



<u>Decision Ref:</u>	2021-0015
<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**

The complaint concerns the Complainants' mortgage loan secured on one of their rental properties.

The Complainants' Case

The Complainants entered into a mortgage loan agreement with the Provider in **1995**. The Provider decided to sell the mortgage loan account to a third party in the summer of **2018**.

The Complainants submit in their complaint form dated **2 August 2019** that they had three mortgages in total with the Provider, one was secured on a family home and two were secured on rental properties. The Complainants state that they notified the Provider in **March 2018** that they intended to sell one of the rental properties (Property 1) and requested a reduced payment arrangement for the mortgage in respect of the second rental property mortgage (Property 2) which would allow them time to complete the sale of the other rental property. The mortgage on Property 2 is the subject of this complaint.

The Complainants state that their request for a reduced repayment arrangement in respect of Property 2 was agreed by the Provider. The Complainants have furnished a letter dated **4 April 2018** from the third party agent servicing the loan for the Provider which states that an alternative repayment arrangement was to be put in place beginning on **27 April 2018** and expiring on **27 September 2018**.

The Complainants state that as part of the arrangement, it was agreed that the monies from the sale of Property 1 would be paid towards the Complainants' mortgage loan account in respect of Property 2.

The Complainants state that following the sale of Property 1, the Complainants paid €50,000 toward the outstanding debt on the mortgage loan account in respect of Property 2. The Complainants further state that as of **30 August 2018** the debt remaining on the mortgage loan account in respect of Property 2 reduced from €200,000 to €150,000.

The Complainants state that the Provider wrote to them by way of letter dated **28 August 2018** advising that the Provider had, on **13 August 2018**, agreed to transfer the mortgage loan in respect of Property 2 to a third party provider. The letter dated **28 August 2018** states that this third party would write to the Complainants once the transfer had taken place to confirm the date of said transfer within a minimum of 3 months of the transfer occurring.

The Complainants state that they then contacted the Provider and were referred to the third party agent servicing the loan on behalf of the Provider. The Complainants state that they lodged a complaint with this third party agent and a further alternative payment arrangement was entered into by way of letter dated **27 September 2018**. This arrangement was to run from **27 October 2018** to **27 March 2019**. Despite this arrangement, the Complainants state that the loan in respect of Property 2 was transferred to the third party provider in **November 2018** and they received correspondence in respect of this on **6 December 2018** from the third party which became the new owner of the mortgage loan.

The Complainants state that they *"feel very much treated badly by [the Provider] in the circumstances as [we] had entered into an agreement with them for a 6 month period and they still sold off my mortgage without any consultation prior to this agreement nearing completion. Also [our] complaint was not fully appreciated by [the Provider] as they failed to confirm that [we] did reduce the capital as agreed from 200k to 150k"*.

On **16 October 2019**, the Complainants state that *"there is no mention of the terms and conditions of the agreement that [we] entered into with [the Provider] in relation to the reduced payment agreement that was to run from 27/04/2018 to 27/04/2019, of which forms the basis of my complaint. During this agreement [the Provider] sold [our] mortgage to a 3rd party without our prior consultation or good corporate ethics and governance"*.

On **5 May 2020**, the Complainants made further submissions to this Office. In these submissions, the Complainants state that their mortgage was *"grouped in with other 'non-performing mortgages'"* by the Provider and *"was simply sold off without due consideration"* for the significant efforts the Complainants made to reduce their mortgage. The Complainants also state that the Provider's decision to sell their loan during the period of their alternative repayment arrangement amounted to *"a breach of this agreement"*. The Complainants also state that the Provider has given an inaccurate account of the alleged three month notice period as in reality the Complainants state that the Provider did not engage with the Complainants during this time period.

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Furthermore, the Complainants stress in these submissions that the Provider has not acted in a *“fair and reasonable”* manner by selling their mortgage to a third party provider. The Complainants also state that in light of *“the poor manner of service”* from the Provider, they are declining the Provider’s offer of €500.

The Complainants want their mortgage to revert to the Provider and want an apology for what happened.

The Provider’s Case

The Provider, in its Final Response Letter dated **28 November 2018**, stated that it is *“sorry that [the Complainants] feel it is unfair that the loan has been sold. Further to a review of our customers lending exposures and associated accounts under management...it was agreed that a portfolio of non performing mortgages would be sold.”*

The Provider further states in its Final Response Letter that it confirms that a *“forbearance arrangement for a period of 6 months, effective from October 2018, for €900.00 per month”* is currently in place. It states that although the Complainants advised the Provider of its intention to remit surplus funds from the sale of Property 1 to the account of Property 2 that *“regrettably the position of the debt sale still stands”*.

The Provider states in its Final Response Letter that *“the terms of [the Complainants’] loan offer do not restrict any assignment of [the Complainants’] mortgage loan and any transfer of any security to the Buyer and therefore such assignment and transfer is permitted under our agreement with you”*.

In respect of the complaint that the loan was sold without prior notification to the Complainants, the Provider states that the Complainants received a letter which outlined *“all the specifics...It explained that ownership of the debt will transfer to the purchaser on 30/11/18 and all repayment arrangements will now be made with them. It confirms your legal position will not change in terms of this loan and there is no change to your rights and obligations as outlined in the loan documentation. As a result, I can confirm that the correct process has been followed when notifying borrowers of the impending debt sale.”*

On **12 August 2019**, the Provider made submissions to this Office relating to the complaint. It stated that the decision to transfer its interest in the mortgage was taken *“only after careful consideration”* and that the reason for the transfer was because the Complainants’ mortgage fell into a category of accounts which had been in arrears for a number of years (since **2010**). The Provider states in this letter that in **October 2018**, after the expiry of the six month agreement, the Provider did agree to a further six month repayment agreement as it was entitled to do, until such time as the third party provider that was taking over the mortgage completed the full takeover. The Provider stated that the Complainants’ rights under the mortgage contract and regulations did not change as a result of this transfer of the Provider’s interest in the mortgage to the third party provider.

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In my Preliminary Decision, I had stated that:

“The Provider, in its Final Response Letter to the Complainants, states that while it is satisfied that the decision to transfer its interest in the mortgage is a decision which it is entitled to make using its own sole commercial discretion, it can appreciate the distress caused to the Complainants by the decision and in the circumstances wishes to offer the amount of €1,000 “as a gesture of goodwill and in resolution of the complaints made”. The Complainants did not accept this offer”.

The Provider, in a post Preliminary Decision submission, pointed out that this was incorrect. I am happy to clarify that no financial offer was made by the Provider in its Final Response Letter.

The Provider made an offer as part of its response to this Office’s Summary of Complaint, wherein the Provider submitted that:

“The [Provider] regrets any distress which the debt transfer has caused the Complainants. In recognition of lapse in customer service, the [Provider] would like to offer the Complainants a gesture of goodwill in the sum of €500”.

Its offer of €1,000 was made in its letter to the Complainants dated **12 August 2019**, a copy of which was furnished to this Office, which was subsequently declined by the Complainants.

On **17 April 2020**, the Provider made further submissions to this Office in response to the complaint. The Provider stated that it is relying on section 12 of the General Mortgage Terms and Conditions in respect of the sale and transfer of the Complainants’ loan relating to Property 2. This is the mortgage entered into initially between the Complainants and the initial provider of the loan in **2004**.

The Provider states that the General Terms and Conditions state under section 12 ‘Securitisation’:

“[The Provider] may from time to time and at any time transfer, assign, mortgage and/or charge the benefit of all or any part of the Mortgage and all of the rights and interests of [the provider] in and to any life assurance assigned to, or charged unto, [the provider] in and to any life assurance assigned to, or charged unto, [the provider] and all other contracts and policies of insurance relating to the Property on such terms as [the Provider] may think fit. Information on securitisation is available at your local branch”

The Provider states that by signing the Acceptance of the loan offers dated **3 August 2004** and **27 May 2005** (signed by the Complainants on **12 August 2004** and **20 June 2005** respectively) the Complainants agreed to the following conditions:

- (a) *I/we acknowledge receipt of the General Terms and Conditions and Specific Conditions attached to the Loan Offer.*

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I/we have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our Solicitor and I/we fully understand them. I/we hereby accept the Loan Offer on the specific terms and conditions offered. I/we undertake to complete the Mortgage Deed as soon as possible.

(b) I/we hereby confirm that I/we understand that the Mortgage and all associated rights and interest (including the Loan and any other debt secured thereby and the interest in related insurances and assurances) will be freely transferrable by [the Provider] on such terms as [the provider] may think fit as part of a loan transfer and mortgage securitisation scheme."

In respect of the lump sum repayment of €50,000 paid to the Complainants' mortgage loan for Property 2 in **August 2018**, the Provider states that this did not have any impact on the categorisation of the mortgage account as it merely reduced the mortgage balance.

The Provider states that it is important to note that it had made the decision to transfer the mortgage account to the third party provider prior to the lump sum payment being received. The Provider states that the lump sum payment "*did not change this decision*".

The Provider states that the financial arrangement entered into in **October 2018** between the Complainants and the third party agent servicing the loan for the Provider, "*in no way interfered or restricted [the Provider's] right to dispose of the Complainants' mortgage loan to a third party and it was entitled to make this decision at its own sole commercial discretion*".

The Provider disputes that it acted in breach of contract in respect of the 6 month arrangement agreed in **October 2018** with the Complainants. It states that when the Complainants entered into the financial arrangement in **October 2018**, they had known for approximately two months that the transfer of their mortgage loan accounts to a third party provider was imminent, given the letter of **28 August 2018**. The Provider states that it considers it fair and reasonable to dispose of the mortgage loan while the six month arrangement, agreed to in **October 2018**, was in place. The Provider states that the purpose of the six month arrangement was to support the Complainants in managing their mortgage account in the short terms and did not interfere with the Provider's rights to transfer the debt. The Provider states that its decision to transfer the mortgage account did not affect its efforts to assist the Complainants in the management of their mortgage repayments in the short term while arrangements for the mortgage account transfer were being made.

The Provider states that it regrets that the Complainants were not satisfied with the response which they received from the complaint they raised on **30 August 2018** through the third party servicing the loan. It states that it wishes to apologise for "*any lapse in customer service which the Complainants may have experienced as a result of their inability to make contact with the complaint handler*" in **December 2018** and further wishes to apologise to the Complainants for "*any lapse in customer service as a result of not being able to discuss the content of the Final Response Letter following receipt of same*".

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The Provider made further submissions on **21 May 2020**. In these submissions, the Provider states that *“there is a long-established history of engagement by the Provider in relation to the Complainant’s mortgage accounts...However, the requirements for such arrangements to be put in place demonstrate that the mortgage account could not be repaid by the Complainants under the terms of the original contract and therefore this resulted in the account being classified as non-performing and ultimately led to the transfer of the mortgage debt to [the third party provider].”*

The Provider, in its response to the Summary of Complaint issued by this Office, concludes *“The Bank regrets any distress which the debt transfer has caused the Complainants. In recognition of the lapse in customer service, the Bank would like to offer the Complainants a gesture of goodwill in the sum of €500”*.

The Complaints for Adjudication

The complaint is that the Provider wrongfully sold and/or transferred the Complainants’ mortgage loan account to a third party without consultation and in breach of the repayment arrangement in place. Another element of the complaint is that the Provider failed to fully appreciate and/or understand all aspects of their complaint and failed to address and/or take those aspects of their complaint into account in its Final Response Letter.

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 6 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.

Following the issue of my Preliminary Decision, the Provider made a submission under cover of its e-mail, together with attachment, to this Office dated 13 November 2020, a copy of which was transmitted to the Complainants for their consideration.

The Complainants have not made any further submission.

Following consideration of the Provider's additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

While I acknowledge the Complainants' frustration at the sale of their mortgage loan in light of their ongoing co-operation with the Provider and the significant efforts made by the Complainants to reduce the balance outstanding on the mortgage; this does not negate or undermine the Provider's entitlement to transfer the mortgage loan in accordance with the terms and conditions of the loan agreement. In this regard, I note that section 12 of the Provider's general mortgage loan approval conditions states that the Provider *"may from time to time and at any time transfer, assign, mortgage and/or charge the benefit of all or any part of the Mortgage and all of the rights and interests of [the provider] in and to any life assurance assigned to, or charged unto, [the provider] in and to any life assurance assigned to, or charged unto, [the provider] and all other contracts and policies of insurance relating to the Property on such terms as [the Provider] may think fit"*. I further note that there is no evidence that the financial arrangement entered into in **October 2018** between the Complainants and the Provider fettered the Provider's commercial discretion or restricted the Provider's right to sell the Complainants' mortgage loan to a third party provider.

Therefore on the basis of the foregoing, I accept that 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 third party provider and this Office will not interfere with the commercial decisions taken by the Provider in relation to the sale of its assets.

In the interests of completeness, I note that there is no evidence before me that the Provider failed to fully appreciate the complaint made against it or failed to address and/or take the full complaint into account in its Final Response Letter.

Finally I note that the Provider recognises that there was a lapse in customer service, as a result of which the Complainants did not get the opportunity to discuss the content of the Final Response Letter following receipt of the letter and in light of the fact that the Provider has made goodwill offers in respect of any lapses, I do not uphold this complaint.

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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**

19 January 2021

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.