An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0435
Sector:	Banking
Product / Service:	Commercial Mortgage
Conduct(s) complained of:	Appointment of a receiver Delayed or inadequate communication Dissatisfaction with customer service Disputed transactions Maladministration
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants entered into a mortgage loan agreement with a financial services provider in **October 2006** which comprised of two loans, Loan A and Loan B. The Complainants' business premises was provided as security for these loans. This loan was subsequently acquired by another financial services provider in **November 2014**. The Provider, against which this complaint is made, is an asset serving company and was appointed to manage the Complainants' loans in **April 2015**. A receiver was then appointed over the Complainants' business premises in **May 2016**.

The Complainants' Case

The Complainants explain that they entered two loan agreements with a financial services provider in **2007**: one on a capital and interest repayment basis, and a second one an interest-only basis. In **2014**, the Complainants' loans were sold to another financial services provider and the Provider was appointed to manage these loans.

In **December 2015**, the Provider *"… applied for and received a double mortgage payment, when contacted, they said 'someone pressed the button twice' and the second mortgage payment was cancelled."*

In **March 2016**, the Complainants received a letter advising them that *"… we were in breach of contract and would be taken to High Court if full payment of mortgage was not received in 10 days."*

The First Complainant contacted the Provider by telephone and spoke to someone in the Provider's Arrears Support Unit (**ASU**), who advised the First Complainant that a payment was missed in **December 2015** and, because of this, the Complainants were in breach of contract and the Provider was entitled to evict them from their premises. The Provider was advised that no payments were missed but *"… he ignored this saying a returned direct debit was showing on his system for December 2015."*

During this conversation, the person in the ASU told the First Complainant *"… 'don't worry about that' because he was in a position to offer me a generous discount if I could re-finance."* The First Complainant explained that the Provider's ASU agent *"… told me a sad story about his investors not being a mortgage company and they were paying 8% for their money so my tracker was costing them money."* The First Complainant advised the ASU agent that the value of their property had collapsed and was worth much less than what was owed under the loans *"… but he said as I was paying €1,600 per month I should be able to approach my bank but I told him I would need a number which he wouldn't give me."* The Complainants explain that they offered the Provider €40,000.00 in an attempt to get a response but no response was received.

The Complainants *"… were put into Receivership …"* in **May 2016** and the receiver arrived at the premises looking for vacant possession in order to sell it. The Second Complainant has also submitted a document recounting a visit she received while at the premises on **25 May 2016** by a person who identified themselves as *"… the person in charge of the receivership of the building …"*

The Complainants believe that the Provider made false claims of missed payments from **December 2015** to **November 2016** to the Irish Credit Bureau, with *"… no attempt to rectify the report or apology …"* and thereby *"… damaging my business, reputation and causing serious stress and upset to everybody here."* However, suddenly the Provider stopped stating payments were missed in **November 2016**. The Complainants *"… suspect that while preparing for going to court for a possession order, somebody … noticed that the missed payments had not been missed, the contract had not been breached and rather than give me a right of reply they simply backed off – but I am still in Receivership because according to [the Provider] I don't pay my bills!"*

The Complainants state that as the Provider refused to acknowledge their complaint to the ASU agent regarding the missed payments and refused to issue a final response letter, thereby prevented the Complainants from making a complaint to this Office. The Complainants also remark that the Provider failed to respond to their solicitors since **2017**.

In **November 2018**, the Complainants' monthly interest payments on the Loan B were increased from €36.00 to €4,332.00. They contacted the Provider and were advised that it was an IT issue but in **December 2018**, the interest payment increased to €4,418.00.

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The Complainants state that *"[w]e complained again and this time we went back to December 2015 where they issued their final response letter where they say they had done nothing wrong."*

The Complainants sum up their complaint as follows:

> *"… [the Provider], [the Receiver] and [the Solicitors] have attempted to ruin our business and throw us out of our premises for which we have faithfully paid our monthly mortgage. They have ignored our complaints through either gross negligence or lack of honesty. When we took the legal route to bring the issue to their attention - they ignored our solicitors letters. Dealing with these companies has been frightening, exhausting and stressful ordeal which should never have happened. No one should have to be the prey of such organisations and having to endure the feeling of your life being put on hold and unable to breathe."*

The Provider's Case

Background

The Provider explains that on **12 October 2006**, a financial services provider furnished the Complainants with a Letter of Loan Offer for two loan facilities. The first being a mortgage loan of €290,000.00 to be repaid on an interest and capital basis over a 20 year period. The second facility was a mortgage loan of €20,000.00 to be repaid over a 12 month period on an interest only basis with the principal to be repaid at the end of the facility's term. These loans were advanced to the Complainants on **9 January 2007**.

On **3 June 2008**, the financial services provider offered the Complainants a variation on Loan B. Under the terms of the variation, the term of this loan was extended by 12 months on an interest only basis with the maturity of the loan being extended to **9 February 2009**.

By way of Deed of Sale dated **29 November 2014**, the Complainants' loans were sold to their current owner. On **20 April 2015**, the loans were transferred to the Provider. The status of the loans at the date of transfer was:

Loan Account	Principal Balance	Arrears Balance	Outstanding Balance
Loan A	€197,387.69	€0.00	€197,387.69
Loan B	€0.00	€20,121.40	€20,121.40

The Provider explains that Loan A transferred as an interest and principal repayment loan and was fully up to date at the transfer date. Loan B transferred as an expired interest only facility in arrears with the term having expired on **9 February 2009**.

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At the date of its response to this complaint, the Provider sets out the status of the loans as follows:

Loan Account	Principal Balance	Arrears Balance	Outstanding Balance
Loan A	€117,229.83	€0.00	€117,229.83
Loan B	€0.00	€20,710.23	€20,710.23

Duplicate loan payments

The Provider explains that during **December 2015** it was still receiving migration information from the original loan owner and this entity was also continuing to present direct debits on behalf of the Provider. On **1 December 2015** and **2 December 2015**, both the original loan owner and the Provider sent direct debit mandate instructions to the Complainants' bank account. Therefore, two direct debit collections were attempted for both loan accounts. The Provider explains that it cancelled one of the instructions and the Complainants also instructed their bank not to honour one of the direct debits. On **7 January 2016**, the Provider received information from the Complainants' bank that the **December 2015** direct debits had not been honoured; however, one of the mandates had been paid. Consequently, Loan A entered into arrears of €1,566.99 and the arrears on Loan B increased by €40.11.

On **29 November 2016**, the Provider reconciled both loan accounts by decreasing the arrears amounts. However, default interest and interest on arrears for Loan A had not been waived and this account remained in arrears of €106.85. The Provider explains this has been rectified and on **15 April 2020**, arrears of €145.40 were written off.

The Provider refers to the definition of *Events of Default* in clause 9 of the loans' terms and conditions. If an event of default occurs, the Provider is entitled to declare all loans to be immediately due and payable and also declare the security to become immediately enforceable. The Provider submits that Loan B expired on **9 February 2009**. However, while the Complainants maintained interest only instalments on the account, the principal balance has been due since the expiry date and this is the event of default which occurred. As the loans are both secured on the one property, a receiver was appointed under the terms of the mortgage deeds.

Arrears

Date of arrears

The Provider accepts that letters issued to the Complainants stating that Loan B first entered arrears on **20 April 2014** is incorrect. The Provider advises that **20 April 2015** was the date the loans were transferred to it. The Provider states that Loan B first entered into arrears on **9 February 2009**.

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The Provider states that the Complainants were first issued with letters regarding their arrears on **7 May 2015** and the request to cancel the duplicate payments in **December 2015** had no bearing on the decision to correspond with the Complainants regarding arrears on their account.

Number of missed payments

The Provider explains that letters issued to the Complainants between **April 2015** and **March 2017** stating that the Complainants had missed 77 repayments. The Provider accepts *"… that the letters were all incorrect.*

We can also confirm that, as this is an expired account in arrears for the total balance, the letters should have stated that the borrowers had missed 1 repayment."

In **March 2017**, to rectify this issue, the Provider made changes to its letters. From **April 2017**, arrears letters issued on expired interest only accounts state 0 repayments have been missed.

Credit reporting

The Provider states that it has not made any report or submission to the Irish Credit Bureau in respect of the Complainants' loans. However, the Provider does report to the Central Credit Register and that report shows only that the term of Loan B has expired.

November and December 2018 Interest Payments

Dealing with the payments that were called for in **November** and **December 2018**, the Provider explains that subject to the terms and conditions of the loans, amounts overdue are subject to surcharge interest from the date these amounts become overdue. While the Provider has not applied surcharge interest to Loan B, it is accruing and continues to accrue, surcharge interest. Due to a technical issue which occurred in **November** and **December 2018**, the Provider applied to the Complainants' bank account for the accrued surcharge interest amounts instead of the interest only repayment. The Provider states that this was an unexpected issue and the Complainants were not notified in advance.

Alternative Repayment Arrangements

On **15 March 2016**, the Provider emailed the First Complainant attaching a Statement of Affairs (**SoA**) for the Complainants to complete and return along with their proposal to deal with the debt. Prior to sending this email, the First Complainant and the Provider's agent discussed refinancing the debt.

On **21 April 2016**, the Provider emailed the First Complainant requesting that he return the SoA and an update on any progress the Complainants might have made in respect of refinancing the debt. On **25 April 2016**, the Provider requested a response to its previous email. On **29 April 2016**, the Provider attempted to contact the First Complainant.

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On **3 May 2016**, the Provider emailed the First Complainant advising that if a response to its previous requests was not forthcoming, a recommendation would be made to its investors to consider all options.

The Provider states that as the Complainants did not submit their financial information or a proposal for it to assess, no alternative arrangement could be considered prior to the appointment of a receiver.

Acknowledgement of correspondence

In dealing with various provisions of the Consumer Protection Code 2012 (the **Code**), the Provider states that *"[w]e also did not acknowledge or respond to correspondence received from them or their solicitors."*

Appointment and/or Conduct of the Receiver

The loans the subject of this complaint are secured by way of a charge over the Complainants' business premises (the **Secured Property**). By Deed of Appointment dated **23 May 2016**, a receiver was appointed in respect of the Secured Property. The Provider is not the owner of the Complainants' loans. As noted above, the Provider is an asset servicing company and was appointed to manage the Complainants' loans. Furthermore, the Deed of Appointment indicates that the receiver was appointed over the Secured Property by the owner of the Complainants' loans and not the Provider.

The Complaints for Adjudication

I note the Complainants' dissatisfaction with the appointment of the Receiver and I understand their concerns. However, this Office cannot investigate, as part of this complaint against the Respondent Financial Service Provider, the appointment of a Receiver by another financial service provider (the loan owner).

Furthermore, this Office cannot investigate the conduct of a Receiver as it is not a financial service provider. In addition, at law the Receiver is considered to be an agent of the borrower and not an agent of the financial service provider.

Furthermore, I note there are references to surcharge interest in the submissions of the parties. In the interest of completeness, I would point out that I have not investigated the application of surcharge interest.

Accordingly, the complaints for adjudication are that the Provider:

1. Wrongfully debited the Complainants' loan accounts in **December 2015** with duplicate payments;

2. Failed and/or refused to engage with the Complainants regarding their loans;

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3. Furnished the Complainants with correspondence containing incorrect information regarding arrears;

4. Reported incorrect information to the Irish Credit Bureau and/or Central Credit Register;

5. Failed and/or refused to respond to correspondence from the Complainants' solicitors;

6. Failed and/or refused to acknowledge a complaint regarding the **December 2015** payments and/or to issue a Final Response Letter; and

7. Wrongfully and/or unreasonably increased the Complainants' interest repayments on Loan B in **November 2018** and **December 2018**.

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.

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 30 July 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.

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Following the issue of my Preliminary Decision, the parties made the following submissions:

1. E-mail and attachments from the Complainants to this Office dated 18 August 2020.

2. Letter from the Provider to this Office dated 31 August 2020.

3. E-mail and attachments from the Complainants to this Office dated 10 September 2020.

4. E-mail and attachments from the Complainants to this Office dated 13 September 2020.

Copies of these submissions were exchanged between the parties.

Having considered these additional submissions and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

The Loan Agreements

A financial services provider extended a credit facility to the Complainants under a facility letter dated **12 October 2006** which comprised two loans (Loan A and Loan B). Under Loan A, it was agreed to advance the sum of €290,000.00 to the Complainants for a term of 20 years. Repayments under Loan A were on capital and interest basis. Under Loan B, it was agreed to advance the sum of €20,000.00 to the Complainants for a term of 12 months. The principal sum advanced was repayable by way of a single payment on the expiry of the term of the loan with monthly repayments being interest only. The credit facility was secured by way of a charge over the Complainants' business premises, the Secured Premises.

By letter dated **3 June 2008**, the financial services provider agreed to extend the term of Loan B by a further 12 months which extended the loan's expiry date to **9 February 2009**.

Correspondence

By letter dated **15 December 2015**, the Provider's relationship manager wrote to the Complainants advising that he had made a number of attempts to contact the Complainants by telephone but these were unsuccessful and requested that the Complainants contact him at their earliest convenience.

By email dated **3 March 2016**, the relationship manager wrote to the First Complainant advising him of the attempted telephone contact and to contact him at his earliest convenience. By separate letters dated **9 March 2016**, the Provider demanded repayment of the total amount outstanding under each of the loans.

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In an email exchange between the First Complainant and the relationship manager on **14 March 2016**, the First Complainant, referring to the Provider's demand, states that *"… the agreement you speak of is fully paid up … or perhaps it was a mistake as in december, when you applied for two mortgage payments accidentally. …"*

The relationship manager responded by advising the First Complainant that he had tried to make contact by telephone on a number of occasions to discuss the matter.

The relationship manager also advised that Loan B was not fully paid up as it had expired. He also advised that Loan A and Loan B were in arrears of €1,589.52 and €20,133.10 respectively.

In a later email, the First Complainant queried the arrears on Loan A and whether the payment for **9 March 2016** had been processed yet. In the emails that followed, the arrears on Loan A do not appear to have been addressed by the relationship manager. The First Complainant also indicated his reluctance to *"… conduct business over the phone and have two often violently differing positions on what has been said …"*

Following an earlier telephone conversation, in email correspondence on **15 March 2016**, the relationship manager stated:

> *"As discussed, I would be keen to get a proposal from you in respect of the outstanding debt & note that you will be speaking to your bankers to ascertain whether they would be willing to provide funds to refinance the debt.*
>
> *As I advised you, our investors will need full visibility in respect of your financial position when considering any proposal, and as such I would appreciate if you could arrange for the attached statement of affairs document to be sworn in respect of your and [the Second Complainant's] financial position. …"*

The relationship manager sent a follow up email on **21 April 2016** advising that the SoA had not been received and sought an update in respect of refinancing. Further follow-up emails were sent on **25 April 2016** and **3 May 2016**.

On **26 May 2016**, the First Complainant emailed the relationship manager stating:

> *"… You have bought a contract at huge discount that you don't want so why don't you stop playing games and give me a number …"*

The relationship manager responded, referring to an email of **4 May 2016**, which does not appear to have been furnished by either party, as follows:

> *"… I received an e-mail from you 04 May 2016 whereby you noted that refinancing wasn't an option with no explanation as to why & no alternative proposal to address the debt (no reference was made to the statement of affairs documents that are still outstanding …) …"*

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The First Complainant wrote to the relationship manager by letter dated **19 December 2016**, as follows:

> *"Having needed year end accounts to see finance availability for refinancing [the Secured Property] - I have only been able to check with the bank now.*
>
> *As I have said before the value of commercial properties in … has collapsed and two neighbouring properties have been almost sold recently which is what the bank valuation is going on.*
>
> *The first is next door which was sold for less than €50,000 and another which originally had an asking price of €450,000 has just fallen through at less than €80,000.*
>
> *This being the case and having looked at the books, the most they were willing to offer was €40,000. Like I said before we are in so much negative equity we will never come out of it, but I am just passing on the information so you know that I have checked. …"*

The relationship manager received an internal email dated **6 March 2017** in respect of a message left by the First Complainant. This email states:

> *"He advised that [relationship manager] contacted him last year about a possible discount if refinanced with another bank. [The First Complainant] wants to find out more about this now."*

It is also clear that the First Complainant made a number of calls to the Provider between **March** and **May 2017** requesting a settlement figure. The only recordings of these calls are those with the customer service agent who answered the phone to the First Complainant. The Provider advises that calls with the relationship managers are not on a recorded line.

The following entry was made on the Provider's *Notes* on **22 May 2017**:

> *"RM contacted the borrower …, after the borrower communicated through the receiver that he wanted to be contacted to discuss a F&F settlement.*
> *It was discussed that in order for any proposal to be considered the minimum value would be that of the secured property plus something towards the residual.*
>
> *Following the conversation an email was issued outlining the required documents that are required supporting the proposal. …"*

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In an undated letter to the Complainants' bank, the First Complainant states:

> *"… [The relationship manager] contacted me about refinancing the mortgage with another bank but I explained to him that there was no chance of doing this because of significant negative equity on the premises. However, he informed me that there would be a 'generous discount' on the balance (his expression) and is awaiting my proposal.*
>
> *Any refinancing would result in a maximum of 80% of current market value and he must know this as I am sure he has consulted valuers in the area, the current market value is €100,000 approx. leaving a target return for him of up to €80,000 - however as he has give (sic) me no figure this is pure speculation on my part.*
>
> *At the time of [the Provider] purchasing the loan, the balance was €197.356 and if as reported they paid 40% of book value (or less) than that is €78,942 …*
>
> *It is possible that an offer of €80,000 would leave him with a nice profit, however I would wish to offer him €40,000 and see what his response is and while I don't expect it to be accepted perhaps he will give an idea of what he would accept. …"*

The First Complaint

The account statements for Loan A show that a direct debit payment in the amount of €1,566.99 was both presented and reversed by the Provider on **9 December 2015**. This resulted in an arrears balance of €1,566.99 accruing on Loan A. Following this, *a default/surcharge interest charge* and *an interest on arrears charge* began to accrue in respect of Loan A each month. An adjustment was then made to this account on **29 November 2016** which reduced the arrears on the account by €1,566.99 and thereby clearing the arrears. However, despite this adjustment, a default/surcharge interest charge and an interest on arrears charge continued to be applied to this account. Quite some time later, on **15 April 2020**, arrears of €145.40 were written off and the charging of surcharge and arrears interest ceased.

The account statements for Loan B show that a direct debit payment was presented and reversed on **9 December 2015**.

The duplicate transactions were reversed on both accounts on the same day as the payment was requested. That was the end of the matter in so far as Loan B was concerned. However, this was unfortunately not the case for Loan A. It is clear from the evidence in this complaint that the Provider was immediately aware that duplicate direct debit requests had been made to both loan accounts. Notwithstanding this, arrears accrued and interest was applied to Loan A.

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The arrears balance was not rectified for almost a year. However, interest continued to be charged to the account. This was not rectified until **April 2020**, almost four and half years after the duplicate transaction occurred.

Once the duplicate payments were requested to the loan accounts, the Provider should have satisfied itself that no adverse consequence would arise because of this; for example, in terms of arrears accruing or interest being applied to the accounts. The Provider did not do this in respect of Loan A despite the First Complainant's protests regarding the arrears. These were in effect, ignored by the Provider and its relationship manager. This was further compounded by the fact the having adjusted the arrears balance on Loan A in **November 2016**, interest continued to be applied for another three and a half years. I would consider it of the utmost importance for the Provider to have definitively satisfied itself at this stage that the Complainants' account was in order. However, the Provider failed to do this because if it had, it would have discovered that interest was still wrongfully being applied to Loan A.

Even more worrying is the fact that having investigated this as part of the Complainants' formal complaint, the Provider again failed to discover or identify this issue as part of its investigation into the complaint and adequately address it in its Final Response letter on **8 January 2019**.

While the error arose because the original loan owner was still requesting payments on the Provider's behalf, I am not satisfied there were sufficient controls in place to ensure this would not negatively impact the Complainants' loans.

Therefore, I am satisfied that the Provider wrongfully applied for payments to the Complainants loan accounts in **December 2015** and failed to ensure either or both loan accounts, especially Loan A, were not adversely impacted by this error.

The Second Complaint

It is clear that the Provider's relationship manager made a number of efforts to engage with the Complainants through the First Complainant and a number of telephone conversations were held between the parties during which the loans were discussed. Unfortunately, recordings of these conversations are not available as relationship managers are not on a recorded line. While recordings of conversations with the Provider's relationship manager are not available, I note that no notes or memos of the unrecorded telephone conversations have been furnished by the Provider (however, it is not clear if any such records are available), nor has any statements been prepared by the relevant relationship managers in respect of these calls. This is very disappointing.

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The Complainants have, in their post Preliminary Decision submission which was received by this Office on the **10 September 2020,** submitted that:

> *"Messages have been sent to* [the Provider's] *former employee* [name redacted] *explaining the situation and requesting a statement, they remain unanswered, he is expecting contact from the Ombudsman. Please take note he has not denied the complaint or conversation ever took place as the* [Provider] *have done, maybe he never took notes, recorded calls or made reports and that is why he was sacked".*

This Office has not and will not seek to make contact with the former employee of the Provider. While I stated that it is disappointing that the Provider was unable to submit an account from this individual in relation to the telephone conversations, this does not mean the Office will seek to make contact directly with the individual.

The email correspondence between the First Complainant and the relationship manager also demonstrates a willingness on the part of the Provider to engage with the Complainants. However, the Complainants appear to have been reluctant to engage and co-operate with the Provider.

This can be seen from the fact that the Complainants never returned a completed SoA despite being requested to do so. Further to this, no formal proposals appear to have been put to the Provider regarding the loans.

It must be noted that the Provider is not obliged to suggest or recommend proposals, this is a matter for the Complainants. However, once a formal proposal is made and accompanied by relevant supporting documentation, the Provider is obliged to give appropriate consideration to these proposals. There is no evidence of any such proposal being made in this instance and no explanation has been given by the Complainants as to why this is the case.

The evidence suggests that the First Complainant speculated as to the price at which the loans were sold and attempted to negotiate with the relationship manager on this basis in an effort to get a *figure*. The Provider was not obliged to engage in such a process. While the First Complainant submits that the Provider was willing to offer a *generous discount*, this appears to have been premised on the basis of the Complainants refinancing, something which they were apparently unable to do.

The Complainants have, in their post Preliminary Decision submission, submitted correspondence from a named financial service provider, which details that the Complainants:

> "*were in discussions with [named financial service provider] regarding a loan for €98,000 over 10 years to refinance existing debt".*

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Ultimately it appears that an application was not submitted to the named financial service provider. While this may demonstrate that the Complainants were seeking refinancing options, it does not alter the fact that that the provider is not obliged to suggest or recommend proposals, this is a matter for the Complainants and there remains no evidence of any such proposal having made to the Provider.

Nonetheless, refinancing would constitute a formal proposal and would most likely require supporting documentation and the like, especially if there was going to be residual debt.

Therefore, in the circumstances of this complaint, I am not satisfied that the Provider failed and/or refused to engage with the Complainants regarding their loans.

The Third Complaint

The Provider issued a number of letters to the Complainants regarding the arrears on Loan B from around **7 May 2015**. It is submitted by the Complainants and accepted by the Provider that the information contained on these letters relating to the date Loan B first went into arrears and the number of missed payments was incorrect.

From **May 2015**, the arrears letters stated that Loan B first fell into arrears on **20 April 2015**. This was incorrect. Loan B fell into arrears/expired in **February 2009**. However, letters were issued to the Complainants from **2015** to **2020** stating that Loan B first fell into arrears in **April 2015**. Further to this, from **June 2015**, the number of missed repayments were recorded as 76. This increased to 77 in or around **January 2016**. This was also incorrect. The number of missed repayments remained at 77 until **20 April 2017** when they reduced to 0. The arrears letters sent to the Complainants from **21 November 2017**, while stating that repayments had been missed on Loan B, did not specify the number of missed repayments. This appears to have continued until **2020**.

In terms of Loan A, the Provider wrote to the Complainants on **7 December 2017**, advising the Complainants that this loan first fell into arrears on **18 April 2015** and the number of missed payments was 1. This information was incorrect.

I am satisfied that the Provider should have been aware this information was incorrect; particularly in light of the fact that the Provider should have ensured no adverse consequences arose on foot of the duplicate payments in **December 2015** and also because of the fact that when the Complainants' facility transferred to the Provider in **April 2015**, Loan A was not in arrears yet the arrears letters were issuing and advising that arrears first arose in **April 2015**. These letters continued to be issued until **2020**.

From the outset, the information contained in the arrears letters for both accounts were replete with errors and incorrect information. These defective letters were issued to the Complainants for several years. In terms of Loan A, arrears letters should never have issued to the Complainants.

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Furthermore, while Loan A wrongfully entered arrears, as recorded on the arrears letters, in **April 2015** and as per the duplicate payments, in **December 2015**, arrears letters did not begin to issue in respect of Loan A until **December 2017**. I note no explanation has been advanced by the Provider as to why this was the case.

Therefore, I am satisfied that arrears letters should never have issued in respect of Loan A. I am also satisfied that the Provider issued arrears letters to the Complainants in respect of Loan B which never contained accurate or fully correct information.

The Fourth Complaint

The Complainants maintain that the Provider has reported incorrect information to the Irish Credit Bureau thereby *"… damaging my business, reputation."* Further to their submission in this regard, in a submission dated **1 May 2020**, the First Complainant states:

> *"(7) The provider states that it doesn't report to ICB or CCR but told the entire world that we don't pay our bills and we cannot borrow money for a bag of chips because of this and they only charged us €1,600 a month for the privilege."*

Responding to this point, the Provider states in a submission dated **8 May 2020** that besides the Central Credit Register, *"[w]e can confirm that [the Provider] have not disclosed the Complainants repayment history to any other lender, entity or individual."*

Despite the Provider's failings in terms of recording the Complainants' arrears, there is no evidence to suggest that incorrect information was reported to either the Irish Credit Bureau or the Central Credit Register by the Provider. While the Complainants assert that incorrect information was reported to the Irish Credit Bureau, the Complainants have not provided any evidence to support this. Furthermore, as the Provider explains, it does not report to the Irish Credit Bureau.

Accordingly, I have no evidence that the Provider has furnished incorrect information to the Irish Credit Bureau or the Central Credit Register in respect of the Complainants' loans.

The Fifth Complaint

The Complainants' solicitors wrote to the Provider on **13 September 2017** in respect of the Secured Property. The Complainants' solicitors wrote a further letter on **9 February 2018** enclosing and seeking a reply to, their letter from **September 2017**.

In a submission dated **13 May 2020**, the First Complainant attaches three letters sent by his solicitors to the solicitors acting on behalf of the receiver which the First Complainant also asserts were ignored.

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The Provider accepts that it did not respond to correspondence received from the Complainants' solicitors. While I accept the Provider's submission that it does not correspond with unauthorised third parties, I am satisfied that this should have been conveyed to the Complainants' solicitors and/or the Complainants should have been advised that the Provider had received correspondence from a firm of solicitors purporting to act on their behalf.

In relation to the correspondence sent to the solicitors acting on behalf of the receiver, as stated above, the receiver was not appointed by the Provider nor was the receiver acting on the instructions of the Provider. Therefore, I cannot hold the Provider responsible for replying to any correspondence sent to the solicitors representing the receiver.

The Sixth Complaint

This aspect of the complaint concerns the Provider's alleged failure to acknowledge a complaint regarding the **December 2015** payments and/or to issue a Final Response Letter.

A complaint was logged by the Provider during a telephone conversation on **9 November 2018**. This complaint was in respect of the payment issues experienced by the Complainants in **December 2015**, **November 2018** and **December 2018**.

The First Complainant contacted the Provider by telephone on **16 November 2018** to enquire about the **November 2018** direct debit payment. The Provider's agent stated that a complaint had been logged. On **20 November 2018**, the First Complainant contracted the Provider by telephone to determine precisely what the Provider was investigating as part of the complaint and whether it included the **December 2015** payment issue. The Provider's agent stated that the **December 2015** would be investigated as part of the complaint.

I note that during this conversation the First Complainant states that *"[t]here is an ongoing complaint going on two years that I've had no reply from yourselves …"* Notwithstanding this comment by the First Complainant, there is no evidence to indicate that a formal complaint was made by either of the Complainants prior to **November 2018**. Additionally, the Complainants have not given any details about this complaint, when this complaint was made, by whom or to whom it was made, or whether it was in writing or over the telephone.

The Provider wrote to the Complainants acknowledging their complaint on **15 November 2018** and to advise that the matter was currently being reviewed and it would revert to the Complainants within fifteen days. A further letter was sent to the Complainants on **6 December 2018** advising that the Provider was continuing to review the matter and would revert with a response in due course.

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The Complainants received a Final Response letter dated **8 January 2019**. This letter sought to address the payments issue from **December 2015** and those that arose in **2018**. In terms of the **December 2015** payment, I accept that the Final Response letter adequately addressed this aspect of the complaint with the exception of the failure to identify the continued application of interest to the wrongful arrears balance, as discussed above.

Taking the foregoing into consideration, I have no evidence that the Provider failed and/or refused to acknowledge the complaint regarding the **December 2015** payment. Furthermore, while the Provider did not issue a Final Response to the complaint within 40 days as required by clause 10.9 of the Consumer Protection Code 2012, the Provider issued the Complainants with a number of holding letters. In any event, I am not satisfied that the Provider unreasonably delayed in responding to the complaint. Accordingly, I am not satisfied that the Provider failed and/or refused to issue a Final Response letter.

The Seventh Complaint

On **9 November 2018**, a payment of €4,332.06 was both presented and reversed on the account in respect of Loan B. A similar event occurred on **9 December 2018** in the amount of €4,418.41. This was also reversed on the same day.

The Provider explains that this issue arose due a technical error. The Provider has also furnished an *Error Report* which sets out the nature and reason why these transactions presented to the loan account in the manner in which they did. The report states:

> *"A development was completed on the system and deployed to production. When the change was deployed to production it impacted a field containing the logic for the application of interest on interest only expired loans.*
>
> *As the issue occurred at the production phase of implementation and a change to this field was not part of the development, the issue was not identified in the testing phase prior to its release into production.*
>
> *The issue resulted in the system calling for increased direct debit payments containing loan interest and default interest which was not scheduled to be paid until settlement of loans."*

Taking the relevant evidence into consideration, I am not satisfied that the Provider sought to increase the interest repayments on Loan B during **November** or **December 2018**. The substantially increased repayments, while they should not have occurred, arose due to a technical error.

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Goodwill Gesture

The Provider has acknowledged the following:

> *"Letters issued to the Complainants regarding arrears on [Loan B] which detailed that 77 repayments had been missed, and that arrears first arose on 20 April 2015, are incorrect. …*
>
> *Additionally, the time taken to apply the Complainants' December 2015 repayment to [Loan A] is unacceptable … It is also disappointing that when the payment was applied to the account in November 2016 that interest which accrued on the payment amount had not been adjusted accordingly and written off. We are also disappointed that this particular error was not discovered at the time of investigating the Complainants complaint by our office.*
>
> *It is equally unsatisfactory that letters received from the Complainants and their solicitors were not acknowledged or responded to; notwithstanding that [the Provider] did not hold authority to communicate with the solicitor, we do expect the Complainants would be contacted to notify them that an unauthorised third party had attempted to engage with us on their behalf. Likewise, it is unsatisfactory that phone calls made to our offices by the first named complainant have not been returned to him by the Relationship Manager for the accounts.*
>
> *The error leading to the attempted collection of inflated Direct Debit amounts in November 2018 was unforeseen and it is regrettable that the issue was not fixed prior to the attempted collection in December 2018. We can confirm that this issue had been fixed and we are confident that the issue will not reoccur.*
>
> *We would like to take this opportunity to apologise to the Complainants for the above issues and the level of service they have received from [the Provider]. By way of apology we offer €3,000 for any inconvenience caused to the Complainants."*

The Provider also advises that:

> *"We can assure the Complainants and the Financial Services and Pensions Ombudsman that none of the issues identified as part of this submission contributed to [the loans' owner's] decision to appoint a Receiver over the Secured Property. However, as a show of good faith, we can confirm that the Receiver will be discharged of his duties under the deed of appointment if the Complainants redeem [Loan B]. Alternatively, if the Complainants wish to engage with [the Provider] to come to an alternative repayment arrangement or full and final settlement in respect of the total balances, we would request that they contact our offices …."*

The Provider has acknowledged a number of shortcomings in respect of the service provided to the Complainants and offered compensation in the sum of €3,000.

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The Consumer Protection Code 2012 requires the Provider to act with due skill, care and diligence in the best interests of its customers (2.2) and correct errors and handle complaints speedily, efficiently and fairly.

I believe the Provider has failed to adhere to these requirements in its dealings with the Complainants.

The stress and inconvenience caused to the Complainants by the incorrect and poor communications of the Provider were considerable and took place over a long period. Therefore, I do not consider €3,000 to be a reasonable sum of compensation for the inconvenience caused to the Complainants.

For this reason, I partially uphold this complaint and direct the Provider to pay a sum of €7,000 to the Complainants.

Conclusion

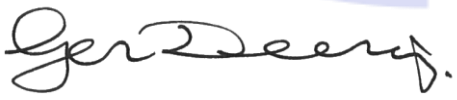
My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2)(b), (e) and (g).***

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 Complainants in the sum of €7,000, 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.



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FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

30 November 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.