



<b><u>Decision Ref:</u></b>	2021-0482
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Loans
<b><u>Conduct(s) complained of:</u></b>	Arrears handling - commercial lending Level of contact or communications re. Arrears Dissatisfaction with customer service Premature ceasing of arrears negotiations
<b><u>Outcome:</u></b>	Rejected

**LEGALLY BINDING DECISION**  
**OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Complainant is a company and entered two mortgage loan agreements with the Provider, against which this complaint is made, in **November 2007**. The Complainant submitted a proposal in respect of the restructure of its loans on **10 April 2018**. The Complainant was advised of the sale of its loans to a third party (the **Purchaser**) on **23 May 2018**. A further proposal was submitted on **3 July 2018**. The Provider informed the Complainant of its decision to refuse to restructure its loans on **27 July 2018**. The reason given was that the Purchaser had requested full repayment of the loans.

**The Complainant's Case**

The Complainant explains that on **3 April 2018**, the Provider wrote to it pursuant to the ***Lending to Small and Medium-Sized Enterprises Regulations 2015*** (the **SME Regulations**) and, on **10 April 2018**, a full submission was made to the Provider in respect of the Complainant's loans and the loans held by its directors. The Complainant says the Provider responded to this proposal on **25 April 2018** and certain information was furnished to the Provider on **8 May 2018**.

On **23 May 2018**, the Complainant states it was informed by the Provider that its loan had been sold. The Complainant remarks that, contrary to the Provider's Final Response letter, its complaint:

*"... relates to the fact that the bank chose to sell these loans while not adhering to the code of conduct relating to lending to SME's. That the bank facilitated a third party making credit decisions in relation to the complainant when the compliant (sic) had no obligation to the third party.*

*That this third party to which the Bank facilitated the transfer of information on the complainant may not be regulated and should not have been involved in this credit decision to any extent."*

The Complainant submits this occurred despite the Provider noting its obligations in its letter of **3 April 2019** and a further letter dated **19 June 2018**, suggesting it was still adhering to the SME process, when in fact, no review or meeting was offered to the Complainant and its loans were sold.

The Complainant states that:

*"The SME regulations should:*

- *Promote fairness & transparency. The bank in not facilitating the required meetings and review, in inferring to the borrowers that it was adhering to the Code at a time when the loan sale preparation was clearly concluded, did not act in a fair or transparent manner.*
- *Provided no information or timelines, as they had already decided what their preferred course of action was to be.*
- *Despite providing information regarding the Bank's policies, did not adhere to these policies*
- *The bank's commitment from its own website 'consider any financial difficulties sympathetically and work with you constructively to explore alternative solutions. In most cases by continuing to work together, we will find an acceptable alternative way forward.' This did not materialise and the bank made its own decision to ignore both its own statements and its commitment to the central Bank in relation to SME's and pursued a loan sale rather than the Lending to SME Regulations 2015."*

The Complainant observes that in the Provider's letter of **23 May 2018**, it advised the *transfer date* would be **27 July 2018**. The Complainant submits at that date, and only at that date, would its obligations transfer to the Purchaser; and until the transfer date, all obligations of the borrower remained with the Provider and all obligations of the Provider to the borrower remained. The Complainant submits this would require the Provider to be the party assessing its credit proposal and not the Purchaser.

The Complainant explains that a further submission was made to the Provider on **3 July 2018** and in the Provider's response dated **27 July 2018**, the Provider declined to offer a restructure of the Complainant's loans because *'The Purchaser requests for repayment of the loan.'* The Complainant says it had no obligation to the Purchaser at this time and this is clearly outlined in the Provider's letter of **23 May 2018**.

In respect of this, the Complainant poses the following questions:

- " ...
- *why [the Provider] did not comply with its obligations to the borrowers and conduct its own appraisal of the submission made by the borrower before the transfer date*
  - *Why [the Provider] provided information sent by the borrower to its own lender before the transfer date, was then given by [the Provider] to a third party to whom the borrower had no contractual obligation.*
  - *Was this third party that [the Provider] deferred the Credit decision to be made on the bank own (sic) borrower a regulated entity ..."*

The Complainant acknowledges that while the Provider may have entered a contractual agreement with the Purchaser regarding the ongoing management of the loans up to the transfer date, the Complainant was not a party to this agreement. The Complainant submits the Provider had a duty to adhere to its existing obligations and make its own decision on its submission which was made before the transfer date.

Referring to the Provider's letter of **27 July 2018**, the Complainant says this letter states that the Purchaser had certain rights and entitlements prior to the transfer date. The Complainant states *"[t]his is not accurate, again based on the bank's own letter of May 23<sup>rd</sup> which clearly identified the 'transfer date' as the date on which the rights and obligations transfer to [the Purchaser]."* The Complainant submits that the Provider did not adhere to the SME Regulations by facilitating a credit decision made by a third party at a time when the Complainant had no contractual obligation to that third party. The Complainant also submits the Provider furnished the Purchaser with information without its consent. The Complainant says it did not know if the Purchaser was a regulated entity at the time it made the decision on its loan.

Commenting on the Provider's Final Response letter dated **13 August 2018**, the Complainant submits this letter suggests:

" ...

- *Submitting proposals to [the Provider] (point 2 of this letter). The bank had facilitated [the Purchaser] in making the credit decision before the transfer date. How does the bank now expect to adjudicate on a further credit application AFTER transfer date?*
  
- *On point 3, we have never made a complaint regarding the Bank's entitlement to sell the loans. We complained that the bank knowingly avoided its obligations under Regulations to lending for SME's 2015 in order to ensure that the loan sale process concluded in a fashion that the bank wished it to conclude regardless of the borrower's rights or entitlements.*
  
- *In point 4, the bank states that 'the transfer of your clients loans was completed on August 2nd ..... we no longer have any decision making capacity in respect of your clients loans.' This clearly suggests that the bank held the decision making capacity before August 2nd, why therefore was the decision on the complainants credit submission – received by [the Provider] before August 2nd – made by [the Purchaser] as confirmed in the Bank's letter of July 27th?"*

The Complainant submits that the Provider's actions has placed it, its business and employees in a difficult position. The Complainant says it is well established that funds acquiring loans from Irish banks are seeking to recoup their investment as soon as possible. The Complainant states that its business and its capacity to repay loans is based on long term cashflow and the Provider had full knowledge of its business model prior to the loan sale as full and detailed submissions were provided on an annual basis for a number of years. The Complainant explains this longer term cashflow based repayment model does not suit the shorter term expectations of funds and, the Provider, by ignoring the Complainant's entitlements and by allowing the Purchaser to make credit decisions has placed these stakeholders in jeopardy.

The Complainant advises that the mortgage loan in respect of its directors' primary residence remains with the Provider and their capacity to meet these repayments is reliant on the Complainant's business. The Complainant submits that the Purchaser in seeking to recoup its investment may not be inclined to facilitate these repayments or facilitate the Complainant's business with the time required to meet these obligations from ongoing cashflow.

While a number of further submissions were made by the parties, in submissions dated **27 July** and **30 September 2020**, the Complainant's representative refers to a subsequent loan sale undertaken by the Provider and refers to a letter issued to SME customers who, similar to the Complainant, submitted a proposal around the time of the sale.

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The Complainant's representative remarks that the Provider's decision regarding the proposal was communicated as follows: *'your proposal is rejected as it did not meet the Bank's expectations.'* The Complainant's representative posed the question as to why the Provider assessed that proposal and not the Purchaser, as was the case in respect of the Complainant.

### **The Provider's Case**

The Provider explains that Letters of Sanction in respect of the loans the subject of this complaint issued to the Complainant in **November 2007**. However, the Provider advises that despite extensive searches, it has been unable to locate these letters.

The Provider states that the Complainant's rights in respect of the loans was unaffected throughout the loan sale transaction including up to the transfer date and its legal rights in respect of the loans was extinguished at the transfer date, being **2 August 2018**.

Referring to its letter dated **23 May 2018**, the Provider says this letter advised that: *'We will also transfer the information necessary to allow [the Purchaser] to continue to manage your Loans and for related legal and regulatory purposes.'* The Provider states the proposal submitted by the Complainant's representative fell within this category of information.

The Provider states the proposal of **3 July 2018** was received after it had agreed to sell the loans to the Purchaser and as the Purchaser had a beneficial and economic interest in the loans at that time, any proposals with regard to these loans were presented and reviewed by the Purchaser in accordance with the Provider's obligations under the terms of the agreement with the Purchaser.

The Provider advises that the Purchaser is a retail credit firm regulated by the Central Bank of Ireland and states that the Complainant's rights were unaffected by the sale or any review of the proposal by the Purchaser and the Complainant retained the same regulatory protections it had prior to the sale.

The Provider submits that it fulfilled its obligations to the Complainant by responding to its proposal in acknowledging its receipt on **9 July 2018**, advising that the proposal was being considered and that the Provider would be in contact shortly. The Provider says the final decision on the proposal was addressed in its letter of **27 July 2018** which declined the proposal and also offered the Complainant the right to appeal this decision. The Provider also advises that the rights and entitlements referred to in this letter were in respect of the sale agreement that existed between the Provider and the Purchaser.

Referring to the letter issued to the Complainant on **27 July 2018** and the enclosure, the Provider acknowledges that the wording of the cover letter may have been confusing and led the Complainant and its representative to believe further correspondence under separate cover would be issued. The Provider states that it wishes to apologise for this.

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In its Final Response letter, the Provider says it offered to facilitate the communication of any further proposal to the Purchaser. The Provider submits there was no commitment to adjudicate on further proposal applications after the transfer date and it was stated that any proposals would be forwarded to the Purchaser. The Provider advises that after the transfer date it was only facilitating the provision of any further proposals to the Purchaser to assist the Complainant in the transition phase.

Regarding the Complainant's position that its complaint did not concern the Provider's entitlement to sell its loans, rather its compliance with the SME Regulations; the Provider states that it apologises if it was mistaken in interpreting this element of the complaint. On this occasion, the Provider states that it interpreted the following as an expression of dissatisfaction: *'In the context of this ongoing engagement, it came as a shock to your customers to be advised by letter that the Bank had chosen to sell their business related loans to the TPP.'* The Provider advises that it proceeded to address this point in its Final Response letter.

In respect of the Complainant's comments that the Provider advised in its Final Response letter that it no longer had any decision-making capacity, the Provider advises this was in response to a request for a meeting. The Provider also refers to the relevant part of the Final Response letter in respect of this point.

The Provider explains the Final Response letter issued on **13 August 2018** and at this date it no longer had any decision-making capacity in relation to the Complainant's loans. This was highlighted to ensure the Complainant understood that in extending the offer of a meeting, the Provider could not resolve any issues in respect of the loans.

The Provider states it is satisfied it fulfilled its obligations under the terms of the loan agreement and, as per the Notice of Sale letter dated **23 May 2018**, it was communicated to the Complainant that the Provider would continue to service the loans until the transfer date of **27 July 2018**, the *Transitional Period*, and all queries should still be directed to the Provider during this period.

The Provider advises that the Complainant's representative first submitted a tentative proposal for review on **10 April 2018**. The Provider states that a sworn Statement of Affairs (**SoA**) was required to assess this proposal and the Complainant's representative advised this would follow. The Provider says it issued a letter dated **25 April 2018** requesting a sworn SoA which was required by the Provider and essential in assessing the proposal. The sworn SoA was furnished on **8 May 2018**.

The Provider advises that the Mortgage Sale Agreement (**MSA**) was signed by the Purchaser on **16 May 2018**. The Provider states that as a result of the crossover of these dates and the transfer of the Complainant's loans to the relevant department within the Provider, the proposal was not assessed at this time by the Provider. The Provider says it *"... acknowledges this as a customer service failing and apologises that this proposal was not assessed."*

Later in its Formal Response, the Provider advises the loan sale was announced before it had an opportunity to consider the April proposal and financial statements submitted by the Complainant's representative on **10 May 2018**.

In a letter dated **23 May 2018**, the Provider advises that the Complainant was informed that the Provider had agreed to sell the loans prelisted in the schedule to the letter to the Purchaser. Subsequent to the loan sale being announced, the Provider states the Complainant issued a revised proposal for consideration which its representative felt was more in line with the Purchaser's strategy for loans. By email dated **3 July 2018**, the Provider says a proposal was submitted to it by the Complainant's representative which was addressed to the Purchaser.

The Provider states this proposal was received after it had agreed to sell the loans to the Purchaser and as the Purchaser had a beneficial and economic interest in the loans at that time, any proposals with regard to the loans were presented and reviewed by the Purchaser.

The Provider advises that it then took responsibility for advising the Complainant and its representative of the Purchaser's decision in respect of the proposal and that the Provider had responsibility for any appeals up to the transfer date.

The Provider states that it adhered to its obligations to the Complainant and was the signatory for decisions made prior to the transfer date. In addition, the Provider states that it was responsible for any appeals in cases where credit decisions were made before the transfer date. The Provider advises that in cases where an appeal was submitted after the transfer date, these appeals would be acknowledged by the Provider's Transition Service Team and forwarded to the relevant servicing agent of the Purchaser.

An appeal was submitted to the Provider's Credit Appeal Office on **17 August 2018** which the Provider says was received on **20 August 2018**. The Provider submits that as the final transfer date of the loans was **2 August 2018**, the decision regarding the appeal lay with the Purchaser. The Provider states that it acknowledges that the Complainant's representative followed the procedure set out in the letter of **27 July 2018**. The Provider says this letter was issued 14 business days after the acknowledgement of the Complainant's proposal of **3 July 2018**. The Provider advises that on **27 July 2018** it was still the legal owner of the loans and was obliged to include details of its own appeals procedure.

On **22 August 2018**, the Provider states it responded to the appeal outlining that it had agreed to sell the loan which was completed on **2 August 2018** and that all of the Complainant's rights had transferred to the Purchaser. The letter identified the relevant servicing agent and advised that the Complainant's rights in respect of any appeal process had not been affected but the legal owner of the loans was now the Purchaser and advised it was the servicing agent who would review the appeal.

The Provider states that at the time of the **25 and 27 July 2018** letters, it was the legal owner of the loans and from the date of signing of the MSA, **16 May 2018**, the Purchaser had a beneficial and economic interest in the loans. The Provider states that the transfer date was the date that all servicing of the loan would transfer to the Purchaser and its servicing agent.

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In respect of the **25 July 2018** letter, the Provider submits the fact the Complainant's rights would be unaffected by the transfer is highlighted in this letter was the Provider outlined that even though the transfer date was **2 August 2018**, it may not have completed its investigation into the complaint until after the transfer date but the Provider would continue to investigate the complaint up to and including resolution.

The Provider has also set out its compliance with the provisions of the SME Regulations in its Formal Response.

In terms of its Final Response letter dated **13 August 2018**, the Provider states that having reviewed the complaint again, it feels that complaint points 1 and 3 were misinterpreted by the Provider and it apologises for this. The Provider states that at point 1 the Complainant's representative had not disputed its authority to sell the loans but that it was felt the Provider sold the loans even though the Complainant was an engaging SME.

The Provider also states that at point 3, the Complainant's representative was not requesting to appeal the decision to sell the loan but was requesting to appeal the fact the Provider had not facilitated offering the Complainant an alternative repayment arrangement.

### **The Complaints for Adjudication**

The complaints are that the Provider:

Failed to adhere to the *Lending to Small and Medium-Sized Enterprises Regulations 2015*; and

Wrongfully and/or unreasonably permitted the Purchaser to participate in and/or influence the decisions regarding the Complainant's loans.

### **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.

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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 11 February 2021, 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 Complainant made a submission to this Office under cover of its letter dated 26 February 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 8 March 2021 that it had no further submission to make.

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

### **Background**

By letter dated **3 April 2018**, the Provider wrote to the Complainant in respect of loan account ending 469 pursuant to the SME Regulations "[a]s the arrears/excess on this account have continued for three consecutive months ...." In essence, the letter requested that the Complainant engage with the Provider to address the situation.

A proposal was submitted to the Provider by the Complainant's representative in respect of the loans the subject of this complaint and certain other loans on **10 April 2018**. The letter advised that the current repayment amounts were not sustainable and requested a meeting to discuss the Complainant's position. The letter also advised that a Statement of Affairs was being prepared and would be provided once it was sworn.

The Provider wrote to the Complainant's representative on **25 April 2018** acknowledging receipt of the proposal stating that:

*"We note that you are to submit under separate correspondence a sworn Statement of Affairs and await receipt of same, which will be required to enable us progress a request for review/restructure of existing facilities.*

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*We note that the draft proposal to transfer the property in ... from [the Complainant] to one of the group companies. ...”*

A sworn Statement of Affairs was furnished under cover of letter dated **8 May 2018**.

From the Provider’s Formal Response, it appears that a Mortgage Sale Agreement regarding the sale of the Complainant’s loans was executed on **16 May 2018**.

The Provider wrote to the Complainant on **23 May 2018** in respect of the sale of its loans as follows:

*“We are writing to inform you that we have agreed to sell your loans specified in Schedule 1 (your **Loans**) to a third party called [the Purchaser].*

*We will write to you again to inform you when the transfer to [the Purchaser] (the **Transfer**) has completed. We expect the Transfer to complete on or after 27 July 2018 (the **Transfer Date**).*

*The sale of your Loans to [the Purchaser] is permitted under the terms of your Loans. We will also transfer the information necessary to allow [the Purchaser] to continue to manage your Loans and for related legal and regulatory purposes. Your obligations in respect of your Loans will be owed to [the Purchaser] rather than to us from the Transfer Date.*

**How does this affect you?**

*All your rights under your Loans will not change and all our rights under your Loans will transfer to [the Purchaser] on the Transfer Date. Under existing regulations, you will continue to be provided with the same protections of the consumer protection regulations and codes, after the sale of your Loans, as you had before.*

*We will continue to service your Loans from now until a number of months after the Transfer Date (the **Transitional Period**). From now until the end of the Transitional Period you should continue to direct all queries to us as per the contact details provided below. ...*

*Following the Transitional Period, we will no longer provide services in relation to your Loans. Those services will be provided by the servicing agent of [the Purchaser]. All relevant details relating to your Loans, including personal details, which are being transferred to [the Purchaser] may also be shared with their servicing agent. ...”*

The Provider wrote to the Complainant in respect of loan account ending 543 on **19 June 2018** pursuant to the SME Regulations *“[a]s the arrears/excess on this account have continued for three consecutive months ...”* In essence, the letter requested that the Complainant engage with the Provider to address the situation.

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By email dated **3 July 2018**, the Complainant's representative forwarded a proposal "... seeking a lump sum settlement prior to the transfer of indebtedness to [the Purchaser] on July 27th. ..."

The Provider acknowledged receipt of this email on **9 July 2018**, advising that the proposal was being considered and the Provider would contact the Complainant's representative shortly.

The Provider wrote to the Complainant on **27 July 2018** to advise it of the sale of its loans, stating:

*"We are writing to you in relation to the facilities specified in Schedule 1 (your **Facility**) of the enclosed letter. As previously advised to you in our letter dated 23 May 2018, we have agreed to sell your Facility to [the Purchaser].*

*As a result of this agreement for sale, any decisions to be made by the lender in respect of your Facility are to be submitted to and approved by [the Purchaser] and your proposal to [the Purchaser] was submitted to them for their consideration. The decision of [the Purchaser] is set out in the enclosed letter.*

*As advised in our letter dated 23 May 2018, we will write to you again to inform you when the transfer of your Facility to [the Purchaser] has completed. This is expected to be on or after 27 July 2018 (the **Transfer Date**). We will continue to service your Facility on behalf of [the Purchaser] for a number of months after the Transfer Date.*

*Nothing in this letter, or any delay or engagement, statement or discussion shall operate to waive, prejudice or reduce the powers, rights and remedies of the Bank or [the Purchaser] under your Facility and/or any security documents, and the Bank and [the Purchaser] fully reserve their right to exercise the same in their absolute discretion. ..."*

The letter enclosed with this letter, which is also dated **27 July 2018**, states:

*"... We looked at your application carefully, taking everything into account. On this occasion, we have decided not to offer you a restructure of your credit facility because*

- *The purchaser requests full repayment of the loans.*

*The Bank has an internal appeals process for SMEs which is available in relation to various decisions taken by the Bank in respect of your credit. You may appeal the Bank's decision in writing ...."*

The Complainant's representative wrote to the Provider on **17 August 2018** indicating that he wished to appeal the decision to refuse to restructure the Complainant's loans as this decision appeared to have been taken by the Purchaser and not the Provider.

The Provider responded on **22 August 2018**, advising the Complainant's representative that the transfer of the loans completed on **2 August 2018** and that all of the Provider's rights had transferred to the Purchaser. The letter also directed the Complainant's representative to the Purchaser's asset servicer and that the appeal had been forwarded to this entity for a full review.

### ***Formal Complaint***

On **15 June 2018**, the Complainant's representative wrote to the Provider in respect of the sale of the Complainant's loans expressing dissatisfaction with the Provider's decision to sell the loans "*... on an engaging SME client, and in doing so flaunt the Central Bank's guidelines and also the Bank's own stated policies towards SME's. ...*"

This letter was acknowledged as a complaint by the Provider on **22 June 2018** and was followed by a number of updates regarding the investigation of the complaint. A Final Response letter issued on **13 August 2018**.

### ***Analysis***

In the correspondence regarding the sale and transfer of the Complainant's loans, the Provider advised, in essence, that the Complainant's obligations would be owed to the Provider until the *transfer date*; which in this instance was **2 August 2018**.

The evidence shows that two separate proposals were submitted on the Complainant's behalf regarding its loans.

The first proposal was submitted on **10 April 2018** with a sworn Statement of Affairs being sent on **8 May 2018**. I believe that the first proposal was not complete or required to be considered until the sworn Statement of Affairs was received. The second proposal was sent by email on **3 July 2018**.

The Provider states that the first proposal was not assessed due to *a cross-over of dates* surrounding the receipt of the proposal, the signing of the MSA and the transfer of the loans to the relevant department to facilitate their transfer to the Purchaser.

I am satisfied that the first proposal was received at a time when the Provider was the legal owner of the loans; and this was a time when the Provider was obliged to assess the Complainant's proposal in accordance with the SME Regulations. Disappointingly, due to the MSA and associated arrangements taking place within the Provider to facilitate the transfer of loans to the Purchaser, this first proposal was not actioned.

Even though the Provider had agreed to sell the Complainant's loans around the time the first proposal was received, this does not affect its duty to the Complainant, especially in the context of assessing its proposal. The Provider was still the legal owner of the loans and the Complainant was still its customer.

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Further to this, I consider it reasonable to expect the Provider to have anticipated situations such as the one which arose in this instance and to have proper measures in place to ensure that proposals or correspondence from customers was not overlooked or went unactioned prior to/during the transfer process, and during the period the Provider was still the legal owner of the loans.

The second proposal was received after the execution of the MSA. I note that a copy of the MSA has not been provided, even in redacted form. While the Provider's position regarding the Purchaser's interest in the loans is not necessarily consistent with or clear from the language of its letter dated **23 May 2018**; I accept the Provider's submission that the execution of the MSA meant the Purchaser had a beneficial and economic interest in the loans. Therefore, I accept that the Provider was entitled to forward the second proposal to the Purchaser for its consideration and that the Purchaser was entitled to be involved in the decision-making process surrounding this proposal.

Further to this, while the Provider submits that the Purchaser had an interest in the Complainant's loans arising from the MSA, I believe it was reasonable to expect this to have been communicated to the Complainant, particularly as the Provider issued correspondence pursuant to the SME Regulations on **19 June 2018** requesting that the Complainant engage with the Provider. I would consider it prudent to have informed the Complainant that decisions regarding changes or restructures to its loans would have to be considered and/or approved by the Purchaser. Although, I note such information was subsequently and somewhat belatedly communicated in the Provider's letter of **27 July 2018**.

In terms of the letter issued on **27 July 2018** declining to restructure the Complainant's loans and the entitlement to appeal this decision, I believe that further clarity surrounding the appeals process could have been included. While I accept that the Provider still had certain obligations regarding appeals, I think it is reasonable to have also included some information in respect of appeals received after the transfer date but during the transition period and who would be in charge of and/or deciding such appeals.

Finally, the Provider has made certain submissions regarding its response to the Complainant's formal complaint. Having considered the Final Response letter, I accept the Provider misinterpreted the complainant being made and, as a result, did not fully respond to the complaint in its Final Response letter.

### ***Goodwill Gesture***

The Provider states that:

*"In preparation of this submission, the Bank recognises that more clarity could have been provided in some communications with regard to the Loan sale process and credit decisions of proposals received. In addition ... two points contained in the Banks Final Response Letter of 13 August 2018 were misinterpreted by the Bank and for this the Bank apologise.*

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*The Bank also recognises that the 1<sup>st</sup> proposal received by the Complainants TPA on 10 April 2018 with all relevant supporting documentation received on 08 May 2018 was not assessed and the Bank apologises for this.*

*In recognition of these service failings, poor communication and the passage of time, the Bank would like to apologise for any inconvenience that may have been caused and would like to make offer (sic) as a gesture of goodwill in the amount of €5,500 in full and final settlement of this dispute.”*

In my Preliminary Decision I indicated that I considered the goodwill gesture of €5,500 to be a reasonable sum of compensation for the customer service failings on the part of the Provider. I also indicated that on that basis and on the basis that this offer remains available to the Complainant, I did not propose to uphold the complaint.

The Complainant’s Representative in a post Preliminary Decision submission, takes issue with the description of the Provider’s failings as customer service failings. However, I remain of the view that the Provider’s offer of €5,500 is reasonable in all the circumstances of this complaint and therefore, I do not uphold the 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**

6 December 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—**

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- (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.**

