



<u>Decision Ref:</u>	2018-0017
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Investment/buy to Let Mortgage
<u>Conduct(s) complained of:</u>	Failure to release security Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants' dispute relates to the sale of a property which was cross mortgaged with the Bank. The property in question formed part of the security in place in respect of their mortgage accounts xxxxx231 and xxxxx870. The Complainants requested the release of the property from the cross charge, under account number **xxxxx870**, and requested that they be permitted to use the proceeds of sale in the discharge of mortgage account **xxxxx231**.

The Complainants' complaint relates to the actions of the Bank following this request.

The Complainants' Case

The Complainants submit that following a proposal to the Bank regarding the sale of a property by Solicitor's letter dated 05th July 2016, they wrote to the Bank but that there was a failure by the Bank to reply to their letters, dated 16th July 2016, 26th July 2016, 29th July 2016 and 09th August 2016.

The Complainants submit that the Bank's actions jeopardised the completion of the sale of their property, in the sum of approximately €380k, which sale had a closing date of 08th July 2016, and, further, that the actions of the Bank exposed them to potential legal action by the purchaser.

The Complainants also submit that the Bank was holding surplus/excessive security "*hostage*", in order to compel it to reduce the Bank's tracker rate exposure.

The Complainants have submitted that the actions of the Bank have resulted in their suffering losses/costs, due to sale of the property not closing on the closing date of the 08th July 2016, including loss of rent during the period 08th July to 14th October, 2016 in the sum of €4,000 and additional solicitors fees in the sum of €2,500.

The Provider's Case

The Bank submits that the Complainants appear to have entered a contract for the sale of the security property without due regard to the cross security which was in place in respect of the property.

The Bank submits that the Complainants submitted a proposal without regard to its requirements for the information necessary for it to address such a proposal, and without any regard for the necessity to provide the Bank with a reasonable timeframe within which to review the matter.

The Bank says that it has dealt with the proposal and communicated in such a way as advanced the Complainants' request to completion, in an appropriate and reasonable time frame.

The Bank contends that the Complainants' assertions with regard to its "*jeopardising*" the completion of the sale of the security property and its retaining "*excessive security*" are completely unreasonable and without merit.

The Bank submits that the Complainants' Solicitor made a proposal, which asked the Bank to agree to release the security within mortgage account number xxxxx870 and to accept the amount required to repay loan account xxxxx231 (redemption amount €206,082.45).

The Bank's position is that the Complainants' Solicitor submitted a written proposal on behalf of the Complainants at a very advanced stage of the sale process, and that the proposal was dated 3 days in advance of the advised closing date. It says that it received the letter on the 08th July, being the date of the closing.

The Bank submits that the letter issued by the Complainants' Solicitor, dated 05 July 2016, asked the Bank to consider providing its consent to the sale of the property at a shortfall, i.e., for less than that required to repay the loans secured by the property in full.

The Bank submits that where a security is sold, usually the loans secured would be repaid in full from the sales proceeds before it releases its security. The Bank says that the proposal put forward, asked it to accept the amount required to repay loan account xxxxx231, only.

The Bank's position is that it is never obliged to allow the sale of property held as security at a shortfall, and that the only case where a borrower can insist that it release the mortgage deed, is where the sale proceeds are sufficient to repay the mortgage loans fully.

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The Bank submits that the Complainants' request was not a simple administrative matter and that it required assessment by the Bank's credit department. Its position is that, for the Complainants to have signed a contract for the sale of the property, without a clear confirmation that the security could be released, was a failing on the part of the Complainants and/or their legal advisors, and not a failing on the part of the Bank.

When the request was reviewed, the Bank submits that it required additional information, which it requested on the 25th July 2016. It says that when this was furnished, the decision was made to allow the Complainants retain a portion of the funds from the sale proceeds that should otherwise have been applied in reduction of their mortgage loans.

The Bank submits that there was also a significant disparity between the CGT liability figures provided at the outset and the finalised figures that were provided to it in September 2016.

The Bank says that it did not insist on the full gross sales proceeds of the sale and agreed to deductions relating to disposal costs, capital gains tax liability and that it sought net proceeds of €240,000 from gross sale proceeds of €375,000. The Bank submits that it also agreed to the Complainants retaining an additional amount of €66,025. The Bank maintains that its decision was fair and reasonable.

The Bank says that it took a total of 18 working days to deal with the Complainants' request including reverting to the customers for additional information which was then made available.

The Bank submits that the terms as set out in the letters of loan offer made clear the terms of security under each of the loans and that it was always a clear requirement of the lending that the security was held as common between both loans, and this was accepted by the Complainants in the letter of loan offer. The Bank contends that when the loan offers were made, and accepted, the Complainants had the benefit of legal and financial advice. The Bank submits that it cannot accept that the Complainants should be allowed to impose an amendment to those terms without it being provided a reasonable opportunity to review.

Decision

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

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 was satisfied that the submissions and evidence furnished did not disclose a conflict of fact

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such as would require the holding of an Oral Hearing to resolve any such conflict. I was also satisfied that the submissions and evidence furnished were sufficient to enable a determination to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Finding was issued to the parties on 21st November 2017 outlining the preliminary determination of the Financial Services Ombudsman 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 Finding would be issued to the parties, on the same terms as the Preliminary Finding, in order to conclude the matter.

Following the consideration of additional submissions from the Complainants, and following the commencement of the **Financial Services and Pensions Ombudsman Act 2017**, on 1 January 2018, the final determination of this office is now issued to the parties, by way of this Legally Binding Decision of the Financial Services and Pensions Ombudsman.

The sale of the property which the Complainants proposed to the Bank involved a compromise to the security previously provided for under the terms of Loan Offers accepted by the Complainants. Given the nature of the cross mortgage security, I propose to begin by looking at the loan terms of security.

Terms of Security

In relation to Loan Account No **xxxxx870**: pursuant to letter of Loan Offer dated 25 January the Complainants availed of a mortgage loan in the sum of €686,965, subject to the terms and conditions set out therein. Special Condition 11 of this Loan Offer provided as follows:

(a) Security Required

- *First Legal Charge over the property at ..., County Dublin registered in the names of [the Complainants].*
- ***First Legal Charge over [the property the subject matter of the complaint] registered in the names of [the Complainants].***
- *First Legal Charge over the property at ..., Co Mayo, registered in the names of [the Complainants].*
- *Legal Assignment to the Bank of Joint Life policy on the lives of [the Complainants] for the minimum amount of €120,000. This policy to remain in force for the duration of the facility now approved.*

Regarding Loan Account No **xxxxx231** - by letter of Loan Offer dated 03 May 2006, the Bank offered the Complainants a mortgage loan in the sum of €280,000, subject to the terms and conditions set out in the Loan Offer. Special Condition 11 provided as follows:

Security Requirements

- *First Legal Charge over the property at ..., County Dublin registered in the names of [the Complainants].*
- **First Legal Charge over [the property the subject matter of the complaint] registered in the names of [the Complainants].**
- *First Legal Charge over the property at ..., Co Mayo, registered in the names of [the Complainants].*
- *First Legal Charge over the property at ..., Co Mayo, registered in the names of [the Complainants].*

Having examined the documentation furnished, I am satisfied that the cross charge on the security property was a requirement of the loans, stipulated in the letters of loan offer and accepted by the Complainants.

Timeline of events

Jan 2005

The Bank approved an investment loan mortgage (account xxxxx870) in the sum of €686,965 under Mortgage Offer Letter of 25th January 2005.

As identified above, the security required for the advance consisted of a First Legal Charge over their existing investment properties, including a First Legal Charge over the property the subject matter of the complaint. The Complainants accepted this offer letter on the 26th January 2005.

May 2006

By way of Mortgage Offer Letter dated 03rd May 2006 the Bank approved an investment loan mortgage (account xxxxx231) in the sum of €280,000. The purpose of the advance was to part fund the purchase of a further investment property.

The security required for the new advance was a Legal Charge over the investment properties specified in offer letter xxxxx870, which included the property in question herein, together with a First Legal Charge over the new investment property.

30 June 2016

The Complainants' Solicitors requested a redemption statement on account xxxxx870, and all mortgages pertaining to the property to be sold.

05 July 2016

The Bank wrote to the Complainants' Solicitor, and issued redemption statements in relation to accounts xxxxx870 and xxxxx231, on this date.

These letters advised that the amount required to redeem mortgage account xxxxx231 was €206,082.45 and the amount required to redeem mortgage account xxxxx870 was €292,947.04, i.e., a total of €499,029.49.

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On this same date, the Complainants' Solicitor issued a letter to the Bank, proposing to sell the property in question, and use some of the proceeds to redeem mortgage account xxxxx231, as follows:

RE...Mortgage Account No. xxxxx870 and xxxxx231

Dear Sirs,

We refer to the above and confirm that we act on behalf of [the Complainants] in relation to the sale of the property at [Address]. In this regard we copy extract of Contract for Sale and you note the sale is due to close on the 8th inst for the sum of €380,000.00.

The said property was cross charged under both of the above mortgage account numbers and our clients have instructed us to put the following proposal to you in relation to the sales proceeds:

Our clients would like us to remit sufficient proceeds to redeem in full mortgage account number xxxxx231 and also in consideration of this that a full eDischarge of the burden registered on Folios DN163022F and DN106033L. There are CGT liabilities owing to Revenue in the sum of €85,000.00, approximately.

The properties remaining under the security of account xxxxx870, ... will be far greater in value than the balance due and on this particular mortgage account.

We would be obliged if you could consider this proposal and revert as soon as ever possible as the sale has been agreed to complete on 8th instant and if we do not hear from you we will have to postpone completion. The Purchasers solicitor has confirmed that he is in funds to complete.

The Bank says that it received this letter dated 05th July, from the Complainants' Solicitor on 08th July 2016.

The Bank has submitted that it was entitled to rely on the full gross sale proceeds and that it therefore sent this proposal to the Bank's Credit Department for assessment.

08 July 2016

This was the original closing date in connection with the sale of the property. It is also the date the Bank says it received the Complainants' Solicitor's letter, dated 05th July 2016.

13 July 2016

The Complainants' Solicitor issued a letter to the Bank acknowledging receipt of the redemption statements. This letter enclosed a copy of their letter dated 05th July 2016 and requested a response to the proposal outlined therein.

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16 July 2016

The Complainants wrote to the Bank's Head of Mortgages, and the Bank says that this was received by it on 21st July 2016. This letter requested that the Bank agree to the release of the property in question, as a matter of urgency, as the sale of the property was at risk.

The letter stated as follows:

Dear Sir,

With regard to the above, our Solicitor ... was unable to complete sale on closing date 08/07/16, as [the Bank] had not confirmed approval of release Deeds [to the property] subject to clearance of Tracker mortgage no. xxxxx231 (200k approx.).

Please note this property only forms part of [the Bank] Security relating to our Tracker mortgages xxxxx870 (300k) & xxxxx231 (200k), and is, based on amounts now outstanding since drawdown 10 years ago, surplus to banks Requirements.

Following completion of sale we will be further reducing our bank mortgage liabilities by 200k (clearance Tracker no. xxxxx231).

This will leave our total mortgage liabilities at 300k (mortgage no. xxxxx870), with [the Bank] holding over 300% LTV security cover (see details on attached letter).

[The Bank] delay confirming approval release of [the property], subject to clearance Tracker mortgage no. xxxxx231, is putting sale of property at risk & causing undue inconvenience to purchaser.

Please address as a matter of urgency.

18 July 2016

The Complainants' Solicitor issued a letter to the Bank enclosing copies of previous correspondence. This letter stated that *"The non-response from [the Bank] has now delayed the completion of this sale and if we do not hear from you by close of business on Tuesday 19th July we will have no option but to submit a complaint to the Financial Services Regulatory Ombudsman."*

25 July 2016

The Bank sought certain further information from the Complainants in connection with their proposal for the sale of the property.

The Bank's Mortgage Department emailed the Complainants' Bank branch and requested that it contact the Complainants to complete a mortgage modification request form. It asked:

"Can you please have them complete attached mortgage modification form so that we have their up to date financial position. We need to know details of any assets, their income, pension income, rental income per property and all of their financial commitments.

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They should outline their request on this form also so we have it in writing from them. You can advise them that I have already started the assessment but need the above details as had no current details for them. I will ensure and give it priority when it comes in – you can scan over to me on an email.”

On this same date the Complainants’ Solicitor issued a letter to the Bank enclosing “*authority duly signed by our clients authorising you to correspond with ourselves in relation to the above mortgage accounts*”, which authority from the Complainants was dated the 22nd July 2016.

26 July 2016

The Complainants’ Bank Branch sent an email to the Bank’s Mortgage Department, confirming that it had spoken with the second named Complainant and that she would attend at her local branch, to complete the requested form.

The Complainants so completed a Mortgage Modification Request Form on this date.

On this same date, the Complainants wrote a letter of complaint to the Bank’s Customer Service Department stating that they received no reply to their letter dated 16th July 2016 and that the Bank’s inaction was jeopardising the sale of the property and exposing them to possible legal recourse by the purchaser.

28 July 2016

The Bank issued a response to the Complainants’ Solicitor’s proposal of the 05th July, in which it agreed to release the property from the security held. The Bank says that this issued following an assessment of the Complainants’ request and supported by documentation furnished to the Bank in the intervening period. It submits that this letter was deemed to be a response to the Complainants’ letter dated 16 July 2016 (which it says it received on 21st July 2016). This letter set out the Bank’s approval of the release the property in question, account xxxxx870, from the security held, subject to certain conditions:

- A. *Capital reduction of €278,750 against the mortgage by 1/10/2016*
- B. *Accountant’s verification of Capital Gains Tax computation at €85,000*
- C. *The matter being completed no later than 1/4/2017*

The letter requested a Deed of discharge for sealing with a copy folio of the property to be released.

29 July 2016

By letter dated 29 July 2016, the Complainants sought clarification of the Bank’s offer which issued on 28 July 2016, as it referred only to account xxxxx870, and did not mention account xxxxx231, as per the proposal initially put to the Bank on the 05th July.

03 August 2016

By letter dated 03rd August 2016, the Complainants' Solicitor appealed the capital reduction amount €278,750 and noted that the Bank's most recent letter made no reference to the Complainants' proposals as set out in their letter of 05th July 2016, as the proposal did not relate to account xxxxx870.

The Complainants' Solicitor requested that the Bank review its position, confirm the release of the cross charge under account xxxxx870 and provide evidence of a discharge of mortgage account xxxxx231.

08 August 2016

The Complainants' Solicitor issued a letter following up on the letter of 03rd August 2016, indicating that they were coming under severe pressure from the Purchaser and requested a response from the Bank, by close of business that same day.

09 August 2016

The Complainants issued a letter to the Bank's Customer Service Department requesting a follow up on their letter of 26th July 2016.

10 August 2016

The Complainants' Solicitor issued a letter to the Bank, following up on the letter of 03rd August 2016.

The Complainants submitted a Complaint to this Office.

12 August 2016

The Complainants' Solicitor issued a further letter, following up again on the letter of 03rd August 2016.

15 August 2016

The Bank requested a Statement of Personal and Financial details in respect of the Complainants.

16 August 2016

In response to the Bank's request of 15th August 2016 the Complainants' Solicitor provided the Bank with a Statement of Personal and Financial details for the Complainants.

30 August 2016

The Bank issued a letter consenting to the release of the security held over the property, on the following conditions:

- A. *Capital reduction of €220,000 against this mortgage by 31/10/2016*
- B. *Accountant's verification of Capital Gains Tax computation at €85,000*
- C. *The matter being completed no later than 1/4/2017.*

31 August 2016

The Complainants' Solicitor wrote a letter to the Bank, seeking clarification of the sums to be appropriated to the mortgage accounts, as the Bank's letter of the 30th August did not specifically confirm the account which the figure of €220,000 was to be remitted against.

The letter enclosed a draft Deed of Discharge.

02 September 2016

The Bank sent a letter to the Complainants' Solicitor confirming that *"we require the capital reduction to be made to mortgage account xxxxx231 to clear same in full, the balance should then be lodged to mortgage account xxxxx870"*.

06 September 2016

By letter dated 06th September 2016 the Complainants' Solicitor provided evidence of a revised and finalised CGT computation figure €57,725, from the Complainants' accountant.

12 September 2016

The Bank revised its capital reduction requirement on the basis of the reduced CGT, to €240,000 and issued a letter to the Complainants' Solicitor advising of same.

13 September 2016

The Complainants' Solicitor requested up to date redemption statements for both accounts and advised they were now proceeding to make arrangements to close the sale of the property.

17 October 2016

The sale proceeds of the property were credited to accounts xxxxx870 and xxxxx231.

Analysis

The first aspect of the Complainants' complaint is the alleged failure by the Bank to reply to their letters dated 16th July, 26th July, the 29th July and 09th August, 2016.

The second aspect of their complaint is that the Bank's actions jeopardised the completion of the sale of their property, which had a closing date of 08th July 2016, thereby exposing them to possible legal action by the purchaser.

The Complainants also submit that the Bank was *"holding surplus/excessive security hostage, to compel [them] to reduce [the Bank's] tracker rate exposure by an unwarranted amount euro €278,750, ten years ahead of schedule"*.

I will address each of these, in turn.

1. *The Bank's Response to Correspondence.*

From an examination of the timeline of events, above, I note that communications issued to the Bank, both from the Complainants' solicitor as well as from the Complainants. The

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Bank has submitted that these were interpreted by it as forming part of the same proposal, and were dealt with accordingly.

The Complainants have submitted that the Bank failed to respond to their letters of the **16th July, 26th July, 29th July** and **09th August 2016**.

The Complainants' letter of the **16th July 2016**, to the Bank's Head of Mortgages, which as set out above, asked the Bank to address their proposal and stated that

"[The Bank] delay confirming approval release of [the property], subject to clearance Tracker mortgage no.xxxxx231, is putting sale of property at risk & causing undue inconvenience to purchaser" and to *"Please address as a matter of urgency"*.

The Bank has submitted that it did not receive the Complainant's letter until Thursday **21st July 2016** and that it responded within 3 days of receipt of same, when it requested additional information as part of its assessment process.

I accept that the Bank did not revert to the Complainant's directly in respect of this letter, but note that it did, on the **25th July 2016** request additional information to allow its credit department to complete its assessment - the Bank's Mortgage Department contacted the Complainants' Bank branch, requesting that they contact their customers to complete a mortgage modification request form.

I accept that this communication was effectively a response to the issue raised within the Complainants' letter to the Bank's Head of Mortgages, which was in relation to the Bank proceeding to release the Deeds.

On the **26th July 2016** the Complainants attended at their Branch and completed a Mortgage Modification Request Form in furtherance of their request for release of the security in question.

On this same date, the **26th July 2016**, the Complainants wrote a letter of complaint to the Bank's Customer Service Department, stating that they received no reply to their letter dated **16th July 2016**, and advising that the Bank's inaction was jeopardising the sale of the property and exposing them to possible legal recourse by the purchaser.

The Complainants received no response to this letter from the Bank's Customer Service Department.

The Bank has submitted that in order for it to execute a Deed of Discharge in connection with the property, which was held as security over two mortgage accounts and where only one of the accounts was being discharged from the proceeds of the sale, that certain requirements needed to be met.

The Bank issued a response to the Complainant's Solicitor on the **28th July 2016**, in which it addressed the proposal put to it, and agreed to release the property from the security held. The Bank says that this was issued following an assessment of the Complainants' request and supported by documentation furnished to the Bank in the intervening period.

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The Bank has submitted that it deemed this to constitute a response to the Complainant's letter of the 16th July 2016. As the Bank's letter of the 28th July addressed the matter which the Complainant's letter of the 26th related to, I am of the opinion that this constituted a response in respect of same. It is disappointing to note however, that this letter contained incomplete and inaccurate information and I will refer to this further below.

The Complainants received no response to their subsequent letter of the **09th August 2016**, also addressed to the Bank's Customer Service Department, which stated:

"With regard to [letter of complaint 26/07/16], we have received no reply.

As you are aware, this is well outside [the Bank's] complaints response timeframe (within 5 working days.)

Does the absence of a reply to our correspondence to [the Bank] confirm, the only recourse to customer care in Ireland is via the Financial Services Ombudsman?"

On **25th July 2016** the Bank had received a letter of authority from the Complainants' Solicitor, which enclosed *"authority duly signed by our clients authorising you to correspond with ourselves in relation to the above mortgage accounts"*. This authority from the Complainants was dated the **22nd July 2016**, and stated:

"With regard to the above [i.e., letter dated 16/07/16 to the Banks' Head of Mortgages] we hereby authorise [their Solicitor] to speak/correspond in relation to our requirements detailed in our letter of the 16/17/16."

In my opinion, it was not unreasonable for the Bank to correspond directly with the Complainants' Solicitor in relation to the proposal. It addressed the substantive issue relating to the proposal, which were the issues raised in the Complainant's letters of the 16th July and 26th July.

Each of the letters which the Complainants say they did not receive a response to, were letters which were directed at urging the Bank to proceed to release the security, as requested. Whilst it is the case that no specific response was issued directly to the Complainants in this regard, from an examination of the timeline of events, I accept that the Bank was so proceeding and that its requests, seeking further information, etc, constituted communications in relation to same.

The first letter in which the Bank indicated its consent to the sale, issued to the Complainants on **28th July 2016**. This referred to Home Loan Account xxxxx870 and stated: *"We have received confirmation from our credit department that they have agreed to release the property at [address] from the security held.*

This consent is conditional upon:-

- A. Capital reduction of €278,750 against this mortgage by 1/10/2016*
- B. Accountant's verification of Capital Gains Tax Computation at €85,000*
- C. The matter being completed no later than 1/4/2017.*

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Please forward a Deed of Discharge for sealing with a copy folio of the property to be released. In the Deed of Discharge it should mention the address of the property that is being released."

On the **29th July 2016** the Complainants wrote to their local Bank branch requesting clarification in respect of the amount in question as well as the account referred to. There is also a handwritten note from the Complainants, to their Solicitor, identified as "*information/suggested response given to our solr. [name] on receipt by solr. Bank letter 28/7/16*", which asked the Solicitor to ask the Bank to review the details contained in its letter of the 28th July. The Solicitor wrote to the Bank's mortgage department in this regard on **03rd August**, the **08th August**, **10th August** and **12th August 2016**, requesting a response. On the **16th August 2016** the Complainants' Solicitor enclosed Statement of Personal and Financial details, further to the Bank's request in this regard, of the **15th August 2016**. On the **23rd August 2016** the Solicitors firm emailed the Bank and by response dated **24th August 2016** the Agent in question advised "I have contacted credit and they advised we will have a decision today."

A letter of updated approval ultimately issued from the Bank on **30th August 2016**.

The letter again referred to xxxxx870 and stated that the consent was conditional upon:-

- A. *Capital reduction of €220,000 against this mortgage by 31/10/2016*
- B. *Accountant's verification of Capital Gains Tax Computation at €85,000*
- C. *The matter being completed no later than 1/4/2017.*

The content of the letter received from the Bank necessitated the Complainants' Solicitor having to revert and to seek clarification, as the letter did not specifically confirm the account number to which the €220,000 was to be remitted. The Complainants' Solicitor noted that there was approximately €206,000 owing on account xxxxx321 and asked whether they were to remit the necessary redemption figure in respect of this account and the balance to account xxxxx870.

By letter dated **02nd September 2016** to the Complainants' Solicitor, the Bank confirmed that it required the capital reduction to be made to mortgage account xxxxx321 to clear same in full and the balance to be lodged to mortgage account number xxxxx870.

Having considered all of the evidence before me, I do not find that the Bank failed to respond to the Complainants, as alleged, in circumstances where there were dual lines of communication in operation, from the Complainants and the Complainants' Solicitors, which formed part of the same proposal. In my opinion, it was not unreasonable to deal with the issue and correspond with the Complainants' Solicitor, on this basis, in accordance with the Complainants' signed authority.

2. The Complainants' contention that the Bank's actions jeopardised the completion of the sale

I accept that the property forming the subject matter of the proposed sale, was held as security by the Bank in respect of two mortgage loans. I am satisfied that the Bank was entitled to a reasonable time to review the request regarding the sale of the property, and to consider whether it would consent to the sale of the property for less than that required to repay the loans secured by the property in full.

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I also accept that the Bank was entitled to request further information in order to assess the position and come to a determination, as it was not a simple administrative matter but rather was one which required appraisal by the Bank.

I am of the opinion that any delay incurred in the closing of the sale of the property, in circumstances where the Complainants had signed a contract for the sale of the property without having secured confirmation from the Bank that the security could be released, is not a failing which can be attributed to the Bank. The Complainants' Solicitor submitted the proposal at a very advanced stage of the completion of the sale, and wrote a letter to the Bank which is dated 3 days before the advised closing date. No explanation has been provided as to why the Complainants' Solicitors failed to seek approval from the Bank to release the security, prior to progressing matters to that stage. I note that the Complainants' Solicitor wrote to the Complainants on the 29th November 2016 to confirm an increase in fees of €2,500, "*due to the difficulties in securing an agreed settlement figure with the financial institution who held security over this property.*" This suggests a degree of misunderstanding on the part of the Solicitors as to the Bank's position in this regard, and the fact that the Bank was not under any obligation whatsoever to release the cross mortgaged security.

Ultimately, the Bank issued a letter on **30th August 2016**, consenting to the release of security held over the property, on the basis of certain conditions. However, I would also note that as late as **06th September 2016**, the Complainants' Solicitor then reverted to the Bank with a revised and finalised CGT computation figure, which then had to be taken into account by the Bank, to enable the matter to be reviewed.

It issued a further letter to the Complainants' Solicitor on the **12th September 2016**, having revised its capital reduction requirement on the basis of the reduced CGT, to €240,000. On **13th September 2016** the Bank was advised that the Complainants were proceeding to make arrangements to close the sale of the property. The sale proceeds were credited to accounts 79772879 and xxxxx231 approximately a month later, on **17th October 2016**.

I do not find any basis for the contention that the actions of the Bank jeopardised the sale of the property, in circumstances where it had a discretion as to whether or not to agree to release the security held. The contract for sale had a closing date of **08th July 2016** and the Bank says that this is the date it first received the Solicitor's request, by letter of **05th July 2016**. I am satisfied that the Bank was entitled to a period of time within which to consider the proposal made to it. As per the chronology of events outlined above, the time which elapsed between the proposal being put to the Bank, dated **05th July** and **12th September 2016** when the Bank ultimately revised its capital reduction requirement on the basis of the reduced CGT and issued a second letter to the Complainants' Solicitor advising of same, was not an unreasonable amount of time to have elapsed; the Bank was entitled to consider the matter and to seek such further information as necessary to come to a determination.

I consider that any difficulties which the Complainants experienced with the Purchaser and the potential threat of legal action which they experienced, arose from having proceeded

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to that stage of the conveyancing process without having firstly secured the necessary confirmation and approval from the Bank to the sale.

I do not, therefore, find there to be any basis for upholding the second aspect of the complaint.

3. The Complainants belief that the Bank was holding excessive security hostage to “compel [them] to reduce [the Bank’s] tracker rate exposure by an unwarranted amount... ten year’s ahead of schedule.”

The letters of loan offer provide for the terms of security under each of the loans operated and outline that the security was held as common between both loans. This was accepted by the Complainants in the respective letters of loan offer.

The Complainants have not elaborated upon this bare assertion, nor has any supporting evidence been furnished in this regard. Indeed, the reasoning applied by the Complainants in making this complaint, was that this must be the case “*in the absence of any other rational explanation*”, as to why the Bank was not proceeding to release the security with due haste.

Having considered all of the evidence before me, none of which supports such a contention, I do not find there to be any basis for upholding this aspect of the complaint.

I note that in the correspondence which issued in approving the Complainants’ request, firstly, on the **28th July 2016** when it required a “*capital reduction of €278,750 against the mortgage by 1/10/2016*” and subsequently on the **30th August 2016**, when it advised that approval was subject to “*Capital reduction of €220,000 against this mortgage by 31/10/2016*”, the mortgage account referred to in the letter was account xxxxx870 and no reference was made to account xxxxx231.

This prompted a letter from the Complainants’ Solicitor on the **31st August 2016**, noting that the Bank “*does not specifically confirm the account number to which the €220,000 is to be remitted.*” The letter asks, “*it would appear that there is approximately €206,000 owing on account xxxxx231. Are we to remit the necessary redemption figure in respect of this account and then the balance towards account xxxxx870?*”

By letter dated **02nd September 2016** the Bank confirmed that this was the position and that it required the capital reduction to be made to mortgage account xxxxx231 to clear same in full, the balance should then be lodged to mortgage account xxxxx870. This was not explicitly explained or made clear, however, prior to the Complainants’ Solicitor’s request for clarification in this regard, which required subsequent clarification.

I note in this regard that the Consumer Protection Code 2012 prescribes certain requirements in respect of information provided by the Bank, namely:

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

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attention of the **consumer**. The method of presentation must not disguise, diminish or obscure important information.

In light of the significant nature of the transaction in question, the instructions provided by the Bank ought to have been clearly communicated, in an unambiguous way to the Complainants, so that it was apparent to them the actions required of them to comply with the Bank's conditions attaching to its agreement to the release the property from the security, and that there was an initial failing by the Bank in this regard, which required subsequent clarification.

It is clear however that this need for clarification did not hold up the closure of the transaction and that the figures subsequently required re-assessment, on the basis of the revised CGT figures made available by the Complainants' Solicitor, on the **06th September 2016**.

Whilst the lack of clarity was therefore regrettable, it did not, in my opinion, give rise to any loss, inconvenience or expense, such that it would be appropriate, bearing in mind all of the circumstances outlined above, to uphold this complaint against the Bank.

Accordingly, I am satisfied, for the reasons outlined above, that this complaint should not be upheld.

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
DIRECTOR OF ADJUDICATION AND LEGAL SERVICES**

07 February 2018

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) in accordance with the Data Protection Acts 1988 and 2003.