



<u>Decision Ref:</u>	2021-0078
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Maladministration
<u>Outcome:</u>	Rejected

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

This complaint relates to maladministration, poor customer service and complaints handling.

The Complainants' Case

The Complainants have a mortgage with the Provider. They also have life cover attached to their mortgage with the Provider. In addition, the Complainants have a life cover and savings with a different regulated entity.

The Complainants explain that every time that they wanted to draw down some savings with the other regulated entity, they were obliged to go through the Provider because of the Provider's interest in the policy. The Complainants state that the involvement of the Provider in this process took a long time and delayed matters. Consequently, the Complainants explained that they took out a fresh policy in respect of their mortgage in September 2018 with the new regulated entity.

This meant that the Provider's interest in the policy ceased and the Complainants now had two life cover policies in being with two separate regulated entities other than the Provider.

The Complainants state that they thought no more of the situation until they were informed by one of the other regulated entities in April 2019 that the Provider still held an interest in the first policy.

The Complainants approached the Provider to query this and the Provider informed the Complainants that in fact they had sent a letter of release on 12 September 2018 to a third-party regulated entity demonstrating that the Provider had no further interest in the policy.

The audio recording of a phone call between the Provider and the Complainants evidences this.

The Complainants explained that the third-party regulated entity had no connection with their policy. The Complainants contacted their branch and a week later the branch informed them that head office was writing to the Complainants. The Complainants explained that this was 18 June 2019.

In the absence of any response, the Complainants rang the Provider on 25 June 2019 and stated that they expected a response on or before Friday, 28 June 2019.

By letter dated 5 July 2019 (which the Complainants state they received on 12 July 2019), the Provider wrote to the Complainants stating that on 12 September 2018, the Provider generated a Letter of No Further Interest to the other regulated entity with whom the Complainants held a life policy. However, the Provider explains that the letter was inadvertently, and in error, addressed to a third-party regulated entity. The Provider explains that on further investigation, the Letter of No Further Interest was never in fact posted to the third party regulated entity due to an internal quality check within the Provider that picked up the error.

The Provider explains that what should have happened then was that the letter should have been re-addressed and directed to the regulated entity with which the Complainants held the other life policy, but the Provider has accepted that due to an oversight this did not happen.

The Provider has apologised for any inconvenience caused by this error and has offered a sum of €3,000 as a gesture of goodwill in full and final settlement of the dispute.

The Complainants have rejected the Provider's offer and feel that a larger gesture is more appropriate.

The Complaint for Adjudication

The complaint is that the Provider is guilty of maladministration and has offered poor customer service to the Complainants.

The Provider's Case

The Provider accepts that it has fallen short in relation to a reasonable level of customer service.

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The Provider explains that once it has been instructed by a customer that they have replaced an insurance policy that the Provider has an interest in, the Provider assigns the new policy and the Provider then drafts a Letter of No Further Interest and sends it to the original existing insurance company. This letter advises that the Provider no longer has an interest in the policy.

In this instance, the Provider generated the Letter of No Further Interest but inadvertently and through administration oversight, addressed the letter to a third-party regulated entity. It transpired, after investigation in May 2019 or thereafter, that the error in the letter was realised by another official of the Provider during a quality check exercise. Consequently, the letter was returned to the Provider's official who then failed to amend the letter and submit it again for approval. This resulted in the Letter of No Further Interest not being posted. This oversight occurred on 12 September 2018, but it was not discovered by the Provider until the Complainants brought it to its attention in April or May 2019.

When the Complainants contacted the Provider on 5 April 2019, they advised the Provider that they had been advised that the policy was still assigned to the Provider. The Provider states that it arranged a Letter of No Further Interest to issue on that day. A second Letter of No Further Interest was issued on 30 May 2019 which the Provider explains was part of the management of the complaint and error.

The Provider states that it is satisfied that it met its obligations under the Consumer Protection Code 2012 to notify the Complainants of any error that has impacted or may impact negatively on the cost of service, or the value of the product, provided where possible. The Provider states that the error was identified on 30 May 2019 and the erroneous letter was never in fact sent.

The Provider states that it met its obligations under 10.3 of the Consumer Protection Code 2012 by resolving the complaint as soon as reasonably possible.

Decision

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

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

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

A Preliminary Decision was issued to the parties on 4 March 2021, 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The core facts, and the fact that the Provider made an administration error as outlined above, are not in dispute.

The issue that remains to be determined is whether Provider complied with the Consumer Protection Code 2012 or any other regulations that may be applicable.

Sections 10.1, 10.2 and 10.3 of the Consumer Protection Code 2012 provide:

10.1 *A **regulated entity** must have written procedures in place for the effective handling of errors which affect **consumers**. At a minimum, these procedures must provide for the following:*

- a) *the identification of the cause of the error;*
- b) *the identification of all affected **consumers**;*
- c) *the appropriate analysis of the patterns of the errors, including investigation as to whether it was an isolated error;*
- d) *proper control of the correction process; and*
- e) *escalation of errors to compliance/risk functions and senior management.*

10.2.1 *A **regulated entity** must resolve all errors speedily and no later than six months after the date the error was first discovered, including:*

- a) *correcting any systems failures;*
- b) *ensuring effective controls are implemented to prevent any recurrence of the identified error;*
- c) *effecting a refund (with appropriate interest) to all **consumers** who have been affected by the error, where possible; and*

- d) *notifying all affected **consumers**, both current and former, in a timely manner, of any error that has impacted or may impact negatively on the cost of the service, or the value of the product, provided, where possible.*

10.2.2 *Where an error which affects **consumers** has not been fully resolved (as outlined in Provision 10.2) within 40 **business days** of the date the error was first discovered, a **regulated entity** must inform the **Central Bank**, on paper or on another **durable medium**, within five **business days** of that deadline.*

The Provider argues that because the error was identified on 30 May 2019 when the Provider reviewed the complaint that was raised by the Complainants on 28 May 2019, the fact that it had issued the Letter of No Further Interest by 5 April 2019 and again on 30 May 2019 demonstrates its compliance with its obligations under the Consumer Protection Code. In addition, the Provider makes the point that notwithstanding the fact that an error was made in drafting the Letter of No Further Interest in September 2018, the Provider had adequate checks in place such that the error was spotted, and the letter was never sent.

However, what the Provider appears to ignore is the fact that on 12 September 2018, the Provider's quality control system checked the Letter of No Further Interest and realised, at that point, the error. The material and operative error in this case was not simply that the letter was addressed to an incorrect regulated entity but also the fact that the letter which was intended to issue to the correct and appropriate regulated entity was never sent at that point. Therefore, the first shortcoming of the Provider was failing to properly address the letter and send it to the correct regulated entity in the first place. The Provider then realised that error and sent the letter back to its official to amend and send out again. This never happened. This constituted the second shortcoming on the part of the Provider.

In this regard, I am satisfied that the Provider, while having procedures in place for effective handling of errors under section 10.1 of the Consumer Protection Code 2012, this section goes on to state that "*at a minimum*" these procedures must provide for a proper control of the correction process. There appears to have been an inadequate control of the correction process in circumstances where the error was identified in September 2018 and the correction process was commenced by sending the letter back to the official to send out but the official never sent the letter back out and it appears that nobody was managing this process to make sure that this happened.

In addition, section 10.2 of the Consumer Protection Code 2012 obliges the Provider to resolve all errors speedily and no later than six months after the error was first discovered. In this instance, the Provider's quality control system identified the error in September 2018 that is, that the Letter of No Further Interest was not going to reach its intended recipient. Ultimately, the Provider states that the Letter of No Further Interest did not issue until April 2019 which is more than six months after the error was first discovered.

Consequently, there is no evidence that the Provider complied with its obligations under section 10.3 of the Consumer Protection Code 2012 in circumstances where the error was first discovered in September 2018 and not on 30 May 2019 as the Provider suggests.

Considering all the foregoing, I believe the Provider did not fully comply with its obligations under the Consumer Protection Code 2012. However, I also believe that the Provider's offer of €3,000 as a "goodwill gesture" to the Complainants is a reasonable amount of compensation.

Therefore, on the basis that the Provider has made a reasonable offer to rectify the impact of its conduct, 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**

25 March 2021

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**

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(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

