



<u>Decision Ref:</u>	2018-0101
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling (non- Mortgage Arrears Resolution Process) Lost or mislaid title deeds
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants have a mortgage with the Bank. The Complainants sought interest only repayments for six months but the Bank refused the request. The Complainants want to sell the house, the subject matter of the mortgage, but this has been delayed due to the loss of the title deeds.

The Complainants' Case

The Complainants feel that the Bank, in refusing them interest only payments, has failed to take account of other debt which they are anxious to repay. The Complainants state that there is a large amount of equity in the house and they are selling the house so the Bank has no risk in allowing them interest only repayments. The Complainants feel they are being treated unfairly by the Bank.

The Complainants contend that the Bank is responsible for the loss of the title deeds to the house. The Complainants contend that the Bank had the title deeds from 1998 to 2002 when it forwarded the title deeds to the Complainant's solicitor. The Complainants contend that the Bank was responsible for ensuring safe return of the title deeds from the solicitor. The Complainants believe that given the Bank's failure in this regard it should show the Complainants leniency and allow interest only repayments.

The Provider's Case

The Bank states that it assessed the Borrowers request in accordance with the requirements of CCMA and decided not to offer the borrowers a further arrangement. The Bank states that the request was assessed in accordance with the requirements of CCMA.

The Bank state that the Complainants have previously availed of forbearance on the mortgages. In 2012 the Complainants were offered fixed reduced repayments for a period of 17 months. In 2014 the Complainants were offered and accepted a term extension until 2022. This reduced the monthly repayments to an affordable level and capitalised the existing arrears. The Bank states that the term extension and capitalisation of arrears was provided as a long term sustainable solution to their mortgage difficulties.

The Bank declined the A.R.A in November 2016 on the basis that the Complainants had affordability to maintain the mortgage repayments and interest only repayments were not required. The Complainants appealed this decision and in January 2017 the Mortgage Appeals Board confirmed the decision not to grant interest only repayments.

In this regard, the Provider states that:

“it is important to note that the Complainants had been provided with a long term affordable arrangement on the mortgage accounts through the extension of the term and the capitalisation of arrears. The Complainants’ mortgage account was not in arrears at the time of the application for forbearance and the assessors were satisfied that the Complainants had sufficient repayment capacity to maintain the mortgage repayments. The Bank noted the Complainants had sufficient repayment capacity to maintain the mortgage repayments. The Bank noted the Complainants’ intention to sell the property and confirm that the proposed sale was not a requirement of the Bank. The Bank was satisfied that the Complainants could maintain the mortgage and retain the property if they prioritised repayments to their mortgages. Following this decision the Complainants have accrued arrears to the mortgage account”.

The Bank states that the title deeds to the property have never been provided to the Bank by the Complainants’ former solicitors under the solicitors Undertaking. The Bank states that the title deeds were lost/mislaidd by the Complainants’ former solicitor. The Bank states that it has engaged with the Complainants former solicitor and the Law Society in order to bring the matter to a conclusion.

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.

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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 8 August 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, my final determination is set out below.

This complaint relates to the Bank's refusal to grant the Complainants forbearance pending the sale of the property. The Complainants contend that in the circumstances where the title deeds to the property were lost the Bank should grant them forbearance.

As a general note, it is important to point out the limitations of the jurisdiction of this Office in complaints regarding the MARP. This Office can investigate the procedures undertaken by the Provider regarding the MARP, but will not investigate the details of any re-negotiation of the commercial terms of a mortgage which is a matter between the Provider and the Complainants, and does not involve this Office, as an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of Section 60 (2) of the Financial Services and Pensions Ombudsman Act 2017.

Looking at the Provisions of the CCMA;

Provision 35. *"A completed standard financial statement must be assessed in a timely manner by the lender's ASU."* I consider that the Bank in this case complied with this provision.

Provision 36. *"A lender's ASU must examine each case on its individual merits."* Having read all of the documentation I consider that the Bank did examine the Complainant's case on its merits.

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Provision 37. *“A lender’s ASU must base its assessment of the borrower’s case on the full circumstances of the borrower”* I consider that the Bank did assess the personal circumstances of the Complainants, the overall indebtedness of the Complainants, the information provided in the standard financial statement, the Complainants’ repayment capacity and repayment history. I understand that the Complainants are not happy that the Bank requires the Complainants to prioritise their mortgage over unsecure debts, however, this is not an unreasonable request by the Bank.

Provision 40. *“A lender must document its considerations of each option examined under Provision 39 including the reasons why the option(s) offered to the borrower is/are appropriate and sustainable for his/her individual circumstances and why the option(s) considered and not offered to the borrower is/are not appropriate and not sustainable for the borrower’s individual circumstances.”* The Appeal Board has documented that the options under Provision 39 are *“not suitable”* and state that the borrowers could meet repayments to the mortgage if the mortgage is prioritised over other lending. I consider this to be in compliance with Provision 40 and not to be an unreasonable requirement.

Provision 45 *“If a lender does not offer a borrower an alternative repayment arrangement, for example, where it is concluded that the mortgage is not sustainable and an alternative repayment arrangement is unlikely to be appropriate, the lender must provide the reasons, on paper or another durable medium, to the borrower.*

In these circumstances, the lender must inform the borrower of the following...” I consider that letter dated 22 November 2016 from the Bank to the Complainants is in compliance with Provision 45:

“We have now assessed your full circumstances including:

- your personal circumstances;
- all your debts;
- the information you have provided, including in the standard financial statement (SFS) you filled in;
- your repayment history;
- your current ability to make repayments;
- the alternative repayment arrangements (ARAs) we currently offer (as described in the ‘Guide to Dealing with Mortgage Difficulties’ we sent you and in the Arrears Support section of our website at www.bankofireland.com); and
- the effect the ARA would have on your financial circumstances.

We have decided that an ARA is not appropriate or suitable to you for the following reasons.

- You have enough income to make your normal mortgage repayments. You need to make sure you pay your mortgage repayments in full before you make payments towards short-term debts, such as personal loans or credit

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cards, which you have not provided security for (unsecured debts). You should arrange to reduce your regular payments on unsecured debts. If you have unsecured debts with [the Bank], they will write to you separately about helping you reduce these repayments”.

I accept that the Complainants were provided with an appeal process which is in compliance with Provision 49, 50 and 51 of CCMA.

I consider it important that the Bank have offered the Complainants forbearance on two previous occasions and this is indicative of the Bank attempting to assist the Complainants.

I consider that the issue of the missing title deeds is a separate issue to the agreement of forbearance, I note that the Bank at all times denied that it was at fault for the title deeds going missing. I note that the Bank has exhibited a solicitor’s undertaking dated March 1998 for the mortgaged property whereby the Complainants’ solicitor undertook to lodge the deeds with the Bank. A second solicitor’s undertaking is dated October 2002 whereby the Complainants’ solicitor undertook to lodge the deeds with the Bank. The Bank is entitled to rely on the solicitor’s undertaking to lodge title deeds and I cannot hold the Bank responsible for this matter.

Any complaint against the legal profession is not a matter for this Office.

For the above reasons, I do not uphold this complaint.

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**

10 September 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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.