



<u>Decision Ref:</u>	2019-0089
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling (non- Mortgage Arrears Resolution Process)
<u>Outcome:</u>	Partially upheld

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

Background

This complaint concerns a number of mortgage loan accounts the Complainant holds with the Bank and the Bank's decision to appoint a Receiver over the property forming the security for those facilities.

The Complainant has three Non-Principal Private Residence mortgage loans with the Bank, all of which are secured against a property, which the Complainant describes as his "*holiday home*". The Complainant explains that in **2013**, against a backdrop of dwindling financial circumstances, he ceased all payments to the accounts in question. He entered into negotiations to sell the security property, with the Bank's authorisation. As the sale date approached, and due to him having an "*emotional family attachment*" to the house, he decided to stop the sale of the house and to clear all outstanding arrears on his accounts. The Complainant explains that he received a cash injection which enabled him to take this course.

Following payment by the Complainant of €20,000 towards his account on the **19 February 2015** and a subsequent payment of €28,843.65 in **April 2015**, the Complainant issued instructions to the Bank to re-commence deducting full capital and interest repayments from his accounts. Indeed, this had been a pre-condition of the Bank's agreement to refrain from pursuing the sale of the asset.

It seems that the paying account from which the Direct Debits had been paid prior to 2013 had been closed in the interim and therefore the new instruction by the Complainant to re-commence mortgage repayments in April 2015 could not be actioned. Consequently, the Complainant's Non-Principal Private Residence mortgage loan accounts began to accumulate arrears again. The Complainant was unaware of this fact until he received, what he describes as an "*unsolicited*" communication from the Bank's Arrears Support Unit in late **May 2015**.

The Complainant insists that the Bank is responsible for the error regarding the closed account and he argues that the Bank attempted to deduct payments from the wrong account. The Complainant is of the view that the Bank therefore caused arrears to accumulate on his accounts. The Complainant sought an apology from the Bank; however, no apology was forthcoming.

The Complainant submits that he continued to wait for an apology from the Bank. Subsequently, he received a communication from a Receiver in early February 2016 outlining that his holiday home had been placed into receivership. The Complainant is adamant that he received no prior notification from the Bank indicating that a Receiver was going to be appointed. The Complainant explains that upon being informed that a Receiver had been appointed, he made contact with the Receiver and was told, he claims, that the receivership would be discontinued.

The Complainant, who at this point was of the opinion that all was in order, attended at his holiday home on **22 March 2016**, in order to commence a renovation project. Upon arrival he states that he was shocked to discover that his key would not unlock the door, the newly installed side gate had been knocked to the ground, the back sliding door had been left unlocked and his letter box had been screwed closed. The Complainant submits that he believed his holiday home had been broken into and so he contacted the Gardaí.

It subsequently transpired that the Complainant's holiday home, the security for his mortgage accounts, was still in receivership; hence the access to his home. The Complainant states that he was left with no option but to clear all his arrears immediately, which he did.

The Complainant proceeded to make a formal complaint to the Bank about the manner in which he had been treated and outlining his disgust at the Bank's decision to appoint a Receiver over his property.

The Complainant's Case

The Complainant is extremely dissatisfied at the manner in which he has been treated. He states that the Bank is responsible for numerous errors and points out that the procedures it employs are severely flawed. The Complainant emphasises that, given his repayment history, the likelihood of default on his loans was low. He takes issue, therefore, with the Bank's decision to appoint a Receiver in all the circumstances.

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On his Complaint Form dated the **12 June 2016**, when asked how he would like the Financial Service Provider to put things right the Complainant stated as follows-

- “(1) The Bank and Receiver are bullying me into paying receiver fees-this is wrong and no way should I have to as I was in negotiation the entire time with my Bank Manager- fees unknown at the moment.*
- (2) Damages to my house by forced entry of Receiver despite the fact that I was informed it wouldn't go ahead €1.3k.*
- (3) Loss of earnings due to having to deal with this €5k.*
- (4) Stress and sleepless nights- how to estimate that???*
- (5) Correct and restore my credit rating.”*

The Provider's Case

The Bank insists that it acted correctly and in accordance with the Complainant's Mortgage Deed when it appointed a Receiver over the mortgage security property.

The Bank explains that the Complainant stopped all payments to his mortgage accounts, with no payments received from February 2013 until February 2015, at which point he withdrew from the agreed voluntary sale process and undertook to clear his arrears. The Bank points out that it was under no obligation to accept the Complainant's proposal to return to capital and interest repayments; however, it agreed to the Complainant's proposal on certain specified conditions.

The Bank submits that the Complainant gave instructions to the Bank to reinstate the Direct Debit in order to recommence mortgage repayments. A letter then issued to the Complainant on the **5 May 2015** regarding the three mortgage accounts in question, requesting him to confirm the account details outlined. The Bank states that it received no response to, or account detail clarification, on foot of this correspondence. The Bank was unable to implement the Direct Debit repayment instruction because the nominated account had been closed.

The Bank wrote to the Complainant confirming missed payments and arrears, which communications were not responded to. The Bank's Arrears Support Unit made contact with the Complainant on the **29 May 2015** in order to discuss the arrears on the accounts; however, the Complainant refused to engage with the caller and would not answer any security questions.

The Bank states that its Arrears Support Unit continued to try to make contact with the Complainant, but to no avail. The Bank points out that the Complainant used abusive language during the course of calls with the Bank's agents.

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Contrary to what the Complainant contends, the Bank states that a clear and unequivocal warning that a Receiver might be appointed issued to the Complainant by way of letter dated the **21 September 2015**. The Bank states that this letter was sent despite the fact that the Bank is not obligated to furnish notice of its intention to appoint a Receiver. The Bank explains that a Receiver was duly appointed on the **4 February 2016**. While the Bank notes the Complainant's reference to a conversation allegedly held with the Receiver sometime in February 2016, the Bank is unable to comment on third party conversations; furthermore, there was no agreement reached with the Complainant in February 2016 to discharge the Receiver, upon clearance of arrears.

The Bank asserts that the Complainant was told that in order to discharge the Receiver, arrears would have to be paid, in addition to 6 months up front capital and interest repayments.

The Bank's position is that the Complainant did not properly engage with the Bank or put a satisfactory arrangement in place to deal with the accumulated arrears, nor did he respond to the arrears or enforcement correspondence that issued.

The Bank states that in **December 2016** it gave instructions to discharge the Receiver further to the repayment record established by the Complainant in the intervening period. The Bank is of the view, however, that the Complainant has not provided sufficient justification for the waiving of the legitimate costs and expenses incurred as a consequence of the appointment of a Receiver. The Bank advised in August 2017, that it was willing to offer the Complainant a goodwill gesture of €1,000 towards the outstanding Receiver fees in full and final settlement of his complaint. This offer was made in recognition of the overall circumstances of the case and to mark the issues experienced surrounding the Direct Debit from a closed account.

The complaint regarding the damage to the house by the Receiver is denied by the Bank, which has advised that matters relating to the actions of the Receiver should be raised directly with the Receiver. The Bank points out that the Receiver was validly appointed to take control of the asset secured by the mortgages and the Bank was entitled to do so.

The Bank confirms that it is not in a position to amend the Complainant's credit rating. The Irish Credit Bureau was updated monthly to reflect payments made/unpaid to the accounts.

The Complaint for Adjudication

The complaint is that the Bank acted wrongfully and/or unfairly by appointing a Receiver over the property forming security for the Complainant's Non-Principal Private Residence mortgage loans.

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. 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 12 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.

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

The Complainant is extremely aggrieved at the manner in which he has been treated by the Bank concerning the operation of his mortgage loans. The crux of his complaint is that the Bank should not have resorted to the appointment of a Receiver over his mortgage property in circumstances where only a few months earlier he had repaid an amount of approximately €48,000 towards his mortgage accounts to address outstanding arrears, and given that the fresh accumulation of arrears commencing in April/May 2015 was attributable to an error which, he insists, was perpetrated by the Bank.

The factual background leading up to the complaint has been set out in brief above and in significant detail by both parties in their respective submissions. I have considered the timeline of events outlined by both parties and the substantial documentary evidence supporting the chronology of events furnished for my perusal.

The Bank has confirmed that the mortgage accounts in question, i.e. those detailed by the Complainant on his Complaint Form to the Financial Services Ombudsman, are Non-Principal Private Residence mortgage loans. The mortgage loans are secured against a property, which is not the Complainant's primary private residence. Copy mortgage agreements have been supplied in evidence.

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An initial loan in the amount of £115,000 issued to the Complainant on foot of a Mortgage Loan Offer Letter dated the **15 October 1998**. This mortgage contract stipulated that the property would comprise the security for the loan. It seems that the mortgage account underlying this mortgage agreement was subsequently split into two separate accounts. A document dated the **24 August 1999** furnished in evidence bears this out. Following on from this, by Mortgage Loan Offer Letter dated the 17 October 2007 an amount of €430,000 was advanced to the Complainant. This mortgage contract outlines that the Complainant's holiday home is the "*Property to be Mortgaged*".

A Mortgage and Charge dated the **22 October 2008** has also been furnished in evidence, which sets out the mortgage particulars and addresses the powers of the Mortgagee. I will return to this document below.

Although the Bank has supplied a detailed account as to what transpired in 2013, when the Complainant stopped repaying his mortgage instalments, and leading up to 2015, the salient details for the purposes of this investigation are simply that in 2013 the Complainant ceased performing his contractual obligations for a period of almost two years, following which, an agreement was reached between the parties whereby all arrears would be cleared and the accounts would revert to full capital and interest repayments. Indeed, by late April 2015 all accounts were brought back into order and as per the agreement with the Bank, and the Complainant issued an instruction to recommence deducting monthly mortgage instalments, in accordance with the terms of his mortgage contracts.

It is my opinion that it is the events which occurred post-April 2015, which are central to the current complaint and therefore it is this particular time that must be examined.

All parties are in agreement to the effect that the Complainant instructed the recommencement of his monthly mortgage repayments. While I have not been supplied with the relevant written instruction or Direct Debit mandate relating to this instruction, the Complainant's Bank Manager, who was liaising with the Complainant throughout this time, has indicated that he issued the instruction to recommence full capital and interest repayments. In a statement by the Complainant's Bank Manager attached to the Bank's submission to this Office dated the 21 November 2017, he acknowledges that "*I had sent an MMail requesting repayments to recommence*". Unfortunately, it seems that the account from which the payments were previously paid, had since closed, a detail the Bank Manager was unaware of- "*However, the account that the repayments had previously been coming from had closed, unknown to me and as a result the mortgage fell into arrears again*".

It seems that by late April 2015 the Complainant fully believed that his accounts had been restored to an arrears-free state, and that the necessary repayment authority was in place. Against this backdrop of (what he thought were) compliant accounts, the Complainant was extremely perturbed to receive a telephone call from a representative of the Bank's Arrears Support Unit in late May 2015. While I understand that the Complainant had historical dealings with the particular representative who made the call, and that he was upset at being asked to discuss matters with this particular individual, the fact of the matter is that the Complainant simply did not entertain the conversation and would not even answer preliminary security questions. This telephone conversation of the **29 May 2015** has been

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supplied in evidence. In my opinion, the Complainant was aggressive from the outset and totally unco-operative. The Bank's representative, however, was polite and cordial and repeatedly encouraged the Complainant to engage. Given the lack of co-operation by the Complainant, nothing meaningful was discussed during the call.

The Complainant argues that this call was unsolicited and should not have been made. I cannot accept this. The call was made in ease of the Complainant and in order to discuss the current arrears status of his accounts. As a result of the closure of the paying account which the mortgage account payments previously came from, by May 2015 the Complainant's mortgage accounts had, once again, entered into arrears. I fully accept that the Complainant did not provide incorrect account details to the Bank, and so he was not directly responsible for the incorrect paying account details being used in the Direct Debit request; however, an oversight had occurred which resulted in payments being missed on the Complainant's mortgage loan accounts. By contacting the Complainant in May 2015 the Bank was merely trying to address this issue to avoid the accumulation of further arrears. Indeed, regulatory codes promote communication with customers in such circumstances.

It is also noteworthy that letters issued to the Complainant in respect of all three accounts on the **5 May 2015**, requesting him to confirm the Direct Debit account details set out. These letters have been furnished in evidence. These letters stated as follows-

"We have recently applied or amended your mortgage paying account details on our system. This letter is to confirm your information, or the addition of further information to your existing SEPA direct debit mandate."

The letters then went on to recite the account details held on record for payment of the mortgage instalments and to request that the Complainant contact the Bank's Customer Relationship Unit *"if any of the above details are incorrect, or if you have a query regarding this letter"*.

The Bank has confirmed that the Complainant did not respond to these letters to rectify the account details relating to the paying account.

The Bank has further confirmed that arrears letters also issued to the Complainant following the missed payments to his accounts. Copy letters have been supplied in evidence. Having considered the level of communication with the Complainant regarding the mounting arrears in his account, I am satisfied that he was on ample notice of the status of his accounts.

The Complainant argues that he was awaiting an apology from the Bank before proceeding to regularise his accounts. While I sympathise with the Complainant over the fact that an error in the payment instruction had arisen, which he did not directly make, which instigated the accumulation of arrears, he was provided with ample opportunity to address the issue in the very short term, but he chose not to, instead holding out for an apology from the Bank. Even though the events leading to the 2016 arrears were not entirely of the Complainant's doing, he was presented with an opportunity to rectify the Direct Debit account details in May 2015, which he did not avail of, and subsequently, he was afforded

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more opportunities to right the situation every time he received an arrears notification letter.

To take an example, in the letter that issued to the Complainant on the **18 June 2015**, he was informed that he must *“contact [the Bank] to discuss the mortgage repayment you missed”*. He was then advised that he could either make a credit transfer to pay his mortgage instalment, or use his Debit Card. The letter also warned the Complainant of the possibility of legal action being taken, as follows-

“If we take legal action to repossess your property, we estimate that the costs will be more than €3,000 (and could be far more)...If we repossess your property and sell it for less than the amount you owe us under your mortgage, you will still be liable to pay the remaining amount.”

It must be borne in mind that as the borrower, it was/is the Complainant's responsibility to meet his mortgage repayments. For example, General Condition 4(a) of the Mortgage Loan Offer Letter dated the 17 October 2007, which the Complainant accepted on the same date, stipulates that-

“Unless otherwise stated herein or agreed by the Lender in writing, the repayment of the Loan shall be by monthly instalments in arrears by direct debit and the Borrower must effect and maintain a suitable direct debit mandate with the Borrower's bank or other financial institution.”

The Bank has confirmed that it was the continuing escalation of arrears which led to its ultimate decision to appoint a Receiver over the security property. By **August 2015** there was still no attempt by the Complainant to commence repaying his mortgage instalments. It seems that even the Complainant's Bank Manager, who by all accounts has a very close relationship with the Complainant, advised the Complainant to service his loan. In the Bank Manager's statement annexed to the Bank's submission of the 21 November 2017, he stated that *“as a result [the Complainant] decided, against my advice, to let arrears build until he received an apology from the bank”*.

The Bank has confirmed that on the **31 August 2015** a letter of demand issued to the Complainant. Following this correspondence, a *“receiver warning letter”* issued to the Complainant on the **21 September 2015** outlining that a Receiver would be appointed. I note the Complainant's comments to the effect that he did not receive this letter of the 21 September 2015. However, the Bank has furnished a Certificate of Posting confirming the letter was posted. Even if I accept the Complainant's position that he did not receive this letter, and I note his argument about a previous letter he did not receive from the Bank, the Complainant has not denied receiving the earlier demand letter of the 31 August 2015. This letter informed the Complainant about the potential appointment of a Receiver:-

“Warning: If you do not pay us what you owe us under the above mortgage loan account(s) within 10 business days, including any interest that arises after the date of this letter, we can start legal proceedings against you to enforce our rights including, but not limited to, proceedings for repossession of the mortgage property,

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appointment of a receiver over the property, and any other right of remedy we might have in respect of the debt outstanding.

Under the terms of your Mortgage Deed, you are responsible for the costs of any legal action we take to repossess the mortgaged property. These costs could be substantial. We include an estimate of costs in the 'Important Information' appendix to this letter. We would stress the importance of clearing the arrears in your mortgage loan account(s) to avoid the need for court proceedings...'

Furthermore, the Mortgage Deed the Complainant signed pertaining to the accounts in question also outlines the possibility of a Receiver being appointed in the event of default. I also note that during a telephone conversation between the Complainant and the Bank on the 6 February 2015, around the time of the more historic interactions between the parties, and the negotiations to stop the sale of the property conditional upon existing arrears being paid, the Complainant was urged to clear his arrears *"to avoid the appointment of a Receiver"*.

Given all of the foregoing, I am satisfied that the Complainant was fully aware and on notice of the fact that a Receiver could be appointed over the mortgage security property.

I am also satisfied that the Bank was legally and contractually entitled to appoint a Receiver. The Mortgage Deed is pertinent here and particularly the following clauses-

"6.01 At any time after the execution of this Mortgage the Mortgagee may without further consent from or notice to the Mortgagor or any other person enter into possession of the Mortgaged Property or any part thereof or into receipt of the rents and profits of the Mortgaged Property or any part thereof.

6.02 The Mortgagee shall have the statutory powers conferred on mortgagees by the Conveyancing Acts as varied and extended by this Mortgage including the power to appoint a receiver and in particular subject to the following variations and extensions that is to say:

(a) the secured moneys shall be deemed to have become due within the meaning and for all purposes of the Conveyancing Acts on the execution of this Mortgage;

(b) the power of sale shall be exercisable by the Mortgagee or on its behalf by a receiver or any other party appointed by it without the restrictions on its exercise imposed by section 20 of the Act of 1881..."

7.01 The Mortgagee shall not exercise any of the powers provided for in clause 6 hereof or conferred by statute until any of the following events occur:

(a) default is made in payment of any monthly or other periodic payment or in payment of any other of the secured moneys hereunder..."

While I note the reference to excluding the applicability of the provisions of *Section 20* of the *Conveyancing Act 1881*, which regulates the statutory power of sale, I am satisfied that in the present case, given that a Receiver was appointed when the Complainant's accounts were in excess of three months in arrears and in circumstances where a letter of demand issued to the Complainant in August 2016, the criteria to avoid the restrictions of *Section 20* of the 1881 Act, had in fact been met.

Regarding the Complainant's contention that upon talking to the Receiver directly on the 9 February 2016 he was informed that the receivership would not be continued with, there is insufficient evidence before me to substantiate this suggestion. An audio file of the telephone call reflecting this conversation has not been furnished in evidence, and the Receiver is not a party to this complaint. What is abundantly clear however, is that, notwithstanding what may or may not have been discussed with the Complainant on the 9 February 2016, the Bank never instructed a discharge of the Receiver it appointed in February 2016.

The Receiver the Bank appointed over the Complainant's property has since been discharged. In its letter to this Office dated the 21 August 2017 the Bank explained that in **December 2016** it "*provided instructions to discharge the Receiver further to the repayment record established in the intervening period*". The Complainant indicated that in the wake of his discovery that a Receiver had entered his house, he was left with no option but to settle his arrears. The Bank has also confirmed that arrears in the amount of €26,797.05 were cleared by the Complainant in or around the **29 March 2016**.

The Complainant argues that he should not have to pay the Receiver's fees in all the circumstances of the case. He points to the fact that the Bank was at all times aware that he was at low risk of defaulting and that the entire "*debacle*" arose as a result of the Bank attempting to take money from a closed account.

The appointment of a Receiver is arguably a somewhat draconian measure that should only be invoked as a 'last resort'. In the Complainant's favour, the settling of the more historic arrears in the amount of circa €48,000 a few months beforehand, demonstrated his commitment to servicing his mortgage. On the other hand however, this particular sum had been paid following a period of almost two years of non-payment. Of huge significance also is the continuous lack of meaningful engagement by the Complainant in the aftermath of the paying account oversight, which led to the more recent arrears being initially triggered, and his steadfast refusal to make his mortgage instalments until an apology was proffered. Whilst the Complainant suggests that the Bank must have been aware that he was "*at low risk of defaulting*" the factual position was that he was in default, and he refused to engage with the Bank with a view to resolving the default position.

Taking everything into consideration, and given the contents of the Mortgage Deed, which outlines that the Borrower is responsible for remunerating the Receiver¹, I am unable to

¹ Clause 6.02(d) states as follows-

"any receiver appointed by the Mortgagee under the power to appoint a receiver shall be deemed to be an agent of the Mortgagor and the Mortgagor shall be solely responsible for the acts, omissions

accede to the Complainant's request to direct that the Receiver fees be waived. Whatever the amount of such fees it is the Complainant's contractual responsibility to discharge such costs as have fallen due.

However, I note that the Complainant's repayment record improved significantly after these events. Considering this, and taking into account the issues surrounding the Direct Debit and paying account which the Bank Manager unfortunately failed to note was closed in April 2016, and given that in April 2016 it was the Complainant's express intention to recommence full repayments to his mortgage accounts in order to be mortgage compliant, I am of the view that this complaint should be partially upheld and that the Bank should compensate the Complainant in that regard. Although the Complainant requested that the Receiver fees be waived, I consider it appropriate instead in the circumstances to direct the Bank to make a compensatory payment to the Complainant, which he can then utilise towards the discharge of the Receiver's fees, whether or not such fees have already been discharged. In my opinion the Bank should make a compensatory payment to the Complainant in the amount of €1,750, a figure which is larger than that suggested by the Bank in its submission to this Office dated the 21 August 2017. This figure is directed to take account of the Bank's shortcomings which give rise to the complaint being partially upheld, rather than by reference to the total amount of receivership fees, for which the Complainant is responsible.

Regarding the Complainant's request to be compensated for damage done to his house by the Receiver, this is not something it will be appropriate for the FSPO to adjudicate on, given that the Receiver is not a party to this complaint, and in circumstances where the acts complained of appear to have a criminal dimension. I note that the Gardaí are involved and the Complainant has referred to his "case with the Gardaí for a breaking and entering". Should the Complainant wish to pursue this aspect of his complaint, there are other more appropriate forums within which it can be properly ventilated. The Complainant also wishes to have his credit rating amended. This is not something I consider it appropriate to direct the Bank to do. The Bank has confirmed that the Complainant's credit profile with the Irish Credit Bureau (and presumably also with the Central Credit Register) was updated monthly to reflect repayments received or not made to his various accounts.

These updates reflected exactly what was occurring on the Complainant's accounts and therefore I do not believe his credit profile should be amended or rectified. The fact that arrears were no longer present on his accounts, following the payment by him of the various lump sums outlined in his submissions, will also have been reflected on the Complainant's profile.

and defaults of such receiver and for his remuneration and the Mortgagee shall not under any circumstances be answerable for any loss or misapplication of the rents and profits of the mortgaged property or any part thereof by reason of any default neglect or breach of trust of or by any such receiver for the time being and all moneys received by any such receiver after providing for the matters specified in paragraph (i) to (iii) of sub-section (8) of section 24 of the Act of 1881 and the remuneration of such receiver and the discharge of costs, charges and expenses of or incidental to the exercise of any powers of such receiver may and shall if the Mortgagee in its absolute discretion shall so direct be applied in or towards satisfaction of the secured moneys and in such order as the Mortgagee may from time to time conclusively determine."

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Finally, I note that in a submission to this Office dated the 5 February 2018 the Complainant outlined a grievance he has regarding another account with the Bank. This account was not referred to in the Complainant's original Complaint Form, did not form part of the Bank's 'final response' and did not form the basis for this investigation. In those circumstances, I do not consider it appropriate to make any finding on the new issue. I note also that the Bank did not respond to this newly articulated grievance. If the Complainant would like to pursue this matter further, he can raise that matter separately with the Bank, and take matters from there.

For the reasons outlined above, this complaint is partially upheld.

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) (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Bank to compensate the Complainant in the sum of €1,750, by paying that amount to an account of the Complainant's choosing, within 35 days of the Complainant's nomination of account details to the Bank.
- 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.

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

15 March 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.

