An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0190
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Dissatisfaction with customer service Delayed or inadequate communication
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant holds a mortgage account with the Provider. The account fell into arrears and the Complainant applied for an alternative repayment arrangement (ARA). Without notification to the Complainant, the Provider requested that a valuer undertake a valuation of the mortgaged property for the purposes of the financial review, for the ARA. The valuer contacted a former employer, and then a current employer of the Complainant, in seeking to contact the Complainant to arrange a suitable date for the valuation. The Complainant is aggrieved that he did not receive prior notification from the Provider of its intention to seek a valuation of the property and he is further aggrieved that the valuer contacted him on two numbers that he states that he did not provide to the Provider, rather than on his mobile phone details of which the Provider had on file. The Complainant further says that details of his personal data were disclosed on these phone calls which has caused him upset, embarrassment and difficulties at work.

The Provider acknowledges that it did not notify the Complainant in advance of his being contacted by the valuer and it has apologised for this. It further acknowledges that the phone number used by the valuer was not an up-to-date number, though it states that the Complainant provided this number to it, and it was therefore given to the valuer on the basis that it was one of the contact numbers that the Complainant had himself provided to it.

The Complainant's Case

The Complainant states that the Provider engaged an external valuer to undertake a valuation of his home with no prior notification to him, or no contact with him. He states that the valuer initiated contact with his present employer without giving any prior notification to him and disclosed personal information.
The Complainant states that the valuer also contacted his previous employer in a similar manner and also disclosed personal details. He argues that the actions of the Provider through its agent were highly damaging to him personally and in a work capacity. Due to what the Complainant alleges was the negligence of the Provider and its agent, he believes that this has affected his daily duties in his employment in that his personal businesses is now a topic of conversation at his workplace and has become public knowledge in his hometown, and is highly detrimental to him.

The Complainant states that he brought this complaint verbally to the notice of an official of the Provider and received a final response letter dated 14 October 2015, which was unsatisfactory to him. He suggests that the Provider acted illegally and "*in blatant arrogance to a mortgage holder disregarding normal business procedures in practice*." He is seeking to be financially reimbursed and compensated for the damage to his character which he states cannot be reversed and which has affected his daily duties at work.

The Provider's Case

In its final response to the complaint dated 14 October 2015, the Provider acknowledged that the correct correspondence was not issued to the Complainant prior to the Provider requesting a valuation to be carried out on the Complainant's property. It explained that the valuation was required to consider all options for ARAs, as part of the assessment of the Complainant's financial circumstances. The Provider apologised for the correspondence not being issued to the Complainant prior to the valuer attempting to make contact with him.

In relation to contact number provided to the valuer, the Provider acknowledged that this was not an up-to-date number and rather was an old number which the Provider had on file for the Complainant, but which has since been removed from the system following the Provider becoming aware of the incident. It states that it "*would be confident*" that the Complainant's account was not discussed in detail with any third party, but cannot confirm the position as the calls were not recorded. It notes that the matter has been reported to the Provider's data protection unit.

The Provider states that the Complainant applied for a home loan in 2006 and his account first went into arrears in February 2010. The Provider states that it received a completed Standard Financial Statement (SFS) dated **25 August 2015** from the Complainant along with supporting documentation and a cover letter dated 24 August 2015 outlining how the Complainant's circumstances had changed since the last assessment. The Provider acknowledged receipt of the SFS and supporting documentation to the Complainant.

On **4 September 2015**, the Provider's assigned case manager within the Arrears Support Unit (ASU) commenced an assessment of the Complainant's circumstances based on the financial information received from the Complainant. The Provider states that the case

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manager in question identified a requirement for a full valuation to be completed on the Complainant's property and proceeded to order same. The Provider accepts that the case manager did not telephone the Complainant to request permission for a valuation to be carried out, which should have been done in line with the Provider's procedures.

The case manager was then out of the office for a number of days, while the request was being actioned and the error was not identified at that time.

On **8 September 2015**, the Provider's assigned valuer telephoned the Complainant on the telephone number made available to him by the Provider, which was one of the telephone numbers held on the Provider's records. It states that the valuer attempted to make contact with the Complainant on the number provided which transpired to be a number which belonged to the Complainant's previous employer. The valuer spoke to a receptionist who advised that it was the Complainant's previous employer and the receptionist provided the valuer with contact details for the Complainant's new place of employment. The valuer then telephoned this new number and requested to speak to the Complainant. The Provider states the valuer was told that the Complainant was unavailable so the valuer left a message requesting a call back from the Complainant.

On the same day, the Complainant telephoned the Provider's ASU seeking to establish who had authorised the valuation and why the valuer had contacted his employer. Although the Complainant claimed on this call and on later calls that he had never provided the phone number in question (i.e. the phone number of his former employer) a manager of the Provider explained to him that the phone number had been submitted by the Complainant, as his home telephone number on his original home application in 2006. The Complainant was advised that the matter would be investigated further.

The Complainant states that he should have received a letter prior to the valuation, to notify him of the Provider's intention to complete a valuation. The Provider states that it was not required to issue correspondence to the Complainant prior to a valuation being completed, but it does acknowledge that the Complainant should have been contacted to advise him of its requirement for a valuation to be carried out. The Provider states that it apologised to the Complainant for this, during a telephone conversation on **14 September 2015** and it further apologises for any confusion this may have caused. It states that a complaint was lodged following the conversation with the Complainant on 8 September 2015 and an acknowledgement letter was issued to him on 11 September 2015.

Following a complaint by the Complainant on **1 October 2015** that he had not received any confirmation that this complaint had been logged, a member of the Provider's complaints team telephoned the Complainant and advised him that an acknowledgement letter had been sent on the 11 September 2015. At the Complainant advised he had not received a letter, he was told that the Provider would reissue a letter. The final response letter was issued on **14 October 2015**.

The Provider acknowledges that in this instance it did not adhere to its policies and procedures in relation to how valuations are normally completed. It states that it apologised and tried to come to a long-term solution in relation to the issue. It states that it employs

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the use of independent valuers for the purpose of completing valuations of customer properties, in order to avoid any potential conflict of interest. It states that valuers are given limited information regarding the customer – account number, folio ID, name, address and contact telephone number.

The Provider states that the valuer is not told the reason for the valuation and the Provider points out that the requirement for a valuation to be carried out, does not necessarily mean that the customer is in financial difficulty. It states that there are numerous reasons why a valuation may be required, such as a change in interest rates, a requirement as part of the new mortgage sanction, or a top up of a mortgage.

The Provider states that valuers are required to sign a confidentiality agreement regarding any borrower information coming to their knowledge during or post a valuation. The Provider accepts that usually when it has identified that a valuation is required, a case manager will telephone the customer to request permission for the valuation and to explain the process involved. If permission is given, the case manager then contacts the valuation team and gives them the customer's contact details, folio ID, address and name. After this, the valuation team will contact an independent valuer with this information, and the valuer will call the customer to organise access to the property for a valuation.

In respect of the Complainant, the Provider states that it gave the valuer what was believed to be (at the time) one of the contact telephone numbers for the Complainant as set out in his home loan application form of 2006, to allow the valuer to contact the Complainant to arrange a valuation of this property. The Provider states that the Complainant listed two telephone numbers in his original home loan application in 2006 – the number which was used and a mobile phone number. The Provider was unaware that the number used pertained to the Complainant's place of employment at the time the application was submitted. It was simply one of the contact numbers that was given by the Complainant in 2006 and which were available to be used by it, in the absence of an instruction from the Complainant to the contrary.

The Provider states that in August 2009, the Complainant submitted an income and expenditure form in which he did not apply any new telephone contact information so no change was made to his account on the Provider's records. It accepts that the employment and income details were updated by the Complainant with the name of the new employer but there was no request received with this form, to change the Complainant's telephone contact details or to remove the previous number provided. The number was therefore still active on the Provider's systems.

The Provider argues that it is satisfied that it has acted in accordance with normal business procedures and practice in the handling of the Complainant's case, apart from not advising Complainant in advance, of the need for a valuation to be carried out. It states that the information used by the valuer to attempt to contact the Complainant was information that had been provided by the Complainant himself in his loan application. The Complainant did not request or advise the Provider not to use this contact telephone number. The Provider

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argues that it was acting in the best interests of the Complainant by trying to engage with him in relation to the arrears and come up with a long-term solution.

The Provider states that in subsequent conversations with the Provider's assigned case manager, the Complainant did not consent to a full valuation of his property to be carried out. To avoid further delays, the Provider agreed to progress with the assessment in the absence of a full valuation, and instead completed a drive-by valuation of the property, following which a new ARA was offered to the Complainant.

In recognition of the failure of the Provider to advise the Complainant in advance of the need for a valuation to be carried out as part of its assessment, and for any confusion or upset caused to the Complainant, the Provider formally offered the Complainant a goodwill gesture of €2,500.

The Provider has also offered a letter from the valuer in question. The valuer noted that he was not informed that the contact number provided to him was a place of work and that usually a home number or mobile number is provided in valuation cases. He states that he cannot recall the exact conversation he had, but that there is a good chance that he assumed that he was calling a home number and not a work number. He states that he has subsequently called the same number and the call was answered by a person who made no mention of the fact that the number was a business. He states that it is likely he asked to speak to the Complainant in respect of a valuation, but he is certain he would not have gone into any further detail and cannot understand how this would have compromised the Complainant in any way. The valuer also refers to an email he wrote to the Provider on 8 September 2015 following a call that the valuer received from the Complainant where he stated "*Not a happy man – knew nothing of the Valuation going to talk to [the Provider]*." The valuer notes that the Complainant did not state in this call that he was unhappy with the call, nor did he say that the valuer disclosed any information to his place of work.

The Complaint for Adjudication

The complaint concerns alleged maladministration and poor customer service regarding the Complainant's mortgage account, in particular in relation to attempts to make telephone contact with the Complainant, without prior notification to him.

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.

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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 8 July 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.

In the absence of additional submissions from the parties, regarding the merits of the complaint, within the period permitted, the final determination of this office is set out below.

It is important to clarify at the outset that, insofar as the matters under investigation touch upon potential breaches of data protection legislation, these are not matters which this Office can investigate and instead are matters to be brought to the attention of the Data Protection Commission. The Complainant has been advised to pursue a complaint to the Data Protection Commission if he wishes to progress this aspect of his complaint. This Decision will therefore deal only with the other issues raised in the complaint, and will not investigate any suggestion that personal data that was sensitive to the Complainant, was disclosed by the Provider to third parties or any potential consequences of such suggested disclosure.

I have been furnished with a copy of the Complainant's loan application form from 2006. On the front page of this, the Complainant has filled out two telephone numbers – one under home and one under mobile. The phone number given by the Complainant under home telephone number, is the same number that was given by the Provider to the valuer in September 2015, and is the number that the valuer initially called, in trying to contact the Complainant. This is the number of the Complainant's former employer but it was not identified as such by the Complainant in his loan application form, in 2006.

Insofar as the Complainant has suggested that he did not provide the number of his former employer to the Provider, and did not recall doing so, I am satisfied that the Complainant did in fact provide the phone number of his former employer to the Provider in **2006** on the loan application form, by way of one of two contact numbers, and specifically as a home phone number.

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In an income and expenditure statement sent to the Provider in **2009**, and in response to a request for "*phone numbers*", the Complainant inserted his mobile phone number only. The Provider has drawn attention to the fact that this form, did not contain a correction of the initial landline number provided. I am of the view, however, that the fact that only the mobile number was repeated by the Complainant at that time, and that the updated form did not repeat the initial landline number, is notable in the circumstances of the present complaint.

More glaring in my opinion, is the SFS completed by the Complainant in August 2015. In this SFS, the following appears:

	Please indicate and give details of preferred contact method	**Tick**	**Details**
A8	Home telephone		
A9	Mobile	√	*** *****58
A10	Work Telephone		
A11	E-mail		

A decision was made by the Provider's case manager that the valuation of the property in question was required on the basis of the financial assessment being carried out, on foot of this SFS. In the SFS, the Complainant indicated his clear and only preference for contact – contact by his mobile phone and not by work or telephone number or by email.

It is difficult to understand why the Provider then opted to use a telephone number that it had held for the Complainant from the 2006 loan application and not the mobile phone number that the Provider was given in 2015, specifically for the purpose of the financial assessment. It appears that the Provider had been customarily using the mobile phone number (and only the mobile phone number) to contact the Complainant in relation to his arrears. I accept that the old work number was given by the Complainant himself and was therefore on the Provider's records. On two subsequent occasions in relation to arrears support, however, the Complainant had indicated the preferred use of his mobile phone, for contact by the Provider. In my opinion, this should have been reflected in the Complainant's record with the Provider. When the case manager was dealing with the relevant assessment, it is apparent that he or she simply ignored Complainant's instruction in his SFS that his preferred contact method was by his mobile phone. The reason why this happened has not been adequately explained by the Provider.

Further, the Provider has failed to give any explanation for the fact that the valuer contacted the Complainant on his current work number which is a number he had not given to the Provider. It appears that this number was given to the valuer by the receptionist of the Complainant's previous employer but certainly was not identified by the Complainant himself as an appropriate method of contact.

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I note from an email sent by the Provider to the valuer, that the Provider did not pass on the mobile number that it had on record for the Complainant. The only number given to the valuer was the old work number which the valuer was then informed was no longer up-to-date when he called it. To my mind it would have been appropriate at that juncture, for the valuer to have reverted to the Provider in relation to contact information for the customer, rather than ringing a suggested current work number that the Complainant had not provided, and then leaving a message with a third party. In my opinion, the Provider has a case to answer to the Complainant, in that respect.

The third aspect of this matter is the fact that the Provider did not contact the Complainant to seek his permission to arrange a valuation of his property. I acknowledge that the case manager responsible for this oversight, contacted the Complainant by telephone within a week of the initial complaint to apologise for the omission. I further acknowledge that the Provider has reiterated its apology to the Complainant for the fact that he was not notified in advance. Be that as it may, there was no notification to the Complainant nor was his permission sought before his details were passed to a valuer for the purposes of arranging a valuation of his home. This is not satisfactory. Though one can appreciate that a valuation of the secured property will be appropriate in certain circumstances where a financial assessment is being conducted in order to determine the most appropriate ARA where a borrower is in mortgage arrears, a regulated entity cannot simply forge ahead, and take any action that it wishes, without the borrower's approval.

As appears to be the case with the Provider's own normal policy and procedure, a regulated entity should contact a borrower and explain to him or her that a valuation of the secured property is required and why that is so. The entity should also seek the permission of the borrower before engaging a valuer.

It would also be appropriate, to my mind, for a regulated provider to confirm with the borrower at that juncture, by what method the third party valuer ought to make contact with him or her, or at what time of day. Although I appreciate the rationale behind seeking valuations from third-party valuers, appropriate respect must be given to the position of a borrower such as the Complainant on the receiving end of contact from an unknown third party. Even if there had not been confusion in relation to the appropriate contact number as described above, I still do not believe that it would have been appropriate for the Complainant to have received a call out of the blue from a valuer in relation to organising a valuation, if he had not been notified in advance of, and agreed to, the Provider's requirement in relation to a valuation, for the purposes of an ARA.

There are a number of provisions of the Consumer Protection Code (CPC) that I consider to be relevant to these events. In this regard, provision 2.10 CPC obliges the Provider to ensure that any outsourced activity complies with the requirements of the CPC, so the actions of the valuer in this instance can be treated as actions of the Provider.

The Provider is obliged under provision 2.2 CPC to act with "*due skill, care and diligence in the best interests of its customers*". I do not believe that the Provider has met its obligations under provision 2.2 in a number of respects:

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(a) the failure of the Provider to notify the Complainant and seek his permission in advance of engaging a valuer and passing on the Complainant's contact details to the third party valuer;

(b) the failure of the Provider to give the Complainant's mobile phone number to the valuer, which he had indicated was his preferred method of contact in 2009 and in 2015 in relation to the ARA; and

(c) the failure of the Provider to ensure that the valuer at the outsourced entity, was aware that it was not appropriate to contact a customer on a number he had not provided, ie the number of his current employer.

The Provider is obliged under provision 2.8 CPC to corrects errors and handle complaints speedily, efficiently and fairly. I note that the Provider failed to respond to part of the Complainant's complaint in its final response letter of 14 October 2015, to wit, that the valuer appointed by it attempted to contact the Complainant at his current work, on a number he had not given to the Provider. This point was made by the Complainant on several occasions on telephone calls with representatives of the Provider but no response was made to him regarding this aspect of the matter. I am of the view that the Provider has failed to comply with provision 2.8 in this regard.

Under provision 3.3 CPC, a regulated entity "*must ensure that all instructions from or on behalf of a consumer are processed properly and promptly*." In this case, the Provider was instructed by the Complainant through his SFS that he wished to be contacted on his mobile phone and not on any other number or by email. This instruction was not processed by the Provider which forwarded only the alternative number, to the third party valuer in September 2015. I find that the Provider was in breach of provision 3.3 in this regard.

Further, I note that under provision 3.40, a "*regulated entity may make telephone contact with a consumer who is an existing customer, only if:*

a) the regulated entity has, within the previous twelve months, provided that consumer with a product or service similar to the purpose of the telephone contact;

b) the consumer holds a product, which requires the regulated entity to maintain contact with the consumer in relation to that product, and the contact is in relation to that product;

c) the purpose of the telephone contact is limited to offering protection policies only; or

d) the consumer has given his or her consent to being contacted in this way by the regulated entity."

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As it is clear that the permission from the Complainant in relation to telephone contact applied only to contact on his mobile phone as per his SFS, I consider that provision 3.40 has also been breached in this case.

In light of the above, I am of the view that it is appropriate to uphold this complaint. Data protection issues are not a matter for this office, though I note that the Complainant has relied heavily on allegations in respect of the unauthorised release of his personal information by the valuer in relation to the damage he has suffered.

As the FSPO cannot investigate whether or not personal data in relation to the Complainant was disclosed, I do not believe that it is appropriate therefore to take account of the upset caused to the Complainant arising from this allegation. It is appropriate only to consider the effect of the breaches of CPC set out above, noting that all borrowers in mortgage arrears, have an expectation of privacy and the Provider owes a general duty of confidentiality.

The Provider in this case has made an offer to the complainant of €2,500 in recognition of the fact that it failed to contact him in advance of contacting the valuer. Bearing in mind this failing and further omissions that I have identified in respect of the Provider's failures in communications, I do not believe that this offer is an adequate one. I therefore consider it appropriate to direct that the Provider instead make a compensatory payment of €4,000 to the Complainant, within the period outlined below.

Missing Correspondence

Though it does not form part of the complaint to this Office, I note that in the course of telephone calls to the Provider, the Complainant expressed concern in relation to correspondence from the Provider not reaching him and correspondence from him not reaching the Provider. The first example is an SFS which the Complainant states that he completed and forwarded prior to August 2015 and which he was advised by the Provider, it had not received. The second is a letter acknowledging receipt of the Complainant's initial complaint which the Provider states was issued to him on 11 September 2015 but which was not received by the Complainant. The Complainant in fact rang the Provider on 1 October 2015 when he had not received any acknowledgement from it of his complaint and was advised at that point, that a letter had been sent and would be re-issued in light of the fact that it was not received.

Whilst I make no direction to the Provider in relation to this aspect, nevertheless, this appears to be a matter which the Provider would be well advised to investigate further. There appears to have been some breakdown in relation to correspondence between the customer and the Provider. In this regard, I would remind the Provider of its obligations under provision 10.12 of the CPC, :

> "10.*12 A regulated entity must undertake an appropriate analysis of the patterns of complaints from consumers on a regular basis including investigating whether complaints indicate an isolated issue or a more widespread issue for consumers. This analysis of consumer complaints must be escalated to the regulated entity's compliance/risk function and senior management*."

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It may also be appropriate for the Provider to consider sending letters by email as well as post, for example, if its customers are concerned that postal correspondence is not being received by them.

Conclusion

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

- 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 €4,000 to an account of his 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 Provider is also required to comply with ***Section 60(8)(b)*** 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

30 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.