



<u>Decision Ref:</u>	2021-0541
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling - Mortgage Arrears Resolution Process Dissatisfaction with customer service Selling mortgage to t/p provider
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants entered a mortgage loan agreement with the Provider in **July 2006** in respect of a residential investment property. The Second Complainant entered a Personal Insolvency Arrangement (**PIA**) in **July 2015**. The Complainants made a number of requests for a meeting with the Provider to discuss the loan and the possibility of putting an arrangement in place to repay the First Complainant's portion of the loan. A meeting was held between the Provider and the Complainants on **4 May 2017**. However, despite several letters, emails and telephone calls, the Complainants did not receive any communication from the Provider after this meeting in terms of putting a repayment plan in place.

The Complainants' Case

The Complainants explain that they have unsuccessfully tried to engage with the Provider to repay their mortgage loan. The Second Complainant is going through a PIA; however, the First Complainant is "... *not part of this arrangement so am liable for the loan but [the Provider] have not engaged with me at all.*" The First Complainant tried to contact the Provider by telephone and email but no one would respond to her. Having sent a registered letter to the Provider, the Complainants say they eventually got a response from an agent in the Arrears Support Unit (**ASU** and the **ASU Agent**) to arrange a meeting. The Complainants explain it was felt this meeting went well: "... *we worked out an affordable payment he said he would have to get the go ahead but said it was the best outcome for [the*

Provider] and me and that he'd get back to me in a few days." The Complainants explain they did not hear back from the ASU Agent since the meeting despite leaving voicemails for him and sending him emails.

The Complainants say that the Provider would not engage with them and they simply wanted to repay the loan. The Complainants explain this has been very stressful. A formal complaint was made to the Provider in **September 2018**. The Complainants *"... have received a letter saying they will have a response for me on the 25th of every month since then. [The First Complainant] phoned them and asked for a final response but was on hold for 30 minutes and no one answered my call."*

The Complainants feel that the Provider has cost them their house and that their loan was sold to the third party. The Complainants *"... pleaded with them to let me pay it but no one was willing to negotiate with me because [the Second Complainant] was going through a P.I.A."*

The Provider's Case

The Provider states that the Complainants' loan has been in continuous arrears since **May 2015** and a full repayment has not been made since **April 2015**. The Provider does not accept that it failed to engage with the Complainants in relation to their arrears and attempted to engage with them in **2015** when the arrears balance first arose.

The Provider states that the Second Complainant applied for a PIA in his sole name. The PIA was approved on **14 July 2015** and remained in place until after the loan was transferred in **February 2019**. The Provider says its understanding is that there was an element of confusion on the part of the Complainants as to the parameters of the PIA and the First Complainant did not contact the Provider to engage with it in addressing the loan until **October 2016**.

The Provider explains the loan was legally sold on **30 November 2018** and transferred to the new service provider on **15 February 2019**.

The Provider submits that it is satisfied it applied the Mortgage Arrears Resolution Process (**MARP**) framework to the Complainants' loan in accordance with provision 18 of the Code of Conduct on Mortgage Arrears 2013 (**CCMA**). The Provider states the mortgage loan, the subject of this complaint, relates to a buy-to-let (**BTL**) property and is not the Complainants' primary residence.

Arrears correspondence issued on **18 May 2015** outlining a missed payment on the loan and the letter provided the dedicated ASU's contact details in order to discuss the reason for the missed payment. Further letters issued on **8 June** and **10 August 2015**. The Provider states that it holds no record of the Complainants completing an SFS in order to avail of an alternative forbearance arrangement prior to the arrears balance accruing in **May 2015**. The Provider submits that other than the PIA, there was no alternative arrangement applied to the loan from **2015** until the loan was transferred in **2019**. The Provider also details its

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compliance with provision 23 of the CCMA, in particular by reference to the arrears correspondence issued to the Complainants.

In respect of provision 31 of the CCMA, the Provider states that it wrote to the Complainants on **8 June 2015** and confirmed they would need to complete an SFS so that the Provider could review their financial situation. The Provider states that its ASU attempted to contact the Complainants post **May 2015** to address the outstanding arrears balance, as outlined in the Timeline of Events. However, the Provider states that its records show the Complainants noted they were progressing via a PIA.

A blank SFS was posted to the Complainants on **24 January 2017**. The Provider has no record of receiving a completed SFS from the Complainants. A letter was received on **12 April 2017** and a telephone call was placed to the First Complainant on **18 April 2017** to arrange a meeting for **4 May 2017** to complete a SFS.

The Provider states that based on the evidence available to it, there appeared to be confusion in relation to the parameters of the PIA and it was not until **October 2016** that the Second Complainant outlined to the Provider that the loan was proceeding by way of a PIA and this was the reason why payments had not been made on the loan. In conjunction with this, the First Complainant was not included in the PIA and would therefore like to come to an arrangement with the Provider to pay the loan.

The Provider wishes to confirm that prior to **October 2016**, the Complainants had not engaged with it to complete a SFS and only made two partial payments between **May 2015** and **October 2016** totalling €158.18. The Provider also states that between **May 2016** and **February 2019**, a total credit balance of €657.55 had been applied to the loan. The Provider states that the Complainants were advised they could pay manually over the phone to the ASU when contacting the ASU to discuss the loan.

The Provider explains that one of its agents, the ASU Agent, met with the Complainants on **4 May 2017** with a view to completing a SFS. The Provider advises that this agent has been out of the office on long term sick leave. As a result, the Provider has been unable to obtain the agent's sequence of events at the time, his understanding of what occurred with the SFS that the Provider believes the First Complainant completed on **4 May 2017**, or explain why the Complainants' phone calls and emails were not responded to.

In investigating this matter, the Provider explains that it completed a thorough review of its records in relation to this SFS and has been unable to locate it. The Provider wishes to confirm that it holds no record of the completed SFS reviewed in the meeting on **4 May 2017**. In this regard, the Provider states that the SFS was not submitted to its Underwriting Department for assessments and, as a result, a financial review was not completed. The Provider advises that it is unable to confirm if a copy of the SFS was provided to the Complainants on the date of completion. The Provider *"... accepts this level of service is unacceptable and we apologise to the Complainants for this and any additional distress or inconvenience that this matter has caused them."*

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Responding to the Complainants' point that they were informed they would be contacted by **6 May 2017**, the Provider states that it "... *accepts there has been a lapse in service offered to the Complainants, and in particular the first named Complainant in relation to the service she received from the Banks agent in relation to her application for an Alternative Forbearance Arrangement.*"

The Provider advises that its records indicate that the First Complainant was due to complete a further SFS with its ASU at a meeting scheduled on **13 March 2018**. However, the First Complainant indicated she would complete the SFS with the Personal Insolvency Practitioner (**PIP**) instead. The Provider states that it has no record of receiving a completed SFS post **March 2018** until the loan was transferred in **February 2019**. The Provider advises that it was not in a position to address the arrears on the loan in **March 2019** as the loan had been sold.

The Provider explains that a complaint was raised with the Complaints Handling Centre on **3 October 2018**. This was acknowledged on **8 October 2018** and the Complainants were issued with correspondence outlining an update on the complaint every 20 working days. This included informing the Complainants of their right to refer the matter to this Office on **27 November 2018** as the complaint was not resolved within 40 working days. A Final Response letter was issued on **27 March 2019**.

The Provider states that it investigated the complaint and has cited a number of passages from its Final Response letter. The Provider disputes that it mishandled the Complainants' complaint. The Provider says it investigated the issues raised including the service received by the Complainants from its ASU.

The Complaints for Adjudication

The complaints are that the Provider:

Failed to engage and/or failed to properly engage with the Complainants; and

Mishandled the formal complaint made by the Complainants.

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

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items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 26 November 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, I set out below my final determination.

Background

The Complainants were offered a mortgage loan in the amount of €148,750 to facilitate the purchase of a residential investment property in **June 2006**. This was accepted by the Complainants in **July 2006**. During **2015**, the loan entered arrears. The Provider wrote to the Complainants on **18 May 2015** to inform them that they had missed a payment on their loan. This was followed by arrears correspondence in **June, August, September and December 2015**.

It appears that the Second Complainant entered a PIA in **July 2015** and residential investment property was also surrendered around this time.

By letter dated **8 March 2016**, the Provider advised the Complainants that they were 10 payments in arrears in respect of the loan. The letter advised the Complainants to contact the Provider and that it would assist the Complainants in completing a SFS. This was followed by similar correspondence in **June and September 2016**, and **March 2017**.

The Provider's Timeline of Events (the **Timeline**) indicates that one of the Provider's agents spoke to the First Complainant on **28 April 2016** to discuss the arrears on the loan account. The Timeline notes the First Complainant's response as "... she advised that they are going insolvent" Following a telephone conversation on **23 June 2016**, the Timeline states: "I

called [the First Complainant] about the arrears on her account and she said that she and her husband are going through insolvency at the moment"

One of the Provider's agents spoke with the Second Complainant on **18 October 2016**, the Timeline in respect of this conversation notes:

"Customer is going through insolvency for the past 1 year. They have been advised by the customers PIP that the mortgage is going to be part of the insolvency and thats why they haven't been paying the mortgage but their PIP informed them that half of the mortgage that is under [the First Complainant] is not going through insolvency so [the First Complainant] would like to put a plan in place in order to pay her mortgage."

The Complainants wrote to the Provider on **9 November 2016** requesting a meeting with the Provider.

One of the Provider's agents telephoned the Second Complainant on **22 November 2016**, in respect of a recently received letter and the request for a face to face meeting. The Second Complainant explained that as far as the Complainants knew *"... everything was supposed to be in the insolvency"*, and some weeks prior to this conversation, the Complainants were informed by the PIP that the First Complainant was not subject to the PIA. The Second Complainant explained the Complainants wished to set up a payment plan to pay off what was owed by the First Complainant in respect of the loan. The Second Complainant explained the reason for not paying the loan is that they were advised to stop making the repayments.

The Provider's agent advised the Second Complainant that she would send a request for a meeting to her team manager and once it was authorised, a representative would contact the Complainants to arrange a meeting. The Provider's notes indicate three unsuccessful attempts were made to telephone the First Complainant between **22 and 24 November 2016**. In a submission dated **8 May 2020**, the Complainants state that when the Provider left messages *"... they were never ignored and were responded to."*

The Complainants wrote to the Provider again on **9 January 2017**, referring to the November letter, previous telephone conversations with the Provider's agents, their request for a meeting, and requested that the Provider contact them. The letter also explained that it was *"... always our understanding that the total property was included in [the Second Complainant's] insolvency agreement. Only recently have we been made aware by [the Second Complainant's] P.I.P that this may not be the case"* The Timeline indicates that there were a number of telephone conversations between the parties during **January 2017**.

The Complainants wrote to the Provider on **2 February 2017** giving it authority to talk to a third party. On **3 April 2017**, the Complainants wrote to the Provider requesting a meeting regarding the loan and explained that they had been advised by the PIP to make direct contact with the Provider.

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It appears that a meeting was arranged between the ASU Agent and the First Complainant during a telephone call on **18 April 2017**. A meeting took place in or around **4 May 2017** with the ASU Agent. The Timeline contains the following note in respect of this meeting: “... [I] gathered some information to try to progress this proposal.”

The First Complainant emailed the ASU Agent on **15 May 2017** asking whether there had been any progress made since their meeting. A similar email was sent on **26 June 2017**, but the First Complainant also requested “... account details that I could lodge money into to avoid further arrears building up.” This was followed by a further email on **18 July 2017** and two telephone calls from the Complainants on **1** and **25 August 2017**.

The First Complainant wrote to the ASU Agent by email dated **3 October 2017**, noting that it was almost 5 months since their meeting, stating:

“... I would have thought that some kind of payment plan like we discussed on that day, would have been in place at this stage.

I think it’s very unfair of [the Provider] to put me and my 3 children under this stress, especially as I’m repeatedly emailing and phoning looking to sort this out and pay the mortgage.

If you are no longer dealing with this, can you please pass this on [to] whoever is and set up a meeting to sort this out. ...”

This was followed by a further email on **5 October 2017**.

The First Complainant emailed the ASU Agent again on **2 February 2018**, this time noting that it had been 9 months since their meeting and the Complainants had yet to receive a response from the Provider. The First Complainant explained that “... all I want is [an] agreement with [the Provider] that I can pay an amount that I can afford each month but no-one has come back to me on this. ...”

In addition to this, I note in a submission dated **8 May 2020**, the First Complainant states that *countless voicemails* were left for the ASU Agent.

Analysis

In a submission dated **8 May 2020**, the Complainants state that telephone call recordings have not been provided in respect of a large number of calls made to the Provider. In a submission from the Provider dated **9 July 2020**, it was noted that the Complainants experienced difficulty listening to three of the recordings that had been provided and was only able to provide an audible recording in respect of one of these recordings. It was also indicated that a further review of telephone calls was carried out; however, the Provider has not advised as to the result of this review.

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It appears a number of call recordings have not been provided by the Provider. However, it is not clear why this is the case nor has the Provider explained why certain of the recordings provided are inaudible. The Provider's attempts at furnishing all relevant call recordings in respect of this complaint is sadly lacking, and better efforts should have been made to locate and provide all relevant recordings, particularly in an audible format.

The Timeline provided by the Provider records a number of calls which took place between the parties. I have referred to various entries in respect of these calls where a recording of the relevant call is unavailable. The Complainants have been given a copy of this Timeline, and while I note this Timeline is based on a note of the Provider's agent's understanding of the various calls, the Timeline has not necessarily been disputed by the Complainants.

The First Complaint

On their Complaint Form, the Complainants indicate the conduct being complained of began on **4 January 2016**.

However, having considered the evidence in this complaint, I am satisfied that there was a reasonable level of engagement and communication between the parties up to **October 2016**.

It appears the Complainants first became aware that the whole of the loan was not subject to the PIA sometime around **October 2016**. The Provider was advised of this information during a telephone call on **28 October 2016** and that the First Complainant would like to put a repayment plan in place to discharge her portion of the loan.

While it is not entirely clear from the evidence, the Complainants appear to have understood that the PIA applied to the First Complainant and/or all of the loan and not just the Second Complainant's share of the debt. This appears to be the reason repayments ceased to be made to the loan account. Based on the evidence, I do not believe the Provider was the source or cause of this misunderstanding. Further to this, in the context of this complaint, it is not for the Provider to advise the Complainants as to the PIA entered into by the Second Complainant and, as is clearly stated on the PIA, it applied only to the Second Complainant.

It appears that following the Complainants' request for a meeting in **November 2016**, certain efforts were made to arrange a meeting. However, it is not clear why a meeting did not take place before the end of the year.

The Complainants repeated their request for a meeting in **January 2017** with a meeting ultimately being arranged on **28 April 2017** for **4 May 2017** with the ASU Agent. The Provider is unable to provide a proper account of this meeting and it has not produced any notes of the meeting or copies of any documentation completed at, or on foot of, this meeting. However, having considered the evidence, I am satisfied that the meeting is likely to have included a discussion of an alternative repayment plan for the First Complainant, that some form of proposal had been agreed in principle, and that a SFS was completed. I am also

satisfied that it is likely that the ASU Agent indicated that he would try to progress the proposal on behalf of the First Complainant and contact her in the coming days.

The Provider advises that the ASU Agent went on long term sick leave and this is why nothing occurred in respect of the Complainants' case. As can be seen, the Complainants made extensive efforts to follow up with the ASU Agent and all the time indicated a willingness to co-operate and engage with the Provider.

What is most striking about this complaint is the total and apparent failure on the part of the Provider to have a system in place to ensure minimal customer disruption when a member of staff is required to go on long term sick leave. There is no evidence of any handover of work taking place, email forwarding, an out of office email being sent from the ASU Agent's mailbox or voicemail forwarding for example.

The Provider has also not specified the date on which the ASU Agent went on sick leave. This is important because while it may explain why the Complainants did not receive any response to their communications, it does not explain why notes of the meeting or a copy of the SFS that is likely to have been completed, do not seem to exist.

Taking the foregoing into consideration, while there appears to have been slow progress made in terms of arranging the meeting of **4 May 2017**, it is not entirely clear why this was the case. However, I accept, on the basis of the evidence presented and especially following the conversation on **22 November 2017**, that the Provider made reasonable efforts to arrange a meeting at an earlier point in time. While a meeting took place, it is quite clear that there was a complete failure on the part of the Provider to engage with the Complainants following this meeting.

Although there was a breakdown in communication after the meeting, it appears that the First Complainant was given the opportunity to submit another SFS in **March 2018**. A SFS was not submitted on this occasion and I note the reason for not doing so was explained by the First Complainant in an email dated **3 June 2020**:

"... I did not complete another S.F.S with [the Provider] as firstly my circumstances had not changed, and secondly I assumed that either [the ASU Agent] or whomever took over his workload would get back to me."

In light of the lack of response from the Provider following the May meeting, the time that had elapsed since the May SFS was completed and given the First Complainant's desire to put a repayment arrangement in place, I do not consider her refusal to complete a further SFS to have been reasonable and I believe this may have helped mitigate the difficulties she was experiencing regarding the loan.

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The Second Complaint

The Complainants made a formal complaint by letter dated **2 October 2018** in respect of the issues raised in this complaint. The Provider acknowledged the complaint on **8 October 2018**.

This was followed by a letter dated **30 October 2018** advising the Complainants that their complaint was being investigated and indicated that a full response would be issued by a specified date the following month. The Provider wrote to the Complainants again on **27 November 2018** explaining that the complaint was continuing to be investigated with a full response being projected for a date the next month. The letter also advised the Complainants of their right to refer a complaint to this Office. This was followed by monthly update letters until a Final Response issued on **27 March 2019**.

Taking the evidence of this complaint into consideration, I am not satisfied the complaint was mishandled by the Provider.

Although the complaint was acknowledged and periodic update letters were issued, it took approximately 6 months to issue a Final Response. Having reviewed the Provider's Final Response and given the absence of any explanation as to why it took this length of time to issue a Final Response, I am satisfied there was an unreasonable delay in responding to the Complainant's complaint.

While the Provider accepted that there was a shortfall in service and apologised for this in its Final Response letter, an explanation was not offered as to what caused the service shortfall, and in the circumstances, it may have been advisable for the Provider to offer an explanation, not just an acknowledgment of the issue and an apology.

Goodwill Gesture

The Provider acknowledges and accepts that the Complainants were not afforded the level of customer service they were entitled to. In this regard, the Provider offered the Complainants €7,000 and later increased its offer to €10,000.

I consider the offer of €10,000 to be a reasonable sum of compensation for the customer service failings on the part of the Provider. In these circumstances, on the basis that this offer remains available to the Complainants, I do not uphold 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.

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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

20 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—
 - (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.