



<u>Decision Ref:</u>	2021-0457
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mortgage Protection
<u>Conduct(s) complained of:</u>	Misrepresentation (at point of sale or after) Delayed or inadequate communication Dissatisfaction with customer service Lapse/cancellation of policy
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a period of five months during which the Complainants say that the Provider harassed them with excessive communication relating to their mortgage loan account.

The Complainants' Case

The Complainants held an amalgamated a mortgage loan account with the Provider, which was in arrears in **2018**. In a letter to this office of **21 July 2020**, the first Complainant explained that she suffered a heart attack on **23 April 2018**. She submitted:

“At that time and for a long period of time the [Provider was] harassing me with letters and constant phone calls, even though I had made them aware that I was seriously ill.”

The first Complainant wrote to the Provider on **11 May 2018**, explaining her personal situation and requesting *“a bit of time to sort my health out”*. The letter noted that the first Complainant would not be fit to talk at length on the telephone, but could accommodate a quick call. The first Complainant sought a written reply to the letter, but did not receive any response.

In the letter attached to the Complainants' complaint of **26 September 2019**, the first Complainant submits that the phone calls continued after this letter *“on a daily basis”*. The Complainants wrote an additional letter to the Provider on **5 July 2018**, explaining that they had been *“bombarded with calls”* from the Provider following the first Complainant's letter of **May 2018**. The Complainants noted that they were not ignoring the mortgage arrears, and that the first Complainant hoped to be well enough to deal with the matter in the near future.

In an email to this office of **17 February 2021**, the first Complainant submitted that many of the Provider's calls went unanswered as she did not have the strength to talk on the phone, due to her illness.

In a letter to the Provider of **29 July 2019**, the Complainants' stated:

"[T]he harassment I received from the Bank immediately after my illness was unforgivable, especially as I had written to the Bank twice to inform them of my condition, and asking for some time to heal before I could deal with the stress".

The Complainants submitted that they received flowers, a 'get well' card, and an offer to pay compensation of €200 (two hundred Euro), from the Provider. They stated that they did not accept this figure, as they felt it was *"insulting and derisory"*, given the harassment suffered.

The Provider's Case

The Provider rejects the contention that it harassed the Complainants at any point. In its reply to the formal investigation of this Office dated **9 February 2021**, the Provider submitted that it has a duty to inform customers that go into arrears, of their position, and of the consequences of not responding to the Provider.

The Provider submitted that, in **2018**, the Complainants had been in arrears on their mortgage for three years. It stated that this was:

"a serious situation for the customers with potentially difficult consequences for them. It would be irresponsible of the Bank not to try and engage with the customers and to assist them wherever possible."

In relation to the period in question of 5 months, ranging from **1 April 2018** to **1 September 2018**, the Provider states that 25 calls to the Complainants were attempted. The calls were made through an automated service, which contacts all of the numbers on file for customers. When one number is not answered, the service then systematically attempts to call the remaining numbers on file.

The Provider submits that **seven** of the 25 attempted calls were successful, insofar as the Complainants answered the phone. From the phone history provided however, it appears that the Provider actually attempted to call the Complainants 24 times, and that **six** of those attempts were successful. One phone call was made directly from the first Complainant to the Provider.

Of the seven phone calls between the Complainants and the Provider, the Provider submits that five calls went to conclusion, one call connected but did not have an answer, and one call was terminated by the first Complainant.

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The Provider notes that two text messages and five letters were sent to the Complainants during this period, which included a General Arrears Letter that had been sent separately to both customers.

The Provider relies on Provisions 23(a) and 25 of the **Code of Conduct on Mortgage Arrears 2013** (CCMA) in submitting that the two quarterly letters sent to the Complainants were not excessive or disproportionate.

The Provider states that it was acting in compliance with Provision 28 of the CCMA in sending the "Serious Arrears Letter" and the "General Arrears" Letters. In its response to this investigation, the Provider quoted from Provision 27 in this regard, and appears to rely on Provision 27 and not Provision 28. As a result, it submits that this correspondence could not be seen as excessive or disproportionate.

When asked by this Office to explain why the Complainants' request for the phone calls to cease, was not acceded to, the Provider submitted that the second Complainant informed the Provider on **25 April 2018** that the first Complainant was in hospital. Although there was one automated call made on the same day, the Provider did not make telephone contact again until **14 June 2018**.

On **18 June 2018**, the first Complainant informed the Provider during a telephone call that she was unwell and awaiting a hospital appointment. The Provider informed the Complainant that a 15-day halt would be put on phone contact, and that this may take 24 to 48 hours to take effect. An automated call was attempted on the same day, but thereafter there was no phone contact with the Complainants until **3 July 2018**.

The Provider submits that the phone correspondence with the Complainants could not be considered excessive in circumstances where there was "*no contact for 6 weeks*", and then a later 15-day halt on phone calls, after receiving the Complainant's requests.

In relation to the application of Provision 22 CCMA, the Provider acknowledges that the Code was applicable to the Complainants' mortgage. It submits that its correspondence with the Complainants was "*proportionate and not excessive*".

The Provider was asked by this office whether it was noted that the first Complainant was a vulnerable customer, after her ill-health came to the attention of the Provider. The Provider stated that it was respectful and considerate of the Complainants during this period. It submitted that the Complainants did have the capacity to make their own decisions, and that the Provider was endeavouring to assist them with their long-term arrears. It stated that no mortgage payment had been made in a number of years, and that the situation was becoming more difficult for all parties.

The Provider stated:

"The Bank is naturally very sympathetic to the health difficulties that [the first Complainant] has experienced..."

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We would respectfully submit however that, as a Bank, there is an obligation to engage with customers to help them as much as possible when they get into arrears. As [the Complainants] were in serious arrears at this stage, there are CCMA obligations that need to be fulfilled in relation to customer contact. It is also important to note that there were gaps in the telephone contact with the customers when, at separate times, both [the Complainants] informed the Agent of [the first Complainant's] health issues."

The Provider made an offer for €200 (two hundred Euro) in full and final settlement of the complaint, and this offer remains open to the Complainants.

The Complaint for Adjudication

The complaint is that in or around the Summer of **2018**, the Provider engaged in an excessive level of communication in relation to the arrears on the Complainants' Mortgage Loan 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 **26 October 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

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Two event timelines underlying this complaint are set out below. The first is the call history between the parties over the relevant period. The second is the history of the written correspondence between them.

Call history from 01/04/2018 to 01/09/2018

Date	Event
13/04/2018 – 14:00	Unsuccessful automated call
13/04/2018 – 14:47	Unsuccessful automated call
16/04/2018 – 11:47	Call from the first Complainant to the Provider
16/04/2018 – 13:28	Call to the first Complainant
16/04/2018 – 15:14	Call to the second Complainant
24/04/2018 – 18:19	Unsuccessful automated call
25/04/2018 – 11:14	Call to the second Complainant
25/04/2018 – 17:57	Unsuccessful automated call
14/06/2018 – 18:13	Unsuccessful automated call
15/06/2018 – 16:31	Unsuccessful automated call
15/06/2018 – 16:51	Unsuccessful automated call
15/06/2018 – 19:16	Unsuccessful automated call
18/06/2018 – 15:58	Call to the first Complainant
18/06/2018 – 17:25	Unsuccessful automated call
03/07/2018 – 14:05	Call to the second Complainant, answered and terminated by the first Complainant
03/07/2018 – 17:45	Unsuccessful automated call
18/07/2018 – 17:25	Unsuccessful automated call
19/07/2018 – 13:26	Unsuccessful automated call
19/07/2018 – 16:50	Unsuccessful automated call
19/07/2018 – 18:08	Unsuccessful automated call
20/07/2018 – 12:46	Call to the first Complainant, successful but did not connect
21/07/2018 – 11:21	Unsuccessful automated call
07/08/2018 – 17:10	Unsuccessful automated call
07/08/2018 – 18:01	Unsuccessful automated call
08/08/2018 – 17:49	Unsuccessful automated call

Written correspondence history from 01/04/2018 to 01/09/2018

Date	Event
12/04/2018	SMS sent to the Complainants
13/04/2018	General Arrears Letter sent separately to both Complainants
23/04/2018	Serious Arrears Letter sent to the second Complainant
24/04/2018	SMS sent to the Complainants
08/05/2018	Quarterly Arrears Letter sent jointly to Complainants
11/05/2018	The Complainants' first letter to the Provider
05/07/2018	The Complainants' second letter to the Provider
08/08/2018	Quarterly Arrears Letter sent jointly to Complainants

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Evidence

Provisions 22, 23(a), 25 and 27 of the Central Bank of Ireland's Code of Conduct on Mortgage Arrears (CCMA) state as follows:

"22. A lender must ensure that:

- a) the level of communications from the lender, or any third party acting on its behalf, is proportionate and not excessive, taking into account the circumstances of the borrowers, including that unnecessarily frequent communications are not made;*
- b) communications with borrowers are not aggressive, intimidating or harassing;*
- c) borrowers are given sufficient time to complete an action they have committed to before follow up communication is attempted. In deciding what constitutes sufficient time, consideration must be given to the action that a borrower has committed to carry out, including whether he/she may require assistance from a third party in carrying out the action; and*
- d) steps are taken to agree future communication with borrowers.*

23. When arrears arise on a borrower's mortgage loan account and remain outstanding 31 calendar days from the date the arrears arose, a lender must:

- a) inform each borrower and any guarantor on the mortgage, unless the mortgage loan contract explicitly prohibits such information to be given to the guarantor, of the status of the account on paper or another durable medium, within 3 business days. The letter must include the following information..."*

"25. Where arrears exist on a mortgage loan account, an updated version of the information specified in Provision 23(a) (ii) and (iii) and (v) above, must be provided to the borrower on paper or another durable medium, every three months."

"27. Where three mortgage repayments have not been made in full in accordance with the original mortgage contract and remain outstanding and an alternative repayment arrangement has not been put in place, the lender must notify the borrower, on paper or another durable medium, of the following:

- a) the potential for legal proceedings for repossession of the property where a borrower is not co-operating, together with an estimate of the costs to the borrower of such proceedings;*
- b) the importance of taking independent advice from his/her local MABS or an appropriate alternative; and*

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c) that irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case.”

I also note that general Requirement 3.1 of the **Consumer Protection Code 2012** (CPC) states as follows:

“3.1 Where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity.”

A vulnerable person is defined in the CPC as:

““vulnerable consumer” means a natural person who:

a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or

b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).”

Analysis

The first element to consider in determining whether the Provider’s communications were “*proportionate and not excessive*”, is the purpose of the communications.

In relation to the purpose of each call, I note that the call of **16 April 2018**, prior to the first Complainant’s illness, was to address the Complainants’ mortgage arrears. The first Complainant indicated that she would contact MABS to deal with the matter. The Provider’s Agent initially requested for a Letter of Authority to be sent to the Provider, and then confirmed that a letter of authority for MABS was already on the Complainants’ account. The first complainant noted that she would contact MABS as soon as possible.

During the call of **25 April 2018**, the Provider contacted the second Complainant. The Provider’s Agent noted that the purpose of the call was in relation to the Standard Financial Statement that the Complainants were to provide with the assistance of MABS. The second Complainant informed the Provider that the first Complainant was in hospital, after suffering a heart attack. He asked for the Provider to “*give it a couple of days*” in relation to the correspondence, and the Provider’s Agent stated at the end of the call, that “*we’ll leave it for a couple of weeks*”.

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On **18 June 2018**, the Provider contacted the first Complainant. During this call, the Provider's Agent indicated that a Letter of Authority for MABS was required, and instructed the first Complainant on how to send this to the Provider. The first Complainant indicated that this had already been done, and the Agent noted that the authority may have expired. The Agent stated that he would put the calls on hold for the maximum period of time, **15 days**, and that the first Complainant could tell the Provider on the next occasion if she was still unwell.

In the first Complainant's letter of **5 July 2018**, just over 2 weeks later, she stated to the Provider that the Letter of Authority had already been given to the Provider.

On **3 July 2018**, the Provider contacted the second Complainant. This call was answered by the first Complainant. The Provider's Agent inquired as to the Complainants' engagement with MABS and the first Complainant stated that the MABS office was "*40 miles*" away and that she was too ill to attend an appointment. The Agent confirmed that MABS had been added as a party on the account. It stated that the Complainants could not be taken out of their current "*contact strategy*", and that the Complainants would have to follow up with MABS to get a proposal sent through.

I accept the Provider's argument that the overall purpose of the communication was to deal with arrears on the Complainants' account, and that this was a serious situation. However, I also note that there were inconsistencies in the precise purpose of each call. Although each call generally related to having the Complainants engage with MABS, the information required by the Provider appeared to vary between requiring the Standard Financial Statement and requiring the Letter of Authority.

The second element to consider is the personal circumstances of the Complainants. The Provider did not determine the Complainants to be vulnerable under the CPC, as they had capacity to make decisions. This argument infers that they did not fall under category (b) of the CPC's definition. However, I consider that the first Complainant may have fallen under category (a) of the CPC definition, in that she may have required assistance in making decisions, given how unwell she was feeling.

The first Complainant repeatedly informed the Provider that she did not have the strength to talk on the phone for long, or to attend an appointment with MABS, due to her illness. As a result, in my opinion, she was entitled to reasonable arrangements under Provision 3.1 CPC. I note that the second Complainant was jointly responsible for the mortgage account. During the call of **3 July 2018**, the first Complainant stated to the Provider that the second Complainant was "*not able*" to deal with the account, and it seems that it was for that reason that the first Complainant had taken on the responsibility of engaging with the Provider. Unfortunately, during the period when she was very ill, this was made particularly difficult, given the time she needed for rest, so as to enable her to properly recover.

The third element to consider is the level of the communication itself. I accept the Provider's explanation that the letters sent to the Complainants during this period were issued in accordance with its regulatory obligations.

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The communication during the phone calls made, falls however to be considered, in particular, those phone calls made after the Provider became aware of the first Complainant's condition on **25 April 2018**.

I note that from the call of **18 June 2018**, that the first Complainant was informed that it may take 24 to 48 hours for the automated call system, to halt the calls. The same day calls from the Provider on **18 June 2018** and **3 July 2018**, are noted to have happened prior to a halt in communication.

There was then a seven-week gap in communication, between **24 April 2018** and **14 June 2018**, after the Provider was notified of the first Complainant's situation. Four unsuccessful attempts to call the Complainants were then made. The Complainants were successfully contacted on **18 June 2018**, and I note that there was then a halt on communication for 15 days. After the successful call of **3 July 2018**, there was another 15-day halt on communication. Thereafter, I note nine attempts to contact the Complainants in the period from **18 July 2018** to **8 August 2018**.

I note that the Provider did not respond to the Complainants' first letter to halt the communication, but did place a halt on communication, after a verbal request during three phone calls.

In my opinion, the proportionality of these calls must be viewed in light of the Complainants' circumstances. The first Complainant was entitled to reasonable accommodation, due to her condition. This was provided in the form of one seven-week reprieve, and two subsequent 15-day reprieves from communication. During this period, the Provider was not informed as to why the second Complainant could not communicate with the Provider regarding the account.

I am sympathetic to the Complainants, who were required to field calls from the Provider during a very difficult period in their lives. I also note that the purpose of the calls sometimes appeared to require the Complainants to provide documentation that had already been provided. However, I am satisfied that on each occasion that the Complainants verbally requested a halt on communication, this was put into effect by the Provider.

In particular, I note that a reprieve of a "*couple of days*" was requested on **25 April 2018**, and in response, the Provider did not make contact for seven weeks. I accept that the overall purpose of the calls required the Provider to maintain some form of communication with the Complainants.

In the circumstances, whilst I understand that the Complainants were feeling under pressure during the relevant period, no doubt because of the building arrears on the account, together with the First Complainant's significant illness, I do not accept that the Provider engaged in excessive communication with the Complainants, during the period in question, given the level of arrears which were building on the account. Having regard to the above, I do not consider it appropriate to uphold the 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.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

30 November 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.