



<b><u>Decision Ref:</u></b>	2021-0365
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Arrears handling - Mortgage Arrears Resolution Process Delayed or inadequate communication Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Failure to provide correct information Failure to process instructions in a timely manner Failure to process instructions Maladministration (mortgage) Wrongful consideration of forbearance request
<b><u>Outcome:</u></b>	Rejected

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

This complaint concerns a mortgage account.

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

The Complainants submit that one of the joint holders, of their mortgage account, “*was on long term sick [leave]*” and was “*due back to work in **January 2019** but would not receive a full paycheck until **February 2019***”.

The Complainants advise that on the **3 September 2018** they contacted the Provider to request an Interest Only Repayment Arrangement on their mortgage account for four months, from **October 2018** to **January 2019**.

The Complainants submit that they were advised by the Provider that “*a telephone call would take place [on 27 September] between [the Complainants and the Provider] where [the Complainants] would detail all [of their] financial information*”. The Complainants state that they asked the Provider whether there would be enough time to put the Interest Only Repayment Arrangement in place and it advised them “*not to worry about it as they could*

*back date the repayments*". The Complainants were also advised, by the Provider, that their Irish Credit Bureau records would be impacted and because the Complainants did not want their *"mortgage to be adversely affected"* they subsequently attempted to arrange an earlier appointment with the Provider. The Complainants further advise that they agreed to accept a telephone call from the Provider on **11 September 2018** after requesting that their *"dissatisfaction to be registered as a complaint"*.

The Complainants assert that they did not receive a telephone call from the Provider on **11 September 2018** and they subsequently attempted to contact the Provider by telephone, however, they *"could not get through [and they were] left on hold"*.

The Complainants advise that they received a letter dated **20 September 2018** from the Provider acknowledging their complaint and advising them that it *"hoped to send [the Complainants] a full response on the 18 October 2018"* [The Complainants noted that this response had missed the Provider's complaints guidelines timeframe].

The Complainants say that they did not receive a telephone call from the Provider on **27 September 2018** referred to by the Complainants as *"the original date for the call"* and when they subsequently attempted to contact the Provider by telephone, they were *"left on hold"*.

The Complainants advise that:

*"At this point, it became clear that we were not going to get the support we needed from [the Provider] and it appeared most likely that the interest only repayments would not be put in place prior to our October repayment on the 12/10/18. We borrowed funds from our in laws to allow us to continue to fund the mortgage, however they were not in a position to provide the full funds and as a result the Jan payment went into arrears"*.

The Complainants submit that they received letters from the Provider, dated the **14 December 2018**, **17 January 2019** and **14 February 2019**, stating that it would have a *"full response"* at a later date. The Complainants further submit that they contacted the Provider by telephone on **18 January 2019**, as they *"heard or received nothing regarding the complaint"* and were advised that it *"would take the details and get somebody to ring [them] back"*.

The Complainants state that they *"did not have the funds to meet the January 2019 mortgage repayment"* and that they *"repaid the mortgage repayment as quickly as we possibly could, paying lump sums off the missed repayment whenever we could"*. The Complainants further state that:

*"Whenever my husband rang to make lodgments he was advised that 'we had been deemed as uncooperative and that we were not making our family home our priority'. My husband advised at each occasion that I had lodged a complaint regarding the mortgage but that was dismissed every time."*

The Complainants advise:

*“how upsetting and frustrating it was to be accused of this when we had, back in Sep 18, attempted to work with [the Provider] and highlight our issues pre arrears and to have gotten absolutely nowhere.”*

The Complainants submit that they contacted the Provider in relation to its Final Response Letter dated **16 February 2019** and stated that it was incorrect as it had:

*“never taken into account that fact that we did not receive the compulsory calls from [the Provider] nor did it address the fact that the complaint never followed ‘complaint guidelines’ and generally responses would only be issued after I had contacted them first. I also found it hard to believe that a complaint regarding the supposed time taken to arrange an appointment with the resolutions assessment team would take 6 months to resolve as it did in this instance!”*

The Complainants advise that the Provider stated that it *“would reopen the complaint and look into the further issues I had raised”*. The Complainants further advise that *“as a result of this the €50.00 redress (which had been offered in the Final Response Letter) was never lodged to the account”*.

The Complainants contend that they did not hear back from the Provider and when they contacted the Provider, by telephone, they were informed that it *“had emailed the complaint handler and they would ring [the Complainants] back”*. The Complainants further contend that on **4 April 2019** they contacted the Provider, by telephone, and were advised that the Provider *“would send two emails, one to [a representative] and the other to the complaints team”*. The Complainants state that the Provider advised them that if they *“did not hear from anyone to ring again and they would consider escalating it at that point. [The Provider] advised [that it] knew [the Complaints Team] were very busy”*.

The Complainants want the Provider to pay them compensation as follows (total €10,000.00):

1. €3,500.00 for funds borrowed to pay their mortgage;
2. €1,150.00 for the **January 2019** mortgage repayment;
3. €5,350.00 for compensation regarding the Provider *“utter incompetence in this matter which caused us untold stress and upset, not to mention the number of calls we received regarding the arrears”*.

The Complainants say that they would also like their Irish Credit Bureau credit rating restored, if applicable.

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

In its Final Response Letter dated **16 February 2019** the Provider stated that it understood that the Complainants were *“unhappy with the time taken to arrange an appointment with our resolution team”* and it apologised for *“any inconvenience that this issue may have caused you”*.

The Provider contended that

*“the reason why an appointment could not have been made any sooner was due to the current backlog”*

and that it was

*“unable to clarify if the appointment took place but there is evidence on file that there have been recent attempts to contact you.”*

The Provider stated that *“after a review of your account [it] notes that it is in arrears”* and advised that if the Complainants were *“having difficulty repaying their mortgage [to] let us know”*.

The Provider advised that *“in light of any inconvenience that may have been caused by this issue [the Provider] would like to offer you € 50.00 as redress”* and that *“this would cover the delay in receiving a response from [the Provider] regarding your complaint”*.

In the Provider's email to the Financial Services and Pensions Ombudsman, dated **24 February 2020** some weeks before the formal investigation of this complaint was commenced, the Provider made an offer of €2,000.00 to the Complainants, as a full and final settlement. The Complainants declined this offer.

### **The Complaint for Adjudication**

The complaint is that the Provider's service level to the Complainants in late 2018 – early 2019, was unacceptably low, insofar as the Provider:

1. Ignored the Complainants' requests for assistance when one of the Complainants was on sick leave and their mortgage account was in pre-arrears;
2. Failed to contact the Complainants, as agreed, to discuss an Interest Only Repayment Arrangement, on their mortgage account and as a consequence, forced the Complainants to borrow money from relatives to pay their mortgage;
3. Sent the Complainants *“excessive emails, texts, letter and phone calls”* when their mortgage account went into arrears and deemed the Complainants as

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*“uncooperative”*. (The Complainants say that at times they found the communications from the Provider to be *“intimidating and aggressive”*).

4. Delivered a poor quality of service to the Complainants when handling their complaint and their requests for assistance including closing their complaint without addressing their issues;

### **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 **20 September 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 substantive comments from the parties, within the period permitted, the final determination of this office is set out below.

The Complainants, in their Complaint Form to this Office, identified **03 September 2018** as the date on which they first contacted the Provider to request an interest only alternative repayment arrangement, being mindful of the impact which the First Complainant’s sick leave would have on their ability to meet their mortgage repayments. The Provider has supplied recordings of various phone calls and it is apparent from a review of these recordings that the request was in fact made in the course of a phone call made by the First Complainant on **24 August 2018**.

I note that during this call, the First Complainant stated that the Complainants were requesting a five-month interest only arrangement, because the First Complainant was at that point on sick leave, and her social welfare payments had stopped (information the First Complainant stated that she had learned only in the preceding days), and she was scheduled for major surgery in September 2018 following which she would remain on sick leave until January 2019.

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In response to this request, the Provider sought to schedule an appointment for the Complainants to discuss their financial position. The initial date offered (*"the earliest available appointment"*) was **28 September 2018**. The First Complainant expressed her dissatisfaction at this, following which the Provider's agent indicated that an earlier appointment would be available on **11 September 2018** owing to a *"cancellation"* by some other customer.

In response to this, the First Complainant expressed concern about the mortgage payment which was due to be paid on 12 September 2018 which she stated the Complainants would be unable to pay. The Provider's agent indicated that the account would, in such circumstances, *"fall into arrears"*, in response to which the First Complainant stated *"that's not good enough"*.

The First Complainant nonetheless accepted the appointment in the absence of any earlier availability. The Provider communicated the various supporting documentation that would need to accompany the application and the Provider's agent indicated that an SFS form would be sent out to the Complainants. The First Complainant also logged a complaint regarding the failure to offer her an earlier appointment.

I note that the day after the phone call of **24 August 2018**, the Provider says that it sent a blank Standard Financial Statement (SFS) to the Complainants along with a MARP brochure. The Provider says that this documentation was sent for a second time on **31 August 2018**., The Provider states that a further letter was sent on 28 August 2018 outlining the supporting documentation that would be required (inclusive of pay slips, bank statements and social welfare receipts) as per the material identified during the phone call of 24 August 2018. The Complainants dispute receiving this documentation. Thereafter, the Provider failed to call the Complainants on 11 September 2018 as had been scheduled. Neither did the Provider call the Complainants on 28 September 2018, as that appointment time which had originally been offered for a meeting had been changed to 11 September, when a cancellation slot was found.

I note that during a phone call of **09 October 2018**, the First Complainant indicated that an alternative arrangement was no longer required. In the event, the Complainants met the full repayments on the account from September 2018 until January 2019 when there was a missed payment and the account fell into arrears. Happily, the January 2019 arrears were cleared in early March 2019, and thereafter, the account operated as normal. The Complainants submit that they borrowed money from family to assist in the making of the payments during this period.

The first issue that falls to be considered is the Complainants' grievance that an earlier appointment was not offered to them in the course of the phone call of 24 August 2018. In essence, the complaint is that a facility was not extended to them to allow the processing of their request for an interest only alternative repayment arrangement prior to their next repayment falling due on 12 September 2018. The First Complainant's phone call was made on Friday 24 August 2018. The appointment offered was initially a month later, but having found a cancellation slot, they were then offered an appointment 12 working days later on 11 September 2018. The Complainants' next repayment fell due the following day.

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I do not accept the suggestion that the offering of an appointment 12 working days after a request for it, constituted unreasonable or deficient conduct on the part of the Provider. On the contrary, and notwithstanding the difficulties faced by the Complainants at the time, this seems to me to have been a reasonable time frame within which to facilitate an appointment.

Furthermore, it seems to me to have been unrealistic on the part of the First Complainant to have expected a request for an interest only alternative repayment arrangement to have been fully completed and processed to final decision by the Provider within 13 working days (given indeed that no customer has an automatic entitlement to such an arrangement).

Indeed, the Complainants did not, before the scheduled appointment date, send to the Provider the supporting documentation that would need to be reviewed before a decision would be reached on their request. (I note that the Complainants dispute having received the correspondence requesting the documentation, however the material was also clearly requested during the phone call of 24 August 2018.) As a result, in my opinion, there was no reality to an arrangement being put in place before 12 September 2018.

It appears that the unsatisfactory situation in which the Complainants found themselves, was precipitated by the lack of notice given to the First Complainant as to the ending of her social welfare payments. This created a pressurised timeline, but that pressure was not caused by any action of the Provider.

The next matter to be considered is the failure on the part of the Provider to contact the Complainants on 11 September 2018 as had been arranged. Having scheduled this appointment, and having been specifically notified of the Complainants' anxiety to progress matters prior to the next repayment, falling due on 12 September 2018, I consider this to be a significant failing by the Provider. How frustrating it must therefore have been for the Complainants to be in receipt of a written communication from the Provider encouraging them to "*let us know*" if they were "*having difficulty repaying their mortgage*". This was precisely what the Complainants had sought to do, in August 2018, but they were let down by the Provider, when the scheduled appointment did not proceed. The Provider has acknowledged this failing and has stated that it was the result of "*human error*" in terms of the confirmation of the appointment details in the Provider's system. This is further addressed below.

The Complainants have also expressed dissatisfaction at "*excessive emails, texts, letters and phone calls*" when their mortgage account went into arrears. They have indicated that they found the communications from the Provider to be intimidating and aggressive.

I note from the communications that shortly after the Complainants made contact with the Provider, letters were sent addressed individually to both the Complainants at their address explaining that in order to complete an assessment of their financial situation, certain important information was required. The letter went on to explain the type of documentation which would be needed and gave details of what would happen next and where the customer could seek independent advice that this was required.

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Whilst I note that these communications contained a very prominent warning concerning the property being at risk if payments were not kept up, it is worth noting that these warnings are a regulatory requirement which the Provider is obliged to include in communications of this nature, in order to ensure that borrowers are aware of the situation.

Some days later, a further communication was sent to the Complainants dated 30 August 2018, acknowledging the complaint which the First Complainant had made on 24 August 2018. I don't accept the Complainants' suggestion in that regard that the letter of 30 August 2018 did not meet the Provider's own complaint timeline. This letter was issued within 4 working days of the complaint having been made and explained that the Provider would revert further, and enclosed a brochure explaining how complaints are managed.

I note that the following day 31 August 2018, further information was sent addressed to the Complainants regarding the Mortgage Arrears Resolution Process, the contents of which again included the required regulatory warnings regarding the property being at risk in the event of not meeting payments.

I further note that on 8 October 2018, and again on 9 October 2018, further communications were sent by the Provider seeking to offer help, to address the Complainants' situation. I can understand why, in the context of the Provider's failure to go-ahead with the telephone discussion on 11 September 2018, the Complainants may have been annoyed by the contents of the communication, in the absence of any real progress. I am satisfied however, that the contents of these communications made it clear to the Complainants what sort of information was required in order to enable the Provider to adequately assess their financial position, in order to make a decision on any request for forbearance.

Finally, the Complainants are also unhappy with the manner in which the Provider dealt with the complaint raised by the First Complainant, in the course of the phone call of 24 August 2018 (being the complaint regarding the failure to offer an earlier appointment). This complaint was acknowledged by way of letter of 30 August 2018 and I note that update letters were sent thereafter on 20 September 2018, 18 October 2018, 16 November 2018, 14 December 2018, 17 January 2019 and 14 February 2019 before a Final Response Letter issued on 16 February 2019. The said Final Response Letter essentially rejected the merits of the complaint (as I have done above) but offered €50 as compensation for the delay in the provision of the Final Response Letter. I see that on 24 February 2020, this offer of compensation was subsequently increased to €2,000 (to reflect all the various acknowledged shortcomings, and not just the delay in providing a Final Response Letter) and in June 2020, when the Provider sent its formal response to this complaint, it confirmed that this offer remains open to the Complainants for acceptance.

I note that the Provider has acknowledged and apologised for two discrete failings, namely the failure to contact the Complainants on 11 September 2018 and the delay in providing a Final Response letter. In the face of this, the Provider has offered compensation of €2,000. I consider this offer to be an adequate offer and note that it was offered before the commencement of the formal investigation of this complaint, and it has been expressly stated to remain open to the Complainants to accept. In those circumstances, I do not consider it necessary or appropriate to uphold this complaint. I am satisfied that weeks

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before the formal investigation of this complaint commenced, the Provider recognised its failures in its communications with the Complainants and sought to address their dissatisfaction by acknowledging its errors and by offering a reasonable level of compensation, by way of redress.

I do not accept that the Complainants' claim for compensation of €10,000 is in any way proportionate to the Provider's errors in this matter. The Complainants did not have any entitlement to an Alternative Repayment Arrangement. Rather, the Provider's obligation was to consider the request for an Alternative Repayment Arrangement and to form an opinion as to what an appropriate arrangement might be, taking into account the information which the Complainants could make available regarding their financial situation, and how long that situation would remain.

Whilst I accept that the Provider failed to engage with the Complainants on 11 September, as had been arranged, which increased the Complainants' concerns, worries and inconvenience, regarding the mortgage payment falling due, ultimately, I note that the Complainants sourced funds elsewhere to assist them with their mortgage liabilities and this prevented an arrears situation occurring in late 2018, on their account.

All in all, on the basis of the evidence available, I am satisfied that the Provider's offer of compensation of €2,000 is reasonable in the circumstances and for that reason, I do not consider it appropriate to uphold this complaint.

It will be a matter for the Complainants to make direct contact with the Provider if they wish to accept the compensatory payment which remains open to them for acceptance. I note in that regard that since the Preliminary Decision of this Office was issued last month, the Complainants have queried who to communicate with, regarding that payment offered. It will be a matter for the Complainants to make direct contact with the Provider, if they wish to accept that compensatory offer, and they should do so expeditiously as the Provider cannot be expected to hold this compensatory offer open indefinitely for acceptance by the Complainants.

### **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.**



**MARYROSE MCGOVERN**  
**Deputy Financial Services and Pensions Ombudsman**

12 October 2021

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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.

