



<u>Decision Ref:</u>	2021-0241
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

The complaint relates to the Complainants' joint Mortgage Loan account.

The Complainants' Case

The complaint relates to a "Calling in Debt Letter" which was inadvertently not sent to the Complainants while they were being dealt with as part of the "mortgage arrears process", sometime in **June 2018**. The Complainants were alerted, in **January 2019**, to the fact that the 'Calling in Debt Letter' had not been sent and, thereafter, they raised a complaint in respect of this with the Provider on **22 February 2019**.

The Complainants state they received a letter from the Provider dated **31 January 2019** informing them that, following a review of their mortgage account, a "technical error" has been uncovered. This involved a "Calling in Debt Letter", which the Provider had "believed" had been issued to the Complainants at that time. Mistakenly however the "Calling in Debt Letter" was not sent in **June 2018**, as has been intended and as had been believed by the Provider. The Provider's letter of **31 January 2019** explained that it would like to reassure the Complainants that "formal legal proceedings are not being issued in [their] case at this time. The purpose of this letter is simply to inform [them] of this error in the process".

The Complainants are very annoyed that this “error” occurred and state “it did not allow us to assess the gravity of our arrears”. They go on to say that, had they received the letter in June 2018, they would have been “fully aware of how serious [their] case was, i.e. legal”. The Complainants also cite poor customer service displayed by the Provider. The First Complainant goes on to say that the Provider was “not actively updating” her to the letter in January 2019, and she spent a “number of lunch hours on hold”, “eventually asking for a complaint to be raised”. The First Complainant also complains that the Provider did not advise them, that it had formally reported the issue to the Central Bank of Ireland in its correspondence to them, until **7 November 2019**.

It is stated that the Mortgage Loan account arrears were capitalised on the agreement of both parties in **October 2018**. The First Complainant states in her submission dated **14 November 2019** that the Mortgage Loan account is no longer in arrears.

The complaint is that the Provider failed to issue the “Calling in Debt Letter” to the Complainants in June 2018, which, had it been issued, would have alerted the Complainants to the serious nature of their arrears position.

On their Complaint Form, when asked how they would like the Financial Service Provider to put things right, the Complainants stated the following:

I want a formal apology, an explanation, I want to this to be logged as a breach of Regulation on the part of [the Provider] with the central bank of Ireland and I want our original settlement amount raised substantially for this error. I want it acknowledged that this error on its own is bad enough but this error just proves what we said last time about how bad a treatment service we were receiving while in arrears/under marp at the time in what was such a difficult time in our lives.

The Provider’s Case

The Provider responded to the Complainant’s complaint in a letter dated **21 March 2019**. It apologised for the delay in acknowledging the complaint, made by the Complaint on **22 February 2019** and indicated that “the Arrears Support Unit (ASU) is working on a detailed review to understand how this error happened”. The Provider stated that on completion of the review it would write to the Complainants again.

The Provider issued a further letter on **8 July 2019**, explaining the outcome of its review. The Provider stated that the “error was caused by a system fault, which is now fixed”. It again stated that the balance of the Complainants’ mortgage account was not affected by the “Calling in Debt Letter” not being issued in June 2018. In this letter, the Provider also advised the Complainants “If you would like to take legal advice in relation to this error, we will cover the cost of that advice, Please send a signed and dated invoice to us and we will arrange to pay that for you”.

The Provider's final letter of **7 November 2019** stated that the issue was formally reported to the Central Bank of Ireland. The Provider did not state this in its January, March or July 2019 letters to the Complainants.

The Provider concludes by sincerely apologising that it failed to issue the '*Calling in Debt*' letter however, it states that it is satisfied that "*this error did not impact on [the Complainants'] mortgage account, as [the Provider] did not start any legal proceedings in relation to the mortgage account*".

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 22 October 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 Complainants made further submissions under cover of their e-mails to this Office dated 22 October 2020, 18 January 2021, 27 May 2021 and a second submission, also on 27 May 2021.

The Provider has not made any further submission.

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

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Analysis

The Complainants have had a number of other complaints as against the Provider. This complaint however relates to a single discrete occurrence which formed the sole subject of a discrete complaint to this office.

Therefore, this complaint will be assessed on its own merits and by reference to the submissions, evidence and the material provided, in relation to this complaint, and not any other. In this regard, I might note that the Complainants' complaint form in this complaint makes reference to "*under par and incorrect service*" and "*treatment*" received by the Complainants while they were going through the MARP process. However, these claims form the subject of a separate complaint to this office and, therefore, are not the subject of this adjudication.

The Complainants drew down a mortgage loan in August 2016 for a term of 35 years pursuant to a Mortgage Loan Offer Letter dated 20 May 2016 which was signed by the Complainants on 25 May 2016. In January 2017, the Complainants missed a repayment on their mortgage. Thereafter, the Complainants made irregular payments (by way of manual lodgements rather than direct debit) such that, though the arrears were not cleared at any point prior to the capitalisation of €2,065.18 of arrears in September 2018, the arrears were never greater than €3,000. It is abundantly clear that the Complainants were aware that their account was in arrears throughout this period.

The subject of this complaint is a "*Calling in Debt Letter*" which the Provider had thought had been sent on 7 June 2018 but which the Provider subsequently realised had not, in fact, been sent. A "*Calling in Debt Letter*" is a letter that formally requests the payment of any outstanding debt and must issue before any legal proceedings are commenced. With regard to the sending of, or the failure to send, this letter, the Provider stated as follows in its response to this office:

On 7 June 2018 the Provider was under the impression it had issued a "Calling in Debt" letter, demanding that the arrears be immediately repaid in order to prevent legal action being instigated. It subsequently transpired this system-generated letter did not, in-fact issue from the system.

It is clear that the Complainants would never have known of the failure to send this "*Calling in Debt*" letter had the Provider not alerted them to the fact. Notwithstanding that legal proceedings were not in fact issued subsequent to June 2018 when the Provider initially thought the letter had been sent warning of that possibility, the Complainants take issue with the failure to send them this letter.

Given that no legal proceedings ensued immediately after 7 June or indeed at any point whatsoever, the rationale of the Complainants' complaint is difficult to decipher. The Complainants say that the failure to send them the letter meant that they were not "*fully aware of how serious [their] case was, i.e. legal*". Two observations can be made about this claim.

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In the first part, I am satisfied that the Complainants were at all times aware of the fact and extent of the arrears on their account; they can have been under no false impression as to the gravity of the situation. Secondly, and perhaps more significantly, their case never in fact went 'legal' and indeed it was resolved some months later by agreement by way of the capitalisation of the arrears. Had the Provider gone 'legal' without having sent the letter, that would be another matter entirely.

However, the Provider did not send the 'legal' letter but neither did the Provider subsequently 'go legal'. I fail to see the prejudice suffered by the Complainants.

The Complainants state that they require a "*formal apology*" and "*an explanation*" for the conduct. The Complainants were provided with both of these. The Provider's letters of 8 July 2019 and 7 November 2019 set out an explanation for the systems failure and "*sincerely*" apologised. Given the nature of the error, given the absence of any prejudice suffered by the Complainants arising therefrom, and in circumstances where the Provider has acknowledged its failing and apologised for the matter, I can see no basis for directing compensation.

The Complainants have, in their post Preliminary Decision submissions, expressed their dissatisfaction that my Preliminary Decision had not mentioned "*the fact that in the letter from [the Provider] from November 2019, it says a lie, it says [the Provider] informed [the Complainants in previous correspondence that [it] notified the Central Bank, this is a lie, as per their letters, they didn't which [the FSPO] can see*".

While I note that the Provider did not in fact inform the Complainants of its referral to the Central Bank of Ireland in its letters dated **31 January 2019** and **8 July 2019** as stated in its correspondence dated **7 November 2019**, I do not believe it is reasonable to characterise this as a "*lie*" by the Provider. Rather it appears to be an error in drafting, whereby the drafter of the **7 November 2019** letter incorrectly assumed the Complainants were notified.

While the Provider's statement from its submission dated **14 July 2020**, is correct in that "*a regulated entity's obligation to report an error to the Central Bank of Ireland [...] is owed to the CBI and not the consumer*", I do note that the Provider has not acknowledged the drafting error in its correspondence dated **7 November 2019**. This is very disappointing.

While mistakes are always regrettable, they happen. What is important is how such mistakes are dealt with. In this case, in relation to the substantive complaint, the Provider notified the Complainants of the mistake, explained how it happened and apologised. I believe this was a reasonable approach in circumstances where the error had absolutely no adverse effect on the Complainants.

For the reasons outlined 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**

14 July 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.