



<u>Decision Ref:</u>	2019-0266
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Arrears handling Dissatisfaction with customer service Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

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

Background

The complaint relates to a loan settlement agreement proposed by the Bank in **January 2016** which the Bank maintains expired in **June 2016** without the Complainant having accepted the offer.

The Complainant's Case

The Complainant held a loan account with the Bank. The Complainant states that, in or around **January 2016**, the Bank agreed to a "*full & final settlement*" of his loan account in the amount of €50,000.00 which offer was "*eventually*" put in writing in **May 2016** quoting an expiry date in **June 2016**. The Complainant submits that, notwithstanding his failure to accept the offer within the stated time-frame, the Bank continued to engage with him regarding the settlement and promised to progress the matter as recently as **December 2016**. A new individual took over the Complainant's account in **February 2017** and a letter issued advising that the offer had expired in **June 2016**.

The Complainant complains about delays on the part of the Bank in responding to him and about "*the abrupt end to discussions on the loan settlement*". The Complainant maintains that the conduct of the Bank was such that it implied that the settlement offer was still open in **December 2016** and, in such circumstances, the Complainant submits that "*he was*

entitled to receive some communication or correspondence ... advising him of the position” before the letter of **February 2017**.

The complaint relates to the manner in which the Company dealt with the Complainant in the course of discussions regarding the settlement of a loan account resulting in the expiry of an offer of settlement. The Complainant seeks the reinstatement of the €50,000.00 settlement offer. The Complainant states that he has already paid €45,000.00 and he submits that a sum of €5,000.00 should be “*set aside*” to cover expenses as well as “*upset and inconvenience*”.

The Provider’s Case

The Bank states that an offer of settlement was advanced in a letter of the **13th of May 2016** in which it was “*clearly stated*” that the offer would expire on the **24th of June 2016**. The Bank states that the Complainant did not accept the offer within that time frame and, as such, the offer lapsed. The Bank maintains that the fact that there may have been ongoing discussions following the **June 2016** deadline is immaterial and did not affect the fact that the offer of the **13th of May 2016** was no longer valid following the expiry of the period stipulated within which to accept it.

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 **30 January 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.

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Having issued by Preliminary Decision, I became aware that a Summary Summons had been issued by the Provider in 2018 seeking recovery from the Complainant of money due pursuant to the terms of the loan account which is the subject of this complaint.

In those circumstances, I advised the parties that it would not be possible for me to continue with the investigation of the complaint unless in accordance with **Section 50(3)** of the **Financial Services and Pensions Ombudsman Act 2017** an application was made to the High Court seeking a formal “stay” of the legal proceedings in question, pending the conclusion of the investigation by this Office.

On the application of the Complainant, the High court made an Order dated **20 May** “staying” the legal proceedings pursuant to **Section 49** of the **Financial Services and Pensions Ombudsman Act 2017**.

A copy of the Order was supplied to this Office on **2 July 2019** by the Complainant’s representative.

On that basis, I am now concluding the adjudication process by issuing my Legally Binding Decision.

Following the issuing of my Preliminary Decision to the parties, the Complainant made a further submission under cover of his representative’s e-mail dated **12 February 2019**, a copy of which was transmitted to the Provider for its consideration. The Provider has not made any further submission.

Having considered the Complainant’s additional submission and all of the evidence furnished to this Office, I set out below my final determination.

Prior to considering the substance of the complaint, it will be useful to set out aspects of the history of this matter together with certain parts of relevant correspondence passing between the parties.

History & Correspondence

In late **December 2007**, the Complainant drew down a loan from the Bank in the amount of €150,000.00. The purpose of the loan was to facilitate an investment in the total amount of €200,000.00 with the balance of €50,000.00 being funded personally by the Complainant. The terms of the facility letter provided for monthly interest only payments (in the amount of €805 approx.) followed by a bullet payment of €150,000.00 on or before the expiry date of the loan facility which was stated to be **30 December 2014**.

The Complainant consistently paid the amount of €778.45 per month from **February 2008** until **November 2014**. This payment would seem to have been made for the purpose of discharging the interest applicable however, owing to interest rate reductions over the course of the facility, the figure of €778.45 came to represent significantly more than the monthly interest due.

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The Complainant maintained monthly repayments in this amount nonetheless with the result that, in **November 2014**, he had satisfied all interest payments due in addition to which he had paid off some of the capital on the loan. Accordingly, on **24 November 2014**, the balance (overdraft) on the account stood at €116,840.02 which reflected the fact that the capital had been reduced by over €33K in addition to interest repayments having been made in the amount of around €30K. The balance was the same on the scheduled date of expiry of the facility. Thereafter, no further regular repayments were made, and surcharges began to accrue.

The investment ultimately failed with the Complainant recouping a total of €26,432.91 only. Certain discussions took place between the Complainant and the Bank in 2015 wherein the Complainant sought a write-down of his debt. The Complainant was ultimately asked to put a proposal in writing leading to the Complainant's letter of the **12th of January 2016** wherein the Complainant offered €26,432.91 in "*full and final settlement of the debt*" which at that point stood at €129,007.59 (inclusive of interest and surcharges). The figure of €26,432.91 was stated to represent the full proceeds realised by the Complainant from the investment and the Complainant pointed out that it should be considered in the context of "*in excess of 65K*" having already been lodged to-date representing "*over 60% contribution by me notwithstanding the additional 50k which was lost in the Investment*".

The Complainant wrote again on **4 April 2016** noting that the Bank had refused his offer and had sought a settlement in the amount of €50k, as had been communicated in a phone call of **1 February 2016**. The Complainant reiterated his offer and stated that "*over this period I have repaid approx. 30,000 in capital with interest of 35,352 and offering a further 26,432.91 totalling my repayments at just north of 91,000 which far outweighs my original risk of 25% added to the 50,000 from my personal funds my total exposure is over 140k*".

The Bank rejected the Complainant's proposal, initially by way of phone call of **26 April 2016** and subsequently by way of letter of Friday the **13th of May 2016** in the following terms:

As per your proposal, I confirm that the Bank is willing to enter into the following agreement as detailed below.

You agree that the terms of this letter will remain confidential between you, your legal adviser and [the Bank], but this will not stop you from making any disclosure required by law, or by any court or government authority.

You agree that the facilities are in default and have agreed to the following:

- (a) Pay the sum of €50,000 (fifty thousand euro) to us by the **27th June 2016**.
Payments to be made to account [account number]*
- (b) The Bank is no longer prepared to offer you banking facilities. Please note that all accounts with [the Bank] must be closed as well as your personal credit card and visa business credit card.*

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The offer will remain open for acceptance by you and within 42 days from the date of this letter, after which date this offer will end without any liability or commitment on our part.

The letter of offer provided a section for the Complainant to sign and to return to the Bank as a means of communicating his agreement to the offer.

The Complainant did not respond within 42 days to indicate his agreement to the offer. The Complainant did write on **25 May 2016** enclosing a letter he had received from the Data Protection Commissioner which was critical of the Bank's failure to retain certain documentation and which sought the Complainant's views as to whether he would accept a written apology from the Bank. The Complainant, in his letter to the Bank of **25 May 2016**, stated as follows:

*I would advise that an apology would be acceptable to me but only subject to your agreement that the offer, in full & final settlement, as outlined in my letter of **12/01/2016** is acceptable to the Bank.*

The Bank responded by way of letter of **17 June 2016** stating as follows:

After discussions held with the Management Team I would like to advise that our offer of €50,000 in full and final settlement of your outstanding debt of €136,989.60 still stands.

*To this end our settlement letter dated the **13th of May 2016** will expire on the **24th of June 2016** and I would be obliged if you could advise if you wish to accept this offer.*

The offer was not accepted within the timeframe specified. Recordings of calls between the Complainant and the Provider have been provided in evidence and considered by me.

The Complainant phoned the Bank on **27 June 2016** "advising he would lodge €40k and could not afford anymore" (as per the Bank's 'Timeline of Events'). The Bank's statement in its response to this office suggests that, in the course of this call, the Complainant was advised that "his counter offer was not acceptable as the agreed formal settlement agreement for €50,000 was not accepted within the timeframe". Having considered the content of the call, it is clear to me that the Bank's description of this call is demonstrably inaccurate.

The 'Timeline of Events' goes on to detail that the Bank's Credit Committee reviewed the €40K proposal and concluded as follows:

4/7/2016 *Bank Credit Committee advised it would consider €40k proposal if the complainant provided:*

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1. *Statement of Affairs & Income & Expenditure Listing within 2 weeks*
2. *Offer would be considered on receipt of the above*
3. *Alternatively if above not provided €50k in full & final settlement within 1 week*

Aspects of the foregoing information (the 'new offer') were communicated to the Complainant in a phone call of **12 July 2016**. Specifically, the Complainant was told that the Bank was still "looking for" €50K but that it would "assess" his request for a payment of €40K only provided that the requested documentation was furnished. The Complainant undertook to furnish the material and thought that this might take 2 weeks. The Complainant was not however advised of the time limits set out above, either in respect of the €50K offer or in respect of the commitment to consider the €40K proposal. This is directly contrary to the Bank's statement in its response to this office that "on a follow up call to the Complainant on **12 July 2016**, the Bank advised he would have to provide the supporting documentation within 2 weeks". This second mischaracterisation by the Bank of the content of a phone call is a cause for serious concern.

The Complainant did not provide the documentation in the following weeks. The Bank left a voicemail with the Complainant on **4 August 2016** noting that the documentation had not been provided as promised. The Bank sought to contact the Complainant again on **9 August 2016** at which point the Complainant advised the Bank that he had been unable to get the requested documentation from his accountant. The Complainant was asked to submit the documentation (some of which would not require the input of an accountant) and he agreed to provide it within one week. It is clear from the content of this call that the Bank's employee gave no commitment about the offer of **13th of May 2016** or any extension of the timeframe for acceptance applicable to the offer.

The Complainant submitted a Standard Financial Statement to the Bank under the cover of letter of **31 August 2016**. This letter stated as follows:

As outlined in previous correspondence the Shares held relating to the [investment] was the only security held by the Bank & I am now providing the sale proceeds plus additional funds to the Bank in settlement.

I do not have the wherewithal to meet any further commitments but, with some family assistance, I will honour my agreement to lodge €40,000 on condition that same is acceptable in full & final settlement. Please confirm that same is acceptable as soon as possible as the offer of assistance referred to cannot be relied upon indefinitely. In any event the settlement negotiations have been prolonged by the bank & if they are not concluded shortly I intend pursuing my complaint with the Data Commissioner.

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In **September 2016**, the Bank sought certain further documentation from the Complainant including copies of the accounts of his limited company. The Complainant refused to provide this documentation, and he closed his business accounts with the Bank. I note the Complainant asserts that he tried to close these accounts on 22 July but that the Provider did not close them. He attached a company account Bank statement dated **29 November 2016** to show that the Provider did not close the accounts when requested. Thereafter, in **December 2016**, the Bank again sought the company accounts indicating that these were required for a full assessment of the Complainant's financial position in order to consider the €40K proposal. The Complainant again declined to provide the records requested.

On **7 February 2017**, the Bank wrote to the Complainant noting that the settlement offer of **13th of May 2016** had not been accepted and stating that the *"facility and all accrued interest is now due for payment"*.

On **18 July 2017**, the Complainant lodged €45,000.00 to the loan account. In my Preliminary Decision I stated that this was the only payment made on the account since the last 'interest' payment of €778.45 on **4 November 2014**. The Complainant, in his post Preliminary Decision submission, pointed out that this was incorrect as a lodgement of €3,123.87 was made on **27 April 2017**. The Complainant is correct in that regard.

The Complainant, in his post Preliminary Decision submission of **12 February 2019**, refers to a phone call between the Complainant and the Provider on **12 December 2016** which he states *"contains vital information which evidently was not available to you at Preliminary Decision stage"*.

While this Office did not receive a recording of that call and it was not included in the list of calls furnished as part of the Schedule of Evidence supplied by the Provider, it is referred to in the response to the Schedule of Questions. It is also listed on the Provider's internal IT system notes.

Analysis

The Complainant maintains that he should be entitled to accept the offer of the **13th of May 2016** even though he did not communicate acceptance of the offer within the timeframe specified in the letter of offer. A secondary aspect of the Complainant's complaint relates to the delays on the part of the Bank in responding to him.

I will consider both of these aspects of the complaint separately.

It is common case that the Bank extended a settlement offer to the Complainant in writing on the **13th of May 2016**. It is also not in dispute that the letter of the **13th of May 2016** stipulated that acceptance must be communicated within 42 days. Equally, the parties are in agreement that no such acceptance was communicated within that period.

I accept that the terms of the offer made clear that, in order to avail of the offer, the Complainant was required to communicate his acceptance to the proposal within 42 days from the date of the letter of offer. This was further underlined in the letter of **17 June 2016**. In default of the communication of acceptance, I accept that the Bank was entitled to consider the offer to have expired.

The question that then arises is whether any further communications from the Bank should be interpreted to have extended the offer or advanced a new offer in similar terms. The phone call of **12 July 2016** is important in this regard. This phone call was made in circumstances where the Bank had decided to allow a 1-week extension of the offer. The time limit was not however communicated to the Complainant. What was communicated to the Complainant was that the Bank was still "*looking for*" €50K. While I find the manner in which the Bank has sought to portray this call in its response to this Office to be inaccurate and unacceptable, I do not believe that this phone call can be interpreted as an extension for an indeterminate period of the offer of **13 May 2016**.

The offer of **13 May 2016** had not been accepted and thus had lapsed. While the Bank may have been prepared to consider accepting €50K for a further period, this did not amount to any formal or firm offer to accept that amount. At this point, the offer had expired and whereas further discussions and agreement were possible, it was from this point forward always open to the Bank to revert to the terms of the loan agreement.

I also accept that there was no communication subsequent to **12 July 2016** that could be interpreted as an extension of the offer of **13 May 2016**.

In his post Preliminary Decision submission of **12 February 2019**, the Complainant takes issue with the statement in my Preliminary Decision that "*the Bank terminated discussions as to the €40K proposal in light of the Complainant's failure to provide the accounts requested*". He states "*there is no evidence of such termination nor was this decision communicated to [the Complainant]. A review was carried out after the Bank obtained Company financial information from CRO and in response to "Schedule of Questions" they stated "on 9 November 2016, the Bank reviewed the Complainant's accounts and the decision was made to not accept the Complainant's proposal of €40,000"*". Had this decision been communicated to [the Complainant] before or during [the] telephone call of **12.12.2016** there would have been a positive outcome following [the Provider's agent's] offer of "*50K to put this to bed*".

I find this to be at variance with the Complainant's letter of **31 August 2016** when he finally provided certain of the documentation sought. This letter made it clear that he was not countenancing a payment of €50K as he did "*not have the wherewithal to meet any further commitments*" over and above a payment of €40K. The vast proportion of communications in this period related to the Bank's efforts to fully assess the Complainant's financial position by securing his limited company's accounts with a view to establishing whether the €40K proposal should be accepted.

I have not been provided with any evidence either before or after I issued my Preliminary Decision to support the argument that the communications in **December 2016** implied that the settlement offer of **13th of May 2016** was still open. There was no reference to any extension of the earlier offer.

In light of the foregoing, and in the absence of the communication to the Complainant of any extension of the offer of **13 May 2016**, I accept that no residual obligations remained on the Bank by reference to the offer of **13 May 2016**. I also accept that there was no requirement on the Bank to advance any similar further or second offer to the benefit of the Complainant. In this regard, the letter of offer of **13 May 2016** clearly stated that, in the absence of acceptance within the specified period, the *“offer will end without any liability or commitment on our part”*.

Insofar the Complainant complains about delays, I have not found evidence of any inordinate delay on the part of the Bank.

The Complainant himself contributed to delays by not meeting deadlines and repeated failures to provide required documentation.

For the reasons set out above, 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 August 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.

