



<u>Decision Ref:</u>	2020-0341
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Delayed or inadequate communication
<u>Outcome:</u>	Rejected

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

This complaint relates to a mortgage account held by the Complainant with the Provider.

The Complainant's Case

This complaint is made by the Complainant against the Provider regarding suggested failures on the part of the Provider in dealing with the Complainant's mortgage loan account.

I note that the Complainant made a complaint over the phone to a member of the Provider's Customer Services Team on **26 March 2019**. During this phone conversation, a recording of which has been provided to this Office, the Complainant requested a complaint to be made in relation to the following issues:

1. The Provider delayed in sending the Complainant his annual mortgage statement and that the Provider failed to advise the Complainant of this delay;
2. The Provider failed to respond to correspondence from the Complainant regarding his mortgage loan account and also that it failed to follow up on matters discussed during telephone calls;

3. The Provider failed to furnish the Complainant with details of the balance on his mortgage loan account and also failed to provide him with a redemption figure on the account;
4. The quality of the assistance provided to the Complainant by the Provider's agents during his telephone calls with the Provider;
5. The Provider failed to advise the Complainant that its calls were being recorded;
6. The Provider failed *"to provide a Data Access Request on request"*; and
7. The Provider failed to pay compensation to the Complainant on foot of a prior decision by this Office.

I note that in his Complaint Form, the Complainant states that the issue he is complaining about happened on **29 March 2019** and that he became aware of the issue nearly 3 months prior on **03 January 2019**. However, the Complainant refers to the Final Response Letter dated **1 April 2019** which in turn is based on the content of the telephone conversation with the Complainant on **26 March 2019**.

The Complainant has, in his further submissions to this Office dated **3 October 2019**, indicated that he remains dissatisfied with the Provider's response to his complaint. He stated that the Provider's final response letter was a *"waste of time"*.

I note that on **15 November 2019**, this Office wrote to the Complainant requesting that he *"set out what is the exact conduct being complained of"*. On **20 November 2019**, the Complainant replied stating *"exactly what was reported"*. Following a phone call from the Complainant to this Office on **20 November 2019**, the Complainant sent a second email to this Office in relation to the nature of the complaint stating that he was complaining about:

"communication, customer service, dismissive, failure to take instructions via phonetic alphabet when spelling out difficult words, failure to repeat back instructions, failure to put the call through to complaints, failure to respond to written letters, failure to provide own data".

On **12 March 2020**, the Complainant sent an email to this Office. This email elaborates on the Complainant's complaint regarding the telephone call recording system of the Provider. In the email, the Complainant states:

"THEY DIDN'T GIVE AN ALTERNATIVE TELEPHONE NUMBER FOR ME TO CALL AN UNRECORDED NUMBER.

IF YOU DON'T DO AS YOU ARE TOLD TO SAY YOU ARE HAPPY TO HAVE YOUR CALLS RECORDED, THEY HANG UP, THUS YOU CAN'T DISCUSS THE ACCOUNT, THEREFORE ITS ENTRAPMENT TO AGREE, OTHERWISE YOU GET CUTT OFF...

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THE CALL RECORDINGS SAY THEY NEEDED PERMISSION TO RECORD THE CALL, YET THEY RECORDED THE CALL WITHOUT MY PERMISSION BEING GRANTED AND I WAS NOT APPRAISED OF THIS. THEY SAY THEY DON'T KNOW WHO THEY ARE TALKING TO, HOWEVER THEY FULL WELL KNOW WHO TO STORE CALLS AGAINST WHEN YE REQUEST CALLS FOR THE ACCOUNT. THEY EITHER KNOW OR THEY DON'T. THIS IS VERY SERIOUS TO BE RECORDING THE CALLS WITHOUT PRIOR PERMISSION AS THE AUTOMATED GREETING SAYS CALLS, MAY, I REPEAT, MAY BE RECORDED, YET THEY RECORDED EACH AND EVERY CALL WITHOUT MY PERMISSION."

On **13 March 2020**, the Complainant sent a further email to this Office stating that communication with the Provider *"IS DIABOLICAL"*.

On **2 April 2020**, the Complainant sent an email to this Office stating that he was *"FRUSTRATED BY INCOMPETENCE"*.

On **3 April 2020**, the Complainant sent an email to this Office stating that the Provider is *"UNREAL TO DEAL WITH...ABSOLUTELY TERRIBLE PERSONELL"*.

On **6 April 2020**, the Complainant sent an email to this Office stating that he had *"OBTAINED THE DATA PERTAINING TO THE ACCOUNT, EVENTUALLY"* through the intervention of the Office of the Data Protection Commissioner.

In his Complaint Form, when asked how he would like the Financial Service Provider to put things right, the Complainant stated as follows:

"To be resolved in full, charter payment to be considered for all this continuing hassle with phone calls and lack of communication, etc."

The Provider's Case

In its Final Response dated **1 April 2019**, the Provider states that:

- On **8 February 2019**, **14 March 2019** and **25 March 2019**, correspondence was received into the Provider's offices quoting the Complainant's mortgage account number and requesting information in relation to the mortgage account. Upon reviewing this correspondence, the Provider determined that there was insufficient information provided in the correspondence to enable the Provider to supply the information sought.
- The Provider acknowledges that in the past annual mortgage statements were issued in January of each year for the previous year. It anticipated that the **2018** annual mortgage statement would be released before the end of **April 2019** and in the meantime enclosed an ad-hoc **2018** mortgage statement.

- The Provider stated that it has reviewed the telephone calls made to its offices between **22 January 2019** and **25 March 2019** in relation to the Complainant's mortgage account and that the reason its agents were not able to action any requests made on the calls is because security was not completed. The Provider informed the Complainant that the outstanding balance on the mortgage account as of the date of the letter is €106,679.50.
- The Provider states that the first valid redemption statement request it holds on record for the Respondent was **26 March 2019** and that a redemption statement was issued on **28 March 2019**.
- The Provider states that it takes its obligations under the GDPR and the Data Protection Act with the utmost seriousness and details the steps it must take pursuant to the GDPR to verify the identity of a data subject who requests access to data.
- The Provider states that it has reviewed the telephone call between the Complainant and its agent on **26 March 2019** and acknowledges that its agent did not advise the Complainant that the call may be recorded for training and quality purposes. However, it states that its automated system informs all customers that the calls may be recorded before they are transferred to an agent.
- The Provider also acknowledges that as a result of a prior complaint raised by the Complainant, this Office directed that a sum of €350 be paid by a third party provider to the Complainant. The Provider states that once it receives payment instructions from the Complainant it will process this payment in a timely manner.

The Provider made submissions dated **14 February 2020** to this Office in response to this complaint. In these submissions, the Provider sets out the history and details of the interactions between the Complainant and the Provider. 34 Phone calls were made by the Complainant to the Provider on the following dates:

- **22 January 2019** x 2
- **23 January 2019** x 2
- **25 January 2019** x 4
- **28 January 2019**
- **12 February 2019**
- **15 February 2019**
- **5 March 2019**
- **11 March 2019**
- **13 March 2019**
- **15 March 2019** x 3
- **25 March 2019** x 7
- **26 March 2019**

- **27 March 2019** x 4
- **28 March 2019**
- **29 March 2019** x 4

The Provider states that an undated/unsigned letter was received to the Provider's offices on **8 February 2019**. The Provider states that this letter contained a sentence stating: "*Balance Statement 2018 for Account Number 7600102*". The Provider states that there was no name, address or signature on the letter and therefore it was unable to process the request. A letter dated **13 March 2019** was received by the Provider on **14 March 2019**. The Provider states that this letter stated "*Requirement/Request for: (1) Balance (2) Redemption figure.*" The Provider states that this letter was signed but the signature is illegible and the letter did not contain the Complainant's name and address. The Provider states that a letter dated **22 March 2019** was received by its offices on **25 March 2019**. The letter stated: "*I require a redemption figure for the above account number. I require 2018's Annual Statement. I require/request a Data Access Request.*" The Provider states that this letter was signed, however, the signature was illegible and the letter did not contain the Complainant's name or address.

In its submissions, the Provider states that as a result of the transfer of the mortgage from a third party provider to the Provider on **28 September 2018**, there was a delay in issuing the annual mortgage statements for **2018**. However, the Provider states that the Consumer Protection Code 2012 (as amended) ("**the CPC**") only requires a statement to be issued annually as opposed to being issued in **January** of every year. It states that on receipt of a valid written or verbal request it would issue an ad-hoc statement. It states that the Complainant's 2018 Annual Mortgage Statement was issued to the Complainant on **7 May 2019**.

In relation to the Provider's policy and procedures in relation to call recording and informing customers in relation to call recording, the Provider states that its agents:

- Ask to speak to the borrower in question;
- Ask the borrower to identify himself or herself by name;
- Complete a security check to ensure he/she is speaking to the borrower;
- Specify the purpose of the contact;
- Inform the borrower that the telephone call may be recorded; and
- Establish if the borrower wishes the telephone contact to proceed and, if not, end the contact immediately.

The Provider states that it has tried to accommodate the requests from the Complainant made between **22 January 2019** and **25 March 2019** by setting out the importance of ascertaining the caller's identity, outlining the information that would need to be on a written request, asking alternative security questions when the caller outlined his reluctance to answer some of the questions posed to him, and on later calls offering the Complainant the option of the Provider's agents calling from an unrecorded line.

In essence, the Provider states that the Complainant did not provide it with adequate information in order to allow the progression of the call in such a way that the concerns the Complainant had raised could be addressed.

The Provider has also outlined its Complaints Handling policies in great detail in its submissions to this Office and has stated that they are in accordance with the CPC.

The Complaints for Adjudication

The complaint is that the Provider wrongfully failed to provide an adequate level of customer service to the Complainant in that it did not furnish an annual mortgage statement in respect of his mortgage in the usual manner, failed to deal adequately with his communications and, failed to furnish, on a timely basis, details of the balance on his mortgage loan account as well as a redemption figure.

The complaint is also that the Provider failed to inform the Complainant that all telephone calls would be recorded and that its agents failed to provide proper assistance to the Complainant.

There is a further complaint that a third party provider was instructed by this Office to pay redress to the Complainant in relation to a previous complaint and to date that redress has not been paid.

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.

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A Preliminary Decision was issued to the parties on 8 July 2020, outlining my preliminary determination 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 issue of my Preliminary Decision, the Complainant made a further submission under cover of his e-mail to this Office dated 13 July 2020, expressing his dissatisfaction with the decision but did not offer any additional points of fact, errors of law or fact. A copy of this submission was exchanged with the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant's additional submission and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

At this point, it is important to note the limitation applying to the jurisdiction of the FSPO to investigate the aspect of the Complainant's complaint regarding the Complainant's Data Access Request.

A complaint relating to a Data Access Request, or other provision of data protection legislation or regulation generally is outside the jurisdiction of this Office and is properly a matter for the office of the Data Protection Commissioner. This investigation will therefore not consider this aspect of the Complainant's complaint.

In respect of the complaint that the Provider delayed in sending the Complainant his annual mortgage statement and that the Provider failed to advise the Complainant of this delay, I accept that the Provider is not under any obligation to send a mortgage statement in **January** of the year and I further accept that the Provider had a reasonable explanation (the transfer of the Complainant's mortgage account) to explain why it did not send the statement in **January**. I note that the Provider did provide the Complainant with an ad-hoc **2018** statement and that the annual statement did issue on **7 May 2019**.

In respect of the Complainant's complaint concerning the redemption statement, I accept the evidence of the Provider that the first valid redemption statement request it holds on record for the Respondent was **26 March 2019** and that a redemption statement was issued on **28 March 2019**. Therefore, I do not accept that the Provider withheld or delayed communicating any information about the redemption statement to the Provider.

In respect of the Complainant's complaint that the Provider did not provide him with information concerning the outstanding balance on his mortgage account, I accept the Provider's evidence that it could not provide this information in the absence of appropriate security information being provided.

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I further note that the Provider confirmed for the Complainant that the outstanding balance on the mortgage account was €106,679.50 as of **1 April 2019**.

Recordings of telephone calls between the Complainant and the Provider have been provided in evidence. Having carefully considered these recordings between the Complainant and various agents of the Provider between **22 January 2019** and **25 March 2019**, it is apparent that the problems encountered by the Complainant are due to the Complainant's unwillingness to give basic information to the Provider's agents to enable the agent to identify him and to carry out the requisite security checks. For example, on a number of telephone calls when an agent of the Provider asked for the Complainant's name he replied "*that's a negative*". I accept the Provider's explanation that because of this deficit of information it was unable to identify the Complainant, unable to carry out the requisite security checks and therefore, was unable to action any requests made on the calls. I further note that the need for this information and the need to carry out security checks of this nature were comprehensively explained to the Complainant by the Provider's agents on the phone calls.

Furthermore, I note that there is no substance to the complaint from the Complainant that he received inadequate/poor assistance from the Provider's telephone agents. The audio evidence submitted to this Office discloses courteous and professional behaviour being exhibited by the Provider's agents towards the Complainant, despite the trying circumstances.

I accept that during the telephone call between the Complainant and the agents of the Provider on **26 March 2019**, the agent of the Provider did not advise the Complainant that the call may be recorded for training and quality purposes, at the beginning of the call. While this should have been done, I note that the Complainant had had over 20 phone conversations in the 3 months prior with the Provider and was very much aware that the conversation was being recorded. Furthermore, the agent did make the Complainant aware that the call was being recorded latter on in the telephone conversation and I also accept that the Provider's automated system would have informed the Complainant before he was transferred to the agent that calls may be recorded. Therefore, in circumstances where the Complainant had been warned and knew that the call was being recorded, I find he suffered no detriment as a result of the failure of the Provider's agent on this particular occasion to warn him of this at the beginning of the telephone conversation.

I also accept that the reason that the Provider could not respond to written requests for mortgage account information was because the Complainant failed to provide the necessary information to enable the Provider to carry out a security check.

In the interests of completeness, I note that as a result of a prior complaint raised by the Complainant, this Office directed that a sum of €350 be paid by a third party provider to the Complainant. The Provider states that once it receives payment instructions from the Complainant it will process this payment in a timely manner.

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Accordingly, I accept that it was the Complainant's own actions, and particularly his refusal to answer security questions concerning his name and address which led to the difficulties he encountered with the Provider.

For the reasons set out in this Decision, I do not uphold this complaint.

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

6 October 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.