



<u>Decision Ref:</u>	2019-0124
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Fees & charges applied (mortgage) Application of interest rate
<u>Outcome:</u>	Rejected

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

Background

This Complaint concerns the Provider's implementation of the voluntary surrender of an investment property.

The Complainant's Case

The Complainant held a mortgage secured over an investment property with the Provider. The Complainant explains that as a consequence of deteriorating financial circumstances which resulted in him being unable to meet his monthly repayments, he agreed to voluntarily surrender the property to the Provider in May 2015. He states that he fully anticipated that the property would be sold speedily and that the monies received on foot of the sale would have been applied to the mortgage balance. In the event, however, the property was not sold for some time. The Complainant outlines that during 2016 he was informed by revenue that local property tax (LPT) was due on the property, notwithstanding the fact that he had relinquished control of the property to the Provider.

The Complainant is extremely disappointed with the manner in which the Provider has handled matters. He is aggrieved at the fact that although the Provider received the property in May 2015, there was a substantial delay in effecting the sale (thereby reducing the balance outstanding on the mortgage). The Complainant points out that the value of the

property has diminished over the past number of months, which will cause an increase in the subsequent residual balance he will be obliged to repay.

The Complainant points out that he has been charged interest on the full loan balance since the voluntary surrender despite the fact that the sale price of the property should have been allocated to the balance (had it been sold in a prompt fashion), which in turn would have reduced the interest due and owing on the mortgage.

The complaint is that the Provider mismanaged the repossession and subsequent sale of the property the subject matter of the mortgage. The Complainant would like compensation for the loss suffered as a result of the delay in selling his property. He has provided a calculation of this figure to be €55,000.

The Provider's Case

The Provider has acknowledged a delay of about 15 months between the Complainant surrendering the property and agents on behalf of the Provider taking possession of the property in August 2016.

It has offered to refund €15,000 to compensate for the interest that accrued to the mortgage balance during this 15 month period. It has also offered to refund the €150 LPT that the Complainant was charged by revenue in 2016.

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.

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A Preliminary Decision was issued to the parties 25 March 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, both parties made further submissions as follows:

1. E-mail from the Provider to this Office dated 8 April 2019.
2. E-mail from the Complainant to this Office dated 23 April 2019.
3. E-mail from the Complainant to this Office dated 23 April 2019.
4. E-mail from the Provider to this Office dated 29 April 2019.

Having considered these further submissions, together with the evidence furnished by both parties, I set out below my final determination.

The Complainant took out a mortgage loan for €238,000 with the Provider in August 2008 to purchase an investment property.

No repayments were made by the Complainant to this mortgage account since June 2012.

Ultimately, on 25 May 2015 the Provider received a "Surrender of Possession of Mortgaged Premises" form from the Complainant.

The Provider has explained in its response to this complaint that, due to an internal error, this form was not forwarded to the correct department within the Provider. As a result, as far as the Complainant was concerned the Provider was in possession of the property from that date, but the Provider had not taken any action on foot of the voluntary surrender form.

This error came to light on 17 June 2016, when the Complainant contacted the Provider to query why he had received a letter from revenue looking for payment of LPT for the property. On foot of this contact, the Provider finally instructed receivers on 12 July 2016 and the property was secured (i.e. receivers took possession) on 29 August 2016.

The property was put on the market on 24 October 2016. Sale was agreed on 19 December 2016. Contracts for sale issued on 21 February 2017, were signed on 2 June 2017, and the sale closed on 11 July 2017. The net proceeds of sale were applied to the Complainant's account on 4 August 2017.

Analysis

There is no doubt that from 25 May 2015 to 29 August 2016 the property was the responsibility of the Provider, and certainly from 25 May 2015 to 17 June 2016 the Provider took no steps, due to its own internal error in getting the voluntary surrender form to the correct department to be actioned.

The Provider has accepted that there was an unacceptable delay between the Complainant submitting a voluntary sale form in May 2015 to receivers being appointed in July 2016 and the property being put on the market in October 2016.

The period of time for which the Provider was at fault here by reason of its own error was from 25 May 2015 to 17 June 2016. That is the time during which no steps were taken at all by the Provider. That no steps were taken during this period is entirely the fault of the Provider. From 17 June 2016 onwards there is no evidence of unreasonable delay by the Provider.

I must therefore consider what the Complainant's loss is as a result of that delay. The Complainant contends that he has suffered the following, quantifiable losses:

- Property tax - €150
- Lost rent - €12,000
- Additional interest - €10,000
- Surcharge interest - €15,000
- Diminished value - €20,000

The Provider has agreed to refund the property tax charge of €150. This is a satisfactory outcome, particularly when one considers that if the Provider's agents had been in possession of the property and paid the LPT themselves, the €150 would have been a cost of the receivership and thus deductible from the mortgage balance pursuant to the mortgage terms. In other words, whether the Complainant paid it directly to revenue or not, it would ultimately have come out of his pocket in any event.

With regard to the claim for lost rent once the voluntary surrender form has been submitted, a customer cannot collect rent from tenants. There is no evidence that the property was being let prior to surrender. If it was, then it has to be taken into account that no repayments were being made to the mortgage account from the proceeds of that rent. In the circumstances, there is, in my view, no basis for the Complainant to claim for "lost rent".

The Complainant claims figures of €10,000 as "additional interest" and €15,000 as "surcharge interest". There is no evidence that any surcharge interest was applied.

The Provider has offered €15,000 by way of refund for interest charged as a result of the delay.

As regards the Complainant's claim of diminished value, the property was sold in December 2017 for €170,000. The Complainant's view is that in May 2015 the property would have been worth "*in the region of €180,000*". Valuers instructed by the Provider have estimated the May 2015 value as €150,000.

In order to make a finding in the Complainant's favour on this point, I would have to lend substantially more weight to his own valuation (the Complainant lists his occupation as an accountant) than the one provided in a report prepared by a licensed auctioneer / valuer / property consultant.

I have been provided with no evidence that the property reduced in value. It is more likely that like most property, it would have increased in value with the general uplift taking place at that time.

In relation to the Complainant's complaint that the Provider fell short in its levels of customer service, the Provider has accepted that it failed to contact the Complainant on 2 occasions when it had promised to do so, and that there was a delay in escalating the matter when asked to do so in June 2016. The Provider has offered the sum of €4,000 as a goodwill gesture to resolve this aspect of the complaint.

There was an unacceptable delay by the Provider between the Complainant submitting a voluntary sale form in May 2015 to receivers being appointed in July 2016, a period of just under 13 months.

There was also a falling short in acceptable levels of customer service on the part of the Provider in failing to contact the Complainant on two occasions when it had promised to do so, and in failing to escalate his complaint in a timely manner in June 2016.

After the Complainant submitted his complaint to this office, the Provider accepted fault on both counts.

In order to make amends for these failures, the Provider has offered a number of sums under different headings, some of which would be payable directly to the Complainant and some of which would form deductions from the outstanding mortgage balance.

I believe the offer of rectification and compensation by the Provider is reasonable in all the circumstances and on the basis that this offer of refund of property tax in the sum of €150 and a refund of €15,000 interest to the mortgage account, and the offer of €4,000 "*goodwill gesture*" remains available to the Complainant, I do not uphold this complaint.

I note the interest refund will be made to the Complainant's mortgage account and the compensation and refund of property tax will be paid directly to the Complainant.

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**

13 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.