



<u>Decision Ref:</u>	2020-0429
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Selling mortgage to t/p provider
<u>Outcome:</u>	Rejected

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

This complaint concerns the Complainants' mortgage loan accounts, held with the Provider.

The Complainants' Case

The Complainants submit that the Provider proposes to transfer their loan to a third party.

The first Complainant made a complaint to the Provider on **26 February 2019** by way of telephone call. A customer complaint template was generated by the Provider subsequent to this phone call. This template states that the *"customer was very unhappy with his loan being transferred as he is meeting all required payments each month. Customer queried why loan was included. He advised me he does not give consent for loan to be transferred...He does not think it is right that the [Provider] are allowed to transfer loans where customers are meeting required payments."*

The Complainants state in their complaint form dated **10 April 2019** that they secured a mortgage with the Provider in **2004**, and that during the recession, due to their incomes being reduced, they fell into arrears on the mortgage. They submit that during this time an agreement was reached with the Provider to split the mortgage whereby the Complainants made monthly repayments on one loan and the second loan was warehoused. The Complainants contend that since the agreement was put in place they have *"not missed any payments"* and dispute the Provider's definition of a non-performing loan, believing their loans are *"performing 100%"*.

The Complainants state that they believe that the Provider is *“being very unfair and breaking [the Complainants’] contract”* by the manner in which the Provider is dealing with the Complainants’ mortgage.

At the time the Complainants initiated this complaint, the redress sought through their complaint form was that they wanted their mortgage *“not to be sold to any other body.”* The sale of the mortgage to a third party was completed subsequent to the complaint being made to this office.

The Provider’s Case

In its Final Response Letter dated **3 April 2019**, the Provider submits that on **30 November 2018** it advised the Complainants that their loans were being transferred to a third party in the next 6 months.

The Provider states in this letter that the Complainants’ loan is a “non-performing loan” and that the Provider is required by regulators to reduce the percentage of loans classified as such. The Provider states that the classification of “non-performing” *“applies to loans even where such loans are meeting the terms of an agreed restructuring agreement”* and for this reason, the Complainants’ split loan with a future warehouse amount due is classified as “non-performing”. The Provider further contends in this letter that the terms and conditions of the Complainants’ loan permits it to *“sell, securitise and transfer”* the loan.

The Provider made further submissions to this Office dated **24 April 2020**. In these submissions the Provider states that the Complainants’ mortgage loan first fell into arrears on **12 July 2011** and remained consistently in arrears until **5 August 2014**. The Provider states that a split mortgage restructure arrangement was applied to the account on **5 August 2014**, however, the account had been subject to several short term restructure arrangements prior to this date. The Provider further delineates the restructuring arrangements entered into in respect of the loan from **2012 to 2014**, the details of which are not material to this complaint. Of note, is that from **5 August 2014**, a split mortgage was applied to the Complainants’ account. This meant that a sum of €65,293.70 from the Complainants’ principle mortgage account balance was warehoused and no repayments were due on this element of the loan until the end of the mortgage term but the Complainants were required to continue to make monthly repayments to the main mortgage account, the remaining contractual term was extended by 117 months in order to make the repayment amount affordable and sustainable. The Provider submits that the terms of this split mortgage restructure involved a review of the arrangement at least every 3 years. In **August 2017**, the Provider outlines that it proposed that full capital and interest repayments recommence on the mortgage loan accounts but the Complainants rejected this proposal and as a result the split mortgage restructure arrangement remained in place.

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The Provider acknowledges that the Complainants met the restructured repayments to the mortgage loan.

The Provider states that the Complainants loan was transferred to a third party in **May 2019** and the split mortgage restructure arrangement remained in place following the transfer. Prior to this transfer, the Provider submits that it complied with its regulatory obligations and on **30 November 2018** and **22 February 2019** it wrote to the Complainants informing them that their mortgage loan was included in a securitisation transaction which was resulting in the transfer of the loan to a third party.

The Provider states that the Complainants submitted a complaint to the Provider in relation to the transfer on **26 February 2019** and the Provider issued a Final Response Letter to the Complainants in relation to the transfer on **3 April 2019**.

The Provider states it relied on the terms and conditions of the Complainants' mortgage contract when transferring the loan to a third party. The Provider states that the contract consists of the Letter of Approval dated **23 August 2006**, the Provider's general mortgage loan approval conditions, the Provider's conditions and the acceptance of loan offer dated **28 August 2006**.

The Provider refers to point 1.15 of the Provider's general mortgage loan approval conditions which states:

"1.15 [The Provider] may at any time transfer the benefit of the mortgage to any person or company in accordance with the mortgage conditions".

The Provider also refers to page 13 of the mortgage conditions which states at point 6.7: *"6.7 [The Provider] may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person..."*

The Provider also submits that the Complainants signed the acceptance of loan offer on **28 August 2006** which states:

"I/We the undersigned accept the above offer on the terms and conditions set out in

- (i) The letter of approval*
- (ii) The general mortgage loan approval conditions*
- (iii) The [Provider's] mortgage conditions*

Copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan

And

"My/Our solicitor has fully explained the said terms and conditions to me/us".

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In relation to whether the loan was non-performing or not, the Provider states that the loan was assessed as “non-performing”. The Provider states that the European Central Bank set out that “*non-performing exposures are those that satisfy either or both of the following criteria:*

1. *Material exposure which are more than 90 days past-due;*
2. *The debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due”.*

The Provider states that the Complainants’ loan was assessed as being “*unlikely to pay*” its credit obligations in full within the mortgage term. This assessment primarily arose due to the split mortgage restructure, with an outstanding amount of €65,293.70 (the Warehouse mortgage account) that was due and payable at the end of the mortgage term.

In response to queries raised by this Office concerning the Provider’s adherence to principle 4.1 of the **Consumer Protection Code 2012** (as amended) and its obligations to provide the Complainants with clear, accurate and updated information in relation to the restructure of their debt and any future implications, the Provider states that it is satisfied that it has provided the Complainants with clear, accurate and updated information regarding the future implications of the split mortgage restructure arrangement, in accordance with principle 4.1 of the **CPC 2012** (as amended). The Provider states that it issued a split mortgage restructure arrangement to the Complainants on **15 July 2014**, this was agreed to by the Complainants on **25 July 2014** and the restructure was applied to the account on **5 August 2014**. The Provider also submits that its correspondence of **30 November 2018** was clear in informing the Complainants that the split mortgage restructure would remain in place and continue to apply to the account following the transfer of the Complainants’ loan to the Provider.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has wrongly categorised the Complainants’ loan as non-performing and has wrongly/unfairly transferred the Complainants’ mortgage loan account to a third party.

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 3 November 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.

In respect of the Complainants' complaint that the Provider has wrongly categorised the Complainants' loan as non-performing, I note that between **July 2011** and **August 2014**, the Complainants were in arrears in respect of their mortgage loan. This led to several restructuring arrangements being implemented with varying levels of success until ultimately, in **August 2014** a split mortgage restructure was implemented. Since that point in time, it is accepted by all parties that the Complainants have adhered to the agreement and there is no suggestion that they have missed any repayments in respect of the loan. However, I must note that the nature of the split mortgage restructure is that a relatively large amount of the mortgage loan (€65,293.70) has been set aside (warehoused) and is due and payable at the end of the mortgage term. Therefore, I accept that it was not unreasonable for the Provider to classify the Complainants' mortgage account as "non-performing" having regard to the European Central Bank's criteria for non performing exposures.

While I acknowledge the Complainants' frustration at the sale of their mortgage loan in light of their ongoing cooperation with the Provider and their adherence to the payment schedule on the split mortgage account since **August 2014**, this does not undermine the Provider's entitlement to transfer the loan in accordance with the terms and conditions of the loan agreement. In this regard, I note that point 1.15 of the Provider's general mortgage loan approval conditions states that the Provider "*may at any time transfer the benefit of the mortgage to any person or company in accordance with the mortgage conditions*" and page 13 of the mortgage conditions at point 6.7 states that the Provider "*may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person...*". I also must accept that this loan approval and the general mortgage terms and conditions were accepted by the Complainants as evidenced by the signed acceptance of loan offer dated **28 August 2006**.

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I note that this acceptance letter states that the Complainants had the benefit of legal advice to explain the mortgage terms and conditions to them.

Therefore on the basis of the foregoing, the Provider was entitled to exercise its commercial discretion to include the Complainants' loan within the portfolio of loan and mortgage assets being sold to the relevant third party and this Office will not interfere with the commercial decisions taken by the Provider in relation to the sale of its assets.

For this reason, 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 November 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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