



<b><u>Decision Ref:</u></b>	2020-0307
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service Delayed or inadequate communication Complaint handling (Consumer Protection Code)
<b><u>Outcome:</u></b>	Partially upheld

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

**Background**

The Complainant holds a mortgage loan account with the Provider in respect of a Buy to Let property. The Complainant submits that when he attended at the Provider's Arrears Support Unit Offices, on **02 March 2015** to discuss this loan, he was treated in an unacceptable manner by the Provider's staff and that the investigation conducted by the Provider into the matter was unsatisfactory in a number of respects.

**The Complainant's Case**

The Complainant submits that on 02 March 2015 he visited the Provider's Arrears Support Unit to discuss his mortgage loan. The Complainant submits that at the time he was suffering from depression and displaying suicidal tendencies and that the Provider was on notice of this fact.

The Complainant submits that the meeting of 02 March 2015 became heated at times and that at one stage during the conversation he told those present that he "*had seriously considered taking a knife into the meeting with me and slashing my wrists in front of them because that seemed to me to be what they wanted*" in order to demonstrate the pressure that he was under from the Provider. The Complainant submits that at this point, one of the staff members present sniggered and laughed at him. The Complainant submits that when he confronted her on this she denied it.

The Complainant lodged a complaint in this regard with the Provider.

The Complainant submits that the Provider's investigation into his complaint was unsatisfactory, and was *"hampered by delays and refusal to engage with me in a timely manner or to even provide me with contact details as to whom I should complain to."*

The Complainant submits that the investigation *"was flawed from the outset as it was not impartial."* The Complainant submits that the evidence given by one of the staff members, that her colleague did not snigger and laugh was untrue. The Complainant submits that as due to the seating arrangements, there was no possible way she could have seen the facial expressions of her colleague.

*"When I sent my reply back to the Bank after their investigation I asked this question and received no reply other than as far as they were concerned the matter was closed. I was facing her. I saw what happened. I saw it very clearly, and it haunts me to this day."*

The Complainant submits that the manner in which the Provider dealt with his complaint was obstructionist and that his initial request for the contact details of a person to complain to in HR were not forthcoming. He submits that the investigation into his complaint was not dealt with in a fair and impartial way. The Complainant submits that as a vulnerable customer, the way he was treated by the Provider was unacceptable.

### **The Provider's Case**

The Provider's position regarding the meeting of 02 March 2015, is that the staff members in question furnished signed statements denying that the Complainant was laughed at.

In response to the Complainant's complaint that the investigation which it carried out was flawed, the Provider submits that having reviewed the complaint and the handling of the complaint, it is satisfied that this was conducted in line with its requirements under the Consumer Protection Code.

The Provider submits that the complaint was received via email from the Complainant, following the meeting on 02 March 2015, was acknowledged by letter issued to the Complainant on 05 March 2015 and a further holding letter was issued on 27 March 2015. The Provider submits that it issued a final response letter to the Complainant on 31 March 2015.

### **The Complaint for Adjudication**

The Complainant's complaint is that in March 2015, a member of staff of the Provider treated him in an unacceptable manner when he advised that he had considered self-harming at the meeting. The Complainant contends that the Provider's investigation into this incident was unsatisfactory and flawed.

## 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 **28 February 2020** outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below. I note that the first aspect of the Complainant's complaint, as originally submitted to this Office was that he was not informed that there would be two representatives from the Provider in attendance at the meeting on 02 March 2015. However, the Complainant has subsequently confirmed that this element of his complaint has since been clarified to his satisfaction.

The Complainant has submitted that at the time of the meeting in question he was suffering from clinical depression in respect of which he was under medical supervision. He submits that when he displayed suicidal tendencies during the course of the meeting, one of the staff members present laughed at him, which caused him significant distress.

The Complainant has also submitted that he had to spend a considerable amount of time and effort, to receive information from the Provider and that the investigation was not conducted in a satisfactory manner.

The Complainant, within his submissions, since the preliminary decision of this Office was issued, has submitted that an error was made in that preliminary decision, in not having addressed the issue that:

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*"the encounter that took place on March 2<sup>nd</sup> 2015 should never have taken place at all, given that the Bank were illegally and fraudulently overcharging me at the time."*

[original emphasis]

I have noted in this regard, details of previous correspondences between the Complainant and this Office, regarding the subject matter of his complaint. By email of **19 October 2017** to this Office, the Complainant confirmed that:

*"The complaint I am currently progressing with you is one against members of the [Provider's] Arrears Support Unit and how I was spoken to/dealt with over a sustained period of time but specifically in relation to one incident - the details of which you have. I hope that clarifies same."*

This office also holds a record of a phone discussion with the Complainant on **13 March 2018**, which notes the Complainant as having confirmed that:

*"the conduct on the part of the Bank during the meeting on 2nd March 2015 is the basis of his complaint and that it is exclusively this conduct which forms his complaint, nothing else. He stated that he may consider making a complaint about the other aspects at a later time but not now."*

An email issued to the Complainant on the same date, confirming:

*"As discussed, please note that your complaint will proceed on the basis of the conduct you have complained about surrounding your meeting with the Bank in March 2015."*

This was acknowledged by email from the Complainant of **13 March 2018**.

I am therefore satisfied that the investigation and adjudication of the Complainant's complaint has appropriately been conducted and that the conduct complained of, which formed the basis of his complaint, was his meeting with the Provider in March 2015.

I note that within the Complainant's above referenced email of **13 March 2018**, he also raised the following issue:

*"whether an internal-[Provider] "Code of Conduct/Consumer Protection Document" (or perhaps a similar document with another name) exists for dealing with "vulnerable" customers - similar to the Code of Conduct that exists for consumers. I have asked for this on more than one occasion of the Bank but they have yet to furnish me with same, or indeed inform me if such a document exists. I would appreciate if they would acknowledge my request for same and send me the version of the document which existed in March 2015."*

The Provider responded by email of **03 April 2018**, advising that:

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*“The Bank has procedures in place for dealing with customers deemed to be vulnerable. Any procedures referring to vulnerable customers are internal and contain sensitive information which the Bank is not at liberty to provide.”*

This response was made available to the Complainant who responded, noting his deep disappointment with the Provider’s position in this regard.

The Complainant has also submitted that the Provider’s refusal to furnish him with the above referenced details, was not addressed within the preliminary decision issued to the parties on 28 February 2020, and that this constituted an error/omission, *“tantamount to condoning the Bank’s refusal to provide this crucial piece of information to me.”* He has also submitted that it was an error on the part of this Office not to seek this information.

All of the evidence and submissions received from each of the parties, were considered as part of the preliminary decision made. However, in the interests of clarity and to address the Complainant’s submission in this regard, I confirm that I am satisfied, taking into account the internal and sensitive nature of the documentation in question, that the Provider did not act wrongfully and/or unreasonably in not acceding to the Complainant’s request to disclose its internal policy documents to him, which detailed its procedures for dealing with customers deemed to be vulnerable. Neither was such documentation deemed to be required by this Office, for the purpose of the investigation and adjudication of the within complaint.

The Complainant has submitted the following details regarding the lead up to the meeting and the meeting of **02 March 2015** itself:

*“When I first met [Employee A] at reception she extended her hand to shake mine. I declined said offer. I was taken upstairs to a room with a glass wall to which my back was facing as I sat facing the two employees. When I met [Employee B] she extended her hand, which I declined. [Employee B] laughed/giggled in a bemused fashion at this... Given how I had been treated by the Bank up to this point and at that time I saw no reason to shake her or any member of the Bank’s hand. That’s not the most serious element of my complaint but it does I believe give insight into how this meeting was not being viewed as entirely serious by [Employee B].”*

The Complainant states that during the course of the meeting, Employee B also laughed when the Complainant told them that he had considered taking a knife into the meeting and cutting his wrists.

Following the meeting, each of the parties completed a contemporaneous note of events – the Complainant in the form of an email setting out his complaint to the Provider and the staff members in the form of a file note of the meeting.

The Complainant’s email to the Provider sent on the evening of **02 March 2015**, set out the following course of events:

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*I met [Staff Member A] downstairs and was taken to a room upstairs where [Staff Member B] was waiting. When introduced to [Staff Member B] I declined to shake her hand - something she apparently thought was hilarious as she laughed aloud at this.*

*To outline my situation at present, I am currently not working due to suffering from depression. This depression was triggered by a long period of work related bullying. I have been receiving ongoing professional counselling and am on medication for my condition. .. To say I have a lot on at the moment and am struggling under the weight of worry and pressure would be an understatement.*

...

*I explained to your colleagues that I was under so much pressure at the moment with "this situation" (referring specifically to how I am being treated by the bank) that I actually (genuinely) considered taking a knife into the meeting today with me and slashing my wrists to end the pain. That is where I am at mentally at the moment. Upon hearing this, your colleague, [Staff Member B] smirked and laughed aloud (again) at this. This infuriated me. It absolutely infuriated, disgusted and angered me. I said "How f\*\*king dare you" and "How f\*\*king dare you laugh at me like that". I said it loudly, but I did not shout. I don't regret confronting her on her reaction, I do however regret using the word "f\*\*king" and I apologise now for same. [original emphasis]*

*I was then told by both [Employees A and B] that they had 'never heard that word before in [the Provider]'. I myself laughed incredulously at this. I questioned both on this and upon further probing they eventually acceded that they had in fact heard this word before within the hallowed walls of [the Provider]. Of course it's obvious in hindsight that this was likely some sort of diversionary tactic to defer attention away from the behaviour of [Employee B].*

*[Employee A] will I suspect say that [Employee B] did not smirk or laugh. As she was sitting to [Employee A's] right hand side she would not have been able to see what I saw and was subjected to.*

*I don't think it's appropriate for a member of your staff to behave like this. In fact, its an appalling way to treat any person. She should not be dealing with members of the public who are under duress if she cannot deal with her own emotions. It was an absolutely disgusting thing to do to someone who is suffering from depression and who has considered suicide. [original emphasis]*

*As I was leaving the room I told [Employee B] that I would be making a complaint about her. She then said I had 'threatened her'. I responded by saying 'threatened you? How did I threaten you exactly? I picked up on your inappropriate reaction to my stating I was going to commit suicide'. We went back and forth like this briefly until I left.*

*I left the building at 11:53am. ...*

*I can assure you that I certainly did not feel understood or respected today. In fact I don't think I've ever felt worse after dealing with a Financial Institution.*

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The staff members in question completed a File Note dated **02 March 2015**. Signed by both employees, it includes the following account of events:

...

*[The Complainant] asked what his options were he was told it was to accept the current offer on residual debt and allow the sale to progress or we could seek permission for the sale to progress with residual to be dealt with in Jan 2016. It was explained that a decision on repayments to commence in Jan 2016 could not be made now as circumstances could change by then e.g. he could gain employment. [The Complainant] then advised that he was suffering from depression and had considered bringing a knife to the meeting and slitting his wrists in front of us. He then accused [Employee B] of laughing and smirking at this comment. He placed both hands on the table leaned over and shouted "How f\*\*\*ing dare you" several times. [Employee B] advised that she had not laughed or smirked. [The Complainant] said that she had and remained very agitated. [The Complainant] was told that if he was going to continue like this the meeting would have to be terminated. Both [Employee A] and [Employee B] were very shaken and unsettled by his comments and aggressive behaviour making them feel intimidated and vulnerable. [The Complainant] expressed surprise that no other customer had used this language. He was told that no other customer had spoken as he had or used that language. [The Complainant] then went on to ask was he being told that nobody in [the Provider] cursed. He was told that was not the same and again confirmed that no other customer had spoken to us in that way using that language.*

...

*[The Complainant] asked [Employee B] for her name and wrote it down advising he would be making a complaint in relation to his accusation. [Employee B] reiterated that she had not laughed or smirked and in fact, [the Complainant] had verbally abused her with his comments.*

This matter was investigated by the Provider and it issued its Response Letter to the Complainant on **31 March 2015**, which stated as follows:

*I have reviewed your email of 2 March outlining your experience of the meeting held with [Staff Member A] and [Staff Member B] earlier the same day. I have also reviewed the file note of the meeting provided by [Staff Member A] and [Staff Member B]. Both employees refute your assertion that [Staff Member B] laughed or smirked at you during the course of meeting when you were describing the pressure you were under and how you were feeling. Given the above, it is not possible for me to take a view as to what exactly happened at the meeting on 2 March. However, I do accept that you felt disrespected, frustrated and angry during the course of the meeting. Moreover, I also accept that it was not the intention of either employee to frustrate nor disrespect you.*

...

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*I am sorry that you feel that you were not treated in an appropriate manner and that your recent experience with [the Provider] fell short of your customer service expectations. I can assure you that it was never our intention to add to your current stressful situation and the bank's priority is to assist you with the management of your mortgage account.*

### **Analysis**

Ultimately, due to the nature of the incident, I am of the view that only Employee B and the Complainant know what occurred when the Complainant spoke of his very upsetting thoughts, regarding bringing in a knife to the meeting and cutting his wrists in front of them and even that must be caveated as each may have differing, subjective, points of view or interpretations as to what the nature of any reaction, comprised.

In coming to the conclusion, that only Employee B and the Complainant know what occurred, I have taken into account the Complainant's submissions regarding the seating arrangements on the day, and the relative positions of Employee A and Employee B at the time.

Within his recent submissions, the Complainant has queried why if, *"it is acknowledged ... that only Employee B and the Complainant know what occurred. Why therefore is Employee A's "evidence" being taken into consideration? Why was it not eliminated?"* However, it is the case that all submissions received from each of the parties, are taken into consideration by this Office, in the course of reaching a decision.

It seems likely to me that the meeting was a tense one and indeed the Complainant recalls an earlier "laugh" from the same employee when he rejected her outstretched hand. The Complainant says that this earlier episode gives an insight into how this meeting was not being viewed by the employee as entirely serious. In fact, it seems to me that this interaction at the start of the meeting may have made the employee feel ill at ease (whether or not this is what the Complainant intended).

The Complainant's position is that Employee B *"let out a very slight but audible laugh/giggle at the time of my declaration"*. The Provider's position is that the employees in question have denied that Employee B sniggered or laughed at the Complainant. I am conscious, however, of the fact that such a startling statement from a visiting customer could well provoke a nervous or startled utterance, which may well have the semblance of a laugh but be denied as having been a "laugh". Having had detailed regard to all of the evidence before me, in short, in the absence of any objective evidence, such as an audio or visual recording of the meeting in question, I do not consider that it is possible to determine with any conclusiveness what the precise reaction of the employee was at that moment in time, which gave rise to the great feelings of distress and anger on the part of the Complainant. Whilst the Complainant has in his recent submissions requested an Oral Hearing, having had regard to all of the evidence before me and which I have taken into account, I do not consider that this is appropriate and as outlined above, I accept that his words appear to have provoked a response from Employee B, which the Complainant found distressing.

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I note that within his recent submissions, the Complainant has queried, if it is acknowledged by this Office that *“Employee B could have (made) a nervous or stuttered utterance”* and *“If you concede this - why then was this not investigated? Do you feel it was appropriate?”*

As set out above, I consider that it is not possible to account for the utterance save to note that it occurred in a clearly tense environment, and in circumstances where the Complainant has confirmed that he advised the employees present, that he had considered bringing a knife in to the meeting and cutting his wrists in front of them. In terms of appropriate behaviour, these are rather unusual circumstances.

The Complainant having proceeded to make a complaint on this matter, was entitled to have the matter investigated in a fair and timely manner by the Provider. I will turn now to examine the elements of the Complainant’s complaint, which relate to the manner in which the matter was investigated by the Provider.

#### *The Complainant’s complaint to the Provider*

The Complainant complains that when he submitted a complaint to the Provider that it was firstly not dealt with in a timely or satisfactory manner and that it had been obstructionist in its engagement with him. He submits that on:

*“March 2nd 2015 I asked Bank Employee Ms. [A] via email for the contact details of the appropriate HR representative to whom I could direct my complaint. Rather than comply with this clear and simple request, Ms. [A] chose to ignore that instruction and redirect me to another person (which suited her, not me - the offended party and the customer). This I feel is a very neat summation of the Bank’s attitude to me (the customer) throughout this whole affair from inception to the point we are currently at. The Bank and its employees do what suits them, not their customers.”*

The Complainant submits that further, the investigation was fundamentally flawed insofar as it lacked impartiality. He says that the Provider did not take the following into account in the course of its investigation and in coming to its conclusion on the matter - that whilst the employees in question have denied that Staff Member B laughed or smirked at him, that it would have been impossible for Employee A to have had sight of Employee B as they were sitting side by side facing him and the Complainant has submitted an outline of the seating arrangement in this regard and that this has not been taken into account by the Provider.

The Complainant has submitted that by way of resolution he is seeking, inter alia, *“an acknowledgment that what I actually said happened and not a denial and ‘circling of the wagons’ by the Provider.”*

As regards the Complainant’s contention that it was not dealt with in a timely manner. I note the following timeline of events in relation to his complaint and the Provider’s response:

**02 March 2015 at 12:15**

Following the meeting in question, the Complainant emailed Employee A, asking:

*“Can you please send me by close of business today the details of the person in HR to whom I can make my complaint re your colleague. Whether you choose to believe so or not, she did smirk and laugh. As she was sitting to your side and out of your line of sight you could not have seen this.”*

**02 March 2015 at 16:02**

Employee A emailed the Complainant, advising that the person the Complainant should direct his complaint to, was Ms K, the manager of the Arrears Support Unit.

**02 March 2015 at 16:17**

The Complainant emailed Employee A asking her to *“confirm this person works in HR please?”*

**02 March 2015 at 16:44**

Having not received a response, the Complainant emailed Employee A again, seeking a reply to his question as to whether or not the person worked in HR and, if not, asking that he be directed to a person in HR.

**02 March 2015 at 17:17**

Employee A responded to the Complainant, confirming that Ms K did not work in HR but that she was the Head of Regional Teams in the relevant Unit, and was the most appropriate person to direct his complaint to.

**02 March 2015 at 17:21**

The Complainant emailed Employee A advising that he would like to submit his complaint to HR and requested that she provide him with the name of a person in HR.

**02 March 2015 at 18:33**

The Complainant conducted an internet search for *“HR Director [Provider]”*, and sent an email to this person saying, *“I have repeatedly asked a member of your staff for details of someone in HR today to make this complaint to but she has refused to do so (details of which are at the foot of this email). Hence, I googled ‘HR Director [Provider]’ and found you.”*

**03 March 2015**

Employee A responded to the Complainant with details of a Ms G in HR to whom he could submit his complaint.

Ms G emailed the Complainant advising that the email address which he had used for the Group Director was incorrect, and that it had not delivered successfully, but added that:

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*“for completeness, I have forwarded your complaint to her office so that she be made aware of it. She has asked me to investigate the complaint on her behalf as I am the HR Business Partner for the Arrears Support Unit of [the Provider], and thus am more familiar with the employees and activities of that department....*

*It will take me some time to appropriately investigate the specifics of your complaint. However, I undertake to revert to you directly within 20 working days, which is in line with our customer complaints procedure.”*

**03 March 2015**

The Complainant emailed Ms G and expressed his frustration that it had taken a number of emails on his part to acquire a contact who worked in HR.

**03 March 2015**

Ms G emailed the Complainant, noting his comments and advising that *“This will also form part of my investigation.”*

**05 March 2015**

A letter acknowledging the Complainant’s complaint issued from the Provider.

**27 March 2015**

A holding letter issued from the Provider.

**03 April 2015**

The Complainant emailed Ms G, noting that she had undertaken to provide him with a written response regarding the investigation within 20 working days and that those 20 working days had elapsed without his receiving a response.

**07 April 2015**

Ms G responded to the Complainant, advising that she had sent the written reply in the post on the morning of Tuesday **31 March 2015**. The Complainant enquired as to whether it had been sent via normal post, a courier or registered post. Ms G asked whether the Complainant would like an emailed copy of the letter, via encrypted email. She explained that the Provider’s systems precluded her from sending a scanned pdf copy of the signed version to him, but could send it in an unsigned Word format or that alternatively, she could re-send the letter by registered post.

**08 April 2015**

Ms G emailed the Complainant, advising that she had re-sent the letter by way of registered post. The Complainant responded noting disappointment that it *“wasn't sent by registered post or courier in the first place given the seriousness of [his] complaint.”*

**13 April 2015**

The Complainant emailed Ms G saying that he was extremely disappointed with the Final Response Letter. He advised that he intended to respond more fully later that day or later that week and requested, *"Can you please acknowledge receipt of this email by return?"*

**23 April 2015**

The Complainant emailed Ms G noting that it had been 10 days since he had written on **13 April 2015** asking her to acknowledge his email by return.

He submitted his disagreement with the findings of the Provider as set out in the Final Response letter, with particular regard to the reference to how Employee A had confirmed her colleague did not smirk. He asked that she revisit that particular aspect of its investigation and put this again to both parties to see if they would like to reconsider their statements on this issue.

Ms G emailed the Complainant and apologised for not having confirmed receipt of his email of 13 April and that this was due to an oversight on her part. She confirmed receipt of his emails of 13 April and 23 April and a voicemail which he had left.

The Complainant replied with unhappiness at Ms G's failure to reply previously, which he felt represented further *"significant and unacceptable delays in basic communication from [the Provider]"*. He expressed his mistrust of the objectivity of the investigation conducted by the Provider on the basis that: *"As you work for the same organisation as your colleague, your investigation is fundamentally flawed from the outset. It is clearly not independent. Having previously worked in large multi-national organisations I understand that one of the primary functions of the HR Department is to protect the reputation of the firm. It seems somewhat obvious to me that this is possibly another example of same."* He requested answers to certain questions which he set out, in order to *"understand the scope and breadth of your investigation?"*

**24 April 2015**

Ms G advised a written response would issue. The Complainant repeated his request for a response by way of email and querying why a 10 day turnaround time was necessary.

**28 April 2015**

Ms G confirmed that it was Bank policy that a formal reply required a written response. The Complainant responded by stating that this represented poor customer service.

**01 May 2015**

Written response received by Complainant.

**11 May 2015**

The Complainant emailed Ms G., asking that she send an email version of the Provider's letter of 01 May.

**15 May 2015 at 10:53**

The Complainant emailed Ms G, noting her failure to acknowledge receipt of his email or respond to his request. He indicated his disappointment at the delay.

Ms G responded to the Complainant, acknowledging receipt of his email, apologised for the delay and explained that she did not have the capacity to encrypt emails but that she was looking into the matter.

**15 May 2015**

The Complainant emailed Ms G to express puzzlement at how she had not received his email of 11 May and asking for an explanation in this regard.

**29 May 2015**

The Complainant emailed Ms G to express disappointment that almost 3 weeks after he had asked for an electronic copy of the letter that this had not been done.

**02 June 2015**

Ms G emailed the Complainant advising that the encryption problem had taken longer to solve than she envisaged but that the document would be emailed to him in an encrypted pdf format in the coming days. She advised that he had misread her email of 15 May and that she had indeed received it.

**02 June 2015 at 23:53**

The Complainant emailed Ms G stating that he would like the document in Word format and not a pdf.

**05 June 2015**

Ms G emailed the Complainant explaining that she could not send the letter to him in Word format in order to protect the integrity of the original document.

**11 June 2015**

The Complainant emailed Ms G advising of his disappointment with her response.

**12 June 2015 at 16:56**

Ms G responded that formal correspondence between the Provider and its customers is generally done by letter and that she was unable to send him a copy of the letter of 01 May 2015 as an attachment in a Word document due to the fact that the integrity of the original document must be preserved and it is not possible to do that in Word format.

**12 June 2015 at 17:38**

The Complainant emailed Ms G noting that as she had said this could not "generally" be done that *"one can only logically deduce that both I and my request are not important enough to be accommodated on such a request...If it makes it easier for you could perhaps place it on a memory stick and send it to me via registered post?"*

**01 July 2015**

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Ms G responded that she could not send him a copy of the letter of 01 May in either a Word format, as part of an attachment to an email or on a memory stick.

### **03 August 2016**

The Complainant emailed Ms G advising that he had decided to take up his complaint with the Financial Ombudsman and asking her to re-print all of the written correspondence which she had sent him.

### **05 August 2016**

Ms G responded he would *will need to raise a Subject Access Request for this information.*

I have considered the timeline of events in detail, in examining the standard of service by the Provider and consider that, apart from **the Complainant's email of 13 April 2015** in which he asked for acknowledgment of receipt and received no response until he emailed again on **23 April 2015**, the Provider communicated with the Complainant in a timely fashion and in accordance with its complaint handling obligations under the Consumer Protection Code 2012.

I note the Complainant's complaint about the Provider's refusal to send him formal documentation in Microsoft Word format, and his contention that the Bank's policy is "*not customer serving or friendly*". However, I accept that the Provider is entitled to implement such security measures as it sees fit in this regard and do not find it unreasonable of the Provider to not accede to such a request. I note however that Ms G of the Provider had on **07 April 2015** explained that whilst the Provider's systems precluded her from sending a scanned pdf copy of the signed version of the letter of 31 March to him to him, she could send it in an unsigned Word format. She subsequently advised on **05 June 2015** that she could not send the letter of 01 May 2015 to him in Word format, in order to protect the integrity of the original document.

Whilst it is a matter of discretion on the part of the Provider as to whether it is willing to issue unsigned Word versions of letters, a consistency of approach would be more customer friendly.

An aspect of the Complainant's complaint is that the Provider did not comply with his request for contact details of someone in the Provider's HR Department to whom he could direct his complaint but that it rather, "*chose to ignore that instruction and redirect me to another person (which suited her, not me - the offended party and the customer).*"

Having considered the correspondence in question of **02 March**, I am of the view that the explanation given by Employee A, as to why she had furnished him with contact details of the Head of Regional Teams in the relevant Unit (ASU), on the basis of her being the "*most appropriate person*" to direct his complaint was not an unreasonable one.

I note that the CPC 2012 places the following obligation upon the Provider:

*10.9 b) the **regulated entity** must provide the complainant with the name of one or more individuals appointed by the **regulated entity** to be the complainant's point of*

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*contact in relation to the **complaint** until the **complaint** is resolved or cannot be progressed any further.*

I accept that the Provider is best placed to identify the most appropriate point of contact and do not consider that it acted unreasonably in this regard.

The Complaint further submits that the Provider's investigation into the incident was flawed. Following receipt of the Provider's formal response to his complaint, dated **31 March 2015**, he submitted to the Provider that:

*"your whole investigative process is akin to the "police policing the police". As you work for the same organisation as your colleague, your investigation is fundamentally flawed from the outset. It is clearly not independent. Having previously worked in large multinational organisations I understand that one of the primary functions of the HR Department is to protect the reputation of the firm. It seems somewhat obvious to me that this is possibly another example of same."*

I accept that any internal investigation may, generally speaking, involve it being conducted by someone within the organisation and I don't accept the contention that this points to inherent weaknesses in the investigation itself. It is rather a matter of ensuring that fair procedures are followed.

In support of his contention that the investigation was flawed, the Complainant cites the Provider's determination in its Final Response to him of **31 March 2015** that:

*Both employees refute your assertion that [Employee B] laughed or smirked at you during the course of the meeting when you were describing the pressure you were under and how you were feeling. Given the above, it is not possible for me to take a view as to exactly what happened at the meeting on 2 March".*

He submits that he pointed out that given the seating arrangement that Employee A could not have seen Employee B's response and that Employee A's refutation in this regard could not therefore be relied upon.

The Complainant submits that the Provider's "refusal to revisit the specific point I have raised" further demonstrated its lack of impartiality. He responded to the Provider's finding, that:

*Your letter stated that [Employee A] confirmed her colleague did not smirk that she could claim is simply untrue given the seating arrangement of the office in which we met.*

*As her colleague sat adjacent to and slightly behind her and was facing me and given the limitations of peripheral vision in humans it would have been impossible for her to have seen her colleagues facial movements. I was the only party in the room who could see both people's faces simultaneously. I would ask that you revisit this particular aspect of your investigation highlighting what I have listed above and put*

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*this again to both parties to see if they would like to reconsider their statements on this issue before I take this further."*

Ms G responded to the Complainant that she *"had nothing further to add to my original letter to you dated 31 March 2015."*

The Complainant queried the Provider's investigation, and asked:

*"Can you advise if I can obtain a copy of your investigation report?"*

*"Are you satisfied that you are receiving a full and accurate representation of the events of the meeting when you haven't spoken directly to one of the parties involved (me)?"*

*"Am I (as the injured party) not allowed a right of reply to your findings?"*

*"Am I (as the injured party) not allowed to challenge your findings?"*

*"Do you not consider my challenge and subsequent evidence (and indeed logical) enough to warrant a re-questioning of the individuals concerned and their version of events? Or is the word of any and all employees of [the Provider] to be taken as sacrosanct by HR?"*

The Provider responded to the queries raised by letter of **01 May 2015**, as follows:

1. *"Can you advise if I can obtain a copy of your investigation report?"*

*On 02 March 2015 you made a complaint to [Named] Group HR director in relation to a staff member. On foot of this complaint an internal investigation was carried out and you were advised of the outcome of this investigation in the Bank's letter 31<sup>st</sup> March 2015.*

2. *Are you satisfied that you are receiving a full and accurate representation of the events of the meeting when you haven't spoken directly to one of the parties involved (me)?"*

*The Bank did not deem it necessary to speak directly with you in relation to your complaint given your comprehensive account in your email to [Group HR Director] However, if you wish to provide us with any additional information in relation to the events of the meeting, please advise my colleagues in the Arrears Support Unit on [phone number].*

3. *"Am I (as the injured party) not allowed a right of reply to your findings?"*

*Of course you have the right of reply. I must point out that as a full investigation has already been completed and in the absence of any new information being*

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*provided, the Bank's position remains as outlined previously in our response dated 31<sup>st</sup> March 2015.*

4. *"Am I (as the injured party) not allowed to challenge your findings?"*

*Again, as above, you have the right to challenge the Bank's findings. I must reiterate that as a full investigation has already been completed, the Bank's response of 31<sup>st</sup> March remains as outlined.*

5. *"Do you not consider my challenge and subsequent evidence (and indeed logical) enough to warrant a re-questioning of the individuals concerned and their version of events? Or is the word of any and all employees of [the Provider] to be taken as sacrosanct by HR?"*

*The Bank takes all allegations of this nature very seriously and I can assure you that a full investigation into your complaint has been conducted.*

6. *"As you seem adamant that you are not revisiting this investigation, I assume I can therefore take the next step and now report this incident to the Financial Ombudsman? Can you please confirm same and provide me with the full contact details of Ombudsman?"*

*This information is outlined below.*

In order to clarify the nature and extent of the internal investigation conducted by the Provider, this Office wrote to the Provider for an account of the investigation which was undertaken by the Provider in respect of the Complainant's complaint.

It responded that:

*Both [Employees A and B] who attended the meeting of 2 March 2015 with [the Complainant], worked within the Bank's Arrears Support Unit at that time. [Employees A and B] reported at that time in to [Ms K], who was the Head of the Regional Team within the Arrears Support Unit, at that time.*

*On 3<sup>rd</sup> March 2015 [Ms K], sent on a copy of the file note to [Ms G], in HR. [The Complainant] had requested contact details for someone in HR whom he could escalate his complaint to, and [Ms G]'s name had been passed to him by [Employee A].*

*[Employees A and B] did speak with [Ms K], at the time the complaint was being investigated.*

*[Ms G] did review the file note ahead of issuing the FRL of 31 March 2015 and as she advised in the FRL 31 March 2015.*

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*Also on 3<sup>rd</sup> March [Ms G] sent an email to [Ms K] asking if they could discuss the case. [Ms K] has confirmed that she did have a discussion with [Ms G], to assist [Ms G] with her understanding on the meeting that took place on 2<sup>nd</sup> March 2015, and following on from her own.*

There is no evidence before me that the Complainant's contention as set out in his email of complaint of **02 March 2015**, that:

*[Employee A] will I suspect say that [Employee B] did not smirk or laugh. As she was sitting to [Employee A's] right hand side she would not have been able to see what I saw and was subjected to.*

was broached with Employee A, by the Provider in the course of its investigation.

As this effectively comprised one of the allegations made by the Complainant as part of his complaint I consider that it would have been appropriate for the Provider to have addressed this as part of its investigation, by putting the Complainant's allegation/contention to the employee and taking her response into account.

I note the Provider's submission that as part of its investigation that *"[Employees A and B] did speak with [Ms K] at the time the complaint was being investigated."* I consider that this may have been an appropriate time to have put the Complainant's contention in this regard to Employee A and allowed it to have taken her response into consideration as part of the investigation and determination of the Complainant's complaint.

I consider that it had an opportunity to remedy this oversight at the time it was raised by the Complainant, following his receipt of the Provider's findings, when he requested that this point be put to the employees in question. However the Provider considered the matter closed at that point.

The Complainant's had asked, *"Do you not consider my challenge and subsequent evidence (and indeed logical) enough to warrant a re-questioning of the individuals concerned and their version of events? Or is the word of any and all employees of [the Provider] to be taken as sacrosanct by HR?"*

Its response was that *"The Bank takes all allegations of this nature very seriously and I can assure you that a full investigation into your complaint has been conducted."*

Had the Provider taken this step it may very well have reached the same determination which it did, namely, it had *"not been able to come to a determinative position in this regard"*. However, I consider that the investigative process employed by the Provider was flawed insofar as it failed to take all relevant information into account in conducting its investigation.

I consider that this constituted a lapse in the level of service which could reasonably have been expected by the Complainant in this regard and it is on this basis that I consider it appropriate to partially uphold the Complainant's complaint and to direct the Provider to make a compensatory payment to the Complainant in the sum of €100, to conclude.

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## Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €100.00, 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  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

21 September 2020

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.