



<u>Decision Ref:</u>	2021-0505
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Arrears handling (non- Mortgage Arrears Resolution Process) Level of contact or communications re. Arrears Disputed transactions Failure to provide correct information
<u>Outcome:</u>	Partially upheld

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

The complaint concerns the administration of a mortgage loan account.

The Complainants' Case

In a letter to this Office dated **28 November 2019**, the First Complainant explained that the Complainants received correspondence from the Provider over the previous 12 months which has caused considerable stain and stress for them and their relationship.

The First Complainant says that around **August 2018**, the Complainants' Mortgage Provider informed them that it would be ceasing its business operations in Ireland in the coming months. When it became known that the Complainants' mortgage loan would be transferred to the Provider, against which this complaint is made, the First Complainant says he became concerned and contacted the Central Bank of Ireland for advice. The First Complainant explains that his concerns arose from media reports regarding the treatment of customers by "vulture funds". The First Complainant says that as he had no choice in the matter and despite his protestations, the transfer went ahead in **October 2018**.

The First Complainant says that paperwork regarding the setting up of payments to the Provider was received and that he opted to make payments by way of online banking with his bank. The First Complainant says he endeavoured to make payments on a monthly basis. The First Complainant advises that when the loan was transferred to the Provider, there were arrears of approximately €600.00. The First Complainant explains that he had been making extra payments above the monthly amount and that he would make a double payment the following month if a payment was not made.

The First Complainant says the Complainants began receiving correspondence stating that payments were not received. The First Complainant says that contacting the Provider by phone *"is something of a conundrum as you wait an exorbitant time to speak to someone who may not have English as their first language;"*. The First Complainant says that this occurred on **4 July 2019**. The First Complainant advises that this telephone call was in relation to a very stressful letter stating that the Complainants were in arrears of approximately €1,300.00. The First Complainant says he subsequently contacted his bank, which confirmed that all payments made to the Provider had been processed and completed. Taking the extra monthly payments into account, the First Complainant says he knew the arrears had been cleared and the loan account was in credit at this point.

In **September 2019**, the First Complainant says *"a similar veined stressful letter"* was received, stating the Complainants' loan account was in arrears in the amount of approximately €1,275.76, which, the First Complainant says, completely elevated his stress levels. The First Complainant says he made a number of telephone calls to the Provider. During these telephone calls, the First Complainant says that in the space of 30 seconds, the loan account went from arrears of €1,275.76 to approximately €270 in credit, a difference of approximately €1,545.76. The First Complainant says he is *"in dispute"* in respect of this credit amount in that it should be for a higher amount. The First Complainant says this development infuriated him.

The First Complainant says he made a formal complaint to the Provider. Referring to Item 2 on page 3 of the Provider's Final Response letter dated **22 October 2019**, the First Complainant says the Provider attempted *"to attach an alternative fact based narrative."* The First Complainant says he takes particular umbrage to this, for the following reasons:

*"1. Examine the copies of the payment transactions I have included. From the inception the payment documentation has remained consistent and unchanged. In the message area of the generated document record I have inputted my name.
[The Provider's] assertion that the reference number was omitted for the June payment is simply not true.*

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I changed the payment message for August to “Don’t loose me” hoping it would invigorate a more prudent careful handling of our payments.

2. I remain convinced something untoward happened with the payment made in June 2019.

3. [The Provider] went to exorbitant lengths to explain in the reply to my complaint how their “system” handles payments, holding accounts etc. Surely a functioning fit for purpose system needs no explanation as it never misfires.

4. I am requesting that you investigate my complaint and I would welcome your independent findings.

5. The documentary evidence shows that because of the built up overpayment I have been making, the account in the main remained in credit during the time period. Incidentally [the Provider] saw fit to issue a derisory payment (not reflective of the stress, strain and anxiety caused by this debacle) by way of cheque for €100. I have not sought any monetary compensation from [the Provider]; I await your recommendations on this issue.

I have requested a change of payment due date from 28th inst to 30th inst, and not surprisingly [the Provider’s] “flawless payment system” can’t handle this simple request. [...].”

In their Complaint Form, the Complainants state that:

“We would expect [the Provider] to receive censure and admonishment of a suitable magnitude ensuring no repeat of their behaviour.

Any monetary award is entirely at your discretion.”

The Provider’s Case

In its Complaint Response dated **17 September 2020**, the Provider explains that funds in the amount of €135,000.00 were advanced to the Complainants on **27 October 2009** over a term of 22 years. The Provider further explains that the Complainants’ mortgage loan is a tracker product which means that the interest rate applied to the loan tracks in line with quarterly changes in the Euro Interbank Offer Rate (“the Euribor rate”).

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On **21 November 2018**, the Provider says correspondence issued to the Complainants in which it was stated that the transfer and assignment of their loan to the Provider completed on **16 November 2018**. The Provider says the correspondence also stated that the Provider would hold legal title to the mortgage (and associated home loan) on trust for the benefit of another entity and that the Complainants would continue to receive the same protections of the consumer protection regulations and codes as before. Also outlined in this correspondence, the Provider says, were the actions the Complainants needed to take with regards to maintaining their monthly repayments dependant on their chosen repayment method.

The Provider says it offered clear instructions on how a borrower was to make payments by either Electronic Funds Transfer (“EFT”) or Standing Order. The Provider refers to the documentation supplied in evidence to this Office citing the following passage:

“(ii) Electronic Funds Transfer

If you pay by Electronic Funds Transfer (EFT) or Standing Order, this should be changed to the following bank details:

[Account details]

Please include your account reference number, which is your Loan ID/Mortgage Account Number, when transferring funds, as this will help us correctly apply the funds to your account.”

On **20** and **23 November 2018**, the Provider says members of its Arrears Support Unit (“ASU”) made unsuccessful attempts to contact the Complainants to discuss the arrears outstanding of €374.20 on their account as at those dates.

On **28 November 2018**, the Provider says a member of its ASU placed a call to the First Complainant and as the First Complainant was reluctant to confirm his personal details as he was unfamiliar with the Provider’s landline number, it was agreed that the First Complainant would contact the Provider’s offices directly.

The Provider says the First Complainant placed a follow-up call to its offices the same day and spoke with a member of the ASU. The Provider says its agent explained the basis of the call was of an introductory nature due to the recent transfer of the loan. The Provider says it was during this call that its agent stated arrears of €374.50 were outstanding and that it was estimated it would take a period of six and a half months to clear the arrears based on the additional payment being made with the monthly repayment.

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The Provider says its agent also outlined that additional interest would apply as a result of the outstanding arrears. The Provider says the First Complainant stated his intention was to pay the monthly instalment online to which its agent informed him that the option to pay by debit card was also available. The Provider says it was subsequently agreed that its agent would issue correspondence to confirm that the terms and conditions of the mortgage loan remained unchanged subsequent to the transfer of the loan.

On **3 December 2018**, the Provider says the First Complainant contacted its office to advise that he had transferred a payment of €10.00 to the Provider's account using the instructions outlined in the letter of **21 November 2018**. The Provider says its agent confirmed that the payment was not yet allocated to the loan account, however it was agreed that the Provider's associate would phone the First Complainant on **4 December 2018** to provide an update as to the status of this transfer. During this call, the Provider says the First Complainant queried the issuance of the letter requested during his call on **28 November 2018** to which the Provider's agent advised that it would be issued in due course.

On **4 December 2018**, the Provider says its agent placed a follow-up call to the First Complainant however, this attempt was unsuccessful. On the same day, the Provider says the First Complainant returned the call. During this call, the Provider says its agent confirmed receipt of the payment and while the First Complainant stated that he put account number ending 8100 as the reference number when making the payment online, the Provider's agent stated that a further 01 had been added to the account number since the transfer of the mortgage to the Provider. The Provider says its agent proceeded to state that by referencing the full account number as the reference when making the payment, "*it will be cleared quicker*". The Provider says its agent also stated that the outstanding arrears as at that date were €303.75, with the next scheduled monthly instalment due to apply on the 28th of the month. The Provider says the First Complainant outlined his request to amend the billing date to the 30th of each month, to which its agent advised he would determine what actions, if any, the First Complainant would need to take in order to amend the billing date. The Provider says this request was not reviewed at this time and apologises to the Complainants for any inconvenience caused.

On **5 December 2018**, the Provider says correspondence issued outlining confirmation of the monthly instalment, the date of the next scheduled billing date and the product type held.

On **10 January, 12 February, 25 February, 25 March** and **1 April 2019**, the Provider says its ASU placed follow-up calls to the Complainants to discuss the status of their account, however, these attempts were unsuccessful.

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On **1 April 2019**, the Provider says the First Complainant returned its call and queried the basis of the call. The Provider says its agent advised that the call seemed to relate to queries the First Complainant had regarding the arrears, to which the First Complainant stated that he had no outstanding queries regarding this. The Provider says its agent stated that the arrears as at that date were €831.59, to which the First Complainant stated that he made a payment of €760.00 on **30 March 2019**. The Provider says its agent proceeded to inform him that the Provider was yet to receive this payment, however, once received, the arrears would reduce to €71.59. The Provider says that a payment of €760.00 was subsequently allocated to the Complainants' loan account on **2 April 2019**, reducing the arrears to €71.59.

On **1 July 2019**, the Provider says correspondence issued to the Complainants in accordance with its obligations under Provision 9 of the *Code of Conduct on Mortgage Arrears 2013* ("the CCMA"). The Provider says it was stated that it had not received the **June 2019** monthly instalment which was due on **28 June 2019** as at the date of this letter.

On **4 July 2019**, the Provider says the First Complainant contacted its ASU in response to this letter. The Provider says the First Complainant explained that the contents of the letter were incorrect, to which its agent stated arrears of €679.49 were outstanding. The Provider says the First Complainant queried the basis of these arrears, to which its agent stated that the payment for the June monthly instalment had not been received, which fell due on **28 June 2019**, and the last payment allocated to the account was on **5 June 2019**. The Provider says the First Complainant proceeded to review his bank records and confirmed a payment of €740.00 was transferred to the Provider's account on **28 June 2019**. The Provider says its agent stated that the payment should be allocated shortly and referenced that transfers were not automatic and recommended that the First Complainant make his repayments a few days in advance of the billing date. The Provider says the First Complainant indicated his intention of liaising with his bank regarding this issue.

The Provider says that an annual statement of account for **2018** issued to the Complainants on **4 July 2019** in respect of the transaction period from **17 November 2018** to **31 December 2018**.

On **29 July 2019**, the Provider says correspondence issued to the Complainants in accordance with its obligations under Provision 23 of the CCMA as arrears were outstanding on the Complainants' account for a period of 31 days. The Provider says the arrears at this date were confirmed as €1,378.79.

On **28 August 2019**, the Provider says the First Complainant contacted its offices regarding this letter and queried the basis for this letter. The Provider says its agent initially advised the First Complainant that the **June 2019** monthly instalment was not met, however, the agent proceeded to advise that both the repayment of €740.00 transferred on **28 June 2019** as well as a further payment of €760.00 was allocated to the loan account on **31 July 2019**, which resulted in a credit balance of €122.84 on the account. The Provider says the First Complainant also stated he had previously requested that the due date be changed, however this request was not actioned. The Provider says it was agreed that a complaint would be recorded on the First Complainant's behalf.

On **31 August 2019**, the Provider says correspondence issued in accordance with its obligations under Provision 9 of the CCMA, which advised that the repayment due on **28 August 2019** had not been met. On **28 September 2019**, the Provider says correspondence issued advising that an arrears position remained on the loan account for a period of 31 days and that the arrears outstanding as at that date were €1,275.76.

On **7 October 2019**, the Provider says the First Complainant contacted its offices to query the progress of his complaint and also referenced receipt of the letter of **28 September 2019**. The Provider says its agent proceeded to state that the account had billed on **28 September 2019** and that the Provider had received two payments of €760.00 which resulted in a credit balance of €246.20 on the account. During this call, the Provider says the First Complainant queried if the Provider had actioned his request to change the billing date, to which the Provider's agent responded that she would review this request and place a follow-up call to confirm if the Provider was in a position to facilitate the request. The Provider says the First Complainant also referenced the payments he had transferred to his account and was of the opinion that the credit balance should be higher. The Provider says a further complaint was subsequently logged.

On **8 October 2019**, the Provider says a follow-up call was placed to the First Complainant to advise that the Provider was not in a position to change the billing date on the account. The Provider says its agent proceeded to confirm that it had allocated both the payments made in **August** and **September 2019** to the account on **4 October 2019**. The Provider says the First Complainant was advised that the Complaints Department was currently reviewing the issued raised.

On **18 October 2019**, the Provider says correspondence issued to the Complainant detailing the repayments received into the account from **28 November 2018** to **4 October 2019**.

On **22 October 2019**, the Provider says a Final Response letter was issued.

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Referring to the Complainants' account statements, the Provider says there was an arrears position on the loan account at the date of transfer on **16 November 2018**. The Provider says the Complainants continued to make additional payments along with the monthly instalment until the arrears were cleared on **5 June 2019**. The Provider says that additional interest in the amount of €1.11 was charged to the Complainants' account from **4 December 2018** to **1 February 2019**. The Provider says that no additional interest was applied to the loan account after this date as a result of the arrears position on the account.

The Provider says that the repayments made on **28 June, 30 July, 30 August** and **30 September 2019** did not reference the Complainants' account number, therefore this was in departure of the instructions provided to the Complainant on **16 November** and **4 December 2018**.

The Provider says the account entered arrears when the **June 2019** monthly instalment was not met on **28 June 2019**, which was the scheduled due date at that time. In accordance with its obligations under the CCMA, the Provider says correspondence issued to the Complainants on **1 July 2019**. On **28 July 2019**, the Provider says the **July 2019** monthly instalment applied and, as the payment made on **28 June 2019** had not yet been applied to the account, correspondence issued to the Complainants detailing an arrears position remained on the account for 31 days. The Provider says the amount quoted the monetary amount outstanding for the **June and July 2019** monthly instalments (that fell due on **28 July 2019**) less the credit balance as at that date. The Provider says payments of €740.00 and €760.00 were subsequently allocated to the account on **31 July 2019**, thus the arrears were discharged and a credit balance of €122.84 arose on the account.

On **28 August 2019**, the Provider says the **August 2019** monthly instalment applied to the account and as the payment on **30 August 2019** had not been allocated to the account as the First Complainant had referenced ("*Don't Lose Me*") when transferring the payment, the account entered into arrears for a sum of €576.46. The Provider says correspondence issued on **28 September 2019** referencing the fact the account was in arrears for 31 days (this was in recognition of the **August 2019** monthly instalment not being met). The Provider says that as the **September 2019** repayment had also applied on **28 September 2019** and was not met at the date of the letter, this repayment was included in the arrears amount quoted. The Provider says two payments of €760.00 were allocated to the loan account on **4 October 2019** which resulted in a credit balance of €246.20.

The Provider says it is important to note that when the repayments made on **28 June** and **30 August 2019** were allocated on **31 July** and **4 October 2019** respectively, adjustments were made to the loan account on those dates to ensure there was no negative impact to the account as a result of the delays in allocating the payments, albeit those delays were as a result of the account number not being referenced when the payments were transferred to the Provider's account. The Provider says a sum of €1.63 was applied on **31 July 2019** and a further sum of €1.96 was applied on **4 October 2019**.

In terms of Provision 3.3 of the **Consumer Protection Code 2012** ("the Code"), the Provider says its letter of **21 November 2018** provided the Complainants with clear instructions as to how to maintain the monthly repayments by way of credit transfer. The Provider says the Complainants referenced the loan account number for the transfers made on **3** and **5 December 2018**, and these were transferred to the loan account on **4** and **6 December 2018**. Therefore, the Provider says it is satisfied that these payments were actioned by its Finance Department in a timely manner.

With respect to the delayed allocation of payments made on **28 June** and **30 August 2019**, the Provider says the payment reference listed were the Complainants' names and the title ("*Don't Loose Me*") and, as such, the Finance Department allocated these funds once received into its central holding account.

The Provider says a review of its central holding account was completed in **July 2019** and it was determined that the payment of €740.00 which was received on **28 June 2019** was intended for this account, as such, the payment was subsequently allocated on **31 July 2019**. The Provider says a further review was completed on **4 October 2019** and it was determined that the payment of €760.00 received on **30 August 2019** was intended for this account also and, as such, was allocated on **4 October 2019**. Therefore, the Provider says it is of the opinion that the delayed allocation of payments on **28 June** and **30 August 2019** were a direct result of the Complainants not listing the account number as the payment reference.

The Provider says the transfers of **3** and **5 December 2018** were in accordance with the instructions of **16 November 2018** as the account number was referred to, although one/two digits were omitted. The Provider says while it recognises that all subsequent payments from **31 December 2018** to **30 October 2019** did not include the account number as the payment reference, substantial delays in allocating payments only arose subsequent to the payments transferred on **28 June** and **30 August 2019**. The Provider says it would offer the opinion that on the other occasions where the payments were made without the account number, the agents in its Finance Department reviewing these payments upon receipt were aware of the previous payments made by the Complainants, which resulted in the allocation of the payments to the account in a timely manner.

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In summary, the Provider says it is satisfied the payments made on **28 June** and **30 August 2019** were not allocated to the account in a timely manner due to the omission of the account number.

With respect to the request to change the due date on the loan account, the Provider says it was not in a position to facilitate this request due to a system limitation. The Provider says it recognises that the system limitation was not clearly communicated to the First Complainant until **8 October 2019**. However, the Provider says this issue has been under constant review and the Provider is now in a position to amend the due date on the Complainants' account from the 28th of the month to the 30th of each month (with the exception of February) effective from **September 2020**. At the time of its Complaint Response, the Provider says confirmation of this amendment and the subsequent variation to the monthly instalment would be issued to the Complainants under separate cover within five working days. The Provider says it would like to take this opportunity to apologise for the length of time it has taken to bring this matter to a conclusion and for any inconvenience this has caused to the Complainants.

The Provider says the letters of **1 July, 29 July, 31 August** and **28 September 2019** were in direct recognition of its obligations under the CCMA in order to ensure the Complainants were aware of the status of their account due to the arrears position that had arisen and how those arrears had increased.

The Provider says these letters were factually correct and that it would not be its process to review its central holding account to check if the missed monthly repayment had been received prior to the issuance of these letters. The Provider says that any payments received online would be allocated to the correct account as borrowers have been provided with sufficient instructions on how to maintain payments by way of electronic funds transfer. The Provider says it is also important to note that owing to the volume of payments received each month, it would not be feasible for each non-referenced payment to be checked against all the payments due on the Provider's database at a particular time. As stated above, the Provider says it would be of the opinion that the only reason previous non-referenced payments were allocated correctly was down to the particular individual recognising the payment and the account to which it should be transferred. The Provider says it is also mindful that matching payments to accounts without the required account details can and has led to errors of misallocated payments in the past, therefore, from a controls perspective, the Provider relies on the account details as verification.

With respect to the letter of **1 July 2019**, the Provider says this was the result of the monthly repayment not being met for the **June 2019** monthly instalment on the agreed due date of **28 June 2019**.

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The Provider says while it notes that the payment was transferred to its account on **28 June 2019** with a payment reference of the First Complainant's name, this reference was not in accordance with the instruction of **21 November** and **4 December 2018**. Therefore, the Provider says it is satisfied that the Complainants did not provide all necessary details in order to ensure the timely allocation of the payment to the account at that time to prevent the issuance of the letter of **1 July 2019**.

With respect to the telephone call of **4 July 2019**, the Provider says it acknowledges that its agent did not offer to liaise with the Finance Department in order to locate the payment the First Complainant had confirmed was transferred on **28 June 2019**. The Provider says that if this step was taken at the time, the payment made on **28 June 2019** would have been transferred to the loan account prior to **31 July 2019**, which would have prevented the letter of **29 July 2019**, and the First Complainant would have been informed that the delay in allocating the payment in **June 2019** arose as he had omitted his account number when transferring the funds. The Provider says it also recognises that if the Complainants were advised as to why the repayment was not transferred to the account in **June 2019** once received, the First Complainant may not have omitted the payment reference when he transferred payments into the Provider's account on **30 July, 30 August** and **30 September 2019**.

In relation to the letter of **31 August 2019**, the Provider says this letter was issued as it had not received payment for the **August 2019** monthly instalment due on **28 August 2019**. The Provider says it is of the opinion that the payment was not allocated by **31 August 2019** as the account number was not referenced. However, the Provider says it recognises that if efforts had been taken by its agent during the call of **4 July 2019** to review this matter for the First Complainant, as to the delayed allocation of payments, the payment reference may not have been omitted which would have also negated the issuance of the letter of **28 September 2019**.

The Provider says that it has provided a report to both the Central Credit Register ("the CCR") and the Irish Credit Bureau ("the ICB") with regards to the payments maintained on the Complainants' account for the period **June 2019** to **November 2019** and that there has been no detrimental impact recorded. However, the Provider says that during the course of its investigation, it determined that an issue arose with the payment profile recorded for the Complainants' account with the CCR in **November 2018**. The Provider says that an update was sent to the CCR in **January 2019** to ensure there was no negative impact recorded for this month. The Provider says it has been unable to find any evidence confirming this amendment was completed by the CCR in **January 2019** and, as such, a further remediation request has been sent to the CCR to ensure there was no impact recorded for this account in **November 2018** with the CCR.

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Concluding its Complaint Response, the Provider says it is satisfied the late allocation of payments was as a result of the First Complainant's reluctance to quote the loan account number on the payment transfers from **June 2019** to **September 2019**, which led to the issuing of letters from the ASU during this period. The Provider says the content of these letters was informative in nature and was in no way intended to cause the Complainants any undue concern. However, the Provider says it recognises that its agent could have made further attempts to aid the First Complainant during his telephone call on **4 July 2019** in order to locate the payment he transferred on **28 June 2019** and that there was a delay in actioning the First Complainant's request to amend the due date on the loan account. As such, the Provider says it would like to offer the Complainants the sum of €250.00 in order to bring this matter to a satisfactory conclusion.

The Complaints for Adjudication

The complaints are that the Provider:

1. failed to record or process payment transfers in respect of the Complainants' mortgage loan repayments;
2. incorrectly issued arrears correspondence to the Complainants; and
3. failed to execute an instruction to change the billing/repayment date on the Complainants' mortgage loan.

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.

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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 16 September 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.

Following the issue of my Preliminary Decision the parties made further submissions, copies of which were exchanged between the parties.

Having considered these additional submissions and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

Background

By letter dated **21 November 2018**, the Provider wrote to the Complainants in respect of the transfer of their loan. In terms of the repayment of the loan, the letter advised, as follows:

“Making Payments

Where required, please ensure you make the necessary arrangements where to redirect payments as soon as possible. Details of how payments should be made after 16 November 2018 are set out below.

- (i) *Direct Debit*
If you normally pay through direct debit, there is no action required as these details will have automatically transferred over on 16 November 2018.

- (ii) *Electronic Funds Transfer*
If you pay by Electronic Funds Transfer (EFT) or Standing Order, this should be changed to the following bank details:

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Account Name: [...]
Bank Name: [...]
Bank Address: [...]
Sort Code: [...]
Account Number: [...]
IBAN No: [...]
BIC No: [...]
Reference: [8 digit mortgage account number]

Please include your account reference number, which is your Loan ID/Mortgage Account Number, when transferring funds, as this will help us correctly apply the funds to your account.

(iii) Cheque

If you wish to pay by Cheque, please make you cheque payable to the following Account Name [...]

If you have any queries regarding your repayment method, you should contact [the Provider] on [...].”

The First Complainant returned a call to the Provider on **28 November 2018**. The Provider’s agent advised the First Complainant that the call was essentially an introductory call to speak with customers following the recent loan transfer. The Provider’s agent then enquired as to payment method used by the Complainants to make their loan repayments. The First Complainant explained that he paid ‘online’. The First Complainant also advised the Provider’s agent that loan repayments were normally made around the 30th day of the month. The Provider’s agent then advised the First Complainant that the arrears on the loan account were approximately €374.50. Following this, the parties discussed the transfer of the Complainants’ loan to the Provider. At this point in the conversation, the Provider’s agent advised the First Complainant that all aspects of the Complainants’ loan remained the same, including the loan account number. During the conversation, the parties also briefly discussed the payment options available to the Complainants.

The First Complainant telephoned the Provider on **3 December 2018** and explained to the Provider’s agent that he had set up an online payment for the loan account. The First Complainant further explained that he was unsure as to how to set up the payment instruction as per the Provider’s instructions and referred to the requirement for a reference number, acknowledging that this was the loan account number. The First Complainant explained that he authorised a payment of €10.00 and if that reached the Provider, he would make the remainder of the payment. The Provider’s agent advised that he could not see the payment on the Provider’s system.

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The First Complainant explained that he made the payment on either the preceding Saturday (**1 December 2018**) or Sunday (**2 December 2018**). The Provider's agent asked if the First Complainant followed the payments instructions that were issued, to which the First Complainant responded that the online system did not facilitate the inclusion of a reference number. The First Complainant explained that he put a reference number in the 'Your Message' and 'Receiver Message' sections of the online payment system. The Provider's agent explained that the payment might not clear until the following day, advising that he would check the following day to see if the payment reached the Provider and that he would telephone the First Complainant to let him know that it was received. The parties then discussed the terms of the Complainants' loan and the price paid for the loan.

The First Complainant returned a call to the Provider on **4 December 2018**. The Provider's agent advised the First Complainant that the recent payment had been received. In response to this, the First Complainant advised that he would now transfer €750.00 to the Provider.

The First Complainant asked whether he needed to include a message on the payment transfer. The Provider's agent advised the First Complainant to insert the loan account number in the reference section. The Provider's agent called out the loan account number, advising that the Provider had added '01' to this number. The First Complainant queried whether the account number was required for the purpose of the payment transfer, stating that the Provider had received the previous transfer. I note that the payment reference contained in the transaction document supplied in evidence indicates that the First Complainant used the eight digit mortgage account number for the €10.00 payment. The Provider's agent advised the First Complainant that if he added the additional digits to the account number, the payment would clear more quickly. The First Complainant told the Provider's agent that he had made the payment transfer while they were speaking and asked if the Provider's agent could check to see if it had been received or whether it would take time to come through. The Provider's agent explained to the First Complainant that he would not see the payment until the next day. Following this, the Provider's agent explained that when the First Complainant made the €10.00 payment over the weekend, because he did not include the '01', it was a little slower coming through; and if the First Complainant included the '01', payments would be picked up automatically and be cleared quicker. The First Complainant responded to this by saying that he would change the manner in which he had set up the payment instruction.

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Towards the end of this call, the Provider's agent advised the First Complainant that his next billing date would be the 28th day of the month. In response to this, the First Complainant appears to say that he had told the Provider's agent on **28 November 2018** that the correct date was the 30th day of the month. The Provider's agent then asked the First Complainant if he wanted to change the billing date to the 30th day of the month. The Provider's agent advised the First Complainant that he would need to put in a request to move the billing date. The Provider's agent told the First Complainant it may be the case that a written request would have to be made, but he would confirm this for the First Complainant. The Provider's agent also advised the First Complainant that *"we can move the date out"* and that he would follow up with the agent the First Complainant had spoken to previously to see if the billing date could be moved. The Provider's agent told the First Complainant that he would make a note that the First Complainant had made the request and see what would be required to change the billing date.

By letter dated **5 December 2018**, the Provider wrote to the First Complainant advising that the monthly instalment in respect of the Complainants' loan was €699.30 and that the next billing date was **28 December 2018**.

The First Complainant returned a call to the Provider on **1 April 2019**. The Provider's agent told the First Complainant that the Provider had telephoned him to advise that arrears had carried over when the Provider took over the Complainants' loan. The Provider's agent told the First Complainant that the system notes indicated that the First Complainant had queried the arrears on the loan account. The First Complainant advised the Provider's agent that he did not query the arrears. Following this, the Provider's agent told the First Complainant that the arrears on the account stood at €831.59. The First Complainant advised that he had made a payment the previous Saturday night (**30 March 2019**). The Provider's agent responded by saying that the payment might not have been received by the Provider at that point. The Provider's agent said she would check to see if the payment had been received but also stated that it can take a couple of days for payments to be received. The Provider's agent said she would put a note on the account to watch out for the payment and when it comes through.

By letters dated **1 July 2019**, the Provider wrote to the Complainants, separately, in respect of a recent missed payment on their loan account, as follows:

"We are writing to inform you that you have recently missed a payment on your mortgage loan account (mortgage) referred to above. As of the date of this letter, you have not made the payment due on 28/06/2019.

/Cont'd...

We are sending you this letter in accordance with our obligations under Provision 9 of the Central Bank of Ireland's Code of Conduct on Mortgage Arrears 2013 (the Code). [...]

If you have already made a payment to bring your account up to date, please disregard this letter. Otherwise, it is important that we speak to you to understand why the payment was missed.

It may be that your missed payment is simply due to an oversight. If this is the case, please bring you mortgage up to date immediately.

However, it may be that your financial circumstances have changed and you are having difficulty paying your mortgage. If this is the case, it is important that you contact us immediately. There are a range of options available and we can start working with you to find a solution.

Talk to us

Our Arrears Support Unit (ASU) is available to help you. You can contact the ASU at [...]. Our dedicated team in the ASU will be happy to help to discuss your mortgage situation and work with you to find a solution."

(Referred to below as an "Arrears Letter")

The First Complainant telephoned the Provider on **4 July 2019** in respect of the letter of **1 July 2019**. The Provider's agent advised the First Complainant that the loan account was in arrears in the amount of €679.49. The First Complainant disagreed with the arrears amount. The First Complainant asked how the account could be in arrears, to which the Provider's agent responded that the account was billed on **28 June 2019** and a payment has not been received since that date. The Provider's agent told the First Complainant that the last payment was received on **5 June 2019**. While on the call, the First Complainant checked his online banking records and told the Provider's agent that a payment of €740.00 was made on **28 June 2019**, asking whether this payment had been received. The Provider's agent repeated that the last payment was received on **5 June 2019**. The Provider's agent advised the First Complainant that the **28 June 2019** payment had not yet reached the Provider. The First Complainant told the Provider's agent that all previous payments had reached the Provider and suggested that something might have changed within the Provider. Shortly after this, the Provider's agent stated that, hopefully, the payment would be received the following day.

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Noting that the First Complainant's last payment was received on **5 June 2019**, the Provider's agent said the payment might come in on **6 July 2019** and that the First Complainant's payments might take this length of time to reach the Provider. The First Complainant then suggested that there might be an issue with the Provider's system. The Provider's agent indicated that the length of time for a payment to reach the Provider depended on the bank from which the payment was being made. The Provider's agent noted that the billing date was the 28th day of the month and that payments were also made on the 28th day of the month. The First Complainant told the Provider's agent that payment transfers were instant. The Provider's agent explained that the transfer was not instant when it is an inter bank transfer and it was only instant when it was the same bank. The Provider's agent advised the First Complainant that the payment was coming in after the due date and that the payment needed to come on, or before, the 28th day of the month. The First Complainant stated that the payment was received and that it was somewhere in the Provider's system.

Towards the end of the call, the Provider's agent indicated that telephone contact and correspondence from the Provider could be avoided if payments were made prior to the 28th day of the month.

In response to this, the First Complainant told the Provider's agent he previously stated the only date he could guarantee payment was the 30th day of the month, being the last banking day of the month. The First Complainant stated that he was ending the call within seconds of mentioning this. In response, the Provider's agent thanked the First Complainant for calling.

The Provider issued account statements for the period **17 November 2018** to **31 December 2018** to the Complainants on **4 July 2019**.

By letters dated **29 July 2019**, the Provider wrote to the Complainants, separately, to inform them that their loan account was in arrears for 31 days or more, as follows:

"We are writing to inform you that your mortgage loan account (mortgage) referred to above has been in arrears for 31 days or more.

We are sending you this letter in accordance with our obligations under Provision 23 of the Central Bank of Ireland's Code of Conduct on Mortgage Arrears 2013 (the Code). [...]

Please note that:

- *Your most recent arrears started on 28/06/2019*
- *1.97 repayments have been missed at the date of this letter.**
- *The total monetary amount of repayments missed at the date of this letter is €1,378.79.*
- *The total monetary amount of arrears at the date of this letter is €1,378.79.*

[...]

Therefore, your mortgage is now being dealt with under the Mortgage Arrears Resolution Process (MARP) of [the Provider], in accordance with the Code.

Talk to us

Your case has been assigned to our Arrears Support Unit (ASU) who will be your dedicated arrears contact point during the MARP. You can contact the ASU at [...]. They will be happy to discuss your mortgage situation and to guide you through the steps which you now need to take as part of the MARP, as explained in more detail on the next page and in the information booklet enclosed.

Urgent action required

If your missed payment is simply due to an oversight and you are not currently experiencing financial difficulties, please bring your mortgage up to date immediately. This will ensure that your mortgage is removed from the MARP. [...]

Standard Financial Statement (SFS)

[...]

Not co-operating

It is important that you engage with us throughout MARP, otherwise there is a risk that you may be classified as not co-operating within the meaning of the Code. The definition of not co-operating is set out in Chapter 2 of the Code.

[...]

Mortgage protection insurance/life cover

[...]

/Cont'd...

Payment Protection Insurance (PPI)

[...]

Your credit rating

[The Provider] registers information on your payment history with the Irish Credit Bureau (ICB) based on current operational and reporting procedures. In addition, [the Provider] registers information on your payment history with the Central Credit Register (CCR) in accordance with the Credit Reporting Act 2013.

Your credit rating may be adversely impacted if you miss scheduled repayments or do not make repayments on time. A negative credit rating may limit your ability to obtain credit in the future. However, each creditor's interpretation of a borrower's repayment history will depend on that creditor's scoring criteria. Thus, [the Provider] is not in a position to anticipate the impact on your credit rating from our reporting of your payment history to the ICB or CCR.

Please note that this information is provide for the purpose of Provision 23a (viii) of the Code. At any time in the future, [the Provider] may, where required or permitted, provide additional information to the ICB or CCR which may affect your credit rating in a different manner.

Customer Due Diligence

[...].”

(Referred to below as a “31 Day Arrears Letter”)

The First Complainant telephoned the Provider on **28 August 2019** in respect of the above letter and queried the purpose of this letter. The Provider's agent advised the First Complainant that the **June 2019** payment had not been made. The First Complainant stated that he made a payment on **28 June 2019** and gave the Provider's agent the reference number from the paying bank in respect of this payment. The Provider's agent then checked the system to see if a payment had been received. The Provider's agent advised the First Complainant that the account was up to date. The First Complainant questioned how the above letter could be issued in circumstances where the Provider's agent was able to confirm over the phone that the account was up to date. The First Complainant expressed his dissatisfaction with the fact that he was making repayments to the Provider but the Provider could not locate the payments.

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The Provider's agent told the First Complainant that the June payment did not come through on the Provider's system until **31 July 2019** and that there were two payments recorded for **31 July 2019** of €740.00 and €760.00. The Provider's agent explained that the letter issued to the First Complainant automatically generated from the system when arrears show on an account. Following this, a formal complaint was logged by the Provider's agent. During this call, the Provider's agent advised the First Complainant that the payments on the account were in credit in the amount of €122.84. Discussing the billing date on the account, the First Complainant advised the Provider's agent that he had previously expressed that "*the nearest date to the 30th*" be the billing date and this had not been picked up by the Provider. The Provider's agent asked if the First Complainant would like to request that the billing date be changed. The First Complainant responded by saying that this was the second time such a request was being made.

The Provider issued an Arrears Letter to the Complainants on **31 August 2019** advising that the payment due on **28 August 2019** had not been made.

By letter dated **3 September 2019**, the Provider wrote to the First Complainant acknowledging his complaint. This was followed by a further letter on **24 September 2019** which advised that the Provider was still investigating the complaint.

The Provider issued a 31 Day Arrears Letter to the Complainants on **28 September 2019**, advising that their most recent arrears began on **28 August 2019**, that 1.82 payments were in arrears and that their arrears stood at €1,275.76.

The First Complainant telephoned the Provider on **7 October 2019** to enquire as to the status of his complaint and was advised that the investigation was ongoing. The First Complainant told the Provider's agent that he wished to lodge a further complaint as he was continuing to receive arrears correspondence from the Provider. The Provider's agent advised the First Complainant that there were currently no arrears on the account. In response to this, the First Complainant questioned why he received a letter the previous week stating that there were arrears on the account of €1,200.00. The Provider's agent advised the First Complainant that the loan account billed on the 28th day of the month but the payment in question was received on the 4th day of the following month. The Provider's agent advised the First Complainant that the letter he received was an automatic system generated letter. The parties then discussed the payments on the Complainants' loan account. Later in the conversation the First Complainant mentioned that he had previously requested a change to the billing date on the loan to the 30th day of the month and that if this change was implemented, he would be in a position to make the monthly repayments on time.

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The Provider's agent advised that she would telephone him the following day to advise him as to whether a change to the billing date was possible. This was followed by a further discussion of the payments made to the loan account over the previous months.

The Provider's agent from the previous day's conversation telephoned the First Complainant on **8 October 2019** to advise that the account billing date could not be changed. The Provider's agent also advised the First Complainant as to the dates on which certain of his previous payments were received.

The Provider issued correspondence to the First Complainant dated **18 October 2019** in respect of the transactions on the loan account for the period **28 November 2018** to **4 October 2019**.

The Provider issued a Final Response letter to the First Complainant on **22 October 2019**.

Additional Submissions

The Complainants delivered a submission dated **12 October 2020** in response to the Provider's Complaint Response. In this submission, the Complainants made a number of points under four numbered paragraphs.

In summary, paragraph 1 addressed the payment options in respect of the Complainants' loan account; paragraph 2 referred to correspondence received from the Provider advising that following an account review, "*the wrong principal balance was used in calculating the outstanding figure of balance?*"; paragraph 3 referred to further correspondence received from the Provider advising of certain overcharging which occurred; and paragraph 4 addressed the reference number and messages on the payment instructions completed by the First Complainant.

The Provider responded to this submission on **13 November 2020**, advising that it had nothing further to add. However, the Provider stated that points two, three and four in the Complainants' submission did not form part of the formal complaint made to the Provider.

In a submission dated **22 November 2020**, the First Complainant, stated, among other things, as follows:

“In any investigation/complaint undertaken by any prescribed investigator, the Garda Siochana, Your office, or the financial regulator could not effectively carry out their investigations if constrained by a narrow term of reference focused on the items complained thereof, being compelled to exclude/ignore anything outside that remit? [...] These matters I have raised must be included as they show the continued mismanagement of our mortgage account over a considerable time period.”

On the second page of this submission, the First Complainant stated, as follows:

“At this juncture I am requesting the following:

- 1. Invoke any authority your office may have to initiate a “root and branch” investigation of our account to ascertain if any other irregularities exist?*
- 2. In anticipation of such a request being outside the remit of your office, to refer this request to the Financial regulator/Central bank, the regulatory body for money lending in this jurisdiction.”*

By letter dated **23 November 2020**, this Office wrote to the Complainants to advise that the parameters of the complaint which would be investigated and adjudicated upon were those set out in the Summary of Complaint dated **27 July 2020**. The Complainants were further advised that any additional complaints in respect of the Provider’s conduct would first have to be set out and pursued by the Complainants with the Provider.

Following this, should these complaints remain unresolved, the Complainants were advised that these matters could be referred to this Office as a separate complaint. The Complainants were also advised that, ahead of any adjudication, this Office would not be referring any matters to the Central Bank of Ireland.

Analysis

Following the transfer of the Complainants’ loan, the Provider issued correspondence to the Complainants on **21 November 2018** setting out the payment options available to them. In respect of the electronic funds transfer (“EFT”) option, the letter expressly requested that the Complainants include their mortgage account number when transferring funds.

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The letter further explained that the inclusion of the mortgage account number would assist in the correct allocation of funds to the Complainants' loan account.

At this point, I wish to note that the mortgage account number quoted by the Provider on this letter is an eight digit account number ending 100. Further to this, the reference number provided by the Provider for the EFT option was the eight digit account number. However, as the evidence shows, the Provider amended the mortgage account number by adding two further digits, '01', making it a 10 digit account number. In this respect, I note that the Provider does not appear to have specifically brought this change to the Complainants' attention.

If the Provider changes or intends to change the Complainants' mortgage loan account number, this very important change should have been clearly communicated to the Complainants in writing.

In this regard, I note, in particular, Provision 2.6 of the Code requires that a regulated entity:

*"makes full disclosure of all relevant material information [...] in a way that seeks to inform the **customer**".*

Further to this, Provision 4.1 of the Code states:

*"A **regulated entity** must ensure that all information it provides to a **consumer** is clear, accurate, up to date, and written in plain English. **Key information** must be brought to the attention of the **consumer**."*

In circumstances where the Provider requested that a mortgage account number be included when making a loan repayment by EFT and provided the actual reference number to be used, I would consider it imperative that the correct mortgage account number/reference number be cited on the correspondence that makes such a request – in this case, the letter of **21 November 2018**. While the Complainants' 10 digit mortgage account number was identical to the eight digit account number with the addition of two further digits, it appears the Provider nonetheless failed to identify, and provide the Complainants with, the correct account/reference number in its letter of **21 November 2018**. During the introductory call on **28 November 2018**, the First Complainant was not advised of any change to the mortgage account number and was expressly told that the account number would remain the same.

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While all subsequent correspondence that issued to the Complainants referenced the 10 digit account number in the subject line or identified the mortgage account number as the 10 digit number, I do not consider this was sufficient to put the Complainants on notice of a change to their mortgage account number. On reviewing the various correspondence, it can be seen that the inclusion of the mortgage account number in the subject line for instance, was simply for the purpose of referencing or identifying the account to which the particular correspondence related and not for the purpose of notifying the Complainants of a change to the mortgage account number.

Further to this, while the Provider's agent explained to the First Complainant during the telephone conversation on **4 December 2018** that the mortgage account number had been amended, I do not consider this means that the Provider discharged its duty to properly notify both Complainants as to the change to the mortgage account number. As can be seen, this call was not initiated by the Provider for the purpose of notifying the Complainants about the change to their account number but arose from a query from the First Complainant regarding the setting up of a payment instruction.

The Complainants have, in their post Preliminary Decision submission, detailed that the Provider has changed their mortgage account number and that the Complainants find this *"confusing to say the least"*. The Complainants requested in their post Preliminary Decision submission that the Provider:

"indicate,

(a) the time frame this current number will be in vogue until yet another change is muted?

(b) What is the actual current mortgage number, so that I may inform [the Complainants' bank] to change same?"

The Complainants also state that while they *"will recheck all post received but [the Complainants] do not recall any notification of same"*.

In response to the Complainants' post Preliminary Decision submission the Provider has, in a post Preliminary Decision submission, furnished *"a copy of the correspondence issued to the Complainants on 01 August 2021 which notified them that their account number is now [XXXXXXX9] and outlined the steps that borrowers must take to amend their payment details, if they pay by standing order or EFT. We can confirm that at this time, [the Provider] has no plan to make further changes to the Complainants' account number"*.

As noted above, the Provider set out the appropriate payment instructions in its letter of **21 November 2018**. During the telephone conversation on **3 December 2018**, I note that the First Complainant acknowledged the requirement for a reference number to be included when making an online payment and that this should be the mortgage account number. While the First Complainant indicated that the online payment system he was using could not facilitate the inclusion of a reference number, he was advised that he should put the reference number in the 'Your Message'/the 'Receiver Message' section of the online payment. During the telephone conversation on **4 December 2018**, the First Complainant was provided with the correct mortgage account number and advised to include the mortgage account number in the reference section of the online payment as this would allow payments to clear more quickly.

The First Complainant acknowledged this, indicating that he would change the manner in which he had set up the payment instruction.

The First Complainant has provided copies of a number of 'Payment Log Detail' documents in respect of the payments made to the loan account. The first such document is in respect of a payment made on **4 December 2018** in the amount of €750.00. In the fourth row of the 'Receiver Details' section, the First Complainant inserted nine digits of the 10 digit mortgage account number in the section called 'Message to appear in receiver statement'.

In the Payment Log Detail documents following this, I note that the Complainants' mortgage account number was not inserted. It can be seen from these documents that the message to appear in the receiver's statement from the **29 December 2018** payment to the **30 July 2019** payment was either the First Complainant's first name and surname or the initial of the First Complainant's first name and his full surname. However, in the **August, September and October 2019** Payment Log Detail documents, the message was 'DONT LOOSE ME'.

The evidence shows that the Complainants, in particular the First Complainant, were advised of the importance of including the mortgage account number when making online payments. However, it is not clear why the First Complainant deviated from this and proceeded to omit the mortgage account number when completing the online payment instruction.

While the First Complainant's payments may have originated from the same account on each occasion, I do not consider that the Provider was necessarily required to maintain details of the account from which previous payments had been made. I also note that there is no evidence of First Complainant advising the Provider of the details of the account from which payments would be made or that payments would always be made from this particular account.

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Furthermore, the Complainants say in a submission dated **12 October 2020** that an online method of payment was chosen in order to maintain control over payments. As such, this would mean that payments could originate from any account.

Having considered the matter at length, I do not consider that it is sufficient for the First Complainant to use his name or some variation of his name as the payment reference when he was making loan payments and expect the Provider to automatically identify these payments as relating to a joint loan account held in the name of the First Complainant and the Second Complainant. It is my opinion that using one accountholder's name as a payment reference without identifying the relevant account number or the full account name is likely to cause difficulty in identifying the appropriate loan account to which the payment should be allocated and also cause a delay in allocating the payment.

I would consider this to be somewhat more difficult when the initial of an accountholder's first name followed by their surname is used.

In terms of using a payment reference of 'DONT LOOSE ME', I am of the view that when neither an account number nor an accountholder name is included on a payment reference then the difficulty in identifying the appropriate loan account and allocating the payment is increased.

I also consider the omission of such information and simply using a payment reference such as 'DONT LOOSE ME' would add an additional layer of difficulty in that making a payment in this manner would lead to uncertainty as to whether such a payment was even intended for the Provider.

Accordingly, I accept that owing to the nature of the payment reference/message included on the payments made by the First Complainant, certain delays are likely to have arisen in terms of identifying the loan account for which these payments were intended and also in allocating these payments to the Complainants' loan account. I am also of the view that had the First Complainant included the mortgage account number on the payment instruction, it is likely that the Complainants' loan account could have been identified more easily and any delays in allocating payments could have been reduced, if not avoided altogether.

Despite this, with the exception of the payments made by the First Complainant on **28 June** and **30 August 2019** (discussed further below), payments appear to have been allocated to the Complainants' loan account in a reasonably prompt manner. For instance, having reviewed the transaction details furnished by the Provider in evidence with its Complaint Response and the Payment Log Detail documents furnished by the Complainants, it appears that payments were allocated to the loan account within one to five days of the payment date.

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Considering the reference information contained on the various payment instructions, I do not consider any unreasonable delays arose in allocating payments to the loan account (with the exception of the **28 June** and **30 August 2019** payments).

The evidence shows that payments were made by the First Complainant on **28 June** and **30 August 2019**. However, and as acknowledged by the Provider, these payments were not allocated to the loan account until **31 July** and **4 October 2019** respectively, a delay of over one month in the case of each payment. The Provider's position is that any delay associated with allocating payments to the loan account, including these two payments, is attributable to a failure to include the mortgage account number as the payment reference when completing the payment instructions.

The Provider further addresses the delay in allocating payments by offering the opinion that the agents working in its Finance Department were aware of previous payments made by the Complainants which resulted in the timely allocation of those payments. However, I do not accept this explanation, which I consider to be somewhat speculative. For instance, the Provider has not tendered evidence to show that enquiries were made with any of the agents in its Finance Department nor has the Provider tendered evidence from any of these agents which would support its opinion. As such, it is not clear precisely what the Provider has based its opinion on.

In respect of the **28 June 2019** payment, I note that the payment reference used was the First Complainant's full name. In terms of the delay in allocating this payment to the loan account, I am satisfied that the payment reference used in respect of this payment is likely to have caused some processing/allocation delay. However, I do not accept that all of the delay that arose in respect of allocating this payment can be attributed to the reference information contained on the payment instruction. The evidence shows that the First Complainant's full name was used as the payment reference for a number of payments prior to this payment. The evidence also shows that it never took longer than five days to allocate a payment to the loan account when such a payment reference was used or for any of the payments made prior to this payment for that matter.

In respect of the **30 August 2019** payment, the payment reference used was 'DONT LOOSE ME'. In terms of the delay in allocating this payment to the loan account, I note that the payment reference used made no reference to the Complainants' loan account. I also note that this was the first occasion which the payment reference 'DONT LOOSE ME' was used. As noted from the above discussion, I do not consider it reasonable to use a payment reference such as this and expect the Provider to be in a position to promptly allocate the payment to the relevant loan account without encountering certain difficulties or delays.

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I also note from the evidence that despite the various payment references used, the loan repayments were nonetheless allocated to the Complainants' loan account, suggesting that the Provider had sufficient information to correctly allocate these payments. Although, in the case of the **June** and **August 2019** payments, their allocation to the loan account took over one month.

It appears from the evidence that the inclusion of the Complainants' mortgage account number was not necessarily a strict payment requirement. Rather, the evidence shows that the inclusion of the mortgage account number would facilitate a more efficient allocation of payments. However, I appreciate that the absence of an account number can give rise to a risk of the misallocation of payments.

Having considered the matter in detail, I am satisfied the Provider was aware that payments in respect of the Complainants' loan account were consistently being made without the inclusion of the mortgage account number. It also appears that the Provider's Finance Department was aware of this.

In light of the importance of the mortgage account number for the proper allocation of payments and the continued omission of the mortgage account number from the Complainants' payment instructions, I consider it reasonable to expect the Provider to have communicated with and advised the Complainants of the importance of including the mortgage account number on a payment instruction, the difficulty the absence of the mortgage account number was presenting in respect of allocating payments, and the potential impact this could have in terms of arrears accruing on the loan account due to allocation delays. I believe that if some form of communication along these lines had taken place, the Complainants may have begun to include the mortgage account number on the payment instructions or would at least have been better informed of the consequences of not doing so.

Leading on from this, it appears that the Provider did not have any, or any adequate, system in place to flag or remedy situations such as the omission of a mortgage account number on a payment instruction. And if it did, the Provider does not appear to have taken any steps to communicate with the Complainants.

The Complainants have stated in their post Preliminary Decision submission that "*[i]t seems placing "Dont lose me " in the payment message area is causing [the Provider] a difficulty. Can you confirm that once the payment I BAN, BIC, and account reference number is not altered, that should be sufficient?"*".

The Provider, in its post Preliminary Decision submission, states that the Complainants *“continue to use the reference “DON’T LOSE ME” as the reference number when making payment. [The Provider] wrote to the Complainants on 02 September 2021 and 05 October 2021 outlining our bank details for payment. This letter stated, “It is important to continue to use your Mortgage Agreement number as the reference for these payments”.*

I note that the Provider has also submitted to this office a copy of the correspondence issued to the Complainants on 1 August 2021 which included the line *“** Payee Reference must only include the new 8-digit mortgage account number”* [Provider’s emphasis]

If the Complainants insist on using an irrelevant and unhelpful reference such as ‘DONT LOOSE ME’ or “DON’T LOSE ME” they will, in my view, be exacerbating the problem. To continue to do so is, in my view, both unreasonable and unhelpful and is certainly likely to cause delays and issues for which I believe the Complainants cannot hold the Provider responsible.

It is perfectly reasonable, in my view, for the Provider to require appropriate referencing on payments so such payments can be appropriately allocated. If the Complainants continue to use irrelevant payment references, then they cannot expect the Provider to be in a position to promptly allocate the payment to the relevant loan account without encountering certain difficulties or delays.

In respect of the telephone conversation which took place on **4 July 2019**, I note that the Provider has acknowledged certain shortcomings in terms of how its agent conducted this call. Having considered this conversation, I believe the Provider’s agent was not particularly helpful and failed to properly assist the First Complainant. For instance, it appears that this agent did not take any steps to check or follow-up with the relevant department as to whether the **28 June 2019** payment was received. I believe that based on the information imparted by the First Complainant during this call, the Provider’s agent should have investigated or escalated the matter, particularly as the First Complainant told the Provider’s agent that he had made the payment approximately one week prior to the date of the call.

Accordingly, having considered the evidence, I am satisfied that the First Complainant (as it appears that he was the one who made the payments to the loan account) and the Provider were both responsible, to varying degrees, for the delays associated in allocating the **June** and **August 2019** payments to the loan account. In respect of the **28 June 2019** payment, I am satisfied that there was an unreasonable delay on the part of the Provider in allocating this payment.

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In respect of the **30 August 2019** payment, while I am satisfied that the Provider was responsible for certain of the delay in allocating this payment, I am not satisfied there was any unreasonable delay on the part of the Provider, in the main, due to the payment reference used by the First Complainant.

In terms of the accrual of arrears on the Complainants' loan account, it is my opinion that loan repayments should be received on or before the billing date or scheduled due date, and it is the responsibility of both Complainants to ensure that payments are made such that they are received on time. According to the CCMA and the Code, arrears arise when a borrower does not make a loan repayment by the scheduled due date. In the context of the present complaint, the billing date in respect of the Complainants' loan was the 28th day of the month. As such, if a payment was not received by this date, then Complainants' loan account would be regarded as being in arrears.

In the Provider's letter of **21 November 2018**, it sought to advise the Complainants about, amongst other matters, how payments should be made to the loan account after **16 November 2018**. However, having considered this letter, I note that the Complainants were not advised as to the correct billing date in respect of the loan or if this had changed following the transfer to the Provider. Separately, this letter does not appear to have advised the Complainants that when making payments, by whatever payment option they chose, payments were required to be received on or before the billing date. On considering this letter, it is my opinion that the Provider should have included some form a clarification regarding the precise billing date on the Complainants' loan and, if the EFT payment option was chosen for instance, the need to ensure payments were received by the billing date.

The Complainants did not want their mortgage transferred to the Provider but they had no say in this matter. Where a mortgage is transferred in this manner, I believe it is essential that the mortgage holders are furnished with the fullest information. I believe the Provider's communications were deficient in this regard.

During the telephone conversation on **28 November 2018**, the Provider's agent enquired as to whether there was a particular date on which the loan repayments were made. In responding to this, the First Complainant advised that it was normally around the 30th day of the month. Later in the conversation, the First Complainant queried whether it would be alright to make repayments on the 30th day of the month or whatever weekday was closest to this. The Provider's agent acknowledged the First Complainant's comments but did not indicate that there would be any problem with making payments in this manner.

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In circumstances where the billing date on the loan account was the 28th day of the month and in light of the nature of the conversation which took place, I am of the view that this telephone conversation presented a good opportunity for the Provider's agent to inform the First Complainant as to the billing date on the loan account.

Further to this, it was quite clear from the conversation that the First Complainant would not be in a position to, or did not intend on making payments prior to the 30th day of the month, which was after the billing date. In these circumstances, I am of the opinion that the Provider's agent should have advised the First Complainant as to the billing date on the loan account. I am also of the opinion that it was wrong of the Provider's agent to indicate to the First Complainant or allow the First Complainant to believe that it was alright to make payments to the loan account on the date which fell after the billing date in circumstances where it deemed the account to be in arrears if he did so.

Further to this, the Provider wrote to the First Complainant only, on **5 December 2018** setting out the monthly repayment amount and the billing date, however, the letter did not advise that payments were required to be received on or before the billing date.

In forming the opinions set out in the preceding paragraphs, I am conscious of the requirements of Provisions 2.6 and 4.1 of the Code, set out above.

While the billing date for the Complainants' loan account does not appear to have been communicated to the Complainants at the time of the loan transfer, I note that the First Complainant was advised during the telephone call on **4 December 2018** and in the Provider's letter of **5 December 2018**, and on further occasions after this, that the billing date on the loan account was the 28th day of the month. However, I also note that it did not necessarily suit the First Complainant to make payments on this date as he was not paid until the 30th day of the month. I further note that the First Complainant communicated this to the Provider's agent during several telephone calls and as early as **28 November 2018**. I believe some flexibility from the Provider is required in such circumstances.

Having considered the evidence, I am satisfied that the First Complainant was aware that the billing date in respect of the loan was the 28th day of the month, and despite his requests to change this date. However, the billing date does not appear to have been changed during the period of the conduct being investigated.

It can be seen from the Payment Log Detail documents that only one payment was made by the First Complainant on the billing date (on **28 June 2019**). However, most payments were generally made on the 30th or 31st day of the month.

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Therefore, even if the payments were allocated to the loan account on the day they were made by the First Complainant, all but one were received after the billing date, meaning the loan account was in arrears.

While the transaction document supplied in evidence suggests that some of the payments made by the First Complainant may have been received by the Provider on the date they were made, I do not accept that the Provider is likely to have received every payment on the day they were made. Further to this, I note the First Complainant was advised as early as **3 December 2018** that payments may not clear until the following day. The First Complainant was similarly advised during the telephone conversations on **1 April** and **4 July 2019**. In addition to this, it must also be noted that the payment references used by the First Complainant is likely to have led to a delay in allocating payments to the loan account, further preventing them from being received by the due date. However, as effectively all payments were made after the due date, the manner in which the First Complainant referenced the payments would not have prevented them from being received on or before the billing date in the present circumstances.

As can be seen, the First Complainant made a payment to the Provider on **28 June 2019**, however, this payment was not allocated to the loan account until **31 July 2019**. The Provider issued Arrears Letters to the Complainants on **1 July 2019** pursuant to Provision 9 of the CCMA advising that the payment due on **28 June 2019** had not been made.

Provision 9 of the CCMA states, as follows:

*“As soon as a **borrower** goes into **arrears**, a lender must communicate promptly and clearly with the **borrower** to establish in the first instance why the repayment schedule in accordance with the mortgage contract, has not been adhered to.”*

The above Arrears Letters issued three days after the billing date. However, I note from the evidence that a number of previous payments were not allocated to the loan account for up to five days after the billing date, but no Arrears Letters appear to have been issued. If it is the case that Arrears Letters are automatic system generated letters, it is not clear why no such letters issued to the Complainants prior to **July 2019**.

However, taking into consideration that payments are not always likely to be received on the date they are made and that allocation delays arose from the manner in which the **28 June 2019** payment was referenced, I accept that this payment is unlikely to have been received or allocated by the date these Arrears Letters were issued. Accordingly, in light of the requirements of Provision 9 of the CCMA, I am not satisfied that the Provider's conduct in issuing the Arrears Letters dated **1 July 2019** was unreasonable or wrong.

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The Provider issued 31 Day Arrears Letters on **29 July 2019** in respect of the payment due on **28 June 2019** pursuant to Provision 23 of the CCMA.

Provision 23 of the CCMA states, as follows:

*“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** [...] of the status of the account on paper or another **durable medium**, within 3 **business days**. [...].”*

Provision 23 continues by setting out the information which must be contained in the required letter.

It is my opinion that the **28 June 2019** payment should have been allocated to the loan account prior to these letters issuing. My position in this regard is based on the fact that previous payments containing similar payment references as the one used for the **28 June 2019** payment were allocated to the loan account within a short number of days of the payment date; the poor level of assistance offered to the First Complainant during the telephone call on **4 July 2019**; the absence of any communication from the Provider regarding the payment references being used; and the unreasonable delay on the part of the Provider in allocating this payment (discussed above). Accordingly, I am satisfied that the 31 Days Arrears Letters should not have issued to the Complainants on **29 July 2019**.

The Provider issued further Arrears Letters to the Complainants pursuant to Provision 9 of the CCMA on **31 August 2019** advising that the payment due on **28 August 2019** had not been made. In this regard, I note that the First Complainant made a payment to the loan account on **30 August 2019**. However, as the billing date for the August payment was **28 August 2019**, I accept that the loan account was in arrears by the time the First Complainant made this payment. In this respect, I note that the First Complainant was expressly advised during the telephone conversation on **4 July 2019** that payments were coming into the loan after the billing date and that payments needed to come in on or before the 28th day of the month.

As stated above, I am not satisfied that payments are always likely to be received by the Provider on the date they were made by the First Complainant. Further to this and as discussed above, because of the particular payment reference used for this payment, the Provider is likely to have encountered greater difficulty and delay in its allocation. In these circumstances, I accept that this payment is unlikely to have been received or allocated on the date these Arrears Letters were issued.

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Accordingly, in light of the requirements of Provision 9 of the CCMA, I am not satisfied that the Provider's conduct in issuing the Arrears Letters dated **31 August 2019** was unreasonable or wrong.

The Provider issued 31 Day Arrears Letters on **28 September 2019** pursuant to Provision 23 of the CCMA in respect of the payment due on **28 August 2019**. However, I am not satisfied the Provider's conduct in issuing these letters was unreasonable or wrong. My position in respect of these letters is based on the fact that I do not consider there to have been an unreasonable delay in allocating the **30 August 2019** payment. However, I am also mindful of the poor level of assistance offered to the First Complainant during the telephone call on **4 July 2019** and the absence of any communication from the Provider regarding the payment references previously used. Nonetheless, I do not consider this is sufficient to show that the Provider should have allocated the **28 August 2019** payment prior to issuing the letters on **28 September 2019**. Accordingly, in light of the requirements of Provision 23 of the CCMA, I am not satisfied that the Provider's conduct in issuing the 31 Days Arrears Letters dated **28 September 2019** was unreasonable or wrong.

During the telephone conversation on **4 December 2018**, a request was made to change the billing date on the loan account from the 28th day of the month to the 30th day of the month. On considering this conversation, it is clear that the Provider's agent advised the First Complainant that the billing date could be changed and that he would put in a request to change the billing date. The Provider's agent also indicated that he would clarify what was required in order to change the billing date and that he would confirm this with the First Complainant. Quite disappointingly, there is no evidence of this agent or any of the Provider's agents following-up with the First Complainant in relation to changing the billing date.

While the Provider did not revert to the First Complainant regarding a change to the billing date, it appears that it was not until **28 August 2019**, almost nine months later, that the First Complainant mentioned that he had previously requested the billing date be changed. The Provider's notes of this conversation indicate that a request was made to change the billing date on the Complainants' loan account, which state, as follows: *"emailed MG re changing the billing date."* It does not appear that this agent or any of the Provider's agents followed-up with the First Complainant regarding this request. However, in the circumstances, I would expect someone within the Provider to have promptly informed the First Complainant whether or not it was possible to change the billing date.

The evidence suggests that it was not until **8 October 2019**, 10 months after the initial request was made, that the First Complainant was told that it was not possible to change the billing date.

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It is difficult to establish which version of the Provider's advice is correct. The Complainant was informed that it was possible to change the billing date, then he was told it was not possible and then I note it was ultimately possible and appears to have been changed. This is most unsatisfactory.

It is quite clear that there were customer service failings when it came to the request to change the billing date on the loan account and I am very disappointed at how this request was handled. Also of concern was absence of an awareness on the part of the Provider's agents as to whether or not it was possible to change the billing date. I am of the opinion that a request to change the billing date on a loan account is likely to be a somewhat common enquiry or, at least, an enquiry that the Provider would reasonably anticipate or expect to receive. As such, I find it strange that none of the Provider's agents with whom the First Complainant spoke appear to have been aware of the Provider's asserted system limitations regarding changes to billing dates or that it was purportedly not possible to change the billing date. Had the Provider's agents been properly appraised of such matters, I believe that the First Complainant would have been aware from the time of his initial request whether or not it was possible to change the billing date. Instead, from the First Complainant's perspective, these requests were effectively being ignored.

The Provider has furnished details of the information provided to the CCR and ICB in respect of the Complainants' loan account in its Complaint Response.

In respect of the information reported to the CCR, I note that in the column, 'Number of Payments Past Due', the number '1' is recorded for **30 November 2018** which appears to be correct as there were certain arrears on the Complainants' loan account when transferred to the Provider. For the period **31 December 2018** to **31 August 2020**, the Number of Payments Past Due is recorded as '0'.

In respect of the information reported to the ICB, the Provider states that the profile for the Complainants' loan account reads as '00000000000000000000' (19 zeros) as at **31 May 2020**. I understand that this indicates that of the 19 payments due on the Complainants' loan account prior to **31 May 2020**, none were missed. This is significant as, importantly, it means the Complainants' credit record has not been negatively impacted by the Provider's conduct.

In light of the above information and in the absence of any evidence from the Complainants that there was adverse credit reporting in respect of their loan account, I am satisfied that no adverse credit reporting occurred in respect of the Complainants' loan in respect of the conduct the subject of this complaint.

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With regard to the Complainants' comment that they would expect the Provider to receive censure and admonishment, I must point out that it is not the role of this Office to sanction or censure providers.

Such actions are a matter for the Regulator or the Central Bank of Ireland. The role of this Office is to investigate and adjudicate on complaints based on the merits of the individual complaint.

Goodwill Gesture

As outlined in its Complaint Response, the Provider has offered €250.00 as compensation in respect of certain shortcomings arising from the telephone conversation which took place on **4 July 2019** and the delay in actioning the First Complainant's request to amend the billing date on the loan account.

The date of a billing is of crucial importance to a borrower, particularly in circumstances where, like the Complainants, they are deemed to be in arrears if they don't meet it. Clearly, having a billing date that falls two days before being paid was a serious challenge and inconvenience for the Complainants.

However, in light of the foregoing analysis and the significant ongoing inconvenience to the Complainants, I am not satisfied that an offer of compensation in the amount of €250.00 is adequate compensation for the inconvenience sustained by the Complainants.

Therefore, I partially uphold this complaint and direct the Provider to pay a sum of €1,000 in compensation to the Complainants.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)** as the conduct complained of was unreasonable in its application to the Complainants and on the ground specified in **Section 60(2)(g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant/s in the sum of €1,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

13 December 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

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

