



<u>Decision Ref:</u>	2019-0309
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Documents mislaid or lost Failure to process instructions in a timely manner
<u>Outcome:</u>	Partially upheld

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

Background

This complaint relates to a mortgage account and alleged maladministration and poor customer service.

The Complainants' Case

The Complainants held mortgage accounts with the Provider and consequently the Provider had a legal charge over two properties in a Provincial City which were owned by the Complainants.

The Complainants state that in their efforts to sell their properties they sought the title documents from the Provider on **3 March 2015** but that the Provider delayed in furnishing the title documents for over 12 months and that they were not furnished to the Complainants' solicitor until **10 March 2016**. The Complainants state that the city council had a compulsory purchase order over the properties and that the delay in the title documents being furnished by the Provider had the consequence of delaying the purchase of the properties by the council in excess of 12 months. The Complainants believed that the Provider has wrongfully, unfairly and unreasonably continued to charge interest on the accounts during this 12 month period which the Complainants state were lost as a result of the Provider's actions or inactions.

Following on from this, the Complainants state that they requested the Provider to agree a fair redemption figure which reflected the Provider's failures and delays and did not include the interest charged or accrued from the days that the title documents should have been furnished.

The Complainants are unhappy that the Provider has treated this request as an application for debt forgiveness and requires the Complainants to complete standard financial statements amongst other things.

Finally, the Complainants feel that the Provider was unnecessarily and unfairly bureaucratic and obstructive in requiring a Letter of Authority from the Complainants, confirming the Provider could deal directly with their solicitor, in light of the fact he was the solicitor already on record for them in the court proceedings taken by the Provider.

The Provider's Case

The Provider accepts that certain delays occurred in respect of the foregoing matters during 2015 and 2016. However, the Provider disputes the extent of the delays for which it is responsible.

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 25 July 2019, 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.

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Following the issue of my Preliminary Decision, the Complainants made an additional submission to this Office under cover of their solicitors' letter dated 8 August 2019, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainants' additional submission, together with all of the evidence submitted, I set out below my final determination.

Prior to investigating this complaint, this Office had to consider whether it had jurisdiction to investigate this complaint in light of Section 50(3) of the Financial Services and Pensions Ombudsman Act 2017 and the fact that legal proceedings have been brought by the Provider against the Complainants in the Circuit Court on **3 June 2014**. This Office considered the pleadings furnished to it and was satisfied that none of the service issues which gave rise to this complaint formed the subject matter of the court proceedings. Accordingly, this Office decided that it could continue to deal with the complaint. This decision was furnished to both the Provider and the Complainant. The Provider confirmed that it was satisfied that the conduct being complained of is a separate matter from the matters to be determined in the court proceedings. In addition, the solicitors for the Complainants confirmed in writing to this Office that they concurred with the view that this Office does have jurisdiction to deal with the complaint notwithstanding the extant court proceedings.

This Office has been furnished with a copy of all the relevant documentation.

Dealing firstly with the issue relating to the title deeds. It is clear from the documentation that on **26 January 2015**, property advisers engaged by the Complainants' solicitor wrote to the solicitors for the City Council in relation to a proposal that the council would carry out a compulsory purchase order of the Complainants' properties at [address redacted] for an amount of €150,000.

There is also correspondence which demonstrates that the Complainants' solicitor furnished a letter to the Provider by email dated **3 March 2015** which requested that the title documentation for the Complainants' properties in [locations redacted] be forwarded to the Complainants' solicitor. The Provider states that it has no record of receiving this request and that in fact the first record it has, is a request dated **14 April 2015**. The outcome of this complaint is not determinative of whether the request was received on **3 March 2015** or **14 April 2015**. However, I am satisfied, having seen a copy of the letter of **3 March 2015**, that this was the date upon which the request was made for the title deeds. Further, having reviewed the letter of **14 April 2015**, it clearly refers to the previous request of **3 March 2015**. The Complainants' solicitors then wrote again to the Provider on **15 April 2015** requesting the title deeds and asking if there was some reason for the ongoing delay in furnishing the title documents. Another request was made on **30 April 2015** and **5 May 2015**.

The Provider responded to the Complainants' solicitor by email of **21 August 2015** and stated, among other things, that the deeds in respect of one of the properties were being held by a firm of solicitors in Cork and were being requested centrally by the Provider.

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However, according to the Provider's own summary of the dispute, following the above response from the Provider of **21 August 2015**, it was not until October 2015 that the Provider's solicitors requested the title deeds from the solicitors in Cork who had held the deeds in their office since **15 February 2007**.

Following this, it was not until **17 December 2015** that the Provider's solicitors received the title deeds from the solicitors in Cork and the deeds were then furnished to the Provider on **5 January 2016**. Notwithstanding this, it appears the deeds were not furnished to the Complainants' solicitors at this time and the Complainants' solicitors followed up with the Provider's solicitor by letter dated **2 March 2016** reiterating that they had been in correspondence with the Provider since early 2015 with regards to the title documentation. The letter goes on to state, amongst other things, as follows *"there is a possibility that a sale by our clients of the property will be imperilled by these ongoing delays and it is beyond doubt that it is causing inconvenience loss and damage to our clients and to yours."*

On foot of this, the Provider then furnished the title deeds back to its solicitor who then in turn sent the title deeds to the Complainants' solicitors who received the title deeds on **10 March 2016**, just over 12 months from the initial request.

The Provider, while accepting that the delay in furnishing the title deeds did arise from some service issues on the Provider's part, also states that there was a delay from the Complainants' previous solicitors in Cork in releasing the title deeds to the Provider.

Having considered all of the documentation and the evidence and the submissions, I am satisfied that the title deeds were requested on **3 March 2015**. There was little or no engagement with the Complainants' solicitors by the Provider until August 2015 when the Complainants' solicitor was advised that the title deeds were held with the solicitors in Cork and that they were being requested by the Provider. However, according to the Provider's own summary of the dispute, the Provider's solicitors did not request these title deeds from the solicitor's office in Cork until mid-October 2015. While there appears to have been a two-month period between that request and receipt of the title deeds in December 2015, I am satisfied on balance that the vast majority of the time it took to recover the title deeds was due to the culpable delay on the part of the Provider. While the Provider might argue that the Complainants could have written to the solicitors in Cork themselves, the Provider expressly advised the Complainants that the Provider was doing this.

Recordings of telephone calls were furnished to this Office in evidence. I have considered the audio recordings of all of the telephone calls furnished this Office on **24 February 2015, 14 October 2015, 25 May 2015, 28 May 2015, 8 July 2016, 22 September 2016, 23 September 2016, 27 September 2016, and 28 October 2016**. Most of the audio recordings are either not relevant or not determinative of any matters at issue. However, on the calls on **8 July 2016 and 27 September 2016** there is an acceptance by the Provider in these calls that there have been major delays regarding the furnishing of the title deeds and that the Complainants' case was not dealt with as it should have been.

The Complainants state that they were charged interest under the mortgage during this 12 month period while they were waiting for the title deeds and they argue that they should not have been charged during this time. They state that if they had received the title deeds earlier and had been in a position to sell the property and redeem the mortgage, the interest charges would not have been applicable. However, having considered all of the evidence and documentation, there is insufficient evidence to show that a contract for sale had been agreed or drawn up or was awaiting completion pending the title deeds. In addition, the letter of **2 March 2016** refers simply to a “possibility” that the delay in furnishing the title deeds may endanger a sale of the property.

I note in their post Preliminary Decision submission dated 8 August 2019, the Complainants’ solicitors state:

“... it was impossible to prepare a contract without the Title documents. As the Solicitor who eventually prepared the contract, I had neither copy documents nor any information in regard to the Title to the property sufficient to enable me to draft the contracts. As a result, until the Title documents were furnished by the Provider on 10th March 2016, the Complainants were unable to have draft contracts prepared. In consequence, my clients were unable to sell the property and redeem the mortgage. For this reason, the Complainant should not be obliged to pay interest that would have accrued during this period. I accordingly request that you uphold my clients’ claim for restitution of overpaid interest charges during this period”.

In light of all of the foregoing, while I accept that there was culpable and unreasonable delay and poor customer service on the part of the Provider, there is insufficient evidence for this Office to conclude that the delay in furnishing the title deeds held up an “inevitable” sale and redemption of the mortgage such that the interest rate would not otherwise have been operative. Therefore, while I uphold the complaint in relation to the poor service issues in the furnishing of the title deeds, I do not uphold any claim for restitution of overpaid interest charges during this period.

In relation to the other aspect of the complaint relating to the requests for the redemption figures. I note that redemption figures were being requested long before those in controversy in this complaint. However, the Complainants complain that their redemption requests were being treated as a form of debt forgiveness and that it was unreasonable of the Provider to require them to complete standard financial statements and attend meetings with the Provider in relation to this matter. It is not in dispute that the Provider was entitled, under the terms of the mortgage, to charge interest to the account in compliance with the terms and conditions of the mortgage. The terms of the mortgage provide, and the documentation shows that the Complainants were advised that interest continues to accrue and be charged to the mortgage account as long as there is an outstanding balance of the mortgage account.

In light of my earlier finding that the Provider was entitled to charge interest during the 12 month period while the title deeds were awaited, the Provider had no obligation to calculate a redemption figure which disregarded the interest charged during that period.

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The Provider had furnished mortgage redemption statements to the Complainants between July 2016 and March 2017 without any reference or commitment to a reduction or write-down of the outstanding balances quoted in those statements. When the Provider was requested to provide a redemption sum, having discounted the validly charged interest, I consider that it was reasonable for the Provider to consider this request to be a request that the Provider accept a financial amount which was less than the true balance on the mortgage and that it was therefore entitled to treat the request in the manner that it did. Accordingly, I do not uphold this aspect of the complaint.

In relation to the issue surrounding the letter of authority, the Complainants state that the Provider engaged in a pointless and repetitive effort to obfuscate and delay and evade all efforts of communication by repeatedly seeking authorisations from the Complainants to engage in correspondence with their solicitor. In addition, the Complainants' solicitor makes the point that he was the solicitor on record for the Complainants in the court proceedings brought by the Provider against them.

The Provider submits that prior to January 2017, it did not have a record of a Third Party Authority on file to enable the Provider discuss the Complainants mortgage account with the Complainants' solicitors.

While it may have been the case that the Provider did not have Third Party Authority on file in respect of the Complainants' solicitors until January 2017, I consider it a reasonable conclusion that the Complainants' solicitor was on record in the court proceedings and that the Provider, either through its solicitors or directly, must have been corresponding with the Complainants' solicitor in those proceedings which also related to the Complainants' mortgage account.

In addition, the correspondence on the file shows ongoing written correspondence and evidence of meetings and telephone conversations between the Complainants' solicitor and agents of the Provider in [location redacted] from at least 2013 onwards. Each of these communications evidences discussions between the Provider and the Complainants' solicitor about matters in issue in this complaint, including the Complainants' mortgage account and properties generally.

In my view therefore, I consider there to be a lack of practicality and common sense and a lack of reasonableness on the part of the Provider in putting in place unnecessary bureaucracy at a time when the Provider had already spent years communicating directly with the Complainants' solicitor in relation to these issues.

The Complainants' solicitors in their post Preliminary Decision state:

"My clients agree with your finding that there was a lack of practicality and common sense and a lack of reasonableness on the part of the Provider in requiring third party consents and compliance with what you have properly described as 'unnecessary bureaucracy'.

I repeatedly pointed out the unreasonableness of their behaviour in this regard and respectfully submit that for them to have ignored my protestations amounted to more than just a lack of practicality, common sense and unreasonableness and did in fact amount to deliberate obstruction and obfuscation, and I accordingly submit that you should uphold this aspect of my clients' complaint".

However, I do not accept that there is any evidence that shows any intent to be obstructive or deliberate obfuscation on the part of the Provider in this regard. I do not uphold this aspect of the complaint.

I note that the Provider has made an ex gratia offer of compensation in the sum of €2,000 which remains open. Having considered the exhaustive efforts of the Complainants' solicitors both in time spent on telephone calls, writing letters on behalf of the Complainants and having to deal with the unnecessary third-party authorisation issues, I believe that the Complainants are entitled to a greater sum of compensation and recognition of the inconvenience and the frustration experienced as a result of the delays and inefficiencies on the Provider's part. I believe that the sum of €5,000 to be a more reasonable amount given the inconvenience experienced by the Complainants. I therefore partially uphold the complaint and direct the Provider to pay the sum of €5,000 in compensation to the Complainants.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2) (c)**.

Pursuant to **Section 60(4) 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

6 September 2019

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.