



<u>Decision Ref:</u>	2019-0261
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Loans
<u>Conduct(s) complained of:</u>	Arrears handling - commercial lending
<u>Outcome:</u>	Partially upheld

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

Background

This complaint relates to thirteen loans held by the Complainant. In **December 2016**, a third party (“TP”) purchased a number of the Complainant’s loan facilities from a fourth party (“FP”). These loans were managed by the FP until **17 March, 2017**. On that date, the Provider, against which this complaint is made, took over the management of the loans. After a period of financial difficulty in the repayment of the loan facilities, the Complainant sent a business proposal to the Provider on **19 November, 2017**. The TP sent a letter of demand to the Complainant on **8 December, 2017**, prior to any communication about the TP’s decision on the Complainant’s proposal.

The Complainant’s Case

The Complainant says that by letter dated **21 April, 2017**, the Provider wrote to him requesting a repayment proposal in light of the performance of his loan accounts. He says that he requested a meeting with the Provider, which took place on **20 June, 2017**. He says that the proposal sent to the Provider dated **19 November 2017** was detailed and was devised in conjunction with his financial advisor. He says that the Provider was frequently briefed on the progress of the preparation of the proposal between the meeting date and the date it was sent to them.

He says that he never received any response to the proposal put by him before the TP called in the loans in its letter of demand. Three days after he received that letter of demand, on **11 December, 2017**, his financial advisor received an email from the Provider indicating that the proposal was not of a sufficient level to communicate to the TP for consideration. On **16 December, 2017**, the Complainant's financial advisor sent an email to the Provider complaining about the Provider's '*blatant breach*' of the Code of Conduct for Business Lending to Small and Medium Enterprises 2012 ("SME Code").

The Complainant says that on **21 December, 2017**, the Provider wrote to him accepting that the loans should not have been called in ("final response"). That final response did not, however, offer to withdraw the letter of demand or make any offer to engage on the proposal put forward by the Complainant.

The Complainant wants:

1. Appropriate action to be taken against the Provider for the breach of the Central Bank Lending Regulations for Business Lending to SMEs;
2. The demand letter to be withdrawn and proper engagement to take place in relation to his proposal; and
3. Financial compensation of €10,000 to be paid for the stress caused to him and his family in the weeks leading up to Christmas as a result of the improper issue of the demand letter.

The Provider's Case

The Provider submits that the TP makes all commercial decisions regarding the loan facilities that the Provider manages. While it accepts in its final response that the letter of demand should not have been sent prior to the refusal of the Complainant's proposal being communicated to him, the Provider submits that this arose due to an unfortunate miscommunication and that it was a customer service failing rather than a failure of the Provider to comply with its legal obligations.

The Provider submits that it is important to note that the TP did not appoint a receiver over the Complainant's property until after it issue a revised demand letter on **9 January, 2018** and a formal response to the Complainant's proposal had issued. The Provider submits that the fact that the TP issued a revised demand letter after the Complainant's proposal had been formally responded to means that there is no action required in respect of withdrawing the demand letter.

The Provider states that there was no breach by the Provider of the SME Code.

The Provider has outlined in its submissions its compliance with the SME Code, in particular Provisions;

- i. 9 - in affording the Complainant an opportunity to arrange a meeting with the Provider;
- ii. 13 - the Provider issued annual statements to the Complainant;
- iii. 17 - within 15 working days of the Provider taking over the loan facilities, the Provider issued financial difficulty letters to the Complainant confirming that these loan facilities were being treated as financial difficulties cases;
- iv. 18 - the Provider submits that it implemented policies, procedures and structures which ensured its representatives comply with the provisions of the SME code;
- v. 19 - the Provider has an information booklet for borrowers who enter into financial difficulty and also has a dedicated section on its website for borrowers in financial difficulty;
- vi. 20 - in its correspondence with the Complainant the Provider submits that it had been more than reasonable in the time it afforded to the Complainant to submit a business plan and supporting documentation and advised the Complainant that he would be classified as non-cooperating if he failed to do so, and the implications of this. It further submits that when it took over the Complainants loan facilities the Complainant was already in arrears but the Provider, in the interests of fairness, issued letters to the Complainant in compliance with its obligations under provision 20(3) and (5). Further, the Provider states that it notified the Complainant of any change in the designated point of contact;
- vii. 22 - the Provider submits that as the Complainant was classified as "*not co-operating*", it did not communicate the decision of 11 December 2017 in the manner described. The Complainant was already on notice of that classification of "*not co-operating*" which meant that the TP could refuse to consider an alternative arrangement;
- viii. 24 - the Provider has an internal framework whereby appeals are reviewed by an independent panel of senior members of the management team who were not involved in the original assessment of the proposal. The Provider submits the Complainant was not offered the opportunity to appeal as he had already been deemed as "*not co-operating*"; *and*
- ix. 25 - the Provider submits again that it has procedures, policies and a log for complaints in place, however, as these contain commercially sensitive information it states that it was not in a position to provide these as part of its submissions.

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The Provider does state that it is fully aware of its obligations under this provision and that the issues were investigated and its formal response issued within 5 days of receiving the complaint. It does acknowledge that the demand letter should not have issued prior to its response to the proposal issuing,

In relation to the Complainant's request that the Provider engage with him in respect of the debt settlement proposal that was submitted by him, the Provider states that prior to the receipt of the proposal dated **19 November 2017**, the Provider had afforded the Complainant several opportunities to submit a proposal and afforded him sufficient time to do so before he was classified as "*not co-operating*". The Provider further states that the Complainant has not submitted an alternative proposal to the Provider after its email of **11 December 2017** to the Complainant and, as per the condition contained in the not cooperating letters issued to the Complainant from TP, the Provider is entitled to refuse to consider any alternative arrangements after this.

The Provider further submits that all information sought by the Provider from the Complainant was reasonable, proportionate and necessary to understand the Complainant's financial circumstances.

The Provider has acknowledged in its final response letter that the letter of demand should not have issued on **8 December 2017**, however, it states that the TP had the right to demand the loan facilities after the formal response to the proposal issued to the Complainant. It rejects the Complainant's contention that he is entitled to €10,000 for stress caused to him and his family as a result of the demand letter issuing and states that there are no grounds for this.

The Complaints for Adjudication

1. That the Provider did not respond to the Complainant's proposal, prior to the TP issuing a letter of demand, causing stress to the Complainant and his family; and
2. That the Provider breached the SME Code.

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 15 July 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, within the period permitted, I set out below my final determination.

The main element of this complaint is that the Provider did not respond to the Complainant's proposal prior to the TP effectively confirming its rejection of it by issuing the letter of demand. I accept that it is reasonable to expect that, in circumstances where he had issued a proposal to the Provider, he would receive a reply to this, whether positive or negative. It is reasonable to expect that this response would be received prior to issue of any demand letter by the TP. It is understandable that it might have appeared to him that either the Provider had failed to furnish his proposal to the TP or that the TP merely disregarded his proposal without even considering it. Having reviewed all documentation submitted by both the Complainant and the Provider however, I find that the evidence does not support this contention.

The documentary evidence shows that the Provider sent the Complainant's proposal to the TP on **20 November, 2017**, and the TP replied to the Provider on **6 December, 2017**, indicating its refusal of the proposal; two days before it issued its demand to the Complainant.

It would have been preferable if the Complainant was informed of this refusal by the Provider, prior to receiving the letter of demand. However, in circumstances where the TP was not minded to accept the proposal of the Complainant and had made that decision, it was entitled to issue a letter of demand and the issue of this letter is a matter for the TP. In any event, the TP did not act on its letter of demand of **8 December, 2017**, but held off until it issued a revised letter on **9 January, 2018**. While the Provider has stated in its submissions to this Office that it is always aware when the TP issues a demand letter, I note that there was a very short window between the TP's communication of its refusal and the issue of the letter of demand.

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The Provider accepts that there was “*an unfortunate miscommunication*” between it and the TP which meant that the demand letter issued by the TP before a response had issued from the Provider to his proposal dated **19 November 2017**. I find that this represents poor customer service and a failing in this regard on the part of the Provider, which is accepted by the Provider, and it is reasonable to expect that this caused stress, worry, inconvenience and uncertainty to the Complainant.

The Complainant asserts that there was a “*blatant breach*” of the SME Code by the Provider but does not specify any provisions that he believed the Provider breached, nor does he point to any specific instances of non-compliance. The Provider has addressed a number of the relevant provisions applicable in the circumstances. The factual basis for its asserted compliance is set out above. On the basis of the evidence supplied to me and the Provider’s demonstrated compliance, I am of the view that the Provider has complied with its obligations under the relevant provisions.

I do not find that the poor customer service failing, in respect of the failure to issue a letter confirming the rejection of the Complainant’s proposal prior to issue by the TP of the demand letter, constitutes a breach of the SME Code. However, for the reasons set out above, I partially uphold the complaint, having regard to the poor customer service given by the Provider, in failing to notify the Complainant of the rejection of his proposal prior to the issue of the letter of demand by the TP. I also direct the Provider to pay a sum of €1,000.00 to the Complainant for the inconvenience caused.

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) and (g)**.

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 compensatory payment to the Complainant in the sum of €1,000.00, to an account of the Complainant 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***.