An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0019
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Arrears handling - Mortgage Arrears Resolution Process Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants entered into two loan agreements with Entity A in **2005** and **2007**. The funds advanced on foot of these loans were primarily used to purchase a residential investment property (the **Residential Investment Property** or the **RIP**). The RIP together with the Complainants' primary residence were offered as security for these borrowings. The assets and liabilities of Entity A were transferred to Entity B in **2011**. The Complainants' loans were purchased by another entity during **2014** (the **Loan Owner**). The Provider, against which this complaint is made and which provide asset management services to the loan owner, was appointed to service the loans from **August 2014**. A Receiver was appointed over the RIP in **December 2014**. The Complainants have raised a complaint in respect of the Provider's management of their loans, the circumstances surrounding the appointment of the Receiver, and the Provider's communications with the Receiver.

The Complainants' Case

The Complainants have enclosed a Summary of Complaint with their Complaint Form prepared by their representative which outlines their complaint against Entity B and the Provider. It was confirmed with the Complainants' representative during a telephone call to this Office on **12 November 2018**, and also indicated in subsequent correspondence from this Office, that the present complaint is in respect the Provider only and not Entity B.

In such circumstances, this investigation and adjudication will be limited to those aspects of the Complainants' submissions that relate to the Provider.

The Complainants' Summary of Complaint states, in relating to the Provider's handling of their mortgage loans, the Provider, acting on behalf of the Loan Owner, did not correctly adhere to the ***Code of Conduct on Mortgage Arrears 2013*** (the **CCMA**), despite confirming in a letter dated **10 June 2014** that it had voluntarily committed to do so. Referring to the Provider's Final Response letter dated **24 September 2018**, the Complainants *"… find highly disingenuous and deceitful"* the Provider's position that as its adherence to the CCMA was voluntary, the full requirements of the CCMA did not apply. The Complainants also believe the Provider acted in breach of clause 56 of the CCMA when it issued *a further demand letter* on **21 November 2014** and *"… the correct channels to issue a demand letter had not been followed."*

The Complainants also assert that the letters issued by the Provider around this time were *"… highly confusing in that following the demand letter on 21 November 2014, further letters were issued on 28 November 2014 and on 6 December 2014, the latter attaching an Income and Expenditure form for completion."* The Complainants were afforded 21 days to complete the Income and Expenditure form; however, on **15 December 2014** they were notified of the appointment of a Receiver.

The Complainants explain the Receiver never responded to an offer made by their daughter in respect of the mortgaged property nor did the Receiver notify the Complainants' daughter that a higher offer had been received. The Complainants advise that as correspondence was coming directly from the Receiver, the Complainants engaged with the Receiver and not the Provider. The point is made had the Complainants engaged with the Provider as opposed to the Receiver *"… a response to their offer and settlement proposal may have been forthcoming."* It is also stated that under clause 8.12 of the ***Consumer Protection Code 2012*** (the **Code**), the Complainants *"… were entitled to notification that this offer had not been accepted and for being provided with the reasons for same."*

The Complainants advance the position that:

> *"… the issues above have had a material impact on the amount of arrears outstanding on [the Complainants'] account. Further, [the Complainants'] quality of life has suffered greatly, and they have suffered ongoing stress as a result."*

In resolution of this complaint, the Complainants:

> *"… ultimately wish to agree a full and final settlement with [the Loan Owner], and we are willing to make a proposal to [the Loan Owner] to this effect. However, we ask that the issues above are fully investigated by the FSPO as we believe they have a material bearing on any potential outcome."*

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The Provider's Case

Background

The Provider explains Entity A provided the Complainants with a Letter of Loan Offer on **1 June 2005** in the amount of €170,000 for the purpose of purchasing a residential investment property, the RIP. The loan was secured by way of a first legal charge over the RIP and supported by a cross collateral charge on the Complainants' primary residence (the **Primary Residence**).

On **5 June 2007**, Entity A provided the Complainants with a further Letter of Loan Offer in the amount of €38,000 for the purpose of releasing equity in the RIP. The loan was secured by way of a first legal charge over the RIP and supported by a cross collateral charge on the Primary Residence.

In **July 2011**, certain of Entity A's assets and liabilities, including the Complainants' loans, were transferred by the High Court to Entity B. In **2014**, Entity B agreed to sell the Complainants' loans to the current Loan Owner. On **10 June 2014**, the Loan Owner wrote to the Complainants advising them that the day to day administration of the loans would be managed by the Provider. The Provider advises that between **10 June 2014** and **25 August 2014**, Entity B managed the day to day administration of the loans on behalf of the Loan Owner. On **22 August 2014**, the Provider wrote to the Complainant to advise them of its impending appointment and encouraged them to contact its Arrears Support Unit (**ASU**). The Provider commenced servicing the loans on **25 August 2014**.

Status of the Complainants' Loans

The Provider states the Complainants' loans transferred to it with an event of default declared under cover of demand for payment letter issued to the Complainants by Entity B on **14 February 2014**. The Provider also states there was a Deed of Appointment of a Receiver dated **27 February 2014**.

The status of the Complainants' loan accounts at this time were as follows:

Account	Outstanding Balance	Arrears	Instalment	Last Payment
Loan A	€190,641.02	€17,678.97	€685.63	4 February 2014
Loan B	€31,709.71	€7,800.34	€304.48	4 February 2014

Timeline

On **10 October 2014**, the ASU attempted to contact the Complainants. These attempts were unsuccessful.

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On **21 November 2014**, a legal demand for payment of the total outstanding balances on the loans were issued by solicitors acting on behalf of the Loan Owner.

On **28 November 2014**, the ASU wrote to the Complainants outlining the status of the loan accounts and encouraged them to contact the ASU. The ASU wrote to the Complainants on **6 December 2014**, outlining the status of Loan B and encouraged them to contact the ASU. The letter also included an Income and Expenditure form. A further letter was issued on **28 December 2014**, outlining the status of the loan accounts and encouraged the Complainants to contact the ASU.

A Receiver was appointed by the Loan Owner by Deed of Appointment dated **11 December 2014** pursuant to the powers conferred on it by the mortgage and charge dated **29 July 2005**.

The First Complainant contacted the Provider on **12 January 2015**.

An offer was received by the Receiver from the Complainants' daughter on **11 February 2015** to buy the RIP in full and final settlement of the Complainants' debt. This offer was reviewed and rejected by the Loan Owner.

The Receiver stated that the marketing process in respect of the RIP had completed and a sales price of €63,000 had been achieved. The sale was approved by the Loan Owner on **25 March 2015**.

A further offer was received by the Receiver from the Complainants' daughter on **10 April 2015** in the amount of €65,000. This offer was declined by the Loan Owner on **15 April 2015** and the Provider communicated this decision to the Receiver the same day.

On **16 April 2015**, the ASU contacted the First Complainant by telephone to discuss the loan accounts. The Provider notes the First Complainant acknowledged receiving confirmation her daughter's offer was rejected.

The net proceeds in respect of the sale of the RIP of €46,982.47 were remitted on **30 July 2015** and **19 February 2016**.

The Provider became the legal lender in respect of the Complainants' loans in **June 2018**.

Terms and Conditions

The Provider advises that Special Condition 8.6 of the **2005** Letter of Loan Offer states the loan is subject to demand for immediate repayment at any time during the term of the loan and both letters provide a warning that *'YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER LOAN SECURED ON IT.'*

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Arrears

The Provider explains that records provided to it indicate the Complainants entered into arrears on **29 February 2012**. When the loan accounts transferred to the Provider the last payment made was on **4 February 2014** in the amount of €400. There have been no payments to the accounts since then.

Correspondence

The Provider advises that letters issued to the Complainants on **28 November 2014** and **6 December 2014** with the intention of encouraging them to engage with the ASU with a view to reaching a resolution to their mortgage debt. The Provider states that it will always engage with borrowers in financial difficulties regardless of the status of the debt or the progress within the legal or receivership process.

The demand letter was issued by the Loan Owner's solicitors on **21 November 2014** due to the level of arrears outstanding since **September 2012**, the non-payment of the loans since **February 2014**, and the lack of engagement from the Complainants.

The Receiver

The Provider advises that a Receiver was appointed on **11 December 2014** pursuant to Deed of Appointment and the Complainants' failure to comply with the demand for payment on **21 November 2014**.

The Consumer Protection Code

The Provider maintains that it complied with the provisions of the Code. However, there was one occasion when the Second Complainant contacted the Provider, and he was referred to the Receiver despite the Provider's normal procedure being to engage with the customer to understand and address their query where possible.

The Provider submits that despite its best efforts, there was very limited engagement from the Complainants prior to the appointment of the Receiver. It states that if the Complainants had engaged with the Provider subsequent to the demand for repayment, it would have delayed the appointment of the Receiver pending the assessment of the Complainants' circumstances for a revised repayment arrangement.

This section of the Provider's submission also contains details surrounding its employee training and complaints handling.

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The Code of Conduct on Mortgage Arrears

When the Complainants' loans initially transferred to the Provider, the Credit Servicing Act 2015 had not been enacted. This was enacted in **July 2015**. At that time, loans owned by unregulated firms such as the Loan Owner were not regulated irrespective of whether the firms servicing the loans were regulated.

The Provider outlines that prior to the Credit Servicing Act, the Loan Owner chose to voluntarily apply a framework that corresponded to the Mortgage Arrears Resolution Process (**MARP**) framework set out in the CCMA in so far as was possible. The Provider states that it implemented this framework.

The Provider remarks that the loans were advanced to the Complainants specifically for the purpose of purchasing the RIP. While cross collateral is held on the Complainant's Primary Residence, the first and foremost security was a charge over the RIP. Subsequent to the sale of the RIP, the residual balances are now secured on the Complainants' Primary Residence and the Provider is applying the CCMA.

The Provider has also detailed its compliance with and the procedures in place in respect of Provision 1, 2, 3, 7, 9 and 56 to 59.

The Complainants' Daughter

The offer made by the Complainants' daughter to purchase the RIP in full and final settlement of the debt was made under unusual circumstances. Pursuant to the Provider's options of voluntary sale, as well as receivership sales, the Provider insists the sale of a property is completed at arm's length. Additionally, neither a voluntary sale nor receivership sale is completed in full and final settlement of a debt.

Offers or agreements made for asset disposal or full and final settlements are usually conducted through the ASU. In the case of the Complainants' daughter, the offer was to purchase the RIP for €63,000 with any residual debt being written off and the vacating of the charge over the Primary Residence.

The Provider advises that the decision to reject the offer was communicated to the Receiver on **15 April 2015** and the First Complainant confirmed the Complainants were informed of this during a telephone conversation on **16 April 2015**.

The Complainants' representative, in his post Preliminary Decision submission, states:

> *"With regards to the communication of the decision rejecting the offer from my clients' daughter in April 2015, I would like to clarify that the (sic) my clients were advised by the estate agent selling the property that another offer had been accepted- and thus, indirectly, that their offer was not accepted.*

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> *Further, my clients' daughter, in querying with the Receiver where such offers should be made was told in an email from 7 April 2015: "Your offer was correctly submitted to the bank for consideration by myself directly to their ASU team". It is well and good to say that my client should have engaged with the ASU directly, but a) the Provider informed my clients to deal directly with the Receiver and b) the Receiver informed my clients that it was appropriate to submit offers to them instead of the ASU. While the Receiver may, in legal fact, be an agent of the borrowers/my clients, it is also clear that the Receiver engaged directly with the Provider on this matter. Tellingly, there is no note on the Provider's file (again see* ***Evidence 4****) to document any of the offers received from my clients' daughters or the consideration given to same. It is thus not surprising that, when asked on 16 April 2015 to fill in another SFS, my clients refused-* [the former loan owner] *had ignored the previous SFSs submitted, their daughter's offer had been rejected without proper communication and their property had been sold at the lowest point of the market."*

In its post Preliminary Decision submission, the Provider states:

> *"The Complainants' daughter's offer to purchase the property in Full and Final Settlement of the Complainants' debt was presented to* [the loan owner] *and declined. The fact that it was dealt with via the Receiver rather than the ASU had no bearing on the outcome.* [The loan owner's] *decision to reject the offer was made on the basis that once the sale of the RIP completed it still retained a legal charge over the Complainants' PPR and the offer of €65,000 in Full and Final Settlement was unacceptable given the amount demanded from the Complainants was for €225,568.64 plus accruing interest."*

As the Complainants' daughter was attempting to purchase the RIP, she was involved in the sales process with the Receiver. Her negotiations for a full and final settlement should have been conducted through the ASU and the Provider would have expected such negotiations to take place prior to the appointment of the Receiver. However, the Complainants did not engage with the Provider prior to the Receiver's appointment. The Provider submits that given the exceptional circumstances surrounding the offer and the status of the RIP, it is satisfied the offer made by the Complainants' daughter was reviewed appropriately and the commercial decision to reject the offer was at the discretion of the Loan Owner.

I do not find the Provider's conduct in this regard to be unreasonable.

The Complainants' Proposal for Resolution

Addressing the Complainants' proposals regarding the resolution of this complaint, the Provider advises that it will review any full and final settlement offer the Complainants wish to make and request that they engage and maintain contact with the ASU in this regard. However, the Provider states there is no obligation on it to accept any such offer or provide any level of debt forgiveness.

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Further Submissions

Both parties to the complaint have delivered further submissions. In particular, the Complainants' representative has made a number of observations in a letter dated **10 February 2020** in respect of the *Provider's Case* outlined above. It is stated that the Complainants were never made aware of the appointment of a Receiver on **27 February 2014** until the Provider's Final Response letter. Further to this, the Complainants received a demand for payment on **22 November 2013** and not **14 February 2014**. It is also stated there was a delay of 7 months in applying the proceeds from the sale of the RIP to the Complainants' loan accounts.

The Provider indicated on **25 February 2020** that it had no further submission to make in respect of the first mentioned point and that it is not in a position to comment on the delay on the part of the Receiver in furnishing payment, as the Receiver is an agent of the Complainants.

Separately, referring to a file note in respect of contact with the First Complainant regarding the Receiver, the Provider states:

> *"It is disappointing that our associate did not inform the first named Complainant of what was required to discharge the Receiver; however, the Complaint [sic] called with specific reference to the appointment of the Receiver and did not mention the letter to him dated 6 December 2014."*

Appointment and/or Conduct of the Receiver

This Office cannot examine the conduct or actions of a Receiver appointed by a financial service provider as a Receiver is not a regulated financial service provider. Furthermore, at law, a receiver is considered to be an agent of the mortgagor (i.e. the borrower) and not an agent of the financial service provider.

This Office wrote to the Complainants' representative on **24 October 2019** advising him of the position regarding the Receiver. The position was noted by the Complainants' representative by letter dated **11 November 2019**. However, a request was made that this Office investigate the following:

> *"I would thus appreciate if you could investigate the circumstances surrounding the appointment of the Receiver, including the issuance of the letter on 6 December 2014 as noted above. I would also appreciate if you could examine [the Provider's] procedures for liaising with the Receiver and confirm if these were adhered to …"*

The investigation of these issues was confirmed by this Office on **12 November 2019**.

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The Complaints for Adjudication

The complaints are that the Provider:

1. Poorly managed the Complainants' mortgage loan accounts; and

2. Proffered inadequate communication, customer service, and complaints handling.

The Complainants have also requested that the following be investigated:

1. The circumstances surrounding the appointment of the Receiver; and

2. Whether the Provider's procedures for liaising with the Receiver were adhered to.

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 8 September 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 parties made the following submissions:

1. E-mail and attachment from the Complainant's representative to this Office dated 23 September 2020.

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2. E-mail and attachment from the Provider to this Office dated 28 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 Loans

The Complainants entered into a loan agreement with Entity A in **June 2005** to facilitate the purchase of the RIP. The RIP was given as security for this loan together with a cross collateral charge on the Primary Residence. The Complainants entered into a further loan agreement with Entity A in **June 2007** with the same properties being offered as security.

The Complainants were advised by Entity B on **24 April 2014** of the sale of their loans to the Loan Owner in **March 2014**. Entity B wrote to the Complainants again on **9 June 2015** regarding the sale of their loans. The Loan Owner wrote to the Complainants on **10 June 2014** to advise them that, as of **6 June 2014**, it was the new owner of their loans and the Provider was chosen to service the loans. The Provider wrote to the Complainants on **22 August 2014** to advise them it would oversee the administration of their loans from **25 August 2015**.

Demand for Payment

The solicitors acting on behalf of the Loan Owner wrote to the Complainants separately on **21 November 2014**, demanding immediate repayment of the total sums outstanding in respect of the loans. The Complainants were also advised that should payment of the relevant amount not be received, the Loan Owner would, among other possible alternatives, seek to appoint a Receiver over the RIP.

This letter expressly stated that the solicitors were acting on the instructions of the Loan Owner, and the Provider was managing the loans on behalf of the Loan Owner.

Account Statements

The Provider's account statements for Loan A and Loan B indicate the arrears on for these loan accounts stood at €16,993.34 and €7,495.86 respectively at **23 August 2014**.

Account Statements were issued to the Complainants on **16 December 2016**. I note the final page of the statement explains:

"Are you experiencing financial difficulties?

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Dear Borrower

At [the Provider] we are very aware that the economic environment or unforeseen life events can affect people's financial situations including their ability to pay all of their debts.

If your financial situation has changed for any reason and you are struggling to pay your mortgage, please talk to us. There are options available and we are fully committed to working with you to find a solution. …

You can call our Arrears Support Unit (ASU) on …"

A largely similar statement was contained in a letter issued to the First Complainant on **21 December 2016** which appears to have enclosed the above mentioned account statements.

Arrears Correspondence

The Provider issued arrears correspondence to the Complainants in respect of both loans which appear, from the documentation provided, to have begun on **28 November 2014**. These letters are general arrears letters and provided the Complainants with certain information regarding the arrears on their loan accounts, and recommend that the Complainants contact the ASU in order to try and resolve their arrears situation. These letters also advise the Complainants as to the identity of the Loan Owner and the Provider's role as the entity charged with the provision of portfolio and asset management services. The Provider appears to have issued arrears letters in respect of both loans on a monthly basis.

However, an arrears letter was issued by the Provider in respect of Loan B on **6 December 2014**. This letter is drafted in broadly similar terms to the other arrears correspondence. This letter also enclosed an Income and Expenditure form and outlined certain options available to the Complainants to address their arrears.

Appointment of a Receiver

A Receiver was appointed over the RIP by the Loan Owner by Deed of Appointment dated **11 December 2014**. The Receiver wrote to the Complainants on **15 December 2014**, to inform the Complainants that a Receiver had been appointed over the RIP by the Loan Owner and enclosed a copy of the Deed of Appointment.

Communications with the Receiver

The Provider has set out at Appendix 7 of its Schedule of Evidence, communications between it and the Receiver.

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An offer in respect of the RIP was made by the Complainants' daughter on **19 January 2015** in the following terms:

> *"[The Complainants' daughter] is prepared to offer €55,000 as follows:*
>
> 1. *to acquire the freehold of the property free of all encumbrances and registered charges thereon*
>
> 2. *acceptance of the offer is to be in full and final settlement of the debt outstanding to [the Loan Owner]. …"*

Various documentation in support of this offer was sought by the Receiver on **26 January 2015**. The relevant information was supplied on **9 February 2015**. This was followed by a series of email exchanges between the Receiver and the Complainants' daughter.

On **24 March 2015**, the Receiver wrote to the Provider advising that the marketing process in respect of the RIP had concluded. It was recommended that an offer of €63,000 be accepted. This appears to have been approved on **25 March 2015**. However, given the redactions applied to this email, it is unclear whether the Provider or the Loan Owner gave this approval.

The Complainant's daughter submitted an offer of €65,000 to purchase the RIP in full and final settlement of the Complainants' debt on **9 April 2015**. This was acknowledged by the Receiver on the same day and proof of funding was also requested. Proof of funding was supplied on **13 April 2015**. This offer appears to have been discussed by the Receiver and with the Provider on **14 April 2015**. In an email exchange between unknown parties on **14** and **15 April 2015**, the offer made by the Complainants' daughter is discussed as follows:

> *"On the above property, the borrower initially made an offer of €55,000 however this was declined as we had a stronger PT offer which was later finalised and approved at €63,000 …*
>
> *The borrower has now submitted an improved offer of €65,000 as full and final settlement on the loan … Can you review same and advise if you are satisfied to decline the settlement offer from the borrower in favour of the PT offer …"*

In response to a query raised on foot of this email, the same individual seems to have responded, stating:

> *"Given that we have an unconditional PT offer above hurdle, I would recommend proceeding with this rather than jeopardising the sale by engaging further with the borrower regarding their proposal to settle the loan for €65,000."*

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The recipient of this email replied as follows:

> *"FAFS declined on the basis that the residuals will remain secured on the PDH (in equity). Please proceed with the sale.*
>
> *Engagement from the daughter is welcomed and can you please ensure that she is made aware that the debt is secured on the PDH and that her details … are passed to ASU so that we can look to come to an arrangement for the PDH."*

The email then indicated that the Receiver contact the Complainants' daughter to communicate the decision regarding her offer.

Correspondence

There appears to be very little correspondence between the Complainants and the Provider outside of that which I have referred to above. The Provider wrote to the Complainants on **13 December 2017**, referring to previous requests for up to date identification documentation and that this had not been received. The Provider repeated its request for this documentation.

Letters issued to the Complainants on **20 February 2018** requesting that the Complainants contact the Provider's ASU to discuss their loan accounts.

Reclassification of Loans

The Provider wrote to the Complainants on **21 September 2018** to advise them that it understood the property standing as security for the loans was their primary residence within the meaning of the CCMA. The Provider asked the Complainants to verify if this was the case by completing an attached declaration and returning certain supporting documentation. It is not clear when this verification process was completed by the Complainants.

The Complaint

An undated letter of formal complaint was received by the Provider on **13 August 2018**. The Provider responded to this letter on **17 August 2018** advising that the complaint had been received and it was currently being reviewed. The Provider issued a further letter on **7 September 2018** explaining that the complaint was still being reviewed. A Final Response letter was issued by the Provider on **24 September 2018**. This was responded to by the Complainants' representative on **8 October 2018**.

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The First Complaint

The Complainants maintain the Provider poorly managed their loan accounts. The Complainants have advanced five reasons in support of this aspect of the complaint. First, the Provider failed to adhere to the CCMA. Second, a demand letter was issued on **21 November 2014** in breach of Provision 56 of the CCMA, and the Provider failed to follow the *correct channels*. Third, the Provider issued correspondence that was *highly confusing*. This point relates to the letter issued on **21 November 2014**, **28 November 2014**, and **6 December 2014**.

Fourth, the Complainants were given 21 days to complete the Income and Expenditure form enclosed in the **6 December 2014** letter yet were notified of the appointment of a Receiver on **15 December 2014**. Fifth, pursuant to clause 8.12 of the Code, the Complainants were entitled to be notified that their daughter's offer had been rejected and the reasons for same.

From the outset, it must be clarified that the Provider was not strictly subject to the provisions of the CCMA at the date the letters, the subject of this aspect of the complaint, were issued. This is because the ***Consumer Protection (Regulation of Credit Servicing Firms) Act 2015***, had not yet been enacted.

Notwithstanding this, the Complainants refer to the fact the Loan Owner indicated that it would adopt a policy for dealing with borrowers in line with the CCMA. The Provider has also clarified the Loan Owner chose to voluntarily apply a framework that corresponded to the MARP framework set out in the CCMA insofar as was possible. The Provider asserts that it implemented this framework. I note in the Loan Owner's letter of **10 June 2014**, it is stated that:

> *"[The Loan Owner] has committed voluntarily to adhere to the Central Bank of Ireland's Code of Conduct on Mortgage Arrears 2013 (CCMA) …"*

The letter of demand dated **21 November 2014**, noted above, was issued by solicitors acting on behalf of the Loan Owner and on the Loan Owner's instructions. There is no evidence to indicate the decision to issue this letter and make the demand for repayment of the loan balances was issued or authorised by the Provider. There is also no evidence to demonstrate the Provider was responsible for this conduct.

Furthermore, simply because the Provider is the agent of the Loan Owner and is charged with administering the Complainants' loans, does not mean it is responsible for the Loan Owner's conduct. The Provider is only answerable in respect of its conduct.

The Provider did not issue the letter of **21 November 2014**. This was issued by a separate entity, the Loan Owner. However, the Provider did issue the letters dated **28 November 2014** and **6 December 2014**. These two letters are very much consistent with one another and are broadly in line with Provision 23 of the 2013 CCMA; in particular, the December letter. As the Provider did not issue the November letter, I do not consider the correspondence issued by the Provider was *highly confusing*.

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Under Deed of Appointment of the Receiver, the Receiver was appointed by the Loan Owner and not the Provider. It appears the Complainants have conflated the two entities and regarded them and their conduct as one, seeking to hold the Provider responsible for the actions of the Loan Owner. The Provider and the Loan Owner are separate entities and the Provider cannot be held accountable for the conduct of the Loan Owner in the circumstances of this aspect of the complaint.

The offer made by the Complainants' daughter appears to have been made to the Receiver. The Complainants have also acknowledged they corresponded directly with the Receiver.

While the Provider appears to have been aware of the offer, I am not satisfied it necessarily had a role to play in communications with the Complainants regarding this offer especially as the Complainants and their daughter do not appear to have made this offer to the Provider. Furthermore, it appears an instruction was given by the Provider to communicate the decision regarding the rejection of the offer to the Receiver around **15 April 2015**. The Second Complainant appears to have acknowledged that he was aware of this during a subsequent telephone conversation with the Provider. Accordingly, in the circumstances, I do not accept that the Provider failed to notify the Complainants that their daughter's offer was rejected or of the reasons for this. In any event, the ultimate decision in respect of any offer lies with the Loan Owner and not the Provider.

The Loan Owner indicated that it committed to voluntarily adhere to the CCMA and the Provider has stated in its submissions that it implemented this framework. However, the evidence does not support the contention that the Provider's conduct, as identified by the Complainants, was contrary to the CCMA.

Accordingly, I do not accept that the Provider poorly managed the Complainants' mortgage loan accounts. Finally, while there could have been better co-ordination and communication between the Loan Owner and the Provider in respect of the matters complained of, this does not mean the Provider's conduct was wrong or unreasonable.

Therefore, I do not uphold this aspect of the complaint.

The Second Complaint

In light of the findings above and having considered the evidence in this complaint, I am not satisfied the Provider's communications with the Complainants were inadequate, and outside of the points raised in the previous section, the Complainants have not given any specific examples of where the Provider failed in this regard. Contrary to the Complainants' submissions, it appears the Provider did attempt to engage with the Complainants. However, there is no evidence of any communication or engagement with the Provider on the part of the Complainants prior to the complaint to this Office.

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Further to this, while there were several telephone conversations between the Provider and the Complainants, the Provider contacted the Second Complainant by telephone on two particular occasions. I note the Second Complainant did not engage with the Provider on these calls and refused to speak with the Provider's agent.

A letter of complaint was received by the Provider on **13 August 2018**. This letter runs to almost six pages, is quite detailed, and identifies a number of issues. The complaint was acknowledged by the Provider on **17 August 2018** and a Final Response letter was issued on **24 September 2018**. Having considered the letter of complaint, the Final Response letter and the Provider's handling of the complaint, I am not satisfied the Provider's conduct in this regard was wrong or unreasonable.

Having considered the evidence in this complaint and while the Provider has acknowledged there was poor communication during a telephone call with the Second Complainant regarding the Receiver, I have not been provided with evidence to demonstrate the Provider proffered poor customer service to the Complainants.

Therefore, I do not uphold this aspect of the complaint.

The Receiver

The Complainants have requested that the following be investigated:

1. The circumstances surrounding the appointment of the Receiver; and

2. Whether the Provider's procedures for liaising with the Receiver were adhered to.

As noted above, the Receiver was appointed pursuant to a Deed of Appointment dated **11 December 2014**. The Deed shows that the Receiver was appointed by the Loan Owner. The Provider is not the owner of the Complainants' loans. The Provider is an asset servicing company and was appointed to manage the Complainants' loans. Accordingly, as the Loan Owner is not a party to this complaint and the Receiver was not appointed by the Provider, the circumstances surrounding the appointment of the Receiver cannot be investigated as part of this complaint.

The Provider is not required to have a particular procedure or policy in place for communicating with a Receiver. Furthermore, there is no evidence to suggest the Provider had a specific procedure or policy for communicating with Receivers. Therefore, it is not possible to investigate whether the Provider's procedure for liaising with the Receiver was adhered to.

/Cont'd…

The Complainants' representative, in a post Preliminary Decision submission dated 23 September 2020, notes that the Preliminary Decision, in the *Provider's Case* section states that:

> *"The Provider states the Complainants' loans transferred to it with an event of default declared under cover of demand for payment letter issued to the Complainants by Entity B on 14 February 2014. The Provider also states that there was a Deed of Appointment of a Receiver dated 27 February 2014".*

The Complainants' representative then states that:

> "I *would direct you to my letter of 10 February 2020 in this regard. As has been clarified previously, neither myself nor my clients were aware of the appointment of a Receiver by* [former loan owner] *until we were advised of same in Pepper's/the Provider's complaint response letter of 25 September 2018".*

The Complainants' representative goes on to detail its engagement with the former loan owner. The Complainants believe the mistake of the former loan owner allowed for what they maintain was the wrongful actions of the Provider:

> *"I appreciate that* [the Provider] *is not* [the former loan owner]. *However,* [the former loan owner's] *declaration of an event of default and the subsequent appointment of a Receiver was the ultimate catalyst for the swift disposal of my clients' property within months of the transfer of their loans to* [the loan owner/ the Provider]. *This should not have happened-* [the former loan owner] *effectively ignored the requirements of the CCMA so that an event of default could be declared".*

I would point out that it had been previously explained to the Complainants that it was only the conduct of the Provider, against which this complaint is made, that is being investigated and that forms part of this Decision.

The Complainants' representative also submits in the post Preliminary Decision submission dated **23 September 2020** that:

> *"As [the former loan owner] cannot be reached via this complaint process and as [the Provider] refuse to accept the evidence of the errors made by [the former loan owner], the following question remains unanswered:*
>
> ***How can my client receive a fair outcome when nobody is held accountable for previous errors made and breaches of their entitlements under CCMA?***
>
> *If their loans were managed by one entity during this time, there would be accountability. However, as the loans have changed hands several times, accountability has disappeared- the only thing remaining is my clients' liability. How is this fair on my clients when the transfer of their loans was outside of their control?"*
>
> [Complainants' representative's emphasis]

/Cont'd…

The Complainants' representative notes my comments regarding the Complainants' engagement with the Provider. The representative submits that:

> *"It is clear in retrospect that my clients should have engaged more proactively with* [the Provider] *in 2014 when their loans were sold, but how could they have trust in a system following their experience with* [the former loan owner]? *This was then confounded by the rushed sale of their property within months of the transfer to* [the Provider]. *During this time, they only had one phone call attempt from* [the Provider] *on 10 October 2014- there was no answer and no voicemail left, and a further demand letter was then issued on 21 November 2014. How were my clients to even know who was calling them and for what purpose when no voicemail or message was left"*

I had noted in my Preliminary Decision in relation to the letter of demand issued by the Loan Owner's solicitor that:

> *"…this letter was issued by solicitors acting on behalf of the Loan Owner and on the Loan Owner's instructions. There is no evidence to indicate the decision to issue this letter and make the demand for repayment of the loan balances was issued or authorised by the Provider. There is also no evidence to demonstrate the Provider was responsible for this conduct.*
>
> *Furthermore, simply because the Provider is the agent of the Loan Owner and is charged with administering the Complainants' loans, does not mean it is responsible for the Loan Owner's conduct. The Provider is only answerable in respect of its conduct".*

The Complainants' representative notes in his post Preliminary Decision submission that according to the Provider's submission to this Office, it is clear it noted on its system a letter had been issued by the Loan Owner's solicitor. The Complainants' representative further argues that he believes:

> *"The recommendation to issue a demand for repayment would in this case have been made by the Case Manager on the loan, who would have been an employee of the Provider and responsible for making recommendations about the loans he/she managed. This would then have been approved by the Loan Owner and the Provider would have engaged with the solicitors to issue the demand letter. There can be no disconnect between the Provider and the Loan Owner in this regard, as otherwise a demand for payment may issue at the incorrect time. There is no doubt but that* [the Provider] *were aware of the correspondence, as the above noted file note proves".*

While the Provider may have this noted on its internal system, it does not alter the fact that the letter was issued by solicitors acting on behalf of the Loan Owner and on the Loan Owner's instructions.

/Cont'd…

There is no evidence to indicate the decision to issue this letter and make the demand for repayment of the loan balances was issued or authorised by the Provider. There is also no evidence to demonstrate the Provider was responsible for this conduct.

For the reasons outlined in this Decision, I do not uphold this complaint.

Conclusion

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

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

25 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.