



<u>Decision Ref:</u>	2019-0158
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner
<u>Outcome:</u>	Partially upheld

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

Background

This complaint refers to a life loan which was taken out by a deceased couple (the “**Borrowers**”) which became repayable when both borrowers died. The Complainant, the legal personal representative of the last surviving borrower, states that the Provider has shown poor customer service and maladministration in respect of the account and has delayed in redeeming the account, resulting in daily interest charges accruing.

The Complainant’s Case

In **2003**, the borrowers entered into a life loan mortgage in the sum of €44,000.00 with a charge on a residential property to be repaid once both borrowers had died. It was a term of the mortgage that the borrowers would keep the property insured and would note the Provider’s interest on any insurance policy.

In **mid 2013**, the first of the borrowers died and on **17 October 2013** the surviving borrower executed a new will naming the Complainant as her executrix.

In **late 2014**, there was a fire at the borrower’s property which destroyed the property the subject of the life loan.

The second borrower died at this time.

Between the **end of 2014 and 26 November 2015**, interest at a daily rate of €17.27 accrued. The total interest which accrued from the date of death of the surviving borrower to the redemption was €5,946.73.

The Complainant asserts that the Provider should not have charged interest on the account after the death of the surviving borrower until the redemption of the mortgage and also complains that the Provider was guilty of delay in processing the Complainant's issue.

The Complainant contends that the Provider did not properly engage with her or her partner or address the correspondence or phonecalls made by them to the Provider. In **May 2015**, the Complainant asserts that her partner had attended at the Provider's branch to speak with someone in relation to the matter, but could not resolve the matter.

Furthermore, in July, August and September 2015, the Complainant's partner and the solicitor dealing with the Estate sought information from the Provider in relation to the redemption of the mortgage loan and whether the Provider would be willing to compromise the debt. The Complainant's partner had emailed the Provider at an email address printed on the headed paper of correspondence from the Provider, and received no response from the Provider.

The Complainant further contends that the Provider refused to accept two cheques to redeem the mortgage account on **16 November 2015** when she attended at a branch of the Provider.

The mortgage loan was ultimately redeemed on **30 November 2015**.

The Provider's Case

The Provider asserts that it was entitled to charge interest up until the redemption of the mortgage loan pursuant to the terms of the agreement. The Provider asserts that no attempt to redeem the mortgage was made until **November 2015** when it was paid off in full.

In **2006**, the borrowers incepted a new insurance policy in respect of the property, but did not inform the Provider and did not have the Provider's interest noted on the policy. The Provider asserts that it only became aware that its interest was not noted on the insurance policy of the property after the property burned down. The Provider asserts that this is what caused the delay in redeeming the mortgage account as it was required to enter negotiation with insurance companies, brokers and solicitors in order to resolve the issue.

The Provider states that it acted in good faith, but accepts that there was a delay in resolving this issue.

The Complainant's partner, the son of the borrowers, had been named as executor of the surviving borrower's estate in the life loan application on **13 November 2003** and the Complainant's partner had signed the portion of the life loan application entitled "the Executor's Acknowledgement" on **19 December 2003**. The Provider states that it is satisfied that the Complainant's partner understood the terms of the loan as set out in this section of the loan agreement.

The Provider was not notified of the change of personal legal representative until **3 June 2015** and when it became aware of this the Provider asserts that it could no longer deal with the Complainant's partner as he was not the executor to the Estate nor was he party to the life loan.

The Provider submits that the delay in responding to the Complainant in July 2015 was due to "*an administrative error*" while a particular employee was on annual leave and no one had been appointed to deal with the file in their absence.

The Provider asserts that the Complainant's partner routinely emailed an un-serviced e-mail address and failed to properly note relevant account numbers in correspondence and this caused a delay in responding.

Furthermore, the Provider states that it was not at liberty to divulge details of the account to the Complainant's partner as he was not the personal representative of the estate, nor was he a party to the life loan account. The Complainant had signed an authority requesting the Provider to deal with the appointed solicitors in respect of the account. The Provider states that it informed the Complainant's partner of this in email correspondence dated **3 September 2015** and the **28 September 2015**. The Provider further states that it advised the Complainant and/or the appointed solicitor of this in correspondence dated **8 September 2015** and **16 September 2015**.

The Provider states that redemption figures were furnished by it to the Complainant and/or the Complainant's solicitor on the following dates; **20 January 2015; 16 June 2015; 6 October 2015** and **23 October 2015**. The Complainant sought a reduction in the interest and this was considered by the Provider and 2 days' interest was waived by the Provider. The balance to be paid was communicated to the Complainant on **26 November 2015**.

The Provider accepts that there were delays caused by the Provider in dealing with the account and on that basis the Provider made an offer of €500 as a goodwill gesture to the Complainant and her partner, which was not accepted.

The Complaints for Adjudication

The complaint is that the Provider delayed for over 11 months in redeeming a life loan mortgage account and wrongfully charged interest on the loan during this period of time and further that the Provider has shown poor customer service and maladministration in respect of the account and delayed redeeming the account.

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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 8 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.

In the absence of additional submissions from the parties, I set out below my final determination.

In determining whether or not the Provider was entitled to charge interest between the date of death of the last borrower and the date of redemption it is necessary to consider the mortgage documentation. Clause 4(a)(i) states that the loan shall become repayable on the death of the last surviving borrower. Clause 4(c) states that interest shall accrue until the loan and interest are repaid in full. It is not in dispute that the monies were not repaid until **November 2015**. As such, the Provider was entitled to charge interest from the date of death of the last surviving borrower to the date of the redemption of the mortgage.

While the Provider was legally entitled to do so, it is necessary to determine whether there was any unfairness or unreasonableness in the approach that the Provider took, which might have a bearing on the Complainant's repayment of the loan. It seems that a significant delay arose due to the failure to ensure that the Provider's interest was noted on the insurance policy on the property. In 2006, the borrowers obtained a new insurance policy and failed to have the Provider's interest noted on it. It seems that this resulted in confusion over whether or not the proceeds were payable to the Provider.

While the Complainant's partner attempted to communicate directly with the Provider, it is clear that he was not executor of the estate as of 2013, when the last surviving borrower executed a new will appointing the Complainant as her executrix.

Once the Provider was informed of this, it was entitled to only deal with the executrix or her appointed solicitor. On **18 June 2015**, the Complainant's solicitors furnished an authority signed by the Complainant that authorised the Provider to deal with the solicitor in respect of this matter. It was reasonable for the Provider to therefore refuse to deal directly with the Complainant's partner, as he was neither a party to the loan account nor a legal personal representative of the estate. A provider could be held accountable for any loss that flows from dealing with an individual other than the personal representative of an estate, and it is reasonable therefore for a Provider to ensure that there is clarity about who is the proper representative.

I find that the Provider was entitled to charge interest from the date of death of the surviving borrower up until the date of repayment of the loan. Further, I accept that the primary cause of the delay in redeeming the loan was the fact that the payment made by the insurance provider was slowed down by the failure of the borrowers to note the Provider's interest on the new insurance policy. While I accept that this was not the fault of the Complainant or her partner, neither was it the fault of the Provider.

However, there are two matters that are relevant from the Complainant's perspective in respect of how the Provider dealt with the issues the Complainant raised in respect of the redemption of the loan. Firstly, it seems that the Complainant's partner was e-mailing the Provider at an address that was un-serviced but appeared to still be capable of receiving e-mails. This seems to have resulted in some of the Complainant's partner's e-mails not being responded to which contributed to the delay.

Secondly, the Provider's employee who primarily dealt with this complaint was away on two occasions which, by the Provider's admission, slowed down the processing of the Complainant's grievances. I find that these factors contributed, in part, to the delay in redeeming the loan.

In that regard, I partially uphold the complaint in light of the two issues which contributed to the delay in redeeming the loan and therefore some increase in the interest that accrued. I note that the Provider has offered the sum of €500 as a goodwill gesture to the Complainant, however I do not find that this is sufficient recompense for the Provider's contribution to the delay in redeeming the loan.

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) (c)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a payment to the Complainant in the sum of €1,500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

3 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.