An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0436
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Arrears handling (non- Mortgage Arears Resolution Process) Premature ceasing of arrears negotiations Selling mortgage to t/p provider
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants entered into two mortgage loans agreements with the Provider in **2006** and **2008**. The first relates to a residential investment property (the **RIP loan**) and the second relates to the Complainants' private dwelling house (the **PDH loan**). The RIP loan was sold to a third party (the **Purchaser**) in **December 2016**. The Complainants state that the Provider agreed to capitalise the arrears on the RIP loan prior to its sale but failed to honour this agreement. The Complainants also believe that the Provider was not entitled to sell the RIP loan. The Complainants made a complaint to the Provider in respect of these matters in **January 2017**, however, a Final Response to their complaint was not issued until **October 2018**.

The Complainants' Case

The Complainants explain they had a mortgage loan with the Provider in respect of a private dwelling however, this turned into a residential investment property and was subject to a tracker interest rate of 0.75%. The Complainants also had a separate mortgage loan with the Provider in respect of their primary dwelling house. The Complainants fell into arrears in **2009** with arrears totalling €23,415.77. The Complainants state that they engaged with the Provider in respect of their arrears and entered into an economic concession and repayment restructure in respect of the PDH and RIP mortgage loans and did not miss any of the agreed repayments during these arrangements.

The Complainants submit that they *actively engaged* with the Provider to work towards full capital and interest repayments on both loans and requested the arrears be capitalised on the loans and their terms extended.

The Complainants outline that they were advised by the Provider *"… that this would be done but that the priority was the PDH. Agreed with this but re-iterated our desire and intention to do the same with the RIP."* The Complainants state the arrears were capitalised on the PDH loan and it returned to full capital and interest repayments. A similar arrangement was sought in respect of the RIP loan as the Complainants were capable of meeting their full capital and interest repayments. However, the RIP loan was sold to a third party on **16 December 2016** without being capitalised.

A formal complaint was lodged with the Provider in respect of the sale of the RIP loan and the Provider's refusal to capitalise the arrears. The Provider acknowledged the complaint and advised the Complainants that it was investigating the matter. The Complainants explain that the Provider continued to investigate their complaint and issued updates every three months with a promise to have the complaint resolved in full. The Provider issued a Final Response to the complaint on **19 October 2018**, almost two years after the initial complaint.

The Complainants state that full capital and interest repayments were made to the Purchaser of the RIP loan and a request was made to this entity to capitalise the arrears but this request was refused. The Purchaser also refused an offer to settle the arrears on the loan and a subsequent offer to settle the full amount of the arrears. A receiver was then appointed over the RIP on **31 August 2018**. The Complainants submit that the RIP loan *"… with capitalised arrears is fully serviceable, [the Purchaser] have no interest in allowing me to maintain the loan."*

In resolution of this complaint, the Complainants state:

> *"I am simply looking for the arrears to be capitalised as per the original agreement with [the Provider] thus allowing me to maintain my mortgage and continue paying the loan on current Tracker Mortgage rates. This returns the loan to fully performing and will ensure removal of the Receiver."*

<u>The Provider's Case</u>

Capitalisation of Arrears

The Provider states that in **January 2015** arrears of €20,907.83 on the Complainants' PDH loan were capitalised. The Provider explains this was part of its policy for PDH loans in **2015**, and part of its commercial discretion that accounts on an economic concession could be assessed to have arrears capitalised after six months' repayments. In relation to the RIP loan, the Provider advises that capitalisation of the arrears on the RIP loan was requested by and discussed with the Complainants, however, the Provider rejects the assertion that any commitment was given to the Complainants that arrears on the RIP loan would be capitalised.

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The Provider states that the reason for not capping arrears on the RIP loan was because the Complainants were in a reduced repayment arrangement. In line with the Provider's policy and commercial discretion, in order to capitalise arrears, borrowers are required to meet six months capital and interest repayments to demonstrate they could afford the repayments sufficient to repay the loan on a capital and interest basis to the end of the loan's term. The Provider advises that the Complainants' RIP loan did not qualify at any point for capitalisation of arrears during that period and it states that it is satisfied that no commitment or undertaking was given to the First Complainant that the arrears on the RIP loan would be capitalised.

The Provider outlines that the RIP loan was subject to the following reduced repayment arrangements:

- 06/09/2013 to 06/08/2016 Reduced Repayments of €826.00 for 36 months.
- 14/06/2016 to 14/02/2017 Reduced Repayments of €826.00 for 6 months.
- Reduced repayments to June 2017 as part of loan sale.

It is submitted by the Provider that, as detailed in the telephone calls, the Complainants were advised that they could make extra payments to their loans at any time over the agreed monthly amount to pay down the debt and reduce the arrears without any restriction.

It is suggested by the Provider in response to question 4 of the Schedule of Questions (issued by this Office as part the investigation of this complaint) that the first reference to capitalisation of arrears was made by the First Complainant during a telephone conversation on **28 April 2014**. The Provider explains that capitalisation of arrears could be discussed with a customer at any time, however, performance and adherence to an agreement for six consecutive months would be required before actual capitalisation of arrears could be considered.

Discussing the Provider's decision to decline the Complainants' request for capitalisation of the arrears on the RIP loan, the Provider refers to a telephone call which took place on **7 January 2015** with the First Complainant. It was explained to the First Complainant that the arrears on the RIP loan could not be capitalised. The Provider also refers to a telephone call which took place on **20 October 2016**.

The Provider has also set out its policy and procedure for dealing with arrears, alternative repayment arrangements and capitalisation of arrears and the like.

Sale of the RIP Loan

The Provider explains that the RIP loan was sold in **December 2016** as it had been in arrears for a number of years. The Provider refers to section 12 of the terms and conditions governing the RIP loan to demonstrate its entitlement to dispose of this loan.

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The Provider also states that in compliance with provision 3.11(b) of the ***Consumer Protection Code, 2012***, it pre-advised the Complainants of its intention to dispose of the RIP loan and provided the necessary two months' notice.

Delay in Investigating the Complaint

The Provider explains that a complaint was logged on its system on **31 January 2017** and a Final Response letter issued on **19 October 2018**. The Provider states that *"[t]he delay in issuing the bank's response is very much regretted and we sincerely apologise."* During the two years it took to investigate this complaint, the Provider received a significant spike in the number of complaints due to the debt sale process that was completed around that time. The Provider advises that *"[t]he investigation was only fully attended to in the month before closure using the bank records attached to this response."*

The Provider advises that an acknowledgment letter was sent to the Complainants on **31 January 2017** with updates being issued on **24 February 2017** and **24 March 2017**. A further letter was sent on **26 April 2017** at the First Complainant's request. The Provider states that the complaint was transferred to its new complaint handling system on **22 July 2017**. It is also acknowledged that*"[i]t is a matter of regret that no update letters were issued to the customers between 24 March 2017 and 1 September 2017, for which we apologise."* After this period, the Provider states that monthly letters were issued to the Complainants until the Final Response letter was issued.

Final Response Letter

The Provider acknowledges that the Final Response letter *"contains a number of errors, for which we sincerely apologise."* The first two errors relate to incorrectly identifying the Relationship Manager the First Complainant spoke to on **7 January 2015** and **23 January 2015**. The third and fourth errors relate to incorrectly detailing information in respect of the PDH and RIP loans. The Provider explains that *conflicting information* is contained in the Final Response letter in respect of the third and fourth errors was caused by an error its system notes when the contents of the call on **7 January 2015** were being inputted. The PDH loan account number was inputted instead of the RIP loan account number.

It is submitted by the Provider that during a telephone conversation with the Provider on **20 October 2016**, the First Complainant advised the Provider that he had been trying for 18 months to get the Provider to agree to capitalise the arrears on the RIP loan. The First Complainant was advised that prior to considering a request to capitalise arrears, the Complainants would have to meet six months of capital and interest repayments on the loan. The First Complainant was advised that the Complainants had not demonstrated affordability to meet the capital and interest repayments on the RIP loan and arrears could not be capitalised.

During a telephone conversation on **20 April 2017**, the Provider recited the complaint to the First Complainant and stated that one of the complaints was that the First Complainant had been advised that the arrears would be capitalised.

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The First Complainant responded by correcting the record stating that he had not been told the arrears would be capitalised but that he had requested that arrears be capitalised.

Further Submissions

The parties have made a number of further submissions in respect of this complaint. In particular, the First Complainant furnished a response to the Provider's Formal Response on **10 December 2019**. Amongst the points made, the First Complainant disputes the Provider's position that it never made any commitment to capitalise the arrears on the RIP loan. He also notes the Provider is relying on differences in policy to justify the treatment of the PDH and RIP loans with one being subject to an economic concession and the other a reduced repayment. The First Complainant raises a number of questions in this regard, in particular, whether the Provider is saying that no RIP loans avail of reduced repayment arrangements and arrears capitalisation.

The Complaints for Adjudication

The complaints are that the Provider:

1. Wrongfully and/or unreasonably refused to capitalise the arrears on the RIP loan despite a commitment to do so;

2. Wrongfully entered into an agreement to sell and/or wrongfully sold the RIP loan; and

3. Unreasonably delayed in its investigation of, and/or its response to, the Complainants' complaint.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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.

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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 5 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.

The Loan Agreements

The Complainants entered into a mortgage loan agreement in **November 2006** to facilitate the purchase of a private dwelling house. This loan was topped-up in **March 2008**. These loans comprise the RIP loan with account number ending 507. The Complainants entered into a further mortgage loan agreement in **March 2008** to facilitate the purchase of another private dwelling house. This being the PDH loan with account number ending 044. On the purchase of the second property, the original property became an investment property, and the second property became the Complainants' private dwelling house. The Provider has furnished copies of its *General Terms and Conditions* dated **June 2006** and **June 2008**.

Alternative Repayment Arrangement

The Provider wrote to the Complainants by letter dated **16 September 2013** to advise them that an alternative repayment arrangement (**ARA**) was being offered in respect of the RIP loan for the period **6 September 2013** to **6 August 2016**. The Provider wrote to the Complainants on **17 June 2016** to advise them that the ARA was coming to an end which meant that repayments would revert to the contracted repayments. However, the letter also advised that there were options open to the Complainants but any such options could only be discussed following the completion and assessment of a Standard Financial Statement (**SFS**).

An SFS appears to have been returned to the Provider by email dated **12 July 2016**. In this email, the First Complainant states:

> *"… I am very happy we have honoured our agreements with [the Provider] and I hope to roll up the arrears on [the RIP] and eventually start paying down the debt. …"*

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The First Complainant followed up with the Provider on **25 August 2016** as follows:

> *"I have not had any contact from any of your colleagues in [the Provider] and I am a little bit concerned regarding the time frames. As you mentioned below my deal expires in August, as there has been no further communication since the 27th of July what does this mean for me? …"*

The First Complainant wrote to the Provider by email dated **30 August 2016** referring to a telephone conversation with the Provider that morning where it was discussed that the above-mentioned ARA would continue for a further six months until **March 2017**.

The Provider wrote to the Complainants on **21 December 2016** to advise that the extended ARA was due to expire. This letter was written in similar terms to the one previously issued to the Complainants.

The First Complainant wrote to the Provider on **1 March 2017** expressing his desire to maintain the current ARA until **June 2017**. The First Complainant also advised the Provider that he had lodged a formal complaint regarding the transfer of the loan without his permission. The Provider informed the First Complainant that the ARA would continue until **June 2017** by email dated **13 March 2017**.

Correspondence

A series of emails were exchanged between the First Complainant and the Provider.

On **2 October 2014**, the First Complainant wrote to the Provider as follows:

> *"… I wanted to find out when we can roll up the arrears on [the RIP] as I am very anxious to do this. When I made my last payment I was advised that I can do this right away? …"*

In an email to the Provider dated **28 July 2014**, the First Complainant wrote:

> *"Please see confirmation attached as previously advised, can you give me a call when you get this as I want to make sure that we are now on the right track and can roll up the arrears etc..."*

The First Complainant wrote to the Provider again on **5 January 2015**:

> *"Can you let me know when I can roll up the arrears on the above referenced mortgage [RIP]? I am very anxious to do this asap and start repairing my credit rating. [The Provider's HQ section] have advised me that my arrangement does not allow me to roll up the arrears and that I need to discuss this directly with you? …"*

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By email dated **22 January 2015**, the First Complainant wrote to the Provider advising that he had made the January payment in respect of the PDH loan. Responding the same day, one of the Provider's agents advised the First Complainant that one of their colleagues in the Provider's HQ section would contact the First Complainant to complete the capitalisation.

The First Complainant wrote to the Provider on **30 August 2016** stating:

> *"I refer to our telephone call this morning the 30/09/2016 [this appears to be an error and should read 30/08/2016 as the e-mail date and time is 30 August 2016 at 14:09] where we agreed to let the current arrangement remain for the next 6 months until the 1st of March 2017.*
>
> *The repayments will remain at €826 per month. The arrangement will then be reviewed in line with my PDH which is due for review in September 2017.*
>
> *Can you confirm how my current repayment of €826 per month is broken down between capital and interest, as I am very eager to capitalise the arrears on this account and repair my credit rating as soon as possible."*

A further email exchange occurred in **March 2017**. On **1 March 2017**, the Provider wrote to the First Complainant in respect of the RIP loan advising that the transfer of this loan to the Purchaser was due to complete in the coming weeks and if he wished for the present RIP loan arrangement to be extended, certain documentation would be required. The First Complainant responded later in the afternoon as follows:

> *"… I wish to maintain the current arrangement until June as advised. I have lodged a formal complaint about this mortgage being transferred to [the Purchaser] without my permission. As previously advised the transfer of this property to [the Purchaser] (who will look to sell this property immediately to recoup costs) will completely destabilise my financial future. As you will be aware this property currently generates €1950 per month in rental income with the potential for an increase up to €2200 per month going forward. This property can wash its face under the [Provider] tracker on capital and interest.*
>
> *[The Purchaser] will look to sell this property as I have no means refinancing with any lenders, thus removing any potential for (sic) I cannot understand why this was not looked at more closely. Any surplus income currently received from the BTL will be lost. The option of benefiting from selling the BTL in the next 10 years to further reduce my PDH liabilities will be removed. This is a lose, lose situation for me and I am not happy with how my case has been handled by [the Provider] over the past 5 years. I will wait to hear from [the Provider] regarding my formal complaint. …"*

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The First Complainant wrote to the Provider by email dated **4 May 2017** stating:

> *"… Regarding my proposal seeking a debt write off, I believe that [the Provider] do write off unsustainable debt in certain circumstances. As I have stated all along, my financial position has been irrevocably damaged by the transfer of my loan from [the Provider] to [the Purchaser]. I am looking for a long term solution to this problem not something to be reviewed every two years. I respectfully request that my proposal be submitted for review and allow [the Provider] revert with some suggestions once they have full sight of my Financial situation. …"*

By email dated **18 May 2017** the First Complainant wrote to the Provider:

> *"[The Purchaser] are being very aggressive and have stated that I had no arrangement in place regarding the BTL that has transferred to them from [the Provider]. As a result they are looking for the full capital and interest repayments immediately, without first assessing my SFS and my repayment capacities.*
>
> *Due to the manner in which this account has been handled can you please forward me confirmation of the extension of my arrangement. [It] was my understanding that it was run in line with the review of my PDH in July."*

The Complainants have furnished a letter from the Purchaser's asset serving firm dated **28 June 2019** which advises that on *"… on migration from [the Provider] to [the Purchaser] this being 17th March 2017 the above noted loans were on a reduced payment arrangement. …"*

Sale of the RIP Loan

The Provider wrote to each of the Complainants separately on **14 October 2016** to advise them that the Provider agreed to transfer the RIP loan to a third party on **8 October 2016**. The Provider wrote to the Complainants again on **6 January 2017** to advise them that the transfer of their loan to the third party had completed. The Complainants were also furnished with a *Notice of Assignment* in respect of the RIP loan dated **6 January 2017**.

Investigation of the Complaint

The First Complainant lodged a complaint with the Provider in respect of the matters the subject of this complaint on **31 January 2017**. The Provider acknowledged this by letter of the same date. Updates issued to the Complainants on **24 February 2017** and **24 March 2017**. No further updates were issued by the Provider until **September 2017** when monthly updates issued until a Final Response letter was furnished to the Complainants on **19 October 2018**.

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Final Response Letter

The Provider issued a Final Response letter dated **19 October 2018**. This letter states:

> *"… I'm sorry you are unhappy with the service we provided and that we have given her cause to complain.*
>
> *Our review took us longer than initially anticipated to finalise given the complexity of the case and I apologise for any inconvenience the delay in issuing our response may have caused. I have taken this delay into consideration in my increased redress proposal …*
>
> *…*
>
> *My understanding of your complaint is that:*
>
> 1. *You are unhappy as the account [ending 507] has been included in the debt sale.*
> 2. *You are unhappy as you were provided incorrect information from our Relationship Manager … regarding the status of the account, [the Relationship Manager 1] was discussing with you the possibility of capitalising the arrears in July 2017, and this account has now been sold as part of our Debt Sale.*
> 3. *You are unhappy as your performing debt was sold and this will provide difficulty with your plans for your Private Dwelling Home.*
> 4. *You have had to deal with three different Customer Account Managers, who were then removed to work on different projects.*
> 5. *You are worried that as you have complained about one of our Customer Account Managers, [Relationship Manager 1], when the arrangement ceases this could adversely affect any potential future deal being placed on the account.*
>
> *…*
>
> *Prior to the sale of your mortgage to [the Purchaser] it was being managed by the Customer Debt Solutions Unit of the Bank and has been under specialist management for a significant period of time due to the arrears situation on it. As advised in our letter to you dated 6th January 2017, we can confirm that the transfer of the mortgage loan together with any facility letter and all other rights relating to your mortgage loan was completed on 19th December 2016.*
>
> *The Bank believes and is advised that it has the necessary rights to effect any such disposal under the terms and conditions of your facility agreements.*

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The terms and conditions governing your facility letter demonstrate that the Bank has the right to assign Loans and to disclose personal data and information in relation to you to the purchasers of the Loans. We would encourage you to take any legal of other advices that you deem appropriate in relation to the terms and conditions of the loan and the rights given to the Bank.

…

I would like to confirm the initial contact regarding the Capitalisation commenced on 7th January 2015 [Relationship Manager 1] advised you that you had made five payments on the account [ending 507] which is on an Economic Concession arrangement, further he advised you that once the 6th payment was made that month, he can make an application to have the arrears Capitalised. You were then subsequently updated and advised that under the current policy, we would not be able to Capitalise the arrears on account [ending 044] as it was on an active Reduced Repayment arrangement and as such does not qualify for Capitalisation. [Relationship Manager 1] advised you that he will contact you in the coming weeks if there is any change to policy. The second contact was on 23 January 2015 when [Relationship Manager 1] confirmed that account [ending 044] has been capped, however, the account number [ending 507] is currently in Reduced Repayment arrangement so we cannot proceed to capitalise the arrears.

I would like to confirm in order to capitalise arrears, there should be 6 months of deal payments followed by 6 months of normal monthly repayments to qualify for Capitalisation. As, your account was on a series of Reduced Repayment arrangements the arrears could not be Capitalised. However I would like to apologise for the conflicting or unclear information provided by [Relationship Manager 1]. When any forbearance arrangements or Capitalisation is discussed with customers it remains subject to approval from our Underwriters and is assessed along with an up to date Standard Financial Statement (SFS). I apologise if the service on this occasion did not meet the standard that [the Provider] strives to achieve.

I would like to confirm that your account was managed by the Customer Debt Solutions Unit of the Bank and has been under specialist management for a significant period of time due to the arrears situation. I would like to confirm the account was in arrangement from 17 September 2013 to 16 February 2017. Further, the account was in arrears €25684.76 before they were cleared by [the Purchaser].

I would like to apologise for change of the Customer Account Manager, however the Bank try to ensure you have an (sic) representative to assist you, we apologise you feel this was inconsistent, however, all our representative intend to ensure you are treated fairly.

I have supplied feedback to the area responsible for our Customer Account Manger's in order to ensure we are providing continuity to our customers when supporting them.

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In addition, I would like to offer you reassurance you can, if necessary raise a complaint at any time with [the Provider] without having to worry about any repercussions.

Once again, we would like to sincerely apologise for the delays and inconvenience caused. We acknowledge that the service you received was not what we expect. This was clearly not in accordance with [the Provider's] customer service standards and we regret any poor and unprofessional impression this created. Please accept our sincere apologies for any inconvenience caused.

*Furthermore, I would like to offer you redress in the amount of €500.00**. This payment is offered by way of atoning for the length of time it has taken to deal with your complaint, for the cost of calls throughout the complaint and for the poor customer service. …"*

The First Complaint

The Complainants maintain that the Provider wrongfully refused to capitalise the arrears on the RIP loan. It is important to note at this juncture that this Office can investigate the procedures and conduct of the Provider but it will not investigate the re-negotiation of the commercial terms of a mortgage loan such as the capitalisation of arrears for example which is a matter for the Provider and the Complainants and does not involve this Office whose role is an impartial adjudicator of complaints.

This Office will not interfere with the commercial discretion of a financial services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainants. In this respect, it is also important to be aware of the wording of clause 30 of the terms and conditions which expressly states that the Provider may, at its sole discretion, agree to capitalise arrears:

*"**30. Capitalisation of Arrears***

The Lender may, at it's (sic) sole discretion, agree to capitalise the Borrower's arrears of Monthly Payments (if any) on terms and conditions agreed between the Lender and the Borrower."

Having reviewed the evidence in this complaint it is not clear when, or if at all, an agreement was made with the Complainants to capitalise the arrears on the RIP loan. While it is clear from the telephone conversations and the correspondence between the parties that the First Complainant wanted to capitalise the arrears on the RIP loan, there is no evidence of any assurance being given or agreement being entered into during these calls to capitalise the arrears on the RIP loan, and there is no documentary evidence to support this either.

Recordings of telephone calls between the Complainant and the Provider have been provided in evidence. I have considered the content of these calls.

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It is clear from these calls that it was explained to the First Complainant on several occasions that the RIP loan was on a reduced repayment arrangement and the Provider's policy did not allow for the capitalisation of arrears when such arrangements were in place on a loan. Capitalisation of arrears on the PDH was discussed and it was explained that because this loan was on an economic concession that arrears could be capitalised. The First Complainant was also advised that it would be for the credit committee to approve any arrangements on the loans. The Provider's requirements regarding the continuation or implementation of any further arrangements in respect of the loans was also discussed at various points.

I have been provided with no evidence that the Provider indicated during any of these conversations that the arrears on the RIP loan would be capitalised. I accept that the First Complainant seemed to have been under this impression. This may have been because discussions were had about capitalising the arrears on the RIP loan, the arrears on the PDH were being capitalised. I note the Complainants' compliance with the reduced repayment plan in place for the RIP loan. However, I also note no assurances or commitments were made regarding the capitalisation of the arrears on the RIP loan. The First Complainant has not identified or referenced any specific calls where any assurance or commitment was given. Similarly, the correspondence outlined about does not indicate that a commitment or agreement had been made by the Provider to capitalise the arrears.

While the arrears were capitalised on the PDH loan, as stated by the Complainants, it was *"… our desire and intention to do the same with the RIP."* The evidence demonstrates that it was only desire requests and discussions regarding the capitalisation of the arrears on the RIP loan that occurred, and never progressed beyond this. Furthermore, simply because the Complainants adhered to any alternative/reduced repayment arrangements, did not entitle them to have the arrears capitalised. While the Provider was entitled to consider this option, it was not obliged to approve such an option, nor does it mean the Provider made any binding commitment to capitalise the arrears.

The RIP loan was subject to a reduced repayment arrangement and the Provider's policy did not allow capitalisation of arrears in these circumstances. The Provider's policy in this regard is a matter which falls within its commercial discretion and does not appear unreasonable or wrongful.

Accordingly, I am not satisfied the Provider wrongfully or unreasonably refused to capitalise the arrears on the RIP loan nor am I satisfied the Provider gave any commitment to do so.

The Second Complaint

It is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the sale or transfer of a mortgage loan to a third party which is a matter within the commercial discretion of the Provider generally so long as it is provided for in the terms and conditions mortgage loan agreement. This Office will not interfere with the commercial discretion of a financial services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainants.

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Clause 12 of the terms and conditions deals with the Provider's entitlement to sale/transfer the Complainants' mortgage loan:

> ***"12. Securitisation***
>
> *The Lender may at any time and from time to time transfer, assign, mortgage and/or charge the benefit of all or part of the Mortgage and all of the rights and interests of the Lender in and to any life assurance assigned to or charged unto the Lender and all other contracts and policies of insurance relating to the Property on such terms as the Lender may think fit. Information on securitisation is available at your local Branch."*

The RIP loan is a mortgage loan agreement and was sold to the Purchaser in **December 2016**. As per clause 12, the Provider was entitled to sell or transfer its interest in the RIP loan to the Purchaser. While the Provider was obliged to notify the Complainants of the sale, it was not required to obtain the Complainant's prior consent to, or approval of, the sale.

The Complainant's have not produced any evidence or identified the precise manner in which the Provider wrongfully entered into an agreement to sell and/or wrongfully sold the RIP mortgage loan. As such, I accept that the Provider was entitled to sell or transfer the RIP mortgage loan to the Purchaser.

The Third Complaint

The Complainants made a complaint to the Provider on **31 January 2017**. The complaint was acknowledged by letter of the same date. This was followed by two updates in **February 2017** and **March 2017**. While the Provider states that a further letter was sent on **26 April 2017** at the First Complainant's request, a copy of this letter does not appear to have been provided. In any event, no further updates were issued for approximately 6 months until **September 2017** when monthly updates recommenced. Over 12 months later, and 21 months after the complaint was made, the Provider furnished the Complainants with a Final Response letter on **19 October 2018**.

The Provider explains that around the time the complaint was received, there was a spike in the number of complaints due to the Provider's recent debt sales process. While this may have been the case, I am not satisfied this constitutes sufficient reason or in any way excuses, firstly, the unexplained discontinuance of update letters, and secondly, the exorbitant delay in delivering a Final Response. While a comprehensive Final Response letter was issued, this appears to have contained a number of errors in terms of identifying the correct Relationship Manager and, confusing the RIP loan with the PDH loan and vice versa. It is disappointing that these errors were not identified prior the Final Response letter being issued and demonstrates a lack of oversight/qualify control on the part of the Provider. It also indicates that the Complainants' complaint was not properly investigated.

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While the Provider has apologised for the delays in responding to the complaint and the errors contained in the Final Response letter, I am satisfied the Provider's conduct in terms of its investigation of, and response to, the complaint was wholly inadequate and unreasonable.

Goodwill Gesture

In its Formal Response, the Provider acknowledges a number of shortcomings in the level of service provided to the Complainants and apologises for this.

The Provider states:

> *"1. The delay in responding to the complaint and the fact that a number of update letters were not sent when they should have been in 2017. We do appreciate that this was a stressful time for the borrowers. While the bank did receive a very significant number of complaints around debt sales, which caused the delays in dealing with [the] complaint and issuing resolutions, we accept that the delays were unacceptable and do apologise for our shortcomings.*
>
> *2. The content of our letter of 19 October 2018 was inaccurate and did not reflect the sequence of events.*
>
> *3. I apologise for the content of the phone call of 10 July 2014. While the bank is entitled to contact both parties to a mortgage when in arrears, I do believe that [the] matter should have been handled better that (sic) the staff member. I apologise for any distress caused.*
>
> *[In] recognition of our service lapses, we wish to offer the amount of €4,000.00 and hope this is acceptable in resolution of this complaint, with our apologies."*

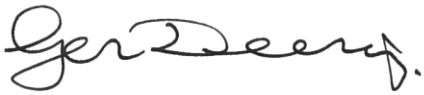
I consider this goodwill gesture offered by the Provider to be a reasonable sum of compensation for the customer service failings on the part of the Provider. In these circumstances, on the basis that this offer remains available to the Complainants, I do not uphold this complaint.

Conclusion

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

/Cont'd…

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

1 December 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.