



<u>Decision Ref:</u>	2019-0386
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Maladministration Failure to process instructions Errors in calculations Fees & charges applied (mortgage)
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Provider managed the day to day administration of the Complainant's six mortgage loan accounts ("mortgage accounts"), on behalf of the owners of the mortgage loans from **25 August 2015**. The owner of the mortgage loans was not a regulated financial service provider.

This complaint relates to the Provider's alleged poor management of the mortgage accounts, and its poor customer service (to include poor communication and complaints handling).

The Complainant's Case

The Complainant contends that the Provider subjected him to a "*prolonged period of harassment*" from June 2014, as a result of issues that he was not responsible for, causing "*great trauma and stress*" for the Complainant and his family.

The Complainant submits that the Provider took a "*cavalier approach*" to handling his accounts, and that it has made several administrative errors including but not limited to:

- Failing on a number of occasions to apply the direct debits on some of the accounts;
- Wrongfully stating that direct debits were returned to it unpaid;
- Refusing to furnish the Complainant with mortgage statements despite “*numerous requests*”;
- Stating that the Complainant was not being charged accrued interest, despite evidence to the contrary on account statements;
- Applying interest incorrectly to the Complainant’s accounts;
- Issuing confidential correspondence for the Complainant to the address of a “*Buy to Let*” property;
- Wrongfully issuing arrears letters to the Complainant and a joint account holder in 2015;
- Causing undue delays in releasing the Complainant’s title deeds and the associated releases for his properties after the mortgage accounts were fully redeemed.

The Complainant also contends that he lodged formal complaints about “*so many different personnel dealing with [his] complaints and concerns, some 8 or 9*” and states that he has “*upwards of 20 letters of meaningless apologies*” from the Provider in response to the issues he has raised with them.

The Complainant wants the Provider to compensate him in the amount of €75,000 for the reasons outlined in his submissions.

The Provider’s Case

The Provider’s submissions to this office dated 3 January 2018 outline the background to the Complainant’s mortgage accounts. The submissions state that:

- In **2014**, the previous owner of the mortgage accounts (“the previous owner”) agreed to sell “*amounts owing to it in respect of the mortgages*” to the current owner of the mortgage accounts (“the owner”).
- Between **10 June 2014** and **25 August 2014**, the previous owner managed the day to day administration of the mortgage accounts on behalf of the owner.
- On **25 August 2014**, the Respondent Provider commenced management of the mortgage accounts on behalf of the owner.

The Provider states that it only became associated with the Complainant’s mortgages from **25 August 2014**. The Provider submits that for that reason, it will only comment on its conduct from this date onwards. In respect of the complaint about the failure to apply direct debits, the Provider submits that “*when the mortgages transferred to [the Provider] on 25 August 2014 [the previous owner] did not provide any Direct Debit mandate information and therefore [the Provider] was not in a position to collect repayments by this method*”. It states that the completed Direct Debit forms were received from the Complainant on **16 September 2014** and that Direct Debits were set up on its systems on **22 September 2014**.

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It also states that further Direct Debits that were not applied for in May 2015 and October 2015, were collected on other dates and that it was recorded as *“collected by Direct Debit”* on the mortgage statements. The Provider disputes that it marked the Complainant’s mortgage statements with *“unpaid transaction”*.

In respect of the complaint about the failure to furnish the Complainant with mortgage statements (despite his requests), the Provider states that it was *“only in a position to provide mortgage statements from January 2014”* and that *“statements of accounts were issued upon request; however, on a few occasions statements for mortgage X-XXXXXX602-1 were not issued due to administration oversight”*.

The Provider accepts that *“interest incorrectly applied to the mortgages was applied to arrears amounts. To rectify this issue and correctly balance the mortgages, the transaction had to be applied to the mortgages as an ‘arrears write off’”*. The Provider submits that all correspondence issued by the Provider to the Complainant and his co-borrowers was to the correct address.

In respect of the arrears on mortgage account X-XXXXXX602-1, the Provider submits that the mortgage account had an arrears balance of €666.28 when it migrated to the Provider. The Provider submits that it cannot comment on the actions of the previous owner during its period of administration of the mortgages. The Provider asserts that it asked the Complainant to provide proof of his payments to the mortgage account, or the letter from the previous owner confirming that the mortgages were up to date at September 2013, but that the requested evidence was not forthcoming. The Provider submits that

“due to the nature of the complaints submitted by the Complainant, [the Provider] put a hiatus on the issuing of arrears for mortgage X-XXXXXX602-1. We recommenced issuing arrears correspondence on mortgage X-XXXXXX602-1 in February 2015 and continued to do so until such time the Complainant remedied the arrears”.

In respect of the complaint about the delay in furnishing the title deeds and the releases, the Provider stated in its final response letter dated 16 May 2017, that the Complainant’s request to have his mortgage deeds vacated was *“not referred to [the Provider’s] Legal Department”* and the Provider apologised for this. In the Provider’s submissions to this office, it submits that *“the Title documents were issued to the Complainant’s Solicitors on final receipt on 13 June 2017, with the vacate documents issued on 14 November 2017”*.

In respect of the complaint about the Provider’s complaint handling, the Provider submits that complaints raised were treated in line with its policy on complaints. The Provider submits that

“actions such as the issuance of arrears correspondence and statements to an incorrect address between 2010 and 2014, and title documents to that same incorrect address in 2014; the recording of payments as “unpaid DD” on the mortgage statements and; compounding of mortgage repayments, were not the actions of [the Provider] and pre-date our administration of the mortgages therefore

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must be disregarded from the complaint. In this regard, the Complainant's suggestion that [the Provider] attempted to discredit him must also be disregarded from the complaint".

The Provider further submits that

"notwithstanding the above, the level of service offered to the Complainant by [the Provider] falls below the level of service we strive to offer our customers. It has been noted that issues, such as, the time taken to issue redemption figures between 16 December 2016 and 19 January 2017 and the subsequent delays in providing title documents on final receipt, as well as discharge documents, served as an inconvenience for the Complainant, which would have resulted in a financial impact to him".

The Complaint for Adjudication

The Complaint is that the Provider:

1. Poorly managed the mortgage accounts held by the Complainant and his co-borrowers;
2. Delayed returning the title deeds (and releases) after the mortgages were redeemed in full;
3. Provided poor customer service (to include poor communication and complaints handling) throughout.

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 8 October 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that

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date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below. At the outset there are a number of points to be noted.

Firstly, this complaint has been raised against the Provider in its capacity as credit servicer of the mortgage accounts purchased in June 2014 by an unregulated entity. Therefore the investigation and adjudication of this complaint deals only with the conduct as alleged against the Provider, from **25 August 2014** onwards, as this was the date that the Provider commenced its management of the mortgage accounts. The investigation of this complaint does not address the conduct of any other party which was involved with the Complainant's mortgage accounts, prior to 25 August 2014.

Secondly, the jurisdiction of this office to consider complaints is governed by the provisions of the **Financial Services and Pensions Ombudsman Act 2017 (the "2017 Act")**. The jurisdiction of this office is limited to the investigation of complaints as set out at section 44 of the 2017 Act. I note that this complaint has also been raised against the owner of the mortgage accounts. As the owner was not a regulated financial service provider at the material time, the FSPO was unable to consider its conduct as part of the investigation of this complaint.

First Element of the Complaint

At the outset, it is important to note that when the Provider commenced the management of the mortgage accounts on 25 August 2014, one mortgage account (X-XXXXXX602-1) was recorded as being in arrears and the other five mortgage accounts were up to date.

The Complainant submits that the Provider made a number of administrative errors in respect of his mortgage accounts. In his letter to this office dated 4 February 2019, he states that he has been subject to

"an unacceptable amount of inefficient and unprofessional management which has been acknowledged by the Provider, that caused my family and myself considerable stress and trauma".

I will deal with each aspect of this complaint in turn.

Direct Debits

The Complainant submits that the Provider failed on a number of occasions to apply the direct debits to the mortgage accounts. The Complainant also submits that the Provider wrongly stated that the direct debits were "*not paid*" on his mortgage statements, when it was the fault of the Provider that the direct debits were not paid (i.e. not called for).

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The Provider submits that “*migration data provided by [the previous owners] did not contain any Direct Debit mandate details or any telephone contact details*” and that “*on 19 August 2014, [the owner] wrote to the Complainant advising that the repayments due to the mortgages on 10 September 2014 would not be collected by Direct Debit*”.

The Provider accepts that it failed to apply for the direct debits for the mortgage accounts in May 2015 and October 2015, but states this “*had no impact to the Complainant*”. The Provider submits that it wrote to the Complainant on these occasions to inform him that the Direct Debit would be called for the following month (together with the instalment for that month). The Provider disputes that that it recorded that the direct debits were “*not paid*” on the Complainant’s mortgage statements when the direct debits were not called for by the Provider. From a review of the evidence before me, I note that the Provider did not call for the direct debits in:

- September 2014
- May 2015
- October 2015

I also note from listening to the telephone call between the Complainant and the Provider on 8 July 2016, that the Provider was unable to collect the direct debit on **10 July 2016**. The Provider advised the Complainant that the direct debit would be collected a few days later on **13 July 2016** and the representative apologised for this.

I do not consider the Provider to have been responsible for the failure to call for the direct debit in **September 2014**, as it did not hold the Complainant’s direct debit details at that time. I have listened to the telephone call between the Complainant and the Provider on 10 September 2014, in respect of the direct debit that was not called for in **September 2014** (for two of the mortgage accounts). The Complainant told the Provider that he would send a cheque to cover instalments for September and October 2014.

On **10 September 2014**, the Complainant sent a cheque to the Provider in the sum of €569.17 with an instruction letter for the payment to be allocated between the two mortgage accounts. This was received by the Provider on **16 September 2014**. I note that the payment was allocated to only one of the mortgage accounts, which left the other mortgage account in arrears. The Complainant raised a complaint about this. The Provider accepted in its final response letter that the payment was incorrectly allocated to one mortgage account, rather than being allocated between the two mortgage loan accounts. The Provider stated in its final response letter that:-

“this issue has now been rectified and that the interest that accrued on your account as a result of our administration oversight has been credited to your account X-XXXXXX904-1. We would like to apologise for the administration oversight that resulted in the delay in allocating this payment as requested”.

I accept that this was an administrative error on the part of the Provider which led to the Complainant receiving an arrears letter and interest being incorrectly charged to one mortgage account. I appreciate that this was frustrating for the Complainant, particularly

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when he had taken prompt action to send the cheque to the Provider with a letter of instruction as to the allocation of the funds. I accept that the Provider failed to call for the direct debits on three other occasions between **May 2015** and **July 2016** and that these were administrative errors on the part of the Provider.

It is evident from listening to the telephone call on 14 October 2015, (when the Complainant was advised that the direct debit was not applied for on 10 October 2015 and that it would be applied for on 25 October 2015), that he was concerned at the number of times that this had happened, and he stated that he felt the need to check his statements every month, in case the direct debit had not been applied.

I have considered the Complainant's 'Statement of Account' which was supplied to the Complainant by the owner (covering the period of **1 January 2014 to 25 August 2014**). I note that the description of the payment on **10 August 2014**, states "*unpaid DD*". I accept that it was the previous owner which recorded this entry on the Complainant's mortgage statement and I note that this was prior to 25 August 2014. I therefore find no wrongdoing on the part of the Provider in this respect.

I have reviewed the statements for the six mortgage accounts furnished by the Provider, and I accept that the Provider has not recorded any direct debits that were not called for, as 'unpaid'.

Request for mortgage statements

The Complainant submits that the Provider refused to supply him with his mortgage statements despite numerous requests. The Provider disputes this and asserts that it provided the mortgage statements upon request. From a review of the correspondence furnished by the Provider, I note that the following requests were made by the Complainant:

- He requested the certificates of interest and mortgage statements for all of the mortgage accounts during a telephone call with the Provider on **11 May 2015**. The Complainant was advised by the representative that the certificates of interest would be issued to him but that the mortgage statements could not be sent to him until **10 June 2015**, as this was when the annual mortgage statement would be sent. I note that the certificates of interest were issued to the Complainant on **18 May 2015**, however the mortgage statements were not sent.

The Complainant wrote to the Provider on **20 May 2015** as follows:

"I still cannot understand why you continue to refuse to furnish my entitlement of statements of account to year end December 2014, also my legal entitlement to receive certificates of interest on all my mortgage accounts, now at the end of May 2015 I am denied the right to check your records, some of which I know are in error".

On **7 July 2015**, the Provider issued a final response letter to the Complainant. In respect of the request for statements, the letter stated

“we are currently not in a position to issue same however [the Provider] on behalf of [the owner] are required to issue you an annual statement of account...[the Provider] will honour their obligations to issue you an annual statement of account once they are in a position to do so”.

The Provider enclosed the certificates of interests as requested. I note that the statement of accounts for the year 2014 were furnished to the Complainant on **26 August 2015**.

- On **11 January 2016**, the Complainant requested mortgage statements for the year 1 January 2015 to 31 December 2015. On **13 January 2016**, the Provider sent the mortgage statements to the Complainant.
- In a telephone call on **14 March 2016**, the Complainant requested his mortgage statements and certificates of interest until the end of December 2015. These were issued to the Complainant on **15 March 2016**. In another telephone call on **21 March 2016**, the Complainant telephoned the Provider to request the certificate of interest and the mortgage statement for mortgage account X-XXXXXX602-1, as these documents had been omitted from the documents sent to the Complainant on 15 March 2016. These documents were then issued to the Complainant on **29 March 2016**.
- The Complainant wrote to the Provider on **16 August 2016**, as he had requested an updated statement for account number XXXXXX602-1, but had been sent a duplicate of a different mortgage account. The Complainant requested the statement for this mortgage account again. The correct mortgage statement was then sent to him by the Provider on **19 August 2016**.

I accept that there was a delay on the part of the Provider in sending the mortgage statements to the Complainant. It appears his initial request was made in **May 2015**, but he did not receive the correct documents until around three months later (in **August 2015**). However, I do not accept that the Provider refused to send the mortgage statements as it explained its reasoning as to why the statement would not be released (in that it was waiting to send the annual mortgage statement). It is disappointing that it then took over two months for the mortgage statements to be issued to the Complainant, as he had been told in a telephone call with the Provider that the mortgage statements would be ready on **10 June 2015**, but he did not receive them until **26 August 2015**. I am of the view that the Provider's failure to include all of the mortgage statements / certificates of interest in March 2016 and August 2016 were minor errors, however I accept that this was an inconvenience to the Complainant (who then had to write again to request the correct documents).

Noting the administrative failings outlined above, I also note that the mortgage statements were promptly issued to the Complainant, when requested in January 2016.

Application of interest to the Complainant's mortgage account

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The Complainant submits that interest was incorrectly applied to his mortgage accounts. The Complainant also submits that the Provider stated that the Complainant was not being charged accrued interest, however the evidence on his mortgage statements showed that he was. The Complainant stated in an email to this office dated 21 February 2019 that:

“many of my accounts have been ‘blighted’ with the ‘wording arrears, and arrears write off’. All of which was inaccurate and down to inefficiencies and errors by the Provider’s staff, as accounts were never in arrears due to negligence or neglect on my part”.

The Provider accepts that interest was incorrectly applied to the Complainant’s mortgage accounts and that it remedied this. In its letter to the Complainant dated **15 June 2016**, the Provider states that it was due to an *“administrative oversight”*. The Provider accepts in its submissions to this office that it found further errors in respect of interest applied to the Complainant’s accounts as *“interest was applied to the arrears on the accounts when it should not have been”*. It states that the arrears on the account were overstated in the sum of €75.08.

I note that the only mortgage account that was in arrears (prior to August 2016 when the Complainant suspended the direct debits for all of his mortgage accounts for a period of three months), was the mortgage account X-XXXXXX602-1. The Complainant’s other five mortgage loan accounts were up to date and were not in arrears. I have reviewed the mortgage statements for each of these five mortgage accounts and I accept that the Provider incorrectly applied an ‘interest on arrears charge’ on each of the accounts. As the five mortgage accounts were not in arrears, this interest should not have been applied.

In addition, when this issue was raised with the Provider, it wrote off the incorrect charges and recorded this as *“Arrears Write-Off”* in each of these five mortgage accounts on **15 June 2016**. I accept that this was frustrating for the Complainant, as his statements gave the impression that he had been in arrears, when in fact arrears had never accrued on these mortgage accounts. It is clear from listening to the telephone calls that the recording of ‘arrears write-off’ in the Complainant’s mortgage statements was stressful for him. The Complainant has furnished documentary evidence from his banks, which demonstrate his positive banking history. I understand the Complainant’s concern that if he wanted to apply for another financial product, that his statements would have references to his mortgage accounts being in arrears, when this was not true.

I am of the view that incorrectly applying interest on numerous mortgage accounts is a serious error, and it is disappointing that this had to be raised by the Complainant on **18 January 2016**, rather than the Provider identifying this issue in and of itself. The Complainant was inconvenienced by having to write to the Provider about this and I accept the Complainant’s position that recording the rectification of the error as an *“Arrears Write-Off”*, was inappropriate as it did not reflect the true position with respect to the Provider’s error.

The Complainant requested an explanation for the interest on each of the accounts and it stated

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“my Bank have never returned a DD unpaid or have I been unable to fund these accounts throughout that history yet on statements received from you shows arrears of interest on every account”.

It is evident that this was stressful for the Complainant as his letter said that

“these statement showing arrears are discrediting my standing with bankers and others”.

The Provider’s response to this letter stated as follows:

“As per our statement for mortgage loan account number X-XXXXXX602-1, the interest on arrears charged during this period of the statement relates to the arrears that were on your account from 10/08/2014 to 10/10/2014. Your direct debit returned on 10/08/2014 prior to [the Provider] servicing your account. I can confirm that a direct debit is set up on your mortgage loan account number X-XXXXXX904-1, to apply on the 10th of every month”.

In my opinion, this response from the Provider was unacceptable and unsatisfactory as it did not address the Complainant’s question as to how interest had been charged to all of his mortgage accounts. It is also disappointing that the Provider only rectified this issue some five months after the Complainant sought an explanation. I accept that this will have added to the Complainant’s overall frustrations.

In respect of the complaint that the Provider stated that the Complainant was not being charged accrued interest, however the evidence on his mortgage statements showed that he was, I note the correspondence from the Provider to the Complainant dated **3 June 2015** (in response to the direct debit not being applied for in May 2015). The letter stated that *“we will not incur any additional interest, or other charges, as a result of this matter”*. From a review of the five mortgage statements, the interest was applied in advance of this and continued between **29 September 2014** and **15 June 2016**.

Issuing confidential correspondence

On **1 August 2014**, the owners wrote to the Complainant (and joint account holder). The Complainant submits that this correspondence was sent to the Complainant’s buy to let property and not to the correct address. I note that the Provider’s final response letter to the Complainant dated **29 April 2015**, states that *“we would however like to apologise for the administration oversight by [the owner] on 1 August 2014 and for any concern or inconvenience this issue may have caused you”*.

As I have outlined above, this investigation and adjudication deals only with the conduct of the Provider (and not the conduct of the owner, an unregulated entity). Consequently, I cannot hold the Provider responsible for the actions of the owner in sending this correspondence to the Complainant at an incorrect address.

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The Provider submits that all correspondence to the Complainant (and the joint parties) was issued to the correct address. There is no evidence before me which shows that the Provider wrote to the Complainant (or joint account holder) at an incorrect address. There is also no evidence before me which shows that the Provider breached the Complainant's confidentiality throughout its dealings with the mortgage accounts.

I accept that any suggested breaches of confidentiality referred to in the complaint, took place prior to 25 August 2014. The Complainant raised a complaint against the Provider for issuing correspondence without the envelope being sealed, however I have not been furnished with any evidence to support this.

The Complainant also submits that third party correspondence was issued to him and that this correspondence contained mortgage statements of the third party. I note that the letter from the Complainant to the owner dated **11 July 2014**, states that the third party correspondence was sent to him by the owner. Whilst I have not been furnished with any evidence to support this, I accept that this element of the complaint concerns events which took place prior to 25 August 2014. There is no evidence before me to show that the Provider sent any third party correspondence to the Complainant.

Issuing arrears letters

The Complainant submitted a number of complaints to the Provider in respect of the arrears on mortgage account X-XXXXXX602-1. The Provider submits that when the Complainant's mortgage accounts migrated to the Provider on **25 August 2014**, that the mortgage account X-XXXXXX602-1 had an arrears balance of €666.28. The Provider submits that it is

"not in a position to comment on the actions of [the previous owner] during their period of administration of the mortgages".

I note that these arrears were disputed by the Complainant and that this issue was the subject of a number of complaints from the Complainant to the Provider. The Provider states that it asked for proof in the form of the Complainant's payments to this mortgage account or the letter from the previous owners confirming that the mortgages were up to date, at September 2013, however it submits that this evidence was not forthcoming. The Provider also submits that it

"must rely on the information provided by the originating loan owner, including [the previous owner], in relation to the mortgage balances. In this regard, the burden of proof fell on the Complainant to prove that either the payments were made as he insisted, or, that the mortgage was up to date in September 2013.....We will not write off arrears without specific proof confirming that the payments were made, or the accounts were up to date, during the period in question".

As I have outlined above, this investigation can deal only with the conduct of the Provider. The evidence before me suggests that there were issues with the Complainant's mortgage accounts prior to their migration to the Provider for management. I accept that the Complainant had an exemplary record in respect of his mortgage payments going back a number of years, and I have been furnished with letters from various banks expressing their

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satisfaction in respect of his banking history. I also accept that the Complainant was of the belief that his mortgage accounts were up to date when they migrated to the Provider. Therefore, I can appreciate the Complainant's frustrations when he began receiving letters about this mortgage account being in arrears.

I am, however, of the view that the issues in respect of these mortgage accounts and the reason for arrears appearing on this mortgage account, originated prior to 25 August 2014. I am unwilling to find any wrongdoing on the part of the Provider on this specific issue, as the arrears were on the account when the Provider took up the responsibility to manage that account. I accept that the Provider acted reasonably in its investigation of this issue and that its proposal for the Complainant to supply evidence to prove that the payments were made, was a reasonable proposal. It is disappointing that the Complainant did not avail of this.

I appreciate that the Complainant states that he no longer holds this letter and that he did not provide his bank statements because of confidentiality reasons. I am of the view, nevertheless, that the provision of this underlying evidence might have resolved the issue, and the issue could have been dealt with sooner, if the Complainant had availed of this proposal from the Provider.

I also note that in **August 2016** the Complainant suspended his direct debits for three months and therefore arrears accrued on each of his mortgage accounts. The Complainant submits that he did this

"due to the numerous catalogue of errors, with limp apologies, and a lack of will to attend properly to my requests for meaningful reviews going back over a 2 YEAR period" and that he would reinstate the direct debits "once [his] complaints have been dealt with in a professional manner".

Whilst I appreciate that the Complainant was frustrated due to the number of errors that the Provider had made in respect of his mortgage accounts, the Complainant had a contractual obligation to make the repayments due, and I do not accept that this was an appropriate course of action by the Complainant.

Notwithstanding the above, I accept that there were a number of shortcomings on the part of the Provider in respect of its communication to the Complainant about the "arrears" on his mortgage accounts.

The Provider wrote to the Complainant on **28 May 2016** in respect of the arrears on the mortgage account X-XXXXXX602-1, and incorrectly stated that there were 8 repayments missed. The previous arrears letters sent to the Complainant had referred to 6 payments missed. The Provider accepted in its letter to the Complainant dated 3 July 2016 that it

"overstated the number of instalments in arrears by 2 months".

In respect of the arrears letters that the Complainant received in relation to mortgage account X-XXXXXX602-1, I note that the explanation from representatives of the Provider during the telephone calls (in respect of what the six missed payments were) was not clear

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or adequately explained. In addition, I note that the Complainant wrote to the Provider on **30 September 2016**, to request an explanation for reference to 10 payments missed in its arrears letter. It is disappointing that the Provider responded by letter to explain how 6 payments were missed, but it did not address the Complainant's query about 10 payments. I accept that the Provider's letters in respect of the number of missed payments were not clear and that this undoubtedly added to the Complainant's confusion. I also note that the Complainant gave a cheque to a field representative of the Provider on **24 November 2016** in order to clear the arrears that had accrued on the mortgage accounts (following the period of suspension). However, the Provider sent arrears letters to the Complainant in respect of three mortgage accounts on **10 December 2016**.

The Complainant telephoned the Provider on **15 December 2016** to query why he had received arrears letters when he had already discharged the arrears and had requested for his direct debit to be reinstated for December 2016. I accept that there was a slight delay on the part of the Provider in processing the payment with respect to the arrears, however I do appreciate that the funds from the cheque had to be allocated to all of the mortgage accounts and that the Provider told the Complainant during the telephone call on **15 December 2016** that it had put a suspension on the accounts, to ensure that no further arrears letters were sent.

Second Element of the Complaint

It is useful to set out a sequence of events relevant to this element of the complaint.

- On **14 December 2016**, the Complainant wrote to the Provider to request the redemption figures for his six mortgage accounts. The Complainant also asked the Provider in this letter about the length of time it would take to receive the title deeds for the properties.
- On **18 January 2017**, the Complainant telephoned the Provider and stated that he had written to the Provider in respect of the redemption figures, but that he had no reply. The Provider told the Complainant that it would escalate this and would have an update for the Complainant the next day.
- On **19 January 2017**, the Provider furnished the Complainant with the redemption figures.
- On **20 January 2017**, the Complainant wrote to the Provider and enclosed a cheque (with an amount to cover the redemption figures for the six mortgage accounts and an amount to cover the cost of vacating each mortgage deed). The letter stated as follows:

"I would point out that I feel justified in seeking a rebate of the daily interest charged of £9.82. per day, which I was charged, yet seeking a redemption figure since

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November last, I was therefore denied the opportunity to settle the accounts without further unnecessary costs. I estimate a rebate of £392.50”.

- On **23 January 2017**, the Provider received the correspondence and the cheque from the Complainant.
- On **10 February 2017**, the Complainant telephoned the Provider to ask whether his bank draft had been received as he had not received an acknowledgement. He was informed on this call that the title deeds would take around 6 to 8 weeks once the payment is received. The Complainant asked for a representative to call him back.
- On **20 February 2017**, the Provider telephoned the Complainant to query the source of the funds for the redemption of the mortgage accounts. The Complainant responded to this query and asked whether his cheque had been received. The Provider told the Complainant that his cheque had been received.
- On **15 March 2017**, the Complainant telephoned the Provider to ask about the whereabouts of the title deeds. He asked that the Provider write to him as to when he would expect to receive the title deeds.
- On **18 April 2017**, the Complainant telephoned the Provider to inform it that he had paid the redemption figure for the mortgage loan accounts in January but that he had not received an acknowledgement. The Complainant advised the Provider that he required his title deeds. The Provider informed him that it usually took 3 to 6 weeks to receive the title deeds once the account was closed. The Provider informed him that the account was closed last month and that she would contact the legal department.
- On **21 April 2017**, the Provider telephoned the Complainant and left a voicemail message.
- On **25 April 2017**, the Complainant telephoned the Provider and requested that it write to him about the title deeds. The Provider advised the Complainant on this call that a DS1 form was required to have the charge removed from the title deeds. The Complainant stated that *“it is a pity I’m only being told on the phone now with me having to chase ... it’s a pity me having to phone”*. The Complainant asked why he was not informed about this when he was informed above the vacate fee (in the Provider’s letter dated 19 January 2017). The Complainant raised a complaint in respect of the delay of the title deeds and the fact that he had not been told previously about the requirement of a DS1 form.
- On **26 April 2017**, the Complainant telephoned the Provider to advise that he had spoken to his solicitor in Northern Ireland and that the DS1 form was not required. The Provider informed that Complainant that it would check with the legal team. The Complainant stated that he was anxious about the whereabouts of the title deeds.

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- On **26 April 2017**, the Complainant wrote to the Provider in respect of the requested DS1 form. The Complainant stated in the letter that *“the DS1 form is only used in the UK, it is not used in Northern Ireland”*. The Complainant authorised the Provider to liaise with his solicitors in Northern Ireland.
- On **2 May 2017**, the Complainant’s solicitor from Northern Ireland telephoned the Provider. The Complainant’s solicitor asked whether the Provider had received the Complainant’s authorisation for her to speak with the Provider, to which the representative confirmed it had. The Complainant’s solicitor advised of the reasons why the DS1 form was not required in Northern Ireland. The Complainant’s solicitor advised that they needed to draw up releases but would need the title deeds to do so. The Provider informed the Complainant’s solicitor that it would need to speak with the legal department. The Complainant’s solicitor requested that the legal department telephone her.
- On **3 May 2017**, the Complainant telephoned the Provider to ask for the date that the title deeds would be sent. The Provider told the Complainant that the legal department was insisting that the DS1 form was required to remove the charge. The Complainant raised a concern that he thought the Provider had lost his deeds. The Complainant told the Provider about the advice he had received from his solicitor in that the DS1 form was not required.

When another representative telephoned the Complainant back on that date, he was informed that the title deeds were with the Provider and that it would respond to the complaint within the timeframes.

- On **11 May 2017**, the Complainant wrote to the Provider to lodge a complaint. His letter stated as follows:

“I obtained redemption figures to settle my 6 mortgages after an unacceptable delay which was costing me further unnecessary interest charges. I forwarded a sterling Bank draft in January in total settlement plus the requested vacate fee. I was informed the title deeds would be available in 3-6 weeks. I got no acknowledgement of receipt of my draft or any informed correspondence as requested, several staff that I had been dealing with left the organisation. I am now at this later stage advised by telephone that I must obtain, sign and return a DS1 form. Which in the case of properties in Northern Ireland is totally incorrect. I am advised by two Northern Ireland law firms..... that the DS1 is not used in N.I.”

- On **16 May 2017**, the Provider issued a final response letter to the Complainant in respect of the complaint raised during the telephone conversation on 25 April and in the letters dated **26 April 2017** and **11 May 2017**.

In its final response letter, the Provider accepted that *“following receipt of your correspondence the request to have your mortgage deeds vacated was not referred to our Legal Department, and for this we apologise. We have found that on 18 April*

2017 you contacted our offices to discuss the vacating of your mortgage deeds; and that following this call the request was escalated to our Legal Department and the Title Documents were requested from our offsite storage to be prepared and issued to you. We would like to take this opportunity to apologise to you for the length of time it has taken to release the title documents to you we thank you for your feedback”.

The Provider advised the Complainant that written authority from the joint borrowers on the mortgages was required as to where they would like the title deeds to be issued.

The Provider further states in the letter that *“upon review of your concerns that our associates misinformed you that a DS1 form needed to be completed by your solicitor, prior to our Legal Department vacating your mortgage deeds...However upon you advising our offices that your solicitor would not be completing same we have reviewed this matter with our Legal Department and we can confirm that on this occasion we will proceed to vacate the Title Documents to you without the DS1 form”.*

- On **18 May 2017**, the Complainant wrote to the Provider enclosing authorisations from the joint borrowers as requested by the Provider. In respect of the Provider’s response about the DS1 form, the Complainant stated *“I believe it quite disingenuous and lacking honesty and integrity to suggest that you were waving the need for a DS1 form, knowing full well that this process is not used by land registry in Northern Ireland”.*
- On **30 May 2017**, the Provider telephoned the Complainant’s solicitor to check which solicitor’s office to send the title deeds to, as the authority from one of the joint borrowers was for a different solicitor’s office. The Provider stated that the title deeds were ready to be issued.
- On **13 June 2017**, the Provider furnished the title deeds in respect of the six properties, to the Complainant’s solicitors.

The Complainant has furnished this office with an email from his solicitor dated **28 February 2018**, in respect of the communication between the Complainant’s solicitors and the Provider about the release of the charges from the title deeds.

This office has not been furnished with any of the correspondence referred to in this email, in which the Complainant’s solicitors state that:

- Upon review of the title deeds furnished to the Complainant’s solicitors, the solicitors realised that *“there was no vacate or release for the security on the property”.*
- On **10 July 2017**, the Provider contacted the Complainant’s solicitors to request the DS1 form to remove the charge.

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- On **28 July 2017**, the Complainant's solicitors sent the releases to the Provider.
- On **14 November 2017**, the releases were received from the Provider, however the Complainant's solicitors stated that the signatories were illegible.
- On **5 January 2018**, the Complainant's solicitors received clarification from the Provider about the signatories.

I note that the Complainant submits that the Provider delayed in furnishing details of the redemption figures on the mortgage accounts.

The Complainant states that

"in December I made a request for redemption figures from [the Provider], [the owner's] management agent, despite several requests and eventually an apology from [the Provider's representative] who admitted all of [the owners/the Provider] short comings and regretted the deplorable action against me over account XXXXXX602. I subsequently received redemption figures and the vacate fee costs in mid-January 2017".

The Provider accepts in its submissions to this office that the time taken to issue redemption figures between **16 December 2016** and **19 January 2017** was *"below the level of service we strive to offer our customers"*.

I accept that there was a delay on the part of the Provider in furnishing the redemption figures to the Complainant. I do not consider this delay to have been overly excessive, given the intervening Christmas period, however I accept the Complainant's concern that he was charged daily interest whilst he waited for the redemption figures, and that the figures became available, only after he followed up by phone, with the Provider.

The Complainant submits that there was a delay in the Provider furnishing the title deeds. The Provider accepts that the *"delays in providing title documents on final receipt, as well as discharge documents served as an inconvenience for the Complainant, which would have resulted in a financial impact to him"*.

From the evidence available to me, I am of the view that there was an unacceptable delay on the part of the Provider in furnishing the title deeds, as they were provided more than four months after the mortgages were redeemed. I accept that it was the Complainant who had to contact the Provider on multiple occasions to obtain an update in respect of the title deeds, as he had not received any update or information from the Provider. Understandably, this must have been very frustrating for the Complainant.

The Complainant submits that he missed the opportunity to sell one of the properties due to the delay on the part of the Provider. I accept that there was an unreasonable delay on the part of the Provider, however I do not accept that there is a sufficient causal link between the delay of the title deeds and the loss of a sale. I note that there are a number of

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factors that come into play, during the potential sale of a property and I am unwilling to accept that the suggested loss of the sale was solely because of the delay of the Provider. I have not been provided with any evidence to this effect.

In respect of the Provider's request for the DS1 form, I accept that its initial request for this form was reasonable as it appears from the evidence before me that this was the standard process for the Provider. In addition, as Northern Ireland is within the United Kingdom, I accept that it was reasonable for the Provider to request this. However, it is most disappointing that the Provider only requested this form from the Complainant during a telephone call on **25 April 2017**, which I note was a call from the Complainant yet again, to the Provider.

It is also unsatisfactory that this was some three months after the accounts had been redeemed in full in full. The Provider failed to set out its request for this form in writing and it was only when the Complainant rang the Provider, that this particular request was made.

I also accept that there were a number of customer service failings on the part of the Provider in respect of this aspect of the complaint as follows:

- The Provider received the Complainant's bank draft on **23 January 2017**. It is unsatisfactory that the Provider failed to write to the Complainant to acknowledge that his bank draft had been received, despite numerous requests from the Complainant. I note that the first correspondence issued to the Complainant following 23 January 2017, was on **16 April 2017** (which was the Provider's response to the Complainant's complaint).
- The Provider's representatives during the telephone calls on **25 April 2017** and **3 May 2017** were unable to provide adequate information as to what was required in respect of the DS1 form. I note that they were unable to address the Complainant's queries in respect of this form.
- I accept from listening to the telephone calls on **26 April 2017** and **3 May 2017** that the Complainant was anxious about the whereabouts of his title deeds. A representative of the Provider on a separate telephone call (on 3 May 2017), alleviated the Complainant's concerns and informed him that the title deeds were on file. The two previous representatives failed to inform the Complainant of this and in my view they did not in any way alleviate the concerns that the Complainant clearly had.
- The Complainant's solicitor telephoned the Provider on **2 May 2017** in respect of the issue about the DS1 form, however this call was not returned by the Provider.

From the evidence before me, I also accept that there was a delay on the part of the Provider in furnishing the release documents. Whilst I have not been furnished with the underlying correspondence, I accept that the Complainant's solicitor had to effectively "chase" the Provider on a number of occasions for these documents. I do not accept the Provider's

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submission that the releases could have been provided at the outset by the Complainant's solicitors as the Complainant's solicitors had to receive the title deeds to draft the releases.

I note that it took between **23 January 2017** and **5 January 2018** for the issues to be resolved in respect of the title deeds and the releases. The Complainant found himself in a difficult and stressful situation and I accept that the delay and the lack of communication on the part of the Provider greatly added to what was already a stressful time for the Complainant.

The Third Element of the Complaint

The Complainant submits that the Provider showed "*unethical and unprofessional behaviour*" towards him and that this caused him stress and anxiety. He submits that his correspondence was not responded to and that his solicitors had the same difficulties. The Complainant also submits that the Provider failed to revert to [the previous owner] to

"correct the mismanagement of this account by them would have solved a lot of unnecessary time and effort...I can find no evidence of any meaningful endeavours by either party to revert to [the previous owner] for substance of my claim of error by [the previous owner]".

The Provider submits that it "*strives to act honestly, fairly and professionally. Regrettably, there are occasions when we fall short of these expectations, however on identifying these issues, we will always work towards improving our processes and systems to ensure that they are addressed appropriately and in a timely manner*".

The Provider also submits that "*taking the view of the issues and experiences of the Complainant as an accumulative over a sustained period of time we can empathise with his feelings regarding the overall treatment of him. However, [the Provider] and our representatives have always worked with a view to finding a positive outcome for the Complainant. We strongly refute the Complainant's contention that our treatment of him is 'verging on contempt'*".

The Provider accepts that in relation to the overcharging of interest to the accounts, and the delay in allocating the cheque payment received by the Complainant in September 2014, "*notwithstanding the fact that these issues had no financial impact to the Complainant, the level of service offered to the Complainant in relation to these matters was very unacceptable and we acknowledge that they did compound the litany of bad experiences for him*".

In considering these issues, I have had regard to the following provisions of the **Consumer Protection Code 2012:**

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*A **regulated entity** must ensure that in all its dealings with **customers** and within the context of its authorisation it:*

*2.8 corrects errors and handles **complaints** speedily, efficiently and fairly;*

....

*4.1 A **regulated entity** must ensure that all information it provides to a **consumer** is clear, accurate, up to date, and written in plain English. **Key information** must be brought to the attention of the **consumer**. The method of presentation must not disguise, diminish or obscure important information.*

*4.2 A **regulated entity** must supply information to a **consumer** on a timely basis. In doing so, the **regulated entity** must have regard to the following:*

- a) the urgency of the situation; and*
- b) the time necessary for the **consumer** to absorb and react to the information provided.”*

Having considered the telephone evidence in this case, I consider that in the most part, the representatives of the Provider tried to assist the Complainant in the best way they could and as patiently as possible. I note that they were courteous in each telephone call. However, the representatives were not easily able to locate one of the mortgage accounts on the Provider’s system, during eight telephone calls. This was the mortgage account that was in dispute (X-XXXXXX602-1).

I accept that this was confusing for the Complainant as the representatives either could not locate the mortgage account, or it took significant time for them to locate it. During one telephone call, the Complainant was told

“all your accounts are all up to date and everything is perfect this side, so hopefully we have resolved it all for you”.

I accept that the Complainant was provided with incorrect information as a result of the disputed mortgage account not being easily accessible for the representatives on the Provider’s system. In my opinion, this added to the Complainant’s frustrations.

In respect of the Complainant’s submission that the Provider failed to investigate how the arrears came to be on his mortgage account (X-XXXXXX602-1), and that it failed to liaise with the previous owners in this regard, I note that the Complainant raised a complaint with the Provider during a telephone call on **18 February 2015**. I note that the Provider responded on **29 April 2015**. I accept that the Provider’s response was reasonable and that it did show that it had carried out a review of the file from the previous owner. In this letter the Provider requested that the Complainant send the *“supporting documentation to our offices in order for this issue to be further investigated”*. I note that the Provider requested the

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Complainant's bank statements or the letter from the previous owner to show that the payments were made on numerous occasions. I note that the Complainant did not provide such evidence, despite initially informing the Provider on telephone calls that he would provide this.

Owing to the volume of administrative errors on the part of the Provider, the Complainant had to make a large number of complaints, but I am satisfied that in addressing those complaints, the Provider acted in line with the requirements of the Consumer Protection Code, in respect of complaints handling. However, taking into consideration the number of shortcomings on the part of the Provider (as I have outlined above), I accept that the Complaint was subjected to poor customer service from the Provider. I have identified a number of customer service failings on the part of the Provider, throughout this Decision. Whilst I accept that the Provider dealt with the complaints, I do note that the Provider did not respond to a number of the Complainant's letters and it was the Complainant who had to contact the Provider in respect of a range of errors regarding these mortgage accounts.

I am of the view, in that respect, that the Complainant had to spend a considerable amount of time communicating with the Provider as a result of administrative errors or delay on the Provider's part. I accept that this poor level of service added to the Complainant's frustration and distress. I note indeed that notwithstanding the essential termination of the relationship between the parties in early 2018, it became necessary for the Provider to write to the Complainant and his co-borrowers again on 9 September 2019 as the Provider had discovered another error pertaining to some of the accounts at issue. The Provider's letter to the Complainant and his co-borrowers advised, inter alia, that

"As a result of a processing error, the balance on your loan prior to its closure was overstated..."

In that context, the Provider confirmed to the addressees of the correspondence that they had *"paid more than you were required to pay."* The letters also included a copy of cheques in favour of the Complainant and his co-borrowers, copies of which were furnished to this office by the Complainant in the respective sums of €22.09, €44.17, €44.17 and €33.13. It is noted by this office that the covering letter from the Complainant advising of this development requested as follows:-

"If you have influence to request the Provider not to communicate with me again, I would be most grateful and appreciate same. After five years of total anguish and trauma dealing with them, I never want to hear from them again."

It is to the credit of the Provider's auditors that the errors in question have been identified, and that refunds in various small amounts have been proffered, inclusive of a compensatory element. As one of the co-borrowers is sadly now deceased however, this raises a difficulty for the Complainant in cashing the cheques in question for these small amounts. The Provider recently offered to issue the payments in question to the Complainant in his sole name, but it requires the return of the cheques issued in joint names, in order to do so. I am conscious of the Complainant's comments and his stated desire to have no dealings with the Provider in the future. Ultimately, he will have to decide whether or not he remains of that

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firm position that he will have no further dealings with the Provider, and in doing so, take into account the views of this office that the Provider is not acting unreasonably in requiring the return of the jointly issued cheques, before replacing them with a suitable payment to the Complainant.

Much of the Complainant's dissatisfaction stems from events which occurred prior to 25 August 2014, prior to the transfer of ownership of the mortgage accounts to the new owner for which the Provider acts as a credit servicer. The Provider cannot therefore be held responsible for those events. Nevertheless, insofar as the Complainant's complaint against the Provider is concerned, in respect of its conduct from August 2014 onwards, I accept that there were multiple failures in aspects of the Provider's dealings with the Complainant. Consequently, I consider it appropriate to substantially uphold this complaint.

I note the Provider has made an offer of €2,500 to the Complainant in full and final settlement of the complaint. However, I do not consider this amount to be sufficient in all of the circumstances. The Complainant has indicated that payments to the mortgages and expenses were funded from his Sterling account and indeed, it is notable that all of the mortgages in question were denominated and drawn down in Sterling. In those circumstances, in order to bring a conclusion to this matter, I consider it appropriate to direct the Provider to make a compensatory payment of Stg£4,000 to the Complainant.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of Stg£4,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

25 November 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.