



<u>Decision Ref:</u>	2019-0193
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Multiple Products/Services
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Dissatisfaction with customer service Failure to advise on key product/service features
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint is in relation to the Complainant's mortgage loan accounts with third parties which are being administered by the Provider.

The Complainant's Case

The Complainant submits that in **May 2016**, she made an offer to the Provider of €598,000 in full and final settlement of the mortgage loans. The Complainant submits that there have been significant delays on the part of the Provider on reaching a decision on her offer. The Complainant submits that this delay caused her and her family *"... Increased stress and costs; as well as a forced inability to make significant decisions"*. The Complainant states that the Provider's *"... Agents were constantly changing, on holiday, ill, on training, or promoted, making phone communication difficult and information changing. They were inconsistent and very inconsistent and very hesitant to commit to writing, saying that would delay matters"*.

The Complainant submits that she has not received any breakdown on the total repayments or the rationale behind any decisions made by the Provider. The Complainant states that

“the delay of 15 months, May 2016 to August 2017, in making the decision on the final payment, has cost me €17,401”.

The complaint is that the Provider wrongfully delayed in reaching a decision on the Complainant’s offer of a full and final settlement and failed to provide her with any rationale behind its decisions.

The Provider’s Case

The Provider accepts that there were delays in accepting the Complainant’s proposal but that any such delays were unintentional and that the Complainant did not suffer any loss as a result but in fact benefited from an increased debt write-down.

Decision

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

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

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

A Preliminary Decision was issued to the parties on **25 April 2019**, 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.

On **13 May 2019**, the Complainant made an additional submission which was exchanged with the Provider.

The Provider responded on **17 May**. This was exchanged with the Complainant.

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On **6 June**, the Complainant made a further submission which was exchanged with the Provider.

The Provider responded on **24 June** and indicated it had no further submissions to make.

While the Complainant raised a number of questions in her Post Preliminary Decision submissions to this Office and made observations about the financial loss she claims she has suffered, no issues were raised which would change my decision as it was set out in my Preliminary Decision. Following the consideration of additional submissions from the parties, as well all of the evidence provided, my final determination is set out below.

This is a case that has a lengthy factual background involving a significant amount of documentation supplied in evidence which I have considered carefully. Ultimately however, the issues to be determined are relatively straightforward. The Complainant states that since mid-2016, the Provider is guilty of serious delay in dealing with her proposal for full and final settlement of the relevant mortgage accounts. The Complainant states that this delay was unreasonable and represented a breach on the Providers part and that as a result of this, the Complainant suffered losses by having to make repayments on the mortgage accounts and obligatory life insurance payments during the period of delay when, if the Provider had accepted her proposal, she would not have had to make those payments.

On 1 May 2016, the Complainant wrote to the Provider stating that there had been “significant changes” in her circumstances. The letter explained that the Complainant’s income generated through her rental property had ceased and she was therefore unable to cover her monthly payments next due on 25 May 2016. The letter went on to say that the Complainant’s personal circumstances were about to improve because of a significant inheritance.

The Complainant requested that the Provider consider her request to hold payments on the account for the following 12 week period. This letter is stamped as being received on 6 May 2016 by the Provider. The Provider’s Mortgage Arrears Support Unit responded to the Complainant in June and July 2016 acknowledging the request to hold payments for 12 weeks but stating that “we cannot stop the account billing”.

The documentation shows that from at least early August 2016, the Complainant had requested from the Provider the redemption figures on the two mortgage accounts as soon as possible. On 26 August 2016, the Provider responded to the Complainant informing her that as of that date, the combined redemption figure for the mortgage accounts was €626,019.36. The Complainant responded by letter of 1 September 2016 stating, among other things, that the inheritance which she had hoped to use to settle the accounts falls short of the redemption figure quoted. Accordingly, the Complainant asked the Provider to consider the sum of €598,000 in full and final settlement and she indicated that she was in a position to make this payment and attached a standard financial statement in support of her settlement offer. There is a further letter in the documentation dated 7 September 2016 which is identical to that of 1 September 2016 mentioned above.

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On 30 September 2016, the Complainant wrote again to the Provider enclosing her previous letter from 1 September 2016. The letter went on to state that the Complainant was very anxious to have a response from the Provider regarding her proposal and asked for the Provider's immediate attention on this matter. On 19 December 2016, the Complainant wrote again to the Provider stating that the lack of communication had been causing her considerable stress and she re-offered the sum of €598,000 in full and final settlement of the mortgage accounts. In addition, the letter goes on to point out that the Complainant has had a number of telephone conversations with "various agents" concerning this matter and the Complainant indicated that she wished to make a complaint as to the manner in which she had been treated. The letter went on to state "I am dismayed and confused as to why it is proving to be impossible to have a response on this matter". On 22 December 2016, the Provider wrote to the Complainant acknowledging a number of queries raised by the Complainant during a telephone conversation on 16 December 2016 and subsequent correspondence in relation to the mortgage loan accounts on 19 December 2016. The Provider stated that "the matters are currently being reviewed and that we will revert to you in writing within 15 business days". The Complainant wrote again to the Provider on 13 January 2017 in the same terms as her previous letter of 19 December 2016. The Provider responded on 17 January 2017 confirming that it was "continuing to review the matter and will revert with our response in due course".

On 6 February 2017, the Provider wrote to the Complainant with an outcome of the Complainant's complaint. The Provider, among other things, explains that it had carried out a review of her mortgages since February 2016. The letter went on to state that notwithstanding correspondence received in May 2016 alluding to the Complainant's expected inheritance and a forthcoming proposal, the Provider did not receive a proposal in writing regarding the redemption of the mortgages until September 2016 and that the Provider does not review any such offers until they are received in writing.

The letter went on to state that the Provider assesses each case on its own merits and "as such has no set time frame for proposals to be reviewed". It went on to state that in this case "the decision has taken longer than we would have anticipated; for this we would like to apologise to you". The letter went on to state that the proposal to accept the figure of €598,000 in full and final settlement was still under review and that the Provider had instructed that a second valuation be completed on the property and once it has received this information it will refer the proposal for consideration and revert to the Complainant once the decision has been made.

By April 2017, it appears that the Complainant had still not received a response and she lodged a second complaint with the Provider arising out of this delay. The Provider responded to this by letter of 10 April 2017. The Provider, among other things, explained that the second valuation was carried out on 22 February 2017 and was furnished to the Provider on 28 February 2017. It was discussed on 7 March 2017 but a decision was not reached at that meeting. The letter goes on to state that the value of the property "significantly exceeds the debt secured against same" and under normal circumstances and offer in the nature of the one made by the Complainant which represents the level of debt write off that she is requesting would immediately be declined. The Provider went on to state that while there was a delay in making the decision, the fact that it was still under

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consideration “represents the serious consideration given to your circumstances and the FAFS offered by you”.

Ultimately, the Complainant’s offer was declined by the Provider and a counter offer of €634,000 was made on 21 June 2017. The Provider explains that this counteroffer represented debt write-down of in excess of €7,000. This was appealed by the Complainant.

The Provider explains that during the appeal process, it came to light that the Complainant’s mortgage balances were overstated due to “a legacy issue” which “impacted a small number of mortgages”. Accordingly, the Provider explains that the Complainant’s proposal was re-presented on 9 August 2017 and ultimately, it was agreed to accept the offer of €598,000 in full and final settlement. The Provider asserts that this represented debt write-down of €43,353.59. This was communicated to the Complainant on 15 August 2017 and on 16 August 2017 the Complainant wrote to the Provider advising it that she transferred a payment of €598,000 to the Provider’s accounts that day.

It is the Complainant’s case that the delay of 15 months from May 2016 to August 2017 in making the decision on the final payment has cost her €17,401.

The only documentary evidence submitted to me shows the offer of full and final settlement being made by the Complainant in September 2016 and therefore if there was any recoverable loss as a result of delay, it would be from that time. The Provider accepts and I am satisfied that the evidence establishes that there was a delay, an inordinate delay, with the Provider dealing with or processing the consideration of the Complainant’s offer for full and final settlement. While the Provider was entitled to carry out valuations, the evidence shows that those valuations could have been undertaken by it as early as March 2017.

Notwithstanding the foregoing, the Provider has a broad discretion over a commercial decision such as whether to accede to applications or offers of this nature. Ultimately, it acceded to the Complainant’s offer but did so only after discovering a discrepancy in the balance of the Complainant’s mortgage account which is a tribute to a “legacy issue”. This was agreed on 15 August 2017. It had previously been rejected almost 2 months prior on 21 June 2017.

Although there was a delay on the Provider’s part, I am not satisfied that the Complainant has established any direct consequential financial loss. Firstly, these decisions are at the commercial discretion of the Provider and the Provider could have decided not to offer debt write-down. Secondly, it is clear that the Complainant did benefit from a debt write-down notwithstanding the fact that the value of the property exceeded the balance of the mortgages. The Complainant, until such time as the mortgage had been redeemed or settled, was still contractually obliged to continue the repayments due under the terms of the agreement. I’m not satisfied therefore that a loss of €17,100 has been suffered by the Complainant.

However, it is clear that the Provider acted unreasonably by reason of the inordinate delay in which it dealt with the Complainant’s offer. In that respect, I uphold this aspect of the complaint. Furthermore, if the Provider saw fit to accede to the Complainant’s offer on 15

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August 2017 for the reasons that it did, it was unreasonable for the Provider to reject that offer in June 2017. Accordingly, in recognition of the inordinate delay, I direct the Provider to make a payment to the Complainant in the amount of €3,000 for the inconvenience caused.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2)(f)**.

- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €3,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

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

15 July 2019

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.

