



<u>Decision Ref:</u>	2020-0012
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

The Complainant held a mortgage loan account with the Provider against which this complaint is made. During **June 2016** the Complainant entered into an arrangement with the Provider to make six payments to her loan account over a six month period. At the end of this period, following the completion and assessment of a Standard Financial Statement, Complainant's arrears were to be recapitalised. In **October 2016**, the Complainant was advised that her loan was sold by the Provider to a third party. Following this, the Complainant was advised that the Provider could not recapitalise the Complainant's arrears as her loan had been sold.

The Complainant's Case

The Complainant states that she submitted a complaint to the Provider on **29 December 2016**. On the same day, the Complainant received a letter from the Provider dated **8 December 2016** requesting that she complete a Standard Financial Statement (SFS). The Complainant points out that this was the day before a court appearance in respect of the repossession of her family home by the Provider. The Complainant states that she had previously completed an SFS on **5 December 2016**, and was advised that it would take up to two weeks for a response. In a submission to this Office dated **12 July 2017**, the Complainant elaborates on this aspect of her complaint stating:

"[The Provider] failed to inform me that they could not do the capitalisation on my mortgage, I was informed that the Standard Financial Statement would be sent to the new provider to make a decision which takes roughly two weeks. ...

I was led to believe that after the two weeks it would be all good to go with the capitalisation and I would be starting 2017 on a fresh slate with the banks.

...

On December 29th I received an SFS in the post and only when I made contact with [the Provider] was I informed that the capitalisation could not be done. [The Provider] led me to believe that there was no issues."

The Complainant continues by clarifying that her "... *complaint is not about the fact that the capitalisation was not completed, it is over [the Provider] misleading me and letting me believe that everything was in hand when it so clearly wasn't. ...*"

The Complainant states that the Provider sold her mortgage loan to a *vulture fund* and failed to provide her with sufficient detail as to the identity of the new owner of her loan. The Complainant points out that she has received three letters "... *two from [the Provider] with different company names and then another letter from another Financial Service (sic) informing me that they will be looking after my mortgage.*" The Complainant states she again made contact with the Provider to confirm the identity of the new owner of her loan but was unable to get an answer.

The Complainant refers to the court proceedings in respect of her family home and states that a direction was given by the County Registrar that the Provider's solicitors furnish the Complainant with details of a designated contact within the Provider no later than **16 December 2016**. The Complainant submits that this direction has not been complied with.

The Complainant states that she reached out to the Provider on **7 March 2017**, to get an update in respect of the above matters as the Provider had requested 40 working days within which to deal with her complaint which was **22 February 2017**. The Complainant states that she also made contact with the Provider on **22 February 2017**, and was informed that a letter had been issued to her in respect of her complaint. The Complainant states that she received a letter requesting a further 10 days to deal with her complaint. The Complainant advises that she granted the Provider the additional 10 days being sought. When the Complainant contacted the Provider on **7 March 2017**, she was informed that her complaint was still under investigation and she was "... *left in limbo as to why this matter has not been resolved.*" The Complainant states that she has found this experience stressful.

The Complainant advises that as of **March/April 2017**, she is no longer permitted to contact the Provider in relation to her loan which she accepts but questions how she is supposed to have her complaint resolved. The Complainant states that at the date of her complaint to this Office she has not received a Final Response from the Provider – only correspondence asking for more time to deal with her complaint.

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The Complainant states that she is “... constantly chasing my tail trying to get a resolution to this ... Either the Solicitors acting on behalf of [the Provider] have been negligent by not carrying out the order of the County Registrar or [the Provider] have been negligent and ignored the order of the County Registrar.”

The Complainant states that she wants the Provider “... to take liability for their lack of Customer Service abilities. I also want them to take responsibility for this. ...”

The Provider’s Case

Background

The Provider states that the Complainant was seeking to have the arrears on her mortgage loan account capitalised following an arrangement entered into with the Provider where the Complainant was going to make six payments in a six month period. The Provider states that the Complainant completed the arrangement between **June 2016** and **December 2016**.

The Provider points out that when the final scheduled payment to the Complainant’s account was due, it had already entered into an agreement to sell the Complainant’s loan to an external third party. The Complainant was concerned that the arrangement to capitalise her arrears would not be honoured by the Provider or the new owner of her loan despite the six payments being made to her account. The Provider states that the Complainant made efforts to have the capitalisation completed by the Provider prior to the sale of her loan but this was not completed prior to sale concluding. The Complainant submitted a complaint to the Provider in relation to her efforts to have the arrears capitalised on her loan account.

The Provider states that the Complainant advised that it had not provided a response/update to the SFS completed with a member of its staff on **5 December 2016** as part of the re-capitalisation process and felt the time taken to have a decision reached on this would impact the ability to capitalise her arrears before the sale of her loan was finalised.

The Provider states that the Complainant also advised that the Provider failed to provide sufficient detail of who the new owner of her loan would be. The Provider states that the Complainant has confirmed receipt of three letters (two from the Provider) with different company names highlighting who would be managing her account and sought clarity on the information provided. The Provider states that the third letter was from a financial services provider confirming they would be managing the Complainant’s mortgage loan account.

The Provider states that in **June 2016**, the Complainant entered into another arrangement to make six consecutive monthly repayments of €972.11 to her loan account and thereafter, the accrued arrears would be capitalised back into the loan.

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The Provider states that this arrangement was put in place and the Complainant endeavoured to ensure it would be honoured as previous arrangements were unsuccessful. The Provider states that the arrangement to complete the six payments was completed between **June 2016** and **November 2016** inclusive. During this time, the Provider entered into a contract to sell the Complainant's loan. In **October 2016**, the Provider states that it advised the Complainant that it had entered into a contract to transfer the her loan account to a third party but that until the completion of the sale and for a number of weeks after the transfer date, the Provider would continue to be the Complainant's point of contact. The Provider submits that the purchaser of the loan was identified in this correspondence together with the purchaser's servicing agent.

The Provider submits that when the Complainant contacted its Resolution Assessment Team in **December 2016** to complete an SFS and subsequently requested that the arrears be capitalised. The SFS was completed and the Complainant was advised of the expected monthly repayments that would have to be made when the capitalisation was complete.

The Provider states that as the six payments in six months was agreed before the contract of transfer was entered into and would be concluded in **December 2016**, the assessment of the capitalisation request and subsequent decision would have rested with the new owner of the loan as the loan was being sold at the time of the arrangement ending.

The Provider states that its agent advised the Complainant during certain telephone calls in **December 2016** that the capitalisation request would have to be transferred to the new owner for consideration and that a timeframe of one week would be the expected turnaround. The Complainant was advised to contact the Provider's Resolution Assessment Team in two weeks should there be no confirmation of a decision on the SFS assessment and recapitalisation.

The Provider states that as the Complainant's loan was in arrears and subsequently in the process of being transferred to a third party, any decisions surrounding the recapitalisation of the arrears would be at the discretion of the new owner. The Provider "*... recognises the Complainant was advised during her conversation with staff on 21st October 2016 'that everything that is in place now will have to be honoured and that won't change'.*" The Provider states that this was recognising the Complainant's acknowledgement of receiving correspondence surrounding the sale of her loan and discussions over the recapitalisation.

The Provider states that the Complainant was advised of the necessary steps the Provider had to take in forwarding the case to the new owner for assessment following the completion of the Complainant's six payments in six months. The Provider states that if a decision regarding the capitalisation was not received, it apologises for the inconvenience caused to the Complainant.

As previously stated, the Provider recognises that the Complainant did fulfil her obligation to meet the six payments in six months and as noted in the telephone conversation on **1 December 2016**, the Complainant was advised that the new owner of the loan would have to adhere to the agreement already in place.

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The Provider states that it “... has directed that the capitalisation on the Complainant’s mortgage account with the Purchaser be completed as soon as conveniently possible. This will complete the arrangement entered into between the Bank and the Complainant prior to the contract sale negotiated in October 2016.”

The Complaint for Adjudication

The Complainant is dissatisfied with the level of customer service she has received from the Provider. At the time the Complainant submitted her complaint to this Office, legal proceedings had been issued by the Provider in respect of the repossession of the Complainant’s family home. In the course of her complaint, the Complainant has identified an alleged failure on the part of the Provider to comply with a direction of the County Registrar to furnish the Complainant with a designated point of contact in respect of her loan. **Section 50(3)** of the **Financial Services and Pensions Ombudsman Act, 2017** states:

*“The Ombudsman shall not investigate or make a decision on a complaint where—
...*

(b) there are or have been proceedings (other than where the proceedings have been stayed under [section 49](#)) before any court in respect of the matter that is the subject of the investigation”

This Office wrote to the Complainant by letter dated **18 December 2018**, advising the Complainant that this Office had formed the opinion that the conduct of the Provider in terms of its alleged failure to comply with the direction of the County Registrar fell outside the jurisdiction of this Office and would therefore, not form part of the investigation of this complaint.

Therefore, the complaint is that the Provider did not provide adequate customer service to the Complainant in that the Provider:

1. misled and/or misinformed the Complainant as to the capitalisation of the arrears on her loan;
2. delayed in responding to the SFS completed on **5 December 2016** and sent the Complainant an SFS dated **8 December 2016** despite having completed an SFS on **5 December 2016**;
3. failed to provide the Complainant with sufficient information as to the identity of the new owner of her loan; and
4. failed to investigate and respond to the Complainant’s complaint in a timely fashion

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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 13 December 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.

Capitalisation Arrangement

By letter dated **27 July 2016**, the Provider wrote to the Complainant on foot of its assessment of a recently submitted SFS, informing the Complainant that:

"We've assessed your financial situation based on the information in the SFS, and we have agreed that you will make your normal monthly repayments for a period of time, as detailed below.

Repayment details

*We have agreed that you will make your normal monthly repayment * for 6 month(s). At the end of this period, if you have made the repayments in full we will contact you to discuss available options to address your current situation."*

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On **18 October 2016**, the Provider wrote to the Complainant to advise that the repayment arrangement on her loan was due to expire on **28 November 2016** and stated:

"If you are in a position to return to the monthly repayments in your mortgage contract, or if we've recently agreed to a new repayment arrangement with you, please ignore this letter."

The Provider wrote to the Complainant by letter dated **8 December 2016** (which the Complainant submits she did not receive until **29 December 2016**), stating:

"Further to your recent contact with us, we enclose a Standard Financial Statement (SFS) for you to complete and return to us (if you have not done so already), which will be assessed and will help us in our dealing with you.

However we still strongly advise that you call us to complete the SFS over the telephone as this is the quickest and easiest way to enter into an Alternative Repayment Arrangement."

Purchase of the Complainant's Loan

In terms of notifying the Complainant of the sale of her loan and the identity of the new owner of her loan, three pieces of correspondence have been referred to by the parties: two of which were generated by the Provider.

On **6 January 2017**, the Provider furnished the Complainant with a *Notice of Assignment* which states:

"We give you notice that, by a Mortgage Sale Deed dated 08 October 2016, a Deed of Transfer dated 19 December 2016 and an Assignment of Standard Securities ... we assigned to [purchaser], all of our rights, title and interest ... in and to the Mortgage Loan ...

Our duties and obligations under the Mortgage Documents have been assigned and/or assumed and following the Transitional Period (as defined in the letter attached) we will no longer be responsible to you for any such duties and obligations.

...

Further, any and all notices and correspondence relating to or arising out of the Mortgage Documents should be delivered to the Buyer at the following address:

Purchaser: ...

Address: ...

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Email: ...”

By way of a further letter dated **6 January 2017**, the Provider states:

“As you are aware, by way of letter sent to you on 14 October 2016, [the Provider] has entered into a contract to transfer its above noted Mortgage Loan with you. ...

*[The Provider] will continue to provide services in relation to the Mortgage Loan for a number of weeks following the Transfer Date (the “**Transitional Period**”). During this period you should continue to direct all queries to the Bank.*

The Buyer has appointed [servicing agent] as its servicing agent who will service your Mortgage Loan following the expiry of the Transitional Period. The Servicer will contact you on expiry of the Transitional Period to notify you of the date on which the Transitional Period expired and to confirm details of the servicing arrangement in respect of your Mortgage Loan. ...

All relevant details relating to your Mortgage Loan, including personal details, which are being transferred to the Buyer, may also be shared with the Buyer’s loan service provider with contact details set out below:

*Servicer: ...
Address: ...”*

The Complainant received a letter during **October 2016** advising her of the sale of her loan. A copy of this letter has not been furnished to this Office by either party.

Internal Notes

The Provider’s records in respect of a telephone call which took place with the Complainant on **23 June 2016**, states: *“I am proposing a 6 month MRP arrangement to work towards eligibility to Cap arrears in 6 months’ time.”* On **7 July 2016**, Complainant contacted the Provider by phone advising that she had not received any confirmation that the proposal had been approved.

In the Provider’s internal notes an entry was made on **5 December 2016** recording the following:

“... sfs completed with [the Complainant]. Aware of [purchaser’s] timelines ...”

A further entry was made on **29 December 2016**:

“... spoken with [the Complainant] with regards to sfs being completed and sent to [the purchaser’s servicing agent]. No specific timeline of when this will be returned

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and advised we aren't able to put any arrangement in place until they authorise this. ..."

The Provider's internal telephone records indicate that a call was placed to the Complainant on **13 June 2016**, with a view to completing an SFS "*... to have the Cap put in place to have [the] repossession order stopped Recap: [the Complainant] is going to phone into tonight to get one completed.*" An SFS was completed by telephone on **23 June 2016**.

On **21 October 2016** an entry is made in respect of a telephone conversation which took place between the Complainant and the Provider.

The relevant part of this entry states:

"[The Complainant] was concerned that she is going through the process of having her arrears capped and is worried that [the purchaser's servicing agent] isn't going to honour that agreement, I assured her that they have to honour any agreement that she has made with us. She is also worried that the agreement is only for 5 mths instead of 6. I said it is a monitoring period and that she made a full payment in June and will have make the 6 full payments by November she will be eligible for that. ..."

Call Recordings

A number of call recordings have been submitted by the Provider in respect of this complaint. I have outlined certain of these recordings below.

On **21 June 2016**, the Complainant contacted the Provider to complete an SFS with a view to putting in place the capitalisation of her arrears. The Complainant was advised that she would have to make the six full payments on time before the recapitalisation of the arrears would be considered and that an SFS would be required to be completed when the six payments were made. During the call, the Complainant states that she would need to complete an SFS in order to enter the recapitalisation process. The Provider clarified that an SFS was required to stop the repossession order.

On **22 June 2016**, the Complainant contacted the Provider to complete an SFS and explained that she was trying to renew the recapitalisation arrangement in respect of the arrears on her loan account as the one previously arranged was not implemented because she had missed some repayments. The following day, **23 June 2016**, the Complainant advised the Provider that she needed to complete an SFS as there were repossession proceedings in respect of her home. As noted above, an SFS was completed on this date.

The Complainant contacted the Provider on **28 June 2016**, as she wanted to ensure the first of her six scheduled payments was made on time as there may have been a delay with the authorisation of the direct debit mandate. The Provider's agent informed the Complainant that it had received a payment that day. However, the Complainant advised the Provider's agent that the payment had not been debited from her account and was advised by another of the Provider's agents that the direct debit has not been set up in time for the **June** payment.

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The Provider's agent then checked the notes on its system and confirmed that the direct debit was set up for **28 July 2016**. The Complainant proceeded to make her **June** payment over the phone and the Provider's agent confirmed that this payment would be recorded as the first of her scheduled payments.

On **7 July 2016**, the Complainant contacted the Provider for an update on her SFS as she had completed one two weeks previously. The Complainant was advised that the payment arrangement had been completed but no date for commencement had been set as the arrangement had yet to be approved. The Complainant was informed that she would be notified when the arrangement would start.

The Complainant asked if the arrangement would begin in **July** or if it would back-dated to **June**. The Complainant was advised that the arrangement was still out for approval. During a telephone call with the Provider on **11 July 2016**, the Complainant was advised that the arrangement had been completed but it was awaiting final checks and was not yet in place.

On **21 October 2016**, the Complainant confirmed that she had received a letter the previous day informing her that her loan had been sold and was now being managed by an asset management company. The Complainant also stated she believed that the recapitalisation arrangement would occur on completion of six payments in six months arrangement.

Speaking with another of the Provider's agents on **21 October 2016**, it was explained that her loan was non-performing and it formed part of the sale. The Provider's agent advised the Complainant that the letter she received was a 60 days letter informing her as to what was happening. The Provider's agent also explained that there was a transition period associated with the sale and the Provider would be handling her loan until mid-**December** or early **January**.

During this conversation the Complainant explained her understanding of the current arrangement was that:

"... from June, the June payment wasn't taken into account because she said it was too late. That's fine. So from July to December I have to make six full month payments then come the start of January we could do the recapitalisation on the arrears. That's fine. So this new company that has now taken over my mortgage, do I still have an option to recapitalise my arrears?"

The Provider's agent responded as follows:

"They have to honour everything that you have started with us. So everything that's in place with us now, they have to honour that ... that won't change. The account will pass over to them and they will have to honour what we've already started ..."

The Complainant then asked:

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"So they will still have to recapitalise the arrears onto the end of the term of the mortgage?"

To which the Provider's agent replied:

"Yeah, they have to honour that ..."

The Complainant was advised that the arrangement was based on when the payments were made. The Complainant informed the Provider's agent that she was advised that she was too late for the **June** payment, however, the Provider's agent confirmed that the Complainant was still eligible for recapitalisation as she had been making her scheduled payments.

The Complainant asked if she could recapitalise her arrears at the end of **November 2016**. The Provider's agent responded as follows:

"... once the monitoring period and we've got all payments then they'll be in touch with you to tell you when that's gonna happen. So if this transition period is going over to [the purchaser], this will all be passed on to them, they will have to honour that. They will have to do that. They can't just turn around and stab you in the back."

The Complainant replied:

"Come the end of November I'm entitled then to recapitalise the arrears cause I've made six full month payments ..."

In answer to this, the Provider's agent stated:

"Yeah, yeah so then that'll all be taken into consideration and then they'll be in touch with you to tell you what's gonna happen next ..."

The Complainant advised the Provider's agent that:

"On the 28th of November I will be ringing [the Provider] because the last payment will have been made and I will instruct [the Provider] to start the recapitalisation process and I don't mind how long it takes as long as I have something there for when we go to court to prove that I've made my six full months' payments and that I am doing the recapitalisation."

The Provider's agent confirmed as follows:

"Yeah and that will be honoured by [the purchaser]. If it takes time while the transition goes on ..."

On **1 December 2016**, the Complainant was advised that the purchaser of her loan would be writing to customers in the middle of **December** to provide them with contact details.

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The Provider's agent informed the Complainant that the purchaser would look at the Complainant's payments and obtain a report from the Provider verifying that the payments were made.

The Complainant was informed that the Provider would not be in a position to know what course of action the purchaser would decide to take in respect of her loan and it was for the purchaser to decide whether to recapitalising the Complainant's arrears. The Complainant queried why this decision was with the purchaser and not the Provider. The Complainant was advised that it was because her loan had been sold. The Complainant then informed the Provider's agent that she was advised in **October 2016** that the purchaser would honour everything that was agreed with the Provider. A call back was arranged for the following day to update the Complainant regarding what had been agreed in terms of the recapitalisation of the arrears on her loan. I note that this call back did not take place.

During a call with the Provider on **5 December 2016**, the Complainant advised that she was aware that her loan had been sold. The Provider advised the Complainant that the purchaser of her loan would be taking over her loan and therefore, the Provider could not action the recapitalisation arrangement.

Complaint to the Provider

The Complainant lodged a complaint with the Provider by telephone on **29 December 2016**. By letter dated the same day, the Provider wrote to the Complainant to advise that "... [w]e'll deal with your complaint fairly and as quickly as possible. However, if it's not resolved within 20 business days, we'll be in touch to give you an update." Following this, the Complainant contacted the Provider on a number of occasions to get an update on the status of her complaint. On **22 February 2017**, the Complainant contacted the Provider to advise it that it was 40 working day since she made her complaint and that she had not received any update. The Complainant advised the Provider that a letter had been issued to her the previous day to update her on her complaint. On **21 February 2017**, the Provider wrote to the Complainant to inform her that it was still dealing with her complaint and it would expect to provide her with a response within the next 10 working days.

During a conversation with the one of the Provider's agents on **7 March 2017**, the Complainant advised the Provider's agent that she had received a letter informing her that her loan had been sold to a particular entity and then sold to another entity. Referring to the letter received from the servicing agent, the Complainant was advised that the servicing agent would be looking after her loan. The Complainant advised the Provider's agent that she wanted contact details for the person/entity that would be looking after her loan. The Complainant stated that she wanted to be able "... to reach out to someone ..." The Complainant acknowledged receiving the letter from the servicing agent and that this entity would be looking after her loan. However, the Complainant stated that:

"I don't know if [the purchaser] have engaged with [the servicing agent] to look after it for them ... or [the Provider] has changed who they are selling it to and it's going to [the servicing agent]. I just don't know who I'm supposed to reach out to ..."

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On **8 March 2017**, the Provider's agent explained to the Complainant that the three entities were effectively the same entity and that the servicing agent would be looking after her loan.

The Provider furnished the Complainant with a Final Response dated **7 April 2017** and apologised for the poor level of customer service.

Analysis

The Complainant entered into an arrangement with the Provider in **June 2016** to make six monthly payments to her mortgage loan account over a six month period commencing on **28 June 2016**. This was considered to be a monitoring period.

At the end of the monitoring period, if the Complainant made the required monthly payments, the Provider would, following the completion and assessment of an SFS, recapitalise the Complainant's arrears. There was some confusion surrounding when the monitoring period began as the Complainant's direct debit mandate was not set up in time to make the first payment in **June 2016**. The Complainant made the first payment over the phone on **28 June 2016**. It was confirmed by the Provider's agent during the call which took place on **28 June 2016** and a subsequent call on **21 October 2016**, that this payment would be considered as the first payment in the monitoring period.

In or around **8 October 2016**, the Complainant's loan was transferred to the purchaser. It is apparent that after this point and during the transitional period, the Provider, while remaining a point of contact, could no longer enter into any legally binding arrangements with the Complainant in respect of her loan as this was now a matter for the purchaser. I accept that, during the course of one of the telephone conversations between the Complainant and the Provider on **21 October 2016**, the Complainant was advised that the purchaser of her loan would have to honour all agreements previously entered into between the Complainant and the Provider in respect of the recapitalisation of her arrears. I am satisfied that the Complainant was led to believe that once the sixth payment was made in **November 2016**, she could begin the process of recapitalising her arrears and this recapitalisation arrangement would be honoured by the purchaser of her loan. It was not until **December 2016**, that the Complainant became aware that the purchaser of her loan would have to approve the recapitalisation arrangement. This was most unacceptable and unreasonable.

The Complainant completed an SFS with the Provider on **5 December 2016**. The Complainant was anxious to have an SFS completed with the Provider in advance of the transfer of her loan to the new purchaser in order to ensure her arrears would be recapitalised as she had made the last of her six monthly payments in **November 2016**.

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Following this, the Complainant received a blank SFS from the Provider on dated **8 December 2016**. No explanation has been offered by the Provider as to why this occurred.

However, there is no evidence to suggest and I am satisfied that, this did not prejudice or interfere with the Complainant and her efforts to have her recapitalisation arrangement implemented.

The Complainant states that the Provider delayed in responding to her SFS. This SFS was completed with a view to recapitalising the Complainant's arrears. At that point in time the Provider was no longer in a position to enter into a recapitalisation arrangement with the Complainant. This decision rested with the new owner of the Complainant's loan and the Provider was not in a position to respond to the SFS. The SFS was prepared with a view to the new owner of the loan assessing it and making a decision as to whether or not to recapitalise the Complainant's arrears. While there was confusion as a result of the conversation which took place between the Complainant and the Provider on **21 October 2016**, the alternative position, as set out above, was explained to the Complainant on **1 December 2016**.

Therefore, I do not accept that the Provider delayed in responding to the SFS completed on **5 December 2016**.

During the Complainant's monitoring period, the Provider sold the Complainant's loan. The Complainant received three letters in respect of the sale of her loan. The first was received in **October 2016** and was from the purchaser's servicing agent. A copy of this letter has not been provided by either party to this complaint. The latter two were sent by the Provider. The Complainant was informed by one of the Provider's agents on **21 October 2016**, that there was a transitional period associated with the sale of her loan and the Provider would be administering her loan during the transitional period which would be until mid-**December** or early **January**. On **1 December 2016**, the Complainant was advised that the new owner of her loan would be writing to her with contact details that month.

The Provider furnished the Complainant with two letters dated **6 January 2017**. I am satisfied that these letters clearly identify the new owner of the Complainant's loan and also the entity servicing the Complainant's loan together with relevant contact details. The letters also advise the Complainant that the Provider would continue to provide services to the Complainant during the transitional period.

The Complainant raised concern surrounding who would be looking after her loan following receipt of a letter in **October 2016**. I am satisfied that this letter was not issued by the Provider. However, the evidence and submissions in this complaint suggest that three entities were identified in this letter – two apparent purchasers and the servicing agent. It was subsequently explained to the Complainant that these were effectively the same entity.

Therefore, I am not satisfied that the Provider failed to provide the Complainant with sufficient information regarding the new owner of her loan or its servicing agent.

The Complainant submitted a complaint to the Provider on **29 December 2016**. By letter of the same date, the Provider wrote to the Complainant acknowledging her complaint. In the intervening period, the Provider wrote to the Complainant on **21 February 2017** to inform her that it was still dealing with her complaint and sought a further 10 days to provide her with a response. The Complainant also contacted the Provider by telephone to get an update on her complaint. The Provider furnished the Complainant with a Final Response letter dated **7 April 2017**.

Section 10.9(d) of the **Consumer Protection Code 2012** (the **Code**), states that a regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint. If the 40 day period elapses and the complaint is not resolved then the regulated entity must inform the Complainant of the anticipated timeframe within which it hopes to resolve the complaint.

I accept that the complaint was not resolved within the 40 day period recommended by the Code. However, the Complainant was aware, primarily through her own proactiveness, of the status of her complaint.

While the Complainant received a final response to her complaint approximately 3 months after it was lodged with the Provider, I do not accept that, in this instance, such conduct is contrary to the requirements of the Code.

Goodwill Gesture

In a submission to this Office, Provider states that:

“We believe the Complainants (sic) have not received the level of customer service from the Bank in this regard. The Bank fully accepts there has been a fall down in service by way of administration of the Mortgage facilities.

As a result, the Bank would like to offer the Complainant a goodwill gesture of the amount of €3,000.00 ...”

While I believe the Provider’s conduct in relation to how it communicated in relation to possible capitalisation of the arrears was unreasonable, I consider the goodwill gesture of €3,000 offered by the Provider to be a reasonable sum of compensation for this and the poor level of customer service received by the Complainant. In these circumstances, on the basis that this offer remains available to the Complainant, I do not uphold any aspect of this complaint.

/Cont’d...

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**

10 January 2020

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.