



<u>Decision Ref:</u>	2021-0425
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Maladministration Delayed or inadequate communication Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a number of loan accounts.

The Complainant's Case

The Complainant states that he held five legacy exposures, the ownership of which was transferred from a regulated financial service provider to an unregulated Special Purpose Vehicle, which appointed the Provider to '*administer the facilities on their behalf*'. The Complainant states that upon the transfer of the legacy exposures, he started to engage directly with the Provider as a means of obtaining '*an optimal resolution in the interests of both parties.*'

The Complainant states that on **26 January 2018** a letter of authority for the file was issued to a nominated relationship manager employed by the Provider as a means of facilitating a resolution. The Complainant states that following this, an initial proposal was submitted to the Provider. The Complainant states that although this proposal was declined, '*discussion between the parties were professional, regular and absent (of) unnecessary conflict.*'

The Complainant submits that the exposures were in default and therefore enforcement communication was maintained between the parties. The Complainant states that good progress was achieved late in **2018** and early **2019**, to such an extent that the Complainant was of the view that an understanding had been reached wherein a fresh proposal submitted on **24 March 2019** was likely to be deemed acceptable for all parties.

The Complainant states that following this, the relationship manager he had been liaising with was removed from dealing with his file and was replaced by a new relationship manager.

The Complainant states that the new relationship manager:

'...immediately pursued a conflict agenda and aggressively sought to undermine all of the progress that been made with his predecessor which no doubt had a negative influence on his client's understanding of the progress made heretofore'

The Complainant states that, as a result, he submitted a formal complaint on **23 May 2019**. The Complainant states that the relationship manager did not acknowledge this complaint and has *'knowingly ignored any follow up emails and phone messages regarding this matter.'* The Complainant contends that his legal rights are being denied by the Provider and he was left with no choice but to escalate his issues. The Complainant refers to five emails dated between **April 2019** and **June 2019** that were sent to the newly appointed relationship manager and which appear to have gone unanswered.

The Complainant wants the Provider to replace the relationship manager central to the dispute and for an *'apology to be issued to [The Complainant] for the manner in which his file is being denied.'*

The Provider's Case

The Provider issued a final response to the Complainant's complaint of May 2019, by way of letter dated **15 August 2019**. The Provider states that the Complainant's initial email dated **23 May 2019** was not logged as a complaint despite the Complainant's request for it to be logged as such. The Provider states that it is aware of its obligations under *'Chapter 10 of the Consumer Protection Code'* and it states that it is disappointed that this was not logged as a complaint and offers its apologies. The Provider states that this matter has been raised internally and dealt with within the pertinent management team.

The Provider states in relation to the Provider's lack of response to numerous emails, that it strives for a high level of service which includes ensuring that correspondence received from borrowers and their representatives are replied in a timely manner. The Provider states that upon review of the Complainant's file it was apparent this level of service was not met, and it notes five unanswered emails between **April** and **May 2019**. The Provider submits its assurance that its representatives did not intend to ignore any correspondence and it adds that feedback has been provided to ensure that any such issues will not arise again. The Provider also states that it has appointed a new point of contact for the Complainant, if he wishes to make any further queries regarding this outstanding debt.

The Provider submits its response to the Complainant's contention that *'Despite several chasers'*, he has not received a response to the proposal offer he made to the Provider as a means to find a resolution to issues surrounding his exposures. The Provider confirms its awareness of the unanswered emails previously referred to and accepts that he was not issued with a response to his proposal in a timely fashion. In recognition of these failings,

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the Provider offered compensation in the amount of €500. This offer was subsequently increased by the Provider to €5,000.

With regard to the Complainant's proposal as regards the debt, the Provider states that as per previous correspondence dated **13 August 2019**, the proposal was declined for the reason outlined within. The Provider submits that its client, the third party entity which currently owns the loans, is *'under no obligation regulatory or otherwise to accept any proposal when it represents a significant shortfall to the debt owed.'*

The Provider has addressed a data subject access request as part of its response, however the Complainant has been directed to the Data Protection Commission as the appropriate body for any complaint thereby arising and this issue does not form part of the investigation and adjudication of the Complainant's complaint to the FSPO.

The Complaint for Adjudication

The complaint is that the Provider:

1. Appointed a relationship manager in 2019, who undermined progress on reaching an agreement that would suit all parties in relation to the Complainant's exposures, thereby creating an ongoing issue for the Complainant that still hasn't been addressed;
2. Failed to respond to a proposal made by the Complainant and his subsequent follow up emails;
3. Failed to respond to the Complainant's official complaint relating to the issues above and only responded when prompted by the Financial Services and Pensions Ombudsman.

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 Complainant was 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.

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A Preliminary Decision was issued to the parties on **26 October 2021**, outlining the preliminary determination of this office 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, the final determination of this office is set out below.

This complaint relates to what the Complainant describes as “5 legacy” bank “exposures”, albeit that the Complainant cites only one account number in his complaint form. The Provider, in its response to this Office, states that

“the exposure relates to four loans that were advanced to [the Complainant] in 2007 for the purpose of purchasing four investment properties.”

The Provider lists four account numbers (including that cited by the Complainant in his complaint form) as well as the “current exposure” on these four accounts which, as of the date of the Provider’s letter of 23 June 2020, amounted in total to **€940,008.70**. The figure was **€844,992.43** as of January 2018. The fifth facility is a mortgage in respect of a property that was formerly the home of the Complainant and his wife, but which had ceased being the primary residence of the Complainant (and his wife) prior to the interactions which are the subject of this complaint. I note that this fifth facility (itself comprised of two accounts) was in total arrears of **€97,890.23** as of January 2018.

It is clear that the original third-party bank sold the five loans to an entity (hereinafter ‘the Loan Owner’) which in turn appointed the Provider to manage the loans on its behalf. The complaint relates to the management by the Provider of those accounts. Specifically, the Complainant takes issue with the manner in which a specific individual manager handled the engagement between the parties on behalf of the Provider. It is relevant to note that a receiver was appointed by the Loan Owner over the properties in January 2018.

I consider it useful, at this juncture, to reproduce details of what the Complainant stated in his complaint form to this Office, was the way in which he wished for the complaint to be resolved:

- 1. Data Access Request submitted to be released*
- 2. [The Provider’s] Relationship Manager to be replaced*
- 3. Apology to be issued to [the Complainant] for the manner in which his file is being administered where his rights are being denied.*

I note that the Complainant began a process of engagement with the Provider in **January 2018** (one week after the appointment of the receiver) as regards the overall debt, in the hope of reaching an agreed resolution. This engagement was initially managed on behalf of

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the Provider by a specific 'relationship manager' (hereinafter 'Mr A') in respect of whom the Complainant makes no complaint.

I note that an initial proposal was advanced by the Complainant in early March 2018 whereby the Complainant proposed to make a payment of **€400,000** in full and final settlement of his liabilities to the Loan Owner. I note that his proposal was passed on by the Provider to the Loan Owner which rejected the proposal and this was communicated to the Complainant in an email of **28 March 2018**.

Thereafter, the Complainant invited a counterproposal from the Provider's "client", following which the Provider reverted, in an email of **23 April 2018**, communicating the Loan Owner's decision not to provide a counter proposal.

In that regard I note that the Provider stated as follows (which had also appeared in earlier emails):

The loan facilities referred to in this correspondence are managed by [the Provider] as service provider for and on behalf of and in accordance with the instructions of [the Loan Owner]. [The Provider] has no authority to bind, commit or conclude contractual arrangements on behalf of [the Loan Owner].

The Complainant at this point expressed a degree of frustration regarding the manner in which the Provider/Loan Owner had assessed the proposal and he sought further detail prompting the following response from the Provider set out in an email of **26 April 2018**:

I note the key points outlined in your email. I have also advised [the Loan Owner] of the same. However please note [the Complainant] has not made any payments to any of the mortgage accounts since migration, but has continued to collect rental income. [The Complainant's] proposals was below market value of the assets and it would be unreasonable to expect [the Loan Owner] to accept anything other than market value plus a deficiency payment towards the residual.

The next development of note was an increased offer of **€465,000** in full and final settlement proposed by the Complainant in **September 2018**. This proposal was also declined by the Loan Owner however there was a six-week delay in communicating this decision to the Complainant.

Thereafter, a further improved offer was advanced by the Complainant on **18 January 2019** in which a payment of **€485,000** was proposed, with the said funds to be generated from the sale of the four investments properties into a third-party investment vehicle. The Provider requested proof of funds for this proposal, and this was ultimately provided on **25 March 2019**. Around this time, Mr A ceased to be the 'relationship manager' and point of contact for these accounts and was replaced by Mr B.

I note that during a phone call of **03 April 2019**, Mr B indicated, in respect of the proposal, that he "doesn't see it being accepted if truth be told". Mr B reiterated that no-one within the Provider makes a decision on a proposal of that kind, and that all the Provider can do is simply to "give an indication".

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I note that at this point, the Complainant's advisor said "*we're looking at a battle then*", and, when queried on this by Mr B, he referenced the fact the Provider "*can't get into those properties*". This appears to have been a reference to the fact that the tenants in the four investment properties were not cooperating with the receiver, as well as the fact that a relative of the Complainant, who was living in the fifth property, was also not cooperating with the receiver.

At this point Mr B warned that "*the worst thing you can do to my client... at any stage is try and say we'll get what we want either way...*". I note that Mr B went on to suggest to the Complainant's advisor that he should "*be talking some sense into somebody instead of somebody saying you just won't get access to the property*".

The Complainant's advisor took umbrage at this, stating that all he could do was "*endeavour to facilitate an optimal outcome*" and that "*based on the underlying security that there is a significant doubt about enforcement*". Mr B finished by undertaking to put the proposal forward to the Loan Owner.

I note that following this phone call, the Complainant's advisor sent emails on **23 April 2019**, **30 April 2019**, **03 May 2019** and **13 May 2019** seeking an update. A fifth email was sent on **23 May 2019** claiming that Mr B had "*consciously neglected to respond*" to the earlier emails and requesting the logging of a formal complaint. The Provider states that all of these emails were "*unintentionally overlooked*" in circumstances where they were inadvertently diverted to junk mail and not read.

A further email sent on 24 May 2019 comprised a data access request in which a letter signed by the Complainant was included as an attachment. This email noted that the hard copy letter was going to follow in the post. A reminder (relating to all previous emails) was sent on **21 June 2019**.

On **01 July 2019**, a further email complained about the absence of any response to all the various earlier emails. The data access request made its way to the appropriate department to be dealt with, however, the Provider states that "*regrettably this email thread was not read in its entirety*" resulting in the data access request only being progressed (I will return to this below). The Provider states as follows:

The Case Manager failed to acknowledge or respond to the other elements, including the complaint received in the days prior. It was only when [the FSPO] contacted [the Provider] on behalf of the Complainant on 7th August 2019 to issue a final response when [the Provider] commenced its investigations to discover what happened with the unanswered emails.

With regard to the last two of the various emails mentioned above, the chronology document provided by the Provider states that the emails of 21 June 2019 and 01 July 2019 were also diverted to junk mail and therefore not read at the time.

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The passage quoted above refers to correspondence from this Office. Following the issuing of that correspondence, the Provider sent a letter to the Complainant on 09 August 2019 acknowledging receipt of the complaint. A Final Response Letter then issued swiftly thereafter on 15 August 2019 acknowledging that the Complainant's various emails were not "*acknowledged and replied to in a timely manner*" and acknowledging that the Complainant's complaint of 23 May 2019 was not appropriately logged as a complaint. There was however no reference to the 'junk mail' explanation.

In addition to the failure to address the various unanswered emails described above, it would appear that the Provider omitted to communicate the Complainant's third proposal (the €485k proposal) to the Loan Owner until 12 August 2019 (notwithstanding the assurances provided during the phone call of 03 April 2019) following which, a decision was made and notification of the rejection of the proposal was provided to the Complainant on 13 August 2019 together with an apology "*for the delay in the response*".

The Final Response Letter of 15 August 2019 also apologised for this (described later as an "*unintentional oversight*") and, in upholding the Complainant's complaint, offered compensation in the amount of €500. It was also indicated that a new relationship manager had been appointed to the Complainant's accounts. In its response to the formal investigation by this Office, the Provider reiterated its acceptance of certain failings, it repeated its apologies, and increased its offer of compensation to **€5,000** which has been expressly noted to remain open to the Complainant to accept "*at any stage*".

I note that the Provider has long since acknowledged its serious failings as regards the service it provided to the Complainant. There is one anomaly however that I consider it useful to address and that relates to the email of 24 May 2019 enclosing the data access request. It seemed a little strange that the Provider acknowledged receiving this email, but says that several emails both before and after it, were diverted to junk mail.

On closer analysis, it may possibly be that this is explained by the email of 24 May 2019 which stated that the letter signed by the Complainant attached to it, would follow in hard copy by post. It seems possible therefore insofar as the Provider acknowledged and addressed the data access request, that it may have done so as a response to the hard copy letter, rather than as a response to the email.

In terms of the failings of the Provider, I consider these to be as follows:

- The six-week delay in communicating the refusal of the second proposal.
- The failure to ensure that the various emails sent by the Complainant from April to July 2019 were read.
- The failure, in the Final Response Letter of 15 August 2019, to refer to the junk mail diversion as its explanation of the problem.
- The delay of over four months in submitting the Complainant's third proposal to the Loan Owner.

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Having reviewed the entire file and having, in particular, listened to the phone call of 03 April 2019, I am not satisfied that the Complainant has established that Mr B “*pursued a conflict agenda and aggressively sought to undermine all of the progress that been made with his predecessor*”. Mr B was certainly frank and candid in expressing his views, but I do not accept that he “*pursued a conflict agenda*”.

I am satisfied that the reasons provided during the phone call and in subsequent correspondence for the likely refusal of the Complainant’s proposal or the actual refusal of the proposal, were reasonable and legitimate. I also do not accept that Mr B “*consciously neglected to respond*” to the Complainant’s email given the junk mail explanation which has been made available. I would however note that this explanation nonetheless clearly represents substandard service, as clearly does the four-month delay in communicating the Complainant’s third proposal.

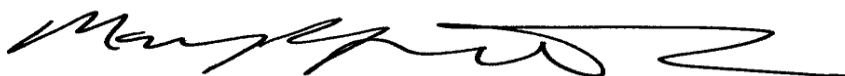
Having considered the matter, I take the view that the figure of €5,000 offered by the Provider when it responded to the investigation by this Office represents adequate compensation for the Complainant in respect of the matters identified in bullet points above. I might note that, in terms of the manner in which the Complainant stated he wished the complaint to be resolved, it is clear that each item he sought has been appropriately resolved (excluding that relating to the data access request which falls to be addressed elsewhere).

The Provider acknowledged its failings in the Final Response Letter and offered compensation. It has since increased that offer of compensation to a figure I view as adequate, and which I note remains open to the Complainant to accept. In those circumstances, I do not consider it appropriate or necessary to uphold the complaint. Rather, it will be a matter for the Complainant to make direct contact with the Provider if he wishes to accept the compensatory payment which has been offered. In that event, the Complainant should make contact expeditiously, as the Provider cannot be expected to hold this offer open indefinitely.

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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 November 2021

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
- and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

