November 2017** was correct. The Provider says it is also satisfied that the SFS conducted with the ASU on **18 March 2017** included all three loan accounts and incorporated information on the Complainants' overall personal and financial circumstances.

In terms of the outcome of the SFS assessment in **March 2017**, the Provider says that during conversations which its ASU agent had with the Complainants and the Financial Adviser on **18 March 2017** and the next working day, **20 March 2017**, the ASU agent advised that the Provider was not in a position to make any repayment proposals to the Complainants at that time. Instead, the matter would need to be referred to the Underwriting Team for review and assessment of the best option, taking into account the circumstances of the case.

The Provider says the assessment by the Underwriting Team was completed on **29 March 2017**, the outcome of which meant that a decision on the case was deferred due to the fact that the Underwriting Team considered the Complainants had the scope to increase the term of their mortgage accounts and increase the level of repayments. The Provider says that letters advising of the Complainants' existing financial arrangements were issued on **29 March 2017**. The Provider states that although system notes of **31 March 2017** state 'letter and txt requested as per defer strategy', it was unable to locate such a text message or letter being sent to the Complainants in respect of the deferral decision. The Provider has apologised for its failure to communicate the outcome of the SFS to the Complainants.

In respect of the First Complainant/the Complainants being vulnerable customers, the Provider says the Complainants raised a complaint in **May 2015** which was recorded under complaint reference 2260, relating to the level of contact from the ASU regarding their three loan accounts. During his communications with the Provider, the Provider says the First Complainant cited his health issues and for this reason, in the best interests of the Complainants, the Complaints Handler requested the ASU to add the First Complainant to the Vulnerable Customers register which was actioned, as per the Provider's system notes, on **27 November 2015**.

/Cont'd...

The Provider says the Complaints Handler requested that instead of following the Provider's normal contact strategy, the Complainants be placed on a contact exclusion list (for the period while financial arrangements applied to the loan accounts) in order to alleviate any undue stress to the Complainants. The Provider says this was the reasonable arrangements/assistance which the Complaints Handler deemed the most appropriate for the Complainants' particular circumstances.

The Provider says the complaint was resolved in Final Response Letters in **November 2015** with an addendum to the Final Response issuing in **February 2016**. The Provider advises that financial redress totalling €3,700.00 was provided to the Complainants in resolution of that complaint.

By putting such contact exclusion measures in place, the Provider says it considered the health of the First Complainant as advised in **2015**, and put the appropriate arrangements in place to facilitate his dealings with the Provider and to remove any distress being experienced by the Complainants regarding contact made by the ASU.

Therefore, the Provider says placing the Complainants on the contact exclusion list was the support identified and implemented for the Complainants during the complaint investigation in **2015**. This measure remained in place while the Complainants were in financial arrangements on their accounts.

The Provider says it regrets if the fact that it noted vulnerability on the mortgage system is a cause of dissatisfaction for the Complainants. While its system is not calibrated to allow for the removal of a note previously placed on record, the Provider advises that it can, if requested, add an additional note stating that the Complainants wish it to be noted that they do not consider themselves to be vulnerable.

In respect of its response to the Complainants' complaint, the Provider says that complaint reference 1317 was initially raised with the Asset Service Provider and then forwarded to the Provider for investigation and response. The Provider submits that the complaint was handled in accordance with its complaints process and a final response was issued on **21 December 2018** with an addendum issuing on **2 April 2019**. The Provider says complaint reference 1519 was raised in writing and a response issued to this complaint on **14 October 2019**.

The Provider says it fully recognises that it did not respond to complaint reference 1317 in the timely manner which the Complainants deserved. It suggests that the delay experienced by the Complainants was outside of the level of service which the Provider aims to provide to all customers. Without excusing this significantly delayed response, the Provider says, by way of explanation, the delay was as a result of a higher than normal level of complaints received around that time. The Provider has apologised unreservedly for its delay in responding to the Complainants in a timely manner.

In respect of complaint reference 1519, the Provider says while the Complainants' letters to the ASU were dated **July 2019**, these were initially treated as requests for information / statements and acted upon. The Provider says the complaint was recorded on **3 September 2019** and an acknowledgement letter issued within 5 working days on **9 September 2019**.

The Provider advises that the Complainants' three loan account entered arrears in **2012** and the following financial arrangements were sanctioned in **March 2013**:

|                      |  |
|----------------------|--|
| Account 5546         | Approved interest only arrangement for 36 months     |
| Accounts 4318 & 1969 | Reduced repayment of €300.00 per month for 36 months |

The Provider states that account 5546 was transferred to a third party with effect from **February 2019** and account 1969 was transferred to a third party with effect from **June 2019**. The Provider advises that account 4318 remains within its ownership.

The Provider has set out the following:

#### Direct Debit

The Provider states that it is entitled to attempt to recover the normal monthly payments by direct debit when there is no alternative repayment arrangement in place. In the absence of any agreement in the terms of forbearance on the loan accounts, the Complainants are contractually obliged to pay the full amount as set out in the original mortgage loan agreements.

#### Contact by the Asset Service Provider

The Provider says it is satisfied that no personal or financial information relating to the Complainants was disclosed to DG or the receptionist during the telephone contacts on **6 and 7 September 2017**.

/Cont'd...

That said, the Provider says due to the potential seriousness of such a matter, during the course of the complaint investigation under reference 1317, its Complaints Handler contacted the Asset Service Provider to ensure that this matter was recorded correctly regarding the contact made with a previous third party on the Complainants' accounts.

The Provider says it undertook much work to address the identified lapse in transfer of some key information between it and the Asset Service Provider to ensure that both parties going forward would have up-to-date and relevant information for customers.

#### Correspondence issued by the Asset Service Provider and the Provider

The Provider says it has attempted to explain why the Asset Service Provider addressed some (but not all) correspondence to the Complainants at their local branch. The Provider says remedial action was taken to amend the addresses held for the Complainants and that it can see no evidence that the matter recurred once rectified.

The Provider states that while the branch acted in good faith by forwarding such correspondence to Address 3 on the understanding that the Complainants resided there, the Provider says this matter has also been raised with the branch as a direct result of the Complainants' feedback.

#### The Complaints for Adjudication

In the course this complaint, certain issues surrounding the Provider's compliance, and the Asset Service Provider's compliance, with data protection legislation has been raised. It is important to note that pursuant to **Section 44(2)(c)** of the **Financial Services and Pensions Ombudsman Act 2017**, a complaint may not be made to this Office where the conduct complained of relates to a matter that is within the jurisdiction of an alternative suitable forum or tribunal. Further to this, **Section 50(3)(c)** states that this Office shall not investigate or make a decision on a complaint where the complaint relates to a matter within the jurisdiction of an alternative suitable forum or tribunal. In such circumstances, the Provider's compliance, or the Asset Service Provider's compliance, with the any applicable data protection legislation will not be examined as part of this complaint, which is more properly a matter for the Office of the Data Protection Commission.

In a submission received from the Financial Adviser on **4 November 2020**, the Financial Adviser raised certain issues regarding the appointment of a Receiver over one of the secured properties and the sale of the loans the subject of this complaint.

In a submission dated **12 November 2020**, the Provider stated that these issues did not form part of the original complaint or the Summary of Complaint issued by this Office, and the conduct identified by the Financial Adviser occurred after the complaint was received by the Provider.

It is important to note that **section 50(3)(a)** of the **Financial Services and Pensions Ombudsman Act 2017** provides that this Office shall not investigate or make a decision on a complaint where the internal dispute resolution procedures under **section 54** have not been complied with. **Section 54(1)** states that this Office may decide not to investigate or make a decision on a complaint where (a) the Complainants have not engaged with the Provider and (b) the Provider has not been given a reasonable opportunity to deal with the complaint through its internal dispute resolution procedures. Further to this, **section 54(3)(b)** states before the internal dispute resolution process is complete, this Office may consider a complaint where it is determined that the complaint is of such importance as to warrant waiving the internal dispute resolution procedure.

Having considered the matter, the appointment of a Receiver and the sale of the Complainants' loans have not been raised as a formal complaint with the Provider or subject to the Provider's internal dispute resolution procedures. Accordingly, I determine that by reference to **section 50(3)(a)** and **section 54(1)** and having considered the provisions of **section 54(3)(b)**, any complaint(s) in respect of the appointment of a Receiver and the sale of the Complainants' loans do not form part of the present complaint and, therefore, will not be adjudicated upon as part of this complaint. It is a matter for the Complainants if they wish to make a separate complaint in this regard.

Accordingly, the complaints are that the Provider:

Contacted an unauthorised third party to discuss the Complainants' loan accounts;

Failed to update its records regarding the third parties authorised to discuss the Complainants' accounts;

Refused to engage with the Complainants' Financial Adviser;

Issued correspondence regarding the Complainants' loan accounts to an incorrect address;

Failed to consider the Complainants' overall repayment capacity when assessing alternative repayment proposals and failed to issue a written decision;

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Presented unauthorised direct debits on the Complainants' personal current account;

Provided a service that was ineffective, confusing and bullying when communicating key information;

Failed in its duty to treat the First Complainant as a vulnerable consumer; and

Provided a poor quality of service and complaints handling.

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

Following the issue of my Preliminary Decision, the Provider made a submission under cover of its letter to this office dated 3 December 2021, a copy of which was transmitted to the Complainants for their consideration.

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The Complainants have not made any further submission.

Having considered the Provider's additional submission and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

### **Analysis**

#### ***Third party authority***

The Complainants furnished the Provider with a letter of authority dated **18 March 2017** giving the Provider permission to discuss their loan accounts with their Financial Adviser (noting their address as Address 1). This letter appears to have been received by the Provider around **21 March 2017**. However, the Provider's system notes indicate that it was not until **13 April 2017** that the Financial Adviser was added to the Provider's third party database.

In this respect, I note that Provision 3.3 of the Code states, as follows:

*"A **regulated entity** must ensure that all instructions from or on behalf of a **consumer** are processed properly and promptly."*

It appears to have taken approximately 16/17 business days for the Provider to update its database with details of the Complainants' new authorised third party. It is not clear why it took this length of time to process the Complainants' instruction, and I am not satisfied that it should have taken this length to process such an instruction. Accordingly, I accept that there was an unreasonable delay on the part of the Provider in updating its database with details of the Complainants' authorised third party.

By letter dated **28 April 2017**, the Provider wrote to the Financial Adviser advising that:

*"We have applied the authority to the customers account now. This authority will remain on the account until you or the borrower request that it be removed."*

By letter dated **3 May 2017**, the Provider wrote to the Complainants at Address 2, in respect of loan account 6405 (1969), as follows:

*"We are writing to acknowledge receipt of your instructions appointing [the Financial Adviser] to act on your behalf in relation to your mortgage."*

/Cont'd...

*We have noted this on our records.*

***What happens next?***

*This authority will remain on your account until you request that it be removed. [...]*

*Regardless of this authority, we may send communication in relation to your arrears directly to you where it is a requirement of the Code of Conduct on Mortgage Arrears ("CCMA"), and where not to do so would be a breach of the requirements of this Code. [...]"*

Similar letters were also sent to the Complainants in respect of loan accounts 2866 (5546) and 3449 (4318) but to Address 1. At this juncture, I note an inconsistency exists in respect of the addresses used by the Provider when issuing the above correspondence to the Complainants.

While the Provider's database was updated on **13 April 2017**, correspondence did not issue to the Financial Adviser in respect of the Complainants' instruction for a further 11 business days. Further to this, correspondence acknowledging the receipt and execution of the instruction did not issue to the Complainants until 14 business days after **13 April 2017**. Having considered the matter, it is not clear why it took this length to issue these particular letters. In the circumstances, I am of the opinion that there was an unreasonable delay on the part of the Provider in acknowledging that its records had been updated with details of the Complainants' authorised third party.

As at **March/April 2017**, it appears that loan accounts 2866 (5546) and 3449 (4318) were serviced by the Asset Service Provider. However, on considering the Provider's submissions, it is not clear what method or process the Provider had in place for notifying the Asset Service Provider of changes to an accountholder's authorised third party. Further to this, the Provider does not appear to have clarified whether this information was passed to the Asset Service Provider and the date on which this occurred. In any event, the evidence shows a failure on the part of the Provider to forward details of the Complainants' new authorised third party to the Asset Service Provider.

This failing, as discussed further below, resulted in an unauthorised third party being contacted by the Asset Service Provider regarding the Complainants' loan accounts on **6 September 2017**. Following this, separate conversations took place between the First Complainant and the Asset Service Provider, and DG and the Asset Service Provider on **7 September 2017**.

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On considering these conversations, it is clear that the Asset Service Provider was not aware that a new third party had been appointed by the Complainants (the Financial Adviser). During a conversation with the First Complainant on **7 September 2017**, the Asset Service Provider's agent explained that she could not speak with the Financial Adviser, stating that: *"I haven't got the letter to talk to [the Financial Adviser]. I have to ask [the Provider] for it."* It appears from this conversation that the Asset Service Provider's agent indicated that she would contact the Provider regarding this, and other matters raised by the First Complainant during this conversation. While it appears from timeline of events at Appendix M of the Provider's Schedule of Evidence that the Asset Service Provider referred this matter to the Provider, it is not clear what action was taken by the Provider to communicate the correct authorised third party details to the Asset Service Provider at this juncture.

The evidence shows that despite the above communication, the Asset Service Provider remained formally unaware (from a Provider perspective) of the Financial Adviser's appointment for quite some time after this.

During a telephone conversation on **3 November 2017**, the First Complainant advised the Asset Service Provider's agent that a third party had been appointed to deal with the Complainants' loan accounts. In response to this, the Asset Service Provider's agent stated that an email had recently been received from a third party adviser explaining that they were no longer dealing with the Complainants. However, it appears, in this instance, the Asset Service Provider's agent was referring to the individual contacted in **September 2017**, DG. The First Complainant told the Asset Service Provider's agent that the Asset Service Provider had the wrong information. In response to this, the Asset Service Provider's agent advised the First Complainant that a new letter of authority was required. During this conversation, the First Complainant attempted to explain, at several points, that a letter of authority had been furnished to, and acknowledged by, the Provider. However, the Asset Service Provider's agent did not accept this and repeated that the First Complainant was required to send a signed letter of authority to the Asset Service Provider.

Having considered this conversation, I accept that the manner in which the Asset Service Provider's agent responded to the First Complainant was not appropriate. It is my opinion that this agent failed to give appropriate consideration to the issues raised by the First Complainant and did not offer to investigate or query the matters with the Provider, which I believe would have been the appropriate course of action.

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At one point in the conversation, having discussed the arrangements in previously in place on the Complainants' loan accounts and the contractual monthly repayments, the Asset Service Provider's agent stated that:

*"This going around in circles [interruption] and you claiming that we breached data protection when you know we haven't and these other issues that you're bringing up that you know are not issues [interruption] they are not resolving the real issue which is trying to get something done with [Secured Property 1 (loan account (5546) 3449)] so that way a receiver is not appointed to the property."*

At the time of the **November 2017** conversation, almost eight months had passed since the letter of authority was received by the Provider and almost seven months had passed since the Provider updated its third party database, however, the Asset Service Provider remained unaware (from a Provider perspective) of the correct third party authority authorised to discuss the Complainants' accounts. Further to this, it is not clear from the Provider's submissions or the evidence, when the Provider formally communicated details of the Complainants' authorised third party to the Asset Service Provider. It is my opinion that the Provider should have notified the Complainants, and this Office as part of its formal response to this complaint, as to when this occurred.

In its Complaint Response, the Provider states that corrective measures have been put in place to ensure account amendments are properly communicated to the Asset Service Provider. The Provider also advises that a project was undertaken in **2018** and **2019** to ensure that its account data was aligned with that of the Asset Service Provider.

Although the Provider has outlined the steps taken in response to the issues that arose as part of this complaint, it appears likely that correct third party authority details were not communicated to the Asset Service Provider until some point during **2018**, when the Provider undertook its review project and implemented certain corrective measures. In this respect, I note that during a telephone conversation between the First Complainant and the Asset Service Provider on **7 February 2018**, it appears the Asset Service Provider had not yet received details of the Complainants' correct authorised third party. As such, it appears there was a delay of at least 11 months (**April 2017** to **February 2018**) in communicating correct account details to the Asset Service Provider. While the Asset Service Provider issued a blank 'Letter of Authority' to the First Complainant on **3 November 2017**, which he declined to return, I do not accept that this excuses or mitigates the Provider's conduct in failing to properly communicate third party authority details to the Asset Service Provider.

Accordingly, I accept that the Provider failed to promptly communicate, and unreasonably delayed in communicating, details of the Complainants' authorised third party to the Asset Service Provider.

***Contact with an unauthorised third party***

The evidence shows that the Asset Service Provider telephoned DG on **6 September 2017** to discuss the Complainants' loan accounts. While the evidence suggests that DG may have had some involvement with the Complainants' loan accounts in previous years, in light of the letter of authority issued to the Provider in **March 2017**, I do not consider it was appropriate for the Asset Service Provider to contact DG in **September 2017** to discuss the Complainants' accounts. It is my view that had the Provider promptly communicated details of the Complainants' **March 2017** instruction to the Asset Service Provider then DG would not have been contacted.

In terms of the telephone call placed to DG on **6 September 2017**, I note that DG's secretary answered the phone and the Asset Service Provider's agent asked to speak with DG. DG's secretary advised the Asset Service Provider's agent that DG was unavailable and offered to take a message. The Asset Service Provider's agent explained he was calling in relation to the First Complainant and gave his contact details. On **7 September 2017**, DG telephoned the Asset Service Provider to advise that he was no longer acting as the First Complainant's financial adviser.

Accordingly, I am satisfied that arising from the Provider's failure to promptly notify the Asset Service Provider of the Complainants' **March 2017** instruction, the Asset Service Provider contacted an unauthorised third party with the intention of discussing the Complainants' loan accounts. However, on reviewing the telephone conversations which took place on **6 and 7 September 2017**, I am satisfied that the Asset Service Provider did not discuss or disclose any confidential account information.

***Engagement with the Financial Adviser***

The Financial Adviser telephoned the Provider on **6 April 2017**. Prior to discussing the Complainants' accounts, the Provider's agent explained that she would first have to check the third party database for the Financial Adviser's details. Following this, the Provider's agent advised the Financial Adviser that there were no details relating to him on the database. In response to this, the Financial Adviser stated that he had completed an SFS over the phone with the Provider on **18 March 2017** and that he had received confirmation that the Complainants' letter of authority had been received by registered post.

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The Provider's agent placed the Financial Adviser on hold to review the account notes. When the Provider's agent returned to the call, she advised that on **18 March 2017**, the First Complainant authorised the Provider to discuss the account over the phone but that the Financial Adviser's details were not keyed onto the system yet.

The Provider's agent then enquired as to the purpose of the call. The Financial Adviser advised that the parties had not heard from the Provider in relation to the previously completed SFS and the proposal submitted, and that the 'MARP' agreement had expired. The Financial Adviser repeated the point that acknowledgement had been received showing that the letter of authority had been received by the Provider. The Financial Adviser also noted this was the third occasion on which authority had been provided. The Provider's agent advised that a manager would follow-up on the matter. The Provider's agent further advised she could see on the account notes that a letter of authority had been received but it had not been added to the database. The Provider's agent stated that the Provider would try to contact the Complainants regarding the matter.

In circumstances where the letter of authority was received by the Provider on **21 March 2017**, it is my opinion that the Provider's database should have been updated by the time of the Financial Adviser's telephone call on **6 April 2017**, which was 12 business days after **21 March 2017**.

Accordingly, as a result of the Provider's delay in updating its third party database, I accept that the Financial Adviser was unable to discuss quite important account related matters with the Provider. However, having considered the evidence, it appears this is the only occasion on which the Financial Adviser was unable to discuss the Complainants' loan accounts following the **March 2017** letter of authority.

### ***Correspondence***

The CIN ending 1185 shows a 'Permanent Residential Address' for the First Complainant as care-of the Provider's branch as from **30 January 2002**. This appears to have been updated to Address 1 in **April 2019**. However, it is not clear why or how the Provider recorded the First Complainant's permanent residential address as a branch address, which, in my opinion, was quite clearly not an appropriate address to maintain in respect of the First Complainant. Further to this, it is not clear what efforts were subsequently made by the Provider to ensure that it had an appropriate address on record for the First Complainant. It is very disappointing, and quite concerning, to see that this address remained in place in respect of the First Complainant for over 17 years.

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In the 'Home Loan Application Form' signed by the Complainants on **24 March 2004**, their address is recorded as Address 2. However, it does not appear that the Provider updated its records or CINs to reflect this address related information.

The CIN ending 7718 shows a 'Permanent Residential Address' for the First Complainant as Address 3 as from **9 September 2009**. However, it is not clear how the Provider came to understand this to be the First Complainant's address or the basis for recording this as an address for the First Complainant. In particular, I note there is no evidence to suggest that the First Complainant ever resided at this address, that this address was ever provided to the Provider by the First Complainant or that this address matches any of the mortgage properties.

On **10 November 2015**, the Provider wrote to the Complainants at Address 1 by separate letters in respect of accounts 3449 (4318), 6405 (1969) and 2866 (5546). On **25 November 2015**, the Provider wrote to the Complainants in respect of account 2866 (5546) at Address 1. On **26 November 2015**, the Provider wrote to the Complainants in respect of account 6405 (1969) at Address 2 and account 3449 (4318) at Address 1.

In light of the address information recorded on CIN 1185 and CIN 7718, it is not entirely clear why the Provider issued correspondence to the Complainants at addresses that were not recorded on either of the previously mentioned CINs. The basis for issuing correspondence to the Complainants at Address 1 is equally unclear. However, I note that in its Complaint Response, the Provider states that Address 1 is recorded for accounts 2866 (5546) and 3449 (4318), and Address 2 is recorded for 6405 (1969) on its mortgage platform. While the Provider has provided copies of the information recorded on its CINs, the Provider does not appear to have provided copies of the information contained on its mortgage platform. Further to this, it quite strange that within a very short period of having issued correspondence to the Complainants at Address 1 in respect of all three loan accounts, correspondence issued in respect of account 6405 (1969) to a separate address, not recorded on either CIN. The same inconsistent approach can be seen in the letters issued by the Provider on **1 March 2017** and **3 May 2017**.

At this juncture, I must say that the Provider's conduct in terms the manner in which it recorded address details in respect of the First Complainant is quite inappropriate and questionable. Furthermore, the approach taken by the Provider in issuing correspondence to the Complainants was very much incoherent and inconsistent in terms of the addresses used.

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The Asset Service Provider wrote to the First Complainant on **3 November 2017** in respect of loan account 5546 (2866) by way of two identical letters and the only apparent difference between the two letters is the address and reference number. In this respect, I note that one letter is addressed to the First Complainant at Address 1 (reference 1104) and the other is addressed to the First Complainant 'C/O' the Provider's branch address (CIN 1185). Strangely, it appears that both letters were received in the Provider's branch.

It can be seen from these letters that the 'Account Name(s)' were recorded as the First Complainant's name twice and that the Second Complainant's name was omitted from each letter. These letters also noted an arrears balance of €30,302.03. The purpose of this letter was to provide the First Complainant with a blank Letter of Authority to sign and return to the Asset Service Provider.

In respect of the letter addressed to the Provider's branch, it appears that when this letter was received in branch it was re-directed to the First Complainant at Address 3. In this respect, the Complainants have provided a copy of a hand addressed envelope. However, I note that an explanation has not been offered as to how the Provider's branch staff member understood the First Complainant resided at this address. Accordingly, I am not satisfied that it was appropriate for the Provider's branch staff to send correspondence to this address.

In respect of the letter addressed to the First Complainant at Address 1, it appears this letter was also re-directed to the First Complainant by branch staff. However, the address to which this letter was re-directed appears to be the same address as was on this letter in the first instance. In this respect, I note that a copy of a further hand addressed envelope has been provided. However, it appears that a different branch staff member is likely to have addressed this envelope as the handwriting on this envelope is noticeably different and refers to the First Complainant as 'Snr'.

Accordingly, having considered the matter, I accept that the Provider failed to maintain appropriate account information in respect of the Complainants; failed to provide correct account information to the Asset Service Provider; and issued (or caused to be issued) account related correspondence to an incorrect address.

### ***Assessment of the Complainants' repayment capacity***

In both letters of **5 December 2017**, the First Complainant states that the Asset Service Provider's agent would not engage with him in relation to all of the loan accounts.

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During the course of this call, the Asset Service Provider's agent advised that the purpose of the call was to discuss account 3449 (4318) and that account 2866 (5546) could also be discussed. The First Complainant stated that the Asset Service Provider would have to deal with all three loan accounts. However, the Asset Service Provider's agent stated that he could only deal with two loan accounts and that the First Complainant would have to deal with the Provider in respect of the third loan account. During a telephone conversation on **7 February 2018** with the Asset Service Provider, the First Complainant stated that the Asset Service Provider would have to assess the Complainants' overall financial position. In response to this, the Asset Service Provider's agent agreed with the First Complainant and advised that the Complainants' overall financial position would be assessed though an SFS.

On considering the evidence, it appears the First Complainant was concerned to ensure that the Complainants' overall financial position was taken into consideration by the Asset Service Provider in respect of all three loan accounts, and that this was not being done because the Asset Service Provider would only deal with two loan accounts. In this respect, I am not necessarily satisfied that there was a refusal on the part of the Asset Service Provider to assess the Complainants' overall financial position. It appears that because only two of the Complainants' loans were transferred to the Asset Service Provider, the Asset Service Provider could only deal with these two loans in terms of considering any alternative repayment or restructure proposals and it could not consider such matters in respect of the third loan account, which was not being serviced by it at the time and remained with the Provider.

In terms of the Provider's assessment of the Complainants' overall repayment capacity, I note that a SFS was completed during a telephone call on **18 March 2017**, with the First Complainant, the Financial Adviser and the Provider. On considering this telephone conversation, I note the SFS was completed in respect of each of the three mortgage loan accounts the subject of this complaint. At approximately 16 minutes and 45 seconds into the conversation, the Provider's agent stated, as follows:

*"because there are three properties, we will need to, you know, assess what would be the best arrangement for all three of them [...] and spread whatever affordability is across all three [accounts]"*.

It appears from the documents contained at Appendix F and Appendix G of the Schedule of Evidence that the Provider assessed and considered the Complainants' position in respect of all three loan accounts in **March 2017**. Further to this, account notes for **18, 20 and 29 March 2017** at Appendix L(i) indicate that consideration was given to repayment capacity in respect all three accounts.

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The Underwriting Department assessment dated **29 March 2017** at Appendix L(ii) further indicates that consideration was given to repayment capacity in respect all three accounts.

In response to an email from this Office where certain information was sought in respect of the conduct complained of, in an email dated **21 February 2020**, the Financial Adviser explained that the Provider did consider the Complainants' repayment capacity, as follows:

*"[The Provider] did in fact consider the Complainants' overall financial repayment capacity in a pre-arranged telephone conversation (to complete an SFS over the phone) between the Bank, the clients Third Party Independent Financial Advisor and the clients themselves and agreed an Alternative Repayment Proposal, however the Bank never followed through on a Final Decision, as promised by them."*

As can be seen from this email, the Financial Adviser states that the Provider did not communicate the outcome of its assessment. In its Complaint Response, the Provider says that letters issued to the Complainant regarding their existing financial arrangements on **29 March 2017**. The Provider also says that although account notes of **31 March 2017** state 'letter and txt requested as per defer strategy', it is unable to locate this text message or the letter.

In this respect, I note that on foot of the underwriting assessment which took place on **29 March 2017**, the matter was to be deferred back to the Complainants in respect of a reduction in their expenditure. In the Provider's account notes dated **31 March 2017**, it is stated that: *"letter and txt requested as per defer strategy"*. First, I note that the word *requested* is used in this particular account note, however, this does not demonstrate that any such letter or text message were sent. Second, I note that the Provider is unable to furnish a copy of the particular letter or text message referenced in this account note.

The account notes indicate that unsuccessful telephone contact was attempted with the First Complainant on **5 and 6 April 2017**, and with the Second Complainant on **7 April 2017**. While the purpose of these calls is not clear from the account notes, in the timeline of events, in respect of the calls placed to the First Complainant, it states that these calls were *"to advise of outcome."*

On considering the evidence, I accept that appropriate consideration was given to the Complainants' overall repayment capacity across their three loan accounts. However, while it appears that efforts were made to contact the Complainants by telephone regarding the outcome of the underwriting assessment, I am not satisfied that the text message or letter requested in the account notes dated **31 March 2017** were issued.

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In such circumstances, I am of the view that there was a failure on the part of the Provider to properly communicate the outcome of the underwriting assessment to the Complainants. It is my opinion that this caused unreasonable disruption and inconvenience and interfered with the Complainants' ability to put alternative arrangements in place in respect of their loan accounts.

### ***Unauthorised direct debits***

It is the Complainants' position that the Provider presented unauthorised direct debits to a personal current account between **April 2017** and **August 2017** in respect of the loan accounts the subject of this complaint.

Extensive submissions have been exchanged in relation to this aspect of the complaint. In a submission dated **18 August 2020**, the Financial Adviser disputed the Provider's entitlement to seek to present direct debits in **April 2017** as a MARP process was ongoing and that revised monthly repayments had been agreed in respect of the three loan accounts. The Financial Adviser also stated that the Complainants attended their bank on **3 May 2017** and **4 August 2017** to sign a 'Bank (SEPA) Restriction Form' in order to *blacklist* the Provider. The Financial Adviser further refers to the use of a new 'OIN' by the Provider and the Provider's asserted non-compliance SEPA Guidelines.

The Provider wrote to the Complainants separately in respect of each of their three loan accounts on **9 January 2017** to inform them that the repayment arrangement currently in place on the respective account was due to expire on **1 March 2017** and that upon expiry of the arrangement, repayments would revert to the monthly repayment amounts required under the terms of the relevant mortgage contract.

The Provider wrote to the Complainants again on **29 March 2017** in respect of account 3449 (4318) to advise them of the expiry of the alternative repayment arrangement on their loan account. The letter further advised, amongst other matters, that the new monthly repayment amount would be €1,243.16 beginning on **1 April 2017**. However, it does not appear that similar letters were issued in respect of accounts 2866 (5546) or 6405 (1969). In a submission dated **23 October 2020**, the Provider says that:

*"Similar letters should have been issued to the Complainants on 29 March 2017 regarding the new repayments due on mortgage references xx6405 and xx 2866 [...]. Unfortunately, the Bank is unable to retrieve copies of these letters [...]."*



In respect of the correspondence issued by the Provider on **29 March 2017**, it appears this correspondence was issued only in respect of loan account 3449 (4318). In circumstances where the Provider issued such correspondence in respect of one loan account, it is my opinion that the Provider should have issued similar correspondence in respect of all loan accounts. However, I am not satisfied that any such correspondence was issued in respect of accounts 2866 (5546) or 6405 (1969).

Having considered the evidence, I accept that the Complainants were aware that the arrangements in place on their loan accounts were due to expire on **1 March 2017** and the repayments would revert to the full monthly repayment amount. Further to this, it is clear from the telephone conversation which took place on **18 March 2017** with the Provider and the First Complainant and the Financial adviser, and the separate telephone conversations with each of the Complainants on **20 March 2017**, that the current arrangements on the accounts had expired and a further formal arrangement had yet to be agreed and put in place. The evidence also shows, as discussed above, that the Provider did not revert to the Complainants following its assessment of their loan accounts in **March 2017**. Therefore, I am satisfied that no further arrangements were agreed or put in place. As a result, I accept that the full contractual repayments were due in respect of each of the loan accounts.

As the underwriting assessment took place around **29 March 2017**, I cannot see how any new repayment arrangements could have been put in place in advance of the **1 April 2017** repayment date. Further to this, I do not accept that because the Complainants were engaged in any kind of MARP or assessment process, the Provider was required to refrain from seeking to collect the monthly repayments due in respect of each of the loan accounts nor did it discharge the Complainants' obligation to make the appropriate monthly repayments.

'Direct Debit Details' documents from the Complainants' bank show that the direct debits for each of the loan accounts were cancelled on **5 May 2017**. In a further set of 'Direct Debit Details' documents, it can be seen that the direct debits were cancelled again on **4 August 2017**. It can also be seen that the OIN/Creditor Identifier changed between each of these sets of documents. I also note that the UMR (Unique Mandate Reference) also changed in respect of each of the loan accounts.

While the Complainants cancelled the direct debits with their bank, I do not accept this means that the Provider was prohibited from presenting a direct debit to the Complainants' current account. In particular, I note the Complainants did not seek to cancel the direct debits with their bank until after the **April 2017** direct debit presented to their account.

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Therefore, this direct debit was presented before any attempt to cancel direct debits or any change to the OIN/Creditor Identifier or UMR. Furthermore, it is also not clear whether the Complainants sought to cancel their direct debits directly with the Provider or issued any instruction to the Provider to cancel the direct debits. It is my opinion that if the Complainants wanted to stop the direct debits, this instruction should have been communicated to the Provider.

In terms of the cancellation of the direct debits, I note that the means by which the Complainants were to make their monthly loan repayment was by way of direct debit. In this respect, I note that in the Special Conditions accompanying the Offer of Advance in respect of loan account 4318 (3449), it states:

*“A fully completed Direct Debit Mandate (enclosed) to be forwarded to this office prior to release of the mortgage cheque.”*

Clause 3 of the General Conditions states that:

*“Throughout the Term the Applicant(s) will be required to maintain an account with a branch of a Bank or Building Society and to give the Manager of that branch a direct debiting mandate to pay the variable monthly repayments.”*

I note that similar conditions are also contained in the Offers of Advance for loan accounts 5546 (2866) and 1969 (6405).

Therefore, it would appear that in cancelling the direct debit, the Complainants acted contrary to the terms of their loan agreements.

It is the Provider’s position that it changed the OIN during **May 2017**. I understand that an OIN is a unique number used to identify the Provider account which the Complainants’ direct debit payments were to be transferred. As part of a submission dated **2 October 2020**, the Financial Adviser enclosed correspondence between the First Complainant and the Banking and Payments Federation Ireland (“the BPF”) from **August 2020** where the First Complainant raised certain queries regarding direct debits. In particular, the First Complainant queried whether a bank could use a different OIN without a customer’s permission and whether a bank could use different creditor identifier numbers to collect direct debit payments. In response to this, the BPF stated:

*“If a Creditor changes Creditor information including Name, Creditor Identifier, Unique Mandate number they must advise the Debtor.”*

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While the BPFİ has set out its position in respect of the questions posed by the First Complainant, it is not clear what the BPFİ's position is based on. For instance, neither the BPFİ nor the Complainants have identified how any change to the OIN/Creditor Identifier or the UMR was contrary to the terms of the Complainants' loan agreements, the provisions of the Code or any SEPA regulations.

Accordingly, I accept that the Provider was entitled to change the OIN/Creditor Identifier and UMR in respect of the Complainants' direct debits and I do not accept that the absence of any communication in this regard meant that subsequent direct debits were unauthorised. Further to this, I note that the Complainants' current account statements indicate that Provider refunds in respect of all three loan accounts were credited to this account on **4 May 2017** and **8 August 2017**.

Therefore, I do not accept that the Provider presented unauthorised direct debit payments in respect of the Complainants' loan accounts.

#### ***The First Complainant as a vulnerable consumer***

In the First Complainant's letter to the Provider dated **17 January 2019**, he states that:

*"I also wish to remind the [Provider] Complaints Team that I, [the First Complainant] has been classed as a Vulnerable Customer since 27 November 2015. This information was obtained under FOI Subject Access Request [...]. Notwithstanding, [the Provider] have a fiduciary responsibility to us as a customer to act in our best interests, which you can see from above is not the case. [...]."*

In a submission dated **18 August 2020**, the Financial Adviser states that the Provider failed to acknowledge the First Complainant's vulnerability and refers to an account note dated **7 September 2017**. This account notes asks the following question:

*"Have you checked for potential customer vulnerability on our systems [three systems listed]?"*

The answer recorded in response to this is:

*"Yes checked no vulnerabilities."*

The Financial Adviser continues the above submission by stating that the Provider's records prove the Complainants did not receive comfort or support from the Provider for the First Complainant's vulnerability.

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It appears that the First Complainant was added to the Provider's vulnerable customer list/register around **November 2015**. In this respect, I note that Provision 3.1 of the Code states, as follows:

*"Where a **regulated entity** has identified that a **personal consumer** is a **vulnerable consumer**, the **regulated entity** must ensure that the **vulnerable consumer** is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the **regulated entity**."*

The term 'vulnerable consumer' is defined, as follows:

*"**vulnerable consumer**" means a natural person who:*

*a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or*

*b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)."*

Although the First Complainant is classified by the Provider as a vulnerable consumer, based on the available evidence, the basis on which the First Complainant was identified as a vulnerable consumer in **November 2015** is not entirely clear. Further to this, the Complainants or their Financial Adviser have not identified the particular vulnerability the First Complainant was experiencing at the time of the telephone conversation on **7 September 2017** or how this would have required the Provider's agent to record the First Complainant as having a particular vulnerability in the above account note. Additionally, if the First Complainant or the Financial Adviser considered that the First Complainant was a vulnerable consumer, it is not clear whether any particular vulnerability was brought to the Provider's attention such that would require the Provider to put any special arrangements or assistance in place. On considering the telephone conversation which took place on **7 September 2017**, it does not appear that the First Complainant was experiencing any particular vulnerability and was able to conduct the call in a coherent and articulate manner.

In terms of Provision 3.1, I note that some form of physical or mental impairment is generally required before a person is classified as a vulnerable consumer, however, the Complainants or their Financial Adviser have not provided evidence to show that the First Complainant met this definition.

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While the First Complainant is classified by the Provider as a vulnerable consumer, I am not satisfied it is sufficient for the Complainants or the Financial Adviser to simply say the First Complainant had a vulnerability without identifying the particular vulnerability he was experiencing at the time. Further to this, I note that the Financial Adviser appears to have engaged with the Provider from around **March 2017** and it also appears that the Financial Adviser was aware that certain of the Complainants' loans were being managed by the Asset Service Provider. In such circumstances, if the First Complainant was considered a vulnerable consumer either from the Complainants' perspective or the Financial Adviser's perspective, then it is reasonable for this to have been brought to the Provider's attention at the relevant time. Further to this, if the First Complainant had a vulnerability, I note that he had the assistance of the Financial Adviser (and the Second Complainant, as joint borrower) to engage with the Provider and the Asset Service Provider on his behalf.

In a submission received on **4 November 2020**, it is stated that the First Complainant was in hospital from mid **July 2019** until **Spring 2020** and (at the time of this submission) was currently confined to his home.

In this respect, I note that midway through a telephone conversation between the Financial Adviser and the Provider on **25 July 2019**, the Financial Adviser told the Provider's agent that the First Complainant was in hospital and would be there for some time. Following on from this, the Provider's agent asked whether the First Complainant's condition was something the Provider should be notified of. In response, the Financial Adviser noted that the First Complainant was classified as a vulnerable consumer and had ongoing health issues with his heart. The Financial Adviser explained that the First Complainant was currently in hospital and was immobilised. The Provider's agent asked if the Financial Adviser would like him to "*note down the condition, we don't have anything prior about his past medical history or even the current ones*". The Financial Adviser said he could check with the First Complainant and that his understanding was that he was the First Complainant's third party adviser for a number of years and that the Asset Service Provider was aware of the First Complainant's health matters. The Financial Adviser said that the First Complainant's full health circumstances was relayed to the Provider and by extension, the Asset Service Provider through the files passed to the Asset Service Provider.

In terms of the First Complainant's hospital admission in **2019**, I am not satisfied the condition described by the Financial Adviser necessarily brings the First Complainant within the definition of vulnerable consumer as set out in the Code. In any event, I accept that reasonable enquiries were made by the Provider's agent during the telephone conversation on **25 July 2019**.

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I am also satisfied that any vulnerability which this hospital admission may have given rise to were appropriately addressed by virtue of the fact that the First Complainant had the assistance of the Financial Adviser.

In a submission dated **2 October 2020**, the Financial Adviser states, as follows:

*“Surely if the Bank’s computer records stated that the customer had no vulnerabilities, then any assessment of a restructure of their mortgage(s) facilities at that juncture would have had a consequential outcome to the Bank’s overall decision to the clients’ request?”*

Having considered Provision 3.1 of the Code, it is my opinion that when a consumer is identified as vulnerable, the Provider must ensure that reasonable arrangements or assistance is in place to facilitate the consumer in their dealings with the Provider. However, I do not accept that Provision 3.1 requires the Provider to consider any vulnerability when assessing alternative repayment arrangements or restructure arrangements on a loan account or that this should have a bearing on the nature or type of financial alternatives/arrangements considered or offered by the Provider. It is my opinion that Provision 3.1 is concerned with the manner in which the Provider interacts with a vulnerable consumer and the arrangements/assistance put in place to accommodate any vulnerability.

Accordingly, based on the available evidence, I am not satisfied that the Provider failed in its duty to treat the First Complainant as a vulnerable consumer.

#### ***Formal complaint to the Provider***

On foot of a telephone conversation between the First Complainant and the Asset Service Provider on **7 September 2017**, a complaint was logged by the Asset Service Provider with the Provider in respect of the third party authority on the Complainants’ loan accounts. The Provider’s Complaints Handling Team wrote to the Complainants on **11 September 2017** acknowledging this complaint. The Provider’s Complaints Handling Team wrote to the Complainants again on **31 October 2017** advising that it was still investigating the complaint and, if the Complainants were unhappy with the progress being made, of their right to refer the matter to this Office. This letter also advised that the Provider was continuing to gather information in respect of the complaint.

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The First Complainant wrote to the Complaints Handling Team with further details in respect of his complaint on **5 December 2017**. On **8 December 2017**, the Provider's Complaints Handling Team telephoned the First Complainant in respect of this letter to clarify each aspect of the complaint being made.

In the Provider's timeline, it is stated that monthly holding letters were issued in respect of the complaint between **November 2017** and **December 2018** advising that the complaint was still under investigation. While copies of these letters have not been furnished by the Provider, I note that the Complainants have provided a copy of one of these letters dated **16 November 2018**.

A Final Response letter issued on **21 December 2018**. The Complainants set out their response to this letter in a letter to the Provider dated **17 January 2019**. Following this, it appears the Complainants emailed the Provider regarding their letter around **23 February 2019** (a copy of which does not appear to have been provided). In an undated letter, the Provider wrote to the Complainants in response to this email advising that it was still gathering information in respect of the points raised in their letter and that it hoped to be in a position to respond as soon as possible. The Provider issued a formal response to this letter on **2 April 2019**.

A complaint was initially recorded in **September 2017** with the First Complainant raising further issues regarding the Provider's conduct in **December 2017**. While it appears the Provider kept the Complainants up-to-date regarding their complaint, it took over 12 months for the Provider to issue a Final Response Letter. The Provider acknowledges the delay which occurred in issuing a Final Response Letter and, while not necessarily trying to excuse the delay, the Provider also refers to the fact that it was experiencing a higher than normal level of complaints.

Having considered the nature of the complaints raised by the First Complainant and while I accept that the Provider may have been experiencing a high volume of complaints, it is my opinion that the delay in issuing a Final Response Letter was inordinate and unreasonable, and it should not have taken over 12 months to formally respond to the complaint.

Further to this, the Provider does not appear to have acknowledged the Complainants' letter of **17 January 2019**. It appears that the Provider did not correspond with the Complainants with regard to this letter until after it received their email of **23 February 2019**. Based on the available evidence, it is my opinion that the Provider failed to acknowledge, and delayed in acknowledging the Complainants' letter of **17 January 2019**. However, I am not satisfied that there were any unreasonable delays issuing the Provider's formal response dated **2 April 2019**.

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### ***Formal complaint to the Asset Service Provider***

In addition to making a formal complaint to the Provider on **5 December 2017**, the First Complainant also wrote to the Asset Service Provider by letter dated **5 December 2017** indicating that he wished to make a formal complaint. I note that the conduct complained of in the letter to the Asset Service Provider is quite similar to the matters raised in the letter to the Provider.

In an email to this Office dated **21 August 2018**, the Asset Service Provider stated that:

*“[The Asset Service Provider] work under the instruction of [the Provider]. As part of our servicing requirements, all Financial Services and Pensions Ombudsman (FSPO) cases are referred directly to [the Provider] where they will be dealt with by their designated complaints handling team. [The Asset Service Provider] will where required, work with [the Provider] in providing all necessary details relevant to the complaint case.”*

In respect of the above email, the Complainants stated in an email to this Office dated **8 January 2019** that they were never informed by the Asset Service Provider, this Office or the Provider that all complaints to the Asset Service Provider are referred to the Provider to be dealt with by the Provider.

As part of a submission to this Office dated **4 December 2019**, the Complainants’ Financial Adviser enclosed a copy of the Asset Service Provider’s ‘Complaints Procedure Leaflet’ noting that it had not been adhered to by the Asset Service Provider. This leaflet states, as follows:

*“At [the Asset Service Provider] each of our customers is important to us, and we believe you have the right to a fair, swift and courteous service at all times.*

*We are in receipt of your complaint and we will deal with it promptly, effectively and in a positive manner. [...]*

*1) We acknowledge your complaint within 5 working days of receipt of your complaint.*

*2) We will investigate your complaint and endeavour to send a final response to you within 4 weeks of receipt of your complaint. [...]*

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*3) We will endeavour to send a final response to you within 8 weeks of receipt of your complaint. [...].”*

In a submission dated **18 September 2020**, the Provider says the complaint initiated with the Asset Service Provider in **September 2017** was referred by the Asset Service Provider to the Provider. The Provider says it was the dedicated Complaints Handling Team within its Arrears Support Unit that responded to the Complainants, addressing the complaint raised with the Asset Service Provider. In a submission dated **23 October 2020**, the Provider says that while the Asset Service Provider managed the arrears on the loan accounts, it always remained the responsibility of the Provider to investigate and address complaints relating to its customers' accounts, regardless of where the complaint was initially raised. The Provider says this explains why complaint correspondence issued directly from the Provider and not the Asset Service Provider. In a submission dated **12 November 2020**, referring to the First Complainant's letter to the Asset Service Provider dated **5 December 2017**, the Provider says it received a copy of this letter in **December 2017** and that its Final Response Letter of **21 December 2017** was based on the concerns raised in this letter.

While I accept it is the Provider's procedure to handle Asset Service Provider complaints as part of its complaints process, it is my opinion that this process must be clearly communicated to Provider customers like the Complainants, by both the Asset Service Provider and the Provider.

When the First Complainant wrote to the Asset Service Provider on **5 December 2017**, it does not appear that the Asset Service Provider acknowledged receipt of this letter or informed the First Complainant that complaints of this nature would be passed to the Provider, for the Provider to investigate and respond to as part of its complaints process. Having considered the Asset Service Provider's Complaints Procedure Leaflet, I note that nowhere is it stated that when complaints are raised in respect of loan accounts being serviced by the Asset Service Provider, such complaints would be referred to the relevant account-holding financial services provider.

In terms of the Provider, I note the Provider did not acknowledge receipt of the First Complainant's letter to the Asset Service Provider nor did it inform the Complainants in its complaint correspondence that the issues raised in this letter would be investigated and responded to by the Provider as part of its complaints process. Further to this, there is no acknowledgement in the Provider's Final Response Letter dated **21 December 2018** that it was responding to the issues raised in the First Complainant's letter to the Asset Service Provider.

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As a result of this, and although there was a similarity between the issues raised in each of the letters dated **5 December 2017**, the First Complainant's letter to the Asset Service Provider was not acknowledged or responded to by either the Asset Service Provider or the Provider.

On reviewing the evidence, it is not clear when the Asset Service Provider passed the First Complainant's letter to the Provider nor has the Provider clarified, in the course of its submissions, when this took place. Furthermore, while the initial referral of a complaint by the Asset Service Provider to the Provider on **7 September 2017** is noted in the Provider's timeline of events, there does not appear to be any corresponding entry in respect of the referral of the **5 December 2017** letter. Also, I note that while the Provider telephoned the First Complainant on **8 December 2017** in respect of the letter dated **5 December 2017** addressed to the Provider, it does not appear that the Provider's agent was aware of the letter sent to the Asset Service Provider at the time of this call.

Accordingly, based on the available evidence, I am not satisfied that the letter to the Asset Service Provider was referred to the Provider or that the Provider was aware of this letter when investigating and responding to the specific complaint raised with it by the First Complainant.

It is my opinion that there was a concerning lack of communication from the Asset Service Provider and the Provider with the First Complainant/the Complainants in terms of acknowledging the letter to the Asset Service Provider and explaining the appropriate complaints procedure that would be followed. Having considered the complaint correspondence issued by the Provider, it is my opinion that it was virtually impossible for the Complainants to know that the issues raised in the letter to the Asset Service Provider were being dealt with by the Provider as part of its complaints process. It is my opinion that this arose from the apparent absence of any clear process being in place for acknowledging and responding to complaints made to the Asset Service Provider, and the apparent absence of any clear process for communicating with and informing complainants about how complaints would be handled and the entity which would be handling these complaints.

### ***Goodwill Gesture***

In its Complaint Response, the Provider says that:

*"We again wish to apologise for the distress these issues have caused the Complainants.*

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*We appreciate that they may feel we have not acted in their best interests but hope that we have at least provided explanations and re-assurances that the actions we have taken will prevent such matters from recurring.*

*In the Bank's Final Response Letters, we had increased our offer of compensation from €1,500 to €1,650. We would like to make a final, formal offer to the Complainants in the sum of €4,000 in recognition of the services they have experienced in their dealings with the Bank and our agent, [the Asset Service Provider]. We consider this offer to be fair and reasonable, taking into consideration the facts of this complaint. This revised offer remains open to the Complainants indefinitely."*

On considering both the Provider's conduct and the Asset Service Provider's conduct, as discussed above, I am not satisfied that the Provider's goodwill gesture constitutes a sufficient sum of compensation for the customer service failings on the part of the Provider and the Asset Service Provider. For this reason, I indicated my intention to direct that the Provider pay compensation in the amount of €7,000 to the Complainants.

I also indicated my intention to make the following directions:

I direct that the Provider review its procedure and the Asset Service Provider's procedure in relation to the referring of complaints by the Asset Service Provider to the Provider.

I direct that the Provider review the procedure the Asset Service Provider has in place for acknowledging and responding to complaints which are referred, or are to be referred, to the Provider.

I direct that the Provider review the procedure for acknowledging and responding to complaints referred to it by the Asset Service Provider.

In response to the proposed directions, the Provider, in its post Preliminary Decision submission of **3 December 2021**, stated as follows:

*"The Bank is cognisant of the customer service failings highlighted in the Preliminary Decision on the part of the Bank and the Asset Service Provider, who in this instance was [name redacted].*

*As you are already aware, [name redacted] is an approved service provider that acted on behalf of the Bank in relation to arrears cases (i.e. customers in arrears of 30 days or more) within its residential investment/Buy-to-Let portfolio. From 14 July 2020 the Bank changed provider of this Asset Service from [name redacted] to [name redacted].*

*The Bank would like to provide assurances to your office that since the appointment of [name redacted] we reviewed our processes, including the Complaint Handling Process which is overseen by the Arrears Support Unit's Supply Manager via monthly meetings with [name redacted]. We will review processes to ensure that your directions as outlined above are carried out with respect to the Asset Services provided by [name redacted].*

*We would like to apologise again to the Complainants for the poor customer service that they received due to the Bank's short comings."*

I welcome the actions taken by the Provider. However, while I remain of the belief that it is appropriate to substantially uphold the complaint, in light of the actions taken by the Provider, I will confine my direction to the payment of compensation in the sum of €7,000.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2) (b)** as the conduct complained of was unreasonable and improper in its application to the Complainants, and on the grounds specified in **Section 60(2) (f) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to pay compensation in the amount of €7,000 to the Complainants to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

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

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



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

5 January 2022

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.