



<u>Decision Ref:</u>	2020-0101
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling (non- Mortgage Arrears Resolution Process) Delayed or inadequate communication Dissatisfaction with customer service Documents mislaid or lost Maladministration Errors in calculations Classification of borrower as non-cooperating
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant entered into the mortgage loan agreement with Entity 1 on **8 August 2006**. On **1 July 2011**, certain of Entity 1's assets and liabilities, including the Complainant's loan, were transferred to Entity 2. Sometime later, both of these entities merged to become Entity 3. Entity 4 acquired the Complainant's loan between **April and June 2015**. In **August 2015**, the Provider, against which this complaint is made (the Provider), was appointed by Entity 4 to service the Complainant's loan. Following a protracted engagement with the Provider, the Complainant has identified a number of issues regarding the administration of her loan.

The Complainant's Case

The Complainant explains that she has a residential mortgage with Entity 4 which is now being managed by the Provider. The Complainant advises that she relocated to the USA in **April 2014** and prior to her relocation she attempted to contact Entity 3 to advise it of her impending move as this entity was in the process of selling her loan and she wanted to determine the correct payee before departing. The Complainant states that she was unable to make contact with Entity 3 "*... so I paused payment.*" The Complainant explains that her loan account had an extra month's payment at that point. The Complainant states that Entity 3's loan sale was announced on **1 April 2014**.

When Entity 4 purchased the Complainant's loan and assigned the Provider to service the loan, the Complainant states that *"... I did not receive correspondence of the change – I later found out that they had sent correspondence to an old address and not the current statement address."*

The Complainant continues, stating that *"[a]rrears built (approx. 10k on 200k) on the mortgage during the time and once I established the owners and administrators full monthly payments resumed."*

The Complainant explains that *"... the arrears figure sounded like it was inflated and I questioned [the Provider] and asked for a breakdown."* The Complainant states that the Provider refused to provide the necessary information and *"... we went back and forth for a number of years."* The Complainant advises that she submitted a data subject access request (**DSAR**) to the Provider in an effort to recreate the figures herself and subsequently found a number of issues.

The Complainant states that despite communicating her concerns in respect of the management of her loan account to the Provider, a receiver was appointed to the mortgage property in **June 2017**. The Complainant submits that she communicated that she had *"... the means to purchase the property outright but had no confidence in the quoted redemption figure."* The Complainant states that she had a reliable tenant in the property when she left for the USA who vacated the property as a result of the receiver's appointment and the property remained vacant for a further 10 months during which time arrears continued to accrue on her loan account.

The Complainant explains that during the period when her property was on sale, the Provider was investigating her complaint. The Provider partially responded to the Complainant in **January 2018** and *"... refunded me for a couple of overcharging incidents."* In **July 2018**, the Provider sent further correspondence to the Complainant in respect of further overcharging and gave the Complainant another refund. The Complainant states by that time, she still had not been furnished with a breakdown of the alleged arrears on her loan *"... but their investigation showed that it was inflated by a sizeable sum."*

The Complainant states that she appointed a solicitor to help her and, in an effort to resolve matters, the Complainant offered *"... a fair sum to close the matter and purchase the property (full redemption excluding the damage from lost rental income)."* The Complainant submits that *"8 weeks after the proposal was made, [the Provider/Entity 4] have responded with a demand for their newest full redemption sums plus receiver costs."*

The Complainant states that *"I'm really at a loss, surely it should not be necessary to appoint a solicitor and consider court action in order to have a regulated financial institution behave in a transparent, fair and accountable manner."*

The Provider's Case

Timeline of Events

The Provider has submitted a detailed timeline in respect of this complaint. I will now set out relevant aspects of this timeline below.

On **26 February 2014**, Entity 3 received confirmation that the Complainant had cancelled the direct debit used for the payment of her loan. The Provider states that in **April 2014**, Entity 3 agreed to sell the Complainant's loan to Entity 4, the current owner of the loan. The Provider is the servicing agent retained by Entity 4 to administer the Complainant's loan. On **10 June 2014**, Entity 4 wrote to the Complainant to advise her that the day to day administration of her loan would be managed by the Provider. The Provider advises that on **4 June 2014**, Entity 3 received returned post which outlined that the Complainant was *gone away*. The Provider states that from the notes provided to it by Entity 3, it appears that the Complainant's correspondence address was changed to a UK address. The Provider advises that it wrote to the Complainant on behalf of Entity 4 on **22 August 2014**, at her UK address to confirm Entity 4's appointment of the Provider as servicing agent. The Provider states that on **25 August 2014**, it commenced servicing the mortgage loan.

The Provider explains that it received a letter on **15 October 2014** dated **22 August 2014**, confirming that the Complainant was not known at the UK address. The Provider states that the Complainant's address was thereafter changed to the address of the property provided as security for the mortgage loan agreement located in Dublin. The Provider states that it issued correspondence to the Complainant on **7 January 2015** at the Dublin address requesting that she contact its Arrears Support Unit (ASU). The Provider states that on **7 April 2015**, the Complainant contacted the ASU by telephone.

The Provider advises that on **26 June 2015**, the ASU wrote to the Complainant outlining details of her loan account and enclosed account statements for the period **1 January 2014** to **25 August 2014** together with a list of transactions for the period of **25 August 2014** to **26 June 2015**. A statement of the loan account was issued to the Complainant on **19 July 2015**.

The Provider states that Entity 4 issued a legal demand for full repayment of the loan on **7 January 2016**. The Provider states that on **15, 22** and **26 February 2016** it attempted to contact the Complainant. On **29 February 2016**, solicitors acting on behalf of Entity 4 issued a further demand for payment of the outstanding balance within 7 days. The Provider states that on **29 April 2016**, it issued an Income and Expenditure (I&E) form to the Complainant and a completed I&E was received on **7 July 2017**. Around this time the Complainant also made a DSAR. There were a number of instances of contact and attempted contact together with attempts to visit the secured property from **April 2016** to **January 2017**. The Provider advises that on **20 March 2017**, Entity 4 issued a legal demand for full repayment of the loan. On **6 April 2017** and **8 May 2017**, solicitors acting on behalf of Entity 4 issued a further demand for payment of the outstanding balance within 7 days.

/Cont'd...

The Provider states that it received a request on **4 May 2017** for historic statements of account; statements issued by the Provider for 2014, 2015 and 2016; the total arrears balance and interest applied to the account; correspondence between Entity 4 and its solicitors; a redemption figure; and proof of transfer from Entity 3 to Entity 4.

The Provider states that on **8 May 2017**, a redemption figure was issued to the Complainant and on **13 June 2017**, it wrote to the Complainant addressing the queries raised in her letter of **4 May 2017**. The Provider advises that it received a letter from the Complainant on **20 June 2017**, addressed to Entity 4 which contained the requests contained in her letter of **4 May 2017** and also offered a full and final settlement figure of €125,000.

The Provider explains that Entity 4 signed a deed of appointment appointing a receiver over the secured property on **20 June 2017**. On **11 July 2017**, the Provider received a fax dated **10 July 2017** from the Complainant stating that she wanted to make a full repayment of the residual debt and on **18 July 2017** a redemption figure was issued to the Complainant. On **24 July 2017**, the Provider received a fax from the Complainant enclosing her proof of available funds to redeem the loan. On **15 August 2017**, the Provider wrote to the Complainant advising that her full and final settlement offer of €120,000 had been declined.

On **2 October 2017**, the Provider received a fax from the Complainant highlighting her concerns regarding the administration of her loan and requesting a breakdown of the arrears balance. This was followed by two telephone conversations. On **11 October 2017**, the Provider received a fax from the Complainant requesting a breakdown of the arrears; the outcome of its investigation into the arrears; and account details to facilitate the redemption of the loan. The Provider wrote to the Complainant on **12 October 2017** answering her queries in relation to her account. The Provider states that on **1 November 2017**, the Complainant submitted a complaint via email.

Change of Ownership

The Provider states that the records provided by Entity 3 show that the Complainant cancelled the direct debit used to make the loan repayments in **February 2014** with the loan entering into arrears in **March 2014**. The Provider submits that the Complainant's actions can only be regarded as a deliberate act of default because:

- Entity 3 did not inform customers of the sale of its loans to Entity 4 until **24 April 2014** however, the cancellation of the Complainant's direct debit occurred two months prior to this date;
- The Complainant did not contact Entity 3 by telephone, in writing or otherwise to advise it of her impending relocation to the USA; and
- The Complainant did not contact Entity 3 in respect of the sale or to identify the correct payee.

/Cont'd...

The Provider submits that subsequent events which are a consequence of Entity 3's changing of the Complainant's address resulted in the Complainant not being notified of the confirmation of sale by Entity 3 on **9 June 2014** or Entity 4 on **10 June 2014** or the Provider's appointment.

The Complainant's Address

The Provider advises that there was no written notice furnished by the Entity 3 when the loan was transferred. When correspondence returned from the UK address, the Complainant's correspondence address was changed to the address of the mortgaged property. The Provider also submits that the administration file for the Complainant furnished by Entity 3 did not contain any written notification of the Complainant's relocation to the USA or her intention to suspend repayments because of the relocation.

The Provider states that customer information provided to it by Entity 3 in **August 2014** confirmed that there were no in-service telephone contact details for the Complainant nor an email address. The Provider states that at the time of receiving the returned post in **October 2014**, the ASU decided to change the Complainant's address to the secured property address as the most likely method of contact with the Complainant. The Provider acknowledges that further attempts to contact the Complainant were not made until **7 January 2015**, at which point the ASU began issuing letters to the secured property address. As noted above, the Complainant made contact with the Provider on **7 April 2015**.

In response to the submission that the Complainant received a letter on **1 July 2014** to her correct address, advising her of the arrears on her account, the Provider states that it is not in a position to comment on this as it predates its appointment for the day to day administration of the loan. The Provider states that the administration of the Complainant's loan at that time was managed by Entity 4 on behalf of Entity 3.

Complainant's Attendance at the Provider's Office

In response to the submission that the Complainant called to the Provider's office multiple times during **August, September and October 2014**, the Provider states that it holds no record of any contact from the Complainant during those months.

Arrears

The Provider states that the Complainant's arrears first arose in **March 2014**. The Provider advises that it is not in a position to provide the Complainant with statements from Entity 1 and Entity 3 covering **2006** and the period of **October 2013 to December 2013**. It states that it has provided statements of account which cover the period of the arrears and all interest charged in respect of the arrears which would have allowed the Complainant to confirm the amounts owed.

/Cont'd...

In acknowledging there was a delay in initially contacting the Complainant following its appointment in **August 2014**, the Provider submits that subsequent to establishing that the Complainant was not residing in the UK, it communicated the arrears balances to the Complainant throughout **2015** and **2016**.

Interest

The Provider states that interest is calculated at a daily rate based on the principle balance of the loan and applied on the last day of the month. Interest on arrears is calculated on a daily basis and charged to the account when a payment is received. Therefore, debit interest will vary depending on the number of days in the month. The Provider explains that loan repayments are made up of both principal and interest. When an account is up to date and the full scheduled payments are received, a portion of the repayment is used to pay the interest first and the surplus is allocated in reduction of the principal. When an account is in arrears, any repayment received is allocated in reduction of the arrears first. The outstanding balance upon which interest is based is made up of the principal balance and any arrears outstanding.

Fees and Charges

The Provider states that there were no fees and/or charges added to the Complainant's loan account during the period from when it began servicing the Complainant's loan and when the loan was redeemed. The Provider advises that a total of €1,846.46 of interest on arrears was applied to the loan account during this period.

Request for Explanations and Calculations

The Provider submits that the Complainant did not query the arrears balance on her account or request explanations and/or calculations until after her DSAR was issued in **October 2016**. The Provider states that the first such request was received on **4 May 2017** and prior to this date, the Complainant has only attempted to establish that Entity 4 was the legal owner of her loan which was provided in the DSAR.

The Provider submits that the Complainant was afforded sufficient period to establish that Entity 4 was the legal owner of the loan in order to pay the arrears. The Provider acknowledges that while there were delays in dealing with the Complainant's queries, subsequent to her request of **4 May 2017**, the Complainant had a period of almost three years to address the arrears balance and showed no urgency to deal with the arrears until the appointment of the receiver in **June 2017**.

Customer Service

The Provider advises that in **August 2014** it issued a welcome letter to the Complainant at her UK address. The letter was returned to its office on **15 October 2014** at which stage the Complainant's address was amended to that of the secured property. The Provider notes that no further attempt was made to contact the Complainant until **7 January 2015** when the ASU wrote to the Complainant asking her to contact its office.

The Provider states: *"We recognise that our ASU should have made more extensive efforts to contact the Complainant during the period October 2014 – January 2015."*

Tax Relief

The Provider advises that at the time of issuing the Final Response letter to the Complainant the outcome of the investigation into the complaint determined that the Provider under allocated Tax Relief at Source (**TRS**) in respect of the Complainant's loan repayments by €225 during **2015**. The Provider advises that subsequent reviews have shown that as the Complainant did not make any payments to the loan account during **January, February and March 2015**, she was in fact over-allocated TRS by €225 for the year ending **2015** and has benefited by this amount in addition to the €30 applied to the Complainant's loan by the Provider when issuing the Final Response letter. The Provider advises that it will not attempt to recoup this over-allocation of TRS.

Arrears

The Provider explains that the Complainant's queries in relation to the arrears balance which was first received in **May 2017** *"... were dealt with in a manner in which [the Provider] would deem to be unacceptable."* However, the Provider points out that the Complainant committed an act of deliberate default by terminating the direct debit used to make the loan repayments two months in advance of the announcement of the transfer of her loan and four months in advance of the transfer date. The Provider acknowledges that while it did not provide what the Complainant deems to be an acceptable breakdown of the arrears balance when requested, she was provided with annual statements in **2015, 2016 and 2017** detailing the arrears balance at migration, payments not made and interest applied to the account.

The Provider recognises that the Complainant disputed the interest applied to her loan account in relation to the arrears. The Provider advises that it must also be noted that the Complainant made no effort to pay the amount of arrears which she believed to be correct.

The Provider acknowledges that when clarification regarding the arrears balance was provided to the Complainant in **October 2017**, *"... the migrated arrears balance was incorrect and overstated by one instalment. This is also disappointing to [the Provider] from a customer service perspective."*

/Cont'd...

Full and Final Settlement Offer

The Provider states that the Complainant submitted a full and final settlement offer on **11 June 2017** of €125,000. The Complainant subsequently wrote to the Provider on **10 July 2017** confirming that she could pay the outstanding balance. A redemption figure was issued to the Complainant on **18 July 2017**.

On **15 August 2017**, the Provider informed the Complainant that her offer of €120,000 had been rejected by Entity 4. The Provider states that *"[i]t is disappointing that the incorrect FAFS figure was communicated to [Entity 4]."* The Provider points out that the Complainant was provided with a redemption figure on **15 August 2017** and did not redeem the loan in line with her letter of **10 July 2017**. The Provider advises that the outcome of Entity 4's review was that the Complainant's offer was rejected on the basis that it was not enough to satisfy the outstanding debt given the valuation of the secured property.

In respect of the above matters the Provider states: *"We would like to take this opportunity to apologise to the Complainant for the issues highlighted above."*

The Complaints for Adjudication

The complaints are that the Provider:

1. failed to inform the Complainant of the change in ownership of her loan and/or the identity of the new owner of her loan;
2. miscalculated the arrears on the Complainant's loan account;
3. failed and/or refused to provide, when requested, information regarding the arrears;
4. a receiver was appointed without warning on **23 June 2017**;
5. miscommunicated an offer to redeem the loan; and
6. refused to acknowledge and/or investigate her complaint and unreasonably delayed in investigating her complaint.

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.

/Cont'd...

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 2 March 2020, outlining my preliminary determination 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.

Correspondence

Entity 3 wrote to the Complainant at her UK address by letter dated **9 June 2014** to advise her of the sale of her mortgage loan. The relevant parts of this letter state:

*"We wrote to you on 24 April 2014 to advise that [Entity 3] had agreed to sell amounts owing to it in respect of your Mortgage to [Entity 4] (the **Purchaser**). The purpose of this letter is to confirm that this sale successfully completed on 6 June 2014. As a result the legal ownership of your Mortgage has now transferred to the Purchaser and all amounts owing by you in respect of your Mortgage are now owed to the Purchaser and not to [Entity 3].*

To ensure the smooth transition of your Mortgage from [Entity 3] to the Purchaser it has been agreed that [Entity 3] will, for a period of time, continue to manage the day to day administration of your Mortgage on behalf of the Purchaser. During this period [Entity 3] will operate solely in the capacity of a service provider to the Purchaser ...

WHAT ACTION DO YOU NEED TO TAKE?

You do not need to do anything further at this time.

If your Mortgage loan account is up to date it is important that you continue to make repayments to [Entity 3] in the agreed amounts and on the agreed dates ...

/Cont'd...

WHEN WILL THE PURCHASER CONTACT YOU?

The Purchaser will write to you in the coming days in relation to your Mortgage. ...

WHO DO YOU CONTACT REGARDING YOUR MORTGAGE DURING THIS TRANSITION?

Until further notice you should continue to direct all day to day administrative queries in relation to your Mortgage directly to [Entity 3]. ...”

The Provider wrote to the Complainant at her UK address on **22 August 2014** regarding its appointment as the service provider in respect of her loan.

This letter states:

“[Entity 4] wrote to you on the 10 June 2014 advising that as new owners of your mortgage loan account (mortgage) they would be working with [Entity 3] to transfer the day to day administration of your mortgage loan account from [Entity 3] to their chosen service provider, [the Provider].

[Entity 4] wrote to you on 13 August 2014 advising of any changes you would need to make to payments from September 2014 onwards as a result of the move of your loan administration from [Entity 3] to [the Provider].

*We are now pleased to confirm that the administration of your mortgage loan account will transfer to [the Provider] ... from **Monday 25th of August.** ...”*

The Provider next wrote to the Complainant at the address of the secured property on **7 January 2015** advising her of the arrears balance on her loan account. Correspondence continued to be sent to this address by the Provider until **29 April 2016** when correspondence began to be addressed to the Complainant’s address in the USA.

The Provider has submitted a short report prepared by a tracing specialist dated **13 May 2016** which states:

“The subject vacated the last known address [secured property] without leaving a trace. The subject is believed to be living in [the USA] however despite extensive enquiries no further leads have come to light forcing us to return a negative report on this occasion.”

In a letter dated **27 October 2016** the Complainant acknowledged receipt of DSAR documentation from the Provider and advised that she was in the process of reading though the documents provided. By letter dated **24 April 2017**, the Complainant, having reviewed the documentation sent to her in respect of her DSAR, believed the DSAR to be incomplete and requested that she be provided with the missing information.

/Cont’d...

The requested information was as follows:

- “1. 2006 transactions and interest charged on 2006 transactions and from Jan 2007.*
- 2. Oct 2013 to Dec 2013 transactions, which are missing from the statements provided.*
- 3. A full annual statement for 2014, 2015 and 2016. The [Provider’s] statement does not give an adequate breakdown of interest charged vs capital paid and balance.*
- 4. The total arrears claimed on the account and the expected payment dates that the arrears relate to, including any additional interest applied.*
- 5. Full correspondence with [Entity 4] and [Entity 4’s solicitors].”*

The Provider replied to this letter on **13 June 2017** advising that the first two items should be addressed to Entity 4 and that the remainder of the documentation sought had previously been provided.

On **11 June 2017** the Complainant wrote to Entity 4 as follows:

“I’m attempting to streamline communication and make progress by corresponding with [Entity 4] directly. I’ve sent a copy of this letter to [the Provider].

[The Provider] advised on 8th May 2017 that the redemption figure of my mortgage is €182,084.72. I have secured funding for and can make an offer of €125,000.

Should you wish to decline the offer and continue to have [the Provider] service this loan I need your assistance with concluding a data subject access request with [the Provider] ... These are critical documents missing that I requested in my letters dated 27th October 2016 and 24th April 2017 (enclosed) any my requests are being ignored. ...”

The Provider responded to the Complainant’s proposal on **15 August 2017** as follows:

“We are writing to advise that your proposal to redeem the above mortgage loan account ... has been reviewed.

We can confirm that the offer of €120,000 in full and final settlement has been declined.

The current combined outstanding balance on the above mentioned mortgage account is €181,241. (sic) is not a redemption figure and is subject to change with the passing of time ...”

/Cont’d...

The Provider wrote to the Complainant by letter dated **12 July 2017** enclosing a statement of the Complainant's account. In a fax to the Provider dated **21 July 2017**, the Complainant states:

"Also, during my call with ... on July 10th she committed to providing the following via fax by July 14th and I have not yet received.

- breakdown of arrears amount: payment months missed and full details of additional interest or penalties charged ..."

The Complainant sent a fax to the Provider dated **29 September 2017** querying the difference in the redemption figures furnished to the Complainant on **8 May 2017** and **22 September 2017**. The Complainant also stated:

"Also, on 16th August ... committed to sending me the missing information (particularly arrears calculation and additional arrears interest) and review the account for overcharging and irregularities.

I sent a fax following that call with our agreed actions. You did not respond to the matter. In another call on 22nd September ... committed again to providing this information by 25th September and I still have not received it."

The Complainant sent a further fax to the Provider on **10 October 2017**, requesting information regarding the breakdown of her arrears, the outcome of the investigation of the Provider's finance team and account details for the transfer of the redemption monies.

The Provider wrote to the Complainant by letter dated **12 October 2017** as follows:

"In reference to your letter received on the 2nd October 2017 and our telephone conversation on 09th October 2017, you requested to know why the redemption figure had decreased since May to September 2017. As discussed on our telephone conversation please see below in writing as agreed.

On the 08th May 2017 a letter was issued to you advising of the redemption figure of €182,084.72 as at 8th May 2017, with a daily interest of €18.17.

At your request a further redemption figure was issued to you on 11th September 2017 advising of the redemption figure of €181,729.93 as at 11th September 2017, with a daily interest rate of €18.13.

Between the 8th May and the 11th of September 2017 payments amounting to €2,636.37 have been credited to your account. Taking these payments and interest into consideration this relates to the difference in the redemption figures issued to you by letter on the said dates.

In relation to your queries surrounding the outstanding arrears and the interest on arrears see below.

/Cont'd...

On the most recent statement issues to you on 12th July 2017 you can see that following information:

- *Your account migrated to [the Provider] with arrears of €5,626.53.*
- *Total amount credited to your account from August 2014 to date is €25,269.29 this includes tax relief at source (TRS) of €2,531.82.*
- *The total amount billed to this account since August 2014 is €33,468.30.*
- *The arrears currently stand at €14,163.09 and the outstanding balance is €182,292.40*
- *The interest rate is currently 3.65% ...”*

The Complainant sent a fax to the Provider on **23 October 2017** pointing out that the statements supplied by the Provider did not adequately set out how arrears had been treated and stated that due to the Provider’s lack of co-operation, the Complainant had been unable to complete an audit of her account. However, notwithstanding this, the Complainant identified a number of discrepancies with her account.

The Complainant contacted the Provider’s Head of Commercial Real Estate by email dated **1 November 2017** outlining a number of issues she was experiencing with the Provider. The Provider wrote to the Complainant on **2 November 2017** advising that the matters highlighted in her correspondence dated **23 October 2017** and **1 November 2017** had been logged as a complaint and was currently being reviewed by the Provider. The Provider advised the Complainant by email dated **3 November 2017**, in response to email correspondence from the Complainant, that the issues identified by her had been escalated and were being investigated. The Provider sent a fax to the Complainant on **23 November 2017** informing her that, for security reasons, it did not correspond via email. The Provider further advised that her complaint was being investigated and that a response would issue in due course. The Provider wrote to the Complainant on **28 November** and **30 November 2017** to advise that her complaint was still being investigated. The Provider wrote to the Complainant on **28 December 2017** to inform the Complainant that her complaint was still being investigated and that the Provider would revert with its response within 20 business days. The Provider issued a comprehensive Final Response letter on **26 January 2018**.

Analysis

The First Complaint

Entity 4 acquired the Complainant’s loan in or around **April 2014** with the sale of the loan completing in or around **June 2014**. Subsequent to this, the Provider was appointed by Entity 4 to service the Complainant loan from **25 August 2014**.

/Cont’d...

The sale and transfer of the Complainant's loan occurred prior to the Provider's appointment as servicing agent. Furthermore, the Provider was neither the vendor nor purchaser of the Complainant's loan. I accept that the Provider was obliged to inform the Complainant of the sale or change in ownership of her loan.

The Second Complaint

The Complainant submits that the Provider miscalculated the arrears on her account. Having considered the evidence and submissions of the parties, I accept that the Complainant's arrears balance was slightly distorted due to certain issues surrounding the allocation of TRS to her account and also the fact that her arrears balance was overstated by one payment at migration stage.

The Third Complaint

The correspondence outlined above suggests that the Complainant first requested information regarding her arrears during a telephone call on **7 April 2015** and again on **17 September 2015**.

The correspondence exchanged between the parties and the various telephone conversations outline the efforts made by the Complainant to obtain answers to her queries and also the information requested. This took place over quite a protracted period of time.

Under cover of letter dated **26 June 2015**, the Provider furnished the Complainant with account statements for period **1 January 2014** to **26 June 2015** and periodically thereafter. On **12 October 2017**, the Complainant was furnished with information regarding the arrears on her loan account. A further explanation as to how interest and arrears were calculated was given to the Complainant in the Provider's Final Response letter dated **26 January 2018**.

The Provider accepts that the Complainant's queries in relation to the arrears balance were not dealt with in an acceptable manner. The Provider acknowledges that while it did not provide what the Complainant deemed to be an acceptable breakdown of the arrears balance when requested, she was provided with annual statements in **2015, 2016** and **2017** detailing the arrears balance at migration, payments not made and interest applied to the account.

I accept that the Provider failed and/or refused to provide, when requested, information regarding the Complainant's arrears.

The Fourth Complaint

It is important to note that the Provider is the servicing agent of the Complainant's loan. It is not the owner.

/Cont'd...

Entity 4 is the owner and any decision to appoint a receiver rests with Entity 4 and not the Provider. Furthermore, the Deed of Appointment appointing the receiver was executed by Entity 4. As the Provider did not appoint the receiver and Entity 4 is not a party to this complaint, I have not investigated this aspect of the complaint and will make no finding in that regard.

The Fifth Complaint

The Complainant made an offer in full and final settlement of her outstanding loan balance on **11 June 2017** in the sum of €125,000. While this letter was addressed to Entity 4 it was sent to the Provider by the Complainant. The Provider responded to this offer on **15 August 2017** advising the Complainant that her offer of €120,000 had been declined. I accept that the Provider miscommunicated the Complainant's offer to Entity 4 by advising that there was a difference in €5,000 between the offer made by the Complainant and the offer communicated to Entity 4. I note that this error has been acknowledged by the Provider and an apology has been offered. Given that the outstanding balance on the loan was in the region of €180.00, I believe that while this was regrettable, it was unlikely to have had any impact on Entity 4's decision.

The Sixth Complaint

The Complainant began to query her arrears balance and request information from the Provider in or around **April 2015**. The Complainant contacted the Provider's Head of Commercial Real Estate on **1 November 2017** outlining a number of issues she was experiencing with the Provider. The Provider wrote to the Complainant on **2 November 2017** advising that the matters highlighted in her correspondence dated **23 October 2017** and **1 November 2017** had been logged as a complaint and was currently being reviewed by the Provider. I am not satisfied that the Complainant had made a formal complaint to the Provider prior to **23 October 2017/or 1 November 2017**. Following this, the Complainant was provided with a number of updates regarding the status of her complaint and a Final Response letter was issued on **26 January 2018**. I do not accept that the Provider refused to acknowledge and/or investigate the Complainant's complaint and/or unreasonably delayed in investigating her complaint.

Goodwill Gesture

In a submission to this Office dated **19 July 2019**, the Provider offered the following goodwill gesture:

"In light of the level of service offered to the Complainant in this case we would like to offer our apologies for our failings in this regard. By way of an apology we offer the Complainant €1,000 for any inconvenience caused to the Complainant."

/Cont'd...

I believe the Complainant contributed to some of the difficulties by cancelling her direct debit and allowing her mortgage account to go into significant arrears and not informing the mortgage holder or Provider of her forwarding address in a timely manner. In light of this, I consider this goodwill gesture offered by the Provider to be a reasonable sum of compensation for the conduct of the Provider and the service issues experienced by the Complainant. In these circumstances, on the basis that this offer was made at the outset of this investigation and remains available to the Complainant, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

25 March 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.