



<b><u>Decision Ref:</u></b>	2021-0088
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	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**

The complaint relates to customer service issues and the suggested recurrent sending of unhelpful and misleading correspondence to the Complainants by the Provider.

#### **The Complainants' Case**

The Complainants made enquiries of the Provider on **27 May 2019**, regarding clearing a mortgage loan account balance. The Complainants state that they were advised that because of the Provider's daily online limit of €20,000 on transfers, it would require two separate payments to be made to fully redeem the mortgage balance. The first payment was made by the Complainants on **27/28 May 2019** and the second payment was made the following day, on **29 May 2019**.

The Complainants wrote to the Provider on **4 June 2019** stating that a letter had been sent to them by the Provider which did not reflect the phone conversation the Complainants had with the representative of the Provider about clearing their mortgage balance. The Complainants asked the Provider:

- to confirm that their mortgage account was closed, and if there was any small residual balance due to be refunded to them;
- to issue the mortgage discharge directly to the Complainants and confirm whether the discharge was by way of deed of release, or vacate attached to original deed of charge;
- to issue a letter of "no further interest" in respect of the insurance in place, and to advise whether that letter would go directly to the insurer providing the life insurance policy attached to the redeemed mortgage, or to the Complainants themselves.

The Complainants wrote to the Provider again on **25 June 2019** in response to a letter which they received dated **17 June 2019**. In this letter, the Complainants set out further details of their complaint. They state that:

- They rang the Provider three times in **May 2019** and made arrangements to redeem the mortgage;
- The Provider's staff guided the Complainants through the initial process and were helpful and pleasant;
- The Complainants subsequently cancelled the direct debits for the mortgage and for the life insurance cover attached to same;
- The Complainants asked for a letter of "no further interest" from the Provider and for the Deed of Vacate. The Complainants state that the Provider's staff did not seem to understand this request so they wrote to the Provider to clarify;
- The Complainants rang the Legal and Securities department of the Provider but they did not get an answer. A representative of the Provider took the Complainants' telephone number but did not call back as promised;
- The Provider sent "two ridiculous letters" providing "untimely" and "wrong information" which was "irrelevant and annoying";
- The Complainants also seek clarification concerning whether the Provider holds title deeds and whether the mortgage loan was created on one deed of charge along with another mortgage the Complainants hold, or whether the same deed of charge was used for both mortgages.

The Complainants wrote to the Provider on **8 July 2019** in response to a letter received from the Provider dated **2 July 2019**. The Complainants state that the response from the Provider does not refer to the rationale behind two payments being necessary to clear the mortgage loan. They state that if it is the Provider's practice to stand over such a limit, it should recognise that certain automated letters will not be appropriate and it should cease issuing such letters. The Complainants state that the letter also failed to acknowledge and apologise for the series of issues the Provider got wrong, namely:

- Not reading the correspondence sent to the Provider by the Complainants;
- Emphasising the fee payable by the Complainants when it was not in dispute;
- Not explaining why the Provider issued a repayment letter when the Complainants informed the Provider that they were redeeming the mortgage;
- Not addressing the Complainants' complaint about the timing and irrelevant content of the letters issued by the Provider; and
- Not explaining why the Provider issued a "Goodbye" letter when the contents were irrelevant to the Complainants.

The Complainants stress that the Provider's staff are helpful and friendly but the administrative system that issues letters is "*unfit for purpose*" and detracts from the good work of the Provider's staff. The Complainants state that the Provider appears

*"satisfied to itemise and describe events as if the [Provider] got them right instead of acknowledging the failures and seeking to put matters right."*

The Complainants state that they *“would be grateful if [the Provider] could put changes in place to prevent recurrence of these response failures”*.

The Complainants issued a letter to the Provider dated **16 October 2019** in which they acknowledged that the Provider has regulatory requirements to issue correspondence. They say however, that this does not oblige the Provider to *“issue inaccurate, worthless and annoying letters”*.

Given the Provider’s undertaking to review the service lapses that arose in their case, the Complainants requested an update as to the progress of this review and specifically requested to know what corrective changes the Provider had made to its systems, in order to prevent a recurrence of the continued issuing of inappropriate letters.

The Complainants state that they intended to redeem another mortgage they held with the Provider by year-end, and they requested to know what measures were in place to ensure that all redemption letters to issue, would be appropriate and timely, and to ensure that all deeds of release and re-assignment of life policy documents, would issue promptly and without difficulty. In their complaint to this office the Complainants state that:

- The Provider sent them *“inaccurate and untimely letters at the time of first clearance”*;
- These letters were *“inappropriate”*;
- The repetition and irrelevance of the letters prompted the Complainants to complain;
- The Provider’s first response to this complaint was *“hopelessly inadequate”*;
- The Provider’s letter dated **30 July 2019** was a better response but when the Complainants reverted to ask what corrective action had been taken to prevent a recurrence at their next clearance, the reply they got was *“useless”*

The Complainants made a submission to this Office dated **10 July 2020** stating that the submissions by the Provider in respect of their complaint while comprehensively descriptive, offered no corrective action. The Complainants state that they cannot

*“envisage closure nor agreement in this event where the [Provider] does not accept the need for properly corrective action.”*

The Complainants state that the Provider relies upon regulatory obligation as a defence for the issuing of letters to the Complainants, yet does not explain why it failed to acknowledge the course of action that the Complainants called them about. The Complainants also state that the Provider’s argument that it must weigh the prevention of standard letters issuing against regulatory responsibilities and the provision of services in the best interests of the customer, is *“a particularly weak defence”*, pointing out that regulatory responsibilities and the needs of customers are not competing interests nor should the Provider suggest they are.

The Complainants again stress that the Provider wrote to the Complainants about a system of revised repayment changes, when it knew these were irrelevant to the Complainants. The Complainants state that if the Provider chooses a system to contact its customers, then such a system should deliver on regulatory requirements, customers' wider interests and also address all relevant facts. The Complainants state that the Provider's *"system fell well short in these requirements"*.

The Complainants also state that despite the Provider acknowledging that the "Goodbye Letter" was unnecessary, it has not indicated that corrective action will be made to stop re-issuances of that letter. The Complainants again stress that despite assurances from the Provider, they have seen no evidence of the lapses identified by the Complainants being addressed, reviewed or changed in any way. Finally the Complainants request a copy of the *"vacate (or instrument lodged)"* to discharge the mortgages from the Complainants' land registry folio, to assist with the onward transmission on death (or future sale) of their house.

The Complainants made further submissions to this Office dated **28 July 2020**. In these they re-iterated that they did not understand how the Provider can acknowledge the failure in its communication system, review the situation and yet make no effort whatever to change or correct matters. The Complainants state that the Provider is *"entirely pre-occupied with tracking transactions and completely unconcerned with what was communicated to them"*. Finally, the Complainants state that the Provider's most recent response has ignored the Complainants' enquiries about the deletion of charges from their folio.

By way of further submission dated **5 August 2020**, the Complainants again requested an update as to the release of the charge from their folio.

By way of further submission dated **13 August 2020**, the Complainants stated that the Provider's latest observations were inaccurate, in that they had asked for clarification on the vacating of the charge, on a number of occasions. This was not the first time this issue has been raised and while they accepted that it did not form part of the initial complaint, this was because they did not expect the Provider to ignore their requests concerning this issue, and therefore they did not think it merited inclusion when they made the initial complaint. The Complainants state that

*"it is not too much to ask that [the Provider] clarify how and when the Folio entry was discharged and [they] do not understand the difficulty with a simple clarification."*

Ultimately the Complainants want the Provider to

*"explain what corrective actions they (sic) have taken to stop their automated and other systems from sending out ridiculous letters so that when [they] redeem [their] second mortgage there might be a professional response – or at least one that is appropriate."*

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

The Provider wrote to the Complainants on **17 June 2019** providing information regarding direct debit cancellation and life insurance policies as the Complainants' first mortgage with the Provider had been redeemed.

On **2 July 2019**, the Provider responded to the Complainants letter of **25 June 2019**, stating that it knew that following a call between the Complainants and a representative of the Provider, "*the main issue you had was in relation to your Title Deeds*". The Provider explained what it meant when it referenced title deeds and stated that there was only one deed of mortgage/charge registered to secure both of the Complainants' mortgages and it was therefore not in a position to provide a discharge of deed, until both loans had been redeemed in full.

The Provider states that on **28 May 2019**, part redemption funds of €20,000 were received and lodged to the Complainants' mortgage account and as the mortgage account was not fully redeemed, the repayments necessary were recalculated on the remaining balance, rate and existing term. It states that the Provider is obliged to issue correspondence to clients when the repayment amount changes.

The Provider has also set out information concerning details about the early repayment of a mortgage loan and the cost to the Provider of breaking a fixed rate contract. The Provider states that on **31 May 2019** redemption funds of €1,150 were received and lodged to the Complainants' mortgage account and on **10 June 2019** a letter was issued to confirm that the Complainants' mortgage account was fully redeemed.

The Provider states that on **11 June 2019** a letter of no further interest in the Complainants' life policy was issued to the provider of the Complainants' life insurance. The Provider states that on **13 June 2019** a letter was issued to the Complainants to request account details for the €20.27 credit balance due to be refunded and that this money was refunded to the Complainants on **18 June 2019**. The Provider states that on **17 June 2019**, its 'Goodbye Letter' issued to the Complainants. The Provider states that this letter is issued for all customers with redeemed mortgages to provide important information in writing regarding the redeemed mortgage. The Provider acknowledges that the call back to the Complainants never occurred, as the Provider mistakenly believed that the letter which issued, had answered the Complainants' queries.

In response to the Complainants' letter dated **8 July 2019**, the Provider wrote to the Complainants and stated that it was "*sorry that our previous correspondence did not address all of your concerns and questions*". The Provider states that "*having reviewed the trail of letters that issued to you, I acknowledge that their frequency, tone and content did not provide a good customer experience, and for this I apologise*".

The Provider states that there is a regulatory requirement to issue letters concerning changes to SEPA repayments and alterations to fixed rate loan account, but it admits that these letters "*gave the impression of inattentiveness on our part, especially given your repeated verbal intentions to redeem [the mortgage loan account] in full*".

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The Provider states that the limit of €20,000 is a security measure which was explained to the Complainants by the Provider's staff in the contact centre but it acknowledges that the letters received by the Complainants *"did not address this feature and that our failure to do so further exacerbated the impression of inattentiveness on our part"*.

The Provider states that the 'Goodbye Letter' was intended only as a means to provide customers who have redeemed their mortgage with information which may be useful, however the Provider acknowledges that *"in the context of your particular case it was unnecessary"*. The Provider apologises for the broken promise of a call-back and offers a *"full apology for the lapse in service"*. The Provider also states that it is sorry for the poor experience the Complainants had attempting to recover their title deeds. The Provider also undertakes in this letter to *"address and review the lapses in service you have disclosed to us"*.

The Provider wrote again to the Complainants on **31 October 2019** stating that it had *"tried to accommodate you previously by providing unfettered access to a mortgage product manager"*. It stated that if the Complainants wished to take the matter further they should write to this Office.

The Provider made submissions to this Office dated **2 July 2020**. These submissions set out the history of correspondence and calls with the Complainants, none of which is in dispute. The Provider states in these submissions that it was aware of the Complainants' intention to redeem the full outstanding balance on one of their mortgage loan accounts, by way of two separate transactions made just over 24 hours apart.

The Provider states that despite the Complainants' stated intention to do this, this might not have happened, and therefore the Provider is obliged to record and keep the Complainants up to date with transactions which actually occur *"even if they are on notice of the intended end result of the customer"*.

The Provider states that the letters that issued to the Complainants were not incorrect, but rather detailed accurately the transactions that were occurring on the mortgage loan account which the Provider was bound to report and it re-iterates its statements in respect of these obligations from its letter of **30 July 2019**. The Provider states that given that this reporting is a regulatory requirement, the Provider *"must ensure it is compliant whilst also ensuring it is giving the best and most transparent service to the Complainants"*.

The Provider states that in *"certain extreme circumstances"* the Provider can prevent such correspondence being issued to a customer, however, the use of such a procedure must be weighed against its regulatory responsibilities. The Provider acknowledges that the letters it sent to the Complainants did not provide a good customer experience, but it disputes that they were worthless, as they were mandated under regulatory protocol. Again the Provider re-iterates that the letters reference transactions that occurred and that the "Goodbye Letter" provides useful information for customers who have redeemed a mortgage.

In response to a request from this Office to detail the amendments made to the Provider's process regarding the issuing of accurate and relevant communications to customers, the Provider re-iterates the position outlined in its letter of **30 July 2019** that it *"undertakes extensive analysis of customer experiences and we will address and review the lapses in service"*. The Provider states that it was at all times *"very clear, methodical and accurate with its communications to the Complainants in this matter"* in accordance with the general principles of the Consumer Protection Code 2012 (as amended).

The Provider made further submissions to this Office dated **24 July 2020** in which it reiterated that the reasoning for the issuing of the letters was to directly track the transactions made by the Complainants and that the system accurately records all transactions as they occur, not as the Complainants *"intended them to occur eventually"*. The Provider submits that to begin to engage in a practice where the customer is not always kept up to date with the workings of their account, would leave the Provider and its customers vulnerable to error and in default of legislative regulations. Therefore, the Provider states that it determines that it is in the best interests of the customer to be fully informed of transactions that occur, regardless of whether the outcome of the transaction is temporary.

The Provider stated on **4 August 2020** that it had nothing further to submit. Subsequently, on **12 August 2020** it stated that the discharge from the Complainants' folio had already been operated and *"to this end it would appear there is little to be added by the Provider in respect of this matter"*. The Provider submitted that this query concerning the deed of discharge never formed part of the Complainants' complaint and it would refer same to the relevant department *"for response in due course"*.

### **The Complaint for Adjudication**

The complaint is that the Provider failed to effectively communicate with the Complainants.

### **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.

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A Preliminary Decision was issued to the parties on **16 March 2021**, 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that the Complainants held two mortgage accounts in their joint names with the Provider. The first was redeemed on **29 May 2019** and the second was redeemed on **10 December 2019**.

The fundamental issue in this dispute concerns certain correspondence issued by the Provider to the Complainants which they say ignored the intended set of transactions that the Complainants had outlined to the Provider in respect of the redemption of their first mortgage account with the Provider. As outlined above, the Provider has relied on its regulatory and legislative obligations to report transactions to customers, as justification for the communications it has sent.

I note that it was clear to the Provider's representative that the Complainants intended to pay off the first mortgage account in two separate tranches, and the reason for paying in two tranches (as opposed to one tranche) was that the Provider had restricted the maximum payment that could be carried out online to €20,000.

No doubt, the Complainants believe that it would have been a simple matter for the Provider to have placed a note on their file to prevent the issue of an automatically generated "product switch letter" (issued on **28 May 2019**) for a short period of time, to assess whether the Complainants followed up with their stated plan to redeem the full amount of the mortgage. The Complainants are unhappy that the Provider issued them with a letter which it knew or believed was very likely to be inaccurate, by the time it was received by them.

The Provider however says that it cannot:

*"engage in a practice where the customer is not always kept up to date with the workings of their account and would leave the Provider and its customers vulnerable to error and in default of legislative regulations."*

I accept the Provider's position in that regard. Certainly, in this instance, it was indeed very likely that the Complainants would, as indicated in their verbal discussions with the Provider's representative, follow-up the following day with the balance of the redemption payment due. I accept the Provider's position however, that it cannot second guess what a customer will or will not do, notwithstanding the communication of an intention.

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It seems to me that if the Provider had taken steps to prevent the usual regulatory letter issuing to the Complainants, to communicate the outcome of the redemption payment, and if then the Complainants had not followed through with the second redemption payment, the Provider would have been open to the criticism that it had not met its regulatory obligations to issue the correspondence in question.

The Provider has stated that it will undertake an extensive analysis of customer experiences and will address and review the lapses in service in this instance. Despite requests from the Complainants, it has not provided any substantive details as to what this analysis and review has to date entailed, and what practical steps will be taken, as a result. It is however, important to understand that the Provider cannot simply implement a system change in response to the Complainants' articulation of their dissatisfaction, without a more widespread review and analysis of the consequences of such an amendment to its systems, particularly to identify any potential unintended consequences. I note in that regard that the Provider accepts that the letters sent to the Complainant in their particular circumstances, gave rise to a frequency, tone and content that did not provide them with a good customer experience.

It seems to me that it might have been useful if the Provider's representative had warned the Complainants that the first redemption payment would trigger the issue of automated correspondence. This might have prevented the Complainants becoming irked by the impression which they formed, that their intention to make the second redemption payment had been in some manner, overlooked by the Provider.

I appreciate that the Complainants have found the content of automated correspondence annoying and irrelevant to them. Nevertheless, it is important to recognise that the intention of these communications was to ensure, in the context of any redemption payment/s being made, that adequate information was made available to the Provider's customers. Many such customers will be in circumstances which are different from those of the Complainants and many of them will not hold the same level of knowledge as the Complainants.

Separate from the written communications, I note that the Provider has acknowledged that the Complainants did not receive a return 'phone call, when they sought to clarify certain issues with the "Legal and Securities people". Whilst this is regrettable, I see that ultimately, the clarification concerning the Deed of Charge was made clear in the Provider's letter of 2 July 2019.

I am satisfied, on the evidence before me that although certain communications that were issued by the Provider to the Complainants have caused them a level of irritation and annoyance, the communications in question were sent with a purpose in mind, and I note that they did not give rise to a financial loss to the Complainants. Notwithstanding the Complainants' frustrations, I accept that the Provider has regulatory obligations towards all of its customers, which must be addressed in the overall context.

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The Provider has noted that the Complainants were of the opinion that the content of some of the letters they received was worthless to them. I accept the Provider's advice that the issues which have arisen in this matter will contribute to its ongoing review of the service that it offers to its customers. I also accept however, that the Provider cannot simply rush to implement a change to its systems, without firstly undertaking an appropriate overall impact assessment of any such action.

I am satisfied in those circumstances that this complaint should be partially upheld only. I have noted the limited failures of the Provider, in the context of the issues which have arisen, and I do not consider it necessary or appropriate in the circumstances to make any direction for redress.

### **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)** though I make no direction pursuant to **Section 60(4)** or **Section 60(6)**.

**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**

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