



<u>Decision Ref:</u>	2019-0207
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Appointment of debt collection agency Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

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

Background

This complaint arises out of a joint mortgage and relates to an alleged failure by the Bank to continue a revised repayment arrangement for a second year at the end of an initial one year period, maladministration and poor customer service and complaint handling.

The Complainants' Case

The Complainants are joint mortgage holders with the Bank in respect of a buy-to-let property. The Complainants state that when the account fell into arrears, they applied to the Bank for a reduced payment agreement. They state that this application was made to their local branch and that the application applied for a two-year reduced payment arrangement. The Complainants state that the application proposed that for the first year of the revised repayment arrangement, they would pay €800 per month and that this would be increased to €900 per month for the duration of the second year. The Complainants state that the Bank never informed them that the two-year reduced repayment application was not fully accepted and that they therefore operated on the basis that the application had been accepted as proposed by the Complainants. The Complainants state that it is unfair and unreasonable that they should have been expected to know that their revised repayment application had not been fully accepted in circumstances where the Bank either did not inform them of this or did not make it clear.

In addition, the Complainants state that the Bank failed to respond to their letter of complaint of 7 September 2015 and that the Bank did not respond to a number of letters written by the Complainants' solicitor to the Bank.

The Complainants also state that they are unaware of the legal grounds upon which the Bank has appointed a receiver over their property and sought repossession of the property and the Complainants state that the Bank has failed to provide them with information as to the amount of money that is owed on the account.

The Complainants make this complaint on the basis that the Bank has wrongfully, unreasonably and through a mistake of law or fact, failed or refused to continue a revised repayment arrangement for a second year, at the end of an initial one year period and has been guilty of maladministration and poor customer service and complaint handling.

The Bank's Case

The Bank's position is that it received and considered the Complainants' revised repayment application in 2014. The Bank states that this proposal was assessed in April 2014 and repayments of €800 per month were approved for a 12 month period with effect from **16 April 2014**. The Bank states that correspondence issued to the Complainants to confirm this arrangement. The Bank states that this agreement was for a period of 12 months only and this was clearly communicated to the Complainants in addition to the fact that at the end of the 12 month period, the loan repayments would be rescheduled to ensure that the loan cleared by the expiry date of **16 May 2025**. The Bank therefore denies any wrongdoing in this regard. In addition, the Bank does not accept that it has failed to provide the Complainants with information as to the amount of money owing on the account or that it was not entitled to appoint a receiver and/or repossess the property.

Bank has however, conceded and acknowledged that it did not respond to the letter of complaint submitted on **7 September 2015** and it has also conceded that it did not respond to correspondence received from the Complainants' solicitor in April and May 2016. The Bank has acknowledged that this is poor customer service and has apologised. On foot of the above, the Bank has offered a goodwill gesture payment of €750 to the Complainants.

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.

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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 **28 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.

- 11 April.** The Complainants and Provider submitted material which was exchanged between the parties.
- 16 April.** The Complainants submitted further information, which was exchanged.
- 25 April.** The Provider stated it had no further submissions to make
- 29 April.** The Complainants submitted material which was exchanged
- 3 May.** The Provider responded.
- 11 May.** The Complainants submitted additional evidence
- 23 May.** The Provider Responded
- 4 June.** The Complainants responded.
- 27 June.** The Provider confirmed it had no further submissions to make.
- 5 July.** The Complainants confirmed they had no further submissions to make.

Following the consideration of all the evidence and submissions including the Post Preliminary Decision submissions from the parties, my final determination is set out below.

While there has been a considerable exchange of submissions following my Preliminary Decision, these raised issues of clarification and repeated many of the points previously made. No additional points of fact, errors of fact or errors in law were presented that caused me to change the outcome of my Preliminary Decision.

The mortgage documentation has been provided. It appears therefrom, the Complainants were offered a mortgage on 4 April 2005 for a period of 20 years for an amount of €174,00 in respect of a buy-to-let property.

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Documentation provided by the Bank demonstrates that the Complainants had availed of a number of repayment arrangements on the account since its inception. In May 2006, the Complainants were provided with a six month interest only repayment period and a further six month interest only repayment period was provided in December 2008. In September 2009, the Complainants were provided with a one-year interest only repayment period and it appears that the Bank applied a repayment moratorium for a period of three months on the account in February 2011.

It appears from the Bank statements for the mortgage account that the account first fell into arrears in August 2012. The documentation provided by the Bank also demonstrates that the Complainants applied to the Bank, through their local branch, for a revised repayment arrangement on **4 April 2014**. In that proposal, the Complainants set out to the Bank that they had secured a tenant for their property and were receiving a rental income of €850 per month. The Complainants proposed to lodge €800 per month into the mortgage account for the first 12 months effective from April 2014 and then to increase this to €900 per month for the following 12 months. The Complainants also set out their projection that by 2016, their business would be able to pay the difference between the rental income and the mortgage but that if they failed to meet their full mortgage repayments in 2016, they would look at selling the property. This application was accompanied by a "*Mortgage Forbearance Branch Report*" and a completed "[Bank] Home Mortgage – Reduced Payment Application Form".

The Bank's internal decision template document has been provided which sets out that the Bank had reached the decision after the assessment of a new proposal from the Complainants and it had decided to grant a 12 month fixed period of monthly repayments in the amount of €800 with effect from April 2014.

The Bank has provided a letter in evidence dated **8 May 2014**, addressed to the Complainants which sets out that the Bank had assessed the Complainants application for an alternative repayment arrangement and based on this assessment it had selected the following arrangement as the most suitable for their particular case:

"Fixed Repayments

<i>Revised Repayment</i>	<i>800.00</i>
<i>Effective Date</i>	<i>16/04/2014</i>
<i>Next Repayment Date</i>	<i>16/05/2014</i>
<i>Expiry Date of Fixed Repayments</i>	<i>19/03/2015</i>
<i>Revised Loan Expiry Date:</i>	<i>16/05/2025"</i>

In addition, the letter went on to state that "*at the end of the alternative arrangement period, your loan repayments (excluding the arrears) will be rescheduled to ensure that your loan is cleared by the existing expiry date of 16/05/2025.*" In addition, the letter stated that the "*revised repayment arrangement does not impact on the outstanding arrears of 18,036.26. Please lodge this sum in order to bring your mortgage loan up to date. Interest will continue to accrue on your balance at the current interest rate.*"

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The Complainants assert, amongst other things, that they were not told that their two-year reduced payment proposal had been refused. The Complainants accept that they received the above letter of **8 May 2014** but assert that it does not explicitly set out that their application of two years was not granted. The Complainants state that they were asked by their Bank branch to submit a 2 year proposal and they state that at some stage when the application was being assessed in Dublin, this was changed to one year, but the Complainants assert that the Bank did not inform them or their branch.

Having carefully considered the Complainants' submissions in respect of this aspect of the complaint and having reviewed the wording of the letter of **8 May 2014**, I believe this letter sets out the terms upon which a revised repayment arrangement had been granted to the Complainants following their application in April 2014. Those terms include that the revised repayment arrangement is only to last for a period of 12 months. It follows therefore that a further period of 12 months had not been provided following the Bank's assessment of the Complainants' application.

While it would have been preferable and helpful if the Bank had set out that it was not agreeing to the Complainants' proposal for the second year, there is no indication in the letter that it had accepted that proposal.

Furthermore, the documentation submitted to this office shows that the Complainants submitted a further reduced repayment application in February 2015, in advance of the expiry of the 12 month arrangement entered into in April 2014.

In light of all of the foregoing circumstances, I cannot accept that the Complainants entered into a two-year reduced repayment agreement with the Bank in April 2014 and I accept that the terms of the repayment agreement that commenced in April 2014 were communicated to the Complainants in the letter of **8 May 2014** and also in a further letter dated **20 March 2015** that was sent to the Complainants by the Bank advising them that the 12 month fixed repayment period had expired and that the repayments had automatically reverted to capital and interest repayments. Therefore, it is not my intention to uphold this aspect of the complaint.

A number of call recordings have been submitted in evidence. However, I do not consider the contents of any of the phone calls to be determinative of any aspects of the matters still in dispute in relation to this complaint.

The calls can be summarised as follows:

Call dated **2 September 2015**: This was a telephone call from the Bank to the First Named Complainant to discuss the seven day letter of demand received by the Complainants. The Bank's employee explained to the First Named Complainant that if the arrears were not paid in full, the Bank will appoint a receiver and sell the property. The First Named Complainant explains her belief that the two year repayment arrangement had been put in place with their branch. In response, the Bank's member of staff advised the First Named Complainant to send a complaint

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regarding this to the complaints department and if she is not satisfied with the response she could lodge a complaint with this Office.

Call dated **19 February 2016**: This was a brief telephone conversation between the First Named Complainant and the receptionist of the Bank's legal department.

Call dated **22 February 2016**: This this was a call back from a member of staff of the Bank's legal department. Amongst other things, the First Named Complainant explained that she had logged a complaint with the Bank on **7 September 2015** and had never received any response or engagement from the Bank in relation to the complaint. Conversation also referred to correspondence sent to the Complainants on **8 April 2015** and a further letter dated **27 April 2015**. The conversation also discussed the Bank's position that the Complainants had not provided the Bank with a sufficient standard financial statement in relation to their 2015 reduced repayment application.

Call dated **3 March 2016**: This call was a relatively short call and ended up with the First Named Complainant and the Bank staff member failing to come to any agreement and the Bank stating that they will proceed with the appointment of the receiver.

The Complainants have asserted that the Bank has failed to provide them with information as to the amount of money that they owe and that they are unsure what legal grounds the Bank are working on with regard to their possession of the property. Firstly, the Complainants have been provided with regular account statements in relation to the mortgage and have been advised in numerous correspondence as to the arrears balance on the account. Arrears letters have been provided that issued to the Complainants and these are dated **21 February 2014, 23 May 2014, 22 August 2014, 21 November 2014, 29 January 2015, 20 February 2015, 20 March 2015, 27 April 2015, and 5 May 2015**. I accept from this that the Complainants were provided with information as to the amount of money owed under the mortgage agreement. Furthermore, the Bank has provided a copy of the receiver's deed of appointment.

The Complainants have been advised by the Bank in numerous correspondence that their property was at risk if they did not keep up payments on the mortgage. Furthermore, the Bank sent a demand letter to the Complainants dated **26 August 2015** which set out, amongst other things, that the Bank was demanding payment of the sum of €145,918.55 within a period of seven days of the date of the letter.

The letter set out that if full payment in cleared funds was not made within that seven day period, the Bank would take the steps it deemed necessary to recover the debt and enforce its right under the security held to include the appointment of a receiver and any other legal action. I must accept therefore, that the Complainants were provided with the appropriate level of information regarding the arrears on the account and the consequences for failing to make the payments under the mortgage agreement which included, amongst other things, the appointment of a receiver and the loss of the property. Accordingly, I do not uphold this aspect of the complaint.

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The Complainants have also alleged that the Bank failed to respond to their letter of complaint dated **7 September 2015** and also to a number of letters sent to the Bank by the Complainants' solicitor in April and May 2016. The Bank has accepted and acknowledged its failure to deal with the complaint and its failure to respond to correspondence from the Complainants' solicitor dated **25 April 2016** and **13 May 2016**. The Bank has offered the Complainants a sum of €750 as a goodwill gesture arising out of its failures in this regard. I consider this offer to be reasonable and on the basis that this offer remains available to the Complainants, I do not uphold this complaint.

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

25 July 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.