



<u>Decision Ref:</u>	2019-0199
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Delayed or inadequate communication Maladministration (mortgage)
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants hold a mortgage account with the Provider. In **March 2015**, the second Complainant contacted the Provider to indicate that she was no longer in position to meet repayments on the mortgage. The first Complainant made a proposal to the Provider in **May 2015** for the early redemption of the mortgage account which would involve a write-down of the sum owed. The Complainants are concerned that the proposal was dealt with by the Arrears Support Unit (ASU) of the Provider despite the fact that the account did not and has not actually been in arrears. The Complainants contend that there was considerable delay by the Provider in assessing the proposal made. They further say that the Provider failed to properly investigate complaints raised by them. The issues complained of concern maladministration in the following respects:

- (1) the fact that the proposal was being treated as an arrears case;
- (2) a request made by the second Complainant, that the Provider deal with an unauthorised third party, was ignored; and
- (3) a suggested failure by the Provider to adequately respond to various complaints raised by the Complainants.

The Provider denies that it failed to adequately deal with the complaints raised. It states that before the proposal could be assessed, the Provider requested certain documentation be submitted by the Complainants. The Provider argues that this documentation was not and has never been submitted by the Complainants and, consequently, it has not been in a position to assess the proposal made.

The Complainants' Case

The Complainants state that the second Complainant purchased a house in **2007** for €270,000 and the first Complainant (her father) was the joint mortgagor of the loan.

In **March 2015** and due to a change in her financial circumstances as she was on maternity leave and her tenants were moving out, the second Complainant realised that she would find it difficult to meet the forthcoming monthly repayments, even though the account was not in arrears. The Complainants state that the second Complainant approached the local branch manager to discuss the situation and consider the options available. At the suggestion of the branch manager, the branch manager filled out a standard financial statement (SFS) on behalf of the second Complainant and gave her a copy of the Mortgage Arrears Resolution Process (MARP) information leaflet. The Complainants note that the MARP process served only to distress the second Complainant but she returned the SFS to the branch manager as requested. The Complainants note that the branch manager followed this up by making a number of phone calls to her private mobile, and she found this very stressful. The second Complainant requested in writing that all communication be made to her solicitor. The Complainants state that she provided the contact details of her solicitor in writing, but continued to receive calls after providing this information.

The first Complainant notes that he requested a meeting with the branch manager and advised him that he was taking control of the matter and wished to make an offer for the redemption of the mortgage. The first Complainant notes that the branch manager gave him a MARP leaflet and SFS form to complete despite his insistence that it was not an arrears case and his explanation that while the property was originally the second Complainant's primary residence, the property was now rented and that she had purchased a new primary residence. The first Complainant notes that he stated that he wished to come to a mutually agreeable settlement with the Provider and was told by the branch manager to put any offer in writing and send it to the Arrears Support Unit (ASU) to deal with the offer. The first Complainant notes that he stated that the arrears process was not appropriate, but as no alternative was offered, he simply followed the procedure.

The first Complainant states that on **12 May 2015**, he wrote to the Provider and made an offer of early redemption of the joint mortgage account. He notes that he requested to redeem the mortgage on favourable terms in light of the changed circumstances of the property market and the Provider's security. He says that the Provider failed to assess the offer in an appropriate manner or come to any decision, and it was only after he wrote to the customers services department of the Provider, that he received any acknowledgement or reply to his letter. He stated that his letter was dealt with in a formulaic manner without assessing the details of this particular case. He suggests that the Provider followed the MARP

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notwithstanding that it was not a qualifying loan, and that the mortgage account was not and is not in arrears. He states that the Provider did not respond in a meaningful way to the points he raised in correspondence. He notes that the only communication from the case officer, was by letter dated **27 July 2015** which once again enclosed a copy of the MARP leaflet, although it was clear from correspondence that the property was no longer a primary residence and the account was not in arrears.

The first Complainant states that theirs was never an arrears case and he made this clear from the outset when he spoke to the local branch manager at a meeting in March 2015, and repeated this in subsequent correspondence. He states that it appears that the complaints unit assumed management of the case, rather than conducting an independent review. He states that data obtained on a subject access request contained no evidence of the assessment of his proposal or any evidence of an investigation or review of the case. The first Complainant argues that the complaints procedure appears to lack independence. He states that there was a lack of awareness of the complaints process or an attempt to delay and obstruct his attempts to resolve the issue. He argues that his attempts to make contact with the Provider by phone were frustrated by being directed to a call centre, his requests for a meeting were ignored, and his requests for return telephone calls were not followed through.

The first Complainant contends that phone calls were made to the second Complainant, causing her further distress, after she had made a written request to the Provider requesting that further communication be made through her solicitor. The first Complainant states that the manner in which the Provider dealt with matters caused extreme levels of stress, frustration and anxiety to him, the second Complainant and wider family for almost a year.

In a further submission to this Office dated **23 May 2017**, the first Complainant argues that the Provider has refused from the outset to engage in constructive discussions and that there are flaws in its policies and procedures that render the complaints procedure completely ineffective. He further argues that his attempts to refer the handling of the matter to this Office were frustrated. He says that the second Complainant received further phone calls in **August 2015**, from a named representative of the Provider, in addition to the phone calls that she received around March 2015 from the branch manager, despite a written instruction to contact her solicitors. He states that when he met the local branch manager around April 2015, there was no implication that there was an inability or unwillingness on his part, to discharge his obligations relating to the mortgage account.

In a further submission to this office dated 29 October 2018, the first Complainant rejected the goodwill offer of €3,500 offered by the Provider for customer service failings, on the basis that further clarity on the matters in contention was needed, together with a more significant goodwill gesture which would better reflect the distress caused to the Complainants over the past three and half years. The first Complainant argued that the contact details supplied by the second Complainant in her letter included the name of the solicitor, the name of the firm, and the location of the firm. He argues that the office is located in a prominent position 300 metres from the branch office of the Provider. On receipt of the request to contact her solicitors due to her obvious distress, he argues that the Provider did not make her aware that there was an issue or request any kind of

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clarification in relation to her third-party instruction, but rather continued to contact her with repeated phone calls, some of which could not be identified as incoming calls from the Provider, as they were made from a mobile phone.

The first Complainant draws attention to the recorded internal phone call between the local office and head office in which the local branch manager confirmed that the customer was not pleading that he could not make payments, but wanted a settlement. The first Complainant argues that this confirms that the assessment process was redundant from the outset. He notes that although the Provider now states that the account was considered to be in 'pre-arrears', this decision was never communicated to him.

The Provider's Case

The Provider states that in line with the Code of Conduct on Mortgage Arrears (CCMA), the Provider deemed Complainants to be in "*pre-arrears*". This was in light of the fact that the Complainants advised at that they were at risk of going into arrears on the mortgage account as they found themselves in a position where they were unable or unlikely to pay due to affordability. The Provider states that it was for this reason that its Arrears Support Unit (ASU) managed the Complainants' case and that communications were received from that unit. The Provider refers in particular to the letter of the second Complainant dated **21 March 2015** in which she confirmed that she been struggling to meet repayments on the loan, her student tenants were moving out and she would be unable to meet repayments from April 2015 onwards. It also refers to the letter from the first Complainant of **12 May 2015** in which he confirmed that the second Complainant was unable to service the loan and that his circumstances did not allow for him to meet the contractual repayments or clear the loan in full. In this regard, the first Complainant proposed an offer of €175,000 in full and final settlement of the loan.

The Provider notes that its ASU received a call on 20 May 2015 from X. from the local branch who had spoken to the first Complainant in relation to the financial information required for the assessment. It was agreed on this call that the SFS as completed would be sent for assessment with the information which had been provided to date, though the agent of the ASU made it clear that the assessment team would want to see supporting documentation and that if this was required, written confirmation would be issued to the first Complainant. Though the Provider notes that this was an internal conversation, it states that the local branch was in communication with the Complainants at this time and the message was 'replayed' to the Complainants. The Provider confirms that under the CCMA, it can require supporting documentation to be provided to corroborate the information provided by customers in their SFS. The Provider states that despite requests for this information, the Complainants failed to supply it as requested, to allow the Provider to complete the assessment of their financial circumstances and to issue a formal response to the proposal of May 2015.

In relation to the Provider's failure to respond to the proposal put forward by the first Complainant to settle the outstanding debt in May 2015, the Provider states that in order to conduct an assessment of the Complainants' financial circumstances, the Provider

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required the outstanding documentation in support of the SFSs submitted. The Provider states that this documentation was sought by it, by letter dated 27 July 2015 and that this request was repeated in several letters but is still outstanding.

The Provider states that until this documentation has been supplied to it and an assessment completed, the Provider is unable to formally respond to the proposal that has been submitted.

In relation to the complaint that the Provider continued to contact the second Complainant directly despite instruction in writing to make contact with her solicitor, the Provider states that it was not given contact information in the form the telephone number or correspondence address to allow it to engage with the appointed solicitors on behalf of the Complainants. The Provider acknowledges that the second Complainant wrote a letter to it on 25 March 2015 confirming that she had decided to engage a named individual of a named solicitors firm to act on their behalf and requested that all future correspondence be sent to that individual solicitor. The Provider states that in this correspondence, the second Complainant failed to supply any contact information for the solicitor in question (such as a telephone number or correspondence address) and neglected to sign the letter. The Provider states that in the absence of a clear signed instruction with contact information provided, it was unable to take this as authority to engage with a third party.

In relation to the allegation that the Provider failed to deal with the complaints raised by the first Complainant in an appropriate manner, the Provider has identified three specific complaints that were made by the first Complainant dated 20 July 2015, 7 September 2015, and 23 October 2015.

In respect of the **first complaint of 20 July 2015** in which the first Complainant wrote to the Provider stating that he had not received a response to his correspondence of 12 May or 7 July 2015 in which he made a proposal for the redemption of the mortgage loan, the Provider notes that the complaint was fully investigated and a final response was issued on 14 August 2015. The Provider apologised for the delay in responding to the proposal received and confirmed that in order to consider the proposal, it would require an SFS to be fully completed by both Complainants and returned to it, with the relevant supporting documentation. It confirmed that until this documentation was provided, the Provider would remain unable to respond or make a decision regarding the proposal. The letter of 14 August 2015 also apologised for any offence caused in the wording of the letter of 27 July 2015 which referred to the possibility of the borrowers being classified as "*not co-operating*". The Provider confirmed that the wording of this letter was standard.

The Provider accepts that in light of the contents of a letter from the first Complainant dated 7 July 2015 in relation to these issues, a complaint should be logged as the first Complainant had expressed dissatisfaction with the lack of response to his correspondence. The Provider apologises for any inconvenience caused. The Provider highlights its letter of 27 July 2015 which it acknowledged receipt of the Complainants' SFSs and confirmed that supporting documentation was required to be submitted for the assessment.

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In relation to the **second complaint of 7 September 2015**, a response letter was issued by the Provider on 16 October 2015 in which the Provider confirmed once again that in order to conduct an assessment of the Complainants' financial circumstances, it required the outstanding documentation as per its letter of 27 July 2015. The Provider also confirmed that in order for it to engage with the appointed third party in relation to the Complainants' mortgage account, the Provider required a signed authority from both Complainants to be provided along with the contact information of the said third party.

The Provider states that a phone call was made by X. of its local branch to the second Complainant on 27 March 2015 having received his correspondence and the completed SFS. The Provider states that on this call, X. advised the second Complainant that an SFS and supporting documentation would also be required from the first Complainant and as he was a co-borrower to the mortgage. The Provider notes it is unable to provide a recording of this telephone call but a screenshot of the call record was made available.

In relation to the first Complainant's concern about identifying assets and liabilities of jointly held property, the Provider confirms that it may ask if another member of a household is willing to submit financial information, even though such a person is not party to a mortgage. In the present case, the Provider may have requested the first Complainant's wife to provide financial information for consideration in order to accurately assess the total income and expenditure being received into the first Complainant's household and thus to calculate affordability. It confirms that the first Complainant's wife was never pressured or required to provide any information and if not made available on a voluntary basis, then in the absence of such information, the Provider would still be able to complete an assessment if the first Complainant submitted his own information.

The Provider states that the first Complainant contacted it twice on **19 August 2015** to seek to speak to a named individual in respect of the final response letter that he had received. On both occasions the named individual, W. was unavailable but W. made two attempts to contact the first Complainant the next day (20 August 2015). Both calls were unanswered by the first Complainant.

On 4 August 2015, the Provider states that it attempted to contact the Complainants by telephone to follow up the outstanding documentation required to further the assessment. It states that the call to the first Complainant was answered by a third party who confirmed that the first Complainant was unavailable. In the call to the second Complainant, she stated she was unable to take the call but that the account was being managed by her solicitors. The Provider states that its agent confirmed that no contact information had been provided for the solicitors, which was why contact was being made directly with the Complainants. The Provider is unable to provide any recording of this call but furnished its systems notes.

In respect of the **third complaint dated 23 October 2015**, the bank responded by way final response letter on 1 December 2015. In it the Provider reconfirmed its requirement for completed SFS submitted by all parties to the mortgage with supporting documentation in order for the proposal to be assessed by it. The Provider does not accept that it failed to adhere to complaints procedure and points to the complaint acknowledgements letters and update letters that it sent in this regard.

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In a **fourth Complainant dated 29 January 2016**, the first Complainant again expressed his dissatisfaction with the Provider's handling of his complaints and requested a referral letter to the purpose of bringing the matter to this Office. The final response letter was issued on 2 February 2016. The Provider accepts that it failed to acknowledge a letter sent by the first Complainant dated 19 January 2016 and apologised for any inconvenience caused but states that its response letter of 2 February 2016 made it clear to the first Complainant that he could take that letter as the Provider's final response should he wish to refer the matter to this Office.

The Provider acknowledges that there were a number of customer service failings in relation to the complaint, generally in the context of overlapping correspondence being exchanged between the parties. The Provider does not believe that this impacted the overall timeline of the matter but offered the Complainants a goodwill gesture in the amount of €3,500 in recognition of its failings. The Provider confirms that if it is the Complainants' wish for it to assess the proposal dated May 2015, it requires standard financial statements to be provided by both Complainants (as the previous ones are out of date) in addition to the required documentation.

In a more recent submission, the Provider acknowledges that it did not need to provide the protection of the CCMA in this instance, as the property was not the primary residence of the second Complainant or her sole property in the state. It states that irrespective of this, the Complainants were afforded the protections of the CCMA in relation to the property and the Complainants were not disadvantaged in any way. It states that it requires financial information and supporting documentation to assess any proposal. The Provider argues that the documentation sought by it, was not inappropriate and that full disclosure was required in order to consider the Complainants' proposal.

The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration of the Complainants' mortgage account, insofar as:

- (a) The proposal for early redemption by the first Complainant to include a write-down of the mortgage debt, was treated by the Provider as an arrears case, even though the mortgage account had never been in arrears, and this proposal has not yet been assessed notwithstanding the elapse of several years;
- (b) A request made by the second Complainant for the Provider to deal with an authorised third party was not followed and the Provider continued to contact the second Complainant directly; and
- (c) The Provider failed to adequately respond to various complaints made by the first Complainant.

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 17 June 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 correspondence from the parties, the final determination of this office is set out below.

It is important to note at the outset that none of the issues raised in the course of the investigation of this complaint that concern the adequacy or inadequacy of the Provider's response to a data access request, can be investigated by this Office. Any concerns that the Complainants may have in relation to data protection should be addressed to the Data Protection Commission and are not a matter for this office.

There are three aspects to the Provider's suggested maladministration, as explained below.

(1) – Application of CCMA

In a letter from the second Complainant to the Provider dated 21 March 2015, the second Complainant referred to a meeting which she had with the branch manager on 19 March 2015 and enclosed a completed SFS and bank statements as requested. In the letter, the second Complainant notes:

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"As explained to [the branch manager] I have been struggling to meet the repayments on this loan and since my student tenants now moving out I will be unable to meet the monthly repayment from April onwards."

In the SFS itself dated 21 March 2015 under a section entitled "reason(s) for review/arrears", the second Complainant has written "*unable to meet mortgage payments*".

In a log of a call dated 27 March 2015 between the Provider and the second Complainant, the following is noted:

"I spoke to [the second Complainant] on the 24/03/15 in relation to the SFS she had provided and I advised her that as [the first Complainant] is a joint borrower we would need the SFS filled in and signed by himself also on the relevant information gathered to process the application."

It appears that the first Complainant met with local branch manager on 31 March 2015 in relation to the mortgage, though no record of this meeting has been submitted in evidence.

In a letter dated 12 May 2015, the first Complainant wrote to the Arrears Support Unit (ASU) of the Provider in the following terms:

"Dear Sir,

This is a joint loan which was taken out in 2007 in my name and my daughter's name to purchase [the property] as her primary residence for €270,000. As this property would currently be valued at €90 - €100,000 which is approximately one third of your purchase valuation there is therefore a capital loss of approximately €175,000. The outstanding balance on the loan is approximately €220,000 resulting in negative equity of €125,000. Total capital repaid to date is therefore €50,000 excluding interest.

As outlined in previous correspondence, my daughter [the second Complainant] is now unable to service this loan and my present circumstances do not enable me to commit to making regular repayments or discharge the loan in full.

I am anxious that this matter is brought to a conclusion and following discussions with the wider family it is proposed that the family offer €175,000 to redeem the mortgage in full while retaining title of the property. This would mean that the total paid on the property to date would be €225,000 leaving a balance of €45,000 on the loan.

I enclose two SFS in respect of the above loan in the name of [the first and second Complainants].

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My SFS include all my assets and income in my own name. You would have been aware when the loan was taken out, that any other assets were held jointly with my wife who is not and was not asked to be a party to this loan.

As stated in the form I am now retired and my sole income is a pension as stated. Please note that the life assurance on my life per the terms of the loan agreement has expired.

I would be happy to discuss the situation in more detail with a view to achieving an amicable agreement which would be fair to all parties.

As my daughter initiated contact with you in March I would be obliged if this matter was dealt with as soon as possible."

In these letters from March and May 2015, both Complainants indicated to the Provider that affordability in respect of future mortgage repayments was an issue. The second Complainant confirmed in very clear terms that she would be unable to meet the mortgage repayments going forward, as confirmed by the first Complainant in his letter of 12 May 2015. Although the letter of the first Complainant is somewhat more opaque, I take the view that his statement that his "*present circumstances do not enable me to commit to making regular repayments or discharge the loan in full*" can certainly be interpreted as a notification to the Provider that there was a risk or concern that the mortgage account would fall into arrears in the near future.

In the SFS completed by the first Complainant dated 12 May 2015 (in a section requesting other information relevant to non-property assets) the first Complainant refers to his letter of 12 May 2015 and states:

"Further details will be available as required when full discussion on early redemption is progressed."

I have been furnished with a recording of a call between the local branch manager, X., and the Provider's ASU on 20 May 2015. On this call, X. informed the ASU that the first Complainant had said that he did not need to supply the supporting documentation of bank statements and so forth as the Provider's MARP booklet says that the supporting documents '*may*' need to be provided and that he is not pleading that he cannot make the payments, he just wants an early settlement. The ASU confirmed that supporting documents are always required. It further confirmed that it might have to revert to request the documentation, if not submitted, which might delay the assessment. X. stated that the first Complainant has said that if the ASU required further documentation, it could write out to require it. X. also requested an early assessment of the proposal. The ASU confirmed that it was sending the proposal and completed SFSs for assessment, and that it would typically take approximately 3 to 4 weeks to assess. It was confirmed that if bank statements were needed, the ASU would automatically request these from the customer directly, and not through the branch.

The first Complainant has highlighted this internal call as evidence that the Provider was aware that affordability was never an issue. In my opinion, this is to overlook the letters

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from both Complainants in March and May 2015, quoted above. To my mind, these May 2015 interactions are indicative of the general approach taken by the first Complainant to requests by the Provider for financial information. Although the Provider's conduct is the subject of this Finding, I believe it is also relevant that the first Complainant adopted a position from the outset, that he (rather than the Provider) would choose what information he was willing to disclose, even though he was seeking a write-down of the joint debt. It appears that he was made aware from the outset that financial information and supporting documentation would be required of him, in this regard.

Under the CCMA, a "pre-arrears" case is stated to arise when either:

"a) the borrower contacts the lender to inform it that he/she is in danger of going into financial difficulties and/or is concerned about going into mortgage arrears; or

b) the lender establishes that the borrower is in danger of going into financial difficulties which may impact on the borrower's ability to meet his/her mortgage repayments."

In my view, the Provider in the present case was entitled to consider that the Complainants' mortgage account fell within this definition in that the Provider was contacted by both Complainants and informed that they were "in danger going into financial difficulties and/or concerned about going into mortgage arrears". Further, the letter from the first Complainant dated 12 May 2015 confirms that the property was purchased as the primary residence of the second Complainant and did not make any reference to the acquisition by her of another property which had become a primary residence at that time. The Provider's decision to apply the CCMA at that time, is therefore quite understandable.

The CCMA does not contain specific obligation on the Provider to inform a borrower that he or she is considered to be in pre-arrears. In most instances, this will not be an issue but it has become a problem in the present case. It seems clear that the Complainants were made aware from the outset that the mortgage account and the offer to redeem it, would be dealt with by the Provider's ASU. This is clear from the correspondence and the fact that the first Complainant addressed his letters to the Provider's ASU. While I acknowledge that the Complainants do not appear to have been specifically informed that the case was being dealt with as a pre-arrears case, the fact that the ASU was proposing to assess the application was clear.

On the other hand, the rejection by the first Complainant of the decision to treat the case as an arrears case is clear from the correspondence dated 29 July 2015 to the Provider's customer service department. In that letter, the first Complainant states that he explained from the outset that this was not an arrears case, but he was nevertheless referred to the ASU by the branch manager and customer service hotline. He states that "this is not and never has been in arrears case" and that contact was made by him from 31 March 2015 to "initiate an early and speedy redemption of the mortgage account".

By letter dated 29 July 2015, the first Complainant replied to the ASU referencing his letter of 27 July 2015 and stating as follows:

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“Having explained at the outset that this was not an arrears case, I was referred to the ASU by both the local manager and the [Provider’s] customer service helpline who advised me to put my proposal for early redemption in writing.

I find that obstructive that in the last line of your letter you have referred me back to your website, local manager and customer service helpline where I began contact last March and that you have not even afforded me the courtesy of informing me of the name of the person who is dealing with the matter. If you read my previous correspondence and familiarised yourself with the case you would see that this is not and never has been in arrears case. The contact was made by me on 31st March to initiate an early and speedy redemption of the mortgage account.

...

This ongoing situation is causing considerable stress to my daughter and me. The tone of my correspondence has always been cordial and respectful and I object in the strongest possible terms to the offensive and threatening tone of your letter dated 27 July where you request return of forms within ‘ten working days’ or we ‘could be deemed ‘Not co-operating’.

Considering [the Provider’s] tardiness in replying to correspondence I find this attitude high-handed in the extreme.

I explained at the outset to your manager and customer service helpline that the SFS did not fully cover all aspects of the situation as this form is designed for an arrears case and this is not and has never been an arrears case and in Section F, I included – “Further details will be available as required when full discussion on early redemption is progressed”.

Based on my experience to date, I have lost all confidence in [the Provider] resolving this matter in a cordial and efficient manner.”

It appears from the Provider’s response to queries raised by this Office, that it considered the account to be in pre-arrears. The first time this appears to have been communicated to the Complainant, however, is by letter dated 29 June 2016 – over a year after the proposal was made and eleven months after the first Complainant wrote to the Provider articulating his disagreement with the Provider’s use of the MARP process. In the letter of 29 June 2016, the Provider stated as follows:

“To clarify, you have previously submitted proposals to the [Provider] for assistance (by way of debt write-off) in relation to this mortgage account. In light of this, you have been flagged as a “pre-arrears” customer as defined by the Code of Conduct on Mortgage Arrears (CCMA) 2013. I do acknowledge that your mortgage account is not in arrears; however, any application for forbearance and/or debt write-off was processed through the department.

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In order to conduct a full review of your financial circumstances, the ASU requires that you both complete a Standard Financial Statement (SFS) and return this to the [Provider] with the supporting documentation required. I have enclosed two blank SFS forms for completion and return to the [Provider]. This SFS is the document which the Provider must use in order to obtain financial information from customers. This SFS is required as part of the Mortgage Arrears Resolution Process. This continues to be the [Provider's] position on this matter and until this documentation has been received from you, the ASU cannot review your proposal."

To my mind if this coherent explanation had been made available at the outset, relations between the parties in respect of this complaint may never have deteriorated so badly. It is difficult to understand why the Provider did not offer this explanation to the first Complainant immediately upon concerns being raised that the proposal was to be dealt with by the Provider's ASU. If it had been, the Complainants may have been content to proceed by that process or they could have pointed out clearly in early correspondence that the secured property was not the principal residence of the second Complainant, if they believed that the MARP process was inapplicable, or not appropriate.

While the Provider is rightly to be criticised for the manner in which it communicated in relation to the process it was adopting – or indeed, failed to communicate – I have some concern in relation to negative connotations that the Complainants appear to have attached to the MARP process. The CCMA and MARP provide an additional layer of protection to consumer borrowers in financial difficulty on their mortgage in comparison to what borrowers would otherwise be entitled to expect from a mortgage provider. Other than in relation to the non-cooperation language adopted by the Provider in one of its July 2015 letters (a matter which I will return to in respect of communications) I am somewhat at a loss to understand exactly why the Complainants objected and still object to their proposal being handled by the Provider's ASU, rather than any other department of the Provider.

The real objection taken by the first Complainant from the outset appears to have been in providing details of his income and expenditure and supporting documentation at the request of the Provider. The Provider is entitled to request certain documentation from customers when they are requesting that the Provider consider a proposal which will lead to a write-down of a debt. This seems logical and is ultimately a commercial matter for the Provider, with the documentation required by it, a matter for the Provider to determine. The first Complainant has referred in many of his letters to the fact that he was intervening in the matter because of the fact that the second Complainant was having difficulty in meeting the mortgage obligations, but I note that they were joint mortgagors and therefore they were jointly and severally liable to meet the mortgage repayments.

If a borrower such as the first Complainant (who is contractually obliged to make certain repayments) is not willing to provide documentation which is reasonably sought in support of an application to write-down debt, such a borrower is not in a position to complain if the Provider in question then refuses to assess the proposal made. It is not apparent to me that the documentation sought in the Provider's letter of 27 July 2015 (requests for which have been repeated on numerous occasions since then) was in any way inappropriate,

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oppressive, unreasonable or unduly burdensome in the context of the proposal which the first Complainant had made.

It has been belatedly accepted by the Provider that the Complainants are not entitled to the protections of the CCMA or the MARP as the secured property is no longer the primary residence of the second Complainant. The Provider will therefore not apply MARP in any future negotiations with the Complainants in relation to the proposal. But that does not mean that the Provider cannot select which of its departments will consider the proposal or indeed cannot request the appropriate financial information and supporting documentation that it believes it requires, to properly assess a proposal. As set out above, I believe that the Provider was and is entitled to request appropriate financial information and supporting documentation from the first Complainant upon his request for the Provider to consider a not insignificant write-down of a mortgage debt, which he was jointly and severally liable for, regardless of a fall in value of the secured property.

It is unfortunate that the Provider did not explain to the Complainants why it was adopting the procedure that it did. I do not however, consider it appropriate to uphold any aspect of the complaint centring on the fact that the Provider's ASU rather than another other department was dealing with the write-down proposal, or the fact that the Provider sought certain financial information and supporting documentation from the Complainants, which they have failed to provide.

(2) – Failure to Comply with Customer Instructions

In a letter dated **25 March 2015**, the second Complainant hand delivered a letter to the Provider in the following terms:

"I refer to my meeting with [X.] on 19th March 2015, my letter of 21st March telephone conversation on 24th March.

*I have now decided to engage [**D] of [QD solicitors] to act on our behalf in this matter.*

Please address all future correspondence and communications to [QD].

Please note that I have cancelled the direct debit

Yours faithfully"

At the bottom of her letter, the second Complainant has typed her name, rather than signed it. No response letter was sent to the second Complainant from the Provider either to confirm her instruction, or to inform her that the Provider required further information and a comparable instruction from the first Complainant. Indeed it appears that the second Complainant continued to receive telephone calls from the Provider and her instruction was ignored for many months.

In a log call dated 4 August 2015, the following appears:

- *“30/07/15 – Ltr received from Mr Brw stating [the Provider] has not responded to his proposal for early redemption*
- *Property is in negative equity, but acct is up to date*
- *Acct needs to be assessed before a decision can be made*
- *27/07/15 – see notes re O/S docs for both brws*
- *Called Mr Brw on [home phone number], call answered by 3rd party stated Mr was not available. No further discussion.*
- *Called Ms Brw on [mobile phone number], Ms stated not able to take call, but acct is being handled with sols. I informed her I have no contact details for sols – so had to call brws.*
- *Ms stated they had sent corres with sols contact details and she is not able to take call, but asked what call was in relation to. Informed Ms I need to confirm DPA to proceed with call. Ms Brw stated sols should be contacted and asked for my name. Confirmed my name for Ms.*
- *27/07/15 See note re LOA on file – no contact details for solrs and LOA signed by Ms Brw only”*

On 4 August 2015, therefore, the second Complainant reminded the Provider that she had sent a letter instructing it to deal with her solicitors only. It appears that the Provider’s representative alerted her to the fact that there were no contact details on file for the solicitor, but this appears to have been done in general terms only, and there is no evidence that the specific deficiencies in the letter that are now relied on by the Provider, were explained to her. Despite the fact that there is a reference in the log noting there were no contact details for the solicitor and that the letter of authority was signed only by the second Complainant, it does not appear that a letter was written after this call to the Complainants to explain to them what was missing from their request for the Provider to deal with the solicitors, rather than directly with the Complainants. This oversight is difficult to understand considering that more than four months had elapsed since the letter had been received.

By letter dated 8 August 2015, the first Complainant noted that his daughter had received a phone call from the Provider on 3 August which upset and distressed her, as she had given a specific written instruction in March that she should be communicated with, only through her solicitor. In his letter, the first Complainant noted that the instruction was given in the context of numerous attempts by the Provider to contact the second Complainant by telephone over a three-day period in March 2015 when she was feeling particularly stressed over the matter.

By letter dated 14 August 2015, the Provider stated as follows:

“If you wish for [the Provider] to only deal third party in relation to this matter we will need authority signed by both parties to the account along with contact details of the third party.”

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No reference was made to the original letter of the second Complainant dated 25 March 2015 or to the fact that the Provider considered that this letter could not be relied on by the Provider, for the reasons it now highlights. A further letter dated 16 October 2015 was sent by the Provider in almost identical terms, again with no reference to the second Complainant's letter of 25 March 2015 or the suggested deficiencies of same.

Provision 3.3 CPC mandates that *"A regulated entity must ensure that all instructions from or on behalf of a consumer are processed properly and promptly"*. The second Complainant thought that she had given a valid instruction by letter dated 25 March 2015 to the Provider to deal only with her solicitors. She was entitled to have that instruction followed or, if this was not possible due to the Provider's requirements, she was entitled to have the Provider promptly respond to her by letter highlighting what was missing from her instruction and clearly explaining what she would need to submit, for her instruction to be followed.

It is quite apparent from the correspondence in this case that the second Complainant was uncomfortable receiving phone calls from the Provider. In this regard, I also note provision 3.40 CPC which states that:

"A regulated entity may make telephone contact with a consumer who is an existing customer, only if:

...

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;

... or

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

I accept that the a regulated Provider is generally entitled under provision 3.40(b) to maintain contact with a borrower by phone in relation to a mortgage product but this must be tempered by the borrower's specific requests and in this instance, her clear discomfort.

Further, Provision 8.5 CPC states that:

"At the personal consumer's request and with the personal consumer's written consent, a regulated entity must liaise with a third party nominated by the personal consumer to act on his or her behalf in relation to an arrears situation. This does not prevent the regulated entity from contacting the personal consumer directly in relation to other matters."

I accept that no arrears has arisen on the mortgage account but by the Provider's own account, it was treating the Complainants as being in pre-arrears at the time in question, so it ought to have been conscious of its obligations under Provision 8.5 to liaise with the nominated solicitor.

The Provider has argued that it could not rely on the letter of 25 March 2015 as it was deficient in a number of respects:

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- No contact details for the solicitor were provided;
- The letter was not signed by the second Complainant but rather her name was typed; and
- The letter was not signed by the first Complainant.

In respect of the final issue, I accept that with a joint mortgage account, both parties need to authorise a regulated Provider to liaise with a third party. This was clearly set out to the first Complainant in the Provider's correspondence of August and October 2015 but there is no suggestion that he sent a letter authorising the Provider to liaise with the solicitors in question. In addition, whilst it may have been a straight-forward matter for the Provider to obtain a contact number on the basis of the information made available in the letter, nevertheless, I am conscious of data protection considerations, as a result of which I am satisfied that the Provider was entitled to seek confirmation of those contact details, before it contacted the authorised third party.

While the Provider may have been justified in not relying on the letter of 25 March 2015 as an instruction from both parties to liaise with the solicitors in question, its failure to properly communicate in writing its position in that regard, and the reasons for this position are of concern. I am not satisfied that it did so, either efficiently or clearly, in response to the second Complainant's letter of 25 March 2015.

In light of the above, I consider it appropriate to uphold this aspect of the complaint, primarily due to failures in communications by the Provider.

(3) – Communication Complaints

The First Communication Complaint

By letter dated **7 July 2015** to the Provider's ASU, the first Complainant referred to his letter dated **12 May 2015** in which he had made a formal offer for the early redemption on his loan. He also referred to a phone call received from the Provider on 20 May 2015 requesting further information and in which the first Complainant notes that he asked that "*any request for further information should be made in writing to ensure clarity and avoid any misunderstanding.*" The first Complainant states that:

"To date, over 40 working days later, I had not received a reply to my letter of May 12th. You have not acknowledged any of my correspondence or offered any resolution in order to bring this matter to a mutually satisfactory conclusion.

It appears that [the Provider] is prepared to let this matter continue indefinitely and ignore my repeated attempts at resolving it. I am disappointed that you have not engaged in any meaningful way since contact was initiated last March."

By letter dated **20 July 2015** to the Provider's customer service team, the first Complainant noted that he was writing to them as he was unable to get any response from the ASU to his correspondence. He noted that the matter was initially raised at a meeting with the local branch manager on 19 March 2015, and at a meeting with him on 31 March and that he had received no reply to his correspondence of 12 May and 7 July 2015.

By letter dated **27 July 2015**, the ASU manager wrote to the Complainants in the following terms

"We are writing in connection with the above mortgage account which is currently under review.

We acknowledge receipt of your completed Standard Financial Statement and note that some supporting documentation has not been submitted. In order for [the Provider] to fully assess your financial position the following documentation is required for all parties on the loan:

For [the first Complainant]

- *Fully completed Standard Financial Statement as copy received was not fully completed (Sections C, D and E has not been completed)*
- *Proof of income: pension slip or letter confirming payment.*

For [the second Complainant]

- *Proof of income (payment slip letter from welfare confirming you are not in receipt of any welfare in payment*

*Please return the documentation the enclosed prepaid envelope within **ten working days**. Without the supporting documentation we are unable to adequately assess your arrears situation and determine the most appropriate action. Please note that if you do not return the required documentation or complete the action as outlined, then there is a risk you could be deemed "Not co-operating".*

We would remind you to continue making payments to your mortgage until a full assessment has been completed.

Please visit our website . . . , your local . . . office or contact us directly on [telephone number] should you require any further advice or information."

On **28 July 2015**, the first Complainant wrote again to the customer services team noting that he had not received a reply to this letter of 20 July.

On **29 July 2015**, the first Complainant again wrote to the customer service team referring to his letter dated 20 July and stating that he was "*disappointed with the response of the ASU*" and wished to "*formally complain about the tone and content of the letter as I find it dismissive, offensive and threatening.*"

By letter dated **29 July 2015**, the first Complainant replied to the ASU referencing his letter of 27 July 2015 and stating as follows:

“Having explained at the outset that this was not an arrears case, I was referred to the ASU by both the local manager and the [Provider’s] customer service helpline who advised me to put my proposal for early redemption in writing.

I find that obstructive that in the last line of your letter you have referred me back to your website, local manager and customer service helpline where I began contact last March and that you have not even afforded me the courtesy of informing me of the name of the person who is dealing with the matter. If you read my previous correspondence and familiarised yourself with the case you would see that this is not and never has been in arrears case. The contact was made by me on 31st March to initiate an early and speedy redemption of the mortgage account.

*It is obvious from your letter dated 27 July 2015 that you have not read, or you have chosen to completely ignore my correspondence to date. I made an offer for early redemption in writing on 12th May as advised by my local . . . manager and customer service helpline and that offers been completely ignored to date. If your unit was unable to come to a decision on this case, either because it exceeded your authority or competence, you would be obliged to pass that the appropriate authority in the [Provider] **and** keep me informed of the process. Ignoring the matter for three months until I made a formal complaint to the customer service team is not my opinion an appropriate course of action.*

This ongoing situation is causing considerable stress to my daughter and me. The tone of my correspondence has always been cordial and respectful and I object in the strongest possible terms to the offensive and threatening tone of your letter dated 27th July where you request return of forms within ‘ten working days’ or we ‘could be deemed ‘Not co-operating’.

Considering [the Provider’s] tardiness in replying to correspondence I find this attitude high-handed in the extreme.

I explained at the outset to your manager and customer service helpline that the SFS did not fully cover all aspects of the situation as this form is designed for an arrears case and this is not and has never been an arrears case and in Section F, I included – “Further details will be available as required when full discussion on early redemption is progressed”.

Based on my experience to date, I have lost all confidence in [the Provider] resolving this matter in a cordial and efficient manner.”

A letter acknowledging his complaint was issued on 31 July 2015 from a named individual of the complaints team of the ASU.

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By letter dated **8 August 2015**, to the ASU, the first Complainant responded to the letter of 31 July noting that his involvement as co-mortgagor was to seek a speedy and early redemption of the account and that he was seeking a pragmatic solution to be achieved as soon as possible. He noted that his daughter received a phone call on 3 August which upset and distressed her as she had given a specific written instruction in March that she should be communicated with only through her solicitor.

In a further letter dated **8 August 2015** to the Provider's ASU, and in response to the letter of 27 July 2015, the first Complainant stated as follows:

"I enclose my pension details as requested.

In relation to my personal expenses, the situation is that all expenses are shared with a third party who has not, and does not wish to engage in any way with this issue. In the absence of their agreement, I believe I cannot give further details of personal expenditure. I made it clear at the outset last March that all finances of expenses are held jointly.

In relation to [the second Complainant's] information, all the original documentation and information was requested last March was hand-delivered to [the Provider's local branch] on 21st March. I do not have documentation to handle and the copies that I sent on March 12.

I trust that this information is sufficiently to bring this matter to an immediate conclusion."

The pension details which were enclosed with the letter amount to a one-page printout which confirmed the gross and net pension payment to the first Complainant in July 2015.

In the Provider's final response letter dated **14 August 2015**, W. of the complaints department of the Provider's ASU wrote to the first Complainant noting his findings on the issues raised in his letters dated 29 July and 8 August 2015. The letter states as follows:

"In relation to the proposal put forward by you in your correspondence dated 12 May 2015, in order for [the Provider] to consider your proposal, we will require a Standard Financial Statement fully completed by the parties to the mortgage along with any relevant supporting documentation. The correspondence that issued to you on 27 July 2015 was making you aware of the outstanding documentation required in order for us to assess your financial circumstances. Until the documentation is provided by you, we will be unable to respond to you with a decision regarding your proposal.

I would like to apologise to the delay in responding to you following receipt of your proposal and for any inconvenience that may have caused you.

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In relation to the correspondence that issued to you on 27 July 2015, this is a standard letter that [the Provider] issues to customers when further documentation is required from them to support a proposal/application. I accept that some of the wording of this letter was not appropriate to your case and I would like to apologise for any offence caused.

As mentioned above, before [the Provider] can consider the proposal put forward by you in your correspondence dated 12 May 2015 we will need you to submit the documentation outlined in our correspondence dated 27 July 2015.

If you wish for [the Provider] to only deal with a third party in relation to this matter we will need an authority signed by both parties to the account along with contact details of the third party.

If you have any further queries in relation to the resolution of this complaint please contact W. at [phone number]."

The documentation that had been sought in the letter of 27 July 2015 was as follows:

"For [the first Complainant]

- Fully completed Standard Financial Statement as copy received was not fully completed (Sections C, D and E has not been completed)*
- Proof of income: pension slip or letter confirming payment.*

For [the second Complainant]

- Proof of income (payment slip letter from welfare confirming you are not in receipt of any welfare in payment"*

The provider's letter of 14 August 2015 does not make any reference to the pension details actually submitted by the first Complainant by letter dated 8 August 2015.

I have been furnished with recordings of two telephone calls made by the first Complainant on **19 August 2015**. On those calls, the first Complainant attempted to contact W. on the number mentioned in the letter of 14 August and was somewhat taken aback by the fact that it was not a direct number. I note that on those calls, the first Complainant made it clear that he wished to discuss the letter of 14 August with W. but was informed that W. was unavailable at present and would call him back. In a call log dated **20 August 2015**, two calls are logged from W. to the first Complainant. The first call was attempted at 11.18 and the second of 15.01 and neither call was answered. This appears to have been the last attempt to contact the first Complainant by phone.

The Provider has acknowledged that the letter of the first Complainant dated 7 July 2015 ought to have been noted as a formal complaint and this was not done. I accept that based on the content of this letter, the complaint should have been noted and it was clear that the first Complainant was dissatisfied that he had not received a response to his proposals.

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In respect of the letters of 29 July 2015 and 8 August 2015 in which the first Complainant raised concerns regarding the ASU's letter of 27 July 2015, a final response was sent by the Provider dated 14 August 2015. While that letter acknowledges and apologises for the inappropriate language used in relation to the possibility that the Complainants would be treated as 'non-cooperating', the letter fails to deal with the assertion of the first Complainant that it was not an arrears case. This aspect of the complaint was ignored by the Provider in its response. It was made very clear in the letter 29 July 2015 to the ASU that the first Complainant was not happy about the classification. As mentioned above in relation to the first complaint, the Provider did not take the opportunity to explain to the Complainants why it was proposing to deal with the case as a pre-arrears case, and rather it simply ignored their concerns in that regard, repeating requests for the further documentation sought in the letter of 27 July 2015. The other clear omission in the letter of 14 August 2015 is that the Provider made no reference to the fact that details of the first Complainant's pension had been sent by him in his letter dated 8 August 2015. If the document that had been provided by him was insufficient in some regard, it was incumbent on the Provider to alert the first Complainant to this and explain to him exactly what was required in its stead.

As stated above, the Provider is entitled to request certain documentation from customers when they are requesting that the Provider consider a proposal which would lead to a write-down of the debt. This seems logical and is ultimately a commercial matter for the Provider, with the documentation required by it a matter for the Provider to determine. It is not apparent to me that the documentation sought in the Provider's letter of 27 July 2015 (requests for which have been repeated on numerous occasions since then) were in any way inappropriate, oppressive, unreasonable or unduly burdensome in the context of the proposal made.

The difficulty in the present case, however, is that the parties to the correspondence appear to have been at cross purposes from the outset. The first Complainant did not understand why the Provider was treating the account as if it was in arrears when it was not so. Rather than properly engaging with him on this issue, the Provider simply repeated its request on multiple occasions for the documentation sought. It was clear that the first Complainant objected to providing this information on a number of bases, the primary one being that the account was not in arrears. The Provider failed to engage with him on this issue. It further failed to identify any deficiency in the information that he in fact provided in relation to his pension by letter dated 8 August 2015.

In this regard I note in particular Provision 10.7 of the Consumer Protection Code (CPC) which states that:

"A regulated entity must seek to resolve any complaints with consumers."

This provision makes it clear that it is not sufficient for a regulated financial service provider to simply respond formulaically to complaints raised. Rather it must *"seek to resolve"* complaints made by consumers. When viewed in the overall, and while all parties to the present complaint might be accused of having dug their heels in, in certain respects, I am not satisfied that the Provider sought to resolve the complaint made by the first Complainant. I am satisfied that the disagreement that arose between the first Complainant

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and the Provider in this case, could likely have been remedied in early course if the Provider had engaged on a more active basis with the first Complainant's concerns, particularly as regards why he was being asked to deal with the Arrears Support Unit when his account was not in arrears and secondly in relation to the documentation that was required, despite the fact that there was no arrears balance.

The Second Communication Complaint

By letter dated **7 September 2015**, the first Complainant wrote to the customer service team of the Provider referencing a conversation between them on 20 August 2015 and the ASU's letter of 14 August 2015. The first Complainant expressed his confusion about whether he would receive an update from the ASU or the complaints department. He noted that he was unhappy with the investigation of his issues and questioned the independence of the complaint procedure. He reiterated his view that it was not an arrears case and argued that the process undertaken was not appropriate for his case. He noted that the purpose of his offer was to alleviate the considerable stress that his daughter was experiencing in meeting the mortgage commitments, and that he wished to bring an early and speedy redemption to the mortgage account. The first Complainant noted several concerns which can be grouped as follows:

- no acknowledgement of the second Complainant's correspondence dated 21 March and 25 March 2015;
- failure to inform the second Complainant at the time of her instruction of 25 March 2015 that her request did not meet the requirements of the Provider;
- lack of clarity and independence of the complaints procedure and process surrounding the assessment of the proposal;
- the fact that W. was not available when the first Complainant attempted to call him; and
- failure by the Provider to deal with all the issues raised in the context of the first communication complaint.

The Provider acknowledged receipt of the letter dated 7 September, by letter dated 15 September 2015. This letter acknowledged receipt of the letter by the ASU on 9 September 2015.

By letter dated 23 September 2015, the first Complainant wrote to "member relations manager" and requested a referral letter to this Office.

The Provider acknowledged this complaint by letter dated 2 October 2015. By letter dated 8 October 2015, the first Complainant wrote to W. of the ASU complaints team acknowledging his letter dated 2 October but post-marked 6 October 2015, and noting that he did not receive an acknowledgement within five business days of receipt by the Provider of his complaint as required by the Provider's complaint procedure. He requested an update on progress.

By letter dated 16 October 2015, Q. of the ASU's complaints team responded to the first Complainant in the following terms:

"I refer to your complaint received by the Arrears Support Unit (ASU) on 27 July 2015 and your recent correspondence to the unit. I confirm that I have reviewed the issues which you have raised and am now in a position to provide the [Provider's] final response.

I refer to the [Provider's] correspondence to you dated 14 August 2015. In this correspondence, it was confirmed that in order to conduct an assessment of your financial circumstances, the ASU requires the outstanding documentation, as per our letter dated 27 July 2015, to be provided. Until this has been provided, the ASU is unable to respond with a decision regarding the proposal you have submitted.

As also outlined in this correspondence, if you wish for the [Provider] to engage with a third party in relation to your mortgage account, the [Provider] requires signed authority from both parties to the mortgage along with contact information for the third party.

At present, the above referenced mortgage account is in order with no arrears. As outlined above, in order to progress with an assessment of your proposal, the [Provider] requires the outstanding documentation to be submitted."

The contents of this response letter are a little disappointing. The letter is confusing in that it refers to a complaint dated 27 July 2015 rather than 7 September 2015. Further, the concerns raised by the Complainant in his letter of 7 September 2015 are not addressed in this letter of 16 October 2015. Rather, the letter is almost entirely a repetition of the Provider's response dated 14 August 2015. In my opinion, no genuine attempt is made by the Provider in this October letter to actually engage with the first Complainant in relation to the concerns that he has raised.

The Third Communication Complaint

The first Complainant felt obliged to make a further complaint to the Provider by letter dated **23 October 2015** in relation to the Provider's letter of 16 October 2015. In this, the first Complainant drew the attention of Q. to his letter of 7 September 2015 to which he claimed he had received no response acknowledgement as it was not referred to in the letter of 16 October 2015. He stated that he did not feel that the latest response by the Provider was adequate as it did not address fully the issues raised in his correspondence. He noted the acknowledgement of the Provider that the account was not in arrears and reiterated his concern that it *"is not and never was in arrears case"*. He stated that this was pointed out by him at the outset during his meeting with the branch manager of March and repeatedly in subsequent correspondence, but this fact had never been acknowledged by the Provider until this point.

He noted that in his letter of 12 May 2015 he offered to discuss the issue in more detail, to reach an amicable agreement but that the Provider never responded to this offer and

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instead proceeded to follow the arrears process in a formulaic fashion which led to protracted correspondence, undue delay and the then present impasse. The first Complainant stated that he was offering early settlement taking account of the changed circumstances of all parties to the mortgage, which included a diminution of the value of the secured property. He noted that there was a lack of clear distinction in correspondence between the complaints department and the ASU, which raised concerns on his part in relation to the integrity of the investigation carried out.

Z. of the complaints team of the ASU acknowledged the letter dated 23 October 2015 by letter dated **30 October 2015** and stated that the complaint was received by the ASU on the 27 October 2015. By letter dated 4 November 2015, the first Complainant requested an updated timeframe for completion of the investigation. By letter dated 20 November 2015, the first Complainant was advised that the matter was pending investigation and a response would issue on completion. In a further letter dated 25 November 2015, the first Complainant drew attention to alleged frailties in relation to a data protection request. He further expressed his frustration that he had not been given a timeframe in relation to the investigation of this complaint.

In a final response letter dated **1 December 2015**, the Provider stated as follows:

"I refer to your correspondence of 25 November 2015 in relation to your mortgage account above. Please see my response below to the issues that you have raised.

As advised you in our previous correspondence of 14 August 2015 and 16 October 2015, in order for the [Provider] to consider a proposal from you we will require both you and your daughter . . . to fully complete a Standard Financial Statement (SFS) and return it with the relevant supporting documentation to the Arrears Support Unit for assessment. The previous SFS forms that you submitted in May 2015 are now out of date and new forms will be required. The previous SFS that you submitted could not be assessed as not all the relevant documentation was received, as was outlined to you in our correspondence of 27 July 2015.

In relation to the material you have received under Section 4 of the Data Protection Act, I confirm that you were provided with all relevant documentation relating to your case.

The [Provider] has now responded to you on three separate occasions in relation to this matter and cannot progress it without receiving the documentation outlined to you above."

This response letter is again unsatisfactory in my opinion. Unfortunately, it causes confusion, as it fails to refer to the complaint letter of 23 October 2015. Further, the concerns raised by the Complainant in his letter of 23 October are not addressed in this letter of 1 December 2015. Rather, the letter is almost a repetition of the Provider's responses dated 14 August 2015 and 16 October 2015. Little attempt is made by the Provider in this December letter to actually engage with the first Complainant in relation to the concerns that he has raised in

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his recent letters other than to continually refer back to letter of 27 July 2015 which sets out the documentation required for the assessment of the proposal.

I note that there was further correspondence between the parties in January and February 2016 in which the first Complainant sought a formal referral letter in order to make a complaint to this Office. For the avoidance of confusion, I confirm that each of the final response letters set out above that issued to the first Complainant in 2015 were sufficient for this purpose.

There are a number of provisions of the Consumer Protection Code (CPC) relevant to the above analysis of communication between the parties and the Provider's responses to the complaints raised.

Provision 10.7 of the CPC states that:

"A regulated entity must seek to resolve any complaints with consumers."

This provision makes it clear that it is not sufficient for a regulated financial service provider to simply respond formulaically to complaints raised. Rather it must *"seek to resolve"* complaints made by consumers. When viewed in the overall, and while all parties to the present complaint might have attempted to engage more proactively with one another in certain respects, I am not satisfied that the Provider in the present case sought to resolve the complaints made by the first Complainant.

I am satisfied that the disagreement that arose between the first Complainant and the Provider in this matter could have been remedied in early course if the Provider had engaged on a more active basis with his concerns, particularly as regards why he was being asked to deal with the Arrears Support Unit when his account was not in arrears and secondly in relation to the documentation that was required, despite the fact that there was no arrears balance. While there was some attempt made to deal with the issues raised by the first Complainant in the final response letter of August 2015, this response was deficient in failing to engage with his concerns about the fact that the account was not in arrears. In relation to the response letters of October and December 2015, it is my view that there was little attempt made to seek to resolve the complaints being made. Rather it appears that the complaints department and the Provider's ASU were simply prepared to reiterate again and again that the Provider required the documentation requested in a letter dated 27 July 2015; it made no further attempt to actually engage with the first Complainant's concerns or to respond to more recent concerns raised by him.

The repeated nature of this infringement is disappointing.

Further provisions of the CPC are also relevant. Provision 2.8 CPC mandates that a Provider *"corrects errors and handles complaints speedily, efficiently and fairly"*. I believe that the Provider failed to meet its obligations under provision 2.8 in each of its final response letters from August, October and December 2015, but especially in respect of the latter two.

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In respect of provisions 10.9(a) CPC, the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received. Although there is some dispute in this regard between the parties, I am satisfied that this obligation was met in the present case notwithstanding a small discrepancy between the stated date of certain letters and the date they were received.

Provision 10.9(b) obliges a regulated entity to provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further. Although the first Complainant expressed concern that the point of contact in relation to the first Complainant (i.e. W.) did not have a direct contact line and was not available to take his call on a particular date, I am satisfied that the Provider in the present case met its obligations under this provision. There is no obligation on the Provider to provide direct dial numbers for members of its complaints team. It is also understandable that a named individual may not be available on each occasion that a customer attempts to make contact. What is important in the present case is that a call back was arranged on request and W. did in fact attempt to phone the first Complainant on two occasions the day after the first Complainant had called him.

Provision 10.9(c) obliges the regulated entity to provide the Complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made. Contrary to the submissions of the first Complainant, I do not consider that this provision obliges the Provider to give a timeline for the investigation of the complaint. It is sufficient that the Provider confirm that the complaint is being investigated and that the Provider will revert to the Complainant. I am also satisfied that in accordance with provision 10.9(d), the Provider attempted to investigate and resolve the complaint within 40 business days of having received the complaint, though as noted above I consider that its responses to the various complaints raised, were inadequate, in the circumstances.

In light of all of the above, I consider it appropriate to substantially uphold this complaint. As set out in more detail above, the nub of all three aspects of the complaint to my mind, are failures in communication and the handling of complaints. Considerable frustration has been caused due to the repeated nature of these communications problems. To mark that decision I direct the Provider to make a compensatory payment to the Complainants for the poor service that they have experienced. Whilst the Provider has offered a goodwill gesture, I believe this to be inadequate in light of the repeated failures on the part of the Provider over the relevant period.

I also recommend that the Provider conduct an internal investigation into the handling of customer complaints by its ASU to determine how and why the complaints in this case were dealt with so inadequately and to ensure that it can examine its requirements to meet its obligations under the CPC in the future. I note that since the Preliminary Decision was issued to the parties on 17 June 2019, the Provider has confirmed its intention to do so.

/Cont'd...

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially 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 Complainants in the sum of €4,500 to an account of their choosing, within a period of 35 days of the nomination of account details by the Complainants 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

10 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.**