



<u>Decision Ref:</u>	2022-0047
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Fees & charges applied Dissatisfaction with customer service Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint is in relation to a direct debit payment.

The Complainants' Case

The Complainants state that they had a mortgage loan with the Provider that was paid on the first of each month by direct debit from Current Account A. The Complainants submit that they redeemed their mortgage loan on **21 December 2020** as they had chosen to re-mortgage with a new mortgage provider. The Complainants submit that, as far as they were concerned, the mortgage with the Provider was complete and it no longer had any right to seek repayments from them. The Complainants submit that on **1 January 2021** the Provider processed a direct debit for €2,000 from Current Account A.

The Complainants submit that they noticed the charge and contacted the Provider on Monday **4 January 2021** to complain. The Complainant maintains that the Provider informed them that a refund would take ten to 14 days to process. The Complainants submit that they were dissatisfied with this and they informed the Provider that this delay was unacceptable as they required the funds to meet their repayment obligations with their new mortgage provider. The Complainants acknowledge that the Provider did in fact process their refund quickly and note that the funds were returned to Current Account A, on Thursday **7 January 2021**.

The Complainants are dissatisfied with the Provider's explanation as to why the direct debit was processed. The Complainants state that they were informed that, based on the date of redemption, there was an onus on them to cancel their direct debit with the Provider. The Complainants dispute this contention, submitting that based on a repayment date of **21 December 2020**, they were within the last seven working days of the month of **December** and therefore they did not need to contact the Provider to cancel the direct debit.

They further submit that regardless of the Provider's internal cut-off points to amend direct debits for the following month, if a mortgage has been redeemed and no future repayments are due, the Provider as both the direct debit originator and the mortgagor, possesses the necessary data to recognise it should not collect any future repayments. Therefore, the Complainants maintain that the direct debit should have been cancelled by the Provider and that the payment being called for was a breach of their original contract.

The Complainants made further submissions on **18 June 2021** stating that the Provider was "*hiding behind system restraints*" and that the "*contract is straightforward...once [they] pay [their] mortgage in full [the Provider is] no longer entitled to collect payments from [their] current account. By collecting a payment they were not entitled from [their] current account [the Provider is] in breach of contract in respect of the operation of [their] current account*".

Ultimately, the Complainant wants the Provider to "*properly address*" the situation that has arisen.

The Provider's Case

The Provider submits that it received a complaint from the Complainants on **4 January 2021** and issued a Final Response Letter on **27 January 2021**. The Provider submits that the Complainants were dissatisfied that the Provider had presented a direct debit on the Complainants' current account on **1 January 2021**, even though the mortgage account was redeemed on **21 December 2020**.

The Provider submits that it has no control over when the funds for redemption are received from third parties. The Provider submits that redemption statements were issued to the Complainants' solicitors on **3 December 2020** and this was followed on **16 December 2020** by redemption figures required to redeem the mortgage in full at that point in time. The Provider maintains that within its correspondence, it provided clear guidance in respect of the treatment of future direct debit payment instructions. The Provider regrets that the Complainants were not informed about the process by their solicitor, on foot of it issuing redemption funds to the Provider, received on **21 December 2020**, for processing.

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The Provider submits that it operates an internal cut off point within the calendar month for amendments to accounts. The Provider confirms that it received redemption funds from the Complainants and because the Complainants did not cancel their direct debit mandate, the direct debit presented for payment on **1 January 2021**. Once the Provider confirmed that the direct debit had processed successfully, the refund was arranged on **7 January 2021**. The Provider submits that a member of its customer service team called the Complainants to confirm that the refund was complete. The Provider also confirms that the discharge of the title deeds were processed upon redemption of the mortgage loan account. The Provider thanked the Complainants for their loyal custom over the years and apologised for any inconvenience this issued caused.

The Provider made further submissions to this Office on **9 June 2021**. It states that it is clearly detailed in the redemption quotation correspondence dated **16 December 2020** under the heading '**Cancellation of Future Payments**' that the requirement to cancel the next Direct Debit lay solely with the Complainants, in circumstances where the redemption proceeds were received during the last seven working days of the month. The Provider states that its *"systems and processes operate with specific cut-off dates throughout the month to facilitate the continual functionality of our accounts"*.

The Provider states that its system can only provide for the automatic cancellation of a direct debit where the redemption proceeds have been received before the last seven working days of the month. The Provider states that in the case of this matter, the redemption proceeds were received within the last seven working days of **December 2020** and because it did not receive an instruction from the Complainants to cancel the direct debit due on **1 January 2021**, that direct debit request was presented. Furthermore, the Provider states that the redemption proceeds were received by cheque, and the normal cheque clearance timeframes apply, therefore the account was not settled until the cheque cleared, a number of days after it was received.

The Provider also relies on section 39 of the Terms and Conditions attaching to the Complainants' current account which it submits *"demonstrates that the onus was on the Complainants to contact [the Provider] specifically in relation to cancelling or suspending a direct debit"*.

The Complaint for Adjudication

The complaint is that in January 2021, the Provider incorrectly presented a direct debit on the Complainants' Current Account notwithstanding that the Complainants' mortgage account had been fully redeemed during the previous calendar month.

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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. Recordings of telephone calls furnished in evidence, have also been considered. 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 **13 January 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that a request for redemption figures was received by the Provider from the Complainants' legal representative on **14 December 2020** and a redemption quotation issued to the Complainants' nominated legal representative on **16 December 2020**.

This letter of **16 December 2020** stated, under a heading "**Cancellation of Future Payments**" that:

"If you pay by direct debit, the direct debit currently in place on your account will be cancelled from the month following redemption of your account. However if you have not yet made your direct debit payment for the current month or your redemption proceeds are received within the last seven working days of the month you will need to contact your banking provider to request cancellation of your next payment.

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The redemption proceeds were received on **21 December 2020** which was the seventh last working day of **December 2020**. Therefore, I accept that the redemption proceeds were received within the last seven working days of the month and therefore no automatic cancellation of the direct debit was triggered by the redemption payment, and instead the direct debit remained in place, in the absence of contact being made by the Complainants or their legal representative, to request cancellation. I note that this request for cancellation was not made.

Furthermore, I note that section 39.4 of the terms and conditions of the account associated with the mortgage state that the Complainants “*must contact the Direct Debit Originator to amend or cancel a Mandate*”.

Therefore, based on the foregoing, I do not accept the Complainants’ contention that the Provider incorrectly presented for a direct debit from their Current Account. Given that the redemption proceeds were only paid within the last seven working days of **December 2020**, the onus was on the Complainants to contact the Provider to cancel the direct debit. I am satisfied that this was made clear in the account terms and conditions, and it was also made clear again, in the redemption quotation issued on **16 December 2020** to the Complainants’ legal representative.

In those circumstances, I do not accept the suggestion that the Provider acted wrongfully in processing a direct debit to the Complainants’ current account on 4 January 2021, given that the redemption payment had not been made before the last 7 working days of the month.

I am conscious that the timing of the direct debit presentation, was a little unfortunate for the Complainants, but I note that as soon as they communicated the issue to the Provider, it acted promptly and well within its normal timeline, to ensure that the payment was reversed as quickly as possible. I note in that regard that although the debit had been made on Monday 4 January, the funds were returned by the Provider to the Complainants’ current account on Thursday 7 January 2021.

In those circumstances, in my opinion, the evidence does not disclose any wrongdoing by the Provider and for that reason, there is no reasonable basis upon which to uphold this complaint.

Conclusion

My Decision, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

4 February 2022

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
- and

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