



<b><u>Decision Ref:</u></b>	2022-0020
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Business Bank account
<b><u>Conduct(s) complained of:</u></b>	Arrears handling - commercial lending Delayed or inadequate communication Failure to provide correct information
<b><u>Outcome:</u></b>	Rejected

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

The Complainants are members of a partnership and held a number of accounts with the Provider.

**The Complainants' Case**

In their Complaint Form, the Complainants indicate that the conduct they are complaining about began during **2017**. In this respect, the Complainants state that:

*"[The Provider] have over the last number of years frustrated the settlement of these liabilities. We have been promised settlement agreements over the years without delivery. We believe [the Provider] have misled us."*

In a letter dated **5 April 2019**, the Complainants' Representative made a formal complaint to the Provider in the following terms:

*"I wish to formally complain as to the manner in which these liabilities have been dealt with.*

*We have been attempting to deal with these liabilities for a number of years with the empty commitment of settlement agreements to come shortly to never end.*

*The account has moved through a number of Relationship Managers and it now appears that we are at the start of the process even though we have been promised the outstanding settlement agreements on numerous occasions. We have had to 'torture' the previous relationship manager to get any progress made*

*Below is a summary of events and attached is the supporting documents to prove our case*

- *First Met with Bank 16<sup>th</sup> February 2016, Rural County 1, Financial Position discussed, options from our point of view outlined and our preferred method of exit outlined*
- *We outline we wish to begin Asset Disposal but will require full and final settlement before last asset is sold*
- *Various due diligence done by both sides over the next few months*
- *First Potential restructure outlined by Bank in October 2016*
- *Sold the first Asset*
- *Consents to Sale for remain assets issue in December 2016 with no expiry*
- *25<sup>th</sup> January 2017, Bank restructured and new case manager appointed*
- *Unable to contact new Manager*
- *Had to engage old RM to contact new RM*
- *Held meeting in April 17, Meeting did not go well with meeting being hostile, seemed to be a lack of knowledge of what had been discussed previously*
- *Unable to contact new relationship Manager*
- *Had to contact former Manager to get any movement*
- *Met with Bank 8<sup>th</sup> August 2017, we left happy believing structure was agreed in principal*
- *No movement or developments in September*
- *Approval issued from Bank on the 5<sup>th</sup> October*
- *We request settlement agreements*
- *Told in November Settlement Agreements where being drafted*
- *Unable to contact RM until April 2018 where we are told they are being prepared and reviewed*
- *Unable to contact Manager for 3 months*
- *We are informed the problem is internal and Bank would be willing to place this in writing*
- *Told in August they are being prepared*
- *October 18 Bank restructure and we are back to the start of the process*

*The delays and false promises are not acceptable and we require an immediate investigation into same."*

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The Complainants' Representative wrote to the Provider again on **9 April 2019** with the following "*additional information*" regarding the complaint:

*"A meeting had been arranged since the middle of March to discuss these liabilities. This meeting was cancelled by the Bank the evening before the meeting was due to take place, this was obviously because the Bank had sold the loans and it is obvious the Bank knew liabilities were being sold in advance of this meeting taking place."*

In resolution of this complaint, the Complainants "*want [the Provider] to deliver the settlement agreement previously promised.*"

### **The Provider's Case**

The Provider begins its Complaint Response by outlining Complainants' loans and liabilities. This is followed by a 13 page timeline of events covering the period **June 2015 to July 2019**.

Following this, the Provider says that Heads of Terms were issued to the Complainants dated **12 August 2015**. The Provider says these non-binding Heads of Terms provided for asset disposal of properties located in Dublin and Rural County 2 with conditions precedent including an independent valuation to be completed on land in Rural County 2. In **August 2015**, the Provider says the Complainants petitioned for the appointment of an Examiner to their company. The Provider says the Examiner could not get an agreement for a proposal to ensure the survival of the company and on **17 October 2015**, the Examiner was discharged and appointed as the Official Liquidator. As a result, the restructure as proposed was no longer possible and a new restructure had to be negotiated and agreed.

The Provider says it would like to state that there was no formal restructure agreed in **2016** and no Letters of Offer had issued to the Complainants. The Provider says the non-binding Heads of Terms could not be advanced to a restructure based on the Complainants' company activities. The Provider says that as at **23 December 2016**, the Complainants applied for credit approval for an extension of the Annual Review process to **9 May 2017**. The Provider says this extension was to facilitate the Complainants in providing additional financial information which the Provider expected to receive by **February 2017** and the Complainants advised that they would be employing the services of an advisor to assist them in compiling the relevant information.

On **23 January 2017**, the Provider says the Complainants were assigned a new Case Manager and were advised of this change by letter. The Provider says that while it continued to issue regulatory letters, it has no record on file of telephone calls or written communication between the parties from **February 2017** until a meeting took place on **10 April 2017**.

The Provider says it met with the Complainants and their Representative on **10 April 2017** and that this meeting is noted as being at the Complainants' request. The Provider says the Complainants' Representative advised that the Complainants requested the meeting to finalise the offer extended by the previous Case Manager.

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The Complainants' Representative advised that the Complainants had verbally accepted this offer and set it out as follows:

- €96,000 Net Sales Proceeds (“NSP”) from sale of property in Rural County 1 - proceeds received in late 2016
- €60,000 in lieu of €100,000
- NSP from sale of property in Dublin with an Open Market Value of €170,000 now sale agreed at €140,000
- NSP from sale of property in Rural County 2 with an Open Market Value of €100,000 now sale agreed at €100,000

The Provider says the Complainants and their Representative were advised at this meeting that although the offer had been structured, it had not been approved by the Provider's credit department. The Provider says that the Complainants' Representative suggested at this meeting that if the formal offer from the Provider was not forthcoming that the sales process for the assets should be ceased. The Provider says it advised that if the sales target had been achieved the sales should be progressed as this would reduce the overall debt position.

Subsequent to this meeting, the Provider says there were exchanges between it and the Complainants' Representative in relation to the restructure as follows:

- 27 April 2017** Email received from Complainants' Representative seeking clarification on the Provider's auctioneers panel for the valuation of land held in the name of the Second Complainant.
- 27 April 2017** Email to the Complainants' Representative containing a proposal for the outstanding liabilities. The proposal was in response to discussions at the meeting of **10 April 2017**.
- 28 April 2017** Email from the Complainants' Representative in response to the Provider's email of **27 April 2017**, referred to above, making a counter proposal.
- 9 June 2017** Email from the Complainants' Representative advising they were finding it difficult to maintain a stance with the Complainants that the Provider was willing to engage given that no progress had been made in relation to items discussed at the meeting of **10 April 2017**.
- 20 June 2017** Customer Treatment Strategy Telephone Call between the Provider and the Complainants.
- 20 June 2017** Email from the Complainants' Representative to the Case Manager as a follow up to a call held on the **20 June 2017**, requesting to have a meeting arranged.

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- 3 August 2017** Email from the Complainants' Representative. This email is directed to the previous Case Manager and requests that they also attend a meeting with the Complainants and the new Case Manager in an attempt to resolve the outstanding issues.
- 3 August 2017** Email to the Complainants Representative in response to the email received from the Complainants Representative of **3 August 2017**. This email advises that it would be inappropriate for the previous Case Managers to attend any meeting with the current Case Manager.
- 4 August 2017** Email to the Complainants' Representative regarding the discussion in relation to revising the proposal made by the Provider to the Complainants on **10 April 2017** and discussed in a subsequent call with the Complainants Representative on **20 June 2017**.
- This set out the following proposed solution:  
A Note: €155,000 based on a valuation of €125,000 on the lands in Rural County 2. However, if the Complainants were willing to sell the lands then there would be no A Note  
B Note: €30,000 over 5 years  
Potential C Note: €1,000,000
- 4 August 2017** Email from the Complainants' Representative advising that discussing the details of the proposal would be more appropriate "in person on Monday".
- 8 September 2017** Email to Complainants' Representative, advising that the Provider was in the process of submitting a proposal to the credit department.
- This proposal detailed the following:
- Fundamental Restructure (FR) with compromise as follows:
- A Note of €264k for 12 months to be cleared from sale of two assets as outlined
  - C Note of €1,058k to be cleared within 3 years subject to performing A Notes
  - New A/C notes restructuring facilities 1.1 - 1.7 and 3.1 and 3.2 as outlined.
  - Condition precedent that €100k is lodged up front in debt reduction prior to drawdown of FR. This lump sum offered additional comfort in replace of possible affordability note in company name.

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- Provision for release of security items:
  1. Mortgage Protection Policy Life Assurance in the name of the First Complainant in the sum of €500,000.00
  2. Mortgage Protection Policy Life Assurance in the name of the Second Complainant in the sum of €500,000.00
  3. Term Assurance Policy Life Assurance in the name of the Third Complainant in the sum of €400,000.00

The Provider says a restructure was credit approved on **3 October 2017** and this was relayed to the Complainants Representative on **5 October 2017**:

**5 October 2017** Email to Complainants' Representative, advising the Provider had approved a proposal and detailing the proposal as follows:

Provision of:

A Note of €264,000 at Base Lending Rate +3%. Interest only for 12 months with balance to be repaid from the sale of two assets with asset disposal targets of:

- (i) At least €97,000 net sales proceeds in respect of property in Rural County 2
- (ii) At least €167,000 net in respect of property in Dublin, C Note at 0% coupon to be written off subject to the clearance of the A note and satisfaction of conditions attaching in the amount of approximately €1,048m.

Conditions:

Any funds over and above the agreed targets would be applied against a C Note

€100,000 to be lodged upfront prior to the drawdown of the A Note facility

The Provider says this was a complex restructure proposal involving personal and company debt, personal guarantees, accounts sanctioned through different lending entities within the Provider together with a number of items of security and unencumbered assets, the values of which were disputed from time to time.

The Provider says the Letters of Offer could not be issued as legal issues arose with the approved proposed restructure:

1. When the restructure was approved, the Provider believed it held personal guarantees from each of the Complainants for €100,000.

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During the drafting of the letters of sanction, the Provider's legal team reviewed the personal guarantees and discovered that the guarantees held were for €100,000 in total. At the time, the debt in the company was approximately €130,000. The approved restructure was unable to be drawn down as it originally allowed for the entire company debt to be refinanced into the personal names of the three borrowers on foot of their personal guarantees.

2. The original restructure accommodated a shortfall on the facility ending 012 that would be refinanced as part of the debt forgiveness strategy into a combined portion of debt classified as unsustainable and would not accrue interest. However, as the facility ending 012 was held with a separate entity within the Provider it could not be linked to the other facilities.

The Provider says these issues meant that the proposed restructure approved in **October 2017** could not proceed. These issues came to light during the letter of offer drafting process and in order to try and rectify the position, the Provider says demand letters were issued to the guarantors of the company's liabilities in **April 2018** for the correct amounts. The Provider says the reason for this demand was to ensure the security held in the form of guarantees from the Complainants was equal to or adequately covered the total company debt. If there was adequate security cover this would then assist in the process of issuing the letter of offer.

The Provider says the restructure application needed to be redrafted to take the above into account, however the information used to put together the **October 2017** restructure was out-dated by **April 2018** and the Provider's policy required that new information be submitted to ensure the proposed restructure was still a viable solution for the outstanding debt.

As a result, the Provider says it was appropriate to request new information prior to redrafting the restructure. The Provider says it requested a full suite of information in respect of the asset disposal on **2 October 2018**. In this email, the Provider says it also highlighted that it was progressing with a restructure but would be unable to draft Letters of Offer prior to receipt of confirmation that asset values were in line with current market value, and further highlighted that the Provider had contacted the Complainants by letter on **13 September 2018** requesting up to date financial information in order to facilitate an annual review of facilities and that as at **2 October 2018**, this information had not been received.

The Provider says it issued a further letter to the Complainants on **5 October 2018** requesting up to date financial information to facilitate an annual review of facilities be furnished within 10 working days of the date of the letter. The information requested:

- Evidence of Income (i.e. P60, Revenue Self-Assessment)
- Completed Sworn Statement of Affairs
- Confirmation that tax affairs were in order

- Copy of the most recent audited accounts for 'S Ltd'

On **16 October 2018**, the Provider says it sent further correspondence by letter to the Complainants advising of the information required to process fresh consent to sale letters to facilitate the asset disposal process. In this letter, the Provider says it again re-iterated the requirement for the requested financial information to be furnished in order to facilitate the annual review of the facilities. The Provider says it followed up by email with the Complainants' Representative on **30 October 2018** in respect of the fact that it had not received the required financial information from the Complainants.

On **9 November 2018**, the Provider says it contacted the Complainants' Representative by email to advise that, despite requests for information required to facilitate an annual review of facilities being made on **13 September 2018**, **5 October 2018** and **16 October 2018**, no information had been received from the Complainants. The Provider says it advised in this email that in addition to this information being required for annual review, it was also required to ensure the previously proposed restructure was still appropriate prior to issuing any Letter of Offer due to the passage of time. The Complainants' Representative responded to this email on **9 November 2018** advising that the Complainants' file was out for review and that he would be in a position to revert the following week. The Provider says it followed up the Complainants' Representative by email on **9 November 2018** advising that the financial information held on file was dated **March 2016** and was deemed outdated. This email highlighted that credit approval was required prior to issuing Letters of Offer and that the Provider could not progress this without up to date financial information.

On **23 November 2018**, the Provider says it emailed the Complainants' Representative to advise that the information in relation to the asset disposal was still outstanding and as a result of the passage of time (approximately 2 years) since the properties were sale agreed, the Provider's credit department required the information in order to issue fresh letters of consent to sale. This email also advised the Complainants' Representative of the required up to date financial information to progress matters.

Following receipt of the required information on **6 December 2018**, the Provider says it reverted to the Complainants with a number of queries on **3 January 2019**. The Provider says the Complainants' Representative replied to this email on **11 January 2019** advising that there was a meeting scheduled with the Complainants for the following week and he would revert to the Provider with the information during the week beginning **21 January 2019**. The Provider says it replied to this email on **14 January 2019** to thank the Complainants' Representative for the update. On **25 January 2019**, the Provider says it emailed the Complainants' Representative to enquire on any potential update to the queries raised regarding the Complainants' financial information. The Complainants' Representative reverted advising that the information had left him on **24 January 2019** and should be with the Provider the morning of **25 January 2019**.

On **12 February 2019**, the Provider says the Complainants' Representative enquired via email if the Provider had reviewed the documentation sent. The Provider says it replied to this email on **12 February 2019** advising that the information had not been received.

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The Complainants' Representative replied to this email the same day asking the Provider to confirm that the information had not been received. The Provider says it confirmed the information had not been received and requested details of the address it had been sent to in order to follow up. On **13 February 2019**, the Provider says it emailed the Complainants' Representative to ask if the required responses to the queries raised on **3 January 2019** which were not received could be emailed to expedite the issue. The Provider says it emailed the Complainants' Representative again on **14 February 2019** to enquire as to an update on the outstanding queries. On **19 February 2019**, the Provider says it sent an encrypted email to the Complainants' Representative who reverted on **28 February 2019** to advise the encrypted file could not be accessed. The Provider says it reverted to the Complainants' Representative on **5 March 2019** apologising for the delay due which was to annual leave and attached the requested Statement of Affairs template.

As of **22 March 2019**, the Provider says an updated sworn Statement of Affairs had not been received. On **22 March 2019**, the Complainants' Representative requested a meeting with the Provider. The Provider says it responded on the same day requesting again that the completed Statement of Affairs be supplied and that the Provider would facilitate a meeting on **4 April 2019**. However, the Provider says that just prior to the proposed meeting taking place, the Case Manager became aware the loans had been included in the portfolio of loans sold to a Third Party Provider ("**the TPP**"). As advised in the email sent to the Complainants Representative on **3 April 2019**, the Provider says the Case Manager was called away without notice to begin immediate work on a project. On that basis, the Provider says, the Case Manager did not feel it was possible or appropriate to hold the meeting in circumstances where the Complainants had not yet become aware that the Provider had agreed to sell their loans to the TPP and where their Case Manager was not available to attend the meeting. The Provider says notification letters regarding the loan were issued on **4 April 2019**.

The Provider says commercial negotiations with the TPP were progressed on a confidential basis and a final decision on the loans to be included in the portfolio sale was only confirmed just before the signing of the agreement between the Provider and the TPP. Therefore, the Case Manager would not have been aware of the inclusion of the Complainants' loans in the portfolio loan sale in advance of that agreement being reached between the Provider and the TPP.

The Provider says it acknowledges that the Complainants would have been preparing for that meeting but the Case Manager cancelled the meeting at the earliest opportunity once she became that she would not be available to attend and that the Complainants' liabilities had been included in the portfolio loan sale on **3 April 2019**.

The Provider says that the Complainants' loans were out of contract and deemed to be non-performing as repayments had not been received on the loan accounts as follows: 012 – last payment received to account on **25 January 2019**; 375 – last payment received to account on **23 July 2012**; 120 - last payment received to account on **19 September 2016**.

The Provider says the determination of the Complainants' loans as non-performing is not a classification that the Complainants would have been notified of. The classification of a loan as non-performing is an internal procedure used by the Provider to categorise its overall lending portfolio. As part of the Provider's requirement to meet EU norms of reducing Non-Performing Loans ("**NPL**") by the end of **2019**, the Provider says portfolio sales were identified to form a part of its plans to reduce NPLs. The Provider says it reviewed its position and options available on a continual basis and made a strategic decision to sell the portfolio in which the Complainants' loans were included as part of the strategic requirement to reduce its NPLs. The Provider says it conducted a thorough due diligence process prior to including any loan in this portfolio.

The Provider has set out the following list of Case/Relationship Managers appointed to deal with the Complainants' loans and liabilities and the specific dates for which they were appointed:

***Relationship Manager 1:*** June 2015 to January 2017

***Relationship Manager 2:*** January 2017 to September 2018 - letter issued to the Complainants detailing same in January 2017.

***Relationship Manager 3:*** September 2018 to April 2019 - letter issued to the Complainants detailing same on 13 September 2018.

The Provider says that the handover between Case Managers is the subject of an internal process which provides for case handovers to be completed. The Provider says a newly appointed Case Manager reviews the portfolio of transferred files with the previous Case Manager as part of that process. In **April 2019**, the Provider says the Complainants loans and liabilities were transferred to the team managing the transition between the Provider and TPP as part of the loan sale process.

Regarding the Complainants having to contact a former Relationship Manager, the Provider says it acknowledges there was a lack of communication on occasions throughout **2017**. The Provider says it has identified two periods from **January 2017 to April 2017** and **May 2017 to August 2017** where it feels communication fell below the standards that the Provider aims to achieve resulting in poor customer service.

On **23 January 2017**, the Provider says the Complainants were assigned a new Case Manager by letter. While the Provider continued to issue regulatory letters, the Provider says it has no record on file of telephone calls or written communication between the parties from **February 2017** until a meeting took place on **10 April 2017**. The Provider says it acknowledges this lack of direct engagement between the Case Manager and the Complainants and apologises for this.

In the period from **May to August 2017**, the Provider says it notes that the Complainants' Representative contacted the Complainants' previous Case Manager in order to expedite a meeting.

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Whilst the current Case Manager was actively working to finalise a restructure, the Provider says it acknowledges that communication should have been maintained with the Complainants' Representative throughout this period and that it has identified this as a further customer service failing. The Provider says this is not the standard of service it strives to provide to its customers and the Provider says it would like to apologise for any inconvenience or upset that this may have caused to the Complainants.

The Provider says it accepts the statement that *'the length of time it took the case manager to reply in some instances in 2017 was too long'* and apologises for this. The Provider says whilst it was seeking to finalise a restructure based on the details provided at the meeting of **10 April 2017** and subsequent emails up to and including **28 April 2017**, it acknowledges that clear communication should have been maintained between the Case Manager and the Complainants' Representative throughout this period. The Provider says it refutes the suggestion that delays in corresponding at this time had any adverse effect on the progression of the Complainants' restructure. Although proposals had been presented, the Provider says a restructure had not been approved by the Credit Unit until **October 2017**.

Regarding the meeting which took place in **April 2017**, the Provider says its records do not suggest that the meeting was hostile or that the Provider was not adequately aware of what had been discussed previously. The Provider says the file note from the meeting in question suggests that it had prepared for the meeting but the staff members present were unable to comment on verbal exchanges that took place between the Complainants and previous designated contacts within the Provider. The Provider says the Case Manager called the previous Case Manager during the meeting as a courtesy to the Complainants and in an endeavour to ensure the meeting was as productive as possible. The Provider says it refutes the allegation that because these matters were discussed and clarified at the meeting that the Case Manager lacked knowledge of the case. The Provider says it has obtained statements from each of the Relationship Managers in relation to this complaint which was at section 8 of the Schedule of Evidence.

In respect of Settlement Agreements being drafted in **November 2017, April 2018 and August 2018**, the Provider says it advised the Complainants' Representative on **5 October 2017** that a proposal had been approved and that it would progress to issuing Letters of Sanction. At the time of drafting the formal Letters of Offer for the proposed debt restructure, the Provider says, as outlined above, it became aware of certain legal issues which led to the Provider being unable to proceed with the proposed restructure as approved.

As a result of the above the proposed restructure, the Provider says that from **3 October 2017** it could not proceed as approved and an amended restructure was required to allow the Complainants' entire debt to be restructured. However, the Provider says this required full credit approval and, therefore, the issues identified had to be addressed to allow an amended restructure to be proposed and approved. The Provider says the Complainants' Representative was advised that the matter was being reviewed by the Credit Department on **1 June 2018** and again on **10 July 2018**. Due to the complex nature of the issues identified, the Provider says it took time to analyse these and find a solution.

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The Provider says it began this process by issuing demand letters to the guarantors of the company in **April 2018** and, as it would not be appropriate or possible to proceed with a restructure based on financial information over 12 months old, by requesting up to date financial information to ensure the restructure was still affordable and appropriate for the Complainants.

The Provider says that it cannot evidence that it advised the Complainants that Letters of Offer were being drafted in **August 2018**. The Provider says the Complainants' Case Manager changed in **September 2018** and within the notification of change was a request for up to date financial information. The request for financial information was based on the fact that the financial information held by the Provider in **September 2018** dated back to **March 2016** and was outdated. In addition, the Provider says the consent to sale had expired in relation to the asset disposals as the sales process had been ongoing for two years at that point. In order for the Credit Department to assess the proposed restructure as to its appropriateness and feasibility at that stage, the Provider says a full review of up to date financial information was required.

To clarify its position, the Provider refers to the following events:

**3 April 2018:** The Complainants' Representative emailed the Provider to advise the sale of the remaining assets were ready to close and asked for the Letter of Consent to sale to be issued.

**6 April 2018:** Email to the Complainants' Representative advising that the Provider was in the final stages of reviewing the proposed agreement with its legal team. The Provider advised that the condition being reviewed was in relation to bringing the company debt into the Complainants' personal names. The Provider also advised that it would issue fresh letters of consent to sale in the coming week.

**12 April 2018:** Letter to the First Complainant making formal demand for payment due and owing under the terms of the guarantee dated **10 January 2013** for the obligations of S Limited in the sum of €100,000.

Letter to Second Complainant making formal demand for payment due and owing under the terms of the guarantee dated **19 December 2012** for the obligations of S Limited in the sum of €100,000.

Letter to Third Complainant making formal demand for payment due and owing under the terms of the guarantee dated **18 December 2012** for the obligations of S Limited in the sum of €100,000.

**13 April 2018:** Letter to the Complainants' Representative acknowledging sales had been agreed on the properties in Dublin and Rural County 2.

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This letter set out that the sales were due to completed by **31 July 2018** and if the sales was not completed within this timeframe, an extension was to be sought. This letter also confirmed that following the sale of the properties, the net sale proceeds from same will be applied to account ending 102.

However, the Provider says it should be noted that its agreement to release the Legal Mortgage/Charge over the properties in the absence of the full clearance of the debt, for which the assets were held as supporting security, did not represent an agreement in relation to the outstanding residual debt owing to the Provider.

- 1 May 2018:** Letter to the Complainants advising account 012 in arrears since **31 October 2012**.
- 23 May 2018:** Email from the Complainants' Representative enquiring if there was any development in relation to the proposed restructure.
- 1 June 2018:** Email to the Complainants' Representative advising that the Provider needed to get internal sign off on the structure of the agreement. The Provider also enquired as to whether the Complainants required correspondence issued in respect of same.
- 6 June 2018:** Email from the Complainants' Representative advising there was no need to issue correspondence in respect of progress with the agreement and that he would diary a follow up for a few weeks' time.
- 10 July 2018:** Email from the Complainants' Representative enquiring as to whether there was any update on the progress of the agreement.
- 10 July 2018:** Email to the Complainants' Representative advising that the Credit Department were reviewing the agreement.
- 31 July 2018:** Letter to the Complainants advising account ending 012 in arrears since **31 October 2012**.
- 7 August 2018:** Email from the Complainants' Representative advising the Complainants were ready to close the sale of the property in Rural County 2 and fresh Letter of Consent was required as the existing one was out of date. The Complainants' Representative further requested that this consent to sale be extended to **30 September 2018**.
- 10 August 2018:** Letter to Second Complainant acknowledging a sale had been agreed on properties in Dublin and Rural County 2.

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This letter set out that sale was due to completed by **30 September 2018** and if sale was not completed within this timeframe, an extension was to be sought from the Provider. This letter also confirmed that following the sale of the property, the net sale proceeds from same would be applied to account ending 102.

However, the Provider says it should be noted that the agreement to release the Legal Mortgage/Charge over the properties in the absence of the full clearance of the debt, for which the asset was held as supporting security, did not represent an agreement in relation to the outstanding residual debt owing to the Provider.

**13 September 2018:** The Provider issued individual letters to each Complainant informing them of the appointment of a new Relationship Manager. The letters also advised that the Annual Review of their facilities was overdue and information was requested to allow same to be completed.

**20 September 2018:** The Complainants' Representative emailed the Provider advising that the Complainants had experienced difficulties contacting their solicitor in order to advance closing the sales of the assets. The Complainants' Representative further advised that the Complainants had been waiting a considerable length of time to receive Letters of Offer. The Provider says it advised it would also attempt to contact the Complainants' solicitor to progress matters.

**2 October 2018:** Email to the Complainants' Representative seeking information in relation to the asset sales of the properties. In order to extend the period of consent to sale, the Provider says it required further information, as set out in the timeline.

The Provider says it advised that it would not be in a position to issue Letters of Offer prior to receiving confirmation that the asset values were in line with current market value.

**5 October 2018:** Letter to the Complainants advising that information requested in previous correspondence of **2 October 2018** in respect of financial information was still outstanding.

**16 October 2018:** Individual letters issued to each of the Complainants advising that the Provider had not received a response to correspondence issued to the Complainants' Representative requesting information in relation to the agreed sale of the assets at Dublin and Rural County 2. The letter further advised that asset sale consent letters dated **10 August 2018** had expired and that consent could not be extended without credit approval. The Provider has set out the information that is required to obtain credit approval in its timeline.

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- 30 October 2018:** Letter to the Complainants advising that account 012 in arrears since **31 October 2012**.
- 7 November 2018:** Letter issued to the directors of a company owned by the Complainants advising that the Annual Review of their overdraft facility was now due and company accounts were requested in order to progress the review.
- 9 November 2018:** Email to the Complainants' Representative, following up on required information as requested on **13 September 2018, 5 October 2018** and **16 October 2018**.
- 9 November 2018:** Email from the Complainants' Representative advising that the Complainants' file was out for review and that he should be in a position to revert with financial information the following week.
- 9 November 2018:** Email to the Complainants' Representative advising that the Credit Unit would not be in a position to issue Letters of Offer based on financial information supplied by the Complainants in **March 2016**. In order to facilitate a review by the Credit Committee, up to date financial information needed to be supplied.
- 23 November 2018:** Email to the Complainants' Representative, requesting further information required in order to progress matters.
- 3 January 2019:** Email to the Complainants' Representative querying information previously provided on **14 March 2016, 6 September 2018** and **21 November 2018**.
- 11 January 2019:** Email from the Complainants' Representative advising that a meeting had been organised with the Complainants' Representative and the Complainants on **21 January 2019** and outstanding documentation would be gathered at that stage.
- 14 January 2019:** The Provider acknowledged the email from the Complainants' Representative of **11 January 2019**.
- 25 January 2019:** The Provider emailed the Complainants' Representative to enquire as to whether the queries posed by it on **3 January 2019** had been addressed.
- 25 January 2019:** The Complainants' Representative responded to the Provider's email of **25 January 2019** advising that documentation had left the Complainants' Representative and should be with the Provider the following day.

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- 29 January 2019:** Letter to the Complainants advising that account 012 in arrears since **31 October 2012**.
- 1 February 2019:** Individual letters issued to each of the Complainants advising of excess balance on account 029.
- 12 February 2019:** Email to the Complainants' Representative advising information requested on **3 January 2019** was still outstanding.
- 13 February 2019:** Email from the Complainants' Representative advising that information was sent by internal mail on **24 January 2019**.
- 13 February 2019:** Individual letters issued to each of the Complainants advising that facilities (012, 375 and 120) were in default and reserving the right to demand full repayment.
- 14 February 2019:** Email to the Complainants' Representative enquiring if there was any update to the request for documentation made by the Provider on **3 January 2019**.
- 19 February 2019:** The Provider sent an encrypted secure email to the Complainants' Representative.
- 28 February 2019:** The Complainants' Representative responded to the email of **19 February 2019** advising that the secure email could not be opened.
- 5 March 2019:** The Provider responded to the Complainants' Representative's email of **28 February 2019** advising that a copy of the documentation could be forwarded by post if required.
- 22 March 2019:** The Complainants' Representative emailed the Provider requesting a meeting and suggested the week beginning the **1 April 2019**.
- 22 March 2019:** The Provider responded to the Complainants' Representatives email and advised that the Provider was available to meet on **4 April 2019**. The Provider also re-iterated in this email the need to supply updated sworn Statements of Affairs.
- 3 April 2019:** Email to the Complainants' Representative, advising that the Provider would be unable to make the meeting scheduled for the following day.
- 4 April 2019:** Letters to the Complainants advising of sale of loan account numbers 102, 120 and 375 to the TPP. This letter advised that the final transfer of these loan accounts would happen on or after **14 June 2019**.

/Cont'd...



In respect of the legal and technical issues regarding drafting and issuing Letter of Offer, as stated above, the Provider says that the legal and technical issues which arose were:

- (a) The transfer of the debt from the company to personal debt; and
- (b) The sum total of the guarantees held by the Provider from the Complainants in respect of the company debt came to €100,000, whereby to effect the restructure adequately, a guarantee of €100,000 would be required in the name of each of the Complainants.

The Provider says that as a result of these issues, the restructure from **October 2017** could not proceed as approved and an amended restructure was required to allow the debt to be restructured. However, this required full credit approval and, therefore, the issues identified had to be addressed to allow an amended restructure to be proposed and approved. Due to the complicated nature of the issues identified, the Provider says it took time to analyse these and find a solution.

The Provider says it began this process by issuing demand letters to the guarantors of the company in **April 2018** and, as it would not be appropriate or possible to proceed with a restructure based on information over 12 months old, by requesting up to date financial information to ensure the restructure was still affordable and appropriate for the Complainants.

The Provider says the communication around these issues are, as follows:

- 6 April 2018:** The Provider confirmed that issues had been noted with the proposed restructure that needed to be addressed. A legal issue was highlighted in respect of bringing company debt into the names of the Complainants as personal debt.
- 12 April 2018:** The Provider issued demand letters to the Complainants in their capacity as guarantors for the obligations of the company in which they were shareholders.
- 1 June 2018:** The Provider confirmed further internal sign off required due to the above issues.
- 10 July 2018:** The Provider advised that the Credit Department were reviewing the outstanding issue with the restructure regarding transfer of company debt to the Complainants' personal names.
- 13 September 2018:** The Provider requested up to date financial information for an annual review. This would also ensure the restructure was suitable at this point in time.

**20 September 2018:** The Provider noted a delay in the sale of the assets and requested clarification in relation to same. The Provider says this delay would have impacted the drafting of an agreement as the detail would have to be altered depending on which of the assets had not been sold at time of drafting the proposed agreement. As there had been an unusually long delay on the Complainants' side in respect of the asset sales completing, the Provider required an update on sale progress.

**20 September 2018:** The Provider emailed the Complainants' Representative to advise that amendments to the restructure were being looked at as noted previously, but that fresh information was required given the passage of time.

**2 October 2018:** The Provider outlined the reasons why fresh information and valuations of assets were required.

Regarding the passage of time before fresh financial information was requested, the Provider says that this was a complex restructure involving both personal and company debt, accounts sanctioned through different lending entities within the Provider, and a number of pieces of security, including personal guarantees and unencumbered assets, the values of which were disputed from time to time. As noted above, the Provider says that following the approval of a restructure in **October 2017**, certain legal issues were identified which meant that the restructure as approved could not proceed and a new restructure was required to be drafted and approved.

While the Provider acknowledges that this did lead to a delay, the Provider says that its position is that this unavoidable delay was due to unforeseen legal issues that had to be comprehensively dealt with before moving forward. Furthermore, the Provider says that it would not have been possible to proceed with a restructure based on information which was over 12 months old and that requesting up to date financial information to ensure the restructure was still affordable and the best solution for the Complainants was appropriate at the time it was sought by the Provider on **3 January 2019**.

The Provider says it would like to acknowledge the delays that occurred and would like to apologise for any inconvenience or upset that this may have caused to the Complainants. While the Final Response letter notes that Provider policy dictated that new information was required given the passage of time, the Provider says this information should have been clearly communicated to the Complainants and, for this, the Provider apologises. The Provider says that in order to comply with its lending policy, once financial information becomes more than 6 months old, fresh information is required to ensure that any credit decision is based on up to date information.

The Provider says the Complainants' Representative provided the details of the address where the delivery of the documentation was made in **January 2019**. This is detailed in an email from the Complainants Representative to the Provider on **12 February 2019**.

/Cont'd...

Having cited this address, the Provider says that this is a partial address relating to its business activities and this in some way may explain how the documentation did not arrive at their intended destination. However, the Provider says it notes that the documentation was provided on **31 January 2019** and receipt of the documentation was acknowledged to the Complainants' Representative.

The Provider says its Final Response letter of **18 July 2019** states:

*"We note you say you sent the answers to queries by internal mail on 24 January 2019. According to our records the Case Manager did not receive this communication."*

The Provider says it requested this information on a number of occasions prior to the Complainants' Representative advising that the documentation had been sent by internal mail on **24 January 2019**. The Provider has set out the dates this information was requested. The Provider says it has no record of receiving the correspondence that the Complainants' Representative advised he sent through internal mail on the **24 January 2019**. The Provider says that the Statement of Affairs for the Complainants remained outstanding as at **22 March 2019** when the Complainants' Representative requested a meeting.

The Provider says it issued consent to sale letters to the Complainants on:

**20 December 2016:** The Provider consented to the sale of property in Dublin with a Gross Sales Price of €170,000.00, deductions of legal and sales costs of €3,000.00. Upon receipt of the Net Sales Proceeds of €167,000.00, the Provider undertook to furnish the Complainants with a deed of discharge in respect of the property. The Provider consented to the sale of property in Rural County 2 with a Gross Sales Price of €100,000.00, deductions of legal and sales costs of €3,000.00. Upon receipt of the Net Sales Proceeds of €97,000.00, the Provider undertook to furnish the Complainants with a deed of discharge in respect of the property.

**20 October 2017:** The Provider issue a letter to the Complainants and their solicitors, advising it acknowledged confirmation of the properties in Dublin or Rural County 2 having been agreed for sale. The Provider requested a written undertaking confirming that on completion of the sale the Net Sales Proceeds would be remitted to the Provider. The Provider says it acknowledged that the sales were due to complete no later than **20 January 2018** and should the sales not complete on or before this date an extension was to be sought from the Provider to progress. The Provider advised that on receipt of the agreed sum less sales and legal fees, it would discharge the Legal Mortgage/Charge over the properties and that the proceeds would be applied to loan account 102. The letter further advised that it did not represent an agreement in relation to any residual debt due and owing to the Provider.

/Cont'd...

**20 April 2018:** The Provider issued a letter to the Complainants and their solicitors advising it acknowledged confirmation of the properties at Dublin and Rural County 2 having been agreed for sale. The Provider requested a written undertaking confirming that on completion of the sale the Net Sales Proceeds will be remitted to the Provider. The Provider acknowledged that the sales were due to complete no later than **31 July 2018** and should the sales not complete on or before this date an extension was to be sought from the Provider to progress. The Provider advised that on receipt of the agreed sum less sales and legal fees, the Provider would discharge the Legal Mortgage/Charge over the properties and that the proceeds would be applied to loan account 102. The letter further advised that it did not represent an agreement in relation to any residual debt due and owing to the Provider.

**10 August 2018:** The Provider issued a letter to the Complainants and their solicitor advising it acknowledged confirmation of the properties in Dublin and Rural County 2 having been agreed for sale. The Provider requested a written undertaking confirming that on completion of the sale the Net Sales Proceeds would be remitted to the Provider. The Provider acknowledged that the sales were due to complete no later than **30 September 2018** and should the sales not complete on or before this date an extension was to be sought from the Provider to progress. The Provider advised that on receipt of the agreed sum less sales and legal fees, it would discharge the Legal Mortgage/Charge over the properties and that the proceeds would be applied to loan account 102. The letter further advised it did not represent an agreement in relation to any residual debt due and owing to the Provider.

Throughout the period from **20 December 2016** to **30 September 2018**, the Provider says the sales of the properties did not close. The Provider says it advised the Complainants' Representative by email on the **2 October 2018** that the period of consent to sale had expired and highlighted that due to the fact the sales had not closed within a 2 year period, it was not possible to extend the consent to sale further and a new letter of consent to sale would need to be issued. The Provider says it advised that in order to re-issue a consent to sale the Provider would have to receive credit approval and would require certain information to do so. The Provider says the request for an extension to the consent to sale of the assets would not have been required in **October 2018** if the sales of the assets had successfully closed.

If the Complainants had successfully completed the asset sales at any point during the previous two years, the Provider says they had valid consent from the Provider. However, as the sales had not been completed and given the passage of time, it was reasonable for the Provider to request updated information and assurances prior to affording the Complainants an additional consent to sale period.

/Cont'd...

The Provider says that the Complainants, the Complainants' Representative and the Complainants' solicitors were aware that the consent to sale expired on **30 September 2018**. The Provider says it reached out at the earliest date with a lapse of 1 business day between consent to sale expiring and the request for information to secure new consents to sale.

### **The Complaints for Adjudication**

The complaints are that the Provider:

1. failed to engage with the Complainants over a sustained period of time;
2. failed to properly prepare for, and was hostile during, a meeting with the Complainants in **April 2017**;
3. changed Relationship/Case Managers on a number of occasions which caused delay and disruption; and
4. sold the Complainants' loans to a third party despite having a settlement agreement in place.

### **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 11 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.

/Cont'd...

Following the issue of my Preliminary Decision, the Complainants' Representative emailed this office on 2 December 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this office under cover of its email dated 17 December 2021 that it had no further submission to make.

Having considered the contents of the Complainants' Representative's email and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

### **Background**

In an undated letter to the Second and Third Complainants which appears to have issued in **January 2017**, Case Manager A wrote to the parties to advise that due to a recent reorganisation of the Provider's customer teams, there was a change to the Case Manager looking after their accounts and that from **23 January 2017**, Case Manager A would be assuming this position.

A meeting took place between the various parties on **10 April 2017**. The file note prepared by the Provider in respect of this meeting states, as follows:

*"Meeting was held at borrowers request. 3 Borrowers plus Financial Advisor in attendance. Financial Advisor outlined that the borrowers wished to now finalise offer extended by previous Case Mgr [Provider redaction] and [Provider redaction] to borrowers late 2016. He advised the Offer as:*

*€96k - NSP from sale of property in Rural County 1 - Proceeds received late 2016*

*€60k lump sum in cash in lieu of €100k B note sought.*

*Sale proceeds (VSFL) of property – [address], Dublin 8 OMV €170k- this property now sale offered @ €140k*

*Sale proceeds (VSFL) of [address], Rural County 2 OMV €100k - this property also sale offered @ €100k.*

*Outstanding debt advised as c €1.4m:*

*Case Mgr outlined that we were not aware of the offers or consent to sale of the 2 properties above and of any final & approved offer on behalf of the Bank as presented above by Financial Advisor. Case Manager advised that the inclusion of 28 acres of land was included and discussed previously regarding the restructure. Financial advisor replied that he had already advised the previous Case Manager that in addition to no right of way access the Land is also held in joint names of [Provider redaction]. A valuation showed the land value €125k however financial advisor contests this as proposes land worth is €40k.*

/Cont'd...

*Financial advisor requested that Case Manager contact previous Case Mgr as the borrowers were very dismayed that what they regarded as a final Restructure Offer did not appear to be now acceptable to Bank. They had attended the meeting in good faith to finalise the Offer they thought had been agreed and wished to progress to finalisation in order to move on. They advised they had verbally accepted the Offer in good faith and had since heard nothing from Bank due to the re-organisation of [redacted] taking place. They were aware that a new Case Mgr had been allocated to them and had requested meeting to finalise matter. Borrowers advised they were broke, had €10k revenue bills each + €400k liabilities in relation to liquidation of the Company and the €60k cash in lieu of B note offered by them was being funded from Family / friends.*

*Case Manager contacted previous case manager who confirmed that the Offer (which had not yet been approved by Credit was to include sale of the properties, €100k B note and that value of land would impact on any B note or write off. Sale of land or cash in lieu would determine the value of B note. Financial advisor again stated that the land was not worth the valuation amount received and that if we advised him of a Panel Valuer he would have another valuation carried out.*

*Financial advisor again contested this - repeating that land had no value, was landlocked, was jointly owned and that €60k was agreed in lieu of B note with no reference to land. He advised that voluntary sale for loss of properties was part of the Offer. He re-iterated that we had received NSP for Rural County 1 property & we confirmed this.*

*Case Mgr advised we would check into the consent to sale agreements as we were not aware that remaining 2 properties were progressed to sale agreed stage. Finc advisor replied that if the deal was not forthcoming they would not progress the sale of both properties and we advised that he should progress sales if sales target had been achieved as this would reduce the outstanding debt.*

...

**Follow Up Actions:**

*Case Manager to follow up with previous case Manager and revert to Financial advisor regarding the issue of the land.*

*Follow up has been completed and Case Mgr will discuss with Portfolio Mgr and revert to Finc Advisor*

*Credit analyst to follow up to see if 2<sup>nd</sup> file on customers as consent to sale of both properties was not evident on existing file.*

/Cont'd...

*This has been completed and the consent to sales correspondence located in a 2<sup>nd</sup> file.*

*Credit analyst to seek up to date financials from the accountant ie accounts y/e 2015 in order to access any further repayment capacity.*

*Borrowers to be advised of Panel Valuer as financial advisor advised they would have another valuation carried out as disputing the amount of the PV completed in Dec 16 which we hold."*

Following this meeting, the Complainants' Representative emailed the Provider on **13 April 2017**, as follows:

*"I refer to our meeting earlier in the week.*

*To keep you in the loop I have spoken to both [Provider redaction] about what unfolded.*

*At the time of writing we still await a list of your approved agent to have the lands PVD."*

The Complainants' Representative emailed the Provider again on **27 April 2017**, as follows:

*"At the time of writing we have not received clarification on the auctioneers panel for the valuation.*

*Im sure you can appreciate the guys are anxious to bring this matter to an end. I also spoke to your assistance last week who confirmed I would have the information within 24hrs.*

*Can you forward the details today"*

The Provider responded to the Complainants' Representative on **27 April 2017** outlining a proposal in respect of the Complainants' liabilities. The Complainants' Representative responded to this email on **28 April 2017** setting out the Complainants' position towards the proposal and submitted an alternative proposal.

The Complainants' Representative emailed the Provider on **9 June 2017** in respect of the absence of contact over the previous two months and his unsuccessful attempts to contact the Provider, as follows:

*"I have attempted over the last few weeks to get in contact with you (as recently as yesterday) without any joy.*

*It is two months since our meeting and we are no further forward.*

*We have been attempting to bring this matter to conclusion for a considerable time.*

/Cont'd...



*I am finding it increasingly difficult to maintain the stance to the guys that the Bank want to engage with us.*

*Can you clarify what the delay is or can we take it that the Bank have withdrawn from discussions*

*In any event we request an urgent meeting to discuss”*

It appears from a Provider ‘Minutes of Customer Contact/Meeting’ dated **20 June 2017** that a telephone conversation took place between the Provider and the Complainants’ Representative on that date in respect of the proposed settlement of the Complainants’ liabilities. It appears that the Complainants’ Representative emailed the Provider on **20 June 2017** following this conversation, stating that:

*“I refer to our conversation 12.33 and a subsequent conversation I have had with [Provider redaction].*

*Firstly it is disappointing that it has taken two months to get a reply in this matter.*

*I understand you say that you were working on the file but Im sure you can appreciate that the lack of dialogue has caused considerable tension and brought an element of uncertainty*

*Secondly to clarify [Provider redaction] has confirmed that the reason that the restructure was not finalised in Provincial Town was due to their workload and the restructure within the Bank.*

*I am now seeking an urgent meeting with yourself to include [Provider redaction] to discuss this. We are available to come to Provincial Town or Dublin.*

*We have cooperated fully since the start of the process and it appears that the Bank have adopted an aggressive attitude with no engagement with us. I have ran the scenario a number of times and can not rationalise the counter offer you have made”*

The Provider appears to have responded to the above meeting request on **3 August 2017**. It seems due that to the nature of the meeting, in that it would involve the attendance of previous Case Managers, the Provider advised that *“Due to the change of management it would not be appropriate for [Provider redaction] and I to attend.”* The Complainants’ Representative responded to this email the same day expressing his dissatisfaction that the meeting could not be facilitated and outlined why he considered that such a meeting could be attended by the requested parties:

*“To be honest, I dont know what to say about this. I dont think our request was that difficult to comply with considering I have been repeating my calls for you to attend a meeting in all our attempts to engage with [Provider redaction].*

/Cont’d...

*I have never had a situation whereby, when a relationship manager changes, the previous manager finds it inappropriate to attend what is a 'hand over' meeting with the new manager.*

*Especially given the difficulties we have had in engaging with [Provider redaction]. You are aware that it has been difficult to get to the point where even a meeting can take place. The entire point of the forthcoming meeting was to pick up where negotiations had left with you and try to reengineer why the situation has changed so drastically. Let us all remember it is us who have driven the process in an attempt to put a final solution in place. We have all come a long way since we all met in Rural County 1 and the basis of an agreement was made.*

*In fact I have another case going on at the minute where the relationship manager is beating down the door to attend the meeting with the new relationship manager to ensure that continuity and customer service expectations are met. What is the difference between the two cases.*

*The meeting will have to proceed without you as once again I reiterate we want to engage with the Bank.*

*[Provider redaction] In advance of the meeting I require an explanation (and I would expect a response before 3pm tomorrow to allow me to consider the response before the meeting) as to how [the Provider] can propose to size two loans to a total value of 155k where there is clearly no affordability from day 1 to repay it. ..."*

The Provider responded to this email on **4 August 2017** and offered to discuss the matter by telephone. Responding to this email the same day, the Complainants' Representative indicated that the matter was best discussed in person the coming Monday.

It appears the Complainants' Representative emailed the Provider on the morning of the **8 September 2017** in respect of the Complainants' case, however, the body of this email appears to be missing. That afternoon, one of the Provider's agents emailed the Complainants' Representative, in respect of the Complainants' settlement proposal, as follows:

*"I am looking after [Provider redaction] files while [Provider redaction] also working alongside him ongoing so feel free to contact me.*

*In regard to [the Complainants'] file, I am in the progress of submitting this application to our credit department and hope to have this complete by this evening. After approval is sought by credit committee, I envisage that this should take approx. 10 business days. Letters of Offer will then issue to the Borrower, which they will need to return signed to ourselves.*

*I will keep in touch to advise accordingly."*

/Cont'd...

The Complainants' Representative emailed the Provider on **21 September 2017** requesting an update on matters. It appears that a telephone conversation took place between the Provider and the Complainants' Representative on **5 October 2017** which was followed by an email from the Provider outlining an approved settlement proposed, subject to contact and certain further conditions. The Provider issued correspondence to the Complainants on **20 October 2017** regarding the sale of certain property and, amongst other matters, the manner in which the proceeds of sale would be applied once received by the Provider. It was noted in this correspondence that the sales were to be completed by **20 January 2018**, failing which, an extension was to be sought from the Provider.

The Complainants' Representative emailed the Provider on **3 April 2018**, to advise that:

*"Just touching base in relation to the Letters of Consent for the sales of the remaining assets. We are ready to close the sales but the consents have expired. Can you reissue them to allow us to advance.*

*Also any sign of the settlement agreements"*

The Provider responded to this email on **6 April 2018**, as follows:

*"Apologies for the delay getting back to you, only here a few days this week. lots going on.*

*I am at the final stage with legal on the settlement agreements they are just reviewing a condition in the Letters, solely related to bringing the company debt into the write off in the personal names.*

*I will get fresh consent to sale letters out to you next week."*

The Provider issued correspondence to the Complainants on **12 April 2018** making a formal demand for the repayment of certain monies on foot of guarantees made in favour to the Provider. On **13 April 2018**, the Provider issued correspondence to the Complainants' Representative regarding the sale of certain property and, amongst other matters, the manner in which the proceeds of sale would be applied once received by the Provider. It was noted in this correspondence that the sales were to be completed by **31 July 2018**, failing which, an extension was to be sought from the Provider.

The Complainants' Representative emailed the Provider on **29 May 2018** requesting an update in respect of the Complainants' case. The Provider responded to this email on **1 June 2018**, as follows:

*"My apologies for the delay in reverting, mad busy for month end.*

*In relation to the above legal have come back to me on it and I now just need to get sign off on the structure of the agreement.*

/Cont'd...

*As I said before this is purely internal and does not affect the agreement in principal. My apologies for the delay, I had expected this to be resolved a lot sooner.*

*If your clients would like me to issue correspondence to them directly outlining this, please let me know."*

The Complainants' Representative responded to this email on **6 June 2018** advising that he would follow-up with the Provider in a couple of weeks. It appears that the Complainants' Representative emailed the Provider in respect of the Complainants' case on **22 June 2018**. However, the body of this email appears to be missing. The Complainants' Representative emailed the Provider again on **10 July 2018**, requesting an update. In response to this, the Provider advised, the same day, that: *"I have someone looking at this for me for credit, will talk to them and see where we are at and get back to you."* The Complainants' Representative sought a further update on **19 July 2018**. A further update was sought by the Complainants' Representative on **7 August 2018**, as follows:

*"Any sign of settlement agreements*

*We are ready to close the Rural County 2 sale, but the consent is out of date, [named entity] have asked that the letter of consent is extended until the 30th September. Can you forward this to us"?*

By letters dated **10 August 2018**, the Provider wrote to the Complainants regarding the sale of certain property and, amongst other matters, the manner in which the proceeds of sale would be applied once received by the Provider. It was noted in this correspondence that the sales were to be completed by **30 September 2018**, failing which, an extension was to be sought from the Provider.

By letters dated **13 September 2018**, Case Manager B wrote to the Complainants to advise that due to a reorganisation of the Provider's customer teams, Case Manager B would be taking over the day to day management of the Complainants' facilities. This letter further noted that a restructure of the Complainants' facilities was being progressed by the Provider and also requested certain information in order to facilitate an annual review of their facilities:

*"I acknowledge that a restructure of your [Provider] Facilities is currently progressing with Letter of Offers to be issued in the next few weeks.*

*In the meantime, upon review of the file, I note that the Annual Review of your Facilities is now overdue with the latest financial information provided to the Bank dated March 2016."*

/Cont'd...

On **20 September 2018**, the Complainants' Representative wrote to the Provider by email, as follows:

*"I will attempt to make contact with [the Complainants' solicitor] on your behalf. We have had a number of issues with our solicitor in regards to advancing the closing of the sales, but we have also been attempting to limit our exposure on the residual debt, Im sure you can appreciate that until we have a Letter of Offer we are in a weak position. We have been awaiting the agreements for a considerable length of time.*

*The Dublin unit is not rented as it is sale agreed*

*We are available to meet and discuss if required"*

The Provider responded to this email the same day, advising that: *"I will also make contact with [the Complainants' solicitor] in order to issue response letter"*.

On **2 October 2018**, the Provider emailed the Complainants' Representative regarding the progression of matters, as follows:

*"I refer to previous correspondence regarding our mutual customers [the Complainants]. I also refer to the disposal of properties at ... Rural County 2 and ... Dublin [location redacted].*

*As previously advised, I note that properties have been sale agreed for c. 2 years which is unusual for assets to require this length of time to complete. I acknowledge that asset sale consent letters dated 10<sup>th</sup> August 2018 issued by [Provider redaction] in respect of both properties have now expired.*

*As per [Provider] policies asset sale consent cannot be extended [Provider redaction] juncture. In order to progress matter and receive credit approval to further extend, the [Provider redaction] ensure market value is being obtained as a result the Bank require the following:*

- (i) Independent valuation ... in respect of both properties.*
- (ii) Marketing report ...*
- (iii) Purchaser name*
- (iv) Confirmation that the transaction is to an unrelated party and is arm's length.*

*As previously advised the Bank is progressing with the restructure of the Borrowers' facilities with [the Provider] with Letter of Offer to issue shortly. However, the Bank will not be in a position to issue Letter of Offer prior receiving confirmation assets are in line with current market value.*

/Cont'd...

*Finally, you may be aware of letters issued to the Borrowers dated 13.09.2018 requesting up-to-date information in order to progress with the annual review of the Facilities. No response has been received from the Borrowers at this juncture.”*

By letters dated **5 October 2018**, the Provider wrote to the Complainants repeating its request for information as set out in its letter of **13 September 2018**. The Provider wrote to the Complainants again on **16 October 2018**. In respect of its email of **2 October 2018**, the Provider repeated its request for information surrounding the market value of the properties, advising that:

*“... the Bank is progressing with the restructure of the facilities with [the Provider] with the view to issue Letter of Offer. However, the Bank will not be in a position to issue Letter of Offer prior receiving confirmation assets are in line with current market value.”*

The Provider also requested a response to its correspondence of **13 September** and **5 October 2018** in respect of the annual review of the Complainants’ facilities.

The Complainants’ Representative emailed the Provider on **30 October 2018** regarding the Complainants, as follows:

*“... Could you please provide me with an update. Finally, I continue to await up-to-date financial information in respect of the Borrowers in order to progress matter.”*

In response to this email, the Provider wrote to the Complainants’ Representative on **9 November 2018**, as follows:

*“I have not yet received responses to my queries. I have also received no responses to my letters dated 13.09.2018; 05.10.2018 and 16.10.2018 to the Borrowers.*

*Please be advised that in addition of the annual review of the facilities, the Bank require up to date financial information to ensure the proposed restructure previously discussed by previous Relationship Manager, [Provider redaction] remains appropriate prior issuing Letter of Offer in light with the unfortunate passing of time.*

*If you could liaise with the Borrowers regarding outstanding financial information in order for me to progress it would be greatly appreciated. In the event that no up to date financial information are received in the next 10 business days, the Bank will have no option but to deem the Borrowers as not co-operating. Finally, I continue to await up-to-date financial information in respect of the Borrowers in order to progress matter.”*

In further email correspondence between the parties that day, the Complainants’ Representative stated, as follows:

*“Apologies for not getting back to you*

/Cont’d...

*I have the file out for review and will be in a position to revert next week*

*In relation to the non cooperation, I think this is inappropriate as we have been awaiting a settlement agreement for some times and hold numerous correspondence confirming same”*

In response to this, the Provider advised the Complainants’ Representative that:

*“... However, in light with the passage of time, due to operational issues, I will not be in a position to progress with the issuance of the Letter of Offer as discussed with previous Relationship Manager*

*Following review of the file, I can confirm that the latest financial information provided to the Bank by the Borrowers are dated 03/2016 which are deemed outdated at this juncture. Credit approval is required prior the issuance of the Letter of Offer and I can confirm that I will not be in a position to receive approval unless up to date financial information are received. I can confirm it is my intention to progress matter swiftly but will not be able to do so unless up to date financial information are received. Financial information dated 03/2016 will not be acceptable to our Credit Committee which will need to ensure the proposed restructure remain appropriate. As previously outlined, the Bank continues to require the Borrowers’ full co-operation and disclosure to progress matter”.*

On **14 November 2018**, the Complainants’ Representative requested up-to-date loan balances to enable the completion of the Statements of Affairs.

Following correspondence from the Complainants’ solicitors regarding the sale of the Rural County 2 property, the Provider emailed the Complainants’ Representative on **23 November 2018**, as follows:

*“Please be advised that I have received correspondence from [the Complainants’ solicitor] from [law firm] yesterday in respect of the sale of property at ... Rural County 2, seeking for letter of consent from the Bank. However, as previously advised to all parties, the Bank is no longer in a position to re-issue the letter of consent in light of passing of time since the property was sale agreed (i.e. 2 years). Indeed, the Bank will require credit approval to progress with same and as such is required to obtain the following information as previously advised in order to progress: ...*

*Please be advised that I issued response today to [the Complainants’ solicitor] outlining the above.*

*Finally, I am looking forward to receiving up to date financial information in respect of the Borrowers with the view to progress matter.”*

/Cont’d...

On **6 December 2018**, the Provider emailed the Complainants' Representative to confirm receipt of financial information in respect of the Complainants. The email further advised that it would review this information shortly and revert with any queries.

On **3 January 2019**, the Provider emailed the Complainants' Representative raising a number of queries regarding the Complainants:

*"I have now reviewed all the financial information provided recently by yourself in order to progress with the restructure of the [Provider] Facilities, in default, vesting in the joint names of [the Complainants]. Following review of same I have raised few queries which I hope you might be able to answer. Queries are as follows ..."*

The Complainants' Representative emailed the Provider on **11 January 2019** to advise that he had arranged to meet the Complainants the following week and that he would gather the outstanding documents. The Complainants' Representative also indicated that he would revert to the Provider in the week of **21 January 2019**. This email was acknowledged by the Provider on **14 January 2019**. The Provider then emailed the Complainants' Representative on **25 January 2019** requesting an update in respect of the queries raised in the email of **3 January 2019**. Responding the same day, the Complainants' Representative advised that: *"The documents left me yesterday, you should get them this morning"*. It appears that the Complainants' Representative forwarded further documentation to the Provider in respect of the Third Complainant on **31 January 2019** and also advised that due to a family emergency, he would be out of reach until the following week.

On **12 February 2019**, the Complainants' Representative emailed the Provider asking whether the Provider had the opportunity to review the documentation previously provided. Responding to this email, the Provider stated that:

*"... As previously advised I reviewed the documents provided for all Borrowers and raised queries in early January (i.e. outlined in my email dated 03.01.2019 - please advise if you wish for me to re-submit same). I have not yet received response to same and continue to await same in order to progress further."*

In a further email on **12 February 2019**, the Complainants' Representative advised that: *"A package of information was sent via internal mail to you on the 24th January?"* The Provider advised the Complainants' Representative that the package was not received and asked the Complainants' Representative where it was sent. It appears that the Complainants' Representative then provided the address to where he sent the documents and asked if it would be easier for him to scan the documents to the Provider. In response to this, the Provider asked the Complainants' Representative if he could email the responses to the queries raised in **January 2019**. A follow-up email appears to have been sent on **14 February 2019**.



By letters dated **13 February 2019**, the Provider wrote to the Complainants to advise them that an event of default had occurred on their loan accounts in that they had fallen into arrears.

The Provider sent a secure message by email to the Complainants' Representative on **19 February 2019**. The Complainants' Representative informed the Provider on **28 February 2019** that he was unable to access this message. The Provider responded to this email on **5 March 2019** apologising for the delay in responding (as the Provider's agent was out of the office for a period) and attached the relevant correspondence.

By email dated **22 March 2019**, the Complainants' Representative requested a meeting to discuss matters in the week beginning **1 April 2019**. The Provider responded the same day suggesting a date of **4 April 2019** and advised that the Provider continued to await receipt of sworn Statements of Affairs. On **3 April 2019**, the Provider emailed the Complainants' Representative in respect of the meeting, as follows:

*"I refer to previous conversation in respect of our meeting scheduled for tomorrow. Unfortunately, I will not be able to attend same as I have been required to attend a project on short notice. I will be in touch next week to rearrange a meeting. Apologise for the inconvenience caused."*

By letters dated **4 April 2019**, the Provider wrote to the Complainants to advise them of the sale of loan accounts ending 012, 102 and 375; with an expected transfer date of **14 June 2019**. In separate correspondence dated **4 April 2019**, the Complainants were also advised of the sale of the debt arising from the overdrawn balance on current account ending 029.

Following this, by letters dated **5 and 9 April 2019**, the Complainants' Representative made a formal complaint to the Provider.

### ***The First Complaint***

Case Manager A was appointed as the Complainants' Case Manager with effect from **23 January 2017**. However, while the Provider appears to have issued correspondence in **December 2016** consenting to the sale of certain property, there does not appear to have been any communication between the parties until the beginning of **April 2017**. In respect of this period, I note that the Complainants' Representative indicated in the letter of complaint dated **5 April 2019** that he attempted to contact Case Manager A between **January** and **April 2017** but was unable to do so:

*"...*

- 25th January 2017, Bank restructured and new case manager appointed*
- Unable to contact new Manager*
- Had to engage old RM to contact new RM*
- Held meeting in April 17 ..."*

/Cont'd...

The file note in respect of the meeting which took place on **10 April 2017**, indicates that, amongst other matters, the Provider would furnish details of a 'Panel Valuer' to the Complainants' Representative. Arising from this, the Complainants' Representative emailed the Provider on **13 April** and **27 April 2017**, requesting this information. Following this, there was brief engagement between the parties on **27 April** and **28 April 2017** regarding a proposal in respect of the settlement of the Complainants' liabilities. This concluded with an email from the Complainants' Representative on **28 April 2017** where he put forward a proposal for the Provider's consideration. However, it appears that this email was not responded to and the next contact between the parties was an email from the Complainants' Representative on **9 June 2017** noting the absence of contact and seeking to progress matters.

It appears from the Complainants' Representative's email of **20 June 2017** that the Provider advised the Complainants' Representative during a telephone conversation on **20 June 2017** that the Provider was *working on the file*. However, if that was the case, it is not unreasonable to expect the Provider/Case Manager A to have kept the Complainants' Representative or the Complainants apprised of matters.

In the Complainants' Representative's email of **20 June 2017**, it can be seen that he made a request for *an urgent meeting*. However, this email does not appear to have been responded to until **3 August 2017**. In light of the absence of contact which preceded this email, I consider that a more prompt response to the meeting request should have been forthcoming.

The correspondence between the parties in **August 2017** concluded on **4 August 2017** with the Provider offering to discuss matters by telephone with the Complainants' Representative. In response to this, the Complainants' Representative indicated that the matter "*is best discussed in person on Monday*". The Provider does not appear to have responded to this meeting suggestion and the next point of contact was over a month later on **8 September 2017** when the Complainants' Representative emailed the Provider regarding the Complainants' case. In an email of the same date, the Provider advised that it was in the process of submitting a settlement proposal to the Credit Department which it was hoped would be submitted that evening. The email further advised that credit approval should issue in approximately 10 business days and that the Provider would keep in touch with the Complainants' Representative. Although within the 10 business day timeframe, the Complainants' Representative emailed the Provider on **21 September 2017** requesting an update on matters. However, it does not appear that this email was responded to.

While there was some other communication between the parties in **October 2017**, the Provider issued correspondence to the Complainants regarding the sale of certain property, with the sale to be completed by **20 January 2018**. However, there appears to have been no contact between the parties during the period of **20 October 2017** to **3 April 2018**.

While it is reasonable to expect the Provider to have kept in contact with the Complainants or the Complainants' Representative during this period, particularly on the passing of the **January 2018** sale completion date, it is equally as reasonable to expect the Complainants or the Complainants' Representative to have kept in contact with the Provider.

While there was further communication between the Provider and the Complainants/the Complainants' Representative during **April 2018**, with further consent to sale issuing, I note that in an email from the Provider dated **6 April 2018**, it was stated in respect of the settlement proposal that:

*"I am at the final stage with legal on the settlement agreements they are just reviewing a condition in the Letters, solely related to bringing the company debt into the write off in the personal names."*

The Complainants' Representative emailed the Provider on **29 May 2018** requesting an update and, responding on **1 June 2018**, the Provider advised that:

*"... legal have come back to me on it and I now just need to get sign off on the structure of the agreement.*

*As I said before this is purely internal and does not affect the agreement in principal. My apologies for the delay, I had expected this to be resolved a lot sooner."*

Following this, it appears that the Complainants' Representative emailed the Provider on **22 June 2018** regarding the Complainants' case, but a response does not appear to have been received. The Complainants' Representative emailed the Provider again on **10 July 2018** requesting an update, which was responded to by the Provider the same day.

A further update was sought on **19 July 2018**, but a response does not appear to have been received. In an email from the Complainants' Representative on **7 August 2018**, an update was sought in respect of the settlement agreement and, noting that the consent to sale had expired, a request was also made for the period of the consent to be extended. While the Provider issued correspondence regarding the sale of the properties on **10 August 2018**, it does not appear to have responded to the Complainants' Representative's request for an update on the settlement proposal.

Accordingly, having consider the communication between the parties between **April and August 2018**, it is my opinion that the Provider did not make sufficient efforts to communicate with the Complainants' Representative regarding the progress being made in relation to the settlement proposal and, on certain occasions, the Complainants' Representative's emails were not responded to.

A change in Case Manager came about in **September 2018**. In Case Manager B's letter of **13 September 2018**, it was stated that a restructure of the Complainants' facilities was being progressed by the Provider.

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This letter also contained a separate request for information regarding the Complainants in order to facilitate an annual review of their facilities. It appears from an email from the Complainants' Representative dated **20 September 2018** that around this time the Complainants were experiencing certain difficulties in respect of closing the sales of the properties. However, I note that the consent to sale issued by the Provider in **August 2018** was due to expire on **30 September 2018**.

On **2 October 2018**, the Provider advised that in order to extend the consent to sale, certain information was required to satisfy the Provider that market value was being obtained in respect of the properties. This email further advised that the Provider would not be in a position to issue a Letter of Offer in respect of the restructure of the Complainants' facilities until the Provider received confirmation that the properties were in line with current market value. The Provider repeated this request in an email dated **16 October 2018**. The Complainants' Representative appears to have responded to the Provider on **30 October 2018** requesting an update and stated that he was awaiting up-to-date financial information in respect of the Complainants.

On **9 November 2018**, the Provider advised the Complainants' Representative that it had not received a response to its correspondence dated **13 September, 5 October or 16 October 2018**. It was at this point that the Provider advised that in addition to being required for the purpose of the annual review, the information requested in this correspondence was also required to ensure that the proposed restructure of the Complainants' liabilities remained appropriate prior to issuing a Letter of Offer given the passage of time. Responding to this email the same day, the Complainants' Representative advised that *"I have the file out for review and will be in a position to revert next week"*. It appears that the financial information requested by the Provider was received around **6 December 2018**.

In respect of the period from the beginning of **September 2018** to the beginning of **December 2018**, I do not consider there to have been any delays or lack of engagement on the part of the Provider.

As can be seen, the consent to sale had expired and, in order to extend this, certain information was required regarding the market value of the properties in **October 2018**. Following this, in **November 2018**, the Provider advised that given the passage of time since the Complainants had provided financial information to the Provider (which appears to have been around **March 2016**) the financial information previously requested in respect of the Complainants' annual review was also required in order to assess the continued suitability of the proposed restructure. In circumstances where consent to sale had been extended on a number of occasions and passage of time since updated financial information was provided, I do not consider the Provider's requests for information to have been unreasonable. However, as can be seen, it took time for this information to be provided.

In the Provider's email of **6 December 2018**, the Complainants' Representative was advised that the Provider would review the information that had been provided and revert to the Complainants with any queries. In this regard, the Provider emailed the Complainants' Representative on **3 January 2019** with a number of queries.

/Cont'd...

In light of the fact that the Provider required time to consider this information and that the information was furnished to the Provider in the month of December which is the Christmas and New Year period, I do not consider there was any unreasonable delay on the part of the Provider in responding to the Complainants' Representative on **3 January 2019**.

It appears that the Complainants' Representative responded to the Provider's queries by post on **24 January 2019**. However, the evidence indicates that this information was not received by the Provider. Later, on **31 January 2019**, the Complainants' Representative advised the Provider that he would be unavailable the following week. Following correspondence between the parties on **12 February 2019**, the parties became aware that the information sent by the Complainants' Representative had not been received. While it appears that on **12 February 2018**, the Provider asked if the Complainants' Representative could forward the information by email and that a follow-up request was sent by the Provider on **14 February 2019**, it is not clear from the evidence when this information was provided. Further to this, it appears that as of **22 March 2019**, the Provider was still awaiting receipt of sworn Statements of Affairs in respect of the Complainants.

In respect of the foregoing paragraph, I do not consider that the Provider was responsible for any delays arising from the issues surrounding the provision of information in response to the queries raised in **January 2019**. In particular, it is not clear who provided the Complainants' Representative with the address to which he sent the documentation or where he obtained this address from, nor does it appear that the Complainants' Representative sought to clarify or confirm the details of the correct correspondence address from the Provider or the address he was in fact sending the information to.

The Provider sent a secure message to the Complainants' Representative via email on **19 February 2019**. However, it appears that the Complainants' Representative did not advise the Provider that he was unable to access this message until **28 February 2019**. That said, the Provider did not respond to this email until **5 March 2019**, although I note that the Provider's agent was out of the office for a period, around this time. In the circumstances, I accept that there was no unreasonable delay on the part of the Provider.

In the Complainants' Representative's letter of **9 April 2019**, the Complainants' Representative took issue with the Provider's cancellation of a meeting scheduled for **4 April 2019** the day before the meeting was due to take place. The Provider's evidence is that just before the meeting was due to take place, Case Manager B was called away without notice to begin work on another project and, also at this time, Case Manager B became aware of the inclusion of the Complainants' loans in a loan sale. In such circumstances, the Provider says Case Manager B did not feel it was possible or appropriate to hold the meeting, particularly as the Complainants had not yet become aware that the Provider had agreed to sell their loans. The Provider says that the sale was progressed on a confidential basis and was not something that Case Manager B would have been privy to. The Provider also says that the meeting was cancelled at the earliest opportunity.

In the Provider's email of **3 April 2019**, the Complainants' Representative was advised of the cancellation of the meeting, as follows: *"I have been required to attend a project on short notice. I will be in touch next week to rearrange a meeting."* By letters dated **4 April 2019**, the Complainants were informed of the sale of their loans and the debt arising from overdrawn balance on their current account.

The reason for the cancellation of the meeting was twofold. The first reason was that Case Manager B was required to work on another project, without any prior notice; and the second reason was the sale of the Complainants' loans. Only the first of these reasons were communicated to the Complainants' Representative as the Complainants had yet to be informed of the sale of their loans.

In respect of the requirement for Case Manager B to begin immediate work on another project without advance notice, I note that the Provider has not offered any explanation as to why Case Manager B was required in such an urgent fashion.

In respect of the loan sale, I accept that matters such as this can proceed on a confidential basis and not all Provider personnel would be aware of the inclusion of a particular loan in a loan sale until quite late in the process. In this respect, I note that in the Final Response letter dated **18 July 2019**, the Provider explained that a final decision on the loans to be included in the loan sale was only confirmed on **29 March 2019**.

In light of the timing of the loan sale and the meeting, I appreciate that Case Manager B was in a difficult position in that the Complainants had not been formally notified of the sale of their loans. In such a situation, I accept that it would not have been appropriate to advise the Complainants' Representative of the loan sale before this information was formally communicated to the Complainants.

Accordingly, while undoubtedly very frustrating for the Complainants, I accept that the sudden and expected unavailability of Case Manager B on the date of the meeting was a legitimate basis for cancelling the meeting, albeit at very late notice. Further to this, I accept Provider's position that it may not have been appropriate to hold the meeting in circumstances where the Complainants may not have been aware or may have just become aware of the sale of their loans.

That said, I note that in her email of **3 April 2019**, Case Manager B intimated that she would be in touch with the Complainants' Representative the following week to reschedule the meeting. However, it does not appear that Case Manager B (or any other representative of the Provider) did in fact seek to contact the Complainants' Representative with a view to rescheduling the meeting. While I am satisfied that the unavailability of Case Manager B and the fact that the Complainants may not have been aware of the sale of their loans at the time of the meeting were legitimate reasons for cancelling the meeting, this does not mean that meeting should not have been rescheduled and I think that Case Manager B should have followed-up with the Complainants' Representative as outlined in her email.

/Cont'd...

Having considered the matter in detail and on considering all of the available evidence, I accept that there were a number of instances where the Provider failed to communicate and engage with the Complainants/the Complainants' Representative. However, it can also be seen that, at certain points, there were delays on the part of the Complainants/the Complainants' Representative in responding to and furnishing information to the Provider.

### ***The Second Complaint***

In respect of the meeting which took place on **10 April 2017**, the Complainants' Representative stated in his letter of **5 April 2019** that: *"Meeting did not go well with meeting being hostile, seemed to be a lack of knowledge of what had been discussed previously"*. In a submission to this Office dated **5 November 2020**, the Complainants' Representative stated that: *"The Bank had not prepared for the meeting and had little knowledge of the connection."*

The file note in respect of this meeting has been set out above. Further to this, the Provider has furnished the following statement of Case Manger A:

*"I believe I was the case manager for this Customer from February/March 2017 to the time I left the role to move to a different employer in August 2018. In that time, I managed a significant portfolio of complex, detailed cases and would have conducted a large number of meetings in person as well as extensive telephone conversations. Taking this into consideration and given the timeframe that has elapsed since I had any involvement with this case, I do not have a very detailed recollection.*

*I do recall having a meeting with the customers in April 2017 which if I recall correctly was also attended by one of my colleagues. It was also attended as I recall by the individual customers involved as well as their representative. To the best of my recollection, a point of discussion arose during that meeting in relation to an arrangement on the loans discussed with the previous relationship manager. I think it was in relation to sale of a property. My recollection is that a review of the file carried out prior to the meeting had not revealed any agreed arrangement. I left the meeting to call the previous relationship manager to clarify the point. I called and spoke to him. I seem to recall it was a short conversation, but I don't remember the detail.*

*I then went back to the meeting room. My recollection then is that I advised them that the Bank would do a further review of their file and further discussions would be had with the previous relationship manager.*

*My recollection of interactions after this is that I did not have any further meetings in person with the borrowers. However, I do recall being in regular contact with the borrower's representative by phone. The Bank worked towards securing a settlement deal which I think involved the sale of a property and land.*

/Cont'd...

*If I am recalling correctly, I think there were discussions around the valuation of this land and the impact this would have on a settlement value. My understanding is that this settlement was agreed however, I don't think it was transacted by the time I left."*

The Provider has also provided a statement from the staff member who was in attendance at the meeting:

*"With regard to the above investigation I wish to confirm that I attended the meeting with Case Manager [Provider redaction] on behalf of the Bank on the 10th April 2017. The meeting was held at the Bank premises in [location].*

*The customers present at the meeting were introduced as [the Complainants] together with their Financial Advisor ....*

*The file notes which were completed by myself following the meeting are a true reflection of the content of the meeting held with the customers and their Financial Advisor.*

*There was no hostility on behalf of the Bank at the meeting. While the Case Manager had prepared for the meeting he was unable to comment or verify any verbal discussions which had taken place between the previous Case Manager and the borrowers / Financial Advisor. The Case Manager contacted the previous Case Manager during the meeting, as requested by the Financial Advisor. The Financial Advisor again challenged the value of the land and the meeting ended with Case Manager advising he would discuss the land details with his line Manager (Portfolio Manager) following which he would revert to the Financial Advisor with the outcome of the land value query raised by the Financial Advisor."*

In terms of there being any hostility at this meeting, it appears that Case Manager A was unaware of previous verbal discussions that took place with the former Case Manager. While it is likely that this may have caused frustration, having considered the evidence, I have no evidence that the meeting was hostile or that the Provider's representatives behaved in a hostile manner. For instance, in the email correspondence exchanged between the parties immediately following the meeting and 'Minutes of Customer Contact/Meeting' dated **20 June 2017**, there is nothing to suggest that the meeting was hostile. In addition to this, the matter of the meeting being hostile does not appear to have been raised until two years after the meeting took place.

Furthermore, the Complainants or the Complainants' Representative have not identified precisely what it was about the meeting that was hostile or how the meeting became hostile. Further to this, I note that none of the Complainants have provided a statement of their recollection of this meeting.

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In terms of Case Manager A's lack of knowledge and lack of preparedness together with the other staff member in attendance at the meeting, I note that this meeting was at the Complainants' request. However, there is no evidence which shows the precise purpose for which the meeting was arranged or the specific matters that were to be discussed. In Case Manager A's statement, it is indicated that a review of the Complainants' file was carried out prior to the meeting. However, as noted above, Case Manager A was unaware of the verbal discussions which took place with the former Case Manager prior to his appointment.

The evidence in this complaint, in particular the file note of the meeting, suggests that there were certain discussions with the former Case Manager regarding a settlement proposal which do not appear to have been recorded on the Complainants' file. In this respect, I note that **section 11.7** of the **Consumer Protection Code 2012**, requires regulated entities, amongst other matters, to maintain complete records. In light of the negotiations that appear to have been taking place between the Complainants/the Complainants' Representative regarding the restructure/settlement of their liabilities, it is my opinion that any discussions regarding restructure/settlement proposals should have been recorded by the relevant Case Manager. In such circumstances, there appears to have been a failure on the part of the Provider to maintain complete records reflecting pertinent discussions which took place regarding the Complainants' liabilities. This in turn appears to have caused certain confusion and frustration at the meeting on **10 April 2017**. Accordingly, I am of the view that the Provider's representatives were not fully apprised of the previous discussions regarding the Complainants' liabilities in advance of, or during, the meeting.

### ***The Third Complaint***

A change in Case Manager occurred in **January 2017** with the appointment of Case Manager A and again in **September 2018** with the appointment of Case Manager B. It will inevitably be the case that a newly appointed Case Manager will need time to familiarise themselves with their new portfolio of customers. This can, in some cases, cause a certain amount of delay and disruption which, in my opinion, is not unreasonable.

In the context of this complaint, having considered the evidence, I do not accept that the appointment of new Case Managers necessarily in and of itself caused delay and disruption. The difficulties which arose appear to have arisen, as noted above, from the Provider's failure to maintain complete records and a poor level of communication and engagement from the Provider.

### ***The Fourth Complaint***

This aspect of the complaint is that the Provider sold the Complainants' loans to a third party despite having a settlement agreement in place.

/Cont'd...

The evidence shows that the parties were trying to put a restructure/settlement proposal in place. However, the evidence also shows that a Letter of Offer in respect of this proposal did not issue prior to the sale of the Complainants' loan nor was any binding agreement entered in this respect.

It is also the case that certain issues arose in **October 2017** regarding the manner in which the proposal would be structured and these issues were required to be resolved before the proposal could progress to a Letter of Offer. Further to this, I note that there were delays on both sides in respect of certain aspects of this complaint. I also note that the consent to sale was renewed on a number of occasions. However, in the months leading up to the sale of the Complainants' loans in **April 2019**, beginning as early as **October 2018**, the Provider advised the Complainants' Representative that certain information was required by it in order to issue a Letter of Offer. In this respect, the evidence indicates that information remained outstanding immediately prior to the sale in **April 2019**.

In my Preliminary Decision I stated my belief that in such circumstances, I did not accept that a settlement agreement was in place between the Complainants and the Provider. I note the Complainants, in their post Preliminary Decision submission of **2 December 2021**, remain of the opinion that an agreement did exist and point to the email of **1 June 2018**. I have dealt with this matter above and I remain of the view that no settlement agreement was in place between the Complainants and the Provider. Furthermore, I do not believe that such an agreement would necessarily have prevented the Provider from selling the Complainants' loans. Accordingly, I accept that the Provider was entitled to sell the Complainants' loans.

### ***Goodwill Gesture***

In its Complaint Response, the Provider states that:

*"In recognition of the issues identified in this submission and, in particular, our poor communication with the Complainants and their Representative together with the length of time that this matter has been outstanding for the Complainants, the Bank would like to offer a gesture of goodwill in the amount of €12,500.00 in full and final settlement of this dispute."*

In light of the above, and having considered all of the available evidence, I consider this goodwill gesture to be a reasonable sum of compensation for the customer service failings on the part of the Provider. In these circumstances, on the basis that this offer remains available to the Complainants, I do not uphold this complaint.

### **Conclusion**

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

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



Ger Deering

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

10 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.