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| <u>Decision Ref:</u> | 2019-0232 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Repayment Mortgage |
| <u>Conduct(s) complained of:</u> | Maladministration |
| <u>Outcome:</u> | Rejected |

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

Background

This complaint relates to three jointly held mortgage loan accounts, which the Complainant holds with her estranged husband.

The Complainant is aggrieved that a third party requested and subsequently received information on joint mortgage loan accounts that she holds with her estranged husband without her authority. It is the Complainant's contention that her estranged husband's solicitor requested redemption figures for the three accounts in question from the Provider. She asserts that, being a party to the accounts, she should be obliged to give consent, and/or be informed, of any issuing of information regarding the balance of same. She further contends that she was handed a copy of these redemption figures moments before a family law court appearance, by the solicitor representing her estranged husband.

Furthermore, the Complainant is unhappy with what she considers to be the poor handling of her complaint. Specifically, she is dissatisfied that the information contained within two Final Response Letters issued in July 2017 and June 2018 was "*false and mis-leading*".

The first Final Response Letter the Complainant received in response to her grievance about the issuing of the redemption figures to the Complainant's estranged husband's solicitor in **July 2017** included several alleged discrepancies in relation to dates noted within it. It is the Complainant's contention that she sent an original letter of complaint to the Provider dated 28 April 2017 detailing her grievance.

The grievance, she submits, consists of the disclosure of the balance owed on the three joint mortgage loan accounts which she holds with her estranged husband, in the form of redemption figures, following a request from the solicitor. This request, she contends, was on 26 April 2017.

In a Final Response Letter from the Provider dated 26 July 2017 sent in response to her letter of 28 April 2017, it is the Complainant's assertion that the Provider, in acknowledging receipt of the letter, referred to same as the "*letter on the 4th of May 2017*". This, she submits, does not accurately describe her letter of complaint. Furthermore, the Complainant is unhappy that further information was provided in the second Final Response Letter dated 12 June 2018 that was not included in the original Final Response Letter, that is, details surrounding additional requests from the Complainant's estranged husband's solicitor for Redemption Certificates. This additional information not shared with her by way of the first Final Response Letter demonstrates, she contends, mis-leading information provided to her.

In resolution of her complaint, the Complainant would like the Provider to explain the "*false and mis-leading information*" furnished to her in the Final Response Letters of 26 July 2017 and 12 June 2018 as explained above. She would also like the Provider to offer further justification as to why the authority of only one borrower is required to access information regarding a joint account; the Complainant submits that the Provider's existing response to her question in this regard is "*unintelligible*".

The Complainant's Case

The Complainant holds three joint mortgage loans with her estranged husband.

The Complainant is unhappy that the Provider did not seek her permission when disclosing information relating to the joint mortgage loan accounts to the solicitor's firm acting for the Complainant's estranged husband following a request from them for redemption figures. It is the Complainant's contention that she ought to be informed about such requests and she further contends that she should have to give her permission for such information to be issued.

The Complainant is further displeased that Final Response Letters received by her in July 2017 and June 2018 contain information which she deems is "*false and mis-leading*". She states that she initially complained to the Provider in a letter dated 28 April 2017 about, what she considers to be breaches to her data protection rights. The Complainant explains that, in the Provider's Final Response Letter dated 26 July 2017, it states that it was notified of her 28 April 2017 complaint letter "*on the 4th May 2017*". This, she submits, does not accurately describe her letter of complaint.

The Complainant is further displeased that the Provider stated in the July 2017 Final Response Letter that it received a request from the Complainant's estranged husband's solicitor for redemption figures *"on the 26th April 2017"* despite the figures being issued on 19 April 2017, *"5 working days earlier than the 26th April 2017"*.

The Provider's Case

In response to the Complainant's grievance that the authority of only one borrower is required in order to issue information about the joint mortgage loan accounts, the Provider asserts that it holds an authority to deal with the Complainant's estranged husband's solicitor on his sole behalf. It further advises that when *"there are two borrowers on the mortgage [it] only need[s] authority from one to liaise with a third party"*.

In that regard it must comply with the co-borrower's request for information regarding the said accounts. It also submits that as the solicitor's firm in question is practicing and *"on the Law Society of Ireland's roll of solicitors and being officers of the Court, the [Provider] is entitled, in respect of this request for redemption statements, to accept the written confirmation from them"*.

It is the Provider's contention that as the Complainant's estranged husband is a named borrower on the joint mortgage loan accounts, he is entitled to this information either directly requesting it himself or via his appointed solicitor *"just as [the Complainant is] entitled to make such a request without [her estranged husband's] consent"*.

In responding to the Complainant's further grievances, the Provider states that the Complainant's *"letter of complaint dated 28 April 2017 was received on 4 May 2017, therefore the date of receipt of the letter was referred to in the final response letter as this is the date of the complaint"*.

The Provider contends that the original Final Response Letter dated 26 July 2017 states that it received requests from the Complainant's estranged husband's solicitor for redemption figures on 26 April 2017.

It further submits in the later Final Response Letter dated 12 June 2018 that it received several letters from this solicitor requesting the redemption figures; these requests were dated 18 April 2017, 26 April 2017 and 27 April 2017. It asserts that redemption figures were issued by the Provider on 19 April 2017 and on 27 April 2017.

The Complaint for Adjudication

The complaint is that:

- The Provider did not seek the authority of both parties to the accounts before divulging the balance of said accounts; and

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- The Provider poorly handled the Complainant's complaint. Specifically, the Complainant is unhappy that the Provider issued two Final Response Letters in July 2017 and June 2018, incorrectly detailing dates and containing information that the Complainant deems "*false and mis-leading*".

Decision

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

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

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

A Preliminary Decision was issued to the parties on 02 May 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 a number of additional submissions from the parties, the final determination of this office is set out below.

Analysis

It should be noted that any complaint against a Provider in relation to suggested breaches of data protection legislation is a matter for the Office of the Data Protection Commission and does not fall within the remit of the Financial Services and Pensions Ombudsman. The Complainant was therefore advised that, if she so wishes, she may raise a complaint about any suggested data breaches with the Data Protection Commission, which may indeed also be in a position to address the Complainant's contentions, as outlined in her submission dated 10 August 2018 to this office, regarding what she believes to be the correct protocol for the release of data regarding a joint account.

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The Complainant's submission of 10 August 2018 also raised some new elements of complaint but as these issues did not form any part of the original complaint made to this office, they have not therefore been examined for the purpose of this investigation. I note that, in resolution of these newer grievances raised by the Complainant, the Provider offered her €500 in August 2018, but this was refused by the Complainant.

The Preliminary Decision of this office on 2 May 2019 made clear that if the Complainant remained dissatisfied with this proposed resolution, it was open to her to make a separate complaint in respect of these additional grievances and, if her complaint was not then resolved by the Provider's internal dispute resolution process, she could of course proceed with a further complaint to this Office. This no longer remains the position however, as a recent submission from the Complainant discloses that these more recent issues, have since been brought before the Circuit Family Court. I note that the Court made an order on 30 May 2019 directing this Provider to make certain information available to the Complainant.

The Complainant has also been advised that this Office cannot investigate any complaint about the conduct of her estranged husband's solicitor. She was informed by way of letter dated 20 March 2018, that any such concern is more appropriately pursued through the Law Society of Ireland. Since the Preliminary Decision was issued to the parties on 2 May 2019, the Complainant has again referred to what she believes to have been numerous instances of inappropriate content in the letters issued by her estranged husband's solicitors (in the form of her name being confirmed as one of the "Borrowers" given that she is not a client of that office). The conduct of a firm of solicitors however, remains a matter for the Law Society of Ireland, rather than for this office.

The first aspect of this complaint relates to the Provider's failure to seek the authority of the Complainant before disclosing information associated with three joint mortgage loans held by the Complainant and her estranged husband, to his solicitor.

It is important to note that the three mortgage loan accounts held by the Complainant and her estranged husband are held jointly. They are both jointly and severally liable for the full amount of the debts. The Provider states that it is entitled to pursue any one customer for the full amount owing on the jointly held loan, and that it is up to each of the parties involved to pursue the other for a contribution of their share of liability. This stipulation is set out under section 1(a) of Part B – The General Conditions of the Mortgage Loan Offer Letters, signed by both parties on 05 June 2003 and 11 October 2002 respectively, and set out in section M of the conditions of the mortgage loan signed by both parties on 17 November 1997.

The Provider advises that the three jointly held mortgage loan accounts fall within the remit of the Code of Conduct on Mortgage Arrears 2013 (CCMA 2013). The CCMA 2013 sets out that lenders must apply the protections of the Code to joint borrowers who notify the lender in writing that they have separated or divorced.

The Code sets out that the lender should treat each borrower as a single borrower under this Code (except to the extent that an action requires, as a matter of law, the agreement of both borrowers). The mortgage loans in question, the Provider submits, fall within the remit

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of the CCMA 2013. The Provider further submits that *“either borrower is entitled to submit a request to the [Provider] for information relating to their mortgage loan accounts”* (underscored emphasis my own). A borrower, the Provider asserts, can also submit such a request through an appointed representative and the Provider can liaise with them; *“in this instance, the [Provider] holds an authority to deal with the co-borrowers solicitor”*. I accept the Provider’s assertion that *“just as [the Complainant is] entitled to make such a request without [her estranged husband’s] consent”* she too can make a request for similar information, if desired. I am satisfied that this is indeed the position.

Indeed, were it not for the Provider’s entitlement in certain circumstances, to treat estranged joint borrowers as single borrowers, it would not have been possible for the Complainant to have pursued this complaint via this office, as her estranged husband’s consent would have been required by the Provider, in order to secure joint consent, to release details of the accounts to this office.

Accordingly, having considered these issues, I am of the opinion that the Provider did not act wrongfully in replying to the Complainant’s estranged husband’s requests for information, communicated through his authorised solicitor, and this element of the complaint cannot be upheld.

In addition, the Complainant is unhappy with what she considers to be the poor handling of her complaint. Specifically, she is dissatisfied with the information contained within two Final Response Letters issued in July 2017 and June 2018, which she deems were *“false and mis-leading”*.

Firstly, the Complainant asserts that she sent an original letter of complaint to the Provider dated 28 April 2017 but that when the first Final Response Letter was issued on 26 July 2017, it referred to this letter as having been notified of the complaint *“on the 4th May 2017”*. The purpose of the first letter of complaint to the Provider was to raise grievances in relation to what she originally viewed as a data breach on the Provider’s part, following its release of redemption figures to her estranged husband’s solicitor. This particular grievance, and its suitability for the Data Protection Commission, has been referred to above and has been noted to be outside of the remit of this Office. The Provider explains that this description of the original letter of complaint as noted in the Final Response Letter was because it *received* the letter on 04 May 2017 *“noting that 1 May 2017 was a bank holiday”*. The Provider asserts that *“there is no date discrepancy”* and having reviewed the evidence, I am satisfied that this is the case.

Secondly, this Final Response Letter refers to the date on which redemption figures were issued to the Complainant’s estranged husband’s solicitor as being 26 April 2017. However, in a further Final Response Letter dated 12 June 2018 issued to the Complainant, the Provider states that it received several requests from this solicitor requesting the redemption figures by letters dated 18 April 2017, 26 April 2017 and 27 April 2017.

In the second Final Response Letter, the Provider further asserts that redemption figures were issued by it on 19 April 2017 and 27 April 2017. The first Final Response Letter, as noted above, only refers to the request received on 26 April 2017 but further elaborates in the

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second Final Response Letter on the additional requests and issue dates. Based on this variance in information issued to the Complainant over two separate Final Response Letters, I acknowledge that confusion may have occurred as a result of the second more comprehensive Final Response Letter being issued to the Complainant.

I acknowledge that the detail contained in the first Final Response Letter was less than in the second Final Response Letter. However, this less detailed Final Response Letter sent in response to the Complainant's original grievance, which called for an explanation regarding the release of details by the Provider on the specified date, ie on 19 April 2017, explained why the Provider was obliged to send the Complainant's estranged husband the redemption figures, and to that extent I accept that it addressed the Complainant's grievance. In my opinion, whereas the first Final Response Letter is shorter, it nevertheless succinctly dealt with the Complainant's issues, and in my opinion, it was not demonstrative of a breach of either the **Consumer Protection Code 2012 (as amended)** or wrongful conduct within the meaning of the **Financial Services and Pensions Ombudsman Act 2017**.

I accept that the information given was not as comprehensive as the second Final Response Letter but it was not inaccurate nor, in my opinion, was it deliberately misrepresentative or an attempt to disguise or obscure important information.

The Provider asserts that the Final Response Letters of 26 July 2017 and 12 June 2018 are its final response in the matter and I accept that the information contained within both letters comprehensively informed the Complainant as to the reason for the disclosure of the redemption figures to her estranged husband's solicitor. Accordingly, based on the evidence before me, I do not consider it appropriate to uphold this complaint.

Conclusion

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

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**

3 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.