



<u>Decision Ref:</u>	2019-0061
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Level of contact or communications re. Arrears Dissatisfaction with customer service Failure to process instructions
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the administration of the Complainant's mortgage account, and in particular the application of a payment made by the Complainant.

The Complainant's Case

The Complainant holds a mortgage loan with the Provider and he transfers the required payment each month. He says that his monthly mortgage payments are due on the 28th day of each month but as 28 January 2018 fell on a Sunday, the relevant mortgage payment was made by him manually on 29 January 2018. Despite the payment, the Complainant says that he received a letter from a credit servicing firm on behalf of the Provider dated 3 February 2018 suggesting that he had failed to make the January mortgage payment.

He states that when he called the credit servicing firm he was met with no consideration or benefit of the doubt and that the agent in question spoke contemptibly to him. He called back later the same day and was told that a query has been raised with the finance department. The following day, the Complainant made another call to the credit servicing firm and was advised that the payment had been found and there had been a human error as it had been received but not allocated to the Complainant's account. New account details were furnished to the Complainant.

A complaint was raised by the Complainant about the payment issue and also about the attitude of the agent on the first telephone call.

The Complainant is not satisfied with the Provider's response to his complaint and states that he is seeking substantial compensation for the false accusation that he failed to pay the mortgage payment on its due date and he wants the person responsible for causing the issue to be dismissed. He says that the issue has caused him anxiety, distress, frustration and has been a waste of his time. He suggests that this is not the first time that he has had an issue with payments not being received.

The Provider's Case

In its letter in reply dated 20 February 2018, the Provider accepted that the Complainant's January payment had been received on 30 January 2018, the day after payment was made, but this had not been allocated to the Complainant's account until 7 February 2018, due to an administrative oversight.

It states that the letter dated 3 February 2018 was issued pursuant to the Code of Conduct on Mortgage Arrears 2013 ("the CCMA") as the account then showed that the January 2018 mortgage payment had not been received.

The Provider states that it has reviewed the relevant calls made by the Complainant to the credit serving firm and found that its agent discussed the account in an informative manner in an attempt to assist, and not so as to upset the Complainant in any way.

An apology was made in relation to the administrative oversight in processing the mortgage payment and the sum of €50.00 was offered in compensation.

The Provider acknowledges that previous complaints have been raised but it is satisfied that these have been addressed in the final response letter issued to the Complainant at the time of those previous complaints.

The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration, leading to an incorrect arrears notice issuing to the Complainant, causing him considerable upset before the issue was rectified.

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 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 6 February 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The Complainant's mortgage repayments are due on the 28th of each month. He makes these payments manually. The 28th of January 2018 fell on a Sunday, so the Plaintiff made a payment by wire transfer on the first business day thereafter - the 29th of January 2018.

The Provider allows 3 days of grace after a due date for the payment to be received. The Complainant's payment was not applied to his account however until the 7th of February 2018. Because the payment was not noted as received by the 1st, and as a result of the regulatory obligations by which the Provider is bound, an arrears notification letter automatically issued to the Complainant on the 3rd of February 2018.

The delay in payment being applied between the 30th of January 2018 when it was received, and the 7th of February 2018, was due to an administrative error on the part of the Provider. There is no suggestion whatsoever that this was in any way the fault of the Complainant.

The Complainant promptly contacted the Provider by telephone on receipt of the arrears notification letter on Tuesday 6th of February 2018, 8 days after he had transferred the funds.

The first conversation on the 6th of February 2018 was tense. The initial reaction of the Provider's agent was that the arrears letter had been correctly issued as payment still had not been received. This caused the Complainant to become quite annoyed as he (rightfully) believed that the error was not on his part, and he made it clear that he wanted the person responsible to be "*taken down*".

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I can fully understand why the Complainant would have been taken aback by the suggestion that his payment hadn't been received. Once the Complainant explained that he had made a payment on the 29th of January 2018, the focus of the conversation from the Provider's agent soon moved to getting to the root of the problem and finding out what had happened and why. The Complainant however, remained very unhappy that the Provider's starting position was that the fault lay with him, notwithstanding what he subsequently referred to as his "*impeccable*" account management. It is unfortunate that the call took on the tone which it did, with the Complainant indicating that it was his intention to "*make hell for whatever you're after doing*".

When the call ended the Provider's agent was to make enquiries to locate the missing payment, and find out what had gone wrong. The log furnished to this office by the Provider shows that an email was immediately sent (at 3pm) by the telephone agent, to the finance department to make inquiries.

Just under two hours later the Provider unsuccessfully attempted to contact the Complainant on his mobile phone. The Complainant called the Provider back about 40 minutes later, at 5:37pm – some two and a half hours after the initial call. The agent he had been dealing with had left the office at that point. This call was a good natured exchange, and the issue was largely rehashed between the Complainant and another agent, but in a more pleasant fashion and indeed it was at this point that it came to light that the Complainant's transfer to the recipient account he had been transferring funds to for a number of years, was in fact a transfer to a "*old*" account. The staff member agreed to send him details of the new account, so as to prevent a similar problem arising again.

The following day, on the 7th of February 2018, at 10:12am the Provider unsuccessfully attempted to contact the Complainant to inform him the payment had now been applied to his account. At 3:20pm the Complainant called the Provider back, and was informed of this by the agent who had spoken to him on the first call the previous day. The Complainant reiterated his dissatisfaction and again demanded that the person responsible be dismissed, and also his dissatisfaction with the Provider's agent herself. An apology was made by the agent, but this was not accepted by the Complainant as he felt it should have been proffered sooner. An official complaint was logged.

The Provider issued a final response letter on the 20th of February 2018.

Analysis

I can sympathise with the Complainant's initial dissatisfaction with the response from the Provider's agent on 6 February 2018, when she initially told him that the letter had issued correctly.

However, once the agent's focus shifted to trying to resolve the issue, I am not satisfied that the difficulties during the rest of the call can be attributed to the conduct of the Provider's agent only. It is important to remember that the staff of the Provider who deal with telephone calls are also human beings, and are entitled to be spoken to with a certain level

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of civility no matter what the underlying issues are. In this instance however, there appears to have been something of a clash of personalities.

The suggestion by the Complainant that his reputation was tarnished, is not accepted, in circumstances where the offending letter was addressed to him only and the underlying issue was discovered and remedied within 24 hours of receipt of the letter.

The Complainant's credit rating was not affected and the interest applied as a result of the delayed payment was refunded promptly by the Provider.

The Complainant consistently demanded that the person responsible for the error in applying his payment, be fired. In my opinion, this would be a disproportionate response, and in any event would not constitute redress of a nature which can be directed by this office.

The Complainant received an arrears letter in error on the 6th of February 2018, which must of course have been an unpleasant surprise for him. The issue was resolved however, when his payment was applied to his account, the following day.

The Complainant's annoyance arose largely because of, as he put it himself, the Provider's automatic assumption that it was he who was at fault, and it assumed that it could not be the Provider's own error. As the Complainant said to one representative of the Provider *"the way you put stuff is not a big deal per se, but gets people's backs up"*.

The inconvenience caused to the Complainant lasted for just under one day. Any inconvenience, stress or upset that the Complainant may have suffered after the issue was resolved, and after the payment was applied to his account, and the position had been explained to him, was not caused by the conduct of the Provider.

In examining this complaint however, I note that the Provider responded to the effect that:-

"I can confirm that the Complainant's payment of €643.59 was received into our bank account on 29 January 2018, however when the relevant personnel in our Finance Department proceeded to allocate funds received into our bank account to the designated borrowers accounts, the Complainant's account was omitted and as such the Complainant's account fell into arrears on 31 January 2018".

Whilst there was also reference in the audio evidence to a "new" account and an "old" account, since the Preliminary Decision issued, the Provider has clarified that the "old" account into which the Complainant lodged his funds in January 2018, was still an active bank account at the relevant time and, consequently, this aspect of the matter did not give rise to the delay encountered. Rather, the Provider has reiterated that as documented in a contemporaneous email in early 2018 *"it just looks like this was left out of the upload due to human error"*; this was the sole cause of the delay.

It is clear to me from the evidence available that the Complainant is a meticulous person who prides himself on keeping his affairs in order. It is also clear from the Provider's

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submission that nothing the Complainant did contributed to the error which occurred. Given the Complainant's very precise approach to the management of his affairs, I am satisfied that the arrears letter issued to him in error on 6 February 2018, was most unwelcome, though happily the issue was resolved by the following day.

I am not satisfied however, that the Provider's offer of compensation in the sum of €50 is an appropriate figure to redress the issues which arose. Since the Preliminary Decision in this matter was issued, the Complainant has suggested that the Provider is "*getting away lightly with this, because if I defaulted, the property would be up for repossession, that's a lot more for what they have to fork out to me for accusing me of failing to pay, which has been found to be incorrect on their side. I would have expected a lot lot more, that ensures that [the Provider] are severely penalised for this issue*".

In the circumstances outlined, I am satisfied that this complaint should be partially upheld and whilst the Complainant believes that he should receive "*a lot lot more*" I consider it appropriate to mark that finding by directing the Provider to make a compensatory payment to the Complainant in the sum of €350, to an account of the Complainant's choosing within a period of 35 days of the Complainant's nomination of account details to the Provider.

The Complainant has referred to other issues that he had with the service of the Provider over the years. However, this Decision concerns only the complaint which was made to this office regarding the delay in applying the 29th of January 2018 payment to the Complainant's account, and the Provider's response thereto.

Conclusion

My Decision is that this complaint is partially upheld pursuant to **Section 60(1)** 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

22 March 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.

