



<u>Decision Ref:</u>	2019-0004
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Wrongful consideration of forbearance request Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

Background

The Complainant is a long-standing customer of the Respondent Bank. He states that in February 2016 he took out a term loan with the Bank. Subsequent to the extension of this loan, the Complainant's financial circumstances changed somewhat owing to very difficult personal circumstances.

The Complainant has explained in detail some very personal circumstances since 2009, as a result of which he effectively became financially responsible for his son and grandchildren. He also states that he has incurred enormous medical bills for both himself and his son, in recent years, including the cost of some very significant surgeries which he was obliged to undergo.

The Complainant states that given the massive financial pressure he was labouring under as a result of his personal circumstances he applied to the Bank in May 2017 for a 12-month stay on repayments on his term loan. He submits that as he has been a loyal customer of the Bank for 44 years, he was convinced his request would be acceded to. Much to his disappointment, however, in July 2017 he was notified that his application had been refused. He appealed this decision but his application was declined again in August 2017.

The Complainant is at a loss as to why the Bank did not approve his forbearance request. He believes the Bank employed a ruthless, un-empathetic and unfair approach to assessing his application. He points out that the Bank had adequate security for the term loan in the form

of an insurance policy worth €63,000. He points out furthermore that he even offered the deeds to his home as additional security, yet the Bank maintained its position to decline his payment-stay request.

While the Complainant notes the Bank's ultimate decision, following further assessment of his application, to offer him an interest-only facility for a period of 12 months followed by settlement of the account in full in November 2018, he states that this is not the forbearance arrangement he requested.

The Complainant is also annoyed at the manner in which he was treated by the Bank. He points out that the Bank took an extended period of time to respond to his forbearance application. He says delays included *"5 months waiting for a decision checking post every day waiting for a phone call"*. He states that he received threatening telephone calls from the Bank, including a call during which he was told his credit rating would be adversely affected. He also received what he has described as intimidating correspondence outlining that continued arrears would be reported to credit reference agencies.

The Complainant's Case

The first complaint is that the Bank wrongfully and unfairly refused to accede to the Complainant's request for a full moratorium on loan repayments for a period of 12 months.

The second complaint is that the Bank provided the Complainant with an unacceptable level of customer service.

The Complainant is of the firm view that he should be compensated for the Bank's failings.

The Bank's Case

The Bank rejects the complaint.

The Bank explains that the Complainant sought a facility in January 2016 to amalgamate his lending with the Bank and other financial institutions. Notwithstanding that it was against Bank policy to refinance a customer's non-Bank facilities, the Bank agreed to amalgamate all of the Complainant's borrowings into one single loan. Conditions of this re-finance included the closure of the Complainant's non-Bank credit card accounts, the closure of his Credit Union account and a reduction in his current account overdraft and credit card limit.

The Bank states that it is satisfied that its decision to re-finance the Complainant's outstanding debts showed great empathy and understanding and took into account the Complainant's long-standing relationship with the Bank.

The Bank states that despite the trust put in the Complainant to clear his non-Bank facilities, this condition of sanction was not complied with.

/Cont'd...

The Bank submits that in October 2017 the Complainant applied for a restructure of his existing loan. The Bank sanctioned a 6-month, interest-only repayment arrangement, to be followed by 90 months capital and interest repayments.

The Bank emphasises that the Complainant was informed at this juncture that the Bank would not restructure the facility again. The Bank states that in line with its position that it would not restructure again, the Complainant's request in April 2017 to cease all payments for a period of 12 months, was declined.

The Bank submits that in circumstances where the Complainant appealed to the Bank to assess his application again, a decision was ultimately made to offer the Complainant the option of repaying interest-only instalments for a period of 12 months, followed by a lump sum repayment of the full loan in 2018. This decision was communicated to the Complainant in November 2017.

The Bank states that it is satisfied that it acted appropriately at all times. The Bank does not believe that it acted unfairly, unreasonably or in an unjust or improper manner in the context of its dealings with the Complainant. The Bank points out furthermore that standard generated arrears letters have issued to the Complainant in accordance with its regulatory obligations.

The Complaints for Adjudication

The first complaint is that the Bank has treated the Complainant unfairly and wrongfully in refusing his request for a full moratorium on loan repayments, for a period of 12 months.

The second complaint is that the Complainant received an unacceptably poor level of customer service from the Bank.

Decision

During the investigation of this complaint by this Office, the Bank was requested to supply its written response to the complaint and to supply all relevant documents and information. The Bank responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Bank's response and the evidence supplied by the Bank. 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

/Cont'd...

Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 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.

Following the consideration of an additional submission from the Complainant, the final determination of this office is set out below.

The Complainant advanced two main grounds of complaint, which arise out of a request for forbearance he submitted to the Bank in April 2017. The loan the subject matter of this complaint, and to which the Complainant's forbearance request related, was taken out in 2016. A copy of the loan pack relating to this facility has been included in evidence. Section 2.1 of the Credit Agreement outlines the following 'Important Information'-

Amount of credit advanced	€48,300.00
Period of Agreement	Until 5 th February 2024
Number of repayment instalments	96 consecutive monthly repayments
Amount of each instalment	€645.35
Total amount repayable	€61,953.60
Cost of this credit (5 minus 1)	€13,653.60
Annual percentage rate	6.664%

Repayment information is set out under Sections 2.6 and 2.7 as follows-

“2.6 You will repay your loan by making 96 consecutive monthly repayments of €645.35, starting on the 5th March 2016.

2.7 It is important that you are aware that your repayment amounts will not change if the interest rate goes up or down (however, we reserve the right to change them in such circumstances). This could mean that either your repayments may not be enough to repay your loan in full (for example, if the interest rate goes up) or that you repay your loan early (for example, if the interest rate goes down). If you wish to adjust your repayments when interest rates have changed, you can contact us to discuss this request.”

The Complainant has submitted a huge volume of correspondence and documentation in support of his complaint. A lot of this supporting documentation describes, and relates to, the very difficult personal circumstances the Complainant was experiencing during the

period of this loan, which prompted him to make the application in April 2017, for a 12-month stay on loan repayments.

Given the sensitivity of the subject matter, I have not outlined these circumstances in any great detail here. The Complainant indeed has expressed dissatisfaction that his and his family's very personal circumstances have been widely circulated within the Bank. This information sharing within the staff of the Bank was of course necessary to ensure that decisions made were fully informed decisions, but one can appreciate the Complainant's position, given the sensitivity of the situation for him and his family. The issues inflicting the Complainant and his family are well documented and the Bank was made aware of these issues at the time of the forbearance request, as was appropriate. It is not necessary to outline these circumstances in detail in this Decision but, in short, the Complainant incurred enormous medical expenses during this period and was placed in a position where he was effectively supporting his adult son and grandchildren.

Notwithstanding his representations to the Bank, the Complainant's request for a 12-month repayment moratorium was declined.

The Complainant is most aggrieved at the Bank's failure to accede to his forbearance request given the circumstances he was in at the time, both personal and financial, and given his extensive historic relationship with the Bank.

It is important to point out that this Office is precluded from investigating matters which fall within the unique commercial discretion of a financial institution. As financial institutions are under no obligation to extend a requested facility to a customer or to accede to a request to amend the terms of a facility, this Office is unable to intervene in the decision making process leading up to any such refusal of a request for finance or loan amendment. However, in accordance with **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**, this Office can examine the conduct of a financial institution in order to determine whether the conduct complained of was *"unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant"*.

The issue to be determined, therefore, is whether the Bank's refusal to accede to the Complainant's forbearance request was unreasonable, unjust, oppressive or improperly discriminatory. Having considered the evidence before me, and in particular the history of loan approval and forbearance previously granted to the Complainant, I am unable to make a finding that the Bank's conduct was in any way improper or in any manner unreasonable, unjust, oppressive or discriminatory in its application to the Complainant.

First and foremost, when the Complainant accepted the Bank's offer of finance in 2016, he agreed to repay the loan in accordance with the credit agreement. Portions of this agreement have already been set out above. In February 2016 the Complainant agreed that he would make 96 consecutive monthly repayments of €645.35, commencing on the 5 March 2016. In accepting the Bank's loan offer, the Complainant also agreed to abide by the Bank's General Terms and Conditions for Personal Loans. Clause 4.1 of these Terms and Conditions sets out the repayment obligation of the loan, and provides as follows-

/Cont'd...

“You agree to repay us the full amount that you owe us under this Credit Agreement in the manner set out in this Credit Agreement (unless otherwise agreed by us in writing). It is your responsibility to ensure that arrangements are in place to make these repayments on time. You may be required to complete a direct debit and/or standing order instruction for this purpose. Any repayments made will permanently reduce your balance, which means that you cannot redraw such amounts, unless we allow otherwise.”

It is clear from the content of the credit agreement between the parties that it was entirely at the Bank’s discretion whether or not the terms of the loan would be altered.

In its letter to this Office dated the 13 March 2018 the Bank set out a detailed summary of the dealings between the parties leading up to the Complainant’s request for a 12-month moratorium. It seems that in 2014 a loan of approximately €30,000 was sanctioned to clear external debt. This loan was topped up and restructured in January 2015. Following on from this the Complainant sought a restructure of his facilities both with the Bank and with other financial institutions. This application culminated in the parties entering into the credit agreement referred to above. It was agreed that the Complainant would assign a whole of life assurance policy to the Bank, valued at €63,497.00, as security for the loan. While I note the Complainant’s repeated contention that the Bank had ample security for the loan, the Bank argues that this particular security has *“no current tangible value”* as it only pays out on the Complainant’s demise.

There were also a number of specific conditions attached to the loan. These are set out under Section 4 of the credit agreement dated the 5 February 2016, as follows-

“4.1 You agree that the following specific conditions apply to your loan:

- a) On drawdown we will lodge €4,300.00 to [the Bank] Credit Card ending 7514 towards payment of the amount owed to us in respect of that card and reduce the available credit limit on that card to €2,000.00. For security purposes and your protection, only the last four digits of your card appear;*
- b) On drawdown, the overdraft facility attaching to current account number...will reduce to €2,000;*
- c) Copy statement for [another financial institution] Mastercard to be provided to the bank showing outstanding balance on account. At drawdown, bank draft will issue to clear this credit card in full and account closed;*
- d) Copy statement for [another financial institution] Credit Card to be provided to the bank showing outstanding balance on account. At drawdown, bank draft will issue to clear this credit card in full and account closed;*

/Cont’d...

- e) *Copy statement from Credit Union to be provided to the bank showing outstanding balance on account. At drawdown, bank draft will issue to clear this credit card in full and account closed; and,*
- f) *On drawdown, we will clear the debit balance on account number...in full and close that account."*

The Bank has confirmed that the Complainant failed to comply with a number of these conditions. The Bank also points out that at the time of loan issue, the Complainant was informed that it would not consider any further restructure.

The Bank states that after the loan was drawn down in February 2016, loan repayments were maintained until the 5 October 2016. At that point the Complainant requested forbearance in the form of interest-only repayments for a period of 12 months. The Bank states that after assessing the Complainant's proposal, it deemed that he could afford to repay both capital and interest instalments; however, on foot of a *"very strong recommendation"* from the branch, it decided to offer the Complainant a 6-month, interest-only period, to which the Complainant agreed.

The Bank submits that in May 2017 capital and interest repayments resumed on the loan and instalments were received until September 2017. In April 2017, just prior to the return to capital and interest repayments the Complainant sought a full moratorium on repayments for a period of 12 months. The Bank states that this application was declined *"without processing an application as it is not something the Bank would normally facilitate"*.

I note that in his submissions to this Office the Complainant refers to awaiting a prolonged period before being told that his application for a 12-month stay on loan repayments had not been approved. The Bank contests this and outlines that the Complainant was informed of the Bank's position in April 2017.

It seems that subsequent to this decline, the Complainant appealed to the Bank again, requesting that it re-consider his application for forbearance. An application for a 6-month period of interest only repayments was processed on his behalf, but was declined *"because it was felt that the Complainant had been well accommodated in the past and he had sufficient income to cover capital and interest repayments"*.

Due to the Complainant's extreme dissatisfaction with the Bank's refusal to grant further forbearance, the Bank re-considered matters again, culminating in its offer to reduce the Complainant's loan instalments to an interest-only repayment basis until November 2017, with full repayment of the facility within 12 months of this date.

While I sympathise greatly with the Complainant's predicament and while I acknowledge the hugely distressing and difficult personal circumstances he has experienced over the last number of years, having considered the loan facilities advanced and restructure arrangements agreed by the Bank in the period dating from 2014 onwards, I am of the view that contrary to what is alleged, the Bank has accommodated the Complainant significantly

/Cont'd...

over the years and has repeatedly facilitated his forbearance and restructure requests. I simply cannot find any basis for the claim that the Bank acted in a ruthless manner or that it demonstrated a lack of empathy and understanding. Having scrutinised the internal communications from branch level staff to the Bank's credit department, furnished in evidence for my perusal, it is clear that the Complainant's request for forbearance in April 2017 was given substantial consideration by the Bank.

In an email dated the 1 August 2017 addressed to the Complainant's branch manager, the Bank representative assessing the application stated the following by way of an explanation for the decline-

"Unfortunately we are only in a position to sanction an appeal if new information comes to light or the customer's circumstances have changed, this does not seem to be the case here. We have been very supportive to [the Complainant] in relation to this facility previously with numerous restructures on file however we feel at present that the current arrangement that [the Complainant] agreed to and signed in Sept 2016 is to remain and that a further period of forbearance is not warranted.

I appreciate that he has found himself in a difficult position and that there is an intention to clear this loan from any compensation received from the court case however there is no guarantee that the case will be successful or even when it will get to court, this could take years and therefore I am unable to take it under consideration."

A later internal email dated the 2 October 2017 demonstrates the persistence of local level Bank staff in lobbying on behalf of the Complainant for forbearance approval-

"Client has written a letter of complaint which includes a reference to his son suffering from a mental illness and [the Complainant] and his wife, aged 72 + 73, looking after their grandchildren as a result. He maintains that he and his wife are also unwell and under stress. He is seeking an extension of IO for a period, given legal and medical expenses.

This is an obvious hardship case. While I understand that client has been very well facilitated to date, are you fully satisfied that we cannot extend an IO period for clients?"

'Lenders Reports' have also been supplied in evidence and this documentation evidences the Bank's assessment of the Complainant's application and his affordability. An excerpt from the Lenders Report citing an application date of the 6 July 2017, demonstrates that the Bank was fully aware of the Complainant's strained circumstances and considered same in the context of its assessment. Under the section entitled 'Track Record' the following information is set out-

“Long standing customer with excellent record at bank. Dealing with a very difficult situation and in addition to strong family support to his son and grandchildren, the financial support is taking its toll, restructure onto a capital & interest. 07.2017 [the Complainant] has again reverted to [the Bank] for support-current outgoings putting severe financial stress on himself & his wife. Good account performance...Customer is under fin pressure. Client has come to [the Bank], pleading with us to help him through this difficult time...he has sent in several letters pleading his case and asking [the Bank] to help him through this difficult period I have faxed copy of letters also. He is barely surviving as he has to cover self & wife, son & children’s maintenance payts and medical/solicitor expenses, ICB in order.”

Under the section entitled ‘Repayment Capacity’, the Complainant’s total household income is outlined as follows-

“xxx Capital Pension €2430 + State Pension €1011 + [Complainant’s wife] Pension €905 = €4346.”

The Complainant’s net monthly income is also set out, along with the net disposable income allowing for supporting his son and grandchildren.

Against a backdrop of telling the Complainant that no further restructuring would be accommodated, and notwithstanding previous assessments of the Complainant’s latest forbearance request, in November 2017 the Bank decided nevertheless to issue a further offer of restructure to the Complainant. This was not however, the particular forbearance which the Complainant had requested and this offer was not taken up by the Complainant.

On the basis of the evidence made available to me, it is my opinion that the Bank acted in a very sympathetic and fair manner in the way in which it dealt with the Complainant’s many loan restructure and forbearance requests. On numerous occasions the original terms of the credit agreement dated the 5 February 2016 were varied in ease of the Complainant and to accommodate his changing circumstances. At times the Bank made exceptions for the Complainant, again illustrating its willingness to assist. These exceptions are outlined in the Bank’s letter to this Office dated the 13 March 2018, as follows-

“It should be noted that the Bank have made a number of exceptions for the Complainant in terms of:

- Restructuring facilities beyond the normal length of a personal loan*
- Sanctioned interest only on more than one occasion*
- Takeover of non-[Bank] facilities*
- Reduced rate by c. 5% because it was deemed a hardship case*
- All of the above are despite the fact that we deem that the client has adequate repayment capacity to make capital and interest repayments based on his level of income which he provided.”*

While I note the Complainant’s disgruntlement with aspects of the Bank’s behaviour, including the length of time taken to inform him of the outcome of his forbearance requests, the issuing to him of arrears letters, and being advised in what he believes was a threatening

/Cont’d...

manner, that his continued arrears might result in a negative report to credit reference agencies, I have not been sufficiently persuaded of customer service failings on the part of the Bank.

Regarding the alleged delay by the Bank in notifying the Complainant of its decision on the 12-month payment stay request, the Bank has indicated that the Complainant was notified of its position verbally, in April 2017. Even if it is the case that the written decline decision was not communicated to the Complainant until August, some months after his request, given the previous indications by the Bank that no further restructure requests would be entertained on his loan account, I don't believe any such delay is reproachable.

In relation to the Complainant's dissatisfaction at being issued with arrears notifications, when a customer falls into arrears it is incumbent upon the lender to inform the customer of the potential consequences of said arrears.

The purpose of such notifications is not to intimate or threaten, but rather to urge the borrower to bring his/her account into order to avoid the repercussions of default. Section 8 of the Consumer Protection Code 2015 mandates regulated entities to communicate with borrowers who fall into arrears. It is noted, furthermore, that the arrears letters that issued to the Complainant, copies of which have been provided in evidence, specifically refer to the Consumer Protection Code.

Regarding being told that the continued failure to service his loan account might result in a negative report to credit reference agencies, the Complainant was already on notice of this issue via the terms of the credit agreement-

"we may report missed or late repayment to the relevant credit rating agencies. This may affect your credit rating and make it more difficult for you to get credit in the future."

I don't accept that conveying this information to the Complainant verbally was intended to cause distress or anguish, although it understandable that the Complainant was upset, as he has been under immense financial pressure over the last few years.

One final matter I would like to address is the Complainant's dissatisfaction over the Bank's refusal to offer him the opportunity to take up the equity release product he says he saw advertised. The Bank confirmed that an equity release product of the kind the Complainant saw advertised did not then currently form part of its suite of products and it pointed out that the internet article in question refers to "*new proposals*" by the Bank. I am satisfied, therefore, that the Bank was simply not in a position to consider the Complainant's request to take out an equity release loan.

In light of all of the foregoing, whilst I empathise with the Complainant regarding the situation he has found himself in, I take the view on the basis of the evidence available that it would not be reasonable to substantiate this complaint.

/Cont'd...

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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

3 January 2019

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,**
- (ii) a provider shall not be identified by name or address,**

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.