



<u>Decision Ref:</u>	2019-0182
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Variable Mortgage
<u>Conduct(s) complained of:</u>	Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Documents mislaid or lost Selling mortgage to t/p provider
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint is in respect of a mortgage account held by the Complainants with the Provider. The mortgage is secured on a Dublin city centre property. Following a five year 'interest only' period, the Complainants' mortgage fell into arrears in **February 2010**, when the interest only sum of €345.71 was not paid. The 'interest only' period was extended for one month to **March 2010**. At the end of **March 2010**, the Complainants' account reverted to capital and interest repayments of €1,349.77 per month. The Complainants did not make the repayment on time. The Complainants' mortgage was ultimately sold to a third party ("TP") in **2017**.

The Complainants' Case

The Complainants entered into a mortgage agreement with the Provider in **March 1998** for the sum of €88,881.67 (IR£70,000) to purchase a property. They entered into further mortgage agreements with the Provider in **November 1999** for €1,291.48, in **December 2003** for €42,000 and in **December 2004** for €70,000 (collectively "mortgage"). By February 2005, the Complainants had an outstanding mortgage balance of €184,778.

There was a five year “interest only” period in respect of the mortgage repayments which was extended by the Provider for an additional month and expired in **March 2010**. At the end of **March 2010**, the Complainants’ account reverted to capital and interest repayments of €1,349.77 per month. The Complainants’ mortgage was ultimately sold by the Provider to a third party (“TP”) in **2017**.

The Complainants say that their account fell into arrears in **2011**. They say that they made numerous attempts to engage with the Provider to resolve the arrears but that the Provider refused to engage with them in any meaningful way “*despite [their] very best efforts to come to some arrangement.*” The Provider’s final response letter dated **7 June, 2017**, notes that “*a twelve month Fixed Repayment arrangement was approved for [the Complainants] by ASU in April 2012*” but notes that “*no payments were made by [the Complainants] under that arrangement.*”

The Complainants state that they never received this alternative arrangement proposal and suggest that it may have been sent to the wrong address, as had occurred a number of times over the years. They say that they attempted to correct this problem 10 times but that the Provider was still making the same mistake in respect of their address. In addition, they say that the Provider must have lost their file.

The Complainants say that they did not always receive a response to their telephone communications and correspondence. They also say that some of their proposals were declined without explanation. They accept that they were sent arrears correspondence at regular intervals but complain that they were never assigned a relationship manager and, as a result, each time they contacted the Provider they were dealing with different people.

The Complainants are now in a position to make capital and interest repayments. They want an opportunity to restructure their mortgage loan.

The Provider’s Case

The Provider states that whilst the property, the subject of the mortgage, may have previously been the Complainants’ principal private residence, at the time the loans were sanctioned, it was on the basis that it was an investment/buy-to-let property.

The Provider states that following the five year ‘interest only’ period, the Complainants’ mortgage fell into arrears in **February 2010**, when the interest only sum of €345.71 was not paid. The ‘interest only’ period was extended for one month to **March 2010**. At the end of **March 2010**, the Complainants’ account reverted to capital and interest repayments of €1,349.77 per month. The Complainants did not make the repayment on time. The Complainants’ mortgage was ultimately sold to a third party (“TP”) in **2017**.

The Complainants failed to make repayments in accordance with the terms of their mortgage from the end of **March 2010** to **20 September, 2010**, by which time the arrears had increased month on month to €9,092.88. On **20 September, 2010**, the Complainants made a payment in the sum of €7,652.57, which reduced the arrears to €1,440.31. No

/Cont’d...

further payments were made to the account until **16 March, 2011**, when the Complainants made a payment of €10,082.17, which cleared the arrears in full. From **February 2010** to **March 2011**, the Complainants received arrears correspondence on a monthly basis. In addition, the Provider submits that its Arrears Support Unit ("ASU") spoke with the Complainants on **4 August, 2010, 22 June, 2010, 16 September, 2010, and 14 March 2011**.

After **16 March, 2011**, the Complainants were required to make monthly repayments of €1,440.31. The Complainants made payments in the sum of €500 in **April 2011** and **May 2011** but did not make any further repayments until **5 July, 2013**, when they made a payment of €1,400. The sum of arrears that accrued during that period of non-payment was €27,921.81. The Provider says that it sent regular arrears correspondence to the Complainants during that time and engaged in a number of telephone conversations with the Complainants. On **17 February, 2014**, the Complainants made a payment to the account of €2,000. They made payments of €500 for **April 2014, May 2014** and **June 2014**.

In **February 2010**, the Complainants submitted a request for an extension of 'interest only' repayments. The Provider responded on **12 February, 2010**, seeking further information to progress their request. On **13 April, 2010**, the Provider spoke with the Second Complainant by telephone and advised her that it had not received the requisite documentation. The Second Complainant informed the Provider that she had already submitted it but that she would send it again. The Provider received a further request for 'interest only' repayments from the Complainants in **September 2010** but states that it refused this on a commercial basis.

In **February 2012**, the Provider's ASU received a request from the Complainants for a period of reduced payments. Their case was assessed and fixed repayments of €700 for a period of 12 months were approved. A letter issued to the Complainants on **23 April, 2012**, to convey this offer. That letter noted that the Complainants were not in a position to make repayments in the full sum. Although the Complainants had sought an 'interest only' repayment plan, the Provider assessed that the Complainants were in a position to make repayments in that sum and that this was the reason for the offer. The Complainants failed to make any lodgements during those 12 months. By the expiration of that period, the Complainants had accrued arrears in the sum of €26,124.03.

On **12 July, 2012**, the Second Complainant called the Provider and informed it that the property the subject of the mortgage was leased to the local council and that there was a delay in getting payments from the local council. The Second Complainant told the Provider that once the payments were received from the local council, it would clear the arrears on the account.

On **8 July, 2013**, the Provider wrote to the Second Complainant in response to her letter dated **4 July, 2013**, requesting that the Complainants complete a reduced payment application form ("RPAF") and blank direct debit and standing order forms as requested by the Second Complainant in her letter. In her letter of **4 July, 2013**, the Second Complainant stated that she was in a position to make repayments of €70 per month and goes on to request the appropriate forms so that she may set up a direct debit for €70 a month with effect from **August 2013**. The Complainants didn't make any of these payments.

/Cont'd...

On **12 July, 2013**, the ASU received a completed RPAF but this could not be assessed as the Complainants did not submit all of the necessary documentation. The Provider emailed the Second Complainant on **9 August, 2013**, outlining the missing documentation. That documentation was never furnished to the Provider.

On **14 October, 2015**, the Provider wrote to the Complainants in accordance with provision 8.10 of the Consumer Protection Code 2012, as amended, (CPC). This letter advised the Complainants that management of their case was being passed to a fourth party (FP), which the Provider had appointed to communicate with the Complainants on its behalf. On **15 October, 2015**, the FP wrote to the Complainants advising them of its appointment and what they needed to do next. The FP included an income and expenditure form with this correspondence. The FP received an income and expenditure form from the Complainants on **9 November, 2015**, but this form was unsigned. As a result, no assessment could take place.

The Complainants submitted a completed form in **January 2016** and their circumstances were assessed. That assessment concluded that the Complainants' property be sold by receiver as the Complainants could not meet the capital and interest repayments as they fell due and their property was in positive equity. The Complainants were made aware of this decision by telephone on **21 January, 2016**, and they were informed by correspondence dated **22 January, 2016**, that the management of their case had been returned to the Provider. By the end of **January 2016**, when the Complainants' account had been returned to the Provider, the Complainants had not made repayments to the account since **May 2014**.

The Provider says that it received correspondence from the Complainants on **20 August, 2015, 28 January, 2016, 22 March, 2016, 12 April, 2017, and 25 April, 2017**, where they requested a meeting with the Provider. The Complainants' account had been handed over to the ASU in **April 2014**. The ASU informed the Second Complainant on the telephone on **20 August, 2015** that the outstanding arrears of €66,984.87 would need to be cleared to avoid a receiver being appointed over the property. The Second Complainant was told that, even if the Complainants paid all of the rental income they were in receipt of from the mortgaged property, there would have been a large shortfall of the agreed repayments.

On **3 December, 2015**, the Provider wrote to the Complainants indicating that in order to remove their account from the legal process, they would need to clear their arrears and make full and normal monthly repayments. On **3 February, 2016**, the Provider again wrote to the Complainants indicating that the arrears of €75,211.44 would need to be cleared and the full and normal monthly repayments made to remove the Complainants' case from the legal process.

The Provider says that even though it did not hold a meeting with the Complainants until **September 2017**, it had already made its position clear to the Complainants, in the terms outlined above, and a meeting would not have changed that. Additionally, the Complainants had not engaged with the arrears whether by making repayments or realistic proposals.

During the meeting that took place between the Second Complainant and the Provider on **26 September, 2017**, the Provider submits that the Second Complainant did not tell the

/Cont'd...

Provider anything that the ASU did not know when it had completed its assessments previously.

The Provider says that any perceived failure of it to engage with the Complainants is actually a result of the Complainants' failure to promptly provide information and documentation that would have enabled it to do so. The Provider says that it sought to agree an approach to the Complainants' arrears and this is evidenced by the fact that the Provider afforded the Complainants with 5 years of interest only repayments and the offer to allow that same basis of repayments for one year from **February 2012**.

The Provider notes 3 instances where it failed to properly respond to the Complainants' correspondence. The Second Complainant sent a letter on **20 August, 2015**, which outlined the Complainants' circumstances. The Provider asserts that there was no reason to respond given that it had a lengthy conversation about the same thing earlier that day. The Second Complainant again wrote on **2 October, 2015**, referring to the fact that she never received any response to her letter of **20 August, 2015**, and saying that '*it is best if [the Second Complainant] proceed to making a payment of €700.00.*' The Provider says that it was in the process of handing over the Complainants' file to the FP at this time. The Second Complainant wrote to the Provider again on **20 October, 2015**. That letter adverted to the Provider potentially ignoring her previous correspondence. By that date, the Complainants' file was with the FP. Although these 3 letters that were not responded to might be seen as a failing from a customer service perspective, the Provider submits that the content of the letters would not have affected the arrears management strategy adopted by the Provider.

The Provider accepts that it sent 2 letters to an incorrect address and that the FP was given an incorrect address when the management of the Complainants' file was passed to them and that, as a result, FP sent a number of letters to that address. It says that the incorrect address is not an address that exists. The Provider apologises for its errors in this regard and has made an offer of €1,000 in compensation for these errors.

The Provider did not lose the Complainants' file and relies on the large amount of correspondence provided to this Office to corroborate this assertion. In respect of the Complainants' reliance on the items of correspondence dated **29 March, 2011** and **7 April, 2011**, the Provider accepts that it has no record of this correspondence. It explains this by reference to a potential confusion on the Complainants' part; it has records of telephone conversations on that date rather than correspondence being received.

The Provider said that it was not its policy at the time to have a case manager assigned to each arrears case.

The Provider notes that eight letters did not issue when they should have in respect of the Complainants' mortgage arrears in accordance with Chapter 4 of the Consumer Protection Code 2006 and makes an offer of €2,000 as a gesture of goodwill in respect of these lapses. The Provider accepts that it should also have issued three letters, in accordance with provision 8.8 of the Consumer Protection Code 2012, which it failed to do. In light of that, it has made a further offer of €750.

/Cont'd...

The Complaints for Adjudication

That the Provider did not engage with the Complainants to come to an acceptable alternative repayment agreement for their mortgage loan from the period 2011 onwards, communicated poorly, delivered poor customer service throughout and wrongly sold the Complainants' mortgage to the TP.

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 Complainants were 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 30 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 following additional submissions were received from the parties:

1. Submission from the Complainants dated 9 May 2019.
2. Submission from the Provider dated 24 May 2019.

The Complainants say that they never received the alternative repayment arrangement proposal that the Provider says it sent to them on **23 April, 2012**. Recordings of telephone calls between the Complainants and the Provider have been provided in evidence. I have considered the content of those calls. On **31 May, 2012**, the First Complainant spoke with the Provider by telephone. I note that in this call the Provider detailed the revised repayment arrangement that it was in a position to offer to the Complainants, namely 12 monthly repayments in the sum of €700. The First Complainant said that he *'thinks'* he

/Cont'd...

received the letter. Although the letter offering this alternative repayment arrangement may have been sent to the wrong address the month previous, this phone call demonstrates that the First Complainant was aware of this alternative arrangement offer by **23 April, 2012** at the latest. Nevertheless, the Complainants did not make any repayments under it. I find that the Provider offered an alternative repayment arrangement to the Complainants, as outlined above, following engagement with the First Complainant by telephone, although the Complainants failed to engage with it by making repayments under it.

The Complainants in the post Preliminary Decision submission dated 9 May 2019 point to what they believe are breaches of data protection. Data protection issues have not been considered as part of this investigation and adjudication as these should more appropriately be addressed to the Data Protection Commissioner.

I note that the Complainants were asked to furnish the Provider with information or documentation that was necessary to allow it re-assess the Complainants' situation in July 2013 but the Complainants failed to furnish all of the required documentation and/or information to the Provider resulting in the Provider being unable to make an offer of an alternative repayment arrangement at this time.

The Complainants in their post Preliminary Decision submission dated 9 May 2019, state that the Provider *"...no assessment could take place and then their letter on 3 Feb references our figures provided... and declined a revised repayment plan with no explanation"*. However, I note the Provider's assessment took place based on a signed standard financial statement returned by the Complainants in January 2016. The Complainants, in their post Preliminary Decision submission of 9 May 2019, also state that *"at the time it was industry practice to make a revised repayment plan with loans that were in difficulty but our request was consistently declined without explanation"*. I find that the Complainants' contention that the Provider did not engage with them in relation to an alternative repayment agreement is not supported by the evidence.

The evidence provided by both parties indicates that the Provider engaged with the Complainants in respect of an alternative repayment agreement. While I fail to understand the Provider's unwillingness to meet the Complainants, I accept that the Provider could not have had a meaningful further engagement in circumstances where it was not provided with all of the documentation requested by it from the Complainants.

The Complainants have not suggested any basis for, or provided any evidence in support of their allegation that their mortgage was improperly sold to TP and I have not found any wrongdoing on behalf of the Provider in respect of the sale.

Provision 8.12 of the CPC states:

'Where arrears arise on an account and where a personal consumer makes an offer of a revised repayment arrangement that is rejected by the regulated entity, the regulated entity must formally document its reasons for rejecting the offer and communicate these to the personal consumer, on paper or on another durable medium.'

/Cont'd...

On the telephone on **20 August, 2015**, the Provider indicated that once it received a proposal in writing from the Complainants, it would consider that and revert. The Provider has acknowledged that it failed to properly respond to the Complainants on 3 separate occasions, one such failure relating to that letter. In my opinion, the failure to respond to a proposal made by the Complainants after indicating that it would on the telephone is a failure of the Provider. The fact that this occurred at a time when the Provider was in the process of handing the file over to the management of another entity does not excuse this failing. On the contrary, it makes this error more serious. Furthermore, the Provider acknowledges that it did send correspondence intended for the Complainants to an incorrect address, even after the incorrect address was flagged to them by the Complainants. This is a further failing by the Provider.

However, on the basis that the offers of €3,750 (€1,000, €2,000 and €750) are still available to the Complainants, I do not uphold this complaint as I believe this to be reasonable compensation for these failings.

Conclusion

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** 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**

20 June 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.