



<u>Decision Ref:</u>	2018-0223
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Investment/buy to Let Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - buy-to-let Appointment of a receiver Delayed or inadequate communication
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

As a result of a letter of loan offer dated the 7th April, 2006, the Complainants (who are husband and wife) purchased a 25 year mortgage in the amount of €290,000 at a variable commercial base rate ("**the Mortgage**") from the Provider in respect of a buy-to-let property which was not the family home ("**the Property**").

The Complainants explain that initially, they met their mortgage repayments in accordance with the terms of the loan agreement. However, in or around 2011 their financial circumstances changed and consequently they began to experience difficulties servicing their mortgage. The Complainants state that they also have a mortgage in respect of their family home (this loan is not the subject of this complaint). They submit that their changed financial circumstances also impacted upon their ability to repay the instalments on their family home loan. They contacted the Irish Mortgage Holders Organisation, who acted on their behalf in negotiating an action plan, which included agreeing to sell the investment property at a profit in order to use said profit to clear outstanding arrears on the family home.

The Complainants' Case

The Complainants state that their investment property was placed on the market in October 2014. Although the property reached 'sale agreed' stage on four occasions prior to November 2015, each sale failed to complete. In November 2015 the property reached 'sale agreed' stage once again. The Complainants state that their Solicitor attempted to contact

the Provider on numerous occasions to ascertain redemption figures, but without success. The Complainants state that they had to intervene and contact the Provider to request that redemption figures be furnished to their Solicitor.

The Complainants submit that on the 20 January 2016 their Solicitor contacted the Provider to inform it that the sale was now complete and to outline that a small shortfall would remain after the sale proceeds were applied to the loan. Consent to close the property sale was requested. The Complainants state that despite two letters being sent to the Provider, no response issued to their Solicitor.

The Complainants state that they undertook to contact the Provider. The First Complainant telephoned the Provider in January 2016 only to be told that the Title Deeds would not be released until the outstanding balance was cleared in full. The First Complainant explained that he would not be in a position to clear the relatively small shortfall; he also asked the Provider to contact his Solicitor. The representative the First Complainant was dealing with said that no such letter would issue to his Solicitor. The representative also advised that a Receiver would be appointed to sell the property.

Having considered the conversation, the First Complainant telephoned the Provider again approximately 30 minutes later to express his dissatisfaction with the way matters were being dealt with. The Complainants say that during this conversation the First Complainant was told that a Receiver had in fact been appointed previously. When the First Complainant queried why he had received no contact from the Receiver, the representative was unable to proffer an explanation.

The Complainants are extremely aggrieved at the manner in which they have been treated and at the way this matter has been handled. They point out that at all times they made the Provider aware of their intention to sell their investment property. Not until very late in the day were they told that the Provider would not consent to the sale unless the loan was discharged in full. The Complainants are also annoyed and confused as to why they were not informed that their mortgage property was in receivership. They submit that they incurred costs in attempting to sell the property at a time when the property was already said to be in receivership.

The Complainants state that they have received no assistance or support from the Provider even though the Provider's literature promises communication with mortgage holders and promotes "*finding a solution together*".

The Complainants state that the Provider unreasonably refused to sanction the sale of the Property, as the sale price was not sufficient to cover the mortgage and sale costs. The Complainants also state that sometime prior to the period in which they were trying to sell the Property, the Provider had appointed a receiver. The Complainants state that they were not informed of the appointment until approximately twelve months later.

The Provider's Case

The Provider maintains that it has done nothing wrong, apart from its failure to respond to the two requests for redemption figures from the Complainants' solicitors. It has offered €1,000 in compensation for these failures.

The Provider specifically maintains that it did not refuse to allow the sale to go through but advised the Complainants of the process for negative equity sales, that is, consent to sale would only be required if there was a residual balance after the sale. The Provider highlights the extensive arrears and rejects any allegation that the Complainants did not receive support from the Provider.

Relevant Events

I will now outline some of the relevant events.

Arrears

- a. September, 2011: Provider begins to send arrears letters to the Complainants;

Standard Financial Statement (SFS)

- b. 7 February 2012: Mediator writes to Provider on behalf of Complainants, seeking to discuss the Complainants' arrears;
- c. 29 February 2012: Provider emails Mediator attaching Standard Financial Statements and requesting their completion so a payment plan could be negotiated and follows up with a phone call on 10th August, 2012;
- d. 24 May, 2012: As a follow on to a call in March, Provider requests submission of SFS within 7 days;
- e. 9 July, 2012: Provider again requests completion of SFS and submission to Arrears Support Unit (ASU);
- f. 4 October 2012: Provider requests that the Mortgage account be brought up to date within 7 days or contact from the Complainants to discuss the situation, failing which legal proceedings would issue;
- g. 17 January 2013: Provider holds meeting with First Complainant in which the Provider statedly went through the SFS and requested its completion and supporting documentation;
- h. February 2013: ASU received SFS from Complainants (when arrears were approximately €17,000) which statedly could not be assessed due to outstanding information;

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- i. 3 July 2013: Provider sends letter to the Complainants advising that completed SFS and/or supporting documentation has not been received, that this information is required in order for the Provider to assess whether the Mortgage was suitable for restructuring and advising that they would be treated as non-co-operating if Provider did not hear from them within 7 days;
- j. 16 July 2013: Provider calls back First Complainant regarding SFS which the latter believed was completed; First Complainant is informed that only blanked out portions of bank statements are outstanding. Although he maintains that he had already sent these to his agent, he undertakes to send them to the Provider;
- k. September 2013: ASU received new SFS from Complainants which statedly could not be assessed due to outstanding information;
- l. 29 October 2013: Provider phones Second Complainant looking for her bank statements and the latter undertakes to submit her last three months' statements;
- m. 30 October 2013: Provider sends letter to the Complainants advising that completed SFS and/or supporting documentation has not been received, that this information is required in order for the Provider to assess whether the Mortgage was suitable for restructuring and advising that they would be treated as non-co-operating if Provider does not hear from them within 7 days;
- n. 1 November 2013: Provider leaves message on voice mail of Second Complainant asking that the call be returned;
- o. 5 November 2013: Provider sends letter to the Complainants advising that they will be deemed "non-co-operating" unless they contact the Provider and provide "*the required information to enable us to assess a sustainable solution on your mortgage*" within 20 business days;
- p. November 2013: According to Provider's submission to this office, "*Management of the Complainants' mortgage were referred to the ASU Legal Department in November 2013*";
- q. 9 December 2013: First Complainant phones Provider in relation to the threat to be categorised as "*non-co-operating*" and advises that the outstanding information (the Second Complainants' payslips which had become due after the submission of the SFS when she moved from social welfare to employment) were definitely sent by post and permission was also granted to the Provider to view the Second Complainant's bank statements online; he is informed that the payslips weren't received and he says he will email them that day;
- r. 10 December 2013: Second Complainant sends payslips, but accidentally sends them to an incorrect email address;

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- s. 12 December 2013: Second Complainant phones Provider to ensure that the payslips have been received; he is told the emails take a few days to be scanned into the system but that they should arrive;

Referral to ASU legal department

- t. 7 January 2014: First Complainant phones the Provider in relation to the outstanding payslips and upon being told that the Provider still did not have them, undertook to post them again;
- u. 8 January 2014: First Complainant phones the Provider to inform the Provider that he had discovered that the payslips had been sent to an incorrect email address; he was advised to appeal the Complainants' non-co-operating status;
- v. 9 January 2014: Provider leaves message on voice mail of First Complainant asking that the call be returned;
- w. 13 January 2014: First Complainant phones Provider and is informed that the Mortgage account had been referred to the ASU legal department as they had been classified as "non-co-operating"; he is told he is outside the time to appeal the status and can only send in a letter of complaint and his status can only be altered upon the payment of substantial monies;
- x. 14 January 2014: Second Complainant emails her payslips to the Provider with an email stating:-

"Attached please find payslips as requested. I have already sent these in the post about three weeks ago and previously before that gave permission to view my [Bank] account details which they said would be sufficient. I have requested a review of my mortgage repayments last January 2013 and co-operated in every way possible, I have filled out the same forms several times and answered the same questions on numerous occasions; it just seems to be going around in circles and the letters are becoming more threatening as the time goes on".

The above payslips were not considered as they were received outside the 20 day period;

- y. 17 January 2014: First Complainant wrote letter of complaint regarding Provider's decision to treat Complainants as non-co-operating borrowers. The Complainants take particular issue with the Provider's position that the SFS was not complete and they assert that a complete SFS was submitted on the 4th September, 2013, and that when the position changed and paper copies of the payslips were required, these were submitted in October 2013 and this matter was followed up on several occasions up to the email of the 14th January;

- z. 28 January 2014: Provider acknowledges the letter and notes that that a response will issue after an investigation into the relevant matters;
- aa. 19 February 2014: First Complainant rings to follow up on his complaint and is advised there is no update yet.
- bb. 11 April 2014: Provider responds to letter of complaint, detailing the confusion regarding the payslips and noting:-

“We would like to formally apologise for any inconvenience cause to you for any delays and/or errors on our part during this time.

We appreciate your co-operation going forward, we would encourage you to maintain full repayments while also reducing any arrears balance owing, and going forward we hope to achieve a resolution in the overall matter and come to an agreeable solution to all parties”.

- cc. April 2014: Complainants engage Irish Mortgage Holders Organisation (IMHO) to act on their behalf with the Provider, when arrears were approximately €39,000;
- dd. 11 June 2014: IMHO write to Provider enclosing up-to-date SFS and relevant documentation and advising that Complainants intended to sell the Property and that the expected return would be used to clear the arrears on the Mortgage;

Sale of Property

- ee. 20 June 2014: Complainants phone ASU, informing them of a wish to sell the Property. The line was very poor but Complainant informs Provider that the Property is worth around €400,000. The Provider notes that the Mortgage account was *“in the legal process at the moment”* and that wouldn't be stopped.
- ff. 30 June 2014: Provider approves voluntary surrender of the Property noting that *“[a]ny residual)(should be minimal if any) to be funded by borrower. No compromise”*. Provider states that this approval was emailed to IMHO but a copy of this email has not been supplied in evidence to this office;
- gg. 19 September 2014: First Complainant emails solicitors who were acting for the Provider in relation to legal proceedings by the Provider against the Complainant in relation to their principal private residence (PPR), stating that the approximate value of the Property was €410,000 and the Mortgage balance was €270,000 and, therefore, the balance could be cleared upon the sale of the Property;
- hh. November 2014: Complainants' last payment on the Mortgage;

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- ii. 22 June 2015: First Complainant informed a member of [Provider]" by phone that the Property was sale agreed at €340,000 (when the Mortgage balance was €331,647.06). The Provider advised that if the net proceeds from the sale cleared the Mortgage (and arrears would continue to accrue), the sale could proceed without its consent. However, if this was not so, there would have to be an agreement with the Provider regarding the residual balance before the sale could be finalised and suggested this would not be an easy process;
- jj. 31 July 2015: Provider receives a request from the Complainants' solicitors for redemption figures on the Mortgage as the Property was sale agreed; this request was not responded to;
- kk. 19 August 2015: A member of staff from the Complainants' branch of the Provider phoned the Second Complainant and advised her to progress the sale before a receiver was appointed;
- ll. 28 November 2015: Provider receives a request from the Complainants' solicitors for redemption figures on the Mortgage as the Property was sale agreed; this request was not responded to in a timely manner;
- mm. 9 December 2015: First Complainant informed a member of the ASU legal team that the Property was sale agreed at €340,000 or €345,000, at which time the balance on the Mortgage was €339,795.31. The staff member said the account was *"in the legal process"* and the Provider wouldn't give permission to sell unless the loan would be discharged in full. The Provider said it would not release the deeds on the Property to allow the sale to close unless the net sale proceeds were sufficient to clear the account in full and, if this could not happen, the Provider would appoint a receiver over the Property and to sell it. The Provider would not contact the Complainants' solicitor;
- nn. 30 December 2015: Provider issues redemption figures to Complainants' solicitors;
- oo. 20 January 2016: Complainants' solicitors write to Provider advising of the anticipated sale, noting *"this is a negative equity sale although the shortfall is not too severe"* and requesting the Provider's *"immediate consent to the sale"*;
- pp. 27 January 2016: First Complainant phoned ASU legal team but no-one available to take the call;
- qq. 28 January 2016 (10.14 a.m.): First Complainant called the Provider's ASU legal team seeking a response to his solicitor's letter regarding the sale of the Property and the residual balance. The Provider told him that the sale would not be approved by the Provider, a receiver would be appointed and he would get a colleague to reply to the letter from the Complainants' solicitor which contained the residual balance;

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- rr. 28 January 2016 (10.49 a.m.): First Complainant again called the Provider's ASU legal team to attempt to progress the conversation he had earlier. He spoke to another member of the team who was quite abrupt, dismissive and unhelpful. The Provider did not wish to engage given that there would be a residual balance, nor would it reply to a letter sent in by the Complainants' solicitor:-
- ss. 8 February 2016: First Complainant wrote a letter of complaint expressing his dissatisfaction with the Provider's failure to consent to the sale of the Property, due to the residual balance and the fact that he had been advised that if the sale proceeds were not sufficient to clear the Mortgage, a receiver would be appointed;
- tt. 15 February, 3 March, 1 April 2016: Provider acknowledged letter of complaint and issued holding letters in relation thereto;
- uu. 17 February, 2016: Sale of the Property falls through;
- vv. 4 April 2016: Complainants complained to the FSO;

Post-FSO/FSPO complaint correspondence

- ww. 8 June 2016: As a result of the above complaint, the Provider issued a final response letter;
- xx. 12 August 2016: Provider states that it has exhausted all avenues with Complainants, again seeks a financial statement and states that it will commence legal proceedings if there is a failure *"to engage with us immediately"*;
- yy. 17 August 2016: Complainant outlines his dissatisfaction with the above letter, in the context of events to date;
- zz. 31 August 2016: Provider sends a letter of demand in the sum of €353,534.45, being the balance on the Mortgage;
- aaa. 20 April 2017: Provider sends letter informing Complainants that the Mortgage had been sold.
- bbb. 31 July 2017: Provider assesses current balance on the Mortgage as €370,411.64.

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

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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 20 November 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, I set out below my final determination.

This complaint relates to the Provider's alleged refusal to sanction the sale of a property, being the security for a mortgage held by the Complainants with the Provider, the Provider's purported appointment of a receiver over that property, unbeknownst to the Complainants and the manner in which the Complainants were dealt with by the Provider.

Recordings of the telephone calls have been provided in evidence. Some of these calls demonstrate a very oppressive and unhelpful approach by the Provider.

While I have set out a timeline of events above, I will now set out extracts of the exchanges between the Complainant and the Provider by telephone that took place on 28 January 2016 to illustrate the approach taken by the Provider to the difficult situation the Complainants found themselves in.

The first call, that day, was made by the Complainant at 10.14 a.m. The purpose of this call was to ask the Provider to respond to the Complainants' solicitor's letter regarding the sale of the property and the residual debt.

Call 28 January 2016 at 10.14 a.m.

Agent: [Agent identifies himself].

Complainant: *How are you doing?*

Agent: *Not too bad.*

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Complainant: *I was on there yesterday and someone was supposed to phone me back and they never got back to me. Will I give you my loan account.?*

Agent: *Is it [Provider A or Provider B]?*

Complainant: [Provider B].

Agent: *What's the number? *****385. Your name is?*

Complainant: [Complainant's name].

Agent: [Complainant] *just bear with me and I'll call up that account and we will see what we can do for you there. I am going to put you on hold for two seconds ok.*

Complainant: *Alright.*

Agent: [Complainant], *I have to remind you that all our calls are recorded for training and monitoring ok?*

Complainant: *Yeh.*

Agent: *Under Data Protection can you just confirm your DOB for me?*

Complainant: [DOB]

Agent: *Can you also confirm your mobile number?*

Complainant: [Mobile Number]

Agent: *That's grand [Complainant]. Like I said my name is [Agent's name]. I work in the Legal Team in the Arrears Support Unit. How can I help you there?*

Complainant: [Agent's name] *there, look this house is sale agreed, we've received a deposit. My solicitor has sent a copy of that, copy of contract, the whole lot. This is the fourth sale. Three other sales have fallen through so look, we're lucky we've got one. My solicitor sent a letter stating it was sold, stating that some arrears. There's going to be a bit of a shortfall and the purchasers are getting anxious. They need, they want it now, they wanted to move in last week do you know? So we've got nothing back from yourselves. My solicitor rang me two days ago and said listen will you get on to [Provider] to see if you can get anything from them. He sent letters and he has received nothing.*

Agent: *Well, [Complainant] you were talking to a colleague of mine, [other agent] on 9 December.*

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Complainant: *That's right.*

Agent: *And he said.*

Complainant: *Yes about redemption figures.*

Agent: *He confirmed that the deeds will not be released without the loan being discharged in full, wasn't that right?*

Complainant: *No, I was on to him about redemption figures and that my solicitor was looking for redemption figures and he had wrote three letters at that stage and he got nothing back so that's what I was on to [other agent] about. So eventually my solicitor did get the redemption figures so now my solicitor has written a letter outlining stuff. He sent it to a [named official] I think is what he said in the Securities Department.*

Agent: *Yeh well, [other agent] has. [Other agent] has a note up here which says that he explained to you that we wouldn't be releasing the deeds until the loan had been discharged in full.*

Complainant: *Ok well will you send that letter to my solicitor, would somebody just...*

Agent: *Well look, we don't need to send it to you, I'm just saying to you now right like we are not, how much, what is the shortfall on this by the way?*

Complainant: *I think about 20 grand or something.*

Agent: *Em.*

Complainant: *Like I've already done a re-structure of my own home loan.*

Agent: *I can see that yeh.*

Complainant: *Like that one went into problems so I can't pull another 20,000 out of the sky you know what I mean.*

Agent: *Yeh so then what's going to happen there [Complainant] is we are going to appoint a receiver on the property.*

Complainant: *Right.*

Agent: *We'll appoint a receiver.*

Complainant: *Ok. So then this sale will fall through, the arrears are going to keep increasing.*

Agent: *I don't know, I don't know what...*

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Complainant: *But it doesn't make sense, it doesn't make sense, like you know like I have been offered nothing. Nobody has come and asked me anything. It's just been a blank and this is typical of [Provider].*

Agent: *Well.*

Complainant: *You say arrears support and you want to help people like they are writing off millions for people and here is an individual with a small shortfall and I have a home loan with you and you know the amount of money I would have paid on this when I was able to and the amount of money I was able to pay on my own when I was able to. Unfortunately things went the way they did and everybody got into trouble but you have been absolutely, I mean it and I'm not giving out to you, I know you are only at the end of the phone but it's unbelievable to be honest. No support whatsoever. I asked I don't know on how many occasions just to meet somebody in relation to own home loan and I haven't had a meeting with anybody. Just a phone call. It's just unreal and saying now that my solicitor has to write three times for redemption figures, he wrote this letter and nobody has the decency even to reply to him.*

Agent: *Em.*

Complainant: *It's just criminal. It's unbelievable. And he wants a letter back. If that's the case that you are not willing to let it go through would somebody just please have the decency to write him a letter or send him an e-mail to say listen this will not be done until whatever. That's what he wants. He wants it in writing.*

Agent: *Em.*

Complainant: *Surely that's not too much to ask. Is there a manager or is there somebody I could speak to?*

Agent: *There's nobody here at the minute em.*

Complainant: *Well would you ask somebody to ring me back if that is not too much?*

Agent: *Well you know I can deal with it here myself. There will be no need to give you a call back on it. Like, what I will do is. I see the letter in from the solicitor and I will get one of my colleagues to reply to that.*

Complainant: *Yeh.*

Agent: *But as far as we are concerned, we are going to appoint a receiver on to the property [Complainant] and after the receiver he will take the property there. Once you are advised of who the receiver is you can give him the*

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details of the person that is going to buy it and he may entertain the sale that way right. But otherwise it will be up to him how he disposes of it.

Complainant: *And what happens then? For example, there is going to be a shortfall.*

Agent: *Well our residual balances team will get in touch with you. Once we know what the residual balance is right, the residual balances team will be in touch with you and em.*

Complainant: *But that's on that letter from [solicitor]. Could that not be ... Could the residual balances team not contact me now when it's sale agreed instead of putting more costs on everybody? You know it's...*

Agent: *Yeh.*

Complainant: *It just doesn't make sense.*

Agent: *Well it kinda does make sense because you won't be able to afford the residual balance anyway isn't that right? You are already on a re-structure on the other property.*

Complainant: *Yeh yeh.*

Agent: *So what will happen. The process here in the Bank at the minute. What they want to happen is if the arrears are not paid in full right, they won't sell it right and even if you were going to sell it and there's a shortfall they still won't let you sell it. Like their view is ...*

Complainant: *So when it goes to the receiver, the receiver sells it right?*

Agent: *Correct.*

Complainant: *Ok so what happens the shortfall then?*

Agent: *The shortfall. What I am saying to you is that the residual balances team here in the Bank will be in contact with you and they'll ask you for your proposals.*

Complainant: *So if I say like I'm saying to you now, I can't give or I don't have ...*

Agent: *Exactly, you can't give what you haven't got.*

Complainant: *Right. So is this going to be a better situation you're saying for me?*

Agent: *Yeh well what they may be able to do. They may be able to look to other assets that you have right? Maybe put a second charge on it, you know what I mean?*

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Complainant: *What do you mean? Like. On my family home?*

Agent: *Yeh.*

Complainant: *Sure that's in negative equity. That's a re-structure.*

Agent: *Exactly right so...*

Complainant: *But they can come along and put the shortfall on to that if they want to can they?*

Agent: *No they can't put the shortfall on right because its protected under the Family Home Protection.*

Complainant: *Right.*

Agent: *But what they can do is put a second charge on it. It means like say, for example, in 15 years' time say you have about 10 grand left on that mortgage.*

Complainant: *Yeh.*

Agent: *Then you go to sell the house, right and they say well you owe us 10 grand right. No, say you sell it and you have a profit on the house of about 200 and they say well you still owe us 10 grand on the original mortgage, give us the 10 grand oh and by the way there is a second charge here, you owe 20 grand on em.*

Complainant: *20 oh right right. So they could put it something like that?*

Agent: *But it will take them a long time to do that, to put it on to your family home right and they don't do it right away. There's other things that they can look to.*

Complainant: *Ok.*

Agent: *Or look for, you know what I mean?*

Complainant: *So. It's a process. Another process.*

Agent: *And it may never happen either. Sometimes they get instructions to say no this customer, you know good customer, he's in trouble already, what's the point in putting a second charge, so you know.*

Complainant: *Fair enough. So will you just get somebody to contact, send a letter to my solicitor.*

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Agent: *Ok, I'll do that. I'm going to pass it on to the legal account manager who is in charge of that and I'll ask him to make a reply to that. Is that ok?*

Complainant: *Ok grand. Sorry, what's your name again?*

Agent: *My name is [agent's name].*

Complainant: *[Agent's name] grand thanks [agent's name].*

Agent: *Thank you. Bye.*

Clearly shocked and concerned by the response he had received from the Provider on the above call where he had been informed that the Provider would appoint a receiver, sell the property and engage with the Complainant regarding the residual balance but would not engage with the Complainant in circumstances where the Complainants had a sale agreed without the appointment of a receiver, the Complainant called the Provider's ASU again some 30 minutes later at 10.49 that same day. This time he received an even more oppressive and dismissive response from a different agent than the 10.14 call but an agent he had previously spoken to.

Call 28 January 2016 at 10.49

Agent: *[Provider, agent name] speaking.*

Complainant: *Hello [agent name], how's it going?*

Agent: *Good.*

Complainant: *Em. Is that the legal department yeh?*

Agent: *It is indeed yeh.*

Complainant: *Yeh. I was on to a colleague of yours, em, [other agent name].*

Agent: *Ok.*

Complainant: *There a while ago. But look I was speaking to you before. I will give you my eh...*

Agent: *Give me your account number there please.*

Complainant: *Yeh and I left a message the last few days for you there, sorry *****385.*

Agent: *Ok, yeh [Complainant], I did actually pick up those messages this morning. I'll tell you if you ring my direct dial number. It's only by a matter of luck that I*

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would get the message. If you do a return call to this. We are on a hunt line like, so what happens is, it sits in mailboxes ... log in in a different way if you like so [Complainant], before I proceed I just need to confirm that calls are recorded for training and monitoring. I know you are holding for a while there, apologies for that. Just for security you might confirm for me your date of birth and the address of the mortgaged property.

Complainant: [DOB] and [Address]

Agent: ****585. My name is [agent's name], you are through to the arrears support unit in the legal department here [Complainant], what can I do for you?

Complainant: [Agent's name], look it, I was on already and with [other agent's name] there this morning. Our property is sold or we have sale agreed.

Agent: Ok.

Complainant: This is the fourth sale and the other four.. this is the fifth. The other four fell through for various reasons and this is the fifth one. This is the guy who bought it in the first ... the very first time he bought it and fell through but he's got mortgage approval. We have deposit, contracts signed and everything and my solicitor sent a letter there last week confirming everything. There's going to be a shortfall so my solicitor...

Agent: Sorry for cutting across you there. If and look I don't appear to be unreasonable, don't want to appear unfair. The position honestly is exactly as I explained before, exactly as [other agent] would have explained before.

Complainant: No, no but I can't pay up I've no sale.

Agent: But that's where we are unfortunately, and look I can understand the frustration with that but that is definitely where it is and there's no real way around that I am afraid. There really isn't.

Complainant: But can I ask the logic?

Agent: The logic is that given the level of arrears on the account we have now taken control of this and we are going to close it out and irrespective of any other factor .. I can understand...

Complainant: Why didn't you appoint a receiver 6 months ago?

Agent: We can talk for ten minutes or ten hours or for ten days. The receiver stands. Based on your contractual performance unfortunately that's where it is and at this point now...

/Cont'd...

Complainant: *But can I ask you why wasn't a receiver appointed nine months ago, six months ago? Why now that we are there you are telling me now there is going to be a receiver appointed?*

Agent: *[Complainant], what you need to do at this stage now is if you are unhappy with the way account is being handled, you need to make a formal complaint and obviously...*

Complainant: *I am going to and I'm going to go to the Financial Ombudsman because...*

Agent: *Do yeh. Yeh absolutely.*

Complainant: *Because like the arrears support unit and the support, there has been absolutely none like...*

Agent: *Absolutely, and that is why you are going to make a formal complaint, like with the arrears, just 78 well 80,000 in arrears, the last payment would have been back in August 2014.*

Complainant: *I know that. Listen I know all that.*

Agent: *That's why we appointed a receiver.*

Complainant: *I am aware of that but how come I never heard from the receiver?*

Agent: *Eh. Well we have appointed a receiver and the receiver now progresses. That's that.*

Complainant: *When did you appoint the receiver?*

Agent: *Eh. Receiver was appointed, let me see, eh this would have fallen into receivership process the eh, in 20 eh, it would have fallen in, its actually been in the receivership process for 12 months, believe it or not.*

Complainant: *Fair enough and not a word.*

Agent: *I'll tell what I'm going to do I'll get it set up absolutely. We'll get that secured. You are absolutely right to be honest with you. I didn't see it was hanging around that long. I'll get on to our property management team and make sure that's set up for you.*

Complainant: *Why has that taken so long and now when there's a sale...*

Agent: *That's going to form part of your complaint. That's really what it's all about. You need to... if you are not happy with the way the account has been handled, we should have appointed the receiver a little bit sooner I would have thought so let's ...*

/Cont'd...

Complainant: *So why are you letting it go through with a sale, solicitors...*

Agent: *Don't know, don't know.*

Complainant: *Do you know?*

Agent: *Well in the first instance what you would normally do is obviously if you are selling a property you would get a redemption figure and that's what you should do but look I suppose...*

Complainant: *I got a redemption figure and again part of that took four letters from my solicitor ...*

Agent: *Sure.*

Complainant: *Which again will be part of the complaint.*

Agent: *Exactly, exactly all right look.*

Complainant: *So why did you set out redemption figures if there was going like to be ...*

Agent: *No no no no.*

Complainant: *Three weeks ago if there were going to be a receiver appointed?*

Agent: *Sure. Well obviously they'll send out redemption ...*

Complainant: *They won't.*

Agent: *No, no. Just to explain if you are going to redeem the account in full of course that is an option but you are not but anyway look [Complainant]...*

Complainant: *But of course we didn't know until the house has sold.*

Agent: *To be honest with you, we have been through this two or three times at this stage. I have explained it in detail, [other agent] explained it in detail, look I suppose there is not an awful lot of point I suppose without cutting the call short. We have explained it, you are aware of the situation but unfortunately we are where we are. I'm going to make a note that you intend to make eh, a written complaint and that is absolutely within your remit of course. In the meantime...*

Complainant: *Do I do it to the Financial Ombudsman or to yourselves or both?*

/Cont'd...

Agent: *Generally to ourselves first and then if you are not happy with that response you would need to go to the FSO. You need to exhaust our internal complaints procedures first.*

Complainant: *Ok.*

Agent: *All right?*

Complainant: *But I don't have to. I can go straight to the Financial Ombudsman if I want.*

Agent: *Oh you can and he will send you straight back to us but whatever you want to do yourself. There is no problem.*

Complainant: *Grand.*

Agent: *All right [Complainant] thanks for that.*

Complainant: *I asked [other agent] this morning would somebody send a letter to my solicitor out of courtesy explaining the situation.*

Agent: *We ... demand letter would be, we don't send ad hoc letters, no we wouldn't do that.*

Complainant: *No, but he has sent a letter to yourselves so in reply to that letter surely somebody can send a letter of reply. He sent a letter on the 22nd to a [named official] I think so surely somebody can at least try.*

Agent: *This unit won't, we don't issue ad hoc letters, we don't do that but look again...*

Complainant: *It's not an ad hoc letter, it's a reply to the letter that he sent in.*

Agent: *This office won't be doing that but again [Complainant] that can form part of your complaint as well probably.*

Complainant: *Oh My God, Jesus ok.*

Agent: *All right [Complainant] thanks bye bye.*

Complainant: *Oh My God.*

The manner in which the Complainant was dealt with was oppressive and most unreasonable.

The Complainants in their submissions to this Office pointed out that the Provider's literature in relation to dealing with mortgage arrears claims that the Provider will "work

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closely with mortgage holders ... communicate with mortgage holders” and refers to “finding a solution together” and “keep you fully up-to-date on your situation”.

The Complainants state that none of these actions or sentiments were evidenced in the manner they were treated.

This is borne out by the evidence submitted to this Office.

It is impossible to understand why a Provider would insist on appointing a receiver in circumstances outlined in the phone calls above.

It defies any logic that the *residual balances team* would only engage with the Complainant after a receiver would have sold the property but not when the Complainant had a sale agreed. There can be no doubt that the appointment of a receiver would have delayed the process, incurred more interest and increased arrears for the Complainants and significant additional costs with the associated risk that the residual balance to be funded by the Complainants could in fact be significantly more.

Indeed, I note that when the First Complainant tried on numerous occasions to establish where the logic was in this process he was either ignored or his query was dismissed.

It is also most unreasonable that having engaged in the process of selling the property with all the associated costs and effort he was informed that a receiver had been appointed 12 months earlier.

I would strongly recommend that the Provider review how it deals with customers who have mortgages in arrears and provide training for its agents in how to deal with customers, particularly customers in difficulty.

It is clear from the content of the calls on the 28th January, 2016, set out above that the First Complainant is correct that he was (incorrectly) told by the Provider’s representative in the ASU legal department, on several occasions, that a receiver had been appointed over the Property twelve months before. Therefore, the Provider was wrong to state in its letter of final response that *“[the representative] confirmed that due to the high level of arrears on the account [the Provider] had taken the decision to refer this mortgage to [its] Asset Management team and the appointment of a Receiver was to be considered. [The representative] confirmed that the initial referral to the Asset Management team actually took place approx. 12 months previously”.*

The Provider was also wrong to assert in its submission to this office that the *“the staff member noted that the Complainants (sic) case had been scheduled to enter the Receivership process approximately 12 months previously but this had not progressed”.* Neither statement is a fair or accurate representation of what the First Complainant was told and is more likely to represent what the Provider wished its representative (who appears to have been confused about the subject) had said to the First Complainant. While the Provider might be forgiven for making the error in the first place, as it appears to be grounded in its representative’s confusion, it is most disappointing and unacceptable that the Provider did

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not admit the mistake at the earliest opportunity and, despite having access to the recordings of the calls, instead mischaracterised the content of the calls in its letter to the Complainants and its submission to this office.

Furthermore, it is clear from the content of these phone calls that the attitude of the Provider's agents was most unreasonable and indeed oppressive.

I also believe that the decision to refer the Mortgage to the legal department of the ASU was unreasonable. This decision likely had a significant impact on the manner in which the Provider dealt with the Complainants.

I am also satisfied that the offer of monetary compensation of €1,000 in respect of the failure to respond to the Complainants' solicitors requests for redemption figures is wholly inadequate in all of the circumstances.

The letter dated the 5th November, 2013, referred to in the timeline above informed the Complainants that:-

"As you have failed to comply with one or more of the requirements above, you will be considered not-co-operating after 20 business days from the date of this letter unless you:

- 1. Contact us on the number below, and*
- 2. Provide us with the required information to enable us to asses a sustainable solution on your mortgage" [emphasis added].*

Irrespective of whether the Provider was entitled to send that letter in the first place given the confusion on both sides regarding the Second Complainant's payslips, the Provider was manifestly not entitled to treat the Complainants as non-co-operating borrowers before the expiry of its own deadline. However, according to its own submission, "*Management of the Complainant's mortgage were referred to the ASU Legal Department in November 2013*" and according to the call on the 13th January, 2014, the Mortgage was referred to the ASU legal department because the Complainants had been classified as non-co-operating borrowers. Therefore, it is abundantly clear that the Complainants were treated as non-co-operating borrowers in November 2013, at best, within 18 business days of the letter. This is entirely separate to the question of whether that characterisation was fair in the first place, given the ongoing contact and confusion on both sides regarding the payslips.

It is impossible to know the precise impact which the above decision had on the subsequent treatment of the Complainants' case but there are several matters which indicate that it had an unfavourable impact, not least the manner in which the First Complainant was dealt with in his communications by the ASU, though his treatment by the ASU staff was unacceptable under any circumstances.

In addition, the Provider's submission states that the First Complainant's payslips were "*not actioned*" when they were finally received in January because they were received outside

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the relevant period, suggesting that their shift in status in November 2013 from co-operating precluded the negotiation of a repayment option as initially envisaged by the Provider on the 29th February, 2012. Although the Provider apologised to the Complainants in relation to the payslips issue, it did not remove the file from the ASU legal department or re-classify the Complainants as “co-operating” (at least not explicitly) and most of the Complainants contacts were with the ASU legal department, thereafter.

The Provider, entertained a subsequent SFS from the IMHO and, by email dated the 30th June, 2014, decided to permit a voluntary surrender by the Complainants in which “*any residual*” would be funded by the Borrower. On its face, that document envisaged that the Provider would have sold the property, with the Complainants remaining liable for the full residual balance.

Therefore, at that time, the Provider was willing to countenance the sale of the Property (by the Provider) and since it was unlikely to impose any limitation on its own ability to dispose of the Property, it must have also countenanced reaching a separate agreement with the Complainants regarding any residual balance.

It seems that the Complainants were not informed of the Provider’s offer but, in any event, it seems that by the 22nd June, 2015, the Provider was still willing to countenance a sale by the Complainants and an agreement on the residual balance (albeit prior to the sale), although the Complainants were advised to avoid this if possible.

Thereafter, there was a change in tone from the Provider, with the Complainants being repeatedly told by members of the ASU legal department that the Provider would not consent to the sale under any circumstances unless the net proceeds could discharge the Mortgage in full. It seems clear from the phone calls from the Provider’s representatives that this was because the Mortgage had been transferred to the ASU legal department. For example, during the call of the 9th December, 2015, the First Complainant was told that the account was “*in the legal process*” and permission to sell would not be forthcoming unless the Mortgage was discharged in full. Further, in explaining why the Provider would not countenance a residual debt, the Provider’s representative explained that “*we’ve now taken control of this and we are going to close it out...irrespective of any other factor*”. In addition, although the Complainants’ solicitors were seeking redemption figures from the Provider, these requests were not being responded to, seemingly because the ASU legal department does not correspond with borrowers’ solicitors (see second call of 28th January 2016).

Ultimately, it seems that as a result of the Provider’s decision to classify the Complainants as non-co-operating borrowers inside its own deadline and its failure to remove the file from the ASU legal department (where it could have been sent again, in appropriate circumstances), the Complainants were caught in an impossible situation where the Provider was in fact forbearing from engaging its legal remedies such as the appointment of a receiver but was dealing with the Complainants’ attempts to reach an agreement with the Provider as though they were non-co-operating borrowers against whom legal remedies had commenced.

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The Complainants found themselves in a very difficult situation. They were making efforts to resolve the situation through the sale of the mortgaged property.

The Provider's Arrears Support Unit's legal department adopted a most unhelpful and obstructive approach. I find the actions of the Provider in relation to the Complainants to be unreasonable, unjust and oppressive.

For the above reasons, I uphold this complaint.

I direct the Provider to pay a sum of €90,000 in compensation to the Complainants for the loss, inconvenience and expenses sustained by the Complainants.

Conclusion

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

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 €90,000, 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**

13 December 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.