



<u>Decision Ref:</u>	2019-0185
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Maladministration Failure to provide accurate account/balance information
<u>Outcome:</u>	Rejected

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

Background

This complaint is in respect of the Complainant's loan with the Provider which was taken out in **August 2010** and was due to be repaid in one payment on **19 January 2011**. The loan was in substitution of existing loans that the Complainant had with the Provider.

The Complainants' Case

On **16 August 2010** the Complainant drewdown a loan from the Provider in the amount of €339,845 to be repaid in one payment on **19 January 2011**. After the loan became due the Complainant's representatives and the Provider discussed the options open to the Complainant to repay the loan, including the sale of the property, to address the Complainant's indebtedness.

On various occasions, the Complainant asserts that the Provider agreed to accept a lesser sum than the total indebtedness. On **5 November 2013**, the Provider's representative wrote to the Complainant's representative stating that it would accept €300,000.00 in settlement of the debt. On **11 November 2013**, the Provider's representative wrote to the Complainant's representative stating that it would accept €285,000.00 in settlement of the debt.

On **8 November 2016**, the Complainant asserts that the Provider indicated that it would accept €330,000.00 in the course of a phonecall in settlement of the debt. By letter dated **24 January 2017**, the Complainant's financial representative also asserts that a deal was entered into on the Complainant's behalf in November 2013, February 2014 and April 2014 to settle the indebtedness for the sum of €285,000.00.

On **17 November 2016** the Complainant's representative issued a cheque in the sum of €361,500 in full and final settlement of the loan. The Complainant states that the Provider failed to furnish the exact redemption figure when asked by the Complainant's representative and in circumstances where the Provider asserted over the phone that the figure was slightly over €361,000, the Complainant furnished a cheque in this amount. The Complainant asserts that, upon receipt of the cheque, the Provider delayed in releasing the property held as security. A letter dated **29 November 2016**, was received by fax by the Complainant's representative on **6 December 2016** which stated that an e-discharge would be filed. By letter dated **20 January 2017** from the Complainant to the Provider, the Complainant asserted that the e-discharge had not yet been filed.

The Complainant asserts that the Provider did not provide details of final accounts on various occasions. By letter dated **15 November 2016** the Complainant's representative lodged the cheque in the sum of €361,500 to redeem the loan and requested confirmation that the account had been settled in full. The Complainant's representative again wrote on **23 November 2016** requesting confirmation that the Complainant's liability had been settled. The Provider replied by letter dated **29 November 2016** confirming receipt of the cheque. The Complainant's representative again wrote on **1 December 2016** requesting confirmation that the mortgage had been discharged in full, to which no response was received. He again wrote on **5 December 2016** noting that the Provider had left a voicemail asking "had [he] not received my letter" and advised that no letter had been received. Further correspondence dated **12 December 2016** and **13 December 2016**, was sent from the Complainant's representative to the Provider seeking a closing statement of the account. By letter dated **19 December 2016**, the Provider furnished the Complainant's representative with the closing statement.

The Complainant also asserts that her representative wrote on various occasions seeking details of the Provider's complaints procedures. On **5 December 2016**, the Complainant's representative sent a letter to the Provider requesting that it furnish its procedures for handling complaints. On **7 December 2016**, the Complainant's representative sent a letter again requesting the Provider's procedures for handling complaints. By letter dated **12 December 2016** to the Provider, the Complainant's representative requested written procedures from the Provider for the filing of complaints. The Provider responded by letter dated 8 December advising that the complaint should be addressed to the two individuals whom the Complainant's representative had been dealing with and about whom the complaint was in relation to. In response to this the Complainant's representative again wrote on **13 December 2016** requesting an independent person with the Provider to whom the complaint could be addressed and by letter dated **19 December 2016** the Provider referred the Complainant's representative to their website and directed him to the online complaint form.

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A complaint was lodged on **20 January 2017** by letter to the customer care unit of the Provider which was acknowledged on **27 January 2017** by letter from the Provider.

By letter dated **3 February 2016**, the Complainant's representative sought details of the timeline of the complaint, the procedures and the identity of the adjudicator, which was responded to on **7 February 2017** and which responses indicated that the complaint was under investigation and a response was expected by **17 February 2017**

The Complainant further asserts that Provider did not adequately respond to correspondence sent. As outlined above, the Complainant asserts that there was various correspondence to which the Provider failed to respond.

The Provider's Case

The Provider asserts that there was never any agreement in respect of settling the Complainant's debt. In **November 2013**, the Provider accepts that it made an offer to accept €285,000.00, but that this was never accepted by the Complainant.

On **17 February 2014**, the Complainant's representative wrote to the Provider stating that the funding the Complainant had expected which would enable her to discharge the debt had not materialised and that the property would be sold.

On **1 April 2014**, the Provider wrote to the Complainant seeking confirmation that the property was being actively marketed and requested proposals for the loan to be serviced or consent to appoint a receiver. On **21 July 2015**, the Provider states that it met with the Complainant, but that there was no discussion of settlement of the debt. On **8 July 2016**, the Complainant's representative wrote stating that the Complainant was offering €270,000.00 in settlement of the debt. On **30 August 2016**, the Complainant's representative wrote stating that the Complainant was offering €300,000.00 in settlement of the debt. On **6 September 2016**, the Provider wrote stating that the offer of €285,000 made in November 2013 had never been accepted or declined by the Complainant. By letter dated and **12 September 2016** the Provider further asserted that the Complainant's offer of €270,000 in full and final settlement of the debt indicated that the Complainant had not accepted the Provider's offer of €285,000 in settlement of the debt.

In response to the Complainant's assertion that a figure of €330,000 was put forward by the Provider in a telephone call with the Complainant's representative in full and final settlement of the debt in **November 2016**, the Provider asserts that it did not enter into an agreement to accept this sum in settlement of the debt, and asserts that such figure was put forward by the Provider and it was conditional upon credit committee approval which was ultimately refused.

The Provider states that on **29 November 2016**, the Provider indicated that an e-discharge of the mortgage would be filed. The Provider states that due to the Christmas break this was delayed and on **23 January 2017**, the Provider sent a letter stating that instructions

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were sent to the Provider's securities department on **29 December 2017**. On **3 February 2017**, a notice of completion of the e-discharge issued.

The Provider asserts that on **8 December 2016** details of how to lodge a complaint were sent to the Complainant's representative. On **19 December 2016**, the Provider asserts that it wrote to the Complainant's representative referring the Complainant to the Provider's website to obtain details of the complaints procedure. In this correspondence the Provider stated that it is not its policy to appoint an independent party to act as adjudicator.

On **7 February 2017**, in response to receipt of the Complainant's complaint, the Provider asserts that it responded to the Complainant's representative stating who would be overseeing the investigation and that the Provider's complaints procedure was being followed.

The Provider asserts that on **19 December 2016** the closing statement of account was provided to the Complainant's representative. The Provider acknowledges the delay in this and apologises.

The Provider asserts that it responded with letters dated **8 December 2016** and **19 December 2016** and also a letter dated **29 November 2016** which was faxed to the Complainant's representative on **6 December 2016**. The Provider asserts that the letter dated **29 November 2016** was ultimately returned to the Provider on **9 February 2017** marked "insufficient address" and was then forwarded to the Complainant's representative, who disputed the explanation advising that the letter had been addressed correctly. However the Provider states that it had been sent within an envelope and that part of the address was omitted from that envelope due to human error.

The Provider acknowledges its customer service failings, and in respect of this aspect of the complaint has made a goodwill offer to the Complainant in the sum of €4,000.

The Complaint for Adjudication

The complaint is that the Provider indicated a figure it would accept to settle the debt and subsequently wrongfully advised that it would not accept this figure, delayed in discharging the security held by it, failed to give proper details of its complaints procedure, delayed in providing a statement of account and failed to respond properly to the correspondence that it received.

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

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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 on 25th 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 issuing of my Preliminary Decision, the Complainant made a further submission by letter dated, 7th May, 2019, a copy of which was transmitted to the Provider for its consideration. The Provider under cover of its email dated 21st May, 2019, advised this Office that it did not wish to make any further submission.

Having considered all the evidence including the Complainant's further submission, I set out below my final determination.

In a post Preliminary Decision submission dated 7 May 2019, the Complainant's solicitor points out that the Complainant originally applied for a mortgage but was instead offered a business loan which she accepted. When the loan fell due for repayment in 2009, the Complainant paid the interest on the loan and the loan was rolled over for another year. In 2010, the loan fell due for repayment and once again the Complainant was not in a position to discharge the principal, or interest. It was at that time that the Provider noticed that it had not registered a charge on the property. The Complainant remained unable to repay the loan and put the property on the market. The Complainant's solicitor states that in April 2014, a representative of the Provider wanted to appoint a Receiver but only at that stage realised that the charge was on the Complainant's private residence and the loan was moved to the Mortgage Recovery Unit within the Provider. The solicitor also points out that in the Summer of 2015 the property was valued in the sum of €650,000. The Complainant's solicitor, in the post Preliminary Decision submission of 7 May 2019, acknowledges that the Provider's agent did not have the final authority to bind the Provider in relation to any settlement agreement. However, he points out that it was the Provider's agent who suggested possible settlement figures. He goes on to state:-

"[the Provider's] agent led us to believe that while the matter would need to be referred to the Credit Control Committee, that this was merely a formality

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and as a result of same, [the Provider's] agent acted to [the Complainant's] detriment. [The Complainant] sold her property and purchased another property in reliance and with the reasonable expectation that [the Complainant] was in a position to ensure that [the Provider] would honour the agreement which was reached and was in a position to ensure that same was honoured".

I have not been provided with any settlement agreement or documentary evidence of any offer being accepted by either party. While I have been provided with numerous items of open correspondence from both parties making offers to settle the Complainant's debt, there is no evidence of any open offer being accepted by either party. In relation to the **November 2013** offers, I note that the Complainant's representative wrote in **February 2014** advising that the funding had not materialised. Furthermore, both parties continued to make open offers to settle the debt after **November 2013**. I find that this is consistent with the parties understanding that there was no settlement agreement entered into in **November 2013**.

In relation to the **April 2014** offer, I have been provided with no evidence of any settlement agreement arising from any offer, and I note that further negotiations continued after **April 2014**. In relation to the meeting in **July 2015**, it appears that there was no settlement entered into on that date, as the parties continued negotiating a potential settlement after that meeting.

In respect of the phonecalls, I have been furnished with recordings of the telephone calls, and I have considered the contents of these calls. I find that the phonecalls are inconsistent with the assertion that a settlement agreement was entered into in 2013 or 2014. In all of the phonecalls around that time the parties are primarily discussing the monthly repayments that the Complainant was in a position to make, and a pending court case that the Complainant had issued in respect of nearby lands which she hoped to raise funds from. Neither the Complainant nor her representatives asserted in those phonecalls that the debt had been settled in either 2013 or 2014. Furthermore, the content of these calls is inconsistent with any deal being struck at the July 2015 meeting at the Provider's branch, as the parties continued to negotiate in phonecalls subsequent to that meeting.

In the phonecall on **23 August 2016**, however, the Complainant's representative does assert a previous agreement on the debt. The Provider's representative noted that at the July 2015 meeting that there was no mention of any agreement, which the Complainant's representative accepts as being the case.

I find ultimately that the fact that further offers and negotiations were made for settlement of the debt for different sums after those dates indicates that no final agreement had been entered into.

I note from the **4 November 2016** phonecall that the parties were of the understanding that there was no final agreement in place. The Provider's representative made clear that any offer would be subject to credit committee approval. In the **8 November 2016** phonecall the Provider's representative said that it was putting in an offer of €330,000.00 which was

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subject to credit committee approval. The Complainant's representative accepted that this offer was subject to credit committee approval. On **15 November 2016**, the Provider's representative phoned the Complainant's representative and indicated that the credit committee had rejected the proposal on the basis that there was enough equity in the property to satisfy the debt.

In relation to the discharge of the security held by the Provider, I note that the debt was cleared on **17 November 2016** when the cheque was received and the discharge occurred on **3 February 2017**. I note that the Provider acknowledges that this amounts to a delay, and that the Complainant's representative was actively requesting that the discharge occur. There has been no adequate explanation advanced for this delay, other than it occurred over the Christmas period, and as such I find that the Provider should have ensured that the security was discharged in a timely manner.

In relation to the provision of information concerning the complaints procedure, I note that the Provider furnished information about how to make a complaint, that it identified the individual who would hear the complaint and that it set out a timeline for the complaints process. I do, however, note that the initial persons to whom the Provider directed the Complainant to make her complaint to were the two individuals with whom her representatives had been dealing with and about whom she wished to complain.

I note that complaints were lodged and were responded to within the time limit required by the Consumer Protection Code 2012. The main matter at issue, therefore, is the extent to which the Provider was obliged to provide written details of its internal complaints procedure, or to appoint an independent individual to conduct the investigation. The Provider says that it is not obliged to do so, while the Complainant says that it is. In light of the provisions of the Consumer Protection Code 2012, I find that the Provider is not obliged to provide details of its internal dispute resolution mechanism or to appoint an independent investigator. While a Provider is obliged to have a written procedure for the handling of complaints, Chapter 10 of the CPC does not require these procedures to be furnished to a complainant. Similarly, there is no obligation on a Provider to appoint an independent investigator to any particular complaint.

In relation to the statement of account being furnished, the first request for the closing statement was made on **12 December 2016** and that the statement of account was delivered on **19 December 2016**. In all of the circumstances, I find that the statement of account could perhaps have been furnished slightly sooner than it was, but that one week is not a particularly long delay.

In relation to the failure to reply, as I note above, there was a lot of correspondence in early December 2016 between the parties. I find that the Provider responded to some but not all of the issues raised by the Complainant in those letters.

For example, while the Provider in its letters dated **8 December 2016** and **19 December 2016** acknowledged receipt of some of the Complainant's issues, there was no acknowledgement of the initial letters dated **1 December 2016** and **5 December 2016**. It seems as well that the Provider's letter dated **29 November 2016** confirming the lodgement of the monies and

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the intended release of the security was not delivered until **6 December 2016**. I find that this represents inadequate customer service on behalf of the Provider.

In all of the circumstances, I find that there were lapses in the service insofar as it applies to the delay in discharging the security and the failure to properly reply to the Complainant's correspondence. I note that an offer of €4,000 as a good will gesture had been offered by the Provider to the Complainant in respect of its customer service failings and on the basis that this sum remains available to the Complainant I do not uphold this complaint.

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

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.