



<u>Decision Ref:</u>	2022-0278
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions Delayed or inadequate communication Complaint handling (Consumer Protection Code) Failure to process instructions in a timely manner Failure to release security
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint arises from a delay in returning the title deeds of a property. The Complainants' borrowing was previously owned by a third-party lender and ownership was transferred to the Provider in **February 2019**. The Provider uses the services of a credit servicing firm whose actions in this decision, are referred to as those of the Provider.

The Complainants' Case

The Complainants state that they contacted the Provider on **13 March 2019** with a view to resolving any outstanding issues and balances at that time. The Complainants say that they put the property on the market to sell and achieved a purchase price of €165,000 on **28th August 2019**, which would have cleared the outstanding balance on their mortgage account.

On **11th March 2019** and **28th August 2019** the Complainants' Solicitor contacted the Provider to request the title deeds be issued on Accountable Trust Receipt ("ATR").

The Complainants' Solicitor wrote to the Provider on **6th February 2020** requesting it again to issue the title deeds by ATR. The Complainants submit that at this time, the sale of the property had been lost. The Complainants state that they did not get any response to their request until they received a letter dated **13th February 2020** from the Provider stating that it was investigating the complaint raised.

The Complainants submit that their Solicitor wrote again to the Provider on **18th February 2020** looking for the title documents. The Complainants state that their Solicitor wrote to the Provider on **21st February 2020** to advise it that the property was going to auction, with a guide price of €140,000. The Complainants state that in its letter dated **5th March 2020**, the Provider advised that it was still investigating the complaint. The Complainants state that their Solicitor wrote to the Provider requesting the title deeds by return. The Complainants submit that the delay in issuing the deeds resulted in the Complainants being prevented from selling the property at auction on **4th March 2020**.

The Complainants submit that in a conversation between an agent of the Provider and the Complainants' Solicitor, on **14th May 2020**, the Provider's agent indicated that consent to sale was due to issue and that a fee of €150 would be requested by letter, for the title deeds to be taken up on ATR.

The Complainants submit that despite complaints made to the Provider it refused to engage and only sent the title documentation through a Solicitor on **21st July 2020**. The Complainants state that the sale of the property for €165,000 was by then, lost. The Complainants submit that they have tried to sell the property, however it only achieved sale agreed on **18th January 2021** for the sum of €145,000, "*being a loss of €20,000*". The Complainants submit that in the meantime, they had to pay extra interest to the Provider on account of "*their tardiness and disregard to standard procedures and to request for release of title documents in the ordinary course*".

The Provider's Case

The Provider, in its letter dated **3rd April 2020**, submits that on receipt of the Complainants' Solicitor letter, dated **13th March 2019**, it attempted to contact the Complainants' Solicitor however it was unsuccessful at that time.

The Provider states that on receipt of the Complainants' Solicitor letter, dated **19th March 2019**, its agent tried to call the Complainants' Solicitors office and left a message for a return call. The Provider submits that the Complainants' Solicitor did not call the Provider.

The Provider stated in April 2020, in its Final Response Letter that "*there is currently a proposal being reviewed for consent to sale and once a response is received for this the deeds will be issued on ATR*".

In April 2021, when responding to the formal investigation by this Office, the Provider supplied a detailed account of events which are included below, under the heading "**Chronology of Events**".

The Complaint for Adjudication

The complaint is that the Provider delayed in issuing the title deeds on ATR, as a consequence of which one definite and two potential sales of the property, were lost.

The Complainants want the Provider to compensate them for the loss incurred due to the Provider's delay in issuing the title documents.

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 **26 July 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

Chronology of Events

2019

- **18th February 2019:** The Provider issues a welcome letter to the Complainants confirming that the facilities related to their mortgage with **Bank X** have been sold

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to the Provider. This initial letter confirmed the outstanding balance and the arrears balance and the identity of the Provider's credit servicing firm.

- **25th February 2019:** Letter issues to the Complainants highlighting the outstanding arrears on the account and warning that if no contact was made within 30 days, the property may be at risk of having a receiver appointed to it.
- **26th February 2019:** The First Complainant telephoned the Provider seeking a status update on the Complainants' account. The Provider's agent advised that the arrears balance should be cleared in full. The Provider informed the Complainants of potential options of voluntary sale or voluntary surrender of the property. The First Complainant advised that the property had been on the market for over a year and they had been unable to sell it. The First Complainant advised that the property was tenanted.

The Provider's agent confirmed that the property was at risk of having a receiver appointed to it. The First Complainant advised that they may be able to raise €90,000 in full and final settlement of the mortgage. The Provider's agent advised that this would not be accepted. The First Complainant stated that he would speak with the Second Complainant and telephone back. The Provider asserts that the First Complainant did not call back.

- **14th March 2019:** The Provider sent an email to the credit servicing firm.
- **15th March 2019:** The Complainants' Solicitor wrote to the Provider advising that the Complainants cannot sustain the full contractual repayments of €3,400. The solicitor advised that their clients would be getting a payment of approximately €80,000 upon their retirement and requested that the Provider accept this in full and final settlement of the outstanding debt.
- **15th March 2019:** The Provider asserts that it telephoned the Complainants' solicitor but there was no answer.
- **21st March 2019:** The Provider received a letter from the Complainant's solicitor advising that they looked forward to hearing from the Provider and enclosing a letter from an estate agent, advising of their attempt to sell the property.
- **21st March 2019:** The Provider telephoned the Provider's solicitor and left a message requesting a call back.
- **21st March 2019:** The Complainants' Solicitor telephoned the Provider; however, the Provider's agent was not available to take the call.
- **21st March 2019:** The Provider's agent telephoned the Complainant's Solicitor who was seeking available options. The agent confirmed that the Provider was looking for the arrears to be cleared and for the full contractual repayments to be maintained. The Complainant's Solicitor advised that this was not possible, and that the Complainants may be able to obtain a lump sum of €80,000 - €90,000. The Provider's agent advised that this would be too low to accept. The Complainant's Solicitor advised that he would communicate with the Complainants and see if anything else could be done.
- **26th April 2019:** The credit servicing firm sent an execution request to the Provider to issue a formal demand
- **1st May 2019:** A formal demand was issued to the Complainants, calling in the full amount owing as full contractual repayments were not being met and the arrears were increasing.

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- **11th July 2019:** The Provider telephoned the First Complainant seeking an update on the payment for June, and left a voicemail.
- **11th July 2019:** The Second Complainant was called, but she was unable to speak and asked for a call back the following Monday.
- **12th July 2019:** A quarterly arrears letter was sent to the Complainants.
- **15th July 2019:** The Provider telephoned the Second Complainant. It transpired that the Complainants had input an incorrect reference number in respect of the June payment, which was subsequently allocated to their account. The Second Complainant advised that they were selling the property. The Provider confirmed that Consent to Sale (“CTS”) was required for this and confirmed the documentation that was required.
- **18th July 2019:** The Second Complainant telephoned the Provider to advise that the property was up for sale, and that the sale proceeds would clear the balance in full. The Provider’s agent confirmed the requirement for CTS. The Second Complainant stated that she would call back the following week with details. The Provider notes that no call back was received.
- **22nd August 2019:** An arrears letter was sent to the Complainants
- **28th August 2019:** The First Complainant called to advise that the property was “sale agreed” and although he was not sure of the amount, he noted there would be no shortfall. The First Complainant advised that the sale was due to close in October or November and confirmed he would revert with details. The Provider’s agent advised the First Complainant of the CTS documentation required.
- **24th September 2019:** The Provider attempted to telephone both Complainants to seek an update regarding the sale of the property, as it had not heard from them since the previous call on **28th August 2019**.
- **24th September 2019:** The credit servicing firm sent the Deed of Assignment for the appointment of a receiver, for execution.
- **24th September 2019:** The Second Complainant returned the Provider’s call. The Provider’s agent advised that it was seeking an update on the CTS documentation. The Second Complainant advised the Provider’s agent to call their Solicitor as they were looking after the gathering of CTS documentation. The Second Complainant had no update on the sale of the property and the Provider’s agent agreed for a call to be made to the Complainants’ Solicitor.
- **25th October 2019:** The Provider telephoned the Complainants’ Solicitor seeking an update as no documentation had been received for CTS. No update on the sale agreed status of the property had been received. The Complainant’s Solicitor (**Solicitor A**) was not available for a call, so the Provider’s agent left a message.
- **20th November 2019:** A quarterly arrears letter was sent to the Complainants by the Provider
- **13th December 2019:** The Provider telephoned the Complainants’ Solicitor to advise that a formal demand had issued, that a Deed of Assignment was pending on the account, that a receiver could be appointed at any time, and that arrears would need to be cleared to stop this. A voicemail was left seeking a call back from the Complainants’ Solicitor.
- **13th December 2019: Solicitor B** returned the call. The Provider’s agent advised that a receiver was pending on the Complainants’ account. Solicitor B advised that the

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property sale had fallen through as the seller pulled out, but that efforts to sell the property would continue.

Solicitor B advised that the Complainants had unsuccessfully attempted to re-mortgage the house. The Provider advised that CTS was required and that several telephone calls had been made to the Complainants to explain this. Solicitor B said that the property had been sale agreed which would have covered the mortgage and was valued at roughly €200,000 or €250,000, but did not have the exact figures to hand. Solicitor B felt that CTS would not be required in this instance. The Provider's agent noted that as the account was in arrears and pending a receiver, he was of the understanding that CTS was required. The Provider's agent advised that the property was at risk of having a receiver appointed to it, due to the arrears position and a formal demand having previously issued.

2020

- **6th February 2020:** Solicitor B called the Provider seeking the redemption figure and title deeds. Solicitor B claimed that it was selling for in the region of €200,000, potentially a little less but they did not have a sale agreed. The Provider advised that CTS was required. The solicitor was dissatisfied that CTS was required and claimed that nobody had responded to letters regarding the deeds on ATR, and that a complaint would be forthcoming in respect of the deeds.
- **7th February 2020:** The Provider's agent telephoned Solicitor B, who advised that she was seeking the title deeds on ATR. The Provider's agent advised that in order for the deeds to be released on Accountable Trust Receipt, the Provider would require that the CTS process be completed. Solicitor B was dissatisfied and claimed that her letters had not received responses and the sale of €165k was lost in **August** due to the deeds not being issued. The Provider's agent explained that a number of calls were made, to advise of this process, but these were not responded to. The Provider's agent advised that as the arrears were not cleared, and formal demand has issued, that a receiver was pending. The Provider's agent advised that the deeds could not be released on ATR until CTS was granted. Solicitor B advised that she would write, in the coming days, seeking a response.
- **12th February 2020:** The Provider received a letter from the Complainants' solicitor with a letter of authority and request for deeds to be issued on ATR.
- **13th February 2020:** A complaint acknowledgment letter was issued to the Complainants' solicitor
- **17th February 2020:** The Provider's agent telephoned the Complainants' solicitor, and left a message with a third party, noting that the Provider needed to know how much the property was being sold for and whether the sale would cover the full costs of sale. The Provider also needed to query when the Complainants expected the sale to close, as the formal demand had issued and so there was a chance of a receiver being appointed. Solicitor B was out of the office and a message was left requesting a call back.
- **17th February 2020:** The Provider sent a 'request for contact' letter to the Complainants' solicitor
- **18th February 2020:** A quarterly arrears letter was issued to the Complainants

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- **19th February 2020:** The Complainants' solicitor sent a letter to the Provider's complaints team in response to the acknowledgment letter issued on **13th February 2020**. The Complainants' solicitor's letter claimed that the deeds remained outstanding and were required within 10 days of the letter.
- **20th February 2020:** Solicitor A telephoned the Provider seeking an update on the deeds. The Provider's agent advised that a formal demand had issued on the account and that the property was at risk of a receiver being appointed. The Provider's agent advised that CTS was required, and that there should not be a problem in getting the deeds sent on ATR once they could confirm whether the property in question was being sold for positive equity. The Provider's agent queried the expected market value and when he expected to have the sale completed. Solicitor A was unsure of these details but was to revert to the Provider once he had confirmed them. The Provider's agent advised that if there was a shortfall, that a standard financial statement would also be required. Solicitor A expressed dissatisfaction that the letters in respect of the title deeds had not been responded to. The Provider's agent explained that this was being investigated by the Complaints Team.
- **26th February 2020:** The Complainant's solicitor wrote to the Provider requesting the deeds on ATR with details of the sale and confirmation that the property was going to auction with a guide price of €140,000.
- **2nd March 2020:** The Provider telephoned the Complainants' solicitor and spoke with Solicitor B. The Provider's agent advised that as the property was advertised online at €140,000, there could be a possible shortfall. The Provider's agent queried if the costs would be covered by the Complainants. The solicitor advised that the Complainants were requesting the deeds on ATR and that they hoped to achieve full par, and that the property would not be sold unless this happened. The Provider's agent advised that it would submit a request for approval to release the deeds on ATR. Solicitor B advised that this needed to be done as a matter of urgency, as the deeds were requested more than a year before and still had not been received.
- **5th March 2020:** The Provider telephoned the Complainants' solicitor and spoke with Solicitor A. The Provider's agent advised that he was speaking with Solicitor B two days' previously. The Provider's agent confirmed that the request for title deeds to be issued on ATR had been submitted, and advised that Solicitor B had said that the property was to be put up for auction on **4th March**. The Provider's agent enquired as to whether a bid had been placed on the property. Solicitor A confirmed that he couldn't put it up for auction without title, as they did not know whether there was a defect with the title.
- **5th March 2020:** A 20-day holding letter was issued to the Complainants' solicitor.
- **10th March 2020:** A request for the title deeds was received from the Complainants' solicitor, which advised that they did not want the complaint investigation to delay them any further
- **5th April 2020:** A Final Response Letter was issued in respect of the complaint
- **8th April 2020:** A letter was received from the Complainants' solicitor requesting the title documentation and claiming that they had proof the Provider did not respond to their correspondence
- **14th April 2020:** The credit servicing firm wrote to confirm the CTS had been put to the Provider.

- **28th April 2020:** A letter from the Complainant's solicitor issued stating that they could not understand why CTS had not yet been granted and that any loss of revenue from the sale of the property would be used as evidence
- **30th April 2020:** An email was sent from the Provider's agent to an internal Team Lead seeking an update on the CTS
- **1st May 2020:** An email was sent from the credit servicing firm to the Provider seeking an update.
- **14th May 2020:** The Provider's agent telephoned Solicitor A to confirm that CTS was granted on the property and that the deeds would be issued on ATR. The Provider's Agent advised that they would request them today, and issue them as soon as possible. Solicitor A advised that they were unsure of the sale of the property now, as two sales have been missed due to deeds not being released. He advised that they had been requesting these for some time now, and that he required the deeds on ATR as they are required to put offers in place. The Provider's agent advised that the Provider's approval was required to issue deeds on ATR. Solicitor A advised that the meaning of ATR was that the deeds would be held for full par recovery and the discharge of the mortgage. Solicitor A advised that he would need to obtain the Complainants' instruction. The Provider's agent advised of the previous, closed complaint and the possibility of opening a new complaint. Solicitor A advised not to open a new complainant for the moment, but to log his dissatisfaction. The Provider's agent advised of the fee of €150 for releasing the deeds on ATR. Solicitor A advised that they should not be paying this fee. The Provider's agent advised that if they were unhappy with the fee to write advising of this.
- **9th June 2020:** Letter was received by the Provider from the Complainants' solicitor confirming their dissatisfaction with the requirement to pay €150 + VAT for the deeds on ATR.
- **11th June 2020:** Deeds were received by the Provider's solicitor
- **17th June 2020:** Email was sent by the credit servicing firm to the Provider's solicitor attaching a schedule, ATR letter and Invoice for ATR to be sent out.
- **21st July 2020:** The credit servicing firm sent the Provider's solicitor a query regarding deeds, as the Complainants' solicitor advised that they had not received them
- **28th July 2020:** The completed ATR was returned from the Complainants' solicitor.
- **3rd September 2020:** A letter was sent from the Provider's solicitor to the Complainants' solicitor confirming that the deed fee had been waived and that the invoice could be disregarded.

Evidence

- (i) The Provider maintains that it is under no strict obligation under Irish law, to release the custody of the title deeds to a borrower such as the Complainants, or their solicitor, upon receipt of such a request. The Provider submits that the Complainants in this situation would be entitled to inspect and make copies of title documents retained by a lender, on payment of the lender's reasonable costs and expenses pursuant to **Section 91** of the **Land and Conveyancing Law Reform Act 2009**.

However, the Provider notes that this legislation does not require the lender to release the custody of the original documents to the borrower.

Section 91 of the **Land and Conveyancing Law Reform Act 2009**, as relied on by the Provider, is found under the section entitled '*Powers and rights of mortgagor*' and under the sub-heading '*Documents of title*' it states as follows:

"91. (1) Subject to subsection (2), a mortgagor, as long as the right to redeem exists, may from time to time, at reasonable times, inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the possession or power of the mortgagee.

(2) Rights under subsection (1) are exercisable –

(a) on the request of the mortgagor, and

(b) on payment by the mortgagor of the mortgagee's reasonable costs and expenses in relation to the exercise

(3) Subsection (1) has effect notwithstanding any stipulation to the contrary.

(ii) The Provider notes its satisfaction that it discharged its obligations under General Requirements 3.3 and 4.1 of the Consumer Protection Code 2012 (as amended). Those requirements state as follows:

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

"4.1 *A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information."*

(iii) A **Final Response Letter** was issued by the Provider on **3rd April 2020**. The key excerpts from the letter are as follows:

*"This letter reached our office on **15th March** and an agent from our office contacted you to discuss this in further detail however, the attempted contact was unsuccessful at this time.*

*We received a further letter dated the **19th March 2019** to our office on **21st March 2019**. Enclosed within this letter was a letter from the estate agents that your client had chosen to place their property on the market with.*

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Our agent again tried calling your office and left a message for you to return the call however, we did not receive a call from your office. It is regret however that we did not follow up these calls with written correspondence and for this I apologise.

In relation to you not yet receiving the Deeds pertaining to your client's property, I can confirm that there is currently a proposal being reviewed for Consent to Sale, once a response is received for this the Deeds will be issued to you on Accountable Trust Receipt (ATR). We have requested that this matter is treated as a matter of priority, we apologise for the resultant inconvenience caused by this delay."

(iv) Definition of 'Accountable Trust Receipt'

The definitions section of '*Solicitors (Professional Practice, Conduct and Discipline – Commercial Property Transactions) Regulations 2010*, defines this term as follows:

"Accountable Trust Receipt" means an Undertaking to hold title deeds to any land or buildings on behalf of a Financial Institution and either to return such title deeds to the Financial Institution on demand in the same condition as they were received by the Solicitor or to discharge or procure the discharge of a mortgage or other security on, or a loan advanced on security of, such land or buildings".

Audio Evidence

It is noted that as part of its response, the Provider submitted recordings of 21 telephone conversations with the Complainants and their solicitors' office. Relevant excerpts from a number of telephone conversations are as follows:

(i) Telephone call on **20th February 2020**

Complainants' Solicitor B	I don't need consent
Provider's credit servicing firm	We need CTS from our client. Our client needs to approve before we can issue out the deeds to you
Complainants' Solicitor B	I am discharging this mortgage. I cannot discharge the mortgage without deed. I will pass this onto the principal, and he will write a letter into yourselves. This is being discharged in full. I am not looking for consent ... not looking to pay less than the mortgage amount

Provider's credit servicing firm	We're not going to issue them out unless we have CTS from our client...because a formal demand has issued on the account on 1st May. That requires borrowers to pay the full outstanding amount on the account. Our client would require CTS because a receiver can be appointed at any stage.
Complainants' Solicitor B	Do I have to go on and make a complaint to Financial Regulator on this? I understand fully your procedures, 90% of the time you would assume that these mortgages that are bought up by likes of Provider, they would be in negative equity so normal procedure would be to seek consent because you're not getting the full whack for the mortgage
Provider's credit servicing firm	I understand where you're coming from
Complainants' Solicitor B	My clients are caught between a rock and a hard place - you're looking for the money, but you won't release the deeds so that they can sell the property and give you the money. The property is not in negative equity. It achieved sale agreed last August of 165k which is more than enough to clear the mortgage – I don't need the consent from Provider, I need the title deeds. We're taking the burden
Provider's credit servicing firm	But you do need CTS because a formal demand has issued

(ii) Telephone call on 2nd March 2020

Complainants' Solicitor B	
Provider's credit servicing firm	The letter states guide price is €140k - but outstanding balance is €139k. There is going to be a deficit in relation to -
Complainants' Solicitor B	We don't know that as yet, secondly, still waiting on title documents, which is what I'm trying to get from the lender
Provider's credit servicing firm	That's what we're trying to explain - if there is going to be a deficit, are they going to cover the cost
Complainants' Solicitor B	I'm well aware of the procedure – I'm giving an undertaking on this.

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	I'm not going to do this if not satisfied the mortgage will be cleared. I need to know what the position with the title documents is -
Provider's credit servicing firm	They're not going to release them if costs aren't going to be covered by the borrower. Are they going to be covered?
Complainants' Solicitor B	We're giving an undertaking -we hold them on ATR - we hold them on trust for Lender. If there is any sort of a deficit, we are not going to be closing any sale, we are not going to be giving undertakings to do anything at all unless we are satisfied that the mortgage is covered in full. This is standard procedure for all solicitors' offices
Provider's credit servicing firm	I will put in request to get title deeds put out. If any issues will be in contact with you.

Analysis

I note that the Provider asserts that neither the Complainants nor their solicitor is entitled to custody of the original deeds, although they are entitled under the legislation to inspect and make copies of the documents, while discharging the lender's reasonable costs and expenses. It submits that in practice, where a property sale is proposed, and access to original deeds is required to facilitate the sale, the Provider would facilitate the release of deeds on ATR to a borrower's solicitor. However, it notes that in order to ensure that the deeds are being released to assist with the sale of the property, the Provider requires that there is 'Consent to Sale' or CTS in place, in advance of the release of the deeds on ATR.

In respect of the Provider's suggested inability to contact the Complainants' Solicitor on numerous occasions, it submits that several steps were taken to attempt to resolve the issue. It asserts that it notified the Complainants on four occasions, that CTS was required in order to sell the property, and that it notified the Complainants' solicitor of this requirement, on two occasions.

The Provider notes in its response that it attempted to contact the Complainants' solicitor in **2019** to seek an update as to whether or not, it was the Complainants' intention to sell the property. The Provider notes that at this point, there was no mention made during these phone calls that there was an outstanding issue in respect of the deeds being requested on ATR.

The Complainants assert that a conversation took place on **14th May 2020** between their solicitor and the Provider's agent. It is submitted on behalf of the Complainants that the Provider's agent indicated to their solicitor that CTS was due to issue, and that a fee of €150 would be requested in a letter, in order for the title deeds to be issued on ATR.

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The Complainants assert that as of **26th June 2020**, no such letter was received. In response to this assertion, the Provider notes that CTS was granted on **14th May 2020** and that this was confirmed during a telephone call on that date, to the Complainants' solicitor. The Provider confirms that a letter did not issue to the Complainants' solicitor, as per this telephone conversation. The Provider's solicitors confirmed that the deeds were issued on **17th June 2020** when in reality, the deeds did not issue until **21st July 2020**. I note that the related fee of €150 + VAT for taking up the deeds was waived by the Provider's solicitor as a result of this delay.

The Provider asserts that it discharged its obligations under the **Consumer Protection Code 2012 (as amended) ("the Code")** and that it ensured that all instructions from or on behalf of the Complainants and their agents were processed properly and promptly in respect of the release of the title deeds on ATR. The Provider notes its satisfaction that the Complainants and their Solicitor were notified of what was required in order for the deeds to be furnished on ATR. It states that it sought updates regularly on the status of the loan and advised that in order for any sale to proceed, Consent to Sale (CTS) was required.

The Provider notes that upon receipt of the request for the deeds on **6th February 2020**, it advised the Complainants that it required the details of the sale, and the market value of the property. At that juncture, it notes that it also expressed concern at the guide price received on **26th February 2020**, as potential existed for a residual balance to remain outstanding after the sale. It notes that once these details were clarified, the credit servicing firm adhered to the Provider's procedure in respect of requesting CTS. The Provider states that when the CTS was approved, a delay arose in relation to the release of the deeds by its solicitor.

However, the Provider notes that this delay does not fall within the scope of whether it discharged its own obligations under the Code. The Provider further asserts its satisfaction that it discharged its obligations under the Code in respect of the process for obtaining deeds on ATR. It submits that if the Complainants' solicitor had acted in reliance on the information furnished to it by the Provider, the matter would have progressed more efficiently.

The Complainants submit that they have lost out on significant proceeds from the potential sale of the property as a result of the Provider's suggested delay in releasing the title deeds to their Solicitor. The Provider points out that in **March 2019**, the Complainants' Solicitor (Solicitor A) mentioned a full and final settlement of the account for €80,000 - €90,000, which would be obtained as part of the parties' retirement lump sum. The Provider also notes that it had discussions with the Complainants in **July** and **August 2019**, during which the Complainants and/or their agent were unable to confirm what the expected sale price was. It notes that during a conversation with the Complainants' Solicitor (Solicitor B) in **December 2019**, figures of €200,000 and €250,000 were quoted, although the solicitor was unable to confirm the accuracy of these figures and also claimed that the proposed purchaser had pulled out of the sale. It is submitted on behalf of the Provider that in **2019**, there was no clarity or consistency available to it, when discussing the sale of the asset.

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It is apparent to me that throughout the parties' engagement in respect of the release of the title deeds, the Provider sought to adhere to its obligations under the Consumer Protection Code 2012 and related legislation, such as the Land and Reform Conveyancing Act 2009. However, the Provider did not meet the standard of customer service and account administration prescribed by the Code when it failed to follow up its telephone conversations with the Complainants, or their Solicitor with written letters.

It is apparent from the chronology of the events set out above, that key discussions took place between the Provider and the Complainants' solicitors over the telephone and relevant information was exchanged during these conversations. The Provider made it abundantly clear that it had certain requirements in respect of CTS that the Complainants would be obliged to meet in order for the request for the deeds to be facilitated. The Complainants did not acknowledge that they had outstanding obligations with regard to CTS, but continued to request the title deeds by letter and by telephone. During the telephone conversations between the Provider's agent and Solicitor B on **20th February 2020** and **2nd March 2020**, the Complainants' solicitor was adamant that her office did not require the Provider's consent to sale where the property would be sold for more than the redemption value. I don't accept this, given that there were significant arrears outstanding and, at times, the Provider was on the cusp of appointing a receiver.

Notwithstanding the absence of this 'follow-up' written correspondence from the Provider however, I am not satisfied that the Complainants were unaware of their additional requirements in respect of CTS, before the title deeds would be released to them. The Provider had clearly communicated over the telephone, as can be seen from the excerpts set out above, that CTS would be required, for the title deeds to be released. Solicitor B vehemently denied that this was the case, relying on what she considered to be usual practice. It is clear from the evidence that she did not accept that the situation was any different, because a formal demand had issued, and a receiver could have been appointed by the Provider, at any time.

The evidence shows that the Complainants and their solicitor were notified of what was required by the Provider, in order to have the deeds released on ATR. It is apparent from the correspondence submitted to this Office that updates were sought regularly on the status of the loan in question, and it was regularly noted that before the parties could proceed, CTS was required. I am satisfied that the Provider discharged its obligations under the Consumer Protection Code in this regard.

I do not accept that the Provider is responsible for the loss of potential sale proceeds arising from the property. There is insufficient evidence of any clarity or consistency in the manner in which the Complainants notified the Provider of potential sales and where such were notified, the Provider was consistently clear in communicating what was required, in order for the title deeds to be released.

Accordingly, I do not accept that the Provider acted in a way that brings its conduct within Section 60(2) of the Financial Services and Pensions Ombudsman Act 2017, and in those circumstances, I do not consider it appropriate to uphold this complaint.

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Conclusion

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

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)**

22 August 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.