



<u>Decision Ref:</u>	2019-0120
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Selling mortgage to t/p provider
<u>Outcome:</u>	Rejected

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

Background

This complaint relates to a residential business mortgage loan the Complainant took out with the Provider in August 2006.

The Complainant's Case

The Complainant says that on 23 July 2015, the Provider wrote to him to inform him that his mortgage loan was in the process of being sold to a third party entity, and that he would be advised when the transfer would take place. The Complainant states that when he received a further letter from the Provider on 15 October 2015, it confirmed that the transfer of ownership of the mortgage loan had already taken place on 14 October 2015.

The Complainant submits that over a number of years during the course of the mortgage loan, the Provider made available to the Complainant a series of alternative repayment arrangements including interest only periods and capital payment holidays. The Complainant states that a low level of arrears accumulated on the mortgage loan account during the time leading up to the sale of the Complainant's mortgage loan to the third party entity. The Complainant asserts that the Provider made a number of errors in relation to the account which may have shown the account as a non-performing account and thereby included his account in the cohort of mortgage loans to be sold by Provider.

The complaint is that the Provider sold the Complainant's mortgage loan to the third party entity without affording the Complainant any opportunity to renegotiate the level of repayments on the loan or to secure alternative loan funding.

The Complainant also says that if arrears appeared on the account, which might have influenced the Provider's decision to sell the mortgage loan, these arrears were due to administrative errors on the part Provider and amounted to 0.125% of the value of the loan at the time of sale. The Complainant is seeking to be fully compensated for the financial loss incurred as a result of the Provider's actions.

The Provider states that it had full power of assignment in relation to the mortgage loan which formed part of a portfolio of loans sold by the Provider in accordance with the applicable terms and conditions. In particular, the Provider relies on two conditions of the mortgage loan which allowed it to transfer the mortgage at any time and without the consent of the mortgagor.

The Complainant indicates that he took out a loan was taken of €500,000 in July 2006 and a sum of €100,000 was paid off in 2009, leaving a balance of €387,699.77. Between September 2008 and June 2015, a number of alternative repayment arrangements were entered into and renewed on a yearly basis which involved interest-only or slightly above interest-only payments every month. He states that by December 2014, the arrears were listed at €814.17. On 23 July 2015, the Complainant was informed of the sale of his mortgage to a third party entity but with no mention of a timeline or date of sale. He was then informed on 15 October 2015 that the transfer had already taken place the previous day.

The Complainant states that as a result of this "*rash, unilateral decision*" his loan was transferred to the third party entity who subsequently refused to extend the alternative repayment arrangement and quickly followed up by placing his loan into receivership. He states that he is now penniless as a result. The Complainant submits that he was not afforded the opportunity to rearrange finance or to discuss and negotiate a new payment plan. He further states that he was not consulted in any way. He states that assumptions were made based on inaccurate and incomplete knowledge of the facts. He states that he would like to be financially compensated for the full financial loss that has been incurred as a result of the Provider's actions but that calculations were not possible at the present time as the property was then still in the hands of a receiver appointed by the third-party entity and a balancing statement had yet to be finalised.

By letter dated 28 March 2018, the Complainant indicated that before the Provider had notified him that it had contracted to sell the mortgage loan, he had informed it on 24 June 2015 that he intended to sell the property with a view to fully redeeming the loan. He argues that assumptions were made by the Provider based on inaccurate, incomplete and factually incorrect information. By way of example he states that he was given a glowing annual review on 30 June 2015 which states that he was "*cooperative*" and that the loan exposure was "*affordable and sustainable*". He argues that financial details contained in the sustainability analysis dated 20 July 2015 were wrong. He states that rental income therein was underestimated in the amount of €44,000. He questions why after such a good annual review, the Provider would agree to sell his loan within four weeks. He further questions

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why an alternative repayment arrangement was signed by him on 13 August 2015 if the loan had already been sold or was about to be sold.

The Complainant indicates that if the Provider's argument is that it acted within the terms of the loan agreement, he states that while it may have been within the letter of the law, it was not within the spirit of the law and based on obvious flaws, mistakes and inconsistencies. He states that the errors highlighted show that the Provider incorrectly disposed of the loan. The Complainant is seeking compensation in the sum of €350,000 together with all expenses and fees incurred since October 2015. He states that this figure is based on the price of €320,000 which was listed for the auction of the property on 18 April 2018 by the receiver. He argues that the value of the property at the time of transfer was between €650,000 and €700,000. He states that as a result of the Provider's actions, he and his family have been placed under an ever-increasing level of financial and emotional stress and that there is the possibility they would have to sell their home due to the reduction in the selling price of the property in question.

By letter dated 9 September 2018 in response to a submission by the Provider, the Complainant rejected the Provider's offer of €4,000 in compensation for its acknowledged shortcomings. He states that far from clarifying the reason for selling his loan to the third party entity, the Provider's response has added to his confusion as to why his loan was sold. He argues that the loan was a commercial mortgage entered into while he was running his business. He notes that the Provider acted within the letter of the law and yet in every other respect of its behaviour could not be described as being within the spirit of the law. He indicates that he has not been told what criteria were used to justify selling his loan to a third-party entity and claims that he is entitled to know this. He had assumed that the loan was sold because it was deemed to be in arrears but it now appears that the only criteria was that the loan had no restriction on assignability. He argues that the fact that the Provider could legally transfer his loan does not make it right or just to do so. The Complainant reiterated that he was in negotiations with the Provider concerning the extension of his alternative repayment arrangement right up to August 2015 and yet still it sold the loan. He questions whether this was in order to disguise the true intentions of the Provider. He questions why he would redeem his loan in full while he was negotiating with the Provider during the summer of 2015 for a new repayment plan. He submits that he didn't seek finance elsewhere for the simple reason that he informed the Provider on 24 June 2015 of his intention to sell the property at public auction to redeem the loan in full. He notes that while the Provider was told in 2014 of his intention to sell the premises, this required a lot of things to be done before he could actually put it on the market and at all times advice was sought from his solicitor and an experienced auctioneer. He suggests that the Provider sold the loan for a fraction of the value of the property. He argues that the Provider handled the loan badly and there was no such need to sell it off when he had informed it of his intention to sell the property with a view to redeeming the loan in full. He states that the "rash" decisions and actions taken by the Provider could have resulted in a large financial loss to him.

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The Provider's Case

By letter dated 14 September 2018 to this Office and in response to queries raised by this Office, the Provider states that the Complainant's commercial mortgage loan was part of a portfolio of mortgage accounts within the bank's commercial loan book which was sold to a third party entity. The Provider states that the portfolio included a mixture of both performing and non-performing loans. It states that prior to the sale, a comprehensive due diligence exercise was carried out across the portfolio to ensure that there were no restrictions on assignability in the loan and mortgage documentation.

The Provider states that on contracting to sell the Complainant's commercial mortgage loan account, it wrote to the Complainant on 23 July 2015 confirming that it had agreed to transfer the mortgage to the third party entity. It states that it was not in a position to confirm the transfer date in advance given the many variables involved in migrating the loan account from the Provider's loan platform system to the purchaser's loan platform system. It states that on 14 October 2015, the loan account was successfully migrated from the Provider's loan platform system to the purchaser's loan platform system and a confirmation letter issued immediately to the Complainant confirming that the transfer had been completed.

The Provider stated that the mortgage loan account was not classified as a non-performing loan. In the circumstances, it states that its criteria for classifying a loan as non-performing is not pertinent. It confirms that the Complainant's loan was part of a portfolio of mortgage accounts which were sold and which included a mixture of both performing and non-performing loans.

The Provider emphasised the following terms and conditions which were accepted by the Complainant:

Mortgage Conditions

"6.7 [The Provider] may at any time (without the consent of the mortgagor) transfer the benefit of the mortgage to any person"

General Mortgage Loan Approval Conditions

"1.15 [The Provider] may at any time transfer the benefit of the Mortgage to any person or company in accordance with the Mortgage Conditions."

The Provider states that it reserves its right to transfer the mortgage loan to a third party in accordance with the terms and conditions of the loan account. It further referred to the Complainant's acceptance of the loan offer which states:

"I/we the undersigned accept the within offer on the terms and conditions set out in

(i) Letter of Approval

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(ii) the General Mortgage Loan Approval Conditions

(iii) [the Provider's] Mortgage Conditions".

It notes that the Complainant duly signed the acceptance of loan offer on 23 October 2006 in the presence of his solicitor, indicating that he accepted the terms and conditions of the commercial loan account and agreed to be bound by same.

The Provider states that it actively engaged with the Complainant over the preceding years and implemented an alternative repayment arrangement in an effort to facilitate Complainant.

In relation to the complaint that the letter of 23 July 2015 did not provide a timeline or actual date of transfer, the Provider states that it was not a position to confirm the transfer date in advance given the many variables involved. It states that once the loan account had been successfully migrated to the purchaser's loan platform system, a confirmation letter issued immediately to the Complainant confirming that the transfer completed. In relation to the complaint that the Complainant wasn't given an opportunity to discuss alternative options, the Provider states that prior to the transfer of the loan facility, the Complainant could engage with the Provider at any time regarding the redemption of his loan facility as per the terms and conditions relating to facility. It points out that in the letter of notification on 23 July 2015, the Complainant was advised that he could repay the facility at any time and gave a telephone number for any queries. The Provider argues therefore that the Complainant had the opportunity to arrange finance with another financial institution to redeem the facility or sell the premises. The Provider further argues that the implementation of an alternative repayment arrangement was not affected by the decision to sell the loan to the purchaser as the status of the loan was not the deciding factor in that the portfolio included a mix of both performing and non-performing loans.

The Provider states that it received correspondence from the Complainant's solicitor dated 24 June 2015 which advised that the property was being placed on the open market. Following the Provider's notification letter dated 23 July 2015, further correspondence was received from the solicitor dated 24 September 2015 requesting redemption figures which were issued by the Provider on 30 September 2015. The Provider argues that a request for redemption figures does not signify confirmation that the mortgage loan will be redeemed in full but it is merely a request for the exact amount outstanding on the mortgage loan, including any interest accrued. It states that the mortgage loan account remains open and active until the outstanding balance is paid in full and therefore the transfer of the Complainant's commercial loan account went ahead as scheduled. It states that had the sale of the Complainant's property been finalised following the transfer date, the Complainant would have been free to redeem the loan in full with the third party entity upon completion of the sale. It stated that the inclusion of the Complainant's commercial mortgage loan in the cohort was based on the account type and therefore the fact that the property had been placed on the market had no bearing on its inclusion within the portfolio.

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The Provider states that it was only if the account had been paid off in full prior to the transfer date that it would have been excluded from the transfer portfolio. It states that its decision to sell off part of its commercial loan book was a commercial decision.

In relation to the complaint that certain issues raised in the Complainant's correspondence on 5 September and 16 October 2017 which were not addressed in the Provider's earlier responses, the Provider apologised for this oversight. Further, the Provider accepted that its notification letter of 23 July 2015 "*lacked clarity*" and apologised for same. It emphasised, however, that it was not a position to confirm the transfer date in advance.

In respect of the complaint of maladministration concerning occasions where full repayment amounts were put through to the Complainant's account while he was renegotiating his repayment schedule, the Provider states that the Complainant may be referring to a repayment in December 2013. It notes that on 3 October 2013, it issued correspondence to the Complainant advising that his then current repayment arrangement would expire on 27 October 2013. It notes that the Complainant subsequently submitted an application for a further period of forbearance, which was approved following an assessment in November 2013. It states that documentation outlining the details of the new alternative repayment arrangement offer together with documentation for completion was issued to the Complainant on 27 November 2013. It states that as the completed documentation was not received by it by 24 December 2013, the new alternative repayment arrangement could not be implemented and a full capital and interest repayment fell due in the sum of €3,610.56. It states that the completed documentation was subsequently received by it on 31 December 2013. It states that as the Complainant had cancelled a direct debit on 21 December 2013, a manual direct debit was raised in the amount of €2,156 to cover December 2013 on 3 January 2014. It states that the manual direct debit was returned unpaid in January 2014 and due to a technical issue, funds were not deducted until March 2014. It states that correspondence was issued to the Complainant on 13 March 2014 advising him of this. It states that when the direct debit payment for December 2013 was returned and no alternative payment received from the account for December 2013, the account fell into arrears. The Provider states that in June 2014, the Complainant increased the monthly payment by €100 to reduce the arrears going forward.

Further on 1 May 2015, the Provider wrote to the Complainant to advise that the current repayment arrangements was due to expire on 27 May 2015, after which the repayments would automatically switch to full repayments. It notes that it received correspondence from the Complainant dated 22 June 2015 advising he was not in a position to make full repayments and requested that repayments would continue at the lower amount of €2,211.73. It states that on 25 June 2015, the Provider contacted the Complainant and advised that it was too late to amend the collection of the direct debit for the full repayment but that the billing amount had been amended to the lower amount. It states that the Complainant advised he would lodge the lower amount of funds in the branch account and cancel the direct debit. The relevant amount was lodged by the Complainant on 25 June 2015 and when the direct debit in the full amount of interest and capital was presented for payment of 26 June 2015, it was returned unpaid on 1 July 2015.

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The Provider states that while the direct debit was presented to the full repayment, the repayment due amount (the billing amount) was noted as being €2,114.47 therefore when the direct debit was returned unpaid, a small arrears amount of €198.91 resulted on the account. The Provider states that during the month of July 2015 while the assessment for an alternative repayment arrangement was taking place, the Complainant was contractually obliged to make payments to the mortgage but that he did not make any lodgement the account in July 2015 which resulted in arrears increasing to €4,174.55.

The Provider states that on 7 August 2015, it agreed a further six-month period of reduced repayment and issued the required documentation for completion in order to implement the agreement. This was signed and returned by the Complainant dated 13 August 2015 but due to an oversight, it was not noted that the Complainant had also return the completed direct debit mandate, as a result of which the Provider issued further correspondence to the Complainant the following day (14 August 2015) which requested that he complete the attached direct debit mandate. The Complainant completed and returned this and the alternative repayment arrangement was implemented. Confirmation of the implementation was issued to the Complainant on 8 September 2015. The Provider states that the Complainant did not make any lodgement to the account in August 2015 which resulted in arrears increasing to €8,140.19. It states therefore that during the months of July and August 2015, the account was billed for the full monthly repayment of €3,945.64. It says that the Complainant did not meet these repayments nor did he lodge the reduced monthly amount of €2,211.73 for July and August 2015 that he had been paying prior to the expiry of the agreement. As a result, the arrears on the account increased to €8,140.19.

The Provider states that the Complainant's commercial mortgage loan was included in the portfolio of mortgage accounts to be sold to the purchaser due to the loan type and that any arrears in place on the account would have had no bearing on this decision. While the Provider does not consider that there was a delay in assessing the Complainant's request for a further forbearance, approximately six week in total, it acknowledges there was a slight delay in implementing the arrangement as a result of the initial direct debit mandate received being overlooked and it apologised for the oversight.

The Provider indicates that it is satisfied that a complied with the general principles of the Consumer Protection Code (CPC). It argues that as the Complainant is a personal customer, the Code of Conduct for Business Lending to Small and Medium Enterprises is not applicable.

In light of the shortcomings it identified in relation to the complaint, the Provider made an offer of compensation in the sum of €4,000 to the Complainant in full and final settlement of the complaint.

By letter dated 23 October 2018, the Provider states that prior to the transfer date of 14 October 2015, it continued to liaise directly with the Complainant regarding the loan account. It states that it did not disguise its intention to sell the Complainant's loan and issued correspondence to him dated 23 July 2015 advising of the impending loan sale. It states that no stage during the period 23 July 2015 and the transfer date of 14 October 2015 did is advise the Complainant that the sale would be deferred or cancelled.

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The Provider states that the Complainant was entitled to redeem the loan in full prior to that date or with the third party entity after that date upon the completion of the sale of the property as per the terms and conditions of the facility. The Provider states that the details of the valuation of the property and the transaction with the third party are commercially sensitive so it is not in a position to provide details in relation to these matters.

The Complaints for Adjudication

The primary complaint is that the Provider sold the Complainant's mortgage loan to a third party entity without affording the Complainant an opportunity to renegotiate the level of repayments on the loan or to secure alternative loan funding. He further alleges a degree of maladministration in that insofar as any arrears appeared on the account at the relevant time which might have influenced the Provider's decision to sell the mortgage loan, these arrears were due to administrative error of the part of the Provider.

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.

The Complainant, in his letter dated 19 April 2019, made reference to his "*complaint at the very least meriting an Oral Hearing*", however, 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 16 April 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 issue of my Preliminary Decision, the Complainant made a further submission to this Office under cover of his letter dated 19 April 2019, a copy of which was transmitted

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to the Provider for its consideration. The Provider advised this Office by letter dated 3 May 2019 that it did not wish to make any further comment.

Having considered the Complainant's further submission, together with all of the evidence submitted by the parties, I set out below my final determination.

The loan at the centre of the complaint was made to the Complainant by the Provider in October 2006 in the sum of €502,500 to refinance of an existing loan with the Provider and a commercial loan with another lender. The loan was secured by way of first legal charge over a property. A sum of €100,000 was repaid in 2009. From September 2008 to December 2015, a series of alternative repayment arrangements were put in place by the Provider at the Complainant's request. Interest only repayments were made between September 2008 and November 2012. Thereafter, from November 2012 until the transfer of the loan in October 2015, a series of repayment arrangements known as the capital payment holidays were put in place which included interest repayments on the loan account and a small contribution to the capital repayments but which fell well short of full interest and capital repayments. A small arrears balance appeared on the loan account at the time of sale.

Sale of the Mortgage Loan without Consultation

In respect of the primary complaint regarding the inclusion of the Complainant's mortgage loan in the sale to the third party entity, the following terms and conditions of the mortgage account which were accepted by the Complainant are pertinent:

Mortgage Conditions 2002

"6.7 [The Provider] may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person . . ."

General Mortgage Loan Approval Conditions

"1.15 [The Provider] may at any time transfer the benefit of the Mortgage to any person or company in accordance with the Mortgage Conditions."

The Complainant accepted the loan offer on 23 December 2006 the in the following terms:

"1. I/we the undersigned accept the within offer on the terms and conditions set out in

(i) Letter of Approval

(ii) the General Mortgage Loan Approval conditions

(iii) the [Provider's] Mortgage Conditions

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copies of the above which I/we have received, and agreed to mortgage the property to [the Provider] as security for the mortgage loan.

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4. My/our solicitor fully explained the said terms and conditions to me/us."

The Complainant accepts that these terms and conditions are part of his agreement with the Provider, but he considers it very unfair in light of all the circumstances that the Provider would sell his loan for no reason whatever other than the fact that there was no restriction of the mortgage loan. While the Complainant's concern in this regard is understandable, the fact remains that he agreed to be bound by the relevant terms and conditions. The terms and conditions included the ability of the Provider to act in its own interests in deciding to sell the mortgage loan to a third party without an obligation to consult with the Complainant prior to doing so and without an obligation to obtain the Complainant's consent to any proposed transfer. I note that while there is some dispute in relation to the clarity provided by the Provider in the letter of 23 July 2015 in respect of its agreement to sell the Complainant's loan, it did nevertheless notify the Complainant that his loan was to be sold to a third party entity.

It was a number of months before the transfer took place and so even though the Complainant did not have a timeframe for the relevant transfer, in reality some months elapsed before this notification and the date of the transfer. Further, the letter of 23 July 2015 advised under a sub-heading of "*If you wish to repay your facilities prior to the transfer date*" that the Complainant could repay all amounts owing under the facility at any time.

The Complainant also takes issue with the fact that negotiations were in being between him and the Provider while the Provider was in the course of the loan facility. I note in this respect that a succession of alternative repayment arrangements were put in place between the Provider and the Complainant between 2009 and 2015 prior to the sale of the loan. While it is apparent that a further six-month repayment arrangement was put in place after the Complainant had been notified of the impending sale of his mortgage loan, I accept that there was no suggestion by the Provider at that time that the arrangement that was being put in place would in any way impede, postpone or cancel the impending sale. Further it would not appear that the Complainant asked for confirmation that the impending sale would not proceed in light of the short-term repayment arrangement that he requested. There is no suggestion that the third party entity to which the mortgage loan was sold was not made aware of the short-term repayment arrangement put in place in August/September 2015.

The Complainant is also aggrieved that the loan was sold in circumstances where he was in the process of attempting to sell the property in question. It appears that he notified the Provider of his intention to sell the secured property in June 2015 and redemption figures were requested by his solicitors and promptly provided to them at the end of September 2015.

It appears that the Complainant may have had in mind to sell the property for a number of years. The Complainant phoned the Provider on 17 October 2013, for example, requesting that the alternative repayment arrangement would remain in place as his finances had not

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changed and advising that he intended to sell the property the following year. In the loan review and sustainability and affordability assessment dated 28 November 2013, it is noted that Complainant requested an extension of the interest only repayments from his branch manager during which time the secured property would be marketed for sale. The author of the report expressed the view that as the property was to be marketed for sale, they were satisfied to recommend the extension. There is no indication from the documentation before me that the Complainant made attempts at this point to market the property for sale, though I of course accept that there are certain steps that must be taken before the property can be placed on the market. Having said that, a period of almost 2 years appears to have elapsed from October 2013 when the complainant advised of his intention to sell the property and a request by the Complainant's solicitors for redemption figures for the property in September 2015. There is also a reference in a letter from his solicitors of 2 October 2015 to an auction due to take place on 14 October 2015, though I have not been provided with any further details of this. Nothing else before me would indicate that the property was placed on the market during this time. Further there does not appear to have been any firm commitment by the Complainant to place the property on the market by any particular date or in reference to the notification received on 23 July 2015 of the pending sale of his loan and mortgage to a third party entity.

While I acknowledge the Complainant's frustration at the sale of his mortgage loan in light of his ongoing cooperation with the Provider and his attempts to ensure that the mortgage loan did not fall into arrears at any stage, this does not undermine the Provider's entitlement to transfer his loan in accordance with the terms and conditions of the loan agreement. The Provider was entitled to exercise its commercial discretion to include the relevant loan within the portfolio of loan and mortgage assets being sold to the relevant third party. This Office will not interfere with the commercial decisions taken by the Provider in relation to the sale of assets. It is clear that the Complainant was entitled to repay his mortgage loan at any time, before or after the transfer of the loan, on the sale of the secured property.

Maladministration

The second aspect of the complaint concerns maladministration. The Complainant understood that the loan had been selected for inclusion in the portfolio sale on the basis that it had been categorised as non-performing in that a small arrears balance had accrued. The Complainant alleges that if arrears appeared on his account, this was due to errors on the part of the Provider as capital and interest repayments were occasionally presented for payment in the course of the renegotiation of alternative repayment arrangements between the parties. In light of the fact that the Provider has demonstrated that loan was not classified as non-performing and that the arrears had nothing to do with its decision to include the Complainant's loan facility in the portfolio sold to the third party purchaser in 2015, the question of the arrears balance does not appear to be pertinent to the main complaint. I will therefore look at the issue of an isolated maladministration complaint.

I note that a series of alternative repayment arrangements were approved by the Provider by letters dated 4 September 2009, 18 November 2012, 28 November 2013, 2 January 2014 and 7 August 2015. It appears that on three occasions between the expiry of one repayment

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arrangement and the commencement of another, the Complainant's loan account automatically reverted to full interest and capital repayment before a new alternative repayment arrangement was agreed and implemented. This meant that the Provider called for full capital and interest repayments from the Complainant by direct debit but the higher amounts were not paid. It appears from the evidence available to me that the Provider wrote to the Complainant approximately four weeks in advance of the expiry of any repayment arrangement informing him that the arrangement was due to expire on a given day and informing him that full repayments would resume at that point. It further appears that there may have been some delay on the part of the Complainant in contacting the Provider requesting an extension of the repayment arrangements on occasion, such as in May/June 2015.

It also appears that any questions of maladministration were dealt with by correspondence between the parties when the arrears arose. For example, I note that by letter dated 27 March 2014, the Provider wrote to the Complainant in relation to an arrears balance of €1,850.17.

In this letter, the Provider explained that as per a telephone call on 31 December 2013, the loan account had billed for full principal and interest repayments on 24 December 2013 in the sum of €3,610.56 as the Provider had not received the signed offer of restructured arrangement that was issued to the Complainant on 28 November 2013. The author of the letter states that following the telephone call on 31 December 2013, he arranged for the principal and interest repayment direct debit to be returned unpaid on 16 January 2014 and a new direct debit was then raised for December 2013 on the agreed repayment amount of €2,156 on 3 January 2014. He states that this renewed direct debit was returned unpaid on 20 March 2014 resulting in the current arrears of €1,850.17. I note from other documentation submitted that the delay in the return of the unpaid direct debit appears to have resulted from a change to SEPA. In a letter of 13 March 2014, the Complainant was informed that the returned direct debit of €2,156 from January was not applied to his account and so the returned direct debit would be debited around 18 March 2014. It appears that the Complainant suggested that his monthly repayments would increase by €100 per month to reduce the arrears that had accrued. This was agreed by the Provider. I am satisfied that there is no evidence of maladministration in relation to the arrears that accrued in December 2013 and January 2014 and I am satisfied that the Provider communicated promptly with the Complainant in relation to the arrears and assisted him in trying to deal with them.

I note that by letter dated 1 May 2015, the Provider informed the Complainant that his current repayment arrangement was due to expire on the 27 May 2015 at which point his repayments would automatically switch back to full repayments. He was encouraged to contact the Provider with any queries or if he required further assistance in making his monthly payments.

The Complainant wrote to the Provider on 22 June 2015 indicating that he wished to continue repaying at the existing level of €2,211.73 as he was not in a position to meet the proposed interest plus capital payment of €3,946.29. He asked the Provider to urgently reverse any payment instruction and allow him to continue with the lower repayment

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amount. He stated that the Provider had been very understanding the past and he hoped it would continue to be so until his financial circumstances improved. The Complainant's request for an extension to the alternative repayment arrangement was approved by letter dated 7 August 2015 for a period of six months. This was signed by the Complainant on 13 August 2015. A copy of a direct debit mandate form in relation to the new repayment arrangement has been provided to me in evidence. It is signed by the Complainant dated 4 September 2015. By letter dated 8 September 2015, the Provider acknowledged receipt of the restructure agreement form and confirms that it set up the relevant restructure arrangement on his account from September 2015 to February 2016.

I note that the Provider accepts that a direct debit mandate was in fact signed by the Complainants on 13 August 2015 but for some reason this was overlooked by it. Due to this oversight, a new direct debits mandate was requested from the Complainant. It was for this reason that there was a delay in the implementation of the new alternative repayment structure until September 2015. The Provider has accepted responsibility for this oversight and apologised for it.

I accept that there was a delay in the implementation of the new arrangement. I further accept that a period of six weeks elapsed from the Complainant's request for an extension to the alternative repayment arrangements that had previously applied to his account, until its approval on 7 August 2015. This might appear to be somewhat slow in light of the fact that the Complainant appears to have confirmed that his financial circumstances had not changed and interest only or capital holiday class arrangements had been in place on the account for a period of approximately seven years. That said, the Complainant also appears to have been somewhat slow in applying for the relevant extension in light of the fact that the Provider wrote to him on 1 May 2015 notifying him that the arrangement would soon expire. A period of some 7 or 8 weeks elapsed before the Complainant requested that the arrangement be extended.

I accept that the Provider was somewhat slow in assessing the application for an extended repayment arrangement and that there was a delay in the implementation of that agreement in September 2015. I accept, however, that after the expiry of the repayment arrangement, the Complainant was contractually obliged to make full repayments to include capital and interest until the implementation of the new arrangement. Despite this, I note that no payment whatever was made to the account in July and August 2015.

The complaint in relation to the arrears that accrued at this time were not particularised by the Complainant in his initial complaint to the Provider. I note that after this complaint was particularised, the Provider accepted responsibility for the delay in the implementation of the alternative repayment arrangement. I further note that it offered a sum in compensation to reflect this. A sum of €4,000 has been offered by the Provider to reflect this delay and the lack of clarity in the letter of 23 July 2015 to which I will now turn.

Inaccuracies

A final issue raised by the Complainant is in relation to alleged inaccuracies in relation to a sustainability and affordability assessment that was conducted by the Provider on 30 June

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2015 in relation to the 22 June 2015 restructure request. This report noted that the Complainant requested that he be afforded an extension to the expiring alternative repayment arrangement of €2,200 per month which included interest of €2,100 per month and capital of €100 per month. The review notes that the Complainant advised the relationship manager that his personal financial affairs had not changed since the last review in October 2013 and that he could not afford to increase his remittances to the Provider. The review suggested that the borrower should be offered a six-month extension to the arrangement to expire on 29 December 2015 and it was noted that the borrower was cooperative and that the loan exposure is affordable and sustainable per the Provider's credit policy.

Details of income and liabilities were set out in the assessment in line with a standard financial statement submitted by the Complainant on 23 October 2013. It was noted that the rental income on the secured property was €36,000 per annum.

The Complainant has submitted that this figure was inaccurate and that rental income on the property ought to have been noted at €80,000 per annum. It does not appear this updated rental figure was notified to the Provider. It also appears from the assessment that the Complainant confirmed to his relationship manager in June 2015 the financial position remained the same as that had been per the standard financial statement in 2013.

I note the Complainant, in his post Preliminary Decision submission of 19 April, states that he did not submit an SFS with information that the rental on the property was €36,000. However, his subsequent statements are inconsistent since he writes, 'if this figure did appear' and then states that he did see it as a result of a Data Access request.

Communications

In its letter dated 23 July 2015, the Provider notified the Complainant that it "*has contracted to sell*" the Complainant's mortgage facility to a third party and that the Provider "*will write to you in due course to confirm the date on which the transfer will take effect*". The notification indicated that the facility would remain in place until all amounts payable under the facility had been paid in full but that from the transfer date, the obligations would be owed to the purchaser of the loan rather than to the Provider. The letter further indicated that the Complainant should continue to make payments in the normal way and did not need to take any action. By letter dated 15 October 2015, a further notification was sent to the Complainant recalling the letter of 23 July 2015 and writing "*confirming that the transfer date was 14 October 2015*".

It is common case that the Provider did not confirm the date on which the transfer would take place in advance of the transfer as its letter of 23 July 2015 suggested. Instead it confirms that the transfer had taken place the previous day to the second letter dated 15 October 2015. The Provider accepts that there was a lack of clarity in its letter dated 23 July 2015 in this regard, but it emphasises that it was not then in a position to confirm the actual date on which the transfer would take place.

I agree that there was a lack of clarity in the letter of 23 July 2015 in that the letter implied that the Complainant would be contacted again in advance of the date of transfer. However, the Provider was not obliged to provide any particular period of notice to the Complainant prior to the transfer of his mortgage loan to allow him to organise refinance of the facility or to sell his property as this could be an open-ended period. As set out earlier in this Decision, it appears that the Complainant had been discussing placing the property for sale from us two years prior to the transfer of his loan mortgage. So while I accept there was a lack of clarity in relation to the communication, there was no direct financial impact on the Complainant as a result of this. He remained entitled to seek refinance or to place his property on the market after the transfer of his mortgage loan to the third party entity.

I am of the view that there were other failures of communication by the Provider in its initial response to the complaint raised by the Complainant. By way of letter of appeal on 5 September 2017, the Complainant made a formal complaint in relation to the transfer of his mortgage loan. He indicated that he had always taken a very proactive approach with the Provider in relation to his loan and always tried to find a mutually agreeable solution to any difficulties that arose over the years. He indicated that if there were any arrears they were due to an administrative oversight by the Provider.

He stated that on a number of occasions between periods of re-negotiating his repayment schedule, full repayments were accidentally put on his account but that he was assured at the time this was not an issue. He asked a series of questions in relation to the transfer such as why he was not forewarned of the intention to sell the loan, when his loan was classified as non-performing, and what criteria were used to classify a loan as non-performing. He also asked why his loan was sold and why the Provider did not approach him to renegotiate a new repayment arrangement as it had done for a number of years prior to the sale.

By letter dated 12 October 2017 in response to his complaint, the Provider stated that the Complainant was notified of the transfer of his loan facility prior to the transfer date by correspondence issued on the 23 July 2015 and confirmation of the transfer was made to him on 15 October 2015. The Provider stated that it was satisfied that it had full power of assignment in relation to the loan and that it was certain the relevant terms and conditions allowed it to transfer the benefit of the mortgage at any time. The other issues raised by him in his letter of September 2017 were not acknowledged or answered. I accept that the Provider has now fully responded to all of the complaints raised by the Complainant but the fact remains that it ought to have responded to each aspect of the complaint before the involvement of this Office. In this regard I note provision 2.8 of the general principles of the Consumer Protection Code obliged regulated entities to handle "complaints speedily, efficiently and fairly". I do not believe that the Provider in this case complied with provision 2.8 of the Code.

The Provider acknowledges its shortcomings in relation to this complaint and offered the Complainant €4,000 in compensation. I consider this compensation offered to the Complainant to be reasonable in all the circumstances.

On the basis that the €4,000 compensation remains available to the Complainant, I do not uphold this complaint.

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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**

24 May 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.