



<u>Decision Ref:</u>	2022-0122
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Managing Deceased Estates
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Maladministration
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a mortgage loan account and the consent for sale requests in respect of two secured properties.

The complaint is made by the Executors of the estate of the mortgage loan account holder (“the Borrower”) who died in late 2010. The Executors are referred to below as “the Complainants”.

The Complainants’ Case

In their Complaint Form, the Complainants state that the Provider failed to process, in a timely and efficient manner, applications for the Provider’s consent to the sale of two properties located in Dublin, Property 1 and Property 2 (together, “the Properties”).

In resolution of this complaint, the Complainants are seeking “*financial compensation*”.

The Provider’s Case

The Provider says this complaint relates to a Buy-to-Let (“BTL”) mortgage loan which was sanctioned in the name of the Borrower and drawn down on **23 June 2006**. The Provider says the loan was for €500,000.00 and the purpose was to release equity from the securities held (listed below) for the purchase of two apartments in Paris.

The Provider says the loan was drawn down over a 10 year term including a capital repayment moratorium for the first 60 months. After the expiry of the 60 months in 2011, the Provider says repayments were to revert to full capital and interest repayments. When the Provider replied to the formal investigation of this complaint in July 2020, the balance on the account as at **23 July 2020** was €487,493.24dr. Responding to this complaint the Provider said that repayments of €500.00 per month were being made to the account.

When the loan was drawn down, the Provider says the security for the loan consisted of:

- A first legal mortgage over Property 1
- A first legal mortgage over Property 2
- A first legal mortgage over Property 3
- An extension of the Provider’s first legal mortgage over:
 - Property 4
 - Property 5
 - Property 6
 - Property 7
 - Property 8
 - Property 9

The Provider says it is relying on the following documentation provided to the Borrower when the loan facility was sanctioned:

1. Letter of Loan Offer dated **3 March 2006**
2. Standard Commercial Loan Conditions applicable to the Letter of Loan Offer

The Provider says the above documents do not contain any specific reference to ‘consent to sale’ requests. In a submission dated **16 December 2020**, the Provider said that in addition to the above documentation, it is also relying upon ‘The General Conditions for [Provider] Home Loans’ dated **4 January 2006**.

The Provider has set out a timeline of events for the period from **1 June 2018** (when an email was received from the Complainants’ solicitor requesting consent to sell Property 1) and **26 April 2019** (when Case Manager 2 emailed the Complainants’ solicitor to advise that a consent to sale letter had issued in respect of Property 1).

In relation to Property 1, the Provider says it first received a request from the Complainants' solicitor for 'consent for sale' on **1 June 2018**. The Provider says it issued further correspondence on **8 June 2018**, **25 June 2018** and **29 June 2018** to the Complainants' Third Party Adviser.

On **25 June 2018**, the Provider says Case Manager 1 ("CM1") sent an email to the Complainants' solicitor saying that she was looking in to how to proceed with the consent to sale because in this case, the Borrower was deceased. On **29 June 2018**, the Provider says CM1 sent an email to the Complainants' solicitor enquiring as to the rental income on all of the Complainants' Buy to Let (BTL) properties. The Provider says this information was required before a paper could be sent to its Credit Department to apply for the 'consent for sale'.

The Provider says that because the information requested was not provided, CM1 sent follow up emails to the Complainants' solicitors on **11 July 2018**, **19 July 2018** and **15 August 2018**. The Provider says CM1 also called the Complainants' solicitors on **12 July 2018** requesting the information.

The Provider says that on **23 October 2018**, almost four months after the information had been requested, CM1 received an email from the Complainants' solicitor with details of rental income. On **31 October 2018**, the Provider says CM1 sent an email to the Complainants' solicitor requesting confirmation that the sale of the property was an 'at arm's length sale', which the Provider says would be normal procedure in a case where consent for sale was requested. The Provider says that on **8 November 2018**, it received a letter from the Complainants' solicitor confirming the sale was 'at arm's length'.

The Provider says a new Case Manager ("CM2") was assigned to the case and that CM2 sent an email to the Complainants' solicitor on **22 November 2018** requesting details of the legal costs and auctioneer's fees relating to the sale of Property 1, which the Provider says would be normal procedure in a case where consent for sale was requested.

On **18 January 2019**, the Provider says it received a letter from the Complainants' solicitor requesting consent for sale of Property 2. On **21 February 2019**, the Provider says the Complainants' solicitor telephoned to speak with CM2 but CM2 was not in the office on that day and the Complainants' solicitor spoke to another member of staff. The Provider says the staff member advised the Complainants' solicitor that in order to progress the request for sale, the Provider would require details of legal costs, auctioneer's fees, confirmation the sale was at arm's length and details of any Local Property Tax outstanding. The Provider says it acknowledges that the requests for valuations were not discussed at this time and it apologises for this.

On **27 February 2019**, the Provider says CM2 received a call from the Complainants' solicitor and during this call, CM2 confirmed that all required documentation had been received and that he would progress the application for consent for sale. On **11 March 2019**, the Provider says CM2 received a call from the Complainants' solicitor who was looking for an update on the matter.

The Provider says CM2 explained that he had just returned from annual leave and would investigate the current status of the case and revert to the Complainants' solicitor as soon as possible. On **21 March 2019**, the Provider says CM2 called the Complainants' solicitor and advised that the Credit Department required that valuations be carried out on the Properties. The Provider says it received the valuation in respect of Property 2 on **29 March 2019** and that the valuer declined to value Property 1 due to a conflict of interest. The Provider says a different valuer was then appointed but due to illness, the property agent was unable to grant access to Property 1 until **9 April 2019**. The Provider says it received a valuation report on **10 April 2019**.

On **12 April 2019**, the Provider says it received a letter from the Complainants' solicitor which advised that the purchasers of Property 2 had withdrawn from the sale due to the delay in obtaining consent to sale. On **17 April 2019**, the Provider says CM2 called the Complainants' solicitor to advise him that the application for consent for sale had been submitted to the Credit Department. The Provider says the Complainants' solicitor was not available so CM2 left a message. Later that day, the Provider says CM2 spoke to the Complainants' solicitor and during this call, the Complainants' solicitor expressed dissatisfaction at how long it had taken for the consent for sale request to be approved and sought an explanation for this. The Provider says CM2 stated that he had an 'Out of Office' message on his emails for the period he was on leave and that the Complainants' solicitor should have received an automatic response to his emails advising of this. The Provider says the Complainants' solicitor stated that he had not received any such message.

Following the call, the Provider says CM2 sent an email to the Complainants' solicitor on **17 April 2019**. In this email, the Provider says CM2 explained in relation to Property 2, the Provider's policy for consent for sale, was that consent could not be granted when the offer on the property had been withdrawn. CM2 further advised that if a new offer was received, he could then progress the application for consent for sale and also advised that he had resubmitted the application in respect of Property 1.

On **26 April 2019**, the Provider says a consent for sale letter issued in respect of Property 1 and CM2 sent an email to the Complainants' solicitor the same day to confirm that the letter was being issued.

The Provider says it acknowledges there were some shortcomings on its part in its handling of the applications for consent for sale from the Complainants' solicitor and that it has not fully complied with Provision 3.3 of the ***Consumer Protection Code 2012 (as amended)*** ("the Code").

In relation to the application for consent for sale in respect of Property 1 received on **1 June 2018**, the Provider says it should be noted that the application could not be progressed initially due to the delay of almost four months in the Provider being provided with the information requested in relation to rental income. However, the Provider says that it does acknowledge that the Complainants' solicitor should have been advised of all of the information/documentation required (legal costs, auctioneer's fees, confirmation of arm's length transaction) to progress the consent for sale application, when it was first received.

In relation to Property 2, the Provider says it acknowledged there was a delay of almost one month from **February 2019** to **March 2019** in the progression of the consent for sale applications due to CM2 being on annual leave. The Provider says there was also a delay of almost two weeks in a valuation being carried out on Property 1, although this was partly outside of the Provider's control.

The Provider says the following constitutes its consent for sale process:

- To commence the process the borrower must inform the Provider of the intention to sell the property and will be asked to provide a Standard Financial Statement ("SFS") with supporting documents.
- If the borrower has an offer, this must be confirmed in writing by their solicitor. The Provider Case Manager should request confirmation that this is an arm's length transaction and look for all transaction costs involved in the sale (solicitor's costs, auctioneer's costs, NPPR, water charges, property tax).
- The Case Manager should review all documentation to ensure they have sufficient information to commence the assessment. If not and they require clarity on the SFS, income or require further information they should contact the customer/third party advisor to request this.
- Once all documentation is received and in order, the Case Manager should assess the case and make a recommendation to Credit. (For unsustainable cases this must include a recommendation for the treatment of residual debt, taking allowed costs into consideration).
- Once the decision has been approved, the Case Manager will contact or attempt to contact the customer/third party advisor in order to communicate the decision. A confirmation letter then issues to the borrower/third party advisor.

The Provider says a complaint was originally received on **19 March 2019** and acknowledged on **25 March 2019**. However, during a call with a member of the ASU Complaints Team on **27 March 2019**, the Complainants' solicitor advised that he wanted to add to the original complaint.

The Provider says the new issue related to him being unable to contact the ASU Complaints Team directly by telephone or email. The Provider says this oral complaint was recorded under reference number ending 070 and handled in accordance with its complaints process and addressed in the complaint response letter dated **17 April 2019**.

The Provider says it issued a complaint response letter to the Complainants' solicitor on **17 April 2019**. In this letter, the Provider says it acknowledged the delays the Complainants had experienced in obtaining consent for sale in relation to the Properties, and apologised for these delays. The Provider says it also offered the Complainants a goodwill gesture of €500.00 in respect of the delays experienced in an effort to resolve the complaint. The Provider says it also provided the Complainants' solicitor with details of the ASU Complaints Team, as the Complainants' solicitor had expressed dissatisfaction in relation to the difficulties experienced when trying to contact the ASU Complaints Team.

The Provider says it is satisfied that it addressed all elements of this complaint in its complaint response letter dated **17 April 2019**. The Provider also refers to the following passage from this letter:

"[The Provider] does not advise its customers with respect to maintaining or terminating tenancies whilst a property is being marketed for sale and as such cannot be held liable for any loss of income that has crystallised as a result of a customer or property agent's decision to vacate a property for marketing purposes"

The Provider notes the Complainants are seeking financial compensation but did not quantify the amount sought. The Provider says it acknowledges there have been some customer service failings in its handling of the Complainants' case. These relate to poor communication in respect of delayed responses and inadequate clarity on information and documentation required, and failure to respond to a letter received from the Complainants' solicitor on **18 January 2019**. The Provider says it also acknowledges the difficulty experienced by the Complainants' solicitor in contacting the Complaints Team, Case Manager or a Case Manager colleague in order to progress the subject matter of this dispute.

The Provider says it would like to apologise for the above customer service failings and for any inconvenience or upset caused to the Complainants or their solicitor. In recognition of this, the Provider when responding to the formal investigation of this complaint, advised it

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would like to offer the Complainants a goodwill gesture of €10,000.00 in full and final settlement of this dispute. In a submission dated **16 December 2020**, the Provider advised it was increasing this offer to €10,500.00, owing to its failure to include certain General Conditions from its original submission to this Office, and noting the Complainants' frustration.

Further Submissions

The Complainants' solicitor delivered a submission in response to the Provider's Complaint Response on **11 November 2020**. In this submission, the Complainants' solicitor referred to an agreement reached between the Complainants and the Provider regarding the voluntary disposal of the Borrower's properties for the purpose of reducing the Borrower's debt. In this respect, it was stated that:

"It appears from the documentation furnished, that at no stage were details of this agreement communicated to the case manager dealing with the application for consent to sale. It now appears, due to the failure of the provider to inform the case manager of this agreement, the consent to sale department treated this as a standard or normal application by a borrower to sell a property. Matters such as a Standard Financial Statement, details of rent rolls on the portfolio of investment properties, etc, are not relevant to the disposal of these properties, as agreement had already been reached with the bank for their sale. In fact, it was the provider who demanded that the complainants agree to the voluntary sale of the properties to reduce the debt.

A proposal was put to the provider and agreed with [K] that [Property 8], [Property 2], [Property 1] would be placed on the market for sale."

The Complainants' solicitor also contends that the request for the rental income on the Borrower's investment properties on foot of the request for consent to sale regarding Property 1, was irrelevant because it was at the direction of the Provider that the Complainants were arranging for the disposal of this property. The Complainants' solicitor states that the Case Managers and the Credit Committee had no knowledge of the above agreement. The Complainants' solicitor further states that there was no policy or procedure in place to deal with the sale of a property where the borrower was deceased.

The Complainants' solicitor also observes, amongst other matters, that the Provider did not issue a standard letter, at the beginning of the application process outlining the criteria to be satisfied before the matter could go before the Credit Committee. The Complainants' solicitor further remarks on the absence of a process for the handling of a case when a Case

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Manager is absent. Additionally, the Complainants' solicitor states that it was not possible to make contact directly with the individual handling the complaint.

The Provider delivered a further submission on **16 December 2020**. At the fifth paragraph, the Provider states that:

"The Bank acknowledges that there were ongoing discussions between the Bank and the ATP [Authorised Third Party] with regards to the necessity for the properties to be sold and to progressing the sale of same, however it is the Bank's position that it at no time indicated that these sales could be progressed outside of the Bank's policies and procedures. In addition, it is the Bank's position that all information requested in relation to the sale of the properties was necessary and appropriate.

The Complaint for Adjudication

The complaint is that the Provider failed to process applications for consent to the sale of the Properties in a timely and efficient manner, and proffered below par customer service, communications and complaints handling.

Decision

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

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

A Preliminary Decision was issued to the parties on **11 March 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that

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date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

Background

I note that pursuant to a 'Loan Offer' letter dated **3 March 2006**, the Provider approved a loan facility in the amount of €500,000.00 in favour of the Borrower. As part of the security for this loan facility, the Provider required a first legal mortgage over Property 1 and Property 2. The Loan Offer was signed by the Borrower on **10 April 2006**.

The Borrower passed away in late **2010** and the Borrower's son and daughter were appointed Executors of her estate.

It appears that some form of proposal was discussed between the Provider and the Complainants regarding the sale of the properties or certain of the properties held as security in respect of the Borrower's debt owed to the Provider.

By email dated **1 June 2018**, the Complainants' solicitor wrote to the Provider (R) to advise that Executor 1 had agreed a sale of Property 1 for €216,250.00 and sought confirmation that the Provider would release its charge over the property upon receipt of the net sale proceeds. This email also set out the legal costs and auctioneer's fees associated with the sale of the property.

The Provider's Securities Department wrote to the Complainants' solicitor on **8 June 2018** referring to a letter sent to the solicitor dated **23 November 2017**. The letter continued by asking that the solicitor review its file and revert with an update so that the Provider could release the solicitor from its 'Undertaking'. The enclosed letter dated **23 November 2017** noted that registration of the title deeds in respect of four properties, including Property 1 and Property 2, had not been completed in the name of the Borrower and requested that the solicitor and the Executors engage with their Relationship Manager to rectify the situation.

By letter dated **13 June 2018**, the Complainants' solicitor wrote to the Provider's Securities Department advising it was expected that a sale would be agreed in respect of Property 2 in early course. In relation to Property 1, the letter advised that the property had gone 'sale agreed' and enclosed the above correspondence requesting consent to sale. The Complainants' solicitor advised that he awaited hearing from the Provider in this regard.

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On **25 June 2018**, the Provider emailed the Complainants' solicitor apologising for a delayed response and to advise that a query was with management regarding how to go about carrying out an assessment for consent to sale where the party named on the loan was deceased. The Provider emailed the Complainants' solicitor again on **29 June 2018** requesting the total monthly rental income for 'the properties'.

The Provider further advised that once this information was received, a proposal could be submitted to 'credit' and if Credit had any further queries, the Complainants' solicitor would be notified. The Provider emailed the Complainants' solicitor on **11 July 2018** seeking an update on its query regarding the rental income. The Complainants' solicitor replied the same day requesting a client name, property details and reference. It appears the Provider then sent an email in identical terms to the one sent on **29 June 2018**, in response.

A Provider agent (R) telephoned the Complainants' solicitor on **12 July 2018**. Regarding the sale of Property 1, R requested the net monthly rental income on 'the property' and advised that the proposal was 'ready to go' but a figure for the rental income was outstanding as this was the only income figure that could be used in the income assessment. The Complainants' solicitor queried if it was the net rental income for Property 1 that was required. The Provider's agent responded in the affirmative which appeared to be in the context of Property 1 but added, *"and if there's any other rental income that would still be there for the secured properties that we have"*. The Complainants' solicitor indicated that there was no rental income in respect of Property 1 and that it was vacant. The Provider's agent asked if the Complainants' solicitor could find out the rental income on the rest of the properties as these were all secured. The Complainants' solicitor advised he would try to obtain this information but also requested that the Provider's agent revert to him in respect of Property 1, to which the Provider's agent indicated she would. The Provider's agent then advised that the proposal was ready to go to 'Credit' but she required the net rental income for all the properties.

The Provider emailed the Complainants' solicitor on **19 July 2018** referring to the previous telephone conversation and the sale of the Borrower's 'property'. The Provider's agent asked whether the solicitor had received a figure for the monthly rental income. The Complainants' solicitor responded the same day advising that he did not have an update but that he would be speaking with his clients soon and would revert to the Provider then. Further updates regarding rental income were sought by the Provider on **15 August 2018** and **4 October 2018**. The Complainants' solicitor ultimately responded to the Provider's query with details of rental income on **4 October 2018**. In this email, the Complainants' solicitor requested a letter of consent for the sale of Property 1 as the purchasers' loan approval was due to expire.

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It appears from the documentation furnished by the Complainants' solicitor that updates were sought from the Provider by emails dated **9 October**, **11 October** and **19 October 2018**. In these emails, the Complainants' solicitor expressed the urgency of obtaining consent to sale, advising that the parties were coming under pressure from the purchasers to confirm the position, the purchasers were seeking to complete the sale on **26 October 2018**, and the purchasers' loan offer may expire.

On **31 October 2018**, the Provider emailed the Complainants' solicitor requesting confirmation, on headed paper, that the sale of Property 1 was an arm's length transaction. The author advised that: *"I have a paper ready to submit to credit to seek consent to sale of [Property 1], this is required by our credit team."* Once received, the email advised the application would be escalated as a priority. The relevant confirmation was furnished by the Complainants' solicitor on **7 November 2018**.

A Provider agent emailed the Complainants' solicitor on **22 November 2018** to advise that the agent originally dealing with the matter had been seconded to another project. In this email, a request was made for the legal costs and auctioneer's fees on headed paper from each party. In response to this, the Complainants' solicitor emailed the Provider the same day, advising that this information had been provided on a previous occasion and all that was required was confirmation that the sale was an arm's length transaction. The Complainants' solicitor further advised that he was under 'huge pressure' from the purchaser to exchange contracts. By letter dated **22 November 2018**, the Complainants' solicitor furnished the Credit Team with its costs relating to the sale, and stated that the matter was extremely urgent. The Complainants' solicitor emailed the Provider on **28 November 2018** requesting an update. A further update was requested from the Provider on **8 January 2019**.

By letter dated **11 January 2019**, the Complainants' solicitor wrote to the Provider to advise that the previous sale of Property 2 had been discontinued and that a new sale had been agreed in the amount of €235,000.00. The Complainants' solicitor requested the Provider's consent to sale and requested details of requirements to issue formal consent to sale.

The Complainants' solicitor emailed the Provider in respect of Property 1 on **12 February 2019** attaching its letter dated **22 November 2018** dealing with its costs. The Complainants' solicitors emailed the Provider again on **13 February 2019** attaching a valuer's invoice dated **12 February 2019**. In both of these emails, the Complainants' solicitor requested consent to sale.

By email dated **14 February 2019**, the Complainants' solicitor furnished the Provider with a copy invoice from the selling agent in relation to Property 2 and also advised that the legal costs involved in the sale of this property were the same as those outlined in its letter of **22**

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November 2018. The Complainants' solicitor requested that consent to sale be issued as a matter of urgency in respect of the Properties.

A member of staff of the Complainants' solicitor telephoned the Provider on **21 February 2019** to speak with the relevant Case Manager but was advised by another of the Provider's agents that the Case Manager was sick and absent from work for the week.

The solicitor's staff member advised that she was looking for a letter of consent and that the Complainants' solicitor had written to the Case Manager a number of times. The solicitor's staff member also said that the solicitor had written to the Case Manager in **January 2019** requesting a letter of consent to sale. As a result, it appears this conversation related to Property 2. The Provider's agent advised that a request had been made on **22 November 2018** regarding legal costs and auctioneers fees to which the solicitor's member of staff responded that these were provided on **11 January 2019**. As the solicitor's staff member was saying this, the Provider's agent stated: *"Did you? Cause I haven't any update on that now."* The Provider's agent also queried whether confirmation regarding Local Property Tax had been provided. The Provider's agent then advised the following documentation was required: legal costs, auctioneer's fees, the transaction is at arm's length, and all local property charges and household charges are up to date.

By email dated **22 February 2019**, the Complainants' solicitor furnished a Local Property Tax statement to the Provider.

A member of staff of the Complainants' solicitor telephoned the Case Manager (P) on **27 February 2019** in respect of the Properties. During the call, P noted that five or six emails had been received from the Complainants' solicitor over the past week or two, but he had been on sick leave. On reviewing the documentation received, P advised that he had everything required to carry out the assessment and also advised that he would be on leave again from the following day. P advised that the case would not be assessed by him but he would mark it down to be assessed as a matter of urgency. P said he would speak with his Team Leader and ask her to appoint someone to take over the case in his absence, and get someone to contact the Complainants' solicitor so that there was a point of contact. P advised that if the Complainants' solicitor needed to follow up in the meantime, the Complainants' solicitor could contact the main hotline and ask to speak with a named individual, the Team Leader.

The Complainants' solicitor wrote to the Provider on **1 March 2019** expressing concern with the delay on the part of the Provider in providing consent to sale of Property 2. In this letter, the Complainants' solicitor conveyed that it was understood consent to sale had been approved in principle and was awaiting sign-off. The Complainants' solicitor requested an update in this regard as the closing of the sale was being arranged.

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A member of staff of the Complainants' solicitor telephoned P on **11 March 2019**. P advised that he had returned from annual leave that day. The solicitor's staff member stated that she had been trying to contact someone to speak to regarding an update, but P was the first person she had been able to speak with. P advised that the application was with 'Credit' at that moment in time, but Credit had not made a final decision.

P advised he would check the status of the application and see what Credit was looking for, and call the solicitor's staff member. P noted that the relevant Credit Manager was not in at that moment, and it would be the next day before he would have an update. P advised he would contact the staff member the following day with an update.

A formal complaint was made by the Complainants' solicitors by letter dated **15 March 2019**, as follows:

"Our clients reached an agreement with [named individual] on behalf of [the Provider], to dispose of the secured properties in order to reduce the debt, with a view towards eventually discharging the entire debt due to [the Provider].

Relying on this agreement our clients placed two properties on the market for sale:

- *[Property 1] was placed on the market and a purchaser was secured in May 2018. A formal request was made to [the Provider] by email on 1st June 2018 seeking written consent to the sale of the property. This application has been dealt with [by Provider agent] and [Provider agent] on behalf of [the Provider]. To date, we have still not received consent to the sale. As you can appreciate, it was necessary for our client to arrange for the property to be vacated so that it could be placed on the market for sale. Our client has been without the rental income in this property since May 2018. Our client estimates that the loss of income due to the delay in [the Provider] processing the consent is approximately €11,000.00 to date, and continues to accrue at the rate of approximately €1,100 per month.*
- *[Property 2] was placed on the market in Summer 2018 and a purchaser was secured in late 2018. A request was made to [the Provider] for consent on 10th January 2019. To date, no consent has been forthcoming. This property was also vacated in order to arrange for its sale and our client suffers an ongoing loss of approximately €950.00 per week in respect of this property."*

The Complainants' solicitor emailed the Provider on **21 March 2019** referring to its correspondence of **1 March** and **15 March 2019**, noting that the Provider had failed to provide consent to sale and also failed to acknowledge their correspondence. In addition,

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the solicitor stated that attempts were made to telephone the Provider on a daily basis, but the call always rang out and there was no facility to leave a voice message. The solicitor also advised that correspondence was received from the purchasers of Property 2 stating that if the transaction did not complete the next day, they would withdraw from the sale.

I note that P telephoned the Complainants' solicitor on **21 March 2019** in relation to Property 2. P advised that he had gone to the Credit Department for a sign-off on the application but explained that:

“part of the issue was that I was actually on annual leave for a couple of weeks but I was also on sick leave the week you sent in the email to me so the credit application only went up there last week after we got approval from the Deceased Team that all was in order to send up the application.”

I note that P then explained that the Credit Department advised that valuations were required on both Properties. P advised that he could have a valuation ordered as a matter of urgency and that the only stumbling block would be facilitating access to the Properties. The Complainants' solicitor provided P with contact details of the selling agents for each of the Properties. P advised that he would contact a Panel Valuer and request that he contact each of the selling agents as a matter of urgency, to set up an appointment. P advised he would notify the Complainants' solicitor of the appointment. Once the valuations were received, P advised that the applications could be submitted for approval and this was all that was requested by the Credit Department. P also advised that he would get the letters of consent to sale drawn up, as a matter of priority.

By letter dated **25 March 2019**, the Provider acknowledged the complaint made by the Complainants' solicitors.

The Complainants' solicitor telephoned the Provider on **26 March 2019** and requested to speak with a named individual in the Complaints Team, S. At the beginning of the call, the Provider's agent advised that she would need certain information from the Complainants' solicitor to verify the account for security purposes. Following this, the Provider's agent requested property address details in relation to the account and a date of birth. The Complainants' solicitor provided a property address but was unable to provide a date of birth. The Complainants' solicitor requested to speak to a Provider agent where he would not have to provide the requested security information. The Provider's agent placed the Complainants' solicitor on hold, while she sought clarity on the matter.

On returning to the call, the Provider's agent advised that because the Complainants' solicitor was unable to complete the data protection questions, she would be unable to continue with the call but she could issue a call back request to the department he wished

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to speak with. The Complainants' solicitor requested a call back from S advising that the matter was urgent. The Provider's agent advised that the matter would be marked urgent and a request would be made for a call back to be received that day. The Provider's agent also advised that the request would be made to S but it could take up to 48 hours for the call back to take place.

A Provider agent (K) from the Provider's Complaints Team telephoned the Complainants' solicitor during the afternoon on **26 March 2019**. K advised that the complaint was being investigated but the investigation had not yet concluded.

The Complainants' solicitor explained that consent to sale in respect of the Properties was awaited since the previous summer and since January, a delay had ensued which the Complainants' solicitor considered inexplicable. The Complainants' solicitor advised that a purchaser of one of the properties had withdrawn from the sale. The Complainants' solicitor then referred to P's absences and that he had a telephone number that rings out and cannot leave a voicemail. The Complainants' solicitor also referred to unacknowledged emails and sporadic contact from the Provider requesting information. The Complainants' solicitor also noted the difficulty contacting the Complaints Team and asked if the Provider had a specific number for the Complaints Team. K advised that there was no external telephone number for the Complaints Team. The absence of a direct contact number of the Complaints Team was also added to the complaint and K provided the Complainants' solicitor with an ASU email address.

It appears that a Provider 'Valuation Report' was prepared by a valuer in respect of Property 2 on **28 March 2019**, and a Valuation Report was prepared in respect of Property 1 by a separate valuer on **9 April 2019**.

The Complainants' solicitor telephoned the Provider on **11 April 2019** and requested to speak with S in the Complaints Team. When completing the Provider's data protection protocol, the Complainants' solicitor provided valid account holder names and a valid property address but was unable to provide a date of birth for the Borrower. In light of this, the Provider's agent placed the Complainants' solicitor on hold, to ascertain whether he could proceed with the call. On returning to the call, the Provider's agent advised that he could proceed with the call, however, the Complainants' solicitor had located the Borrower's date of birth in the meantime. The Provider's agent advised that he was unable to reach S. The Complainants' solicitor outlined the basis for the complaint, and the Provider's agent queried certain matters regarding the loan and the Properties with the Complainants' solicitor. The Provider's agent advised that he would escalate the matter to a manager or organise a call back. The Provider's agent then advised that he would send a call back request to P and also request a call back from the Complaints Team. The Complainants' solicitor requested a call back that day.

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By letter dated **11 April 2019**, the Complainants' solicitor wrote to the Provider's Complaints Team to advise that the purchasers of Property 2 had withdrawn from the sale, due to the delay in obtaining consent to sale.

The Complainants' solicitor also stated that there had been no further contact from the Provider in relation to Property 1, advising the sale of this property was also at risk, due to the Provider's delay. In a further letter to the Complaint's Team dated **12 April 2019**, the Complainants' solicitor stated, as follows:

"The last we have heard from [the Provider] was from [P] on the 21st March 2019 when we were given the impression that everything was being resolved and the only matter outstanding was a valuation of the premises. We have since been advised that a valuer called out to view [Property 2] in or about the 25th day of March 2019. However subsequent to this our clients selling agent was advised that the valuer had a conflict of interest and therefore a new valuer was appointed who also required access to the property. The second valuer viewed the property on 8th April 2019. Despite this we have still heard nothing from [the Provider]."

A member of the Complaints Team, K, telephoned to speak with the Complainants' solicitor on three occasions on **15 April 2019** but this individual was unavailable at the time of each call. During the third call, the Provider's agent left her contact details and advised that she would be unavailable after 3:30pm. The Complainants' solicitor telephoned K later that afternoon and the parties discussed certain matters related to the complaint. During the conversation, K advised that an application had gone to 'Credit' that morning. The Complainants' solicitor also noted the difficulty contacting P. K then placed the Complainants' solicitor on hold while she tried to contact P but he had just left the office. K advised she would leave a message for P to contact the Complainants' solicitor.

The Complainants' solicitor returned a call to P on **17 April 2019**. P advised that a valuation for Property 1 was received the previous week. In relation to there having to be a second valuation on this property, P stated that the valuer advised of a conflict of interest but did not identify the conflict. P explained that credit approval was awaited and once that was received, a consent to sale letter would be issued as a matter of urgency. The Complainants' solicitor stated that K previously advised that the application had already been submitted to credit. P responded that the application was returned by the Credit Department as it had a number of queries related to the other properties in the portfolio. P explained that he requested that the Credit Department revert to him that day.

Regarding the delay, P stated that he was on sick leave when certain emails came through and *"there was nobody here to follow up because nobody gets the emails through to*

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ourselves". P advised that emails are sent to his individual email address and no one has access to his emails, even when on sick leave, and these emails would 'sit' until his return. P advised when he returned from sick leave, he was in the office for two days and then went on annual leave.

The Complainants' solicitor queried why P's emails were not forwarded to someone else when he was not in the office or "I don't get feed back to say that look I'm not in the office. I'm away. I'm on annual leave. How come you get nothing?" P explained that when the Complainants' solicitor emailed him, he should have received an out of office reply. The Complainants' solicitor stated that he did not receive any such reply. P said this would be investigated. P explained that the out of office email would have confirmed that P was out of the office and that the email would not be forwarded.

In terms of Property 2, P stated that an email was received advising that the sale had fallen through and that it had gotten to the point that the credit paper was ready to go but he was waiting for details in relation to Property 1 as the applications would be sent in one go. P advised that the Credit Department would not issue approval without a concrete offer.

The Provider emailed the Complainants' solicitor on **17 April 2019**, as follows:

"I have spoken to our credit department in relation to the consent to sale letters for [Property 2] and they have advised that they cannot approve a consent to sale when we have been told that the offer her (sic) been withdrawn. This is the Bank's credit policy. If you receive another offer for the property or the previous offer can be put back on the table, we can progress a new application for consent to sale at that time. You can advise me directly once an offer has been made and I can get the credit application through asap.

In relation to the consent to sale letters to be issued for [Property 1], I have re-submitted the application for approval. I have requested this to be reviewed for approval as a matter of urgency however as we are heading into the Easter Break, I cannot guarantee the letters will be out until after the Easter Break. I will follow up with [named individual] in your office (cc'd) as requested to advise him of the progression of this case."

A Final Response letter issued to the Complainants' solicitor dated **17 April 2019**, stating as follows:

"[Property 1]

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Our records show that on 1 June 2018 you emailed us a request for 'consent for sale' for this property. The Case Manager at the time, [R], contacted your offices on 25 June 2018 and asked you to provide us with a list of the monthly rental income for all the buy-to-let properties within the Estate, that the Bank had a charge over. [R] advised that on receipt of this information, a proposal would be submitted to our Credit Committee for consent for sale.

I can see that we followed up with your offices, to seek this information, on 11 July 2018, 12 July 2018, 19 July 2018 and 15 August 2018, to transfer the case back into the legal process.

On 23 October 2018 we received this information from your offices, by email. We then requested confirmation from you that the sale was being conducted "at arms length". This confirmation was received on 8 November 2018. At this stage, [P] had been appointed as your new Case Manager.

On 22 November 2018 [P] contacted your offices seeking a breakdown of the associated legal and auctioneer costs. Our records indicate that this information was not received and the proposed sale did not go ahead as the prospective buyer had withdrawn their offer.

[Property 2]

Our records show that in January 2019 you emailed [P] with a new 'consent for sale' request for this property and also for [Property 1]. [P] was away from the office at the time, so your email would have generated an "out-of-office" automated reply, quoting a telephone number to contact the Resolutions team, in the case of urgent business. Our records indicate that you did not contact us to progress matters.

On 21 February 2019, one of your colleagues contacted us seeking an update on the 'consent for sale'. [P] was absent from the office, and as such your colleague was informed by another Case Manager that we would need a formal breakdown of legal and auctioneer costs, and confirmation of 'Sale at arms length', before we could proceed in granting consent for sale.

On 11 March 2019 you rang us and spoke with [P]. He informed you that he had just returned from annual leave and he was aware you had emailed him, in his absence, with respect to the consent for sales. [P] informed you that he would collate all the information received from you and contact you as soon as possible with an update. [P] rang you on 22 March 2019 to say the documents received were all in order, and that our Credit Managers had asked for valuations to be carried out on the respective

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properties, before they could proceed with 'consent for sale'. I am aware that you provided your consent for this purpose and you gave [P] contact details for the respective property agents.

We received the valuation for [Property 2] on 29 March 2019. The valuer, however declined to value [Property 1] due to a conflict of interest (being that they had valued the property previously). A different valuer was then appointed, however, due to illness, the property agent was unable to grant access to the property under 9 April 2019. The valuation report was received by us on 10 April 2019.

I am aware that you have since written two letters to us, dated 11 and 12 April 2019. In your letter dated 11 April 2019 you informed us that the purchasers of [Property 2] have recently withdrawn their offer because of the delay with consent for sale being granted. In your letter dated 12 April 2019 you reiterated your complaint about lack of response from [the Provider], in particular since the recent valuations of the properties.

I am aware that in a phone call with my colleague, [C] on 15 April 2019, she informed you that the case had been submitted that day to our Credit Committee for consent for sale approval. A call back message was left for [P] to contact you with an update in this respect. During this phone call you also mentioned to [C] that you may not have the correct email and telephone contact details for [P]. [P] will clarify these details with you also.

The Bank does not advise its customers with respect to maintaining or terminating tenancies whilst a property is being marketed for sale and as such cannot be held liable for any loss of income that has crystallised as a result of a customer or property agent's decision to vacate a property for marketing purposes.

The Complaints team does work closely with other departments of the Bank to conclude their investigations as quickly as possible. You can contact the Complaints Team, by emailing [the Provider] at [email address] or ringing our general Arrears Support Unit (ASU) telephone number [number]. Your email or a call back request will then be forwarded to the Complaints team and we will respond to you within forth eight working hours. If, at the time you call, a Complaints Investigator is available to speak with you, your call will be transferred to them straight away.

My investigations have shown that delays throughout this process have been caused by both [the Provider] and your offices. We have not always been timely in corresponding with you and I can also see that information we requested from your

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offices on 2018, to progress matters, was furnished to us a considerable time later, which also added to the delays. On behalf of the Bank, I wish to apologise for our part in these delays. There are occasions when we did not provide the type of experience you would expect from us. This matter has been brought to the attention of the Resolutions Management to improve our standards of customer service. As a gesture of goodwill, I will arrange for a cheque in the amount of €500 payable to the customer, to be sent to you under separate cover.”

By letter dated **25 April 2019**, the Provider wrote to the Complainants’ solicitor in respect of Property 1 to advise that on receipt of net sale proceeds in the amount of €211,177.62, it would provide a full release and discharge of the mortgage/charge held over this property. The Provider emailed the Complainants’ solicitor on **26 April 2019** to advise that the consent to sale letter had issued.

Analysis

I note that the Loan Offer states that the loan facility is subject to the terms and conditions detailed in this letter and the attached schedule of ‘Standard Commercial Loan Conditions’ (“the Standard Conditions”). In its submission of **16 December 2020**, the Provider says it is also seeking to rely on the ‘General Conditions for [Provider] Home Loans’ dated **4 January 2006** (“the General Conditions”).

At this juncture, I note that the Loan Offer, the Standard Conditions and the General Conditions do not contain any provisions dealing with the sale or disposal of the properties offered as security for this facility. However, while the Provider seeks to rely on the General Conditions, I note that the General Conditions do not appear to be incorporated or referenced by the Loan Offer or the Standard Conditions, nor does the ‘Acceptance’ signed by the Borrower appear to incorporate or reference the General Conditions. In particular, I note the ‘Attachments’ listed on the Acceptance, are the Standard Conditions and a direct debit mandate. Further to this, the Loan Offer and the Standard Conditions do not appear to provide for the amendment of the terms and conditions of the facility or for the incorporation of additional terms and conditions. Consequently, on considering the loan documentation provided, the Provider’s entitlement to rely on the General Conditions is unclear.

I note that the Complainants’ solicitor requested consent to sale in respect of Property 1 on **1 June 2018** and advised that Executor 1 had agreed a sale of the property. Although the Provider correspondence issued to the Complainants’ solicitor on **8 June 2018**, this correspondence does not appear to have been in respect of the request for consent to sale. For instance, the Provider’s letter does not reference the solicitor’s email, the request contained in this email appears unrelated to the request for consent to sale; the letter

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originated from the Securities Department whereas the request for consent to sale was sent to an agent in the Legal Assessment Department; and the Final Response letter appears to suggest that the first contact in response to the request was the Provider's email of **25 June 2018**.

The Complainants' solicitor responded to the Securities Department's letter on **13 June 2018**, however, a response does not appear to have been issued by the Securities Department. As a result, I am not satisfied that the Provider's letter of **8 June 2018** constitutes a response to the request for consent to sale.

The Provider emailed the Complainants' solicitor on **25 June 2018** apologising for a delayed response. It would appear that this is when the request was first acknowledged, 15 clear business days or three weeks after the initial request. However, I am not satisfied that such a period of time should have elapsed before the request was acknowledged. It is my opinion that there was an unreasonable delay on the part of the Provider, in acknowledging the request for consent to sale made on **1 June 2018**.

In the email of **25 June 2018**, the Provider's agent advised that as the Borrower was deceased, a query was being raised with management as to how to assess the request for consent to sale. This email further advised that *"I am speaking with them this afternoon regarding how to proceed, so I will let you know the outcome."* Having considered the documentation furnished by the parties and the telephone call recordings, it does not appear that the Provider's agent reverted to the Complainants' solicitor regarding the outcome of the conversation with management or the precise information required to assess the request.

The Provider emailed the Complainants' solicitor on **29 June 2018** requesting net monthly rental income figures in respect of 'the properties'. However, this email did not identify the properties in question. While the Provider may have held security over a number of the Borrower's properties, I consider it reasonable for the Provider to have specified the exact 'properties' being referred to, particularly as the request for consent to sale related only to one specific property. Further to this, it is not clear in the context of the request for consent to sale, why rental income figures were required in respect of other unidentified properties.

In the email of **29 June 2018**, the only information sought by the Provider's agent (which appears to have been subsequent to her conversation with management) was rental income figures. It was also expressly stated in this email that once this information was received, the request could be submitted to the Credit Department.

In its Complaint Response, the Provider set out the information required for a consent to sale request as comprising:

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- Written confirmation of an offer;
- Completion of a Standard Financial Statement (“SFS”);
- Confirmation that the transaction is at arm’s length; and
- Transaction costs associated with the sale (solicitor’s costs, auctioneer’s costs, NPPR, water charges, property tax).

In my opinion, if this is the information required for a consent to sale request, it is not clear why the Complainants’ solicitor was not advised of this in **June 2018**. Rather, the evidence shows that this information was requested by the Provider in a piecemeal and haphazard fashion. Furthermore, it is not clear why an SFS was not requested, nor it is clear, in **June 2018**, why rental income generated by unspecified properties was requested.

During the telephone conversation on **12 July 2018**, R advised the Complainants’ solicitor that a rental income figure was required as this was the income figure that could be used in the income assessment. It was also stated during this conversation that it was the rental income in respect of the properties secured on foot of the Loan Offer that was required. As a result, it would appear that there was a reasonable basis for requesting rental income figures in respect of Property 1 and the properties secured on foot of the Loan Offer. However, it is disappointing that it was not until this conversation that the rationale underpinning the request for this information, was explained, and it was made clear that ‘the properties’ were the properties covered by the Loan Offer. It appears that rental income details were furnished to the Provider on **4 October 2018**.

Having considered the matter, I am not satisfied that the Provider was responsible for any delay which arose in respect of providing rental income details once clarification was given on **12 July 2018** in respect of the properties covered by the request and the basis for the request.

While details of rental income were furnished on **4 October 2018**, the Provider does not appear to have acknowledged receipt of this information. Further to this, the Complainants’ solicitor appears to have emailed the Provider on **9 October, 11 October and 19 October 2018** – none of which were acknowledged or responded to.

On **31 October 2018**, the Provider sought confirmation that the sale of Property 1 was an arm’s length transaction and advised that this information was required by the ‘Credit Team’. I note that the Provider was furnished with details of rental income on **4 October 2018**, however, 16 clear business days later (over three weeks) the Provider reverted to the Complainants’ solicitor seeking confirmation that the sale was an arm’s length transaction. In the first instances, I am of the view that the Provider unreasonably delayed in assessing the request for consent to sale.

Further to this, the Complainants' solicitor was advised on **29 June 2018** that the only outstanding information was details of rental income. However, at a point where it appears that the request had yet to be submitted to the Credit Department (although the language of the email is somewhat conflicting in this regard) the Provider sought further information, despite having advised the Complainants' solicitor on **29 June 2018** (and after consultation with management) that all that was required was details of rental income.

I also note that in the Complaint Response the Provider has stated that confirmation that a sale is an arm's length transaction, is part of the normal procedure of a consent to sale request. In these circumstances, it is my opinion that the Complainants' solicitor should have been informed of this in **June 2018** and not more than four months after the initial request was made. This confirmation was provided by the Complainants' solicitor, in a reasonably prompt manner, on **7 November 2018**.

On **22 November 2018**, the Provider requested details, on headed paper, of the exact legal costs and auctioneer fees associated with the sale. In the email of **1 June 2018**, the Complainants' solicitor set out what the legal costs would be and provided a figure of what the auctioneer fees would 'likely' be. However, at no point did the Provider query or question this information. Furthermore, in the emails dated **29 June 2018** and **31 October 2018**, the Complainants' solicitor was advised that the request for consent to sale was ready to be submitted to the Credit Department, once the information identified in these emails was furnished.

It is disappointing in the extreme that it was not until **22 November 2018**, almost five months after providing details of legal costs and auctioneer fees, that the Provider was seeking more formal information in respect of these items of expenditure. If the manner in which this information was initially provided was not satisfactory, it is my opinion that this should have been brought to the attention of the Complainants' solicitor at a significantly earlier point in time. In this respect, I am of the view that some form of assessment of the request for consent to sale would likely have taken place in order for the Provider's agent to advise in the email of **29 June 2018** that the application was ready to submit to the Credit Department once rental income details were provided. Consequently, it was at this point that the Provider should reasonably have identified, and notified the Complainants' solicitors of, any issues regarding the manner in which details of legal costs and auctioneer fees were provided.

The Complainants' solicitors provided details of the legal costs under cover of letter dated **22 November 2018**. However, it seems that it was not until **13 February 2019** that details of auctioneer's fees were provided. Following the letter of **22 November 2018**, the

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Complainants' solicitor sought updates from the Provider on **28 November 2018** and **8 January 2019**, but these requests were not responded to.

Consent to sale in respect of Property 2 was requested on **11 January 2019**. However, this request was not responded to. In the Final Response letter, referring to this email, the Provider says the relevant agent, P, was away from the office at that time but an out of office email would have generated. It is the position of the Complainants' solicitors that out of office replies were not received from P.

In this respect, I note that the Provider has not provided evidence to demonstrate that an out of office reply was active on P's email account during his absences, nor has the Provider furnished copies of the out of office replies generated in response to the Complainants' solicitor's emails. It also appears that no response was received to the emails sent to the Provider during **February 2019**. In the course of a telephone conversation on **21 February 2019**, a staff member of the solicitor was advised that P was on sick leave and provided details of the information requested for a consent to sale request.

In terms of Property 2 then, it appears that the Complainants' solicitor was not made aware of the requirements for a consent to sale request, until **21 February 2019**. In terms of Property 1, it appears that this was the first point at which the Provider advised of the requirement for confirmation surrounding the payment of Local Property Tax which, in my opinion, is something that the Complainants' solicitor should have been made aware of, in **June 2018**, as this is something which appears to form part of the Provider's normal process.

It appears that the agent dealing with the request for consent to sale in respect of Property 1 and to whom the request for sale in respect of Property 2 had been addressed (P) was absent on sick leave at certain points during **January** and **February 2019**. Further to this, I note that during a telephone conversation on **17 April 2019**, P stated when he was on sick leave emails would effectively 'sit' in his inbox, not being forwarded, and remain unactioned until his return. This approach by the Provider is certainly less than ideal.

Insofar as concerns the Complainants, P was in a position where he was being asked to prepare requests for consent to sale of certain secured properties. This is quite important work which should be conducted in an efficient and expeditious manner. However, it is startling to see that the Provider had no mechanism or process in place to monitor or action any emails received by P while on sick leave, which based on the available evidence, appears to have been for an extended period during **January** and **February 2019**. I note from the Final Response letter that P was absent at the time of the email of **11 January 2019**, and at the time of the telephone call on **21 February 2019**. This is all the more concerning in circumstances where the Provider has not provided sufficient evidence to show that an out of office reply was issued in response to emails received by P.

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Further to this, during a telephone conversation between P and the Complainants' solicitor on **17 April 2019**, the Complainants' solicitor raised the issue of not receiving out of office replies to which P responded that this would be investigated. However, despite this, the evidence does not demonstrate or suggest that this issue was indeed investigated.

During a conversation between P and the Complainants' solicitor on **27 February 2019**, P advised that he had everything required to carry out the assessment in respect of the Properties but that he would be on annual leave the following day.

In the course of this call, P advised he would speak with his Team Leader and ask her to appoint someone to take over the case in his absence, and also get someone to contact the Complainants' solicitor so there was a point of contact. It is not clear from the available evidence whether someone was appointed by the Team Leader to assess the requests in P's absence, although, I note from a telephone conversation on **11 March 2019**, P advised that the requests were with the Credit Department. However, there is no evidence of anyone within the Provider contacting the Complainants' solicitor, so that a point of contact would be in place. I also note that P does not appear to have contacted the Complainants' solicitor with an update as promised during the telephone conversation on **11 March 2019**.

During a telephone conversation on **21 March 2019**, P appears to have attributed a delay in submitting the request for consent to sale to him being on sick leave and annual leave. In addition to this, P also remarked that approval from 'the Deceased Team' was only received the previous week. It appears at no point did the Provider advise the Complainants' solicitor that any form of approval was required from the Deceased Team. Further to this, the Complainants' solicitor was advised on **25 June 2018** that the assessment of a consent to sale request where a borrower was deceased has been queried with management and, on certain occasions subsequent to this, was advised that the matter was ready to proceed, with no reference being made to any involvement required from a Deceased Team. Additionally, in setting out the process associated with a request for consent to sale in its Complaint Response, the Provider did not refer to this either.

It was during the conversation on **21 March 2019** that P advised the Complainants' solicitor that the Credit Department required valuations in respect of the Properties. The valuation in respect of Property 2 was carried out on **29 March 2019**. However, the valuation in respect of Property 1 was not carried out until **9 April 2019**. Once the requests for consent to sale were ready, they would be submitted to the Credit Department for approval. As the request for valuations came from the Credit Department, I do not consider, based on the available evidence, there to have been any delay in requesting the valuations.

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It appears the valuation of Property 1 was delayed by a conflict of interest on the part of the valuer because the valuer had previously valued the property and also because there was difficulty accessing the property, due to the illness of the selling agent. In terms of the initial valuer's inability to value Property 1, this arose from a conflict of interest. However, it is not clear at what point in time this conflict was identified, nor is it clear how long it took the Provider to appoint a new valuer. Based on the available evidence, I am unable to determine whether there was any delay arising from the valuer's conflict of interest and whether any such delay was unreasonable.

Further to this, it is not clear how long the valuation was delayed due to the selling agent's ill health, which is something the Provider is not accountable for. Separately, during the conversation on **21 March 2019**, P stated that he would notify the Complainants' solicitor of the valuation appointments, however, this does not appear to have occurred.

During a telephone conversation on **11 April 2019**, the Complainants' solicitor requested a call back from the Complaints Team and from P, that day. When requesting call backs, the Complainants' solicitor was advised that these would generally be actioned within 48 hours. The Complainants' solicitor received a call back from a member of the Complaints Team on **15 April 2019**, which I note was within the two business days of the request. However, I note that the Complainants' solicitor did not receive a call from P until **17 April 2019**, which was after a further request for a call back on **15 April 2019**; and is four business days after the initial request was made and two business days outside of the 48 hour call back timeframe previously indicated by the Provider's agents.

During the telephone conversation on **15 April 2019**, K advised the Complainants' solicitor that an application had been submitted to the Credit Department that morning. When speaking with P on **17 April 2019**, the Complainants' solicitor was advised that the application was returned by the Credit Department as this department had a number of queries relating to the other secured properties. However, on **21 March 2019**, the Complainants' solicitor was advised that the only request from the Credit Department was for valuations on the Properties. In the first instance, I am of the view that the Provider should have notified the Complainants' solicitor that the Credit Department had reverted with certain queries.

Further to this, it appears that the queries surrounding the other secured property may only have arisen after the valuation reports had been submitted to the Credit Department, yet this department only decided to raise these queries at this point in time and not at the time of the request for the valuations. It is my opinion, based on the available evidence, that it was reasonable to expect the request for the valuation reports and any other queries (such as those relating to the other secured properties) to have been raised at the same time, rather than in the ad hoc manner that appears to have arisen here.

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On reviewing the telephone conversation which took place on **17 April 2019**, it appears to me that the application for consent to sale in respect of Property 2 was held up, while certain details were awaited in respect of Property 1 and that both requests were going to be sent to the Credit Department together.

Having considered the matter, I do not consider it was reasonable, particularly in light of the delays which had arisen and also because the sales of the Properties were to be completed within certain timeframes, to refrain from submitting a completed request to the Credit Department while certain information was being gathered in respect of a separate and distinct request, so that both requests could be submitted together. It seems to me to have been possible that consent to sale in respect of Property 2 could have been processed at a point in time closer to when its valuation report was received (dated **28 March 2019**).

Consent to sale in respect of Property 1 ultimately issued on by letter dated **25 April 2019**. However, consent to sale did not issue in respect of Property 2 as the purchasers had withdrawn from the sale around **April 2019**.

I note that during the course of certain telephone conversations with the Provider, the Complainants' solicitor encountered certain difficulties complying with the Provider's account verification process. However, I am satisfied that the security questions posed were reasonable and appropriate, and in furtherance of a legitimate aim of ensuring the security of the account.

The Complainants' solicitor also expressed dissatisfaction with not being able to make direct contact with the person handling the complaint. In this respect, I note Provision 10.9(b) of the Code requires a regulated entity to provide a complainant with the name of the person appointed to be the point of contact in respect of the complaint. In the complaint acknowledgement letter dated **25 March 2019**, this letter is signed off on behalf of a named individual within the Complaints Team. The letter also advised that if the Complainants' solicitor needed to contact the Complaints Team, to contact the Arrears Support Unit on the phone number provided. Although the Complainants' solicitor appears to have been unable to speak with the individual noted on the complaint acknowledgement letter, regarding the complaint, I note that the Complainants' solicitor was able to speak with a member of the Complaints Team regarding the complaint and that this person communicated with the Complainants' solicitor during the investigation of the complaint. The Complainants' solicitor was also dissatisfied with the absence of a direct telephone contact number for the Provider's Complaints Team. However, I am not satisfied that the Provider is strictly required to have one in place nor am I satisfied that the Provider's decision to direct complaint queries to its Arrears Support Unit was unreasonable.

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Having considered the Provider's conduct regarding the requests for consent to sale in respect of Property 1 and Property 2, it is my opinion that there were significant shortcomings and failings on the part of the Provider in terms of how it handled these requests and in terms of the level of engagement and communication with the Complainants' solicitors.

I am of the view that the Provider's conduct was contrary to Provision 2.1 of the Code as the Provider did not approach or handle the requests for consent to sale with a reasonable level of professionalism such that was in the best interests of the Complainants. Further to this, I am of the view the Provider's conduct was, without doubt, contrary to Provision 2.2 of the Code and I am not satisfied that the requests for consent to sale were processed with a reasonable level of due skill, care or diligence such that was in the best interests of the Complainants. Nor am I satisfied that the Provider has complied with Provision 2.4 as there was a clear absence of any procedure or policy in place to handle the requests for consent to sale, and if there was, it does not appear to have been properly implemented or adhered to by the Provider's agents dealing with the requests. Furthermore, I have significant reservations about the absence of any process to ensure emails are monitored or actioned when a Case Manager like P is absent from work, whether on sick leave or annual leave.

At the time when consent to sale issued in respect of Property 1, I note that the sale of this property was still in being. However, before consent to sale issued in respect of Property 2, the purchasers had withdrawn from the sale. As can be seen, there were a number of instances of delay associated with the requests for sale for which I am satisfied that the Provider was responsible. I am also satisfied these delays caused significant inconvenience in respect of the sale of Property 1 and Property 2. However, there were periods of delay for which I am satisfied that the Provider was not responsible, such as the delay which occurred in respect of the provision of rental income details between **12 July 2018** and **4 October 2018**, the delay in providing auctioneer's fees between **22 November 2018** and **13 February 2019** (although this is qualified by the fact that the Provider should have requested this at a much earlier point in time), and the delay associated with the valuations of Property 1 in **March/April 2019**.

Further to this, while I am satisfied that the Provider's conduct is likely to have contributed to the loss of the sale in respect of Property 2, I am not satisfied that this was the sole reason for the loss of the sale. In particular, evidence has not been provided in respect of the communications between the Complainants' solicitor and the purchasers or those acting on their behalf.

Further to this, there is no evidence to suggest given the location of Property 2 and its condition (as set out in the valuation report) that another purchaser could not be readily found or that the property would attract a lesser selling price than previously agreed.

In its Complaint Response, the Provider acknowledged and apologised for certain shortcomings in respect of how it handled the requests for consent to sale and offered a goodwill gesture in the amount of €10,000.00. This goodwill gesture was subsequently increased to €10,500.00.

However, having considered the matter at length, I am not satisfied that the goodwill gesture offered by the Provider constitutes sufficient compensation for the inconvenience caused by the Provider's conduct. Accordingly, I consider it appropriate to substantially uphold this complaint and to direct pursuant to **Section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider pay the compensatory payment specified below.

I also recommend that the Provider carry out a review of the process which it has in place for consent to sale requests and secondly, that it review its processes for actioning customer communications addressed to a particular staff member when the staff member, is on leave of any nature.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider make a compensatory payment to the Complainants in the sum of **€12,500.00**, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

7 April 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.