



<u>Decision Ref:</u>	2020-0226
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Arrears handling - Mortgage Arrears Resolution Process
<u>Outcome:</u>	Partially upheld

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

This complaint concerns the administration of the Complainants' mortgage loan account with the Provider.

The Complainants' Case

This complaint concerns a joint loan account held by the Complainants with the Provider. The Complainants submit that the Provider delayed in assessing their application for a term extension of their joint mortgage loan account. In addition, they submit that incorrect information was furnished by the Provider in relation to the completion of the Standard Financial Statement (SFS) which further exacerbated the delay in the assessment of the term extension.

The Complainants submit that the Provider did not furnish details of the additional information that was required in conjunction with the SFS.

The Complainants state that they were given incorrect/confusing information concerning the fact that they needed to make six months full capital and interest repayments before being eligible for a term extension to be applied to their account.

The Provider's Case

Provider records indicate that the Complainants drew down a mortgage in December 2005 for €189,000. The loan was to be repayable over 30 years.

The loan went into arrears on 9 January 2006. In August 2009 a 3 month moratorium on payments was agreed. In December 2009 a period of 12 months interest only repayments was agreed. In March 2011 a period of 12 months interest only repayments was agreed for the period April 2011 to March 2012. In November 2011 this agreed interest only period was interrupted and a moratorium of 12 months on repayments was agreed. The interest only repayments were later recommenced.

In February 2016 a six month period of reduced payments of €613.00 per month was arranged through a third party mortgage administrator. In August 2016 this reduced repayment arrangement was renewed for a further 6 months. Reduced repayments of €626.00 were agreed from March 2017 to August 2017.

The amount of arrears owing as of January 2019 was €13,370.89, and the outstanding mortgage balance was €169,411.40.

The Provider has offered the Complainants €500 in recognition of there being unnecessary delays in assessing the SFS for mortgage account ****3448, as well as delays in investigating the complaint.

Complaint for Adjudication

The complaint for adjudication is that the Provider unreasonably delayed in assessing the Complainants' term extension application for account ****3448.

The Complainants want a term extension to be granted and for their Irish Credit Bureau record to be amended to reflect that fact they have been making agreed repayments since July 2015.

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 Complainants were 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.

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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.

Following the issue of my Preliminary Decision, the Complainants made a further submission to this Office under cover of their e-mail dated 26 April 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainants' post Preliminary Decision submission and all of the submissions and evidence furnished by the parties to this Office, I set out below my final determination.

It is important to point out the jurisdiction of this Office in relation to complaints of this type. In relation to requests in respect of mortgage loan arrears and applications for forbearance arise, this Office is only in a position to investigate whether a provider correctly adhered to any obligations pursuant to the Central Bank's Consumer Protection Code (CPC) and Code of Conduct on Mortgage Arrears (CCMA) and/or any other regulatory or legislative provisions in relation to the mortgage loan and the application. This Office will not interfere with the commercial discretion of a provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a complainant.

The Complainants' complaint relates to a delay in assessing the standard financial statements submitted by them and the Provider's failure to offer them a term extension. As set out above, whether or not to offer a term extension (or any other form of forbearance) is a matter within the commercial discretion of a lender.

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The Code of Conduct on Mortgage Arrears 2013 (CCMA) contains the following provisions in relation to the assessment of an application for forbearance on receipt of an SFS:

*“35. A completed **standard financial statement** must be assessed in a timely manner by the lender's ASU.”*

On 2 November 2015 the First Complainant contacted the Provider to discuss the account. Initially, he did not wish to be assessed by way of SFS, but reconsidered this position and an SFS form was sent to him by the Provider on 4 November 2015. On 2 December 2015 the SFS was completed by the First Complainant. The First Complainant's financial details were assessed by the Provider as showing no affordability for the mortgage, and the Second Complainant (joint account holder) was to be assessed for affordability.

On 4 December 2015 the First Complainant advised the Provider that his details had changed, with regard to childcare costs. There was still no SFS from the Second Complainant. On 8 December 2015 the First Complainant called to complete another SFS (to amend figures). The Provider's agent wanted to confirm some details but the First Complainant told him he did not have time at that point and said he would call back.

The First Complainant called back on 4 January 2016 and was referred to the third party mortgage administrator. He advised that his co-borrower was no longer living at the property and that it was fully rented, accordingly the property status was amended to “buy to let”.

On 15 February 2016 the First Complainant called the Provider about his request for a term extension on another account - a mortgage over another property. An SFS had been completed in respect of that property. The Provider's agent said he would look into this and call him back.

The Provider called the First Complainant back on 16 February 2016 but there was no answer so a voicemail was left. The purpose of that call was to try to arrange a suitable time to complete an SFS. The November 2015 SFS was incomplete and there was no SFS from the Second Complainant.

On 8 March 2016 the Provider attempted to contact the First Complainant by telephone, but again the call was not answered and a voicemail was left. On 24 March 2016 the Provider got through to speak with the First Complainant who advised that he was in work and the Provider agreed to call him back “on Tuesday” (29 March).

No call was made on 29 March 2016, however the Provider did call on 31 March 2016. The call went unanswered and a voicemail was left.

On 5 July 2016 the First Complainant called the Provider and was advised that he would need to submit another, up to date, SFS in order to be considered for a term extension. The First Complainant advised that he did not have time at that time to complete the form but would call back.

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It is worth noting that a lender is entitled to require an up to date SFS – the November 2015 SFS was both incomplete and 8 months old at this stage, and was only in respect of one of the two borrowers.

The First Complainant called back on 29 September 2016 to enquire about a term extension and capitalisation of the arrears. He was told that in order to be considered for capitalisation he would have to make 6 months of full capital and interest repayments.

On 19 and 20 October 2016 the Provider called the First Complainant but the calls went to his voicemail and messages were left. On 21 October 2016 the Provider succeeded in getting through to the First Complainant but he advised that he was in work so would call back.

On 26 October 2016 the Provider called the First Complainant and the parties agreed to complete an SFS on 9 November 2016. The Provider's agent agreed to remind him of this the day before, and did so by telephone call on 8 November 2016.

On 9 November 2016 the First Complainant completed an SFS form with the Provider's agent. The Provider sought documentation in relation to expenditure, and noted the First Complainant's statement that the Second Complainant does not make any payments towards the mortgage, and is simply named on it.

While the Provider's telephone log suggests an email was sent internally to "*get supporting docs letter out to customer*". I have not been provided with a copy of this letter. However, the Complainant can have been in no doubt that further documentation was necessary in order to progress matters, as this had been explained to him on numerous occasions.

On 30 January 2017 the First Complainant expressed his frustration at the time it was taking to organise a term extension. He stated that once a term extension was agreed he would seek to capitalise the arrears. He was advised he needed to make full capital and interest repayments for six months in order to be considered for a term extension or capitalised arrears. It is important to note that he was informed that he would be considered, not that it would be granted.

At no stage was he advised that if he made the 6 months full repayments that he would be entitled to capitalisation of arrears or a term extension as of right.

Analysis

The Complainant is, in essence, seeking a term extension and capitalisation of his arrears.

As set out above, this Office does not act as an appeal process for a commercial decision made by a provider in respect of repayment capacity or sustainability. The decision as to whether or not to grant forbearance to a borrower in respect of mortgage arrears is one that could only be interfered with in the most exceptional and extreme of circumstances.

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Despite being informed of this the Complainant persists in seeking that I direct the Provider to recapitalise the arrears.

The Complainant in his post Preliminary Decision submission dated 26 April 2020 states:

"I have read through his findings numerous times. I would like to point out this was never about compensation all I am looking for is the mortgage to be re-capitalised and for this nightmare to end"

The Complainant also states in his post Preliminary Decision submission:

"I would also like to note that I went into the bank in 2013 with two mortgages to be re-capitalised one was done and here we are 7 years later and still the second mortgage has not been re-capitalised!! Why wasn't the two re-capitalised at the same time? And this is why I need to keep investigating this matter as at the time I gave the adequate paper work required"

The above did not form part of the complaint investigated by this Office. This Office investigated the Provider's delay in assessing the Complainant's application for a term extension around 2016. In any event as I have stated previously the matter of a recapitalisation falls within the commercial discretion of the Provider, which I will not interfere with.

From the evidence presented to me I see no grounds for me to find that the Provider has acted in any way other than in accordance with its obligations and its commercial discretion in refusing to offer either a term extension or capitalisation of arrears.

The telephone log and calls from November 2015 to January 2017 show that a completed, up to date, SFS (together with supporting documentation) was not received from the First Complainant (the Second Complainant appears not to have engaged at all). The log notes also show that the significant lapses of time during this period occurred when the ball was "in the court" of the First Complainant. The Provider attempted on numerous occasions to contact him, and he was either busy, did not answer, or did not call back when he said he would.

I therefore cannot accept that the Provider has failed to consider an SFS in a timely manner. I note that this mortgage account has been in difficulty from the very beginning, and numerous forbearance measures have been agreed over the years. I have been provided with no evidence of unreasonable or unjust conduct on the part of the Provider.

Neither have I been provided with evidence that the Provider's agents informed the First Complainant that he would automatically have his arrears capitalised if he made 6 months of capital and interest repayments.

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Furthermore, it is important for the Complainant to understand that in the absence of any agreement in terms of forbearance on the loan he is contractually obliged to pay the full amount as set out in his original mortgage agreement.

I do not accept the First Complainant's contention that this mortgage account should simply have been "dealt with" in the same manner as the account in his sole name. Each account and application for forbearance must be considered on its own merits and a joint account clearly has to be dealt with differently from an account in a sole name.

In relation to the reporting to the Irish Credit Bureau (ICB), the Provider has, in its submissions to this Office, accepted that it furnished incorrect information to the ICB in respect of this account. The account had been reported as having missed payments, when in fact it should have been reported as being in an alternative repayment arrangement.

In my Preliminary Decision I stated, in relation to the reporting to the ICB:

"The Provider has rectified this error and apologised for it. This error caused significant distress to the Complainant."

The Complainant states in his post Preliminary Decision submission dated 26 April 2020:

"I have stated numerous times I am looking for my ICB rating to be rectified as again I have stated I am self employed and can not secure any credit/business loan/overdraft to help me progress and build my business".

On **30 January 2020** the Complainant made a submission to this Office. The submission stated that:

"Please see below an email from. I've been refused an over draft because of my credit history. Can you send me a email confirm that we are in talk to resolve this issue".

The email attached to this submission is from a third party provider which is not involved in this complaint. It states:

"As per telephone call, if you could inform me of the details regarding your Investment property so I can relay that back to our credit department"

The submission does not confirm that the Complainant has been refused an overdraft.

The Provider responded to the above in a submission dated **14 February 2020**. In its submission it stated that the above email does not demonstrate that the Complainant has been refused an overdraft by the third party provider. Its submission goes on to state:

"...the Complainants' mortgage is still owned by [the Provider] as of date of writing this response. The current arrears figure on the Complainants' mortgage ending 448 is €14,208.

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The Bank is obliged, as prudent lenders and members of the Irish Credit Bureau, to report the correct information on our customers' borrowings to the Irish Credit Bureau".

It appears from the evidence before me that around January 2019 the Complainants' arrears stood at over €13,000 and over €14,000 in February 2020.

It therefore would appear that, notwithstanding the correction by the Provider of its incorrect reporting to the ICB, the Complainants' credit rating may continue to be impacted for as long as the account is in arrears or in an alternative payment arrangement. I cannot direct the Provider to report the account to the ICB in any manner other than as reflects the actual situation.

In relation to how it dealt with this complaint, the Provider has accepted that its complaint acknowledgement letter issued 2 days outside the 5 day window required by the CPC. It has apologised for this delay.

In addition to the foregoing errors, I consider it unsatisfactory that the Provider is not in a position to furnish the "supporting documentation" letter that ought to have issued in the days after 9 November 2016.

Finally, the telephone conversations and the First Complainant's general exasperation and frustration has undoubtedly been contributed to by being constantly referred back and forth between the Provider and the third party mortgage administrator engaged by the Provider throughout 2016 and 2017. This is not a satisfactory level of service to offer to a customer who, while frequently culpable of delay himself, did attempt to make progress but was passed from one entity to the other.

I must nonetheless acknowledge the patience of the Provider's telephone agents on occasion in the face of some inappropriate language. No matter what a provider's failings might be in a given situation, their telephone agents are entitled to be treated in a civil fashion.

For the reasons outlined above, I partially uphold this complaint and direct the Provider to pay a sum of €1,500 to the Complainants.

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)(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 Complainants in the sum of €1,500, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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**

18 June 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.

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