



<u>Decision Ref:</u>	2020-0033
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

This complaint concerns the Provider's administration of a mortgage loan account held by the Complainants.

The Complainants' Case

The Complainants had been customers of the Provider for several decades and the mortgage loan account pertaining to the complaint is that which ends in 4142.

The Complainants submit that the Provider agreed to provide them with a one year term mortgage loan account for the sum of €150,000 to build a new house. The Complainants' plan was to sell their existing house to clear this new mortgage balance within a year. The mortgage loan was drawn down on 9 February 2016 and was due to be paid off by 9 February 2017.

The Complainants state that they had borrowed a total of €207,694.83 with the Provider in respect of the mortgage loan account and two other loan accounts for which the Provider was holding collateral to the value of €1.5 million. The Complainants submit that collateral consisted of the following: the existing house which had a guide price value of €780,000, a partly finished adjoining house which the Complainants submit they had already invested approximately €350,000 and 1.5 acres adjoining their property.

The Complainants state that due to the withdrawal of a prospective purchaser of their existing house in November 2016, the Complainants requested an extension to the term of their mortgage loan on an interest only basis. The Complainants submit that the balance on the mortgage account at that time was €134,497.00.

The Complainants state that they approached the Provider in early December 2016 to advise that it was unlikely that they would be in a position to sell their existing property within the one year term. The Complainants submit that, as requested by the Provider, they sent a letter in January 2017 to request the extension to the mortgage loan account and they received notice from the Provider that they had been granted a temporary extension to the loan term until 9 April 2017, pending the processing of a new mortgage application.

The Complainants state that they received a letter dated 17 February 2017 which outlined the new terms of business to the mortgage loan and they received the mortgage loan application form on 28 February 2017, which they returned to the Provider on 1 March 2017.

The Complainants say that they received three missed telephone calls from the Provider on 22 March 2017. The Complainants submit that on 4 April 2017 the Provider telephoned them for a fourth time and during this call they were told they had been called in error.

The Complainants submit that on 22 March 2017 and 18 April 2017 they received letters from the Provider which advised them that their mortgage account ending in 4142 was in arrears. The Complainants state that this information was incorrect as their account had always been maintained and kept in credit.

The Complainants received an Irish Credit Bureau (ICB) report on 18 April 2017 which showed a credit rating of 50 as it was noted that up until 3 March 2017 the mortgage loan account ending in 4142 was showing as in arrears. The Complainants state that they were advised by the Provider on a telephone call on 26 April 2017 that the ICB report could not be amended to remove this rating until such time as the mortgage loan account "*reinstatement process was complete*" and the Provider informed them on this call that the process would be completed within three to four weeks.

The Complainants submit that the Provider's representative also acknowledged on this telephone call that it had made the four previous telephone calls to the Complainants in error pertaining to the account being in arrears.

The Complainants state that the erroneous telephone calls they received from the Provider were intimidating, unjust, and unwarranted and they felt harassed by the Provider for an error which was caused by the Provider and not by them.

The Complainants submit that they completed a Standard Financial Statement (SFS) and returned it to the Provider, along with a complaint letter to the Provider.

The Complainants state that the Provider wrote to them on 25 April 2017 requesting further information to the SFS form dated 18 April 2017 and they submitted this information without delay. The Complainants submit that they had been assured by the Provider's representative that the ICB credit report had been corrected on 25 April 2017.

The Complainants met with the Provider's representative on 2 May 2017 to discuss the ongoing issues they were having with the Provider and this meeting was followed by a letter sent by the Provider's representative dated 4 May 2017 which acknowledges that the Provider posted *"9 missed payments in February 2017 relating to a mortgage taken out in February 2016 [account ending 4142]"* and advised the Complainants that *"This has now been corrected... this error, should not have occurred as [the Complainants] have an exemplary credit record with [the Provider] over many years"*.

The Complainants submit that on 15 May 2017 they received a further letter from the Provider which incorrectly advised that that their mortgage loan account was once again showing arrears.

The Complainants state that on 29 May 2017 they received a Letter of Agreement from the Provider offering them a period of interest only payments which they returned to the Provider along with a direct debit mandate form.

The Complainants have submitted a letter dated 31 May 2017 in which the Provider confirmed that *"a term extension letter has been issued until June 2018"* and *"Your ICB record has been corrected"*.

The Complainants state that on 14 July 2017, the second Complainant received another phone call from the Provider, which they describe as *"unwarranted"*.

The Complaint for Adjudication

The complaint is that the Provider wrongfully contacted the Complainants in relation to alleged arrears on their account and dealt with the complaint pertaining to these calls in an unacceptable manner. The complaint is also that the Provider caused inaccurate information to be recorded on their ICB record.

The Complainants want the Provider to furnish them with adequate monetary compensation as a full and final resolution.

The Provider's Case

The Provider submits that the Complainants wrote to their relationship manager (RM) on 9 January 2017 following a meeting in December 2016 seeking a term extension on the interest only repayment period for the account.

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The Provider states that on 15 February 2017 the Complainants' loan term was extended by 2 months (to 18 April 2017). This extension was on a capital plus interest repayment basis although the Provider acknowledges that the Complainants were not made aware of this.

The Provider submits that on 18 April 2017 the First Complainant met with his RM, who explained that in order to have the loan term extended on an interest only basis the account would need to be assessed by the Provider's arrears support unit. An SFS dated 18 April 2017 was submitted to the arrears support unit on 24 April 2017. On 25 April 2017 correspondence issued to the Complainants seeking further supporting documentation for the SFS. The required information was received, a 12 month extension of interest only repayments was approved, and a Letter of Agreement issued to the Complainants on 19 May 2017. This agreement was signed by the Complainants on 30 May 2017, and correspondence confirming the new agreement issued to the Complainants on 7 June 2017.

The Provider submits that, in line with its normal procedures, when the loan had not been cleared at the end of original term, the term was extended by two months on a capital plus interest basis. Due to the fact that the original direct debit mandate had expired, when payment (of €67,792.06) was "due", it was not made and the account went into arrears. Accordingly, an arrears letter issued.

The Provider submits that a further arrears letter issued on 18 April 2017, on a similar basis (that is the capital plus interest payment "due" was not made). The Provider submits that a further arrears letter issued on 15 May 2017 as "the term of the loan had expired".

After the Letter of Agreement was signed and the extension of interest only repayments was implemented (31 May 2017), the Provider states that due to an error on its part, the Complainants' direct debit was not activated which resulted in the repayment for July 2017 not being processed. Furthermore, due to the direct debit mandate not being reviewed by the Provider, the Complainants were informed on 14 July 2017 that the form required both Complainants' signatures.

The Provider states that its home mortgages department could only extend the term of the loan by two months, and a longer extension required a new mortgage application to be submitted. The Complainants' application for an extension of their loan term and interest only repayments was declined by the home mortgages department and referred to the arrears support unit, who ultimately sanctioned it.

The Provider submits that the Complainants' account was initially reported to the ICB as being in arrears because the term expired on 9 February 2017 and was not extended until 15 February 2017, thus placing it "technically" in arrears for the period from 9 February 2017 to 15 February 2017.

The Provider has stated that no surcharges/charges were applied to the account by reason of it being recorded as being in arrears.

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The Provider states that the Complainants' ICB record was corrected on 25 April 2017 to show no arrears.

The Provider has acknowledged customer service failures on its part in the manner that the Complainants' case was dealt with. It has apologised for making them feel threatened or bullied and for any stress that they suffered as a result. It acknowledges that the Complainants took all reasonable steps to ensure that an agreement was reached with the Provider in relation to the repayment of this mortgage.

The Provider also acknowledges that the telephone calls could have been handled by it in a better manner.

The Provider has apologised to the Complainants for these failures and offered the sum of €6,500 as a goodwill gesture.

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 9 January 2020, 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.

Following the issue of my Preliminary Decision, the Complainants made a further submission to this Office under cover of their letter dated 14 January 2020, a copy of which was transmitted to the Provider for its consideration.

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The Provider, in its e-mail to this Office dated 22 January 2020, advised that it did not have any further submission to make.

Having considered the Complainants' additional submission and all of the submissions and evidence furnished to this Office, I set out below my final determination.

The Complainants took out a mortgage loan with the Provider on February 2016. The term of the loan was one year, as the Complainants were planning on selling the property to pay the loan off.

When they realised they were not in a position to repay this loan within the one year term, the Complainants were proactive in seeking to extend the period of this loan. Having met with the Provider in December 2016 they wrote to it in January 2017.

The Provider states that it would be its normal procedure to extend the term by two months (albeit on a capital plus interest basis). It appears this "extension" was not implemented until 15 February 2017, when the loan term had expired on 9 February 2017. Furthermore, the Complainants were not told that this extension was on a capital plus interest basis.

In my Preliminary Decision, I stated that "technical" arrears arose on the account and that the Complainants had no knowledge of this.

The Complainants, in their post Preliminary Decision submission dated 14 January 2020, object to the term "technical" arrears which they state translates into gross incompetence on the part of the Provider staff who were dealing with this at all levels. They go on to state *"we regard this attempt to excuse the inexcusable. It was not acceptable to us to use this excuse to treat us in the way we were treated by [the Provider]. At all times we were led to believe by senior [Provider management] that we were not in arrears. In the circumstances the apologies given to us are meaningless"*.

Once arrears accrue on an account, a bank is required to notify the customer. The telephone calls and the letters that issued on foot of this period of "arrears" were a result of the initial failure of the Provider to (a) implement the two month extension from 9 February 2017 and (b) to inform the Complainants this was happening.

I can understand why the Complainants were shocked to receive arrears warnings. However, I accept there was no malice intended, and these communications were on foot of the Provider's regulatory requirements to inform a customer of arrears. It is regrettable that these communications were sent to the Complainants, but I am not satisfied they constitute harassment.

The arrears warning letters from February to May 2017 arose due to the fact that the direct debit instruction for the Complainants' account had expired, and during those months an extension had not been agreed and a new direct debit mandate had not been put in place.

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The situation regarding the arrears resulted in the Complainants' ICB record being affected, with 9 missed payments being recorded for the account. Again I can understand the Complainants being shocked at this, particularly in circumstances where they had previously enjoyed an exemplary credit record and are long standing customers of the Provider.

The error was resolved promptly by the Provider once it came to light. On 25 April 2017 the ICB record was amended to reflect no arrears on the account.

In their post Preliminary Decision submission dated 14 January 2020, the Complainants state *"with regard to the defamatory ICB posting against our names, the report [Preliminary Decision] does not point out that we, due to our extensive business and financial experience, had the foresight to check the Credit Bureau. As a result of this, we discovered the posting and asked for it to be removed. At no time did [the Provider] advise us that they had made this adverse posting against our exemplary credit rating. If we had not checked, it is quite possible, given the level of incompetence displayed by [Provider staff] that this posting could still be in place, continuing to adversely affect our credit rating"*.

During May 2017 the Complainants and the Provider were finalising an agreement for an extension of the term loan on an interest only basis. On 15 May 2017, another arrears letter issued for the reasons set out above.

I note in this regard that the Complainants state in their post Preliminary Decision submission of 14 January 2020 *"we never said that we would have difficulty in repaying the loan. We asked for an extension to the loan whilst we organised the sale of the house. We could and would have arranged for alternative ways to deal with this loan at the time if we had been told [the Provider] were going to treat us in this disgraceful manner"*.

An agreement for an extension of the term loan with interest only repayments was finalised on 31 May 2017. A direct debit mandate (DDM) form was signed by one (but not both) of the Complainants to implement the repayments on foot of this agreement.

The DDM has to be signed by both parties. However, due to its own failure in correctly actioning the form when received, the Provider did not tell the Complainants that they both needed to sign the form until 14 July 2017, by which time a repayment had been missed. This missed repayment caused the account to, again, go into arrears. I am satisfied that, once again, this arrears was not caused by the Complainants, but rather by the Provider's own maladministration.

In the event, the situation was regularised promptly, a lodgement was made to the account in July, the direct debit was implemented, and no adverse information was furnished to the ICB.

Ultimately, the loan balance was cleared in August 2018.

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Conclusion

The Complainants suffered inconvenience and distress by reason of the Provider's failures, which caused their account to go into what has been described as "technical" arrears in February 2017. This was compounded by the Provider's failure to correctly action a direct debit mandate in July 2017.

The Provider, for its part, is obliged to notify a customer when they go into arrears. While the telephone calls and letters may not be welcome by a customer, I am not satisfied that they constitute threatening or intimidating behaviour.

In this complaint, the "arrears" issue and the ICB issue was remedied by the end of July 2017.

I stated in my Preliminary Decision that *"the reason that this complaint fell to be decided by this Office was due to a dispute over the appropriate level of compensation recoverable by the Complainants from the Provider"*.

In its response to this Office dated 5 June 2019, the Provider offered €6,500 as a gesture of goodwill. I believe this level of compensation to be reasonable in the circumstances.

The Complainants, in their post Preliminary Decision submission dated 14 January 2020, state *"your Preliminary Decision misinterprets and thereby minimises the level of stress and harassment that we were subjected to by [the Provider] It should be put in your report that we were told that the house could be taken from us if we did not clear the loan in seven days. It should also be noted, that we, two very experienced accountants, were told, in a manner we would describe as being both insulting and derogatory, that we should go and seek financial advice"*.

The Complainants have taken issue with my statement that *"the reason this complaint fell to be decided by this Office was due to the dispute over the appropriate level of compensation"*. They state *"this is incorrect, our primary reason for making the complaint was the disgraceful treatment we suffered at the hands of [the Provider]. We wanted to have the way they treated us put on an official record with an admission that they deliberately treated us in this way, in the main, as part of their normal policy at that time. As regards the monetary compensation, we would have thought that the way we were treated and the way in which our financial integrity was compromised deserves a larger compensation than that offered and adjudicated"*.

On the basis that the offer of €6,500 was received prior to the matter proceeding for adjudication by this Office, and in all the circumstances, I consider it a reasonable one, I do not uphold this complaint.

My Decision is that this complaint is rejected, pursuant to **Section 60(1) (d)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

4 February 2020

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.