



<u>Decision Ref:</u>	2022-0167
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Wrongful consideration of forbearance request Documents mislaid or lost Failure to process instructions Failure to implement payment terms
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a mortgage loan held by the Complainants and the Provider's conduct in its dealings with that loan, prior to it being transferred to a new owner, in **December 2019**.

The Complainants' Case

The Complainants explain that they held a number of mortgage loans with the Provider all of which were transferred to a new owner on **6 December 2019**. They explain that following the first Complainant's retirement in **2013**, all of the loans, with the exception of the loan pertaining to this complaint, were successfully restructured with the Provider and that repayments thereon are currently up to date. They explain that the restructure of the mortgage loans was arranged by a third party acting on their behalf.

In addition, the Complainants explain that the mortgage loan concerned with this complaint was one taken out by them to assist a family member with the purchase of a property. They say that this loan was not restructured at the same time as the other loans and that instead, it was, "*put on a full cap and interest basis of approx. €250 a month*".

The Complainants state that they asked their third-party representative to re-engage with the Provider in respect of restricting this loan, and that having done so with a named employee of the Provider, it was provisionally agreed that he (the named employee of the Provider) would try to restructure the loan, such that the repayments thereon would be in the region of €100 per month going forward. The Complainants say that *“there was no follow up from [the Provider]”* and that their third-party representative left his then employer, to work for another company.

The Complainants’ submissions indicate that the next contact with the Provider took place in or about **November 2018**, at which time the Complainants state that they contacted the same named employee of the Provider who arranged for a financial information form to be sent to the Complainants. The Complainants state that they returned the completed form in **January 2019** but that they *“got no response from the [Provider]”*. The Complainants submit that in the letter they received from the Provider dated **1 November 2018**, it was stated that, *“if you do not provide enough information or all the supporting documents we need to fully assess your mortgage we will pass you details to your local branch who will then follow this up with you”*.

The Complainants state that, following notification by the Provider of the proposed sale of their mortgage loans to a new owner, they again attempted to contact the named employee of the Provider with whom they had previously dealt, but were informed by another employee of the Provider that she would deal with the matter. The Complainants state that a further financial information form was sent to the Complainants on **13 September 2019** and they returned it to the Provider on **17 September 2019**. The Complainants state that they again *“heard nothing back from the [Provider] and...received a letter to say all of [our] loans were transferred to [the new owner] from 6th December 2019”*.

The Complainants’ submissions state that they again contacted the Provider’s employee who had sent the financial information form to them in **September 2019** and were informed by her that *“she had never received their correspondence of 17th September”*. The Complainants also state that this employee told them that *“there was nothing further [the Provider] could do as the loan was now owned by [the new owner]”*.

The Complainants indicate that having expressed their unhappiness with this response from the Provider, they subsequently received correspondence from the Provider informing them that, *“the [Provider] had in fact received our correspondence of 7th September 2019 but it was not scanned to the correct account no. and was sent to a different case manager and was not dealt with”*.

The Complainants’ submissions indicate that they then wrote to the new owner of the mortgage loan in question to seek the required restructure.

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The Complainants made further submissions to this Office on **23 February 2021**. Within these submissions the Complainants re-iterated the background to their attempt to restructure the loan in question and the involvement of the Provider's employee who was assigned to the loan. The Complainants are "*adamant*" that they sent the requisite financial information to the Provider in **January 2019** "*by post*". The Complainants also state that when they called the Provider in **September 2019** after receipt of the Provider's letter discussing the sale of the Complainants' loans, the Complainants were never informed that the loan in question would be sold "*irrespective of the outcome*" of the financial assessment of the Complainants by the Provider. The Complainants deny being "*uncooperative customers*". They state that until the loan was actually sold to the new owner the Provider should "*have the final say on anything to do with the loan*". The Complainants add that "*there is also the added problem that the [Provider] have also placed my name on the Irish Credit Bureau list of bad creditors which of course precludes me from getting a loan from any other financial institution*".

The Complainants made further submissions to this Office on **8 April 2021**. These submissions repeat many of the points made in earlier submissions by the Complainants. The Complainants query why they were given two different reasons for the non-receipt of their correspondence. The Complainants state that they were initially informed that the Provider never received their form and were then told that the form was scanned and sent to an incorrect account number and as a result went to the wrong case manager. In this submission, the Complainants re-iterate their confusion as to how the Provider can "*maintain that [the new owner] had ultimate discretion regarding any forbearance request made by [the Complainants] at any time after August 2019 notwithstanding the fact that [the Complainants'] contract was with [the Provider] until the date of the sale of [the Complainants'] loan on 9 December 2019*".

The Complainants made further submissions dated **18 May 2021**. The Complainants question "*how thorough*" the initial investigations into the complaint were from the Provider, given the submission by the Provider of hitherto undiscovered phone calls. The Complainants state that "*the fact still remains that [the Provider] gave two different contradictory explanations*" as to why it denied that correspondence was received in **September 2019**. The Complainants repeat their submissions querying how the Provider could have no discretion to re-structure the loan prior to the transfer to the new owner being completed. The Complainants also state that they should have been told when the financial information form was sent to them, that there was "*no prospect of getting a restructure*". The Complainants also state that the terms and conditions of their mortgage are different under the new owner, in contrast to the submissions of the Provider.

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The Complainants want *“compensation from [the Provider] for their incompetence in this matter”*. The Complainants point to the time and stress that the matter has caused them and they attribute a hospital stay undertaken by one of the Complainants, to stress arising from the Provider’s behavior.

The Provider’s Case

The Provider in its Final Response Letter dated **8 January 2020** states that it wrote to the Complainants on **9 September 2019** to advise them of the intended sale of their loan accounts to the new owner. The Provider states that the *“terms and conditions in the loan documents under which your mortgages were extended, include the right for the [Provider] to freely transfer the loans without requiring customer consent whether as part of a loan sale, a securitization scheme or any other type of transfer”*.

In this Final Response Letter, the Provider acknowledged that it received a Financial Information Form from the Complainants on **19 September 2019** and states that by mistake, it was not scanned to the Complainants’ account and was instead scanned to a different account. The Provider noted that *“due to this oversight”* the Complainants’ application for forbearance had failed to progress to the Provider’s credit department for a decision. The Provider recognised that it had *“not met the level of service that we aim to provide”* but it affirmed its position that, *“as the sale of your accounts has now completed and transferred to [the third party] on 9 December 2019”* it *“cannot influence or make any decisions going forward regarding your accounts”*.

The Provider made submissions to this Office on **4 February 2021** stating that the loan the subject of this complaint was *“not considered for restructuring at the same time as the other mortgage loans as that account was on interest only repayments until **September 2016**”*. The Provider states that when the interest only period of this loan expired in **September 2016**, the loan was assessed together with two accounts in the name of the first Complainant and a third party, and the loan was deemed to be affordable and no forbearance was offered.

The Provider states that *“there is no record of any proposed restructuring”* of the loan to reduce payments to the region of €100 per month as suggested by the Complainants and the Provider rejects the assertion by the Complainants that it ever agreed to try to restructure the loan to put repayments of approximately €100 a month in place. The Provider states that it was not possible to consider restructuring the loan as the Complainants never returned a completed standard financial statement form on time. The Provider states that its employee’s notes of a phone call between the employee and the representative for the Complainants, note that the failure to return the Standard Financial

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Statement Form was acknowledged by the Complainants' representative as being his own fault. Furthermore, the Provider states that its employee who was dealing with the loan, did not have authority to restructure the loan as *"such decisions are made solely by the Provider's Credit Department, subject to strict criteria"* and any completed forbearance or restructuring proposals, would have to be determined by this department.

The Provider states that its notes record *"repeated engagement"* from its employee with the Complainants' representative throughout **2017** and in particular during **February 2017** and **March 2017**, during which time the Provider states that its employee repeatedly followed up with the Complainants' nominated representative seeking additional information. In this regard the Provider notes messages and calls made by its employee to the Complainants' representative on **20 February 2017, 27 February 2017, 3 March 2017, 8 March 2017 (x2) and 21 March 2017** seeking updates regarding the Complainants' rental incomes across the properties they owned.

Throughout **April 2017**, the Provider states that its notes record a number of attempts to set up a face to face meeting between the Provider, the Complainants and their nominated representative to discuss the level of repayments the Complainants could afford. The Provider states that this meeting ultimately took place on **11 May 2017** at which time the Provider states that an offer of forbearance was made to the Complainants. The Provider states that its notes record that *"a fresh offer"* was to be made by the Complainants through their nominated representative, following this meeting. The Provider notes that it followed up with the nominated representative on **30 May 2017, 1 June 2017, 2 June 2017 and 8 June 2017**.

The Provider states that on **16 June 2017** the Complainants' representative acknowledged that *"the stuff is outstanding and sorry about that"*.

The Provider states that it sent a further AALOO to the Complainants on **18 September 2017** which was never completed and returned to the Provider. The Provider states that in **November 2017**, management of the account was transferred to a different employee who noted that the *"prescribed treatment strategy"* at the time was to appoint a receiver with a view to completing the sale of the property held as supporting security for the loan. The employee stated that he engaged actively with the Complainants during this timeframe to *"avoid this eventuality and am satisfied that the approach I took was in the customer's best interest"*. The employee outlined that standard financial statement forms were not returned at any time during his management of the loan. The Provider submits that the foregoing shows *"very substantial engagement with the Complainants regarding their mortgage loan arrears"* and states that *"neither the Complainants, nor their nominated representative, were proactive about engaging with the Complainants' arrears during the relevant period"*.

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The Provider also states that the Financial Information Form which the Complainants state that they returned to the Provider in **January 2019** was *“in fact never received by the Provider”*. The Provider states that if it had received the Financial Information Form, it would have contacted the Complainants to obtain further information, but in the absence of same, there was no requirement for the Provider to follow up with the Complainants seeking further information and in fact the Provider could not offer an alternative repayment arrangement as it did not know the repayment capacity of the mortgage holders.

In its submissions to this Office, the Provider accepts that it erred in failing to correctly process the Complainants' request for forbearance when it was made in **September 2019**. As a result, the Complainants' request was not dealt with in a timely manner. The Provider has made an offer of €1,000.00 (one thousand euro) to *“compensate the Complainants for the inconvenience they suffered as a result of this error”*. The Provider notes however that its error did not compromise the Complainants' ability to engage with the Provider to restructure the mortgage loan, as the loan at that point, had already been sold and therefore, the nominated entity had the ultimate discretion with regard to approving any forbearance/restructuring requests. The Provider also states that due to the loan being sold at this stage, it did not have any authority to approve a restructuring request without obtaining the express authorisation from the new owner.

The Provider states that as the property on which the loan was secured was not the Complainants' primary residence, but rather was a residential investment property, it did not fall within the **Code of Conduct on Mortgage Arrears 2013**. The Provider states that it dealt with the Complainants in line with the provisions of **the Consumer Protection Code 2012 (as amended)** (the “CPC”). In respect of the error made with the Financial Information Form, the Provider states that *“once it became aware of the error, the Provider conducted an internal investigation and gave a full apology to the Complainants for this mistake in its Final Response Letter”*. The Provider states that it became aware of the error on **2 January 2020** and issued the Final Response Letter on **8 January 2020**. The Provider acknowledges that in failing to properly process the Financial Information Form it breached provision 2.2 of the CPC but submits that its offer of €1,000.00 is adequate compensation for this.

The Provider made further submissions to this Office dated **16 March 2021**. The Provider refers to its letter to the Complainants of **9 September 2019** in which it notified each of the Complainants of the impending transfer of the loan account. The Provider notes that these letters explicitly specified that the sale agreement had already been concluded. Therefore, the Provider states that there was *“no reasonable basis upon which the Complainants might have believed that a forbearance request on their mortgage loan account would affect the transfer of the loan account in question”*.

The Provider states that *“for the avoidance of doubt, the Provider confirms that its failure to process the Complainant’s FIF correctly had no bearing whatsoever on the ultimate transfer of the mortgage loan account in **December 2019**”*. In respect of the ICB reporting, the Provider notes that at the time the loan was transferred, the loan account showed an Irish Credit Bureau report of 9 missed repayments, which is the maximum number of missed repayments which is reported to the ICB. The Provider states that the account first fell into arrears on **15 September 2016** and the Provider first started reporting the arrears on the account on **15 November 2016** (3 months after the arrears arose). The mortgage loan account remained in continuous arrears until **9 December 2019** when the ownership was transferred to the named entity. The Provider states that it *“will not be amending its records which have been reported to the ICB on this mortgage loan account as the Provider is satisfied that the reports which have been made are an accurate reflection of the repayments which may have been missed by the Complainants”*.

The Provider made further submissions to this Office dated **5 May 2021** when it stated that it had *“uncovered a number of recordings, which, due to individual error when accessing the Provider’s call recording platform, had not been identified previously”*. The Provider makes an offer of an additional €500.00 to the Complainants to compensate them for this uncertainty and inconvenience. The Provider states that *“there was no ambiguity surrounding the finality of the agreement to transfer the Complainants’ mortgage loan account, such as would have required clarification in the phone call on **13 September 2019**”*. The Provider again addressed the issue of the receipt of the Complainants’ Financial Information Form (FIF). It states that when the form was received in **September 2019**, it was *“erroneously allocated to a case manager other than the one who had been dealing with the Complainants’ arrears”* and the matter was not followed up on. The Provider disputes that its internal notes *“muddy the waters”* and states that its notes *“offer a contemporaneous account of the Provider’s internal investigation and are entirely consistent with the sequence of events”* as set out in its submissions.

Furthermore, the Provider states that in the letter of offer signed and accepted by both Complainants on **8 August 2006**, the Complainants consented irrevocably to *“any future transfer assignment, or other disposal howsoever arising of the legal and equitable benefit of the Loan, any and all security held therefore and all of the [Provider’s Predecessor] interests and rights arising thereunder whether as part of any loan transfer and securitization scheme or otherwise howsoever arising”*. The Provider states that it sold its interest in the Complainants’ loan to the new owner in **August 2019** and as part of this agreement the Provider carried out the day-to-day running of the mortgage loan account pending formal transfer to the new owner and the new owner would have *“ultimate discretion regarding any forbearance or restructuring agreement”*. The Provider does not accept that this procedure was unfair to the Complainants.

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The Provider made further submissions by way of letter dated **1 June 2021**. The Provider clarifies in these submissions that *“it is not the case”* that there was no prospect of the Complainants’ loan being restructured on foot of consideration of a completed Financial Information Form. The Provider stresses that it was the new owner rather than the Provider that had the *“ultimate discretion”* with regards to this decision over whether or not to restructure the Complainants’ mortgage loan account. In respect of changes to the Complainants’ mortgage loan accounts/repayments post the transfer, the Provider states that it is *“not a party to”* the relationship between the Complainants and the new owner and it confirms that following the **December 2019** transfer the new owner *“continued to be bound by the entirety of the terms and conditions of the mortgage loan account”*.

The Complaint for Adjudication

The complaint is that the Provider wrongfully and negligently failed to properly administer the Complainants’ mortgage loan account at the time when they sought to restructure the loan and it failed to afford the Complainants an appropriate and acceptable level of customer service, as a result of which the Complainants were denied an opportunity to obtain a restructure of the loan by the Provider, prior to the loan being sold to a new owner.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

A Preliminary Decision was issued to the parties on **20 April 2022**, 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.

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I note that the Provider has accepted that it failed to correctly process the Complainants' request for forbearance when it was made in **September 2019**. I accept the explanation offered by the Provider in this regard, namely that it sent the request to the wrong member of its team, and I do not accept that there has been an inconsistency in the Provider's response. Rather, it originally believed that the document had not been received, but it transpired that it had been scanned to the wrong account.

This failure to correctly process the Complainant's request was poor customer service and amounted to a breach of provision 2.2 of the CPC in that the Provider failed to "*act with due skill, care and diligence*". I note that the Provider has made an offer of €1,000.00 in compensation to the Complainants for the inconvenience suffered as a result of this element of the administration of the mortgage loan

I note that the Complainants claim to have sent a Financial Information Form to the Provider in **January 2019** but the Provider states that it never received it. In the absence of evidence of posting, it remains entirely unclear as to how this communication from the Complainants to the Provider went astray, but in circumstances where the Provider has still been unable to locate any record of this document (unlike the subsequent document received in September 2019) I take the view that there is inadequate evidence available upon which it would be appropriate to make a finding that the Provider misplaced this correspondence from the Complainants.

Notwithstanding the fact that the Provider failed to correctly deal with the request for forbearance sent in **September 2019**, I accept that this did not result in the sale of the loan to the new owner nor did it affect the Complainants' ability to restructure its loan with the Provider as the loan had already been sold to the new owner as of **August 2019**, before the mistake with the forbearance request occurred. I note that ownership of the loan was not transferred to the new owner until **December 2019**, however, I do not find anything unusual about the submission of the Provider that a new owner would retain discretion as to substantive decisions to be made on loans which had been sold but not yet transferred.

I further note that the Provider wrote letters to the Complainants on **9 September 2019** in which it notified each of the Complainants of the impending transfer of ownership of the loan account. I have also considered carefully the phone call between the first Complainant and the Provider's representative on **13 September 2019** and note that the Complainants were never told during this call, nor was it suggested, that if the loan was re-assessed, it would not be sold on to the new owner. In fact, the first Complainant was explicitly told that in regard to the sale of the loan, there was a dedicated phone number that the Complainants could ring to enquire about the details of the loan.

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Furthermore, the letter sent on **9 September 2019** detailing the impending transfer of the loan was explicitly referenced by the Provider's representative during the phone call with the first Complainant on **13 September 2019**.

In addition, I note that in the Letter of Offer signed by the Complainants on **8 August 2006** they agreed to any future transfer/assignment/sale of the loan. I am satisfied that the sale of the Complainants' loan to a new owner was entirely within the commercial discretion of the Provider.

In respect of the concern that the Complainants have been recorded on the Irish Credit Bureau ('ICB') list of bad creditors, I note that at the time the loan was transferred to the new owner, the loan account had 9 missed repayments and therefore the reports made to the ICB by the Provider were an accurate reflection of the repayments which had been missed by the Complainants.

I note however, that in October 2021, the Irish Credit Bureau ceased to operate and, in that context, all of the data concerning loans held with financial service providers and any arrears information on those loans, was deleted by the Irish Credit Bureau and no such records continue to be held. Insofar as the Provider, prior to December 2019 may have also registered arrears information with the Central Bank of Ireland's Central Credit Register, in accordance with its statutory obligations under the Credit Reporting Act 2013, I am satisfied that the Provider had an obligation to report accurate information regarding any arrears arising on the loan during the relevant period.

I note that the Provider failed to initially locate all of the phone calls relevant to this dispute and it made an increase of €500.00 (five hundred euro) on its offer to the Complainants in this regard.

I can understand that the Complainants are disappointed that no restructure was agreed with the Provider during **2019** which might have prevented the inclusion of their mortgage loan in the grouping of accounts which were sold to the new owner in late 2019. There is however, inadequate evidence of any interactions with the Provider in that regard in early 2019.

Insofar as the Complainants communicated with the Provider in September 2019, I am satisfied that, at that point, the Complainants' mortgage was already included in the Loan Transfer Agreement entered into with the new owner and, consequently, at that point any application by the Complainants for a restructuring, was a matter which fell to be administered by the Provider, but subject to the discretion of the new owner as the appropriate decision maker at that time.

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I am satisfied that the Provider's error in scanning the Complainants' documentation to the wrong mortgage account denied the Complainants an opportunity at that time to have their application for forbearance assessed, but it must be noted that the new owner was not under any obligation to agree to the forbearance request and at this remove, it is simply not possible to know what might then have transpired. There is, however, nothing to prevent the Complainants from making a similar application directly to the new owner, now that ownership of the loan has been transferred.

Having considered the Provider's compensatory offer of €1,000 at the time when it responded to the formal investigation of this complaint, I am satisfied that this compensatory offer was appropriate to redress its errors in the administration of the Complainants' loan and I note indeed that since that time the Provider, in recognition of its failure to adequately locate all of the relevant audio evidence for this investigation, has offered an additional €500 with a view to resolving this complaint.

On the basis that this offer of €1,500 remains open to the Complainants for acceptance, I do not consider that it is necessary or appropriate to make any further direction in this matter and, rather, it will be a matter for the Complainants to make direct contact with the Provider if they wish to accept the Provider's compensatory offer in that regard.

For the reasons outlined above, I do not consider it appropriate to 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.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

16 May 2022

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PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.