



<u>Decision Ref:</u>	2019-0035
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Refusal to transfer mortgage into sole or joint names
<u>Outcome:</u>	Rejected

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

Background

The complaint relates to the Bank's refusal to remove the Complainant's former spouse as an account holder in respect of a mortgage account.

The Complainant's Case

In 2008, the Complainant and his wife at the time opened a joint tracker mortgage account with the Bank in respect of a residential dwelling. Thereafter, unfortunately the marriage broke down such that the parties were legally separated in January 2014 and divorced in December 2016.

As part of the divorce agreement, the Complainant bought out his former wife's interest in the dwelling. Additionally, as part of the divorce agreement, the Complainant was allowed a period of 12 months within which "*to use his best endeavours*" to procure the removal of his wife's name from the mortgage. Failing his procurement of the removal of her name within the specified period, the divorce agreement provided for the Complainant's former wife's entitlement to seek a court directed sale of the dwelling.

The Complainant currently lives in the dwelling with his two children. He has been solely responsible for the mortgage repayments throughout the lifetime of the mortgage and the mortgage has never been in arrears. Despite his repeated requests, the Bank has refused to

accede to the request to remove the Complainant's former wife's name from the account and to transfer the account into the Complainant's sole name.

The complaint is that the Bank has unreasonably declined to remove the Complainant's former wife's name from the mortgage account. The Complainant seeks that the Bank be directed to remove the Complainant's former wife's name from the mortgage account.

The Provider's Case

The Bank's Final Response Letter of 3 March 2017 reaffirmed the Bank's previously stated position that it did "*not wish to remove [the Complainant's former wife] from her liability to the loan*".

The Bank has also pointed out that "*it is not possible to just remove a name from a home loan*". What in fact is required is "*the closing of the joint home loan and the opening of a new home loan in the name of the remaining party*".

The Bank has indicated that if a new loan were to be sanctioned in the Complainant's sole name, it would be subject to less favourable terms than those currently in place under the tracker mortgage.

Preliminary 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 Preliminary 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 do 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 are sufficient to enable a Preliminary Decision to be made in this complaint without the necessity for holding an Oral Hearing.

Analysis

The Complainant in this case finds himself in a most unfortunate position. Owing to the Bank's failure to agree to the removal of the Complainant's former wife's name from the mortgage account, he faces the prospect of a court ordered sale of his property. Alternatively, if he were to secure a new mortgage, he would lose the very favourable loan terms of which he currently has the benefit.

/Cont'd...

On the other hand, the Bank argues that both individuals have agreed to be bound by the terms and conditions of the loan and it maintains that it is entitled to make a commercial decision to retain the security provided by preserving the accountability of both individuals for the loan. It is undeniably the case that, in the event of a default in payment, and notwithstanding her interest having been bought out, the Bank would have recourse, pursuant to the signed loan agreement which remains in force, to both the Complainant and his former wife (albeit that the Complainant would then be compelled pursuant to the divorce agreement to indemnify his former wife in respect of any liability that might arise for her).

I fully understand the very difficult circumstances in which the Complainant finds himself. However, the decision by the Bank is a commercial one over which the Bank enjoys a discretion and I am not satisfied that there are any grounds for me to interfere with this commercial discretion. I have not identified any terms or conditions of the Complainant's relationship with the Bank in support of his claim to be entitled to the outcome sought.

I do not see how the action complained of by the Complainant could amount to evidence of wrongdoing by the Bank or conduct within the terms of Section 60(2) of the Financial Services and Pensions Ombudsman Act 2017. The Bank is a commercial entity and it is entitled to make commercial decisions in respect of the security it requires in respect of borrowing or the terms on which it will advance a new loan. I have not been provided with evidence of unlawful, unreasonable, unjust, oppressive or improperly discriminatory conduct on the part of the Bank.

In light of the foregoing, and in the absence of evidence of wrongdoing by the Bank or conduct within the terms of Section 60(2) of the Financial Services and Pensions Ombudsman Act 2017 that could ground a finding in favour of the Complainant, I do not propose to uphold the complaint.

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 Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict.

/Cont'd...

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 on 28 January 2019, 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.

Analysis

The Complainant in this case finds himself in a most unfortunate position. Owing to the Bank's failure to agree to the removal of the Complainant's former wife's name from the mortgage account, he faces the prospect of a court ordered sale of his property. Alternatively, if he were to secure a new mortgage, he would lose the very favourable loan terms of which he currently has the benefit.

On the other hand, the Bank argues that both individuals have agreed to be bound by the terms and conditions of the loan and it maintains that it is entitled to make a commercial decision to retain the security provided by preserving the accountability of both individuals for the loan. It is undeniably the case that, in the event of a default in payment, and notwithstanding her interest having been bought out, the Bank would have recourse, pursuant to the signed loan agreement which remains in force, to both the Complainant and his former wife (albeit that the Complainant would then be compelled pursuant to the divorce agreement to indemnify his former wife in respect of any liability that might arise for her).

I fully understand the very difficult circumstances in which the Complainant finds himself. However, the decision by the Bank is a commercial one over which the Bank enjoys a discretion and I am not satisfied that there are any grounds for me to interfere with this commercial discretion. I have not identified any terms or conditions of the Complainant's relationship with the Bank in support of his claim to be entitled to the outcome sought.

I do not see how the action complained of by the Complainant could amount to evidence of wrongdoing by the Bank or conduct within the terms of Section 60(2) of the Financial Services and Pensions Ombudsman Act 2017. The Bank is a commercial entity and it is entitled to make commercial decisions in respect of the security it requires in respect of borrowing or the terms on which it will advance a new loan. I have not been provided with evidence of unlawful, unreasonable, unjust, oppressive or improperly discriminatory conduct on the part of the Bank.

/Cont'd...

In light of the foregoing, and in the absence of evidence of wrongdoing by the Bank or conduct within the terms of Section 60(2) of the Financial Services and Pensions Ombudsman Act 2017 that could ground a finding in favour of the Complainant, I do not uphold the complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

25 February 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.