



<u>Decision Ref:</u>	2020-0183
<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 Selling mortgage to t/p provider
<u>Outcome:</u>	Partially upheld

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

This complaint concerns the failure of the Provider to follow its own stated procedure in respect of an offer of a Voluntary Surrender Solution to the Complainant and a failure to assist the Complainant in taking up that offer. There is a further complaint that the Provider failed to respond to the Complainant's formal complaint in a timely manner.

The Complainant's Case

The Complainant refers to a mortgage loan account which the Complainant held with the Provider. The mortgage loan account first fell into arrears on **30 June 2009**.

On **6 September 2017**, the Provider wrote to the Complainant offering a 'Voluntary Surrender Solution'. The Provider's offer included writing off the remaining mortgage and arrears. The Voluntary Surrender Solution offer was limited to acceptance by the Complainant within **30 days**. The Complainant states that due to a planned surgery, some 3 weeks later, on the **26 September 2017** and the recovery time this surgery necessitated, he was unable to complete the necessary steps to avail of this offer within the Provider's stipulated time frame. It was the Complainant's belief that the Provider then withdrew the offer. The mortgage loan account was subsequently transferred to a third party provider in or around **August 2018**.

The Complainant states that he contacted the Provider, by phone on the **15 September 2017** to arrange a meeting regarding the offer letter he had received.

The Complainant states that the Voluntary Surrender Solution letter set out *"four key stages"* of the process, and step 1 was to call a dedicated portfolio manager *"to arrange to meet...who will guide you through the process, assisting with the completion of documentation if required"*. The Complainant states that he was anxious to arrange a meeting with the Provider and also to obtain legal advice in relation to the Voluntary Surrender Solution (pursuant to step 3 of the Provider's Voluntary Surrender Solution letter) before the planned surgery on **26 September 2017**.

The Complainant states that when he rang the Provider, on **15 September 2017**, the Provider's employee told him that the Provider *"would only agree to meet with him after he handed back the keys to his home"*. The Complainant submits that he was taken aback by this comment from the Provider and stated that he had questions that he wished to ask before handing back the keys to the home concerning the sale of the property and the resolution of the Complainant's mortgage liability. The Complainant submits that the Provider told him that *"there would be no meeting or clarification of anything until he handed back the keys"*.

Further to this phone call, on the **20 September 2017** the Complainant wrote to the Provider enclosing a declaration of assets and means. He submits that he expressed a definite interest in taking up the Voluntary Surrender Solution offer. He also submits that in this letter he again stated that he was due for surgery on **26 September 2017** and would have *"restricted movements for 6 weeks thereafter"*. He went on to ask that his personal circumstances be taken into account regarding *"any specific time line in relation to the resolution of this specific mortgage account"*.

The Complainant accepts that he received missed telephone calls from the Provider at 5.35pm on the **25 September 2017** and on the **2 October 2017**. The Complainant states that he was preparing for his admission to hospital at the time of the first call and was indisposed due to his surgery in respect of the second call.

He states that he again wrote to the Provider on **5 October 2017** following no response to his letter dated **20 September 2017** and received a letter in response on **11 October 2017** stating that the offer was valid from **6 September 2017**. The Complainant rejects any suggestion that this 30 day limit was subsequently extended.

The Complainant then received a letter dated **16 October 2017** from the Provider, which made no mention of the Voluntary Surrender Solution or correspondence or calls related to the voluntary surrender but this letter was only in relation to the arrears on the mortgage account. This letter invited the Complainant to arrange an appointment with the Provider.

The Complainant submits that he received a phone call on **18 October 2017** from the same employee of the Provider who had denied him a meeting on **20 September 2017**. The Complainant states that this employee adopted a *“hectoring approach”* and a *“badgering tone”*.

The Complainant then wrote a letter to the Provider dated **19 October 2017** and described his dissatisfaction with how the above events had unfolded and stressed that he was still medically indisposed. He finished this letter by stating that he remained *“keen to have this matter resolved and as already noted in my previous letters to you I would ask that my personal circumstances be taken into account in any specific time line in relation to the resolution of this specific mortgage account”*. In a postscript to this letter, the Complainant notes that prior to his operation he requested that he be able to correspond with the Provider via email as it would enable him to receive and respond to emergency communication from and to the Provider during his surgery and subsequent period. The Complainant states that the employee of the Provider refused this request.

The Complainant sent a further letter to the Provider dated **23 October 2017** again highlighting his confusion with the process and the problems he experienced attempting to arrange a meeting to discuss the matter.

The Provider wrote to the Complainant on **2 November 2017** stating that it was investigating this matter and provided updates saying it was continuing to investigate the matter on **23 November 2017** and **21 December 2017**. On each occasion, the Provider stated that it would try to have the matter resolved within 20 working days. The Provider wrote to the Complainant on **15 January 2018** concerning his arrears, with no mention of the investigation into the matter, but inviting the Complainant to arrange an appointment with the Provider. The Provider then wrote again to the Complainant on **24 January 2018**, stating that it was still investigating the matter and would hopefully have the matter resolved by **24 February 2018**.

The Complainant wrote to the Provider on **20 February 2018** noting that he had now received two letters dated **16 October 2017** and **15 January 2018** both of which invited him to arrange meetings with the Provider. He also pointed out that he had been attempting to set up a meeting with the Provider since the Provider stated that a meeting was available in its letter to him dated **6 September 2017**. Again, the Complainant stressed that he was willing to meet to progress a final resolution in the matter.

The Complainant received a further letter dated **16 April 2018** from the Provider again making no reference to the investigation but commenting on the arrears on his mortgage account and offering him the opportunity to arrange a meeting regarding the arrears.

On **22 May 2018**, the Complainant received a letter from the Provider stating that it was still investigating the matter and would hopefully have the matter resolved by **20 June 2018**.

On **20 June 2018**, the Complainant received a letter from the Provider stating that it was still investigating the matter and would hopefully have the matter resolved by **18 July 2018**.

The Complainant wrote to the Provider on **22 June 2018**, again pointing out that he was still keen to have the matter resolved and have a meeting to progress to final resolution of the matter.

The Complainant also pointed out that he had now received approximately half a dozen letters from the Provider stating that resolution would hopefully issue within 20 working days, yet no resolution had issued.

On **16 July 2018**, the Complainant received a letter from the Provider again making no reference to the investigation but commenting on the arrears on his mortgage account and offering him the opportunity to arrange a meeting regarding the arrears.

On **18 July 2018**, the Complainant received a letter from the Provider stating that it was still investigating the matter and would hopefully have the matter resolved by **16 August 2018**.

On **2 August 2018**, the Provider sent a letter to the Complainant informing him that it intended to transfer his mortgage account to a third party provider in the near future.

On **16 August 2018**, the Complainant received a letter from the Provider stating that it was still investigating the matter and would hopefully have the matter resolved by **13 September 2018**.

The Complainant made a complaint to this Office on **12 September 2018**. On **24 July 2019**, the Complainant made further submissions in response to the Provider's **13 June 2019** and **18 June 2019** submissions regarding his complaint. The Complainant reiterates in this correspondence that he did engage with the Provider on numerous occasions by both post and by phone call. The Complainant also stresses that the offer of a meeting was not possible without the Complainant completing the Voluntary Surrender Solution application form and handing back the keys to the property, he highlights his concern at taking these steps without clarification/a comfort letter as to exact nature of the debt forgiveness on offer.

On **17 September 2019** the Complainant made further submissions stating that he is suffering from a life threatening illness which he contends is directly contributed to by the campaign of legal and financial harassment he has been subject to from the Provider. He states that he is seeking compensation to be awarded up to the limit of this Office's statutory capacity.

The Complainant states that the Provider's actions in respect of this matter have caused him anxiety and additional stress.

Ultimately, the Complainant wants the Provider to re-offer the Voluntary Surrender Solution and to consider compensation to the Complainant for the original offer being withdrawn.

The Provider's Case

In its Final Response Letter dated **23 October 2018** the Provider states that when the Complainant telephoned on **15 September 2017** requesting a meeting to discuss the matter further, the Provider *"outlined that the meeting could take place once [the Complainant] had completed the voluntary surrender forms and had the keys to hand back to the [Provider]"*. The Provider also states that the employee offered to *"answer any queries"* at that time but as the Complainant was driving at the time, it offered to call him on **18 September 2017** (**16 September 2017** and **17 September 2017** were a Saturday and Sunday respectively). Furthermore, the Provider states that it did call the Complainant on **18 September 2017** and noted that the Complainant was favourably disposed to the Voluntary Disposal Surrender solution but was seeking legal advice before agreeing to this. The Provider also notes that the Complainant requested a timeline as to when the property would be sold and the mortgage written off. The Provider further notes that its employee stated that a meeting could only be arranged when the necessary forms were completed and the Complainant had the keys ready to hand back.

The Provider states that its employee rang the Complainant on **18 October 2017** and advised that the offer had expired two weeks earlier but that if the Complainant still wished to avail of the offer, he would need to engage with the Provider. The Provider states that its employee offered to meet the Complainant but the Complainant stated that he would respond in writing.

The Provider states that further correspondence was exchanged between the Provider and the Complainant but ultimately states that the Voluntary Surrender Solution scheme had a strict limit of 30 days and while the Provider did extend this for a period, it was not in a position to extend the offer further.

The Provider also states that it notes the Complainant's dissatisfaction with the transfer of the mortgage account to the third party provider but that this was undertaken in order to meet the Provider's regulatory requirements to reduce the percentage of non-performing loans. The **23 October 2018** final response letter ends with the Provider offering to meet to discuss any aspect of the Complainant's mortgage.

The Provider furnished a response to this complaint by way of letter dated **13 June 2019**. In this response the Provider reiterates that it attempted to arrange a meeting with the Complainant but that the Complainant *"would not engage meaningfully in the process"*. The Provider also stresses in this response that it *"was not obliged to offer the Complainant any form of debt forgiveness... [it] made a commercial decision to offer a Voluntary Surrender Solution to the Complainant... It is not unreasonable for the [Provider] to impose a time limit on such an offer... the onus was on the Complainant to adhere to the terms of the offer in order to avail of same within the allowed timeframe"*.

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Furthermore, the Provider states that it in fact extended the Voluntary Surrender Solution offer until **13 November 2017** but this was not relayed to the Complainant.

The Provider states that it attempted to contact the Complainant by telephone on **7 November 2018** and **5 December 2018** but was unsuccessful.

The Provider also stresses that even if the Complainant had submitted all the relevant documentation within the 30 day time limit period, this would not have guaranteed that the Provider would have approved the Voluntary Surrender Solution.

The Provider rejects the assertion that it denied the Complainant the opportunity to meet with a portfolio manager in order to avail of the Voluntary Surrender Solution, it stresses that the Complainant failed to complete and return the requested documentation within the allotted time frame.

The Provider stated that it does not discuss details of a borrower's mortgage account via emails as it is not considered a secure form of correspondence due to data protection concerns.

The Provider states that it did take the Complainant's circumstances into account by offering to engage with him after the original 30 day period for the Voluntary Surrender Solution offer had expired.

The Provider notes that the Complainant had the option of appointing a third party to engage with the Provider on the Complainant's behalf which would have allowed the matter to progress while the Complainant was indisposed.

The Provider accepts that it was unable to investigate the Complainant's complaint in a timely manner and accepts that this represents a service failure on the Provider's part. The Provider also accepts that it did not respond to letters from the Complainant dated **23 October 2017**, **20 February 2018** and **22 June 2018**. Furthermore, it accepts that it did not issue a final response letter in as timely a manner as possible. It has apologised for this.

In response to the Complainant's further submissions dated **24 July 2019**, the Provider stresses that the Complainant declined a meeting via telephone call on **18 October 2017**. The Provider further states:

"with regard to the question of how a customer could hand back the keys without first being provided with a face to face meeting to discuss the pros and cons of relinquishing their only property, the [Provider] did offer meetings to the Complainant...the voluntary surrender offer clearly outlines the [Provider's] recommendation to avail of independent financial advice before proceeding with an application. Additionally the Provider offered to pay €250.00 towards this advice."

The Provider states that it has no record of receiving a request for a letter of comfort from the Complainant.

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By way of letter dated **25 October 2019** the Provider has made an offer of €1,000 to the Complainant in light of its service issue shortcomings. The Provider confirms that this offer will remain open to the Complainant should he wish to accept it at a later date.

The Complaint for Adjudication

The primary complaint for adjudication is that the Provider failed to follow its own stated procedure in respect of an offer of a Voluntary Surrender Solution to the Complainant and failed to assist the Complainant in taking up the offer. There is a further complaint that the Provider failed to respond to the Complainant's formal complaint in a timely manner and its handling of the complaint in general.

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 on 15 April 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.

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In respect of the complaint that the Provider failed to follow its own stated procedure in respect of an offer of a Voluntary Surrender Solution to the Complainant and failed to assist the Complainant in taking up the offer, I note that the letter dated **6 September 2017** which set out the Voluntary Surrender Solution made it clear that the steps necessary to avail of the offer were as follows:

“Step 1: Review the Information Pack and speak with us

Step 2: Meet with one of our dedicated Portfolio Managers

Step 3: Legal and Financial Advice

Step 4: Apply to Voluntarily Surrender your Property”

Step 2 was described in the letter as follows:

“During your meeting, a Manager will answer all your questions and discuss next steps with you.”

While there is a requirement outlined within Step 2 to bring completed documentation, I note that there is no obligation to bring the keys of the property to that meeting.

I further note that both parties are in agreement that, at the behest of the Provider, the initial meeting could only take place *“once [the Complainant] had completed the voluntary surrender forms and had the keys to hand back to the [Provider]”*. This requirement for the Complainant to agree to hand over the keys of the Property notwithstanding the fact that he clearly had valid queries regarding the voluntary surrender process and in the absence of the Complainant receiving legal advice seems most unreasonable. It flies in the face of the Provider’s own advice contained in its letter of **6 September 2017** to seek legal and financial advice prior to proceeding with the voluntary surrender.

I accept that the Complainant made every effort to organise a meeting with a representative of the Provider and I do not find any evidence to support the Provider’s assertions that it was open to any such meeting. Recordings of phone calls between the Complainant and the Provider have been provided in evidence. I have considered the content of these calls. In the first phone call on **15 September 2017** the Complainant clearly states that he would *“like to meet”* and that he would like to *“to discuss the ins and outs of it [the voluntary surrender]”*. In the second phone call on **15 September 2017** the Complainant also explains the position with his upcoming surgery very clearly and states that he is *“concerned if this [the voluntary surrender] is not acted on”* and he is *“trying to get things kickstarted”*. As there is no audio recording of the **18 October 2017** phone call, I have no evidence that during that phone call the Provider made any offer to meet with the Complainant and the Complainant refused this. Furthermore, I accept that the letters written by the Complainant (beginning with the letter dated **20 September**) all succinctly and accurately set out the Complainant’s position and stress that he is keen to resolve matters.

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I accept that the Provider's letters sent to the Complainant on **16 October 2017, 15 January 2018, 16 April 2018** and the **16 July 2018** were confusing in the extreme. These letters made no reference to the investigation into the complaint concerning the voluntary surrender offer but did comment on the arrears to the Complainant's mortgage account and offered him the opportunity to arrange a meeting regarding the arrears. The Complainant's repeated requests for a meeting pursuant to these letters were ignored.

While I acknowledge that the Provider "*was not obliged to offer the Complainant any form of debt forgiveness... [it] made a commercial decision to offer a Voluntary Surrender Solution to the Complainant... It is not unreasonable for the [Provider] to impose a time limit on such an offer*", I believe that having offered the voluntary surrender scheme to the Complainant, the Provider was under an obligation to afford the Complainant a reasonable opportunity to meet with it to discuss it prior to the Complainant making a final decision as to whether he would surrender his mortgaged property or not.

It is most disappointing and unacceptable that the Provider has continued to assert over the course of its submissions to this Office that the Complainant "*would not engage meaningfully in the process*", when all the evidence before me indicates the contrary. The Complainant could not have gone to greater lengths to ensure the Provider was fully aware of his willingness to have a meeting to discuss the matter and the accompanying complications that his medical situation may cause with the timeline for arranging any such a meeting.

In a submission to this Office, the Provider states:

"The Bank is satisfied that it adhered to the terms of its own voluntary surrender offer and afforded the Complainant every opportunity to engage both before and after the initial 30 day timeframe outlined in the offer letter of 6 September 2017".

I find it hard to understand how anyone reviewing the circumstances of the Complainant could make this statement. It is simply not borne out by any reasonable assessment of the evidence.

I note with interest the Provider's position that the Complainant could have appointed a third party to act on his behalf while he was indisposed. Had the Provider had a modicum of common sense or empathy in its dealings with the Complainant, it would have suggested this to the Complainant or alternatively, and perhaps more appropriately, it would have attempted to arrange a meeting with the Complainant prior to his operation. I find no fault in the Complainant for not coming up with this solution himself, especially given his personal circumstances at the time this voluntary surrender scheme was offered.

In respect of the complaint that the Provider failed to handle the Complainant's complaint properly/in a timely manner, I note that the Provider accepts that it was unable to investigate the Complainant's complaint in a timely manner and accepts that this represents a service failure on the Provider's part.

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I further note that the Provider also accepts that it did not respond to letters from the Complainant dated **23 October 2017**, **20 February 2018** and **22 June 2018**. Furthermore, I note that the Provider accepts that it did not issue a final response letter to the Complainant in as timely a manner as possible. I note that the Provider has apologised for these service failures.

Based on the foregoing I accept that the Provider has not complied with provision 2.1 of the Consumer Protection Code 2012 (as amended) ('the CPC') by not acting "*professionally in the best interest of its customers and the integrity of the market*" due to its failure to adhere to its own stated procedure, its failure to arrange a meeting with the Complainant and its service failures in how it dealt with the Complainant's complaint. The Provider also did not comply with provisions 2.2 of the CPC by failing to act with "*due skill, care and diligence in the best interests*" of the Complainant and has not complied with provision 2.8 of the CPC by failing to handle the Complainant's complaint "*speedily*".

By failing to let the Complainant know that it had extended the expiry date of the voluntary surrender offer and by sending confusing and conflicting correspondence to the Complainant, the Provider has breached provision 4.1 of the CPC by failing to ensure that the information it provided to the Complainant in respect of the expiry date of the voluntary surrender letter was "*clear, accurate and up to date*".

Finally there is insufficient evidence to support the assertion of the Provider that it took the Complainant's vulnerable circumstances into account by offering to engage with him after the original 30 day period for the Voluntary Surrender Solution offer had expired. Therefore, I find that the failure of the Provider to accommodate the Complainant regarding his communication preferences whilst he was indisposed with illness following a serious operation highlights a failure to deal with or accommodate the Complainant in accordance with the Provider's vulnerable consumer policy and therefore the Provider has breached provision 3.1 of the CPC which states that:

"where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity."

In the interests of completeness, I accept that there is no evidence that the Complainant requested a letter of comfort from the Provider.

Dealing with a situation where a mortgage is in arrears is difficult and stressful. I would expect a provider in such circumstances to engage in clear communications and, in particular, where a mortgaged property is to be surrendered, I would expect that the very least that could be expected would be a face to face meeting. Further, where an offer of a surrender is made by a provider, I would expect it to be made in the clearest possible terms, including setting out the steps and time limits involved. The Provider failed on all these fronts and refuses to accept the extent to which it failed in relation to this complaint.

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Having regard to the particular circumstances of this complaint, in particular the serious failings on the part of the Provider in its handling of the offer to the Complainant of the Voluntary Surrender Scheme and its handling of the Complainant's subsequent complaint and the understandable distress and anxiety this caused to the Complainant, I partially uphold this complaint and direct the Provider to make a compensatory payment of €15,000 (fifteen thousand euro) to the Complainant.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €15,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

7 May 2020

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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.

