



<u>Decision Ref:</u>	2018-0013
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Mis-selling Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Complainant's term loan held with the Provider.

The first complaint is that the Provider wrongfully mis-sold a term loan to the Complainant in 2011. The second complaint is that the Provider dealt with the Complainant's complaint in an unacceptable manner.

The Complainant's Case

The Complainant states, in his Complaint Form to this Office dated 25 July 2016, that "*I recently read about a case where a loan had been refinanced/rolled over and that the Central Bank had agreed with the Court decision that it was an illegal transaction. I feel that my case is exactly the same*".

The Complainant submits that he was experiencing financial difficulties and met with the Provider's branch manager in September 2011. The Complainant submits that he asked the Provider's branch manager to "*wipe off this loan since it was given to me (as were the previous rolled over loans) because I had money in bonds invested with [an Insurance Company]. The bonds were lost by [the Insurance Company] in 2011 which made it virtually [impossible] for me to pay off these loans since I was intending to clear the loan with the bonds money*".

The Complainant submits that the Provider's branch manager advised him that all he could offer him was a reduced payment over a longer period. The Complainant states that "*At the*

time I was so desperate, had not sought any other advice and felt this was my only option. I neither wanted this extra/rolled over loan nor did I ask for it but I was given no choice". The Complainant also states that "I asked if there was a better compromise since it was [the Insurance Company] who lost my money and therefore my ability to clear my loans and the Branch Manager said that [the Insurance Company was] nothing to do with [the Provider]".

The Complainant submits that there are many issues with the new loan. The Complainant submits that while the payments are reduced, they are over a longer term amounting to an extra €2,300 extra in interest. The Complainant submits that there is no explanation in the agreement that he signed as to what the Special Condition "close [loan account ending in '3323]", and this was not explained to him at the time that he signed the new agreement. The Complainant states that "When I asked the Manager what will happen if I cannot pay this loan he said it would end up in the courts".

The Complainant states that "I would like to be completely refunded for the entire amount I have paid the bank since September 2011 on this loan".

The Provider's Case

The Provider submits that the Complainant contacted it on 15 September 2011, and stated that he was experiencing financial difficulties and struggling to meet the monthly repayments on his then existing term loan. The Provider submits that the Complainant queried whether it would be possible to reduce the monthly repayment.

The Provider submits that in order to comply with the general requirements set out in the Consumer Protection Code, it made every effort to assist the Complainant in relation to his financial difficulties. The Provider submits that in order to facilitate a reduction in the monthly repayment on the Complainant's term loan, it processed a new term loan for the balance outstanding, over an extended repayment term, that is, 8 years as opposed to the remaining term of 4.5 years on the existing loan. The Provider submits that the result of this process was that the monthly repayments were reduced from €134.05 to €99.16.

The Provider submits that in accordance with the Consumer Protection Code the Complainant was given a copy of the Credit Agreement for the new loan facility, which clearly provided an explanation of the revised repayment arrangement.

The Provider states that "It was not illegal to advance funds to clear your existing loan, to facilitate reducing the monthly repayment as requested by you. The Bank has complied with all the legal requirements in relation to this new loan and there was nothing illegal in what the Bank did. The loan remains fully valid and must be repaid in accordance with the credit facility letter".

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

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items in evidence. The Complainant was 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 26 February 2018, 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, the final determination of this office is set out below.

(1) The first issue to be determined is whether the Provider wrongfully mis-sold a term loan to the Complainant in 2011.

The Provider submits that the Complainant had an existing Term Loan account number ending in '3323 in the amount of €8,050.00 which issued on 15 April 2009. The Provider submits that the purpose of this Term Loan at the time was to restructure the Complainant's existing Term Loans and Overdrafts with it (5 accounts in total) into one new Term Loan.

The Provider submits that in September 2011 the Complainant began to experience financial difficulty and approached the Manager of its branch in relation to his Term Loan account number ending in '3323. The Provider submits that the Complainant had been meeting his monthly repayment and there were no arrears on the account. The Provider submits that in an effort to facilitate the Complainant, its branch Manager offered him the option of reducing his monthly repayment over a longer period which meant his existing debt would be restructured into a new Term Loan with a monthly repayment that would be suitable to his repayment capacity. The Provider states that *"The Complainant requested a reduced repayment and applied for a restructure. The branch put forward a recommendation for assessment"*.

The Provider submits that the Complainant applied for a reduced repayment on his Term Loan over a 10 year term. The Provider submits that on 20 September 2011 the Complainant completed an Application form and Term Loan account number ending in '7390 issued in the amount of €6,050.00 for a period of 8 years at an Interest Rate of 12.25% with a monthly

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repayment of €99.16. The Provider submits that the Complainant signed the Consumer Term Loan Variable Rate Agreement on 20 September 2011 for Term Loan ending in '7390 with a Special Condition quoting the following:

"Close [loan account ending in '3323]"

The Complainant submits that he cannot find an explanation as to what this means on the agreement he signed, and the Provider's branch Manager did not explain it to him at the time. The Complainant states that *"When I asked the Manager what will happen if I cannot pay this loan he said it would end up in the courts"*. The Complainant also submits that while the monthly repayments for the new Term Loan are reduced, the repayments are over a longer term amounting to an extra €2,300 in interest.

The Provider submits that the Consumer Term Loan Variable Rate Agreement for Term Loan account number ending in '7390 states, under the heading *"SCHEDULE"* and sub heading *"Special Conditions"*, *"close [loan account ending in '3323]"*. The Provider states that *"This meant there was a Special Condition on the Complainant's new Term Loan account number [ending in '7390] that the existing Term Loan account number [ending in '3323] was to be closed"*.

The Provider submits that also on the Term Loan application form, under the heading *"Facility Details"*, it states *"Purpose – Restructure"*, and in the *"Notice of Approval"* under Approval Conditions it states *"Existing Term Loan to be closed"*.

The Provider submits that the Manager the Complainant refers to no longer works for it. The Provider states that *"The Manager at the time would have advised the Complainant of the consequences if the Term Loan fell into arrears. He would have outlined that if the account went into arrears, the account would enter the normal Collections process within the Bank"*.

Based on the evidence before me, it is not possible to determine what was discussed between the Complainant and the Provider's branch Manager during their meeting at loan application stage. Provision 9 of Chapter 4 of the CPC 2006 provides the following:

"NON-MORTGAGE PERSONAL LENDING

9. Prior to a loan being approved, a regulated entity must explain to a consumer the effect, if any, of missing any of the scheduled repayments. This information must be highlighted in any relevant documentation and the following notice should also appear:

Warning: If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating.

If the Provider's Manager did advise the Complainant that if he cannot pay the loan it would end up in the Courts, while I take the view that this could have been said to the Complainant in a more customer friendly manner, I must accept the Provider's submission that ultimately

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“if the account went into arrears, the account would enter the normal Collections process within the Bank and if the arrears still remained with no agreement in place, after a certain period, the account would be referred through the legal route.”

The Provider has obligations pursuant to the CPC 2006. Provisions 24 and 30 of the CPC 2006 provides the following:

“24 Before providing a product or service to a consumer, a regulated entity must gather and record sufficient information from the consumer to enable it to provide a recommendation or a product or service appropriate to that consumer. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the consumer, but must be to a level that allows the regulated entity to provide a professional service.

This requirement does not apply where:

i) the consumer has specified both the product and the product provider and has not received any advice; or

...

30 A regulated entity must ensure that, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the regulated entity is aware:

a) any product or service offered to a consumer is suitable to that consumer;

b) where it offers a selection of product options to the consumer, the product options contained in the selection represent the most suitable from the range available to the regulated entity; or

c) where it recommends a product to a consumer, the recommended product is the most suitable product for that consumer.

This requirement does not apply where:

i) the consumer has specified both the product and the provider and has not received any advice;

ii) the consumer is purchasing or selling foreign currency; or

iii) where, in the context of the provision of a basic banking product or service, the regulated entity has alerted the consumer to any restrictions on the account and/or the availability of a lower cost alternative.”

The Provider submits that the Complainant signed a Suitability Assessment Waiver on 20 September 2011, stating the following:

“I/We confirm that I/We have specified this loan type that I/We wish to apply for. I/We have approached [the Provider] for the loan type stipulated and have received no advice from [the Provider] staff in choosing this loan. I/We do not require an assessment of my/our requirements with regard to other loan options that are available”

Provision 3 of Chapter 1 of the CPC 2006 provides that:

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“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

...

3 does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service”

The Provider submits that it did not recklessly, negligently or deliberately mislead the Complainant as to the real or perceived advantages, or disadvantages of a product in compliance with Provision 3 of Chapter 1 of the CPC 2006.

Provision 12 of Chapter 2 of the CPC 2006 provides that:

“PROVISION OF INFORMATION TO THE CONSUMER

12 A regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.”

The Provider submits that it ensured all information it provided to the Complainant was clear and comprehensible and the key items were brought to his attention. The Provider submits that the method of presentation did not disguise, diminish or obscure important information. The Provider states that *“The Credit Agreement clearly outlined the Period of Agreement, Number of repayment Instalments, amount of each Instalment, Cost of Credit, Interest Rate and Annual Percentage Rate may increase or decrease at the Bank’s discretion in accordance with the General Conditions 5 and 7”*.

The Provider submits that it also issued annual statements to the Complainant, which included details of the interest rates applied to the account during the period covered by the statement.

The Provider submits that the Complainant signed the Customer Term Loan Variable Rate Agreement on 20 September 2011, which stated the following under the heading of *“Signatures”*:

“I/We confirm that before signing this Agreement I/We had an opportunity to read and become acquainted with it, and I/We agree to be bound by its Terms and Conditions”

The Provider submits that the Consumer Term Loan Variable Rate Agreement outlined the following:

<i>IMPORTANT INFORMATION</i> <i>(as at 19 September 2011)</i>	
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<i>(This notice is required to be set out on the front page of all credit agreements by applicable law)</i>	
1. Amount of Credit Advanced:	€6050.00
2. Period of Agreement*:	096 Months from drawdown
3. Number of Repayment Instalments*:	00096
4. Amount of Each Instalment*:	€99.16
5. Total Amount Repayable*:	€9519.36
6. Cost of this credit (5 minus 1)*:	€3469.36
7. Annual percentage rate of charge (APR)*:	13.0% p.a.
NB: In addition to your contractual right to terminate this Agreement at any time, you also have the right under the European Communities (Consumer Credit Agreements) Regulations 2010 (the "CCD Regulations") to withdraw from the Agreement within 14 calendar days (the "withdrawal period") of receiving this Agreement or a copy of it**	

SCHEDULE	
Borrower(s) name:	...
Address:	...
Term Loan Rate – Variable*:	Reference Rate B currently 12.2500% per annum.
Date of Expiry:	096 months from drawdown (This may change – see General Condition 5(d) overleaf)
Special Conditions:	Close [account number ending in '3323]

*Note: These may increase or decrease at our discretion see General Condition 5 and 7 overleaf.

**Note: If you withdraw from this Agreement within the withdrawal period you must repay, within 30 days of dispatching notice to us of your withdrawal, the amount borrowed with interest to the date of repayment. The interest payable per day, as at the date of your loan illustration, is €2.03. If you do not exercise your right of withdrawal the terms of this Agreement will continue to apply."

The Provider submits that the Term Loan account number ending in '7390 in the amount of €6,050.00 subsequently issued and Term Loan account number ending in '3323 closed.

The Provider submits that it acted accordingly with its lending criteria and all legal requirements in relation to the processing and issuing of Term Loan account number ending in '7390, in order to facilitate the Complainant in repaying his outstanding debt to it. The Provider states that "As a result the Bank is not in a position to write off Term Loan account number [ending in '7390] and refund him the repayments he has made to this loan from September 2011 to date". The Provider also states that it "It is not illegal to advance funds

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to a customer to clear an existing loan in order to facilitate reducing the monthly repayment as requested by the customer”.

The Provider also has obligations pursuant to the European Communities (Consumer Credit Agreements) Regulations 2010 (the “2010 Regulations”). Provision 11 of the 2010 Regulations provides the following:

“Obligation to assess creditworthiness of consumers

11. (1) Before concluding a credit agreement with a consumer, a creditor shall assess the consumer’s creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.”

I note that the Provider gathered the Complainant’s financial information and recorded the information on the Term Loan Application Form, which the Complainant signed on the 20 September 2011 confirming that *“the information given in the application is true and accurate”*.

I note that the Provider’s *“Personal Term Loan Recommendation”* printout dated 15 September 2011 sets out, among other things, the following:

“Customer Profile

... is currently unemployed. He is a tenant and is struggling to repay his current restructured loan. He has requested a reduced payment and we have applied for a restructure over 10 years. This was declined by the system. Customer did have funds in [an Insurance Company] but they have been surrendered.

Repayment Capacity:

The only income available to our customer is social welfare and while his loan is currently not in arrears, he is struggling to make the repayment. We are satisfied to restructure over 10 years.”

I must accept that there is nothing to prevent the Provider from advancing funds to the Complainant to clear an existing loan in order to reduce the monthly repayments, as long as the Complainant can demonstrate sufficient repayment affordability. I note that the Complainant submits that he was experiencing financial difficulties and met with the Provider’s branch Manager in September 2011. The Provider was not obliged to provide the Complainant with a Term Loan restructure, the Complainant had a contractual obligation to repay the Term Loan in place at the time in full and in the terms originally agreed.

Having carefully considered all of the evidence before me, I take the view that the Provider gathered sufficient information from the Complainant in order to assess his creditworthiness, and based on the information it determined that a restructure of the Term Loan was approved.

This Office will not interfere with a financial service provider’s decision to accept or reject a consumer’s application for credit, other than to ensure that the Provider complies with

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relevant codes/regulations and does not treat the applicant unfairly or in a manner that is unreasonable, unjust, oppressive or improperly discriminatory. There is no evidence before me to suggest that the Provider processed the Complainant's application unfairly or unreasonably. Furthermore, I can find no evidence that the Provider was discriminating against the Complainant or that its behaviour was oppressive in granting the Complainant a new Term Loan to facilitate the restructure of his Term Loan in place at the time.

I must also accept that the Provider set out clearly the important details regarding the new Term Loan in the Letter of Loan Offer that the Complainant signed on 20 September 2011, and I can find no evidence that the Provider breached its obligations pursuant to the CPC 2006 in this regard.

Consequently, it is my Legally Binding Decision that this aspect of the complaint is not upheld.

(2) The second issue to be determined is whether the Provider dealt with the Complainant's complaint in an unacceptable manner.

The Complainant raised an issue regarding the Provider's complaint handling process. The Complainant, in his submission to this Office dated 29 June 2016, submits that he first wrote to the Provider regarding his complaint on 29 March 2016 *"and since then I have received a letter from [it] every two months informing me [it is] still investigating and assuring me that I would get a response within the next two months"*. The Complainant also states that *"The letters all read the same and feel a little like a fobbing off exercise. [The Provider's] own customer charter quotes a total period of sixty working days to resolve any issue. So far [it has] passed [its] own timescale for providing a resolution"*.

The Provider has obligations pursuant to the Consumer Protection Code 2012 (the CPC 2012) in relation to its complaint handling. Provision 10 of the CPC 2012 provides, among other things, the following:

"COMPLAINTS RESOLUTION

10.7 A regulated entity must seek to resolve any complaints with consumers.

10.8 When a regulated entity receives an oral complaint, it must offer the consumer the opportunity to have this handled in accordance with the regulated entity's complaints process.

10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;

b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;

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c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and

e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:

i) the outcome of the investigation;

ii) where applicable, the terms of any offer or settlement being made;

iii) that the consumer can refer the matter to the relevant Ombudsman, and

iv) the contact details of such Ombudsman.”

The Provider has submitted a copy of its letter to the Complainant, erroneously dated 31 March 2015, issued within 5 business days of the complaint being received, in compliance with Provision 10.9 a) and b) of the CPC 2012. I note that the Provider issued the Complainant with an update on 26 April 2016 within 20 business days, in compliance with Provision 10.9 c) of the CPC 2012. I also note that the Provider issued correspondence to the Complainant on 23 May 2016 informing him of the anticipated timeframe within which it hoped to resolve the complaint, that is 23 June 2016, and provided the contact details for this Office if the Complainant wished to refer the matter to this Office in compliance with Provision 10.9 d) of the CPC 2012. The Provider issued a similar letter to the Complainant on 24 June 2016 which stated, among other things, that *“I hope to be in a position to issue a response to you by 22nd August 2016”*.

The Provider issued the Complainant with its final response letter on 5 July 2016. While I note that a significant time had elapsed from when the Complainant complained to the Provider on 29 March 2016 and when the Provider issued its final response on 5 July 2016, the Provider has not breached its obligations under the CPC 2012 with regard to its handling of the Complainant’s complaint.

Consequently, it is my Legally Binding Decision that this aspect of the complaint is not 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

23 March 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.