



<u>Decision Ref:</u>	2021-0288
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to implement payment terms Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

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

The complaint concerns a mortgage account.

The Complainant's Case

The Complainant argues that on 23 November 2018, he telephoned the Provider to make a payment to his mortgage account following the scheduled November monthly direct debit being unpaid due to lack of funds in the account. The Complainant states that the Provider refused to take payment via credit card.

The Complainant states that due to the Provider's refusal to take payment, his mortgage account went into arrears and his account was passed to the Provider's agent to service. The Complainant further argues that due to the arrears, he has been unable to avail of lower interest rates as his account has remained in arrears.

The Complainant argues that the Provider made an assertion that he was in financial difficulty by not allowing him to pay by credit card.

The Complainant argues that there were persistent communications problems from the Provider, including a problematic secure email system and a failure to send letters by recorded delivery. He argues that he never received the Provider's final letter of response dated 17 January 2019.

The Complainant argues that the Provider is incorrect in its assertion that he should give out security details to an unknown caller and this is contrary to all advice. He indicates that he is “*multi-banked*” both in Ireland and the UK, both commercially and privately, and that other financial institutions regularly advise that they would never contact a customer in such a manner. The Complainant indicates that this is not a major issue of his complaint, but he argues that the Provider has severe deficiencies in its system.

The Complainant argues that the key issue of the complaint is whether he is entitled to pay the mortgage by way of his own preferred method, in this particular instance, by credit card. He argues that the legal terms governing his loan do not refer to such a restriction. He argues that there is no provision in the terms and conditions for payment by direct debit. The Complainant argues that the Provider has not set its systems up to take payment by credit card and it is seeking to justify its position to his and his family’s detriment and suffering.

The Complainant argues that the Provider’s stated justification for its refusal to take payment via credit cards (that is, that unsecured lending is usually a more costly way of borrowing money) is factually wrong and intended to mislead. He argues that when a loan becomes impaired, it is subject to higher rates of interest and administration fees while, by contrast, most credit cards offer between 12 and 24 months interest free credit. He argues that the Provider has acted in an “*exceptionally aggressive and threatening manner*” and gives the example of the Provider engaging the services of a third-party service provider and the communications he has received from that third party service provider since that time.

In respect of the Provider’s argument that it was a condition of the loan that a completed direct debit mandate be forwarded prior to the release of mortgage monies, the Complainant argues that he accepts that a direct debit was required to be set up prior to the release of the loan. He argues, however, that there are no terms and conditions governing ongoing requirements to continue to pay by direct debit payment. Further he argues that the Provider envisages this as not being realistic by providing alternative methods of payment, including debit card, standing order, inter-bank payments, or through its branch. He further argues that the terms of the direct debit clearly state that he is entitled to cancel it.

The Complainant argues that he contacted the Provider’s mortgage arrears department in an effort to change the interest rate but was informed that until the arrears payment was settled, the Provider would not consider offering alternative rates.

The Complainant argues that the Provider was not acting in his best interests when it chose to engage a third party service provider to manage his account and that its decision to do so in the face of a legitimate dispute between the parties was excessive and unreasonable. The Complainant argues that while the Provider may have been lawfully entitled to transfer his account to the third party service provider while this Office was investigating his complaint, its actions were unreasonable and may have caused lasting damage which was entirely avoidable.

The Complainant wants the Provider to:

- (a) accept the Complainant's payment by credit card to settle the outstanding debt;
- (b) rectify the Complainant's credit rating;
- (c) retrieve all of the Complainant's personal details submitted to the third party service provider and ensure the third party irrevocably deletes the information; and
- (d) moves the Complainant to a fixed rate at 2.3% and backdate payments until January 2019 or accept liability for the variance in the rate charged by the Provider and prevailing rate of competitors backdated to January 2019.

The Provider's Case

The Provider states the Complainant contacted it in relation to his mortgage account on 23 November 2018. He was transferred to a staff member of the Arrears Support Unit (**ASU**) and during that call was informed that the Provider was unable to take a payment towards a missed mortgage payment in November 2018 by credit card. He was advised of alternative methods of payment. The Provider states that the Complainant declined the offer by the staff member to log a complaint on his behalf.

The Provider states the Complainant contacted the Provider's Chief Executive Officer (**CEO**) by email dated 23 November 2018 expressing dissatisfaction with what had occurred. The Provider indicates an acknowledgement was sent to the Complainant on 26 November 2018 and on 28 November 2018, the Provider attempted to telephone the Complainant to discuss matters, but there was no follow-up to its voice message. A complaint acknowledgement letter was issued to the Complainant on 29 November 2018.

The Provider argues that on 30 November 2019, a staff member of the ASU rang the Complainant to see if the matter could be resolved. The Provider indicates that the call did not proceed past the security verification stage as the Complainant refused to provide details to verify his identity. He also expressed dissatisfaction with the telephone security verification process.

On 30 November 2018, an email was sent to the Complainant confirming that the ASU do not take mortgage payment by credit card and requesting that he contact the Provider to discuss the issue. By email of the same date, the Complainant again wrote to the CEO advising he did not wish to raise a complaint so the complaint that had been recorded was closed.

On 1 December 2018, the Provider's representative emailed the Complainant setting out the Provider's position. She explained that the Provider has to complete security checks on telephone calls to protect customers' data and privacy. She also confirmed that the Provider's decision not to take credit card payments on mortgage accounts was driven by the Provider trying to do the right thing for customers as unsecured lending is generally a more costly way to borrow money.

The Provider indicates that on 1 December 2018, an email was received from the Complainant expressing his dissatisfaction with matters. On 3 December 2018, a letter issued to the Complainant advising that the mortgage account was in arrears. On 4 December 2018, the Complainant emailed the Provider requesting confirmation on whether there were legal clauses restricting him for making payment through a credit card. He argued that if there were no such restrictions, it was not acceptable for the Provider to "*continue to cause harm concern to me and my family*".

By email at the same date (4 December 2018), the Provider wrote to the Complainant confirming that there were no legal clauses pertaining to credit card payments but the Provider does not accept credit card payments for the reasons previously explained. The Provider argued that the:

"terms and conditions of your mortgage do require payment by direct debit however we are able to offer various other methods of payment such as debit card, standing order, interbank payment from a [Provider] account payment at the branch.

We are still keen to work with you to better advise what alternative payment methods are available to you."

The Complainant responded by email dated 4 December 2018, continued to express his dissatisfaction and requested a final response letter so that he could submit a complaint to this Office. The Provider acknowledged receipt of his request for a final response letter and confirmed that it would re-open his complaint.

By email dated 6 December 2018, the Complainant requested confirmation that if he transferred funds into his current account, that the November 2018 repayment would not be deducted until the parties had reached an agreement or there was a court ruling or formal arrangement in place. He argued that he wanted to ensure there were funds in place for the December loan repayment and to provide for spending in Ireland during the Christmas period.

Upon request, the Provider sent an email to the Complainant on 7 December 2018 attaching copies of the Complainant's mortgage loan and terms and conditions dated November 2012. The Provider states that as these contained personal customer information, they were sent using the Provider's secure method of email communication. A letter of the same date was sent to the Complainant confirming that the normal monthly repayment of €1,264.22 would be deducted from the account by direct debit on 12 December and that he had to ensure sufficient funds were available.

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The letter confirmed that under the Provider's Code of Conduct on Mortgage Arrears (**CCMA**) obligations, letters would be issued in reference to the missed payment.

The Provider states that on 11 December 2018, the Provider sent a letter to the Complainant enclosing a copy mortgage loan documents as he had been unable to open the documents sent by email on 7 December. The Provider states that a letter from the ASU was sent to the Complainant on 14 December 2018 in respect of arrears on his account. The letter informed him that the Provider would appoint an identified third party to assist the management of the arrears outstanding on the account. The Provider has identified further correspondence sent from the third party from January 2019 onwards in respect of the missed November 2018 payment.

The Provider states that on 17 January 2019, a final response letter was issued to the Complainant confirming that the Provider could not accept payment by credit card and declining to uphold his complaint.

The Provider points to the special conditions relating to the Complainant's mortgage account which he signed and accepted on 20 December 2012. It refers to a condition which states that "*fully completed Direct Debit mandate to be forwarded to the Bank prior to release of the mortgage monies*". The Provider indicates that as explained in its final response letter dated 17 January 2019, the Complainant agreed to pay the mortgage by way of direct debit at the outset in 2012. Further, at the time of his complaint in November 2018, he was also advised of the alternative methods – payment by debit card, standing order, inter-bank payment or through any branch. The Provider indicates that the Complainant signed a direct debit mandate in respect of the mortgage account in October 2012. The Provider indicates that the Complainant has been advised since the outset in November 2018 of the Provider's position in respect of mortgage repayments by credit card. It states that he was provided with details of alternative methods of payment by way of direct debit. The Provider argues that it made numerous attempts to discuss matters with the Complainant and to come to a resolution, but it was unsuccessful.

The Provider argues that it is satisfied that it complied with its obligations under the Consumer Protection Code 2012 (**CPC**). The Provider explains that on 12 November 2018, a direct debit was presented on Complainant's current account calling for the November mortgage payment. The direct debit was applied for due to the mandate that the Complainant had completed and signed with the Provider on 29 October 2012. As the Complainant had insufficient funds available on his current account to make the direct debit, it was returned unpaid, and the mortgage account fell into arrears in the amount of €1,264.22.

The Provider argues that there was no error made by it in relation to the matter in question. It argues that it is the policy of the Provider not to accept mortgage payments by credit card. It argues that the terms and conditions of the Complainant's mortgage account provide that he make payment by direct debit and that he signed a direct debit mandate in 2012 but that the Provider also offers alternative methods of payment for customers.

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The Provider argues that the Complainant has been informed from the outset in November 2018 of the Provider's position. It states that it is satisfied that the complaint raised by the Complainant was handled speedily, efficiently and fairly.

The Provider further states that it is satisfied that all communications, both verbal and written, made clear to the Complainant from the outset what method of payment the Provider would or would not accept. The Provider does not accept that it breached any obligation to supply information to a consumer on a timely basis. It argues that documentation was sent by the Provider to the Complainant by way of encrypted secured email on 7 December 2018. Further, the password to open the secure email attachment was advised to the Complainant by telephone on 10 December 2018. When the Complainant experienced difficulties opening the encrypted email, the documentation was then sent by post on 11 December 2018. The Provider states that in its final response letter, it apologised to the Complainant that he was unable to open the email but also notes the Complainant subsequently confirmed that the documentation was safely received by him in the post.

The Provider states that it is satisfied that it has complied with all requirements of the CCMA, including general requirement 20 under which it is obliged to inform a borrower that it has appointed a third party to engage with the borrower in respect of his case. The Provider argues that the third party was appointed for a number of services, ranging from administering the collections process in respect of residential investment portfolios to engaging with borrowers to put alternative repayment arrangements in place. The Provider argues that its relationship with the third party in question was approved by the Central Bank of Ireland. The Provider argues that it appointed the third party to engage with all borrowers whose mortgage accounts are secured by buy to let properties and that the third party was appointed irrespective of whether or not the borrower was engaging with the Provider, and whether or not the mortgage account was in arrears. The Provider argues that all customers whose accounts were transferred to the third party were advised of this by the Provider initially and then by the third-party directly.

The Provider states that it is sorry that the Complainant believes that the letter from its ASU dated 14 December 2018 was threatening. The Provider argues that the letter was sent due to the missed November mortgage payment and that it has an obligation to advise customers in mortgage arrears of the consequences of not meeting mortgage payments. The Provider refers to its communications during November and December 2018 in which the Complainant was informed that the Provider was there to help and welcomed the opportunity to discuss matters with him to come to an amicable solution. The Provider argues that it has an obligation to advise customers of the implications of not making mortgage payments. It argues that there was nothing in the communication that was aggressive, intimidating or threatening.

The Provider argues that the facts the case are that the Complainant was dissatisfied with the Provider's position in respect of taking mortgage payment by credit card but, despite being advised of alternative methods of payment, the Complainant chose not to make payment or engage with the ASU in respect of this.

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The Provider notes that the Complainant indicated in his complaint form that as a result of his mortgage account being in arrears, he is unable to avail of lower interest rates than would otherwise be offered by the Provider. The Provider states that while the Complainant had not raised this point with it prior to escalation to this Office, it confirms that any discussion that the Complainant wishes to have with the Provider regarding the interest rate applicable to the account should be directed to its mortgage operations department.

The Provider argues that the fact that the customer has raised a complaint to it or to this Office does not affect its right to choose to engage a third-party service provider. The Provider argues that the interest rate that applies to the balance of the Complainant's account is the same, irrespective of whether or not arrears have arisen, so it is not applying a different rate of interest to the arrears to the account. It further argues that no administration fee is being applied to the Complainant's mortgage account as a result of the arrears. It argues that the only fee that was applied was an unpaid direct service fee of €12.70 in accordance with the terms and conditions of the current account.

The Complaint for Adjudication

The complaint is that the Provider refused to accept payment of his mortgage account by credit card and proffered poor customer service throughout.

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 28 July 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 complaint concerns a missed payment in November 2018 on the Complainant's mortgage account held with the Provider. It is common case that when the direct debit was called for against the Complainant's current account in November 2018, it was returned unpaid. It is also common case that on 23 November 2018, the Complainant rang the Provider to make the relevant mortgage payment.

The Complainant offered to make the payment by way of credit card payment but was informed that the Provider does not accept mortgage loan repayments by credit card and he was instead offered several alternative methods by which the Complainant could pay, including payment by debit card. The Complainant is aggrieved by this policy and argues that he should be entitled to pay in whatever manner he prefers. As a result of the disagreement, the Complainant's mortgage loan account has been in arrears since November 2018, though he has paid subsequent monthly repayments.

Recordings of telephone calls between the Complainant and the Provider have been furnished in evidence.

I have considered the content of the call recordings submitted by the Provider. When the Complainant rang to make payment on 23 November 2018, he offered to make the missed November 2018 payment by way of a credit card payment. He was informed by the Provider's Arrears Support Unit (**ASU**) that the Provider could not take a credit card payment, only a debit card payment. The Complainant objected to this, indicated that he was offering to make payment and it was the Provider's problem if it would not accept it. The representative clearly explained that it was unable to accept payment by way of credit card, and that it was not refusing to take a payment but was refusing to take a credit card payment. He explained that the Provider could facilitate a debit card payment instead. The Complainant indicated that he would raise a complaint in respect of the issue as he was of the view that the Provider was refusing to accept payment. He was provided with the call reference number for his records. The representative highlighted to the Complainant that there were consequences of his failure to make payment by debit card and that letters in respect of the arrears would continue. The Complainant asked that the Provider cease and desist and refused the representative's offer of making a formal complaint on the basis that, he argued, it would be a waste of his time.

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The Complainant emailed the Provider's CEO on 23 November 2018 setting out a range of grievances unrelated to this complaint and stating that he had telephoned the Provider and "sought to make payment but this payment was refused by the Bank". He further stated:

"If payment is not taken from me using the details I sought to provide, then I will have little option but to instigate legal proceedings to protect my position. I will hold the bank liable for all costs and loss."

An email acknowledgement was sent to the Complainant on 27 November 2018 with the Provider welcoming the opportunity to speak to him and asking him either to call the writer or asking if he wished to progress matters formally through a complaint.

On 30 November 2018, the Provider called the Complainant to discuss and attempt to resolve the complaint, but the Complainant raised an objection in principle to answering security questions on the basis that the Provider had called him. The Complainant requested that the Provider simply take the payment but was informed that the representative in question was unable to do so without confirmation of the security questions, and so the call ended.

By email to the CEO dated 30 November 2018, the Complainant indicated he did not want a formal complaint to be raised as it would be a:

"futile waste of time and undertaken merely to appease the financial regulators. There will be no meaningful outcome. Please ensure that I am not contacted further in this regard.

I am legally entitled to make payment by any lawful means I deem appropriate.

[The Provider], through their own process's [sic], have opted not to take my payment ...

Having regard to the nature of the issue and the fact that I have been placed in the arrears support unit, I intend to take legal action if this is not resolved without further delay and recover costs and damages. This will extend to injunctions to counter and legal threats [sic].

If I am contractually prohibited from making payment via a credit card please advise as to the clause under our mortgage/loan agreements – I have had a quick review and am unable to see any such restriction.

Please do not have somebody contact me who is not senior enough or with the power to take the necessary corrective action."

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By email dated 1 December 2018, M/S of the Provider's ASU emailed the Complainant noting that her colleague had spoken to him briefly on 30 November. She indicated that the Provider completes security checks on all calls to protect customers' data and privacy by ensuring it is speaking to the account holder and cannot continue phone calls without completing those checks. In respect of the refusal to take payment by credit card, M/S stated as follows:

"I want to assure you that our decision not to take credit card payments on our mortgage accounts was driven solely by us trying to do the right thing for our customers. Typically unsecured lending by its nature is a more costly way of borrowing money and we are strongly of the belief that, given that mortgage debt typically attracts a lower interest rate, it is the right thing to do for our customers.

However, we would be very keen to talk to you about the nature and timing of your cash flow and explore options to help align your mortgage payments to your cash flow. Please contact me on the details below or send me an email to advise a suitable time for us to call you to allow us to discuss other options with you.

We want to support all of our customers in financial difficulty and so I will also send you a letter this week which will outline the documentation required to allow us to complete a comprehensive assessment of your financial and personal circumstances."

By email in response dated 1 December 2018, the Complainant set out his position but under the heading "*Sent Without Prejudice Save As To Costs*". I am unsure if the Complainant continues to assert privilege over the communication but considering there was no litigation in being, and none has issued since then, I am not sure what on basis such a claim could be asserted. For that reason, I will proceed on the basis that I am entitled to consider the email in question.

The Complainant objected to the Provider asking security questions of him when the Provider had rang him as it "*ought to expect that the person at the end of the telephone call is myself*". He indicated in his experience the Provider's representatives had "*an arrogant ignorance as to security*" and that the Provider's security governance and policies were poor. The Complainant further objected to the Provider's assumption that the use of the credit card would involve unsecured lending and at a higher rate of interest as that was not the case for him, he suggested. He stated that the assertion that there was some financial difficulty was extremely misguided. The Complainant stated that he required the Provider to provide the "*legal clauses and agreements which restrict me from making payment with the details provided to you*" and that it seemed to him that the Provider was "*seeking to foist new terms on me – which I will not agree to*". The Complainant challenged the integrity of the Provider's position and suggested that it was inconsistent and disingenuous. He suggested that there was "*no cashflow issue but an unwillingness to allow you flagrantly breach the law and bully customers.*"

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By letter dated 3 December 2018, the Provider wrote to the Complainant noting that he was in arrears and encouraging him to speak to one of its arrears support agents.

By email dated 4 December 2018, the Complainant asserted that the matter of payment was simple – either there were legal clauses restricting him from using the payment method he has sought to avail of or there were no such clauses. If there are no such clauses, he argued that it was not acceptable for the Provider to *“continue to cause harm and concern to me and my family”*.

By email response dated 4 December 2018, M/S confirmed there were:

“no legal clauses pertaining to credit card payments however as advised we do not accept credit card payments for the reasons previously explained and do not have the facility to take credit card payments.

The terms and conditions of your mortgage do require payment by direct debit however we are able to offer various other methods of payment such as debit card, standing order, inter branch payment from an [Provider] account payment at the branch.

We are keen to work with you to better advise what alternative payment methods are available to you.”

The Complainant responded not to M/S but to the CEO and requested a final response letter so that he could submit a complaint to this Office. He suggested that M/S' response did not address his queries in full, particularly as to security, and that the reasons for the Provider's refusal to take credit card payments did not apply to him. In response on 4 December, the Provider stated that it would reopen his complaint which had been closed on his instruction on 30 November and he would be issued with the Provider's final response letter after investigation.

By email dated 6 December 2018, the Complainant requested that the Provider do not deduct the November 2018 payment from funds which he intended to transfer into its current account pending resolution of his complaint. He also requested that the Provider send him his original loan documents and mortgage documents. The loan documentation and terms and conditions were sent by way of encrypted email on 7 December 2018 by M/S. There was a further encrypted email sent to the Complainant on the same date, in which M/S confirmed that the normal monthly repayments of €1,264.22 would be deducted by direct debit on 12 December and that the account would remain in arrears by reference to the missed payment. She also indicated that under the Provider's CCMA obligations, letters would be issued in reference to the missed payment. The PIN for the encrypted emails was supplied to the Complainant on a telephone call on 10 December but it appears that he could not access the encrypted emails. As a result, M/S sent the relevant loan documentation to him by post on 11 December.

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I have reviewed the loan offer of 21 November 2012 and the special and general conditions relating to it. The only reference to a payment method for repayment of the loan is the first specific loan condition which provides as follows

“Fully completed Direct Debit Mandate to be forwarded to the Bank prior to release of the mortgage monies.”

I have been provided with a copy of the direct debit mandate completed by the Complainant dated 29 October 2012. On the last line of the mandate, the following appears:

“You can cancel the Direct Debit Instruction in good time by writing to your Bank.”

By letter dated 7 December 2018, the Provider wrote to the Complainant setting out its understanding of his complaint and asking that he contact it with any additional complaints he wished to raise.

By letter dated 14 December 2018, the Provider wrote to the Complainant noting that he had missed a mortgage repayment and his account was in arrears. The letter noted that by missing payments, his credit rating may be affected. The letter stated that:

“If your mortgage loan account remains in arrears for 31 calendar days or more, the Bank intends to appoint a third party . . . to assist with the management of any arrears outstanding on this account.”

The letter encouraged the Complainant to contact it to work out a sustainable solution.

A holding letter in respect of the complaint was sent to the Complainant dated 20 December 2018.

By letter dated 21 December 2018, the Complainant argued that the Provider had refused to take payment through his chosen method and had misrepresented the facts of the case and had subjected him further unwarranted threats and made unlawful deductions from his account. He made disparaging personal remarks in respect of the competence of M/S which I will not repeat. The Complainant argued that the loan condition whereby he was required to complete a debt direct debit mandate prior to the release of the mortgage monies did not cover the ongoing relationship on the payment of monies. In reference to the letter dated 14 December 2018, the Complainant argued that the contents of the letter were not clear but were threatening. He stated that he did not consent to his details being passed to the third party service provider, and threatened to take injunctive proceedings against the Provider if it attempted to appoint it. The Complainant accused the Provider of levying an unpaid charge on his account in respect of the disputed amount. He argued that the “extortionate” charge amounts to a penalty and should be refunded. In response, the Provider indicated that his letter would be added to the issues raised in his existing complaint which was under investigation.

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By way final response letter dated 17 January 2019, the Provider wrote to the Complainant and responded to this complaint as follows:

“Complaint 1

*I have reviewed your Account ending ****3659 and I note that a Direct Debit was presented on this Account to pay your November Mortgage payment. This Direct Debit was applied on foot of the Mandate that you completed and signed with the Bank on 29 October 2012. As you had insufficient funds on the day, the Direct Debit was returned unpaid placing your Mortgage in arrears in the amount of €1,264.22.*

I understand that you contacted the Bank on 23 November and you attempted to make a payment using your Credit Card with another financial institution. You were advised that his [sic] was not something the Bank could facilitate – i.e. paying credit with credit. During this call an offer was made for you to make the payment by alternative means and you advised that you were not happy about this and you would only pay using your Credit Card.

I fully appreciate that this came as a disappointment to you and I do apologise for any inconvenience that has caused you. [M/S] who is Head of our Customer Contact Centre did advise you by email the reasons why the Bank cannot take Credit Card payments. This is driven solely by the Bank trying to do the right thing for our customers. Unsecured lending by nature is a more costly way of borrowing money and we are of the belief that as the Mortgage interest rate would be lower that this is the right thing to do for our customers.

I understand a representative from our Arrears Support Unit did attempt to contact you on 30 November and unfortunately you did not provide security details in order for the call to continue.

Please be assured that the Bank is not trying to foist new terms and conditions upon you and we do apologise for any inconvenience this had caused you. You agreed to pay your Mortgage by way of Direct Debit at the outset in October 2012 and you have been advised of the alternative methods of payment – i.e. Debit Card, Standing Order, Inter Branch payment or through any Branch. This offer remains open to you to remedy the arrears in relation to the November payment. I have not upheld this aspect of your complaint. The Bank is satisfied that it has exhausted all avenues within its control in its attempts to facilitate you paying your November Mortgage payment.

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Complaint number 2

As your Mortgage went into arrears, it would be normal for the Bank to make contact with you under CCMA. We complete security checks on all calls to protect our customer’s data and privacy by ensuring we are speaking to the account holder.

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We cannot continue conversations with customers without completing full security checks. Regrettably we were unable to continue conversations with you without fully complying with these. I have not upheld this aspect of your complaint.

Complaint number 3

I am sorry that you believe we have made an assertion that you are in financial difficulty. As your November Mortgage repayment was returned unpaid due to lack of funds we offered you a full financial review to see how we could help you. As you are attempting to pay your Mortgage Arrears using a non-[Provider] Credit Card, we would have no way of knowing what, if any, interest-free credit facilities would be available to you by your Card Provider.

Please accept our apologies for any offence this may have caused you which was not our intention. This however does not change our position in relation to accepting Credit Card payments for Mortgage Arrears and would urge you to make arrangements to address the missed November payment. I have not upheld this aspect of your complaint.

Complaint number 4

The comments in relation to [M/S]'s position have been noted.

As part of my Investigation I have reviewed the Specific Loan Offer Conditions which confirm as follows: –

“A fully completed Direct Debit Mandate to be forwarded to the Bank prior to release of the Mortgage Monies”. Notwithstanding your position as outlined in your complaint, we would respectively (sic) remind you that you have been paying your mortgage by direct debit by way of signed mandate in line with these conditions for six years prior to November 2018. In these circumstances it would be the Bank's position that it would be the reasonable expectation of the parties to the loan offer contract that this method of payment was the agreed one. In this regard, you had insufficient available funds for your November 2018 Mortgage repayment which was returned unpaid by the Bank placing your Mortgage Account into arrears. As noted above in response to Complaint Number 1, the Bank is satisfied that it offered you a number of alternative repayment mechanisms and from our perspective I am satisfied that we at all times acted in your best interests in order to avoid your mortgage account going into arrears and the attending consequences of such an occurrence.

In relation to the copies of Mortgage documentation, [M/S] sent the documentation by way of encrypted secure email on 7 December 2018 which contained a copy of the Loan offer, Specific Loan Offer Conditions and General Terms and Conditions. I enclose a copy of the signed Loan offer for your records and I am sorry this was omitted from the documentation sent to you.

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The password to open the secure email attachments was advised to you on 10 December by phone. As you experienced difficulties opening the encrypted email, the documentation was sent to you by M/S by post on 11 December 2018. I am sorry you are unable to open the email and for the difficulties you experienced. You have confirmed that the documentation was safely received by you in the post. If you require further documentation, please let us know specifically what you require and we can arrange this for you.

As detailed in our response to complaint number 1 – the Bank cannot provide facilities for customers to make payment to their Mortgage by way of Credit Card. This was explained to you by email dated 4 December 2018 as we are driven solely by trying to do the right thing for our customers. I have not upheld this aspect of your complaint.

Complaint number 5

I am sorry that you believe the letter from our Arrears Support Unit dated 14 December 2018 is threatening. The reason this letter was sent was due to your November Mortgage repayment not being provided for by acceptable means after your Direct Debit was returned unpaid due to lack of funds. I am sorry that you feel the tone of the letter is threatening and please be assured that is not our intention.

The Bank has an obligation to advise customers of Mortgage arrears and the consequences of not meeting Mortgage repayments. The Bank did write to you on 3 December advising you of the arrears and direct contact was also made with you by phone.

It is Bank Policy to pass Mortgages in relation to Investment properties to [the third party service provider] when Mortgage arrears remain on the Account for 31 calendar days or more. I would respectfully suggest that you make arrangements to provide for the missed payment in order for the Account not be passed to [the third party service provider] who provide a service to the Bank to deal with Mortgage arrears on investment properties. I have not upheld this aspect of your complaint.

Complaint number 6

*You have requested a refund of all charges levied in relation to the disputed Mortgage repayment. In this regard, I have reviewed your Account ending ****659 and can confirm that the only charge levied upon you is in relation to the unpaid Direct Debit fee of €12.70. This charge was applied on 12 November in line with the Personal Banking fees and charges as there were insufficient available funds in the Account to meeting (sic) your Mortgage Direct Debit.*

The charges are applied when we return an item because you do not have sufficient funds in the Account. I cannot find any evidence of Bank error in this regard. I have not upheld this aspect of your complaint.”

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Other than in respect of the appointment of the third party service provider, the Provider's response to queries raised by this Office have remained consistent with its final response of 17 January 2019. I note that in its response to this Office, it now argues that all investment property mortgage loan accounts are sent to the third party service provider for management. It appears from the contemporaneous letters, however, including the letter of 14 December 2018, that the Provider's decision to send the Complainant's account for management with the third party service provider was indeed based on the fact that there were arrears existing on the account for a period of 31 days. As a result, I accept that the account was sent to the third party service provider at that time due to the missed November 2018 payment. In finding that, however, I am not finding that there was anything unlawful or unreasonable in the Provider's decision to do so. There is nothing to prevent the Provider from sending any accounts, including accounts in arrears, to a third party service provider for management, though the Provider is at all times responsible for the actions of any such agent. The Complainant has furnished no evidence to support his assertion that he has been negatively affected by this decision or that there were any knock-on negative consequences arising for him.

The fact remains that due to the dispute in respect of the November 2018 payment, his account was in arrears from November 2018 onwards, which I assume was reported to relevant credit agencies.

Unless, therefore, I find that the Provider was incorrect to refuse to accept the proffered credit card payment of 23 November 2018, the other consequences that have arisen for the Complainant (that is, receipt of arrears letters and the transfer of his account for management by the third-party service provider) are simply consequences of his refusal to make his November 2018 mortgage repayment in a manner acceptable to the Provider.

In my view, the Provider was and is entitled to refuse to accept mortgage repayment by way of credit card payments which represents, in its words, the repayment of credit by credit. As far as I am aware, no institution, retailer or merchant is obliged to accept all available methods of payment that a customer wishes to use. What is important is that sufficient methods of payment are made available to customers such that they are in a position to make payments. In other words, it is important that no undue obstacles are placed in the way of customers in making payments, particularly loan repayments.

I am satisfied that not only was the preferred option for mortgage repayments by way of direct debit but that this was the only payment method agreed between the parties. I agree with the Complainant that there are no terms and conditions which provide that direct debit is the only method by which he can pay his mortgage repayments (and indeed this is not the position that has been adopted by the Provider). However, the only method of loan repayment that was expressly contemplated and agreed between the parties was repayment by way of direct debit. The Complainant was obliged to and did sign a direct debit mandate prior to the release of mortgage monies and it appears that all repayments to the loan account between November 2012 and November 2018 were made by way of direct debit.

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When the direct debit was presented by the Provider pursuant to the Complainant's mandate and was returned unpaid in November 2018, he contacted the Provider to make payment on 23 November by way of credit card. He was advised that he could not make a mortgage repayment by way of credit card. He was advised, however, that there were a number of alternative methods of payment available to him, including in the form of payment by debit card. If the Provider had sought to argue that it would not accept any payment other than by way of direct debit, for example, this would have been unreasonable. But this is not what happened. The Provider has set out a range of potential payment methods for the Complainant. It has simply refused to allow loan repayments be made by way of credit card.

I accept the Complainant's argument that there is no condition of the loan which precludes him from paying by credit card. Neither, however, are the alternative methods of repayment offered by the Provider set out in any terms and conditions. The agreement between the parties does not expressly provide for any method of repayment other than by way of direct debit. The Provider has not sought to force the Complainant to pay only by that method. I do not see anything objectionable in it taking a principled decision not to allow its customers to pay mortgage instalments by credit card, or to repay credit with credit. As far as I am aware, this is not an unusual stance for a mortgage lender to take and the practice is relatively common. I do not believe that the policy is unlawful or unreasonable.

While the Complainant has sought to argue that credit cards are not invariably a more expensive source of credit than a mortgage loan, I accept that, as a general (though not universal) principle, the interest rates applicable to credit cards are higher (and often significantly higher) than interest rates applicable to mortgage loans. The policy adopted by the Provider is therefore a logical one and I will not direct that it accept mortgage repayments from customers by way of credit card.

The Complainant has been offered numerous opportunities by the Provider to pay the missed November 2018 mortgage repayment and has been presented with several payment options to allow him to do so. His continued refusal to make payment other than by way of credit card, and hence to remain in arrears on his mortgage since November 2018, was his own decision. I do not accept the argument that the Provider refused to take payment from him in November 2018; he simply refused to make payment by way of any of the acceptable methods of payment available from the Provider. The Provider was, and remains willing to accept payment from the Complainant, just not by way of credit card payment.

In respect of alleged failings in customer service, I have set out details of the interactions between the Complainant and the Provider above. I am satisfied that the Provider attempted to communicate with the Complainant clearly and promptly at all times. The Provider was consistent and clear in all of its communications in respect of its policy not to accept payment by credit card. I note that the Complainant appears to have experienced difficulties in opening the attachments sent to him by the Provider on 7 December 2018 by way of secure email. I accept that the emails were sent and that the PIN was provided to him on a telephone call.

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Further, when the Complainant communicated to the Provider that he was unable to open the attachments, the Provider immediately sent the documents by post on 11 December 2018. The Complainant has accepted these were received. I further note that the Complainant has argued that he did not receive the Provider's final response letter of 17 January 2019. It is apparent that this letter was created by the Provider, however, and I accept that it was sent. Therefore, I do not accept that there was a failure in service by the Provider in this regard.

Other than the email correspondence between the parties, it is apparent that the Provider made attempts to communicate with the Complainant by phone. The call of 30 November 2018 was unable to proceed owing to the Complainant's refusal to answer security questions on the basis that the Provider had called him. I believe there is nothing wrong with the Provider seeking to verify the identity of a person to whom it is speaking on the telephone by asking security questions. This is not the same thing as asking a customer for the security credentials of their payment instrument, for example, which would indeed be inappropriate. Instead, the usual security questions concern the address and date of birth of the account holder and are simply used to verify identity. There is nothing wrong, and indeed it is considered necessary and best practice, with asking those questions to ensure the security of the customer's data and privacy.

In respect of the Complainant's arguments that the letter of 14 December 2018 was threatening, I do not accept that this was the case. The Provider is obliged to communicate promptly with customers when arrears appear on their account and this letter did so.

It also informed him that when accounts are in arrears for more than 31 days, the account would be passed for management by a third party service provider. Again, I do not accept that this was in any way threatening as it did not in any way affect the Complainant's rights or entitlements under contract or regulation, nor did it impede his ability to simply make the November 2018 mortgage repayment that he had missed.

In respect of the issue of interest rates, the Complainant has argued that he was informed on an unidentified date by the Provider that it was unable to change the interest rate applicable to the loan until he cleared his arrears. The Provider has indicated that it has no record of any such conversation and has provided a copy of the only telephone call that it can locate which deals with the question of interest. On that occasion, the Complainant rang the Provider to discuss interest charged on the account. He requested the interest charges for specified periods. The relevant figures were provided to him and there was no discussion of the applicable interest rates or the possibility of changing interest rates.

I have been furnished with no evidence of poor customer service provided to the Complainant. Rather, I am of the view that the Provider went out of its way to promptly and clearly communicate with the Complainant and sought to resolve the difficulties that had arisen. The Provider was courteous and professional at all times in its communications with the Complainant.

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The Complainant has raised additional complaints in correspondence with this Office but as these issues did not form part of his original complaint, he has been advised that these matters must be raised as a separate complaint with the Provider at first instance.

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**

23 August 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.