



<u>Decision Ref:</u>	2019-0049
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Variable Mortgage
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency
<u>Outcome:</u>	Rejected

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

Background

This complaint concerns the administration of the Complainant's mortgage account.

The Complainant's Case

The Complainant held a mortgage account with the Provider.

The Complainant states that he declared himself bankrupt in the United Kingdom in 2012 and he states that under European law his credit rating / history has to have been "wiped" as of the date of the bankruptcy.

In 2015, the Provider submitted information to the Irish Credit Bureau (ICB) to the effect that the mortgage security (a house) had been repossessed under the mortgage. This record will therefore remain on his credit history until 2020.

The Complainant states that as a matter of law, the Provider was not entitled to furnish information to the ICB in relation to the mortgage loan he held with it after 2012, in accordance with the terms of his bankruptcy.

The Complainant states that a third party company, which has apparently bought the debt from the Provider, has since contacted him about the keys of the property.

The Complainant also contends that the Provider failed to respond to his complaint in a timely or efficient manner.

He would like his credit record to be amended, and an explanation for the conduct complained of, which he states has caused him significant distress.

The Provider's Case

The Provider states that it is obliged to report true and accurate information to the ICB.

It states that it sold his debt to a third party in accordance with its entitlements under the loan agreement. In relation to the delays in responding to his complaint however, it acknowledged and apologised for this failure, and it originally offered the Complainant €150 as a goodwill gesture.

When responding to this investigation, in August 2018, the Provider noted that if it had proceeded as previously notified to the Complainant, it would have repossessed the property in December 2012, and reported an "R" to the ICB in January 2013, with no further indicators notified thereafter. It did not do so however, and therefore the Provider proposed that

1. The Complainant's ICB record be amended to reflect a repossession having occurred in December 2012, such that it would instruct the ICB to remove the records postdating January 2013. (As ICB records remain in place for 5 years, the Complainant's ICB profile would have remained in place until January 2018, thus, this proposal would essentially clear the Complainant's ICB record in relation to this debt, from 2018 onwards.)
2. It make a payment to the Complainant of €2,500 by way of compensation for both the November 2012 misinformation and the delay in responding to the July 2017 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.

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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 5 February 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, relating to the substantive issues for adjudication, the final determination of this office is set out below.

The Complainant took out a mortgage with the Provider in **November 2006** for €235,000 to be repaid over 25 years. The mortgage loan was secured over property in Co. Meath. The loan terms were restructured in **2008**, whereby the term of the loan was extended to 35 years.

The Complainant fell into difficulty with repayments in or around **2011** and a moratorium on payments was agreed. The Provider was then unable to contact the Complainant and the moratorium on repayments ended in or around **July 2012**. The Provider continued to be unable to contact the Complainant during **August** and **September 2012**.

In **November 2012** the Complainant was adjudicated bankrupt by a court in the UK. The Complainant returned the keys of the property to the Provider around this time, in a purported voluntary surrender of the property.

The Provider continued to be unable to contact the Complainant in **2013**. In March 2013 the Provider notified the official receiver in bankruptcy that because there existed negative equity in the property, that it would be staking a claim for €65,000 which was the shortfall in the value of the property held as security against the amount of the mortgage loan outstanding at that time.

After proceeding through its recovery process, the Provider was contacted by the Complainant who stated that he was made a bankrupt the previous year, so his mortgage arrears should be cleared. He believed this to be a matter of European law. He was advised by the Provider that this was not the case and the Provider continued with its recovery process.

In **November 2014** the Provider confirmed its intention to take possession of the property, and decided not to pursue its legal action for the outstanding debt.

No sale of the property was completed during 2015 and 2016, and ultimately the loan was sold by the Provider to a third party in **December 2016**. It appears that the property has since been put up for sale.

Analysis

There is no evidence before me to suggest that the sale of the Complainant's loan to the third party was in any way wrongful or occurred any way other than in accordance with the mortgage agreement terms and conditions.

The Provider has acknowledged its failure to respond to the Complainant's queries during 2017, within a reasonable amount of time.

The Complainant appears to be under the impression that his mortgage loan with the Provider was covered by the UK bankruptcy process, and in those circumstances he believes that he was entitled to have the mortgage debt essentially wiped out and to have no adverse credit information relating to that borrowing furnished to the ICB, post the date of his bankruptcy.

The Provider has furnished information from the UK's bankruptcy service which explains why this is not a correct understanding of the UK bankruptcy process, and its effect. The loan the subject matter of this complaint was a secured loan. The residual balance after sale, may well be unrecoverable from the Complainant, however the Provider (and now the third party) is entitled to rely on the mortgage terms in relation to dealing with the security.

With that in mind, and considering that the Provider has an obligation to furnish accurate information to the ICB, I am not satisfied that the Complainant's complaint in relation to this aspect of the complaint is well founded.

However, during the course of this Complainant the Provider has reviewed the communications and acknowledged that in November 2012 it provided incorrect information to the Complainant – specifically it advised by letter dated 28 November 2012 that the property would be repossessed on 12 December 2012. The property was not in fact repossessed until 2 years later, in December 2014.

While the Provider states that it made strenuous attempts to contact the Complainant by telephone after this incorrect information was given to him, it did not write to him to inform him of this error.

The Provider clearly failed in its duty to provide correct information to the Complainant in this instance. I do however have to bear in mind that at this stage the Complainant had essentially become uncontactable and was not engaging with the Provider, and he had been adjudicated bankrupt nearly two weeks before the offending letter was issued.

The Provider has proposed the following resolution for this error:

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1. The Complainant's ICB record to be amended to reflect a repossession having occurred in December 2012. This would involve the Provider instructing the ICB to remove records of the repossession which arose on this account, from the ICB from January 2018 onwards.
2. Payment to the Complainant of €2,500 by way of compensation for both the November 2012 misinformation and the delay in responding to the July 2017 complaint.

I am satisfied that this constitutes a reasonable proposal in the circumstances - the Complainant will thereby receive a more appropriate ICB record, as well as the sum of €2,500.

Whilst the Complainant's understanding of the effect of his 2012 UK bankruptcy, was not correct, because the Provider's debt at the relevant time was a secured one, nevertheless, I believe the approach of the Provider within the suggested proposal, is a reasonable one.

Accordingly, on the basis that this proposal can be implemented expeditiously, I do not consider it necessary to uphold the Complainant's complaint. The Provider's amendment of any profile indicators registered with the ICB should also of course include any equivalent correction to indicators (if any) registered with the Central Bank's Central Credit Register, so that the Complainant can rest assured that any record of repossession of the property will date from 2012, and be expunged as appropriate.

Since the Preliminary Decision was issued by this office on 5 February 2019, it has been confirmed by the Complainant that he wishes to accept the Provider's proposal. In those circumstances, the Provider should now proceed to implement the terms of the proposal, in order to bring the matter to finality.

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

27 February 2019

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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.