



<b><u>Decision Ref:</u></b>	2018-0233
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Level of contact or communications re. Arrears Arrears handling - Mortgage Arrears Resolution Process
<b><u>Outcome:</u></b>	Partially upheld

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

##### **Background**

In December 2007 the Complainants took out a loan with the Respondent Provider on foot of a Facility Letter dated the 19 December 2007. An amount of €200,000 was advanced, to be repaid within a period of 15 years and 1 month. This loan is now owned by a Third Party, following the sale of the loan by the Provider to the Third Party on the 21 October 2016.

The Complainants state that, against a backdrop of enormous financial pressure and difficult personal circumstances, and in light of the vulnerable status of the First Complainant, in July 2016 they made a proposal to the Provider to pay an amount of €85,000 in full and final settlement of the debt outstanding on their loan. This offer was rejected initially; however, following an appeal the Provider accepted the offer.

The Complainants submit that it was their understanding that the Provider's Arrears Support Unit were to contact them in relation to the offer. They say no contact was made, despite numerous requests.

The Complainants submit that notwithstanding the Provider's agreement to accept a specified amount in full and final settlement of their loan account, in October 2016 their loan was sold to a Third Party.

The Complainants submit that the Third Party will not honour the settlement agreement reached with the Provider.

### **The Complainants' Case**

The complaint is that the Provider sold the Complainants' loan to a Third Party notwithstanding the fact that prior to the said sale an agreement had been reached between the parties whereby the Provider agreed to accept an amount of €85,000 in full and final settlement of the loan account.

On their Complaint Form dated the 9 October 2017, when asked how they would like the Financial Service Provider to put things right, the Complainants stated the following-

*"I only want settlement of my debt on a reasonable basis. [The Provider] should not have sold my loan to a vulture fund and renegeing on terms offered."*

### **The Provider's Case**

The Provider rejects the complaint.

The Provider submits that the sale of the Complainants' loan was completed in October 2016 as part of the Provider's process to withdraw from the Irish market. The Provider states that an announcement was made previously, in October 2013, to the effect that the Provider was to close its retail operations in the Republic of Ireland.

The Provider states that it is satisfied that the sale of the Complainants' home loan to the Third Party was completed within the terms and conditions of the home loan. The Provider states that all regulatory requirements were complied with in respect of the sale. The sale of the mortgage loan did not serve to change the terms and conditions of the loan.

The Provider states that an agreement to settle the Complainants' home loan for €85,000 was reached between the parties on the 15 August 2016 following a successful appeal to the Provider's Appeals Board. The Complainants were advised in writing of the decision, by letter dated the 15 August 2016, and were informed that funds would have to be received within a period of 2 months. The Second Complainant was also informed of the Provider's decision during a telephone conversation on the 15 August 2016.

The Provider submits that the Second Complainant made a counter offer to the Provider, received on the 13 September 2016. An application was processed in relation to this offer and it was recommended that the offer be declined. The Provider acknowledges that the Complainants were not informed of this decision.

The Provider submits that by letter dated the 19 August 2016 the Complainants were given two months' notice of the proposed sale of their loan.

The Provider submits that funds were not lodged to the Complainants' account by the 15 October 2016 (i.e. within two months of the letter dated the 15 August 2016); therefore, the loan was not cleared in line with the agreement for full and final settlement of the debt.

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On the 21 October 2016 the Complainants' loan was transferred to the Third Party.

The Provider states that prior to the transfer of the loan to the Third Party, it had worked with the Complainants through 5 years of financial difficulty and always worked in good faith. The Provider states that it is satisfied that the actions taken were correct in all the circumstances.

### **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 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, the final determination of this office is set out below.

As set out above, this complaint revolves around a loan, which is now owned by a Third Party. This complaint is levelled against the previous owner of the loan, the Provider, who extended the loan funds in question to the Complainants in December 2007. A copy of the Facility Letter dated the 19 December 2007 has been supplied in evidence. The 'Important Information' is set out on the first page, as follows-

Amount of credit advanced	EUR 200,000.00
Period of Agreement	15 years 1 month(s) from drawdown.
Number of repayment instalments	179 plus any final balance.
Amount of each instalment	179 payment(s) of EUR 1,530.45

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	1 payment(s) of EUR 1,528.15
Total amount repayable	EUR 275,558.70
Cost of this credit	EUR 75,558.70
Annual percentage rate	4.60% variable
Amount of mortgage protection premium (if applicable) (Monthly estimate)	EUR 53.58
Effect on amount of instalment of 1% increase in the first year in interest rate	EUR 104.30

The Complainants submit that in August 2016 the Provider accepted their proposal to pay an amount of €85,000 in full and final settlement of the amount outstanding on their loan account. They say that despite this agreement, the Provider went ahead and sold their loan to a Third Party. The Complainants state that the Third Party has refused to adhere to the settlement terms agreed between the Complainants and the Provider.

In its letter to this Office dated the 10 May 2018 the Provider outlined the background leading up to its decision to accept the Complainants' offer of €85,000 to settle their account. It seems that in April 2016 an initial settlement offer of €70,000 was proposed by the Complainants to settle their account; however, this offer was declined.

The Provider has included its internal credit application paperwork in respect of this offer. The 'Reply' to the application is set out as follows-

*"Settlement proposal declined as the amount offered is deemed insufficient relative to the outstanding debt and collateral value."*

The Complainants were notified of the Provider's position by letter dated the 16 May 2016.

In June 2016 the Complainants then sought an extension of their reduced monthly repayments. This application was also declined. In its letter to this Office dated the 10 May 2018 the Provider set out the reasons for this decline-

*"Declined for ARA in respect of the PPR, as in the Provider's opinion:*

*-the borrower is not prioritising repayments to the PPR  
-no evidence that the household financial position will improve in the short/medium term  
-no evidence that any step up in the home loan repayment could be affordable, even after the proposed ARA  
Review for AVS (Voluntary Sale) Resolution Option."*

Subsequently, in July 2016 the Complainants made another proposal to the Provider- on this occasion they proposed to pay the sum of €85,000 in full and final settlement of their loan account. This offer was declined. The reason for this decline is set out in the Provider's internal credit application documentation, which has been supplied in evidence, as follows-

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*“It is the Provider’s opinion the level of write off is considered too high in this instance.”*

In the wake of the Provider’s refusal to accept their proposal, the Second Complainant launched an appeal of the Provider’s decision. The Provider has supplied the minutes of the meeting of the Appeals Board, held on the 11 August 2016. The Appeals Board decided to uphold the appeal and agreed to accept the sum of €85,000 in full and final settlement of the Complainants’ home loan. The minutes disclose the decision reached as follows-

*“The Appeals Board upholds the customer’s appeal and the customer’s PPR remains in MARP.*

*Having reviewed all documentation furnished and in light of the restricted access and restricted services to the customers PPR, the Appeals Board is of the view that the customers’ PPR would be extremely difficult to sell on the open market. Accordingly, the Appeals Board would recommend that [Management Servicing Company] accept the offer of €85,000 in full and final settlement of the customers’ PPR liabilities to the Provider. [Management Servicing Company] to advise the customers that acceptance of the full and final settlement offer is strictly subject to net sale proceeds in the sum of €85,000 (with no deductions) being received within 2 months from the date of the ARA being communicated to the customers.”*

The Complainants were informed of the Provider’s decision by letter dated the 15 August 2016. The content of this letter is highly significant in the context of this complaint.

I will now set out the relevant sections:

***“Review***

*In considering the appeal, the Appeals Board reviewed your repayment history to the mortgage, in addition to the expected monthly repayment which is €1,820 and the total outstanding balance which currently stands at €145,024.98. The Appeals Board also considered your levels of income and expenditure as denoted in your Standard Financial Statement (“SFS”) which demonstrated that they have a monthly repayment capacity of €399 to pay towards the mortgage.*

*Furthermore, the Appeals Board took into consideration your circumstances and the content of your letter of appeal which set out your grounds for the appeal.*

***Conclusion***

*Having given consideration to the above, the Appeals Board has upheld your appeal and you will remain within the protections of the Mortgage Arrears Resolution Process (“MARP”). Having reviewed the documentation, the Appeals Board recommended that the ASU accepts your offer of €85,000 in Full and Final Settlement (“FAFS”) of your liability to the mortgage. **Please note that the acceptance of this***

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***offer in FAFS is strictly subject to net sale proceeds in the amount of €85,000 (with no deductions) being received within 2 months of the date of this letter. [My emphasis]***

*The reason for this decision is because the Appeals Board is of the view that the mortgage is unsustainable and you have other significant debt and financial difficulties. Furthermore [the First Complainant] is considered to be a vulnerable customer.*

***The ASU will contact you in due course to discuss the FAFS..." [My emphasis]***

Included with its response to this Office dated the 10 May 2018, the Provider enclosed substantial documentation, which illustrates the protracted dealings between the parties in the years prior to 2016.

A number of Alternative Repayment Arrangements were facilitated on the loan, bearing out the Provider's recognition of the strained financial circumstances the Complainants were experiencing over a number of years.

The crux of the Complainants' case is that notwithstanding the agreement to accept €85,000 in full and final settlement of their loan account, the Provider went ahead and sold their loan to a Third Party. The Complainants insist that they were awaiting contact from the Provider's Arrears Support Unit about the settlement arrangement, but that the Provider failed to make said contact "*despite numerous requests*".

The Provider argues that the Complainants did not meet the timeframe for payment of the settlement monies stipulated in their letter of the 15 August 2016, that is, 2 months from the date of the letter. The Provider states that in circumstances where terms of the agreement for full and final settlement were not met, the loan in question was sold to a Third Party in accordance with the Provider's process to withdraw from the Irish market.

In its letter to this Office dated the 10 May 2018 the Provider also explained that following its approval of the Complainants' proposal, the Second Complainant contacted the Provider again advising that the Complainants could only raise the sum of €72,500 and requesting that the Provider accept this amount. A copy of the Second Complainant's letter to the Provider dated the 12 September 2016 has been furnished in evidence.

I will set out the relevant sections:

*"I refer to your letter of 15<sup>th</sup> August last.*

*On foot of the content my brother made a formal application for €85,000 to purchase the property to settle [the Provider] debt thereon.*

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*Having duly assessed the application the Provider's underwriters came back with a loan offer of €72,500 as the maximum they are prepared to provide stating concerns around location and lack of suitability should a default arise.*

*He can draw down these funds by September 25<sup>th</sup> and provide immediately to his solicitor for transfer to [the Provider] on completion of legal documentation.*

*I know this falls somewhat short of what was agreed but that is the maximum he can borrow and I hope you can agree to this settlement on the basis that it is completed by October 15<sup>th</sup>.*

*This is very stressful and I am totally beholden to my brother who wants to help our family out to the best of his ability particularly given my husband's vulnerability.*

*I hope you can understand our position and agree to the reduced settlement figure which I can guarantee will be paid by the date specified above."*

The Provider has stated that it did consider the Second Complainant's revised offer, but that it declined same. In internal Provider documentation, supplied in evidence, a note of the Provider's rejection of this latter offer is outlined as follows-

*"Borrowers have sent in a revised offer of 72,500 as the source of funds, borrowers brother, could not secure from lender the €85,000 as agreed by the appeal board. Recommendation: Decline as below agreed figure agreed by the appeal board."*

The Provider has accepted that this decision of the Provider was not communicated to the Complainants.

As outlined above, on the 21 October 2016 the Complainants' loan was transferred to a Third Party.

In support of the Complainants' case that they were awaiting contact from the Provider about their settlement arrangement, the letter they received on the 15 August 2016 does indicate that contact by the Arrears Support Unit will be made "in due course". However, it seems that although the Complainants proposed settling the account for €85,000, which offer was accepted, they then made a counter-offer to the Provider in the amount of €72,500, outlining their inability to raise the previously suggested, and agreed upon, settlement figure.

Although the Provider considered this counter-offer and ultimately rejected it, this decision was not communicated to the Complainants in advance of the sale of the loan to a Third Party.

Recordings of telephone calls have been provided in evidence. The content of these calls clearly demonstrate the Second Complainant's attempts to get an answer to her counter-offer from the Provider, without any success. The Second Complainant telephoned the

Provider's Management Service Company on three occasions after sending the Provider her letter dated the 12 September 2016, imploring the Provider to issue her with a response.

The content of these calls is very instrumental in terms of the conduct of the Provider and how it treated the Complainants.

The Second Complainant was unable to contact the Provider directly. In this regard I note the calls were answered "*Pepper Servicing [Provider]*".

During these calls which were most unhelpful and frustrating for the Second Complainant at a time of great stress, she at all times remained composed, dignified and calm, seeking only to get a response to her counter offer.

Initially the agents she spoke to would not put her through to her Relationship Manager. On the third call she managed to speak to him.

The agents admitted that the Provider was not communicating with them and had not provided a response to her letter of 12 September 2016.

When the Second Complainant asked if the reason the Provider was not responding was because of the imminent transfer of the loan, the agent replied "*It could be because of the transfer*".

When the Complainant said "*you must have loads of cases like this*", the agent laughed. Understandably, the Second Complainant was very upset by this as she and her family were in a very stressful and difficult situation. From listening to the recording of the call, while it was most unacceptable and upsetting that the agent laughed, I believe it was a reflection of the agent's own frustration at having to deal with the situation she found herself in.

I must accept that the Complainants did not fulfil the terms of the agreement reached between the parties on the 15 August 2016 to pay an amount of €85,000 to the Provider within a period of two months in full and final settlement of the loan account. While most understandable as the Complainants were unable to secure the full amount, this was most regrettable and resulted in the unfortunate situation where the Complainants were unable to avail of the agreement and write-down before the Provider sold the mortgage. As the Complainants were unable to avail of the settlement offer of 15 August 2016, I accept that the Provider was entitled to sell the mortgage after two months had expired.

That said, the Complainants were awaiting contact from the Provider's Arrears Support Unit about their "FAFS". That is borne out by the Second Complainant's letter to the Provider of 12 September 2016 and telephone calls between the parties.

The Provider has stated that the sale of the Complainants' loan was completed in accordance with the Consumer Protection Code 2012. To this end, I note that the Complainants were provided with notification of the impending sale of their loan, both in writing and verbally (during the course of a telephone conversation).

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On the 19 August 2016 the Complainants were furnished with a letter outlining that their loan would be sold as part of a portfolio transfer. In that letter, a copy of which has been provided in evidence, the Complainants were informed that it is *“currently intended that the sale and transfer of ownership of your Account(s) to the Purchaser will take place prior to the end of October 2016”*. The Complainants were then notified, in writing, when the sale was complete.

The General Conditions pertaining to the Complainants' loan have been supplied in evidence. Clause 21 is entitled 'Assignment', and provides as follows-

*“21(a) We may assign, transfer, mortgage, charge or otherwise dispose or grant interests or security over the whole or any part of our rights and/or obligations under the Agreement without your consent and any reference to us shall be deemed to include our assignees, transferees or other disposees who shall be entitled to enforce the terms of the Agreement and exercise all our discretions and rights in the same manner as if a party hereto. We shall be entitled to disclose any information relating to you or the Loan to any actual or prospective assignee, transferee, mortgagee, chargee or other disposee or to any party who may enter or propose entering into other contractual relations with us in relation to the Agreement, including their successors, respective officers, employees, agents and advisers.”*

Considering the notifications to the Complainants about the impending sale of their loan and in light of the content of the General Conditions of their home loan agreement, I am of the view that the Provider acted in accordance with contract when the loan in question was sold on the 21 October 2016.

However, having considered the entirety of the evidence and, in particular, telephone evidence in the case, namely three audio files relating to calls made by the Second Complainant to the Provider following the submission of her counter-offer on the 12 September 2016, and the fact that a response by the Provider to the said counter-offer did not issue to the Complainants, I believe that the conduct of the Provider was unreasonable and I intend to partially uphold this complaint. While I note that the loan has been sold to a Third Party, I do not believe this absolves the Provider of its responsibility to the Complainants.

It would appear that the Provider just ignored the communications of the Complainants in the hope that the matter would no longer be its problem once the loan was sold. To allow this situation to pertain would, in my view, be unjust.

The Complainants found themselves in a very difficult and stressful situation. The fact that no one from the Provider's ASU contacted them as indicated would happen in the letter of 15 August 2016, despite a letter from the Complainants on 12 September and three phone calls by the Second Complainant, the Provider failed to make contact or respond to the counter offer, in my view greatly added to what was already a most stressful time for the Complainants.

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There is a duty on the Provider to communicate with its customers and, in particular, where customers, such as the Complainants, are in such a stressful situation.

I believe the conduct of the Provider was unacceptable and the manner in which the Complainants were dealt with was unreasonable and unjust. Accordingly, I partially uphold this complaint and direct that the Provider pay a sum of €15,000 in compensation to the Complainants.

I would also strongly suggest that the Provider arrange appropriate training for its agents in how to deal with customers who are suffering financial distress.



## **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) (b) 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 €15,000, 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.