



<b><u>Decision Ref:</u></b>	2022-0211
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service Delayed or inadequate communication Complaint handling (Consumer Protection Code) Failure to process instructions in a timely manner
<b><u>Outcome:</u></b>	Substantially upheld

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

This complaint concerns a mortgage loan.

#### **The Complainants' Case**

In **2006** the Complainants incepted a mortgage loan account ending **2609** with a financial institution. The Complainants experienced financial difficulties in relation to their mortgage loan account. The Complainants' mortgage loan account was transferred to the Provider thereafter, along with other loan accounts of a similar nature.

In correspondence sent to the Provider on **19 March 2019**, the Complainants proposed a repayment arrangement to the Provider. The Complainants proposed making continued payments in respect of accounts ending 5108 and 3302, which they submit had been agreed with the original loan provider. The Complainants proposed the voluntary sale of the asset associated with loan ending **2609** to other family members.

The Complainants submit that the asset related to loan ending **2609** is of great emotional value to their family for sensitive personal reasons. The Provider outlined in correspondence dated **08 May 2019** that it was considering the Complainants' proposal of €95,000.00 in full and final settlement of mortgage account ending 2609.

The Complainants' representative sets out in a letter to the Provider:

*"[W]e have signed restructures in place with [a financial institution] now transferred to your office. The [Complainants] as outlined previously wish to continue with this arrangement, bar the sale of one of the assets which again has been documented in detail previously."*

The Complainants submit that they have since made numerous attempts to advance the matter *"and have provided everything asked from us but have been unable to gain a response from [the Provider]."* The Complainants say that on **05 July 2019**, they received confirmation from the Provider that *"the matter would be finalised the following week."*

In their submission dated **19 March 2020**, the Complainants state:

*"Since that time we have had no explanation or conclusion to the matter despite contacting them circa every ten working days. We complained to them directly and initially they would not confirm our complaint and since then they have in our opinion refused to meaningfully engage and resolve both the proposal and our complaint."*

The proposal was ultimately approved on **05 October 2020**.

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

The Provider maintains that the Complainant's proposal required a *"complex and detailed titled review"* which was delayed due to the necessity to seek *"input from a third-party provider (the loan's originating provider)"*. The Provider *"appreciates that the matter was ongoing for some time, this was necessary to progress the Complainants' proposal which ultimately resulted in their desired outcome"*.

In its response to this office, the Provider states as follows:

*However, having reviewed the matter, the Provider accepts that the Complainants were not adequately informed as to why the decision regarding their proposal was ongoing, particularly in relation to the title review and the complex investigation required to complete same. We regret that the service provided to the Complainants fell below the standards that the Provider would expect to achieve and it did not adequately manage the Complainants' expectations. As such, and by way of apology for the inconvenience caused due to these service shortfalls, the Provider would like to offer the Complainants a goodwill gesture of €1,000.00.*

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### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully failed to fulfil its assurance provided to the Complainants that it would decide upon a settlement arrangement in **early July 2019**. The Complainants say in that regard that the Provider delayed its decision for over six months, failed to meaningfully engage with them, and failed to correctly handle their customer complaint.

When making the present complaint, the Complainants sought for the Provider to engage with them in relation to their attempts to find a resolution in respect of their mortgage loan accounts.

### **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 **5 May 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that the Complainants engaged with the Provider using a third-party representative. For the purpose of this decision, any communication made to or by this third-party representative is considered to have been a communication to or by the Complainants themselves. Sadly, after this complaint was made to this Office, one of the Complainants died, and will therefore be represented by his Estate. In this instance, this Office has been notified that the other Complainant is the Executrix of the deceased's Estate, and also the sole beneficiary, and for that reason, the adjudication is proceeding without awaiting the formal extraction of probate.

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The Complainants submitted a proposed repayment arrangement to the Provider on **19 March 2019** with a note that the author was available “*to meet and discuss this complex case*”. A Standard Financial Statement (SFS) was submitted at the same time. The Provider raised certain queries on the proposal on **28 March 2019** to which responses were provided on **01 April 2019**. In this response, the author noted that a meeting would be beneficial and sought the Provider’s availability during a specific week, that month.

On **10 April 2019**, the Provider called the Complainants. Following the return of the call, the Provider noted initially that it “*could facilitate*” a meeting, if necessary, but that this would likely generate “*no benefit*”. It is clear that the Complainants had asked for the meeting owing to the sensitivity relating to personal matters associated with the secured property, and the main concern was that those issues would be communicated and understood. My impression of this call is that the Complainants accepted that these details had been adequately communicated and that no meeting would be necessary. The details of the offer/proposal were also clarified during this call (as was an issue regarding the servicing of other accounts and the failure of the Provider to furnish ‘lodgment books’ to facilitate manual payments).

I note that on **30 April 2019**, the Complainants wrote seeking an update on the assessment of their proposal. Thereafter, a further phone call took place between the Complainants and the Provider on **07 May 2019**, in the course of which, the Provider again referenced the Complainants’ request for a meeting to which the Complainants responded indicating that they were happy, in the first instance, to await the “*feedback*” on the proposal which had been promised and in respect of which an update was again sought. The Complainants wrote a letter the same day, referencing the phone call earlier in the day, setting out the position and (in a manner somewhat inconsistent with the call earlier that day) explicitly requesting a meeting on specific dates.

A holding letter issued from the Provider on **08 May 2019** citing the 30 April 2019 correspondence and thereafter, I note that the following requests for updates and responses issued:

21 May 2019	Phone in the course of which the Complainants sought an update. (per the Provider’s response to this Office.)
31 May 2019	Letter from the Complainants requesting an update
06 June 2019	Holding letter from the Provider
10 June 2019	Letter from the Complainants requesting an update
12 June 2019	Letter from the Complainants requesting an update
17 June 2019	Letter from the Complainants requesting an update

24 June 2019	Letter from the Complainants requesting an update
03 July 2019	Letter from the Complainants requesting an update
05 July 2019	Letter from the Provider confirming that <i>"the settlement proposal assessment is to be finalised and decided on next week"</i> .
12 July 2019	Letter from the Complainants requesting an update
07 August 2019	Letter from the Complainants requesting an update
15 August 2019	Letter from the Complainants requesting an update
22 August 2019	Letter from the Complainants requesting an update
05 September 2019	Letter from the Complainants requesting an update
30 September 2019	Holding letter from the Provider
02 October 2019	Letter from the Complainants requesting an update. This letter expressly requests <i>"acknowledgment"</i> of the Complainants' <i>"complaint"</i>
14 October 2019	Letter from the Complainants requesting an update. This letter expressly requests <i>"acknowledgment"</i> of the Complainants' <i>"complaint"</i>
21 October 2019	Letter from the Complainants requesting an update
29 October 2019	Letter from the Complainants requesting an update
31 October 2019	Holding letter from the Provider
01 November 2019	Complaint acknowledgement letter from the Provider
18 November 2019	Letter from the Complainants requesting an update
19 November 2019	Holding letter from the Provider
25 November 2019	Letter from the Complainants requesting an update
27 November 2019	Holding letter from the Provider
29 November 2019	Complaint holding letter from the Provider anticipating a <i>"full response"</i> within a further 20 working days.
02 December 2019	Letter from the Complainants requesting an update

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13 December 2019	Letter from the Complainants requesting an update
19 December 2019	Letter from the Complainants requesting an update
02 January 2020	Complaint holding letter from the Provider anticipating a <i>“full response”</i> within a further working 20 days.
06 January 2020	Letter from the Complainants requesting an update
15 January 2020	Holding letter from the Provider
28 January 2020	Letter from the Complainants requesting an update
11 February 2020	Complaint holding letter from the Provider anticipating a <i>“full response”</i> within a further 20 working days.
12 February 2020	Letter from the Complainants requesting an update
20 February 2020	Holding letter from the Provider
21 February 2020	Letter from the Complainants requesting an update
28 February 2020	Holding letter from the Provider
09 March 2020	Letter from the Complainants requesting an update
10 March 2020	Complaint holding letter from the Provider anticipating a <i>“full response”</i> within a further 20 working days.
11 March 2020	Letter from the Complainants requesting an update
20 March 2020	Letter from the Complainants requesting an update
23 March 2020	<p>Letter from the Complainants requesting that the correspondence address held by the Provider be updated to an address in [European Country] where the author was <i>“stranded”</i> due to COVID-19.</p> <p>Note: all further correspondence sent to the Provider cited this address abroad, as the sender’s address.</p>
07 April 2020	Letter from the Complainants requesting an update
14 April 2020	Letter from the Complainants requesting an update

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20 April 2020	Date on which the Provider states that the “ <i>review concluded</i> ” resulting in the request for further information issued on 06 May 2020.
21 April 2020	Letter from the Complainants requesting an update
24 April 2020	Letter from the Complainants requesting an update
05 May 2020	Letter from the Complainants requesting an update
06 May 2020 [The Provider’s response to question 7(iii) posed by this Office refers to 08 May 2020]	Letter from the Provider to the Irish address indicating that “ <i>in order to consider the proposal</i> ” the identity of the buyer and proof of funding would need to be required.
12 May 2020	Letter from the Complainants requesting an update
20 May 2020 [The Provider’s response to question 7(iii) posed by this Office refers to 22 May 2020]	Further request from the Provider sent to the Irish address seeking the proof of funding information
26 May 2020	Two letters from the Complainants, one requesting an update and the other requesting confirmation that “ <i>the change of address has been actioned to maintain continuity of service</i> ”.
29 May 2020	Letter from the Complainants acknowledging receipt of the Provider’s letter of 06 May and confirming that the required documents were being gathered.
09 June 2020	Letter from the Complainants acknowledging receipt of the Provider’s letter of 20 May and confirming that the required documents were being gathered.
13 July 2020	Letter from the Complainants requesting an update
14 July 2020 [The Provider’s response to question 7(iii) posed by this Office refers to 17 July 2020]	Letter from the Provider sent to the address abroad noting that the requested documentation had not been provided and noting that “ <i>the request has now been closed</i> ”.
30 July 2020	Letter from the Complainants acknowledging receipt of the Provider’s letter of 14 July and requesting “ <i>what documentation you are outstanding</i> ”.

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12 August 2020 [The Provider's response to question 7(iii) posed by this office refers, apparently in error, to 17 August 2020]	Further request from the Provider sent to the address abroad seeking the proof of funding information as well as the facilitation of a valuation.
17 August 2020	Letter from the Complainants requesting an update
20 August 2020	Letter from the Complainants noting that phone contact had been unsuccessfully attempted earlier that day and requesting a call back.
25 August 2020	Letter from the Complainants referencing the Provider's letter of 12 August and confirming that a valuation can be carried out
25 August 2020	Letter from the Provider advising that the <i>"Sales &amp; Settlement process has closed due to the requested information not being submitted"</i> .
05 October 2020	Proposal approved by the Provider (per the Provider's response to this Office)
09 October 2020	Approval of proposal communicated to the Complainants (per the Provider's response to this Office)

By way of overview, I consider the Complainants' proposal to have been completed on **01 April 2019** when the initial queries had been addressed. Thereafter, there was essentially a delay of 13 months (approx. 56.5 weeks) until a substantive response of any nature was issued to the Complainants on **06 May 2020**. This response however was issued to an address other than that instructed by the Complainants, resulting in the letter not being received until in or around **29 May 2020**, meaning the delay in reality was 14 months (approx. 61 weeks). I do not however hold the Provider responsible for any delay after this point, given the Complainants' failure to supply the requested documentation. [The decision promised in July 2019 had not materialised.]

The Provider submits that the review of the Complainants' proposal took as long as it did due to it being a *"very complex task"* and due to the necessity *"to conduct a title review across all associated accounts"*.

This Office queried the precise steps involved leading to this delay. In its response to this Office, the Provider detailed seven steps (misnumbered as six) which I note cumulatively, were said to have required 28 weeks to complete.

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Without looking behind these figures (such as the seven weeks apparently required to get title documents for three properties out of storage and review same), in my opinion, there is still a large period of unexplained time lost stretching to 28 - 33 weeks (depending on whether or not the date of receipt of the letter of 06 May 2020 is employed). In my opinion, this was excessive.

In addition, I am also not persuaded by the imprecise nature of the explanation offered by the Provider. References have been made to the complexity of the task, in particular relating to the title review. An *“anomaly with respect to the security”* is also cited. I noted in my preliminary decision that no specific details had been supplied, regarding any particular factual matters said to have contributed to the ‘complexity’ or said to have comprised the ‘anomaly’. Since that time the Provider has made a further submission to this office, which included the following details:

*“The Complainants mortgage accounts transferred to the current Provider from a previous Provider in February 2019. Based on the data provided on transfer it appeared that what had been acquired, or ought to have been acquired, were three loans secured by three separate properties.*

*Uncertainty arose however as to the actual number of properties securing the loans acquired. This uncertainty was due initially to the fact that the property addresses provided, on acquisition, as securing the loans were the same or similar and for two of the secured properties the details were the same ([address details redacted]).*

*A detailed review was requested to ascertain if in fact there were three properties securing the three acquired loans (as understood to be the position at purchase) or if there were two properties securing the three loans. Clarity on this was required in order to assess the borrower’s proposal at the time and understandably this detail would be a key consideration.*

*Upon receipt of the title documents for the three acquired loans it became apparent that the documents received were not complete. Following an exhaustive investigation, further details as noted below, it became evident that the title documents for one of the loan accounts remained with the previous Provider and that one of the acquired loans may be unsecured.*

*As part of the review undertaken it was identified that the transfer deeds from the previous Provider to the current Provider incorrectly noted the same mortgage deed (4 December 2007) as securing two of the Complainant’s acquired loans. This did not appear to correspond with the two loan offers in question which issued on different dates and detailed two different properties as required to be given as security for each loan.*

*As a result of the above noted discrepancies and inconsistencies, further investigation was undertaken to include, reviewing all of the documents scanned to the current Providers system for all three accounts, as well as a detailed planning*

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*review incorporating an online review of all relevant planning documents and applications.*

*Having concluded the above review it was apparent that there were in fact two separate properties that should have secured the two loans noted in the preceding paragraph as secured by the same mortgage dated the 4 December 2007. Folio SL15328F was identified as the security details omitted to have been provided to the current Provider by the previous Provider.*

*Following engagement with the previous Provider to clarify the position it was confirmed that the Folio identified (SL15328F) secured one of the loans acquired by the current Provider. It was also confirmed that the previous Provider held the title documents for this matter.*

*The detailed review required to be carried concluded and confirmed that three separate assets ought to have secured the three Complainant's loans acquired by the Provider, that one of the assets was erroneously omitted from the data and transfer deeds provided by the previous Provider and that the title document for the omitted asset were held by the previous Provider.*

*Based on the above Additional Points of Fact the Provider is of the opinion that the compensation of €5000 awarded to the Complainants is disproportionate and are of the opinion the €1000 offered by the Provider as a goodwill gesture for the inconvenience caused due to limited service shortfalls is more appropriate."*

It is clear from these additional details that errors occurred at the time of the transfer of ownership of the Complainants' loans from the previous provider to the Provider, and that this played a significant part in the delay which the Complainants encountered in having their proposal assessed during 2019-2020. In my opinion, this delay was excessive, and it is clear from the evidence that the Complainants ultimately bore the brunt of the errors that had been made at the time of the transfer of ownership between providers, in 2019.

I am satisfied that there was an excessive delay in assessing the Complainants' proposal, by reference to overall time taken, against the background of the complexities that the Provider has now explained which stemmed from errors made in the course of the transfer of ownership of the loans to the Provider, in 2019. In addition, I note the failure to honour the letter of 05 July 2019 which promised a reply within one week. I view this disappointing delay as conduct which was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

In addition, I agree with the Provider that there was a continuing failure to provide the Complainants with any explanation or detail regarding the ongoing delay. The Complainants clearly sent a multitude of letters seeking updates and each of the responses which issued contained no substantive explanation whatsoever. This is very disappointing. I agree with the Provider's statement that the Complainants "*were not adequately informed as to why the decision regarding their proposal was ongoing*". Had the Complainants been given some

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understanding of why the matter was being delayed, they may have been less frustrated by the situation.

In light of the entirety of the foregoing and noting the Provider's reluctance to accept that the delay was excessive, I consider it appropriate to substantially uphold this complaint. In terms of compensation, the Provider has offered "a goodwill gesture of €1,000.00" which it considers to be appropriate. I do not however agree.

I do not accept that this offer is adequate to compensate the Complainants for the delay which arose over the period in question. Accordingly, in the circumstances, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainants, as directed below, to reflect the inconvenience caused to the Complainants owing to the Provider's significant delay and poor communication.

### **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)(d) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of **€5,000**, 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)**

24 June 2022

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## **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.